



# **PHASE 3 REPORT ON IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION IN THE CZECH REPUBLIC**

**MARCH 2013**

This Phase 3 Report on the Czech Republic by the OECD Working Group on Bribery evaluates and makes recommendations on the Czech Republic's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. It was adopted by the Working Group on 14 March 2013.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

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## EXECUTIVE SUMMARY

The Phase 3 report on the Czech Republic by the OECD Working Group on Bribery evaluates and makes recommendations on the Czech Republic's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in the Czech Republic's legislative and institutional framework, as well as progress made since the Czech Republic's Phase 2 evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

The Working Group on Bribery welcomes the adoption by the Czech Republic of a comprehensive corporate liability regime, and is hopeful that this will contribute to more effective enforcement of the foreign bribery offence. However, the Working Group considers that foreign bribery enforcement could be much enhanced by engaging with key actors. In particular, the Working Group is concerned by the regrettably low level of awareness of the foreign bribery risks in the Czech Republic. Of serious concern was the complete absence of representatives from Czech companies at the on-site visit, which indicates a serious deficiency in the engagement between the Czech government and the Czech private sector. Similarly, there is a lack of awareness among auditors and accountants of their reporting obligations, and a lack of adequate compliance programmes to address the risks of foreign bribery among Czech companies. To further enhance detection and prevention, the Working Group also recommends that the Czech Republic proceed promptly with its intention to adopt adequate protection for whistleblowers.

The report identifies further areas for improvement. With regards to prosecutorial independence, the Working Group is concerned that possible political pressures over prosecutorial decisions, may indirectly influence investigations and prosecutions for foreign bribery. With respect to the recently introduced procedure on agreements on guilt and punishment, the Working Group considers that significant aspects of such agreements should be publicised, including the natural and legal persons involved, the reasons why the agreement was appropriate and terms of the agreement, in order to increase accountability, raise awareness, and enhance public confidence.

The report also notes positive developments. The UOKFK and the HPPO, the principal units responsible for investigating and prosecuting foreign bribery, appear well-armed to investigate foreign bribery adequately, and foreign bribery training for the police is included in the general training on corruption. The Czech Republic has also taken measures to improve the level of expertise in the area of confiscation of proceeds of crime, and there has been a steep increase in confiscation in bribery cases. The Czech Republic is also commended for its initiatives to train and assist prosecutors and judges in the field of mutual legal assistance. The Czech Republic has yet to record a conviction or prosecution for foreign bribery. Of the three foreign bribery allegations brought to light, two investigations are ongoing, and one could not be prosecuted due to the absence of corporate liability at the time of the offence. The Working Group is hopeful that the enforcement framework in place will allow the Czech authorities to effectively pursue the investigations underway, as well as any future foreign bribery cases.

The Report and its recommendations reflect findings of experts from Iceland and South Africa, and were adopted by the Working Group on 14 March 2013. It is based on legislation and other materials provided by the Czech Republic and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to Prague on 23-26

October 2012, during which the team met representatives of the Czech Republic's public and private sectors, legislature, judiciary, and civil society. Within one year of the Working Group's approval of this report, the Czech Republic will make a follow-up report on its implementation of certain recommendations. It will further submit a written report on the implementation of all recommendations within two years.

## A. INTRODUCTION

### 1. The On-Site Visit

1. During 23-25 October 2012, an evaluation team from the OECD Working Group on Bribery in International Business Transactions (Working Group) visited Prague as part of the Phase 3 evaluation of the Czech Republic's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2009 Recommendation for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Anti-Bribery Recommendation), and the 2009 Recommendation of the Council on Tax Measures for Further Combating the Bribery of Foreign Public Officials in International Business Transactions (2009 Tax Recommendation).

2. The evaluation team was composed of lead examiners from Iceland and South Africa as well as members of the OECD Secretariat.<sup>1</sup> Before the on-site visit, the Czech Republic responded to the Phase 3 questionnaire and supplementary questions, and provided relevant legislation and documents. During the on-site visit, the evaluation team met with representatives of the Czech Republic's public and private sector, legislature, judiciary, civil society, and media.<sup>2</sup> The evaluation team expresses its appreciation to the participants for their openness during the discussions, and to the Czech Republic for its co-operation throughout the evaluation.

3. Of serious concern during the on-site visit was the complete absence of representatives from Czech companies. Although the lead examiners appreciate the efforts of the Czech Republic to invite private companies, the fact that not even one representative from a Czech company attended the on-site visit indicates a serious deficiency in the engagement between the Czech government and Czech private companies on the awareness of foreign bribery. Accordingly, the examining team was forced to rely on statements from business organisations, accountants, auditors, lawyers, and civil society in order to assess the awareness of Czech companies of foreign bribery. The reasons for the lack of engagement between the Czech government and private sector are further addressed in sections 7.c. and 10.a.

### 2. Summary of the Monitoring Steps Leading to Phase 3

4. In accordance with the regular monitoring procedure that applies to all Parties to the Convention, the Czech Republic has already undergone the following monitoring steps leading up to Phase 3: 1) Phase 1 (March 2000); Phase 2 (October 2006); as well as Phase 2 Written Follow-Up Report (February 2009). As of the Czech Republic's Phase 2 Written Follow-Up Review, the Czech Republic had partially implemented recommendations 1(a), 1(b), 1(c), 4(a), 4(b), 5(a), 6(a), 8(b), 9(a), 14(b), 15(b), 16(a), 16(b), and 17. At that time, the Czech Republic had not implemented recommendations 2, 6(c), 8(c), 13, and 15(a). The Czech Republic had fully implemented all other recommendations.

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<sup>1</sup> Iceland was represented by: Mr. Helgi Magnus Gunnarsson, Deputy Director of Public Prosecutions; and Ms. Inga Oskarsdottir, Legal Expert, Ministry of Interior. South Africa was represented by Mr. Dumazi Marivate, Principal State Law Advisor, International Legal Relations, Department of Justice and Constitutional Development; and Mr. Gerhard Nel, Deputy Director of Public Prosecutions, National Prosecuting Authority. The OECD Secretariat was represented by Ms. France Chain, Senior Legal Analyst and Co-ordinator of the Phase 3 evaluation of the Czech Republic, and Mr. Chiawen Kiew, Legal Analyst, Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

<sup>2</sup> See Annex 2 for a list of participants.

### **3. The Outline of the Report**

5. This Report is structured as follows: Part B examines the Czech Republic's efforts to implement and enforce the Convention and the 2009 Recommendations, having regard to Group-wide and country-specific issues. Particular attention is paid to enforcement efforts and results, and weaknesses identified in previous evaluations. Part C sets out the Working Group's recommendations and issues for follow-up.

### **4. Economic Background**

6. The Czech Republic is one of the smaller countries in the Working Group by gross domestic product (GDP) and foreign direct investment (FDI). In 2010, the Czech Republic was ranked 32<sup>nd</sup> among Working Group members in terms of GDP, and 35<sup>th</sup> in terms of outward FDI. In 2010, the Czech Republic was ranked 25<sup>th</sup> among Working Group members in terms of growth, which slowed to 1.7% in 2011 and is expected to have decreased to 1.0% in 2012.

7. The Czech Republic has one of the most developed and industrialized economies in Central and Eastern Europe. The main export industries of the Czech Republic are motor vehicles, electronics, and information technology/telecommunications facilities. More than half (54.6%) of Czech exports came from the machinery and transport sector. Over 60% of the Czech workforce is employed by small and medium enterprises (SMEs).<sup>3</sup>

8. Over 80% of Czech exports are directed to European Union member countries, and its top five trading partners are Germany, Slovak Republic, Poland, France, and Austria. The percentage of exports to emerging markets is relatively low, but has steadily grown in recent years. Similarly, outward foreign direct investment is mainly targeted at EU member states with the Netherlands (40%), Slovakia (15.2%) and Romania (9.6%) being the most significant investment destinations. Foreign direct investment to emerging markets is negligible.

9. Media articles and commentators have noted significant domestic corruption issues in the Czech Republic.<sup>4</sup> A recent report by the Czech secret service alleged that Czech state-owned companies were committing corruption in public procurements and added that "[i]nvestigation of serious cases ... is complicated by the political consequences and by the possible bias of local authorities engaged in prosecution".<sup>5</sup> The Czech Republic ranks 57<sup>th</sup> in the Corruption Perception Index, with a score of 4.4.<sup>6</sup>

### **5. Cases involving the bribery of foreign public officials**

10. Since 2000 and the entry into force of the foreign bribery offence, the Czech Republic has not prosecuted any cases of foreign bribery. During the on-site visit, the Czech Republic discussed six allegations of foreign bribery that have come to light since the Czech Republic ratified the Anti-Bribery Convention in 2000.<sup>7</sup> Discussions during the on-site visit clarified that three of these cases are in fact cases

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<sup>3</sup> Czech Economy – development and macroeconomic factors, [http://www.mzv.cz/athens/en/trade\\_and\\_economy/czech\\_economy\\_development\\_and\\_indices.html](http://www.mzv.cz/athens/en/trade_and_economy/czech_economy_development_and_indices.html)

<sup>4</sup> "Inside the Chamber of Secrets", The Economist, 26 May 2012; "The State of Corruption", The Economist, 18 May 2012.

<sup>5</sup> Czech Secret Service Raps State Firms for Lawbreaking, Reuters, 23 August 2012.

<sup>6</sup> The Transparency International Corruption Perception Index ranks countries according to their perceived level of corruption in the public sector. For more information: [www.transparency.org/research/cpi](http://www.transparency.org/research/cpi).

<sup>7</sup> The Czech legislation for implementing the Anti-Bribery Convention came into force on 9 June 1999.



of bribery of Czech public officials by foreign companies.<sup>8</sup> These cases are not detailed in sub-sections a. and b. below, but may be referred to in the body of the report where relevant to the topic. Out of the three other cases, which all concern allegations of bribery of foreign public officials by Czech individuals or companies, one is the subject of ongoing investigations (Case #1), the second one has been suspended due to lack of mutual legal assistance (MLA) from the country of the foreign public official (Case #2), and the third one was never opened due to lack of jurisdiction over the legal person (Case #3). These cases are discussed in more detail below, and are also discussed where relevant throughout this Report. For reasons of confidentiality, only non-identifying information is provided about these cases.

**(a) On-going foreign bribery investigations**

11. *Case #1 – Arms Company Case:* A Czech company in the arms industry allegedly bribed foreign public officials in a non-Party to the Convention in 2003. This case was reported in the press of the foreign public officials' country. The Unit for Combating Corruption and Financial Crime (UOKFK) initiated investigations in 2011, notably in view of the fact that the statute of limitations was expiring. Since the vast amount of evidence would be in the foreign country, the UOKFK solicited co-operation from that country through INTERPOL, two months prior to the on-site visit by the Phase 3 evaluation team. The investigation is further complicated by the fact that the Czech intermediary is deceased. As of the time of this review, interrogations of persons were still underway as well as gathering of paper evidence. The Czech authorities further indicated that there were as yet insufficient grounds for prosecution. Progress on this case in the Czech Republic will depend on information requested from the foreign country, which is conducting its own investigation into the matter.

**(b) Terminated or suspended foreign bribery investigations**

12. *Case #2 – Cocoa Company Case:* This case involved the alleged attempted payment in 2001 of a USD 100 000 bribe to high-level public officials in a non-Party to the Convention in relation to the privatisation of a state-owned cocoa company. Investigations were opened by the UOKFK in 2007. The Czech authorities indicated that they were not able to pursue this case, because the country of the foreign public officials did not provide the requested mutual legal assistance, in spite of repeated requests including from the Czech ambassador to the Ministry of Justice of the foreign country. Although the investigation was suspended in March 2008, the Czech authorities explained that the case could be reopened at any time if information is received from the recipient country or if new facts arise.

13. *Case #3 – Construction Permit Case:* This case involved an individual from another Party to the Convention who, in 2007, obtained a construction permit in exchange for the payment of a USD 6 million

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<sup>8</sup> These three cases concern:

- (1) Alleged scheming in public tenders and bribery of Czech public officials by a company from a Party to the Convention, the subsidiary of a company from another Party, in relation to an arms contract. A high-level public official is being prosecuted. Cooperation with the authorities of the daughter and parent company is ongoing.
- (2) Alleged scheming in public tenders and bribery of Czech public officials by a company from a Party to the Convention in relation to an arms contract. The initial investigation was halted by the Czech police in 2008 but reopened by the SPPO in 2010. Cooperation, including through mutual legal assistance, is ongoing with several Parties to the Convention.
- (3) Alleged bribery of Czech public officials by a company from a Party to the Convention in relation to the privatisation of a Czech state-owned company. The initial investigation was shelved in the Czech Republic in 2008 with some suspicions of political influence, but reopened in 2009 under the responsibility of the HPPO in Olomouc. Six Czech individuals have been charged for, inter alia, insider trading and defrauding the state. A high level of co-operation was achieved with the authorities of the foreign company, including through the provision of mutual legal assistance.

bribe to officials in a country not Party to the Convention. The money circulated through a Czech bank. The Czech authorities explained that no individual was involved in the Czech Republic and, given that liability of legal persons was not established in the Czech Republic at the time of the facts, it was not possible to engage proceedings against the Czech bank. Nevertheless, the Czech Republic was able to provide mutual legal assistance to both countries involved in the case (the country of the natural person paying the bribes and the country of the foreign public officials). Eurojust also arranged several meetings between public prosecutors from the Czech Republic, and three other European Parties to the Convention. The case against the individual and the bank was finalised in the country of the foreign public officials by plea agreement. Investigation and prosecution of the bribe recipients is still ongoing in that country.

### *Commentary*

*The lead examiners note that no foreign bribery cases have been prosecuted in the Czech Republic as of the time of this report, but that the foreign bribery allegations which have come to light are being investigated. The lead examiners however hold the view that further efforts could be made to more proactively detect foreign bribery, for instance by engaging with stakeholders involved in anti-money laundering, accounting and auditing, by offering protection to whistleblowers, and by otherwise raising awareness in the private sector.*

## **B. IMPLEMENTATION AND APPLICATION BY THE CZECH REPUBLIC OF THE CONVENTION AND THE 2009 RECOMMENDATIONS**

14. This part of the Report considers the approach of the Czech Republic to key horizontal (Group-wide) issues identified by the Working Group for all Phase 3 evaluations. Consideration is also given to vertical (country-specific) issues arising from the Czech Republic's progress on weaknesses identified in Phase 2, or from changes to the Czech Republic's domestic legislative or institutional framework.

### **1. Foreign bribery offence**

15. Since its Phase 2 evaluation, the Czech Republic's Criminal Code (CC) was revised and a new CC became effective on 1 January 2010 (CC, Act No. 40/2009 Coll.).<sup>9</sup> These revisions were conducted in consultation with the prosecutorial and judiciary authorities, as well as with relevant government departments. The active bribery of foreign public officials is criminalised in section 332 of the new CC and provides for a sentence of imprisonment between one to six years and a pecuniary penalty. Confiscation may also be imposed (see sections 3 and 4 below for further discussion). The current offence retains several aspects of the previous offence for active bribery of a public official (CC, Act No. 140/1961 Coll., section 162) which was considered by the Working Group in earlier evaluations of the Czech Republic.<sup>10</sup> The new offence, however, broadens the scope of punishable corrupt conduct, while the previous provision only criminalised bribery in "procuring matters of general interest".<sup>11</sup>

#### **(a) Definition of foreign public official**

16. There are two provisions that define "foreign public official", namely, sections 127 and 334 of the CC. Section 127 defines "public officials" as judges, public prosecutors, the President of the Czech Republic, members of parliament, members of the government or those holding office in public bodies,

<sup>9</sup> Relevant legislative extracts, including the new active bribery offence, are set out in Annex 4.

<sup>10</sup> [Czech Republic Phase 1 Report](#), pp. 1-5; see also [Czech Republic Phase 2 Report](#), paras. 140-49.

<sup>11</sup> Section 161 CC.

and other functions (e.g., public notary, financial arbiter, various guards). Section 127 also provides that “a public official of a foreign state or international organisation [] shall be considered [] a public official according to the CC, if an international treaty provides so.” This definition is applicable to all sections of the CC.

17. Compared to foreign bribery legislation in force until 2010, section 334 has incorporated a broader definition of “public official” that is specifically applicable to the offences of bribery and trading in influence. In addition to those civil servants listed in section 127, a “public official” under section 334 also includes persons in a legislative, judicial, or public administration function of a foreign country. As before, the new definition continues to apply to employees of enterprises “in which a foreign country has the decisive influence” (i.e., state-controlled enterprises) as well as employees of international organisations.<sup>12</sup> The definition also now explicitly includes employees of an “international judicial body”.<sup>13</sup> The Czech Republic indicated that this definition of foreign public official had been specifically expanded with the intent to fully implement the OECD Anti-Bribery Convention and the Additional Protocol to the Convention on the Protection of the European Communities Financial Interests.

18. The new definition of “public official” in section 334 raises two concerns that existed at the time of Phase 2.<sup>14</sup> First, the definition requires that “the criminal offence [be] committed in connection [with the] competence” of the public official. Second, the definition requires that the performance of the official be “connected to a competence in procuring matters of general interest”.<sup>15</sup> In Phase 2, the Working Group decided to follow up whether the foreign bribery offence of the Czech Republic covers all acts in relation to the performance of an official’s duties, including any use of the public official’s position, whether or not within the official’s authorised competence.<sup>16</sup>

(i) *Competence of the official*

19. The current definition of foreign public officials requires that the bribe be connected to the “competence” of the official. Representatives from the Ministry of Justice (MOJ) and the Ministry of Interior at the on-site explained that this is understood broadly to mean any act that is within the official’s capacity as a public official. Czech authorities added that the Czech courts would interpret the “official’s competence” in a functional sense (i.e. what the official actually does) rather than a legalistic sense (i.e. what the official is contracted to do), although no case law was provided in this respect.

20. The offence as phrased may therefore not cover the situation where a bribe is offered to a foreign public official with a view to persuade him/her to cause a third party, such as a state-owned entity, to award an undue advantage to the briber. Czech authorities at the on-site responded that, in that situation, the bribe-giver would be liable of bribery if the public official was exercising his/her influence within his/her official capacity. However, if the public official were exercising his/her influence in his/her personal capacity (for instance, over a relative or his/her family member), the trading in influence offence would apply.

21. Even so, the lead examiners are concerned that the trading in influence offence may be used as a substitute for cases that should be more properly prosecuted as bribery. This is of particular concern since

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<sup>12</sup> Section 162a(2) CC.

<sup>13</sup> Section 334(b) CC.

<sup>14</sup> [Czech Republic Phase 2 Report](#), paras. 143-49.

<sup>15</sup> Section 334(2)(d) CC.

<sup>16</sup> [Czech Republic Phase 2 Report](#), follow-up issue 18(c).

the trading in influence offence carries only a sentence of up to two years' imprisonment, whereas the active bribery of foreign public officials has a maximum term of imprisonment of six years. This, in turn, impacts significantly the statute of limitations which is ten years for the active bribery offence, but only three years for trading in influence. How this affects the effective enforcement of foreign bribery will need to be further assessed as case law develops.

(ii) *Procuring matters of general interest*

22. It is also unclear whether the requirement that the performance of the official be connected to "procuring matters of general interest" is consistent with Article 1 of the Convention. Section 334(3) of the CC provides that "procuring matters of general interest shall also be understood as maintaining an obligation imposed by a legal regulation or assumed by contract, the purpose of which is to ensure that damage or unjust enrichment of parties to business relationships or persons acting on their behalf is avoided in such relationships." At the time of Phase 2, court decisions suggested that "procuring affairs" denotes performing activities or decision-making that serve the greater interests of society.<sup>17</sup> The Czech Republic explained that this addition in section 334 of the new CC was meant to expand upon earlier jurisprudence and include coverage of private sector bribery. The Czech Republic also added that the section would cover bribery for the foreign public official to take no action.

23. Court decisions have not added clarity to this issue. Some court decisions suggest that "procuring matters of general interest" should be interpreted broadly to include bribery for private as well as public interests. The Supreme Court has stated that the concept of "procuring matters of general interest" encompasses "not only the decision-making of bodies of state authority and administration, but also other activity involved in satisfying the interests of citizens and legal entities with regard to material, social, cultural or other needs".<sup>18</sup> For instance, providing loans or even preparing documentation for the provision of loans by a private bank has been found to be "procuring matters of general interest" within the meaning of the bribery provision.<sup>19</sup> Several cases by the Constitution Court and Supreme Court have also concluded that preserving the integrity of a soccer match falls within the definition of "procuring matters of general interest".

24. However, one 1992 decision raises concerns that "procuring matters of general interest" may exclude bribery that would otherwise be covered under Article 1 of the Convention. In that decision, the Supreme Court found that payment to a competitor at a public auction so that the competitor would withdraw its bid was not "procuring matter of general interest".<sup>20</sup> The Court reasoned that the decision to withdraw from the auction is a "personal right, and the exercise of such right cannot be considered as procuring a matter of general interest, however socially important it may be as part of this activity".<sup>21</sup>

25. There is thus conflicting authority as to whether "procuring matters of general interest" is consistent with Article 1 of the Convention. Decisions according a broad definition to the phrase are encouraging. Other decisions, however, suggest that the bribery legislation of the Czech Republic may not cover a payment by a Czech company to the official of a foreign state-owned company to withdraw a bid from a public auction. In such a case, it would be unclear whether withdrawal by the foreign state-owned company would be considered a "personal right", given that the state-owned company arguably represents

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<sup>17</sup> *Ibid*, para. 146.

<sup>18</sup> 8 Tdo 396/2007 (Supreme Court) (unofficial translation).

<sup>19</sup> 4 To 189/96 (Supreme Court).

<sup>20</sup> 4 Tz 37/92 (Supreme Court).

<sup>21</sup> 4 Tz 37/92 (Supreme Court) (unofficial translation).

public rights. The Czech authorities argue, however, that, in the 1992 Supreme Court decision, withdrawal from the auction was considered a “personal right” only because the bribe recipient was a private person. According to them, by definition, a decision by a state-owned company to withdraw from an auction could never be considered a “personal right”, since public officials, by definition, do not exercise “personal rights” when acting “in connection with their competence in procuring matters of public interest”. However, in light of the conflicting court interpretations as well as the lack of foreign bribery cases, the fact remains that it is unclear whether this provision would be interpreted consistently with Article 1 of the Convention.

### *Commentary*

*The Convention requires that the foreign bribery offence criminalise bribery for any improper use of the official’s position (Convention Article 1 and commentary 19). Under Czech law, the definition of “public official” requires that bribery be committed in connection with the competence of the official and with “procuring matters of general interest”. Although the lead examiners note the Czech Republic’s explanation that the “competence” of a public official would be interpreted by the courts in a functional sense, they remain concerned that the legislation may not cover instances where a foreign public official improperly exercises his/her influence in a personal capacity or over a third party.*

*The lead examiners thus recommend that the Working Group follow up on the application of provisions requiring that bribery be committed in connection (1) with the “competence” of the official and (2) with “procuring matters of general interest”, to ensure that the foreign bribery offence is enforced in conformity with the standards of Article 1 of the Anti-Bribery Convention. The lead examiners also recommend that the Working Group follow up on whether Czech authorities are relying on the trading in influence offence to avoid difficulties in establishing a bribery offence, and what consequences this may have on effective enforcement of the Convention.*

### *(b) Bribery through intermediaries and to third party beneficiaries*

26. Section 332 of the CC criminalises providing, offering or promising a bribe “to another person” or “for another person”. Although this is more explicit than the former active bribery offence in the old section 161 of the CC, it does not explicitly address whether a bribe conveyed to another person indirectly (i.e., through an intermediary) would be covered.<sup>22</sup> The Czech authorities explain that this language was drafted with a view to explicitly include bribery through intermediaries. However, the provision could be read to address intermediaries who bribe on behalf of a principal (i.e., those who bribe “for another person”). It is not entirely clear that the legislation explicitly covers situations where the principal used an intermediary to commit bribery (i.e. bribery “through” another person). Furthermore, while the Czech Republic was able to provide one case where an intermediary was prosecuted for aiding and abetting trading in influence and for passive bribery, no case was provided where a bribe payer who used an intermediary was prosecuted for active bribery. This issue would therefore merit follow-up as case law develops.

27. As for bribes paid to third party beneficiaries, these are explicitly covered in section 334(1) of the CC. Under this provision, bribery is constituted if an unauthorised advantage is given to “the bribed person or with his/her consent to another person”.

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<sup>22</sup> See paras 140-142 of the [Czech Republic Phase 2 Report](#).

## *Commentary*

*The lead examiners recommend that the Working Group follow up on the application of the Czech foreign bribery offence as case law develops to ensure that perpetrators who pay bribes through intermediaries are held liable.*

### *(c) Defence of “effective regret”*

28. The foreign bribery offence at the time of Phase 2 provided a defence of “effective regret” if the briber could show that “he/she has been requested” to bribe and “reported the fact voluntarily and without any delays to the prosecutor or police authority”.<sup>23</sup> The Working Group acknowledged that the defence of effective regret could be an important tool to increase reporting of domestic bribery because Czech authorities may prosecute its own officials. However, since its use in foreign bribery cases would completely undermine the purpose of the Convention, the Working Group recommended that the Czech Republic amend its legislation to exclude the defence of “effective regret” for foreign bribery. This defence was duly repealed by the time of the Phase 2 Follow-Up evaluation. The new CC does not include this defence with respect to either domestic or foreign bribery offences.<sup>24</sup>

29. In May 2012, the Government of the Czech Republic adopted a resolution asking the MOJ to prepare and submit a bill re-introducing the defence of “effective regret”. As of the date of this Report, the proposed reinstatement would allow prosecutors to defer prosecution of a bribe-giver if the bribe-giver “commits himself/herself to give full and true testimony” in proceedings against the bribe recipient.<sup>25</sup> If the suspect has fulfilled his or her commitments, the prosecution may decide to release the bribe-giver from prosecution.<sup>26</sup>

30. The Government considers that the defence may be an effective tool to enhance reporting of bribery allegations, since it offers a guarantee to the reporting party that he or she may not be prosecuted for the crime. The MOJ and the Ministry of Interior, however, have both expressed their opposition to the re-instatement of the defence. The MOJ argues that the defence was rarely used when it was previously in force. At the on-site visit, one panellist from civil society who was in favour of reinstating the defence believed that it may increase reporting by breaking the “corruption pact” between the payer and the recipient of the bribe. The panellist noted that the defence was a “traditional tool” for fighting corruption which exists in many European Union (EU) jurisdictions.

31. The Working Group has previously addressed these policy arguments and concluded that they are inapplicable in foreign bribery cases. As the Working Group outlined in Phase 2, in a domestic bribery case, the Czech Republic can prosecute its official who solicited the bribe. In a foreign bribery case, however, there is no guarantee that the corrupt foreign official will be prosecuted, either in the foreign country or in the Czech Republic. In any case, the Convention seeks to address the bribe payer and not the bribe recipient. Thus, in Phase 2 the Working Group concluded that, with respect to foreign bribery, “the defence serves no useful purpose: the crime may come to light, but the offenders remain unpunished and the ends of justice are not served.”<sup>27</sup> Even the panellist at the Phase 3 on-site visit who was in favour of

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<sup>23</sup> See section 163 of the old CC, and discussions in paras 153-163 *ibid*.

<sup>24</sup> Sections 331, 332 CC.

<sup>25</sup> Section 159c(1) CPC (proposed).

<sup>26</sup> Section 159d CPC.

<sup>27</sup> [Czech Republic Phase 2 Report](#), para. 163.

reinstating the effective regret defence agreed that it would be of marginal value as applied to the foreign bribery offence.

32. Representatives from the MOJ stated that, even if it were reinstated, the defence would not apply to foreign bribery. Following the on-site visit, the text of the draft amendment to reintroduce the principle of effective regret into the Czech Criminal Procedure Code was provided to the evaluation team. The draft section 159c explicitly provides that the principle of effective regret cannot be applied where the bribe was given, offered or promised to a foreign public official, as defined under section 334(2) of the CC. As of the time of this review, this provision had not yet been passed into law.

### *Commentary*

*The Convention does not permit a defence based on effective regret. In cases of foreign bribery the defence of effective regret would completely undermine the purpose of the Convention. The lead examiners were assured that it is not the Czech Republic's intent to re-instate the defence of effective regret with respect to foreign bribery. Therefore, they urge the Czech Republic to ensure that this assurance is carried through when and if the principle of effective regret is reintroduced in the Czech legal order. The lead examiners also recommend that the Working Group follow up the proposal to re-instate the defence of effective regret to ensure it is not applicable in foreign bribery cases.*

## **2. Responsibility of legal persons**

33. Article 2 of the Anti-Bribery Convention requires each Party to “take such measures as may be necessary [...] to establish liability of legal persons for the bribery of a foreign public official.” In Phase 2, the Czech Republic was found non-compliant with its obligations under Article 2, and the Working Group recommended that the Czech Republic establish such liability, and put in place effective proportionate and dissuasive sanctions.<sup>28</sup> During the Written Follow-Up to Phase 2, this recommendation was found not implemented.<sup>29</sup>

34. On 1 January 2012, the Act on Criminal Liability of Legal Persons and Proceedings against Them (Act No. 418/2011 Coll.) entered into force, establishing the criminal liability of legal persons for a number of criminal offences, including foreign bribery.<sup>30</sup> This Phase 3 evaluation therefore reviews this new corporate liability legislation, as well as implementation thereof in practice. The Czech Republic's corporate liability legislation is here assessed against Article 2 of the Anti-Bribery Convention, as well as against the Good Practice Guidance on Article 2 provided in Annex I to the 2009 Anti-Bribery Recommendation.

### **(a) Legal entities subject to liability**

35. Act No. 418/2011 Coll. refers broadly to liability of ‘legal persons.’ However, the term ‘legal person’ is not defined in the Act. During the on-site visit, the Czech authorities pointed to section 18 of the Civil Code which provides that legal entities are (a) associations of natural persons or legal entities, (b) special purpose property associations, (c) municipal authorities, (d) other entities designated as such by law. Under this provision, it appears that the definition of legal entities is broad enough to cover both profit

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<sup>28</sup> Recommendation 13 of the [Czech Republic Phase 2 Report](#).

<sup>29</sup> See [Written Follow-Up to Phase 2 Report](#).

<sup>30</sup> See Annex 4 for relevant legislative extracts of Act No. 418/2011 Coll.. See also the Czech Responses to the Phase 3 Questionnaire for the complete version of Act No. 418/2011 Coll..

and non-profit entities. The Czech authorities explain that section 6 of Act No. 418/2011 Coll., which excludes from criminal liability the Czech Republic, as well as “local self-governing entities while exercising public authority”, is only meant to exclude local governmental entities exercising public functions, but not state-owned or state-controlled enterprises. They also indicate that section 6(2) specifically covers state-owned and state-controlled entities by providing that where the local entities or Czech Republic hold shares of legal persons this “does not preclude criminal liability of such legal person”. The Czech authorities further assert that “there has never arisen any doubt that such companies, fully or partially state-owned, would escape criminal liability”, and that “all the commentaries to the Act also support such reading.” Nevertheless, given the very recent entry into force of Act No. 418/2011 Coll., the application of the criminal corporate liability regime to all legal persons, including state-owned or state-controlled enterprises, will need to be further assessed as case law develops.

**(b) Standard of liability**

*(i) Impact of the prosecution or conviction of the natural person*

36. The 2009 Anti-Bribery Recommendation specifies that prosecution of a legal person should not depend on the prosecution or conviction of the natural person. Act No. 418/2011 Coll. goes further, providing that “criminal liability of a legal person is not obstructed by the fact that a concrete natural person [...] cannot be identified” (section 8(3) of the Act). Thus, identification of a natural person is not necessary to engage proceedings against a legal person. This articulation in practice will need to be further assessed as case law develops. At the time of this review, all cases underway involving legal persons also included proceedings against natural persons.

*(ii) Correlation between the act of the natural person and the act of the legal person*

37. The Czech approach to corporate liability is akin to the second concept envisaged in the 2009 Anti-Bribery Recommendation.<sup>31</sup> Under section 8 of Act No. 418/2011 Coll., the responsibility of the legal person is triggered by acts or omissions of persons with a high level of managerial authority (member of a statutory body, person performing managerial or controlling activity, or person with a “decisive authority on management”).

38. Section 8(1)a of Act No. 418/2011 Coll. covers liability of the legal person for acts committed by “a statutory body or member of the statutory body or other person entitled to act on behalf of or for the legal person”. Discussions at the on-site visit addressed whether “other person[s] entitled to act on behalf of or for the legal person” could include agents acting as intermediaries in a bribery transaction. Law enforcement authorities and representatives of the MOJ expressed the view that such individuals are more appropriately covered under section 9 (see section (iii) below on acts committed by intermediaries).

39. Acts of lower level persons (“employee or person with similar status”) may also trigger the liability of the legal person, if the following conditions are met. First, the acts must have been committed by the employee “while fulfilling his/her duties/tasks”.<sup>32</sup> Second, the liability of legal persons for acts of employees is triggered (1) if the employee acted under the decision, approval or guidance of bodies or persons with higher level of managerial authority; or (2) if these bodies or persons did not take legally or “justly” required measures to prevent or avert the commission of a criminal act for which the legal person can be held liable.<sup>33</sup>

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<sup>31</sup> See section B, paragraph 2.b. of Annex I to the 2009 Anti-Bribery Recommendation.

<sup>32</sup> Section 8(1)d of Act No. 418/2011 Coll..

<sup>33</sup> Section 8(2)b *ibid.*



40. The first condition raises questions as to whether bribes paid by employees in international business transactions might be considered as outside the scope of “fulfilling his/her duties/tasks”, thus allowing the legal person to escape liability. Companies could well argue that the employee acted outside the scope of employment, because a payment for a bribe was never explicitly authorised (or was contrary to company policy). The Czech authorities, however, expressed the view that an employee would be acting outside the scope of “fulfilling his/her duties/tasks” only if he/she acted outside of a decision of the statutory bodies or person with managerial authority, or outside of the boundaries of internal controls set up by the company.

41. Section 8(2)b describes ‘justly required’ measures as “obligatory or necessary control (supervision) over the activities of employees”, or “necessary measures to prevent or stave off the consequences of a committed criminal act.” Representatives of the MOJ and prosecutorial authorities were of the view that the mere existence of a corporate compliance programme would not suffice to show that ‘justly required’ measures are in place. Effective enforcement of that compliance programme would have to be demonstrated. In terms of burden of proof, the Czech authorities consider that the prosecutor would only have to show that either no compliance programme was in place or that the programme was not effectively implemented. It would then be up to the legal person to show that they had made their best efforts to ensure enforcement of their corporate compliance programme to prevent bribery.

(iii) *Liability for acts committed by intermediaries, including related legal persons*

42. Annex I to the 2009 Anti-Bribery Recommendation clarifies that “a legal person cannot avoid responsibility by using intermediaries, including related legal persons” to commit foreign bribery.

43. The Czech law specifically addresses the issue of liability of legal persons for acts committed by intermediaries. Section 9(2) provides that the perpetrator of a criminal offence “is also a legal person that used other legal or natural persons for the commitment of a criminal act.” In this sense, bribery through (related or unrelated) legal persons is akin to bribery through any intermediary. Consequently, bribery through subsidiaries, joint ventures, or mother companies appears to be covered under this provision. Whether bribery through a related legal person could also be covered under section 8(1)a may need to be clarified as case law develops (see section (ii) above on acts by a “person acting on behalf or for the legal person”).

44. The Act also covers successor liability, by providing, in section 10 that “criminal liability of legal persons descends to all its legal successors.” The Act also addresses how proceedings should be handled in cases where the legal person undergoes a change in form or dissolution in the course of criminal proceedings.<sup>34</sup>

(iv) *Defences*

45. A defence of effective regret is foreseen for legal persons for certain types of offences (see explanations on effective regret in section 1.c. above).<sup>35</sup> However, under Act No. 418/2011 Coll., this defence is not available for the passive and active bribery offences or for the trading in influence offence.<sup>36</sup>

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<sup>34</sup> Section 32 *ibid.*

<sup>35</sup> Section 11 *ibid.*

<sup>36</sup> Section 11(2) *ibid.*

46. As noted above, the Czech authorities indicated that consideration is being given to reinstating the defence of effective regret for the active bribery offence applicable to natural persons. This could also impact enforcement of the bribery offence against legal persons.

**(c) Proceedings against legal persons**

**(i) Proceedings**

47. Criminal proceedings against a natural person are not a prerequisite to engaging proceedings against a legal person. Nevertheless, section 31 of Act No. 418/2011 Coll. provides that, where both natural and legal persons are being prosecuted for related criminal acts, joint proceedings will occur. Even in the context of joint proceedings, the liability of the natural and legal persons will be assessed independently.<sup>37</sup>

48. With respect to the conduct of proceedings against legal persons, section 1(2) of the Act provides that all provisions of the CC and Criminal Procedure Code (CPC) are applicable (unless otherwise foreseen in the Act). Thus, the conduct of investigations against legal persons and the investigative tools available would be identical, with the exception of investigative measures only applicable to natural persons (e.g. pre-trial detention). Similarly, proceedings against legal persons may be settled through the agreements on guilt and punishment recently introduced in the CC (see section 3.c and 5.b.(iii) below).

**(ii) Jurisdiction**

49. Under section 18 of the CC, the Czech Republic has jurisdiction to prosecute its nationals for any offence committed abroad, including foreign bribery, and regardless whether the act is a crime where it occurred. In this area, Act No. 418/2011 Coll. departs from the general provision in the CC and provides for specific territoriality and nationality jurisdiction for legal persons. Section 5(1) specifies that the territoriality and nationality jurisdiction provisions in the Act only apply if “admitted under a promulgated international agreement.” Since the OECD Anti-Bribery Convention falls under this category, sections 2 to 4 of Act No. 418/2001 Coll. on jurisdiction are applicable in proceedings against legal persons for foreign bribery offences.

50. Section 2 of Act No. 418/2011 Coll. provides for territoriality jurisdiction. Under this provision, legal persons are liable for acts committed in whole or in part on Czech territory, or affecting an interest in the Czech territory protected by the CC.

51. Section 3 provides for nationality jurisdiction over legal persons with a registered office in the Czech Republic. Section 4(2) goes further than the requirements of the Convention, by providing for jurisdiction over foreign legal persons with no registered office in the Czech Republic, if the criminal act was committed for the benefit of a Czech legal person.<sup>38</sup> However, under this provision, an additional element of proof is required in the form of a benefit to the Czech legal person.

**(d) Considerations of national economic interest**

52. The main point of discussion regarding the corporate liability legislation of the Czech Republic relates to section 14 of Act No. 418/2011 Coll., which prescribes that, in deciding on sanctions, the court

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<sup>37</sup> Section 31.2 *ibid.*

<sup>38</sup> The Czech legal person would also be considered a perpetrator of the offence under section 9 of the Act, for acts committed by using another legal person (see section (iii) above on bribery through intermediaries).

shall “consider whether the legal person conducts activity in the public interest, having strategic or hardly replaceable significance for the national economy” [emphasis added]. While this section is limited to decisions on sanctions, the question at the on-site visit was whether the rules on sanctioning may indirectly influence prosecutorial decisions on how to prosecute legal persons, or the priority given to such cases, even in legal systems operating under the legality principle. This raised questions regarding compliance with Article 3 on effective, proportionate and dissuasive sanctions, as well as, indirectly, with Article 5 of the Anti-Bribery Convention which requires, inter alia, that “investigation and prosecution” of foreign bribery “shall not be influenced by considerations of national economic interest...” Foreign bribery often occurs in the context of large business transactions, involving companies in major sectors of the economy (such as in the arms, extractive, construction or pharmaceutical industry). Legal persons prosecuted for foreign bribery may therefore often be strategic players at the national level, and their prosecution could well impact the national economy of the company’s home country.

53. During the on-site visit, the Czech authorities explained that section 14(1) had been inserted as a compromise, to assuage the fear of some members of Parliament who were concerned that sanctions on legal persons could result in the dissolution of companies with a major role in the Czech healthcare or public transportation systems. However, section 14(1) is not limited in application to the dissolution sanction, but must be taken into consideration in imposing all forms of punishment foreseen under Act No. 418/2011 Coll.. A judge interviewed during the on-site visit explained that he would essentially take into consideration the severity of the acts in order to impose a fair, but not necessarily popular ruling. In his opinion, the fact that a company is in a monopolistic position or plays a unique role should not provide it with immunity. In this sense, the appropriateness of a sanction and the impact on society would generally be taken into account. Regardless, all judges would be bound by provisions in the law and any decision contrary to the law would likely be challenged before higher courts.

54. The Czech authorities expressed the view that Article 5 of the Convention and section 14 do not pursue the same objectives, and that section 14, being about sanctions, would not be inconsistent with Article 5, which only addresses the “investigation and prosecution” stages. They further explained that the law enforcement authorities are obliged to follow the principle of legality (i.e. mandatory prosecution).

55. Differing views were expressed during discussions in the Working Group and the issue was not resolved. Section 14 of Act No. 418/2011 Coll. is further discussed below under section 3.b.(iv) on sanctions against legal persons.

*(e) Proceedings against legal persons in practice*

56. The Czech authorities indicate that there are no investigations or prosecutions to date of legal persons for foreign bribery. There are, however, as of end 2012, 19 prosecutions of legal persons underway. These concern essentially financial and economic criminality, such as tax fraud and tax evasion, false accounting, scheming in relation to public contracts, subsidy frauds, and extortion. In all 19 cases, natural persons are being prosecuted concurrently. As of the end of 2012, legal persons have been formally charged in five of these cases, for which court hearings have been scheduled. No final decision concerning legal persons has yet been handed in.

*Commentary*

*The lead examiners welcome the adoption by the Czech Republic of a comprehensive corporate liability regime. They consider that the Czech Republic has now fully implemented Phase 2 recommendation 13 in respect of the establishment of liability of legal persons. The lead examiners look forward to seeing the first cases against legal persons brought to court to evaluate how liability of legal persons is applied in practice. The lead examiners recommend*

*that the Working Group follow-up in particular on the application in practice of the following issues:*

- *The coverage of all legal persons, including state-owned and state-controlled entities;*
- *The liability of legal persons for acts of lower level employees, including interpretation of acts committed by the employee “while fulfilling his/her duties/tasks”, and the standard of “justly required” measures that must be proven were not taken by a defendant legal person when foreign bribery was committed by an employee;*
- *Liability of legal persons for acts committed by related legal persons; and*
- *Whether the defence of effective regret is reinstated and how it may impact the liability of legal persons.*

*In addition, with respect to the “justly required measures” which will need to be assessed in order to be able to determine whether a legal person is liable for acts of its employees, the Working Group recommends that the Czech Republic provide training to prosecutors on the topic, in particular on how to assess effectiveness of compliance programmes.*

### **3. Sanctions**

57. In Phase 2 it was recommended that the Czech Republic should maintain more detailed statistics on the sanctions imposed in domestic and foreign bribery cases (as well as in money laundering and false accounting cases – see sections 6 and 7 below).<sup>39</sup> This recommendation was considered only partially implemented at the time of the Czech Republic’s Written Follow-Up to Phase 2 in 2009, because statistics maintained did not provide information on the size of the fines imposed or whether forfeiture was applied (concerning forfeiture, see section 4 below on confiscation). Furthermore, Phase 2 recommendation 13 recommended that the Czech Republic put in place effective, proportionate and dissuasive sanctions for legal persons.

#### **(a) Sanctions against natural persons**

58. Under section 332 of the CC, active bribery of a (domestic or foreign) public official may be sanctioned by a penalty of one to six years’ imprisonment. This marks an increase from the Phase 2 evaluation of the Czech Republic in 2006, when the maximum imprisonment sanction was five years. However, the same interrogations raised at the time of the Phase 2 remain regarding whether sanctions imposed in practice are sufficiently effective, proportionate and dissuasive.<sup>40</sup>

59. Monetary sanctions may be imposed concurrently with imprisonment sanctions. The CC provides that “a pecuniary penalty shall be imposed in daily rates in an amount of at least 20 and at most 730 whole daily rates” and that “a daily rate shall amount to at least CZK 100 and at most CZK 50 000.”<sup>41</sup> Thus, monetary sanctions for natural persons may range from CZK 200 (EUR 80) to CZK 36.5 million (EUR 1.46 million). This is also an increase from the Phase 2, when the maximum fine was EUR 200 000.

60. In the absence of foreign bribery cases as of the time of this review, statistics on active domestic bribery cases may be of some guidance. The Czech authorities were able to provide detailed statistics on the number of convictions in respect of the relevant sections of the CC, including information on the length of imprisonment sentences and the size of the fines imposed. In 2009-2012, there were 230 convictions for domestic bribe-giving. Only 19 resulted in jail sentences, ranging from less than a year to 5 years. 73%

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<sup>39</sup> Recommendation 17 of the [Czech Republic Phase 2 Report](#).

<sup>40</sup> See *ibid*, paragraphs 213-215.

<sup>41</sup> Section 68 CC.

resulted in suspended imprisonment sentences (i.e., 168 convictions). Pecuniary sanctions were imposed in only 73 cases (under one third of cases), of which 60 were in the lowest statistical category (less than EUR 2000).

61. These statistics provided by the Czech Republic understandably do not provide a complete picture: case-specific information is not known concerning factors such as the size of the bribe, the benefits accrued by the briber, and the offender's circumstances. Nevertheless, these figures show a very low proportion of imprisonment sentences, a high proportion of suspended prison sentences, and a small proportion of fines imposed, the majority of which are relatively low.

**(b) Sanctions against legal persons**

62. Under section 15 of Act No. 418/2011 Coll., legal persons are subject to a variety of sanctions, ranging from dissolution of the legal person to publication of the judgement, and including monetary sanctions, confiscation, and debarment from different public subsidies.

**(i) Monetary sanctions**

63. Section 18 of the Act sets the daily rate for legal persons at a minimum of CZK 1000 (EUR 40) and a maximum of CZK 2 million (EUR 80 275). The CC provides that “a pecuniary penalty shall be imposed in daily rates in an amount of at least 20 and at most 730 whole daily rates.”<sup>42</sup> Thus, monetary sanctions for legal persons may range from CZK 20 000 (EUR 800) to CZK 1,460 billion (EUR 58,6 million). This would appear to meet the criteria of “effective, proportionate and dissuasive sanctions” under Article 3 of the Anti-Bribery Convention, especially if imposed concurrently with confiscation of the proceeds of foreign bribery (see also section 4.b. below on confiscation for legal persons). Whether sanctions imposed in practice are “effective, proportionate and dissuasive” will have to be seen as case law develops.

**(ii) Debarment and prohibition from receiving public subsidies**

64. Section 15(1)f and g provide that a legal person may be prohibited from concluding public contracts, and from receiving endowments and subsidies. Such prohibitions may be imposed for a period of 1 to 20 years.<sup>43</sup> However, both of these sanctions may only be imposed if the criminal act was committed in connection with the performance of a public contract or with the use of public endowments or subsidies. During the on-site visit, representatives from the MOJ and the public prosecution expressed the view that this would include the performance of public contracts abroad. The Czech agencies in charge of disbursing public monies (official development assistance, public procurement and export credits) indicated that legal persons would now have to provide a criminal register file to show that they have not been debarred or prohibited from receiving public subsidies (see also section 11 below on public advantages). Debarment may be imposed concurrently with pecuniary sanctions and confiscation of proceeds.

**(iii) Other sanctions**

65. Act No. 418/2011 Coll. also provides for the imposition of the following sanctions, in addition to the ones mentioned above:

- Dissolution of the legal person(section 15(1)a);
- Prohibition of activity (section 15(1)e);
- Publication of a judgement (section 15(1)h).

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<sup>42</sup> Section 68 CC.

<sup>43</sup> Sections 21 and 22 of Act No. 418/2011 Coll..

(iv) *Considerations of national economic interest*

66. As mentioned above in section 2.d. on the responsibility of legal persons, section 14(1) of Act No. 418/2011 Coll. prescribes that, in deciding on sanctions, the court shall “consider whether the legal person conducts activity in public interest, having strategic or hardly replaceable significance for the national economy” [emphasis added]. This raises questions in terms of compliance with Article 5 of the Anti-Bribery Convention, which are explored in more detail in section 2.d. above and section 5.c.(ii) below. This can be a concern in a foreign bribery context, where sanctioning a Czech company could be considered to impact the national economy. How this provision is applied in practice will need to be further assessed as case law develops, since, as of the time of this review, no convictions of legal persons had yet taken place.

(c) *Sanctions in agreements on guilt and punishment*

67. The process of agreements on guilt and punishment was introduced a few months before the Phase 3 on-site visit, by Act No. 193/2012 Coll., and became effective on 1 September 2012. The new sections 175a and 175b introduced in the CPC the possibility of agreements on guilt and punishment for certain categories of offences, including foreign bribery (see section 5.c.(ii) for further discussion of the procedure on agreements on guilt and punishment).

68. All sanctions available in the CC for a particular offence may form part of agreements on guilt and punishment, including imprisonment, monetary sanctions and debarment. Since the procedure includes a guilty plea by the offender, it is akin to a conviction, and could therefore justify conviction-based confiscation of the proceeds of bribery. The agreement on guilt and punishment procedure is open to legal persons, since all CPC provisions are applicable to legal persons unless specifically provided for in Act No. 418/2011 Coll..

69. Any agreement on guilt and punishment must be approved by the judge during a public hearing.<sup>44</sup> While the plea agreement contains the name of the offender, the act(s) for which the offender is pleading guilty and the sanctions agreed with the prosecution,<sup>45</sup> the agreement would be anonymised prior to its publication in the Czech database of court rulings. MOJ representatives indicated that it would therefore be quite difficult, even for a well-informed lawyer, to find information on such plea agreements. The impact on the application in practice of debarment sanctions by government agencies would need to be assessed as case law develops (see also section 11 below on public advantages). Indeed, since the plea agreements process entered into force less than two months prior to the on-site visit of the evaluation team to the Czech Republic, no cases had yet been settled through this procedure.

*Commentary*

***Regarding sanctions imposed against natural persons, the lead examiners consider that the Czech Republic has now fully implemented Phase 2 recommendation 17 by providing detailed statistics on sanctions and fines imposed in domestic bribery cases. They recommend that the Working Group monitor the application in practice of sanctions in foreign bribery cases, to ensure that they are effective, proportionate and dissuasive.***

***With respect to legal persons, the lead examiners consider that the Czech Republic has now fully implemented Phase 2 recommendation 13 by putting in place in Act No. 418/2011 Coll. effective, proportionate and dissuasive sanctions, which include high monetary sanctions as***

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<sup>44</sup> Section 175b and sections 314o to 314s CPC.

<sup>45</sup> Section 175a(6) CPC.

*well as other measures such as debarment and confiscation measures. Nevertheless, and in light of the propensity to impose relatively low sanctions on natural persons in domestic bribery cases, the lead examiners recommend that the Working Group follow-up on the application of sanctions on legal persons in practice. The Working Group should in particular pay attention to the application in practice of sanctions on legal persons conducting activities “having strategic or hardly replaceable significance for the national economy”, to ensure that sanctions on such companies are effective, proportionate and dissuasive.*

*Finally, given the very recent entry into force of sections 175a and 175b of the CPC on agreement of guilt and punishment, the lead examiners recommend that the Working Group follow-up on its application in practice to ascertain whether sanctions imposed under this procedure are effective, proportionate and dissuasive, and whether the process is sufficiently transparent (see also commentary after section 5b below).*

#### **4. Confiscation of the bribe and the proceeds of bribery**

70. In Phase 2, in 2006, the Working Group recommended that the Czech Republic raise awareness among prosecutors of the importance of forfeiture and confiscation, and to encourage their use whenever possible.<sup>46</sup> This recommendation was only considered partially implemented at the time of the Written Follow-Up to Phase 2 in 2009: the Working Group considered that, while awareness-raising had taken place, statistics had not been provided to show an increase in the use of confiscation.

##### **(a) *The general confiscation regime under the Criminal Code and Criminal Procedure Code***

71. Sections 78, 79, and 79a to f of the CPC provide for the pre-trial seizure (or “impoundage”) of property “important to criminal proceedings.” Sections 79 and 79d concern “material” things (real estate and other tangible property). Sections 79a and 79e of the CPC appear the most relevant provisions for pre-trial seizure in foreign bribery cases. They allow the prosecutor to “impound” funds in a bank account<sup>47</sup> or other assets<sup>48</sup> where “the established facts indicate that [these] are intended for committing a criminal offence, or that they were used to commit a criminal offence, or are the proceeds of a criminal activity”. Section 79f further provides that a replacement value may be “impounded” if it is not possible to achieve seizure of property or other specific assets covered under section 79a - e.

72. Sections 70 to 72 of the CC provide for confiscation of “a thing or other asset value”<sup>49</sup> or of “equivalent value”.<sup>50</sup> Both sections only apply for confiscation from the offenders, thus necessitating a criminal conviction prior to confiscation. However, sections 101 and 102 of the CC provide for some possibilities of confiscation of proceeds of crime in the absence of criminal conviction (e.g. where the offender cannot be prosecuted or sentenced, or where the proceeds are in the hands of third parties).

##### **(b) *Confiscation of the bribe and proceeds of bribery in the hands of legal persons***

73. Section 15 of Act No. 418/2011 Coll. provides for the possibility of “confiscation of property”<sup>51</sup> as well as “forfeiture of a thing or other asset value”.<sup>52</sup> Section 15.3 provides that “it is not possible to

<sup>46</sup> Recommendation 16(a) of the [Czech Republic Phase 2 Report](#).

<sup>47</sup> Section 79a CPC.

<sup>48</sup> Section 79e *ibid*.

<sup>49</sup> Section 70 CC.

<sup>50</sup> Section 71 *ibid*.

<sup>51</sup> Section 15(1)b of Act No. 418/2011 Coll.

impose the punishment of monetary sanction concurrently to confiscation of property....” However, as explained above (see section 4.a. above on the general confiscation regime), “forfeiture of a thing or other asset value” – and not “confiscation of property” – is the applicable provisions to confiscate the proceeds of foreign bribery obtained by a legal person. Thus, it appears that the Czech corporate liability legislation would allow for the imposition of monetary sanctions concurrently with confiscation of the proceeds of foreign bribery. Whether this is applied in practice will need to be further assessed as case law develops.

**(c) *Increasing expertise and use of confiscation measures***

74. Since the Phase 2 and the Phase 2 Written Follow-Up, the Czech Republic has developed expertise in the area of confiscation. As part of the Czech Government’s Anti-Corruption Strategy, an Effectiveness Analysis was carried out at the police level in the second quarter of 2011 on the basis of information collected from police officers involved in investigating corruption cases, with a view to identifying weaknesses in such investigations.<sup>53</sup> The outcomes were used in police management and methodology, in particular to encourage the use of financial investigations into money transfers more systematically, as these may constitute crucial elements of proof, and may allow for confiscation of the proceeds of crime. The Czech authorities indicated that a financial specialist network has now been established within the Czech police: every regional police level has a specialised financial investigation section. Furthermore, in May 2012, the Supreme Public Prosecutor’s Office established a Working Group, tasked with the tracing, freezing and confiscation of the proceeds of criminal activity. This Working Group is completed by a network of public prosecutors at the regional, high and supreme level, specialised in confiscating proceeds of crime. These specialised prosecutors assist other prosecutors with the confiscation aspects of criminal prosecutions.

75. Although fairly recent, this increased focus on financial investigations and confiscation appears to have already yielded visible results. The Czech authorities provided statistics on the use of confiscation measures in domestic bribery cases, showing a significant increase in the amounts seized in corruption cases: in 2011, the amount seized was CZK 61 million (EUR 2,4 million; USD 3,1 million), a four-fold increase from previous years. In the first half of 2012, this amount reached CZK 766 million (EUR 30,3 million; USD 39,1 million).<sup>54</sup>

***Commentary***

***Regarding maintaining statistics to show increased use of confiscation, the lead examiners consider that the Czech Republic has now fully implemented Phase 2 recommendation 16(a).***

***The lead examiners welcome the measures developed by the Czech Republic to improve the level of expertise in the area of confiscation of proceeds of crime, and are encouraged by the steep increase in figures concerning confiscation in bribery cases. They recommend that the Czech Republic pursue these efforts and apply them in foreign bribery cases where appropriate.***

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<sup>52</sup> Section 15(1)d *ibid.*

<sup>53</sup> See the Czech responses to the general Phase 3 questionnaire at p. 5.

<sup>54</sup> See Phase 3 responses to the general questionnaire at p. 26.



## 5. Investigation and prosecution of the foreign bribery offence

### (a) Investigating foreign bribery

#### (i) Institutional framework and resources within the police

76. In Phase 2, it was recommended that the Czech Republic continue to train police officers on foreign bribery, including the practical aspects of such investigations.<sup>55</sup> This recommendation was only considered partially implemented at the time of the Written Follow-Up to Phase 2: the Working Group considered that, while six training courses were provided six times a year on money laundering and domestic bribery, it was unclear to what extent these courses dealt with foreign bribery.

77. At the time of the Phase 2, two units within the Criminal Police and Investigation Service (CPIS) were responsible for the investigation of foreign bribery and related offences: the Unit for Combating Corruption and Financial Crime (UOKFK) and the Unit for Detection of Illegal Proceeds and Tax Crime (UONVVK). At the end of 2006, the UONVVK was dissolved and its competences and staff transferred either to the UOKFK or to regional offices of the CPIS. There are currently six departments in the UOKFK:

- Department of Corruption and EU Financial Interests Protection,
- Department of Serious Economic Crime,
- Department of Proceeds of Crime and Money Laundering,
- Department of Analyses and Information and Communication Technologies,
- Department of International Co-operation and Methodology,
- Department of the Director's office.

78. The Regional Directorates of the CPIS also have specialised departments and financial investigators.

79. The UOKFK is generally, although not exclusively, the unit responsible for foreign bribery cases. The UOKFK deals with the most serious corruption cases, involving large amounts of money. The UOKFK would generally also have competence over bribery cases with a foreign dimension (e.g., where bribery of foreign public officials is involved, or where bribery of Czech officials is committed by foreign individuals or companies). In any event, all cases involving alleged foreign bribery must be reported to the UOKFK, which then decides whether to take it up or let other police units investigate the case. Two main instruments outline the powers of the UOKFK concerning investigation of corruption offences:

- The Binding Instruction of the Police President No. 30/2009 specifies the competence of the UOKFK. Article 6 provides that offences under section 332 of the CC, including foreign bribery, must be transmitted to the UOKFK for investigation. The UOKFK may decide, after assessment, that such cases be transferred to the local police.<sup>56</sup>
- The Order of the Director of the UOKFK No. 10 of January 2011 aims to ensure an integrated approach in the detection and investigation of corruption, including foreign bribery. This Order highlights in particular the obligations of the police to accept any petition concerning bribery suspicions (including foreign bribery), and elaborates on procedures to question the petitioner. This appears to have more relevance where domestic bribery is concerned: petitioners could include any person being solicited for a bribe by a Czech public official. It seems less relevant where foreign bribery is concerned, since the existence of petitioners in such cases is much less likely.

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<sup>55</sup> Recommendation 9(a) of the [Czech Republic Phase 2 Report](#).

<sup>56</sup> See the Czech responses to the general Phase 3 questionnaire at p. 6.

80. The UOKFK is currently staffed with 385 police officers and 65 civil employees, including analysts in the Department of International Co-operation and Methodology. These staff members are deployed in the six above-mentioned Departments at the central office in Prague, and in six regional offices. The UOKFK handles approximately 250 cases a year, of which 50 to 60 are corruption cases (generally domestic bribery, since there are very few foreign bribery cases). The UOKFK is, for instance, handling the recent bribery investigations linked to bribery of Czech public officials by large foreign companies.<sup>57</sup>

81. In terms of training, foreign bribery is included in the general training on corruption cases provided to UOKFK investigators, but not specific training on foreign bribery. Training courses on financial investigations were also carried out for the Regional Directorates of the Police in 2011, notably in light of the increased focus on these types of investigations. A Handbook on Inquiry into Investigation of Acts of Corruption has also been developed by the Department of International Co-operation and Methodology (the analytical unit of the UOKFK). This Handbook summarises the procedures to be followed by the police when accepting corrupt activity reports, as well as important investigative actions carried out by the police in corruption cases. Representatives of the UOKFK interviewed during the on-site visit expressed the view that their training and experience in dealing with domestic bribery cases would be adequate to enable them to carry out investigations in foreign bribery cases. In the one foreign bribery case currently under investigation, the UOKFK demonstrated its ability to take all necessary investigative steps (see *Case #1 – Arms Company Case* in section 5.a. of the Introduction).

(ii) *Opening investigations*

82. As noted above, the Order of the Director of the UOKFK No. 10/2011 highlights the need for the police to open investigations based on petitions. Nevertheless, the police may also open investigations of their own initiative. According to an Effectiveness Analysis carried out by the Department of International Co-operation and Methodology in 2011–12, approximately one third of corruption cases were detected by police intelligence, a number expected to increase notably in light of the fact that corruption is rarely disclosed by either party to the offence.<sup>58</sup> Representatives of the UOKFK interviewed during the on-site visit reported that a large majority of cases dealt with by the UOKFK (i.e. not only corruption cases) are detected through the Czech Republic’s Financial Intelligence Unit. With specific reference to corruption cases, UOKFK officials indicated media reports as common sources, as well as whistleblowers. In respect of the latter, they deplored the lack of whistleblower protection in the Czech Republic, which often puts the whistleblowers in difficult situations (see section 10.c. below on whistleblowing). The one ongoing foreign bribery investigation was initiated on the basis of media reports (see *Case #1 – Arms Company Case* in section 5.a. of the Introduction).

(iii) *Investigative tools*

83. The CPC provides for the usual range of investigative techniques for foreign bribery cases. These are available to both the police and prosecutors during the “verification” and “investigation” of an offence.<sup>59</sup>

84. An Effectiveness Analysis was carried out in 2011-12 on the basis of information collected from police officers involved in investigating corruption cases, with a view to identifying weaknesses in such

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<sup>57</sup> See footnote 8 above.

<sup>58</sup> See the Czech responses to the general Phase 3 questionnaire at p. 10.

<sup>59</sup> See paragraphs 128-129 of the [Czech Republic Phase 2 Report](#).

investigations.<sup>60</sup> It provides very useful information on investigative tools used in corruption cases, and shows that wiretapping is one of the most frequently used investigative tools in such investigations.

85. One of the particular outcomes highlighted by the Effectiveness Analysis was the need to pay closer attention to financial investigations into money transfers. Indeed, these may constitute crucial elements of proof, and may further allow for confiscation of the proceeds of crime. The Czech authorities report that the outcomes of the Analysis have already been put to use in police management and methodology. Following the Effectiveness Analysis, Binding Instruction of the Police President No. 174 was issued in 2011, establishing an obligation for the police to conduct financial investigations whenever inquiring into corruption cases where “substantial damage” (CZK 500 000; EUR 20 000) has been caused or “substantial benefit” has been gained (CZK 500 000; EUR 20 000).<sup>61</sup> It appears that, along with the Effectiveness Analysis, this may have already yielded results, as shown by the recent and significant increase in the amounts confiscated in corruption cases (see also above section 4.c. on confiscation).

### *Commentary*

*The lead examiners welcome information from the Czech Police that foreign bribery training for the police is included in the general training on corruption. Furthermore, they are of the view that the current framework, infrastructure and resources in the UOKFK appear adequate to investigate foreign bribery. Consequently, the lead examiners consider that Phase 2 recommendation 9(a) has been fully implemented. Nevertheless, the lead examiners recommend that the UOKFK continue to develop its proactive approach in ongoing investigations, as well as any future foreign bribery allegations which may arise. In this respect, they encourage the Czech law enforcement authorities to more proactively detect foreign bribery, notably by utilising other tools such as detection through accounting, tax, money laundering and the private sector.*

#### *(b) Prosecuting foreign bribery*

##### *(i) Institutional framework and resources within the prosecution*

86. The prosecution of foreign bribery cases is generally the responsibility of the High Public Prosecutor’s Office (HPPO). Departments of Serious Economic and Financial Criminality have been established in the HPPOs in Prague and Olomouc, as well as in the Supreme Public Prosecutor’s Office (SPPO), and would generally be the ones overseeing the prosecution of foreign bribery cases. Specialised public prosecutors on corruption have also been appointed at every level of the public prosecution service. Supervision of the HPPO is conducted in all cases by the SPPO (see section c.(i) below on questions of prosecutorial independence).

87. Under section 15 of the Regulation of the MOJ No. 23/1994, the HPPO is competent to investigate active bribery offences under section 332 of the CC. During the on-site visit, prosecutors from the HPPO explained that the Departments of Serious Economic and Financial Criminality of the HPPO deal in general with economic offences involving over CZK 150 million (approximately EUR 6 million or USD 7,7 million), although they are entitled to deal with cases under this threshold. With the consent of the SPPO, the HPPO may decide that a lower public prosecutor’s office is competent to supervise the legality of cases for which the HPPO normally has competence.

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<sup>60</sup> See *ibid* at p. 5 for more details on data collected and results.

<sup>61</sup> See sections 137 and 138 CC.

88. The institutional prosecutorial framework for fighting bribery may however evolve over the next few years. In October 2012, the Czech Government approved the Draft Legislative Intent on the Act on the Public Prosecution by Resolution No. 756. The Legislative Intent proposes in particular to reduce the structure of the public prosecution by abolishing the HPPOs in Prague and Olomouc. In the case of foreign bribery, the current powers of these two offices would be transferred to a Specialised Office to Fight Corruption, Serious Financial Criminality and Terrorism within the SPPO. Other powers of the current HPPOs would be transferred to regional public prosecution offices. The Legislative Intent also addresses issues of prosecutorial independence (see section c.(i) below).

89. With respect to the training of prosecutors, 25 training seminars on combating corruption (including foreign bribery) were organised by the Justice Academy for specialised public prosecutors. Training regarding the new corporate liability regime was also introduced in 2012. The SPPO, together with the Justice Academy, also organised several visits abroad for Czech public prosecutors on the subject of fighting corruption (in Austria, Germany, Romania and the United Kingdom).

(ii) *Principles of prosecution: mandatory prosecution and termination of proceedings*

90. Prosecution in the Czech Republic is governed by the principle of mandatory prosecution (also known as “legality principle”): if an investigation shows sufficient evidence, an indictment must be sought. Nevertheless, under certain limited circumstances, the prosecutor may terminate a prosecution,<sup>62</sup> including where the defendant has already been convicted by another authority (*ne bis in idem* principle), and where the purposes of criminal proceedings have been otherwise reached, for instance where the defendant has remedied the harmful consequences of their act.<sup>63</sup> Whether and how this condition might be met in foreign bribery cases remains uncertain, as quantifying the harm suffered in the context of bribery in an international business transaction may prove particularly complex. As of the time of this review, there had not been any prosecution of foreign bribery: one investigation is at the police stage, and the other investigation has been indefinitely suspended due to lack of response to an MLA request (see, respectively, Cases #1 – *Arms Company Case* and #2 – *Cocoa Company Case* in section 5 of the Introduction).

(iii) *Agreements on guilt and punishment*

91. The process of agreements on guilt and punishment was introduced by Act No. 193/2012 Coll., and became effective on 1 September 2012. The new sections 175a and 175b introduce the possibility of “agreements on guilt and punishment” into the CPC.<sup>64</sup> Sections 314o to 314s of the CPC further specify the proceedings for approval of such agreements. This procedure is available for all offences, with the exception of “particularly serious crimes” and proceedings against a fugitive.<sup>65</sup> During the on-site visit, prosecutors explained that “particularly serious crimes” would concern offences where the maximum prison sentence is at least 10 years.<sup>66</sup> Thus, foreign bribery cases would be eligible for the sections 175a/175b process. Agreements on guilt and punishment are open to both natural and legal persons.<sup>67</sup>

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<sup>62</sup> See section 172(2) CPC.

<sup>63</sup> Section 172(2)(c) CPC.

<sup>64</sup> See Annex 4 for the text of sections 175a and 175b CPC.

<sup>65</sup> Section 175a(8) CC.

<sup>66</sup> Section 14(3) CC.

<sup>67</sup> All CPC provisions are applicable to legal persons unless specifically provided for in Act No. 418/2011 Coll. on the liability of legal persons.

92. Agreements on guilt and punishment may be initiated by the defendant or the prosecutor. A prosecutor may refuse to enter into such an agreement initiated by the defendant.<sup>68</sup> A precondition of this agreement is recognition of guilt by the defendant.<sup>69</sup> The agreement contains the name of the offender, the act(s) for which the offender is pleading guilty and the sanctions agreed with the prosecution.<sup>70</sup> As prescribed under section 175b, any agreement on guilt and punishment must be sanctioned by a judge.

93. With respect to sanctions, all sanctions available in the CC for a particular offence may form part of agreements, including imprisonment, monetary sanctions and debarment, as well as confiscation of the proceeds of the offence. These agreements, once approved by the courts, have the same value as any other court decision, and are therefore made public according to the same rules (i.e. in anonymised form only). Section 175a also foresees several opportunities for addressing victims' rights. It is however uncertain whether victims would be deemed to exist in cases involving bribery of foreign public officials in international business transactions.

94. Immediately after the entry into force of the procedure for agreements on guilt and punishment (i.e. 1 September 2012), the SPPO issued guidance on the process to all public prosecutors in the Czech Republic. Such guidance includes a commentary with commented examples and model agreements on guilt and punishment, commented model petitions to the courts for approval of such agreement, and commented model petitions to negotiate agreement on guilt and punishment.

95. In February 2013, the Czech authorities indicated that approximately 50 agreements on guilt and punishment were negotiated towards the end of 2012, with one half approved by courts, and the other half still pending as of the time of this review. The authorities further indicate that these agreements only very rarely involved economic and financial crimes, and, where they did concerned very small economic criminality with low damages incurred. Some prosecutors interviewed during the on-site visit expressed the view that there was little demand for this sort of procedure in large economic crime cases, and therefore saw little use to it.

### ***Commentary***

***The lead examiners recognise the value and flexibility provided by the availability of the agreements on guilt and punishment recently introduced by sections 175a and 175b of the CC. They consider that, whenever a foreign bribery enforcement action is concluded via this type of agreement, significant elements of the agreements should be publicised, where appropriate and consistent with Czech law. Aspects of the agreement that should be publicised include the reasons why the agreement was appropriate, the legal or natural persons convicted, the sanctions agreed, and the terms of the agreement. The lead examiners are of the view that this would add accountability, raise awareness, and enhance public confidence in the enforcement of the anti-corruption legislation in the Czech Republic. In light of the very recent entry into force of this procedure, they recommend that the Working Group follow up on its application in practice.***

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<sup>68</sup> Section 175a(1) CC – See Annex 4.

<sup>69</sup> Section 175a(3) CC – See *ibid.*

<sup>70</sup> Section 175a(6) CC – See *ibid.*

(c) *Independence of prosecutors and Article 5 considerations*

96. In Phase 2, the Working Group agreed to follow up on whether prosecutions were being impermissibly influenced by factors under Article 5 of the Anti-Bribery Convention.<sup>71</sup> This concern is largely due to the institutional framework in place concerning (1) nomination and dismissal of the SPP; and (2) the possibility of instructions from the SPPO to the HPPO in specific cases.<sup>72</sup> As noted above, most foreign bribery cases would be dealt with by the HPPO, thereby placing it under the supervision of the SPPO. In addition to powers to issue instructions to the HPPO in specific cases, the SPP also has powers of a general nature concerning the nomination and termination of High, Regional and District public prosecutors.<sup>73</sup> The SPP is appointed by the Government on the proposal of the Minister of Justice. The Government may remove the SPP from office on the proposal of the Minister of Justice, without giving a reason.<sup>74</sup>

97. The current SPPO appears committed to the fight against bribery: for instance, SPPO representatives regularly attend Working Group on Bribery meetings of law enforcement officials. Furthermore, the SPP has urged the creation of a special team for combating corruption on the prosecutorial level, and taken steps to remove from office a high-level prosecutor renowned for his willingness to selectively not prosecute politically charged criminal cases. However, the nomination of the current SPP in January 2011 follows years of allegations (and at least one court finding) that the previous SPP intentionally covered up corruption prosecutions at the behest of powerful political actors.<sup>75</sup> In particular, one case of alleged bribery of Czech public officials by a company from a Party to the Convention in relation to the privatisation of a Czech state-owned company was shelved in the Czech Republic in 2008 with some suspicions of political influence.<sup>76</sup> This tends to show that the current system is at the mercy of a change in political willingness to combat corruption and could well switch back the other way, towards less independence.

98. Representatives of the HPPO and SPPO interviewed on-site agreed that the issue of instructions, especially instructions to close a case, are problematic. While prosecutors in both offices consider that current relations between the HPPOs and the SPPO are co-operative and aimed at effective prosecutions, they acknowledge that this could easily change should there be a shift in political powers.

99. The Czech Government approved in October 2012 the Draft Legislative Intent on the Act on the Public Prosecution. In addition to the issues of restructuring of the prosecution authority mentioned in section b.(i) above, the Legislative Intent proposes that the Supreme Public Prosecutor be appointed by the President of the Republic upon proposal of the Government for a period of 10 years without the possibility of reappointment. The SPP could only be removed through disciplinary proceeding conducted by disciplinary court (a specialised senate of the Supreme Administrative Court). To a limited extent, the Legislative Intent proposes to review the nomination process of public prosecutors, by establishing an Advisory Board of the Public Prosecution, which would be consulted regarding the appointment of

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<sup>71</sup> Follow-up issue 18(b) of the [Czech Republic Phase 2 Report](#).

<sup>72</sup> Czech prosecutors are subject to supervision by another prosecutor of an immediately superior prosecutor's office, who may request information on a specific case, and may issue general written binding instructions to his/her junior.

<sup>73</sup> For further details on supervision by superior prosecutors, see paras 122-127 of the [Czech Republic Phase 2 Report](#).

<sup>74</sup> See [http://www.euro-justice.com/member\\_states/czech\\_republic/country\\_report/1713/](http://www.euro-justice.com/member_states/czech_republic/country_report/1713/).

<sup>75</sup> See this March 2012 [article from the Prague Post](#) on "Top prosecutor on the future of the judiciary".

<sup>76</sup> The case was however reopened in 2009. For further details, see case (3) under footnote 8 above.

Regional Public Prosecutors. However, it does not seem that the Board’s opinion would be binding, nor would it have competence in respect of nomination of the HPPs by the SPP. The Legislative Intent also proposes to limit the scope of the internal supervision within one Public Prosecution Office, and to introduce “checks and balances” on the possibility of instructions from higher prosecutors. A Special Public Prosecutor’s Office to Combat Corruption, Serious Financial Criminality and Terrorism may also be established; and it is envisaged that, within this unit, no “negative” instructions (not to prosecute, not to appeal, etc.) would be allowed. As of the time of this report, the draft law has been prepared and is being circulated to relevant stakeholders for comment.

### *Commentary*

*The lead examiners encourage the Czech Republic to pursue the reforms initiated by the Draft Legislative Intent on the Act on the Public Prosecution with a view to reviewing the possibility of instructions from higher prosecutors’ offices in specific cases, and the nomination process for prosecutors which do not currently guarantee independence from the executive. In their view, this would ensure that prosecutorial decisions are exercised independently and help guarantee that foreign bribery investigations and prosecutions in foreign bribery cases are not influenced by factors prohibited by Article 5 of the Convention, namely considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved.*

## **6. Money laundering**

### **(a) The money laundering offence**

100. The Czech Republic has amended its money laundering offence since Phase 2. Following recommendations from the Working Group,<sup>77</sup> the money laundering offence was amended to explicitly include bribery taking place abroad as a predicate offence. This change came into force on 1 July 2008. Under the new CC, the money laundering offence is contained in section 216, and negligent money laundering under section 217.<sup>78</sup>

101. Sanctions for the Czech money laundering offence depend on (1) the severity of the predicate offence and (2) the amount laundered. It is irrelevant whether the predicate offence was committed in the Czech Republic or abroad. In general, money laundering and the concealment of criminal proceeds are punishable by up to four years of imprisonment. Depending on whether the amount in question is “larger”, “substantial”, or “extensive”, money laundering may be punishable up to eight years.<sup>79</sup> Statistics provided by the Czech Republic on the basis of cases from 2012 indicate that “basic” money laundering is considered to have occurred for amounts between CZK 5000 to 50 000 (EUR 200 to 2000); “large” money laundering for amounts between CZK 50 000 to 500 000 (EUR 2000 to 20 000); “substantial” money laundering for amounts between CZK 500 000 to 5 million (EUR 20 000 to 200 000); and “extensive” money laundering for amounts over CZK 5 million. It is possible to impose a fine and seek confiscation in addition to imprisonment.

102. After the merger of UONVDK (Authority for Detection of Illegal Proceeds and Tax Crime) with the UOKFK, the agency responsible for enforcing money laundering offences is now the UOKFK.

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<sup>77</sup> [Czech Republic Phase 2 Report](#), Recommendation 14(a); [Written Follow-Up to Phase 2 Report](#), para. 16.

<sup>78</sup> See Annex 4 for legislative extracts.

<sup>79</sup> Section 216 CC.

**(b) Enforcement and sanctions for money laundering**

103. In Phase 2, the Working Group recommended that the Czech Republic take appropriate measures to enforce the money laundering offence more effectively in connection with bribery cases.<sup>80</sup> The Working Group also agreed to follow up on the sanctions imposed for money laundering in practice<sup>81</sup> and recommended that the Czech Republic maintain more detailed statistics on the sanctions imposed in money laundering cases.<sup>82</sup> During the Phase 2 Written Follow-Up, the Working Group deemed that these recommendations had been partially implemented, because the Czech Republic was able to provide partial statistics on its money laundering enforcement actions, and it was making progress on its money laundering legislation.

104. According to statistics provided by the MOJ, the enforcement of money laundering offences in the Czech Republic has increased since 2010. In 2009 and 2010, the Czech Republic convicted 21 natural persons for money laundering offences. In 2011 alone, the number of convictions more than doubled to 44 convictions of natural persons. In 2012, there were 30 such convictions in the first half alone. None of the convictions, however, have involved foreign bribery as a predicate offence.

105. Sanctions for money laundering appear to be increasing as well. Thirteen convictions for money laundering in 2011 and the first half of 2012 drew non-suspended prison sentences. Six of these were for sentences of greater than five years. By contrast, in 2009-2010, only two convictions had non-suspended imprisonment sentences, and the terms of imprisonment in both cases were less than five years. Financial penalties have similarly increased. In 2009 and 2010, only one financial penalty of less than EUR 2000 was issued among the 21 convictions for foreign bribery. By contrast, in 2011 and the first half of 2012, 11 financial penalties were handed down, most of which were under EUR 2000, but one of which was between EUR 8000 and 20 000. Again, however, none of these cases involved foreign bribery.

**(c) Money laundering efforts to detect and prevent foreign bribery**

106. In Phase 2, the Working Group recommended that the Czech Republic maintain statistics on suspicious transaction reports (STRs) that result in or support bribery investigations and prosecutions.<sup>83</sup> At the time of the Phase 2 Written Follow-Up, this recommendation was deemed unimplemented. The Working Group also asked the Czech Republic to provide better guidance to reporting entities, including by providing typologies on money laundering where the predicate offence is bribery.<sup>84</sup> In the Phase 2 Written Follow-Up Report, this recommendation was deemed partially implemented because the Ministry of Finance had organised training with reporting entities.

107. The financial intelligence unit in the Czech Republic is the Financial Analytical Unit (FAU) of the Ministry of Finance. The agency estimates that it receives approximately 2000 STRs per year, which has led to approximately 300 charges brought by Czech authorities mostly relating to electronic crime, tax evasion or general fraud. The FAU also submitted approximately 900 information/outcomes of investigation to the Tax administration and to Customs authorities. To date, on the basis of the criteria used to sort STRs, there do not appear to have been STRs indicating foreign bribery. In addition, there have been no STRs relating to politically exposed persons (PEPs).

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<sup>80</sup> [Czech Republic Phase 2 Report](#), Recommendation 14(b)

<sup>81</sup> *Ibid*, Follow-Up 18 (f)

<sup>82</sup> *Ibid*, Recommendation 17.

<sup>83</sup> Recommendation 8(c) of the [Czech Republic Phase 2 Report](#).

<sup>84</sup> Recommendation 8(b) *ibid*.



108. Despite the seemingly low number of STRs, the FAU has not issued any typologies on either foreign bribery or PEPs for reporting entities. At the on-site visit, the FAU stated that it conducts trainings and provides consultations on reporting of STRs mostly to larger financial institutions, but these sessions do not address detection of foreign bribery. At the on-site visit, the FAU noted that very few entities request advice regarding foreign bribery or PEPs, and that the FAU had not identified an issue with reporting on these issues. The low number of STRs, however, may indicate that reporting entities are not sufficiently alert to indicators of foreign bribery, especially in cases involving PEPs. It may also reflect a lack of awareness among reporting entities that foreign bribery is a predicate offence and lack of knowledge about PEPs.

109. The low number of STRs is a concern for the detection of foreign bribery. At the on-site visit, the UOKFK indicated that the vast majority of domestic corruption cases are initiated through reports from the FIU. A lack of similar reports regarding foreign bribery may therefore hinder the Czech Republic's efforts to detect the foreign bribery offence.

### *Commentary*

*While the increase in enforcement of money laundering offences generally is commendable, there continues to be a lack of money laundering cases predicated on foreign bribery. This shortcoming may be attributable to weaknesses in detection. Although the FAU notes that few entities have requested advice regarding foreign bribery of PEPs, the lead examiners consider that the Czech authorities should take a more pro-active role in ensuring that reporting entities are aware of indications of foreign bribery, including through training on PEPs. They consider that STRs may prove to be an important source of allegations involving foreign bribery. Consequently, the lead examiners consider Phase 2 Recommendations 8(b) and 14(b) are still only partially unimplemented.*

*The lead examiners reiterate the Working Group's recommendation that the Czech Republic provide better guidance to reporting entities, for instance, by providing up-to-date typologies on money laundering where the predicate offence is bribery. The lead examiners also reiterate the Working Group's recommendation that the Czech Republic take appropriate measures to enforce the money laundering offence more effectively in connection with foreign bribery cases. Finally, the lead examiners recommend that the Working Group follow up on enforcement of money laundering offences in connection with foreign bribery.*

## **7. Accounting requirements, external audit, and company compliance and ethics programmes**

### **(a) *The false accounting offence***

110. The Act on Accounting (AoA) governs accounting standards in the Czech Republic, and in Phase 2 it was found largely compliant with the requirements of Article 8(1) of the Convention.<sup>85</sup> The AoA mandates that a broad range of legal entities keep financial statements that give a "true and fair representation" of the entity's financial position and that accounts be kept "correctly, in a complete and conclusive manner, in a comprehensive and clearly-organised way".<sup>86</sup> The AoA also prohibits off-the-

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<sup>85</sup> [Czech Republic Phase 2 Report](#), paras. 75, 201.

<sup>86</sup> Sections 7, 8 AoA.

books accounts.<sup>87</sup> As reported in Phase 2, Territorial Financial Authorities are responsible for imposing fines against accounting units for breaches of the AoA.<sup>88</sup>

111. In addition to the administrative offence, section 254 of the CC provides a criminal offence for false accounting.<sup>89</sup> Under the CC, it is a criminal offence (a) to fail to maintain accounts despite an obligation to do so, (b) to keep accounts with false or substantially distorted data, and (c) to destroy, damage, and conceal accounts. Failure to comply with this provision may result in six months' to three years' imprisonment, a ban on engaging in an activity and/or a fine of up to CZK 36.5 million (EUR 1,46 million).<sup>90</sup> This offence is applicable to legal persons under the new act establishing corporate liability; for legal persons, sanctions may reach CZK 1,46 billion (EUR 58,6 million).

(i) *Enforcement of false accounting*

112. The Phase 2 Report requested the Czech Republic to take appropriate measures to enforce accounting offences in the AoA more effectively in connection with bribery cases.<sup>91</sup> The Working Group found that Czech authorities lacked the expertise and motivation to enforce both the administrative and criminal false accounting offences.<sup>92</sup> The Working Group was also concerned with the enforcement capability of regional and local police forces with respect to false accounting. At the Phase 2 Written Follow-Up, the Czech Republic had not addressed the Working Group's concerns and thus this recommendation remained unimplemented.

113. The UOKFK is responsible for investigating more false accounting cases deemed "more significant", while smaller cases fall to the regional and local police authorities. At the on-site visit, the UOKFK estimated that it would exercise jurisdiction over cases involving more than CZK 150 million (EUR 5,9 million). The Czech Republic has taken efforts to improve the expertise and motivation to enforce the false accounting provisions. As discussed earlier in sections 4 and 5.a., the UOKFK has established a financial specialist network within the Czech police following an Effectiveness Analysis by the UOKFK Analytical Unit. This network consists of at least one expert at the local level and one unit of financial specialists at the regional level. In addition, at the national level, each unit has its own financial specialist section. According to the UOKFK, this has resulted in a four-fold increase in the amounts seized. The UOKFK expects that financial specialists will be increasingly utilised in foreign bribery cases.

114. Overall enforcement of the false accounting offence under the CC has steadily increased since 2010, although these enforcement efforts are not connected to foreign bribery. According to statistics maintained by the Ministry of Justice for the criminal false accounting offence, Czech authorities convicted 72 natural persons in 2010, 102 natural persons in 2011, and 53 natural persons in the first half of 2012. Police statistics kept by the UOKFK further show that, in 2012, 367 investigations were opened for false accounting offences under section 254 of the CC, a 30% increase from 2011. In addition, one ongoing investigation of foreign bribery allegations may also involve false accounting issues, although that case is at a very preliminary investigative stage (see *Case #1 – Arms Company Case*). Other than this ongoing

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<sup>87</sup> See Annex 4 for relevant legislative extracts. See also [Czech Republic Phase 2 Report](#), para. 75.

<sup>88</sup> [Czech Republic Phase 2 Report](#), para. 203.

<sup>89</sup> Section 254 CC is the same provision as section 125 CC that was reviewed in the [Czech Republic Phase 2 Report](#), para. 202. The provision was re-numbered when the new CC came into effect in 1 January 2010. See Annex 4 for relevant legislative extracts.

<sup>90</sup> *Ibid*, para. 206.

<sup>91</sup> *Ibid*, Recommendation 15(a).

<sup>92</sup> *Ibid*, para. 205.

investigation, the Czech Republic does not appear to have prosecuted any false accounting cases in connection with foreign bribery since Phase 2.

(ii) *Sanctions for false accounting*

115. In Phase 2, the Working Group recommended that the Czech Republic ensure that the criminal and administrative penalties for false accounting are effective, proportionate and dissuasive in practice.<sup>93</sup> The Working Group also recommended that the Czech Republic maintain more detailed statistics on the sanctions imposed in false accounting cases and to follow up on the sanctions imposed in such cases.<sup>94</sup> In the Phase 2 Written Follow-Up, these recommendations were deemed partially implemented, because the Czech Republic had increased the maximum punishment for false accounting offences, but had not addressed sanctions for shell entities (discussed below). In addition, at that time, the Czech Republic had not provided statistics on false accounting sanctions.

116. Statistics for the false accounting offence under the AoA are maintained by the General Financial and Tax Directorate. In 2011, sanctions were imposed in 390 cases, for a total amount of CZK 11 million (EUR 440 000). In 2010, sanctions were imposed in 388 cases for a total amount of CZK 12 million (EUR 480 000). In 2009, sanctions were imposed in 244 cases for a total amount of CZK 8,7 million (EUR 348 000). Fines were imposed essentially for failure to keep accounting in a complete and conclusive manner or failure to keep accounting at all, and for non-compliance with obligations imposed by tax administrator when keeping accounting records.

117. Sanctions imposed in practice for criminal false accounting were on balance relatively low (see above). The vast majority of the 227 convictions between 2010 to mid-2012 resulted in conditionally suspended sentences of imprisonment under a year. Only 12 individuals were sentenced to imprisonment, and 20 individuals were subject to a fine. Even so, of the 12 individuals sentenced to imprisonment, 6 of them were given a sentence greater than five years.

118. Another related concern was that the AoA provided a maximum administrative fine of 3% or 6% of the total amount of assets of the entity.<sup>95</sup> The Working Group expressed concern that sanctions imposed on a shell entity with few or no assets would result in a disproportionately low fine. The Czech Republic has amended the AoA to include methods to determine the amount of assets in cases of a “mismatch” or where it is “impossible to determine the actual amount of assets”.<sup>96</sup> In such cases, the asset value is determined by the respective authority using a qualified estimate. However, the amendment does not address situations where a shell entity has little or no assets. Such cases would still draw a disproportionately low fine, and the use of a qualified estimate would not resolve the concern. Thus, as the Working Group observed in Phase 2,<sup>97</sup> a shell company that is used to channel bribes could conceivably keep false accounts involving significant amounts with little sanction.

*Commentary*

***With respect to Phase 2 recommendation 15(a), the lead examiners are encouraged by the increase in enforcement of the false accounting offences, as well as by the fact that false***

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<sup>93</sup> *Ibid*, Recommendation 15(b).

<sup>94</sup> *Ibid*, Recommendation 17.

<sup>95</sup> *Ibid*, para. 208.

<sup>96</sup> AoA section 37aa

<sup>97</sup> [Czech Republic Phase 2 Report](#), para. 211.

*accounting is being considered in the ongoing foreign bribery investigation. The lead examiners consider that Phase 2 recommendation 15(b) is still not implemented with respect to shell companies. Consequently, they reiterate the Working Group's recommendation that the Czech Republic ensure that the criminal and administrative penalties for false accounting in connection with foreign bribery cases are effective, proportionate and dissuasive in practice.*

*The lead examiners further recommend that the Czech Republic make full use of its financial specialist network in order to enforce more effectively accounting offences in the Act on Accounting in connection with bribery cases.*

**(b) Prevention and detection of foreign bribery by accountants and auditors**

**(i) Raising awareness of accountants and auditors**

119. Phase 2 recommendation 6(a) requested the Czech Republic to work proactively with the accounting and auditing professions to raise awareness of foreign bribery and encourage these professions to develop specific training on foreign bribery in the framework of their professional education and training systems. At the time of the Phase 2 Written Follow-Up, the Working Group considered this recommendation partially implemented because although the Czech Republic had initiated some seminars and courses, these either did not address foreign bribery specifically or it was unclear how well-attended they were.

120. According to panellists at the on-site visit, awareness of foreign bribery among the Czech auditing and accounting profession is low. One auditor reported that, in a training session on foreign bribery, most attendees rated their knowledge of foreign bribery risks as low. The Chamber of Auditors confirmed that foreign bribery is not a concern for many auditors in the Czech Republic, and a representative from the Chamber of Czech Accountants confirmed this perspective among accountants.

121. It is concerning that little has been done to raise awareness of foreign bribery among auditors and accountants. The Chamber of Auditors reported it conducted a training session for Czech auditors in 2010 regarding Codes of Ethics and anti-money laundering, but noted that attendance was sparse and the session did not focus specifically on foreign bribery. The Czech Institute of Internal Auditors has also conducted several sessions pertaining to detection of fraud generally, some of which address corruption in particular. Again, none of these sessions addressed foreign bribery specifically.

122. Prevention and detection of foreign bribery may also be hampered by confusion over whether foreign bribery constitutes “fraud” that is reportable to management of a company. Under the international standards of accounting, which have been adopted by the Czech Republic, Czech auditors are required to consider and identify the risk of material misstatements due to “fraud” in performing an audit. According to some auditors at the on-site visit, “fraud” (when translated into Czech) is generally understood as embezzlement or misappropriation, but not bribery. These auditors stated that, for many Czech auditors, bribery is thought to be a separate category from fraud, which would not be covered by the international accounting standards. One auditor, however, stated that training at his firm educated auditors that fraud includes bribery and therefore misunderstandings due to translation were negligible.

123. Nevertheless, some auditors expressed that awareness of foreign bribery has improved in the last six years due to increasing demand for services in forensic foreign bribery investigations. The auditors attributed the increased work to the awareness among international companies as a result of the United States (US) Foreign Corrupt Practices Act or the United Kingdom (UK) Bribery Act. They did not attribute a possible increase in awareness to efforts by the Czech government. Accordingly, the increase in awareness is mostly in foreign companies operating in the Czech Republic, rather than Czech companies.

(ii) *Reporting of foreign bribery by accountants and auditors*

124. Phase 2 recommendation 6(c) requested the Czech Republic to clarify reporting procedures for auditors, and raise their awareness in this regard. At the time of the Phase 2 Written Follow-Up, the Working Group considered this recommendation not implemented.

125. Czech auditors are not required to report allegations of fraud to law enforcement officials, but are required to report internally to corporate management. Section 21(5) of the AoA mandates that auditors must report any facts “reasonably deemed to accomplish” an economic criminal offence, including “criminal offences of bribery”, to the authorised representative body as well as the supervisory board of the company.<sup>98</sup> Auditors, however, may report to law enforcement “facts indicating potential bribery”; such reports are not deemed a breach of the auditor’s duty of confidentiality.<sup>99</sup>

126. Auditors at the on-site visit appeared to be confused about their reporting obligations. Some auditors stated that reporting potential foreign bribery to law enforcement authorities was not required, but others stated that it was required. Yet some auditors explained that reporting was required internally to company management, but if company management did not take action, the auditor was required to report to law enforcement authorities. There is thus general confusion about the reporting obligation of Czech auditors, which may hinder efforts to detect foreign bribery.

127. The Czech Republic considers that legislation on the reporting obligations of auditors is clear, and along with supporting regulations imposed on Czech auditors, is sufficient to ensure reporting. However, additional training and communication of these requirements may increase reporting and detection of foreign bribery.

*Commentary*

*Section X of the 2009 Recommendations call on Working Group members to ensure that accounting and auditing rules and practices are “fully used in order to prevent and detect bribery of foreign public officials in international business”. The lead examiners consider that the low level of awareness of the risks of foreign bribery among the accounting and auditing profession may significantly limit the detection of foreign bribery risks through companies’ internal control systems. They therefore consider Phase 2 recommendation 6(a) to still be only partially implemented, and recommend that the Czech Republic take steps to raise awareness of foreign bribery risks among the accounting and auditing profession.*

*The lead examiners are also concerned by the lack of awareness regarding the reporting requirements by Czech auditors, which may hamper detection of foreign bribery. In this respect, they consider that Phase 2 recommendation 6(c) remains unimplemented. They therefore recommend that the Czech Republic conduct training to clarify reporting obligations of Czech auditors.*

(c) *Internal controls, ethics and compliance*

128. The lack of adequate compliance programmes among Czech companies to address the risks of foreign bribery is a serious concern and reflects the overall insufficient attention given by the Czech

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<sup>98</sup> If the company is subject to state supervision or supervision of the Czech National Bank, such facts must also be reported to the relevant state supervisory authority or the Czech National Bank (AoA, section 21(3)).

<sup>99</sup> AoA, section 15.

government to foreign bribery issues in the private sector, including the insufficient communication in this field between the government and the private sector, as well as a general disinterest among the Czech private sector regarding foreign bribery. The lack of concern for foreign bribery risks was concretely illustrated by the fact that not a single Czech company attended the on-site visit despite invitations by the Czech government to a number of companies, both directly and through the Czech business organisations. Accountants and auditors at the on-site visit stated that although Czech companies are conducting business in high-risk jurisdictions such as the Balkans and the Middle East, there are few discussions about the risks of foreign bribery in the private sector. As discussed further in section 10.a., it also confirms the lack of adequate efforts by the Czech government to engage effectively with the private sector.

129. Czech companies, especially Czech SMEs, appear to suffer from the greatest lack of adequate compliance programmes. Representatives from auditing and accounting firms noted that Czech companies owned by multinational conglomerates subject to UK and US law are likely to have anti-corruption procedures imposed by their parent companies. However, local Czech companies – who may not necessarily be exposed to UK or US legislation but are nonetheless exposed to foreign bribery risks – do not have compliance programmes to address those risks. Auditors noted that, while some of these companies have a paper compliance programme, there is no compliance structure within the company’s organisation to implement the policies.

130. This lack of internal controls to address foreign bribery among Czech companies is particularly concerning as liability for legal persons was recently introduced in the Czech Republic. The introduction of this new legislation would have provided excellent opportunities for raising awareness and disseminating information on the necessity of internal controls, ethics and compliance systems to prevent and detect bribery, for instance by disseminating the Good Practice guidance for companies in Annex II of the 2009 Anti-Bribery Recommendation. Regrettably, however, no initiatives appear to have been taken in this respect, either by the Czech authorities or business associations. Accordingly, lawyers at the on-site visit unanimously agreed that Czech companies were largely unaware that corporate liability could be imposed for foreign bribery and companies had done little to address that risk. Panellists from civil society and business associations also agreed that awareness of corporate liability was very low, although some business associations were introducing programmes to educate companies about the risk of corporate liability.

### *Commentary*

*The lead examiners are seriously concerned by the lack of adequate compliance programmes to address the risks of foreign bribery among Czech companies, especially given that certain Czech companies operate in high-risk jurisdictions and industrial sectors. This is all the more concerning when considering that the Czech Republic recently introduced corporate liability legislation and a new foreign bribery offence. Accordingly, they recommend that the Czech Republic take urgent steps to promote compliance programmes or measures specifically targeting the prevention and detection of foreign bribery violations, including in particular through the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance in Annex II of the 2009 Anti-Bribery Recommendation.*

## **8. Tax measures for combating bribery**

131. This section discusses the Czech Republic’s implementation of the non-tax deductibility provisions of the 2009 Recommendation on Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions (“2009 Tax Recommendation”), including tax measures for detecting and reporting foreign bribery. The Czech Republic has prohibited tax deduction of bribery since 2001, and there are no outstanding issues with its non-tax deductibility legislation (Act No.

586/1992 Coll. Income Taxes, section 25(1)(zf). The text of the provision and its operation was addressed in Phase 2.<sup>100</sup>

**(a) Awareness, prevention and detection by tax authorities**

132. In Phase 2, the Working Group recommended that the Czech Republic raise awareness of foreign bribery and the non-deductibility of bribes among tax examiners, tax professionals and the private sector.<sup>101</sup> This recommendation was considered partially implemented at the time of the Phase 2 Written Follow-Up Report, because the Czech Republic had not raised awareness of foreign bribery and non-tax deductibility among tax professionals and the private sector.

133. The Czech Republic has not taken steps since the Phase 2 Follow-Up to raise awareness of the non-tax deductibility of bribes. Representatives from the MOF stated that no awareness raising events towards the private sector have been conducted since the non-tax deductibility provision was enacted because, according to the MOF, the legislation is clear and requires no clarification. The Czech authorities stated their view that, if legislation is clear, there is no need to engage in communication with the taxpayers about it. As discussed in earlier sections (see sections 7 and 10), this lack of interaction with the private sector is largely reflective of the generally low level of engagement between the Czech government agencies and the private sector. Accordingly, recommendation 5(a) of Phase 2 remains partially implemented.

134. As discussed in the Phase 2 Written Follow-Up, the Czech Republic indicated it had provided training and guidance to tax examiners based on the OECD Bribery Awareness Handbook for Tax Examiners. Tax officers were also reported to have been trained on detecting bribery through a tax audit upon entry into service. Despite this training, however, representatives from the Ministry of Finance interviewed during the on-site visit did not appear knowledgeable about possible indicia of foreign bribery in tax returns and were unable to explain how a tax examiner would detect bribery in a tax return. They could not provide any red flags for foreign bribery, and could only generically assume that tax examiners would verify all deductions against those permitted in Czech tax legislation. It therefore appears that further efforts could be made to disseminate the OECD Bribery Awareness Handbook for Tax Examiners. Tax officers and provide methodologies and training concerning the detection of foreign bribery.

**(b) Reporting and sharing of tax information**

135. Domestically, the Czech tax administration may spontaneously share allegations of foreign bribery pursuant to an amendment that came into force on 1 July 2008. Indeed, Czech tax administrators are required to report facts indicating certain classes of offences, including a tax criminal offence and foreign bribery.<sup>102</sup> However, as of the time of this review, tax examiners had never reported an allegation of foreign bribery that resulted in an investigation.

136. The Czech Republic shares tax information internationally principally through double tax conventions and tax information exchange agreements, which allow sharing of tax information for tax purposes only. In 2012, the Czech Republic introduced legislation in the Czech Parliament to allow tax information and documents furnished by the Czech Republic to be used by EU member states for purposes other than the administration and enforcement of taxes in compliance with EU Directive 2011/16/EU. This legislation is expected to be passed by June 2013.

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<sup>100</sup> See the [Czech Republic Phase 2 Report](#), para. 59.

<sup>101</sup> *Ibid*, Recommendation 5(a).

<sup>102</sup> Sections 53(2), (3) Tax Code.

137. The Czech Republic signed the Convention on Mutual Administrative Assistance in Tax Matters on 26 October 2012. The Czech Republic does not routinely include the optional language in Article 26 of the OECD Model Tax Convention in its bilateral tax treaties, although it has included the language when requested by the contracting party.<sup>103</sup> The Czech Republic explains that it does not systematically include the clause where there are concerns that information supplied by the Czech Republic to another country may subsequently be passed on to a third country for unauthorised purposes (i.e., political prosecutions).

### *Commentary*

*The lack of awareness-raising efforts targeted at the private sector concerning non-tax deductibility is worrisome as it may result in Czech companies impermissibly deducting bribes to foreign public officials. This concern is compounded by the fact that Czech tax examiners do not appear knowledgeable about how to detect bribes that are deducted as legitimate payments. While the lead examiners acknowledge that the Czech authorities have made available to tax examiners a handbook in electronic form, this clearly seems to be insufficient awareness raising and training. The lead examiners therefore consider that Phase 2 recommendation 5(a) remains partially implemented, and recommend that the Czech Republic raise awareness of the non-tax deductibility of bribes, especially among the private sector. They also recommend that the Czech Republic provide training to tax examiners on the detection of bribe payments disguised as legitimate allowable expenses.*

*With respect to sharing of information, the lead examiners recommend that the Czech Republic consider including the optional language in Article 26 of the OECD Model Tax Convention in all future bilateral tax treaties, including of its own initiative, and not only at the request of the other party.*

## **9. International co-operation**

138. There are two Central Authorities in the Czech Republic for the processing of incoming and outgoing mutual legal assistance (MLA) requests: the SPPO and the MOJ. Both the SPPO and the MOJ are competent to handle MLA requests under Article 4.3 of the Anti-Bribery Convention, where several Parties to the Convention have jurisdiction over an alleged foreign bribery offence and consultations are necessary to determine the most appropriate jurisdiction. The SPPO is responsible for the handling of MLA requests under Article 9 of the Anti-Bribery Convention, in the stages prior to the trial. The MOJ is the Central Authority for requests under Article 9 in all the following stages, and for all requests relating to extradition. The Czech Republic is also party to a number of multilateral and bilateral MLA treaties (MLATs), which allow for direct contacts between judicial authorities for the provision of MLA.

139. The SPPO provides assistance to public prosecutors in the field of international co-operation notably in the form of a 60-page Instruction highlighting the mechanisms for seeking and responding to MLA requests.<sup>104</sup> A Handbook for prosecutors has also been developed, which includes an overview of the MLATs to which the Czech Republic is party, as well as specific templates to assist prosecutors in completing outgoing MLA requests. In addition, the SPPO organises regional seminars twice a year with

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<sup>103</sup> Article 26 of the OECD Model Tax Convention provided that a receiving state may only use tax information for non-tax purposes where expressly permitted by the supplying state, and that the tax information must be treated as confidential. In 2012, this Article was revised to include language which provides that information received may be used for non-tax purposes provided such use is authorised under the laws of both states and the competent authority of the supplying state authorises such use.

<sup>104</sup> Instruction of the Supreme Public Prosecutor dated 21 January 2010 on International Judicial Assistance in Criminal Matters.



public prosecutors to address practical obstacles encountered in requesting MLA. For its part, the MOJ provides assistance to the courts and organises yearly training for judges on MLA. Ad hoc seminars are also organised for the police.

140. Because of the different channels through which MLA requests may pass, the Czech authorities explain that it is not possible to provide complete data on incoming and outgoing MLA requests. Furthermore, the registers of the prosecutors' offices do not provide information on the offence in respect of which MLA requests are made. Statistics on the provision of MLA by the Czech Republic in relation to foreign bribery offences is thus not available.

141. Nevertheless, the Czech authorities were able to indicate that at least four MLA requests were received relating to foreign bribery (either bribery of foreign officials by Czech nationals, or bribery of Czech officials by foreign nationals) or asset recovery:

- One request emanated from a non-Party to the Convention concerning recovery of assets belonging to a public official from the requesting country. The Czech Republic requested additional information from the requesting country, which did not follow-up on this request.
- Two requests were made by another non-Party to the Convention concerning a foreign bribery case involving a legal person from the Czech Republic. One of the requests was answered by the Czech Republic and the other was withdrawn by the requesting country (see *Case #3 – Construction Permit Case* under section 5.c of the Introduction).
- Several requests were received from a Party to the Convention concerning alleged bribery of a Czech public official (i.e. a domestic bribery case for the Czech Republic). Meetings took place between the public prosecutors from the Czech Republic and the requesting country, and information was provided to the requesting country's authorities.
- A Joint Investigation Team agreement was concluded with another Party to the Convention in relation to another case of alleged bribery of a Czech public official (i.e. a domestic bribery case for the Czech Republic).

142. Following the on-site visit, the lead examiners were informed that, during the on-site visit of another Party to the Convention, it was disclosed that several MLA requests were sent to the Czech authorities by the other Party in relation to allegations of bribery by a company from the other Party. Seven of the eight requests were answered positively. One was partially rejected by the Czech authorities on the grounds of national security. In order to be able to answer this part of the request, the Czech authorities sent additional questions to the foreign authorities in 2007, which were never answered. The Czech authorities further explained that they did not consider the foreign authorities' guarantees sufficient to ensure that the information would only be used for the criminal prosecution, and not in civil or arbitration proceedings.

143. The Czech authorities indicate that a three- to four-month period is generally necessary to respond to MLA requests, although urgent requests may be granted within a few days. The Czech authorities provided examples of requests concerning freezing orders in relation to tax fraud and money laundering (not related to foreign bribery) which were able to be executed within days. The Czech authorities further reported that the usual reasons for refusing MLA relate to human rights concerns in the requesting country.

144. Concerning the provision of MLA in respect of legal persons, the Czech authorities explain that the entry into force in 2012 of Act No. 418/2011 Coll. on criminal liability of legal persons substantially

broadened the possibilities for providing MLA in such proceedings. Nevertheless, prior to 2012, provision of MLA in respect of legal persons was still possible, although limited. For acts committed by legal persons prior to 2012, MLA may only be provided for measures for which no dual criminality rule applies (e.g. interrogation of witnesses). Where dual criminality applies (e.g. house searches, freezing or interception), the MLA measures requested cannot be executed.<sup>105</sup>

145. As already discussed in Phase 2, it is still not clear whether the Czech Republic would be able to fully provide MLA in non-criminal proceedings against legal persons.<sup>106</sup> The Czech authorities consider that its regime of mutual assistance in civil matters would satisfactorily answer any concern in this respect, and explain that no complaints in this respect have ever been received. However, the legislation on MLA in civil matters was already considered in Phase 2 to be insufficient in certain respects, notably because it does not allow for the use of important investigative measures such as search and seizure.<sup>107</sup> This may raise issues with respect to compliance with Article 9 of the Convention, since several Parties to the Convention (e.g. Germany and Italy) can only institute civil or administrative proceedings against legal persons for foreign bribery.

146. With respect to outgoing requests, the Czech authorities explained that they have sometimes encountered significant challenges in obtaining MLA, including from a Party to the Convention. For instance, in one case concerning bribery of foreign public officials by a Czech individual, the investigation has been suspended for four years due to the lack of response to the MLA request by the country of the foreign public officials (see *Case #2 – Cocoa Company Case* under section 5c of the Introduction). In another case of alleged bribery of a Czech public official by a major arms company from a country Party to the Convention, the Czech Republic indicated that it had waited 21 months for evidence, or any form of response from the recipient country.

#### *Commentary*

*The lead examiners commend the Czech Central Authorities for the initiatives taken to train and assist prosecutors and judges in the field of mutual legal assistance. Nevertheless, they recommend that the Czech Republic maintain statistics on formal MLA requests received, sent and rejected, so as to identify more precisely the proportion of those requests that concern foreign bribery. The lead examiners further note that the Czech authorities were not able to fully provide MLA to a Party to the Convention in the context of a foreign bribery investigation on the grounds of national security. While noting the Czech justifications, the lead examiners consider that the Working Group should follow this up to ensure that the Czech Republic is compliant with its obligations under Article 9 of the Convention.*

*The lead examiners recognise that obtaining effective MLA is a horizontal issue affecting many Parties to the Anti-Bribery Convention. Furthermore, given the absence of statistics in the Czech Republic, and the limited information available from relevant Parties to the Convention on how effectively the Czech Republic has responded to their requests for MLA on foreign bribery cases, it is difficult to adequately assess this issue.*

*With respect to the provision of MLA in respect of administrative or civil proceedings against legal persons, Article 9 of the Convention states that each Party “shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective*

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<sup>105</sup> See discussion of this issue in para 133 of the [Czech Republic Phase 2 Report](#).

<sup>106</sup> See para 134 *ibid*.

<sup>107</sup> See *ibid*.

*legal assistance to another Party for [...] non-criminal proceedings within the scope of this Convention brought by a Party against a legal person.” When a foreign country may only bring civil or administrative proceedings against legal persons for foreign bribery, the Czech Republic may not be able to provide the full range of MLA to the foreign country in those proceedings. The lead examiners therefore recommend that the Czech Republic take reasonable measures to ensure that a broad range of MLA, including search and seizure, and the tracing, seizure and confiscation of proceeds of crime, can be provided in foreign bribery-related civil or administrative proceedings against a legal person to a foreign state whose legal system does not allow criminal liability of legal persons. They also note that this is a horizontal issue among Parties to the Convention.*

## **10. Public awareness and the reporting of foreign bribery**

147. This section of the report discusses the Czech Republic’s efforts to raise awareness in the public and private sector. This section also addresses efforts to improve reporting of foreign bribery allegations and whistleblower protection in the Czech Republic. Awareness and efforts to combat foreign bribery by corporations and the business community through corporate compliance measures are discussed in section 7.c.

148. In Phase 2,<sup>108</sup> it was recommended that the Czech Republic (a) increase the profile of foreign bribery in its anti-corruption activities; (b) engage non-governmental organisations (NGOs), business organisations and enterprises in these activities; and (c) ensure that Czech individuals and companies which operate internationally are more aware of foreign bribery and of their exposure to solicitations of bribery by foreign public officials. This was deemed partially implemented during the Phase 2 Written Follow-Up, because the Czech Republic had made substantial efforts to raise awareness of foreign bribery within the public sector, but had not sufficiently raised awareness within the private sector.

### **(a) Prevention, detection, and awareness of foreign bribery**

149. Awareness of the risks of foreign bribery and the Convention in the Czech Republic is regrettably low. Although the Czech Republic has made some anti-corruption efforts in the public sector, many of these were directed at combating domestic bribery or corruption generally. These efforts also appear to have been primarily targeted at the public sector. A major concern is the lack of awareness among Czech businesses and individuals and the lack of knowledge about how to address those risks. This lack of awareness was concretely demonstrated by the fact that no Czech companies attended the on-site, despite the fact that invitations were sent by the Czech authorities to 12 companies well in advance of the on-site visit, as well as to several other companies, via Czech business organisations. Also troubling is the attitude by some Czech government ministries that raising awareness of foreign bribery in the private sector is not a priority and/or not their responsibility. As noted below, however, this deficiency may equally be due to the lack of willingness on the part of the private sector to engage with the government as well.

150. The Czech Republic has made efforts to raise awareness in the public sector. The Ministry of Foreign Affairs (MoFA) distributed information on reporting of foreign bribery to all its embassies and consulates, and is enhancing its training process for all heads of missions, embassies, consulates on corruption-related issues. The MoFA has also adopted a one-year anti-corruption plan addressing corruption in (1) public procurement, (2) issuance of visas, and (3) enhancing or strengthening the awareness of personnel. The Ministry of Industry and Trade (MIT) noted that the standardised training for all civil servants includes training regarding bribery and corruption, although it is unclear whether the training only addresses passive corruption or also include active bribery of foreign public officials.

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<sup>108</sup> [Czech Republic Phase 2 Report](#), Recommendation 1.

151. The Czech Republic has also made some efforts to raise awareness in the private sector, but these efforts address corruption generally or are focussed on domestic bribery. Several conferences have been organised to promote corporate social responsibility and the MIT has established an Expert Section for Corporate Social Responsibility. In 2010, the Ministry of the Interior published an anti-corruption manual for citizens providing advice on how and where to report corruption.<sup>109</sup> These efforts, though, are essentially intended to address domestic bribery, and do not include foreign bribery specifically; some focus on corruption only tangentially. In 2011-2012, the Czech Government adopted an Anti-Corruption Strategy with 88 specific measures, including public sector training and education on corruption prevention. Of these 88 measures, 73 were considered to have been implemented at the end of the two-year period. In January 2013, the Czech Government adopted a new Anti-Corruption Strategy for 2013-2014: “From Corruption to Integrity”. This new Strategy includes the measures not yet fully implemented under the previous Strategy, as well as new measures, developed on the basis of an analysis. Measures to be implemented under the new Strategy address topics such as integrity in the public sector, investigation and prosecution of corruption, and strengthening of anti-corruption measures in the private sector. Again, although some of these measures may be applicable to combating bribery generally, the strategy mostly addresses domestic corruption and never explicitly mentions foreign bribery. Members of Government, Heads of other central administrative authorities and the Director of the General Inspection of Security Forces have to inform the Vice Chair of the Government on implementation of the Anti-Corruption Strategy.

152. Since no companies attended the on-site visit, it was not possible to solicit their views on the risks of foreign bribery. The absence of these companies was, however, a major topic of discussion at various panels at the on-site visit, in particular with lawyers, accountants and civil society. Non-governmental panellists interviewed during the on-site visit generally noted a lack of awareness of foreign bribery by companies and individuals engaging in business abroad. They observed that the private sector is either unaware or apathetic towards foreign bribery, partly because companies do not perceive themselves at risk of prosecution for foreign bribery by Czech authorities. As an example of the low level of awareness, a business association mentioned that monthly meetings of Czech companies to discuss foreign trade never addressed the risks of corruption. Another business association reported that it had not conducted any training sessions on foreign bribery because there was no demand for such a course from its member businesses.

153. Many non-governmental panellists commented that foreign bribery was not a priority of the Czech government. They expressed the view that the Czech government did not appear to be open to the private sector and that the Czech private sector distrusted governmental authorities. According to some panellists, it was more likely that foreign governments, rather than the Czech government, would hold events to raise awareness of foreign bribery through their embassies in the Czech Republic.

154. The passive attitude towards raising awareness within the private sector was confirmed when the evaluation team met with Czech government representatives. For instance, the MoFA explained that its main responsibility was training its own employees on anti-corruption issues, not reaching out to companies. MoFA representatives stated that companies should develop their own training courses or contact the MIT. CzechTrade and CzechInvest, agencies of MIT that help Czech businesses export or invest abroad, did not attend the on-site visit. The evaluation team also heard from a Czech lawyer that the Minister of Justice publicly stated that the Czech government should not assist Czech companies with corporate liability issues. According to the Minister, Czech companies should hire lawyers to assist them. The overall impression of these statements is that Czech government agencies do not consider raising awareness in the private sector to be a priority, and appear generally unwilling to engage in contacts with the private sector – an unwillingness which may well be reciprocated from the business side.

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<sup>109</sup> “Initiatives and Practices of the Czech republic in the Area of Prevention of Corruption”, UNODC.

155. Governmental participants also questioned the need for raising awareness among the private sector. Representatives from the MoFA justified their lack of engagement by reasoning that the risk of foreign bribery was low since 80% of Czech exports go to EU countries. They also explained that the business community did not express a desire for assistance, and that Czech businesses in general were reluctant to engage with government ministries, especially on an issue as sensitive as foreign bribery. Nonetheless, business associations at the on-site visit reported that Czech companies operating in a foreign country would likely contact the local Czech embassy for support, especially if the business was operating in an unfamiliar jurisdiction. It would thus seem that embassies are in an advantageous position to advise Czech businesses of the risks of foreign bribery. In addition, the seeming lack of interest by the business community may be due to the fact that Czech businesses are generally unaware of the significant corruption risks they face when conducting business abroad.

### *Commentary*

*Section III of the 2009 Recommendation calls on Member Countries to take concrete and meaningful steps to raise awareness in the public and private sector for the purposes of preventing and detecting bribery. Although the lead examiners acknowledge the obstacles met by the Czech authorities in engaging with the private sector, they nonetheless consider that they should undertake efforts to establish contacts and build relationships with the business community, for instance through cooperation with business organisations. Despite the fact that MoFA and MIT, including CzechTrade and CzechInvest, seem particularly well-positioned to reach out to business community, their efforts have been underwhelming. The current passive attitude of Czech government officials towards engagement with the private sector is clearly ineffective.*

*The lead examiners note that Phase 2 recommendation 1 was considered partially implemented at the time of the Phase 2 written follow-up. The lead examiners are however concerned about the apparent lack of awareness of the private sector and of engagement of the Czech authorities in this respect. The lead examiners are concerned that much still needs to be done to fully implement in particular Phase 2 recommendation 1(c), which asked that the Czech Republic ensure that Czech individuals and companies which operate internationally are more aware of foreign bribery. The lead examiners therefore recommend that the Czech Republic take urgent steps to raise awareness of the foreign bribery offence among businesses operating abroad and the public sector, in co-ordination with business organisations as appropriate.*

### **(b) Reporting of foreign bribery**

156. Since 2010, the Czech Republic imposes mandatory reporting by any person of criminal offences, including foreign bribery. Under section 368 of the CC, if a person “gains credible knowledge” that foreign bribery has occurred, he/she must report the criminal act “immediately” to the public prosecutor or police authority. Failure to report a criminal act carries a sentence of up to three years of imprisonment. If a person has credible knowledge that foreign bribery is about to occur, the person may be subject to criminal sanctions for failing to prevent the crime unless the person makes a report to law enforcement authorities.<sup>110</sup> In terms of reporting mechanisms, the Czech authorities explain that there is no specific format for reporting by individual citizens under section 368 of the CC; such reports may, for instance, be made orally directly to the police. Anonymous reporting, while possible, may be problematic in light of the criminal liability for non-reporting; the Czech authorities indicated that, nevertheless, law enforcement authorities would have a duty to accept anonymous reports and adequately consider them.

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<sup>110</sup> Section 367 CC.

157. Despite these legislative mandates, it appears that reporting of foreign bribery – and crimes in general – is not commonplace. Although the MOJ and Ministry of Interior operate hotlines for members of the public to report corruption, they stated that they have never received a credible allegation through this channel. In any case, it is likely that these hotlines are essentially targeted at detecting bribery of Czech public officials. Furthermore, failure to report a crime is rarely investigated or prosecuted by Czech authorities. As discussed below in the section on whistleblower protection, there is a pervasive attitude in Czech society that reporting wrongdoing to law enforcement is perceived negatively. Despite this perception, however, it seems that reporting of wrongdoing does occur, since the Czech police cited whistleblowers as a primary source for commencing investigations (see section 5.a.(ii)).

158. The mandatory reporting requirements apply equally to Czech public officials. In addition, under section 8 of the CPC, public officials are required to notify the public prosecutor or the police authorities of the facts indicating a criminal offence, including foreign bribery. The Czech Republic recently adopted a new Code of Ethics for Czech Public Servants, which requires civil servants to “report any corrupt activity or suspicion of such activity, he/she learn in a credible way, to his/her superior or law enforcement authority”. This general code is meant to be implemented by each ministry or agency in its respective code. As of this moment, reporting mechanisms for public officials differ according to the internal rules and reporting channels established in each administration. Following the on-site visit, the Czech Republic indicated that a draft law was in preparation which would also include a mandatory reporting obligation. There are no provisions specifically allowing public officials to report to civil society or the media, even in cases where law enforcement fails to take action.

*(c) Whistleblower protection*

159. In Phase 2, the Working Group recommended that the Czech Republic consider adopting additional measures to strengthen protection for whistleblowers in order to encourage employees to report suspected cases of foreign bribery without fear of retaliation.<sup>111</sup> At the time of the Phase 2 Written Follow-Up, this recommendation was considered unimplemented.

160. There is no specific legislation conferring protection for whistleblowers. Other pieces of legislation confer only limited protection for whistleblowing. The Czech Labour Code only provides general protection from unfair dismissal, but does not address other forms of reprisals against employees who report misconduct. In fact, under the Czech Labour Code an employer may immediately terminate an employee for broadly “breach[ing a] duty arising out of the legal regulations”. This could arguably be read to allow employers to terminate employees for reports to law enforcement, since such reports could be a breach of confidentiality rules. The lack of whistleblower protection is particularly troubling, given that failure to report credible knowledge of criminal offences is a criminal offence, as discussed above.

161. The Czech authorities are currently studying how to improve protections for whistleblowers. In 2012, the Czech Republic established a working group to strengthen whistleblower protection, which prepared a regulatory impact analysis on whistleblower protection. The regulatory impact analysis submitted to the government suggested that four pieces of legislation be amended (i.e., the Anti-Discrimination Act, the Civil Procedure Code, the Act on Professional Soldiers, and the Act on Service in Armed Forces) to provide additional protections through anti-discrimination principles, rather than enacting a specific whistleblower protection law. The current proposal would place the burden of proof on the employer who committed the retaliatory act to prove that the employment action was unrelated to whistleblowing.

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<sup>111</sup> [Czech Republic Phase 2 Report](#), Recommendation 2.

162. Representatives from civil society noted that the public is deterred from reporting wrongdoing because of a fear of retribution. One representative stated that whistleblowers are inevitably terminated and have difficulty finding new positions, because of their tainted reputations in the industry. In a widely publicised case, a public sector employee who reported corruption about his employer, the inspectorate to the environment, to the Minister of Environment and the Prime Minister, was ultimately terminated. The fear of retribution from lack of adequate whistleblower protection may harm detection of foreign bribery cases. Czech investigators at the on-site visit stated that current levels of whistleblower protection are insufficient to encourage reporting of corruption cases. According to investigators, although whistleblowers are increasingly trusting law enforcement, investigators must reassure whistleblowers to gain their trust.

163. In spite of the fact that a number of domestic corruption investigations were triggered on the basis of whistleblower reports, panellists at the on-site generally expressed the view that whistleblowing is considered very negatively in Czech society. Many representatives stated whistleblowers are seen as “snitches” and traitors, rather than individuals voicing legitimate concerns. The negative perceptions of whistleblowers may be changing, however. Some panellists cited the recent example of a whistleblower who was elected senator after he exposed political corruption. In any case, given the generally negative perception of whistleblowing in Czech society, adequate legal protection for those who come forward is crucial.

#### *Commentary*

*The lead examiners are encouraged by the initial steps taken by the Czech Republic to review its framework for protecting whistleblowers. They recommend that the Czech Republic proceed promptly with its intention to adopt adequate protection for whistleblowers both in the public and private sector. Nevertheless, at this stage, they consider that Phase 2 recommendation 2 remains unimplemented.*

### **11. Public advantages**

164. In Phase 2, it was recommended that the Czech Republic ensure that the provisions concerning the imposition of administrative sanctions by public agencies in charge of disbursing public monies were applied where appropriate.<sup>112</sup> This recommendation was only considered partially implemented at the time of the Phase 2 Written Follow-Up. The Working Group considered that the export credit agencies had, overall, satisfied the requirements of the recommendation, but were of the view that agencies dealing with public procurement and official development assistance (ODA) had not taken sufficient action.

#### **(a) Public procurement**

165. The Czech Republic has implemented the World Trade Organisation Agreement on Government Procurement and both European Directives on public procurement (2004/17/EC and 2004/18/EC). These instruments require mandatory exclusion of tenderers convicted of corruption and financial crime offences, including foreign bribery.

166. On 1 April 2012, Act No. 55/2012 Coll. came into force, modifying Act No. 137/2006 Coll., with a view to enhancing transparency in public procurement processes. In particular, section 53 of this Act provides as a “basic qualification prerequisite” that the applicant has not been convicted of bribery, including foreign bribery. Natural and legal persons tendering in a public procurement process would have to provide a criminal register file to show that they have not been debarred or prohibited from receiving

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<sup>112</sup> Recommendation 16(b) of the [Czech Republic Phase 2 Report](#).

public subsidies.<sup>113</sup> Since court decisions are anonymised, public procurement authorities do not themselves have access to a central database listing natural or legal persons convicted of bribery. With respect to international debarment lists, public procurement authorities would not typically consult the debarment lists of international financial institutions.

167. Under section 120a of Act No. 137/2006 Coll., providing false information on the fulfilment of the “basic qualification prerequisites” incurs a sanction of debarment for three years, as well as a CZK 20 million fine (EUR 800 000). The Office for the Protection of Competition has responsibility for this administrative debarment procedure. The Ministry for Regional Development has responsibility for a central database which lists companies that have been debarred on the basis of section 120a, and which is publicly available on the web. As of the time of this review, four companies had been placed on this database. This administrative debarment procedure is different from the criminal sanction foreseen under sections 21 and 22 of Act No. 418/2011 Coll., according to which debarment may be imposed on legal persons for a period of up to 20 years (see section 3.b(ii) above under the Czech corporate liability regime).

168. The existence of internal controls, ethics and compliance programmes to prevent and detect bribery are considered during the tendering process, but would not necessarily be a decisive factor in decisions to award a public procurement contract. However, although the existence of such programmes and controls is not part of the “basic qualifications prerequisites”; they could be an added value for one company if two firms in similar positions were being considered.

169. Public procurement is the sole responsibility of the Ministry for Regional Development. Its staff are Czech public officials and therefore subject to the same reporting obligations as all civil servants (see section 10.b. on reporting obligations for civil servants).

**(b) Export credits**

170. The Czech Republic has two export credit agencies (ECAs): the Czech Export Bank (CEB) and the Export Guarantee and Insurance Corporation (EGAP). Both ECAs appear to operate fairly well with respect to combating bribery. Representatives of the CEB and EGAP interviewed during the on-site visit indicated that the procedures for granting export credit support are the same for the two agencies.

171. Both ECAs require exporters and applicants to complete a declaration that they are in compliance with respect to anti-bribery legislation and aware of the consequences of providing false information. CEB and EGAP systematically check the international debarment lists of international financial institutions, and require applicants to provide a criminal register file to show that they have not been convicted of bribery in the five years preceding the application. Due diligence measures are also undertaken prior to support being provided, including with respect to the use and fees of agents.

172. With respect to internal controls, CEB encourages exporters and applicants to develop, apply and document appropriate management control systems in transaction-specific documentation (i.e. text in the general conditions of cover). EGAP relies on a more generic approach, by providing such information on its website and in customer publications.<sup>114</sup>

173. Despite being wholly state-owned, the ECAs are in practice private companies. Accordingly, CEB and EGAP employees are not subject to the reporting obligations incumbent on Czech public

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<sup>113</sup> Section 53(1)(a) of Act No. 55/2012 Coll..

<sup>114</sup> See the individual Czech Responses to the [Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits](#).



officials. Nevertheless, ECA employees are obliged to report to law enforcement whenever they have credible knowledge that bribery may have occurred. However, there have been no such reports to date.

(c) *Official Development Assistance*

174. At the time of the Phase 2 and Phase 2 Written Follow-Up, ten ministries were involved in the disbursement of ODA, in addition to the MoFA. In Phase 2, in 2006, it was recommended that the Czech Republic raise awareness of NGOs and companies involved in ODA-funded projects, and of public officials in charge of administering ODA.<sup>115</sup> This recommendation was only considered partially implemented at the time of the Written Follow-Up to Phase 2 in 2009. The Working Group was only partly satisfied with the awareness-raising carried out, which only addressed NGOs and public officials in the MoFA.

175. The Czech ODA system underwent major transformation between 2007 and 2010. Act No. 151/2010 Coll. on Development Co-operation and Humanitarian Aid became effective on 1 July 2010. Under the new Act, co-ordination of ODA is now the responsibility of the MoFA. For humanitarian aid, responsibility is shared between the MoFA and the Ministry of Interior. Act 151 also established the Czech Development Agency (CzDA), which co-ordinates bilateral projects with specific priority countries;<sup>116</sup> for these bilateral projects, the embassies in the priority countries are also important players, as partners in the project cycle with responsibility for overseeing the programme.

176. In 2011, the Czech Republic provided a total ODA worth USD 250,46 million, both in multilateral and bilateral development assistance, with multilateral assistance exceeding bilateral assistance (69% versus 31%). Czech ODA is largely untied (80% to 90%). In terms of the territorial structure of ODA, the largest recipients of assistance are located in Asia, which receives 37% of Czech bilateral assistance. Other major recipients of Czech ODA include countries in South-Eastern and Eastern Europe. There has been a positive trend of stable increases in ODA in the region of Sub-Saharan Africa, although still limited to 11% of the bilateral ODA totals provided by the Czech Republic. In 2011, the largest recipients of Czech ODA included Afghanistan, Mongolia, Moldova, Bosnia and Herzegovina and Serbia. In addition to geographical criteria, the Czech Republic's Development Co-operation Strategy for 2010-2017 defines priority areas for development, based on the Czech Republic's experience and expertise, in particular with respect to processes of political, economic and social transition. For the next period begun in 2010, the Czech Republic has identified five priority areas subject to development co-operation: environment, agriculture, social development, economic development and the support of democracy, human rights and social transition. Corruption prevention is included as part of this last priority area.<sup>117</sup>

177. Where prevention of corruption is concerned, an anti-corruption clause, directly referencing the Anti-Bribery Convention, is included in all ODA funded procurement contracts, as well as in the main documents regulating ODA projects. The MoFA also conducts regional seminars once or twice a year to raise awareness of corruption issues among NGOs and companies, which, MoFA representatives reported, are generally well-attended. As mentioned above, embassy staff from the MoFA with special oversight role for ODA in priority countries receive specific training on the programme country and anti-corruption.

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<sup>115</sup> See recommendations 4(a) and (b) of the Czech Republic Phase 2 Report.

<sup>116</sup> The priority countries are: Afghanistan, Bosnia and Herzegovina, Ethiopia, Moldova, Mongolia (priority countries with a cooperation programme); and Cambodia, Georgia, Kosovo, Palestinian Autonomous Territories and Serbia (priority countries without a cooperation programme). For further information, see the Development Cooperation Strategy of the Czech Republic 2010-2017 at: [http://www.mzv.cz/file/762314/FINAL\\_Development\\_Cooperation\\_Strategy\\_2010\\_2017.pdf](http://www.mzv.cz/file/762314/FINAL_Development_Cooperation_Strategy_2010_2017.pdf)

<sup>117</sup> See Czech Development Cooperation – 2011: [http://www.mzv.cz/file/876704/Czech\\_Development\\_Cooperation.pdf](http://www.mzv.cz/file/876704/Czech_Development_Cooperation.pdf)

178. Due diligence is the responsibility of the CzDA. The CzDA ensures the broad circulation of information concerning public procurement processes (to ensure open procedures), and controls the background of applicant companies (including their financial status and history). The ODA public procurement process follows the same provisions as the public procurement rules under Act No. 137/2006 Coll.. Consequently, a “basic qualification prerequisite” for tendering in ODA funded contracts is the absence of conviction for bribery, including foreign bribery. Natural and legal persons tendering have to provide a criminal register file to show that they have not been debarred or prohibited from receiving public subsidies. Similarly to the public procurement process, the debarment lists of international financial institutions are not consulted. Due diligence during the execution of the contracts is entrusted to an external expert body. Any suspicions of corruption would cause the process to be immediately stopped.

179. With respect to reporting obligations, staff of the MoFA and CDA are Czech public officials and therefore subject to the same reporting obligations as all Czech civil servants (see section 10.b. on reporting obligations for civil servants).

### *Commentary*

*The lead examiners welcome the new law on public procurement, which includes as a “basic qualification prerequisite” for public procurement that the applicant has not been convicted of bribery. They also welcome decisions by the Czech Republic to streamline the ODA process through Act No. 151 of 2010 Coll., as well as efforts to more systematically include prevention of corruption as part of the procurement process. Consequently, the lead examiners consider that Phase 2 recommendation 16(b) is fully implemented.*

*With respect to recommendations 4(a) and (b), the lead examiners welcome efforts by the MoFA and the CDA to raise awareness of companies and NGOs through annual or semi-annual seminars, as well as inclusion of references to the Anti-Bribery Convention in all ODA material. They are also encouraged by recent initiatives to provide training to Czech embassy staff in ODA priority countries, including on anti-corruption issues. The lead examiners therefore consider that Phase 2 recommendations 4(a) and (b) are fully implemented.*

*With respect to exclusion of companies convicted of bribery from public advantages (public procurement, export credits and ODA), the lead examiners consider that there is no systematic approach whereby all the agencies can consult a central database of convictions. The lead examiners therefore recommend that the Czech Republic consider adopting a systematic approach to providing access to information on companies convicted of corruption, such as through a national debarment register, to facilitate debarment by public contracting agencies of companies convicted of foreign bribery.*

## **C. RECOMMENDATIONS AND ISSUES FOR FOLLOW-UP**

180. The Working Group on Bribery welcomes the adoption by the Czech Republic of a comprehensive corporate liability regime. It also appreciates the clarification of the role of the law enforcement bodies in charge of the investigation and prosecution of corruption and the overall responsibility for foreign bribery entrusted to the UOKFK and the HPPO, which appear well-armed to tackle allegations of foreign bribery. The Working Group therefore looks forward to seeing the ongoing foreign bribery investigations as well as any future ones actively pursued. The Working Group is, however, concerned that the current institutional framework for the prosecuting authorities could lead to investigations and prosecutions of foreign bribery being influenced by considerations prohibited under Article 5 of the Convention. Furthermore, the Working Group is concerned by the lack of attendance of

Czech companies at the on-site visit and what this reveals in terms of the Czech private sector's low awareness of foreign bribery issues. The Working Group considers that the prevention and detection of foreign bribery could be improved through increased engagement with Czech companies, as well as with the accounting and auditing profession, tax profession, money laundering authorities and reporting entities. Current plans to adopt legislation to protect whistleblowers could also enhance detection.

181. Regarding outstanding recommendations from previous evaluations, the Czech Republic has fully implemented Phase 2 recommendations 4(a) and (b), 8(c), 9(a), 13, 16(a) and (b) and 17. The Czech Republic has partially implemented recommendations 1(a), (b) and (c), 5(a), 6(a), 8(b), 14(b), and 15(a), and (b). Recommendations 2 and 6(c) have not been implemented.

182. In conclusion, based on the findings in this report on the Czech Republic's implementation of the Anti-Bribery Convention, the 2009 Anti-Bribery Recommendation and related instruments, the Working Group: (1) makes the following recommendations to enhance implementation of these instruments in Part 1; and (2) will follow-up the issues identified in Part 2. The Working Group invites the Czech Republic to report orally on implementation of recommendations 1, 2, 9 and 10 in one year (i.e., in March 2014). The Working Group invites the Czech Republic to submit a written follow-up report on all recommendations and follow-up issues within two years (i.e., in March 2015). In addition, the Working Group will continue to closely monitor the Czech Republic's foreign bribery enforcement efforts. In this regard, the Czech Republic is invited to provide information on its foreign bribery-related enforcement actions when it reports orally in March 2014 and in writing in March 2015.

## **1. Recommendations of the Working Group**

### ***Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery***

1. Regarding the offence of bribing a foreign public official, the Working Group recommends that the Czech Republic ensure that, if the defence of effective regret is reintroduced, it is not applicable in foreign bribery cases, and keep the Working Group on Bribery informed of developments concerning this possible re-introduction [Convention, Article 1].

2. Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that the Czech Republic:

- Continue to develop its proactive approach with respect to the ongoing foreign bribery investigations, as well as regarding any future foreign bribery allegations which may arise [Convention, Articles 1, 2, 3 and 5];
- take steps to more proactively detect foreign bribery, in particular by engaging with stakeholders in the anti-money laundering authorities, accounting and auditing profession, tax profession, and private business [Convention, Articles 1, 2, 3 and 5];
- provide training to prosecutors on how to assess whether compliance programmes put in place by companies amount to “justly required measures”, as provided in the Czech corporate liability legislation [Convention, Articles 2 and 5]; and
- pursue efforts to increase the confiscation of proceeds of crime and apply them in foreign bribery cases where appropriate [Convention, Articles 3 and 5].

3. Regarding Article 5 considerations, the Working Group recommends that the Czech Republic take steps to guarantee greater independence of prosecutors so that considerations prohibited under Article

5 of the Convention are never taken into account in respect of any investigative and prosecutorial decisions in foreign bribery cases, including where there are instructions in specific cases [Convention, Article 5].

4. Regarding the provision of mutual legal assistance in cases of transnational bribery, the Working Group recommends that the Czech Republic maintain statistics on the number of formal mutual legal assistance requests sent and received, including on the offence underlying the requests, and the outcome and time required for responding [Convention, Article 9].

5. Regarding sanctions in cases of transnational bribery, the Working Group recommends that the Czech Republic:

- a) With respect to agreements on guilt and punishment, make public, where appropriate and in conformity with the applicable rules, as much information as possible, including on the reasons why the agreement was appropriate, the legal or natural persons convicted, the sanctions agreed, and the terms of the agreement [Convention, Articles 1, 2, 3 and 5]; and
- b) Continue to compile statistics on sanctions imposed in bribery cases, including in the context of agreements on guilt and punishment, with a view to allowing the Working Group to assess whether sanctions imposed in foreign bribery cases are effective, proportionate and dissuasive [Convention, Article 3].

***Recommendations for ensuring effective prevention and detection of foreign bribery***

6. Regarding money laundering, the Working Group recommends that the Czech Republic

- a) Provide better guidance to reporting entities, for instance by developing up-to-date typologies on money laundering where the predicate offence is foreign bribery, and by providing training on politically exposed persons (PEPs) [Convention, Article 7; 2009 Recommendation III.(i)]; and
- b) Take appropriate measures to enforce the money laundering offence more effectively in connection with foreign bribery cases [Convention, Article 7].

7. Regarding accounting requirements, external audit and corporate compliance, the Working Group recommends that the Czech Republic:

- a) Ensure that the criminal and administrative penalties for false accounting in connection with foreign bribery cases are effective, proportionate and dissuasive, including with respect to shell entities [Convention, Article 8; 2009 Recommendation X.A.(iii)];
- b) Make full use of its financial specialist network to enforce more effectively false accounting offences in connection with bribery cases [Convention, Article 8; 2009 Recommendation X.A.(iii)];
- c) Raise awareness of the foreign bribery offence among accounting and auditing professionals including by providing training (i) on detection of indications of suspected acts of foreign bribery; and (ii) clarifying foreign bribery reporting obligations of Czech auditors, in particular vis-à-vis law-enforcement authorities [2009 Recommendation X.B.]; and
- d) Take urgent steps to promote internal controls, ethics and compliance programmes or measures to prevent and detect foreign bribery, taking into account the Good Practice

Guidance on Internal Controls, Ethics and Compliance [2009 Recommendation X.C. (i) and (ii), and Annex II].

8. With respect to tax-related measures, the Working Group recommends that the Czech Republic:
  - a) Increase efforts to raise awareness of foreign bribery and the non-tax deductibility of bribes among the Tax Administration and the private sector [2009 Recommendation VIII.(i); 2009 Tax Recommendation I.(i)]; and
  - b) Provide further training to tax examiners on the detection of bribe payments disguised as legitimate allowable expenses [2009 Recommendation VIII.(i); 2009 Tax Recommendation I.(i)].
9. Regarding awareness-raising, the Working Group recommends that the Czech Republic:
  - a) Take urgent steps to raise awareness and provide training to Czech public officials on the foreign bribery offence and their role in reaching out to the business community, in particular in institutions well-positioned to reach out to the business community, such as the Ministry of Foreign Affairs, the Ministry of Industry and Trade, and the Czech trade promotion agencies [2009 Recommendation III.(i)]; and
  - b) Take urgent steps to raise awareness of the foreign bribery offence among Czech businesses operating abroad, including SMEs, in coordination with business organisations as appropriate [2009 Recommendation III.(i)].
10. With respect to the reporting of foreign bribery, the Working Group recommends that the Czech Republic promptly proceed with its intention to adopt appropriate measures to protect from discriminatory or disciplinary action public and private sector employees who report suspected acts of foreign bribery in good faith and on reasonable grounds to competent authorities [2009 Recommendation IX.(iii)].
11. Regarding public advantages, the Working Group recommends that the Czech Republic consider adopting a systematic approach to allow its public agencies to easily access information on companies sanctioned for foreign bribery, such as through the establishment of a national debarment register [2009 Recommendation XI. (i)].

## **2. Follow-up by the Working Group**

12. The Working Group will follow-up the issues below as case law and practice develops:
  - a) The application of provisions in the foreign bribery offence requiring that bribery be committed in connection (i) with the “competence” of the official, and (ii) with “procuring matters of general interest”;
  - b) The application of the Czech foreign bribery offence to ensure that perpetrators who pay bribes through intermediaries are held liable;
  - c) Whether Czech authorities are relying on the trading in influence offence to avoid difficulties in establishing a bribery offence and what consequences this may have on effective enforcement of the foreign bribery offence;
  - d) The proposal to re-instate the defence of effective regret, to ensure that it is not applicable in foreign bribery cases;

- e) The application of the liability of legal persons in particular (i) the application of the law to all legal persons, including state-owned and state-controlled entities; (ii) the interpretation of acts of lower level employees committed “while fulfilling [their] duties/tasks”; (iii) the standard of “justly required measures” that must be proven were not taken by the defendant legal person; (iv) the liability of legal persons for acts committed by related legal persons; and (v) the impact of the defence of effective regret on the liability of legal persons, in the event the defence is reinstated;
- f) The application in practice of sanctions and confiscation measures in on-going and future foreign bribery cases to ensure that they are effective, proportionate and dissuasive, including for legal persons conducting activities “having strategic or hardly replaceable significance for the national economy”;
- g) The use of agreements on guilt and punishment in foreign bribery cases;
- h) Whether the Czech Republic can fully provide mutual legal assistance in foreign bribery cases; and
- i) The enforcement of money laundering offences predicated on foreign bribery.

**ANNEX 1 PHASE 2 RECOMMENDATIONS TO THE CZECH REPUBLIC AND ASSESMENT OF IMPLEMENTATION BY THE WORKING GROUP ON BRIBERY IN 2009**

Phase 2 Recommendation	2009 WGB Evaluation
<i>Prevention, Detection and Awareness of Foreign Bribery</i>	
1. Concerning the <u>general awareness</u> of the Convention and foreign bribery, the Working Group recommends that the Czech Republic:	
(a) Increase the profile of foreign bribery in its anti-corruption activities	Partially implemented
(b) Engage NGOs, business organisations and enterprises in these activities; and	Partially implemented
(c) Ensure that Czech individuals and companies which operate internationally are more aware of foreign bribery and of their exposure to solicitations of bribery by foreign public officials.	Partially implemented
2. Concerning <u>reporting</u> of foreign bribery cases, the Working Group recommends that the Czech Republic consider adopting additional measures to strengthen protection for whistleblowers in order to encourage employees to report suspected cases of foreign bribery without fear of retaliation.	
3. Concerning prevention and detection through <u>export credits</u> , the Working Group recommends that the Czech Export Bank be more proactive in raising awareness of foreign bribery among its staff, clients and potential clients.	
4. Concerning prevention and detection through <u>official development assistance</u> (ODA), the Working Group recommends that the Czech Republic undertake additional activities to raise awareness of foreign bribery among:	
(a) Companies and NGOs that are involved in projects funded by ODA;	Partially implemented
(b) Public officials who are involved in administering ODA, including those outside the Ministry of Foreign Affairs.	Partially implemented
5. Concerning the prevention and detection of foreign bribery through <u>taxation</u> , the Working Group recommends that the Czech Republic:	
(a) Make more efforts to raise awareness of foreign bribery and the non-deductibility of bribes among tax examiners, tax professionals and the private sector.	Partially implemented
(b) Provide training to tax examiners on the detection of bribe payments disguised as legitimate allowable expenses; and	Fully implemented
(c) Disseminate OECD Bribery Awareness Handbook for Tax Examiners in Czech to all tax examiners. The Working Group also encourages the Czech Republic to amend its legislation and remove the restriction against Czech tax officials on reporting foreign bribery detected during tax audits to law enforcement.	Fully implemented

6. Concerning prevention and detection through <u>accounting and auditing</u> in the private sector, the Working Group recommends that the Czech Republic:	
(a) Work proactively with the accounting and auditing professions to raise awareness of foreign bribery and encourage these professions to develop specific training on foreign bribery in the framework of their professional education and training systems;	Partially implemented
(b) Consider requiring external auditors to report indications of a possible illegal act of bribery to competent authorities; and	Fully implemented
(c) Clarify the procedure for auditors to provide information to law enforcement authorities upon demand, and raise the awareness of the procedure among auditors.	Not implemented
7. Concerning prevention and detection through <u>auditing of the public sector</u> , the Working Group recommends that the Supreme Audit Office raise the awareness of foreign bribery among its staff and training its staff on how to detect foreign bribery.	
8. Concerning prevention and detection through <u>anti-money laundering measures</u> , the Working Group recommends that the Czech Republic:	
(a) Improve the feedback to entities that are required to report suspicious transactions;	Fully implemented
(b) Provide better guidance to these entities, for instance, by providing up-to-date typologies on money laundering where the predicate offence is bribery; and	Partially implemented
(c) Maintain statistics on suspicious transaction reports that result in or support bribery investigations and prosecutions.	Not implemented
<b><i>Investigation, Prosecution and Sanctioning of Foreign Bribery and Related Offences</i></b>	
9. Concerning the <u>investigation</u> of foreign bribery, the Working Group recommends that the Czech Republic:	
(a) Continue to train police officers and recruits on foreign bribery, including the practical aspects of such investigations;	Partially implemented
(b) Clarify the rules for dividing competence between the ÚOKFK and the ÚONVDK in foreign bribery cases, particularly those that also involve money laundering or tax offences; and	Fully implemented
(c) Improve the co-ordination among tax, money laundering and corruption investigators in foreign bribery cases	Fully implemented
10. Concerning the <u>prosecution</u> of foreign bribery cases, the Working Group recommends that:	
(a) The Judicial Academy organise additional training on foreign bribery for prosecutors and judges, including new recruits; and	Fully implemented
(b) The Czech Republic maintain statistics on the use of diversion in domestic and foreign bribery cases.	Fully implemented
11. Concerning <u>extradition and mutual legal assistance</u> , the Working Group recommends that the Czech Republic:	
(a) Issue general instructions to prosecutors which state that the provision of extradition and MLA by the Czech Republic in foreign bribery cases shall not be influenced by factors listed in Article 5 of the Convention; and	Fully implemented
(b) Draw the attention of its courts to the relationship between section 377 of the Criminal Procedure Code and the Article 5 of the Convention.	Fully implemented
12. Concerning the <u>offence of foreign bribery</u> , the Working Group recommends that the Czech republic amend its legislation to exclude the defence of “effective regret” from the offence of foreign bribery.	



13. Concerning the <u>liability of legal persons</u> for foreign bribery, the Working Group strongly recommends that the Czech Republic establish liability of legal persons for bribery of foreign public officials without delay, and put in place sanctions that are effective, proportionate and dissuasive. They further expect that the Czech Republic, within 12 months, report specifically to the Working Group in writing on the progress of this issue.	Not implemented
14. Concerning the <u>offence of money laundering</u> , the Working Group recommends that the Czech Republic:	
(a) Consider amending s. 252a of the Criminal Code to expressly cover the laundering of proceeds of foreign bribery where the bribery occurs outside the Czech Republic; and	Fully implemented
(b) Take appropriate measures to enforce the money laundering offence more effectively in connection with bribery cases.	Partially implemented
15. Concerning the <u>offence of false accounting</u> , the Working group recommends that the Czech Republic	
(a) Take appropriate measures to enforce accounting offences in the Act on Accounting more effectively in connection with bribery cases; and	Not implemented
(b) Ensure that the criminal and administrative penalties for false accounting are effective, proportionate and dissuasive in practice.	Partially implemented
16. Concerning <u>sanctions</u> for foreign bribery, the Working Group recommends that the Czech Republic:	
(a) Raise awareness among prosecutors of the importance of forfeiture and confiscation; and	Partially implemented
(b) Ensure that the provisions concerning administrative sanctions are applied when appropriate.	Partially implemented
17. Concerning <u>statistics</u> , the Working Group recommends that the Czech Republic maintain, to the extent possible, more detailed statistics on the sanctions imposed in domestic and foreign bribery, money laundering and false accounting cases.	Partially implemented
<b><i>Follow-up by the Working Group</i></b>	
The Working Group will follow-up the issues below as cases develop in the Czech Republic:	
(a) The use of diversion in domestic and foreign bribery cases;	Fully implemented
(b) Whether the prosecution of foreign bribery cases, and the provision of extradition and MLA in such cases, are influenced by factors such as national economic interest, the potential effect on relations with another State and the identity of the person involved;	Continue to follow up
(c) Whether the Czech Criminal Code covers all acts in relation to the performance of an official's duties, including any use of the public official's position, whether or not within the official's authorised competence;	Continue to follow up
(d) The provision of MLA to other Parties to the Convention in non-criminal proceedings against legal persons;	Continue to follow up
(e) Whether the money laundering offence covers the laundering of proceeds of foreign bribery where the bribery occurs outside the Czech Republic; and	Continue to follow up
(f) The sanctions imposed for foreign bribery, money laundering and false accounting, particularly confiscation and forfeiture.	Continue to follow up

## ANNEX 2 LIST OF PARTICIPANTS IN THE ON-SITE VISIT

### Public Authorities

- Department for Co-ordination of the Fight Against Corruption, Office of the Government
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Industry and Trade
- Ministry of Interior
- Ministry of Justice
- Ministry for Regional Development
- Czech National Bank
- High Public Prosecutor's Office
- Supreme Public Prosecutor's Office
- Unit for Combating Corruption and Financial Criminality (UOKFK), Police of the Czech Republic

### Export Credit Agencies

- Czech Export Bank (CEB)
- Export Guarantee and Insurance Corporation (EGAP)

### Judiciary

- Municipal Court in Prague

### Private Sector

#### *Private enterprises*

None

#### *Business associations*

- Association of Small and Medium Enterprises
- Confederation of Industry and Transport
- Czech Chamber of Commerce

#### *Legal profession and academics*

- Ambruz & Dark
- Dáňa, Pergl & Partners
- Schoultz & Partners
- Charles University Prague

#### *Accounting and auditing profession*

- Chamber of Certified Accountants
- Committee of the Czech Chamber of Auditors
- Ernst & Young
- KPMG
- PwC

### Civil Society

- Confederation of Trade Unions of Bohemia and Moravia
- Transparency International CZ (NGO)
- Respekt (media)

### ANNEX 3 LIST OF ABBREVIATIONS, TERMS AND ACRONYMS

AoA	Act on Accounting
CC	Criminal Code
CzDA	Czech Development Agency
CEB	Czech Export Bank
CPC	Criminal Procedure Code
CPIS	Criminal Police and Investigation Service
ECA	Export credit agency
EGAP	Export Guarantee and Insurance Corporation
EU	European Union
FAU	Financial Analytical Unit
FDI	Foreign direct investment
GDP	Gross domestic product
HPPO	High Public Prosecutor's Office
MLA	Mutual legal assistance
MLAT	Mutual legal assistance treaty
MoFA	Ministry of Foreign Affairs
MOJ	Ministry of Justice
NGO	Non-governmental organisation
ODA	Official development assistance
OECD	Organisation for Economic Co-operation and Development
PEPs	Politically exposed persons
SMEs	Small and medium size enterprises
SOE	State-owned enterprise
SPPO	Supreme Public Prosecutor's Office
STR	Suspicious transaction report
UOKFK	Unit for Combating Corruption and Financial Crime
UONVDK	Unit for Detection of Illegal Proceeds and Tax Crime

## ANNEX 4 IMPORTANT TEXTUAL EXTRACTS

### Selected Provisions from Act No. 40/2009 Coll., Criminal Code (CC)

#### Section 127 Public Official

(1) A public official is

- a) a judge,
- b) a public prosecutor,
- c) the president of the Czech Republic, a member of Parliament or a Senator of the Czech Republic, a member of the government or another person holding an office in another public body,
- d) a member of a city council or a responsible official of local authorities, public administration or another body of public authority,
- e) a member of the armed forces or a security corps or a police officer of the local police,
- f) a judicial executor when performing execution duties and duties arising from a assignment by a judge or a public prosecutor,
- g) a public notary when performing duties in inheritance proceedings as a judicial commissioner,
- h) a financial arbiter,
- i) a natural person assigned by woodland guard, nature guard, hunting guard or fishing guard, if he/she fulfils the duties of a state or community and therein uses the assigned powers.

(2) For criminal liability and protection of a public official according to individual provisions of the Criminal Code is required that the criminal offence is committed in relation to their power or responsibility.

(3) A public official of a foreign state or international organization shall be considered, under the conditions referred to in Paragraph (1) and (2), a public official according to the Criminal Code, if an international treaty provides so.

#### Section 216 Legalization of Proceeds of Crime

(1) Whoever conceals the origin or otherwise attempts to substantially complicate or render impossible to establish the origin of

- a) items or other asset values acquired by a criminal offence committed in the Czech Republic or abroad, or as a reward for such a criminal offence, or
- b) items or other asset values obtained for an item or other asset value referred to in Letter a), or

whoever allowed the commission of such an act to another person,

shall be sentenced to imprisonment for up to four years, to a pecuniary penalty, to prohibition of activity, or to confiscation of items or other asset values; however, if he/she commits such an act in relation to an item or other asset value derived from a criminal offence for which the law stipulates a lighter punishment, he/she shall be sentenced to this lighter punishment.

(2) An offender shall be sentenced to imprisonment for six months to five years or to a pecuniary penalty, if he/she

- a) commits the act referred to in Paragraph (1) in relation to an item or other asset value of a larger value, or
- b) gains larger profit for him-/herself or for another by such act.

(3) An offender shall be sentenced to imprisonment for two to six years or to confiscation of property, if he/she

- a) commits the act referred to in Paragraph (1) as a member of an organized group,
- b) commits such an act in relation to an item or other asset value derived from an especially serious felony,
- c) commits such an act in relation to an item or other asset value of a substantial value,
- d) gains substantial profit for him-/herself or for another by such act, or
- e) exploits his/her occupation status or position to commit such an act.

(4) An offender shall be sentenced to imprisonment for three to eight years or to confiscation of property, if he/she

- a) commits the act referred to in Paragraph (1) in connection to an organized group operating in several States,
- b) commits such an act in relation to an item or other asset value of an extensive value, or
- c) gains extensive profit for him-/herself or for another by such act.

#### **Section 217 Legalization of Proceeds of Crime by Negligence**

(1) Whoever allows another person, even out of negligence, to conceal the origin or to render it impossible to find the origin of an item or other asset value of a larger value, which were acquired by a criminal act committed in the Czech Republic or abroad or as a reward for such an act, shall be sentenced to imprisonment for up to one year, to prohibition of activity, or to confiscation of items or other asset values.

(2) An offender shall be sentenced to imprisonment for up to three years, if he/she

- a) commits the act referred to in Paragraph (1) by violating an important obligation arising from their employment, profession, position or function, or imposed to him/her by law, or
- b) gains substantial profit for him-/herself or for another by such act.

(3) An offender shall be sentenced to imprisonment for one to five years, if he/she

- a) commits the act referred to in Paragraph (1) in relation to an item or other asset value derived from an especially serious felony, or
- b) gains extensive profit for him-/herself or for another by such act.

#### **Section 254 Distortion of Data on the State of Economy and Assets**

(1) Whoever does not keep accounting books, records and other documentation serving to give an overview over the state of economy and assets or serving to its control, even though he/she is legally obliged to do so,

who enters into such accounting books, records or other documents false or grossly distorted data, or

who alters, destroys, damages, makes useless or conceals such accounting books, records or other documents,

and thus endangers proprietary rights of another or imperils proper and timely imposition of tax, shall be sentenced to imprisonment of up to two years or prohibition of activity.

(2) Equally punished shall be thee, who

presents false or grossly distorted information in materials submitted for entry to Commercial Register, Register of Foundations, Register of Beneficiary Societies/Associations or Register of Cooperatives of Owners and/or who conceals important facts in these documents

presents false or grossly distorted information in materials needed to produce an expert opinion that is attached to application for entry to Commercial Register, Register of Foundations, Register of Beneficiary Societies/Associations or Register of Cooperatives of Owners and/or who conceals important facts in these documents, or

endangers or limits other person's rights by not applying without undue delay for entry of data required by law into the Commercial Register, Register of Foundations, Register of Beneficiary Societies/Associations or Register of Cooperatives of Owners or does not deposit a document into the Collection of Documents if required by law or contract.

(3) An offender shall be sentenced to imprisonment from one year to five years or pecuniary punishment, if he/she causes substantial damage by the act under Paragraph 1 or 2 to someone else's property/assets.

(4) An offender shall be sentenced to imprisonment from two to eight years or pecuniary punishment, if he/she causes large-scale damage by the act under Paragraph 1 or 2 to someone else's property/assets.

#### **Section 332 Active Bribery**

(1) Whoever provides, offers, or promises a bribe to another person or for another person in relation to procuring matters of general interest, or

whoever provides, offers, or promises a bribe to another person or for another person in relation to conducting own business or business of another,

shall be sentenced to imprisonment for up to two years or to a pecuniary penalty.

(2) An offender shall be sentenced to imprisonment for one year to six years or to a pecuniary penalty, if he/she

a) commits the act referred to in Paragraph (1) with the intention to gain substantial profit for him-/herself or for another, or to cause substantial damage to another person, or another especially serious consequence, or

b) commits such an act against a public official.

### **Section 333 Trading in Influence**

(1) Whoever requests or accepts a bribe for that he/she will use his/her influence or influence of another to affect the exercise of powers of a public official, for or that he/she has already done so, shall be sentenced to imprisonment for up to three years.

(2) Whoever provides, offers, or promises a bribe to another person for reasons referred to in Paragraph (1), shall be sentenced to imprisonment for up to two years.

### **Section 334 Common Provisions**

(1) A bribe shall be understood as an unauthorized advantage consisting in direct asset enrichment or another profit that is to be given to the bribed person or with his/her consent to another person and to which he/she is not entitled.

(2) A public official according to Section 331 to 333 shall be understood, in addition to the persons referred to in Section 127, also as any person

a) holding an office at the legislative body, judicial authority, or another public authority of a foreign state,

b) holding an office or employed or working at an international judicial body,

c) holding an office or employed or working at an international or multinational organization established by states or other subjects of international public law or within a body or institution thereof, or

d) holding an office at an enterprising legal entity in which the Czech Republic or a foreign state has a decisive influence,

if performance of such functions, employment, or work is connected to a competence in procuring matters of general interest, and the criminal offence was committed in connection to such a competence.

(3) Procuring matters of general interest shall be understood also as maintaining an obligation imposed by a legal regulation or assumed by contract, the purpose of which is to ensure that damage or unjust enrichment of parties to business relationships or persons acting on their behalf is avoided in such relationships.

### **Section 368 Non-reporting of Criminal Offence**

(1) Whoever gains credible knowledge that another person committed a criminal act of [...] Passive Bribery (Section 331), Active Bribery (Section 332), [...], and fails to immediately report such a criminal act to the public prosecutor or police authority, or if a soldier is concerned, to their superior, shall be sentenced to imprisonment for up to three years; if this Act stipulates a lighter punishment for any of these criminal offences, he/she shall be sentenced to such a lighter punishment.

(2) Whoever commits an act referred to in Paragraph (1) shall not be criminally liable, if he/she could not report the criminal act without exposing him-/herself or a close person to danger of death, bodily harm, other serious detriment or criminal prosecution.

(3) The report duty according to Paragraph (1) does not apply to an attorney or his/her employee, who learns about commission of a criminal act in relation to performance of his/her legal profession or practice. The report duty also does not apply to clergymen of a registered church or religious society authorized to exercise special rights when they learn about a criminal offence in relation to performing a confession, or in connection with practice of similar confessional secrets. The report duty for a criminal offense of Trafficking in human beings according to Section 168 (2) and Illegal confinement (Section 170) does not apply also to persons providing assistance to victims of crimes.

## **Selected Provisions from Act No. 141/1961 Coll., Criminal Procedure Code (CPC)**

### **Section 175a Agreement on Guilt and Punishment**

(1) If the investigation results sufficiently justify the conclusion that the act took place, that the act is a criminal offence and that the act was committed by the accused, the public prosecutor may, upon the petition of the accused or even without such petition, initiate negotiation on an agreement on guilt and punishment. If the public prosecutor does not find the petition of the accused justified, they shall notify the accused of their position, and if the accused has a defence counsel, the public prosecutor shall also notify the defence counsel.

(2) The public prosecutor shall summon the accused for the negotiation on the agreement on guilt and punishment; the time and place of the negotiation shall be notified to the defence counsel of the accused and the victim who has not explicitly stated that they waive their procedural rights granted to them by law as a victim. The public prosecutor shall also instruct the victim on the option to exercise, no later than during the first negotiation on the agreement on guilt and punishment, their claim for compensation for damage or non-material damage in monetary terms caused to them by the criminal offence, or their claim for the surrender of unjust enrichment obtained at the victim's expense.

(3) A precondition of the conclusion of an agreement on guilt and punishment is the declaration of the accused that they committed the act for which they are prosecuted, provided, based on the evidence obtained so far and other results of the preliminary hearing, there are no reasonable doubts as to the truthfulness of their declaration. An agreement on guilt and punishment shall be concluded by the public prosecutor and the accused in the presence of the defence counsel.

(4) If the public prosecutor believes that the statutory conditions for imposing a protective measure are satisfied, they shall instruct the accused on the option to proceed under Section 178 Subsection 2 even if the parties conclude an agreement on guilt and punishment in which no protective measure has been agreed. Without such instruction, the public prosecutor may proceed under Section 178 Subsection 2 only if the reasons for imposing a protective measure came to light after the petition for approval of the agreement on guilt and punishment had been filed with the court.

(5) When negotiating an agreement on guilt and punishment, the public prosecutor shall also bear in mind the victim's interests. If the victim is present at the negotiation on an agreement on guilt and punishment, they shall particularly comment on the extent and the manner of compensation for damage or non-material damage, or the surrender of unjust enrichment. An agreement on guilt and punishment may also be concluded without the presence of the victim if they fail to appear for the negotiation despite being duly notified thereof, or if they fail to appear for the negotiation and have already exercised a claim for compensation for damage or non-material damage, or for the surrender of unjust enrichment, or have declared that they will not exercise such claim. If the victim who is not present at the negotiation has exercised a claim for compensation for damage or non-material damage, or for the surrender of unjust enrichment, the public prosecutor may agree on the victim's behalf with the accused on the extent and manner of compensation for damage or non-material damage, or the surrender of unjust enrichment up to the amount of the exercised claim.

(6) The agreement on guilt and punishment shall contain

a) identification of the public prosecutor, accused and victim, if they were present at the negotiation on the agreement on guilt and punishment and if they agree to the extent and the manner of compensation for damage or non-material damage, or the surrender of unjust enrichment,

b) the date and place of the drawing up thereof,

c) a description of the act for which the accused is prosecuted, stating the place, time and manner of committing the act, and, if appropriate, any other circumstances under which the act took place so that it cannot be confused with any other act,

d) identification by its designation under the law of the criminal offence considered to have occurred in such act, stating the applicable provision of the Act and all statutory features including those that justify a certain penalty rate,

e) declaration of the accused that they committed the act for which they are prosecuted and which is the subject of the concluded agreement on guilt and punishment,

f) the kind, length and manner of execution of punishment, including the length of the probation period as agreed in accordance with the Penal Code, and of a substitute punishment in cases set out by the Penal Code, or waiver of punishment, and the extent of reasonable restrictions and obligations where the Penal Code so allows and where they were agreed; in the agreement on the kind and length of punishment, it shall also be taken into account whether the accused obtained or tried to obtain any property benefit (Section 39 Subsection 7 of the Penal Code),

g) the extent and manner of compensation for damage or non-material damage, or the surrender of unjust enrichment, if agreed,

h) a protective measure, if the imposition thereof may be taken into consideration and if it was agreed,

i) the signature of the public prosecutor, accused and defence counsel, and the signature of the victim if they were present at the negotiation of the agreement on guilt and punishment and provided they agree to the extent and manner of compensation for damage or non-material damage, or the surrender of unjust enrichment.

(7) If an agreement on guilt and punishment is concluded, the public prosecutor shall deliver a copy thereof to the accused, their defence counsel and the victim who exercised their claims in a due and timely manner (Section 43 Subsection 3). If an agreement on guilt and punishment is not concluded, the public prosecutor shall make a record thereof in the transcript; in such case, a declaration of guilt made by the accused shall not be taken into account in further proceedings.

(8) An agreement on guilt and punishment may not be concluded in proceedings on a particularly serious crime and in proceedings against a fugitive.

### **Section 175b**

(1) Where an agreement on guilt and punishment was concluded, the public prosecutor shall file with the court a petition for approval of the agreement on guilt and punishment within the scope of the concluded agreement. If an agreement on compensation for damage or non-material damage, or on the surrender of unjust enrichment was not

reached, the public prosecutor shall draw the court's attention to this fact in the petition for approval of the agreement on guilt and punishment.

(2) The public prosecutor shall accompany the petition with the concluded agreement on guilt and punishment and other documents relevant for the court proceedings and decision.

## **Selected Provisions from Act 418/2011 Coll., on Liability of Legal Persons and Proceedings against Them**

### **Territoriality Principle**

#### **Section 2**

(1) Liability to punishment of an act committed on the territory of the Czech Republic by a legal person which has a registered office in the Czech Republic or its establishment or branch is placed on the territory of Czech Republic or at least conducts its activities here or owns property here, shall always be considered under the law of the Czech Republic.

(2) A criminal act shall be considered as having been committed on the territory of the Czech Republic, if a legal person acted:

- a) wholly or partly on the territory of the Czech Republic, even if the violation of, or threat to, an interest protected under Criminal Code resulted, or was to result, completely or partly abroad; or
- b) abroad, if the violation of, or threat to, an interest protected under Criminal Code occurred or had to occur, even if only in part, on the territory of the Czech Republic.

(3) As for complicity/participation Section 4 Paragraph 3 and 4 of the Criminal Code shall similarly apply.

#### **Section 3**

Liability to punishment of an act committed abroad by a legal person with registered office in the Czech Republic shall also be considered under the law of the Czech Republic.

#### **Section 4**

(1) The law of the Czech Republic shall apply when determining the liability to punishment of Forgery and Alteration of Money (Section 233 of the Criminal Code), Uttering Counterfeited and Altered Money (Section 235 of the Criminal Code), Manufacturing and Possession of Forgery Tools (Section 236 of the Criminal Code), Unauthorized Production of Money (Section 237 of the Criminal Code) and Terrorism (Section 311 of the Criminal Code) even if such criminal act has been committed abroad by a legal person with no registered office in the Czech Republic.

(2) The law of the Czech Republic shall also apply when determining the liability to punishment for a criminal act committed abroad by a legal person with no registered office in the Czech Republic, if the criminal act has been committed for the benefit of a legal person with registered office in the Czech Republic.

#### **Section 5**

(1) The liability to punishment for a criminal act shall also be considered under the law of the Czech Republic in cases stipulated in a promulgated international agreement which is part of the legal order (further on "international treaty").

(2) The provisions of Sections 2 to 4 shall not apply if it is not admitted under a promulgated international treaty.

#### **Section 6 Exclusion of Liability to Punishment of Certain Legal Persons**

(1) Following legal persons are not criminally liable according to this Act:

- a) Czech Republic,
- b) local self-governing entities while exercising public authority.

(2) Share of legal persons stipulated in Paragraph 1 in (another) legal person does not preclude criminal liability of such legal person under this Act.

#### **Section 8 Criminal Liability of a Legal Person**

(1) Criminal act committed by a legal person is an unlawful act committed in its name or in its interest or within its activity, if committed by

- a) statutory body or member of the statutory body or other person entitled to act on behalf of or for the legal person,



- b) a person performing managerial or controlling activity within the legal person, even if he/she is not a person as mentioned in Letter a),
- c) a person with a decisive authority on management of this legal person, if his/her act was at least one of the conditions leading to a consequence establishing criminal liability of a legal person, or
- d) employee or a person with similar status (hereinafter “employee”) while fulfilling his/her duties/tasks, even if he/she is not a person as mentioned in Letters a) to c),

given that the act can be attributed to the legal person in accordance with Paragraph 2.

- (2) Commitment of a criminal act as specified in Section 7 can be attributed to a legal person, if committed by
  - a) action of bodies or persons mentioned in Paragraph 1 letters a) to c), or
  - b) an employee mentioned in Paragraph 1 Letter d) on the grounds of a decision, approval or guidance of bodies of the legal person or persons mentioned in Paragraph 1 Letters a) to c), or because the bodies of the legal person or persons mentioned in Paragraph 1 Letters a) to c) did not take measures required by other legal regulation or that can be justly required, namely that they did not perform obligatory or necessary control (supervision) over the activities of employees or other persons, they are superiors to, or they did not take necessary measures to prevent or stave off the consequences of a committed criminal act.
- (3) Criminal liability of a legal person is not obstructed by the fact that a concrete natural person who has acted in a way specified in Paragraphs 1 and 2 cannot be identified.
- (4) Provisions of Paragraphs 1 and 2 will apply also if
  - a) the activity specified in Paragraphs 1 and 2 took place prior to establishing the legal person,
  - b) the legal person has been established but the court decided on nullity of the legal person,
  - c) the legal act establishing authorization for action on the legal persons behalf is invalid or ineffective, or
  - d) the acting natural person is not (held) criminally liable for such criminal act.

### **Section 9 Perpetrator, Accomplice and Participant**

- (1) A perpetrator of a criminal act is a legal person to which a breach or endangering of an interest protected by the Criminal Code by means specified in this Act can be attributed to.
- (2) A perpetrator is also a legal person that used other legal or natural person for the commitment of a criminal act.
- (3) Criminal liability of legal person does not affect criminal liability of natural persons specified in Section 8 Paragraph 1 and criminal liability of these natural persons does not affect criminal liability of the legal person. If the criminal act has been committed by means of a joint action of more persons, where at least one of them was a legal person, every each one of these persons is liable as if the person committed the act on its own.

### **Section 11 Effective Regret**

- (1) Criminal liability of the legal person becomes extinct, if the legal person voluntarily refrains from further unlawful activity and
  - a) eliminates the danger that appeared to an interest protected through the Criminal Code, or precludes such harmful effect or remedies such harmful effect, or
  - b) reports the criminal act to public prosecutor or police authority at the time when the danger to an interest protected through the Criminal Code could be eliminated or the harmful effect of the criminal act could be precluded.
- (2) Criminal liability of a legal person does not become extinct in accordance with Paragraph 1 if Passive Bribery (Section 331 of the Criminal Code), Active Bribery (Section 332 of the Criminal Code) or Trading in Influence (Section 333 of the Criminal Code) have been committed.

### **Section 14 Proportionality of the Punishment and Protective Measure**

- (1) While deciding on type and terms of punishment the court considers the nature and seriousness of the criminal act, situation (circumstances) of the legal person, including its actual activities and property owned; in doing so the court will consider whether the legal person conducts activity in public interest, having strategic or hardly replaceable significance for national economy, defense or security. Furthermore the court considers the activities of the legal person following the commitment of the criminal act, above all its effective effort to restore damage or eliminate other harmful effects of the criminal act. Impacts and effects of the punishment that can be anticipated to future activity of the legal person are to be taken into account as well.
- (2) A protective measure that is not proportional to the nature and seriousness of the criminal act as well as to the situation of the legal person cannot be imposed to a legal person.

(3) While imposing criminal sanctions the court will also consider implications, this imposition might have upon third parties, namely, legally protected interests of injured parties and creditors whose claims towards criminally liable legal person have occurred in good faith and do not originate or are not connected with the criminal act of the legal person, are to be considered.

### **Section 15 Types of Punishments and Protective Measures**

(1) For criminal acts committed by a legal person only the following punishments can be imposed

- a) dissolution of the legal person,
- b) confiscation of property,
- c) monetary punishment,
- d) forfeiture of a thing or other asset value,
- e) prohibition of activity,
- f) prohibition to perform public contracts, debarment from concession procedure or public procurement,
- g) prohibition to receive endowments (grants) and subsidies,
- h) publication of a judgment.

(2) For criminal acts committed by a legal person protective measure of seizure of a thing or other asset value can be imposed to the legal person.

(3) Punishments and protective measures as mentioned in Paragraphs 1 and 2 can be imposed to a legal person separately or concurrently. However, it is not possible to impose the punishment of monetary sanction concurrently to confiscation of property and the punishment of forfeiture of a thing or other asset value concurrently to seizure of the same thing or other asset value.

### **Section 17 Confiscation of Property**

(1) The court may impose the punishment of confiscation of property, if the legal person is convicted of an extremely serious criminal act, by means of which the legal person acquired or tried to acquire property benefit for itself or for another.

(2) Without conditions according to Paragraph 1 the court may impose the punishment of confiscation of property only in cases where the Criminal Code allows imposition of such a punishment for a committed criminal act.

(3) Confiscation of property affects the whole property of a legal person or the part designated by the court.

(4) If the legal person is a bank or foreign bank which branch operates on the territory of the Czech Republic on behalf of a banking license granted by the Czech National bank or on the basis of joint (unified) banking license (European Banking License) according to other regulation, the court may impose the punishment of confiscation of property after an opinion of Czech National Bank on possibilities and consequences of its imposition has been delivered; the court considers such opinion. The first sentence will similarly apply to insurance company, branch of an insurance company, reinsurance company, branch of a reinsurance company, pension fund, investment company, investment fund, securities dealer, branch of a securities dealer, savings and credit co-operative (bank), central securities depository, electronic money institution, branch of electronic money payment institution, payment institution, operator of a settlement system and operator of markets in investment instruments (vehicles).

### **Section 18 Monetary Punishment**

(1) The court may impose a monetary punishment to a legal person, if the legal person is convicted of intentional criminal act or a criminal act committed by negligence. Imposition of the monetary punishment cannot affect the rights of the injured person.

(2) Daily rate is at least 1.000,-CZK and at the most 2.000.000,-CZK. While determining the amount of a daily rate, the court considers property owned by the legal person.

(3) The provision of Section 17 Paragraph 4 will similarly apply.

### **Section 19 Forfeiture of a Thing or Other Asset Value**

The court may impose the punishment of forfeiture of a thing or other asset value, including forfeiture of substitute value, under conditions stipulated by the Criminal Code.

### **Section 21 Prohibition to Perform Public Contracts, Debarment from Concession Procedure or Public Procurement**

(1) The court may impose the punishment of prohibition to perform public contracts, debarment from concession procedure or public procurement to a legal person for one year to 20 years, if the legal person has committed the

criminal act in connection to contracting to perform public contracts or performing of these contracts, participation in public tender, concession procedure or public procurement.

(2) The punishment of prohibition to perform public contracts, debarment from concession procedure or public procurement as a separate punishment may be imposed only if the court deems it not necessary, due to the nature and seriousness of the committed criminal act, to impose other type of punishment.

(3) Throughout the period of the execution of the punishment and in accordance to the extent defined by the court, the punishment of prohibition to perform public contracts, debarment from concession procedure or public procurement consists in prohibition for a legal person to make contracts to perform public procurement, take part in public tenders on public contracts, concession procedure or public procurement according to other legal regulations.

### **Section 22 Prohibition to Receive Endowments (Grants) and Subsidies**

(1) The court may impose the punishment of prohibition to receive endowments (grants) and subsidies to a legal person for one year to 20 years, if the legal person has committed the criminal act in connection to submitting an application or dealing with applications for endowment, subsidy, refundable financial subsidy or contribution or in connection to their provision or use, and/or in connection to provision or use of any other state aid.

(2) The punishment of prohibition to receive endowments (grants) and subsidies as a separate punishment may be imposed only if the court deems it not necessary, due to the nature and seriousness of the committed criminal act, to impose other type of punishment.

(3) Throughout the period of the execution of the punishment and in accordance to the extent defined by the court, the punishment of prohibition to receive endowments (grants) and subsidies consists in prohibition for a legal person to apply for whatever endowments, subsidies, refundable financial subsidies, contributions or any other state aid according to other legal regulations, as well as prohibition to receive any such endowments, subsidies, refundable financial subsidies, contributions or any other state aid.

## **Selected Provisions from Act No. 563/1991 Coll., on Accounting (AoA)**

### **Section 7 True and Fair Representation of the Financial Position**

(1) Accounting units shall keep their accounting in a manner which will enable them to draw up the financial statements giving a true and fair representation of the object of the accounting and the accounting units' financial position.

(2) The representation is regarded as true if the contents of the items in the financial statements correspond to their actual position, and these items are shown in accordance with the accounting procedures prescribed for such accounting unit on the basis of this Act. The representation is regarded as fair if the accounting procedures were used in a manner leading to a true depiction. Where an accounting unit may choose from two or more accounting procedures and the selected procedure would conceal the actual financial position, the accounting unit must choose the procedure which would fairly reflect the actual position. Where, in exceptional cases, the use of a prescribed procedure would be incompatible with the obligation pursuant to Paragraph (1), the accounting unit will depart from the procedure (method) in order to present a true and fair view of the actual position.

(3) An accounting unit shall use a particular procedure (method) in a consistent manner based on the assumption that the accounting unit will continue its activity without interruption and that there is no known fact which would restrict or prevent the accounting unit from continuing such activity in the foreseeable future ("going concern concept"). In the event of an accounting unit being informed that such a fact is impending, it shall use an appropriate accounting procedure and disclose the information on the accounting procedure in the notes on its financial statements.

(4) The layout and headings of items in a balance sheet and a profit and loss account, their content and the valuation methods used in a single accounting period may not be changed by an accounting unit in the following accounting period. An accounting unit may only change the layout and headings of the said items, their content or the valuation method wholly or in part between accounting periods, but solely due to a change in its business or some other activity, or for the sake of improving the accuracy or comprehensibility of its financial statements; information on each such adaptation, together with the reasons for it, must be disclosed in the notes on the financial statements.

(5) Accounting units shall always disclose in the notes on their financial statements [Section 18(1)(c)]: the accounting procedures (methods) they have used, or any departure from the procedures pursuant to Paragraph (2), together with relevant reasons for such departures and their effect on the accounting units' (entity's) assets and liabilities, financial position and business result.

(6) Accounting units shall account for assets and liabilities, as well as for funds received from the state budget and funds received from self-governing territorial units budgets, costs and revenues or expenses in their books of

account and show them separately in their financial statements without them being mutually offsetting. When mutual set-off is used in an instance permitted by the accounting procedures, it shall not be regarded as a breach of the said principle.

**Section 8 Correctness, Completeness, Conclusiveness, Comprehensibility and Durability**

(1) Accounting units shall keep their accounting correctly, in a complete and conclusive manner, in a comprehensive and clearly-organized way and in a manner ensuring durability of the accounting records.

(2) An accounting unit keeps its accounting correctly if the manner in which it keeps its accounting is not contrary to this Act and other statutory provisions and if it does not circumvent their purpose.

(3) The accounting of an accounting unit is regarded to be complete if in a particular accounting period the accounting unit recorded all accounting events in its books of account in accordance with Section 3, and latest by the end of this period has drawn up its financial statements or consolidated financial statements for the immediately preceding accounting period, prepared its annual or consolidated annual report, published the information pursuant to Section 21 a and kept all the relevant accounting records in a clearly-organized manner.

(4) The accounting of an accounting unit is regarded to be conclusive if all its accounting records are properly supported i.e. documented (section 33a) and an inventory was taken.

(5) The accounting of an accounting unit is regarded to be comprehensible if it enables the reliable and unambiguous determination of:

(a) the content of accounting events, at least with using the accounting procedures pursuant to Section 4(8);

(b) the content of accounting records with using the instruments pursuant to Section 4(10).

(6) The accounting of an accounting unit is kept in a manner which ensures the durability of accounting records if the accounting unit meets its obligations relating to their archiving and processing pursuant to Sections 31, 32 and 33(3) and (6) for the entire period to which such obligations under this Act apply.