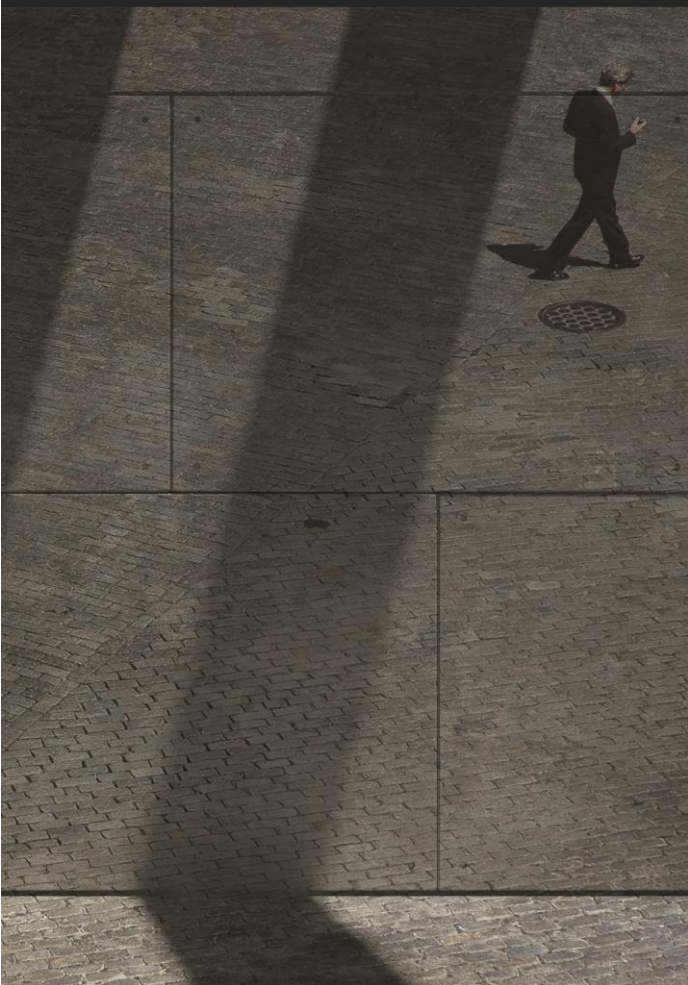




IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION



PHASE 4 REPORT: **CZECH REPUBLIC**

This Phase 4 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 44 members of the OECD Working Group on Bribery on 15 June 2017.

The report is part of the OECD Working Group on Bribery's fourth phase of monitoring, launched in 2016. Phase 4 looks at the evaluated country's particular challenges and positive achievements. It also explores issues such as detection, enforcement, corporate liability, and international cooperation, as well as covering unresolved issues from prior reports.

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

This Phase 4 report by the OECD Working Group on Bribery in International Business Transactions evaluates and makes recommendations on the Czech Republic's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related OECD anti-bribery instruments. The report reviews the Czech Republic's achievements and remaining challenges implementing these instruments, including since its Phase 3 evaluation in March 2013. The evaluation process demonstrated a strong determination by the Czech Republic to improve its system for combating foreign bribery, and the Czech authorities collaborated closely in the drafting of this report and recommendations to find solutions that are workable in the Czech legal system.

During the Phase 4 evaluation process, the Czech authorities were investigating a case identified in the report as the 'pending case'. However, 17 years after ratifying the Convention, the Czech Republic has still not prosecuted a case of foreign bribery, which is cause for concern, especially in view of the export-oriented nature of the Czech economy. In addition, Czech exports include high-risk sectors for bribery, such as machinery and defence materials, and many of the Czech Republic's export destinations for arms are at high risk of corruption. This report therefore focuses on identifying ways to significantly enhance the Czech Republic's framework for enforcement. One of the most important recommendations in this report concerns the urgent need to ensure the availability of adequate analytical resources for foreign bribery cases. It is hoped that the merger of the Police Organised Crime Unit and Unit for Combating Corruption and Financial Crime into the National Organised Crime Agency will maximise the use of available resources through closer coordination and information sharing. The report also highlights ways in which the Czech Republic needs to strengthen its capacity for detecting foreign bribery cases, including by increasing detection through the Anti-Money Laundering and tax systems. Whistleblower protections must be strengthened to encourage employees to report suspected acts of foreign bribery. In addition, the Czech National Bank has an important role to play by reporting suspicions of foreign bribery detected in the course of reviewing listed companies' disclosure documents.

The Czech Republic has now fully implemented key recommendations dating back to Phase 3 on awareness-raising and to compile statistics on bribery convictions. However, it still has not implemented a key recommendation dating back to Phase 3 for the purpose of guaranteeing greater independence to prosecutors so that political factors cannot be taken into account in the investigation and prosecution of foreign bribery cases. Legislation that was proposed during Phase 3 to introduce new safeguards in this regard has not yet been adopted, and the Czech Republic is urged to adopt appropriate legislation without further delay.

Although no corporation or other legal entity has been prosecuted for foreign bribery, major inroads have been made more generally in the enforcement of the Act on Criminal Liability of Legal Entities (CLLE), with investigations and prosecutions increasing since Phase 3 at a formidable rate. However, the application of a new exemption for 'justly required' efforts to prevent the commission of an unlawful act is uncertain, and relevant information in a Guide produced by SPPO is not sufficiently practical. This report therefore recommends closely following up application of the CLLÉ, and that the Czech authorities update the public and internal versions of the Guide regularly to include relevant jurisprudence, and also enhance the internal version of the Guide as a law enforcement tool by adding practical information on how to assess the effectiveness of compliance measures in companies. The report recommends that the Czech authorities engage closely with the private sector to raise awareness of the exemption and adequate compliance measures. Furthermore, the Czech Republic is also recommended to consider further measures to clarify the application of the exemption.

This report also identifies potential good practices regarding implementation of the Convention and related instruments, including the use of requests for mutual legal assistance from foreign jurisdictions to detect foreign bribery cases, the use of non-financial forms of evidence and joint investigative teams for investigating transnational bribery cases, and initiatives for establishing central registries for bank accounts, beneficial ownership of legal entities and arrangements, and contracts with the Czech public sector.

This report and its recommendations reflect the findings of experts from Hungary and Iceland, and were adopted by the Working Group on 15 June 2017. The report is based on findings by the evaluation team during its on-site to Prague in February 2017, which involved meetings with relevant Czech authorities, police, prosecutors, the private sector and civil society. It also reflects legislation, data and other materials provided by the Czech authorities in response to the Phase 4 Questionnaire, as well as research by the evaluation team. The Czech Republic is invited to submit a written report to the Working Group in two years on the implementation of all recommendations and its enforcement efforts.

INTRODUCTION

1. In June 2017, the Working Group on Bribery in International Business Transactions (WGB) completed its fourth evaluation of the Czech Republic's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention), the 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation), and related anti-bribery instruments.

Monitoring process and previous evaluations of the Czech Republic by the WGB

2. Monitoring of the implementation of the Convention, the 2009 Recommendation and related instruments, is conducted through successive phases, according to agreed-upon principles. The monitoring process is compulsory for all parties to the Convention, and on-site visits involving meetings with relevant law enforcement and government authorities, as well as civil society and the private sector, are obligatory in phases 2, 3 and 4. The monitoring reports, which are systematically published on the OECD website, include recommendations to the evaluated country. These reports must be adopted by the Working Group on a 'consensus minus one' basis. Thus, the evaluated party may voice its views and opinions but cannot block the adoption of the final report and recommendations.

Box 1. Previous WGB evaluations of the Czech Republic*

2016: Additional report
2015: [Follow-up to Phase 3 report](#)
2013: [Phase 3 report](#)
2009: [Follow-up to Phase 2 report](#)
2006: [Phase 2 report](#)
2000: [Phase 1 report](#)

3. The Phase 3 evaluation of the Czech Republic took place in March 2013, with a two-year written follow-up in March 2015, and an additional follow-up report in March 2016. By the end of this process, the Czech Republic had fully implemented seven recommendations, partially implemented nine, and not implemented five.¹

Phase 4 process

4. Phase 4 focusses on three cross-cutting themes – detection and enforcement of the evaluated party's foreign bribery offence, and corporate liability for the offence. Additionally, it addresses progress by the party implementing the Phase 3 recommendations that were previously not fully implemented, and any issues raised by changes to the party's framework for combating foreign bribery, as well as further issues that may have come to the WGB's attention for the first time. Phase 4 considers each party's unique situation and challenges, thus resulting in a report and recommendations more closely oriented to the specific challenges and achievements of each party than previous reports. This means that issues that were not problematic or were resolved by the end of Phase 3 may not be reflected in the Phase 4 report.

5. The Phase 4 evaluation team for the Czech Republic was composed of lead examiners from Hungary and Iceland, and members of the OECD Anti-Corruption Division.² Following the Phase 4

¹ See Annex 1 for a list of the Czech Republic's Phase 3 recommendations and the WGB's assessment of their implementation as of the Phase 3 Two-Year Written Follow-up in March 2015.

² Hungary was represented by: **Balázs GARAMVÖLGYI**, Deputy Head of Department, Department of Priority, Corruption and Organized Crime Cases, Office of the Prosecutor General; and **Márton Gábor NAGY**, Legal Expert, Department of International Criminal Law, Ministry of Justice. Iceland was represented by: **Sveinn HELGASON**, Specialist, Department of Public Security, and Ministry of the Interior. The OECD was represented by: **Christine URIARTE**, Coordinator of the Phase 4 evaluation of

procedures, after receiving the Czech Republic's responses to the Phase 4 questionnaire and supplementary questions, the evaluation team conducted an on-site visit to Prague on 7 to 10 February 2017. The team met with representatives of the Czech government, law enforcement authorities and the judiciary, the private sector and civil society. The private sector was represented by several business associations from different sectors, compliance and legal associations, and Czech companies with an international presence from various sectors, including defence, financial, manufacturing, and engineering. Civil society was represented by academia, journalists, legal practitioners, tax specialists, accounting and auditing firms, and non-governmental organisations combating corruption.³

6. The private sector and civil society were extremely well represented, making it necessary to hold two panels for each group. This represents a significant accomplishment for the Czech government, considering that no companies and only two civil society organisations attended the Phase 3 on-site. The lead examiners credit the Ministry of Justice in particular for this milestone, as it had overall responsibility for organising the Phase 4 on-site and other deliverables, including the responses to the Phase 4 questionnaire, supplementary questions, and follow-up information. The lead examiners further congratulate the Czech Republic for its thorough and comprehensive responses to the Phase 4 questionnaire and supplementary questions, punctual responses to requests for follow-up information before and after the on-site, efficient organisation of the on-site, and most importantly, the collaborative spirit in which it engaged in the Phase 4 exercise, including through open and frank discussions during the on-site. The Czech government also demonstrated its commitment to the Phase 4 process through the participation of several high level government officials in the on-site, including the Minister of Justice, two Deputy Ministers of Justice, the Deputy Minister of the Interior, the Police President, the Supreme Public Prosecutor, the Director of the Financial Analytical Office (FAU), as well as high ranking officials from the Ministry of Foreign Affairs (MFA) and the National Organised Crime Agency (NOCA)⁴.

The Czech Republic's relevant economic indicators and foreign bribery risks

7. The Czech Republic is a medium-sized, open, export-oriented economy with a relatively high share of foreign trade in GDP. According to OECD data, the Czech Republic ranks 24th among Working Group members (excluding Costa Rica, Lithuania and Peru) in terms of gross domestic product by volume.⁵ (See Figure 1 below). The Czech government states that in 2015, the net balance of foreign trade accounted for 6,1% of GDP, a decrease by 0,2% from 2014. In 2015, The ratio of exports of goods to GDP (at current prices) was 70,7%, an increase by 0,2% from 2014. The ratio of total exports of goods and services to GDP grew to 83% in 2015 from 82,5% in 2014. In 2015, goods and services accounted for 32,1% of gross value added (at current prices), a decrease of 0,35% from 2014. Manufacturing, including the automotive industry, accounted for 27% of the gross value added in 2015.

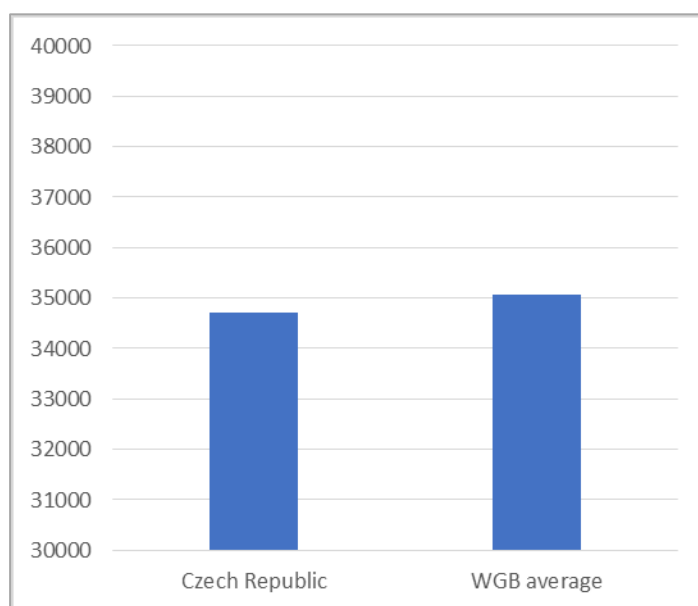
the Czech Republic and Senior Legal Analyst; and **Brooks HICKMAN**, Legal Analyst, both from the Anti-Corruption Division, Directorate for Financial and Enterprise Affairs.

³ See Annex 2 for the list of participants in the on-site.

⁴ A description of NOCA is provided under Section A(2)(a) below.

⁵ http://stats.oecd.org/Index.aspx?datasetcode=SNA_TABLE1. GDP per capita in current PPPs (i.e. measure HCPC in the OECD database).

Table 1. Figure 1: Comparison of the Czech Republic's GDP to the Average for the Working Group on Bribery (GDP per capita in current purchasing power parities, US Dollars)



Source: OECD data.

8. The Czech authorities state that in 2015, the Czech Republic's major exports were machinery and transport equipment (55,4%), other manufactured goods (15,8%), and miscellaneous manufactured goods (12,3%).⁶ During 2015, its main export partners were Germany (32,1%), Slovak Republic (9%), Poland (5,9%), United Kingdom (5,3%), and France (5,1%).⁷ The Czech Republic considers Russia a key trade and economic partner, but exports to Russia have fallen as a result of reciprocal EU and Russian sanctions. In 2014, trade with Russia dropped by 2,7%, and at the beginning of 2015 it dropped by 30,3%.⁸

9. Arms exports from the Czech Republic have been on the increase, and account for around 89% of Czech arms production.⁹ Export partners for arms include: Afghanistan, Algeria, Angola, China, Egypt, Ethiopia, Cameroon, Iraq, Cambodia, Kazakhstan, Nigeria, Pakistan, Russia, Saudi Arabia, and Uganda¹⁰.

⁶ Source: Czech Ministry of Trade and Industry.

⁷ Source: Czech Ministry of Trade and Industry.

⁸ Jo Harper (4 Nov. 2016), "Czech Republic seeks to improve trade with Russia as declines continue" *Central European Financial Observer*, www.financialobserver.eu/recent-news/czech-republic-seeks-to-improve-trade-with-russia-as-declines-continue/ (last accessed 19 May 2017).

⁹ Chris Johnstone (11 March 2015), "Czech arms industry fired up on growing export sales", *Radio Prague*, www.radio.cz/en/section/marketplace/czech-arms-industry-fired-up-on-growing-export-sales (last accessed 19 May 2017).

¹⁰ Daniela Lazarová (20 Aug. 2015), "Czech arms exporters doing good business", *Radio Prague*, www.radio.cz/en/section/curaffrs/czech-arms-exporters-doing-good-business (last accessed 19 May 2017).

Moreover, in February 2016, an ex-Prime-Minister's aide was sentenced for corruption regarding the procurement of defence materials from another party to the Convention.¹¹

10. CzechInvest, the government's investment promotion agency, has adopted a strategy to make the Czech Republic one of the ten most attractive investment destinations in Europe.¹² Indeed, in 2015, inward FDI played a much larger role than outward FDI in the Czech Republic. According to OECD data, in 2015, the top five partner countries from which the Czech Republic received incoming foreign direct investment (FDI) were the Netherlands, Austria, Germany Luxembourg, and France.¹³ The top five main sectors for inward FDI (in descending order) were the following: services (including wholesale and retail trade, motor vehicle repair, transportation, and, storage), financial service activities, manufacturing (including food products, textiles, wood and paper, petroleum, and motor vehicles), real estate activities, and professional, scientific and technical activities. In recent years, foreign companies have made major investments in the automobile and IT services sectors.¹⁴ In order to further attract investment, in 2015, CzechInvest announced a 'Welcome Package' to new investors, to help them in various ways, including obtaining residence and work permits.¹⁵ In 2016, CzechInvest negotiated 12 projects on inward Chinese investment valued at approximately CZK 22 billion.¹⁶ China's President announced in March 2016 that Chinese investment should rise to CZK 294 billion by 2020,¹⁷ and that the Czech Republic may be a 'safe haven' for Chinese investment as well as an important 'hub' for doing business in other parts of Europe.¹⁸ Chinese investments are mainly in energy, finance, logistics and real-estate.¹⁹

11. OECD data show that in 2015, the outward FDI stock of the Czech Republic was USD 18.6 billion, which is considerably below the median for parties to the Convention, which was USD 167.3

¹¹ In February 2016, the ex-Prime-Minister's aide was convicted and sentenced for attempted fraud, but in April 2017 the Supreme Court overturned the conviction and remanded proceedings for a new trial before the Prague High Court. See Prague Daily Monitor (28 April 2017), "High Court cancels Dalik's verdict over legal qualification", <http://praguemonitor.com/2017/04/28/high-court-cancels-dalik%20%ADks-verdict-over-legal-qualification> (last accessed 19 May 2017).

¹² See US Department of State (June 2015), "Czech Republic: Investment Climate 2015", <https://www.state.gov/documents/organization/241745.pdf> (last accessed 19 May 2017).

¹³ FDI statistics are by partner country, which means the most immediate partner country, and not necessarily the ultimate origin or destination of FDI.

¹⁴ Association of Foreign Investment (Oct. 2014), "Out to conquer the world: The rise of Czech ICT", *Czech Focus*, www.czechinvest.org/data/files/cf-2-2014-final-4469.pdf (last accessed 19 May 2017).

¹⁵ CzechInvest (1 May 2015), "Welcome package for investors", www.czechinvest.org/data/files/welcome-package-for-investors-3752-ko.pdf (last accessed 19 May 2017).

¹⁶ CzechInvest (11 Feb. 2016), "CzechInvest anticipates billion-crown investments from China", <http://www.czechinvest.org/en/czechinvest-anticipates-billion-crown-investments-from-china> (last accessed 19 May 2017).

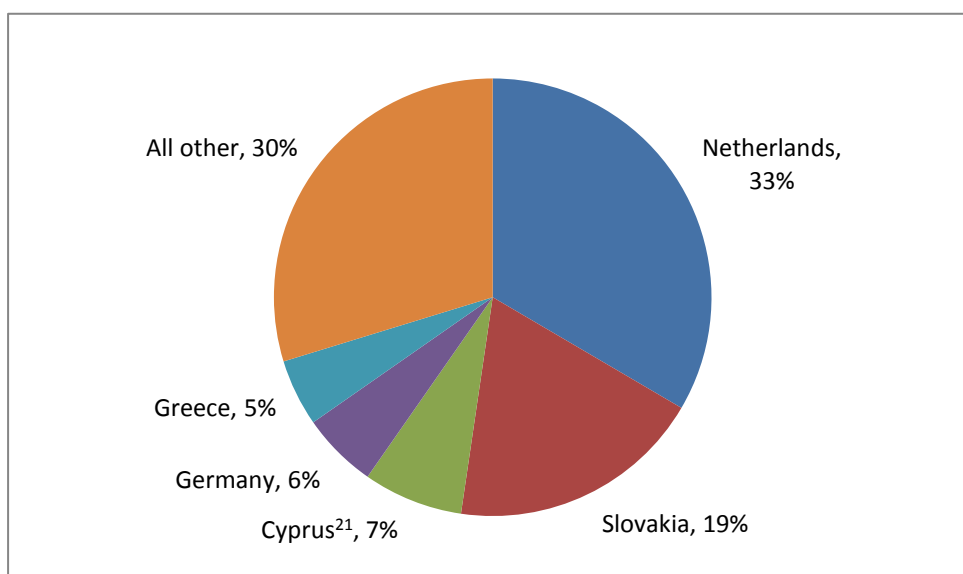
¹⁷ Chris Johnstone (2 Nov. 2016), "Chinese investment in Czech Republic comes under the spotlight", *Radio Prague*, www.radio.cz/en/section/marketplace/chinese-investment-in-czech-republic-comes-under-the-spotlight (last accessed 19 May 2017).

¹⁸ Guo Yan [web editor] (27 Mar. 2016), "Czech Republic a safe haven for Chinese Investment: President" *CRI English.com*, <http://english.cri.cn/12394/2016/03/27/3742s922066.htm> (last accessed 19 May 2017).

¹⁹ Alice Rezkova (31 May 2016), "'VISEGRAD: Chinese investments in Czech Republic – a new gateway to Europe or just a shopping spree?", *bne INTELLINEWS*, <http://www.intellinews.com/visegrad-chinese-investments-in-czech-republic-a-new-gateway-to-europe-or-just-a-shopping-spre-98703/?source=blogs> (last accessed 19 May 2017).

billion. The outward FDI stock was equivalent to 10% of Czech GDP, which was below the OECD median of 30% of GDP. In 2015, the five largest destinations for Czech outgoing FDI (based on total FDI position) were the Netherlands, the Slovak Republic, Cyprus,²⁰ and Germany (see Figure 2, below).²¹ The top five main sectors for outward FDI (in descending order) were the following: financial and insurance activities, services (including motor vehicle repair, and wholesale and retail trade), energy supply, manufacturing (including textiles, wood and paper, petroleum, pharmaceuticals, and metal products), and professional, scientific and technical activities. At the on-site, several private sector and civil society representatives stated that, in addition to seeking investment opportunities in neighbouring countries, Czech firms are increasingly seeking markets in the Middle East and Africa, as well as Asia.

Figure 2: Most important outward investment partners of the Czech Republic



Source: OECD data.

12. Another important feature of the Czech economy is continued substantial public ownership of enterprises, particularly in the energy and transport sectors, even though the number of state-owned enterprises (SOEs) has reduced significantly due to successive privatisation phases. The OECD has made

²⁰ Note by Turkey:

The information in this document with reference to “Cyprus” relates to the southern part of the Island. There is no single authority representing both Turkish and Greek Cypriot people on the Island. Turkey recognises the Turkish Republic of Northern Cyprus (TRNC). Until a lasting and equitable solution is found within the context of the United Nations, Turkey shall preserve its position concerning the “Cyprus issue”.

Note by all the European Union Member States of the OECD and the European Union:

The Republic of Cyprus is recognised by all members of the United Nations with the exception of Turkey. The information in this document relates to the area under the effective control of the Government of the Republic of Cyprus.

²¹ Some of the countries listed as large partners for Czech outward FDI are known to be countries that multinational enterprises often pass capital through on its way to other destinations.

recommendations to the Czech Republic regarding the governance of SOEs, which have boards controlled by political nominees.²²

13. In the Czech Republic, strong links have been demonstrated between organised crime and corruption. An academic paper that analysed Czech domestic corruption scandals between 2004 and 2013 showed the significant role of corrupt networks in Czech organised crime.²³ In addition, domestic and foreign organised crime groups are known to have targeted Czech financial institutions in order to launder the illicit proceeds of various activities, including narcotics, human trafficking and smuggling counterfeit goods.²⁴ In general, Czechs are very concerned about corruption, as shown by a poll conducted in 2016, in which the majority of those surveyed stated that corruption, immigration and white-collar crime were the problems they were most worried about.²⁵

Foreign bribery cases

14. The Czech Republic has not prosecuted a case of the bribery of foreign public officials. The Czech authorities are currently investigating a case of the alleged bribery of a foreign public official from a non-Party to the Convention. The evaluation team was able to meet privately with the investigating authorities – the National Organised Crime Agency (NOCA) and the relevant High Public Prosecutors Office (HPPO), and was able to satisfy itself that the Czech authorities are making best efforts to investigate the case with the resources they have available. Only the strictest minimum of information about this case is provided in this report, where relevant, to protect due process interests and the rights of the accused. Throughout the report, the case is referred to as the ‘pending case’.

Commentary

15. The lead examiners believe that the absence of a prosecution of the bribery of foreign public officials in the seventeen years since the Czech Republic ratified the Convention is a cause for concern, especially in view of the export-oriented nature of the Czech economy. In addition, Czech exports include high-risk sectors for corruption, such as machinery and defence materials, and many of the Czech Republic’s export destinations for arms are at high risk of corruption. As a result, this report focuses on identifying ways to significantly enhance the Czech Republic’s framework for enforcement.

²² OECD (2014), OECD Economic Surveys: Czech Republic 2014, OECD Publishing, http://dx.doi.org/10.1787/eco_surveys-cze-2014-en (last accessed 19 May 2017).

²³ ‘The Nagygate Affair, Corruption and Organized Crime: Corruption Networks and their Potential Impact on the Quality of Democracy in the Czech Republic’ (2015, Kupka, P. & Mocht’ak, M., World Political Science, 11(1), pp. 157-185).

²⁴ US State Department, ‘Countries/Jurisdictions of Primary Concern – Czech Republic’, www.state.gov/j/inl/rls/nrcrpt/2014/supplemental/227766.htm (last accessed 19 May 2017).

²⁵ Prague Daily Monitor (8 Mar. 2016), ‘Poll: Czechs most worried by corruption, immigration, crime’, www.praguemonitor.com/2016/03/08/poll-czechs-most-worried-corruption-immigration-crime (last accessed 19 May 2017).

A. DETECTION OF THE FOREIGN BRIBERY OFFENCE

A.1 Overview

16. In Phase 3, the WGB recommended that the Czech Republic ‘take steps to more proactively detect foreign bribery, in particular by engaging with the anti-money laundering authorities, accounting and auditing professions, tax profession and private businesses’ (Recommendation 2(b)). By the end of the Phase 3 evaluation process, this recommendation was considered partially implemented because of an increase in communication between the law enforcement authorities, the Financial Analytical Office and tax authorities. Still the WGB recommended following up this recommendation closely in Phase 4 due to its centrality to the Czech Republic’s implementation of the Convention. Moreover, at the conclusion of the Czech Republic’s Phase 3 cycle, further recommendations specifically relevant to detection by the tax authorities (Recommendations 8(a) and 8(b)) and through whistleblower reports (Recommendation 10) were not fully implemented. The discussion on detection of foreign bribery under this part of the Phase 4 Report focusses on these issues, as well as detection by the police more broadly. It also discusses detection through the following means: capital markets supervisory authority; requests for mutual legal assistance (MLA) from foreign authorities; Czech foreign representations; self-reporting by companies; and media sources.

A.2 Detection by domestic authorities

a) *Police*

17. A major issue that dominated virtually every panel during the on-site visit was the recent establishment of the National Organised Crime Agency. In June 2016, the Ministry of the Interior (MOI) approved a resolution to create NOCA by merging the former Police Organised Crime Unit (UOOZ) and Unit for Combating Corruption and Financial Crime (UOKFK).²⁶ NOCA was also designated as the National Asset Recovery Office.²⁷ In accordance with a binding instruction issued by the Police President, NOCA is required to take the lead on offences involving various high level government officials, including at the regional level. Most importantly, from the standpoint of the Convention, it is obliged to deal with ‘serious offences’ to be supervised by the High Public Prosecutor’s Office – offences, including foreign bribery, that cause a loss exceeding CZK 150 million (approximately EUR 5.5 million).²⁸ The merger, which came into effect in August 2016, had attracted significant media attention and controversy by the time of the on-site, and stakeholders from government, law enforcement agencies, the private sector and civil society discussed their various theories about the merger.

²⁶ At the time of Phase 3, UOKFK was generally but not exclusively the unit responsible for investigating foreign bribery cases.

²⁷ NOCA is currently organised into the following five commands: 1) Organised Crime; 2) Serious Economic Crime and Corruption; 3) Terrorism and Extremism; 4) Cyber Crime; and 5) Financial Crime. Outside the City of Prague, there are seven NOCA Regional Offices.

²⁸ In additionally, NOCA has the option to deal with the following cases: 1) those it detects by its own initiative, unless such a case is handed over upon the decision of a NOCA director or after prior consent of the competent police unit (due to subject-matter and territorial competence); and 2) those that it takes over based on the decision of a NOCA director after prior consent of the competent police unit.

18. NOCA officers and officials from the Ministry of the Interior stated that the merger was intended to increase efficiencies. It would be easier to manage investigative resources if they were all under the same roof, including by increasing communication and cooperation, and reducing the potential for overlapping investigations. Proponents of this view were quick to point out that the legal framework for the relevant investigative authorities had not changed, and officers continued to perform their responsibilities as before the merger. Moreover, the number of police officers and civil staff remained practically the same, (see Table 1), and management had changed very little. Some participants from civil society and the private sector thought that political reasons were at the core of the decision to establish NOCA. Several participants, including some prosecution authorities, believed that the decision was motivated by inefficiencies caused by competition between UOOZ and UOKFK for certain cases. Some believed it was caused by concerns about leaks on cases that had occurred from certain investigative departments. Others thought that it was caused by prosecutorial decisions to transfer cases from one investigative unit to another.

Table 2. Table 1: Comparison of police agency staff levels before and after NOCA's creation

	31 July 2016	1 August 2016	1 January 2017	11 April 2017
UOOZ	434 officers 46 staff	N/A	N/A	N/A
UOKFK	362 officers 59 staff	N/A	N/A	N/A
NOCA	N/A	792 officers 99 staff	796 officers 102 staff	804 officers 102 staff
Total personnel	901	891	898	906

Source: Czech Republic data

19. All participants in the on-site who voiced an opinion on the merger agreed on one thing – it was too early to know whether the merger would improve the capacity of the Czech authorities to detect and investigate the offence of bribing foreign public officials. In addition to the ‘wait and see’ approach, the majority of the participants, other than NOCA and MOI, criticised the manner in which the merger was conducted. Virtually no consultation or analysis preceded the announcement of the merger. Even the Supreme Public Prosecutor (SPP) was not informed sufficiently in advance, and the public prosecution system was not consulted. Convincing reasons for the absence of sufficient warning and consultation were not provided, but since the merger, the SPP has requested and commented on materials regarding the creation of NOCA, including internal directives, in an attempt to prevent any potential negative impacts of the merger on criminal proceedings.

20. To date, NOCA has not detected a case of the bribery of foreign public officials. Whether NOCA is able to effectively detect such cases will depend largely on two factors: capacity and confidence in the new institution. If the merger of the two police units into NOCA results concretely in enhanced communication and cooperation between the five commands that make up NOCA, detection should be improved. However, capacity also depends on the extent to which foreign bribery is prioritised for the purpose of detection. And at this stage, although a NOCA decree is being prepared on the prioritisation of cases linked to financial funds from the European Community, no decree or internal directive has been issued that mentions the level of priority to be given to foreign bribery. Moreover, it may be questionable whether traditional sources would report allegations to NOCA unless it is able to rebuild the trust and confidence of the public and government institutions that have been eroded by the absence of consultation prior to the merger.

Commentary

21. At this stage it is unclear whether the merger of the two police units – UOOZ and UOKFK – into NOCA will enhance the detection of foreign bribery cases. Certainly there is a potential for increased cooperation and coordination between the five commands that make up NOCA, now that they are under the same roof. However, NOCA's capacity to detect foreign bribery will depend on the priority given to such cases and the level of confidence that the public and relevant government agencies have in the new body. The lead examiners therefore recommend that the Czech authorities take concrete and appropriate steps to ensure that NOCA officers give sufficient priority to the detection of foreign bribery cases. Furthermore, the lead examiners recommend following up the effectiveness of NOCA in practice in the detection and investigation of foreign bribery cases, and the level of public trust in the institution.

b) Anti-money laundering authorities

22. During the on-site visit, the evaluation team heard consistently from the different components of the Anti-Money Laundering (AML) framework – the Financial Analytical Office (FAU), which acts as the financial intelligence unit, individuals and entities with suspicious transaction reporting (STR) obligations under AML legislation, and the law enforcement authorities – that the system has made remarkable progress since Phase 3. In particular, they described smooth channels of communication between the various components, including unfettered access by the law enforcement authorities to information held by FAU.

23. Prior to January 2016, money laundering statistics were not classified according to the predicate offence. Following that date, classifications were added, but corruption in general, and not foreign bribery specifically, was included for this purpose. Based on this new approach, the FAU received two STRs between 1 January 2016 and 24 January 2017 concerning corruption. In April 2017, FAU filed a criminal complaint with the Police regarding the laundering of the proceeds of foreign bribery after completing its analysis of one STR.

24. During the on-site visit, participants from FAU, and the majority of representatives of the financial sector were confident that they had the capacity and awareness to detect money laundering transactions involving the proceeds of bribing foreign public officials. They monitor accounts and transactions to identify unusual customer behaviour, focussing on the characteristics of the transactions and whether, for instance, they involve off-shore tax havens. But they do not have in place specific red flags for identifying the risk of laundering the proceeds of bribing foreign public officials. They explained that they have too many transactions and too few staff to take the analysis to this level. Not one representative of the financial sector was able to say whether their institution had identified transactions involving the proceeds of foreign bribery.

25. The financial sector representatives stated that the government does not intervene much on how they go about monitoring accounts, but they acknowledged that have received some support, including methodologies for dealing generally with suspicious transactions and specifically on transactions involving the proceeds of tax evasion. FAU explained that it continuously cooperates with entities with STR obligations to raise their awareness of particular threats and vulnerabilities to money laundering. It also discusses particular STRs with obliged entities on an *ad hoc* basis during the analytical phase. Some financial sector representatives felt that it would be helpful to have typologies on money laundering transactions specifically involving the proceeds of foreign bribery. Some viewed the prospect of such typologies as further unwanted 'regulation' that would add to their already heavy administrative burden.

26. During meetings with representatives of FAU, the Ministry of Finance, which has overall responsibility for the FAU, and MOI, it was the evaluation team's impression that foreign bribery was not

sufficiently on the authorities' radar. The National Risk Assessment (NRA) associated with Money Laundering and Terrorist Financing, which was approved by the Government at the beginning of early 2017, includes an assessment of the risk of laundering the proceeds of 'corruption' generally. According to the NRA, this risk is quite low. For instance, of money laundering cases prosecuted in the period 2013-2015, only one involved corruption as a predicate offence. The risk assessment was not made on the basis of bribe giving versus bribe receiving, or domestic versus foreign bribery. However, FAU stated at the on-site that it would welcome advice from the OECD on how to specifically address the risk of laundering the proceeds of foreign bribery.

The evaluation team had specifically targeted the real-estate and gambling sectors in their discussions on money laundering, due to concerns about the risk of money laundering that they present in the Czech economy.²⁹ NOCA confirmed the team's concerns about the real-estate sector, stating that it is one of the most exposed areas for money laundering. The one representative of this sector who participated in the on-site did not believe that the real-estate sector was at risk of laundering foreign bribery proceeds. He also indicated that the financial system should detect such transactions in any case. The gambling sector was not represented at the on-site visit, so it was not possible for the evaluation team to gauge the actual level of awareness of casinos in particular of their exposure to the risk of laundering foreign bribery proceeds. The Czech authorities acknowledged that these two sectors are rarely filing STRs. FAU described trainings, beginning in 2016, which involved the real-estate sector as well as other designated non-financial businesses and professions and financial institutions. The training included a presentation devoted to the real-estate sector. They also stated that administrative proceedings have been taken in four cases where real-estate companies failed in their obligation to conduct customer due diligence. In 2017, FAU will begin to target the gambling sector in cooperation with the Customs Administration.

27. Representatives of the financial and real-estate sectors spoke openly at the on-site about the most significant challenge to fulfilling their STR obligations – identifying politically exposed persons (PEPs). One major bank that represented most of the companies that participated in the on-site stated that it does not have enough information to assess the risk of PEPs. It would like the Czech government to provide it with a list of the names of PEPs and their family members. On the other hand, the HPPO involved in the investigation of the 'pending case' stated that it is preferable to have a list of target groups based on criteria that makes a person a high risk for money laundering, as it is impossible to make a list of every PEP. The major bank stated that a list of PEPs coupled with the beneficial ownership (BO) registry that is due to come into effect in January 2018 would significantly enhance its ability to identify STRs. But the Ministry of Justice (MOJ) warned that, although financial institutions and relevant law enforcement authorities would have access to the registry, at this stage its impact is not clear, in part because the pertinent directive was drafted too quickly (see further discussion on the BO registry under Section B(2)(f)). In addition, the representative of the real-estate sector was not sure whether the real-estate industry would have access to the registry.

²⁹ The 2014 country report on the Czech Republic by the United States Department of State describes weak AML regulatory oversight of the gaming industry, and states it is represented by a powerful lobby, with the result that it has filed a relatively small number of STRs. See US State Department (2014), 'Countries/Jurisdictions of Primary Concern – Czech Republic', www.state.gov/j/inl/rls/nrcrpt/2014/supplemental/227766.htm (last accessed 19 May 2017). The International Consortium of Investigative Journalists (ICIJ) released information on the 'Panama Papers' in 2016 regarding foreign investments in the Czech real-estate sector for the purpose of obscuring the real ultimate beneficial owners of wealth. See Pavla Holcova (11 April. 2016), "Panama Papers; The Czech Republic" Czech Centre for Investigative Journalism, <https://www.occrp.org/en/panamapapers/the-czech-republic/>

28. A representative of NOCA stated that professional tax advisors are not effectively implementing their legal obligations to make STRs. One representative of the legal profession stated that making such reports is outside the comfort zone of most tax advisors. Another representative of the legal profession stated that tax advisors lack the background and knowledge to effectively assess whether a suspicion actually relates to a crime and that they do not have an adequate level of awareness of the channels for making such reports.

Commentary

The lead examiners believe that the Czech AML system has the potential to play a key role in detecting suspicions of foreign bribery. All the relevant stakeholders, including the law enforcement authorities and entities and professions with STR obligations described smooth communication channels between the system's various components. In order to enhance the system to effectively detect foreign bribery cases, the lead examiners recommend that the Czech authorities increase the priority of the detection of foreign bribery through the AML system by:

- a) Providing all entities and professions that have STR obligations with specific typologies and trainings on how the proceeds of bribing foreign public officials are laundered through the different channels, while putting an increased emphasis on non-financial obliged entities, such as those in the real-estate and gambling sectors, tax advisors, and legal professionals;*
- b) Working together with entities and professions that have STR obligations to ensure that they have effective access to information about PEPs.*

b) Tax authority

29. NOCA and the HPPO involved in the investigation of the 'pending case' both emphasised the significant potential of the General Financial Directorate to detect foreign bribery cases as the Czech Republic's tax authority. HPPO considered the tax authority the second most important source of information for detecting foreign bribery, just after MLA requests from foreign authorities. The General Financial Directorate always verifies non-standard business operations in its tax audits that may indicate a violation of tax liabilities. If the violation involves facts indicating a crime specified in the Tax Code, it is obligated to report the information to the law enforcement authorities. The OECD Bribery Awareness Handbook for Tax Examiners has been translated into Czech, and is used as a methodology by the tax authority. In addition, the General Financial Directorate published information on the Internet on how to identify bribe payments in tax records (also see under Section C.2. below). So far, however, it has not detected a foreign bribery case.

30. The Ministry of Finance acknowledged at the on-site visit that the tax authority could play an important role in detecting foreign bribery. The Unit on the Fight against Tax Evasion explained that controls on income and value-added tax could disclose tax evasion related to funds used for foreign bribery. It stated that the Ministry prioritises the risks it focusses on, and there is a strong interest in using tax controls to limit the funds used for bribery. It also believed that the focus on identifying fictitious invoices introduced in January 2016 should strengthen the tax administration's capacity to identify bribe payments to foreign public officials, and reduce the use of financial funds for bribery.

31. The most notable development in combating tax evasion – the establishment of KOBRA, a tax enforcement unit composed of officers from the General Financial Directorate, Police Corps and the Customs Administration – could present the best chance of increasing detection of tax evasion cases related to foreign bribery. Established in 2014, the purpose of the unit is to protect the state budget, prosecute perpetrators of tax crimes, and contribute to relevant legislative initiatives. By providing a platform for the police, customs and tax administration to share information and coordinate in individual

tax crime cases, KOBRA is able to operate quickly and efficiently. Indeed so far KOBRA's record has been commendable.³⁰ A prosecutor from SPPO explained that KOBRA has the potential to detect foreign bribery cases, but this would be incidental to its primary task of uncovering tax crime. So far it has only reported tax evasion cases to the law enforcement authorities, and it would have been up to the law enforcement authorities to determine whether foreign bribery or other crimes were related to the tax evasion. The tax administration stated that KOBRA's current priority is to extend its work to the regions, but conceded that it might also think of extending its focus to the detection and reporting of foreign bribery related to tax evasion. The HPPO involved in the investigation of the 'pending case' stated that the KOBRA system could be enhanced significantly, and there is potential for it to expand its mandate to more proactively detect foreign bribery cases related to tax evasion.

Commentary

The lead examiners note that all the relevant stakeholders in the Czech framework for combating the bribery of foreign public officials are aware of the role that the tax administration needs to play in detecting and reporting suspicions of foreign bribery, including the strong interest of the Ministry of Finance to use tax controls to limit bribe payments. The lead examiners believe that there is still room for more awareness and knowledge on the part of the tax administration regarding the bribery of foreign public officials and means for identifying such payments through tax audits. They therefore recommend that the Czech Republic avail itself of significant training opportunities for this purpose, such as those provided by the OECD and other organisations.

The lead examiners believe that KOBRA, the new multidisciplinary tax unit, is an excellent initiative for combating tax evasion, with significant potential for detecting foreign bribery related to tax evasion. Moreover, the Czech authorities agree that KOBRA has important potential for detecting foreign bribery cases, and do not believe that it would be expeditious to create another multidisciplinary team for this purpose. The lead examiners therefore recommend that the Czech authorities find a resource-efficient way to integrate into KOBRA's objectives the task of detecting and reporting foreign bribery related to tax evasion to the competent authorities.

c) Czech National Bank

32. In addition to supervising the financial sector regarding its STR obligations, the Czech National Bank (CNB) acts as the Czech capital markets supervisory authority. Participants in the on-site described important measures taken by CNB to support the financial sector with its AML obligations. A major law firm stated that CNB is 'pretty tough' with the financial sector in this regard. A major bank stated that it receives information from CNB on how to comply with its obligations. NOCA also described a good working relationship with CNB on the financial sector's AML obligations, and stated that CNB would notify FAU immediately of any money laundering suspicions. However, during the on-site, it did not appear that CNB was actively playing a role in detecting and reporting suspicions of foreign bribery by companies listed in the Czech capital market. The CNB representative stated that companies supervised by CNB are subject to very strict regulations; they are required to establish internal and risk controls, and CNB is competent to supervise these requirements. CNB is not responsible for actively detecting

³⁰ There have been various media articles on KOBRA's successes in uncovering tax fraud: *See, e.g.*, Daniela Lazarová (9 June 2015), "Anti-tax evasion squad Cobra marks one year in action with convincing results", *Radio Prague*, www.radio.cz/en/section/business/anti-tax-evasion-squad-cobra-marks-one-year-in-action-with-convincing-results (last accessed 19 May 2017); Prague Daily Monitor (27 January 2017), "Cobra team prevents tax fraud of 7.6 billion in three years", <http://shotgunned.praguemonitor.com/2017/01/27/cobra-team-prevents-tax-fraud-76-billion-three-years> (last accessed 19 May 2017).

suspicious of foreign bribery, but in the event that such suspicions are detected, CNB is required to report them to the law enforcement authorities pursuant to the general legal framework for this purpose in the Criminal Code (CC) and the Criminal Procedure Code (CPC).

33. The Czech authorities explained following the on-site that indeed CNB is well placed to detect foreign bribery through its dual supervisory roles. CNB enforces disclosure duties within the scope of Directive 2004/109/EC of the European Parliament and the Council on the Harmonisation of Transparency Requirements regarding information about issuers with securities traded on a regulated market. Listed companies are required to disclose financial reports, management statements and other information on a regular basis that could disclose suspicions of illicit behaviour, including foreign bribery. CNB also supervises the regulated markets seated in the Czech Republic, which are subject to comparable disclosure rules. The Czech authorities explained that if the CNB developed a suspicion of foreign bribery in its capacity as capital market supervisor, it would request additional information to confirm the suspicion or refer the case without undue delay to the law enforcement authorities in compliance with the CC and the CPC. The Czech authorities did not indicate that such a suspicion has to date been detected by CNB.

34. On 1 January 2017, an amendment to the Czech Act on Accounting came into force for the purpose of implementing an EU directive on financial reporting for specified businesses (Directive 2014/95/EU). The amendment, which requires that such businesses disclose information on the existence and effectiveness of compliance programmes, including for the purpose of preventing and detecting bribery, could further enhance the capacity of CNB to detect foreign bribery. Information through these new disclosure obligations shall be available beginning in 2018.

Commentary

So far, CNB's potential role in detecting and reporting suspicions of foreign bribery as the capital markets supervisory authority has not been utilised, even though CNB currently has access to relevant information, such as financial statements and reports on internal controls, through the disclosure obligations of listed firms. Moreover, these disclosure obligations have been enhanced through an amendment to the Czech Act on Accounting that came into force on 1 January 2017, and requires specified listed companies to report on their compliance programmes, including their anti-corruption measures, and for which information shall start to become available in 2018. The lead examiners therefore recommend that the Czech Republic take reasonable and appropriate steps to ensure that CNB effectively reports to the competent authorities suspicions of foreign bribery that it detects in the course of reviewing listed companies' disclosure documents.

d) Incoming requests for mutual legal assistance

So far, MLA requests from foreign jurisdictions have proved to be the number one source of detection of the bribery of foreign public officials in the Czech Republic. To date, two cases of foreign bribery have been detected through this channel. The first case was detected through two MLA requests from a non-party to the Convention. The resulting investigation was terminated by the time of the Phase 3 Written Follow-Up Report because at the time the Czech Republic did not have the liability of legal persons, and no Czech individuals were implicated in the allegations.

35. In one case detected through an MLA request, a delay in opening the investigation occurred after suspicions were raised through the MLA request. The HPPO involved in the investigation stated that the delay resulted from the complicated channel used to report the information stemming from the MLA request. First the request was delivered to the relevant Regional Public Prosecutor's Office (RPPO). RPPO then sent the suspicion to DPPO which in turn sent it to SPPO. During this period, data could have disappeared. Once SPPO saw the suspicion it referred the case to HPPO because it was the relevant

specialised unit. HPPO informed the evaluation team that due to the lessons learned by this case, suspicions raised in the future through the receipt of MLA requests will be sent immediately to SPPO.

36. Regarding MLA legislation, Act No. 104/2013 Coll., on International Judicial Cooperation in Criminal Matters, which came into force on 1 January 2014, substantially simplified the framework for executing incoming MLA requests. In order to further enhance this framework, in June 2016 MOJ submitted a draft law to the legislative process for the purpose of implementing the European Investigation Order.³¹

Commentary

The lead examiners believe that the Czech law enforcement authorities make effective use of MLA requests from foreign jurisdictions to detect the bribery of foreign public officials. They also note that the Czech authorities took reasonable steps to rectify an inefficiency in the system for reporting such suspicions, with the result that the delay in making such reports should be greatly reduced in future cases. The lead examiners recommend that the methodology for referring MLA requests that concern foreign bribery committed by a Czech national or company directly to SPPO be formalised, for instance in prosecution guidelines, to ensure that in the future relevant incoming requests are evaluated without delay to preserve evidence and assets and to determine whether an investigation should be commenced in the Czech Republic.

e) Czech foreign representations

37. Representatives from the public prosecution system described the important role played by Czech foreign representations in detecting possible offences and supporting law enforcement efforts in transnational corruption cases. Czech foreign representations have also shared information that supported an MLA request that raised a suspicion of foreign bribery.

Commentary

The lead examiners believe that the Ministry of Foreign Affairs and the relevant Czech foreign representations have diligently gathered and shared information concerning transnational corruption cases, and the Czech law enforcement authorities have made effective use of this information.

A.3 Detection by non-government sources

a) Protection of whistleblowers

38. At the end of the Czech Republic's Phase 3 evaluation process, the WGB Recommendation 10 to protect public and private whistleblowers was only considered partially implemented because Act No. 234/2014 Coll., which contained a provision authorising the Government to adopt an

³¹ See "Amendment on international judicial cooperation in criminal matters – EU", Parliamentary Print No. 925/0, Part no. 1/6: www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=925&CT1=0 (last accessed 19 May 2017). In October 2016, the Government approved the draft law and transmitted it to Parliament for discussion. The draft law has not yet been discussed due to circumstances including the upcoming end of the electoral term, and despite efforts by MOJ. It is therefore unlikely that the draft law will be adopted in this electoral term. As a result it will be necessary to adopt it through an accelerated legislative process following the election, which is expected to take place in October 2017.

implementing decree for public sector whistleblower protections, had entered into force.³² The evaluation team therefore focussed its inquiry on progress adopting whistleblower protections in the private and public sectors. Against this background, the evaluation team also considered why no case of foreign bribery had been detected in the Czech Republic so far through whistleblower reports.

39. On 8 February 2017, during the on-site, a draft law concerning whistleblower protections in both sectors was approved by the Government of the Czech Republic, following which it will have its first reading before the Chamber of Deputies of the Parliament of the Czech Republic. If adopted, it would be expected to come into force on 1 January 2018.³³ The draft law proposes to amend section 133a of the Civil Procedure Code, which concerns claims brought by employees against their employers for discrimination, and establishes a shared burden.³⁴ The provision would apply even when the whistleblowing was made directly to the law enforcement authorities. The Czech authorities explain that the draft amendment results from an extensive debate among Czech legal experts, including a regulatory impact assessment, and a legal study conducted by the Office of the Government and an inter-ministerial commenting process.

40. During the on-site, the need for stronger whistleblower protections was underlined by the representative of a major non-governmental organisation, which provides some form of support to approximately 20 to 30 whistleblowers in the Czech Republic every year. However, the situation is perceived very differently by many Czechs. Indeed, most of the participants at the on-site who expressed a view on whistleblowers felt that historical events still continued to shape the view of whistleblowers to a very large extent. Virtually all the participants in the civil society and private sector panels, including academia, major law firms, the accounting and auditing profession, a media representative, and major companies, believed that reform in this area is progressing very slowly due to the negative perception of whistleblowers. In addition, according to the media representative, a recent highly publicised case of retaliation against a public servant has had a chilling effect on whistleblowing in the Czech Republic.³⁵

41. The level of intransigence on this issue was even reflected in the opinion of certain participants in the on-site. For instance, one representative of the financial sector stated that whistleblowers do not provide useful information. He also felt that whistleblower protections would just be another layer of unwanted and unnecessary regulation. A representative of a business association stated that whistleblowers are generally complainers by nature, and that whistleblower protections would not help because employers would still retaliate. Another business association representative believed that whistleblowers are attention seekers, and some even achieve celebrity status. A third business association representative stated that the current legislative framework is sufficient, and making whistleblower protections stronger would just

³² In June 2015, after the Phase 3 Follow-up evaluation, Government Regulation 145/2015 was issued concerning whistleblower protections and reporting channels for “civil servants” in the public sector. Selected excerpts from this regulation are contained in Annex 4.

³³ In addition to the draft law to amend section 133a of the Civil Procedure Code, fragmentary whistleblower protections are provided in the Act on Banks, Action on Savings and Credit Cooperatives, and the Capital Market Undertakings Act, and the Labour Code contains provisions on unjust dismissal, but does not address whistleblower protections specifically.

³⁴ Concerning the principle of a shared burden of proof in discrimination suits, the Czech authorities cite Ronald Craig (2006), *Systemic Discrimination in Employment and the Promotion of Ethnic Equality*, page 27. According to the cited extract, the ‘burden is shared in the sense that once a complainant has made a prima facie showing of discrimination, the burden of proof shifts to the employer to show that he is not in violation of the prohibition against discrimination’.

³⁵ The public servant was dismissed in 2015 for reporting suspicions in relation to an alleged EU subsidy fraud.

encourage malicious reporting. The official representing the Office of the Government confirmed that the biggest employment associations have a very negative perception about the use of whistleblower protections. He also stated that the Czech Republic had taken note of studies from selected countries (Slovak Republic, Romania, Slovenia, and Serbia), which he stated showed that whistleblower protections do not encourage whistleblowers to come forward. Conversely, a major international law firm stated that Czech citizens would come forward and report corruption cases if Czech legislation provided adequate whistleblower protections. In addition, some civil society participants felt that the younger generation had a more progressive attitude towards whistleblowers.

Commentary

In the absence of the adoption of comprehensive whistleblower protections in the public and private spheres, Phase 3 Recommendation 10 to adopt appropriate measures to protect private and public sector employees who report suspicions of foreign bribery in good faith and on reasonable grounds to the competent authorities, remains only partially implemented. The 2009 Recommendation specifically addresses discriminatory or disciplinary action against employees for reporting foreign bribery to the competent authorities. The current legislative initiative, if adopted, addresses discriminatory or disciplinary treatment. However, the 2009 Recommendation does not provide guidelines on effective whistleblower protections. The lead examiners therefore recommend that the Czech Republic fully implement Phase 3 Recommendation 10 without undue delay, and conduct awareness-raising on the use of whistleblower protections in foreign bribery cases for public and private sector employees. The lead examiners also note that what constitutes effective whistleblowing protections in foreign bribery cases may be a horizontal issue for a number of parties to the Convention.

b) Self-reporting by enterprises

42. So far no case of the bribery of foreign public officials has been detected in the Czech Republic through self-reporting by enterprises. In addition, during the on-site, private practitioners and public prosecutors reported that companies in the Czech Republic almost never self-report crimes in general. The legal profession felt that there was not enough of an incentive for companies to self-report, and that instead self-reporting exposes companies to numerous risks. One major law firm believed that self-reporting would not occur in the absence of prosecution agreements, such as deferred prosecutions agreements (DPAs) as used in the United Kingdom and United States, which do not result in a conviction. The lead examiners also believe that the absence of foreign bribery prosecutions is likely a significant reason for the lack of incentives to self-report. This issue is discussed in detail below (see under Section C.2) in relation to the level of awareness in Czech firms of the risks of foreign bribery and the need to establish effective compliance programmes to prevent and detect such bribery.

43. When discussing how to encourage firms to self-report foreign bribery, a major law firm pointed out that the impact of incentives to self-report would need to be assessed carefully pursuant to protections against self-incrimination under the Czech Charter of Rights. A major compliance association stated that a balanced approach to motivating self-reporting could be very useful in the Czech Republic.³⁶

³⁶ The Czech authorities point out that pursuant to the amendment, Act No. 163/2016 Coll., in force from 1 July 2016, a temporary deferral of criminal prosecution of a person who offers, promises or gives a bribe to a domestic public official is available when the following criteria are satisfied: 1) the bribe was solicited; 2) s/he voluntarily reports the bribe transaction to the public prosecutor without undue delay; and 3) s/he undertakes to give a complete and true testimony of the facts in the pre-trial and trial proceedings. The Czech authorities explain that this measure is intended to enhance the reporting of the solicitation of bribes by domestic public officials.

c) *Media*

44. Discussions at the on-site disclosed three main obstacles to the effective detection of foreign bribery cases in the Czech Republic through media reports: 1) media's focus on domestic bribery; 2) limitations to the Czech media's capacity to conduct effective investigative journalism; and 3) limitations to the capacity of the Czech law enforcement authorities to identify and analyse foreign media reports.

45. The Ministry of Justice stated that the Czech media actively reports on domestic bribery cases. NOCA indicated that at least two ongoing domestic corruption investigations were initiated by information contained in media reports. Media interest in major domestic bribery cases was confirmed by a major multinational company with operations in the Czech Republic. In addition, representatives of the financial sector commented on the high level of media attention regarding the establishment of NOCA, which has led to a vigorous public debate on the merger. On the other hand, a major compliance association could not recall a Czech media report about the bribery of foreign public officials by a Czech company or individual. The association as well as a media representative believed that this was likely due to the newness and consequent lack of sufficient awareness of the foreign bribery issue in the Czech Republic.

46. Members of the civil society panel at the on-site, including a major law firm and tax professionals, believed that the absence of reporting by the Czech media on foreign bribery cases could also be linked to the need for stronger investigative journalism. A formal centre for investigative journalism does not exist in the Czech Republic. This has been a major challenge to analysing information about Czech companies and individuals in the Panama Papers – a task that is being carried out by Czech media representatives on a volunteer basis.

47. Neither NOCA nor the SPPO analyses foreign media sources for potential allegations of foreign bribery by Czech companies and nationals. NOCA only has one analyst to decipher Czech media reports for potential allegations, and this is done by using key search words relevant to the domestic environment. NOCA acknowledged that it would be very expedient to expand the analysis to include foreign media sources, but at this time adequate resources are not available for this purpose. SPPO conducts its own review of Czech media sources for potential allegations.

Commentary

Since the Czech media has played an essential role in detecting domestic bribery cases, and raising awareness of the issues surrounding the creation of NOCA, it could also play a significant role in detecting foreign bribery cases involving Czech companies and individuals. From the point of view of the Czech government, adequate resources are not currently being deployed to decipher potential allegations of foreign bribery in Czech media sources, with only one analyst for this purpose conducting Internet searches using key words. In addition, potential foreign media sources of relevant information are being completely overlooked. The lead examiners therefore recommend that the Czech authorities invest in analytics for this purpose, including appropriate human resources, expertise, foreign-language skills, training and potentially software.

B. ENFORCEMENT OF THE FOREIGN BRIBERY OFFENCE

B.1 Overview

48. At the conclusion of the Phase 3 evaluation process for the Czech Republic, the Working Group on Bribery's recommendation to continue to develop its proactive approach to foreign bribery investigations was considered fully implemented. However, the WGB expressly flagged this recommendation for follow-up in Phase 4 because of its significance. The evaluation team considered investigative priority and capacity to be of particularly high importance because previously the Czech authorities relied to a very large extent on self-reporting by bribe givers in order to benefit from the defence of 'effective regret', which no longer applies to foreign bribery. In addition, in the area of investigations and prosecutions, the recommendations to maintain statistics on MLA requests sent and received, and effectively enforce money laundering offences related to foreign bribery, were assessed as partially implemented. The recommendation to guarantee greater independence of prosecutors was considered not implemented. In the area of sanctions, the recommendation to publish agreements on guilt and punishment, and compile statistics on sanctions in foreign bribery cases were assessed as not implemented. The recommendation to increase confiscation of the proceeds of foreign bribery was considered partially implemented, and the recommendation to effectively sanction accounting offences related to foreign bribery was considered not implemented.

49. This part of the Czech report reviews progress on implementing the foregoing recommendations, as well as the Czech authorities' approach to the investigation and prosecution of foreign bribery cases more generally, given the absence of prosecutions of foreign bribery and the fact that there is one ongoing investigation.³⁷ It includes issues regarding the investigation of financial flows, use of non-financial evidence, level of analytical resources, use of joint investigation teams, new registry systems, and publication of court decisions.

B.2 Investigative priority and capacity

a) *Investigative techniques*

i. **Following financial flows**

50. Since 2011, the Czech authorities have had significant success following financial flows for the purpose of recovering assets. Regional and national level police were assigned to specifically address this issue, and since then approximately EUR 24 billion in damages have been recovered, and approximately EUR 7.5 billion have been returned to injured parties. However, NOCA acknowledged that following financial flows for the purpose of investigating corruption cases, including the bribery of foreign public officials, is a difficult area. The challenges are exacerbated when a chain of companies is involved. Cash withdrawals are also extremely difficult to trace unless they are large enough to trigger STRs. Moreover, once financial flows leave the EU, it can become practically impossible to follow illegal flows, especially if they move through offshore tax havens.³⁸ At the on-site, HPPO's Prague office explained that some

³⁷ See also paragraph 14 and Commentary right after paragraph 14.

³⁸ The Czech authorities explain that financial intelligence units (FIUs) in the Czech Republic and usually in foreign states have the power to postpone a client's money transfer for a certain period, which, although limited, provides prosecutors with enough time to make an MLA request. Some jurisdictions also provide prosecutors with the authority to provide pre-MLA seizure based on a simplified request under the

countries outside the EU network do not even confirm receipt of MLA requests to search financial records. As a result, the Czech authorities have to work as quickly as possible to identify a financial flow before it is moved outside the EU.

51. At the on-site, NOCA was confident that it had greater capacity to follow illegal money flows than the individual police units before the merger. Now that the police units are under the same roof, NOCA believes that it can more effectively coordinate and share information, and therefore act more quickly to follow financial flows. With a single point of contact for coordinating financial investigations, and cooperating with foreign law enforcement authorities, the process should be more streamlined.

52. NOCA indicated that the new bank account registry would make the search and seizure of illegal proceeds much easier. On the other hand, NOCA was unsure of the potential impact of the prospective BO registry on financial investigations. The value of these new registry systems for the purpose of foreign bribery investigations is discussed further below (see Section B(2)(f)).

53. During the on-site, NOCA confirmed that in cases where it is not possible to trace the financial flow from the bribe giver to the bribe receiver, it is still possible to successfully investigate a case of corruption with a number of other pieces of evidence. NOCA also stated that it would normally investigate corruption cases by gathering evidence through means such as witness statements and electronic surveillance. Information from sources including property records, mass media and social networks on the Internet, would also be gathered and analysed. HPPO confirmed that bribery can be successfully prosecuted using evidence such as electronic communications, and that these techniques can be more effective than following the money trail due to the challenges obtaining financial information through MLA. The use of non-financial evidence and the level of resources available for analysing financial and other sources of evidence are discussed immediately below under Sections B(2)(a)(ii) and B(2)(a)(iii), respectively.

Commentary

The Czech authorities have made impressive gains since Phase 3 tracing financial flows for the purpose of recovering assets. To a large extent, this progress is due to the efficient cooperation network within the EU. However, once an illegal flow moves outside the EU, tracing it becomes much more complicated, particularly given the challenges in obtaining MLA for this purpose. Since detecting illegal flows before they leave the EU is central to effectively investigating foreign bribery, the lead examiners believe that the swift communication by the law enforcement authorities is absolutely essential. In addition, the lead examiners note that issues related to the gap between EU and non-EU regimes may be an issue relevant to a number of parties to the Convention. Furthermore, as mentioned earlier, there is a potential for increased cooperation and coordination between the five commands that make up NOCA. The previous recommendation and the follow-up issue raised by the lead examiners regarding NOCA above in relation to detection (see Section A(2)(a)) are therefore relevant here as well.

condition that they receive a formal MLA request afterward. In order for these techniques to work effectively, it is essential that there is effective coordination between the FIU, police, prosecutors and possibly courts. For this purpose, the Czech Republic seeks support from Eurojust, the European Judicial Network (EJN), and the Camden Assets Recovery Network (CARIN). Since knowledge of these tools and direct contacts between prosecutors are essential to their success, the Czech authorities find that the seizure of assets in criminal proceedings outside the EU is usually less effective.

ii. Non-financial sources of evidence

54. Given the significant challenges reported above (see under Section B(2)(a)(i)) to following financial flows that represent the proceeds of bribing foreign public officials, the evaluation team made significant inquiries during the on-site about the potential to use other forms of evidence to prove foreign bribery cases. The overall impression of the lead examiners in this respect was positive. NOCA stated that the courts do not simply focus on financial inquiries in bribery cases, and it is possible to obtain a conviction using a number of pieces of non-financial evidence, such as witness statements and electronic communications. The representative of DPPO (Brno) stated that theoretically a conclusion of guilt can be drawn without following the illegal money trail perfectly, but he could not remember such a case in practice. The HPPO involved in the investigation of the ‘pending case’ explained that it is possible to prove a foreign bribery case without following the money trail through real time monitoring, such as electronic surveillance.

55. The Criminal Procedure Code provides the Czech police with the authority to conduct a number of real time monitoring measures, such as simulated transfer, surveillance of persons and items, use of an agent, and the interception and recording of telecommunications, once pre-trial proceedings have been initiated. A simulated transfer may be performed only on the basis of a written authorisation of the public prosecutor, and only where one of the parties denounces the corrupt transaction and cooperates with the authorities. The surveillance of persons or items may be carried out without written authorisation if it is not recorded electronically. Electronic surveillance can only be conducted on the basis of a written authorisation of a public prosecutor. And in cases where it is to be used in a private residence, or to intercept private communications, a judge’s authorisation is required. Both simulated transfers and electronic surveillance may be performed without pre-authorisation in urgent situations, but must be approved within 48 hours with a post facto authorisation. In addition to these investigative measures, the police may use undercover agents, and the interception and recording of telecommunications for the bribery of foreign public officials.³⁹ The former must be authorised upon a motion of the HPPO by the High Court in the relevant jurisdiction, and the latter upon the motion of the public prosecutor to a judge.⁴⁰

56. The Czech law enforcement authorities provided examples of domestic corruption cases in which non-financial evidence was used successfully, including the testimony of witnesses that a bribe had been solicited by a former minister in 2011, and the interrogation of witnesses and coordinated searches and seizures in a case that ultimately brought down the Czech government in 2013 (also discussed below under Section B(4)). However, despite these successes, the Czech authorities reported obstacles to obtaining and using such evidence, in addition to the normal objections that defendants make when evidence is submitted at trial. The Czech authorities often need to rely on foreign authorities to obtain such evidence through MLA requests. The significant obstacles to obtaining effective MLA are discussed below (see under Section B(3)). But a further complication with foreign obtained evidence is that it might not be obtained in accordance with the Czech rules of procedure, with the result that it might be inadmissible at trial. Another significant difficulty is accessing information on social network platforms and servers operated abroad by

³⁹ These coercive measures are available for the following offences: 1) those subject to a maximum term of imprisonment of at least eight years; 2) enumerated corruption offences; and 3) offences for which prosecution is prescribed by an international convention binding on the Czech Republic.

⁴⁰ In October 2016, the Prague High Court overturned a corruption conviction of a prominent politician on the grounds that orders to intercept communications contained defects. The case has been returned to the Regional Court, and a decision on whether the interception were lawfully authorised is expected in June 2017. The Czech authorities explain that the case was entered in the Supreme Court due to a complaint of breach of law.

foreign companies. The new electronic communications technologies also present difficulties, especially due to encryption technologies.

iii. Analytical resources

57. At the on-site, one HPPO representative voiced concerns about the level of available resources to conduct the needed analysis of financial and electronic data to complete foreign bribery investigations. This HPPO representative believed that the analytical capacity of HPPO and NOCA should be enhanced urgently for this purpose. The HPPO had experimented with the use of national multi-disciplinary investigation teams by drawing on expertise from different police units, a practice that had proved useful for investigations but not for analytical work. Although NOCA felt that its capacity for data analysis had improved since the merger of the two police units, the HPPO found that more analysts were still needed. NOCA's stated priorities for analytics were corruption in domestic procurement, crimes related to EU funds, and asset recovery.

58. Following the on-site, the Czech authorities clarified that two to five analysts are deployed in every command and regional office of NOCA. They mainly focus on the analysis of financial flows based on bank account statements and electronic communications, as well as real property and other assets of natural and legal persons suspected of relevant offences. Public sources of information, including media, radio, and the Internet are also used. Public information is extracted from the Internet using free software (freeware). This work is carried out in the framework of criminal proceedings supervised and required by the public prosecutor. Following the on-site, the Czech authorities stated that the number of analysts and information technology experts was insufficient to process and review the high volume and complexity of data involved in complex financial crimes, such as foreign bribery. At the preparatory meeting, immediately preceding the discussion of the draft report in Plenary, the Czech authorities provided new information. They stated that pursuant to a November 2016 agreement between MOJ and SPPO, the HPPO in Prague and Olomouc can employ ten new analysts in 2017 and twelve in 2018, including two IT experts. The HPPOs have already employed seven analysts in 2017 from various sectors to work in their Serious Financial and Economic Crime Departments.

Commentary

The lead examiners recommend as a matter of urgency that the Czech authorities find a way that is reasonable and appropriate to ensure the availability of adequate analytical resources for the investigation of foreign bribery cases. The lead examiners also recommend following up whether the new analytical resources provided to the public prosecution system are sufficient and used effectively.

b) Use of Joint investigation teams

59. Joint investigation teams (JITs) composed of police and prosecutors from the Czech Republic and at least one other jurisdiction have been used widely, with a total of 42 to date, including seven that were multi-jurisdictional. Regarding transnational bribery, in 2011, a JIT composed of law enforcement authorities from the Czech Republic and another Party to the Convention was established to work on a case in the defence sector involving the bribery of a Czech government official by a company from the other Party. The JIT enabled the authorities from both sides to exchange information and evidence with few restrictions, and a conviction was obtained against the Czech official. The Czech authorities explain that these JITs have been valuable for sharing information and evidence as well as expertise in these cases. The experiences from all JITs are collected and analysed by the International Department of SPPO and the national desk of the Czech Republic at Eurojust.

Commentary

The lead examiners note the successful use of the JIT composed of police and prosecutors from the Czech Republic and another Party to the Convention in an investigation of the bribery of a Czech official by a company from the other Party to the Convention. The lead examiners appreciate that it is not always feasible to establish JITs, but encourage the Czech authorities to continue to explore this avenue where appropriate.

c) *New registry systems*

60. Since Phase 3, the Czech Republic has taken a number of initiatives to make information about business transactions more transparent and easily accessible to specified stakeholders. These initiatives, in the form of three principal registries – beneficial ownership, bank account, and contracts – have the potential to make foreign bribery and related investigations more efficient. The evaluation team reviewed the operations of these new registries to determine the value-added they could provide in this regard.

Beneficial ownership registry

61. Legislation was adopted in 2016 to create a beneficial ownership (BO) registry by 1 January 2018, for corporations, other legal persons, and arrangements, including trusts, in order to fulfil the Czech Republic's obligations under EU Directive 2015/849. Since establishing the BO registry is a work in progress, concrete information about how it would operate was not available at the on-site visit. However, the lead examiners already saw indications of a need for more strategic planning regarding its scope and operation. For instance, the evaluation team was warned by MOJ that the impact of the registry on foreign bribery and related investigations (e.g., money laundering where foreign bribery is the predicate offence) was unclear, because enough time was not given to preparing the relevant regulation (see also above under Section A(2)(b)). In addition, the evaluation team was informed about potential problems with the registry. No agency had been delegated the authority to control the registry, and a system had not been planned for the purpose of verifying the information provided by entities and arrangements required to register BO information. In addition, there are no plans to establish criminal sanctions for entities that provide incorrect information. Instead, it is intended that secondary negative effects for the registered person would be a sufficient disincentive to provide false information. The Czech authorities explain that, for instance, false information could trigger the interest of FAU, and result in a money laundering investigation. In addition, a criminal fraud investigation could ensue if a government procurement contract were obtained as a result of false information in the registry. The Czech authorities confirm that direct access to the BO registry will be provided to all entities and professions with STR obligations under the AML framework. Moreover, endowment funds will be required to register their founders.⁴¹

62. Following the on-site the Czech government confirmed that the BO register had still not been designed, but could confirm that state agencies including the following would have access: courts in relation to judicial proceedings, law enforcement authorities regarding criminal proceedings, tax authorities, intelligence agency, FAU, CNB, National Security Authority, Supreme Security Authority, MOI, public procurement authorities, and any other person with a legitimate interest. Entities with STR obligations under AML legislation would also have access for conducting customer identification and due diligence (CDD). In order to obtain access to the BO registry, an application would have to be made to MOJ via the Internet. The requesting person would not be able to browse the register, and would only receive information based on a request about a specific legal person. The Czech authorities confirm that

⁴¹ The obligation to register the founder of an endowment fund is already in place pursuant to section 34, letter d) of the Act No. 304/2013 Coll.

information about the ultimate beneficial owner and the ownership structure should be available from the registry regarding persons that have provided the proper information.

Bank account registry

63. Legislation was also adopted in 2016 to create a central bank account registry by 1 January 2018, under the responsibility of CNB, primarily as an additional means for combating money laundering and terrorist financing. Currently, law enforcement authorities are required to contact individual banks to obtain bank account information for the purpose of financial investigations. If the competent authorities do not know the exact bank that holds a suspect's account, they must submit a request to every bank in the Czech Republic. This process is extremely onerous and time-consuming, sometimes taking months, which increases the risk of information leaks that could jeopardise investigations. Once the central bank account registry is in place, law enforcement authorities will just have to submit their requests directly to the registry, which will have information about the identity of the domestic and foreign owners⁴² of accounts in Czech 'credit institutions' – banks, and savings and credit unions – under one roof. Credit institutions will be required to provide daily updates on clients to the registry. The law enforcement authorities, including NOCA, believe that the central bank registry will be a significant tool for enhancing financial investigations, including money laundering and the bribery of foreign public officials.

Contract registry

64. The Czech Republic has also adopted legislation to establish a contract registry in 2015, which entered into effect in July 2016. Czech and foreign companies with government contracts are required to register their contracts. The registry, which is maintained by MOI is intended to provide transparency about the expenditure of public funds. According to a law firm at the on-site, vast exceptions to the registration requirement are being considered in Parliament, such as for SOEs, which could render the registry meaningless. In addition, an exemption for the purpose of protecting trade secrets is also under debate. NOCA stressed that the contract registry is primarily a prevention tool, and that it is unlikely that enterprises would register contracts that they know were obtained through corruption. There is also a potential to falsify registered documents. Moreover, since only contracts with the Czech government are registered, this tool would have little relevance for Czech foreign bribery enforcement. On the other hand, it could prove useful for parties to the Convention seeking MLA from the Czech government concerning suspicions of bribery of Czech officials by companies and individuals from their jurisdictions.

Commentary

The lead examiners take note of the three new registry systems in the Czech Republic. So far, the Czech Central Bank Account registry appears the most promising, as it will provide law enforcement authorities with direct access to bank account information under one roof, saving significant time and reducing the potential for leaks. The BO Registry could also provide significant value-added, but it is still under development, and potential problems have been identified that could undermine its use in foreign bribery investigations. The Contract Registry could serve as a useful tool for responding to MLA requests from Parties to the Convention investigating the bribery of Czech officials by companies and individuals from their jurisdictions. The lead examiners therefore recommend that the WGB follow-up the use of these new registries in foreign bribery investigations as practice develops.

⁴² Under Act No. 300/2016 Coll., information on foreign owners of accounts will include the name of the owner, the date of establishment/cancellation of the account, managing clerks, and the dates when they became managing clerks.

B.3 Mutual legal assistance

65. By the end of Phase 3, the Czech Republic had only partially implemented WGB Recommendation 4 to maintain statistics on the number of MLA requests sent and received regarding the bribery of foreign public officials. It was unable to provide comprehensive statistics on incoming and outgoing MLA requests regarding foreign bribery because a variety of channels were involved in the process. This part of the report evaluates progress on Recommendation 4. It also assesses the effectiveness of the Czech Republic's responses to MLA requests since Phase 3 from parties to the Convention regarding foreign bribery.

66. The Czech Republic is still not able to provide complete data on incoming and outgoing MLA requests regarding foreign bribery. In its responses to the Phase 4 Questionnaire, only aggregate information about outgoing requests, and information from the RPPOs and SPPO regarding incoming requests was provided. At the time of the on-site, MOJ had initiated a project to develop a pilot database that would include information about MLA. The project should be developed not earlier than 2019. In the meantime, the Czech authorities provided data as follows. In 2014, 2015 and 2016, the RPPOs received a total of 9 037 MLA requests. The Czech authorities state that the vast majority of these requests were executed within one to four months, and where delays occurred, they were often due to the need to translate documentation. The data are not broken down according to the underlying offence, and therefore it is not known whether any of these requests related to foreign bribery. During the same period, SPPO received 200 to 300 requests per year. Three of these requests were received from parties to the Convention regarding foreign bribery, and were executed within one to six months. In 2014, 2015 and 2016, a total of 6 182 MLA requests were initiated by the Czech authorities. The data are not broken down in terms of the underlying offence, and therefore it is not known whether any concerned foreign bribery. However, during the on-site, the authorities referred to several outgoing MLA requests, including to a party to the Convention. The authorities from the party were making best efforts to respond effectively within the constraints of their legal system. Obtaining MLA from one non-party had been initially plagued by delays.⁴³

67. Responses to surveys sent to all the parties to the Convention regarding their experience with the Czech Republic on MLA were of limited use, because only five parties responded, of which only three had actually requested MLA from the Czech Republic on corruption cases. One party sent six requests to the Czech Republic between 2012 and 2016. All the requests had been executed effectively, with a response time of between two months or less and four months. A second party sent one request on an unspecified date, which was still being executed. Czech cooperation was very useful, but some delays had occurred due to the need to translate documents. A third party had sent three corruption-related requests since 2010. Overall, this party had received good cooperation concerning its various requests, but noted that certain requests were still pending after between one to two years.

68. The Czech authorities informed the evaluation team about new MLA legislation (Act No. 104/2013 Coll.) – the International Judicial Cooperation in Criminal Matters Act – which entered into force in January 2014. The new law governs the processing of incoming and outgoing MLA requests, and specifies that most MLA requests are to be handled by either the RPPOs (for pre-trial requests), or regional courts (all other requests). This approach should encourage specialisation and the development of expertise

⁴³ For the Czech Republic, the most effective MLA cooperation takes place between EU members due to the harmonisation of various aspects of the legal systems, and direct contact between authorities responsible for MLA, Eurojust, EJM and other networks or specialists. The Czech Republic has also experienced effective cooperation with certain Parties to the Convention that are not EU members due to regular consultations about cases and direct contacts between the relevant authorities.

within these bodies, and simplify the channels for foreign counterparts. It should also make it much easier to compile data, since fewer authorities are now involved in the MLA process. (Information about the draft law for implementing the European Investigation Order is provided above under Section A(2)(e).)

Commentary

Phase 3 Recommendation 4 to maintain statistics on the number of formal MLA requests sent and received regarding the bribery of foreign public officials remains only partially implemented. However, the Czech authorities managed to compile quite substantial albeit incomplete statistics regarding incoming and outgoing MLA requests concerning foreign bribery. Moreover, those parties to the Convention that responded to the MLA survey were generally quite positive about the Czech Republic's practice in responding to MLA requests related to corruption. The lead examiners note positively that new legislation streamlines the channels for MLA requests, and a new database for compiling MLA information should be functioning in 2017. The lead examiners therefore recommend following up whether the new streamlined MLA channels combined with the database, once it is operational, enable the Czech Republic to effectively implement Phase 3 Recommendation 4.

B.4 Independence of police and prosecutors

69. By the end of the Phase 3 evaluation process, the WGB's Phase 3 Recommendation 3 to take steps to guarantee greater independence to prosecutors so that political factors prohibited under Article 5 of the Convention are never taken into account in foreign bribery investigations and prosecutions, remained not implemented. This recommendation arose from WGB concerns about long-standing allegations, leading up to Phase 3, that high-level corruption prosecutions had been covered up due to political interference.⁴⁴ At the time of the last follow-up report in the Phase 3 cycle, proposed legislation to introduce new safeguards for investigative and prosecutorial independence was being discussed by the Legislative Council. Although the outstanding Phase 3 recommendation focusses on prosecutorial independence, the evaluation team felt it was important to consider the implementation of Article 5 by both the investigative and prosecution authorities, especially given that the Czech police operate under the supervision of the prosecution authorities.

70. The evaluation team has not found any indications of political interference in investigative and prosecutorial decision-making regarding foreign bribery cases. In addition, the Czech authorities recently investigated and prosecuted two very politically sensitive domestic corruption cases – one case involving highly positioned government officials, politicians and lobbyists, which brought about the fall of the Government in 2013, and a case involving corruption in defence procurement. The acquittal in the first case is under appeal, and acquittals in the second case are final. Although these cases are domestic in nature, they appear to demonstrate that the investigative and prosecution authorities are willing and able to tackle highly sensitive cases. However, the legislation to increase the independence of prosecutors has still not been adopted.

71. The legislation discussed in Phase 3 to increase the independence of the prosecution authorities has not yet been adopted.⁴⁵ It would, for instance, provide the Government with the power to appoint the Supreme Public Prosecutor (SPP) upon proposal by the Minister of Justice for a period of seven years with

⁴⁴ See Working Group on Bribery (2013), *Phase 3 Report on Implementation of the OECD Anti-Bribery Convention in the Czech Republic*, para. 97.

⁴⁵ See Working Group on Bribery (2013), *Phase 3 Report on Implementation of the OECD Anti-Bribery Convention in the Czech Republic*, para. 99.

the possibility of renewal for one term.⁴⁶ The SPP could only be removed through disciplinary proceedings conducted by the Disciplinary Court – a specialised body within the Supreme Administrative Court. Currently, the SPP is appointed by the Government on the proposal of the Minister of Justice, and may be dismissed on the proposal of the Minister without a stated reason. The SPPO explained that there is a lack of political will to adopt the needed legislation, due to a disagreement between the political parties, and that it is unlikely to be adopted before elections later this year. The Deputy to the SPP explained that he had to appear before the Legislative Council to respond to questions about why the prosecution authorities needed so much administrative independence.

72. Under the current legislative framework, the police authorities must comply with all instructions given by the prosecution authorities, including decisions to terminate investigations, even if they appear to be wrong. On the other hand, they must not comply with illegal orders, and in such cases they have the right to report their disagreement all the way up to SPPO. However, there is not any avenue, such as judicial review, to obtain recourse if the police ultimately disagree with the decision of SPPO. According to MOI, this is not a problem because the members of SPPO have such a high degree of integrity. Nevertheless, if the prosecution authorities were to give the police a direction to investigate or not investigate that potentially reflected political considerations, ultimately, there would not be any official avenue for the police to obtain an independent review of the direction outside of the public prosecution system. It also does not seem possible for an interested third party to obtain an independent review of such a decision outside the public prosecution system. This also highlights the importance of ensuring an independent public prosecution system.

73. In addition, on 2 February 2017, legislative initiatives were requested by the Chamber of Deputies of the Parliament of the Czech Republic in its resolution of 2 February 2017, concerning the Final Report of the Investigation Committee of the Chamber of Deputies,⁴⁷ which would directly impact on prosecutorial powers if they were pursued. Following the on-site, the Prime Minister entrusted the Minister of Justice with the preparation of an assessment of the proposals in the Final Report. The Ministry of Justice prepared a detailed analysis and concluded that there is no need for legislative or other measures. The Government adopted the opinion by the Resolution of Government no. 418 of May 31, 2017. The evaluation team was informed by MOJ and SPPO that the legislative initiatives would have stripped the prosecution authorities of their supervisory role in pre-trial proceedings, and their right to personally perform individual actions of criminal proceedings or conduct entire investigations instead of the police authority. These requested initiatives would have represented a major change in the role of the police and public prosecutors in the Czech Republic. The lead examiners observe that pursuant to the requested legislative changes, the police would have had more independence vis-a-vis the prosecution authorities, but

⁴⁶ The proposed legislation provides minimum criteria for the appointment of the SPP, including regarding expertise. S/he must have a university Master's degree in law and legal science from a Czech university accredited by the Ministry of Education Youth and Sports. The applicant must also have passed a final examination focused on branches of the law and practice relevant to public prosecution, which is conducted before an examining board appointed by the Minister of Justice. The proposed legislation also provides that every position of public prosecutor will be selected by a board following the initial screening based on the minimal criteria. The Board would consider the applicant's knowledge and ability to appropriately apply legal instruments necessary for the performance of public prosecutor. Moreover, the proposed legislation requires that the SPP have at least 15 years of legal experience, and 10 years for the office of public prosecutor.

⁴⁷ The Final Report examines activities of the Police Presidium of the Czech Republic, UOOZ and public prosecutors of HPPO in Olomouc in the context of the reorganisation of UOOZ and UOKJD of the Police of the Czech Republic, which took effect on 1 August 2016.

it is unclear what safeguards would have been in place to ensure that police decision-making could not be influenced by political factors.

Commentary

There is no indication that political factors listed under Article 5 of the Convention have influenced investigation or prosecutorial decision-making regarding foreign bribery cases in the Czech Republic. However, the lead examiners believe that the proposal before Parliament to safeguard the SPP from unreasonable dismissal is an important and reasonable initiative for ensuring prosecutorial independence, and they urge adoption of appropriate legislation without further delay. Until this legislation is adopted, Phase 3 Recommendation 3 remains not implemented.

In addition, the lead examiners welcome the news that the Government adopted an opinion by resolution that there is no need for legislation or other measures pursuant to the Final Report of the Investigation Committee of the Chamber of Deputies, especially since such initiatives might have impacted on prosecution powers. The lead examiners recommend following up to verify whether similar legislative initiatives are requested again in the future, in particular to assess whether any such initiatives comply with Article 5.

B.5 Enforcement results

a) Sanctions for foreign bribery

74. At the end of Phase 3, two Phase 3 recommendations to the Czech Republic regarding sanctions were outstanding. Recommendation 5(b) to compile statistics on sanctions in bribery cases after conviction and pursuant to agreements on guilt and punishment was not implemented. Recommendation 2(d) to increase the confiscation of proceeds of crime in foreign bribery cases where appropriate was partially implemented. Recommendation 5(b) was considered not implemented because statistics were not provided for sanctions imposed in domestic bribery cases. The Czech Republic simply informed the WGB that there had not been any convictions and thus no sanctions applied in foreign bribery cases. Recommendation 2(d) was considered partially implemented because, although confiscation had been steadily rising in money laundering and domestic corruption cases, confiscation had not yet been applied in a foreign bribery case. In Phase 3, the WGB also recommended following up the application in practice of sanctions and confiscation in ongoing and future foreign bribery cases, because it had observed that in domestic bribery cases, the Czech Republic imposed a high proportion of suspended prison sentences and a small proportion of fines, which were also relatively low.

75. So far, no cases of the bribery of foreign public officials have been prosecuted in the Czech Republic and thus no sanctions have been imposed on natural or legal persons for the offence. However, the Czech Republic produced comprehensive statistics on sanctions for domestic bribery imposed on natural and legal persons.

76. Regarding sanctions for natural persons convicted of domestic bribery, the Czech Republic provided the following information. Between 2012 and October 2016, 98 natural persons were sanctioned for offering, promising or giving bribes to domestic public officials. Of these, 4 offenders (4.1%) received prison terms, 79 (80.6%) received suspended prison sentences, and 15 (15.3%) were not sentenced to prison. In addition, 25 natural persons were sanctioned with fines (25.5%), while confiscation was imposed on 19 natural persons (19.4%). Of the fines, 76% were less than or equal to CZK 100 000 (approximately EUR 3 700), and 96% were less than or equal to CZK 200 000 (approximately EUR 7 400). The Czech authorities informed the evaluation team that in November 2016, the Supreme Court together with SPPO issued a press release announcing that they will begin to change the practice regarding sanctions for natural persons, by increasing the use of monetary sanctions as an alternative or a supplementary sanction to

prison sentences. In order to achieve this goal, the Supreme Court and SPPO in cooperation with the Judicial Academy organised a number of seminars on this topic for judges, public prosecutors, police, and employees of the Probation and Mediation Service.

77. Two legal persons have been convicted of domestic corruption since Phase 3. Both legal persons were financial institutions. They were subject to pecuniary penalties of CZK 5 million (approximately EUR 189 000), and CZK 3 million (approximately EUR 113 500), respectively. The Czech Republic also provided aggregate data on sanctions for other economic crimes for the years 2012 through 2015. Data were provided on the total amount of fines imposed on all companies convicted of each of these crimes per year. The average fine for each category of offences ranged from approximately CZK 4 030 to CZK 40 000 (approximately EUR 150 to EUR 1 478). During this period, five companies were convicted of false accounting, with an average fine of CZK 4 000 (approximately EUR 150). It does not appear that confiscation was imposed on any legal person during this period. However other sanctions were imposed, including publication of the judgement, prohibition of activity, and dissolution of the legal person.

78. The lead examiners note that, although the sanctions imposed on natural and legal persons may appear relatively low, without knowing the facts of the cases, including the value of the bribe payments, and the nature and value of the proceeds obtained, it is not possible to determine whether the sanctions imposed were effective, proportionate and dissuasive. However, private sector practitioners stated at the on-site that the sanctions imposed on legal persons were inadequate, often not exceeding CZK 10 000 (EUR 370). As mentioned in other parts of this report, the general consensus of non-government participants at the on-site was that it would take severe sanctions in major cases to raise the appropriate awareness of the private sector of the risks of foreign bribery. In addition, a representative of the real-estate industry stated that the most effective sanction was disqualification from public procurements, and that all other sanctions were just 'complementary'. One HPPO representative stated that financial sanctions in particular should be more severe, but it is very complicated administratively for courts to enforce financial penalties, and as a result, they are reluctant to impose them. The same HPPO representative also felt that it judges might appreciate training on calculating appropriate financial penalties.

Commentary

The lead examiners consider that the Czech Republic has fully implemented Phase 3 Recommendation 5(b) to compile statistics on sanctions in bribery cases after conviction and pursuant to agreements on guilt and punishment. However, since the Czech Republic has not yet prosecuted a case of foreign bribery, Recommendation 2(d) to increase confiscation of the proceeds of crime in foreign bribery cases where appropriate remains partially implemented. In addition, the lead examiners note that financial penalties imposed on natural persons for domestic bribery cases, and legal persons for other economic crimes, are extremely low. Although it is impossible to assess whether they are effective, proportionate and dissuasive, due to the need to also assess the facts of the case, the lead examiners were told by non-government stakeholders and a prosecution authority that such sanctions are inadequate. The lead examiners therefore recommend continuing to follow-up the sanctions imposed in domestic and foreign bribery cases. They also recommend that judicial training be organised as a matter of priority to support judges in the complicated task of calculating appropriate financial penalties in corruption cases.

b) Publication of agreements on guilt and punishment and court decisions

79. By the end of the Czech Republic's Phase 3 review process, WGB Recommendation 5(a) to publish as much information as possible on agreements on guilt and punishment (AGPs) was not implemented. The WGB wanted the Czech Republic to publish, in particular, the reasons for and terms of such agreements, the legal or natural persons convicted, and the sanctions agreed. The WGB considered

that it was not enough to provide access through the Access to Information Act. The WGB also flagged for follow-up the use in practice of these agreements for the bribery of foreign public officials. The lead examiners have addressed this issue and a closely related issue – in the Czech Republic all final court decisions on the conviction or acquittal of defendants charged with foreign bribery would not necessarily be automatically published.

Agreements of guilt and punishment on foreign bribery

80. AGPs have been available since September 2012, for certain types of offences, including foreign bribery. An AGP must be approved by a court and results in a conviction. To date, AGPs have rarely been used. For instance, in 2015, only 0.13% of all prosecutions were concluded through AGPs. In addition, none involved legal persons. Only four corruption enforcement actions were resolved through AGPs from 2013 to 2015. All these involved domestic bribery cases. During the on-site, the SPPO stated that the use of AGPs was slightly increasing, but it added that defendants in the Czech Republic are not interested in AGPs because they are hoping for an acquittal. Defendants also have a traditional view of the criminal legal system, and expect prosecutors to prove cases at trial. DPPO (Brno) stated that AGPs are mainly used in minor cases. And prosecutors do not normally want to use them because they have sufficient evidence to obtain a conviction at trial. The Czech authorities also emphasised that so far AGPs have mainly been used in small straightforward cases, where the facts are not in dispute, such as cases involving criminal injury. They state that AGPs would likely not be used in foreign bribery cases, due to their size and complexity. They believe that the Working Group did not fully understand that AGPs were not relevant to foreign bribery when they made the recommendation in Phase 3 to publish information regarding them.

81. AGPs are approved by the courts and are always in the form of a judgement. The fact of the conviction of a legal person is always registered, like all convictions regarding legal persons. The decision to publish AGPs concerning natural and legal persons is discretionary. Thus, since Phase 3, the Czech Republic has not taken any steps to address the WGB's recommendation to make all AGPs public, including the identity of the convicted persons, legal and natural, the reasons for and terms of such agreements, and the sanctions agreed. During the on-site, members of the judiciary wondered what would be the benefit of publishing AGPs regarding foreign bribery cases, and questioned whether members of the public would understand or be interested in seeing this information.

Judicial decisions in foreign bribery cases

82. Although trials are held in public in the Czech Republic, only a fraction of court decisions are selected for publication. Constitutional Court and Supreme Court decisions are automatically published. But judgements from the lower courts, which make up the vast majority, are typically only selected for publication if they concern significant legal developments that are considered in the 'public's interest'. The decision on which decisions to publish is made by a panel of judges with substantial theoretical expertise. If the judges on the panel disagree on whether to publish a particular judgement, they refer the question to a second panel. If agreement is still not reached, the question is referred to the Supreme Court. Judgements that are approved for publication are made available on the Internet.

83. The Czech authorities explain further that, pursuant to the current practice, judgements, particularly of higher courts, are published if they contain interpretations of certain legal terms or are interesting from the point of view of legal experts. These published judgements serve as guidelines on judicial interpretation, but are not commonly used by members of the public, which do not normally have a sufficient degree of knowledge to use them appropriately. The Czech authorities also state that, in addition to the administrative burden, publishing all court judgements would result in a chaotic understanding of jurisprudence, as it would be necessary to review a large number of judgements on the same legal issue, and lower court judgements do not have as much significance and binding force as those of higher courts.

The Czech authorities therefore believe that guidelines, handbooks and commentaries provide the public with more effective judicial interpretive tools.

84. When a judgement is not published, the only way to obtain it is through the Access to Information Act. Civil society representatives did not find this expedient. Legal practitioners and private sector representatives expressed considerable interest in having automatic access to court judgments on corruption cases, including foreign bribery, in particular those interpreting the exemption for 'justly required efforts' in the CLLE. They stated that they need this information to be able to establish and implement effective compliance measures. Czech judges expressed scepticism about the value of publishing foreign bribery or corruption cases more broadly. They do not believe the public is interested in technical legal discussions, and that they might even misinterpret them.

Commentary

The lead examiners believe that expedient access to court judgements concerning foreign bribery is necessary to ensure that sanctions for foreign bribery are effective, proportionate and dissuasive as required by the Convention. Their publication is also necessary for raising awareness of the risks of foreign bribery, and to ensure that Czech companies understand how to manage those risks through effective compliance measures. Moreover, public discussion and debate about foreign bribery enforcement would be enhanced by publication of judicial decisions. On the other hand, the lead examiners believe that, in view of information on the limited use of AGPs in corruption cases, Phase 3 Recommendation 5(a) to publish AGPs may not be relevant. However, they recommend following up the transparency of such agreements in case this practice changes, including the rationale for using AGPs, the identities of the convicted persons involved and the sanctions and terms imposed. In addition, they recommend that the Czech Republic take feasible and appropriate steps within its legal system to ensure that all judgements concerning the bribery of foreign public officials are automatically published.

c) *Offence of money laundering*

85. By the conclusion of the Phase 3 evaluation process, the Czech Republic had only partially implemented the WGB's Phase 3 Recommendation 6(b) to enforce money laundering offences linked to foreign bribery. The WGB assessed positively the increase in money laundering convictions, even though none of them involved foreign bribery as a predicate offence. In addition, the WGB was encouraged that the Czech authorities had held several workshops on how to increase prosecution of money laundering offences. But the workshops did not specifically target cases involving foreign bribery as the predicate offence. Indeed, to date, the Czech authorities have not prosecuted a case of laundering the proceeds of foreign bribery.

86. To date, the Czech authorities have still not provided specific training on increasing the prosecution of money laundering offences where foreign bribery is the predicate offence. The need for such training is underlined by the legal necessity in the Czech Republic to prove that the proceeds that are the subject of a money laundering prosecution were derived from a criminal offence. Although a conviction of the predicate offence is not required, and the specific predicate offence of foreign bribery does not have to be proved, in order to prove that the proceeds were obtained through the commission of a criminal offence, it is still important that law enforcement authorities have a high level of knowledge of how to effectively prosecute money laundering cases specifically related to foreign bribery. The methodologies for laundering the proceeds of foreign bribery are not necessarily the same as those for laundering the proceeds of other criminal offences, especially since the proceeds are often obtained through a contract for legal business (e.g., public procurement, oil and gas concessions) as opposed to illegal business (e.g., drug and human being smuggling).

Commentary

The lead examiners believe that specific training is needed in the Czech Republic on enforcing money laundering offences linked to foreign bribery, including due to the necessity to prove that the proceeds were obtained through the commission of a criminal offence. The lead examiners therefore consider that Phase 3 Recommendation 6(b) remains partially implemented, and recommend that the Czech Republic take steps to provide targeted training without further delay.

d) False accounting offence

87. By the end of the Czech Republic's Phase 3 evaluation process, the WGB's Phase 3 Recommendation 7(a) to ensure that criminal and administrative penalties for false accounting in connection with foreign bribery cases are effective, proportionate and dissuasive, was assessed as not implemented. The recommendation arose in Phase 3 because administrative sanctions for fraudulent accounting under the Act on Accounting were based solely on the value of assets held by an entity.⁴⁸ The WGB was particularly concerned about the consequences for shell companies, which often hold limited or no assets.

88. The Czech authorities do not report any legislative changes to address the problem identified regarding the administrative sanctions for false accounting. They state that amendments to the Criminal Code and CPC that have occurred since Phase 3 for the purpose of significantly improving confiscation and forfeiture could have a positive impact on sanctions overall for fraudulent accounting. However, this does not expressly address the WGB's concern regarding administrative sanctions. In addition, data provided by the Czech authorities on the imposition of criminal sanctions from 2014 to 2016 for fraudulent accounting do not indicate a robust use of pecuniary penalties. Out of 379 natural persons convicted of fraudulent accounting under section 254 of the Criminal Code during this period, only 13 were subject to a pecuniary penalty. And out of 14 legal persons convicted over the same period, only one was subject to a pecuniary penalty.

Commentary

The lead examiners consider that the WGB's Phase 3 Recommendation 7(a) to ensure that penalties for false accounting are effective, proportionate and dissuasive remains unimplemented. Administrative penalties for false accounting remain linked to the value of assets held by a company, and monetary penalties are rarely imposed for the false accounting offence under the Criminal Code. The lead examiners therefore recommend that the Czech Republic fully implement Phase 3 Recommendation 7(a) without undue delay.

⁴⁸ Pursuant to the Act on Accounting, the maximum administrative fine for fraudulent accounting was fixed at either 3% or 6% of an entity's total assets.

C. RESPONSIBILITY OF LEGAL PERSONS

C.1 Corporate liability

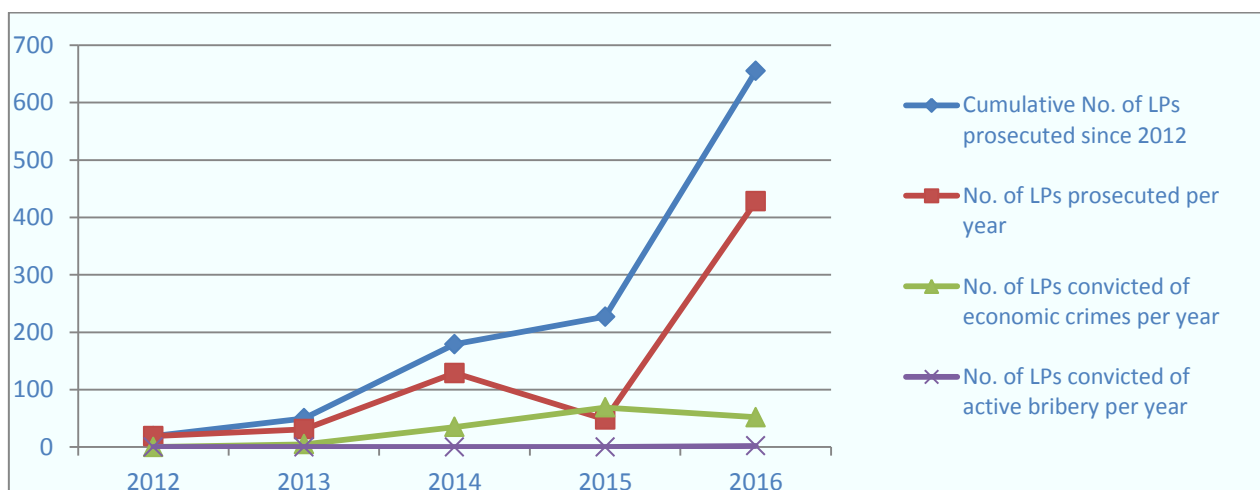
Overview

89. In Phase 3, the WGB was satisfied overall with the Czech Republic’s legislation on the liability of legal persons (CLLE), which came into force in January 2012. However, it could not fully assess its implementation in practice, given the lack of actual cases at the time, and therefore recommended following up the following five issues: 1) its application to SOEs, 2) the meaning of the condition ‘while fulfilling [their] duties/tasks’, 3) interpretation of the requirement of a failure to take ‘justly required measures’, 4) liability for related entities, and 5) the impact of the defence of ‘effective regret’ if re-established.

90. In addition, since 2013 the CLLC has been amended six times. Certain amendments were technical, aligning the CLLC with other legislation. Other amendments, more substantive in nature, such as the adoption of an exemption for ‘justly required efforts’, are discussed below, in addition to enforcement in general, and the five Phase 3 follow-up issues.

91. Since the adoption of the CLLC, no legal person has been prosecuted for the bribery of foreign public officials. However, otherwise, the number of investigations and prosecutions of legal persons has increased at a formidable rate. As seen below in Figure 3, the Czech authorities have investigated at least 655 legal persons through mid-December 2016. In the same period, 163 entities were convicted, including for serious economic offences. Two of these convictions were for the active bribery of a domestic official. In addition, in 2016, the Constitutional Court held that successor liability under section 10 was not limited to “universal succession” and could cover at least some forms of “singular succession” involving the sale of a particular asset, such as the sale of a “venture” or an “enterprise”.

Figure 3: Investigations and Prosecutions of Legal Persons under CLLC



Source: Czech Republic data.

Application of new exemption for 'justly required efforts'

92. Since Phase 3, an exemption was introduced under section 8(5) for legal persons that have made 'all effort that can be justly required to prevent the commission of an unlawful act' (exemption for 'justly required efforts'). In February 2017, the Prague Municipal Court held that the exemption applied to a company charged with manipulating a public tender, because the company had a compliance programme at the time of the alleged crime, which included a code of conduct that banned employees from engaging in illegal activities. In addition, the employee, who allegedly committed the crime, had sworn to abide by the code. On appeal, the High Court in Prague overturned the decision, thus allowing criminal proceedings to continue against the company. The High Court reasoned that an employee's mere acknowledgement of a company's code of conduct does not necessarily demonstrate that the company made 'all efforts' to prevent the commission of an unlawful act. In the High Court's view, analysis under section 8(5) must go beyond a formal review of the content of a company's code of conduct to consider whether the code was 'actually observed [at] the time of commission [of the offence] and whether its observance...was checked and enforced and by whom'.⁴⁹

93. Other than the High Court judgement referred to in the preceding paragraph, which is not a foreign bribery case, the only information about how to interpret the exemption under section 8(5) is contained in a document issued in November 2016 by SPPO ("Application of Section 8(5) of the Act on Criminal Liability of Legal Entities and Proceedings: Public Prosecutors intended Guide to New Legislation"). The full Guide is only available to prosecutors and police. (An abridged version of the Guide was publicly released and is discussed below in Section C(2) on corporate compliance). The internal SPPO Guide provides the following information: 1) a history of the amendment to the CLLE that resulted in the exemption; 2) the text of the amendment; 3) a description of corporate fault-based liability in Czech criminal law; 4) a comparison of the exemption in the CLLE to the exculpation from liability for administrative delicts and misdemeanours; 5) the rationale for the new exemption; and 6) descriptions of five anonymised registered cases involving legal persons where a CLLE provision similar to the new exemption [section 8 (2)(b)] has been considered by the courts. The Guide provides information on section 8(2)(b) since jurisprudence did not exist on the application of the exemption of 'justly required efforts' under section 8(5) at the time it was prepared.⁵⁰ The five anonymised case reports (three of which are included in the public version) do not concern foreign bribery, and provide very limited and vague information about what compliance measures a company must establish and implement to trigger the exemption under section 8(5).⁵¹ Other than the anonymised case reports, the information in the Guide is extremely legalistic, and would provide law enforcement authorities with limited 'real world' advice on what kinds of compliance measures need to be established and implemented to trigger the exemption.

⁴⁹ The High Court also provided guidance on the types of evidence the lower court could consider to assess how the code of conduct was actually implemented in practice.

⁵⁰ Section 8(2)(b) of the CLLE provides for the liability of a legal person where a statutory body, person in a leading position, or person with specified managerial responsibilities did not take measures required by other legal regulation or that can be justly required (in addition to liability when such persons bribes themselves, or authorise or direct an employee to bribe).

⁵¹ There were three concluded cases that were described in the abridged version of the Guide distributed outside the public prosecution system. Case A: A company was exonerated from liability for the illegal purchase of raw materials because training had been provided to prevent the offence. Case B: A company was convicted of illegally conducting waste disposal and transportation activities, because the responsible persons had not supervised the activities of the employees or taken measures to prevent the consequences of the offence. Case C: The public prosecutor dismissed the defendant company's request to terminate proceedings against it for a copyright violation, because the responsible persons had not taken any of the usual measures to prevent the offence.

94. In addition to the scarcity of guidance on the scope of the exemption, at the on-site there was uncertainty about the onus of proof for its application. One private practitioner presumed that the company must prove the exemption. The Ministry of Justice as well as some prosecutors did not think that the law created a ‘reverse onus of proof’. Private practitioners and compliance officers emphasised that no matter where the burden was placed, companies would have to ‘proactively’ demonstrate their prevention efforts. While recognising that the courts would have the final say on the application of the exemption, there was a strong call for guidance on effective compliance measures from the private sector and civil society (see further discussion on this issue in relation to corporate compliance measures under Section C(2) below). Conversely, MOJ and HPPO felt that it was up to the courts to provide guidance through judicial decisions regarding foreign bribery prosecutions. Following the on-site visit, the Czech authorities emphasised that government issued guidelines would not in any way bind the courts. They believe it is more appropriate to educate the public by publishing and summarising relevant case law as it develops, in the form of a handbook.

Phase 3 follow-up issues

95. Regarding the five follow-up issues identified in Phase 3, the following information has been obtained. On the application of the CLLE to SOEs, Czech prosecutors report that pre-trial criminal proceedings are currently underway against two SOEs. However, neither jurisprudence nor pre-trial practice has emerged on the meaning of the condition ‘while fulfilling [their] duties/tasks’, or liability for related entities. The requirement for a failure to take ‘justly required measures’ is interpreted under the five case reports discussed above in relation to the new defence. Furthermore, the Czech Republic ultimately decided not to reintroduce ‘effective regret’ for corruption offences, including the bribery of foreign public officials.

Additional substantive amendments

96. Section 8(1) of the CLLE was amended by adding the requirement that the offence was committed either ‘in [the legal person’s] interest’ or ‘within its activity’. In 2015, the Supreme Court held that an act would be committed in the ‘interest’ of the legal entity whenever the ‘benefit’ obtained by the employee were also a ‘benefit of the legal entity itself’. In addition, section 8(1) was amended to clarify that persons must be ‘in a leading position’ in addition to being ‘entitled to act on behalf’ of a legal person, for their acts to trigger the liability of a legal person. At the on-site, Czech practitioners believed that the category of individuals with ‘decisive authority on management’ was broad enough to trigger liability when such persons do not formally hold a ‘leading position’. Furthermore, the terminology used to describe the sanction of disqualification from public procurement and competition was changed from debarment from a ‘concession procedure or public procurement’ to disqualification from ‘participation in a public contest’. The Czech authorities explain that this change is strictly terminological in order to make the relevant text consistent with the new Act on Public Procurement.

97. Another notable amendment – CLLE section 33a – permits either the prosecutor or the court to ‘suspend’ proceedings against a legal entity upon the ‘reasoned request’ of CNB, if ‘deemed necessary’ to ensure the implementation of a measure to address or to prevent a financial crisis. So far, the provision has not been applied in practice. The Czech authorities explain that section 33a was incorporated into the CLLE to ensure implementation of Directive 2014/59/EU of the European Parliament and Council, which establishes rules for the recovery and resolution of credit institutions and investment firms.⁵² They add that

⁵² Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32014L0059>.

the competent law enforcement authority does not have to execute such a request by CNB if it deems the request unfounded. Moreover, where applied, section 33a only temporarily interrupts the criminal prosecution to provide CNB with time to take necessary measures to alleviate the crisis. The Czech authorities state that this provision shall not be applied in a manner that contravenes Article 5 of the Convention.⁵³ Its purpose is to avoid concurrent proceedings in the situation of a financial crisis, which could lead to the dissolution of the legal entity.

Commentary

Considering that the liability of legal persons has only been in force since 2012, the Czech authorities have demonstrated a strong willingness and ability to apply it in practice. However, to date, no legal person has been prosecuted under the CLLE for the bribery of foreign public officials. In addition, except for the follow-up issue regarding SOEs, for which limited practice has been demonstrated, the other four follow-up issues have not been the subject of any jurisprudence or practice. Moreover, application of the new exemption for ‘justly required efforts’ is uncertain, and relevant information in the internal version of the Guide to prosecutors is not sufficiently practical. Furthermore, amendments since Phase 3 have introduced additional untested concepts, including, notably, the possibility for the prosecutor or court to temporarily interrupt a criminal prosecution against a legal person on request by CNB to implement a measure to address or prevent a financial crisis. In the absence of practice, it is not clear whether this provision could interfere with the effective enforcement of the Czech foreign bribery offence.

In summary, in view of the nature and scope of the issues raised in this part of the report, the lead examiners recommend that the WGB continue to closely follow-up application of the CLLE in practice, including, in particular, the following new provisions introduced by amendments since Phase 3: 1) the exemption for ‘justly required efforts’ under section 8(5), and 2) section 33a on the possibility to temporarily interrupt a prosecution against a legal persons to prevent a financial crisis. In addition, the lead examiners do not consider that the current Guide on the application of section 8(5) provides police or prosecutors with adequate practical information on satisfying the exemption. They therefore strongly recommend that the Czech Republic ensure that the internal and public versions of the Guide are updated regularly to include relevant jurisprudence, and also enhance the internal version of the Guide as a law enforcement tool by adding practical information on how to assess the effectiveness of compliance measures in companies. Furthermore, given the high level of uncertainty about this exemption, the Czech Republic is recommended to consider further measures to clarify its application.

C.2 Engagement with enterprises

98. At the end of the Phase 3 evaluation cycle for the Czech Republic, several WGB Phase 3 recommendations regarding Czech government engagement with enterprises on combating foreign bribery had still not been fully implemented. Recommendation 7(c) to raise awareness of the foreign bribery offence among the accounting and auditing professions was only partially implemented. Although a number of initiatives had been taken by the profession, the Czech authorities themselves had not been actively raising awareness. The WGB considered that further measures needed to be taken to fully implement Recommendation 8(a) to raise awareness of foreign bribery and the non-tax deductibility of bribe payments among enterprises. Recommendation 9(a) to 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

⁵³ Article 5 of the Convention states: ‘Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved’.

the business community was only partially implemented because more needed to be done in particular by the Ministry of Industry and Trade and trade promotion agencies in this regard. Recommendation 9(b) to 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, was only partially implemented, as little appeared to have been done in practice.

99. In the responses to the Phase 4 supplementary questions, the Czech Republic reported significant measures having been taken to implement the outstanding recommendations. For instance, CNB had issued a decree stipulating a general requirement that banks, credit unions and investment firms should implement and manage policies for evaluating operational risks. The decree also stipulated detailed requirements for an internal control system, including regarding the management body and its supervisory function. The Act on Insurance and Export Financing with a State Guarantee was amended to require applicants for export credit to make warranties of compliance with the Convention. Furthermore, the Czech administration had started implementing compliance programmes within state bodies. Further steps had also been taken to promote the OECD Good Practice Guidelines on Internal Controls, Ethics and Compliance. For instance, the Czech Compliance Association was established in March 2016 to promote and raise awareness of compliance programmes, including the OECD Good Practice Guidance. Moreover, at the initiative of the Ministry of Justice several agencies – private and public – had published a translation of the Good Practice Guidance, including the Ministry of Industry and Trade, Association of Small and Medium-Sized Enterprises and Crafts, Confederation of Industry, CzechInvest, CzechTrade and the Association of Engineering and Technology. Regarding awareness of the non-tax deductibility of bribe payments, the General Financial Directorate placed information on the Internet on how to identify bribe payments in tax records, and translated the OECD Bribery Awareness Handbook for Tax Examiners into Czech.

100. Several participants in the on-site, including an international accounting and auditing firm, international law firm, media representative and academic underlined that Czech companies are facing mounting foreign bribery risks. The Czech economy is currently export based, and much of Czech industry exports to countries in the region at high risk for corruption. In most of these countries, connections are needed to obtain business opportunities, making it necessary to hire agents with knowledge of the local environment. In addition, Czech companies are increasingly seeking markets in the Middle East and Africa as well as Asia. Czech government agencies, including CzechInvest and CzechTrade are strongly encouraging Czech companies to conduct business in jurisdictions at high risk for corruption. The international accounting and auditing firm stated that Czech companies are under extreme pressure in certain countries to engage in corruption, and many of these countries are the ones for which they obtain official export credit support from the Czech Export Bank. However, at the on-site, the evaluation team was consistently informed that the majority of Czech companies are not prepared to address these risks.

101. According to the majority of participants at the on-site from the private sector and civil society, the best tool for raising awareness of the risks of bribing foreign public officials is effective enforcement, including hard-hitting sanctions. Since so far the Czech authorities have not prosecuted a case of foreign bribery, it is difficult for Czech enterprises to appreciate the risks and respond with effective compliance measures. Foreign companies with operations in the Czech Republic are more likely to have established appropriate measures if they are subject to the jurisdiction of high enforcement Parties to the Convention, including the United States and the United Kingdom.

102. During the on-site, the representatives of CzechTrade and CzechInvest who met with the evaluation team underplayed the risks of foreign bribery faced by Czech companies; although the Confederation of Industry stated that these agencies are good partners on compliance. And following the on-site the Czech authorities provided additional information about measures taken by these agencies to raise awareness of Czech companies and their agents abroad of foreign bribery risks and the need for effective compliance measures. Indeed, the Czech authorities stress that CzechInvest in particular very

actively cooperates with MOJ on combating foreign bribery, and more joint training activities are planned for the future. At the on-site, the representative of the Ministry of Defence stated that the Ministry's procurement authorities cannot 'insult' Czech companies by asking them if they have anti-bribery compliance measures in place, and to do so would be 'discriminatory'. He added that it might be a good idea to introduce a legal requirement to this effect, but Czech companies would not be happy.

103. The most pressing compliance issue facing Czech companies concerns the exemption in the CLLE for 'justly required efforts' (discussed in detail above under Section C(1)). The existence of this exemption is an important opportunity to raise awareness of the need for strong compliance measures in Czech enterprises. But substantial work still needs to be done in order to fully exploit this opportunity. So far, the only information in the public domain about how to comply with the exemption is the abridged version of the Guide issued by SPPO in November 2016 (see also discussion above under Section C(1)). The publicly available information describes the provisions of the new legislation and the history of the legislative change. It provides a highly technical and legalistic interpretation of the provisions, including the exemption. At the on-site, civil society and the private sector, including a major international law firm, a major compliance association, a major business association, a global accounting and auditing firm and a major global company with operations in various sectors, all agreed that guidelines on how to implement effective compliance programmes are urgently needed. Conversely, the Ministry of Justice and HPPO disagreed, feeling that it was up to the judiciary to provide guidance through judicial decisions regarding foreign bribery prosecutions. While the lead examiners appreciate that the judiciary has the last word on what constitutes 'justly required efforts' to prevent foreign bribery, they believe that appropriate government guidelines, while not binding on the courts, would be a significant resource for Czech firms urgently needing advice in this respect. The guidelines could be considered a living document, and amended as court decisions emerge, and practice is developed. However, in the meantime, Czech companies, which already have a relatively low level of awareness of the risks of foreign bribery, are being deprived of essential information to raise their awareness and manage the risks.

Commentary

The lead examiners consider that the relevant outstanding recommendations on awareness-raising are now fully implemented, due to numerous initiatives taken since Phase 3 to raise awareness of the bribery of foreign public officials among the relevant stakeholders. However, despite these initiatives, the level of awareness demonstrated at the on-site by several constituents, including certain government bodies, was not fully satisfactory. As strongly stated by several participants in the on-site from the private sector and civil society, in the absence of enforcement, including effective sanctions, awareness of the risks of foreign bribery will remain low. In the meantime, Czech companies are facing mounting foreign bribery risks, as they increasingly export to high-risk jurisdictions. The lead examiners therefore strongly recommend that the Czech government engage closely with the private sector to raise awareness of the exemption for 'justly required efforts' and the establishment and implementation of adequate compliance measures to prevent and detect foreign bribery.

CONCLUSION: POSITIVE ACHIEVEMENTS, RECOMMENDATIONS, AND ISSUES FOR FOLLOW-UP

104. The Working Group considers that the absence of prosecutions of foreign bribery by the Czech Republic more than 17 years after ratifying the Convention on Combating the Bribery of Foreign Public Officials in International Business Transactions (Convention) is a cause for concern, especially in view of the export-oriented nature of the Czech economy. In addition, Czech exports include high risk sectors for corruption, such as machinery and defence materials, and many of the Czech Republic's export destinations for arms are at a high risk of corruption. The main focus of this Phase 4 Report on implementation of the Convention and related instruments is therefore to identify ways to significantly enhance the Czech Republic's framework for enforcing its foreign bribery offence.

105. Throughout this evaluation process, the Czech Republic demonstrated a strong determination to address the areas for improvement in its system for combating foreign bribery. The Czech authorities provided access to a substantial number of civil society and private sector representatives at the on-site, and an environment in which they were able to speak confidentially with the evaluation team about the Czech Republic's implementation of the Convention and related instruments. The Czech authorities have largely accepted the observations of these stakeholders. The Czech authorities also worked proactively and collaboratively with the evaluation team to find practical solutions to help increase enforcement that would work effectively under the Czech legal framework.

106. Regarding outstanding Phase 3 Recommendations, the Czech Republic has fully implemented the following recommendations: 5(b) to compile statistics on bribery convictions, and 7(c), 8(a), 9(a), and 9(b) on awareness-raising. The following recommendations remain partly implemented: 2(d) on confiscation, 4 on MLA statistics, and 6(b) on money laundering enforcement, and 10 on whistleblower protections. The following recommendations remain unimplemented: 3 on prosecutorial independence, 5(a) on publishing Agreements on Guilt and Punishment, and 7(a) on penalties for false accounting.

107. In conclusion, based on the findings in this report, the Working Group identifies potential good practices in Part I below and makes the recommendations in Part II below. The Working Group will also follow-up on issues identified in Part III below. The Working Group invites the Czech Republic to submit a written report on the implementation of these recommendations and issues for follow-up in two years (June 2019). The Working Group also invites the Czech Republic to provide non-confidential information on its foreign bribery enforcement actions when it submits its follow-up report.

I. Positive Achievements and Good Practices

108. Throughout this report, the Working Group has identified a number of positive areas regarding implementation of the Convention and related instruments. However, until the Czech Republic prosecutes a case of foreign bribery, it is not possible to state that these areas actually represent good practices and positive achievements that have proved effective in combating foreign bribery and enhancing enforcement.⁵⁴ At this stage, the Working Group therefore considers the following to be potential good practices: 1) use of mutual legal assistance (MLA) requests from foreign jurisdictions to detect foreign

⁵⁴ See [Phase 4 Monitoring Guide](#), which states that Phase 4 evaluations should also reflect good practices and positive achievements which have proved effective in combating foreign bribery and enhancing enforcement.

bribery cases; 2) use of non-financial forms of evidence in investigations; 3) use of Joint Investigation Teams (JITs); and 4) initiatives for establishing the Central Bank Account Registry, Beneficial Ownership Registry, and Contract Registry.

II. Recommendations of the Working Group to the Czech Republic

1. Regarding the detection of foreign bribery, the Working Group recommends that the Czech Republic:
 - a. Increase the priority of detecting foreign bribery through the Anti-Money Laundering system by:
 - i. Providing all entities and professions that have suspicious transactions reporting (STR) obligations with specific typologies and trainings on how the proceeds of bribing foreign public officials are laundered through the different channels, while putting an increased emphasis on non-financial obliged entities, such as those in the real-estate and gambling sectors, tax advisors, and legal professionals,
 - ii. Working together with entities and professions that have STR obligations to ensure that they have effective access to information about politically exposed persons;
 - b. Increase the potential of the tax authority to detect bribe payments by:
 - i. Participating in relevant training activities for this purpose, such as those provided by the OECD,
 - ii. Finding a resource-efficient way to integrate into the objectives of the new multidisciplinary tax unit – KOBRA – the task of detecting and reporting foreign bribery related to tax evasion to the competent authorities;
 - c. Take reasonable and appropriate steps to ensure that the Czech National Bank effectively reports suspicions to the competent authorities suspicions of foreign bribery that it detects in the course of reviewing listed companies' disclosure documents and reports;
 - d. Formalise the new methodology for referring without delay MLA requests that concern foreign bribery committed by a Czech national or company directly to the Supreme Public Prosecutor's Office (SPPO);
 - e. Fully implement without delay Phase 3 Recommendation 10 on whistleblower protections 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 the competent authorities, and conduct awareness-raising on the use of such protections in foreign bribery cases for public and private sector employees; and
 - f. Invest in analytics for the purpose of effectively detecting potential allegations of foreign bribery in Czech and foreign media sources, including appropriate human resources, expertise, foreign-language skills, training and potentially software.

2. Regarding detection and investigation of the foreign bribery offence, the Working Group recommends that the Czech Republic take concrete and appropriate steps to ensure that the newly established National Organised Crime Agency (NOCA):
 - a. gives sufficient priority to detecting and investigating foreign bribery cases; and
 - b. as a matter of urgency has adequate analytical resources for the investigation of foreign bribery cases.
3. Regarding the investigation and prosecution of the foreign bribery offence, the Working Group recommends that the Czech Republic fully implement without delay Phase 3 Recommendation 3, by passing appropriate legislation to increase the independence of prosecutors so that considerations prohibited under Article 5 of the Convention are never taken into account in foreign bribery cases.
4. Regarding sanctions for the foreign bribery offence, the Working Group recommends that the Czech Republic:
 - a. fully implement without delay Phase 3 Recommendation 2(d) to increase confiscation of the proceeds of foreign bribery upon conviction for the offence;
 - b. organise judicial training as a matter of priority to support judges in the complicated task of calculating appropriate penalties in foreign bribery cases; and
 - c. ensure that all judgements concerning foreign bribery are automatically published.
5. Regarding the related offences of money laundering and false accounting, the Working Group recommends that the Czech Republic fully implement without delay:
 - a. Phase 3 Recommendation 6(b) to take appropriate measures to enforce the money laundering offence more effectively in connection with foreign bribery cases, and in particular provide targeted training to the law enforcement authorities; and
 - b. Phase 3 Recommendation 7(a) to ensure that penalties for false accounting are effective, proportionate and dissuasive.
6. Regarding corporate responsibility for foreign bribery, the Working Group strongly recommends that the Czech Republic:
 - a. ensure that the public and internal versions of the SPPO Guide on the application of the new exemption for ‘justly required efforts’ in section 8(5) of the Act on Criminal Liability of Legal Entities (CLLE) are updated regularly to include relevant jurisprudence, and also enhance the internal version of the Guide as a law enforcement tool by adding practical information on how to assess the effectiveness of compliance measures in companies;
 - b. consider further measures to clarify the application of the exemption under section 8(5) of the CLLE; and
 - c. engage closely with the private sector to raise awareness of the exemption for ‘justly required efforts’ in the CLLE and the establishment and implementation of adequate compliance measures to prevent and detect foreign bribery.

III. Follow-up issues

7. The Working Group will follow up the following issues:
 - a. The effectiveness of NOCA in practice in the detection and investigation of foreign bribery cases, and the level of public trust in the institution;
 - b. The use of the new Central Bank Account Registry, Beneficial Ownership Registry, and Contracts Registry, once they are all operational, in foreign bribery investigations;
 - c. Whether the newly streamlined MLA channels combined with the new database for compiling MLA information, once it is operational, enable the Czech Republic to fully implement Phase 3 Recommendation 4 to maintain statistics on the number of formal MLA requests sent and received regarding foreign bribery;
 - d. The sanctions imposed in domestic and foreign bribery cases;
 - e. The application of the CLLE in practice, including in particular, the following new provisions introduced by amendments since Phase 3: 1) the exemption for ‘justly required efforts’ under section 8(5); and 2) section 33a on the possibility to temporarily interrupt a prosecution against a legal person to prevent a financial crisis;
 - f. Whether legislative initiatives similar to those requested by the Chamber of Deputies of the Parliament of the Czech Republic in its resolution of 2 February 2017 are requested again in the future, in particular to assess whether any such initiatives comply with Article 5;
 - g. If the current practice of not using AGPs in foreign bribery cases changes, the transparency of such agreements, including the rationale for using AGPs, the identities of the convicted persons involved and the sanctions and terms imposed; and
 - h. Whether the new analytical resources provided to the public prosecution system are sufficient and used effectively.

ANNEX 1: THE CZECH REPUBLIC'S PHASE 3 RECOMMENDATIONS AND IMPLEMENTATION STATUS AS OF THE 2015 WRITTEN FOLLOW-UP

Recommendations of the Working Group in Phase 3		<i>Status at Written follow-up*</i>
<i>Recommendations for ensuring effective investigation, prosecution and sanctioning of foreign bribery</i>		
1.	a) 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].	<i>Partially implemented</i>
2.	Regarding the investigation and prosecution of foreign bribery, the Working Group recommends that the Czech Republic:	
	a) 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];	<i>Fully implemented</i>
	b) 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];	<i>Partially implemented</i>
	c) 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	<i>Fully implemented</i>
	d) pursue efforts to increase the confiscation of proceeds of crime and apply them in foreign bribery cases where appropriate [Convention, Articles 3 and 5].	<i>Partially implemented</i>
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].	<i>Not implemented</i>
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].	<i>Partially implemented</i>
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	<i>Not implemented</i>

* The right-hand column sets out the findings of the Working Group on Bribery on the Czech Republic's written follow-up report to Phase 3, which was considered in March 2015.

Recommendations of the Working Group in Phase 3		<i>Status at Written follow-up*</i>
	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].	<i>Not implemented</i>
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	<i>Fully implemented</i>
	b) Take appropriate measures to enforce the money laundering offence more effectively in connection with foreign bribery cases [Convention, Article 7].	<i>Partially implemented</i>
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)];	<i>Not implemented</i>
	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)];	<i>Fully implemented</i>
	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	<i>Partially implemented</i>
	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].	<i>Not implemented</i>
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	<i>Partially implemented</i>
	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)].	<i>Not implemented</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	<i>Partially implemented</i>

Recommendations of the Working Group in Phase 3		<i>Status at Written follow-up*</i>
	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)].	<i>Partially implemented</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)].	<i>Partially implemented</i>
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)].	<i>Fully implemented</i>

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 2: LIST OF PARTICIPANTS AT THE PHASE 4 ON-SITE VISIT

From the Czech government, ministries, and other bodies:

- Anti-Corruption Unit of the Office of the Government
- Police Presidium
- Czech National Bank
- CzechInvest
- CzechTrade
- District Public Prosecutor's Office in Brno
- District Public Prosecutor's Office in Prague
- Export Guarantee and Insurance Company
- Financial Analytical Office
- General Financial Directorate
- High Public Prosecutor's Office in Prague
- Metropolitan Court in Prague
- Metropolitan Public Prosecutor's Office in Prague
- Ministry of Defence
- Ministry of Finance
- Ministry of Foreign Affairs
- Ministry of Industry and Trade
- Ministry of Interior
- Ministry of Justice
- National Organised Crime Agency
- Parliamentary Institute
- Regional Court in Prague
- Regional Police Directorates from Central Bohemia, Prague, and Ústí nad Labem
- Regional Public Prosecutor's Office in Plzeň
- Supreme Court's Analytical and Comparative Law Department
- Supreme Public Prosecutor's Office

From the private sector and business associations:

- 4 representatives from Czech business, industry, or sectoral associations
- 4 representatives from the manufacturing and engineering sectors
- 2 representatives from the energy sector
- 1 representatives from the financial sector

From civil society, legal practitioners, compliance, tax and auditing professionals:

- 3 representatives from Czech non-governmental organisations
- 1 representative from academia
- 1 representative from the media
- 9 representatives from the legal and compliance professionals
- 3 representatives from professional tax advisors and Chamber of Tax Advisors
- 3 representatives from the auditing profession

ANNEX 3: LIST OF ABBREVIATIONS AND ACRONYMS

AGP	Agreement on Guilt and Punishment
AML	anti-money laundering
BO	beneficial ownership
CDD	customer due diligence
CLLE	Act No. 418/2011 (Coll.) on Act on Criminal Liability of Legal Entities
CNB	Czech National Bank
CPC	Code of Criminal Procedure
CZK	Czech Republic koruna (currency)
DPPO	District Public Prosecutor's Office
EU	European Union
EUR	Euro
FAU	Financial Analytical Office
FIU	financial intelligence unit
FDI	foreign direct investment
GDP	gross domestic product
HPPO	High Public Prosecutor's Office
JIT	Joint Investigation Team
MFA	Ministry of Foreign Affairs
MLA	mutual legal assistance
MOI	Ministry of the Interior
MOJ	Ministry of Justice
NOCA	National Organised Crime Agency
NRA	National Risk Assessment
OECD	Organisation for Economic Cooperation and Development
PEP	politically exposed person
RPPO	Regional Public Prosecutor's Office
STR	suspicious transaction reporting
SOE	state-owned enterprise
SPP	Supreme Public Prosecutor
SPPO	Supreme Public Prosecutor's Office
UOKFK	Unit for Combating Corruption and Financial Crime
UOOZ	Unit for Combating Organised Crime
WGB	Working Group on Bribery in International Business Transactions

ANNEX 4: LEGISLATIVE PROVISIONS REFERRED TO IN REPORT

Selected Provisions from Act No. 40/2009 Coll., Criminal Code (CC)⁵⁵

Section 332. Bribery

(1) Whoever provides, offers, or promises a bribe 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, to confiscation of property or to a pecuniary penalty, if he/she

a) commits the act referred to in Sub-section (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 334. Common Provisions

(1) A bribe shall be understood as an unauthorised 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 organisation 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.

⁵⁵

The unofficial translations of Czech legislative provisions contained in this Annex were provided by the Czech Republic during the Phase 4 evaluation or in previous WGB evaluations. The Secretariat has excerpted certain provisions but not reviewed or edited the translations.

(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 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 and his/her deputy,
- 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 organisation shall be considered, under the conditions referred to in Sub-section (1) and (2), a public official according to the Criminal Code, if an international treaty provides so or if he/she operates in the territory of the Czech Republic with the consent of the authorities of the Czech Republic; such consent is not required if it concerns an official of the International Criminal Court, International Criminal Tribunal or similar international judicial authority that meets at least one of the conditions stated in Section 145 (1)(a) of the Act on International Judicial Cooperation in Criminal Matters.

Section 68. Extent of Pecuniary Penalty

(1) A pecuniary penalty shall be imposed in daily rates in an amount of at least 20 and at most 730 whole daily rates.

(2) A daily rate shall amount to at least 100 CZK and at most 50 000 CZK.

(3) The number of daily rates shall the court determine with regard to the nature and gravity of the committed criminal offence. The amount of one daily rate shall the court determine with regard to the personal and property circumstances of the offender. Therein shall generally be considered net income the offender has or could have per one day on the average.

(4) Income of an offender, his/her assets and revenues thereof, as well as other data for determination of the amount of a daily rate may be established by an estimation of the court.

(5) The court shall state the count and amount of daily rates in the judgement. If an offender cannot be expected to pay the pecuniary penalty immediately due to his/her personal and property circumstances, the court may stipulate that the pecuniary penalty shall be paid in adequate monthly payments; therein it may provide that the benefit of payments of a pecuniary penalty shall be withdrawn if the offender fails to pay an individual payment on due time.

(6) A pecuniary penalty shall not be imposed if it would be evidently uncollectable.

(7) Collected amounts of pecuniary penalties shall devolve to the state.

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

Selected provisions on Agreements on Guilt and Punishment

Section 175a

[...]

(6) The agreement on the guilt and punishment will contain

- a) identification of the public prosecutor, the accused and aggrieved person, if he was present at the negotiation of the agreement on the guilt and punishment and if he consents with the extent and manner of compensation of damage or non-material harm or the surrender of unjust enrichment.
- b) date and time of its drawing,
- c) description of the act the accused person is being prosecuted for, with stating the time, place and manner of its commission and eventually also other circumstances of its commission so that it could not be confused with any other act,
- d) identification of the criminal offence seen in this act by its statutory name, by stating the relevant statutory provision and all legal attributes, including those that substantiate a specific term of imprisonment,
- e) declaration of the accused person that he has committed the act he is being prosecuted for and that is the subject of the negotiated agreement on the guilt and punishment,
- f) in compliance with the Criminal Code the stipulated type, extent and manner of execution of punishment, including the term of the probation period and in cases provided for by the Criminal Code a substitute penalty, eventually waiver of punishment, and the extent of adequate restrictions and obligations in case the Criminal Code allows it and they were stipulated; when negotiating the agreement on the guilt and punishment, it will be considered whether the accused person gained or tried to gain material profit (Section 39 (7) of the Criminal Code).
- g) the extent and manner of compensation of damage or non-material harm or the surrender of unjust enrichment, if it was stipulated,
- h) protective measure, if its imposition comes into consideration and if it was stipulated,

- i) signature of the public prosecutor, the accused person and defence counsel and signature of the aggrieved person, if he was present at the negotiation of the agreement on the guilt and punishment and whether he consents to the extent and manner of compensation of damage or non-material harm or the surrender of unjust enrichment.

[...].

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.

Section 314q

(1) The court will decide on the petition for approving the agreement on the guilt and punishment in a public session. The presiding judge will summon the accused person to the public session; he will notify the public prosecutor and the defence counsel of the accused person, as well as the aggrieved person, of the time and place of the proceedings. If the aggrieved person has an agent, only this agent will be notified of the public session. The public session is held in the constant presence of the accused person and the public prosecutor.

Selected Provisions from Act No. 418/2011 Coll., on the Liability of Legal Persons and Proceedings against Them

Section 8. Criminal Liability of a Legal Person

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

- a) statutory body or member of the statutory body or other person in a leading position of the legal person entitled to act on behalf of or for the legal person,
- b) a person in a leading position of the legal 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 (thereinafter "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 of the legal person 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 authorisation 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.

(5) If a legal person has made all effort that can be justly required to prevent the commitment of an unlawful act by persons specified in Paragraph 1, such a legal person shall be exempt a criminal liability under Paragraphs 1 to 4.

Section 10. Criminal Liability of a Legal Successor of a Legal Person

(1) Criminal liability of legal person descends to all its legal successors.

(2) If the criminal liability has descended in line with Paragraph 1 to more legal successors of the legal person, the court while deciding on type and terms of punishment or protective measure considers also the size of proceeds, benefits and other advantages of the committed criminal act that have been transferred to every each of them, eventually also in which extent whichever of these continues in the activity related to commitment of the criminal act.

(3) The provisions of the Criminal Code will similarly apply to imposition of accumulative, multiple and joint punishment to a legal successor; if such procedure is not possible due to nature of legal succession or due to other reasons, the court imposes a separate punishment.

(4) The Court will proceed similarly according to Paragraphs 1 to 3 in cases of dissolution of the legal person after the final conclusion of the criminal proceeding.

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, defence 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,
- e) prohibition of activity,
- f) prohibition to perform public contracts or participation in a public contest
- g) prohibition to receive endowments (grants) and subsidies,
- h) publication of a judgement.

(2) For criminal acts committed by a legal person protective measure of seizure of a thing 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.

[...].

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 1000 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 21. Prohibition to Perform Public Contracts or participation in a Public Contest

(1) The court may impose the punishment of prohibition to perform public contracts or participation in a public contest 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, with participation in a tender procedure or with participation in a public contest.

(2) The punishment of prohibition to perform public contracts or participation in a public contest 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.

Section 33a

While considering all relevant facts the prosecutor and during the court hearing the judge may upon a reasonable request of the Czech National Bank suspend criminal prosecution against the legal person, if it is deemed necessary for provision of an effective imposition of a measure for a solution of crisis or a measure of early intervention imposed in accordance with the Act on Recovery Process and Solution of Crisis in Financial Market.

Selected Provisions from Government Regulation 145/2015 (15 June 2015) on measures related to whistleblowing at a service authority [in the public sector]

Section 1. Whistleblower protection

A civil servant who reports suspicion of unlawful conduct of a senior civil servant, a civil servant, another employee or an individual having a civil servant's status pursuant to another legal instrument guiding the civil service, work, or public post or in relation to such individual and whose disclosure was made in line with this Regulation by means regulated by another legal norm (hereinafter only the "whistleblower"), regardless of whether openly or anonymously, shall not be, in relation to this activity, harmed, disadvantaged or otherwise oppressed.

Section 4. Whistleblower confidentiality

The inspector shall keep confidential the name of the whistleblower who requests so in their disclosure. The inspector shall investigate the case so not to disclose the whistleblower's identity.

Selected Provisions from Act No. 93/2009 on auditors

Section 15. Confidential Duty

(1) Unless stipulated otherwise in the present Act or in another piece of legislation, auditors shall keep confidential any facts that do not constitute public domain and that relate to the audited accounting unit, and/or any other facts that do not constitute public domain and that relate to any other accounting units, which they can access in their capacity of the auditors of the group. This duty shall also extend to auditors who no longer work on any such audit, to auditors who have been subjected to a temporary or permanent prohibition of performance of audit activities, or who have otherwise terminated performance of audit activities, and also to persons appointed by the Chamber or by the Council who have or used to have

access to such information, employees of the auditor, and partners as well as members of steering bodies of audit firms.

[...]

(4) The following cases shall not be considered in breach of the confidentiality duty:

[...]

(e) information rendered to the relevant law enforcement authorities concerning facts indicating potential commitment of the offence of bribery;

[...]

Section 21. Rights and Duties of Auditors

[...]

(5) any facts pursuant to subsection 3 or any facts, which can be reasonably deemed to be able to accomplish the state of facts of an economic criminal offence, criminal offences of bribery or criminal offences against property, they shall inform without delay and in writing the authorised representative body as well as the supervisory board of the accounting unit or the local authority of a territorial autonomous unit or of the relevant quarter of the Capital City of Prague if the accounting unit represents a territorial autonomous unit or a quarter of the Capital City of Prague.

[...].

www.oecd.org/corruption/anti-bribery/

