# European Rule of Law Mechanism: input – Czech Republic

## I. Justice System

### *A. Independence*

#### *1. Appointment and selection of judges and prosecutors*

Judicial power in the Czech Republic is exercised by independent courts - sec. 1 of the Act on Courts and Judges (Act no. 6/2002 Coll.). This provision corresponds with art. 81 of the Constitution (Act no. 1/1993 Coll.), which entrusts the exercise of the judicial power – as one of three independent powers - to independent courts. Independence and impartiality of court as main attribute of these bodies are based also on the guarantee in art. 36 of the Charter of Fundamental Rights and Freedoms (Act no. 2/1993 Coll.), which guarantees to anybody the possibility to pursue in a prescribed manner their rights at independent and impartial courts.

**Judges** are appointed to their office for an indefinite period of time. Appointment for an indefinite period of time is one of the principles supporting the independence of a judge in decision making guaranteed by the Constitutional order and by the Act on Courts and Judges (no. 6/2002 Coll.). The office of the judge may only be terminated due to reasons listed by the law. Judges are appointed by the President of the Czech Republic (art. 93 (1) of the Constitution, sec. 63 of the Act on Courts and Judges). For the decision of the President on appointment of judges to be valid, signature of the Prime Minister or authorized member of the Government is necessary (art. 63 (3) of the Constitution).

Currently, other details of the procedure on appointment of judges are not stipulated by law (selection of candidates for office of a judge is in competence of the Presidents of Regional Courts; they submit documents of individual candidates to the Ministry of Justice. The Ministry of Justice processes complete documentation and the Minister of Justice submits the candidates to the President of the Republic).

To become a candidate, the law requires a university education acquired by proper completion of studies in a master's study programme in the field of law at a public university in the Czech Republic and the passing of an expert judicial examination. The latter is usually taken after a 36 month preparatory service, before an examination committee which is appointed by the Ministry of Justice and includes judges, employees of the Ministry and other legal experts. The bar examination, the final examination for prosecution trainees, the notarial examination and the expert executor's examination are also considered as expert judicial examination; furthermore, the exercise of the office of judge of the Constitutional Court for a period of at least two years has the same effect.

An amendment of the Act on Courts and Judges is currently being discussed by the Czech Parliament. The proposed amendment shall establish a transparent and uniform system of new judges´ recruitment and selection of court presidents based on precise, objective and uniform criteria, which must be fulfilled by any person who wants to become a judge, or a court president.

The proposed selection system of new judges consists of 5 phases: 1. a practice as an assistant of judge, 2. judicial exam, 3. selection procedure of a judicial candidate, 4. practice of a judicial candidate and 5. an open competition for the position of a judge. A possibility for applicants from other legal professions (such as lawyers, notaries, bailiffs or public prosecutors) to apply for the position of a judicial candidate and/or judge is also allowed.

For further information, please see GRECO Fourth Evaluation report on the Czech Republic and following compliance reports. For Czech wording of laws, please consult www.zakonyprolidi.cz.

**Prosecutors**:

According to the Constitution of the Czech Republic the Public Prosecution is part of the executive branch. Public prosecutors are appointed into their office for an indefinite time by the Minister of Justice on the proposal of the Supreme Public Prosecutor.

Selection of candidates for public prosecutors belongs to the competence of Regional Public Prosecutors. Prerequisites for the office of a public prosecutor is stipulated by Act on Public Prosecutor´s Office (sec. 17 - Act no. 283/1993 Coll.). Currently, the selection of candidates for the post of prosecutors uses a selection process, which is announced by the Regional Public Prosecutors. Preconditions of their appointment are provided for in Section 17 of the PPO Act and include Czech citizenship, full legal capacity, no criminal conviction, reaching the age of 25 on the day of appointment, masters' degree from a study program in the field of law at a university in the Czech Republic, passing the final examination [after 3 years of training in a public prosecutor's office or partly in other relevant legal job as provided for in Section 33(2) of the PPO Act; an expert judicial examination or bar examination are also considered as such final examination according to Section 34(8) of the PPO Act] , moral qualities guaranteeing due performance of the office and consent with being appointed a public prosecutor and with assignment to a specific Public Prosecutor's Office.

Obligatory selection procedure for appointment of public prosecutors is provided for in the Agreement on Selection and Career Progress of Public Prosecutors, which was prepared by the Supreme Public Prosecutor´s Office and signed by the Minister of Justice in May 2018 and by the Supreme Public Prosecutor, High Public Prosecutors and Regional Public Prosecutors in June 2018.

For further information please consult GRECO Fourth Round Evaluation report on the Czech Republic and follow-up compliance reports.

### *2. Irremovability of judges, including transfers of judges and dismissal*

**Judges** are appointed for an unlimited term and may only be dismissed in disciplinary proceedings by a disciplinary court for disciplinary violations specified by law. For details, please see answer to q. 6).

As for the transfer of judges, in principle, a judge may be transferred to another court only with his/her consent or upon request. However, according to Section 72 of the Act on Courts and Judges, if a change occurs on the basis of a law in the organisation of courts, in the change of a district of a court or in the jurisdiction of courts and proper administration of justice cannot be ensured otherwise, a judge may be transferred to another court even without his/her consent. Moreover, the Minister of Justice may temporarily assign a District Court judge to another District Court, even without his/her consent, if proper administration of justice at this court cannot be ensured otherwise.

It is the Minister of Justice who makes the decision on a transfer of a judge after discussion with Presidents of all the relevant courts – President of court to which the judge is being transferred and with the President of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction and President of court from which the judge is being transferred and with the President of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction.

For further information please see GRECO Fourth Round Evaluation Report on the Czech Republic and its follow-up compliance reports.

### *3. Promotion of judges and prosecutors*

Career advancement of **judges** is not stipulated by any law. The judge may be transferred on proposal and with his consent or based on his request. While transferring a judge to higher court, his expertise shall be considered and he must fulfil specific length of legal practice stipulated by law (please see sec. 71-73 of Act on Courts and Judges).

It is the Minister of Justice who makes the decision on a transfer of a judge after discussion with Presidents of all the relevant courts – President of the court to which the judge is being transferred and with the President of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction and President of the court from which the judge is being transferred and with the President of the Regional Court in case of a transfer of a judge to a District Court within its jurisdiction.

Judges who carried out legal practice for a period of at least 10 years may be transferred to the Supreme Court, those who carried out legal practice for a period of at least 8 years may be transferred to a Regional or a High Court.

Decision of the Minister cannot be appealed at the moment.

**Public prosecutors** are assigned to a certain public prosecutor's office by the Minister of Justice subject to his or her prior consent. The Minister of Justice may transfer the public prosecutor to another public prosecutor's office. Generally, such transfer is possible to public prosecutor´s office of the same or higher level, upon a request of the public prosecutor or with his or her consent. Transfer to an office of a lower level is possible, in principle, only upon a request of the public prosecutor. Requests for transfer are submitted through the Prosecutor General who attaches his or her opinion on the request. The professional level of the public prosecutor concerned and results of broadening of his or her professional knowledge are considered within the transfer to an office of a higher level. Detailed rules on assignment and transfer of the public prosecutors are contained in Section 19 of the PPO Act, as well as in the aforementioned Agreement on Selection and Career Progress of Public Prosecutors.

The promotion of public prosecutors – just as with judges – is not stipulated in the Act on Public Prosecutor´s Office. When transferred to higher public prosecutor´s office, their level of expertise is taken into account.

Public prosecutor may only be recalled in disciplinary proceedings.

For further information please see GRECO Fourth Round Evaluation Report on the Czech Republic and its follow-up compliance reports.

### *4. Allocation of cases in courts*

In the Czech Republic, lawful and independent allocation of cases is guaranteed by the Constitution. General principles on jurisdiction of courts are set by procedural codes (criminal, civil, administrative). There is an exemption for insolvency cases, which are distributed according to the regulation No. 213/2019 Coll. On the automated generator, which is determining that insolvency cases are allocated randomly and independently among insolvency judges by means of specific automatic system.

Distribution of individual cases to be heard and decided in court is governed by a Work Schedule, which is adopted individually for each court (in all instances). A Work Schedule is prepared by the President of the relevant court for each calendar year and he/she is obliged to discuss it with the Judicial Board. The Work Schedule is publicly available.

### *5. Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)*

A body like the Council for the Judiciary has not been established in the Czech Republic.

Judicial power in the Czech Republic is exercised by independent courts (sec. 1 of the Act on Courts and Judges). This provision corresponds with art. 81 of the Constitution, which entrusts the exercise of judicial power – as one of three independent powers - to independent courts. Independence and impartiality of court as main attribute of these bodies are based also on the guarantee in art. 36 of the Charter of Fundamental Rights and Freedoms (Act no. 2/1993 Coll.), which guarantees to

anybody the possibility to pursue in a prescribed manner their rights at independent and impartial courts.

Independence is a prerequisite of an impartiality of a judge, which must never be compromised. The judge performs his/her functions independently and is only bound by the law. Independence of the judiciary means a strict separation from the other branches of state (public) power but also from the political system. The decisions made by the court cannot be interfered with by anyone – no one must compromise its impartiality. Interference with the independence of the court is a separate criminal offense in the Criminal Code – sec. 335 of the Criminal Code.

### *6. Accountability of judges and prosecutors, including disciplinary regime and ethical rules.*

**Accountability of judges:**

A judge bears disciplinary liability for disciplinary violations (voluntary breach of duties of a judge, as well as voluntary behaviour or conduct impairing dignity of the office of judge or endangering confidence in independent, impartial, professionally competent and fair decision-making by the courts). Disciplinary liability of presidents of courts, vice-presidents or presidents of panels of the Supreme Court or Supreme Administrative Court are also liable for voluntary breach of duties connected to their function.

Disciplinary proceedings are dealt with by disciplinary court. The composition, procedure and decisions are stipulated by Act on proceedings relating to judges, public prosecutors and court executors (appended) (Act No. 7/2002 Coll.).

Presidents of courts, vice-presidents or presidents of panels of the Supreme Court or Supreme Administrative Court are also liable for the voluntary breach of duties connected to their function. As for disciplinary measure, the disciplinary panel can at the end of the procedure regulated by the Act No. 7/2002 Coll., on proceedings relating to judges, public prosecutors and court executors impose these disciplinary measures: reprimand; reduction of salary of up to 30% for a period not exceeding one year, and in case of repeated disciplinary violations committed by a judge prior to erasure of the disciplinary violation, for a period not exceeding two years; recall from the office of president of a panel; recall from the office of judge.

Presidents of courts, vice-presidents or presidents of panels of the Supreme Court or Supreme Administrative Court may be disciplined by a reprimand; temporary withdrawal of an increase in salary coefficient for their function; temporary salary reduction,precall from the office of president of court, presidents of panels of the Supreme Court or Supreme Administrative Court.

The Supreme Administrative Court is the Disciplinary Court, which (in cases regarding judges) acts and decides in chambers composed of a judge of the Supreme Administrative Court as the presiding judge, a judge of the Supreme Court as his/her deputy, a judge of a High, Regional or District Court and three lay judges. Among these, there must be at least one public prosecutor, one attorney and one person exercising another legal profession, if registered in the list of lay judges in proceedings relating to judges. The members of the chambers and their presidents are drawn by lots from lists of suitable candidates, for a five-year term.

The proceeding are initiated by the proposal of the President of the Republic and the Minister of Justice against any judge; the President of the Supreme Court (Supreme Administrative Court) against any judge of this court, and against a judge of a lower court deciding on matters belonging to the jurisdiction of courts, where the Supreme Court (Supreme Administrative Court) is the highest instance; the president of the High Court (or Regional Court) against any judge of that Court and against a judge of a lower court; the president of a District Court against a judge of any District Court.

The Czech Parliament is currently discussing a legislative proposal, which shall introduce a new system of appeal and allow the possibility to challenge decisions of the disciplinary court (chamber)

before a second instance. This proposal should increase the efficiency of the disciplinary procedure as well.

Code of Ethics (Ethical Principles of Conduct for Judges) has been adopted by the 15th Assembly of the Union of Judges of the Czech Republic in November 2005 and is based on Bangalore principles from 2002. The Union of Judges is a non-political, professional and voluntary organization, which represents more than 50 % of judges.

Apart from code of ethics (which has no legal power) there are general provisions in the Constitution of the Czech Republic and in Act on Courts and Judges (art. 79 and following).

A new Code of Ethics applicable to all judges has been drafted by a working group of judges, it is now being reviewed by the judicial councils of all courts. For further information please see GRECO Fourth Round Interim Compliance Report of 2019.

**Accountability of prosecutors:**

Disciplinary liability of public prosecutors is regulated by Sections 27 – 30 of the PPO Act. The disciplinary procedure is conducted according to the Act No. 7/2002 Coll., in the same manner as in case of judges. However, the proceeding shall be initiated by the proposal of the Minister of Justice and the Supreme Public Prosecutor against any public prosecutor; a high public prosecutor against a public prosecutor of his or her office or of a Regional or District Public Prosecutor's Office in its jurisdiction; a regional public prosecutor against a public prosecutor of his or her office or of a District Public Prosecutor's Office in its jurisdiction; a district public prosecutor against public prosecutor of his/her office.

Disciplinary violation is a culpable violation of the public prosecutor's duties, the public prosecutor's culpable behaviour or conduct diminishing the trust in the Public Prosecutor´s Office activity or proficiency of its operation or degrading reputation and dignity of the public prosecutor's position. A reprimand, a salary decrease of up to 30% for a period of not more than 1 year and for repeated disciplinary violation committed by the public prosecutor in the period before erasure of the disciplinary punishment for a period of not more than 2 years or removal from the office may be imposed as a disciplinary punishment.

According to the aforementioned draft law of the PPO Act, disciplinary punishment shall be the only option to remove a chief public prosecutor from his or her office before the end of the term.

A new binding Code of Ethics for Public Prosecutors has been adopted as a joint measure of the Supreme Public Prosecutor, the High Public Prosecutors and the Regional Public Prosecutors with the aim to create a unified framework for assessment of the ethical dimension of work and behaviour of the public prosecutors. The Code entered into effect on 1st May 2019 and it contains sections on legality and independence, impartiality, professionalism, trustworthiness, dignity and behaviour and cooperation. Its Czech wording is accessible on the website of the Prosecutor General's Office via http://www.nsz.cz/images/stories/PDF/predpisy/Eticky_kodex_statniho_zastupce.pdf. An explanatory commentary with practical examples has been adopted together with this Code and training to public prosecutors is provided.

Accountability for damage caused by an illegal decision or maladministration of the Public Prosecutor's Office is regulated by Act No. 82/1998 Coll., on Accountability for Damage caused within Exercise of the Public Authority by a Decision or Maladministration.

### *7. Remuneration/bonuses for judges and prosecutors*

The remuneration of **judges** is regulated by the Act No. 236/1995 Coll., on the remuneration and other conditions relating to the performance of the duties of Representatives of the State and certain Public authorities and Judges and Members of the European Parliament. According to this act, Judges' salaries are based on coefficients multiplying a salary base which amounted to 100 872 CZK/approximately 3 710 EUR in 2020. The amount of the salary coefficient depends on the type of

court to which the judge is assigned or transferred, as well as on the duration of practice for salary purposes.

The remuneration of **public prosecutors** is regulated by a special law, Act No. 201/1997 Coll., on Remuneration and certain other Allowances of Public Prosecutors. The amount of remuneration is counted as a product of a salary base and a salary coefficient which is derived from years of practice already served and level of public prosecutor's office to which the public prosecutor is assigned or transferred. The salary base amounts to 90 % of the salary base for judges according to the aforementioned Act no. 236/1995 Coll.; the amount is announced yearly in the Collection of Laws by a communication of the Ministry of Labour and Social Affairs. The pay base for public prosecutors for the year 2020 amounts to 90 784, 80 CZK (around 3 340 EUR).

### *8. Independence/autonomy of the prosecution service*

According to the Constitution, Public Prosecution is part of the executive power. Nevertheless, predominant part of experts is convinced that the Public Prosecution shall be considered a judicial body different from the courts, i.e. part of the judiciary largo sensu. According to Section 2(2) of the PPO Act, the Public Prosecutor's Office has to exercise its competence impartially, while respecting and protecting human dignity, equality of all before the law, and cares for protection of human rights and liberties. Other authorities or persons may not interfere with activity of the public prosecutors or replace or represent them in performance of their duties, as provided for in Section 3(1) of the PPO Act. Independence and impartiality of the Public Prosecutor's Office and the public prosecutors are thus guaranteed.

Corresponding obligations of the public prosecutors are laid down in Section 24(1)(2) of the PPO Act, which, among others, provide that the public prosecutor is obliged to proceed impartially and must refuse any external intervention or influence which could result in violation of his or her duties. The public prosecutor has to avoid any conduct that could raise justifiable doubts regarding adherence to his or her duties or that could jeopardize trust in impartiality and professionalism of performance of the Public Prosecutor's Office's or the public prosecutor's competence.

### *9. Independence of the Bar (chamber/association of lawyers)*

The Czech Bar Association is the largest self-governing legal professional organization in the Czech Republic. It was established in accordance with Sec. 40 of Act No. 85/1996 Coll., on the Legal Profession, as amended. Apart from the performance of public administration in the area of the legal profession, the Bar also provides self-regulation of the entire profession. In this respect, the Bar is not subject to the activities of the State and is not financed by it. The performance of self-regulation is linked to obligatory membership of all lawyers in the Czech Bar Association, disciplinary liability, supervision with respect to compliance with ethical rules, issuing of professional regulation etc. The self-governing power of the Bar is limited by the power of the Minister of Justice, provided for in Sec. 50-52 (c) of Act on the Legal Profession. Under these provisions, the Minister of Justice appoints the members of the Examination Board for the Bar examination, issues the Bar Disciplinary Code and the Bar Rules of Examination by means of a decree and may file disciplinary petitions. Next, the Minister of Justice ensures compliance of the professional rules with the legal order and issues the Decree on the lawyer´s fee.

When providing legal services, individual lawyers are of course independent, as stipulated by Sec. 3 of Act on the Legal Profession. This independence means independence from the State authority, various bodies and anybody attempting to determine how lawyers should provide legal services (apart from the Act on the Legal Profession and professional regulation issued by the Bar).

The issue of independence is directly connected to the duty of professional secrecy/legal professional privilege, which constitutes the cornerstone of modern independent legal profession. Over the course of time, there have been repeated attempts to modify, modulate or partially remove the duty of professional secrecy, for various reasons. These are cases where public authority sees a lawyer as a welcome source of client´s information which could be extracted for the purposes of the

exercise of public authority (e.g. for the purpose of criminal, tax or administrative proceedings, etc.) The Czech Bar Association has repeatedly pointed out these cases in the legislative process, not in order to protect lawyers but their clients since it is their fundamental human rights that are being jeopardised by these attempts (e.g. the issue of utilization of intelligence information as evidence in criminal proceedings or reporting obligations by lawyer to the tax administrator in order to ensure international cooperation in the area of tax administration).

### *10. Significant developments capable of affecting the perception that the general public has of the independence of the judiciary*

*An amendment of the Act on Courts and Judges is currently* being discussed by the Czech Parliament (currently in second reading in the Chamber of Deputies).

The proposed amendment shall establish a transparent and uniform system of new judges` recruitment and selection of court presidents based on precise, objective and uniform criteria which must be fulfilled by any person who wants to become a judge or a court president.

The proposed selection system of new judges consists of 5 phases: 1. a practice as an assistant of judge, 2. judicial exam, 3. selection procedure of a judicial candidate, 4. practice of a judicial candidate and 5. an open competition for the position of a judge. Selection committees in phases 3. and 5. shall consist of judges and judicial experts while judges will have majority. A possibility for applicants from other legal professions (such as lawyers, notaries, bailiffs or public prosecutors) to apply for the position of a judicial candidate and/or judge is also allowed.

Court presidents of district, regional and high courts are selected in open competitions before selection committees in which judges will have majority. Applicants are required to be judges that have at least 5 years of practice as a judge. The proposal prohibits the possibility to repeat the mandate of a court president at the same court. Court presidents are required to fulfil a management education course (organized by the Judicial Academy).

### 11. *Other - please specify*

N/A

## *B. Quality of justice*

### *12. Accessibility of courts (e.g. court fees, legal aid)*

Court fees are regulated by a specific act (Act No. 549/1991 Coll. on court fees). The specific amount of these fees is determined by the so-called List of fees, which is appended to this law. Court fees have not been increased over the last 8 years, so their level is quite moderate and does not constitute an obstacle to access justice, considering the rising standard of living and the rising average wages. At present, there is a comprehensive amendment in the legislative process that revises court fees in terms of their amount and adapts them to the socio-economic situation in the Czech Republic.

Some proceedings are completely exempted from court fees. At the same time, the court may, at a request, exempt a party from court fees completely or partly. Exemption from court fees is based on the participant's financial situation. The possibilities of total exemption from the court fees are further extended by the amendment.

If certain conditions are fulfilled, the party is exempt from court fees, and the court may also appoint a legal representative or a lawyer. The costs are reimbursed by the State in that case.

In 2018, a new system of free legal assistance was introduced by the Czech Bar Association, where free legal advice is provided exclusively by an attorney. The duration of this free legal advice ranges from 30 to a maximum of 120 minutes per year. The fee is set at CZK 100 (approx. 4 €) per session, but there are exceptions where applicants do not have to pay any fee at all.

### *13. Resources of the judiciary (human/financial)*

There are over 3000 judges at all court levels in the Czech Republic. As for further statistical data, please see EU Justice Scoreboard 2019 and CEPEJ Report (2016 data) or consult CEPEJ Dynamic database.

### *14. Use of assessment tools and standards (e.g. ICT systems for case management, court statistics, monitoring, evaluation, surveys among court users or legal professionals)*

Court statistics are being monitored, evaluated and published by the Ministry of Justice. Statistics are available online: https://justice.cz/web/msp/statisticke-udaje-z-oblasti-justice.

The use of modern technology at Courts is on the rise. Application „CEPR“ is helping judges to conduct their court files digitally during some specific cases. The application “Generátor” (Automated generator) is helping Courts to allocate insolvency cases, as described above.

Since the year 2009, Courts are allowed to communicate with parties by data boxes (in Czech “Datové schránky”) application, which is a specific kind of formal digital communication. This form of communication is preferable, but using data boxes is currently not mandatory for natural persons.

Ministry of Justice is also currently drafting digital court file (so called “eFile” or, in Czech, “eSpis”) application, which will allow complete paperless digital administration of court files. The work is still in progress.

### **15.** ***Other - please specify***

*N/A*

## *C. Efficiency of the justice system*

### *16. Length of proceedings*

In general, the judicial system in the Czech Republic is efficient as is proved by the comparative CEPEJ reports and EU Justice Scoreboard. The length of judicial proceedings gets shorter. According to the EU Justice Scoreboard, the Czech Republic is no. 7 out of 28 Member States with regard to civil and commercial proceedings. The length of proceedings is less than 200 days, which is one of the best results in the EU.

### *17. Enforcement of judgements*

*Enforcement of judgements is regulated* by procedural provisions, e.g. the Criminal Procedure Code (no. 141/1961 Coll.), the Act on Enforcement of Imprisonment (no. 169/1999 Coll.) or the Civil Procedural Code (no. 99/1963 Coll.).

For statistics on some aspects of the enforcement of judgements, please see CEPEJ report 2018.

### **18.** ***Other - please specify***

N/A

## II. Anti-corruption framework

### *A. The institutional framework capacity to fight against corruption (prevention and investigation / prosecution)*

***19. List of relevant authorities (e.g. national agencies, bodies) in charge of prevention detection, investigation and prosecution of corruption. Where possible, please indicate the resources allocated to these (the human, financial, legal, and practical resources as relevant).***

1. **Police of the Czech Republic** – National Organized Crime Agency
In cooperation with the Public Prosecutors' Offices investigates corruption related crimes.

2. **Public Prosecution -** In cooperation with Police of the Czech Republic investigates and prosecutes corruption related crimes.

3. **Financial Analytical Office**[1] (FAO), acting as a financial intelligence unit of the Czech Republic, has been established as an independent administrative office on 1 January 2017. The FAO replaced the former Financial Analytical Unit placed within the Ministry of Finance and it has overtaken all its responsibilities. The role of the FAO as stipulated under Sections 29c, 30a and 31 of the AML Act (https://www.financnianalytickyurad.cz/download/FileUploadComponent-752656362/1502715959_cs_1502694516_cs_act-no-69-2006-en.pdf). The FAO is receiving, analyzing and processing suspicious transaction reports submitted by financial and non-financial designated businesses and professions. Furthermore, the FAO files criminal complaints to the Police, particularly to the highest Police body – the Police Presidium. It provides information to the Tax Administration, Customs Administration, Intelligence Services and other relevant bodies active in the fight against money laundering and terrorism financing. For your full understanding of FAO's functioning, responsibilities, cases and workload, please see the FAO's annual reports (https://www.financnianalytickyurad.cz/download/FileUploadComponent-576511580/1563868133_cs_annual-report-fau_2018.pdf). These reports provide you also with well arranged information about the number of employees (both legal and analytical divisions and the office of the FAO), budget and structure.
Corruption and funds generated by corruption related crimes are inner part of FAO's work. As any other crime stipulated under the Czech Criminal Code, corruption can and should trigger submission of the report and it is a subject to FAO's investigation. Besides that, the FAO itself also detects criminal activity and it has the power to initiate case based on information from investigative journalists, social media or other source of information based on its own expertise. Because of the position of the financial intelligence unit of the Czech Republic it is also actively engaged in international cooperation (Section 33 of the AML Act). For its work, FAO has broad scope of competences and available sources of information, including, but not only, excess into the Czech Bank Accounts Register, Czech Register of Beneficial Owners, Czech Business Register, Czech Land Registry, etc. It closely cooperates with law enforcement authorities as well as with private sector,

[1] We would like to point out, that the Czech Republic has been recently evaluated with regards to compliance with international standards in the area of fight against money-laundering and terrorist financing by the Moneyval (https://www.fatf-gafi.org/media/fatf/documents/reports/mer-fsrb/Moneyval-Mutual-Evaluation-Report-Czech-Republic.pdf). Furthermore, the OECD conducted evaluation in 2017 under the Anti-Bribery Convention followed by progress report adopted in April 2019 (https://www.oecd.org/corruption/anti-bribery/Czech-Republic-phase-4-follow-up-report-ENG.pdf). Lastly, the UNCAC conducted the on-site visit in October 2017 an the report can be find here:https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fcze.html. All abovementioned reports provide complex information about the relevant authorities responsible for detection, investigation and prosecution of economic crimes.

such as banks or financial services providers. Lastly, the National Risk Assessment (https://www.financnianalytickyurad.cz/download/FileUploadComponent-1029799670/1524655342_cs_report-od-the-first-round-of-nat-ml_ft-risk-assessment.pdf), thoroughly mapping the risks of money laundering to which the Czech Republic is or could be exposed, including both domestic and foreign corruption, is coordinated and completed by FAU.

4. **Ministry of Justice of the Czech Republic** and its Conflict of Interests and Anti-Corruption Department - within the Ministry of Justice of the Czech Republic the Conflict of Interests and Anti-Corruption Department is in charge of the anti-corruption agenda. The department consists of three units, where two units deal with conflict of interest agenda and one with anti-corruption agenda and its coordination at the Government level.

The two aforementioned units dealing with conflict of interests:

- Manage central electronic register of notifications;
- Provide methodological support;
- Perform controlling and supervisory activities over authorities dealing with misdemeanours and administrative offences in this area and relay both their own and received findings to them.

The Anti-Corruption Unit:

- Drafts Government anti-corruption strategic documents;
- Coordinates and controls the implementation of the tasks arising from governmental anti-corruption strategies;
- Prepares legislative and non-legislative materials relating to the fight against corruption;
- Prepares analyses, comparative studies and other measures related to the fight against corruption;
- Evaluates corruption impacts assessment (within the regulatory impact assessment process) that is done for government sponsored legislation by individual ministries and other central authorities;
- Performs education and awareness raising activities and discusses its activities with the non-governmental, non-profit organizations engaging in combating corruption;
- Provides support for Government Anti-Corruption Council (governmental advisory body),
- Cooperates with other departments of the Ministry in fulfilling international obligations of the Czech Republic in the anti-corruption area.

Human resources: 23 employees
Legal resources: Act No. 159/2006 Coll. On Conflict of Interests, Government Resolution form 3rd December 2018 No. 818 on Transfer of Anti-Corruption Agenda
Practical resources: Government Anti-Corruption Conception for 2018-2022, Anti-Corruption Action Plan for 2020, Central Register of Notifications, websites justice.cz (https://justice.cz/web/msp/stret-zajmu, https://justice.cz/web/msp/boj-proti-korupci) and www.korupce.cz.

5. **Anti-Corruption Council of the Government** - is an advisory body to the Government that was established in July 2014. It currently comprises of 17 members (of max. 19 members) where all of the important stakeholder groups (state administration, law enforcement authorities, NGOs, professional associations and chambers, local authorities and academia) involved in the fight against corruption are represented. There are 6 thematic working commissions established as the working and preparatory bodies of the council.

6. **Czech National Bank** is the regulatory body that oversees activities of financial institutions in the Czech Republic and their compliance with AML/CTF rules. Employees of the Czech National Bank also (along with representatives of Ministry of Justice and of the Financial Analytical Office) represent the

Czech Republic at Council of Europe Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism – MONEYVAL.

7. **Ministry of Foreign Affairs - i**n accordance with MONEYVAL recommendation for the Czech Republic the Czech FIU has established the official Coordination Group on Implementation of International Sanctions. The representatives of the Ministry of Foreign Affairs are extremely valuable members of the Group and their work on national and international level ensures an efficient implementation of international sanctions.

8. **General Inspection of Security Forces** in cooperation with the Public Prosecutors' Offices investigates corruption related crimes that are committed by the members of security forces.

9. **Anti-Fraud Coordination Service (AFCOS) in the Czech Republic**
Within the Czech Republic the members of AFCOS are:

- Ministry of Finance (including Department 69 - "Analysis and Reporting Irregularities" and other relevant departments);
- Prosecutor General's Office;
- Ministry of Transportation;
- Ministry of Labour and Social Affairs;
- Ministry for Regional Development (including National Coordination Authority);
- Ministry of Industry and Trade;
- Ministry of Education, Youth and Sports;
- Ministry of the Interior;
- Ministry of Agriculture;
- Ministry of the Environment
- Prague City Hall
- State Agricultural Intervention Fund
- Police of the Czech Republic
- General Directorate of Customs
- General Financial Directorate
- Office of the Government of the Czech Republic
- Czech National Bank
- Ministry of Justice
- Supreme Audit Office

Legal resources: Article 325 of the Treaty on the Functioning of the EU, Regulation (EU, EURATOM) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF)
Practical resources: IMS (Irregularity Management System), EDES (New Early Detection and Exclusion System) etc.

10. **Supreme Audit Office** is an independent audit institution with the mission to review the state's management of public revenue and expenditure. The existence of the SAO is enshrined in the Constitution of the Czech Republic and its activity and powers is given by Act No. 166/1993 Coll., on the Supreme Audit office. Its findings contribute to identifying actual or potential corruption risks. See more at https://www.nku.cz/en/.

## *B. Prevention*

### *20. Integrity framework: asset disclosure rules, lobbying, revolving doors and general transparency of public decision-making (including public access to information)*

**Government Anti-Corruption Strategic Documents**

Current Government anti-corruption strategic documents (Government Anti-Corruption Concept for 2018-2022, Anti-Corruption Action Plan for 2020) within its two priority areas (1. Efficient and Independent Executive, 2. Transparency and Open Access to Information) contain tasks that are relevant to the topic of integrity frameworks and are fulfilled by relevant ministries and other central authorities.

**Asset disclosure rules**

As for the judges, prosecutors and members of Parliament see GRECO Interim Compliance Report Czech Republic of the Fourth Evaluation Round (paragraphs 23 *et seq*., 46 *et seq*. and 71 *et seq*.).

The Constitutional Court has reviewed the Act on Conflict of Interests which contains the asset disclosure rules several times so far. The latest decisions of the Constitutional Court as well as the latest draft of the amendment of the Act on Conflict of Interests[2] reflect on balancing the right to privacy on one hand and transparency on the other. It was also ruled[3] that the amendment of the Act on Conflict of Interests which presents public officials with the choice of whether to own a business, apply for public contracts and subsidies etc. or whether they will perform a public service, is constitutional. This amendment for example established that a company which is more than one quarter owned by a cabinet member is prohibited from applying for public contracts and subsidies.

Furthermore, the abovementioned amendment proposes that the data in the Central Register of Notifications, which are now in case of some public officials' public, are disclosed only after prior request in all cases.

**Lobbying**

The current Bill on Lobbying[4] was submitted to the government in the summer of 2019 and approved on July 30, 2019. Consequently, it has been submitted to the Parliament (Chamber of Deputies) where it now awaits the first reading. The objective of the Bill is to increase the transparency of lobbying and to recognize it as an activity beneficial to the political system. The Bill draws a line between standard and legitimate lobbying on one hand and deliberately non-transparent lobbying on the other via setting transparent rules.

The key legal instrument to be established by the Bill is the Register of Lobbyists and Lobbied Persons, a publicly accessible information system. Both lobbyists and those public officials that fall within the scope of the Bill (Public Officials) must register with the Register of Lobbyists and Lobbied Persons. Both lobbyists and Public Officials will be required to submit quarterly reports with information on their respective contacts with one another. These reports will be available to the public. In addition, the Bill imposes the duty for lobbyists to disclose to whom he or she is about to lobby - his or her identity and intentions. As for the newly established "Lobbying footprint", it is another tool for transparency - it should be an obligatory attachment to all bills. It will show all lobbying efforts, including information about the lobbyists behind the legislation. The Bill also contains rules on declaration of gifts.

[2] Available at: https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=797&CT1=0.
[3] Available at: https://www.usoud.cz/fileadmin/user_upload/Tiskova_mluvci/Publikovane_nalezy/2020/Pl._US_4_17_na_web.pdf.
[4] Available at: https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=565&CT1=0.

**Internal Anti-Corruption Programme Framework**

In 2013 the Government established an Internal Anti-Corruption Programme Framework that builds on the principles of internal risk management in the form of corruption risks management within ministries, other central authorities and their subordinate bodies and agencies. At the top level there is a Framework Ministerial Internal Anti-Corruption Programme document that was originally adopted by the Government Resolution from 2nd October 2013 No. 752 and that is periodically updated. Its latest update was by the Government Resolution from 20th November 2018 No. 769. This framework document is then at the level of individual ministries and other central authorities implemented by adopting their Ministerial Internal Anti-Corruption Programme documents which are subsequently reflected in the Internal Anti-Corruption Programme documents implemented by their subordinate bodies and agencies. Implementation of the Framework Ministerial Internal Anti-Corruption Programme is periodically (at least every two years) assessed and appropriate changes are proposed to the Government. Measures enshrined within this corruption risk management framework include for example integrity trainings, publication of lists of advisors, advisory bodies and their members, publication of CVs of high ranking civil servants (from directors of departments above), internal whistle-blowing procedures or creation of corruption risk maps. There is also an Interdepartmental Coordination Working Group that discusses and coordinates activities of individual ministries and other central authorities within this framework. This working group is run and presided by the Ministry of Justice.

**Access to Information**

Access to information in the Czech Republic is governed by Act No. 106/1999 Coll., on Free Access to Information. Currently several amendments are prepared by the Ministry of Interior or are already discussed in the legislative process.

**Transparency of decision-making process at the Government level**

The Government processes and keeps within the framework of its information system oDok all its legislative and selected non-legislative materials and information on related decision making processes in the information system called “Public Electronic Library of Legislative Process” (VeKLEP) and also publishes all its non-classified resolutions in information system “fromGovernment” (zVlády). All non-classified legislative and non-legislative materials are processed in “Electronic Library of Legislative Process” (eKLEP) that is non-public and is intended for the use by ministries, central authorities and other selected entities.

**Transparency of the legislative process**

The Constitution of the Czech Republic provides legislative initiative to any individual deputy, group of deputies, the Government, the Senate as a whole and to all 14 regional authorities; any draft acts must be, however, submitted to the Chamber of Deputies; the contents of the draft act is immediately upon its submission published in electronic version at free accessible internet websites of the Chamber of Deputies, as well as the submitted amendments in later phases of legislative process.

Within preparation of the governmental draft acts (within pre-legislative process which proceeds prior to submission of the governmental draft to the Chamber of Deputies), the governmental materials are published in the eKLEP database, which is to a large extent open to public through the governmental web portal oDoK . The public has the opportunity to familiarise with texts of departmental draft acts presented to the inter-departmental comment procedure. The public has also the opportunity to send comments to the responsible ministry, namely in compliance with the Government Legislative Rules.

Besides, there also exists an obligation of departments to consult the public within obligatory application of Regulatory Impact Assessment (RIA) in connection with preparation of governmental draft acts. This obligation has been stipulated in the General Principles for Regulatory Impact Assessment.

### *21. Rules on preventing conflict of interests in the public sector*

Conflict of interests is primarily governed by the Act on Conflict of Interest. The legislation established Central Register of Notifications. Public officials are required to submit their notification including their assets, activities, income, gifts and liabilities. These notifications are public to large extent and public officials have to submit them at the beginning of their term of office. They also submit interim and exit notifications which allows for public control over compliance with key obligations. The findings and suspicions of possible errors in declarations made by the public officials are forwarded to the bodies responsible for dealing with administrative offenses such as the municipal authorities of the municipalities with extended jurisdiction and the Office for Personal Data Protection. In addition to its own evidence and control activities, the Ministry of Justice also provides methodological support to public officials, subsidiary bodies and supervisory bodies, which was entirely absent in the previous system of conflict of interests control. In order to enhance the effectivity, the Ministry of Justice supported amending the Act on Conflict of Interests by the Act No. 112/2018 Coll. effective from June 1, 2019, which connected the Central Register of Notifications with the Land Register thus facilitating filing the entry notification for public officials. This system of inspections is based on self-activity and suggestions from the public.

There are also rules on conflict of interests and its prevention within the Act No. 134/2016 Coll. on Public Procurement that for example contain the obligation for the winner to declare its beneficial owners before the contract is signed.

Furthermore, this area is also regulated in the Act No. 234/2014 Coll. on Civil Service, in the Act No. 312/2002 Coll. on Officials of Territorial Self-Government Units, Act No. 128/2000 Coll. on Municipalities and Act No. 129/2000 on Regions. The abovementioned for example provide rules for the members of municipal and regional councils who are obliged to inform about any possible conflict of interest before the beginning of the meeting of the municipal or regional body. Civil servants are in general prohibited from abusing their position in any way.

There are rules on conflict of interests and incompatibilities also in the Constitution of the Czech Republic and in other laws that regulate specific areas.

**Rules on preventing conflict of interests of the Police of the Czech Republic**

Rules on preventing conflict of interests of the Police of the Czech Republic are regulated in 3 Acts. General rules are regulated in Act on Service by Security Corps Members No. 361/2003 Coll. (referred to as Public Servant Act) and apply to all members of security corps on duty regardless of the procedural regime of their work. Police officers on duty are regulated both by Administrative Procedure Code in public administration area and by Code of Criminal Procedure for the purpose of criminal proceeding. However, procedural regime and rules on preventing conflict of interests differ according to kind of specific activity which police officer exercise. Rules for civilian employees of Police of the Czech Republic are regulated only by Administrative Procedure Code because of their areas of competence.

According to article 17 (3) of the Public Servant Act, every police officer has to take following official oath: *I swear on my word of honour and conscience that I will perform my duties impartially, I will keep law and service regulations, I will follow orders from my superior, I will never abuse my official status. I will always and everywhere behave in such a way as to not endanger good reputation of the Security Service. I will fulfil my duties correctly and conscientiously and I will never hesitate to sacrifice my life to protect the interests of the Czech Republic*."

According to article 45 (1b) of Public Servant Act all police officers are required to avoid conflicts of interests of service with their personality interests, to refuse gifts in relation to their service and to maintain integrity and trust of public in their service, in particular not to abuse the information provided in relation to their service.

When police officers and civilian employees execute their competences in public administration area (for example if they impose a fine on-the-spot or make the decision about residence of foreigners) they are required to respect article 14 of Public Administration Code. According to this paragraph (§ 14), every person directly involved in the execution of powers of an administrative body who, due to his relation to the case under the consideration, to participants in the proceedings, or to their representative, may be justifiably believed as having such interest in the outcome of the proceedings which appear to cast doubt on his impartiality, shall be excluded from performing any act which may influence the outcome of the proceedings. Police officer who becomes informed of circumstances suggesting he should be excluded shall be obliged to immediately notify his superior of the facts. Meanwhile, before the superior determines whether or not the police officer be excluded and takes necessary measures to that end, the police officer may carry out only such acts which must not be subject to delay. A participant in the proceedings may make a claim that an official is biased as soon as he obtains relevant information. The claim shall be immediately decided on by resolution by a superior of the police officer.

When police officers fulfil tasks of authority in criminal proceedings they are required to comply with article 30 of Code of Criminal Procedure. According to this paragraph (§ 30), every police officer or a person in active service in them who raise doubts that for their relation to the case or persons who are directly concerned by it, or due to their relationship to other authorities involved in criminal proceedings they cannot decide impartially, they will be excluded from performing acts of criminal proceedings. The acts performed by the excluded persons may not serve as grounds for decisions in criminal proceedings. The reasons for the exclusion will by decided on by the authority concerned by these reasons, even without a proposal.

If the police officer violates any of these obligations, he commits disciplinary fault according to article 50 of Public Servant Act. In this case police officer could be punished by forfeiture of official rank and consequently (and obligatory) by withdrawal from service.

### *22. Measures in place to ensure Whistle-blower protection and encourage reporting of corruption*

Currently, the Government regulation no. 145/2015 Coll., gives framework for internal reporting systems for civil servants, who are, as of today, the only group of employees protected as Whistle-blowers. The regulation protects civil servants who act as Whistle-blowers against an adverse action taken by the Whistle-blower's employer. Hence, the public servants are free to report an illegal behaviour committed by their colleagues and supervisors.

The Ministry of Justice is in the final stage of drafting the Whistle-blower Protection Bill in order to implement the Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law. The Bill will have come into force by the end of the transposition deadline in December 2021. This year the Bill will be subject to the legislative process.

The Government co-operates with NGOs and private sector experts in the process of drafting the abovementioned Bill and, in general, on raising public awareness in whistle-blowing. The Government Anti-Corruption Council's advisory body – Working Commission on Whistle-blowing consists of government and private sector experts, as well as the representatives of academia and NGOs. This gives the public and private sector a great opportunity to share experience and ideas with respect to Whistle-blowing.

One of the main issues that discourage potential Whistle-blowers form reporting cases of corruption or other illegal activities is the negative perception of Whistle-blowers with general public. The implementation of abovementioned (EU) Directive through the Bill will need a support in the general public as well as among legal and law enforcement professionals in order to be truly efficient. The Government recognises this issue and in 2020 launches the "Strengthening the Fight against Corruption by Increasing General Awareness of the Public Sector Focusing on Judges, Prosecutors and Public Administration" Project. A large media campaign on Whistle-blowing will be a part of the Project as well as international sharing of good practise and seminars for legal professionals.

In addition the Czech Republic also implements its commitment on Whistle-blowing within Open Government Partnership that is enshrined in Action Plan of the Czech Republic Open Government Partnership for 2018 to 2020 that was adopted by the Resolution of the Government of the Czech Republic from 31st July 2018 No. 499.

The **Police of the Czech Republic** has a specific position in this field as an organisation responsible for detection and investigation of crimes. According to article 158 of the Code of Criminal Procedure police officers are obliged, based on their own findings, which may lead to conclusions on a suspicion that a criminal offence has been committed, to make all necessary investigations and take measures to reveal the facts indicating that a criminal offence has been committed. According to article 10 of Act no. 273/2008 on the Police of the Czech Republic, police officers are in case of threat to the internal order and security obliged to carry out all necessary interventions within their competence in order to eliminate the jeopardy. Otherwise speaking the failure to notify an offence committed by colleague or superior is a violation of professional duties and it can also fulfil the substance of the criminal offence. Any notification made in accordance with above mentioned duties is not considered as a violation of confidentiality obligations.

To submit a notice of suspicion of corruption police officers and civilian employees can use:

a) a written notice sent to the control department,
b) an e-mail address pp.ovk@pcr.cz, or control department e-mail address,
c) a receiving telephone line of the control department,
d) personal notice to a control department officer.

In connection with submitted notice the informant must not be penalized, disadvantaged or put under pressure. The anonymity of an informant is guaranteed unless it is absolutely necessary to investigate the notice or fulfil other tasks.

The Act No. 361/2003 Coll., The law of service of Security Forces significantly contributes to protection of informants. According to this Act it is necessary to undertake formal administrative procedure that can be reviewed by ordinary and extraordinary remedies and at court proceedings, about all major personal decisions in matters of employment. Given that this administrative procedure is a subject to the principle of officiality, in which the proof of fact is beyond any doubt, the burden of proof always lies on an superior officer.

According to § 73 of Act no. 150/2002 of Administrative Procedure Code, the Court can decide on suspensive effect of action against personnel decision in case its performance or other legal consequences would mean disproportionately greater damage for the informant than could be inflicted on other persons by granting suspensive effect and it is not in contrary to important public interest. The effects of the contested decision are suspended by granting the suspensive effect until the proceeding at court is completed.

***23. List the sectors with high-risks of corruption in your Member State and list the relevant measures taken/envisaged for preventing corruption in these sectors. (e.g. public procurement, healthcare, other).***

**Public Procurement**

Corruption risks within this sector are addressed among others by Act No. 134/2016 Coll. on Public Procurement. At present an amendment to this act is being discussed within the legislative process, which is to introduce mainly technical changes that have the potential to clarify some parts of the act and change them according to the practical experience and desirable best practice. There is also Strategy for the Fight against Fraud and Corruption in Drawing of the Funds of the Common Strategic Framework for 2014-2020. Its relevance compared with general anti-corruption mechanisms, international recommendations, national methodology and identified risks was evaluated in 2018. There are also several mainly non legislative tasks that are enshrined in current Government anti-corruption documents (Government Anti-Corruption Conception for 2018-2022, Anti-Corruption Action Plan for 2020) that aim at enhancing methodological environment, education of all stakeholders or sharing best practices.

**Healthcare**

This sector was identified as one of the potential high-risk sectors for corruption both by previous and current strategic anti-corruption documents. Subsequently a sectoral corruption risk analysis was created by the Ministry of Health with the participation of relevant shareholder and stakeholder groups in 2019. Some of the identified risks were already mitigated and others are scheduled to be mitigated by specific measures that are to be introduced by the Ministry of Health starting from 2020. The Ministry of Health is also supposed to present legislative proposal which would optimize the functioning of public insurance companies.

**Construction sector**

This sector was identified as one of the potential high-risk sectors for corruption by previous and current strategic anti-corruption documents and by both professional and general public. Currently there is a legislative proposal of a new Construction Code that is to be discussed by the Government. This new proposal has the potential to deal with some of the known systemic corruption risks.

**Financial sector - Corruption as a Predicate Offense to ML/TF**

Since corruption often constitutes a predicate offence to Money Laundering and/or Terrorist Financing, it is identified as a significant threat in the National Risk Assessment. The AML/CTF laws focus on identifying the source of financial assets, client background checks and identification of Politically Exposed Persons. The Czech National Bank oversees the financial institutions and their compliance with these rules. An efficient enforcement of AML/CTF laws makes it very difficult to hide and further take advantage of proceeds of corruption and therefore works as a prevention mechanism against corruption. Also investigative bodies (Police, Public Prosecutor's Office and Financial Analytical Office) use the abovementioned tools to prosecute cases of corruption.

**Sport**

National Sports Agency was established in 2019 by the Act No. 178/2019 Coll. amending Act No. 115/2001 Coll. on Sports Support in order to increase transparency in sports financing. The Ministry of Justice collaborates with Ministry of Education, Youth and Sports and the National Sports Agency on introducing measures in line with conclusions of the Government Anti-Corruption Council.

**Executions, energetics, telecommunication, transportation**

In 2019 the responsible ministries and other central authorities have started works on sectoral corruption risk analyses (similar to the abovementioned analysis for healthcare) to assess potential vulnerabilities in these sectors. These analyses are to be delivered by the end of 2020. Based on their results further steps may follow.

### *24. Any other relevant measures to prevent corruption in public and private sector*

In 2019 the administration of Grant Programme on Prevention of Corruption Behaviour that is targeted on NGOs was transferred from the Ministry of the Interior to the Ministry of Justice. This grant programme is mainly focused on NGOs providing free legal counsel to actual or potential Whistle-blowers and on incentivizing citizens to actively fight corruption by blowing the whistle and cooperating with law-enforcement bodies.

**In the case of Police,** the main **control mechanism** is provided by General Inspection of Security Units, whose functioning is based on the law No 341/2011 Coll. In addition, internal control mechanisms are in place, primarily control mechanisms in relation to the duties of service officers, performed by leading officers and delegated officers from the Internal Control Department.

The control mechanism includes ad hoc on-the-spot controls aimed at officer's performance of duties as well as the controls, where decisions of officers are subject to monitoring, as regards the speed and proportionality of decision-making, or any unusual symptoms indicating corruptive behaviour. Important mean of detecting abuse of police powers is a complaint system open to all persons, who have come into contact with the Police. Any complaint, even anonymous, is addressed by the competent authority.

**Organisational measures**

Anti-corruption measures of technically organisational character include implementation of the „four eyes principle". The patrols compound of at least 2 officers; the trainees serve with experienced officers. The patrol´s compound regularly changes, as well as the officers' workload. Another principle applied in service is the "deconcentration of police activities." With interaction with a person deals several teams of officers, to minimalize the possibility of one officer being the only one responsible for the case. The use of audio-visual tools increases the transparency of officer´s activities as well. Documents are filed in Criminal Procedure Evidence information system, which minimises the attempts to change any documents. The prosecution and executive proceeding is led and filed in Criminal Procedure Evidence information system. Any changes and accesses are filed in Criminal Procedure Evidence information system and easy to detect. Similarly, every search in Police information systems is logged and may be checked in case of a doubt, thus decreasing the possibility of information leaks. Interpreting in the prosecution and executive proceeding is controlled by the management. All the processes are controlled by methodical experts and revised by the management.

**Education**

As a part of a further training it is possible to apply for the following anti-corruption courses:

- a one-day course for police officers who can be approached with a corruption offer
- an e-learning course designed specifically for police chiefs.

**Anti-corruption Policy and Code of Conduct**

The anti-corruption programme implemented by the Police established anticorruption commissions at the regional directorates. The main goals of the programme include:

a) indication of possible sources and forms of corruption behaviour, how to analyse and propose them to managing officers with proposal of further changes, updating internal anti-corruption measures,
b) performance of irregular controls in the fields of activities where there is a risk of corruption,
c) participation in proposing and evaluating of technical and organisational anti-corruption measures.

Integrity within the Police officers is determined in the context of the admission procedure and is one of the main conditions for the establishment of a service relationship. The moral integrity of

applicants is tested within the psychological screening. If a member has lost integrity during his/her duty, he/she is subsequently dismissed from service.

In order to define and develop professional ethics of the police as a part of police culture, the police ethical commission has been established. The commission is also an advisory body to the police president. Important documents in the field of ethics are The Code of Ethics of the Police of the Czech Republic and the Code of Ethics for the employees of the Ministry of the Interior. Basic principles of conduct of police officers and employees are set out in these codes of ethics. Their implementation is based on active propagation and evaluation of their effectiveness. While performing their duties Police officers and police employees are obliged to act in accordance with the codes of ethics, which are available in police information system.

### *C. Repressive measures*

#### *25. Criminalisation of corruption and related offences*

The Act No. 40/2009 Coll., the Criminal Code (hereinafter referred to as "the CC) criminalizes offences related to corruption in Chapter X Division 3 of its Special part, titled "Corruption". It contains three criminal offences – Accepting bribes (Section 331), Bribery (Section 332) and Trading in influence (Section 333), as well as a common provision (Section 334) defining terms "bribe", which is an unauthorized advantage consisting in direct asset enrichment or another profit that is to be given to the bribed person or with his or her consent to another person and to which he or she is not entitled, "public official" and "procuring matters of general interest" for the purpose of corruption criminal offences.

Accepting bribes (passive corruption) consists of accepting a bribe or a promise of a bribe or requesting a bribe, directly or through another person, for oneself or for another person in relation to procuring matters of general interest or in relation to conducting business of oneself or of another person.

Bribery (active corruption) lies in providing, offering or promising a bribe, directly or through another person, for oneself or for another person in relation to procuring matters of general interest or in relation to conducting business of oneself or of another person.

Trading in influence criminalizes both active and passive bribery where aimed at using influence of oneself or of another person to affect the exercise of power of a public official (ex ante) or for already doing so (ex post).

The highest thresholds of imprisonment are laid down for accepting bribes, where the maximum is 4 or 5 years for the basic criminal offence (5 years in case of requesting the bribe) and 12 years in case of the most aggravated offence. Basic criminal offence of bribery has maximum imprisonment threshold of 2 years, aggravated offence 6 years. The maximum threshold for trading in influence is 3 years if it has nature of passive corruption and 2 years if it consists in active corruption. Criminal sanctions other than imprisonment may also be imposed individually or parallel with imprisonment in line with Section 53 of the CC. Also legal entities may be held criminally liable for these offences, in line with Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against them.

Act No. 287/2018 Coll. amended Sections 332 and 333 of the CC by adding "or through another person" into these provision, in order to align the phrasing of these provisions with Section 331. It also broadened the scope of "public officials" in Section 334(2) to include persons acting on behalf of an international or supranational organization.

For further information please see GRECO Part I of Third Round Evaluation Report on the Czech Republic and its follow-up in Compliance Reports.

### *26. Overview of application of sanctions (criminal and non-criminal) for corruption offences (including for legal persons)*

As was already mentioned above, the highest thresholds of imprisonment are laid down for accepting bribes, where the maximum is 4 or 5 years for the basic criminal offence (5 years in case of requesting the bribe) and 12 years in case of the most aggravated offence. Basic criminal offence of bribery has maximum imprisonment threshold of 2 years, aggravated offence 6 years. The maximum threshold for trading in influence is 3 years if it has nature of passive corruption and 2 years if it consists in active corruption. Criminal sanctions other than imprisonment may also be imposed individually or in parallel with imprisonment in line with Section 53 of the CC. Legal entities may be held criminally liable for these offences as well, in line with Act No. 418/2011 Coll., on Criminal Liability of Legal Entities and Proceedings against them. These sanctions include monetary sanction, prohibition of activity or as the most severe sanction, dissolution of the legal entity.

### *27. Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)*

In the Czech Republic the fight against corruption is one of the main priorities. Within the frame of the government´s concept for the fight against corruption for the years 2018 – 2022 the strategies and related action plans for following years are being adopted. These strategies contain number of anti-corruption measures.

In the area of serious economic crime and corruption, the Police of the Czech Republic is responsible for detecting, investigating and prosecuting crimes related to distribution of public funds both at the national and regional level, where also the EU funds are misused.

In the past among the most frequently investigated crimes in the area of public procurement were criminal offences related to Arranging Advantage in Commission of Public Contract, Public Contest and Public Auction according to article 256 of the Criminal Code, often committed together with the offence of Accepting Bribes according to article 331 of the Criminal Code and article 332 of the Criminal Code. In some cases, there were also the public contracts with financing from EU sources in connection with the criminal offence of Harming Financial Interests of European Communities pursuant article 260 of the Criminal Code.

The Modus operandi of such crimes remains basically unchanged. It is mostly a matter of influencing the procurement procedure in the favour of preferred tender who has a personal relationship with the persons acting on behalf of the contracting authority or the procurement procedure is influenced by accepting a bribe. One of the most common ways to influence the procurement procedure is setting up the qualification criteria specifically for the tenderer, so called “tailor made criteria”. Very often the preferred tenderer sets up the qualification requirement himself in order to reduce the number of other potential tenderers by illegally participating in the process of creation of tender documentation. Thus the basic principles of the procurement (principle of equality, transparency, non-discrimination) are denied and the competitive environment of the procurement is distorted in favour of the preferred tenderer. As a consequence of this criminal activity the public contract is awarded for a price that do not stem from a proper competition and is often at the very upper limit of the estimated value of the public contract.

Moreover, this is a highly latent criminal activity and its detection is connected with number of tasks including use of available operational resources. The written documents from the affected procurement procedures often do not show any suspicious mistakes and therefore during the investigation it is not possible to rely on collected documentary evidence. For this reason, this criminal activity is often detected as a result of operational search activities.

The misuse of the funds is also closely connected with corruption and exist in different forms. Fund intermediaries participate in some subcontracting activities or the total price of the project is

overestimated above usual prices and the difference is redistributed according to the share in securing the fund. In the field of property crimes were recently reported various fraudulent acts and breaches of duty in the administration of the third party property, in most cases together with misuse of power by administrative official. These were mainly cases when property owned by the state was sold for a price that clearly did not correspond to its real value with a suspicion of the presence of a corrupt element.

Criminal activity committed in connection with insolvency procedure, which is often associated with extortion amongst entrepreneurs, constitutes a substantial part of criminal cases examined in the area of economic crimes. This type of crime is highly sophisticated as the legal institute can be misused in following ways. It can take form of factual discreditation (elimination) of otherwise healthy trading companies, gradual gaining of control over these companies by financial groups, well equipped with personnel and knowledge, acting on orders e.g. from rival companies, and finally to elaborately accomplished cover up of previous criminal activity, e. g. money laundering.

In the last year the Police of the Czech Republic, on the basis of their jurisdiction, examined also criminal activity of judges and public prosecutors in connection with their duties. However, these were isolated misconducts of individuals in connection with corruption crime or abuse of competence of public officials.

We suppose that regarding economic crimes there will not be any substantial changes in future development in the area of public contracts and grants. There of course will always be attempts of some subjects to get competitive advantage in order to gain financial advantage. Communication channels and coordination of individual perpetrators are changing. We can see shift from face to face meetings to cyberspace and use of covert or encrypted communication channels while committing crimes.

The perpetrators of economic organized crimes, especially in connection with public contracts, grants, fraudulent conducts and corruption, are primarily natural persons with university degree and with acquaintances or connections to highest levels of public administration. They try to use their connections and knowledge in commission of crimes. Mostly state or legal persons belong to injured parties or eventually public interest is damaged.

Typical perpetrator of crimes in the area of public contracts is representative of favoured applicant with personal or other relation to representative of contracting authority, who is often motivated not only by personal relations but also by unauthorised gain. Perpetrator on the side of contracting authority is in most cases a person standing in management or employee performing working tasks in the area of public contracts. Crime is committed also at the expense of contracting authority (respectively Czech Republic) and contracting authority has in this case procedural status of injured party.

Beside above-mentioned perpetrators like applicants and contracting authority exist other group of perpetrators from ranks of administrators od public contract or so-called mediators profiting from personal connections to applicants and suppliers on relevant market. This criminal activity is committed by organized group characterized by planning, coordination and division of role among individuals, which contribute enormously to completion of crime.

In connection with criminal activity in the area of public contracts legal persons are also prosecuted. In most cases they are favored applicants. For them to be prosecuted conditions for criminal liability according to Act on Criminal Liability of Legal Persons and Procedure against them have to be satisfied.

When evaluating criminal liability of legal persons, the Police have to assess whether legal person made every effort, which can be justly required of it, to prevent crime to be committed. In this connection evaluation of compliance program is made, its quality, capacity, effectivity to prevent

illegal practice to happen and whether employees and statutory representatives of particular legal person abide by it.

Before criminal proceeding is initiated the Police can act according to Act No. 273/2008 on the Police of Czech Republic. According to articles 69 to 71 the Police can acquire information about crimes (search for it upon its own initiative or on the initiative of other persons or institutions, reveal, assess and document information about criminal activity in interest environment) and according to articles 72 to 77 can use supportive tools of criminal intelligence operation (informant, covering instruments, security techniques, special financial funds).

After criminal proceeding is initiated the Police, while investigating crime, can use following means of intelligence (article 158b of Code of Criminal Procedure): sham transfer (section 158c), surveillance of persons and items (section 158d) and use of an agent (158e).

Typical operations during the uncovering of corruption cases are seizure of things important for criminal proceedings according to articles 78 to 79 of Code of Criminal Procedure (personal search, search of other premises and land property, house search, wiretapping and record of telecommunication operation according to article 88 of Code of Criminal Procedure, seizure of instruments and assets from criminal activity according to article 79a of Code of Criminal Procedure, request for expert opinion or expert report.

Financial investigation is very important act during the investigation of more extensive and elaborate corruption cases that bring big financial gains to its participants. The financial gains can appear in financial profiles of perpetrators. Outcomes of financial investigation have impact also on decisions of Courts during the sentencing and in case perpetrator is sentenced for corruption, Court can at the same time impose also financial sentence. The Police of the Czech Republic use all information systems at its disposal. Since 2016 till present the Police of the Czech Republic have invested to analytical resources in order to better and effectively detect possible bribery of foreign public officials.

Generally speaking, issue of corruption is relatively extensive. Most part of this type of crime is committed covertly. Main obstacle is good financial background of perpetrators of corruption, which allow them to do nearly “everything” they want. Perpetrators dispose of a first-rate counselling, high quality legal representation and among others they can offer bribes. Often there is a link between business-mafia environment and politics, respectively connection to high ranking politicians and lobbyists.

Negative aspect persisting during detection and investigation of crime is reluctance or unwillingness to report any kind of crime both by injured party (e.g. due to fear of retaliation from perpetrators, fear of another injury, loss of employment) and by witnesses or concerned persons. The Police find out about crime after a delay which makes it harder to document and investigate particular crime.

While committing crimes perpetrators use highly sophisticated and conspiratorial methods. They use computer technology, virtual environment, data storage in cloud at a high-quality level. They employ data encryption and try to prevent the Police from obtaining relevant data. Devices preventing transmission of signal or wiretapping (eavesdropping) are also in use.

Change in communication methods of perpetrators place growing demands on closer cooperation between the Police and state inspection authorities, which can use their legal competences and carry out checks in places where the Police do not have relevant legal power.

Investigation of crime is hindered to a large extent by media information, search warrant made public, published resolution of police authority from which follows what the Police accomplished, what methods they used, a what tactical means they chose.

We need to add that these criminal cases are usually factually and legally complicated, going on for a long time, with many subjects engaged in proceedings. Therefore, continuity of investigation has to be ensured for many years.

Moreover, according to Section 10 of the Act No. 141/1961 Coll., the Criminal Procedure Code, as amended, persons enjoying privileges and immunities under the Czech law or international law are exempt from the competence of the authorities involved in the criminal proceedings. If doubts arise on the scope of exemption, the Supreme Court shall decide upon a petition of the person concerned, a public prosecutor or a court.

Furthermore, in the Czech law, the regulation of immunities is laid down in the Constitution of the Czech Republic (Constitutional Act No. 1/1993 Coll.) and covers the President of the Czech Republic, who can only be prosecuted for high Treason, and to a certain extend the Members of Parliament, who cannot be prosecuted for voting and statements in the Chamber of Deputies and the Senate and may be prosecuted in other cases during their term of office only with consent of the chamber members of which they are (if the consent is denied, the prosecution is postponed to the end of their term of office), and judges of the Constitutional Court, who may be prosecuted during the term of office only with consent of the Senate. Ordinary judges only have a limited immunity according to the Act No. 6/2002 Coll., on Courts and Judges, as regards offences committed within or in connection with performance of their office, for which they may be prosecuted only with consent of the President of the Czech Republic. Immunity of the Public Protector of Rights (the Ombudsperson) is regulated by the Act No. 349/1999 Coll. on the Public Protector of Rights. The Ombudsperson may be prosecuted during the term of office only with consent of the Chamber of Deputies.

# III. Media pluralism

## *A. Media regulatory authorities and bodies*

### *28. Independence, enforcement powers and adequacy of resources of media authorities and bodies*

The Council for Radio a Television Broadcasting (the Council) is the only administrative body in the media field in Czechia. It is authorized to supervise the radio and television broadcasting, as well as on-demand audiovisual media services and supervises the maintaining and further development of plurality in the programme portfolio and information offered in the field of radio and television broadcasting and rebroadcasting. It is envisaged it shall also oversight video sharing platforms in line with the directive 1808/2018/EU. The Council is constituted as an independent administrative body, which consists of 13 members and the Council Office expert staff. It monitors areas within its competence, keeps the register of the providers, issues the licences for broadcasting, oversights the content of the providers under its control and imposes fines in case there is a breach of the law. Its decisions are subject to a judicial review. It is financed through the national budget; it has its own chapter. The Council submits its proposal regarding funding every year to the Ministry of Finance and the final vote is taken by the Chamber of Deputies of the Parliament.

The Act on Radio and Television Broadcasting lists the competences and tasks of the Council, and annually the Council puts forward its report to the Chamber of Deputies of the Parliament. In case that the Council repeatedly and seriously infringes the obligations laid down in the Act, or if the Annual Report fails repeatedly to be approved due to serious faults, the Chamber of Deputies may propose to the Prime Minister to remove the Council. Ministry of Culture shall propose to change this power of the Chamber of Deputies so that only individual members are removed in defined cases (more in answer 29) in line with the directive 1808/2018/EU in order to strengthen the independency of the regulatory bodies.

Other media outlets (print, online) are subject to general rules (criminal law, law on advertising, law on the protection of consumer) and self-regulatory initiatives (among them The Czech Advertising Standards Council).

### *29. Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media authorities and bodies*

*Members of the Council for Radio a Television Broadcasting (the Council) are elected by the Chamber* of Deputies of the Parliament, formally appointed by the Prime minister for the term of 6 years. The Act on Radio and Television Broadcasting lists conditions to be fulfilled by the members in terms of age, legal capacity, integrity of the person as well as incompatibility rules. Council Members shall execute their functions personally and they shall not accept any directions or instructions for the execution of their functions. Council Members shall not assume positions in political parties or movements and act in their favour. Neither Council Members nor persons closely related to them may assume any positions, including unpaid ones, in any bodies of companies that carry out business in the field of mass media, audiovisual production and advertising. Chamber of Deputies of the Parliament shall dismiss individual member in breach of these conditions. Members of the Council may be removed only in specific cases set out in the Act on Radio and Television Broadcasting.

The Head of the Council Office shall be appointed and removed by the Council. The Head of the Council Office shall report to Council Chairperson. The expert staff of the Council Office operates under the Civil Service Act.

## *B. Transparency of media ownership and government interference*

### *30. The transparent allocation of state advertising (including any rules regulating the matter)*

There are no specific rules regarding allocation of state advertising in place and there are also no specific rules in terms of its content. Therefore, state advertising has to obey general requirements for advertisement. State or public institutions intending to advertise have to follow the rules set out in the Public Procurement Act. Any contract on state advertising with a contract value over 50.000 CZK shall be published and made available in public registry.

### *31. Public information campaigns on rule of law issues (e.g. on judges and prosecutors, journalists, civil society)*

The Judicial Academy has been established in 2002 by the Act on Courts and Judges (Act No. 6/2002 Coll.) as the central institution of justice sector for training of judges, state prosecutors and other target groups provides training to all target groups in the Czech judiciary In the course of 2019, the Judicial Academy organized the following seminar related to the rule of law: Ethics in Law, Judges as Participants in Proceedings before the Constitutional Court, The Right to a Fair Trial.

Furthermore, The Czech Ministry of Foreign Affairs will, in cooperation with the Czech Society for European and Comparative Law, organize a conference focused on the topic “The Values of the European Union”. The conference will cover a variety of topics including, but not limited to, the rule of law. It will bring together representatives of various courts, national and European civil servants, individuals from private practice, students, academics, and researchers with the aim to evaluate and discuss current evolution and challenges in this field."

### *32. Rules governing transparency of media ownership*

*There are n*o specific rules in regards to transparency of the media ownership. The Act on Radio and Television Broadcasting aims to control the mergers between the broadcasters and puts into place limits on accumulation of licences or personal links among different broadcasters.

The Act on Conflict of Interest prohibits any public official from being a radio or television broadcaster or a publisher of printed media or controlling person of such broadcaster or publisher.

## *C. Framework for journalists' protection*

### *33. Rules and practices guaranteeing journalist's independence and safety and protecting journalistic and other media activity from interference by state authorities*

The Charter of Fundamental Rights and Basic Freedoms guarantees the freedom of expression and the right to information and bans censorship. The Act on Radio and Television Broadcasting states that broadcasters are entitled to broadcast its programmes in a free and independent manner. Any intervention in the contents of the programmes is admissible only on the basis of law and within the limits thereof. Journalism source protection is ensured under both The Act on Radio and Television Broadcasting and the Press Act.

Furthermore, when adapting GDPR (regulation 2016/679), the Czech Republic used the Article 85 to provide for very moderate regulation of journalistic processing of personal data in the Chapter II of the Data Processing Act (110/2019). The aim of this legislation was both to maintain the constitutional prohibition of (ex ante) censorship, including by limiting the powers of data protection authority, and to achieve a reasonable balance between the public role of journalism in a democratic society and the rights of data subjects.

No changes are planned with regard to this legislation; no important cases or evaluation exist (due to short time period of application).

### *34. Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists*

There is no narrow definition of "journalists" in the Czech law. It is accepted that even a person not employed by traditional journalistic entities may contribute to journalism. (For example, police officers on duty must tolerate being filmed by anyone.) The special arrangements for protection only apply to some "constitutional officials" (determined by the Cabinet, e.g. the President, the Prime Minister) and certain foreign officials. Consequently, the provisions available for protection of everyone apply to journalists as well. In line with Section 2 of the Police Act (273/2008) the Police is given the task to prevent crime, maintain public policy and protect security of all persons and property.

Section 50 of the Police Act enables the Police to protect any person that is likely in danger (threat to health or other serious danger) but is not a witness of crime (see below). This protection may include physical protection (which must be provided immediately in case of imminent attack on life or limb), as well as temporary relocation, technical protective measures and advice. If necessary, such protection is provided to relatives of the protected persons, too. Consent of the persons concerned is always required.

Should a journalist become a witness to a crime and be likely in danger in relation to criminal proceedings, standard witness protection measures according to Witness Protection Act (137/2001) may be undertaken to protect the journalist and their family with their consent.

No changes are planned with regard to these provisions, as the police practice did not indicate need for legislative change. However, an amendment was proposed to enable the Minister of Interior to determine additional persons to be protected similarly to "constitutional officials".

### *35. Access to information and public documents*

From January 2019 the following changes were made within the Access to Information:

**A) Legislation**

With regard to the issue of strengthening the right to information, we draw attention to the amendment to Act No. 106/1999 Coll., on free access to information, as amended by Act No. 111/2019 Coll., amending certain acts in connection with the adoption of the Personal Data Processing Act (effective from 24 April 2019 or, as the case may be in relation to certain institutes of the Information Act, applicable from 1 January 2020). In the area of strengthening the right to information, it introduced, inter alia, the institute of "information injunction" (new Section 16 (4)) and a competence of the Office for Personal Data Protection in the area of the right to information. Put simply, the information injunction assumes that the obliged entity's superior body may order disclosure of information if it does not find any legal reasons in the appellate or complaint procedure under the Free Access to Information Act to prevent such disclosure of information. By its nature, it is analogous to the existing court information injunction, originally contained in Section 16 (4), now in paragraph 5. The Office for Personal Data Protection acquired the power to carry out review procedures on the decisions of obliged entities' appellate bodies (i.e., simply put, it acts as a third instance) and, furthermore, the position of the appellate body vis-à-vis those obliged entities for which those tasks had been performed by the person acting as their head (Section 20 (5)). This applies to most "public institutions" (companies, state-funded organisations, etc.).

2. The Ministry of the Interior also prepared a draft amendment to the Information Act, aiming to provide a reasonable possibility of defence against overtly obstructive requests for information. The draft envisages that the obliged entity will be allowed to reject a request for information on the grounds of abuse of the right to information on the part of the requester for the purpose of coercion or disproportionate burden (the case law permits such an option even now, but the law will expressly state such a situation). The obliged entity will also be allowed to reject a request if the obliged entity does not have the information and is not obliged to have it under the law (even this option is already allowed by the case law, but an explicit provision to this effect is added to the law). Now, the obliged entity should be allowed to require an advance payment to be made to cover the costs associated with extremely extensive information retrieval, which should not exceed 60% of the estimated costs and should be no more than CZK 2,000. There is also an extension of the exemption relating to tax and other proceedings on the rights and obligations of natural persons connected with their economic, health or social situation to all related information (i.e. not only proprietary), since such information is mostly very personal and, in its individualised form, does not contribute to the protection of the public interest and the development of public discussion. The draft also envisages the extension of certain time limits and their approximation to normal time limits in administrative proceedings such as the time limit for decisions on appeals, which should be the usual 30 days. Currently, the amendment is in the Chamber of Deputies of the Parliament of the Czech Republic, Chamber of Deputies Print No. 633, awaiting discussion at first reading; more information can be found at https://www.psp.cz/sqw/text/tiskt.sqw?O=8&CT=633&CT1=0.

3. The Ministry of the Interior is also preparing a transposition amendment to Act No. 106/1999 Coll., on free access to information, which should implement Directive 2019/1024 of the European Parliament and of the Council of 20 June 2019 on open data and the re-use of public sector information into the Czech legal system. The material is now being prepared; the external comment procedure is expected to commence approximately at the beginning of May 2020; the transposition deadline is 17 July 2021.

**B) Political development**

With regard to the competence of this department, we do not have any data.

**C) Development in relation to the judiciary**

The following important decisions can be mentioned with regard to case law for 2019:

1) Judgement of the Municipal Court in Prague of 18 January 2019 Ref. No 6 A 248/2016-73. The Court admitted the possibility of quantifying the reimbursement of the costs of providing information in the form of a qualified estimate.
2) Judgement of the Supreme Administrative Court of 6 February 2019 Ref. No. 6 As 240/2018-40. The Court set rules for providing information on offences of publicly active persons and public servants. When reporting offences claimed to be committed by officials or publicly active persons or where such persons acted as witnesses, but outside their official or public activity, it is necessary to distinguish between publicly active persons on the one hand and officials and other public servants on the other hand. With regard to public servants, it is necessary to apply protection in relation to the name and surname (or, as the case may be, to the information that they somehow participated in offence proceedings) pursuant to Section 8a of Act No. 106/1999 Coll. With regard to publicly active persons, a proportionality test should be carried out and consideration should be given to whether the public's interest does not prevail over the protection of personal data in the case of disclosure of the information that the persons are claimed to have committed or witnessed certain conduct that was (not) assessed as an offence.
3) Judgement of the Municipal Court in Prague of 11 March 2019 Ref. No. 8 A 124/2018-39. The Court confirmed that the obligation to provide information does not concern the processing of legal interpretations and opinions.
4) Judgement of the Supreme Administrative Court of 14 November 2019 Ref. No. 8 As 244/2018-82. The Supreme Administrative Court concluded that the obliged entity was not obliged to take into account the requester's property situation when requiring reimbursement of the costs of providing information.
5) Judgement of the Supreme Administrative Court of 27 November 2019 Ref. No. 9 As 58/2018-32. Regarding judicial protection against the obliged entity's obstruction – the requester may defend himself/herself within the meaning of Judgement of the Supreme Administrative Court of 24 October 2018 Ref. No. 7 As 192/2017-35 by an action against the obstructive processing of the request for information, brought against the first instance decision of the obliged entity, regardless of whether the obstruction occurs only on the part of the obliged entity or also on the part of the appellate body.

**36.** ***Other - please specify***
N/A

## IV. Other institutional issues related to checks and balances

### *A. <u>The process for preparing and enacting laws</u>*

***37. Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), transparency of the legislative process, rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).***

**Stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms)**

In relation with bills submitted by the Government, the comments procedure takes place. The comment procedure is held firstly internally within the institution that proposed the bill and then externally. The comment procedure is regulated by art. 5 of the Government's Legislative Rules and applies to Material Intent of the bills (art. 5) and accordingly for final drafts of bills (art. 8) and legislation such as regulations of Government (art. 13) or decrees of central bodies of state administration (art. 16). Government's Legislative Rules article 5 provides a list of institutions that have to be consulted (other ministries, state administration bodies etc.). Among them are as well Constitutional Court, Supreme Court, Supreme Administrative Court and Prosecutor's General Office

in cases when the bill is related to their subject-matter (art. 5 (1) (e)). The body that proposed the bill may consult even other institutions or organisations, not only the compulsory ones.

In support of its activities, the Government established a number of Advisory and Working Bodies that represents experts, stakeholders or concerned groups. The key role in the preparation of legislation has among them an expert advisory body Government Legislative Council. Moreover, the Regulatory Impact Assessment (RIA) reports shall evaluate an impact of different variants or proposed or existing regulations using consultations with concerned groups.

In case of non-government bills (presented by any Deputy, a group of Deputies, the Senate or the councils of higher self-governing units), abovementioned comment or consultation procedures do not apply. Pursuant to sec. 87 of Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies, the Government shall send its opinion on the bill. The opinion of the Government is based on consultation with ministries and other central state administration bodies. Other institutions might be invited to provide their comments as well (all comments are available to public online in Electronic library of the legislative process called eKLEP).

**Ministry of Justice - Stakeholders'/public consultations**

For major amendments / proposals of a new Acts the Ministry of Justice (within its scope), constitutes workgroups, consisting of external experts. Most of the new Acts or amendments are also consulted with various experts qualified in this particular area of expertise, as judges or attorneys. Ministry of Justice also publishes information about the current development of major recodification drafts, and the public may voice their opinion. For example, information about the recodification of Civil procedural code is available here.

Information on the transposition plans of the Directive on preventive restructuring frameworks was also published online on the Ministry's official website (https://justice.cz/?clanek=podnikatele-se-brzy-dockaji-efektivniho-nastroje-na-reseni-docasnych-financnich-poti-1), giving the public opportunity to express their own views.

As for the consultation of judiciary on judicial reforms, as an example should be mentioned the current proposal of the Act on Courts and Judges, which has been intensively discussed for a certain period of time with judicial representatives. In 2018 and 2019 the Ministry of Justice organised round tables about specific topics of this proposal. The representatives of Regional courts, High courts, Supreme and Supreme Administrative Court as well as Union of Judges participated at these round tables, therefore the proposal can be called as the compromise between the judiciary and the Ministry of Justice.

**Transparency of the legislative process**

In the case of bills which are submitted by the Government (majority of all proposed), everybody may access online an electronic system ODok which enables circulation of documents between central state administration bodies. Part of the system is an Electronic library of the legislative process (called eKLEP) which encompasses all prepared pieces of legislation and even some related documents such as comments, RIA reports etc., except those in the regime of secrecy. The processes connected with the preparation of governmental bills are described in Government's Legislative Rules.

After the submission of any bill prepared by any sponsor to the Chamber of Deputies through its Steering Committee, everybody may follow legislation process on websites of the Chamber of Deputies and the Senate. Chamber's and Senate's meetings and meetings of almost all committees are open to the public unless specified otherwise. On websites of both chambers are placed stenographic records from Chamber's and Senate's meetings and minutes from meetings of Committees. Meetings of both chambers are broadcast online in real time and it is possible to download voice or video records as well.

Bills are available on websites encompassing proposed text (mostly followed by version of how the text would look like in a consolidated version) followed by an explanatory report. Other important information such as the opinion of the Government and committees or proposed amendments are publicly available as well. Both chambers provide online databases of discussed EU documents. Concerning possible conflict of interest, Central register of notices contains notices of public officials such as Deputies, Senators or members of Government on their activities, assets, incomes, gifts and liabilities. The Central register of notices is available online.

The strengthening transparency of the legislative process is a process, which is still ongoing. Hereinafter are mentioned two underway initiatives, which may strengthen it significantly. Firstly, the governmental Bill on lobbying and bill which follows it, which are currently before the first reading in the Chamber of Deputies, propose that every act would have its legislative footprint concerning lobbying. Moreover, selected state officials and politicians would have to notify their meetings with lobbyists and vice versa through so-called Lobbying diary. Secondly, the project eLegislativa[5] – an electronic system for the creation of law, should facilitate handling and processing of prepared of legislation and provide public with more user-friendly system, which would enable easier control and participation in the legislative process.

**Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions).**

The Czech legislative procedure recognizes several fast-track or emergency procedures, namely:

1) *procedure of adopting act in the first reading (fast- track procedure)*
    - *sec. 90 (2 – 7) of the Act No. 90/1995 Coll., on the Rules of Procedure of the Chamber of Deputies (hereinafter referred to "**Rules of Procedure of the Chamber of Deputies**")*
2) *consideration of a governmental bill combined with a request for the vote of confidence to Government*
    - *sec. 96 of Rules of Procedure of the Chamber of Deputies*
3) *legislative process during a state of legislative emergency*
    - *sec. 99 of Rules of Procedure of the Chamber of Deputies*
    - *sec. 118 of Act No. 107/1999 Coll., on Rules of Procedure of Senate (hereinafter "**Rules of Procedure of Senate**")*
    - *sec. 17 of Government's Legislative Rules*
4) *legislative process implementing Resolutions of the UN Security Council on Actions Securing International Peace and Security*
    - *sec. 100 of Rules of Procedure of the Chamber of Deputies*
    - *sec. 118 of Rules of Procedure of Senate*
    - *sec. 18 of Government's Legislative Rules*
5) *legislative process during a state of emergency due to threat or belligerency*
    - *sec. 100a, 109m of Rules of Procedure of the Chamber of Deputies*
    - *sec. 8 Act. No. 110/1998 Coll., on security of the Czech Republic*
    - *sec. 119 of Rules of Procedure of Senate*

[5] More information on „e-Sbírka, e-Legislativa" is provided in the section "43. Other - please specify".

- *sec. 17a of Government's Legislative Rules*

6) *consideration of international treaty*

- *sec. 108 of Rules of Procedure of the Chamber of Deputies*
- *sec. 118a of Rules of Procedure of Senate.*

Concerning statistics on the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted acts, from the total number of 2490 acts adopted until now (24 April 2020) since 1993.

*Table 1 shows the total number of adopted acts in each electoral period in 1998-2017, number of acts passed in expedite procedures (fast track according to sec. 90 (2-7) and legislative emergency procedure according to sec. 99 of the Chamber of Deputies Rules of Procedure).*

| | *III. (1998-2002)* | *IV. (2002-2006)* | *V. (2006-2010)* | *VI. (2010-2013)* | *VII. (2013-2017)* | *VIII. (2017-* |
|---|---|---|---|---|---|---|
| *All bills passed* | *441* | *494* | *348* | *338* | *357* | *172* |
| *Fast track bills* | *31* | *34* | *63* | *28* | *31* | *23* |
| *Bill passed in legislative emergency* | *7* | *16* | *4* | *6* | *0* | *32* |

As stated by the Constitutional Court (paragraph no. 87 of the Judgement) and parliamentary researcher, the state of legislative emergency has not been used as an exceptional measure in all cases in the past.

The legislative process during a state of emergency due to threat or belligerency has not been used yet in the history of the Czech Republic.

The legislation that is related to combat against COVID-19 disease and its negative impacts, might currently be approved in the Chamber of Deputies in a state of legislative emergency regime which was declared on 19 March 2020. The state of legislative emergency might be declared by the Chairperson of the Chamber of Deputies under exceptional circumstances and for a limited period of time, when principal human rights and liberties or the state's security are in jeopardy or the state may suffer considerable economic losses. This procedure does not apply to all proposals during the state of legislative emergency but applies only to governmental proposals in cases when a government asks for use of this process and Chairperson of the Chamber of Deputies agrees to it. Before consideration of a particular proposal, the members of the Chamber of Deputies vote whether the state of legislative emergency continues and the accelerated procedure shall be applied in connection with the particular proposal. Until 24 April 2020, additional 18 acts were enacted using the procedure of state of legislative emergency in relation with the spread of covid-19 disease and 5 acts were sent to publication in Collection of Laws (see 42nd, 44th and 45th sessions of the Chamber of Deputies).

### *38. Regime for constitutional review of laws*

Constitutional review is performed by the Constitutional Court. In short, it is a German, centralized model of review. There has been no major amendments or reforms in years and no such measures

are currently planned for a foreseeable future. The basics of the procedure are set forth in Chapter IV (articles 81 – 96, esp. 83 – 89) of the Czech Constitution.6 The Constitutional Court reviews only enacted acts and acts previously enacted, but no longer in force. There is no preliminary constitutional review performed by the court, nor has the court the jurisdiction to rule on hypothetical petition (for details, see the competences of the court in art. 87).

The only exception with regard to preliminary review are international treaties. Each Chamber of Parliament, overridden minority group of 41 Deputies or 17 Senators and the President of the Czech Republic can refer proposed treaty to the court before that treaty is ratified.7 The reason for this exception is provided by the nature of international treaties. Ratified international treaties bind the republic as a whole, so it would be impossible to rule them void by the court ruling after ratification.

When it comes to acts of parliament, they can be disputed before the courts when they are enacted. They do not have to be effective yet, though. They can be also reviewed when they are no longer valid, but not before.

Like in Germany, the acts can be challenged in three different scenarios. The first one is a legal action submitted by at least 41 Deputies (out of 200), 17 senators (out of 81) and the President of the Czech Republic.[8] Such litigants are able to file petition against any act. The petition doesn't have to be filed with the court in any time limit after the enactment. Consequently, challenged acts can be several years old or even older.

The second type is a referral from the court. Czech constitutional review is centralized, other courts are obliged to refer the questions of constitutionality regarding acts to the constitutional court, if such question arises concerning an act the court is supposed to apply. [9] The courts are not bound by the litigants in referral procedure. As a result, court shall submit referral whenever it comes to the conclusion that the act or its particular provision is (1) supposed to be applied in that case, and (2) the court considers it unconstitutional, the court should refer the case to the const. court. Again, that should be done even against expressed wishes of both parties before the court.

Final (third) option how to challenge an act of parliament is a constitutional complaint. If the litigant loses her case in all courts before the constitutional one, she can file a constitutional complaint against previous rulings, based on human rights' infringement. Yet if the litigant considers some of applied statutory provisions unconstitutional, she can also demand in the same complaint that the const. court renders those provisions void. If the panel of three constitutional judges agrees with such assessment, the panel refers this question to the plenary session of all 15 judges. The panel can also refer the question of constitutionality without such demand from the litigant, even against her wishes.

Regardless which of these paths was taken, the procedure of constitutional review is the same. Such questions are heard before the plenary session of all 15 judges. Majority of 9 judges is required in order to strike a statute down.[10] This qualified majority is part of law from const. court's inception in 1993 and it has never been changed.

Furthermore, *In Czech Republic*, "RIA" (Regulatory Impact Assessment) is a mandatory part of every new legislative document. Compliance with constitutional principles is also being reviewed during RIA analysis. The Ministry of Justice discusses constitutional aspects of a new legislative document also with Office of the Government Agent before the European Court of Human Right.

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[6] Please find the unofficial English translation here: https://psp.cz/en/docs/laws/constitution.html

[7] Art. 87 subsection 2 of the constitution, further details are covered by art. 71a of the const. court's code of procedure. For the code of procedure, please find the unofficial consolidated version in Czech here: https://www.zakonyprolidi.cz/cs/1993-182#cast2

[8] Art. 64 of the code of procedure.

[9] Art. 95 subsection 2 of the constitution.

[10] Art. 13 of the code of procedure.

## *B. Independent authorities*

### *39. Independence, capacity and powers of national human rights institutions, ombudsman institutions and equality bodies*

The Ombudsperson is an independent institution responsible for the protection and promotion of human rights. The Ombudsperson's competence and powers are governed by the Ombudsperson Act. The Ombudsperson is elected for a six-year term by the Chamber of Deputies. The Ombudsperson is answerable to the Chamber of Deputies and provides it with regular annual reports on their activity. This office is held independently and impartially. The Ombudsperson has own budgetary resources and a separate office for the exercise of their powers.

The Ombudsperson's core competence is focusing on public administration activities in accordance with the law and principles of good governance. Special powers encompass protection from ill-treatment (National Preventive Mechanism according to the OP-CAT) and discrimination (Equality Body according to EU law), the supervision of rights of EU citizens, the monitoring of expulsion of foreigners and the fulfilment of the Convention on the Rights of Persons with Disabilities.

The Ombudsperson acts on the basis of complaints or on their own initiative. The Ombudsperson has the authority to enter and conduct investigations in the buildings of authorities, to attend oral hearings, to demand documents, and to ask questions. When finding a breach of law or other misconduct, the Ombudsperson requires the authority's statement or imposes a corrective action. If the authority fails to take the corrective action, the Ombudsperson notifies the superior authority or the government and may also inform the public. The Ombudsperson may also recommend the issuance, amendment or repeal of legislation, or changes of government policies or administrative procedures. The Ombudsperson cooperates with academic institutions and non-governmental organisations, engages in research, organises conferences, and issues opinions and guides. The Ombudsperson works intensively with expert practitioners and with civil society representatives and utilizes their experience in own work. The Ombudsperson publishes all information about their activities on the Ombudsperson's website.

## *C.. Accessibility and judicial review of administrative decisions*

### *40. modalities of publication of administrative decisions and scope of judicial review*

Data collection is still in progress, data will be completed within one week.

### *41. implementation by the public administration and State institutions of final court decisions*

Data collection is still in progress, data will be completed within one week.

## *D. The enabling framework for civil society*

### *42. Measures regarding the framework for civil society organisations*

The civil society is understood as the „third sector" of society so it aggregates of non-governmental organizations (NGOs) and institutions that manifest interests and will of citizens.

In the Czech Republic, the legislative framework for NGOs is formed by several acts which differ by legal forms of NGOs. The list of the most important legal acts regulating the legal forms typical of NGO could be found below:

**Civic associations and their organizational units** (formerly pursuant to Act No. 83/1990 Coll., on the Association of Citizens), now **associations and their branches** (pursuant to the Civil Code).

**Foundations and endowment funds** (formerly pursuant to Act No. 227/1997 Coll., on Foundations and Endowment Funds, now pursuant to the Civil Code).

**Religious legal persons or purpose-built facilities of churches**, established by churches and religious societies pursuant to Act No. 3/2002 Coll., on the Freedom of Religious Expression and the Position of Churches and Religious Societies, as amended).

**Public benefit corporations** pursuant to Act No. 248/1995 Coll., on Public Benefit Corporations (the Act is no longer in force; however, the existing public benefit corporations are still operational under the Act).

**Institutes** (pursuant to the Civil Code) **and educational legal persons**, registered by the Ministry of Education, Youth and Sports and including church schools in a considerable majority.

Moreover, many principles are also specified by international treaties i.e. Convention on the Rights of Persons with Disabilities.

In recent months two major trends among civil society organizations has been observed.
Civil society organizations, NGOs in particular, are struggling with a rising animosity of some segments of society and political parties. They are criticised for the scope of their policies (migrants, gender affairs etc.), sources of financing and their advocacy activity. NGOs are dealing with these tendencies by raising awareness activities, workshops, educational events, PR strategies etc. Nowadays in addition to the usual activities, NGOs are persuading general public and politicians of the necessity of their existence.
The second trend emanates from political representation. In 2019 proposal for a legislative act which suggested controlling finance sources of NGOs and their origin was published. This measure was targeted to so called "political NGOs", whose interest are devoted to the political matters such as democratic principles, political representation, transparency of political affairs etc. However, it had been instantly rejected by the government and NGOs as well. Law proposal of the same kind are expected also in the following years.

**Open Government Partnership (OGP)**

The Czech Republic is a member state of Open Government Partnership (OGP) since 2011. Within the framework of this international initiative and as one of its primary objectives the Czech Republic seeks to involve civil society to policy-making and decision-making processes. Currently the Czech Republic implements its fourth national action plan within the OGP.

### 43. *Other - please specify*

#### 1. Working Party on Open Government (WPOG)

Within its efforts to ensure and maintain the framework for civil society and to fulfil its obligations arising from OECD Recommendation of the Council on Open Government, the Czech Republic takes part in the activities of Working Party on Open Government that falls under the OECD Public Governance Committee (see more at https://www.oecd.org/gov/civicspace.htm).¨

**2. e-Sbírka, e-Legislativa**

**A. Legislation:**

- Act No. 309/1999 Coll., on the Collection of Laws and the Collection of International Treaties (currently in force)
- Act No. 222/2016 Coll. (as amended by act No. 277/2019 Coll.), on The Collection of Acts and The Collection of International Treaties and on the creation of legislation promulgated in The Collection of Acts and The Collection of International Treaties (will enter into force in January 2022)

**B. Policy developments:**

- In 2016, Act No. 222/2016 Coll., on The Collection of Acts and The Collection of International Treaties and on the creation of legislation promulgated in The Collection of Acts and The Collection of International Treaties, was adopted. A call for tender was closed in 2018 and implementation of the project was started in October 2018 and will run until the end of 2020. The Parliament, the Office of the Government and some ministries cooperate on the implementation.
- Act No. 222/2016 Coll. assumes a launch of **the e-Collection and e-Legislation systems** on January 1, 2022; for testing purposes the system will be operational since January 1, 2021.
- The Electronic System of The Collection of Acts and The Collection of International Treaties ("e-Collection") will be used mandatorily for an electronic promulgation of The Collection of Acts and The Collection of International Treaties and will serve as an official and proven source of legal information. It will be divided into two parts – a portal where binding electronic texts of legal acts will be promulgated, and a database of legal acts (in original and revised versions since 1945), which will contain related documents and relations between documents (including EU legislation). The e-Collection will allow the legally binding electronic promulgation of laws and other acts and will make them incessantly available, free of charge and in a manner allowing a remote access. A modern law-making tool based on the law-making rules ("e-Legislation") is also an important part of the project.
- The e-Collection and e-Legislation project will be accompanied by a number of very significant benefits: increased trust of Czech citizens in law and in the Czech state in general, improvement in public control of the public administration, increased democratic element of the legislative process, etc.

**C. Developments related to the judiciary / independent authorities**

- N/A

**D. Any other relevant developments**

- Goals of the e-Collection and e-Legislation project:

1. Maximum accessibility of the applicable law and increasing comprehensibility of the content of the legislation.
2. Increasing awareness of legal regulations and information value of texts and consolidated versions of laws made available thanks to a free-of-charge modern database of information on legal acts.
3. Making more effective use of existing sources of information and better awareness of the European Union law.
4. Full accessibility of information on legislation for people with disabilities.
5. Modernization and significant transparency of legislation by introducing consolidated versions of laws.
6. Obligatory submission of drafts of legislation through a new electronic law-making tool for higher quality and effectiveness of a drafting process.
7. Improving the results of legislative draft discussions through the use of tools which allow discussing legislation drafts, drafting and discussing comments, amendments and other documents using consolidated versions of laws/legal acts.
8. Effective, flawless and fast, unified and fully electronic circulation and electronic signing of legislative drafts through the electronic law-making tool.

9. Increased transparency of a drafting process through unambiguous identification of the author of an amendment and mandatory explanatory documents for the amendment.
10. Better clarity of legislative drafts through a mandatory brief description of the content of legal acts that would be comprehensible for recipients of the law.
11. Unification of law-making procedures through a single mandatory use of the electronic law-making tool.
12. Fulfilment of the Register of Basic Rights and Responsibilities of Public Authorities by providing accurate and verifiable information on legislation.
13. Reducing environmental burden by full digitalisation of the legislative process and the promulgation of legal acts in The Collection of Acts and The Collection of International Treaties.
14. Providing documents contained in the Electronic System of The Collection of Acts and The Collection of International Treaties for reuse in accordance with Directive 2003/98/EC, especially for their use under the Open Data Initiative.