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ANNEX 3

ANNEX

CZECH REPUBLIC

to the

EU Anti-Corruption Report

CZECH REPUBLIC

1. INTRODUCTION – MAIN FEATURES AND CONTEXT

Anti-corruption framework

Strategic approach. Since 1999, the government has adopted consecutive, comprehensive strategies against corruption. Taking into account the limited progress made on the implementation of the strategy for 2011-2012, the European Commission recommended stepping up the fight against corruption.¹ Although in this period the government took non-legislative measures, progress in submitting legislative drafts to Parliament and in adopting them by the end of the programme was limited.² The latest anti-corruption strategy adopted in January 2013, while repeating the majority of measures promised by the previous strategy, covers a wide range of policies but limits itself to listing actions.³ Parliamentary immunity rules were amended following the amendment of the Constitution in May 2013.

In many cases, the government and municipalities worked with civil society to prevent corruption and to identify risks, for instance in public procurement. A considerable amount of data on the perception and experience of corruption is gathered by public institutions, research bodies and NGOs. Research institutes and civil society organisations have created an anti-corruption platform to propose changes to legal provisions, provide training and share good practices.

Legal framework. While the Czech criminal code is largely in line with the Council of Europe Criminal Law Convention on Corruption, the Council of Europe's Group of States against Corruption (GRECO) made four recommendations, specifying the need to amend the criminal code on trading in influence, in particular as regards the acceptance of an offer or promise of an undue advantage and instances of supposed influence. The Ministry of Justice submitted to the government at the end of February 2013 a proposal to amend the provision on trading in influence, but the adoption came to a halt.⁴ The Czech Republic recently ratified the United Nations Convention against Corruption (UNCAC), having previously rectified problems concerning the sanctioning of legal persons in relation to crimes.

Institutional framework. A government committee is in place to coordinate the fight against corruption. A special unit within the Czech police (UOKFK)⁵ investigates corruption and financial crime and deals with an increasing number of corruption investigations.⁶ Transparency International's 2011 National Integrity System assessment concluded that the Ombudsman and Supreme Audit Office were the strongest institutions on good governance in the Czech Republic.⁷ Although the Ombudsman does not have specific powers to deal with corruption, he makes recommendations and provides a model for the civil service to function impartially and transparently.⁸ The legislative recommendations of the previous ombudsman,

1 Commission Staff Working Document: Assessment of the 2013 national reform programme and convergence programme for the Czech Republic. Brussels, 29.5.2013; SWD(2013) 353 final.

2 These legislative drafts included: laws on independence of the prosecution service, conflicts of interest, freedom of information, creation of specialised courts, regulation of lobbying, the Public Servants Act, financing of political parties, extension of powers of the Supreme Audit Office, protection of whistleblowers and reform of parliamentary immunity. See Commission Staff Working Document: Assessment of the 2013 national reform programme and convergence programme for the Czech Republic. Brussels, 29.5.2013; SWD(2013) 353 final. p. 29.

3 Government Resolution No. 39 of 16th January 2013 - http://www.korupce.cz/assets/Strategy-2013-a-2014_FINAL.pdf.

4 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282013%291_CzechRepublic_EN.pdf

5 <http://www.policie.cz/clanek/stop-korupci.aspx>.

6 The number of indictments reached a three-year high of 781 in 2011, compared with 697 in 2010 and 688 in 2009. <http://www.ceskapozice.cz/en/news/society/anti-corruption-police-see-charges-soar-2011>.

7 http://www.transparency.org/whatwedo/pub/national_integrity_system_assessment_czech_republic.

8 The Ombudsman's reports are available at: <http://www.ochrance.cz/en/reports/>.

who resigned in December 2013, have been largely ignored by the legislature. The Supreme Audit Office also plays an important role in anti-corruption policies pointing, for example, to deficiencies in the public procurement process. However, recent legislative efforts to strengthen its competence in relation to corruption powers and to cover local municipalities have not achieved results.

Opinion polling

Perception surveys. In the 2013 Special Eurobarometer,⁹ 95% of Czech respondents believe that corruption is widespread in their country (EU average: 76%). 80% of Czech citizens considered corruption as the most important challenge to be addressed in the country.¹⁰ In a 2012 national survey, 92% of respondents stated their dissatisfaction with corruption in the country, while only 1% were satisfied.¹¹

Experience of corruption 28% of the 2013 Special Eurobarometer respondents felt affected by corruption in their daily lives (EU average: 26%), and 8% of those who dealt with the institutions named in the survey stated that they were expected to pay a bribe in the last 12 months (EU average: 4%).¹²

Business surveys. In the 2013 Eurobarometer business survey,¹³ 71% of Czech respondents, the highest percentage in the EU, noted that corruption is a major obstacle for doing business. Patronage and nepotism are noted by 69% of the respondents as obstacles for business, also the highest figure in the EU. National surveys from 2011 suggest that 12.7% of entrepreneurs had experienced a case of corruption,¹⁴ and 44% reported having had an opportunity to obtain an advantage in exchange for a bribe.¹⁵ The World Economic Forum's Global Competitiveness Report 2013-14 indicates that in the Czech Republic, corruption is the most problematic factor for doing business.¹⁶ This worldwide competitiveness survey ranks the Czech Republic 46th out of 152 countries.

Background issues

Private sector. The Czech Republic fully transposed Framework Decision 2003/568/JHA on combating corruption in the private sector.¹⁷ In 2013, the OECD Working Group on Bribery considered that foreign bribery enforcement could be much enhanced by engaging with key actors including representatives of the private sector, and raised concerns about the lack of

9 2013 Special Eurobarometer 397.

10 Annual study run by the Public Opinion Research Centre of the Institute of Sociology of the Academy of Sciences of the Czech Republic – February 2012; <http://cvvm.soc.cas.cz/politicke-ostatni/nalehavost-zabyvani-se-oblastmi-verejneho-zivota-unor-2012>. Another national survey from 2011 showed similar results: according to 84% of population aged 18-65, the level of corruption in the Czech Republic is high, and the government has no real interest to punish corruption. Online survey by Ipsos, 13 June 2011. <http://www.ipsos.cz/tiskove-zpravy/quo-vadis-korupce>.

11 http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a6865/f3/ps120709.pdf.

12 2013 Special Eurobarometer 397. A similar assessment is reflected by national surveys: one tenth of the population has encountered corruption in the previous year, 3% confessed to have paid a bribe. Mediated experience is higher, 43% of the population has heard about corruption in their neighbourhood. Online survey by Ipsos, 13 June 2011. <http://www.ipsos.cz/tiskove-zpravy/quo-vadis-korupce>.

13 2013 Flash Eurobarometer 374.

14 http://www.tyden.cz/rubriky/byznys/podnikani-a-prace/kazdy-osmy-podnikatel-se-setkal-s-korupci_210789.html - Vodafone survey run in 2011.

15 Corruption climate, GfK survey, April 2010, the press release is available at:

http://www.gfk.cz/imperia/md/content/gfkpraha/press/2010/100406_nejzkorumpovanejsi_jsou_politicke_strany.pdf.

16 http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2013-14.pdf

17 COM(2011) 309 final, Brussels, 6.6.2011.; http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/docs/report_corruption_private_sector_en.pdf; ZÁKON ze dne 27. října 2011 o trestní odpovědnosti právnických osob a řízení proti nim; http://data.idnes.cz/soubory/pravo/A120305_VR_ZAKON_418_2011.PDF.

awareness among them of the foreign bribery offence.¹⁸ The Czech Republic has yet to record an indictment for foreign bribery. Two investigations are ongoing, and one could not be prosecuted due to the absence of rules for the liability of legal persons at the time of the offence.

Parliamentary immunities. A previously burdensome obstacle for successful prosecution of high level bribery has now been partially removed.¹⁹ According to the previous wording of the Constitution of the Czech Republic,²⁰ Members of Parliament enjoyed unlimited immunity against criminal proceedings unless the relevant chamber of Parliament voted to waive the immunity of the member in question. If the respective chamber did not waive the immunity, MPs were protected from criminal prosecution for life.²¹ After several years of discussions in the Parliament, an amendment to the Constitution limited the immunity to the term of the office. Under the amended provision of the Constitution, criminal proceedings may start when an MP loses office, even if the parliamentary chamber had not lifted the immunity.

Whistleblowing. Labour legislation provides general protection against arbitrary dismissal and discrimination of employees but does not include specific protection of whistleblowers.²² The Ethical Code adopted by the government in 2012²³ includes an obligation to report corruption to management or to law enforcement bodies, but it does not provide for the protection of whistleblowers. The OECD Working Group on Bribery reported in 2013 that the Czech authorities had established a working group to strengthen whistleblower protection. This working group suggested amendments to four laws to provide additional protection by implementing non-discrimination principles.²⁴ Recent cases of whistleblowers who exposed illegal practices in public procurement at ministries point to the practical need for such additional guarantees.

Transparency of lobbying. Lobbying is not regulated in the Czech Republic. There is no specific obligation for registration of lobbyists or reporting of contacts between public officials and lobbyists. Practical problems affecting state interests were noted in the annual report of the Czech Security Information Service.²⁵

2. ISSUES IN FOCUS

Use of EU funds

The Czech Republic has been allocated EUR 26.7 billion for the 2007-2013 programming period from the EU structural funds. In 2011, the Commission discovered systemic deficiencies in the functioning of the Czech Management and Control System for the

18 OECD Working Group on Bribery. Phase 3 Report on Implementing the OECD Anti-Bribery Convention on the Czech Republic. (2013) OECD p 46: <http://www.oecd.org/daf/anti-bribery/CzechRepublicphase3reportEN.pdf>

19 Constitutional Act No. 98/2013 Coll. that amends Constitutional Act No. 1/1993 Coll., the Constitution of the Czech Republic, as amended.

20 Constitution of the Czech Republic, Article. 27 sub 4.

21 Code of Criminal Procedure of the Czech Republic, Article 11 sub 1 (c).

22 Act No. 262/2006 Coll., the Labour Code.

23 VLÁDA ČR *Etický kodex úředníků minimalizuje korupční jednání* Vláda ČR. (2012) <http://www.vlada.cz/cz/media-centrum/aktualne/eticky-kodex-uredniku-minimalizuje-korupcni-jednani-95380/>.

24 The four regulatory impact analyses submitted to the government suggesting legislative amendments are: the Anti-Discrimination Act, the Civil Procedure Code, the Act on Professional Soldiers, and the Act on Service in Armed Forces). OECD (2013) Working Group on Bribery. Phase 3 Report on Implementing the OECD Anti-Bribery Convention on the Czech Republic. OECD p 46. Available from: <http://www.oecd.org/daf/anti-bribery/CzechRepublicphase3reportEN.pdf>.

25 For both 2012 and 2013, see chapter 2.1 on protection of important economic interests./ Ochrana významných ekonomických zájmů. <http://www.bis.cz/n/2012-08-22-vyrocní-zprava-2011.html>; <http://bis.cz/n/2013-11-07-vyrocní-zprava-2012.html#3>.

implementation of all 14 European Regional Development Fund and Cohesion Fund (ERDF/CF) programmes.²⁶ These deficiencies led the Commission to interrupt payments for all operational programmes (OPs) in March 2012 and to issue an action plan covering five main areas in need of improvement: lack of independence of delegated audit bodies, the functioning of the audit authority, the national system for handling irregularities, management verifications (first-level controls), and administrative capacity.

Several high-ranking officials responsible for the use of EU funds have been investigated for corruption. In the North-West region, the European Commission interrupted payments in 2011 based on audit findings and bribery allegations against the former head of the managing authority, who was sentenced to five years imprisonment for corruption.²⁷ In 2012, the Czech police launched an investigation against the governor of Central Bohemia on charges of corruption. The Commission also interrupted payments to Central Bohemia in 2012.

The Czech Republic succeeded in fulfilling most of the requirements of the Commission action plan, and payments for almost all of the OPs were resumed in October 2012. In relation to Regional Operational Programme (ROP) North-West, a number of corrective measures were introduced in 2012, including financial corrections of approximately 22% of all its expenditure. In addition, payments were stopped fully or partially for another six OPs in March 2013, with further possible financial corrections under discussion. For some programmes, the payments have since been resumed. The causes of deficiencies in the implementation of EU funds include weaknesses in public administration, in the legislation dealing with conflicts of interest, lack of transparency in the ownership of participating companies and bypassing of public procurement legislation.²⁸

Given the track record of irregularities leading to the interruption of payments on many occasions, the lack of an independent verification mechanism is an important deficiency in the implementation of EU Funds. The Czech authorities have to put in place effective measures to ensure the independence of the bodies responsible for the implementation of the EU funds, and to tackle the issues agreed under the action plan.

The National Coordination Authority responsible for the implementation of EU funds is established in the Ministry of Regional Development. This ministry has prepared a strategy to combat fraud and corruption in the implementation of ESI funds in 2014–2020. Furthermore, at the national level, the Government Strategy for the Fight against Corruption 2013–2014 has also been prepared and departmental anti-corruption programmes are currently being finalised.

Integrity in public administration

During the European Semester for economic policy coordination, the Commission pointed out that corruption and low operational efficiency in the public administration are perceived as major issues because of the Czech civil service's vulnerability to political influence and

26 See for instance: Commission Staff Working Document: Assessment of the 2012 national reform programme and stability programme for the Czech Republic. Brussels, 30.5.2012 SWD(2012) 303 final; p. 22.

27 The suspects included two previous Northwest ROP directors, one of them was sentenced by the appeal court to 5 years imprisonment on 17 January 2013. In another case, an elected official and others are suspected of abuse of power and harming EU interests; crimes which carry a maximum sentence of 12 years imprisonment.

28 Commission Staff Working Document: Assessment of the 2013 national reform programme and convergence programme for the Czech Republic. Brussels, 29.5.2013; SWD(2013) 353 final. p. 30.

weaknesses in the rules regulating it.²⁹ Furthermore, the high rate of fluctuation in the civil service, related to frequent changes in government and lack of guarantees for appointments and dismissals, increases the risk of corruption.³⁰

Despite five attempts since 2002 to put in place new legislation, there is no specific legislation for the employment in the public service. While a few provisions of the 2002 bill, for instance on training, entered into force, its full entry into force was postponed for over a decade. The most recent proposal for a Public Servants Act, presented in early 2013, does not adequately address concerns regarding the guarantees for independence and stability of state officials and a well-functioning career system.³¹ In June 2013 the previous government approved the insertion of several provisions into the bill, aiming for example to establish a state-secretary responsible for human resources in each ministry. This bill, however, was left pending without adoption in Parliament, given the government crisis, which emerged in June 2013 and resulted in dissolution of the Chamber of Deputies in August 2013. After the early elections in October 2013, the political parties forming the new coalition government abandoned the Public Servants Act from 2013, and decided to regulate the legal status of state officials by amending the previously approved, but to a large extent not yet in force, Public Servants Act from 2002. Their amendment bill introduced in December 2013 is still pending in the Chamber of Deputies, together with competing amendment bill approved by the interim government.

GRECO reported that no specific measures are in place to regulate the situation where public officials move to the private sector.³² The Czech Security Information Service reported cases of officials participating in allocating state aid for renewable energy resources who later invested in the same sector.³³ The same authority noted in the previous year that the most significant forms of dysfunction of the institutions of the State Administration and Local Government are corruption, referring to clientelistic ties built to achieve the desired benefit.³⁴

The Act on Conflicts of Interest adopted in 2006 covers disclosure of interests and assets, and rules on conflicts of interest of high-level elected and appointed officials.³⁵ It does not apply to civil servants in general; their conflicts of interest would be regulated by the Public Servants Act not yet in force.³⁶ Those public officials who fall into one of the categories defined by the act are required to submit annual disclosures of financial liabilities and of changes in real-estate ownership, ownership of expensive items, securities, ownership shares in companies, and expensive gifts received while in the office. The disclosures are archived and available from the relevant authority. There is no verification procedure, but public concerns have been raised by a certain number of incorrect disclosures. Non-compliance with the disclosure rules is an administrative offence. Complete statistical data on decisions are not

29 Commission Staff Working Document: Assessment of the 2013 national reform programme and convergence programme for the Czech Republic. Brussels, 29.5.2013; SWD(2013) 353 final. p. 8., p.29-30.

30 2013 Report of the Czech Security Information Service; see chapter 3.2 on organised crime / Organizovaný zločin <http://bis.cz/n/2013-11-07-vyrocní-zprava-2012.html#3>

31 Commission Staff Working Document: Assessment of the 2013 national reform programme and convergence programme for the Czech Republic. Brussels, 29.5.2013; SWD(2013) 353 final. p. 30.

32 See the GRECO report, especially recommendations vi-vii., Second Round Evaluation Report on the Czech Republic, Adopted by GRECO at its 28th Plenary Meeting (Strasbourg, 9-12 May 2006); and Addendum to the Compliance Report on the Czech Republic; Adopted by GRECO at its 47th Plenary Meeting (Strasbourg, 7-11 June 2010).

33 <http://www.bis.cz/n/2012-08-22-vyrocní-zprava-2011.html>; see chapter 2.1 on protection of important economic interests./ Ochrana významných ekonomických zájmů.

34 <http://www.bis.cz/n/2011-09-07-vyrocní-zprava-2010.html>; see chapter 1.6 on organised crime.

35 Act No. 159/2006 Coll., on conflict of interests; for its personal scope, see Article 2.

36 Consequently GRECO found that the current rules on the conflicts of interests were insufficient. Addendum to the Compliance Report on the Czech Republic to the Second Round Evaluation; Adopted by GRECO at its 47th Plenary Meeting (Strasbourg, 7-11 June 2010).

available. According to research, the administrative authorities do not impose deterrent penalties. The most severe fine for breaching disclosure rules corresponds to the equivalent of EUR 150.³⁷

Public procurement

Public works, goods and services in the Czech Republic account for 26% of the GDP. The value of calls for tender published in the Official Journal of the European Union as a percentage of total expenditure on public works, goods and services was 17% in 2007 and 21.5% in 2010.³⁸

Information on public tenders is centralised in the Journal of Public Tenders and available online.³⁹ The oversight of public tenders is carried out by the Office for the Protection of Competition (ÚOHS). The Office reported in 2012 that the most common irregularities identified concerned discriminatory and non-transparent conditions for bidders.⁴⁰

According to the 2013 Eurobarometer business survey, 77% of respondents consider that corruption is widespread in public procurement at national level and 67% in tenders managed by local authorities.⁴¹ In particular, Czech respondents stated that the following practices were widespread: specifications tailor-made for particular companies (73%); abuse of negotiated procedures (47%); conflicts of interests in the evaluation of the bids (60%); collusive bidding (62%); unclear selection or evaluation criteria (53%); involvement of bidders in the design of the specifications (47%); abuse of emergency grounds to avoid competitive procedures (54%); and amendments of contractual terms after conclusion of contract (51%).⁴² In a 2010 survey by the Association of Small and Medium-sized Enterprises and Crafts, almost one out of three state that paying a commission or a bribe is necessary to obtain a public contract.⁴³

According to the findings of a research project, 80% of contracts awarded by ministries between 2006 and 2010 were awarded non-publicly or without tender.⁴⁴ A total of 67% of these purchases took place outside the public procurement information system (PPIS) and 14% were contracts with the same number of tender participants and winners (one in most cases).⁴⁵

In its annual reports, the Czech Security Information Service consistently raised concerns related to public procurement, pointing to undue influence and conflicts of interest in sectors such as energy, railway infrastructure, forestry and postal services. Railway infrastructure and forestry regularly appears as a particularly risk-prone area.⁴⁶ Some of the practices highlighted included undue influence over the specifications of the contract, subjective and unclear selection criteria and bid rigging. The Service identified irregular and non-transparent negotiations, elements of which frequently included cooperation between the contracting authority and the tenderer for a contract, the award of public contracts without a competitive

37 OŽIVENÍ Monitoring střetu zájmů Oživení. (2012) <http://www.bezkorupce.cz/nase-temata/stret-zajmu/monitoring/sz>.

38 http://ec.europa.eu/internal_market/publicprocurement/docs/indicators2010_en.pdf.

39 Ministry of Regional Development (2012) *Věstník veřejných zakázek* Ministry of Regional Development.

40 ÚOHS *Výroční zpráva 2011*

http://www.uohs.cz/download/VZ_verejnost/vyrocní_zprava_UOHS_2011_PRINT.pdf.

41 Flash Eurobarometer 374.

42 These indicators, while not necessarily directly related to corruption, illustrate risk factors that increase vulnerabilities towards corruption in public procurement procedures.

43 http://www.amsp.cz/uploads/soubory/pruzkum4_web_final.pdf. "Do you think it is possible to get a public contract in the Czech Republic without any commission or bribe?" 29,4% of the respondents answered "definitely NOT" and 29,9% of respondents "rather NOT", while 7,1% of the respondents replied "definitely YES" and 23,3% of the respondents "rather YES".

44 For the presentation of project results, see <http://www.zindex.cz/data/110126-ZINDEX-MEDIA.pdf>.

45 Press release from January 2011, see http://www.zindex.cz/data/2011-01-25-TZ_projektu_zIndex.doc.

46 <http://www.bis.cz/n/2011-09-07-vyrocní-zprava-2010.html> See chapter 1.2.

tender, the modification of the terms and conditions for the benefit of the pre-selected candidates, overestimation of the contract, influencing the members of the evaluation committee, or the award of contracts for useless services.⁴⁷ The Service repeatedly noted that corrupt practices in public procurement were based on informal, clientelistic structures which could undermine the activities of public authorities.⁴⁸ A tender for the introduction of an electronic payment system for public transportation in Prague has revealed risk factors in public procurement such as deficiencies in drafting the tender documentation and conflicts of interest involving public officials.⁴⁹

The Czech Republic has made substantial progress by putting in place a modern legal framework on public procurement. In 2012, the substantially amended Public Procurement Act introduced additional transparency and safeguards through stricter rules for publishing tenders and public contracts with the aim of mitigating corruption-related risks⁵⁰. Furthermore, it established a new category of a 'significant public tender', which has to be approved by the government or municipal council, and introduced the requirement of at least two bidders. Nevertheless, while the Commission noted some progress at local level, which previously had insufficient administrative capacity to deal with public procurements, it also highlighted the need for providing further assistance in administrative capacity building. Certain difficulties remain in implementing the Act, notably due to insufficient guidance from the UOHS.⁵¹ Further increase in the administrative capacity and better guidance would speed up and smooth the public procurement process at local level.

The 2012 Public Procurement Act still allows to some extent the conclusion of public contracts with companies that have anonymous shareholders and does not offer sufficiently strong safeguards against conflicts of interest, since the companies' true owner may remain hidden.⁵² The 2013 act regulating anonymous paper shares was expected to address this lack of transparency. However, the new civil code effective from 2014 introduces a new form of property ownership with limited transparency, which makes it difficult to establish the ownership of the proceeds from property, including from shares. Provisions of the 2012 Public Procurement Act aimed at increasing transparency were removed by an amendment adopted in 2013.⁵³ These steps seem to go against the proposed changes in anonymous shareholding.⁵⁴

47 <http://www.bis.cz/n/2011-09-07-vyrocní-zpráva-2010.html> See chapter 1.2.

48 See chapter 3.2; on organised crime of the 2013 Report / Organizovaný zločin of the BIS report; <http://bis.cz/n/2013-11-07-vyrocní-zpráva-2012.html#3>; see chapter 2.2 on organised crime of the 2012 Report./ Organizovaný zločin. <http://www.bis.cz/n/2012-08-22-vyrocní-zpráva-2011.html>.

49 http://zaostreona.korupci.cz/wp-content/uploads/Podkladova_studie_Opencard.pdf - see the analysis of the Respect Institute; original in Czech, referring among others to the audit run by Ernst and Young: http://korupce.praha-mesto.cz/files/=55/MHMP_zaverecna+zprava_FINAL.pdf. The overpriced contract allegedly defrauded the public budget of Prague of around EUR 3 million.

50 Act 55/2012 amending the Public Procurement Act 137/2006. <http://www.portal-vz.cz/cs/Aktuality/Novy-zakon-c-55-2012-Sb-kterym-se-meni-zakon-o>.

51 Commission Staff Working Document: Assessment of the 2013 national reform programme and convergence programme for the Czech Republic. Brussels, 29.5.2013; SWD(2013) 353 final. p. 29-30.

52 Transparency International: Corruption risks in the Visegrad Countries – Visegrad Integrity System Study. p. 18.; http://www.transparency.cz/doc/aktuality/corruption_risks_in_visegrad_countries_full_report.pdf.

53 <https://apps.odok.cz/kpl-detail?pid=KORN9BQAAS3P>

54 Commission staff working document: Assessment of the 2013 national reform programme and convergence programme for the Czech Republic. Brussels, 29.5.2013; SWD(2013) 353 final. p. 30-31.

Financing of political parties

In the Czech Republic, the largest source of political party funding is the state. State subsidies may amount to up to 85% of a party's budget.⁵⁵ Political parties that receive over a specified percentage of votes or hold at least one seat in Parliament are entitled to state subsidies, which are calculated on the basis of the percentage of votes received and the number of candidates elected, for both parliamentary (national or European Parliament) and municipal elections. Political parties may also be funded from membership fees and donations.⁵⁶ Certain restrictions apply to sources of private donations. A political party may not 'accept free benefits and gifts' from state entities, state-funded organisations, municipalities (except for the rental of commercial premises), state enterprises and other legal entities in which the state, a state enterprise or municipality has a share of more than 10%, including legal entities which are managed and supervised by the state, charities, other legal entities defined by special regulations, foreign legal entities (except foreign political parties and foundations) and foreign natural persons who do not have permanent residence in the Czech Republic.⁵⁷

Financial statements of political parties must be audited by an external auditor and a copy of the financial statements must be submitted to a parliamentary office which makes them publicly available at its premises, but not online). Some MPs voluntarily publish information on funding from private sources on the website of their party.

Good practice: Voluntary publication of financial data of MPs

Members of Parliament are not subject to the Free Access to Information Act, but one party has chosen to apply it to its members. The code of ethics of this party requires the MPs to inform the public in full about how they fulfil their office, with the exception of disclosing classified information specified by law.

Nevertheless, according to GRECO, the procedures for financing political parties and election campaigns are insufficiently transparent. In 2011, GRECO singled out nine areas of concern,⁵⁸ including unsatisfactory reporting requirements for campaign expenditure by political parties, the absence of a transparency requirement for the private campaigns of individual candidates (with the exception of presidential candidates, who are required to publish accounts)⁵⁹ and the absence of a requirement to publish the political parties' financial statements online. Lack of proper accessibility to party reports is a major stumbling block for transparency: while GRECO commended the amount of information parties are required to keep on record concerning the donations they receive, together with the very low minimum threshold for declarations, but it noted that the documents are hardly accessible in practice, since only one copy is kept in the library. Even more importantly, GRECO noted concerns about the oversight authority, since external checks are carried out by the parliamentarians themselves, namely through the Supervisory Committee of the Chamber of Deputies, which is responsible for scrutinising the use of financial resources of the state.⁶⁰ The Czech supervision

55 GRECO (2011) *Evaluation Report on the Czech Republic on Transparency of party funding (Theme II)* [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)10_CzechRep_Two_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)10_CzechRep_Two_EN.pdf) page 15.

56 Act No. 424/1991 Coll., on the Association in Political Parties and Movements.

57 Act No. 424/1991 Coll., on the Association in Political Parties and Movements.

58 See the GRECO report, Third evaluation round, Evaluation Report on the Czech Republic on Transparency of party funding (Theme II).

59 Act No. 275/2012 Coll., on the election of the president of the republic and on amendments to certain acts (act on election of the President of the Republic).

60 See the GRECO report, Third evaluation round, Evaluation Report on the Czech Republic on Transparency of party funding (Theme II) p 11., p. 20.

mechanism of party funding is only of formal nature, and is limited to checking whether the declarations have been submitted in due time and in accordance with the criteria set out by law. It is not an effective, independent control mechanism.

In January 2013, the government rejected a legislative draft which had the potential to meet the GRECO recommendations for improving the transparency of party financing. Currently there appears to be no agreement on the preferred model of control over financing of political parties. Two alternative proposals were considered: setting up a new independent oversight authority or broadening the powers of the Supreme Audit Office.⁶¹ None of the two proposals received sufficient support to be taken forward. The previous government intended to amend the laws on political parties and on the code of elections, however, given the elections in October 2013, any bill would have to be resubmitted to the new Parliament so as to be adopted.

Prosecution of corruption

According to a study conducted for the Czech Government by Transparency International, the prosecution of bribery is mainly consistent among the courts. The study noted that most prosecuted cases concerned petty corruption. The prosecution of large scale corruption is relatively rare.⁶² The prosecuted cases almost all related to corruption of public officials. Prosecution of cases of corruption within in the private sector is very rare (only eight cases in the period 2010-12).⁶³

The supervision of investigation of important bribery cases rests largely with the departments of serious economic and financial criminality which have been established in the High Public Prosecutors Office in Prague and Olomouc, as well as in the Supreme Public Prosecutor's Office. The prosecution service has also designated specialist public prosecutors to handle corruption cases. Supervision of the High Public Prosecutor's Office is conducted in all cases by Supreme Public Prosecutor's Office.

The OECD Working Group on Bribery expressed its concern that possible political pressures over prosecutorial decisions may indirectly influence investigations and prosecutions.⁶⁴ According to the law, decisions for dismissal of the head of the Supreme Public Prosecutor's Office do not have to include reasons.⁶⁵ The Government may remove the Supreme Public Prosecutor from office at the proposal of the Minister of Justice. Instructions by the Supreme Public Prosecutor on procedures and administration of the prosecutor's offices are binding.⁶⁶

The government replaced the Supreme Public Prosecutor in January 2011. On the proposal of the new Supreme Public Prosecutor, the Minister of Justice appointed a new High Public Prosecutor in Prague in July 2012. Her predecessor had been removed from office on grounds of mismanagement and unprofessional conduct, whose motion had been turned down by the Supreme Administrative Court.⁶⁷ These two appointments are widely believed to mark an

61 Commission staff working document: Assessment of the 2013 national reform programme and convergence programme for the Czech Republic. Brussels, 29.5.2013; SWD(2013) 353 final. p. 29.

62 Transparency International: *Analýzy soudních rozhodnutí vydaných v letech 2007 až 2009 a 2010 až 2012 ve věcech úplatkářských trestných činů* (2013) <http://www.transparency.cz/analyza-soudnich-rozhodnuti-vydanych-letech-2010-2012-vecech/>, page 171.

63 Ibid., page 172.

64 OECD Working Group on Bribery. Phase 3 Report on Implementing the OECD Anti-Bribery Convention on the Czech Republic. (2013) p. 30. <http://www.oecd.org/daf/anti-bribery/CzechRepublicphase3reportEN.pdf>

65 http://www.euro-justice.com/member_states/czech_republic/country_report/1713/; Act on Public Prosecutor's Office, 283/1993 Coll., section 9.

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

67 Decision of the Supreme Administrative Court of 12 June 2012 No. 1 As 51/2012-242.

important step in the active fight against corruption in the Czech Republic. Since these appointments, the public prosecution has initiated several important cases at the highest levels of politics and public administration.

In October 2012, the government announced that agreement had been reached to restructure the public prosecution which was formally approved by the government in May 2013. The organisation of the prosecution authority would be simplified; three levels would replace the current four-level-structure (district offices – regional offices – Supreme Prosecution Office). The introduction of a new office for the prosecution of corruption cases, attached to the Supreme Prosecution Office, aims to centralise the prosecution of corruption, which is currently handled by individual offices, and to make it more effective. However, this legislative proposal has been withdrawn.

3. FUTURE STEPS

Over the last decade, a strategic framework for fighting corruption has been evolving in the Czech Republic. Persistent problems related to the misuse of public funds, public procurement and other interactions between business and the public sector have been noted, both by EU institutions supervising the use of European financial support and others. Ongoing attempts to put in place legislation on the civil service have not been finalised so far. Perception surveys show that corruption is widely believed to represent a major obstacle to doing business.

The following points require further attention:

- Introducing legislation on the **civil service** that addresses conflicts of interest, merit-based recruitment and guarantees against arbitrary dismissal. Enhancing stability of the civil service and safeguards against political interference. Introducing integrity programmes in the public service that focus on preventive measures.
- Enhancing capacities, specialisation and training for detection and removal of conflicts of interest within **public procurement** at all levels. Ensuring effective implementation of the Public Procurement Act. Enhancing transparency of ownership for companies participating in public tenders. Introducing an ex-ante verification mechanism to prevent conflicts of interest and corrupt practices in relation to the European Structural and Investment Funds programmes. Strengthening the independence of all bodies responsible for the implementation of EU funds.
- Disclosing in detail **party and electoral campaign expenditure** in annual financial reports. Ensuring that financial reports of political parties are easily accessible to the public and establishing effective and impartial supervision of financing of political parties.
- Strengthen the ability of **prosecutors to handle corruption cases in an independent manner** by reviewing the criteria for nomination of prosecutors, and by pursuing reforms regarding instructions by the executive in individual cases.