



DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS

CZECH REPUBLIC: PHASE 2

**REPORT ON THE APPLICATION OF THE CONVENTION ON
COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN
INTERNATIONAL BUSINESS TRANSACTIONS
AND THE 1997 RECOMMENDATION ON COMBATING
BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 27 October 2006.

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EXECUTIVE SUMMARY

The Phase 2 Report on the Czech Republic by the Working Group on Bribery evaluates the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in the Czech Republic. Overall the Working Group finds that the Czech Republic has made efforts to implement the Convention. Nevertheless, the Group remains deeply concerned about the continuing lack of liability of legal persons for foreign bribery in the Czech Republic. In addition, some areas could be strengthened, as recommended by the Group, such as raising public awareness of the Convention.

The Report recalls that a team of experts was scheduled to visit Prague in October 2005 as part of the exercise, but the Czech Republic postponed the visit at the eleventh hour. The visit was eventually rescheduled for May 2006, but the postponement nonetheless raised doubts at the time about the Czech Republic's commitment to implement the Convention. As well, other Phase 2 evaluations had to be postponed in turn, thus affecting the Working Group's ability to monitor the implementation of the Convention in other countries.

The Report notes that the Czech Republic does not impose liability against legal persons for criminal offences, including bribery of foreign public officials as required by the Convention. Accordingly, the Group strongly recommends that the Czech Republic establish such liability for foreign bribery without delay and put in place sanctions that are effective, proportionate and dissuasive. The Group further expects the Czech Republic, within 12 months, to report specifically in writing on the progress of this issue. Finally, there are also concerns that the prosecution of foreign bribery may be influenced by factors such as national economic interest, the potential effect on relations with another state and the identity of the persons involved. The Group will thus monitor this issue as cases develop.

The Report further observes that the Czech Republic has engaged in activities to raise public awareness of corruption generally, but relatively few of these activities specifically mention foreign bribery or the Convention. Consequently, the awareness of foreign bribery and the Convention in the Czech Republic is low and Czech businesses appear unconcerned about these matters. The Working Group therefore recommends that the Czech Republic raise the profile of foreign bribery in its anti-corruption efforts. These activities should specifically target Czech individuals and companies that operate internationally, as well as entities involved in official development assistance, taxation, accounting and auditing.

The Report also highlights a number of positive aspects in the Czech Republic's fight against foreign bribery. The Export Guarantee and Insurance Corporation has devoted significant attention to raising awareness of foreign bribery and the Convention among its clients. The Czech Republic has adopted legislation that expressly denies tax deduction of foreign bribe payments. Recent amendments to the Criminal Code extends a court's power to forfeit or confiscate assets belonging to beneficial owners, as well as assets of equivalent value if forfeiture or confiscation of the original asset is frustrated.

The Report, which details the findings of experts from Iceland and Slovenia, was adopted by the OECD Working Group along with recommendations. Within one year of the Group's approval of the Phase 2 Report, the Czech Republic will report to the Working Group on the steps that it will have taken or plans to take to implement the Working Group's recommendations, with a further report in writing within two years. The Report is based on the laws, regulations and other materials supplied by the Czech Republic, and information obtained by the evaluation team during its on-site visit to Prague, Czech Republic. During the five-day on-site visit in May 2006, the evaluation team met with representatives of several Czech government agencies, the private sector and civil society. A list of these bodies is set out in Annex 1 to the Report.

A. INTRODUCTION

1. *The On-Site Visit*

(a) *The On-Site Visit in May 2006*

1. From 22 to 26 May 2006, a team from the OECD Working Group on Bribery in International Business Transactions (WGB) visited Prague in the Czech Republic, as part of the Phase 2 self- and mutual evaluation of the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) and the 1997 Revised Recommendation (Revised Recommendation). The purpose of the visit was to examine structures in the Czech Republic for enforcing the laws and rules which implement these OECD instruments, and to assess their application in practice.

2. The Czech authorities co-operated with the examination team during the examination process. Prior to the visit, the Czech Republic responded to the Phase 2 Questionnaire and a supplemental questionnaire. It also provided relevant legislation and case law. The examination team analysed these materials and conducted independent research to obtain additional points of view. During the visit, the examination team met representatives of the public and private sectors and civil society.¹ Unfortunately, the Czech media and members of Parliament declined invitations to participate. Following the visit, the Czech authorities continued to provide additional information.

3. The examination team expresses its appreciation of the efforts of the Czech authorities during the examination process.

(b) *Postponement of the On-Site Visit in October 2005*

4. The on-site visit to Prague was originally scheduled for 10-14 October 2005. These dates were set in February 2005 with the agreement of the Czech Republic and the examining countries (Iceland and Slovenia). Unfortunately, the preparations for the visit did not go according to plan. Leading up to the visit, the OECD Secretariat experienced much difficulty in contacting the Czech authorities. The Czech authorities also failed to provide a complete response to the Phase 2 questionnaires. On 5 October 2005, they informed the Secretariat that they would confirm the draft agenda and logistics of the visit soon. Yet, on 7 October 2005 - the last business day before the scheduled visit - the Czech authorities informed the Secretariat that they could not guarantee a successful on-site visit. They had ostensibly just received information that certain important bodies and organisations probably would not participate in the meetings. At the request of the Czech authorities, the visit was postponed.

5. The WGB discussed these troubling developments during its meeting on 18-20 October 2005. Members expressed serious concern over the unprecedented, eleventh-hour postponement. The Chairman of the WGB wrote to the Czech Minister of Justice in late October to express these concerns. On 24 January 2006, the Minister replied that the postponement was due to serious and unforeseen problems in ensuring the participation of important institutions concerned with the implementation of the OECD Convention. He undertook to reschedule the on-site visit for May 2006 and offered to compensate for the expenses resulting from the postponement.

6. The WGB thanks the Minister for his explanation. It also appreciates the efforts of the Czech authorities to reschedule the on-site visit reasonably quickly. Nevertheless, the inability of the Czech Republic to host the on-site visit as scheduled raised doubts at the time about its commitment to implement

¹ See Annex 1 for a list of participants.

the Convention. The postponement and rescheduling also delayed other Phase 2 examinations and inconvenienced the examined and examining countries concerned. Most importantly, these consequent postponements affected the ability of the WGB to monitor the implementation of the Convention in other countries. The postponement by the Czech authorities was thus extremely grave and regrettable.

2. General Observations

(a) Economic System

7. As of 31 December 2005, the Czech Republic had a population of approximately 10.25 million. Prague is by far the largest city, with over 11% of the country's population. The country borders Austria, Germany, Poland and Slovakia.² The Czech economy is relatively small compared to other OECD countries. As of 2004, the total and per capita gross domestic product (GDP) of the Czech Republic ranked 21st and 25th respectively among the 30 OECD countries.³ Since the economic transition in the 1990s, the share of industry and agriculture in GDP has fallen sharply while that of services has steadily increased.⁴

8. The volume of international trade involving the Czech Republic in 2005 was in the bottom third among OECD countries. Germany was by far the main trading partner, accounting for approximately one third of imports and exports. The other major trading partners were in Western and Central Europe, with the exception of China and Russia.⁵

9. The Czech Republic has made very little outward foreign direct investment (FDI) compared to other OECD countries. The top three destinations (Slovakia, Poland and Hungary) account for over 30% of the total. On the other hand, FDI inflows into the Czech Republic (as a percentage of GDP) were among the world's highest in 1999-2001. Inward investment is still increasing and comes mainly from Western Europe and the United States in manufacturing, trade and repairs, and financial activities.⁶

10. Small and medium-sized enterprises (SMEs) play a fairly significant role in the Czech economy. In 2001, SMEs employed 60% of the working population in the Czech Republic and accounted for 52% of GDP, 37% of exports and 47% of imports.⁷ Many SMEs are involved in the Czech arms industry, focusing mostly on small and light weapons. Valued at USD 90 million (approx. EUR 70 million) per year, the Czech arms trade is not insignificant but it is much smaller than that of the world's major arms exporters.⁸

(b) Political and Legal System

11. The Czech Republic is a parliamentary republic. The legislature is a Parliament comprised of a Chamber of Deputies (200 seats) and a Senate (81 seats). Deputies are elected to four-year terms by proportional representation while senators are elected to six-year terms by majority vote. Parliament has

² The Czech Statistical Office www.czso.cz.

³ At current market prices using purchasing power parity (OECD (July 2005), *OECD in Figures*, OECD, Paris, pp. 12-13).

⁴ The Economist Intelligence Unit (2006), *Country Profile – Czech Republic*, The Economist Intelligence Unit, London, pp. 31 and 40.

⁵ See Annex 4 for detailed trade statistics.

⁶ See Annex 4 for detailed foreign direct investment statistics.

⁷ Association of Small and Medium-Sized Enterprises and Crafts of the Czech Republic (AMSP ČR), www.amspacez.cz.

⁸ Kole, W.J. (30 November 2003), "End Users Worry Arms Critics", *Washington Times*; Horakova, P. (26 July 2004), "Transparency International Report Warns of Corruption Risks in Czech Arms Trade", *Radio Prague*, www.radio.cz.

exclusive jurisdiction to enact criminal laws. The chief-of-state is a President who is elected by Parliament to five-year terms. The President appoints a Prime Minister to head the executive government. He/she also appoints a cabinet of ministers on the recommendation of the Prime Minister, though the appointment must be approved by the Chamber of Deputies through a vote of confidence within 30 days.⁹

12. The general courts in the Czech Republic have criminal and civil jurisdiction and are divided into four levels: the Supreme Court and the High, Regional and District Courts. The Constitutional Court adjudicates constitutional issues exclusively. The President appoints judges.¹⁰ Strictly speaking, the doctrine of precedent does not apply in the Czech legal system. Apart from decisions of the Constitutional Court, a decision of a higher court binds a lower court only in the case to which the decision relates. Nevertheless, decisions of higher courts have explanatory value, as do commercially-published commentaries on legislation and articles in legal journals.¹¹

13. The Czech authorities state that it is not customary for the government to issue guidelines regarding particular criminal offences. Guidelines and instructions are sometimes issued to elaborate and regulate complex procedural matters, such as extradition and mutual legal assistance (since many different treaties and considerations apply) and the interception of telecommunications. The Supreme Public Prosecutor may also provide opinions to other prosecutors on the interpretation of laws and regulations.¹²

(c) *Implementation of the Convention and the Revised Recommendation*

14. The Czech Republic implemented the Convention by amending ss. 161 and 162a of the Criminal Code in 1999.¹³ The amendments extended the domestic active bribery offences to foreign public officials. One advantage of this approach is that much of the pre-existing jurisprudence on domestic bribery is applicable to the offence of foreign bribery.¹⁴

15. Since the Phase 1 review in 2000, the Czech Republic has enacted some legislation that is relevant to the implementation of the Convention. It has codified the non-tax deductibility of bribe payments to foreign public officials. A new money laundering offence was added to the Criminal Code in 2002, but the Parliament rejected a broader attempt to revise the Code in March 2006. The Criminal Procedure Code was recently modified but only the changes to forfeiture and confiscation are relevant to the foreign bribery and related offences. There have been no legislative developments in two areas of particular concern to the WGB: the liability of legal persons and the defence of effective regret.

(d) *Cases Involving the Bribery of Foreign Public Officials*

16. At the time of the on-site visit, the Czech Republic had just commenced its first foreign bribery investigation. The case involves a Czech national who allegedly bribed foreign public officials in order to obtain foreign state assets that were being privatised. The allegations surfaced in press reports in the week

⁹ Constitution of the Czech Republic, Chapters 2 and 3.

¹⁰ Constitution of the Czech Republic, Chapter 4; Act on Courts and Judges, 6/2002 Coll. See Annex 7 for an organisation chart of the Czech judiciary.

¹¹ Response to Questionnaire, p. 7.

¹² Response to Questionnaire, p. 7; Act on Public Prosecutor's Office, 283/1993 Coll., s. 12(2).

¹³ See Annex 3 for excerpts of relevant statutes.

¹⁴ This was the intention of the legislator, according to the *travaux préparatoires* of the amendments to ss. 161 and 162a (Response to Questionnaire, p. 7).

prior to the on-site visit. The Czech authorities confirm that the case is under investigation but no indictments have been laid.¹⁵

17. Despite this case, the overall lack of foreign bribery investigations is in stark contrast to anecdotal evidence which suggests that Czech businesses could be exposed to such offences. In a recent survey of 251 Czech companies, one-fifth of the respondents stated that they had come up against corruption in a country to which they supply their products.¹⁶

3. *Outline of the Report*

18. This report is structured as follows. Part B examines the efforts of the Czech Republic to prevent, detect and raise awareness of foreign bribery. Part C looks at the investigation, prosecution and sanctioning of foreign bribery. Part D sets out the recommendations of the WGB and issues for follow-up.

B. PREVENTION, DETECTION AND AWARENESS OF FOREIGN BRIBERY

1. *General Efforts to Raise Awareness*

19. The Czech Republic has taken measures to raise public awareness of corruption. Most of these efforts deal with corruption generally and do not distinguish between domestic and foreign bribery. In other words, there is often little specific reference to the OECD Convention and foreign bribery.

(a) Government Initiatives to Raise Awareness

(i) The Updated Government Programme of Fight against Corruption

20. The Updated Government Programme of Fight against Corruption is the Czech government's policy centrepiece for fighting corruption. The Programme consists of various initiatives to fight corruption, ranging from the implementation of anti-corruption hotlines to legislative and institutional reforms. The government has published annual Reports on Corruption and the Meeting of Programme Objectives which discusses past and future initiatives under the Programme.¹⁷ The reports are circulated to raise public awareness of corruption and the government's initiatives.

21. Though wide-ranging, the Programme's initiatives largely focus on corruption generally, with little specific emphasis on foreign bribery and the Convention. The most recent 39-page report (dated 2005) contains a half-page on foreign bribery, most of which consists of a very general description of the Convention. The report also refers to on-going implementation of the 1996 OECD Council Recommendation on tax deductibility of bribes and co-operation between tax administrators and specialised police units. The Ministry of Interior (MoI) explained that references to "corruption" in the report encompass both domestic and foreign corruption as it is not practical to separate the two concepts.

(ii) CzechTrade

22. The Czech Trade Promotion Agency (CzechTrade) is a government body that aims to promote international trade and co-operation between Czech and foreign companies. It has offices in 27 countries

¹⁵ The Czech authorities could only provide limited information on the case since the investigation is on-going.

¹⁶ Prague Daily Monitor (11 November 2005) "Corrupt Officials Are Great Obstacle to Exports, Survey Says".

¹⁷ The reports are published on a bi-annual basis as of 2005.

which provide “on-the-spot practical assistance to Czech exporters abroad.” Its “professional information, assistance and consulting services accompany Czech exporters to foreign markets”¹⁸.

23. CzechTrade has not engaged in activities to raise public awareness of foreign bribery. Its Web site has no information on foreign bribery or the Convention. It conducts seminars for Czech companies on market conditions in foreign countries. The seminars may deal with the level of corruption in a foreign country but not with the Convention or the Czech foreign bribery offence. CzechTrade has not trained its staff on the Convention, but it has instructed them to report suspicions of foreign bribery to its headquarters in the Czech Republic.

(iii) Additional Government Initiatives

24. In December 2003, the Senate and the Czech chapter of the International Chamber of Commerce (ICC) organised a seminar on corruption. One-third of the seminar was devoted to the Convention. Members of the ICC, Senators, the Minister of Justice and other senior officials attended the seminar.

25. The Ministry of Finance (MoF) is the National Contact Point for the OECD Guidelines for Multinational Enterprises (NCP). The NCP and representatives of the private sector have discussed the Convention and solicitation of bribes. The NCP has not received reports of foreign bribery.

26. In July 2004, the government published a document entitled “Public Administration in the Czech Republic”. This 120-page publication was widely distributed to schools, libraries etc. Just over one page is devoted to a general description of the OECD and the Convention.

27. The MoI’s Web site contains the text of the Convention and advice on how to deal with corruption. It lists anti-corruption hotlines that provide advice to the public and mailing addresses for citizens to make complaints. The Web site of one department of the MoI briefly mentions the anti-corruption activities of the OECD. The MoI is also analysing the awareness of ethical standards among local and regional public officials, with a view to providing training to address areas of weakness. The training is expected to focus on, among other things, officials who come into contact with foreign public officials and hence may become involved in foreign bribery. This initiative is commendable, but it is unlikely to have significant impact on the general public’s awareness of the Convention.

28. Individual ministries have undertaken additional efforts to fight corruption. Several ministries, such as the Ministries of Justice and Finance, operate hotlines to receive corruption complaints. In 2004, the MoF published a Code of Ethics for the tax administration and conducted a programme to increase awareness of corruption within the tax administration. The Ministry of Industry and Trade refers to corruption issues on its Web site. None of these initiatives deal specifically with foreign bribery, however.

(b) *Private Sector Initiatives to Raise Awareness*

(i) Business Organisations

29. The lead examiners met representatives from business associations representing major enterprises and the defence industry. These associations have internationally-active members and some perform educational and informational roles. Unfortunately, the associations have not engaged in any activities to raise the awareness of the Convention or foreign bribery among their members. One association publishes EU conventions on its Web site, but not the OECD Convention. Some of the associations received

¹⁸ Web site of CzechTrade, www.czechtradeoffices.com.

information from the government around 1999 when the Czech Republic ratified the Convention. There has been no activity since.

(ii) Major Enterprises

30. Somewhat surprisingly, the Czech companies who attended the on-site visit were reasonably aware of the Convention and foreign bribery. This was largely due to the companies' foreign connections, not awareness-raising activities in the Czech Republic. Several companies became aware of these issues through parent companies that are foreign multinationals. Others became aware because of anti-corruption provisions in contracts with foreign companies, or through training seminars provided by foreign business partners. None of the companies received information on foreign bribery from the Czech government.

31. Though aware of foreign bribery, the companies who attended the on-site visit were largely unconcerned with the issue. Despite operating in sensitive economies and industries, they generally do not believe that their employees are at risk of committing such a crime. Some of the companies repeatedly stated that there is no potential for foreign bribery because they bid for public procurement contracts through open tender. Most of the companies appeared to conduct little or no due diligence before employing a foreign agent. All stated that they have not been solicited for a bribe abroad.

(iii) Small and Medium-Sized Enterprises

32. The lead examiners also met representatives of SMEs and SME associations. The situation is largely identical to that for major enterprises. Although SME associations have not engaged in awareness-raising activities, some SMEs became aware of the Convention through foreign sources.

(iv) Civil Society and Trade Unions

33. The one NGO (Transparency International Czech Republic – TI-CR) and two trade unions that attended the on-site visit have devoted their energy to fighting domestic corruption. They have not made any efforts to raise awareness of the Convention or foreign bribery.

(c) *Conclusion on Awareness and Awareness-raising*

34. The lead examiners find that there have been relatively few awareness-raising activities on foreign bribery in the Czech Republic. As a result, awareness of foreign bribery and the Convention is generally low. This is also the view of TI-CR, which believes that the average person in the Czech Republic does not know that foreign bribery is an offence. Anecdotally, TI-CR reported that it had called the three corruption hotlines operated by the Ministries of Interior, Finance and Justice. All three hotline operators were unaware that foreign bribery is a crime in the Czech Republic.

35. That even operators of corruption hotlines are unaware of the offence of foreign bribery is likely because the Czech government places much more emphasis on domestic rather than foreign corruption. The lead examiners do not criticise the policy to fight domestic corruption, but the Convention and foreign bribery should not and need not be neglected. Given the prevalence of domestic corruption, awareness-raising initiatives that target “corruption” generally is likely not sufficient to raise awareness of foreign bribery. An average Czech citizen who comes across a reference to “corruption” in government publications will probably associate the term only with domestic - not foreign - corruption.

36. For these reasons, lead examiners believe that the Czech government needs to give foreign bribery a much higher profile. The government will also need to work more closely with NGOs and business organisations to ensure that the message reaches the business and private sectors. Since Czech

companies that are aware of the Convention remain unconcerned about foreign bribery, the government should also inform Czech companies of their exposure to solicitations by foreign public officials.

Commentary

The lead examiners recommend that the Czech Republic make more efforts to raise awareness of the Convention and the foreign bribery offence. In particular, they recommend that the Czech Republic (1) increase the profile of foreign bribery in its anti-corruption activities, (2) engage NGOs, business organisations and enterprises in its awareness-raising activities, and (3) take measures to make Czech companies more aware of their exposure to solicitations of bribery by foreign public officials.

2. Reporting, Whistleblowing and Witness Protection

(a) Duty to Report Crimes

37. Czech citizens are not obliged to report foreign bribery to competent authorities. Section 168 of the Criminal Code requires all individuals to report certain crimes listed in that provision to law enforcement bodies, but the list does not include domestic or foreign corruption.¹⁹ The recent proposal to revise the Criminal Code would have added domestic and foreign bribery to this list. As noted earlier, the Parliament rejected the entire proposed revision to the Code.

38. The Criminal Procedure Code obliges state authorities to report crimes, including foreign bribery.²⁰ However, this obligation has limited application to state-owned and state-controlled companies. Employees of such companies are not obliged to report crimes unless the company performs activities relating to the execution of official duties and is established and regulated under “special laws”. At present, there are no state-owned or controlled companies that fall into this category. Article 7(1) of the Code of Ethics of the Public Administration also requires civil servants to report “fraud or corruption activities” to their superiors or to law enforcement bodies. However, the Code is not binding on civil servants unless it has been incorporated into ministerial regulations or internal codes of conduct.

(b) Whistleblowing and Whistleblower Protection

39. Whistleblowing does not appear to be prevalent in the Czech Republic. None of the panellists at the on-site visit could recall discovery of a corruption case through whistleblowing. Some stated that whistleblowing is considered undesirable in Czech culture.

40. Another explanation for the lack of whistleblowing may be the absence of effective laws that protect whistleblowers. According to Czech officials, the sole protection available is the Labour Code, which states that employment may be changed or terminated by an employer only for reasons stipulated therein.²¹ Aggrieved whistleblowers must bring a civil action to obtain redress. The government and trade unions indicated that much has been done to raise awareness of these provisions and that Czech employees are “very well aware” of them. However, there are no examples of these provisions being used to protect

¹⁹ Section 168 of the Criminal Code states that “whoever reliably learns that another person has committed [a listed crime] and does not report such an offence without delay to a public prosecutor or police authority [...] shall be punished [by up to three years imprisonment]”.

²⁰ Criminal Procedure Code, s. 8(1). This obligation does not fully apply to tax officials who are subject to the Tax Administration Act, 337/1992 Coll., s. 24(5)(c) and (d) (see section B.6(c) on p. 18).

²¹ Labour Code, ss. 36-37 and 46; Response to Questionnaire, Question 2.5.

whistleblowers. Some representatives of civil society believe that these provisions provide “weak” protection.

41. Whistleblowing measures in corporate codes of conduct also appear limited. The companies and business associations at the on-site visit do not have measures to encourage whistleblowing. Only one has a system to protect whistleblowers through an internal ombudsman. Several participants at the on-site visit suggested that whistleblowers should approach company management or trade unions for protection.

42. The lead examiners conclude that there is relatively little whistleblowing and whistleblower protection in the Czech Republic. They are mindful that, at the on-site visit, some Czech representatives expressed views on whistleblowing that stem from the country’s culture and recent history. However, at least one other Party to the Convention with a similar background has enacted specific laws to protect whistleblowers.²² For those that have not, the WGB has recommended that these Parties consider strengthening whistleblower protection.²³ The WGB has also made similar recommendations to Parties that report a cultural bias against whistleblowing.²⁴

Commentary

The lead examiners recommend that the Czech Republic consider adopting additional measures to strengthen protection for whistleblowers in order to encourage employees to report suspected cases of foreign bribery without fear of retaliation.

(c) Witness Protection

43. Witness protection is available in foreign bribery cases, pursuant to the Act on the Special Protection of a Witness and Other Persons in Connection with Criminal Proceedings, 137/2001 Coll. A special unit of the Czech police provides protection and assistance.

3. Officially Supported Export Credits

44. Export credit agencies deal with companies that participate in the international market and thus could play a vital role in raising awareness of the Convention and detecting foreign bribery cases. The Czech Republic provides export credit financing to exporters through the Czech Export Bank (CEB). It also provides export credit insurance against the risk of non-payment through the Export Guarantee and Insurance Corporation (EGAP).²⁵

(a) Awareness-Raising Efforts

45. EGAP informs all applicants (via an application form or a standalone document) that it may withdraw support if an applicant is charged with or convicted of foreign bribery. An applicant must also

²² WGB (2005), *Slovak Republic: Phase 2*, OECD, Paris, paras. 39-40.

²³ WGB (2003), *Bulgaria: Phase 2*, OECD, Paris, pp. 13 and 41; WGB (2005), *Hungary: Phase 2*, OECD, Paris, paras. 49-52 and 208(d).

²⁴ WGB (2004), *France: Phase 2*, OECD, Paris, paras. 32 and 159(5); WGB (2004), *Italy: Phase 2*, OECD, Paris, paras. 48-50 and 216; WGB (2005), *Greece: Phase 2*, OECD, Paris, paras. 90 and 213; WGB (2005), *Japan: Phase 2*, OECD, Paris, paras. 43-48 and Recommendation 9(d).

²⁵ Web sites of the CEB (www.ceb.cz) and EGAP (www.egap.cz).

declare that he/she has not engaged in foreign bribery.²⁶ A representative of a Czech company stated at the on-site visit that he became aware of the Czech foreign bribery offence because of these measures.

46. EGAP has also dedicated an entire page of its Web site to foreign bribery. The page describes the Convention, the anti-bribery declaration in the application process and the consequences of engaging in foreign bribery. EGAP's marketing brochure also prominently discusses the Convention and reiterates much of the same information.

47. The CEB has tried to raise awareness among its clients by referring to the Convention during the application process. Its Web site and marketing literature do not refer to foreign bribery.

(b) Detection of Foreign Bribery

48. EGAP has trained its employees on the above-mentioned contractual provisions on foreign bribery. This includes discussing the Czech offences of foreign bribery and instructing employees on the questions that they should ask a client during the application process. At the on-site visit, the CEB stated that it was preparing training activities on the Convention for its employees.

49. The lead examiners are pleased with EGAP's work to raise awareness of foreign bribery. However, the CEB could be more proactive, such as by providing more information to its clients and staff through the Internet and in print.

Commentary

The lead examiners recommend that the CEB be more proactive in raising awareness of foreign bribery among its staff, clients and potential clients.

²⁶ The application form or the standalone document contains the following text:

Insurance of export credit risks with State support cannot be given to exports, which were negotiated by way of bribery in international trade according to the § 160 and subsequent of the Act No. 140/1961 Coll., Criminal Code. In accordance with the Art. IX of the General Insurance Conditions "C", the insurer has the right to refuse indemnification payment if it has been proven that the applicant submitted in the request for insurance incomplete or untruthful data with regard to the bribery in the international trade.

Applicants are required to make following declaration:

STATUTORY DECLARATION OF THE EXPORTER

on compliance with legal provisions against bribery in international trade

I declare herewith that there has been no breach of regulations against bribery in the international trade (1) in negotiating the export contract. I take cognizance of the fact that the insurance of export credit risks with State support cannot be extended to exports negotiated by way of the bribery in the international trade according to the § 160 and subsequent of the Act No. 140/1961 Coll., Criminal Code.

(1) Communication of the Ministry of Foreign Affairs No. 25/2000 on Acceptance of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions Convention (Part 13/2000 of the Collection of International Agreements) distributed on 29 March 2000.

(Working Party on Export Credits and Credit Guarantees (2005), *Export Credit and Bribery: Review of Responses to the 2004 Revised Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – Situation as of 30 September 2005*, OECD, Paris, TD/ECG(2005)4/REV, pp. 4, 7, 14 and 17; Response to Questionnaire, pp. 28-29).

(c) *Duty to Report Foreign Bribery*

50. EGAP and the CEB will inform law enforcement if they have “suspicions” or “sufficient evidence” of bribery, whether before or after deciding to provide support to a client.²⁷ Internal regulations set out reporting channels. The boards of directors have ultimate responsibility for deciding whether to refer a case to law enforcement. These reporting mechanisms have not been tested since the CEB and EGAP have not detected any foreign bribery cases.

4. *Official Development Assistance*

51. Companies involved in projects funded by official development assistance (ODA) often deal with foreign officials of the country receiving assistance. Government agencies that administer ODA thus play an important role in raising awareness of the Convention and in detecting foreign bribery.

52. The Czech Republic is not a major ODA donor in absolute terms, but it has recently increased its contributions dramatically and expects to continue that trend.²⁸ Plans are afoot to establish an ODA agency in order to improve transparency and efficiency. In the meantime, the Ministry of Foreign Affairs (MoFA) co-ordinates the ODA programme. Ten other ministries are involved in implementing specific projects by contracting with private and non-profit entities. Project officers from the MoFA are dispatched overseas to evaluate the various stages of a project, while officials from the other implementing ministries monitor a project’s day-to-day operation.

53. The MoFA has made some recent efforts to raise the awareness of foreign bribery. In May 2006, it completed a Manual of Project Cycle that details procedures for implementing ODA projects. The Manual’s section on project implementation and monitoring requires Czech officials to pay attention to possible cases of corruption and foreign bribery. Upon detecting such cases, the Manual requires officials to report the case to the MoFA and other ministries involved. The Manual also requires anti-corruption clauses to be included in contracts funded by ODA. The Manual has been disseminated in electronic form to embassies, business associations, NGOs, universities and ministries involved in ODA. Copies in print were also to be distributed.

54. The lead examiners are pleased with the MoFA’s recent efforts to fight foreign bribery. The Manual has been widely disseminated and specifically addresses detection and reporting of bribery of foreign public officials. However, foreign bribery is but a small component of the Manual, which limits the Manual’s effectiveness in raising awareness of this issue. Literature or seminars that specifically address foreign bribery could usefully complement the Manual. Furthermore, the Czech ODA framework is decentralised. Ten ministries beyond the MoFA contract with companies and NGOs to implement ODA projects. Officials of these ministries travel overseas to monitor ODA projects and are thus well-positioned to detect foreign bribery. Unfortunately, the lead examiners could not assess what these ministries have done to raise awareness of foreign bribery among their staff and contractors. Furthermore, as noted earlier, the level of awareness of foreign bribery in the Czech Republic is generally quite low. It may therefore be

²⁷ Working Party on Export Credits and Credit Guarantees (2005), *Export Credit and Bribery: Review of Responses to the 2004 Revised Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – Situation as of 30 September 2005*, OECD, Paris, TD/ECG(2005)4/REV, pp. 35 and 43.

²⁸ In 2003, the Czech Republic disbursed USD 90.6 million in ODA, representing 0.11% of national income and a two-thirds increase from the previous year. Bilateral aid accounted for about 89% of the total. The major recipients were Afghanistan, Iraq, the Balkans and Southeast Asia. In April 2004, the government approved eight priority countries for long-term co-operation: Angola, Bosnia and Herzegovina, Moldova, Mongolia, Serbia and Montenegro, Vietnam, Yemen and Zambia (OECD (2005), *Development Co-operation Report – Volume 6, No. 1*, OECD, Paris, pp. 105 and 221).

advisable for the Czech Republic to undertake additional awareness-raising activities that focus on foreign bribery and which target all entities involved in ODA.

Commentary

The lead examiners recommend that the Czech Republic undertake additional activities to raise awareness of foreign bribery among (1) companies and NGOs that are involved in projects funded by official development assistance (ODA), and (2) public officials who are involved in administering ODA, including those outside the Ministry of Foreign Affairs.

5. Foreign Diplomatic Representations

55. By reason of their location, Czech overseas diplomatic representations could receive information on foreign bribery committed by Czech individuals and companies abroad. These diplomatic representations can also play a useful role in awareness-raising since they often come into contact with Czech businesses that operate internationally.

(a) Awareness-Raising Efforts

56. In 2006, the Ministry of Foreign Affairs (MoFA) provided all overseas staff with an information package containing the definitions of foreign bribery and foreign public officials in the Criminal Code. The package also referred to the Convention and the Code of Ethics of the Public Administration Employees. The MoFA has asked embassy heads to ensure that their staff are familiar with the contents of the package.

57. Less has been done with respect to the private sector. The Convention is not on the Ministry's Web site. It has not prepared literature or seminars on these issues for Czech businesses that are active in the international market. It is unclear whether Czech companies have sought assistance from their embassies and diplomatic posts on such matters.

Commentary

The lead examiners recommend that the Czech Republic ensure that its overseas officials, including those in the Ministry of Foreign Affairs and CzechTrade, undertake efforts to raise awareness of foreign bribery among Czech individuals and companies that operate internationally.

(b) Duty to Report Foreign Bribery

58. The MoFA has implemented a mechanism for reporting foreign bribery cases. As public officials, Czech diplomats posted abroad are subject to the general duty to report crimes under s. 8 of the Criminal Procedure Code. The MoFA has instructed its overseas diplomats to report knowledge of a crime to their superiors, who will in turn forward the information to the MoFA's general inspectorate. If the suspected offender is a Czech national, the general inspectorate will report the matter to Czech law enforcement. Otherwise, the local authorities will be advised of the case. Diplomats are reminded of this reporting procedure before they are posted overseas.

6. Tax Authorities

(a) Non-Deductibility of Bribes

59. Czech tax legislation now expressly denies deduction of foreign bribe payments. Bribes were not tax deductible at the time of the Phase 1 review, even though the legislation did not explicitly prohibit such

deductions. A new provision enacted after Phase 1 states that “expenses that are given to a foreign state official or foreign public official or, with their consent, to another person in connection with performance of his office, even if this concerns an official or public official in a country where the granting of such benefits is tolerated or not regarded as a crime, are not deductible.”²⁹ Czech tax officials stated that this prohibition also applies to bribes paid through intermediaries. The onus is on a taxpayer to provide supporting documentation or to substantiate a deduction upon request.³⁰

(b) *Awareness, Training and Detection*

(i) Awareness-raising and Training

60. The Central Financial Directorate (CFD) at the Ministry of Finance (MoF) is the central authority for training Czech tax officials. The CFD organises regular training activities for its administrators at the central level who are then responsible for training tax officers at the regional and local levels.

61. To raise awareness of foreign bribery among tax examiners, the MoF alerted all tax examiners when the denial of tax deduction of bribes was introduced into legislation. Czech authorities have translated but not disseminated the *OECD Bribery Awareness Handbook for Tax Examiners*.³¹ They now intend to explain the Handbook to tax examiners who attend a training course in November 2006.

62. Czech officials cited additional awareness-raising and training activities that concern corruption generally. These include videos on procurement and the practical aspects of tax audits, and internal recommendations on avoiding corrupt behaviour. Courses in certain areas (e.g. psychology, negotiation with taxpayers, interviewing taxpayers etc.) have anti-corruption components. The mandatory training for new employees covers the Code of Ethical Procedures of Employees of Financial Administration, which also deals with corruption. However, none of these activities specifically deal with foreign bribery.

63. There have been some efforts to raise awareness of foreign bribery among tax professionals in the private sector. The Chamber of Tax Advisors is the regulatory body for tax professionals. The Chamber notified its members when the express denial of tax deductibility of bribes was introduced. The Chamber’s training events have not focused foreign bribery but only on money laundering.

(ii) Detection of Foreign Bribery

64. Czech tax examiners have never discovered a domestic or foreign bribery cases through a tax audit, even though the number of audits is fairly high. In 2004, 119 428 audits were conducted.

65. The failure to detect bribery cases is not for a lack of investigative powers. Czech tax examiners have a range of investigative tools at their disposal, including powers to obtain bank information. Upon request, banks must provide “[the] numbers of bank accounts, the names of account holders, the balance of accounts and movements in such accounts, and data concerning credits and deposits”.³²

66. The lead examiners specifically inquired how Czech tax examiners handle tax deductions of fees paid to foreign agents. Czech tax officials at the on-site visit stated that such deductions are examined during tax audits. The taxpayer must prove (e.g. through a witness statement) that the fees were paid to realise taxable income. Tax examiners may rely upon applicable tax treaties to obtain information from the

²⁹ Act on Income Tax, 586/1992 Coll. as amended, s. 25(1)(zf); Response to Questionnaire, p. 31.

³⁰ Act 337/1992 on Administration of Taxes, section 31(9).

³¹ DAFFE/CFA(2001)/51.

³² Administration of Taxes Act, 337/1992 Coll. as amended, s. 34 (11).

competent authority of the country where the foreign agent operates. This could be used to check whether the fees correspond to a genuine service rendered by the foreign agent, for instance.

(iii) Conclusions on Awareness, Training and Detection

67. The lead examiners are pleased that the Czech Republic has introduced an express denial of tax deduction of foreign bribes into legislation. However, Czech tax officials could do more to raise awareness of the non-deductibility of bribes and foreign bribery generally, particularly in the private sector. Many of the present activities do not distinguish between domestic and transnational corruption, and are therefore unlikely to raise awareness of the latter. As well, given that the tax authorities have never detected a bribery case, training on how to do so through tax audits would be useful. Disseminating the *OECD Bribery Awareness Handbook* to all tax examiners would also help address these concerns.

Commentary

The lead examiners recommend that the Czech Republic (1) make more efforts to raise awareness of foreign bribery and the non-deductibility of bribes among tax examiners, tax professionals and the private sector, (2) provide training to tax examiners on the detection of bribe payments disguised as legitimate allowable expenses, and (3) disseminate the translated OECD Bribery Awareness Handbook for Tax Examiners to all tax examiners.

(c) *Sharing of Information and Duty to Report Foreign Bribery*

68. If Czech tax officials discover foreign bribery during a tax audit, they are generally prohibited from reporting the case to law enforcement. According to officials at the on-site visit, Czech legislation requires tax officials to report only certain offences, such as tax crimes committed by a taxpayer and corruption committed by a Czech tax official in connection with the administration of taxes.³³ Tax officials are forbidden from reporting other offences, including foreign bribery, because of their duty of confidentiality. Nevertheless, one official believed that foreign bribery cases will always be reported because these cases necessarily involve the tax crime of “tax curtailment”.

69. The duty of confidentiality, however, does not prevent tax authorities from providing information in foreign bribery investigations upon demand. Czech tax legislation stipulates that confidentiality cannot be invoked in relation to a demand for information by the ÚOKFK and the ÚONVDK, which are responsible for investigating corruption (including foreign bribery) and money laundering respectively.³⁴

70. The Czech tax authorities may also share information with their counterparts in other countries. The Czech Republic has double taxation treaties with 68 countries which allow for information sharing. These treaties do not contain the optional language recently included in the Commentary to the Article of the OECD Model Tax Convention that deal with information exchange.³⁵ The Czech Republic stated that it will propose to treaty partners to include these provisions in existing and new treaties only if problems arise in the future.

³³ Administration of Taxes Act, 337/1992 Coll., s. 24.

³⁴ Administration of Taxes Act, 337/1992 Coll., s. 24(5)(f).

³⁵ Article 26 of the OECD Model Tax Convention was amended in 2004. Paragraph 12.3 of the new Commentary provides optional language for contracting states to include in their bilateral tax treaties, namely “to allow the sharing of tax information by tax authorities with other law enforcement agencies and judicial authorities on certain high priority matters (e.g. to combat money laundering, corruption...)”. This sharing of information is available if “such information may be used for such other purposes under the laws of both States and the competent authority of the supplying State authorises such use.”

71. To conclude, the lead examiners have some concerns that Czech tax officials are prohibited from reporting foreign bribery to law enforcement authorities. The ability of tax examiners to report tax crimes does not completely alleviate these concerns, since it is conceivable that foreign bribery may not result in “tax curtailment”. Consistent with the WGB’s approach in a previous Phase 2 examination,³⁶ the Czech Republic should review and consider removing this prohibition. After the on-site visit, the Czech authorities advised that they are considering a proposal to expressly require tax officials to report suspicions of bribery to law enforcement authorities.

Commentary

The lead examiners encourage the Czech Republic to amend its legislation and remove the restriction against Czech tax officials on reporting foreign bribery detected during tax audits to law enforcement.

7. Accountants and Auditors

(a) Accounting and Auditing of the Private Sector

72. The Convention and the Revised Recommendation recognise that effective accounting and auditing of companies may lead to the detection of foreign bribery. In the Czech Republic, the Chamber of Auditors (CoA) is the self-governing professional organisation of auditors. The CoA is tasked with issuing regulations and ensuring that its members comply with specified standards. There are no professional regulatory bodies for accountants in the Czech Republic, but accountants have formed professional organisations such as the Chamber of Certified Accountants (CoCA).³⁷

(i) Awareness and Training

73. The accounting and auditing professions have not undertaken significant awareness-raising activities on foreign bribery, nor has the Czech government suggested that they do so. The CoCA requires certified accountants to receive training annually, but the training does not cover foreign bribery. The CoA informs its members annually of the need to detect foreign bribery, but it does not appear to train them on how to do so.

Commentary

The lead examiners recommend that the Czech Republic (1) work proactively with the accounting and auditing professions to raise awareness of the foreign bribery offence, and (2) encourage these professions to develop specific training on foreign bribery in the framework of their professional education and training systems.

(ii) Accounting and Auditing Standards

74. The Act on Accounting, 563/1991 Coll. (AoA) prescribes the scope and manner of keeping accounts and the requirements for their conclusiveness. In addition, the Ministry of Finance issues decrees and Czech Accounting Standards to “harmonise the accounting procedures used by accounting entities”.³⁸ The AoA applies to a large number of entities, including legal entities with their seat in the Czech

³⁶ WGB (2004), *Canada: Phase 2*, OECD, Paris, paras. 27-28 and Recommendation 5.

³⁷ Act on Auditors, 169/2004 Coll., ss. 28-29; Web site of the Chamber of Certified Accountants, www.komora-ucetnich.cz.

³⁸ Act on Accounting, 563/1991 Coll., s. 36.

Republic, foreign persons who carry on business activity in the Czech Republic and enterprises who are on the Commercial Register or whose annual turnover exceeds CZK 15 million (USD 675 000 or EUR 525 000).³⁹

75. The AoA broadly cover the activities described in Article 8(1) of the Convention.⁴⁰ All accounting entities must record costs, revenues and the position of and movements in their property and other assets, commitments and other liabilities. Accounts must give “a true and fair view of the object of the accounting and the accounting unit’s financial position”. They must also be “kept correctly, in a complete and conclusive manner, in a comprehensive and clearly-organised way and in a manner ensuring durability of the accounting records.” “The information shown in the financial statements must be reliable, comparable and comprehensible and shall be considered from the viewpoint of its material importance.” “Accounting entries may not be made outside of books of account,” nor can accounting units “establish accounts outside their list of accounts and books of accounts.”⁴¹

76. According to Czech authorities, the CoA has adopted International Accounting Standards (ISA). Balance sheets after 1 January 2005 must be audited according to ISA. The provision of other auditor’s services after 1 January 2006 is also subject to ISA.⁴²

(iii) External Auditing

77. The following entities must be externally audited and prepare annual reports:⁴³

- (a) Joint stock companies which meet one of the following criteria in the current and preceding accounting periods: (1) total assets exceeding CZK 40 million (approx. USD 1.8 million or EUR 1.4 million), (2) net turnover exceeding CZK 80 million (approx. USD 3.6 million or EUR 2.8 million), and (3) average number of employees exceeding 50;
- (b) Other companies, co-operatives, and foreign persons who carry on business in the Czech Republic and which meet two of these three criteria;
- (c) Certain categories of entrepreneurs.

78. The Czech Republic could not provide statistics on the percentage of Czech enterprises that are subject to external audits.

(iv) Duty of Auditors to Report Crimes

79. Auditors are required to report crimes to corporate monitoring bodies. If an auditor discovers an economic crime, bribery or a property crime during an audit, he/she must inform the statutory and supervisory bodies of the accounting entity. If the entity is a municipality or a region, he/she must inform

³⁹ Act on Accounting, 563/1991 Coll., s. 1.

⁴⁰ Article 8(1) concerns “the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents ... for the purpose of bribing foreign public officials or of hiding such bribery.”

⁴¹ Act on Accounting, 563/1991 Coll., ss. 2, 7, 8, 12(3), 13(3) and 19(6); see also ss. 4(10), 21a and 33a(1).

⁴² Act on Auditors, 254/2000 Coll., ss. 29 and 38; Response to Questionnaire, p. 47; Web site of the Czech Chamber of Auditors, www.kacr.cz.

⁴³ Act on Accounting, 563/1991 Coll., ss. 20 and 21.

the council of the municipality or regional administration authority. The duty to report is an exception to an auditor's general duty of confidentiality.⁴⁴

80. This duty of confidentiality, however, prevents auditors from further reporting crimes to competent authorities. One auditor at the on-site visit stated that, though not obliged to do so, he would report crimes discovered during an audit to an administrative body that regulates the accounting entity (e.g. the banking regulator if the accounting entity is a bank). Officials of the administrative body would in turn report the crime to law enforcement as required under s. 8(1) of the Criminal Procedure Code. If the accounting entity is not subject to a regulatory body, then this auditor would report only to the internal monitoring bodies of the accounting entity (e.g. the board of directors). However, there is no evidence that other auditors follow the same practice.

Commentary

The lead examiners recommend that the Czech Republic consider requiring external auditors to report indications of a possible illegal act of bribery to competent authorities.

(v) Duty to Provide Information to Law Enforcement upon Demand

81. An auditor's duty to confidentiality also impacts the provision of information by auditors to law enforcement bodies upon demand. Under Section 8 of the Criminal Procedure Code, an auditor may refuse a demand by law enforcement to provide information. An auditor must comply with a similar request by law enforcement that has been approved by a judge, but the Czech auditors at the on-site visit stated that they were not sure of the proper procedure for doing so. In the view of the lead examiners, clarifying this procedure for auditors will enhance foreign bribery investigations.

Commentary

The lead examiners recommend that the Czech Republic clarify the procedure for auditors to provide information to law enforcement authorities upon demand, and raise the awareness among auditors of the procedure.

(b) *Accounting and Auditing of the Public Sector*

82. In many jurisdictions, the auditor of the public sector plays a role in fighting foreign bribery since he/she audits not only the government but also state-owned and state-controlled enterprises.

83. The Supreme Audit Office (SAO) is the Czech public sector auditor. It is responsible for auditing "organisation units of the state" and "the management of state property and financial resources collected under the law for the benefit of legal persons". It also audits state-owned and state-controlled enterprises, but only with respect to funds from the state budget, funds provided to the Czech Republic from abroad and funds secured by state guarantee.⁴⁵ If an entity is required to be externally audited under the Act on Accounting, then a private auditor conducts the audit; the SAO is not involved.

84. The SAO conducts three main types of audits: (1) legality control (i.e. whether the audited entity conforms to legal regulations), (2) financial audit and (3) performance audit (i.e. efficiency and economy of the audited entity). The SAO uses auditing standards set by the International Organization of Supreme

⁴⁴ Act on Auditors, 254/2000 Coll., ss. 15(1) and 15(5).

⁴⁵ Constitution of the Czech Republic, Article 97; Act on the Supreme Audit Office, 166/1993 Coll., s. 3; Response to Questionnaire, pp. 48-49.

Audit Institutions (INTOSAI) and observes the EU guidelines for implementing the INTOSAI standards. Auditors have a wide range of powers, including entry into premises, compelling documents and statements, and access to confidential information.⁴⁶ The SAO conducts 35-40 audits annually.

85. Upon discovering a crime (such as foreign bribery), the President of the SAO will report the case to law enforcement. The duty to report crimes under s. 8(1) of the Criminal Procedure Code supersedes the duty of confidentiality. In 2005, the SAO reported 3 cases to the prosecutor's office, though none involved foreign bribery. The final conclusions of an audit are published by the SAO and forwarded to both chambers of Parliament and the government.⁴⁷

86. When law enforcement requests information from an auditor, the President of the SAO will release the auditor from the duty of confidentiality as a matter of practice. This was done 33 times in 2005.

87. The SAO trains its auditors annually on legislation concerning corruption. It is not clear to what extent such training deals with bribery of foreign public officials. The SAO has never detected a foreign bribery case and believes that its audits are unlikely to do so.

88. The lead examiners are pleased with the co-operation between the SAO and law enforcement. To fully realise its potential in detecting foreign bribery, the SAO should engage in more awareness-raising and training activities.

Commentary

The lead examiners recommend that the Supreme Audit Office (1) raise the awareness of foreign bribery among its staff, and (2) train its staff on how to detect foreign bribery.

8. Money Laundering Reporting

89. An effective system to counter money laundering may uncover underlying predicate offences like foreign bribery. The Czech Republic has implemented a regime of anti-money laundering (AML) measures through the Act on Measures against Legalisation of the Proceeds of Crime, 61/1996 Coll. (AMLPC).

(a) Suspicious Transaction Reporting

90. The AMLPC defines money laundering as “an action intended to conceal the illicit origin of the proceeds of [criminal] activity” including foreign bribery. Laundering includes, among other things, the “acquisition, possession or use of property or treatment of [proceeds] knowing that it originates from a crime”. “Proceeds” includes any economic benefit from a criminal offence.⁴⁸

91. The AMLPC creates a system for reporting “suspicious transactions”, which is broadly defined as any “transaction carried out under circumstances that arouse a suspicion of an effort to legalise proceeds”. Banks and various financial institutions must report all suspicious transactions to the Ministry of Finance. Recent amendments extended this obligation to lawyers, notaries, accountants, tax advisers and auditors. However, these entities are exempted from reporting information obtained in relation to litigation or the

⁴⁶ Act on the Supreme Audit Office, 166/1993 Coll., ss. 3 and 21; Response to Questionnaire, p. 39; Web site of the SAO, www.nku.cz.

⁴⁷ Act on the Supreme Audit Office, 166/1993 Coll., ss. 22 and 23; Response to Questionnaire, pp. 48-49; Web site of the SAO, www.nku.cz.

⁴⁸ AMLPC, s. 1a.

provision of legal advice. To protect reporting entities, the AMLPC specifically states that reporting a suspicious transaction is not a breach of any legal duty of confidentiality imposed by another law.⁴⁹

92. The Financial Analytical Unit (FAU) in the Ministry of Finance is the Czech financial intelligence unit. The FAU analyses all suspicious transaction reports (STRs) received by the MoF and decides whether to forward a report to law enforcement for further investigation. The number of STRs received by the FAU has increased steadily in recent years. The number of STRs forwarded by the FAU to law enforcement has remained relatively low, averaging less than 6% of STRs received.⁵⁰ The FAU does not keep statistics on whether an STR results in or supports a prosecution or whether it involves bribery. The FAU believes that the quality of the STRs is improving and that the number of STRs that it receives is not unreasonably high, though it would prefer to have more intelligence staff.

(b) Typologies, Guidelines and Feedback

93. The level of feedback among the various actors in the AML system is uneven. Law enforcement officials meet the FAU regularly and inform the FAU of the steps taken in specific cases. Law enforcement may also request the FAU's assistance in investigations, e.g. when seeking information from a foreign financial intelligence unit. The FAU's feedback to reporting entities is more general. The FAU stated that it has no obligation to provide feedback, and in any event it cannot provide feedback on specific cases because of its duty of confidentiality. Thus, it only provides feedback through training (e.g. materials on CD ROMs) and general typologies on money laundering.

94. The typologies on money laundering also seem somewhat limited. According to the Czech authorities, the main typologies are found in the definition of "suspicious transactions" in the AMLPC, which are understandably very general in nature. The FAU has translated and distributed additional typologies obtained from the Egmont Group, but these date from at least 2003. The Czech National Bank (CNB) has provided further typologies to the banking sector. It is not clear whether any of these typologies refer specifically to bribery. At the on-site visit, Czech banks stated that they rely on additional resources (e.g. typologies from the FATF) on their own initiative because the materials provided by the CNB and the FAU are not sufficient. After the on-site visit, the ÚONV DK stated that it would organise a typology seminar in September 2006. The Czech authorities intend to develop further typologies, but there is no indication whether these typologies will refer to domestic or foreign bribery.

95. The lead examiners acknowledge that there is an operational AML reporting system in the Czech Republic. The system generates a large number of STRs but relatively few investigations, although the Czech Republic may not be unique in this regard. Nonetheless, the quality of STRs could be improved by providing more up-to-date guidance to reporting entities, including money laundering typologies that relate specifically to bribery. More specific feedback (e.g. on whether an STR has led to an investigation or conviction) to reporting entities could accomplish the same goal. To properly assess the effectiveness of the AML system in detecting bribery cases, the Czech authorities need to maintain more detailed statistics on the number of STRs that result in or support bribery investigations, prosecutions and convictions.

Commentary

The lead examiners recommend that the Czech Republic (1) improve the feedback to entities that are required to report suspicious transactions,⁵¹ (2) provide better guidance to these entities, for instance, by providing up-to-date typologies on money laundering where the

⁴⁹ AMLPC, ss. 1a(5)-(7), 4(6)-(8) and 14.

⁵⁰ See Annex 5 for detailed statistics.

⁵¹ The Working Group notes that this is a general issue for many Parties.

predicate offence is bribery, and (3) maintain statistics on suspicious transaction reports that result in or support bribery investigations and prosecutions.

(c) *Sanctions for Failure to Report*

96. Under the AMLPC, failure to report suspicious transactions is punishable by a maximum fine of CZK 2 million and 10 million (approx. USD 90 000 and 450 000 or EUR 70 000 and 350 000) for natural and legal persons respectively. For repeat violations, the maximum fine increases to CZK 10 million and 50 million (approx. USD 450 000 and 2 250 000 or EUR 350 000 and 1 750 000). Lawyers and notaries are not fined but are subject to disciplinary penalties imposed by a relevant professional regulatory body.⁵²

97. At the on-site visit, the Czech authorities stated that the FAU had delegated to the Czech National Bank (CNB) its responsibility for enforcing the AMLPC *viz.* the banking, financial and insurance sectors. After the visit, the Czech authorities stated that there was no such delegation and that the FAU remained responsible for these activities. Even less clear is whether the AMLPC is adequately enforced in practice. The CNB stated that its primary focus is to enforce banking laws, not the AMLPC. As such, it has never imposed sanctions under the AMLPC. The CNB has also only performed fewer than five on-site inspections on average per year in 2002-2005.⁵³ The FAU did not provide any statistics in this regard.

C. INVESTIGATION, PROSECUTION AND SANCTIONING OF FOREIGN BRIBERY AND RELATED OFFENCES

1. Investigation and Prosecution of Foreign Bribery

(a) *The Commencement of Proceedings*

98. A criminal investigation and prosecution in the Czech Republic consists of several phases. Prosecutors and the police are obliged to accept reports that a crime has been committed. Once aware of a possible crime (whether via a report or otherwise), the police must then prepare a report on “the commencement of steps” aimed at clarifying and verifying facts which indicate the commission of a crime. This formally marks the commencement of “criminal proceedings”. Next, the police must gather evidence to “verify that a criminal offence” has been committed and identify a suspect. If the police are unable to do so, the prosecutor or police must dismiss the case. Otherwise, the police institute “criminal prosecution” by drawing up a resolution describing the act under investigation and the legal designation of the offence. The police then start an “investigation” to collect further evidence necessary for trial. When the investigation is completed, the police transfer the file to the prosecutor and propose whether the case should proceed. The prosecutor ultimately makes this decision.⁵⁴

99. The principle of mandatory prosecution requires Czech prosecutors to seek an indictment of a suspect if an investigation turns up sufficient evidence. The principle is subject to some exceptions. For instance, a prosecutor may stay a case that has been decided by a disciplinary body or a foreign court. He/she may also do so if “the purpose of the criminal prosecution has been achieved, having regard to the importance of a protected interest that has been affected by the offence, the manner and circumstances in which the offence was committed, the result of the offence and the accused’s behaviour after the offence”.⁵⁵

⁵² AMLPC, s. 12.

⁵³ See Annex 5 for detailed statistics.

⁵⁴ Criminal Procedure Code, ss. 12(10), 157-167, 174; Response to Questionnaire, pp. 2-4.

⁵⁵ Criminal Procedure Code, s. 172(2); see also ss. 2(3), 172(3), 173 for other reasons to terminate a prosecution.

100. For offences punishable by imprisonment of five years or less (which includes foreign bribery), there are additional provisions to “divert” a case from the criminal justice system. A prosecutor (or a court) may conditionally stay a prosecution after taking into account the circumstances of the offence and the accused. The accused must admit responsibility for the offence and compensate for any damage caused by the offence. He/she is then placed on probation with conditions for 6-24 months. The prosecution is recommenced if the accused breaches the conditions. Another procedure allows an accused to reach a settlement. For this measure to apply, an accused must admit responsibility for the crime, compensate for any damage and deposit money “for a specified recipient for socially beneficial purposes”. All victims of the crime must consent to the settlement procedure. The accused, a victim and the prosecutor may appeal a conditional stay or a settlement.⁵⁶

101. Czech officials provided conflicting opinions on the use of diversion in corruption cases. The police informed the lead examiners that diversion is not common for bribery cases. Prosecutors were of a different view. They indicated that there has been a recent emphasis on diversion, although they could not provide statistics on its use in corruption cases. In their view, most offenders in corruption cases do not have prior criminal convictions and are therefore particularly suitable for diversion. In deciding whether to divert a case, a prosecutor (or a court) also considers factors such as the size of a bribe and the position of the bribed official. Czech prosecutors added that diversion promotes the detection of crimes and raises public awareness of corruption, which they believe are the most important objectives. Financial advantages accruing to an offender are also removed.

102. The lead examiners note that the WGB has expressed concerns in other Phase 2 examinations over the use of diversion under certain circumstances.⁵⁷ In their view, statistics on the use of diversion in corruption cases in the Czech Republic are necessary to determine whether there are similar concerns.

Commentary

The lead examiners recommend that (1) the Czech Republic maintain statistics on the use of diversion in domestic and foreign bribery cases, and (2) the Working Group monitor the use of diversion in domestic and foreign bribery cases in the Czech Republic.

(b) Law Enforcement Authorities

103. The Police of the Czech Republic is the primary law enforcement body responsible for investigating crimes in the Czech Republic. Within the force, the Criminal Police and Investigation Service (CPIS) is responsible for conducting investigations. Two specialised units of the CPIS investigate foreign bribery and related offences: the Unit for Combating Corruption and Financial Crime, and, if closely connected to investigations within its competence, the Unit for Detection of Illegal Proceeds and Tax Crime.⁵⁸

⁵⁶ Criminal Procedure Code, ss. 307 and 309. Conditional stays should not be confused with conditional sentences, which are imposed by a court under the Criminal Code, ss. 58-60 and the Criminal Procedure Code, ss. 328-329.

⁵⁷ See WGB (2006), *Austria: Phase 2*, OECD, Paris, paras. 77-82 and 181(c). In the Phase 2 examination of Slovakia, the WGB also decided to monitor the granting of immunity from prosecution to co-operating offenders (WGB (2005), *Slovak Republic: Phase 2*, OECD, Paris, paras. 162-170 and 250(b).)

⁵⁸ See Annex 6 for organisation charts of the Czech police.

(i) Unit for Combating Corruption and Financial Crime (ÚOKFK)

104. As its name suggests, the Unit for Combating Corruption and Financial Crime (ÚOKFK) has nationwide competence over investigations into corruption, including foreign bribery.⁵⁹ Established in 2003, the ÚOKFK has its headquarters in Prague and regional branches throughout the country. The ÚOKFK is sub-divided into two departments, the Department on Corruption and Protection of EU Interest and the Department on Serious Economic Crimes.

(ii) Unit for Detection of Illegal Proceeds and Tax Crime (ÚONVDK)

105. Since July 2004, the Unit for the Detection of Illegal Proceeds of Crime and Tax Crimes (ÚONVDK) has had nationwide competence over investigations into tax crimes, money laundering and financing of terrorism. Its headquarters is also in Prague.

(iii) Resources, Awareness and Training

106. The ÚOKFK has 310 staff including 250 investigators, 90% of whom have university education. A share of the budget of the Ministry of Interior (MoI) is allocated to the Unit. At the on-site visit, the ÚOKFK indicated that its equipment and working conditions were “above average” compared to other police departments. The ÚONVDK has 300 police officers and administrative staff.

107. Police training is under the purview of the Department of Police Education and Administration of Police Schools, and the Police Colleges of the Ministry of Interior. For new recruits, the Police Colleges offer an 18-month course which covers all criminal offences, including foreign bribery. Additional components of the course cover corruption, though the emphasis appears to be on corruption and integrity of the Czech police force. The Police College Praha – Ruzyně offers an additional 5-week specialisation course for new members of the ÚOKFK on topics such as detection of corruption, financial crimes and protection of EU economic interests. The course emphasises the practical aspects of investigating such offences, but it also covers international conventions relating to corruption, including the OECD Convention.

108. The ÚOKFK and the Police Academy also provide continuing education to police officers, though these activities appeared to again relate primarily to domestic corruption and integrity of the Czech police. The Academy introduced a course on “Financial Crime and Corruption” in the 2004/2005 academic year. With the co-operation of Germany, the ÚOKFK operated a project in 2001-2004 that covered corruption, economic crimes and money laundering. Other activities include publishing a methodological guide for Czech police officers on “Small Gifts, Bribes and Corruption”, and awareness-raising and training activities held jointly with Transparency International Czech Republic. The ÚOKFK has also sent officers abroad for study visits and training seminars on corruption.

Commentary

The lead examiners recommend that the Czech Republic continue to train police officers and recruits on foreign bribery, including the practical aspects of such investigations.

(iv) Division of Competence and Co-ordination among Law Enforcement Bodies

109. Co-ordination between the police and prosecutors is provided for in the Criminal Procedure Code. The police are required to inform prosecutors of certain steps in the proceedings. For instance, after

⁵⁹ Instruction of the President of Police No. 130/2001; Response to Questionnaire, p. 2.

receiving a report of a crime, the police must report on “the commencement of steps” aimed at clarifying and verifying facts to a prosecutor within 48 hours. After verifying a criminal offence, the police must deliver a copy of the resulting resolution to a prosecutor within 48 hours. The prosecutor may also supervise and instruct the police during the verification and investigation of an offence.⁶⁰ However, the police stated at the on-site visit that in practice they are often not supervised because the prosecutors’ office has limited resources. After the visit, the Czech authorities stated that prosecutors have carried out their statutory duties despite insufficient administrative and clerical staff.

110. Internal instructions govern co-ordination among police bodies. According to officials from the ÚOKFK and the MoI, these instructions give the ÚOKFK responsibility for investigating all cases that involve corruption (including foreign bribery). Any police officer at the territorial level who discovers a case with a corruption element must immediately transfer the matter to the ÚOKFK. The ÚOKFK thereafter assumes conduct of the investigation, unless the offence is relatively minor and contains a local element, in which case the investigation may be transferred to local authorities.⁶¹

111. In practice, this division of competence is much less clear. The first foreign bribery investigation in the Czech Republic referred to above⁶² originated as a fraud and money laundering case. The ÚONVVK accordingly had initial carriage of the investigation, but it has continued to do so after the suspicions of foreign bribery surfaced. Consequently, the ÚOKFK did not appear to know much about the case at the on-site visit. The Czech authorities also stated that the ÚONVVK (not the ÚOKFK) will continue to investigate the foreign bribery aspect of the case because of the rules governing criminal proceedings, the close relation between the various offences and the need for a swift investigation. An official of the MoI stated that the ÚONVVK could co-operate with the ÚOKFK “if the investigation is eventually broadened”. The ÚONVVK also raised the prospect of a joint investigative team “if necessary”. If conflicts of competence between the ÚOKFK and the ÚONVVK arise, the Director of Criminal Police and Investigation Service will make the final decision. In any event, this case shows that the division of competence in foreign bribery cases is not as simple as initially described by the ÚOKFK.

112. The division of competence in practice is similarly unclear in tax cases that also involve corruption. During another panel of the on-site visit, the ÚONVVK stated that it also investigates corruption offences that come up in tax investigations. Such cases would only be transferred to the ÚOKFK if the corruption and tax offences are not closely connected. The representative of the ÚONVVK added that there is no general rule for assigning cases, thus clearly contradicting the information provided by the ÚOKFK.

113. The Czech Republic states that it maintains a database of all persons under prosecution. It also maintains several internal databases that are accessible by authorised police officers from all levels of police according to their needs. This includes a database of charged persons, facts relevant for police work, persons of police interest and more general databases (of the population, vehicles and weapons). It is normal to ask other units for verification, whether the case, person account or other data are kept in a particular database.

114. To conclude, the lead examiners are encouraged that the Czech Republic has issued rules to assign competence over domestic and foreign bribery cases to the ÚOKFK. This approach promotes economies of scale and a concentration of expertise in corruption investigations. However, the conflicting information provided during the on-site visit suggests that the system may not be completely functional in

⁶⁰ Criminal Procedure Code, ss. 154(2), 157, 158, 160 and 174.

⁶¹ Instruction of the President of Police No. 130/2001, article 3b, as amended in May 2006.

⁶² See section A.2(d) on p. 8.

practice. It also indicates that co-ordination, consultation and co-operation among tax, money laundering and corruption investigators may be inadequate.

Commentary

The lead examiners recommend that the Czech Republic (1) clarify the rules for dividing competence between the ÚOKFK and the ÚONV DK in foreign bribery cases, particularly those that also involve money laundering or tax offences, and (2) improve the co-ordination among tax, money laundering and corruption investigators in foreign bribery cases.

(c) *Prosecutors and the Judiciary*

(i) Organisation of the Public Prosecutor's Office and the Judiciary

115. The criminal courts in the Czech Republic are divided into 4 levels and comprise the Supreme Court, 2 High Courts, 8 Regional Courts and 86 District Courts.⁶³ The District Courts hear foreign bribery cases in the first instance.⁶⁴ The Public Prosecutor's Office (PPO) follows the same structure and is headed by the Supreme Public Prosecutor (SPP).

(ii) Resources, Awareness and Training of the Prosecutor's Office and the Judiciary

116. A share of the annual budget of the Ministry of Justice is allocated to the PPO. Prosecutors complained to the lead examiners about insufficient administrative and clerical staff, but they also indicated that the level of financial resources has not been "an obstacle" to the PPO.

117. The PPO may set priorities for prosecutions. Priority is usually given to old cases, trials and cases in which the accused is in custody. In fall 2005, the SPP issued a document stating that prosecution of corruption should also be given priority and pledged to give greater attention to this issue. However, the document only speaks of corruption generally and does not refer to the Convention or foreign bribery.⁶⁵ The Czech authorities explained that this was because the document concerns all activities of the SPP and not only criminal issues.

118. The Judicial Academy is responsible for training judges and prosecutors. The Academy draws instructors from the bench, the prosecutor's office, the bar and academia.⁶⁶ It organises one training event per year on corruption generally and additional courses on procedural matters (e.g. search and seizure) that are relevant to corruption cases. Both judges and prosecutors attend these events. However, none of these initiatives deal specifically with foreign bribery because, according to Czech officials, training on foreign bribery would not be substantially different from training on domestic corruption, financial crime and mutual legal assistance. A planned one-day seminar in 2007 will focus on evidence-gathering and investigation in corruption cases but will also refer to the Convention. The PPO provides additional training for their recruits and when there are developments in the law.

119. The lead examiners acknowledge the corruption-related training for judges and prosecutors. However, these activities deal mostly with corruption generally. Further training courses with greater emphasis on foreign bribery would be beneficial.

⁶³ See Annex 6 for an organisation chart of the Czech judiciary.

⁶⁴ Criminal Procedure Code, ss. 16-17.

⁶⁵ Internal Regulation No. SL 63/2005 of 21 October 2005.

⁶⁶ Act 6/2002 on Courts and Judges, ss. 129-133; Act on Public Prosecutor's Office, 283/1993 Coll., ss. 24 and 34a.

Commentary

The lead examiners recommend that the Judicial Academy organise additional training on foreign bribery for prosecutors and judges, including new recruits.

(iii) Division of Competence and Co-ordination among Prosecutors

120. Competence among the various prosecutors' offices is divided according to territory and the level of court at which proceedings are held. In foreign bribery cases, a District Public Prosecutor located in the district in which the offence occurred would commence proceedings in the first instance. If multiple prosecutors have jurisdiction over the same case, then the prosecutor who commenced proceedings first or who has jurisdiction over the most serious charge takes conduct of the case. Disagreements among prosecutors are resolved by a superior prosecutor. To prevent duplicate proceedings, the prosecutors' office maintains a nationwide central database of all persons under prosecution.

121. Complex and major foreign bribery cases are exceptions to the general rule for assigning competence. Prosecutors at the on-site visit explained that the High Public Prosecutor's Office (HPPO) has exclusive competence over proceedings involving economic crimes of a "complex" nature and crimes affecting the EU's financial interest. The HPPO also has exclusive competence over economic crimes which result in "damage" of at least CZK 100 million (approximately USD 4.5 million or EUR 3.5 million).⁶⁷ According to the Czech authorities, the HPPO decides whether a case is "complex" or exceeds the "damage" threshold. The "damage" in a bribery case depends on a variety of factors such as the size of the bribe and the value of the competing tenders for a contract.

(iv) Supervision by Superior Prosecutors

122. Czech prosecutors are subject to "supervision" by another prosecutor of an immediately superior prosecutor's office, e.g. a District Public Prosecutor is supervised by a Regional Public Prosecutor. The superior supervising prosecutor may issue written, binding general instructions to the inferior prosecutor. Regarding a specific case, a superior prosecutor can request information from the inferior prosecutor on matters such as the legal qualification of the case and how the case should be dealt with. If the inferior prosecutor does not proceed pursuant to the relevant legal provisions, the superior prosecutor may assume conduct of the case.⁶⁸

123. For foreign bribery, the HPPO has conduct of major foreign bribery cases (see above). The Supreme Public Prosecutor (SPP) is immediately superior to the HPPO and thus will supervise the HPPO in these prosecutions. For foreign bribery cases of less significance, a Regional Public Prosecutor will supervise a District Public Prosecutor in proceedings in the first instance.

124. The SPP has additional powers of a general nature over other prosecutors. He/she may recommend that the Minister of Justice appoint or remove a High, Regional or District Public Prosecutor.⁶⁹

⁶⁷ Decree of the Ministry of Justice, 23/1994 Coll., s. 15.

⁶⁸ Act on Public Prosecutor's Office, 283/1993 Coll., ss. 12c and 12d; see also Criminal Procedure Code, ss. 175(2) and 179.

⁶⁹ The Minister of Justice may in turn remove a High, Regional or District Public Prosecutor for a "serious breach of duties resulting from execution of the public prosecutor's competence" or "a breach of duties within the public prosecutor's office state administration performance": Act on Public Prosecutor's Office, 283/1993 Coll., s. 10(4).

He/she may issue binding instructions on procedures in and organisation of all prosecutor's offices, as well as binding opinions on the interpretation of laws and regulations.⁷⁰

125. The discussions at the on-site visit gave the lead examiners the impression that the SPP's supervision in major foreign bribery cases could be exposed to political influence. The SPP is appointed and removed by the Government on the proposal of the Minister of Justice. The SPP can be dismissed without cause, unlike High, Regional and District Public Prosecutors, who can generally be removed only for a serious breach of duties.⁷¹ According to a prosecutor at the on-site visit, practice has shown that the appointment and dismissal of the SPP is subject to "political influence". Much depends on whether there is "harmony" between the SPP and the Minister of Justice.

126. The Czech Republic disagrees with these views. It referred to legislative provisions that deal with the impartiality of prosecutors, though these are quite general in nature and may not be sufficient to alleviate the problem.⁷² After the on-site visit, the Czech Republic also referred to the duration of each SPP's appointment over the past 15 years as evidence of the office's independence.⁷³ The Czech authorities add that the SPP has not issued instructions in a specific case in 13 years.

127. Despite the assurances of the Czech Republic, the lead examiners remain concerned that the factors enumerated in Article 5 of the Convention could influence major foreign bribery cases. As noted above, the SPP has general powers of supervision over all other prosecutors. In addition, the SPP supervises the HPPO in specific major foreign bribery cases. Because of the SPP's exposure to political influence, there is a danger that the SPP's supervision could be affected by "concerns of a political nature", "national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved". Indeed, a law professor at the on-site visit observed that the principle of subordination which applies to Czech prosecutors may cause "some cases to be subject to subjective influence".

Commentary

The lead examiners recommend that the Working Group monitor whether considerations of national economic interest, the potential effect on relations with another State and the identity of the person involved are taken into account in the prosecution of foreign bribery cases in the Czech Republic.

(d) Investigative Techniques and Bank Secrecy

128. The Criminal Procedure Code provides the usual range of investigative techniques for foreign bribery cases. These are available to the police and prosecutors during both the "verification" and "investigation" of an offence. Wiretapping is available for "offences in the Criminal Code to the extent that they implement an international convention binding on the Czech Republic", which should cover foreign bribery cases under the Convention.⁷⁴

129. Bank secrecy covers all transactions and services of banks, including account balances and deposits. Secrecy is lifted when a bank reports a criminal act or makes a suspicious transaction report. It is

⁷⁰ Act on Public Prosecutor's Office, 283/1993 Coll., ss. 10(5) and 12.

⁷¹ Act on Public Prosecutor's Office, 283/1993 Coll., ss. 9-10.

⁷² Act on Public Prosecutor's Office, 283/1993 Coll., ss. 3, 24(1) and 24(2); see Annex 3 for excerpts.

⁷³ See Annex 8.

⁷⁴ Criminal Procedure Code, ss. 78-88a, 158a-158f and 164.

also lifted when a bank provides such information upon the written request of a prosecutor or a presiding judge pursuant to the Criminal Procedure Code.⁷⁵

(e) *Mutual Legal Assistance and Extradition*

(i) Mutual Legal Assistance

130. Mutual legal assistance (MLA) is governed by Chapter 25 of the Criminal Procedure Code. The Czech Republic has treaty-based MLA relations with most of its major trade and investment partners.⁷⁶ In the absence of a treaty, the Czech Republic will provide MLA on the basis of reciprocity. Dual criminality is not required. Requests for MLA are executed in accordance with the Criminal Procedure Code, subject to modification by treaty.

131. Two central authorities handle MLA. The Supreme Public Prosecutor (SPP) sends and receives MLA requests if the proceedings in the requesting state are at the pre-trial stage. The Ministry of Justice does likewise for requests arising from trial proceedings. Both central authorities submit incoming requests to the appropriate competent judicial authority for execution. Where provided for by a relevant treaty, requests for assistance may also be sent directly to law enforcement agencies. For both incoming and outgoing requests, the central authorities may provide support to judicial authorities in the form of language assistance, training and guidance.

132. The Czech Republic has rendered MLA in at least two foreign bribery cases. In the first case, it executed a request for documents in approximately eight months. The case was slightly delayed because the requesting state did not comply with certain treaty requirements. The second request was for documents and a witness statement. It was completed in four months.

133. The Czech Republic states that it may render MLA in criminal proceedings against a legal person, even though it does not recognise criminal liability of legal persons. The MLA provisions in the Criminal Procedure Code apply to proceedings of a criminal nature, as do the MLA treaties to which the Czech Republic is a party. Whether the target of an investigation is a legal or natural person is irrelevant. In fact, the Czech Republic (via the SPP) recently provided MLA in a criminal investigation of a legal person on this basis .

134. Less clear is whether the Czech Republic can provide MLA in non-criminal proceedings against a legal person. Several Parties to the Convention (e.g. Germany, Greece and Italy) only recognise administrative (as opposed to criminal) liability of legal persons. The Czech Republic may not be able to provide MLA in such proceedings under the Criminal Procedure Code and MLA treaties because these instruments only apply to criminal proceedings. The Czech authorities believe that they could resort to legislation on MLA in civil matters,⁷⁷ although the legislation has never been used for this purpose. In any event, this legislation may be inadequate for MLA purposes. The legislation consists only of three sections that are very general in nature. The Czech authorities listed a wide range of assistance available under the legislation, but some important measures (e.g. search and seizure) were notably missing from the list.

⁷⁵ Act on Banks, 21/1992 Coll., s. 38; Criminal Procedure Code, ss. 8(1) and 8(2).

⁷⁶ See Annex 6 for a complete list of treaties.

⁷⁷ Act on International Private and Procedural Law, 97/1963 Coll., ss. 55-57; Civil Law Convention on Corruption (CETS No. 174); various bilateral MLA treaties and the Hague Conference on Private International Law Conventions to which the Czech Republic is party; Response to Questionnaire, pp. 51-52.

Commentary

The lead examiners recommend that the Working Group monitor whether the Czech Republic effectively renders mutual legal assistance to other Parties to the Convention in non-criminal proceedings against legal persons.

(ii) Extradition

135. Extradition is also governed by Chapter 25 of the Criminal Procedure Code, subject to modification by a treaty. Czech nationals may be extradited only pursuant to a European Arrest Warrant (EAW) and only if the person sought is eventually returned to the Czech Republic to serve a sentence.⁷⁸ Non-nationals may be extradited pursuant to a treaty or, in the absence of a treaty, on the condition of reciprocity. Dual criminality is generally required except for certain cases under the EAW.

(iii) Denial of Co-operation Due to “Material Protected Interests”

136. The Criminal Procedure Code specifically allows consideration of essential or public interest in granting or providing extradition and MLA. Section 377 states that extradition or MLA will be refused if the request “would violate the Constitution of the Czech Republic, or any provision of Czech law that applies unconditionally or if handling the request would damage some other material protected interest of the Czech Republic” (underlining added). The provision was introduced in 2004 and the Ministry of Justice does not believe that it has been applied in a particular case.

137. The concept of “material protected interests” could affect the effectiveness of international co-operation. Because the concept is not clearly defined, it could conceivably encompass the factors listed in Article 5 of the Convention, namely “national economic interest, the potential effect upon relations with another State [and] the identity of the natural or legal persons involved.” The WGB has noted that consideration of these factors would reduce the efficacy of extradition and MLA in foreign bribery cases.⁷⁹

138. The Czech Republic believes that factors described in Article 5 of the Convention will not influence the execution of incoming MLA requests. Under Article 10 of the Constitution, if a duly promulgated and ratified international legal instrument (such as the Convention) is contrary to Czech domestic law, then the international instrument prevails. Section 375 of the Criminal Procedure Code also states that the provisions on MLA apply “only where not otherwise provided for by a promulgated international agreement binding on the Czech Republic.” Because of these provisions, the Czech Republic believes that the Convention will supersede s. 377 of the Criminal Procedure Code and preclude the consideration of the extraneous factors listed in Article 5. There is, however, no case law to support this position because s. 377 was enacted recently.

139. The Czech Republic could allay some of these concerns by providing general guidelines on extradition and MLA. The Czech Ministry of Justice has issued instructions to courts on certain factors that should be considered in extradition cases (*e.g.* the totality of the conduct, human rights conditions in the requesting state). The Supreme Public Prosecutor has also issued instructions to his subordinate prosecutors on other general matters. Neither of these documents, however, addresses “material protected interests” in the extradition and MLA process.

⁷⁸ Criminal Procedure Code, ss. 393, 403 and 411.

⁷⁹ In the Phase 2 examination of France, the WGB noted that France may refuse MLA if the request jeopardises France’s essential interests, and that such interests may be of an economic or social nature (WGB (2004), *France: Phase 2*, OECD, Paris, paras. 96-97 and 162).

Commentary

The lead examiners recommend that the Czech Republic (1) issue general instructions to prosecutors which state that the provision of extradition and MLA by the Czech Republic in foreign bribery cases shall not be influenced by factors listed in Article 5 of the Convention, and (2) draw the attention of its courts to the relationship between section 377 of the Criminal Procedure Code and Article 5 of the Convention. They also recommend that the Working Group monitor this issue as cases develop.

2. The Offence of Foreign Bribery

(a) Elements of the Offence

(i) Bribery through Intermediaries

140. The foreign bribery offence under Article 1 of the Convention covers bribes given to foreign public officials through intermediaries. On its face, s. 161 of the Criminal Code does not cover this situation. In Phase 1 (at section 1.1.3), the Czech Republic asserted that Section 161 covers “an indirect delivery of a material advantage or other advantages or services.” It did not provide case law in support of this statement.

141. In its response to the Phase 2 Questionnaires, the Czech Republic maintained this view and referred to a decision of the Supreme Court in support.⁸⁰ This case did not deal with the issue squarely, however. The Court held that an intermediary may be liable for indirect bribery (Criminal Code, s. 162) or as a participant in receiving bribes (ss. 10(1) and 160); it did not deal with the liability of the briber.

142. Discussions during the on-site visit ultimately alleviated the examiners’ concerns. The Czech authorities explained that there is no reported case law directly on this point because it is clear in Czech law that s. 161 covers this situation. A Czech criminal law professor confirmed this view. The lead examiners are therefore satisfied that s. 161 meets the requirements of the Convention in this regard.

(ii) Bribery in Order that an Official Acts or Refrains from Acting in Relation to the Performance of Official Duties

143. The Convention covers a bribe to be given “in order that the official act or refrain from acting in relation to the performance of official duties”. This includes “any use of the public official’s position, whether or not within the official’s authorised competence”. For example, the Convention covers “an executive of a company who bribes a official of a government, in order that this official use his/her office - though acting outside his/her competence - to make another official award a contract to that company.”⁸¹

144. The Czech foreign bribery offence is not expressed in such language. Section 161 of the Criminal Code only covers bribes given “in connection with procuring affairs of public interest”. In the same vein, s. 162a(2) states that the foreign bribery offence only applies to a foreign official who executes a function “connected with authority (competency) in procuring the affairs of public interest and the criminal offence was committed in conjunction with such authority.” Section 162a(3) adds that “procuring affairs of public interest” includes “keeping an obligation resulting from legal regulation or undertaken by contract, purpose of which is to ensure that, in commercial relations, participants of such relations or persons acting on their behalf will not be harmed or afforded unreasonable advantage”.

⁸⁰ Opinion (Rt 32/87) 11 Tz 25/86.

⁸¹ Convention Articles 1(1) and 1(4)(c), and Commentary 19.

145. The language in these provisions raises the question of whether the foreign bribery offence in s. 161 of the Criminal Code meets the requirements of Article 1 of the Convention. Put differently, the issue is: Does the notion of “procuring affairs of public interest” in the Criminal Code cover all acts and omissions “in relation to the performance of official duties”, including “any use of the public official’s position, whether or not within the official’s authorised competence”?

146. The jurisprudence suggests that the answer is negative. First, acts of “procuring affairs of public interest” must affect the interest of the whole or a substantial part of society. According to the Supreme Court of the Slovak Socialist Republic:⁸²

The notion of “procuring of matters of public interest” is not in its content equivalent to the performance of tasks falling under the competency of public official; it is broader and concerns performance of all tasks, fulfilment of which is in the interest of whole society or at least a large part of citizens. Procuring matters of public interest is not only decision-making, but also another activity, directly connected to fulfilment of tasks important to society. [Emphasis added.]

In another case, the Court reiterated that “procuring affairs of public interest” denotes “performing certain activity, decision-making or some act that serves the public interest, *i.e.* to the entire society or at least to a larger circle of citizens”.⁸³

147. Second, acts of “procuring affairs of public interest” must relate to the needs of the public. According to the Supreme Court:⁸⁴

“[P]rocuring affairs of public interest” is any activity which is related to fulfilment of tasks important to society, *i.e.* not only decision-making of authorities of state power and administration, but also satisfying of interests of citizens and organizations in the areas of material, medical, social, cultural and other needs. ... [The concept also applies to the fulfilment of important tasks by citizens,] but only with regard to particular activities addressing such needs; it does not apply to such conduct of citizens that is exclusive expression of his personal rights and duties. [Emphasis added.]

148. This jurisprudence causes the lead examiners to conclude that s. 161 of the Criminal Code is narrower than the Convention. The Convention broadly covers bribery to procure acts or omissions “in relation to the performance of official duties”. It is not restricted to acts or omissions that impact the interests of the whole or a substantial part of society. Nor is it limited to acts or omissions that fulfil “tasks important to society” or satisfy the “interests of citizens ... in the areas of material, medical, social, cultural and other needs”.

149. A senior official of the Czech MoJ conceded that the concept of “procuring affairs of public interest” could create a loophole in the offence under s. 161 of the Criminal Code. He admitted that the offence will not cover an individual who bribes a foreign public official in order that the official uses his/her office to influence a private company to award a contract to the briber. This is because the act procured by the briber and performed by the private company (*i.e.* the award of the contract) relates to a matter of private rather than public interest. The only exception is when the contract in question relates to the public’s “material, medical, social, cultural and other needs”, *e.g.* construction of a water treatment plant. The lead examiners view this limit to s. 161 as potentially problematic. Government officials in

⁸² Judgment (Rt 15/81) 6 Tz 28/80.

⁸³ Judgment (Rt 32/87) 11 Tz 25/86.

⁸⁴ Opinion No. 17/1978; see also Response to Questionnaire, p. 41.

many countries wield significant influence over private businesses, but s. 161 would not prohibit the bribery of these officials in order that they exert such influence.

Commentary

The lead examiners recommend that the Working Group monitor whether the Czech Criminal Code covers all acts in relation to the performance of an official's duties, including any use of the public official's position, whether or not within the official's authorised competence.

(b) *Jurisdiction*

(i) Territorial Jurisdiction

150. Article 4(1) of the Convention requires a party to “establish its jurisdiction over the bribery of a foreign public official when the offence is committed in whole or in part in its territory.” The Czech Republic has jurisdiction over all offences committed on its territory. Territorial jurisdiction extends to acts performed on Czech soil that violates or threatens an interest that is found, in whole or in part, outside the Czech Republic. Territorial jurisdiction also applies to the reverse situation, *i.e.* when an offender performs an act outside the Czech Republic which violates or threatens an interest that is, in whole or in part, inside the Czech Republic.⁸⁵

(ii) Nationality and Extraterritorial Jurisdiction

151. Article 4(2) of the Convention requires parties that have jurisdiction to prosecute their nationals for offences committed abroad to establish the same jurisdiction for foreign bribery according to the same principles. The Czech Republic has jurisdiction to prosecute Czech nationals for any criminal offences (including foreign bribery) committed abroad.⁸⁶ There is no requirement that the act is a crime in the place where it was committed.

(c) *Defences and Exemptions from Prosecution*

(i) Defence of Bribes of “Negligible Value”

152. Under the Convention, the conduct described in Article 1 should be a crime irrespective of the value of the bribe given.⁸⁷ There is some jurisprudence which suggests that bribes of a “negligible value” may not amount to an offence in the Czech Republic. At the on-site visit, the Czech authorities referred to case law in which the Supreme Court stated that, “in the area of performance of state power and administration ... no bribes may be tolerated, not even bribes of negligible value.”⁸⁸ The lead examiners are therefore satisfied that the Czech foreign bribery offence complies with the Convention in this regard.

⁸⁵ Criminal Code, s. 17.

⁸⁶ Criminal Code, s. 18.

⁸⁷ Article 1 and Commentary 7 of the Convention.

⁸⁸ Opinion No. 17/1978.

(ii) Defence of “Effective Regret”

153. Section 163 of the Criminal Code sets out the defence of “effective regret”:

Section 163
Special Provision on Effective Repentance

Punishability of bribery (Section 161) and indirect bribery (Section 162) shall cease if the offender has provided or promised a bribe solely because he/she has been requested to do so and reported the fact voluntarily and without any delays to the prosecutor or police authority.

154. There are thus two conditions for the defence to succeed. The official must solicit the bribe from the briber, and the briber must report the matter “voluntarily and without any delays” to the prosecutor or the police. According to Commentaries on the Criminal Code, a report is “voluntary” if it results from a free decision and is not motivated by other factors, *e.g.* because the offence has been detected. “Without delay” means “as soon as possible after the commission of the offence.”⁸⁹ The Czech authorities explained during the on-site visit that the defence also succeeds if a briber intends to report the matter but is arrested before he/she had an opportunity to do so. Coincidentally, the revised Criminal Code that was recently rejected by the Senate would have removed the requirement of “without delay” from the defence.⁹⁰

155. It should be noted that effective regret in s. 163 operates as a full defence, *i.e.* the offender is completely exonerated and becomes a witness for the prosecution. Another provision allows a court to consider effective regret as a mitigating factor at sentencing.⁹¹

156. In terms of procedure, after a briber reports the case, the police and the prosecutor are responsible for investigating whether the prerequisites for the defence are met. They then decide whether the defence should succeed; the courts are not involved. The only exception is when an accused raises the defence at trial after it has been rejected by the police and the prosecutor. In this case, the court decides whether the defence succeeds.

157. As for sanctions, the Czech authorities stated in Phase 1 that proceeds of bribery cannot be forfeited from a briber who effectively regrets. They have reversed their position in Phase 2 and stated that such proceeds can be forfeited under s. 73 of the Criminal Code. Commentaries to the Criminal Code support this view.⁹² A prosecutor must ask a court to order forfeiture.

158. The Czech Republic asserts that there are strong policy reasons underpinning the defence. During the Phase 1 review, it stated that when the defence is raised, “the law enforcing bodies can easily collect evidence in such a case and start penal prosecution against the person who requested a bribe. The bribe would no longer be dangerous to society.” Furthermore, the conditions for invoking the defence are “narrowly defined”.⁹³

⁸⁹ Šámal, Půry, Rizman (2004), *Commentary to the Criminal Code*, 6th ed.

⁹⁰ Response to Questionnaire, p. 38.

⁹¹ Criminal Code, s. 33(ch).

⁹² In Šámal, Půry, Rizman (2004), *Commentary to the Criminal Code*, 6th ed., the authors state that forfeiture under s. 73 may be ordered against a person who effectively regrets under s. 66 of the Criminal Code. Section 66 is a special defence of effective regret that applies only to offences listed in that section, and foreign bribery is not on the list. The Commentary therefore refers to a defence of effective regret which is different from the one that applies to foreign bribery. Nevertheless, the lead examiners are satisfied that forfeiture under s. 73 applies to both defences of effective regret under ss. 66 and 163.

⁹³ WGB (2000), *Czech Republic: Phase I*, OECD, Paris, section 1.1.3 and Evaluation section I.1.

159. In response, the WGB noted that “Although the Convention does not exclude the application of general defences as general provisions of the Criminal Codes of the parties, the general feeling of the WGB was that the defence of “effective repentance” presents a potential for misuse.” Notwithstanding the assurances of the Czech Republic, the WGB “remained concerned that this defence may go beyond the general defences ... and that its application may lead to a loophole in the implementation of the Convention.” The WGB will “specifically focus on this issue during the monitoring Phase 2.”⁹⁴

160. In Phase 2, the Czech authorities reiterated the policy reasons for the defence of effective regret. The defence helps to prevent bribery. It discourages officials from soliciting bribes, since even after the official solicits the briber, the latter still has an opportunity to “escape the bond of loyalty between co-offenders who wish to avoid punishment”.⁹⁵ The defence also helps to detect bribery, a crime that is secretive in nature and hence difficult to uncover. Exonerating a briber is often the only means of detecting an offence. It is thus a price that must be paid to reveal the crime.

161. However, there is little (if any) empirical support for the argument that the defence leads to the prevention and detection of bribery. Police officers at the on-site visit asserted that the provision is used in practice, but the Czech authorities could not provide statistics on how often the defence is invoked or succeeds. Moreover, the Supreme Court has twice noted that the defence is used very rarely.⁹⁶

162. The WGB has dealt with these issues in the Phase 2 examination of the Slovak Republic. The WGB found that the defences of effective regret in those countries are incompatible with Article 1 of the Convention. In the WGB’s view, the Convention does not contemplate liability to be imposed only when a briber fails to make a sufficiently early confession.⁹⁷ It is important to note that the defences of effective regret in the Czech and Slovak Republics are essentially identical because they derive from the same Criminal Code.

163. The WGB has also dealt with the policy arguments raised by the Czech Republic in support of the defence of effective regret. In particular, the WGB has questioned the utility of the defence because of the differences between the foreign and domestic bribery offences. When the defence is raised in a domestic bribery case, the Czech Republic can prosecute its official who solicited the bribe. In a foreign bribery case, there is no guarantee that the corrupt foreign official will be prosecuted. The foreign state may refuse to do so, or the conduct of the official may be legal in the foreign country. If this occurs, then the defence serves no useful purpose: the crime may come to light, but the offenders remain unpunished and the ends of justice are not served.⁹⁸

Commentary

The lead examiners recommend that the Czech Republic amend its legislation to exclude the defence of effective regret from the offence of foreign bribery.

⁹⁴ WGB (2000), *Czech Republic: Phase 1*, OECD, Paris, Evaluation section I.1.

⁹⁵ Response to Questionnaire p. 40.

⁹⁶ In Opinion No. 17/1978, the Supreme Court stated that: “Cases when bribery is reported voluntarily and without delay by the person offering or giving the bribe because such person was asked to do so (s. 163) are almost non-existent.” See also Opinion No. 16/1986.

⁹⁷ WGB (2005), *Slovak Republic: Phase 2*, OECD, Paris, paras. 150-161. The Czech Republic believes that there is no incompatibility between the Convention and the defence of effective regret because “there is subsequently extinguished punishability, not excluded one.”

⁹⁸ WGB (2005), *Slovak Republic: Phase 2*, OECD, Paris, para. 160. The WGB has also considered and rejected a similar argument concerning the defence of *concessione* (WGB (2004), *Italy: Phase 2*, OECD, Paris, para. 139).

(d) *Limitation Periods and Delays in Proceedings*

164. The limitation period in the Czech Republic for foreign bribery is five years.⁹⁹ Time begins to run from the commission of the offence. All proceedings, including appeals, must be concluded within the limitation period. The running of the period is suspended when a prosecution has been conditionally stayed, or if the offender is abroad or cannot be tried because of a legal impediment. The period is “interrupted” (*i.e.* restarted) when an offender is informed of the accusation of a criminal offence, and when the police, prosecutor or court undertakes “tasks directed towards criminal prosecution”. This last condition encompasses a broad range of matters, such as requests for mutual legal assistance, seeking of expert opinions, the commencement of a hearing, the rendering of judgment, the filing of an appeal etc.

165. The Czech Republic could not provide statistics on or estimate the number of foreign and domestic bribery cases which could not be prosecuted because of the expiry of limitation periods. However, because the limitation period can be restarted by a wide range of events, it is likely that few cases become statute-barred due to the lapse of time.

166. Of slightly more concern is delay in the justice system. The media has reported that the Czech judiciary is chronically understaffed, especially in terms of administrative and technical support.¹⁰⁰ Judges at the on-site visit concurred with this view and noted that delays are particularly severe in economic crime cases. Nonetheless, they believe that the situation has been improving.

167. In any event, concerns about delay are not borne out by statistics provided by the Czech Republic. In 2004, proceedings for domestic active bribery offences in the court of first instance took 324 days on average. The corresponding figure in 2005 was 263 days, compared to 380 days for fraud. These average lengths of proceedings are by no means short. Yet, they are not so long as to raise serious concerns that the Czech Republic cannot effectively prosecute foreign bribery.

3. *Liability of Legal Persons*

168. The Convention requires all Parties to “take such measures as may be necessary, in accordance with its legal principles, to establish the liability of legal persons for the bribery of a foreign public official.” Sanctions against legal persons for foreign bribery do not have to be criminal in nature, but they must be effective, proportionate and dissuasive.¹⁰¹

169. During Phase 1, the WGB noted that:¹⁰²

Czech Criminal Law does not know the concept of criminal responsibility of legal persons. There is also no possibility to impose fines on legal persons for bribery of foreign public officials. There is only a liability under administrative law relating to public procurement and under civil law concerning unfair competition (additional administrative or civil sanctions under Article 3.8.).

The Working Group considered that this situation falls short of the requirement of the Convention that parties at least establish effective, proportionate and dissuasive non-criminal

⁹⁹ Criminal Code, s. 67.

¹⁰⁰ The Economist Intelligence Unit (2006), *Country Profile: Czech Republic*, The Economist Intelligence Unit, London, p. 11; Martin, E.P. (13 December 2004), “Strasbourg Court Gives Cause for Deliberation”, Czech Radio 7, Radio Prague, www.radio.cz/en/article/61256.

¹⁰¹ Convention Articles 2, 3(1) and 3(2); Commentaries 20 and 24.

¹⁰² WGB (2000), *Czech Republic: Phase 1*, OECD, Paris, Evaluation section I.2.

sanctions, including monetary sanctions, for the offence of bribery of foreign public officials (Articles 2, 3.2.).

The Working Group took note of the announcement of the Czech authorities that they are preparing to establish criminal responsibility of legal persons in the context of a general re-codification of the Criminal Code, and that a draft is expected for autumn 2000. It encouraged the Czech authorities to finalise the legislative process as soon as possible.

170. Unfortunately, little has changed since the Phase 1 review.

(a) *Criminal Liability of Legal Persons*

171. It was not until June 2004 that the Czech government submitted a bill to Parliament on criminal liability of legal persons. The bill would have imposed liability for foreign bribery based on the actions of authoritative representatives of a legal person or a failure to adequately supervise employees. The range of sanctions would include fines, forfeiture of proceeds of crime, a ban on receiving public subsidies and participating in public procurement, cancellation of a licence to operate, publication of judgments, confiscation of property and winding up of the legal person.

172. Unfortunately, Parliament rejected the bill in November 2004. According to Czech officials, some lawmakers thought the scope of liability in the bill was too wide. Others believed that sanctions against natural persons are already sufficient and that sanctions against legal persons would punish innocent third parties such as shareholders. Some Czech officials believed that there was insufficient political will to pass the law.

(b) *Civil Liability of Legal Persons*

(i) Civil Liability under the Civil Code

173. In Phase 1 (at section 3.8), the Czech Republic stated that:

Pursuant to section 451 of the Civil Code, the court may render a civil law judgement on the transfer of “unjustified endorsement”. An “unjustified endorsement” is defined “as a material benefit acquired by performance of an act for which there was no legal reason, or which was based on an invalid legal act, or by performance in respect of a legal ground that did not materialise, as well as material benefit from dishonest sources”. The Czech authorities confirm that they consider gains from an offence of bribery as being derived from “dishonest sources”. Section 451 of the Civil Code, as any other sanction under civil law, applies to both natural and legal persons.

As succinctly summarised by a Czech official at the on-site visit, s. 451 obliges a legal (or natural) person to return proceeds of foreign bribery to a victim of the crime.

174. While this provision in theory applies to legal persons for foreign bribery, there could be several obstacles in practice. First, the action must be brought by a victim of the crime. A provision that allowed a public prosecutor to bring an action has been repealed. Unfortunately, Czech jurisprudence is not clear on who a “victim” is in a crime of foreign bribery. There is no settled opinion on whether a competitor who lost the tender and the government of the bribed official are victims.

175. Second, even if a foreign state or a non-Czech company may bring an action, it may not be practical to do so. Commencing private litigation in a foreign state is very costly and time consuming. It can therefore be justified only in cases involving large sums of money.

176. Third, there are limits to the jurisdiction of Czech courts to hear foreign bribery cases under the Civil Code. According to an official of the Ministry of Justice, for a Czech court to assert jurisdiction, there must be some connection between the case and the Czech Republic. For example, a court may refuse to hear a case if the only connection is that the briber is a Czech company.

177. Given these practical limitations, the lead examiners do not believe that the Civil Code offers effective, proportionate and dissuasive sanctions against legal persons for foreign bribery. A Czech official at the on-site agreed, noting that “these are not fundamental provisions for dealing with liability of legal persons for foreign bribery.”

(ii) Civil Liability under the Commercial Code

178. The Phase 1 report (at section 3.8) also referred to liability against a legal person under the Commercial Code:

Furthermore, there exists a civil penalty under the Commercial Code. Pursuant to section 44, paragraph 2e, of the Commercial Code bribery is one form of unfair competition. Section 49 of the Commercial Code defines “bribery” as an action (conduct) “whereby:

a) a competitor offers, promises or renders, directly or indirectly, any benefit to an individual who is a member of a competitor’s statutory body (or similar body), or a competitor’s employee (or an individual of similar status), in order to achieve, by means of (individual’s) unfair conduct, a priority, to the detriment of other competitors, for himself or for another competitor, or another unlawful advantage in competition; or

b) the individual referred to in letter a) directly or indirectly demands, solicits the promise of, or accepts, any kind of benefit for the same purpose.”

According to section 53 of the Commercial Code, persons whose rights have been violated or threatened as a result of unfair competition can demand that the violator abstain from his/her action and eliminate the improper state of affairs (resulting from it). They can also demand appropriate satisfaction, which may be rendered in money, damages, and surrender of unjustified enrichment. [Emphasis added.]

179. In Phase 2, the Czech Republic added that “the provision of s. 49 Commercial Code requires the initiative of a private person – the competitor injured.” This raises the same concerns as those for actions under the Civil Code, namely the practicality of bringing litigation in a foreign country.

180. Even more problematic is the restriction of this provision to bribery between competitors. As the above quotation indicates, these provisions only apply when two companies compete for a contract and an employee of one company bribes an employee of the other. The Czech Republic therefore acknowledges that these provisions are generally inapplicable to foreign bribery cases. The only exception is when a legal person bribes a foreign public official who is employed by a state-owned or controlled company that competes with the briber.¹⁰³ These provisions are therefore of very limited use in foreign bribery cases.

¹⁰³ Article 1(4)(a) of the Convention states that “foreign public official” means “any person exercising a public function for a foreign country, including for a public agency or public enterprise...” Commentaries 14 and 15 elaborate on the concept of “public enterprise”.

(c) *Administrative Liability of Legal Persons*

(i) Administrative Liability under the Administrative Order

181. In Phase 1 (at section 3.5), the Czech Republic stated that legal persons can be sanctioned for foreign bribery under the Administrative Order:

If a bribe was given in order to obtain an official permission to perform a certain activity without fulfilling all conditions necessary for obtaining such authorisation, the performance of this activity may be considered, if all conditions are met, as an administrative offence. As a result, the permission may be revoked pursuant to section 62 of the Administrative Order. Prior conviction of the natural person who has acted for the legal person is required. This sanction is intended to force even financially strong persons to comply with the legal requirements particularly in the field of administrative law.

182. The lead examiners doubt the relevance of this measure to foreign bribery. A Czech administrative sanction can usually only be imposed in relation to an act or omission performed by a Czech official. Such a situation is not relevant to the Convention, which concerns acts or omissions performed by foreign, non-Czech officials. The Czech authorities at the on-site visit largely concurred with this view. They stated that an administrative sanction could be imposed for foreign bribery only if the transaction to which the crime relates also happens to involve a Czech administrative decision. For example, a Czech company may bribe a foreign public official to secure a contract for a sale of goods. If the company then obtains a permit from the Czech authorities to export the goods, then the permit could arguably be rescinded as a sanction. Given the provision's restrictions, the Czech authorities readily admit that administrative liability will rarely be imposed in foreign bribery cases.

(ii) Administrative Liability in Public Procurement

183. In Phase 1 (at section 3.5), the Czech Republic stated that, starting in June 2000, a supervisory authority in public procurement may “exclude applicants from the bidding process for up to five years if they were convicted of an offence of, *inter alia*, bribery of a foreign public official.” The ban also applies if a natural person associated with the company (*e.g.* as a partner in a commercial company or a member of a board) has such a conviction.¹⁰⁴

184. On 1 July 2006, a new law on public procurement took effect which strengthened these provisions. The new law expressly requires a participant in public procurement to demonstrate that he/she has no previous convictions for “bribe acceptance, bribery and indirect bribery”. This includes foreign bribery, according to the Czech authorities. A participant who is a legal person must further show that the members of its “statutory body” (*e.g.* board of directors) do not have such convictions. A foreign participant must also prove that the relevant persons have not been convicted of such offences in the country where the participant operates, resides or has its registered office.¹⁰⁵

(d) *Future Developments*

185. There appears to be no concrete plans to address the lack of liability of legal persons for foreign bribery. At the on-site visit, the Czech authorities stated that the Ministries of Justice and Interior had concluded that administrative liability of legal persons is not suitable for the Czech Republic. After the visit, they indicated that the government will reconsider introducing criminal or administrative liability, or a combination of both. The Ministry of Justice stated that legislative reforms were unlikely before the

¹⁰⁴ Act 199/1994 Coll., s. 63.

¹⁰⁵ Act on Public Procurement, 137/2006 Coll., ss. 51, 53 and 57.

Parliamentary elections in June 2006. Any new legislation will probably be narrower in scope than the first bill, though the international commitments of the Czech Republic will be taken into account.

(e) Conclusion on Liability of Legal Persons

186. The lead examiners are deeply concerned over the continuing failure of the Czech Republic to establish liability of legal persons for foreign bribery. The Czech authorities' only attempt to create criminal liability has failed. To make matters worse, it is now clear that the sanctions under the Administrative Order, the Civil Code and the Commercial Code referred to in Phase 1 are of extremely marginal relevance to foreign bribery cases. Bans on public procurement are available but have never been applied in practice. In short, the presently available sanctions cannot be said to be "effective, proportionate and dissuasive". The Czech Republic has thus failed to discharge its obligations under the Convention.

187. The lead examiners are also concerned about the pace of legislative development in the Czech Republic. The WGB first expressed its concerns in Phase 1 over six years ago. It took four years after Phase 1 for the Czech Republic to present a draft bill on criminal liability of legal persons to Parliament. No visible progress has been made in the two years since Parliament rejected the bill. At the time of this report, the Czech authorities have no definite plans for action. In the view of the lead examiners, the Czech Republic needs to treat the issue of liability of legal persons with much more urgency.

Commentary

The lead examiners strongly recommend that the Czech Republic establish liability of legal persons for bribery of foreign public officials without delay, and put in place sanctions that are effective, proportionate and dissuasive. They further expect the Czech Republic, within 12 months, to report specifically to the Working Group in writing on the progress of this issue.

4. *The Offence of Money Laundering*

188. Article 7 of the Convention states that a Party "which has made bribery of its own public official a predicate offence for the purpose of the application of its money laundering legislation shall do so on the same terms for the bribery of a foreign public official, without regard to the place where the bribery occurred."

189. The Czech Republic stated in Phase 1 (in section 7) that two offences in the Criminal Code relate to money laundering: (1) s. 251 on concealment, transfer or use of a thing acquired by a criminal offence committed by another person or what has been acquired for such a thing, and (2) s. 251a on authorising another person to disguise the origin of an asset derived from crime.

190. On 1 July 2002, the Czech Republic repealed s. 251a and added two new provisions: (1) s. 252 on negligent money laundering, and (2) s. 252a which covers:

A person who conceals the origin or strives otherwise to seriously hamper or render impossible identification of the origin of a thing or other financial benefit acquired by criminal activity with the aim of giving the impression (making it appear) that this thing or benefit was acquired legally, or a person who enables another person to commit such an act...

191. During the on-site visit in Phase 2, the Czech authorities insisted that s. 252a is the sole provision that the lead examiners should consider. After the on-site visit, the Czech authorities asked that ss. 251 and 252 as well as s. 166 (on abetting) also be considered).

(a) *Scope of the Money Laundering Offence*

192. At the on-site visit, the Czech Republic clarified a number of matters concerning the scope of s. 252a. The definition of a predicate offence covers all intentional criminal offences, including foreign bribery. The definition of proceeds covers bribes and proceeds of bribery. To secure a conviction, the prosecution must prove beyond a reasonable doubt that the proceeds derived from a specific criminal activity; it is not sufficient to prove that the proceeds came from crime generally. The offence covers self-laundering, that is money laundering by a person who also commits the predicate offence.

193. Several international bodies have questioned whether the definition of laundering in s. 252a is sufficiently broad.¹⁰⁶ Under most international standards, laundering includes the acquisition, possession, use or disposition of proceeds of crime.¹⁰⁷ Section 252a does not employ such language. Furthermore, the definition in s. 252a is different from that in s. 1 of the AMLPC (on AML measures), which expressly defines laundering to include “acquisition, possession, use, conversion and transfer”. At the on-site visit, the Czech Republic stated that its practitioners have consistently maintained that the definition of laundering in s. 252a meets international standards. It did not provide case law to support its position.

194. There are also concerns over whether s. 252a covers foreign predicate offences. On its face, s. 252a makes no reference to laundering proceeds of offences that are committed outside the Czech Republic. As with the definition of laundering, s. 1 of the AMLPC expressly provides for this situation. A recent report noted that the Czech Republic had provided conflicting answers to this question.¹⁰⁸ The lead examiners encountered a similar situation at the on-site visit because one Czech official mistakenly believed that there was case law on this point. The proposed revision of the Criminal Code that was recently rejected by the Senate would have amended s. 252a to expressly cover foreign predicate offences.

Commentary

The lead examiners recommend that the Czech Republic consider amending the Criminal Code to expressly cover the laundering of proceeds of foreign bribery where the bribery occurs outside the Czech Republic. They also recommend that the Working Group monitor the operation of the Criminal Code in these areas as practice develops.

(b) *Enforcement of the Money Laundering Offence*

195. As noted earlier, the ÚONVDK of the Criminal Police Investigation Service is responsible for money laundering investigations. There is no specialised body to prosecute money laundering cases, but the Czech Republic stated that there are prosecutors who specialise in these cases in most prosecutors’

¹⁰⁶ International Monetary Fund (February 2004), *Czech Republic: Report on the Observance of Standards and Codes - FATF Recommendations for Anti-Money Laundering and Combating the Financing of Terrorism*, International Monetary Fund, Washington, D.C., IMF Country Report No. 04/46, pp. 5 and 9; Select Committee of Experts on the Evaluation of Anti-money Laundering Measures (2002), *Second Round Evaluation Report on the Czech Republic*, Council of Europe, Strasbourg, PC-R-EV (2002) 8 Summ. at para. 5; GRECO (2006), *Evaluation Report on the Czech Republic – Second Evaluation Round*, Council of Europe, Strasbourg, para. 33.

¹⁰⁷ For example, see Recommendation 1 of The Forty Recommendations of the FATF; the United Nations Convention against Corruption, Article 23; the United Nations Convention against Transnational Organised Crime, Article 6; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, Article 6.

¹⁰⁸ GRECO (2006), *Evaluation Report on the Czech Republic – Second Evaluation Round*, Council of Europe, Strasbourg, para. 33.

offices. There were 11 convictions under s. 252a in 2002-2005, none of which involved bribery. There were 7 convictions under s. 251a in 2002 before the section was repealed.¹⁰⁹

196. The number of money laundering convictions seems low, considering there were 328 and 107 convictions for domestic bribe giving and taking over the same period. Czech prosecutors agreed, but they believed that other countries have similar statistics. In their view, there are few convictions partly because the offence is difficult to prove. Another explanation is that many offenders are prosecuted only for the predicate offence, which usually attracts a heavier punishment. However, there are no statistics to support this claim. Nor does the explanation apply where different persons commit the predicate and laundering offences, which should arise in at least some bribery cases. In the view of the lead examiners, the complete absence of convictions for laundering proceeds of bribery suggests that the money laundering offence may not be adequately enforced in bribery cases. After the on-site visit, the Czech Republic acknowledged that there needs to be a better connection between bribery and money laundering investigations.

Commentary

The lead examiners recommend that the Czech Republic take appropriate measures to enforce its money laundering offence more effectively in connection with bribery cases.

(c) Sanctions for Money Laundering

197. Money laundering under s. 252a is punishable by 2 years imprisonment and/or a fine of CZK 2 000 to 5 million (approx. USD 90 to 225 000 or EUR 70 to 175 000). A court may also impose forfeiture, confiscation and a prohibition from engaging in an activity.¹¹⁰ The imprisonment increases to 1-5 years if the offender is a member of an organised group or if he/she acquires a benefit of CZK 500 000 or more (USD 22 500 or EUR 17 500). It is further increased to 2-8 years and “forfeiture of property” if the offender abuses his/her office or employment while committing the crime, or if he/she acquires a benefit of CZK 5 million or more (USD 225 000 or EUR 175 000).

198. Statistics show that no jail sentences and 2 fines were imposed in the 11 convictions under s. 252a to date. The other cases were disposed of by way of suspended sentences, bans on engaging in an activity and performance of public work. The pattern is similar for the 7 convictions under s. 251a in 2002. Czech officials could not provide information on the size of the fines or whether forfeiture was imposed.

199. In the absence of practice and more detailed statistics, the lead examiners are unable to conclude whether the sanctions for money laundering in the Czech Republic are sufficient.

Commentary

The lead examiners recommend that the Czech Republic maintain, to the extent possible, more detailed statistics on sanctions in money laundering cases. They also recommend that the Working Group monitor the sanctions for money laundering imposed in the Czech Republic.

¹⁰⁹ There were also 701 convictions under s. 251 in 2001. However, this figure is somewhat deceptive, since the section also covers many crimes unrelated to money laundering, such as possession of stolen property.

¹¹⁰ See section C.6(b) on p. 47 for a detailed explanation of the differences between “forfeiture of property”, “forfeiture of assets” and “confiscation of assets”.

5. *The Offence of False Accounting*

(a) *Scope of the False Accounting Offences*

200. Article 8 of the Convention obliges Parties to prohibit the making of off-the-books accounts or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, and the use of false documents for the purpose of bribing foreign public officials or of hiding such bribery. Each Party must “provide effective, proportionate and dissuasive civil, administrative or criminal penalties” for such activities.

201. As noted earlier,¹¹¹ the Act on Accounting (AoA) defines accounting standards in the Czech Republic. The AoA applies to a range of entities and stipulates standards that broadly prohibit the activities described in Article 8(1) of the Convention.

202. False accounting may also attract criminal sanctions in some cases. Section 125 of the Criminal Code covers (a) the failure to maintain accounts despite an obligation to do so, (b) keeping accounts with false or substantially distorted data, and (c) destroying, damaging and concealing accounts. However, these activities are punishable only if they jeopardise property rights of another person, or proper and timely tax assessment. The lead examiners believe that it is possible to engage in one of the activities described in Article 8(1) without necessarily jeopardising tax assessment or property rights of another person. Section 125 therefore may not cover all of the activities described in Article 8(1).

(b) *Enforcement of the False Accounting Offences*

203. The Public Prosecutor’s Office is responsible for prosecuting false accounting under the Criminal Code. The Authority for Detection of Illegal Proceeds and Tax Crime (ÚONVDK) investigates these cases under the direction of a prosecutor. There were 167 convictions in 2005, though the Czech Republic is unable to determine how many of these were related to bribery.¹¹²

204. On the other hand, Territorial Financial Authorities (TFOs) are responsible for imposing fines against accounting units for breaches of the AoA.¹¹³ TFOs, of which there are 222 in the Czech Republic, are primarily responsible for collecting taxes. At the on-site visit, TFO representatives admitted that their enforcement work focuses on compliance with tax laws and tax collection; enforcement of accounting standards is of secondary importance. TFO officials therefore do not examine every aspect of an entity’s accounts; they only look at items that impact taxes. In fact, TFOs may not have the expertise to enforce accounting standards, as one auditor at the on-site visit pointed out. Detection of bribery is given even lower priority. Upon discovery of false accounting, TFOs will not go further to determine whether the case is related to bribery. Not surprisingly, TFOs have never discovered a false accounting case that also involves bribery. In the view of the lead examiners, enforcement of the AoA is not adequate.

205. The lead examiners are concerned that sanctions in the Czech Republic for the false accounting activities described in Article 8 of the Convention are not effective, proportionate and dissuasive. False accounting that does not jeopardise tax assessment or property rights of another person are not punishable under s. 125 of the Criminal Code. This is not problematic in and of itself, because the Convention does not mandate criminal sanctions for false accounting and these situations are covered by the AoA. However, the AoA is not adequately enforced in practice since TFOs appear to lack the expertise and motivation to

¹¹¹ See section B.7(a)(ii) Accounting and Auditing Standards on p. 19.

¹¹² See Annex 5 for detailed statistics.

¹¹³ Act on Accounting, 563/1991 Coll., ss. 37(6) and (7); Act on Territorial Financial Authorities, 531/1990 Coll., s. 1(f).

do so. In light of all of these circumstances, false accounting that does not jeopardise tax assessment or property rights would escape both criminal and administrative punishment.

Commentary

The lead examiners recommend that the Czech Republic take appropriate measures to enforce accounting offences in the Act on Accounting more effectively in connection with bribery cases.

(c) *Sanctions for False Accounting*

(i) Criminal Sanctions

206. An offence under s. 125 of the Criminal Code is punishable by imprisonment of six months to three years, a ban on engaging in an activity and/or a fine of up to CZK 5 million (approx. USD 225 000 or EUR 175 000). The punishment increases to imprisonment of one to five years if the crime causes damage to another person's property or "other extremely grave consequences".¹¹⁴

207. The sanctions that have been meted out in practice seem much lower. Of the 494 convictions in 2000-2005, only 8 resulted in imprisonment (all of which were one year or less) and 55 resulted in fines.¹¹⁵ The Czech authorities could not provide data on the size of the fines that were imposed.

(ii) Administrative Sanctions

208. During Phase 1, false accounting under the AoA was punishable by a fine of up to CZK 500 000 (approx. USD 22 500 or EUR 17 500). If the offence prevents the proper determination of the tax base, the fine may be increased to CZK 1 million (approx. USD 45 000 or EUR 35 000). The Czech authorities admitted that these sanctions were not sufficiently dissuasive.

209. These penalties have been increased as a result. The offence is now punishable by a fine of up to 3% or 6% of the total amount of assets of the entity to which the accounts relate. If the value of assets cannot be determined, the value for the preceding accounting period will be used. If the value still cannot be determined, the enforcement authorities "shall determine the total assets value by a qualified estimate".

210. The lead examiners have some concerns that this new regime may create a loophole. The penalty for false accounting is now a function of the amount of assets held by the entity to which the accounts relate. It is not clear what penalty, if any, would be imposed against a shell company that has almost no assets. As the WGB observed in a previous Phase 2 examination,¹¹⁶ a shell company that is used to channel and dissimulate bribes to foreign public officials could conceivably keep false accounts with impunity.

211. Sanctions that have been imposed for violations of the AoA seem low. In 2000-2004, the average fine was approximately CZK 13 000 (approx. USD 590 or EUR 460) against natural persons and CZK 30 000 (approx. USD 1 400 or EUR 1 100) against legal persons. Representatives of TFOs explained that the sanctions were modest because TFOs do not check all aspects of an entity's accounts, but only those that impact taxes.

¹¹⁴ Criminal Code, ss. 53 and 125.

¹¹⁵ See Annex 5 for detailed statistics.

¹¹⁶ WGB (2005), *Slovak Republic: Phase 2*, OECD, Paris, para. 210.

(iii) Conclusion on Sanctions for False Accounting

212. The lead examiners have some concerns that the penalties which have been imposed for false accounting under the Criminal Code and the AoA may be inadequate. The data on this point is not entirely clear because the Czech Republic was unable to provide complete statistics, including the size of fines imposed under the Criminal Code, and the number of cases that concern activities described in Article 8(1) of the Convention. Nevertheless, based on the available information, the sanctions that have been imposed under the Criminal Code and the AoA do not appear to be effective, proportionate and dissuasive.

Commentary

The lead examiners recommend that the Czech Republic (1) ensure that the criminal and administrative penalties for false accounting are effective, proportionate and dissuasive in practice, and (2) compile more detailed statistics on the criminal and administrative sanctions that are imposed for false accounting. They also recommend that the Working Group monitor the sanctions for false accounting imposed in the Czech Republic.

6. Sanctions for Foreign Bribery

(a) *Criminal Sanctions*

213. Foreign bribery is punishable by imprisonment of 1-5 years, a fine of CZK 2 000 to 5 million (approx. USD 90 to 225 000 or EUR 70 to 175 000) and/or a prohibition from engaging in an activity.

214. In the absence of foreign bribery cases, statistics on domestic bribery cases can be of some guidance. In 2002-2005, there were 328 convictions for domestic bribe-giving.¹¹⁷ Only 29 convictions resulted in jail sentences, 16 of which were under one year. Almost one-third of the convictions resulted in suspended sentences. Another third resulted in fines, but the Czech authorities could not provide information on the size of the fines. Prohibition from engaging in an activity and performance of public work were relatively rare; they were ordered in only 17 and 24 cases respectively.

215. The lead examiners recognise that these statistics do not provide a complete picture. Sentences vary greatly depending on many factors, such as the size of the bribe, the benefits accruing to a briber and the offender's circumstances. Nonetheless, the low number of jail sentences and the high number of suspended sentences raise concerns that sanctions for bribery in the Czech Republic may be insufficient.

(b) *Confiscation and Forfeiture*

216. Forfeiture is covered under three sections in the Criminal Code. First, under s. 55, a court may "forfeit an asset" which was used or intended to be used to commit a criminal offence. It may also forfeit an asset which the offender acquired in relation to or as a reward for a criminal offence. However, a court can only forfeit assets that belong to an offender. Second, s. 73 allows a court to "confiscate an asset" that belongs to an offender who cannot be prosecuted or sentenced, or who was not punished by a court. A court may also "confiscate an asset" that does not belong to an offender and was acquired in relation to or as a reward for a criminal offence.

217. These provisions were amended in July 2006 to extend the concept of ownership to include beneficial owners. If forfeiture or confiscation is frustrated (e.g. because the original asset has been disposed of), a court may forfeit or confiscate another asset of equivalent value. The class of assets subject

¹¹⁷ See Annex 5 for detailed statistics.

to forfeiture and confiscation now includes not only “property values” such as real estate and movables, but also property rights and other appraisable values.¹¹⁸

218. Czech officials state that ss. 55 and 73 permit forfeiture of bribes and proceeds of bribery. Whether both occur in practice is less clear. Both sections are discretionary. The Czech authorities have provided case law which states that courts will generally forfeit (or confiscate) bribes from a corrupt official.¹¹⁹ They have not provided case law that suggests the same principle applies to proceeds of bribery obtained by a briber. More importantly, statistics indicate that forfeiture and confiscation are infrequent in corruption cases. In 2002-2004, forfeiture of assets under s. 55 was ordered against bribers in only 27% of the convictions for bribe-giving under s. 161. The figure is even lower (6%) for convictions for bribe-taking under s. 160.¹²⁰

219. The last relevant provision is “forfeiture of property” under s. 51. This concerns offenders who are sentenced to an unsuspended term of imprisonment for a serious intentional criminal offence by which the offender acquired, or attempted to acquire, a property benefit. When these conditions are met, a court may forfeit all or part of the offender’s property. According to Czech officials, whether a foreign bribery offence is serious depends on the circumstances of the case. Though statistics are unavailable, this provision is probably rarely applied in bribery cases. The sanction is only available in serious cases and when a court imposes imprisonment, which, as noted earlier, is relatively infrequent in corruption cases.

220. Based on the available information, the lead examiners are not convinced that forfeiture and confiscation are routinely imposed in corruption cases. It may therefore be useful for the Czech Republic to encourage its prosecutors to seek these sanctions in corruption cases whenever appropriate.

(c) *Administrative Sanctions*

221. In addition to criminal sanctions, the Convention contemplates civil and administrative sanctions for foreign bribery. These may include disentitlement to public benefits (e.g. export credit or ODA support) and disqualification from participation in public procurement and privatisation.¹²¹

(i) Officially Supported Export Credits

222. The CEB and EGAP may impose sanctions for bribery but have yet to do so in practice.¹²²

- (a) Before deciding to provide support, the CEB and EGAP will withhold support if there is “sufficient evidence” that a transaction involves bribery. If an exporter faces criminal proceedings, the CEB and EGAP will negotiate with the client but will conclude a contract only after the investigation clears the exporter of wrongdoing. If there is a legal judgment of bribery, the CEB and EGAP will withhold support for the transaction.
- (b) After deciding to provide support, the CEB and EGAP will interrupt loan disbursements if there is “sufficient evidence” that a transaction involves bribery. If an exporter faces criminal proceedings, indemnification is withheld until the exporter is cleared. If there is a legal judgment of bribery, the CEB and EGAP will invalidate the cover, deny

¹¹⁸ Criminal Code, ss. 56a, 73a and 89(13).

¹¹⁹ Supreme Court Opinion 11 Tz 3/83 (Rt 46/1983); Response to Questionnaire, p. 12.

¹²⁰ See Annex 5 for detailed statistics.

¹²¹ Article 3(4) and Commentary 24 of Convention; Revised Recommendation VI(ii).

¹²² Working Party on Export Credits and Credit Guarantees (2005), *Export Credit and Bribery: Review of Responses to the 2004 Revised Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – Situation as of 30 September 2005*, OECD, Paris, TD/ECG(2005)4/REV, pp. 35 and 43.

indemnification and interrupt loan disbursements. Some of these measures are provided for in the standard contracts used by the CEB and EGAP.¹²³

(ii) Public Procurement

223. Public procurement in the Czech Republic is decentralised. The Ministry for Regional Development (MRD) is responsible for developing procurement policies, but individual ministries are left to implement these policies and laws. The Office for Protection of Economic Competition (OPEC) is responsible for reviewing tender procedures and may inspect a procuring entity upon receiving an informal complaint. Beyond this, there are no mechanisms to enforce procurement policies and rules.

224. As noted in section C.3(c)(ii) on p. 41, since June 2001, the Czech Republic may ban persons convicted of foreign bribery from participating in public procurement. The onus is on a participant to demonstrate that he/she has no convictions. As of 1 July 2006, a new law requires a foreign participant to show that he/she has no such convictions in the country where he/she resides, or where his/her business operates or is registered. The Czech Republic is not aware of a case in which a ban was imposed because of (foreign or domestic) bribery. There is no blacklist of disqualified participants.¹²⁴

225. The MRD, among other bodies, trains other ministries on procurement rules. The new law on procurement has sparked activity in this regard. The MRD conducted several seminars in late 2005 and planned more events in the summer and fall of 2006. It considers the qualification of a participant in public procurement, including the absence of prior convictions for bribery, to be a vital issue. The MRD therefore specifically addresses this issue in its training events.

(iii) Official Development Assistance

226. Czech ODA projects are implemented through public procurement or a direct grant of money. The former must comply with the general rules on public procurement, including the requirement that an individual must have no convictions for bribery. The Ministry of Foreign Affairs, which co-ordinates ODA projects, does not believe that such a ban has ever been imposed.

227. ODA projects funded by grants are not subject to the rules on procurement. Nothing requires the government to withhold grants from persons and companies with prior convictions for foreign bribery.

(iv) Privatisation

228. In recent years, the Czech Republic has undergone extensive privatisation through direct sales, international tenders and mass privatisation by voucher. Privatisation is expected to remain a source of government revenue in the next few years and may include sale of assets in the energy sector.¹²⁵

229. Before 1 January 2006, the National Property Fund (NPF) oversaw privatisation. The NPF had no policy to ban persons convicted of foreign bribery from buying privatised assets.¹²⁶

¹²³ For example, see Articles I.5 and X.1.e. of EGAP's *General Insurance Conditions* for several of its products (www.egap.cz).

¹²⁴ Act on Public Procurement, 137/2006 Coll., ss. 51, 53 and 57; Response to Questionnaire, pp. 51-52.

¹²⁵ The Economist Intelligence Unit (2006), *Country Profile – Czech Republic*, The Economist Intelligence Unit, London, pp. 30-31 and 33; OECD (2005), *OECD Economic Surveys - Czech Republic*, OECD, Paris, pp. 56-57.

¹²⁶ Response to Questionnaire, p. 51.

230. The State Property Privatisation Implementation Department of the Ministry of Finance (MoF) has assumed the activities of the NPF since the latter's abolition on 1 January 2006. The MoF stated that the legislation governing privatisation¹²⁷ does not prohibit bans against a person who has been convicted of foreign bribery. At the on-site visit, the MoF pledged to impose such bans in the future, but this intention has not crystallised into a formal policy or rule.

(d) Conclusion on Sanctions for Foreign Bribery

231. The range of available sanctions in the Czech Republic for foreign bribery is comparable to that in other Parties to the Convention. Of more concern are the sanctions that will be imposed in practice. Statistics in domestic bribery cases show that the number of suspended sentences dwarfs that of jail sentences. Courts have imposed fines in some cases, but information on the size of the fines was not available. Regardless, the maximum fine that can be levied (USD 225 000 or EUR 175 000) could pale in comparison to the proceeds of foreign bribery in many international business transactions. The problem is exacerbated because forfeiture and administrative sanctions are rarely imposed. On the whole, it cannot be said with confidence that sanctions for foreign bribery will be "effective, proportionate and dissuasive".

Commentary

The lead examiners recommend that the Czech Republic ensure sanctions for foreign bribery are effective, proportionate and dissuasive in practice. In particular, they recommend that the Czech Republic (1) raise awareness among prosecutors of the importance of forfeiture and confiscation, and encourage prosecutors to seek these sanctions in corruption cases whenever possible, (2) ensure that the provisions concerning administrative sanctions are applied when appropriate, and (3) maintain more detailed statistics on sanctions in domestic and foreign bribery cases.

The lead examiners also recommend that the Working Group monitor the application of sanctions in foreign bribery cases.

D. RECOMMENDATIONS OF THE WORKING GROUP AND FOLLOW-UP

232. Based on its findings on the implementation of the Convention and the Revised Recommendation by the Czech Republic, the Working Group (1) makes the following recommendations to the Czech Republic and (2) will follow up certain issues as cases emerge.

I. Recommendations

Prevention, Detection and Awareness of Foreign Bribery

233. Concerning the general awareness of the Convention and foreign bribery, the Working Group recommends that the Czech Republic:

- (a) Increase the profile of foreign bribery in its anti-corruption activities;
- (b) Engage NGOs, business organisations and enterprises in these activities; and
- (c) Ensure that Czech individuals and companies which operate internationally are more aware of foreign bribery and of their exposure to solicitations of bribery by foreign public officials (Revised Recommendation I).

¹²⁷ Act on the Conditions for the Transfer of State Property to Other Subjects, 92/1991 Coll.

234. Concerning reporting of foreign bribery cases, the Working Group recommends that the Czech Republic consider adopting additional measures to strengthen protection for whistleblowers in order to encourage employees to report suspected cases of foreign bribery without fear of retaliation (Revised Recommendation I).

235. Concerning prevention and detection through export credits, the Working Group recommends that the Czech Export Bank be more proactive in raising awareness of foreign bribery among its staff, clients and potential clients (Revised Recommendation I).

236. Concerning prevention and detection through official development assistance (ODA), the Working Group recommends that the Czech Republic undertake additional activities to raise awareness of foreign bribery among:

- (a) Companies and NGOs that are involved in projects funded by ODA; and
- (b) Public officials who are involved in administering ODA, including those outside the Ministry of Foreign Affairs (Revised Recommendation I).

237. Concerning the prevention and detection of foreign bribery through taxation, the Working Group recommends that the Czech Republic:

- (a) Make more efforts to raise awareness of foreign bribery and the non-deductibility of bribes among tax examiners, tax professionals and the private sector;
- (b) Provide training to tax examiners on the detection of bribe payments disguised as legitimate allowable expenses; and
- (c) Disseminate OECD Bribery Awareness Handbook for Tax Examiners in Czech to all tax examiners. The Working Group also encourages the Czech Republic to amend its legislation and remove the restriction against Czech tax officials on reporting foreign bribery detected during tax audits to law enforcement (Revised Recommendations I and IV).

238. Concerning prevention and detection through accounting and auditing in the private sector, the Working Group recommends that the Czech Republic:

- (a) Work proactively with the accounting and auditing professions to raise awareness of foreign bribery and encourage these professions to develop specific training on foreign bribery in the framework of their professional education and training systems (Revised Recommendation I);
- (b) Consider requiring external auditors to report indications of a possible illegal act of bribery to competent authorities (Revised Recommendation V.B.iv); and
- (c) Clarify the procedure for auditors to provide information to law enforcement authorities upon demand, and raise the awareness of the procedure among auditors (Revised Recommendation I).

239. Concerning prevention and detection through auditing of the public sector, the Working Group recommends that the Supreme Audit Office raise the awareness of foreign bribery among its staff and train its staff on how to detect foreign bribery (Revised Recommendation I).

240. Concerning prevention and detection through anti-money laundering measures, the Working Group recommends that the Czech Republic:

- (a) Improve the feedback to entities that are required to report suspicious transactions;¹²⁸

¹²⁸ The Working Group notes that this is a general issue for many Parties.

- (b) Provide better guidance to these entities, for instance, by providing up-to-date typologies on money laundering where the predicate offence is bribery; and
- (c) Maintain statistics on suspicious transaction reports that result in or support bribery investigations and prosecutions (Revised Recommendation I).

Investigation, Prosecution and Sanctioning of Foreign Bribery and Related Offences

241. Concerning the investigation of foreign bribery, the Working Group recommends that the Czech Republic:

- (a) Continue to train police officers and recruits on foreign bribery, including the practical aspects of such investigations;
- (b) Clarify the rules for dividing competence between the ÚOKFK and the ÚONVDK in foreign bribery cases, particularly those that also involve money laundering or tax offences; and
- (c) Improve the co-ordination among tax, money laundering and corruption investigators in foreign bribery cases (Revised Recommendation I).

242. Concerning the prosecution of foreign bribery cases, the Working Group recommends that:

- (a) The Judicial Academy organise additional training on foreign bribery for prosecutors and judges, including new recruits (Revised Recommendation I); and
- (b) The Czech Republic maintain statistics on the use of diversion in domestic and foreign bribery cases (Convention Article 3).

243. Concerning extradition and mutual legal assistance, the Working Group recommends that the Czech Republic:

- (a) Issue general instructions to prosecutors which state that the provision of extradition and MLA by the Czech Republic in foreign bribery cases shall not be influenced by factors listed in Article 5 of the Convention, and
- (b) Draw the attention of its courts to the relationship between section 377 of the Criminal Procedure Code and Article 5 of the Convention (Convention Articles 5, 9 and 10).

244. Concerning the offence of foreign bribery, the Working Group recommends that the Czech Republic amend its legislation to exclude the defence of “effective regret” from the offence of foreign bribery (Convention Article 1).

245. Concerning the liability of legal persons for foreign bribery, the Working Group strongly recommends that the Czech Republic establish liability of legal persons for bribery of foreign public officials without delay, and put in place sanctions that are effective, proportionate and dissuasive. They further expect the Czech Republic, within 12 months, to report specifically to the Working Group in writing on the progress of this issue (Convention Articles 2 and 3(2)).

246. Concerning the offence of money laundering, the Working Group recommends that the Czech Republic:

- (a) Consider amending s. 252a of the Criminal Code to expressly cover the laundering of proceeds of foreign bribery where the bribery occurs outside the Czech Republic; and
- (b) Take appropriate measures to enforce the money laundering offence more effectively in connection with bribery cases (Convention Article 7).

247. Concerning the offence of false accounting, the Working Group recommends that the Czech Republic:

- (a) Take appropriate measures to enforce accounting offences in the Act on Accounting more effectively in connection with bribery cases; and
- (b) Ensure that the criminal and administrative penalties for false accounting are effective, proportionate and dissuasive in practice (Convention Article 8).

248. Concerning sanctions for foreign bribery, the Working Group recommends that the Czech Republic:

- (a) Raise awareness among prosecutors of the importance of forfeiture and confiscation, and encourage prosecutors to seek these sanctions in corruption cases whenever possible; and
- (b) Ensure that the provisions concerning administrative sanctions are applied when appropriate (Convention Article 3).

249. Concerning statistics, the Working Group recommends that the Czech Republic maintain, to the extent possible, more detailed statistics on the sanctions imposed in domestic and foreign bribery, money laundering and false accounting cases (Convention Articles 3, 7 and 8(2)).

II. Follow-up by the Working Group

250. The Working Group will follow up the issues below as cases develop in the Czech Republic:

- (a) The use of diversion in domestic and foreign bribery cases (Convention Article 3);
- (b) Whether the prosecution of foreign bribery cases, and the provision of extradition and MLA in such cases are influenced by factors such as national economic interest, the potential effect on relations with another State and the identity of the person involved (Convention Articles 5, 9 and 10);
- (c) Whether the Czech Criminal Code covers all acts in relation to the performance of an official's duties, including any use of the public official's position, whether or not within the official's authorised competence (Convention Article 1);
- (d) The provision of MLA to other Parties to the Convention in non-criminal proceedings against legal persons (Convention Article 9);
- (e) Whether the money laundering offence covers the laundering of proceeds of foreign bribery where the bribery occurs outside the Czech Republic (Convention Article 7); and
- (f) The sanctions imposed for foreign bribery, money laundering and false accounting, particularly confiscation and forfeiture (Convention Articles 3, 7 and 8(2)).

Annex 1 List of Participants in the On-Site Visit

Lead Examiners from the Iceland

- Mr. Thorsteinn A. Jónsson, Secretary General, Supreme Court
- Mr. Jón H. Snorrason, Public Prosecutor, Head of the Economic Crime Unit, National Commissioner of Police

Lead Examiners from Slovenia

- Mr. Robert Renier, Head, District State Prosecutor's Office in Krško
- Ms Antonija Setničar Mubi, Senior Advisor, Ministry of Finance, Tax Administration, General Tax Office

OECD Secretariat

- Mr. Silvio Bonfigli, Principal Administrator, Anti-Corruption Division
- Mr. William Loo, Administrator, Anti-Corruption Division

Ministries and Bodies of the Government of the Czech Republic

- Ministry of Justice
- Ministry of Interior, including:
 - Criminal Police Investigation Service
 - Unit for Combating Corruption and Financial Crime (ÚOKFK)
 - Unit for Detection of Illegal Proceeds and Tax Crime (ÚONVDK)
- Public prosecutors, including:
 - Supreme Prosecutor's Office
 - High Prosecutor's Office, Prague
 - Regional Prosecutor's Office, Prague
 - District Prosecutor's Office, Brno - venkov
- Ministry of Finance, including:
 - Financial Analytical Unit
 - Tax Administration
- Ministry of Foreign Affairs
- Ministry of Industry and Trade
- Ministry of Regional Development
- Ministry of Labour and Social Affairs
- Judicial Academy
- Police Academy
- Police College Praha-Ruzyně
- Supreme Audit Office
- Czech National Bank
- CzechInvest
- CzechTrade
- Czech Export Bank
- Export Guarantee and Insurance Corporation
- Office for Protection of Economic Competition

Czech Judiciary

- The Supreme Court of the Czech Republic

Civil Society

- Transparency International Czech Republic
- Czech-Moravian Confederation of Trade Unions
- Association of Independent Trade Unions (ASO)
- Faculty of Law, Charles University

Private Sector

- Association of Defence Industry (AOP)
- Association of Small and Medium-Sized Enterprises and Crafts (AMSP CR)
- Confederation of Industry (SPCR)
- Chamber of Tax Advisors
- Union of Accountants
- Chamber of Certified Accountants
- Chamber of Auditors
- Czech Bankers' Association
- Czech Bar Association
- Economic Chamber of the Czech Republic
- Alta, a.s.
- Aero Trade, a.s.
- Československá obchodní banka (ČSOB)
- Ernst & Young
- GE Capital Bank, a.s.
- HANA, a.s.
- Ompol, a.s.
- Škodaexport, a.s.
- Škoda Auto, a.s.
- Stavby silnic a železnic, a.s.
- Živnostenská banka

Annex 2 List of Abbreviations and Acronyms

AML	anti-money laundering
AMLPC	Act on Measures against Legalisation of the Proceeds of Crime, 61/1996 Coll.
AoA	Act on Accounting, 563/2001 Coll.
CEB	Czech Export Bank
CFD	Central Financial Directorate
CNB	Czech National Bank
Coll.	Collection of Laws
CPIS	Criminal Police Investigation Service
CZK	Czech koruna
EAW	European Arrest Warrant
EGAP	Export Guarantee and Insurance Corporation
EU	European Union
EUR	euro
FATF	Financial Action Task Force
FAU	Financial Analytical Unit of the Ministry of Finance
HPPO	High Public Prosecutor's Office
IAS	International Accounting Standards
ISA	International Standards on Auditing
MLA	mutual legal assistance
MoF	Ministry of Finance
MoFA	Ministry of Foreign Affairs
MoI	Ministry of Interior
MoJ	Ministry of Justice
MRD	Ministry for Regional Development
NCP	National Contact Point for the OECD Guidelines for Multinational Enterprises
ODA	official development assistance
OPEC	Office for Protection of Economic Competition
s.	section
ss.	sections
SAO	Supreme Audit Office
SME	small and medium-sized enterprise
SPP	Supreme Public Prosecutor
STR	suspicious transaction report
TFO	Territorial Financial Authority
TI-CR	Transparency International Czech Republic
USD	United States dollar
ÚOKFK	Unit for Detection of Corruption and Organised Crime
ÚONVDK	Authority for Detection of Illegal Proceeds and Tax Crime
WGB	OECD Working Group on Bribery

Annex 3 Excerpts from Relevant Legislation

1. Criminal Code

Section 55 Forfeiture of an Asset or Other Property Value

- (1) A court may impose a sanction of forfeiture of an asset or other property value
 - (a) which was used to commit the criminal offence
 - (b) which was intended to be used to commit the criminal offence
 - (c) which the offender acquired in relation to the offence or as a reward for it, or
 - (d) which the offender, albeit only partly, acquired for an asset or other property value specified under (c), where the value of the asset or other property value specified under (c) is not negligible in relation to the value of the asset or other property value acquired
- (2) A court may impose a sanction of forfeiture of an asset or other property value only if it is an asset or other property value belonging to the offender.
- (3) If an offender is in possession of an asset or other property value specified in paragraphs 1 and 2 to which he/she is not entitled or is in contravention of a special statute and forfeiture of the asset or other property value can be ordered, the court will always impose also this sanction upon him/her.
- (4) Prior to a decision entering into legal force there is a prohibition on appropriation of the asset or other property value forfeited, which also includes other instructions aimed at hindering the sanction of forfeiture of the asset or other property value.
- (5) Assets or other property values forfeited accrue to the state.
- (6) An offender upon whom a sanction of forfeiture of an asset or other property value has been imposed is regarded as not having been convicted as soon as the judgement in which this sanction was imposed has entered into legal force.

Section 56

A court may only impose forfeiture of a thing or other property value as the sole punishment where the Special Part of this Code permits imposition of this punishment and if, in view of nature of the committed criminal offence and the possibility of rehabilitating the offender, no other punishment is considered necessary for achieving the purpose of punishment.

Section 56a Forfeiture of Equivalent Value

- (1) If an offender destroys, damages, disposes of, renders useless or utilises, in particular consumes, an asset or other property value which a court could declare forfeited pursuant to Section 55 prior to imposition of a sanction of forfeiture of the asset or other property value, or if he/she otherwise hinders forfeiture of the asset or other property value, the court may impose forfeiture of equivalent value up to an amount which corresponds to the value of this asset or other property value; the court may determine the value of an asset or other property value which the court could declare as forfeited on the basis of an expert opinion or expert assessment.
- (2) When an asset is destroyed or damaged or rendered useless the court may impose forfeiture of equivalent value in addition to forfeiture of the asset pursuant to Section 55.
- (3) Equivalent value forfeited accrues to the state.

Section 73
Confiscation of an Asset or Other Property Value

- (1) If a sanction of forfeiture of an asset or other property value specified in Section 55 para. 1 has not been imposed, the court may order confiscation of this asset or other property value,
- (a) if it belongs to an offender who cannot be prosecuted or convicted
 - (b) if it belongs to an offender from whose sentencing the court has refrained
 - (c) if it poses a danger to persons or property or society, or if there is a risk that it will be used to commit particularly serious crimes, or
 - (d) it has been acquired in relation to a criminal offence or as a reward for it and does not belong to the offender, or has been acquired by a person other than the offender, albeit partly, for an asset or other property value which the offender acquired in relation to a criminal offence or as reward for it, or which the offender, albeit partly, acquired for such asset or other property value, where the value of the asset or other property value confiscated is not negligible in relation to the value of the asset or other property value acquired by the offender.
- (2) If an offender or another person is in possession of an asset or other property value specified in paragraph 1 to which he/she is not entitled or is in contravention of a special statute, in relation to which confiscation of the asset or other property value can be ordered, the court will always impose this protective measure on it.
- (3) The court may instead of confiscation of an asset or other property value impose an obligation
- (a) to modify it so that it could not be used for a purpose posing a danger to society
 - (b) remove certain equipment
 - (c) remove the brand name from it or change it, or
 - (d) restrict handling of this asset or other property value
- and stipulate an appropriate time limit for this
- (4) If an obligation specified in paragraph 3 is not fulfilled within the stipulated time limit, the court will decide on confiscation of the asset or other property value.

Section 73a
Confiscation of Equivalent Value

If the owner of an asset or other property value which could be confiscated pursuant to Section 73 uses, in particular disposes of it or consumes it, prior to a decision on sequestration, or if he/she otherwise hinders confiscation of the asset or other property value, obstructs the sanction of forfeiture of the asset or other property value by conduct breaching a prohibition under Section 55 para. 4, or hinders confiscation of the asset or other property value by conduct breaching a prohibition under Section 73b para. 2, the court may impose confiscation of equivalent value on him/her up to an amount which corresponds to the value of this asset or other property value; the court may determine the value of an asset or other property value upon which the court could impose confiscation on the basis of an expert opinion or expert assessment.

Section 73b

- (1) Assets or other property values and equivalent values confiscated accrue to the state.
- (2) The prohibition specified in Section 55 para. 4 is applied mutatis mutandis to imposition of confiscation of an asset or other property value and for imposition of an obligation pursuant to Section 73 para. 3.

Section 89

- (11) “Damage which is not negligible” shall mean damage amounting to no less than CZK 5 000, “damage which is not small” shall mean damage amounting to no less than CZK 25 000, “significant damage” shall mean damage amounting to no less than CZK 50 000, “considerable damage” shall mean

damage amounting to no less than CZK 500 000, “very large damage” shall mean damage amounting to no less than CZK 5 million. These amounts shall be used similarly to determine level of benefit, costs of clearing consequences of damage to environment, and value of a thing.

...

(13) The term “asset” shall also mean a manageable natural force. The provisions on assets also apply to securities and funds in an account and the provisions on real estate also apply to flats and non-residential premises where individual provisions do not imply something else. “Other property value” shall mean a property right or other value that can be estimated in monetary terms which is not an asset. An asset or other monetary value belongs to an offender or another person if he/she is the owner at the time of a decision on it or effectively treats it as the owner but the rightful owner or holder of this asset or other property value is not known.

Section 125

Falsification of Data Regarding Business and Financial Situation

(1) A person who fails to maintain books of account, records or other documents providing an overview of their business and financial situation or a basis for their inspection despite being obliged to do so pursuant to the law, or

a person who states untrue or substantially distorting data in such books of account, records or other documents, or

a person who destroys or damages such books of account, records or other documents, makes them unusable or conceals them,

thus jeopardising property rights of another person or proper and timely tax assessment, shall be punished by imprisonment for six months up to three years, or by prohibition to carry out their activities, or by a monetary punishment.

(2) The same punishment shall be imposed on a person who states incorrect or substantially distorting data in any materials used for registration into the Commercial Register and/or conceals significant facts in such materials, or

who states untrue or substantially distorting data in any materials used for the preparation of an expert opinion to be attached to an application for registration into the Commercial Register or who conceals significant facts in such materials, or

who endangers another person or restricts their rights by failing to file, without undue delay, an application for registration of facts prescribed by the law into the Commercial Register or by failing to deposit a document in the Collection of Documents despite being obliged to do so pursuant to the law.

(3) The punishment of imprisonment for one year up to five years shall be imposed on an offender who causes damage to another person’s property or another extremely grave consequence by their acts set out in paragraphs 1 and 2 above.

Section 161

Offering Bribes

(1) Whoever in connection with procuring affairs of public interest provides, offers or promises a bribe, shall be sentenced to imprisonment for up to 1 year or to a monetary punishment.

(2) A perpetrator shall be sentenced to imprisonment for 1 to 5 years or to monetary punishment

(a) if he commits the act given in paragraph 1 with the intent of procuring a substantial benefit for himself or for another person or of inflicting substantial damage or other particularly serious after-effect to another person or

(b) if he commits the act given in paragraph 1 *viz.* a public official.

Section 162
Indirect Bribery

- (1) Whoever requests or accepts a bribe for exerting his influence on the execution of the authority (competency) of a public official or for having done so, shall be sentenced to imprisonment for up to 2 years.
- (2) Whoever shall provide, offer or promise a bribe to another person for the reason given paragraph 1 shall be sentenced to imprisonment for up to 1 year.

Section 162a
Joint Provision

- (1) A bribe means an unwarranted advantage consisting in direct material enrichment or other advantage received or having to be received by the person bribed or with its consent to another person, and to which there is not entitlement.
- (2) A public official pursuant to Section 160 to 162 means, besides the persons referred to in Section 89, par. 9, also any person occupying a post
 - (a) in a legislative or judicial authority or the public administration of a foreign country, or
 - (b) an enterprise, in which a foreign country has the decisive influence, or in an international organizations consisting of (established by) countries or other entities of international public law,

if the execution of such a function is connected with authority (competency) in procuring the affairs of public interest and the criminal offence was committed in conjunction with such authority.

- (3) Procuring affairs of public (common) interest is also understood to mean keeping an obligation resulting from legal regulation or undertaken by contract, purpose of which is to ensure that, in commercial relations, participants of such relations or persons acting on their behalf will not be harmed or afforded unreasonable advantage.

Section 163
Special Provision on Effective Repentance

Punishability of bribery (Section 161) and indirect bribery (Section 162) shall cease if the offender has provided or promised a bribe solely because he/she has been requested to do so and reported the fact voluntarily and without any delays to the prosecutor or police authority.

Section 168
Failure to Report a Criminal Act

- (1) Whoever reliably learns that someone else has committed a criminal act of high treason (Section 91), subversive activity against the Republic (Section 92), terrorism (Section 93), terrorist attack (Section 95), diversionism (Section 96), sabotage (Section 97), espionage [Section 105(2)(3) and (4)], endangering an official secret (Sections 106 and 107), violation of statutory provisions on the disposal of goods and technologies liable to control procedures (Sections 124a, 124b and 124c), violation on statutory provisions on foreign trade in military materiel (Sections 124d, 124e and 124f), the counterfeiting and altering of money (Section 140), participation in a criminal conspiracy [Section 163a(2)(3)], unlawful disposal of personal data [Section 178(3)], general menace pursuant to Section 179, endangering the safety of a means of air transport or civil vessel pursuant to Section 180a, illegal taking of a means of air transport abroad pursuant to Section 180c(2), battering a charge (Section 215), murder (Section 219), genocide (Section 259) or use of a prohibited means of combat or unlawful warfare (Section 262), and fails to report such criminal act, without delay, to the office of public prosecution or the police, or in the case of soldier, to his commander or chief, shall be sentenced to a term of imprisonment of up to three years; where this Code provides a more moderate sentence for one of above-mentioned acts, this moderate sentence will be inflicted on him.

(2) Where a person commits an offence pursuant to subsection (1), it shall not be punishable if the person could not report the criminal act in question without exposing himself or a close person to the danger of death, a bodily injury, some other serious detriment or criminal prosecution. However, exposure of a close person to the danger of criminal prosecution shall not exonerate the offender from his culpability if his failure to report the criminal act concerns high treason (Section 91), subversive activity against the Republic (Section 92), terrorism (Section 93), terrorist attack (Section 95), diversionism (Section 96), sabotage (Section 97), espionage [Section 105(2)(3) and (4)], endangering an official secret (Sections 106 and 107), participation in a criminal conspiracy [Section 163a(2)(3) or genocide (Section 259).

(3) The reporting duty shall not apply to an attorney-at-law who learns of commission of a criminal act (criminal offence) in connection with performance of his duties as an attorney-at-law or his practice of law. The reporting duty shall further not apply to priests of registered churches and religious societies (being authorised to the exercise of special rights) if they learn of commission of a criminal act (criminal offence) in a confessor's or similar capacity and it is a secret of the confession.

Section 252a

Legalisation of the Proceeds of Criminal Activity

(1) A person who conceals the origin or strives otherwise to seriously hamper or render impossible identification of the origin of a thing or other financial benefit acquired by criminal activity with the aim of giving the impression (making it appear) that this thing or benefit was acquired legally, or a person who enables another person to commit such an act, will be sentenced to imprisonment for up to two years or pecuniary punishment.

(2) An offender will be sentenced to imprisonment for one to five years

- (a) if he/she commits an act specified in paragraph 1 as a member of an organised group, or
- (b) if he/she acquires a considerable benefit by means of such an act.

(3) An offender will be sentenced to imprisonment for two to eight years or forfeiture of property

- (c) if he/she commits an act specified in paragraph 1 related to a thing obtained by means of trafficking in narcotic or psychotropic substances or by means of another particularly serious criminal act;
- (d) if he/she acquires very large benefit by means of an act specified in paragraph 1; or
- (e) if he/she abuses his/her employment or job position for the commission of such an act.

2. Criminal Procedure Code

Section 8

(1) State authorities, legal entities and natural persons are obliged without needless delay and also, unless stipulated otherwise in a special regulation, without payment, to comply with requests from law enforcement bodies in performance of their duties. State authorities are also obliged to notify a state prosecutor or police authorities promptly of a fact indicating that a criminal offence has been committed.

...

(4) Fulfilment of obligations under paragraph 1 can be refused with reference to the obligation to preserve the secrecy of classified facts protected by a special Act or a non-disclosure obligation imposed or recognised by the state; this does not apply (a) if a person who has this obligation would otherwise run the risk of criminal prosecution for failure to report or failure to try to prevent a criminal offence, or (b) when dealing with a rogatory letter from a law enforcement body concerning a criminal offence, where the recipient of the rogatory letter is also the person who reported the criminal offence. A non-disclosure obligation the extent of which is not defined by law but derives from a legal action effected on the basis of the law is not regarded as a non-disclosure obligation recognised by the state under this Code.

(5) Unless a special Act stipulates the conditions under which classified facts protected under this Act or to which a non-disclosure obligation applies may be disclosed for the purposes of criminal proceedings, these facts may be requested for criminal proceedings with the previous consent of a judge. The non-disclosure obligation of a lawyer under the Legal Profession Act is not hereby affected.

Section 307 Conditional Suspension of a Case

(1) In proceedings with respect to a crime for which the law stipulates the punishment of imprisonment the upper limit of which does not exceed five years, the court and in the preparatory proceedings the state attorney may conditionally suspend the criminal prosecution with the accused person's consent if

- (a) the accused confessed to the crime commitment,
- (b) the accused compensated the damage caused by the crime, if any, or concluded an agreement with the injured person on the damage compensation or took other measures necessary for the damage compensation,

and if such decision can be reasonably deemed sufficient, taking into consideration the person of the accused and their hitherto life and circumstances of the case.

(2) The decision on conditional suspension of criminal prosecution shall specify the probation period of six months up to two years. The probation period shall start on the day of legal effectiveness of the decision on conditional suspension of criminal prosecution.

(3) The decision on conditional suspension of criminal prosecution shall order the accused who has concluded an agreement on damage compensation with the injured person to compensate the damage within the probation period.

(4) It is also possible to order the accused to observe reasonable restrictions and obligations directed at their leading orderly life.

(5) The accused and the injured person may file a protest against, and thereby suspend, the decision on conditional suspension of criminal prosecution. If the decision on conditional suspension of criminal prosecution is made by the court, the protest may also be filed by the state attorney.

Section 309 Settlement

(1) In proceedings with respect to a crime for which the law stipulates the punishment of imprisonment the upper limit of which does not exceed five years, the court and in the preparatory proceedings the state attorney may decide on approval of settlement with the accused person's consent if

- (a) the accused declares that they have committed the act for which they are prosecuted and there are no reasonable doubts regarding the fact that such declaration was made freely, seriously and certainly,
- (b) the accused compensates the damage caused by the crime to the injured person or takes steps necessary for its compensation or otherwise rectifies the harm caused by the crime, and
- (c) deposits to the account of the court or in the preparatory proceedings to the account of the state prosecution authority an amount of money designed for a specific addressee for public purposes, which amount is obviously not inadequate to the seriousness of the crime,

and if such manner of resolving the case is deemed sufficient, taking into consideration the nature and seriousness of the committed act, the extent of affecting public interests by the act, the person of the accused and their personal and property condition.

(2) A protest may be filed against and thereby suspend the decision pursuant to paragraph 1 above by the accused, the injured person and in the court hearing also by the state attorney.

Section 377
Protection of National Interests

A request by another country cannot be satisfied if its satisfaction would result in a breach of the Constitution of the Czech Republic or any of the provisions of the Czech laws that must be insisted upon without reservations or if the request satisfaction would harm another material protected interest of the Czech Republic.

3. *Act on Measures against Legalisation of the Proceeds of Crime, 61/1996 Coll.*

Article 1a
Definition of the Concepts

(1) For the purposes of this Act, the legalisation of the proceeds of criminal activity is understood to be an action intended to conceal the illicit origin of the proceeds of this activity with the aim of creating the impression that it is income acquired in accordance with the law. At the same time it is not decisive if this action, in part or whole took place on the territory the Czech Republic. The stated conduct consists in particular in:

- (a) The conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;
- (b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property originates from a crime;
- (c) The acquisition, possession or use of property or treatment of it knowing that it originates from a crime;
- (d) Criminal or any other type of association for the purpose of action stated in letters a), b) or c).

(2) Proceeds, pursuant to this Act, are understood to be whatsoever economic benefit from an action that shows features of a criminal offence.

...

(6) For the purposes of this Act, suspicious transaction is understood to be, transaction carried out under circumstances that arouse a suspicion of an effort to legalise proceeds or that the funds used in a transaction are intended for the financing of terrorism, terrorist activities or terrorist organisations; suspicious transactions are particularly:

- (a) Deposits in cash and then their immediate withdrawals or transfers to another account,
- (b) Establishment of several accounts by one client, if their number is obviously disproportionate to the subject of his/her business activities or his/her relative wealth, and transfers between these accounts,
- (c) Movements on a client's account that obviously do not agree with the character or range of his/her business activities or his/her relative wealth,
- (d) Those cases when the number of transactions on the account in a single day or in consecutive days does not agree with the usual monetary operations of the client,
- (e) Transactions that obviously do not have an economic reason,
- (f) Those cases when a participant to the transaction is directly or indirectly legal person or natural person against whom the Czech Republic is applying international sanctions pursuant to a special Act,

- (g) Those cases where the subject of the transaction is, even if only partially, sanctioned goods or services provided to a sanctioned subject or a sanctioned individual,
- (h) Those transactions directed to countries that inadequately or not at all, apply measures against the legalisation of proceeds.

4. Act on Public Prosecutor's Office, 283/1993 Coll.

Section 3

- (1) Matters entrusted to competency of public prosecutor's office are performed only by public prosecutors; other authorities or persons must not interfere with their activity or supplement or represent them in carrying out such activity.
- (2) Higher public prosecutor's office is entitled to interfere with carrying out the matters falling into competency of lower public prosecutor's offices only in manner and extent stipulated by this act.

Section 9

- (1) The Government appoints the Supreme Public Prosecutor at the proposal of the Minister of Justice.
- (2) The Government may remove the Supreme Public Prosecutor from office at the proposal of the Minister of Justice.
- (3) The Minister of Justice may appoint and remove the Supreme Public Prosecutor deputies at the proposal of the Supreme Public Prosecutor.

Section 10

- (1) The Minister of Justice appoints high public prosecutors at the proposal of the Supreme Public Prosecutor.
- (2) The Minister of Justice appoints regional public prosecutors at the proposal of the high public prosecutor being the head of the high public prosecutor's office, in jurisdiction of which the regional public prosecutor is to be appointed.
- (3) The Minister of Justice appoints district public prosecutors at the proposal of the regional public prosecutor being the head of the regional public prosecutor's office, in jurisdiction of which the district public prosecutor is to be appointed.
- (4) The Minister of Justice may remove a high public prosecutor, regional public prosecutor and district public prosecutor from office, in case they seriously breach duties resulting from execution of the public prosecutor's competence; if it is not a removal for breach of duties within the public prosecutor's office state administration performance (hereinafter referred to as "the public prosecutor's office administration"), he/she does so at the proposal of the chief public prosecutor, who by Paragraphs 1 to 3 is competent to propose the appointment to the office from which the public prosecutor is to be removed.
- (5) The Minister of Justice may also appoint or remove a regional or district public prosecutor at the proposal of the Supreme Public Prosecutor.
- (6) The Minister of Justice appoints or removes deputies of high public prosecutors, regional public prosecutors and district public prosecutors at the proposal of the public prosecutor whose deputy is to be appointed or removed.

Section 24

- (1) In his/her position performance the public prosecutor is obliged to duly perform his/her duties with responsibility, while respecting principles stipulated by the law for the public prosecutor's office activity; he/she is namely obliged to proceed in professional manner, thoroughly, duly, impartially and righteously without undue delay. He/she must refuse any external intervention or another influence, the result of which might be violating some of these duties.

(2) In his/her position performance, personal life and exercising his/her political rights the public prosecutor is obliged to avoid all that might indicate justifiable doubts of observing duties stated in Paragraph 1, endanger seriousness of the public prosecutor's position or the public prosecutor's office or endanger trust in impartial and professional performance of competence of the public prosecutor's office or the public prosecutor. The following namely applies to the public prosecutor:

- (a) Interests of political parties, public opinion or media must not influence the public prosecutor in his/her position performance;
- (b) The public prosecutor must perform his/her position impartially, without economic, social, racial, ethnic, sexual, religious or other prejudice and in relation to persons, with whom he/she negotiates in his/her capacity he/she must avoid expressions of personal sympathies or negative attitudes;
- (c) The public prosecutor must not allow the public prosecutor's position to be misused for enforcing private interest;
- (d) The public prosecutor must manage his/her own property as well as the property which has been entrusted to him with responsibility, enter into obligations the performance of which does not harm due performance of the public prosecutor's position and manage his/her finances so that they may not be used for impermissible influencing his/her person in connection with the public prosecutor's position;
- (e) The public prosecutor must not act as an arbitrator or mediator of a legal dispute settlement, represent participants in judicial proceedings or act as an agent of an injured person or a person being a participant in judicial or administration proceedings, excluding legal representation or cases when such procedure is allowed by a special legal regulation, or cases when it is representation of another participant in proceeding, where the public prosecutor is a participant, too.

5. Code of Ethics of the Public Administration Employees

Article 7

Reporting of Improper Activities

(1) The employee applies all his/her strength to ensure a maximally effective and economical management and use of financial resources, equipment and services that were entrusted to him/her. In case that he/she finds out about a loss of or damage to the property owned by the State or to the property in the territorial self-governing units' ownership, about a fraud or corruption activities, he/she reports such facts to the superior head employee or perhaps to the law enforcement bodies.

Annex 4 Economic Statistics

1. Trade Statistics

In 2005, the Czech Republic imported USD 6.38 billion in goods and services, ranking 20th out of 30 OECD countries. The major import partners (as a percentage of total imports) were: (1) Germany (29.93%), (2) Russia (5.69%), (3) Slovakia (5.42%), (4) China (5.14%), (5) Poland (4.96%), (6) Italy (4.75%), (7) France (4.54%), (8) Netherlands (4.03%), (9) Austria (3.96%), (10) Japan (3.13%). The major categories of imported goods were: (1) electrical machinery, apparatus and appliances (10.34%), (2) road vehicles (8.59%), (3) petroleum, petroleum products and related materials (6.02%), (4) general industrial machinery and equipment (5.33%), (5) iron and steel (5.26%).

In 2005, the Czech Republic exported USD 6.52 billion in goods and services, ranking 21st out of 30 OECD countries. The major export destinations (as a percentage of total exports) were: (1) Germany (33.39%), (2) Slovakia (8.67%), (3) Austria (5.48%), (4) Poland (5.48%), (5) France (5.31%), (6) United Kingdom (4.64%), (7) Italy (4.25%), (8) Netherlands (3.75%), (9) Belgium (2.69%), (10) Hungary (2.68%). The major categories of exported goods were: (1) road vehicles (16.22%), (2) electrical machinery, apparatus and appliances (9.68%), (3) general industrial machinery and equipment (7.19%), (4) office machines and automatic data-processing machines (7.19%), (5) manufactures of metals (5.89%).

2. Foreign Direct Investment Statistics

The Czech Republic's outward FDI position in 2002 was USD 1.4731 billion, ranking 24th among 27 OECD countries for which data were available. By 2005, the outward FDI position had reached an estimated USD 4.2393 billion. At the end of 2004, the top destinations were: (1) Slovakia (22.2%), (2) Netherlands (11.5%), (3) Cyprus (11.4%), (4) United Arab Emirates (8.5%), (5) Bulgaria (8.4%). The top sectors were (1) financial intermediation (40.5%), (2) Trade and repairs (19.1%), (3) Real estate and business activities (13.1%), (4) electricity, gas and water (8.4%), (5) chemical products (4.2%).

The Czech Republic's inward FDI position in 2002 was USD 38.7 billion, ranking 21st out of 28 OECD countries for which data were available. By 2004, the inward FDI position had reached an estimated USD 65.35 billion, ranking 17th out of 25 countries for which data were available. The top sources at the end of 2004 were (1) Netherlands (32.6%), (2) Germany (20.6%), (3) Austria (11.2%), (4) France (6.6%), (5) United States (5.2%). The top sectors at the end of 2004 were (1) financial intermediation (16.5%), (2) trade and repairs (12.9%), (3) real estate and business activities (11.3%), (4) motor vehicles (7.5%), (5) electricity, gas, water (6.7%).

Sources: OECD (May 2005), *Main Economic Indicators*, OECD, Paris, p. 25; The Czech Statistical Office www.czso.cz; OECD (2004), *International Direct Investment Statistics Yearbook 1991-2002, 2003 Edition*, OECD, Paris, pp. 12, 17, 93-105; OECD (June 2006), *Trends and Recent Developments in Foreign Direct Investment*, OECD, Paris; Czech National Bank (March 2006), *2004 Foreign Direct Investment*, Czech National Bank. Where necessary, data converted to USD based on the interbank exchange rate on 31 December 2002.

Annex 5 Statistics on Corruption and Related Offences

All statistics were provided by the Czech Ministry of Justice.

1. Criminal Sanctions for Corruption Offences

2002 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Forfeiture of an Asset (s. 55)	Public Works	Other	No Sanction
		up to 1	1 – 5	5-15							
158	104	0	3	0	87	45	17	-	5	2	1
159	6	0	0	0	3	1	3	-	2	0	0
160	26	0	1	0	23	18	12	1	1	1	0
161	108	6	5	0	43	8	35	27	10	37	0
162	3	0	0	0	3	0	0	-	0	0	0

2003 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Forfeiture of an Asset (s. 55)	Public Works	Other	No Sanction
		up to 1	1 – 5	5-15							
158	110	0	4	1	87	59	21	0	3	1	1
159	11	0	0	0	9	0	2	0	0	0	0
160	20	0	0	0	20	9	7	2	2	0	0
161	53	6	2	0	25	5	19	12	16	0	0
162	2	0	0	0	1	0	0	0	0	1	0

2004 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Forfeiture of an Asset (s. 55)	Public Works	Other	No Sanction
		up to 1	1 – 5	5-15							
158	127	0	9	0	100	53	24	-	4	4	1
159	5	0	0	0	3	2	1	-	0	0	1
160	23	0	0	0	21	16	6	1	0	1	0
161	74	5	1	0	33	3	26	25	7	35	1
162	0	0	0	0	0	0	0	-	0	0	0

2005 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Forfeiture of an Asset (s. 55)	Public Works	Other	No Sanction
		up to 1	1 – 5	5-15							
158	-	-	-	-	-	-	-	-	-	-	-
159	-	-	-	-	-	-	-	-	-	-	-
160	38	0	0	0	3	1	20	-	0	0	7
161	93	3	5	0	0	0	0	-	3	7	7
162	1	0	0	0	0	0	0	-	0	0	0

Note:

- Section 158: Abuse of Authority by a Public Official
- Section 159: Negligent Thwarting of Public Official's Tasks
- Section 160: Receiving Bribes (Passive Bribery)
- Section 161: Offering bribes (Active Bribery)
- Section 162: Indirect bribery

In 2005, Czech courts also imposed forfeiture of property (s. 51) and forfeiture of a thing in 4 and 2638 cases respectively. The Czech Republic cannot determine how many of these cases involved bribery (or related offences such as money laundering or false accounting).

2. False Accounting Offences

Administrative Penalties under the Act on Accounting

	2000	2001	2002	2003	2004	2000-2004 Average
Cases against natural persons	511	539	166	117	196	1 529
• Average fine per case (CZK)	14 589.04	13 241.19	12 325.30	12 196.58	12 188.78	13 377.37
• Average fine per case (EUR)	510.62	463.44	431.39	426.88	426.61	468.21
• Average fine per case (USD)	656.51	595.85	554.64	548.85	548.49	601.98
Cases against legal persons	237	261	71	94	325	988
• Average fine per case (CZK)	43 173.00	30 371.65	61 535.21	27 638.30	14 827.69	30 308.70
• Average fine per case (EUR)	1 511.05	1 063.01	2 153.73	967.34	518.97	1 060.80
• Average fine per case (USD)	1 942.78	1 366.72	2 769.08	1 243.72	667.25	1 363.89

Sanctions under Section 125 of the Criminal Code (False Accounting)

Year	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Public Works	Other	No Sanction
		up to 1	1-5	5 or more						
2000	23	2*	-	-	16	4	4	-	-	-
2001	32	1*	-	-	23	2	6	-	-	-
2002	62	0	0	0	50	8	8	3	1	3
2003	91	1	0	0	69	11	12	7	3	5
2004	119	3	0	0	94	17	14	5	0	5
2005	167	1	0	0	14	2	11	7	0	38

* There were 2 and 1 sentences of imprisonment for 2000 and 2001 respectively, but the Czech authorities did not indicate the length of the sentences.

3. Money Laundering Offences

Sanctions under Sections 251-252a of the Criminal Code

2002 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Public Works	Other	No Sanction
		up to 1	1-5	5 or more						
251	701	52	22	0	368	9	74	147	26	47
251a	7	0	0	0	5	0	0	2	0	0
252	19	1	0	0	9	1	8	1	0	0
252a	0	0	0	0	0	0	0	0	0	0

2003 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Public Works	Other	No Sanction
		up to 1	1-5	5 or more						
251	663	37	13	0	301	5	79	183	11	56
252	22	0	0	0	11	0	7	3	0	1
252a	0	0	0	0	0	0	0	0	0	0

2004 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Public Works	Other	No Sanction
		up to 1	1-5	5 or more						
251	632	41	15	0	278	8	64	175	16	51
252	22	2	0	0	6	0	13	2	1	0
252a	4	0	0	0	3	1	2	0	0	0

2005 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Public Works	Other	No Sanction
		up to 1	1-5	5 or more						
252a	7	0	0	0	0	0	0	1	0	1

Note:

- Section 251: Participation or Sharing
- Section 251a: Authorise Another to Disguise Asset Origin
- Section 252: Negligent Money Laundering
- Section 252a: Intentional Money Laundering

4. *Anti-money Laundering Measures*

Suspicious Transaction Reporting

Year	2000	2001	2002	2003	2004	2005	Total	Percentage
STRs received by FAU	1 917	1 398	1 264	1 970	3 267	3 404	13 220	100%
• STRs from Banks	1 565	1 046	1 023	1 789	3 040	3 163	11 626	87.94%
• STRs from Entities Other Than Banks	352	352	241	181	227	241	1 594	12.06%
STRs Sent by FAU to Law Enforcement	104	101	115	114	103	208	745	5.64%

Enforcement of the AMLPC on Non-Bank Entities (Performed by the Financial Analytical Unit)

Year	On-site Inspections	Inspections by Correspondence	Number of Penalties	Total Amount of Fines Imposed		
				CZK	USD	EUR
2000	14	47	3	3 million	135 000	105 000
2001	5	206	14	12 million	540 000	420 000
2002	6	74	33	30 million	1 350 000	1 050 000
2003	5	27	4	650 000	29 250	22 750
2004	1	14	0	0	0	0

Enforcement of the AMLPC on Entities in the Banking Sector (Performed by the Czech National Bank)

Year	On-site Inspections
2002	2
2003	9
2004	5
2005	3

Note: The Czech National Bank did not impose any sanctions under the AMLPC in 2002-2005.

Annex 6 Agreements on Extradition and MLA in Criminal Matters to Which the Czech Republic Is a Party

Provided by the Czech Ministry of Justice.

1. *Multilateral Instruments*

- European Convention on Extradition, CETS No. 024
- European Convention on Mutual Assistance in Criminal Matters, CETS No. 030
- European Convention on the Supervision of Conditionally Sentenced or Conditional Released Offenders, CETS No. 051
- European Convention on the Transfer of Proceedings in Criminal Matters, CETS No. 073
- Additional Protocol to the European Convention on Extradition, CETS No. 086
- Second Additional Protocol to the European Convention on Extradition, CETS No. 098
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, CETS No. 099
- Convention on the Transfer of Sentenced Persons, CETS No. 112
- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, CETS No. 141
- Additional Protocol to the Convention on the Transfer of Sentenced Persons, CETS No. 167
- Criminal Law Convention on Corruption, CETS No. 173
- Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, CETS No. 182
- Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union of 29 May 2000 and the Protocol of 16 October 2001

2. *Bilateral Instruments*

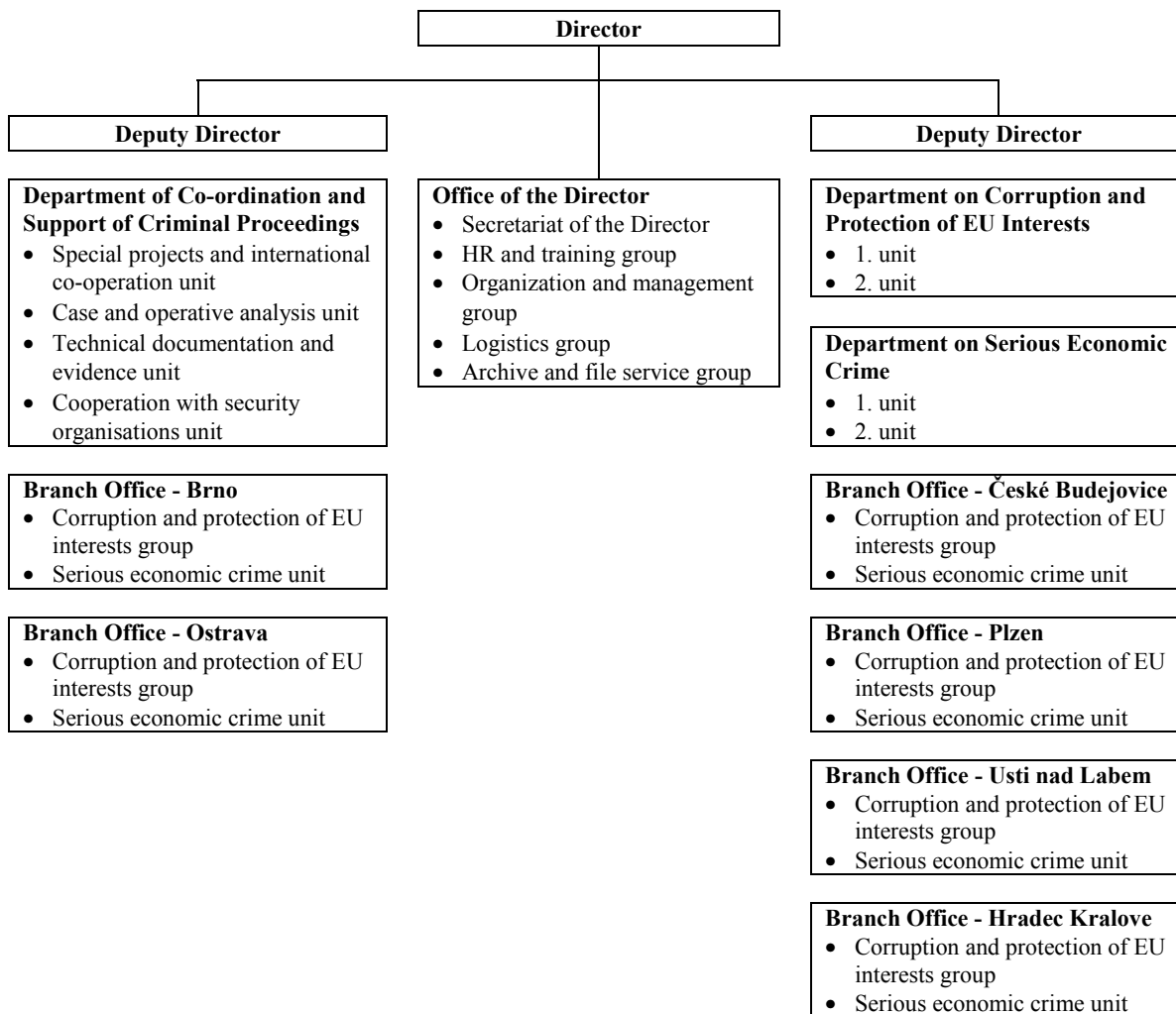
- Treaty between the Czech and Slovak Federative Republic and the Republic of Austria on Mutual Enforcement of Criminal Judgements (1990)
- Treaty between the Czech Republic and the Republic of Austria on Addition to the European Convention on Mutual Assistance in Criminal Matters dated 20 April 1959 and on Facilitation of its Application (1994)
- Treaty between the Czech Republic and the Republic of Austria on Addition to the European Convention on Extradition dated 13 December 1957 and on Facilitation of its Fulfilment (1994)
- Treaty between the Czech Republic and the Canada on Mutual Assistance in Criminal Matters (1997)
- Treaty between the Czech Republic and the Federal Republic of Germany on Addition to the European Convention on Extradition dated 13 December 1957 and on Facilitation of its Application (2000)
- Treaty between the Czech Republic and the Federal Republic of Germany on Addition to the European Convention on Mutual Assistance in Criminal Matters dated 20 April 1959 and on Facilitation of its Application (2000)
- Note of the Ministry of Foreign Affairs of the Czech Republic dated 19 June 2002 on Amendment in Designation and Jurisdiction of Authorities Stated in Art. 19(1) and 20(4) of the Treaty between the Czech Republic and the Federal Republic of Germany on Addition to the European Convention on Mutual Assistance in Criminal Matters dated 20 April 1959 and on Facilitation of its Application (2002)

- Note of the Embassy of the Federal Republic of Germany dated 1 January 2006 on Amendment in Designation and Jurisdiction of Authorities Stated in Art. 23(3) alinea 2 lit. b) of the Treaty between the Czech Republic and the Federal Republic of Germany on Addition to the European Convention on Mutual Assistance in Criminal Matters dated 20 April 1959 and on Facilitation of its Application (2006)
- Treaty between the Czech Republic and the Slovak Republic on Mutual Assistance Made by Judicial Authorities and on Adjustment Some Legal Relations in Civil and Criminal Matters (1992)
- Treaty between Governments of the Czech Republic and the Slovak Republic on Mutual Assistance Made by Judicial Authorities in Pre-Trial Proceedings in Criminal Matters (1993)
- Treaty between Governments of the Czech Republic and the Slovak Republic on Exchange of Records in the Criminal Registers (1995)
- Treaty between the Czechoslovak Republic and the United States of America on Mutual Extradition of Offenders (1925)
- Additional Treaty between the Czechoslovak Republic and the United States of America on Mutual Extradition of Offenders (1935)
- Treaty between the Czech Republic and the United States of America on Mutual Assistance in Criminal Matters (1998)

Police Bodies with Territorial Jurisdiction under the Competence of the Police President

- Police authority for the capital of Prague
- Police authority for Central Bohemia region
- Police authority for South Bohemia region
- Police authority for West Bohemia region
- Police authority for North Bohemia region
- Police authority for East Bohemia region
- Police authority for North Moravia region
- Police City Directorate Brno
- Police City Directorate Ostrava
- Police City Directorate Plzen
- Police county directorates
- Police district directorates Prague I – IV

Unit for Detection of Corruption and Organised Crime (ÚOKFK)



2. **Organisation of the Czech Judiciary**

1st Level – District Courts

District Courts (75) + Prague District Courts (10) + City Court in Brno	
<i>President, Vice-Presidents, Judges</i>	
<u>1st Instance Proceedings</u>	
<i>Panel of 1 Judge + 2 Lay Judges</i>	<i>Single Judge</i>

2nd Level – Regional Courts

Regional Courts (8)			
<u>Criminal Cases</u>		<u>Civil Cases</u>	
<u>1st Instance</u>	<u>2nd Instance</u>	<u>1st Instance</u>	<u>2nd Instance</u>
<i>1 Judge + 2 Lay Judges</i>	<i>3-Judge Panel</i>	<i>1 Judge</i>	<i>3-Judge Panel</i>

3rd Level – High Courts

High Courts (2)	
<i>President, Vice-Presidents, Judges, Disciplinary Tribunal</i>	
<u>2nd Instance Proceedings and Other Cases</u>	
<i>3-Judge Panel</i>	

4th Level – Supreme Court and Supreme Administrative Court

Supreme Court					
<i>President, Vice-Presidents, Judges and Disciplinary Tribunal</i>					
<u>Criminal Division</u>		<u>Civil Division</u>		<u>Commercial Division</u>	
Disciplinary Proceedings	Other Cases	Disciplinary Proceedings	Other Cases	Disciplinary Proceedings	Other Cases
<i>5-Member Panel</i>	<i>3-Judge Panel</i>	<i>5-Member Panel</i>	<i>3-Judge Panel</i>	<i>5-Member Panel</i>	<i>3-Judge Panel</i>

Supreme Administrative Court			
<i>President, Vice-Presidents, Judges</i>			
Cases Relating to Political Parties and Political Movements, Conflict of Competence Actions	Other Cases	Enlarged Panels	Enlarged Panels
<i>7-Judge Panel</i>	<i>3-Judge Panel</i>	<i>7-Judge Panel</i>	<i>9-Judge Panel</i>

Outside the General Court Structure

Constitutional Court	
<i>President, 2 Vice-Presidents, 12 Judges</i>	
<i>Plenary Assembly</i>	<i>4 Panels Each with 3 Judges</i>

Annex 8 Length of Office of Supreme Public Prosecutors

Provided by the Ministry of Justice of the Czech Republic

Supreme Public Prosecutor	Term of Office	Minister of Justice (Membership in Political Party)	Term of Office
JUDr. Jiri Setina	May 1992 – December 1993	Jiri Novak (ODS)	January 1992 – July 1996
JUDr. Bohumira Kopečna	January 1994 - March 1997	Jiri Novak (ODS) Jan Kalvoda (ODA) Vlasta Parkanova (no party affiliation)	January 1992 – July 1996 July 1996 – January 1997 January 1997 - July 1998
JUDr. Vit Vesely	April 1997 – January 1999	Vlasta Parkanova (no party affiliation) Otakar Motejl (no party affiliation)	January 1997 - July 1998 August 1998 - October 2000
Mgr. Marie Benesova	January 1999 - September 2005	Otakar Motejl (no party affiliation) Pavel Rychetsky (CSSD) Jaroslav Bures (no party affiliation) Pavel Rychetsky (CSSD) Karel Cermak (no party affiliation) Vladimir Spidla (CSSD) Pavel Nemec (US-DEU)	August 1998 - October 2000 October 2000 - February 2001 February 2001 – July 2002 July 2002 – August 2003 September 2003 – June 2004 July 2004 4 August 2004 – 3 September 2006
JUDr. Renata Vesecka	Since September 2005	Pavel Nemec (US-DEU) Jiri Pospisil (ODS)	4 August 2004 – 3 September 2006 Since 4 September 2006