

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

CZECH REPUBLIC

(Information as of 31 July 2008)

Date of deposit of instrument of ratification/acceptance or date of accession

The instrument of ratification was deposited with the Secretary-General of the OECD on 21 January 2000. The Convention entered into force internally on 21 March 2000 and was published by the Ministry of Foreign Affairs as No. 25/2000 of the Collection of International Treaties. (Czech translation of the Convention: <http://mvcr.iol.cz/sbirka/2000/sb013-00m.pdf>)

Implementing legislation

- Act No. 96/1999 Coll., amendment to the Criminal Code (Act No. 140/1961 Coll., Criminal Code, as amended). This amendment introduced a new provision of Section 162a, which includes the definition of a bribe, as developed by the judiciary, and a definition of foreign public official, which implements definitions pursuant to Article 1 paragraph 4 of the Convention. These concepts apply to general bribery offences that are stipulated in Sections 160 – 162 of the Criminal Code. Maximum penalty for aggravated active bribery (Section 161 paragraph 2) was increased from 3 to 5 years of imprisonment. All criminal offences, including corruption offences, are predicate offences for purposes of application of legislation against money laundering.

This amendment entered into force on 9 June 1999.

- Act No. 492/2000 Coll., amendment to the Income Tax Act (Act No. 586/1992 Coll., as amended). This amendment introduced explicit prohibition of tax deductibility of bribes paid to foreign public officials pursuant to Article IV of the Revised Recommendation.

This amendment entered into force on 1 January 2001.

- Auditors Act No. 254/2000 Coll., as amended, introduced a duty of the auditors to immediately, in writing, notify statutory and supervisory boards of the accounting unit of any detected facts, which may fall under corruption offences.

This law entered into force on 1 January 2001.

- Amendment No. 353/2001 Coll. to Act on Accounting explicitly prohibited off-the-book accounts and off-the-book transactions and increased fines for accounting offences.

This amendment entered into force on 1 January 2002.

- Amendment No. 473/2003 Coll. to Act on Accounting (No.561/1991 Coll., as amended), introduced international accounting standards (IAS) for consolidated accounts and also for annual accounts for companies whose securities are publicly traded.

This amendment was entered into force on 1 January 2004.

Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations

As recommended during the Phase 1 Reviews, the Czech Republic enacted legislation explicitly denying the tax deductibility of bribes paid to foreign public officials. At present, the Czech authorities are engaged in the process of drafting a new Criminal Code. The law on criminal liability of legal persons designed to implement part of the obligations stipulated by the Convention has been rejected by the Parliament. Therefore the Czech government is currently reconsidering the options for implementation of relevant obligations.

Pursuant to Phase 2 Recommendations several changes to current legislation were drafted and adopted:

- Criminal Code (no. 140/1961 Coll.) - changes to Criminal Code were drafted as Chamber of Deputies' printout 248 - electoral term 2006-2010 - and adopted and issued as act no. 122/2008 Coll.

“effective regret”

- a sentence was added to Section 163 of the Criminal Code which excludes the defence of “effective regret” from the offence of foreign bribery;

money laundering

- punishment for money laundering was increased up to 10 years of imprisonment and forfeiture;

false accounting

- punishment for the offence of false accounting was increased up to 8 years of imprisonment and the possibility to impose a fine on the perpetrator was introduced;

punishment and definition of officials

- punishment for bribery offences was increased and the definition of foreign public official was modified.

The relevant parts of the Criminal Code read as follows:

Division 3

Bribery

Section 160

Passive Bribery

1. Whoever in connection with procuring affairs in the public interest accepts a bribe or the promise of a bribe shall be sentenced to imprisonment for up to 3 years or to prohibition of activity.
2. Whoever under the circumstances given in paragraph 1 asks for a bribe shall be sentenced to imprisonment for 6 months to 5 years or to prohibition of activity.
3. An offender shall be sentenced to imprisonment for 2 to 8 years or monetary punishment if he commits the act given in paragraph 1 or 2
 - a) with the intent of procuring a substantial benefit for himself or for another person; or
 - b) if he commits such act as a public official.

4. An offender shall be sentenced to imprisonment for 5 to 12 years, if he commits the act given in paragraph 1 or 2
 - a) with the intent of procuring a major benefit for himself or for another person; or
 - b) if he commits such act as a public official with the intent of procuring a substantial benefit for himself or for another person.

Section 161 Active Bribery

1. Whoever in connection with procuring affairs of public interest provides, offers or promises a bribe, shall be sentenced to imprisonment for up to 2 years or to a monetary punishment.
2. A perpetrator shall be sentenced to imprisonment for 1 to 5 years or to a 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 consequences to another person; or
 - b) if he commits the act given in paragraph 1 vis-à-vis a public official.

Section 162 Trading in Influence

1. Whoever requests or accepts a bribe for exerting his influence on the execution of the authority of a public official or for having done so, shall be sentenced to imprisonment for up to 3 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 2 (instead of 1) years or a monetary punishment.

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 § 160 to 162 means, besides the persons referred to in section 89, par. 9, also any person
 - a) occupying a post in a legislative or judicial authority or the public administration of a foreign country, or
 - b) occupying a post in an international judicial body,
 - c) occupying a post, being employed or hired by an international or supranational organisation, established by countries or other entities of international public law, or in its bodies and institutions, or
 - d) occupying a post in an enterprise, in which Czech Republic or a foreign country has the decisive influence,

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

3. Procurement of affairs in public interest also means maintaining the duty imposed by legal regulations or a contract whose purpose is to ensure that there is no abuse or unjustified advantage of participants in business relations or persons acting on their behalf.

Section 163

Special Provision on Effective Repentance

The punishability of passive bribery (sec. 161) and active bribery (sec. 162) shall disappear 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; this does not apply if the bribe has been provided or promised in connection with execution of the authority of public official as referred to in sec. 162a par 2 letters a) to c) or letter d), as far as public official occupying a post in an enterprise, in which a foreign country has a decisive influence, is concerned

This amendment entered into force on 1 of July 2008.

Code of Criminal Procedure (no. 141/1961 Coll.)

Chamber of Deputies' printout 360 - electoral term 2006-2010 - issued as act no. 135/2008 Coll. enables to use a police agent when monitoring, investigating and detecting corruption and corrupt activities.

This amendment entered into force on 16 of May 2008.

Administration of Taxes Act (no. 337/1992 Coll.)

- reduction of the duty of confidentiality

Chamber of Deputies' printout 248 - electoral term 2006-2010 - issued as act no. 122/2008 Coll. waives the duty of confidentiality of tax officials in cases of reporting bribery detected during tax audits to law enforcement.

This amendment entered into force on 1 of July 2008.

Other information

Relevant authorities

All criminal offences, including corruption offences, should be reported to the law enforcement authorities (the Police of the Czech Republic or the Public Prosecutor's Offices).

Suspicious of corruption cases in the Police of the Czech Republic should be reported to stiznosti@mvcz.cz.

Suspicious of corruption cases in the Czech judiciary should be reported to korupce@msp.justice.cz.

Relevant Internet links to national implementing legislation (in Czech only)

Collection of Laws (Sbírka zákonů): <http://beta.mvcr.cz/clanek/sbirka-zakonu.aspx>

Chamber of Deputies' printouts and draft legislation (unofficial version but with explanatory reports):
<http://www.psp.cz/sqw/tisky.sqw?stz=1>

Ministry of the Interior - fighting corruption website: <http://www.mvcr.cz/boj-proti-korupci.aspx>

Signature/Ratification of other relevant international instruments

The Czech Republic ratified the Council of Europe Criminal Law Convention on Corruption (8 September 2000) and the Civil Law Convention (24 September 2003).

The second additional protocol to the European Convention on Mutual Assistance in Criminal Matters entered into force on 1 July 2006.

The 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 came into force on 12 June 2006.

The United Nations Convention against Corruption has been signed on 22 April 2005.

Since 9 February 2002 the Czech Republic is engaged in GRECO.

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation
<http://www.oecd.org/dataoecd/13/40/2385959.pdf>

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
<http://www.oecd.org/dataoecd/3/59/37727436.pdf>