



CZECH REPUBLIC: FOLLOW-UP TO THE PHASE 3 REPORT & RECOMMENDATIONS

MAY 2015

This report, submitted by the Czech Republic provides information on the progress made by the Czech Republic in implementing the recommendations of its Phase 3 report. The OECD Working Group on Bribery's summary of and conclusions to the report were adopted on 13 May 2015.

The Phase 3 report evaluated 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.

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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SUMMARY AND CONCLUSIONS OF THE WORKING GROUP ON BRIBERY

a) Summary of Findings

1. Since the Czech Republic's Phase 3 Report in March 2013, out of 21 separate recommendations, it has fully implemented five, partially implemented ten, and not implemented six. In particular, the Czech Republic still needs to make significant progress on certain key recommendations concerning its legislative and institutional framework for implementing the Anti-Bribery Convention (Convention). As of March 2015, one new foreign bribery case is under investigation and three investigations have been closed. The Czech Republic has still not prosecuted a case of the bribery of foreign public officials; although the Working Group on Bribery (WGB) notes improvements on proactively detecting and investigating cases.

2. The WGB does not consider as fully implemented Recommendation 1 to ensure that if the defence of "effective regret" is re-introduced, it does not apply to the bribery of foreign public officials.¹ When the defence was repealed by the time of Phase 3, the Czech authorities stated that if it were re-introduced, it would only apply to the bribery of domestic public officials, due to overriding policy interests in prosecuting domestic public officials that solicit bribes. A draft Bill for re-introducing the defence does not apply to the foreign bribery offence, but until it is adopted by Parliament, this recommendation will be followed-up by the WGB.

3. Recommendation 2b to proactively detect foreign bribery, including by engaging with the anti-money laundering (AML) authorities, accounting and auditing profession, tax profession and private business, is partially implemented. Although steps have been taken to increase communication with these stakeholders, concrete steps do not appear to have been taken to systematically engage with all of them in the three foreign bribery investigations that have been closed. Moreover, Recommendation 3 to guarantee greater independence of prosecutors so that political considerations cannot be taken into consideration as required by Article 5 of the Convention has not been implemented. New legislation is expected to be adopted to address this recommendation, but at this stage, it is only an intention under the 2013-2014 Anti-Corruption Strategy.

4. The Czech Republic has fully implemented Recommendation 2a to continue to develop a proactive approach regarding the investigations ongoing at the time of Phase 3 and future investigations. Foreign bribery investigations conducted to date have utilised a number of proactive techniques, including cooperation with foreign law enforcement and judicial authorities, search and seizure of premises, witness interrogations, engagement with the financial intelligence unit, and search and seizure of bank and company records. Related recommendations for the purpose of enhancing the effectiveness of foreign bribery enforcement have also been fully implemented. For instance, extensive training has been given to the law enforcement authorities to help them effectively apply the foreign bribery offence to legal persons, including how to assess whether a company has implemented necessary controls to prevent corrupt conduct. In order to enhance the detection of foreign bribery through AML measures, the Czech authorities issued typologies and guidance on laundering the proceeds of foreign bribery and politically exposed persons (PEPs). The Financial Specialist Network, which had been embedded in the Czech police force by the time of Phase 3, directly participates in the execution of measures to enhance the use of financial information in corruption investigations. Furthermore, all public agencies responsible for public contracts

¹ The defence of "effective regret" is the name commonly used for a defence that applies when a briber reports the fact to the law enforcement authorities. In the Czech Republic, before its repeal, the defence applied when a briber that was requested a bribe by a domestic or foreign public official voluntarily reported the fact without delay to the law enforcement authorities.

and other public advantages, such as public procurement contracting and contracting funded by official development assistance, are able to obtain information from the public registry on applicants' criminal records in order to verify that criminal register files submitted by applicants are not forged or falsified.

5. Other important recommendations that have not been fully implemented include 8a and 8b, which address the detection of bribe payments by the tax authorities. Although bribes are expressly non-tax deductible under the law in the Czech Republic, virtually no further steps have been taken since Phase 3 to increase the awareness of the tax authorities and the private sector that bribes to foreign public officials are not tax deductible. In addition, training has not been provided to the tax authorities on how to detect bribe payments that are disguised as allowable expenses in tax returns. Regarding whistleblower protections, a Bill has been drafted to implement the Phase 3 recommendation to adopt appropriate measures to protect public and private sector employees who report suspicions of foreign bribery from retaliation. However, this recommendation cannot be considered fully implemented until the relevant law is adopted by Parliament.

b) Conclusions

6. The WGB concludes that the Czech Republic has fully implemented Recommendations 2a, 2c, 6a, 7b and 11; partially implemented Recommendations 1, 2b, 2d, 4, 6b, 7c, 8a, 9a, 9b, and 10; and not implemented Recommendations 3, 5a, 5b, 7a, 7d and 8b.

7. The WGB invites the Czech Republic to report back in writing within one year on the following partially and unimplemented recommendations: 1, 2b, 3, 7d, 8a and 10. In addition, the Czech Republic is invited to report back in writing at the same time on progress enforcing its foreign bribery offence against natural and legal persons, including the reasons for terminating any investigations or prosecutions.

PHASE 3 EVALUATION OF CZECH REPUBLIC: WRITTEN FOLLOW-UP REPORT

Name of country: Czech Republic

Date of approval of Phase 3 evaluation report: 14 March 2013

Date of information:

CHAPEAU TO RECOMMENDATIONS

Please report in writing on foreign bribery enforcement actions that have occurred since March 2013.

Foreign bribery enforcement actions since March 2013:

Ongoing investigations:

Mostecká uhelná společnost („**Investenergy (Czech Republic)**“) – the investigation is in its final phase. In the meantime two natural persons were accused of corruption in connection with privatization of a share in the business company held by the Czech Republic to a foreign investor. Extensive evidence was gathered, the investigation was extended and the file was supplemented in this respect. In Switzerland the related case has reached final decision. Further, several countries were requested to provide MLA. It is expected that the investigative phase will be finalized during the first half of 2015 and prosecution and trial will follow.

Closed investigations:

In the case of **Czech Fighter Jets (Kenya)** the allegations of criminal activity were very vague and it was not possible to support such allegations with concrete evidence, except for articles in African newspapers that do not mention allegations of corrupt behaviour but possible overestimation of the price of the fighter jets. The fact that a business transaction was planned and that the Czech company was not successful in it and a competing foreign company has been awarded the contract does not generate well-founded suspicion that criminal act was committed and prosecution should commence. Czech law enforcement authorities have not, in the long-term, detected any credible information that could lead to a conclusion that a criminal act was committed in connection to the said business transaction. However, due to the fact that statute of limitation might soon expire, the police authority under the supervision of public prosecutor has taken measures to gather information and facts in the respective matter. Documents and interrogations were gathered and law enforcement authorities in Kenya were requested to assist through international police cooperation. The investigation was suspended in July 2013, as the suspicion of committing any crime has not been proven during the investigation. The case can be re-opened at any time should new facts or information arise. (Deleted from MATRIX in December 2013)

The **Inekon Trams (Philippines)** case seems to be (domestic) passive bribery case that took place in the Philippines. The Czech company was asked to provide a bribe, rejected to do so and did immediately report the misbehaviour of Philippian public officials to respective authorities, including the ambassador of the Czech Republic to Philippines. The Czech law enforcement authorities (police and public prosecution) are aware of the case but so far none of the facts available leads to a conclusion that the Czech company has allegedly committed any bribery offence. The Czech Republic has not received any MLA request from Philippian authorities as yet. (Deleted from MATRIX in December 2013)

Property developers (Turks and Caicos) – The Supreme Public Prosecutor’s Office of the Czech Republic received two requests for mutual legal assistance from judicial authorities of the Turks and Caicos Islands in May 2011 and in March 2012 (requests asked for providing of banking information and hearing of witnesses). Requests for MLA were made by special prosecutor for the Turks and Caicos Islands in connection with the investigation of several crimes including corruption, abuse of public office and money laundering by public officials of these islands and other persons. The requests were handed over for execution to the special Department of Serious Economic and Financial Criminality of the High Public Prosecutor’s Office in Prague. Eurojust arranged several coordination meetings with a participation of several involved states. Public prosecutors from the Czech Republic actively participated in the coordination meetings of Eurojust. The coordination meetings arranged by Eurojust were held in May 2010 and in September 2010 with participation of public prosecutors from the Czech Republic, Slovak Republic, the Netherlands and the United Kingdom. MLA to the Slovak Special Prosecutor’s Office was provided by the Czech Republic in 2009 (bank information and documents). Throughout the execution of the MLA requests no information was found suggesting any persons under Czech jurisdiction committed a criminal act (besides nationals of Turks and Caicos, there were Slovak nationals prosecuted in Slovakia and Turks and Caicos). Eventual criminal liability of the bank J&T, registered in Prague, cannot be established as the alleged criminal activity took place before the Act on Criminal Liability of Legal Persons became effective on 1 January 2012 in the Czech Republic. After the execution of both the requests for MLA from Turks and Caicos, the case was terminated in the Czech Republic (the case was also partially concluded in Turks and Caicos). No other independent criminal proceeding or investigation (besides the execution of MLA for the Turks and Caicos Islands and the Slovak Republic) has been conducted in the Czech Republic.

Ongoing prosecutions:

Steyr-Daimler Puch (Czech Republic) – investigation of a suspicion that an advisor to Czech prime minister, in the course of public tender proceeding to supply Czech army with military/weapon systems, had requested, during negotiations with representatives of a company based in Austria, unlawful payment in total amount of 18 mil. EUR. Joint Investigation Team composed of Austrian and Czech law enforcement authorities (both police and prosecutors) has been established and operating till March 2014. Accordingly, in May 2014 indictment has been filed by a public prosecutor from Department for Serious Financial Criminality of High Prosecutor’s Office in Prague. In November 2013 a decision by a Czech public prosecutor has been made to take over the criminal prosecution from Zentrale Staatsanwaltschaft zur Verfolgung von Wirtschaftsstrafsachen und Korruption in Vienna. The criminal proceeding has been initiated in parallel and co-ordinated both in Austria and the Czech Republic. Currently, the case is heard at the Municipal Court in Prague.

Completed prosecutions: none

PART I: RECOMMENDATIONS FOR ACTION

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

Text of recommendation 1:

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

Action taken as of the date of the follow-up report to implement this recommendation:

Ministry of Justice (Legal Department) has prepared an amendment to Criminal Procedure Code (Section 159c) which shall introduce a new legal institute of non-prosecution of the suspect (deferred investigation/prosecution). Such a concept is thus designed exclusively as a procedural defence and compared to previous concept of effective regret does not include any overlaps into material criminal law. With reference to international obligations under the Anti-bribery Convention the respective drafted wording of Section 159c (Paragraph 3) does not allow for the application of non-prosecution of the suspect in cases of foreign bribery.

Draft language of the amendment to Criminal Procedure Code is the following:

Section 159c

Specific Provision on Interim Deferral from Criminal Proceeding

- (1) The police authority decides upon interim deferral from criminal proceeding against a suspect of a criminal act Scheming in Insolvency Proceeding as to Section 226 Paragraph 2, 4 or 5 of the Criminal Code, Breach of Rules of Competition as to Section 248 Paragraph 1 Letter e), Paragraph 3 or 4 of the Criminal Code, Scheming in Public Tender and Public Procurement as to Section 257 Paragraph 1 Letter b), Paragraph 2 or 3 of the Criminal Code, Scheming in Public Auction as to Section 258 Paragraph 1 Letter b), Paragraph 2 or 3 of the Criminal Code, Active Bribery as to Section 332 of the Criminal Code or Trading in Influence as to Section 333 of the Criminal Code in cases where the suspect provided or offered a bribe, asset or other advantage/benefit just because he/she was asked/requested to do so, and voluntarily and without undue delay reported such act to public prosecutor or police authority, reports to police authority facts that are known to him/her about the criminal activity of the person requesting such bribe, asset or other advantage/benefit, and commits him-/herself to give full and true testimony about this fact throughout the preliminary proceeding as well as throughout the court proceeding.*
- (2) Subsequently, if additional facts arise that exclude the decision on interim deferral from criminal proceeding according to Paragraph 1, or if the suspect breaches his/her commitments, the police authority decides to commence the criminal proceeding.*
- (3) The decision on interim deferral from criminal proceeding as stipulated in Paragraph 1 cannot be taken in cases where the bribe, asset or other advantage/benefit has been provided or offered in connection to a person exercising public authority as stipulated in Section 334 Paragraph 2 Letters a) to c) of the Criminal Code or in Section 334 Paragraph 2 Letter d) of the Criminal Code, if the public official concerned is holding a position at an enterprising legal entity in which foreign state has decisive influence.*

The draft amendment is currently debated in the Government (Governmental Legislative Council) and should be subsequently (if approved) passed to the Parliament for a decision. Both the Ministry of Justice and the Governmental Legislative Council are aware of the Anti-bribery Convention and changes to wording of Section 159c Paragraph 3 are not anticipated.

If no action has been taken to implement recommendation 1, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(a):

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];

Action taken as of the date of the follow-up report to implement this recommendation:

The law enforcement authorities, especially prosecution service and the Police Unit for Combating Corruption and Financial Crime, are well aware of the issue of foreign bribery and continue their proactive approach.

The Department of Serious Economic and Financial Criminality of the Supreme Public Prosecutor's Office is in close contact with both the Departments of Serious Economic and Financial Criminality at High Public Prosecutor's Office in Olomouc and Prague. Besides domestic corruption, the issue of foreign bribery has high priority throughout the prosecution service. Therefore the Supreme Public Prosecutor's Office organized 8 specialized workshops in 2013 and 2014 in connection with the Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the Czech Republic that were focused also on foreign bribery offence and other relevant issues including the Anti-Bribery Convention and criminal liability of legal persons. Two of them were held together with experts from the Office for the Protection of Competition, two of them with experts from the Supreme Audit Office, one of them with experts from Financial Analytic Unit and three with the experts from tax, financial and customs administration.

In fight against corruption the Unit for Combating Corruption and Financial Crime is focused on detection, examination and investigation of corrupt behaviour in connection with the criminal offence of Abuse of Powers of an Official Person or Damage to the Financial Interests of the European Union within the state administration and self-government and possibly the business entities subsidized by hem, subordinate entities and state business entities; within the disposal of state and municipal property and government subsidies; manipulated public procurement in respect of investment including projects financed by the European Union, State Development Funds and also of corrupt behaviour in connection with the administrative acts in the sport area

In the scope of proactive approach against corruption the management of the Unit for Combating Corruption and Financial Crime set following priorities for 2014 - 2015:

1. Tax offences. Close cooperation with financial and customs board, Financial Analytic Unit and

other partners, intensive exchange of information and joint activities (e.g. joint teams).

2. Corruption in public procurement.
3. Search and seizure of proceeds of crime.
4. Increase operational and investigation capacities

Experts from the Unit for Combating Corruption and Financial Crime have participated since 2014 in several working groups such as working group to perform tasks determined in new governmental “Conception of Fight against Organized Crime for 2015 -2017”, which is focused on current tax fraud, criminal offences in connection with public procurement, EU subsidies and issues regarding the seizure of proceeds of crime, the working group to implement the Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union and in departmental and interdepartmental working groups dealing with the Anti-Corruption Strategy of the government for years 2015 and 2017, cooperation between tax administration and law enforcement authorities etc. Moreover experts also participate in network AFCOS (anti-fraud coordination service) on a national level.

If no action has been taken to implement recommendation 2(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(b):

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

(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];

Action taken as of the date of the follow-up report to implement this recommendation:

The law enforcement authorities are aware of the complexity of investigation and prosecution of foreign bribery and they are taking steps to strengthen cooperation between all authorities to combat money laundering and terrorist financing (Financial Analytical Unit) as well as tax and customs authorities (Financial Administration and Customs Administration).

The Police Unit for Combating Corruption and Financial Crime is directly participating in the priority task of the Ministry of Finance of the Czech Republic regarding the introduction of measures to improve efficiency of the collection of taxes and customs duties and ensure proper communication between the tax administration authorities, Customs Administration of the Czech Republic, Financial Analytic Unit, Police and prosecution service. Regarding this issue it is necessary to emphasize that new working group (known as COBRA)² was established on May 27, 2014. „Tax Cobra“ is a joint team consisting of the Unit for Combating Corruption and Financial Crimes, the General Financial Directorate and the General Directorate of Customs. Team members work together to fight tax evasion and tax crimes, especially in the field of value added tax and excise tax.

² for more information see <http://www.danovakobra.cz/tax-cobra.html>

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(c):

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

(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

Action taken as of the date of the follow-up report to implement this recommendation:

In last two years the Judicial Academy held series of training courses for public prosecutors and judges to train them in the matter of criminal liability of legal persons and the issue of compliance programmes has been part of the Academy's curriculum.

The issue of compliance programs was dealt with in workshops focused on the criminal liability of legal persons, corruption risks in public procurement, and criminal bribery offences.

Overview of organized workshops and courses regarding compliance programs in 2013 and 2014:

- Workshop on Public Procurement and Concession (4. - 5. 11. 2013, Brno) - focused on control and financing of municipal budgets and problematic aspects in public procurement. Number of participants: 15
- Three-day conference on the Criminal Procedural Law in practice, let's discuss the current problems (14. - 16.10. 2013, Kroměříž) - one of the outcomes is a paper on Criminal liability of legal persons. Number of participants: 44 (mainly public prosecutors)
- Two-day workshop on the Corruption Risks in Public Procurement; (9. - 10. 6. 2014, Kroměříž) - focused on bribery offences - current findings and development, practical examples. Number of participants: 26

Recognizing the significance of the issue of the evaluation of existing compliance programs, the Judicial Academy will pursue this topic even more deeply and intensively in 2015 and following years.

Planned workshops in 2015:

- Criminal Liability of Legal Persons (17. 3. 2015, Kroměříž);
- Workshop for the regional Court in Prague (8. - 10.4. 2015, Kroměříž);
- Multi-day workshop Serious Economic and Financial Criminality (the first half of 2015);
- Workshop focused on frauds and related issues (24. 6. 2015, Prague).

The topic of compliance programs was also discussed within the scope of the Project to strengthen anti-corruption and anti-money laundering system in the Czech Republic CZ10 – Capacity building and institutional cooperation with the Norwegian public institutions, local and regional authorities. Norway grants 2009 – 2014 Registration number of the grant: NF-CZ10-PDP-1-001-01-2014 (for more information about the project see attached document PDP NF CZ10 or www.cz10.cz).

One of the four outcomes of this project is called: Proposals for improvement of criminal legislation are available in the area of anti-corruption and anti money laundering and capacities of key government institutions to execute enforcement measures are enhanced, experiences of practical implementation are gained from abroad. It consists of 4 specific activities: Workshop on international best practices on criminal liability of legal entities, with the aim to produce specific recommendations for Czech regime created by the new law; Training manual and training of trainers for police, public prosecutors and judges on practical implementation issues including case studies; Concluding workshop on methods of implementing regimes for criminal liability of legal entities for the Czech Republic; Collection of selected workshop lectures as a training tool towards the end of the project, which should summarize the newly acquired information, experience and conclusions.

So far the workshop *The Criminal Liability of Legal Entities* has been realized (28. 1. 2015), Number of participants: 75 (judges, public prosecutors, police and ministerial officers). Currently the Training manual is being prepared by the experts of the Council of Europe.

If no action has been taken to implement recommendation 2(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 2(d):

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

(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].

Action taken as of the date of the follow-up report to implement this recommendation:

Confiscation of proceeds of crime in predicate offences for money laundering is one of the priorities of the law enforcement authorities and this issue is taken due care of. The activities concerning better methods in this area and network of specialized public prosecutors are supported.

The Unit for Combating Corruption and Financial Crime is responsible for the issue of confiscation of proceeds of crime and financial investigations. The Czech practice and methods concerning seizure and confiscation of proceeds of crime was evaluated by the European Union as role model for other countries in the Evaluation Report on the Fifth Round of Mutual Evaluations “Financial Crime and Financial Investigations” on the Czech Republic³. The Council of the European Union highly appreciated the set system of specialization within the financial investigation and the methods of practice. Moreover it emphasized the system of statistic data of confiscated property in criminal proceedings and programs and information systems that are used by the Czech police. The system of training, cooperation between

³ Evaluation Report on the Fifth Round of Mutual Evaluations “ Financial Crime and Financial Investigations” Report on the Czech Republic, Brussels, 3 October 2012 11812/2/12 REV 2 (see attached)

concerned authorities and overall policy were evaluated as successful. The improving activities of law enforcement bodies in the area of search and detection of new trends of committing crimes were also evaluated in positive way.

The improved communication and cooperation between police and public prosecutors concerning seizure of proceeds of crime is considered as very promising, and in some cases the public prosecutors alone (on the basis of facts provided by the police) initiate and perform seizure of proceeds of crime. The significant positive influence in this matter is support of Supreme Prosecutor's Office (specifically by establishing and managing the informal network of the specialized public prosecutors) and the public prosecutors attend regularly the instructive methodical meetings of the management of specialized departments dealing with the financial investigation organized by the Unit for Combating Corruption and Financial Crime.

As to the legislative development, the amendment to the Act No. 279/2003 Coll., on Seizure of Assets and Property Subject to Criminal Proceedings (Chamber of Deputies Print No. 305) has been prepared. This draft amendment was prepared on the basis of task defined in the approved The Anti-Corruption Strategy of the Government for years 2013 and 2014 and the governmental "Concept of Fight against Organized Crime for years 2011 – 2014" and on the basis of best practice in the application. It reflects the outputs of the working group of the experts on security, administration and seizure of property subject to criminal proceedings and it also takes into account the international experience and recommended best practices.

The main aims of the proposed draft can be summarized as follows:

- clearly sets the administration of secured property, increase efficiency and decrease financial burden,
- improvement of the status of victims of crime while securing their proprietary claims in criminal proceedings,
- extension of possibilities of effective security and seizure of property from the person against whom the criminal proceedings is conducted.

The draft of this amendment is currently discussed in the Senate of the Czech Republic.

In the absence of foreign bribery cases the Czech Republic may provide only overall data on money laundering seizure of proceeds of crime which in 2011 was 18 253 968 EUR (93 cases), in 2012 was 32 287 157 EUR (171 cases), in 2013 was 33 982 684 EUR (122 cases) and in 2014 has reached 31 673 882 EUR (186 cases); and on seizure of proceeds of crime in bribery cases which in 2011 was 12 157 287 EUR, in 2012 was 74 386 724 EUR, in 2013 was 68 795 094 EUR and in 2014 has reached its maximum since 2011 by seizing 110 678 211 EUR.

The law enforcement authorities are confident that the current level of knowledge and experience would be used in any foreign bribery investigation and prosecution.

If no action has been taken to implement recommendation 2(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 3:

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].

Action taken as of the date of the follow-up report to implement this recommendation:

The Anti-Corruption Strategy of the government for years 2013 and 2014 includes task No. 1.9 - Introduction of a new Act on Public Prosecution. This new act should: establish an Office to Combat Corruption (specialized body of public prosecution service); strengthen independence of public prosecution and increase accountability of public prosecutors; change the way heads of public prosecution offices are appointed by limiting the length of their appointment; change supervisory powers of superiors within the public prosecution service; change the way and form of issuing binding instructions; and amend distribution of cases to public prosecutors.

The current government is well aware of the issue of independence of public prosecutors and both the relevant documents, Coalition Agreement between the ČSSD and KDU-ČSL Parties and the ANO Movement for the 2013-2017 Electoral Period and the Policy Statement of The Government of The Czech Republic, mention independence of the prosecution service and specialized prosecutorial body to fight corruption and thus make the new bill as described in the Anti-Corruption Strategy a priority of the government in place.

The submission of the new Act on Public Prosecution is planned on June 2015 in the Plan of Legislative Work of the Czech Government for 2015.

If no action has been taken to implement recommendation 3, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4:

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].

Action taken as of the date of the follow-up report to implement this recommendation:

The above mentioned statistics are available in cases dealt with within the Ministry of Justice (court to court MLA and extradition proceedings). In cases of providing MLA during prosecution (between prosecution services of the respective countries) the provision of MLA is highly decentralised, where in cases of MLA between EU Member States such cooperation is provided directly between the respective prosecution offices, the proper method of collection of statistical data is sought for.

However the Ministry of Justice keeps statistics on extradition and the relevant data are as follows:

— 1 case of extradition to Macedonia on the basis of criminal offence of money laundering (2013)

- 2 cases of extradition to USA on the basis of criminal offence of bribery (1 in 2013, 1 is ongoing)
- 1 case of extradition from Venezuela on the basis of criminal offence of Misrepresentation of Data on the State of Economy and Assets (ongoing)

On January 1, 2014 the new Act on Mutual Legal Assistance (No 104/2013 Coll., see attached) has come into force. This Act is a modern legal regulation that reflects all international obligations and standards. In connection with this new act, the Supreme Prosecutor's Office has issued new Instruction of General Nature of Supreme Prosecutor concerning the issue of mutual legal assistance in criminal matters (Instruction No. 10/2013). This internal instruction is binding for prosecution service and above all it includes the obligation for the lower public prosecutor's offices to inform the Supreme Prosecutor about all cases of refusal of mutual legal assistance in the Czech Republic or other state on the grounds that the provision of the mutual legal assistance would be obviously detriment to the sovereignty, security, public order or other protected interest of requested state (article 70 and 94 of Instruction). So far no such case was recorded.

If no action has been taken to implement recommendation 4, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 5(a):

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

(a) With respect to agreements on guilt and punishment, make public, where appropriate and in conformity with the applicable rules, as much information as possible, including on the reasons why the agreement was appropriate, the legal or natural persons convicted, the sanctions agreed, and the terms of the agreement [Convention, Articles 1, 2, 3 and 5]; and

Action taken as of the date of the follow-up report to implement this recommendation:

Some of the procedural decisions are published in the court's databases⁴ including the agreements on guilt and punishment, which are approved by court. Moreover, every court's decision is subject to the Access to Information Act and according to the case law, the pending decision of police authorities, public prosecutors and court shall also be provided to the public upon request.

If no action has been taken to implement recommendation 5(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

⁴ See electronic official panel of justice: infodeska.justice.cz

Text of recommendation 5(b):

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

(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].

Action taken as of the date of the follow-up report to implement this recommendation:

The Police Unit for Combating Corruption and Financial Crime did not investigate any foreign bribery case in 2013 and 2014. The statistical information system is kept by the Police Presidium of the Czech Republic, the Information technologies department. The statistical and record keeping system of delinquency provides data about the number of commenced acts of criminal proceedings to clarify and examine facts that reasonably suggest that criminal offence was committed; and about the manner of termination of the examination or investigation; and about the delinquency and perpetrators.

If no action has been taken to implement recommendation 5(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Recommendations for ensuring effective prevention and detection of foreign bribery

Text of recommendation 6(a):

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

Action taken as of the date of the follow-up report to implement this recommendation:

Financial Analytical Unit is developing and regularly updating money laundering typologies and trends. These typologies include types of money laundering with corruption as the predicate offence. Financial Analytical Unit provides obliged persons and other interested subjects with training seminars which include typologies and trends in money laundering, signs of suspicion, legislature and exercise of international sanctions. Currently the introduction of statistics of these seminars is being prepared.

Besides regular training seminars on typologies the FAU provides also specific feedback to individual cases on both formal and working level.

Czech National Bank (in cooperation with Financial Analytical Unit) issued guidance on the approach of financial institutions to higher risk countries. The guidance summarizes and explains legal requirements in AML Act and in the AML Decree, stressing that:

- Financial institutions themselves have to assess the riskiness of foreign jurisdictions. The country lists provided by the Ministry of Finance or the FATF can support the financial

institution's own assessment but cannot replace it.

- If a financial institution encounters a transaction in which the client comes from the higher risk country or the money or goods go to such a country, then there is an increased risk of ML or TF. The financial institution must then act in the same way as in any other increased risk situation. If (based on the customer due diligence) the institution concludes that a transaction is suspicious, it must file the suspicious transaction report and (if applicable), suspend the transaction or reject the transaction (if conditions of Art 15 of the AML Act are met).

The guidance is published on the web page of the Czech National Bank, in the form of Questions and Answers.

If no action has been taken to implement recommendation 6(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 6(b):

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

(b) Take appropriate measures to enforce the money laundering offence more effectively in connection with foreign bribery cases [Convention, Article 7].

Action taken as of the date of the follow-up report to implement this recommendation:

Possibilities of more effective enforcement of money laundering and bribery offences are considered within the Ministry of Justice, the Ministry of the Interior as well as within the Supreme Public Prosecutor's Office and the Unit for Combating Corruption and Financial Crime.

Overall statistics regarding money laundering held by Financial Analytical Unit may suggest increasing efficiency:

year	Suspicious Transactions Reports	reported to law-enforcement authorities
2011	1970	256 (13%)
2012	2191	429 (19,6%)
2013	2721	547 (20,1%)
2014	3192	680 (21,3%)

In the last two years the Judicial Academy held series of training courses dealing with the money laundering.

Overview of organized workshops and courses regarding the money laundering in 2013 and 2014:

- Weeklong workshop on Financial Investigation and Money Laundering, (4. – 8. 11. 2013, Holešov) - focused on undefined legal terms, the sequence of applying sanctions, proceeds and financial investigations, substantive and procedural conditions of seizing of proceeds of crime, practice, money laundering case study; Number of participants: workshop primarily for Police,

however 4 public prosecutors also participated.

- Workshop on Interrogation (16. 1. 2014, Prague) - focused on the interrogation of a witness, accused person and collaborating accused person in connection with the organized crime. Number of participants: 46
- Workshop on Property Delinquency (5. 2. 2014, Prague) - focused on typical forms of internet frauds etc. Number of participants: 29
- Workshop on Code of Criminal Procedure (4. 3. 2014, Prague) - number of participants: 70
- Workshop on Seizure and Confiscation of Proceeds of Crime (24. 3. 2014, Prague) - focused on seizure and confiscation of proceeds of crime in the view of the Unit for Combating Corruption and Financial Crime (search and seizure of the evidence; current topics of Police regarding this issue, practical examples and best practices; seizure of proceeds of tax crimes; administration of the secured property). Number of participants: 44

Moreover, the second outcome of above mentioned Project to strengthen anti-corruption and anti-money laundering system in the Czech Republic CZ10 is defined as: *Risks and threats pertaining to corruption and related offences (esp. money laundering) in the Czech Republic*. Within this topic the first workshop was realized.

- Workshop "Risks and threats in the area of corruption and money laundering", (2. 10. 2014, Prague) - Two areas with currently the highest potential risk of corruption in the Czech Republic were detected. These are the transparency of beneficial ownership of legal entities and related topic of registers of beneficial owners and also the issue of conflict of interests. The results of this workshop were the basis for assignment of two complex studies within those detected risk areas. Both studies should be finalised by the end of February 2015 and will be presented on a separate conference together with recommendations on how to improve the situation in the Czech Republic. Raising the public awareness of the results of studies should be ensured by other planned activities of this project in 2015, for example by the preparation of complex communication strategy and its publication. Number of participants: 27 (national experts and 2 experts of Council of Europe)

If no action has been taken to implement recommendation 6(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(a):

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)];

Action taken as of the date of the follow-up report to implement this recommendation:

This issue is covered by elaborate methodical system of non-criminal competence of prosecution service including the Instruction of General Nature of Supreme Prosecutor and methodical explanatory opinion, especially concerning the action for dissolution of a business corporation submitted in 2013 (subject to article 68 paragraph 6 of the Act No. 513/1991 Coll., Commercial Code) and in 2014 (subject to article 93 of the Act No. 90/2012 Coll., on Business Corporation).

Regional Public Prosecutor's Offices with locus standi submitted 487 actions in 2013 and 266 actions in 2014. The actions were submitted on the grounds received from the proceedings in the Commercial Court in charge of the Commercial Register and public prosecution is entitled to enter into this proceedings or from the criminal proceedings in which was ascertained that company concerned is fictitious company with a person acting as a statutory body, who is a "strawperson" to commit crime offence and hide the real perpetrator. Such legal persons are frequently used for money laundering etc. The legalized competence of prosecution service to submit an action for dissolution of a business corporation, which is handled by specialized public prosecutors, allows direct usage of facts arisen from criminal proceedings that no other authority has at disposal. The prosecution service significantly contributes by using this type of action to eliminate this instrument for serious crimes.

If no action has been taken to implement recommendation 7(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(b):

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

(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)];

Action taken as of the date of the follow-up report to implement this recommendation:

This issue is covered by the binding Instrument of Police President No. 174/2011, which emphasizes importance of financial investigation during investigation of corruption offences. The article 4 paragraph 3 letter b) states that "*Complex financial investigation is conducted particularly during investigation of corruption offences.*"⁵

⁵ The Order of the Director of the UOKFK No. 10 of January 2011 (see paragraph 79 of the CZ P3 Report).

The Unit for Combating Corruption and Financial Crime is responsible for the issue and financial investigation is used as indirect evidence.

The Unit for Combating Corruption and Financial Crime is also directly participating in the execution of a priority of the Ministry of Finance of the Czech Republic regarding the introduction of measures to improve efficiency of the collection of taxes and customs duties and ensure proper communication between the tax administration authorities, Customs Administration of the Czech republic, Financial Analytic Unit, Police and prosecutor service. Regarding this issue it is necessary to emphasize that new working group (known as COBRA) was established. (see recommendation 2 (b).

If no action has been taken to implement recommendation 7(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(c):

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

(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

Action taken as of the date of the follow-up report to implement this recommendation:

Accounting and auditing professionals are regularly trained in detection of indications of acts of any bribery offence and reporting obligations of crimes are clearly stated in law.

Accounting and auditing professionals have three obligations arising from law regarding this issue:

- According to section 367 of the Criminal Code they are obliged to thwart crimes therein enlisted; the crimes of accepting a bribe (sec. 331) and bribery (sec. 332) are included in the list.
- According to section 368 of the Criminal Code they are obliged to report crimes therein enlisted; the crimes of accepting a bribe (sec. 331) and bribery (sec. 332) are included in the list.
- Tax advisors and auditors are obliged entities according to section 2 of Act No. 253/2008 Coll., on selected measures against legalization of proceeds of crime and financing of terrorism; Thus they are bound by obligations according to this Act, among others by an obligation to report suspicious transactions.

In all three above mentioned cases the secrecy obligation of tax advisors (see sec. 6 par. 9 of Act No. 523/1992 Coll., on tax advisors and Czech Tax Advisors Chamber) and auditors (see sec. 15 par. 4 (h) of Act. No. 93/2009, on auditors) does not apply.

The Czech Tax Advisors Chamber and Auditors Chamber organize regular trainings for tax advisors and auditors on obligations in mentioned areas. Training by members of Financial Analytical Unit, by public prosecutors and judges are organized as well. The chambers also publish legal standpoints on these

issues. Lastly, the chambers hold disciplinary powers over tax advisors and auditors.

Moreover, this issue is clearly covered and explained by the professional bodies and experts.

Following overview covers relevant opinions of professional bodies:

Zahálková H. (2000; 2002) *Opinion on Lifting Secrecy of Tax Advisors*. Chamber of Tax Advisors of the Czech Republic.

Trubač O. (2013) *Opinion on obligation of Tax Advisors and Chamber of Tax Advisors of the Czech Republic in fight against Money Laundering*. Chamber of Tax Advisors of the Czech Republic.

Relevant articles:

Šefl, V. (2012) *Criminal Liability of a Tax Advisor*. Daňový expert (Tax Expert) 2012/1.

Kroupa, J. (2013) *Current Legislative Developments in Confidentiality in Tax Matters*. Veřejná správa (Public Administration) 2013/1.

Kuchta, J. & Púry, F. (2013) *Some Remarks on Financial Criminality in the Czech Republic*. Časopis pro právní vědu a praxi (Journal of Jurisprudence and Legal Practice) 2013/2.

Molín, J. (2014) *Comparison of Confidentiality Principle of Auditors and Tax Advisors – Part 1*. Daňový expert (Tax Expert) 2014/2.

Molín, J. (2014) *Comparison of Confidentiality Principle of Auditors and Tax Advisors – Part 2*. Daňový expert (Tax Expert) 2014/3.

Molín, J. (2014) *Duties of an Auditor in Detection of Corrupt Behavior*. Auditor 2014/5.

Hula, J. (2014). *Role of Auditor in Detecting Fraud*. Účetnictví (Accounting) 2014/8.

Relevant books:

Králíček, V. & Molín, J. (2014) *Internal and External Control from the Management Perspective*. Wolters Kluwer; ISBN: 978-80-7478-557-3.

Volkánová, Z. (2014) *Fraud in Corporate Accounting – How to Combat Them*. Linde Praha; ISBN: 978-80-7201-945-8.

If no action has been taken to implement recommendation 7(c), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 7(d):

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

(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].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 7(d), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Translation of the Good Practice Guidance on Internal Controls, Ethics and Compliance has been completed and it will be made public and sent to relevant stakeholders during the second quarter of 2015.

Text of recommendation 8(a):

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

Action taken as of the date of the follow-up report to implement this recommendation:

Act No. 586/1992 Coll., on Income Taxes, explicitly disallows tax deductibility of bribes in its Section 25 Paragraph 1 Letter zf) since 2001:

“For tax purposes, the following expenses, in particular, may not be recognized as expenses (costs) incurred to reach, secure and maintain income zf) benefits provided to a foreign government official or a foreign public official, or with their consent to another person in connection with the execution of their function, not even where it is an officer of a State or a public official acting in a State in which the provision of such benefits is tolerated or is not deemed to be a criminal offence or is usual.”

If no action has been taken to implement recommendation 8(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 8(b):

8. With respect to tax-related measures, the Working Group recommends that the Czech Republic:

(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)].

Action taken as of the date of the follow-up report to implement this recommendation:

As far as Tax Administration is concerned, the tax officers have at their disposal a (methodical) tool for detecting bribes which was developed on the basis of the OECD Bribery Awareness Handbook for Tax Examiners. Both these instruments are available on the intranet of the Czech Tax Administration.

The issue of detecting bribery through tax audit is also part of introductory training of tax officers. See also rec. 2 b) on Team COBRA.

The issue of corruption and fraud is also a regular topic for various courses within the Judicial Academy curriculum. Apart from the already mentioned workshops in 2013 and 2014 following were also carried out:

- Workshop on Fraudulent behaviour (28. 2. 2013, Prague) - focused on current trends in insurance frauds; practical issues of judges in cases regarding property; fraudulent behaviour on the internet portals. Number of participants: 29
- Three-day workshop on Economic and Financial Criminality (28. – 30. 4. Kroměříž) - focused on various forms of tax evasions and case law of the Court of Justice of the European Union. Number of participants: 31

The Ministry of Justice and the Judicial Academy are currently discussing possibilities how to involve more personnel of Tax Administration in these trainings.

If no action has been taken to implement recommendation 8(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(a):

9. Regarding awareness-raising, the Working Group recommends that the Czech Republic:

(a) Take urgent steps to raise awareness and provide training to Czech public officials on the foreign bribery offence and their role in reaching out to the business community, in particular in institutions well-positioned to reach out to the business community, such as the Ministry of Foreign Affairs, the Ministry of Industry and Trade, and the Czech trade promotion agencies [2009 Recommendation III.(i)]; and

Action taken as of the date of the follow-up report to implement this recommendation:

In its Strategy on fighting corruption for years 2013 – 2014 the Government undertook to adopt internal anti-corruption programs in art. 6.2. In its resolution No. 331 from 9th May 2012 it also introduced an obligation for all administrative bodies to adopt an ethical code which includes fight against corruption. Thus all administrative bodies have included such a code into their internal regulations and all

employees are instructed in this matter. Furthermore any official is obliged to report without delay any offer or gain of unjust advantage.

Diplomats, employees of the Ministry of Foreign Affairs and also other officials are trained regularly by the Diplomatic Academy in fight against corruption in the state administration. The specialized workshop is carried out every year and the lecturer comes from the Transparency International. The issue of foreign bribery is included generally in the curriculum. However, since 2015 information on the bribery of foreign officials has been added and the next workshop is planned in autumn 2015 with participation of the Ministry of Justice.

Moreover, in cooperation with the CzechTrade Agency the curriculum of the Business Academy for obligatory preliminary seminars for commercial counsellors was updated and the issue of bribery of foreign officials is included. First seminar on this topic will be carried out on March 17, 2015.

In the curriculum of the Judicial Academy the recommendation 9 (a) was taken into account and following workshops were carried out:

- Two-day workshop on Serious Economic and Financial Criminality, (23. - 24. 4. 2013, Kroměříž); Number of participants: 34
- Two-day international workshop on Organized Crime (6. - 7. 5. 2013, Kroměříž);
 1. focused on specific provisions regarding the organized crime, persons collaborating with justice, mafia and politics, organized criminal groups of mafia-type in Italy, preventative measures etc. Lecturers were justice experts from Italy, the Slovak Republic and the Czech Republic. Number of participants: 39
- Workshop on Crime of Persons in Authority (28. 5. 2014, Prague).
 2. focused on criminal offences that may be committed by the persons in authority, active and passive bribery, practical examples, money laundering in connection with bribery – issue of offshore companies etc. Number of participants: 29

If no action has been taken to implement recommendation 9(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 9(b):

9. Regarding awareness-raising, the Working Group recommends that the Czech Republic:

(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)].

Action taken as of the date of the follow-up report to implement this recommendation:

If no action has been taken to implement recommendation 9(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

In cooperation with the CzechTrade Agency it was agreed that training and information available to exporting entities will be extended to address Recommendation 9b) throughout 2015.

Ways to effectively raise awareness of foreign bribery within Czech investors active abroad and exporters is under consideration.

Text of recommendation 10:

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.(ii)].

Action taken as of the date of the follow-up report to implement this recommendation:

The Anti-Corruption Strategy of the government for years 2013 and 2014 includes task No. 1.5 - Protection of Whistleblowers. A bill has been prepared along the lines as described in the P3 Report, Paragraph 161, but the Government did not decide over the bill. However, the Coalition Agreement between the ČSSD and KDU-ČSL Parties and the ANO Movement for the 2013-2017 Electoral Period refers to the issue of protection of whistleblowers; therefore, it is envisaged that the current government will decide on the issue as soon as possible.

In its Strategy on fighting corruption for years 2013 – 2014 the Government undertook to adopt internal anti-corruption programs in art. 6.2. In its resolution No. 331 from 9th May 2012 it also introduced an obligation for all administrative bodies to adopt an ethical code which includes fight against corruption. Thus all administrative bodies have included such a code into their internal regulations and all employees are instructed in this matter. Furthermore any official is obliged to report without delay any offer or gain of unjust advantage.

Text of art. 7 of model Ethical Code:

(4) An official or public service employee is obliged to report any corrupt behavior or suspicion thereof, which the official or public service employee learned in a reliable manner, to his superior or to a law enforcement authority. Furthermore the official or public service employee are obliged to report any

offer or gain of undue advantage.

In its programme the Government undertook to adopt a legislative solution of whistleblowers protection. Relating to the governmental programme the Government approved the Governmental policy on fighting corruption during years 2015 – 2017 in its resolution No. 1057 from 15th December 2014. This task is further analysed in the Action plan on fighting corruption in 2015. Therefore, in 2015 the legislative solution itself must be preceded by a consistent analysis of the issue supported by the collection of the relevant data, consultations and expert discussions which will lead to the finding of optimal model of whistleblowing and whistleblowers protection in Czech legal order. An eLearning course concerning whistleblowing will be developed for the employees of state administration.

Non-legislative anti-corruption provisions	Responsibility/Co-responsibility
Questionnaire survey concerning the issue of whistleblowers among the employees of state administration	Minister for Human Rights, Equal Opportunities and Legislation
Preparation of an eLearning course concerning whistleblowing	Minister for Human Rights, Equal Opportunities and Legislation
Analysis of possibilities of establishing a centre for whistleblowers	Ministry of Finance / Minister for Human Rights, Equal Opportunities and Legislation
Symposium summarizing information and experience obtained in the course of realization of the Program CZ10	Ministry of Finance/ Minister for Human Rights, Equal Opportunities and Legislation
Stipulation of mechanism for whistleblowing in state administration/civil service	Ministry of the Interior/ Minister for Human Rights, Equal Opportunities and Legislation
Proposal of alternatives of a legislative solution of whistleblowers protection	Minister for Human Rights, Equal Opportunities and Legislation
Sector analysis focused on the issue of manipulation of the match results and related corruption in the world of sports	Ministry of the Interior

The Act No. 234/2014 Coll., on State Service, which has come into force in 1st January 2015 also deals with the protection of whistleblowers, namely in sec. 205 d) of the delegating provisions.

Section 205

The delegating provisions

The Government will determine by governmental decree

d) the rules concerning the protection of civil service employees who have reported a suspicion of committing illegal conduct of superior or other civil service employee, other employee or a person in civil service according to a different legal act, and determine suitable measures to protect the whistleblowers; particularly define conditions for providing a right of a whistleblower to conceal his identity, for organizational securing whistleblowing made anonymously by state employee, for notification of the course and results of the investigation of whistleblower report and time to investigate.

Although Section 205 comes into force on 1st July 2015, the above mentioned governmental decree

stipulating such rules is currently discussed at the working committee of the Chairman of Governmental Council for coordination of fight against corruption dealing with whistleblowing. In the course of implementation of the Act on Civil Service the mechanism for whistleblowing in administration authority or civil service will be defined. As a result of above mentioned steps a bill containing a legislative solution of whistleblowers protection representing effective help in detecting corruption in state administration will be introduced. Last but not least, it will reflect positions and analysis of non-profit sector, the professional public and social partners. Therefore, all the relevant subjects will be represented in the Committee dealing with whistleblowing.

Moreover, the Project to strengthen anti-corruption and anti-money laundering system in the Czech Republic CZ10, which has already been mentioned several times, includes topic of "Proposal to improve whistleblowers protection". The first activity within this topic was carried out on December 8, 2014 in Prague.

5. Workshop „Announcement of misconduct and protection of whistleblowers“ (8. 12. 2014, Prague) Number of participants: 73 experts coming from state administration, academics, Police and non-profit organisations

Within the frame of other activities connected with this issue, an analysis of possibilities to establish a centre for whistleblowers will be created and a symposium summarizing information and experience obtained in the course of realization of the Program will be published.

If no action has been taken to implement recommendation 10, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 11:

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)].

Action taken as of the date of the follow-up report to implement this recommendation:

All public agencies granting public advantages are entitled to approach the public registry of debarred entities, which is administered by the Ministry of Regional Development, and to require a copy of criminal record for natural and legal persons when granting such public advantages. All punishments including prohibition of activity for natural persons and debarment for legal persons are recorded in the Criminal Registry.

If no action has been taken to implement recommendation 11, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

PART II: ISSUES FOR FOLLOW-UP BY THE WORKING GROUP

Text of issue for follow-up:

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”;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In the absence of foreign bribery cases there is nothing to report so far.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

(b) The application of the Czech foreign bribery offence to ensure that perpetrators who pay bribes through intermediaries are held liable;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In the absence of foreign bribery cases there is nothing to report so far.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

(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;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In the absence of foreign bribery cases there is nothing to report so far.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

(d) The proposal to re-instate the defence of effective regret, to ensure that it is not applicable in foreign bribery cases;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

See reply to Recommendation 1 above.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

(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;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

The Act on Liability of Legal Persons came into force on January 1, 2012. In the view of the application issues the Supreme Public Prosecutor responded with the amendment of Instruction of General Nature of Supreme Public Prosecutor concerning the issue of criminal proceedings, which is binding for all public prosecutors.

As to the statistical data in 2012-2014 there were 251 legal persons accused in total (22 in 2012, 61 in 2013 and 168 in 2014); in the same period there were in total 83 indictments submitted and 70 court decisions issued (judgments, criminal orders, conditional discontinuances of criminal prosecution and approved agreements on guilt and punishment) predominantly the penal sanctions affecting possession or confiscation (pecuniary punishment and confiscation). However, sanction of Publication of Judgment and Dissolution of a business corporation were also imposed. The criminal prosecution concerning bribery offences, Scheming to defraud in public tender, and Misrepresentation of data on the state of economy and assets constitute approximately a third of all accusations of legal persons, which indicates the high importance of this issue. For example, the biggest Czech building company is prosecuted for suspicion of committing a bribery offence and scheming to defraud in public tender; in another case the Czech Post, the biggest state owned post company is prosecuted, which proves that the Act on Criminal Liability of Legal Persons is applicable also on entities owned or controlled by state.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

(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”;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

As it was mentioned in previous recommendation, the biggest Czech building company is prosecuted for suspicion of committing a bribery offence and scheming to defraud in public tender, in another case the Czech Post, the biggest state owned post company is prosecuted, which proves that the Act on Criminal Liability of Legal Persons is applicable also to entities owned or controlled by the state. There is no case in which the court would take into consideration that legal person has strategic or hardly replaceable significance for the national economy (article 14 paragraph 1 of the Act on Criminal Liability of Legal Persons). Currently the amendment of the Act on Criminal Liability of Legal Persons is discussed to extend the list of possible criminal offences for legal persons (article 7 of the Act on Criminal Liability of Legal Persons). The list shall be based on opposite principle than nowadays and instead of positive list of offences that legal person may commit, legal person will be able to commit all offences except for a few listed.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

(g) The use of agreements on guilt and punishment in foreign bribery cases;

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

In the absence of foreign bribery cases there is nothing to report so far.

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

(h) Whether the Czech Republic can fully provide mutual legal assistance in foreign bribery cases; and

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

See also answer to Recommendation 4 above.

Judicial Academy is intensively engaged in providing training to judges and public prosecutors regarding the issue of MLA following the adoption of the new MLA Law (No. 104/2013 Coll.):

6. 4 two-day courses on the new MLA Law (18. – 19. 9. 2013, Prague; 21. – 22. 10. 2013, Prague; 9. – 10. 12. 2013, Kroměříž; and 11. – 12. 12. r 2013, Kroměříž); Number of participants: 390
7. one-day course on MLA is available for all regional courts and this training focuses mainly on jurisdiction of regional and district courts acting under the new MLA Law (for example on 3 April 2014 such training was provided to judges of the Regional Court in Hradec Králové and district courts under its jurisdiction).

Text of issue for follow-up:

12. The Working Group will follow-up the issues below as case law and practice develops:

- (i) The enforcement of money laundering offences predicated on foreign bribery.

With regard to the issue identified above, describe any new case law, legislative, administrative, doctrinal or other relevant developments since the adoption of the report. Please provide relevant statistics as appropriate:

No such case has been detected so far. However, making enforcement of money laundering offences (including those predicated on foreign bribery) more efficient is one of the priorities of public prosecution service. Amendment of Rules of Public Prosecution has been adopted, effective as of 24 January 2014, which introduced the obligation for specialized Departments of Serious Economic and Financial Criminality at High Public Prosecution Offices to act in cases of intentional and unintentional money laundering offences if these were predicated by any offence in their jurisdiction. This provision is to be fully applied in all future foreign bribery cases.