



CZECH REPUBLIC: PHASE 2

FOLLOW-UP REPORT ON THE IMPLEMENTATION OF THE PHASE 2 RECOMMENDATIONS

APPLICATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND THE 1997 REVISED 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 13 February, 2009.

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SUMMARY AND CONCLUSIONS BY THE WORKING GROUP ON BRIBERY

a) Summary of Findings

1. The Czech Republic has taken additional steps to implement the OECD Convention since its Phase 2 examination in October 2006. The Working Group notes favourably that the Czech Republic has implemented a number of recommendations in the Phase 2 report. Significant concerns remain, however, over the continuing absence of liability of legal persons for foreign bribery.

2. Concerning awareness-raising, the Czech Republic has made substantial efforts to raise awareness of foreign bribery within the public sector. Many activities were undertaken by CzechTrade, as well as the Ministries of Foreign Affairs, Industry and Trade, and Justice. However, the Ministry of Interior has focused its efforts only on domestic and not foreign bribery. Less has been done *viz.* the private sector. CzechTrade has published information on foreign bribery. The Phase 2 report was sent to the Chamber of Commerce, which discussed the report and disseminated it to members. The Czech Republic could have been more proactive in engaging a wider range of business organisations, enterprises, SMEs, NGOs, and trade unions. In sum, Recommendations 1(a)-(c) have only been partially implemented.

3. Concerning measures to protect whistleblowers, no actions have been taken and none are expected. The Czech Republic remains of the view that whistleblower protection should not be strengthened because of the country's recent history (see Phase 2 report para. 42). This position is peculiar since the Czech Chamber of Deputies recently passed a bill requiring individuals to report crimes, including foreign bribery. If the bill passes the Senate and becomes law, then the need for whistleblower protection will increase. Recommendation 2 therefore has not been implemented.

4. Regarding prevention and detection, the Czech Export Bank has trained its employees and updated its Web site and contracts with relevant information. Recommendation 3 is therefore fully implemented. As for official development assistance (ODA), the Ministry of Foreign Affairs (MOFA) held seminars for NGOs that referred to foreign bribery. The Ministry's new rules on the use of funds by NGOs also refer to foreign bribery and the OECD Convention. Nothing was done to raise awareness among companies involved in ODA, however. Internally, the MOFA has continued to disseminate an information package to its existing and new employees in ODA. Yet, there was no awareness-raising within the ten other ministries that are also involved in ODA. The expected creation of a Czech central ODA agency by 2011 may lessen this concern, but for now Recommendations 4(a) and (b) are only partially implemented.

5. Regarding taxation, the Ministry of Finance has disseminated the OECD Bribery Awareness Handbook for Tax Examiners and used the Handbook to train officials and new recruits. Unfortunately, it has not raised awareness of foreign bribery and the non-deductibility of bribes among tax professionals and the private sector. In the area of reporting, a new law that entered into force on 1 July 2008 requires tax officials to report bribery detected during tax audits to law enforcement. Recommendation 5(a) is accordingly partially implemented, while 5(b) and (c) are fully implemented.

6. As for accounting and auditing, the Action Plan in Accounting and Auditing is expected to be the main vehicle through which the Government interacts with these professions. The Action Plan has not yet been fully implemented, with some legislation still pending in the legislature. Additionally, the Chamber of

Auditors has held seminars and developed a code of conduct for its members. Both dealt with bribery, but not foreign bribery specifically. Courses and training on detecting foreign bribery were given to accountants, though there was no information on the frequency or level of participation. In sum, Recommendation 6(a) is only partially implemented. As for auditors in the public sector, the Supreme Audit Office has organised several seminars that covered fraud, corruption (including foreign bribery) and crimes. Recommendation 7 is fully implemented.

7. Regarding reporting foreign bribery by external auditors, the Czech Republic expects to amend the Act on Auditors in early 2009 to require external auditors to report foreign bribery to competent authorities. As noted earlier, the Senate is also considering an amendment to the Criminal Code that would require all individuals (including external auditors) to report bribery to law enforcement. The Czech Republic has therefore considered the issue of reporting by external auditors and Recommendation 6(b) is fully implemented. Concerning the procedure for auditors to provide information to law enforcement upon demand, the Czech authorities have not raised awareness of the current procedure. The amended Act on Auditors is expected to deal with the procedure, but the amendment has yet to be passed. Recommendation 6(c) is therefore not implemented.

8. In anti-money laundering, a new Anti-Money Laundering Act came into force on 1 September 2008. Section 55(3) requires the Ministry of Finance to “suitably notify the person who reported the suspicious transaction” after the conclusion of an investigation. The Financial Analytical Unit (FAU) now provides feedback on specific cases and general statistics. These measures fully implement Recommendation 8(a). The FAU also held a typology seminar in 2006. However, there was no indication that it developed any new typologies since 2006, or that it now maintains statistics on the number of suspicious transaction reports that result in or support bribery investigations and prosecutions. Recommendation 8(b) and 8(c) are therefore partially and not implemented respectively.

9. On the investigation of foreign bribery, the Czech Republic provides six training courses per year for each police officer that focus on money laundering and domestic bribery. But since it is unclear the extent to which these courses deal with foreign bribery, Recommendation 9(a) is only partially implemented.

10. Regarding the division of competence in foreign bribery, money laundering and tax investigations, the ÚONVDK was dissolved on 1 January 2007 and its responsibilities for tax and money laundering cases were assumed by two new sections in the ÚOKFK. The ÚOKFK investigators (roughly 400 in total) share databases and co-operate personally. The heads of the various sections co-ordinate the work of each section and may establish joint investigative teams. This new organisational structure fully implements Recommendations 9(b) and 9(c).

11. As for prosecution of foreign bribery, the Judicial Academy organised eight seminars for judges and prosecutors that dealt with foreign bribery in 2007-8, and pledges to hold more seminars of this nature in 2009. Additional seminars were held for new judges and prosecutors. The Czech Republic has also provided statistics on the use of diversion in domestic and foreign bribery cases. Recommendations 10(a) and 10(b) are thus fully implemented.

12. Concerning extradition and mutual legal assistance (MLA), the Czech Republic referred to the General Instruction of the Supreme Public Prosecutor No. 1/2005 on extradition and MLA. The Instruction binds all prosecutors and specifically states that a public prosecutor shall respect international conventions that are binding on the Czech Republic when dealing with international matters. Annex 2 of the Instruction refers to the OECD Convention. Seminars for prosecutors in 2006-2008 dealt with extradition, MLA and Article 5 of the Convention. Given this new information, Recommendation 11(a) is fully implemented. Additionally, the Chairs of all High Courts and Regional Courts received the Phase 2 report and a request

to respect the relevant Recommendations in the report. The Chairs in turn drew the attention of all criminal sections of their courts and all chairs of County Courts to this issue. Recommendation 11(b) is therefore also fully implemented.

13. On the defence of effective regret, the Criminal Code was amended on 1 July 2008 to eliminate the defence for foreign bribery. This fully implements Recommendation 12.

14. Concerning the liability of legal persons for foreign bribery, the Working Group in Phase 2 strongly recommended 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. At the Group's request, the Czech authorities wrote to the Working Group in December 2007 and indicated that experts from the Ministries of Justice and Interior were looking at the issue. The Working Group replied that the Czech Republic had not provided any details concerning the expert's work or a copy of a draft law. The Group expressed its wish to see far more convincing action than the mere establishment of a working group, and to see more details of the progress made in the Czech Republic's written follow-up report.

15. Unfortunately, this has not occurred. As of December 2008, the Ministry of Justice was no longer involved in the matter. The Ministry of Interior was considering a scheme of administrative liability that will undergo a "comment procedure" soon. The Czech authorities are now hopeful that a draft bill will be ready by summer 2009. Details of the scheme have not been provided. Given these circumstances, Recommendation 13 has not been implemented.

16. Regarding the offence of money laundering, Section 252a of the Criminal Code was amended on 1 July 2008 to expressly cover the laundering of proceeds from a predicate offence that occurs outside the Czech Republic. Recommendation 14(a) is thus fully implemented.

17. As for enforcement of the money laundering offence, Section 252a as amended in July 2008 no longer requires proof that an accused intended to give the impression that the laundered property was acquired lawfully. The prosecution only has to show that the accused concealed the origin of the property. The Czech Republic believes that this could increase the number of money laundering convictions. But given the recency of this amendment, the Working Group considers that it is too soon to determine the provision's impact. Apart from this legislative change, the Czech Republic has taken no steps to enhance the enforcement of the money laundering offence in connection with foreign bribery cases. The statistics on the number of money laundering convictions in 2006-2007 are comparable to those at the time of the Phase 2 examination. Recommendation 14(b) is therefore only partially implemented.

18. Concerning false accounting, the Working Group noted in Phase 2 that Section 125 of the Criminal Code does not prohibit the full range of false accounting activities described in Article 8 of the Convention. The Act on Accounting is broader and does meet Article 8, but there were concerns that the officials who enforce the Act focus on tax crimes, not bribery. The Czech Republic has not taken action to address these issues and hence Recommendation 15(a) is not implemented.

19. On the sanctions for false accounting, Section 125 of the Criminal Code was amended on 1 July 2008 to increase the maximum punishment in cases where false accounting causes extensive damage to another person's property. The Working Group again finds that it is too soon to evaluate the impact of this amendment. In the meantime, recent statistics on the sanctions imposed under Section 125 are comparable to those provided during Phase 2 and thus do not eliminate the Working Group's earlier concerns. Updated statistics under the Act on Accounting were not provided. The Czech Republic also has not addressed the potential loophole in the Act that could allow a shell company with no assets to escape punishment for false accounting. In sum, Recommendation 15(b) is only partially implemented.

20. As for sanctions for foreign bribery, the Working Group's recommendation on raising awareness of the importance of forfeiture and confiscation was discussed in seminars at the Judicial Academy. There are plans to publish guidelines on the prosecution of corruption which would cover forfeiture and confiscation. However, the Czech Republic has not provided more recent statistics to show whether the use of confiscation in bribery cases has increased. Recommendation 16(a) is thus only partially implemented.

21. Turning to administrative sanctions for foreign bribery, the Czech Export Bank and the Export Guarantee and Insurance Corporation (EGAP) have trained their employees on foreign bribery and the relevant OECD instruments. EGAP has also updated its internal guidelines and introduced a procedure for conducting enhanced due diligence in suspected foreign bribery cases. The Czech export credit agencies have thus implemented the Working Group's recommendation. Czech authorities involved in ODA, however, have not taken any action. The Czech procurement authorities reiterate that contractors convicted of foreign bribery would be banned from procurement contracts. But the Working Group notes that the ability to impose bans existed at the time of Phase 2. On the whole, Recommendation 16(b) is only partially implemented.

22. Concerning statistics, the Ministry of Justice now keeps separate statistics for domestic and foreign bribery. However, there are still no statistics on the size of fines, or whether forfeiture was imposed in money laundering cases. Recommendation 17 is thus only partially implemented.

23. Finally, regarding Follow-up Issue 18(a), statistics on the use of diversion in domestic bribery cases have removed the Working Group's earlier concerns. The Group will continue to monitor Follow-up Issues 18(b)-(f) since there have not been developments or practice since Phase 2.

b) Conclusions

24. Based on these findings, the Working Group concludes that the Czech Republic has not implemented Recommendations 2, 6(c), 8(c), 13, and 15(a), and has partially implemented Recommendations 1(a), 1(b), 1(c), 4(a), 4(b), 5(a), 6(a), 8(b), 9(a), 14(b), 15(b), 16(a), 16(b) and 17. The remaining Recommendations have been implemented or dealt with in a satisfactory manner. Follow-up Issue 18(a) has been clarified. Follow-up Issues 18(b)-(f) remain outstanding and will continue to be monitored.

25. In particular, the Working Group is seriously concerned that the Czech Republic has not implemented Recommendation 13 (liability of legal persons). The Working Group will write to the Czech authorities to express these concerns. It also requests the Czech authorities to provide further information at the Group's March 2009 meeting and a detailed written report at the June 2009 meeting.

26. As for the other recommendations that are not fully implemented, the Working Group invites the Czech Republic to report orally within one year, i.e. by December 2009.

WRITTEN FOLLOW-UP TO PHASE 2 REPORT – CZECH REPUBLIC

Name of country: Czech Republic

Date of approval of Phase 2 Report: 27 October 2006

Date of information: 26 November 2008

Note: For ease of reference, the recommendations from the original Phase 2 Report have been re-numbered. Recommendation 1 of this report corresponds to Paragraph 233 of the Phase 2 Report and so on.

Part I: Recommendations for Action

Text of recommendation 1(a):

1. 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 (Revised Recommendation I).

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

CzechTrade:

All levels of management have been instructed in the foreign bribery issue and the Report on the Czech Republic. The information was forwarded to all the other employees as well.

Having in mind the issue of foreign bribery CzechTrade updated its Rules of Conduct.

In addition the methodology on public procurement and supplier assessment was updated.

So far four seminars for employees took place (“Combating corruption in international business transactions” and “Public procurement”).

CzechTrade also published information for its clients concerning the Convention and legal assistance in criminal matters within the context of foreign bribery.

Office for the Protection of Competition:

The public procurement is a decentralized process in the Czech Republic. The concepts of public procurement are set by the Ministry for Regional Development; however, the implementation is up to the individual Ministries. If a competitor for public procurement contract has breached the law by foreign bribery, such competitor is immediately excluded from participation on the awarding of the contract. Thus while seeking for the public procurement contract the competitor has to prove that he has not been sentenced for such a breach.

A new measure in implementing the recommendation is based in the regulation concerning foreign competitors for the public procurement, who also have to prove that they have not been sentenced for a breach in their resident country. This regulation came into force on July 2006.

Ministry of Foreign Affairs:

In the context of implementation of the Convention all Czech missions abroad, all sections of the Ministry and all allowance organisations of the Ministry have during May 2006 received a note from the General Inspection of the Ministry. During November 2008 this note has been sent to all employees of the Ministry.

This note has drawn attention to ratification of the Convention and its publication as No. 25/2000 Coll. of International Treaties. Simultaneously related parts of the Criminal Code and Code of Criminal Procedure were highlighted. General Inspection also referred to the duty to adhere to these norms.

Due to four year cycle of alternation of employees such a note will be updated and released during the second half of 2009, after the Czech EU Presidency where greater alternation on diplomatic posts is expected.

Following government's Strategy to Fight Corruption in 2006-2011 the Ministry in its anticorruption activities focuses on adhering to ethics and rules to fight corruption, e.g. through broadening personal responsibilities of employees in management functions. Special attention is given to consular activities such as the visa process. Therefore the Ministry has issued a Code of Conduct in cases of suspicion of corruption or irregularities. Besides that the General Inspection has established, made public via its WebPages and operates an anticorruption hotline and e-mail address, where suspicions can be submitted.

Ministry for Regional Development:

As mentioned in the paragraph 225 of the "Phase 2 Report – Czech Republic", the Ministry for Regional Development organised several lectures to Law No. 137/2006 Coll. on Public Contracts in 2005 and 2006. These lectures have been organised regularly since that time.

Lectors stress always that a supplier has to fulfil basic qualifications. One of the basic qualifications is that the supplier has not been finally convicted of criminal offences listed in the Act on Public Contracts. Among other listed criminal offences that is also accepting bribes, bribery and indirect bribery. A supplier who does not meet this requirement is not qualified to conclude any public contract. It applies also to suppliers who have been finally convicted of analogous criminal offences by a foreign court in the country of their origin. The same rule applies to members of statutory bodies of suppliers who are legal persons.

Ministry of Industry and Trade:

Within the scope of awareness raising an article on combating foreign corruption which summarises recommendations made by WGB has been published at the WebPages of the Ministry. The Convention has been uploaded to its WebPages as well.

Ministry of the Interior:

On 25 October 2006 the government issued a Decree No. 1199 on the Strategy to Fight

Corruption for years 2006-2011 that has obliged the minister of the interior and informatics to ensure establishing the anticorruption hotline (199). From 19 September to 19 December 2007 this hotline has been established as a pilot project and since 29 February 2008 this hotline is running as joint project of the Ministry and Transparency International - Czech Republic. This telephone line provides information, as well as legal assistance and qualified counselling free of charge in corruption matters.

Ministry of Justice:

The English original and a Czech translation of the Report has been made public via WebPages of the Ministry of Justice (section “Statistics and Reports”).

The Report has been sent not only to all the interested departments and cooperating institutions but also to all Chairs of both the High Courts and all the regional courts.

The Ministry in cooperation with the Supreme Public Prosecutor’s Office of the Czech Republic and Judicial Academy organises courses for judges and public prosecutors that make participants familiar with the Convention and 1997 Recommendations.

Supreme Audit Office:

Training on foreign bribery was included in the framework of professional education of the SAO auditors.

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

Office for the Protection of Competition:

There is a wide awareness of foreign bribery in the Czech Republic. In this sense a list of competitors excluded from the competition for the public procurement should be published in the future to improve the public procurement process and provide the individual Ministries with the relevant information.

Ministry for Regional Development:

The Ministry for Regional Development has proposed legislation amending the Act on Public Contracts. The amendment shall introduce a “Registry” of persons with prohibited participation on public contracts. The Registry coincides with the “Black List” of suppliers whose absence in the current wording of the Act on Public Contracts criticises paragraph 224 of the Phase 2 Report on Czech Republic. If a supplier furnishes to the contracting entity untrue facts related to his qualification (including denying previous conviction for the listed criminal offences) to conclude a public contract, this supplier shall be recorded into the Registry for the period of three years according to the amendment. A supplier who has a record in the Registry shall not be qualified to conclude any public contract.

The amendment is currently being revised by other ministries and central authorities of the Czech Republic.

The amendment of the Act on Public Contracts shall enter into force on the 1 January 2010. An integral part of the amendment is also the transposition of the EU Directive 2007/66/EC and therefore its chance to be approved by Parliament is very high.

Text of recommendation 1(b):

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

(b) Engage NGOs, business organisations and enterprises in these activities (Revised Recommendation I).

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

Czech Chamber of Commerce:

The Phase 2 Report on Czech Republic in both Czech and English has been transmitted to stakeholders in the Czech Republic including business representations without delay after its delivery. Czech Chamber of Commerce has discussed the Report in its top management, informed its board about the Report and disseminated the information about the Report and its contents among its members (some 14 000 enterprises). Consequently, Czech Chamber of Commerce always takes part in the consultation process.

Office for the Protection of Competition:

The NGOs, the Ministry for Regional Development, as well as other organizations, are dealing with the public procurement questions on seminars and workshops organized to enlarge the awareness of foreign bribery. The ultimate question in the public procurement is the eligibility of the competitor and the absence of a sentence for a breach of law.

Ministry of Foreign Affairs:

Special attention was paid to employees of Czech missions abroad who work in the sections of mutual commercial and economic relations. These were instructed to be sensitive and well aware of the problems of corruption in general and bribery of foreign public officials in international business transactions in particular.

Ministry for Regional Development:

The Ministry for Regional Development meets NGOs, business organisations and enterprises regularly discussing problems connected with awarding of public contracts. In particular the Ministry has asked for suggestions to be considered in the proposed Bill amending the Act on Public Contracts. Also see answer to 1 (a).

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

Text of recommendation 1(c):

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

(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).

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

Czech Chamber of Commerce:

See answer 1 (b). Czech Chamber of Commerce plays active role also within the process of disseminating information about the penal consequences of foreign bribery.

Office for the Protection of Competition:

By seminars and conferences the Ministry for Regional Development, as well as other organizations, are trying to raise awareness of foreign bribery. As mentioned above, the eligibility of the competitor is the key question while discussing the public procurement. The organizations are trying to influence positively the behaviour of Czech individuals and companies both in the Czech Republic and abroad. In cases where Czech individuals or companies seek for public procurement contract abroad, they need to prove that they have not been sentenced for bribery. This regulation motivates the individuals and firms to be aware of the possible breach of law.

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

Text of recommendation 2:

2. 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).

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

Ministry of Labour and Social Affairs:

No actions concerning strengthening protection for whistleblowers have been taken yet. With reference to historical implications the ministry does not envisage strengthening the protection of whistleblowers in the near future.

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

Text of recommendation 3:

3. 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).

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

Czech Export Bank:

CEB updated its WebPages: reference to the Convention and Revised recommendation, list of requirements for future clients, announcement of the right to check information, to inform competent authorities in suspicious cases and to deny financing of export in such cases.

General Trading Conditions have been updated and these are an integral part of any contract.

All competent employees were trained in issues of foreign bribery and related OECD instruments.

OECD document TD/ECG(2006)17/FINAL summarises answers submitted on behalf of CEB to Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits. This document contains description of measures taken to comply with the Convention, 1997 Recommendations and the Action Statement.

Export Guarantee and Insurance Corporation:

Exporters' declaration was extended to explicitly refer to OECD membership obligations as well as to obligations arising under the Convention and 1997 Recommendations.

WebPages were updated to inform exporters about consequences of foreign bribery.

Internal Guidelines were crosschecked and partially updated.

The process of insurance policy making has been revised and a new instrument was introduced, so-called in-depth control if suspicion of foreign bribery arises (enhanced due diligence).

Ministry of Foreign Affairs:

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 Czech Export Bank (CEB). It also provides export credit insurance against the risk of non-payment through Export Guarantee and Insurance Corporation (EGAP).

EGAP informs all applicants (via an application form or a standalone document) that it may withdraw its support if an applicant is charged with or convicted of foreign bribery. An applicant must also declare that he/she has not engaged in foreign bribery.

EGAP has also dedicated one part of its WebPages 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 information.

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.

EGAP and CEB inform law enforcement if they have "suspicions" or "sufficient evidence" of bribery, whether before or after deciding to provide support to a client. Internal regulations set out reporting channels. The boards of directors have ultimate responsibility for deciding whether to refer a case to law enforcement.

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

Text of recommendation 4(a):

4. 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 (Revised Recommendation I).

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

Ministry of Foreign Affairs:

Seminars for companies and NGOs implementing ODA projects were initiated and the issue of foreign bribery is one of their topics.

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

Text of recommendation 4(b):

4. 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:

(b) Public officials who are involved in administering ODA, including those outside the Ministry of Foreign Affairs (Revised Recommendation I).

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

Ministry of Foreign Affairs:

In 2006, the Ministry of Foreign Affairs 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 Ministry has asked embassy heads to ensure that their staffs are familiar with the contents of the package.

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 Section 8 of the Code of Criminal Procedure. The Ministry has instructed its overseas diplomats to report knowledge of a crime to their superiors, who will in turn forward the information to the Ministry's General Inspection. If the suspected offender is a Czech national, the General Inspection 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.

Furthermore, at the request of the Czech Ministry of Foreign Affairs, the OECD Development Assistance Committee (DAC) agreed in May 2006 to conduct a Special Review of Czech international development co-operation. See Special Review of the Czech Republic, DCD(2007)2.

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

Text of recommendation 5(a):

5. 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 (Revised Recommendations I and IV).

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

Ministry of Finance:

Awareness-raising in the field of foreign bribery became part of the professional training of the employees of tax authorities. Also see answer to 5(b).

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

Text of recommendation 5(b):

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

(b) Provide training to tax examiners on the detection of bribe payments disguised as legitimate allowable expenses (Revised Recommendations I and IV).

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

Ministry of Finance:

Original version of the OECD Bribery Awareness Handbook for Tax Examiners, together with Czech translation, has been sent to all tax offices and can also be found on the Intranet. At the same time the Handbook became part of the education scheme of tax officials (Taxtest). Moreover, there was published a best practice handbook adapted on specific conditions which is also available on the Intranet.

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

Text of recommendation 5(c):

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

(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).

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

Ministry of Finance:

See answer to 5(b). The desired legislation amendment entered into force on 1 July 2008. Section 24 paragraph 5 of the Tax administrative procedure code (No. 337/1992 Coll.) was supplemented with new letter d), according to which nobody shall claim tax secrecy when tax officials report suspicion of the bribery to the competent authority, which could be e.g. police or public prosecutor's office.

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.

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

Text of recommendation 6(a):

6. 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).

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

Ministry of Finance:

Cooperation between the Ministry and the Chamber of Certified Accountants has been reinforced and new courses and training on foreign bribery detection were introduced.

Commission for the Action plan in accounting and audit noted the 1997 Recommendations and promised proactive approach towards awareness raising and training on foreign bribery.

The system and programme of auditors' education (continuing education) and professional training is under the charges of the Chamber of Auditors of the Czech Republic (KAČR) by law.

The Ministry of Finance in this regard cooperates with the accounting and auditing profession in raising awareness of bribery and supports the profession in the development of specific training programs in the context of their professional training.

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

Text of recommendation 6(b):

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

(b) Consider requiring external auditors to report indications of a possible illegal act of bribery to competent authorities (Revised Recommendation V.B.iv).

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

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

Ministry of Finance:

The duty of external auditors to report indications and suspicions of possible illegal acts including foreign bribery to competent authorities (law enforcement) is incorporated into Section 21 paragraph 5 of the proposed amendment of the Act on Auditors (No. 169/2004 Coll.) which implements Council Directive 2004/43 EC and which should enter into force in early 2009. (Chamber of Deputies' printout 517 - electoral term 2006-2010 - 2nd reading).

In general, the duty of reporting of criminal offences is dealt with in Section 395 of the new Criminal Code (Chamber of Deputies' printout 510 - electoral term 2006-2010 - passed to Senate). The failure to report bribery to law enforcement bodies shall be sentenced to imprisonment for up to 3 years. New Criminal Code is expected to come into force on 1 January 2010.

Text of recommendation 6(c):

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

(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).

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

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

Ministry of Finance:

Conditions applicable to providing information by an auditor to relevant authorities including law enforcement authorities are determined in Section 15 paragraph 4 and Section 21 paragraph 5 of the new Act on Auditors. See answer to 6 (b).

Text of recommendation 7:

7. 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).

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

Supreme Audit Office:

The Supreme Audit Office organized for its auditors two training seminars in 2007 and one seminar in 2008 concentrating on detecting fraud, corruption and other illegal activities including foreign bribery. Over sixty SAO auditors took part in these trainings. Training will continue in 2009.

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

Text of recommendation 8(a):

8. 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 (Revised Recommendation I).¹

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

Ministry of Finance:

A new Law No. 253/2008 Coll. on selected measures against legalisation of proceeds of crime and financing of terrorism (AML Act) entered into force on 1 September 2008 and replaced the 1996 AML Act. See Appendix 1.

In this act the feedback from the Financial Analytical Unit of Ministry of Finance to the entities that are required to report suspicious transactions is regulated. Section 55 paragraph 3 of the AML Act stipulates that: "After the conclusion of the investigation, the Ministry shall, without undue delay, suitably notify the person who reported the suspicious transaction. No other persons are notified of the investigation and its conclusion."

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

¹ The Working Group notes that this is a general issue for many Parties.

Text of recommendation 8(b):

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

(b) Provide better guidance to these entities, for instance, by providing up-to-date typologies on money laundering where the predicate offence is bribery (Revised Recommendation I).

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

Ministry of Finance:

The Financial Analytical Unit of Ministry of Finance organizes regular training in the framework of cooperation with the professional chambers and associations. Each obliged entity has an opportunity to get knowledge on the methodology and typologies in the area of anti-money laundering/terrorist financing measures on the website of the Ministry of Finance.

Ministry of the Interior:

A new Act No. 253/2008 Coll. on selected measures against legalisation of proceeds of crime and financing of terrorism (AML Act) entered into force on 1 September 2008 and replaced the 1996 AML Act. See appendix 1.

Measures against legalisation of proceeds of crime as from the part of ÚOKFK is primarily financial investigation concerning assets of persons involved in criminal activities. These investigations are successfully realised, since the amount of seized assets is 17 243 thousand EUR. Cooperation between ÚOKFK and Financial Analytical Unit (FAU) is unproblematic. In cases of reporting of criminal acts or suspicious transactions from FAU to ÚOKFK a feedback is provided through information on measures taken.

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

Text of recommendation 8(c):

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

(c) Maintain statistics on suspicious transaction reports that result in or support bribery investigations and prosecutions (Revised Recommendation I).

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

Ministry of Finance:

The Financial Analytical Unit maintains statistics only on quantity of criminal offences (respectively cases handed over to the law enforcement authorities); it doesn't separate types of predicative criminal offences. Types of criminal offences may be distinguished only by law enforcement authority.

Ministry of Justice:

Detailed statistics on prosecutions and final judgements are kept and annually published for all offences as defined in the special part of the Criminal Code.

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

Text of recommendation 9(a):

9. 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 (Revised Recommendation I).

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

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

Text of recommendation 9(b):

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

(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; (Revised Recommendation I).

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

Ministry of the Interior:

The Unit for Detection of Illegal Proceeds and Tax Crime (ÚONVDK) of the Criminal Police and Investigation Service (CPIS) has been dissolved towards the end of 2006. Its staff has been transferred either to the Unit for Combating Corruption and Financial Crime (ÚOKFK) of the CPIS or to regional offices of the CPIS. Since 1 January 2007 ÚOKFK has taken over the competences of former ÚONVDK.

Police officers from ÚONVDK and their files were transferred to new structure of the ÚOKFK; in Prague there were established two new sections (section on tax crime and section on proceeds of crime). Likewise, the personnel from branch offices of the ÚONVDK was integrated to branch offices of the ÚOKFK and these started to investigate tax crimes and legalisation of proceeds of crime. Cooperation between ÚOKFK investigators comprises sharing of databases and personal cooperation among investigators specialised in tax crimes, legalisation of proceeds of crimes and corruption. Cooperation is coordinated at the level of heads of the various sections and can be formalised in joint investigation teams or can be informal, i.e. guidance, advice or consultation among colleagues.

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

Text of recommendation 9(c):

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

(c) Improve the co-ordination among tax, money laundering and corruption investigators in foreign bribery cases (Revised Recommendation I).

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

Ministry of the Interior:

The Code of Criminal Procedure lists the methods to be used while investigating above mentioned crimes (Section 8, Sections 47-49, 347, 349b, 441, 441a and others). 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.

Amendment of the Code of Criminal Procedure No. 177/2008 Coll. introduced some significant changes to wiretapping (Section 88 of the CCP). The time-limit for wire-tapping has been reduced to four months with the possibility of repeated extension through decision of a judge or public prosecutor. For wire-tapping there must be a court decision which is rather time-consuming procedure which might obstruct effective investigation.

See also answer to 9 (b).

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

Text of recommendation 10(a):

10. 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).

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

Judicial Academy (Ministry of Justice):

According to the Plan of Education of the Judicial Academy for years 2007 and 2008 attention has been drawn to corruption as well as to foreign corruption in following events:

23 January 2007; one day seminar for approximately 100 judges and state prosecutors called “Corruption - New trends and Knowledge” which was led by JUDr. Dolejší and experts from Transparency International.

13 to 15 June 2007; seminar for approximately 100 judges and public prosecutors called “Seizure of assets and freezing proceeds of crime” which focused also on corruption and the role of financial investigation, seizure in connection to foreign entities, etc.

22 to 25 October 2007; seminar for approximately 80 judges and public prosecutors called “Economic Crime” dealt with corruption from the perspective of taxes, customs, accounting and related financial criminality.

14 November 2007; one day seminar for approximately 100 judges and public prosecutors called “Corruption - New Trends and Knowledge, Sanctioning Corruption in Line with Ratified International Treaties” which focused also on a comparative European view.

21 and 22 November 2007; in cooperation with the Ministry of the Interior; seminar for approximately 20 judges and public prosecutors specialised in fighting corruption and economic criminality called “Corruption and Anti-Corruption Measures” which was led by Ms. Susane Moller (judge) and Ms. Helina Lehtinene (Ministry of Justice and former public prosecutor) from Finland.

16 to 18 June 2008; seminar for approximately 100 judges and public prosecutors which focused on tax criminality and its trends in EU.

12 June and 9 September 2008; seminar for approximately 100 judges and public prosecutors called “Use of Intelligence Means and Devices in Fighting Organised Crime”.

1 to 3 October 2008; seminar for approximately 100 judges and public prosecutors called “Evidence in Criminal Proceedings”.

There could be mentioned also several seminars for future and young judges and public prosecutors as well as seminars focusing on Mutual Legal Assistance and Extradition.

Judicial Academy’s interest in corruption and foreign corruption matters will continue in 2009.

Supreme Public Prosecutor's Office:

The Judicial Academy organised in the year 2007 and within year 2008 seminars on Economic Crime and Freezing and Confiscation of the Proceeds of Crime for public prosecutors and judges. Within the scope of these seminars the question of corruption was discussed as well. Seminar on Corruption - New Trends and Knowledge was held by the Judicial Academy in the second half 2007. The seminar on Corruption was aimed at the background of the corruption, basic elements and characteristic of corruption, analysis of forms and manners of commission, legal and criminalistic procedures, and methods of investigation of the corruption, prevention and criminal liability of Legal Persons and International conventions that are binding on the Czech Republic.

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

Text of recommendation 10(b):

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

(b) The Czech Republic maintain statistics on the use of diversion in domestic and foreign bribery cases (Convention Article 3).

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

Ministry of Justice:

Department of Informatics and Statistics of the Ministry changed the criminal statistical list and introduced two new items: 30 - domestic bribery, and 31 - bribery of foreign public officials. The original but general item 14 (corruption) has been deleted.

Supreme Public Prosecutor's Office:

Reports on Activities of Public Prosecutor's Offices in the preceding years do not contain statistics on the use of diversion in domestic and foreign bribery cases separately.

Statistics on the use of diversion in bribery cases can be found out from statistics of Ministry of Justice (see the source Statistic Yearbook issued by the Ministry of Justice).

The Supreme Public Prosecutor's Office would like to stress that diversion according to the Czech criminal law procedure means procedural alternative to standard criminal proceedings. In this conception, diversion is alternative within the system of procedural criminal law.

Broader conception of diversion as diversion from criminal proceedings (according to this conception is possible to react to an offence by non-penal sanctions and non-penal manners), is not used.

Under the procedural alternatives to the default criminal procedure (the so-called diversions in the criminal procedure - diversion) we count the compensation and the suspended abortion of the criminal prosecution in the criminal case.

The suspended abortion of the criminal prosecution and the compensation represent the fundamental types of the diversion within the criminal procedure. Both types assume the engagement of parties into settlement of the criminal case and are not related to the imposition of sentence (even though a certain kind of penalty is included).

The suspended abortion of the criminal prosecution can be defined as an interim decision related to a trial period arising out of the satisfaction of certain conditions and duties imposed to the defendant. From the point of the substantive law the offender's liability persists, from the point of the procedural law the law enforcement agencies still involved into the case.

The purpose of the compensation consists mainly in the defendant's satisfaction of all harmful consequences caused to the injured party by the defendant's criminal act. The compensation is out of the question as to the above mentioned criminality.

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

Text of recommendation 11(a):

11. 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 (Convention Articles 5, 9 and 10).

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

Supreme Public Prosecutor's Office:

The Supreme Public Prosecutor issued the General Instruction No. 1/2005 which is binding for all public prosecutors. The Instruction is dealing especially with extradition and mutual legal assistance in criminal matters. According to Articles 1, 24 and 59 of the Instruction a public prosecutor shall respect international conventions that are binding for the Czech Republic when dealing with international matters. In the Annex 2 of the Instruction there is a direct reference made to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Paris which implies also its Articles 5, 9 and 10.

Both, line and specialized public prosecutors attended dozens of seminars which were initiated and organized by the International Department of the Supreme Public Prosecutor's Office during the years 2006-2008. These seminars were focused on up to date issues concerning mutual legal assistance, extradition and European Arrest Warrant, including application of the Convention. During these seminars factors listed in Article 5 of the Convention were discussed in relation to everyday practice of prosecutors which consequently helped to increase their overall awareness of the Convention.

As far as the relationship between Section 377 of the Criminal Procedure Code and Article 5 of the Convention is concerned prosecutors are periodically informed during their training.

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

Text of recommendation 11(b):

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

(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).

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

Courts:

The Report, together with a plea to respect the Recommendation, has been sent to all Chairs of the High Courts (Prague and Olomouc) and all the regional courts (8).

All Chairs acknowledged the Report and confirmed that they drew attention to all criminal sections of their courts and also to all chairs of Czech county courts to the relationship between section 377 of the Criminal Procedure Code and Article 5 of the Convention.

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

Text of recommendation 12:

12. 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).

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

Ministry of Justice:

Legal department of the Ministry in cooperation with the Ministry of Finance prepared an amendment of Criminal Code which among others followed the Working Group’s recommendations. This amendment has been approved by the Parliament and entered into force on the 1 July 2008 as Law No. 122/2008 Coll. The Criminal Code has been amended as follows; a sentence was added to Section 163 of the Criminal Code which excludes the defence of “effective regret” from the offence of bribing foreign public official. See Appendix 2. However, the defence of effective regret remained in cases of domestic bribery. For detailed reasons see paragraphs 153 and following of the Phase 2 Report on Czech Republic.

As far as the draft new Criminal Code is concerned the defence of effective regret has been excluded from the offences of foreign and domestic bribery. This new Criminal Code has been approved by the House of Deputies on 11 November 2008 and is waiting for the approval of the Senate and the president. It is expected to enter into force on 1 January 2010.

If no action has been taken to implement recommendation 12, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 13:

13. 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)).

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

If no action has been taken to implement recommendation 13, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Ministry of the Interior:

Despite several attempts to arrange liability of legal persons the goal to establish criminal liability of legal persons was not achieved. Currently the Ministry produced an intended subject matter of the law on liability of legal persons for administrative offences committed through behaviour which in cases of natural persons is punishable according to Criminal Code and prosecution of such actions carried out by legal persons must be prosecuted in accordance with binding international treaties and legal acts of the European Communities. The material will undergo a comment procedure as soon as such a procedure will be finished within the Ministry of the Interior.

Ministry of Justice:

Due to previous denial of the Chamber of Deputies to the attempt to establish criminal liability of legal persons, an agreement among ministries to establish administrative form of liability of legal persons had arisen. Such form of liability would enable to prosecute and punish acts of carried out on behalf of legal entities in accordance with obligations arising from binding international treaties and legal acts of the European Communities. It is the Ministry of Interior that prepared an intended subject matter of the law and this material should be subject to comment procedure in the near future.

Supreme Public Prosecutor's Office:

The Debate on Criminal Liability of Legal Persons in the Czech Republic is being held within the scope of seminars and conferences organised by the Judicial Academy and Faculties of law.

The Supreme Public Prosecutor's Office is not informed in detail about the current state of legislative work, relating to the recognition of some form of liability of Legal Persons in the Czech Republic.

The Supreme Public Prosecutor's Office has repeatedly expressed the need to introduce Criminal Liability of Legal Persons in the Czech Republic.

Text of recommendation 14(a):

14. 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 (Convention Article 7).

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

Ministry of Justice:

The amendment No. 122/2008 Coll. regulates the facts of the criminal offences of participation and legalisation of the proceeds of crime in such a way that they stipulate explicitly that money laundering can be criminally prosecuted in the Czech Republic even in cases when a predicate offence, including corruption, was committed abroad. Criminality of the act is assessed under the Criminal Code of the Czech Republic, so it is not necessary to examine regulation in another state where a predicate offence has been committed and to adjudge dual criminality.

Money laundering under Section 252a is punishable by 4 (instead of 2) years imprisonment and/or a fine of CZK 2 000 to 5 million. A court may also impose forfeiture, confiscation and a prohibition from engaging in an activity. The imprisonment increases to 2-8 (instead of 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. It is further increased to 3-10 (instead of 2-8) years and forfeiture (added) 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.

See Appendix 2 for the amended wording of the Criminal Code.

Draft of the new Criminal Code makes no changes to this practice.

Supreme Public Prosecutor's Office:

In this respect we draw attention to the amendment of the Criminal Code No. 122/2008 Coll., in effect since 1 July 2008.

The amendment of the Criminal Code modified the offence of money laundering according to the recommendation of OECD. Recommendation of OECD has also been considered while preparing the Draft Criminal Code. It is envisaged that the maximum term of imprisonment for this offence will be increased.

If no action has been taken to implement recommendation 14(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 14(b):

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

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

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

Ministry of the Interior:

Amendment No. 122/2008 Coll. introduced changes to the wording of Sections 251 to 252a of the Criminal Code so as the criminal offences of intended participation and legalisation of the proceeds of crime in such a way that they stipulate explicitly that money laundering can be criminally prosecuted in the Czech Republic even in cases when a predicate offence, including corruption, was committed abroad. See Appendix 2. See also answer to 8 (b).

If no action has been taken to implement recommendation 14(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Ministry of Justice:

As far as legislative work is concerned, the draft of the new Criminal Code simplifies the definition of money laundering and decreases evidence requirements for money laundering offences. New definition does not contain the term “with the aim of giving the impression that this thing or other property value was acquired in accordance with the law” and therefore it will not be necessary to prove the direct intention of the perpetrator. This simplification might lead to increase in convictions for money laundering offences.

Text of recommendation 15(a):

15. 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 (Convention Article 8).

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

Ministry of Finance:

Act No. 563/1991 Coll. on Accounting provides adequate tools for the imposition of sanctions for false accounting; both in terms of adequacy and from the perspective of a deterrent effect (see Section 37, paragraph 4, respectively paragraph 1). In Section 125 of the Criminal Code 140/1961 Coll. forgery and alteration of data in the accounts is classified as a criminal offence with the penalty of imprisonment for up to 2 years or a ban of activity.

If no action has been taken to implement recommendation 15(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 15(b):

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

(b) Ensure that the criminal and administrative penalties for false accounting are effective, proportionate and dissuasive in practice (Convention Article 8).

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

Ministry of Justice:

The above mentioned amendment No. 122/2008 Coll. increased punishment for the most serious offences of distortion of data on economy or property. Above all, the purpose of forgery and distortion of data in the area of book-keeping might be to legalise proceeds of crime. The punishment for offenders who caused damage exceeding 200 thousand EUR has been increased to eight years. A possibility to impose pecuniary punishment on the offender has been introduced. For current wording of Section 125 of the Criminal Code see Appendix 2.

Ministry of Finance:

See answer to 15(a).

If no action has been taken to implement recommendation 15(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 16(a):

16. 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 (Convention Article 3).

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

Supreme Public Prosecutor's Office:

In relation to the recommendation of the WGB we quote repeatedly, that this question can not be solved by instruction of a general nature of the Prosecutor General, for reasons of material nature of this question. In such a case, internal act (binding on public prosecutors) can not anticipate outcomes of investigation of niceties.

The observance of this task is organizationally ensured by establishing specialised public prosecutors (in the entire system of public prosecutor's offices) for these questions, from the regional level of public prosecutor's offices and higher.

The Recommendation was discussed within the scope of Seminars such as "Corruption - New Trends and Knowledge, Economic Criminality and Freezing and Confiscation of the Proceeds of Crime" held by Judicial Academy.

There is a plan to publish guidelines on prosecution of corruption. It is intended, the question of forfeiture and confiscation to be included in it.

If no action has been taken to implement recommendation 16(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Supreme Public Prosecutor's Office:

There is a plan to publish guidelines on prosecution of corruption. It is intended, the question of forfeiture and confiscation to be included in it.

Text of recommendation 16(b):

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

(b) Ensure that the provisions concerning administrative sanctions are applied when appropriate (Convention Article 3).

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

Supreme Public Prosecutor's Office:

Prosecution Service, respectively Public Prosecutors in the Czech Republic, has no competence in the sphere of administrative procedure.

If no action has been taken to implement recommendation 16(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 17:

17. 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)).

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

Supreme Public Prosecutor's Office:

The Ministry of Justice (Informatics and Statistics Department) upon prior notice of the Supreme Public Prosecutor's Office (letter to be sent to the Ministry of Justice on 12th of June 2007, Ref. No.: 7 NZN 135/2007), eked out the Statistical list - criminal, which is filled by public prosecutors in connection with the final execution of criminal case, with two new types. In the concrete, it is the type 30 - corruption behaviour within the scope of domestic corruption and the type 31 - corruption behaviour launched against Foreign Public Officials.

The Statistical list - criminal (designated for criminal courts) adopted practically identical regulation.

See also answer to 10 (b).

If no action has been taken to implement recommendation 17, please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Part II: Issues for Follow-up by the Working Group

Text of issue for follow-up 18(a):

18. 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).

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

See statistics in Appendix 3.

Text of issue for follow-up 18(b):

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

(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).

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

There have been no relevant developments since the adoption of the Phase 2 Report.

Text of issue for follow-up 18(c):

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

(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).

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

There have been no relevant developments since the adoption of the Phase 2 Report.

Text of issue for follow-up 18(d):

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

(d) The provision of MLA to other Parties to the Convention in non-criminal proceedings against legal persons (Convention Article 9).

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

There have been no relevant developments since the adoption of the Phase 2 Report.

Text of issue for follow-up 18(e):

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

(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)

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

There have been no relevant developments since the adoption of the Phase 2 Report.

Text of issue for follow-up 18(f):

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

(f) The sanctions imposed for foreign bribery, money laundering and false accounting, particularly confiscation and forfeiture (Convention Articles 3, 7 and 8(2))

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

There have been no relevant developments since the adoption of the Phase 2 Report.

Instructions

1. This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 2 Review.
2. Responses to the first question under each recommendation should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Countries are asked to respond to all recommendations as completely as possible. Please submit completed answers to the Secretariat on or before Wednesday 26 November 2008.

APPENDIX 1

EXCERPTS FROM ACT NO. 253/2008 COLL. JUNE 5, 2008 ON SELECTED MEASURES AGAINST LEGALISATION OF PROCEEDS OF CRIME AND FINANCING OF TERRORISM (UNOFFICIAL TRANSLATION)

Section 55

- (1) Proceedings conducted under this Act shall always be closed to public.
- (2) Based on a received suspicious transaction report or another motion, the Ministry shall investigate without undue delay.
- (3) After the conclusion of the investigation, the Ministry shall, without undue delay, suitably notify the person who reported the suspicious transaction. No other persons are notified of the investigation and its conclusion.
- (4) In the course of their activities under this Act, authorised employees of the Ministry identify themselves with a service card issued based on the law governing the implementation of international sanctions.

APPENDIX 2

EXCERPTS FROM CRIMINAL CODE LAW NO. 140/1961 COLL., AS AMENDED (UNOFFICIAL TRANSLATION)

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 of activity, or by a pecuniary 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 or contract.

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

(4) The punishment of imprisonment for two years up to eight years shall be imposed on an offender who causes extensive damage to another person's property by acts set out in paragraphs 1 and 2 above.

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 Section 160 to 162 means, besides the persons referred to in Section 89, paragraph 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 (Section 161) and active bribery (Section 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.

Section 252a **Legalisation of the Proceeds of Crime**

(1) Whoever conceals the origin or strives otherwise to seriously hamper or render impossible identification of the origin

a) of a thing or other property value acquired through a criminal offence committed in the Czech Republic or abroad or as a reward for it, or

b) a thing or other property value which was procured for a thing or other property value specified in letter a) with the aim of giving the impression that this thing or other property value was acquired in accordance with the law, shall be sentenced to imprisonment for up to four years or to a pecuniary punishment or to forfeiture of a thing or other property value or to a ban on activity.

2) Whoever enables another to commit an offence specified in paragraph 1 shall receive the same punishment.

3) The offender shall be sentenced to imprisonment for six months up to five years or to a pecuniary punishment or to a ban on activity

a) if he/she commits an offence specified in paragraphs 1 or 2 as a member of an organised group

b) if he/she commits such offence in relation to a thing or other property of significant value, or

c) if he/she acquires through such offence a significant benefit for him/herself or for another.

(4) The offender shall be sentenced to imprisonment for two years up to eight years or to forfeiture of property

a) if he/she commits an offence specified in paragraphs 1 or 2 in relation to a thing or other property value originating from an especially serious criminal offence

b) if he/she commits such offence in relation to a thing or other property of considerable value,

c) if he/she acquires a considerable benefit through such offence for him/herself or for another, or

d) if in the commission of such offence he/she abuses his/her position in employment or his/her function.

(5) The offender shall be sentenced to imprisonment for three years up to ten years or to forfeiture of property

a) if he/she commits an offence specified in paragraphs 1 or 2 in connection with an organised group operating in a number of states,

b) if he/she commits such offence in relation to a thing or other property of very large value, or

c) if he/she acquires through such offence a very large benefit for him/herself or for another.

APPENDIX 3

STATISTICS ON CORRUPTION AND RELATED OFFENCES

All statistics were provided by the Czech Ministry of Justice.

2006 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Public Works	Other	No Sanction	Diversion
		up to 1	1 – 5	5-15							
125	113	2	0	0	84	2	12	8	0	5	24
158	75	0	13	1	49	3	2	6	0	1	12
159	4	0	0	0	3	0	1	0	0	0	1
160	27	0	0	0	14	2	9	2	0	0	0
161	45	2	5	0	21	1	10	3	1	2	7
162	2	0	0	0	2	0	0	0	0	0	0
251	554	38	10	0	276	0	39	119	3	51	72
252	21	0	0	0	10	0	7	1	0	3	4
252a	5	0	0	0	3	0	2	0	0	0	0

2007 Section	Convictions	Imprisonment (years)			Suspended Sentences	Prohibition of Activity	Pecuniary Sanctions	Public Works	Other	No Sanction	Diversion
		up to 1	1 – 5	5-15							
125	127	1	1	0	101	3	15	3	0	3	20
158	64	0	4	0	47	7	3	2	0	1	12
159	0	0	0	0	0	0	0	0	0	0	1
160	51	0	0	0	48	0	3	0	0	0	4
161	51	1	1	0	38	0	6	2	3	0	4
162	1	0	0	0	1	0	0	0	0	0	0
251	481	40	15	1	222	0	23	110	0	45	75
252	13	0	0	0	5	0	6	0	0	2	2
252a	4	0	1	0	3	0	0	0	0	0	1

Note:

- Section 125: False Accounting
- 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
- Section 251: Participation or Sharing
- Section 252: Negligent Money Laundering
- Section 252a: Money Laundering