

CZECH REPUBLIC

Little or no enforcement

0.8% of global exports

Investigations and cases

In the period 2016-2019, the Czech Republic opened one investigation, still pending,¹ commenced one case and concluded no cases.

The OECD WGB's Phase 4 Report on the Czech Republic in 2017 noted with concern that "17 years after ratifying the Convention, the Czech Republic has still not prosecuted a case of foreign bribery, which is cause for concern, especially in view of the export-oriented nature of the Czech economy. In addition, Czech exports include high-risk sectors for bribery, such as machinery and defence materials, and many of the Czech Republic's export destinations for arms are at high risk of corruption."² In 2018, the Czech Republic started a prosecution in relation to alleged bribery in the Ukraine.

In other jurisdictions, according to media reports, the Latvian Bureau for Preventing and Combatting Corruption initiated a bribery and money laundering case in December 2018 involving Czech and Polish companies and arrested the Sales Area Director of the Czech company **Škoda Transportation**. The Bureau alleges that the companies bribed Riga City Council officials and the Riga transport company (*Rigas Satiksme*) in relation to three tenders between 2013 and 2016.³ In Ukraine in 2018, the anti-corruption agency (NABU) conducted investigations and filed charges alleging bribery and money laundering against two intermediaries in relation to the tender award by state enterprise NNEGC Energoatom to Czech company **Skoda JS a.s.** for the

supply of equipment for nuclear power stations. NABU claims Škoda JS a.s. transferred an overcharge of €6.4 million (US\$7.3 million) to a Panamanian company.⁴ The Czech company is a subsidiary of Netherlands-registered **OMZ B.V.**, which is part of the Russian **Uralmash-Izhora Group** or **OMZ Group**, in turn owned or controlled by Russia's state-owned **Gazprombank**.⁵

Recent developments

The government issued an anti-corruption action plan for 2018-2022 which includes plans for several pieces of legislation that respond to the OECD WGB's recommendations.⁶ The Czech anti-money laundering law – the Act on Some Measures Regarding Legalisation of the Proceeds from Illegal Activities and Terrorism Financing (AML Act) – is being amended to reflect the requirements of the 5th EU Anti-Money Laundering Directive.⁷

On 30 June 2020, the Ministry of Justice submitted a Bill on Protection of Whistleblowers, transposing the EU Whistleblower Protection Directive 2019/1937 into an interdepartmental comment procedure. The Bill is expected to be ready for governmental approval by the end of 2020, before being sent to Parliament. If approved, it will establish a Whistleblower Protection Agency as a reporting channel and will require employers to establish "reliable channels". It will also introduce a system to protect whistleblowers from potential retaliation.

The Ministry of Justice has presented to the government an amendment to the Public Prosecutor's Office Act. The Bill aims to protect chief public prosecutors, as well as the Supreme Public Prosecutor, from potential undue political influence. It introduces fixed terms for their offices and their possible removal only via a disciplinary proceeding. Obligatory selection procedures are required for chief district, regional and high public prosecutors. However, the Bill is controversial and therefore its progress within the legislative procedure is

¹ <https://korupce.cz/zahranicni-spoluprace/oeed-2/>; <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>

² <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>

³ <https://eng.lsm.lv/article/society/crime/knab-czech-and-polish-companies-implicated-in-rigas-satiksme-graft-case.a302919/>

⁴ <https://nabu.gov.ua/en/novyny/energoatom-case-indictment-two-more-persons-was-sent-court>

⁵ <https://www.e15.cz/byznys/prumysl-a-energetika/korejci-udajne-kupuji-od-rusu-plzenskou-spolecnost-skoda-js-ruska-strana-obchod-popira-1364903>

⁶ <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>

⁷ As of 3 July 2020.

complicated. The potential for undue political influence will remain, as the Minister of Justice will nominate the majority of members of the selection committee appointing chief prosecutors, and the term of office of the existing chief prosecutors will be limited with immediate effect. It is difficult to predict the further progress and final wording of the Bill within the legislative procedure.

Transparency of enforcement information

The police make public monthly statistics on criminal investigations, which are based on sections of the Criminal Code.⁸ As foreign bribery is not a separate crime, it is not possible to identify from the statistics which investigations concern foreign bribery. Neither the Prosecution Service nor the Ministry of Justice publishes information on investigations.

The Ministry of Justice is responsible for the statistics on mutual legal assistance (MLA), which are updated monthly.⁹ Each statistic is marked with a code, which identifies the agency receiving the request, but does not distinguish foreign bribery. The Prosecutor General's Office adopted an amendment to the General Instruction No. 10/2011, which entered into force on 10 October 2017. This instruction obliges all public prosecutors to inform the international department of the Prosecutor General's Office about MLA requests sent abroad and foreign applications for MLA concerning suspicion of foreign bribery committed by a Czech national or company. The Supreme Court, Supreme Administrative Court and both High Courts generally publish their decisions electronically, in full.¹⁰ The

Municipal and Regional Courts and the District Courts are also starting to publish some of their decisions. Anyone can ask for a specific court decision and receive it in an anonymised form.¹¹

Beneficial ownership transparency

There is a central Register of Beneficial Owners which is not publicly accessible. Only registered entities and designated authorities can have full access to the register free of charge.¹² Those who can prove a lawful interest can gain partial access to the requested information.¹³

The Amendment to the Act on Public Registers of 2018 established the central register.¹⁴ Any legal person or trust must submit an application to the registrar court that maintains the Public Register or Commercial Register (i.e. the publicly accessible register of most of the legal entities in the Czech Republic) to have the relevant information entered in the central beneficial ownership register.¹⁵ However, there are no sanctions for corporations or trusts that fail to do so, which means many do not comply with the obligation.

A new Act on the Register of Beneficial Owners transposing the beneficial ownership registration requirements of the 4th and 5th EU Anti-Money Laundering Directives has been proposed and is currently being debated in the Czech Parliament. The new legislation would introduce public access to most beneficial ownership information about registered legal persons. The act also envisages administrative and civil sanctions for non-compliance with beneficial ownership registration

⁸ Foreign bribery falls within the scope of Sections 331-334 of the Criminal Code, which apply to all bribery crimes without making the distinction between "domestic" and "foreign" bribery or other special subtypes of bribery. The information regarding one foreign bribery case opened in the Czech Republic was published in the Anti-Bribery OECD Convention Implementation Phase 4 Report, <https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>

⁹ http://www.nsoud.cz/JudikaturaNS_new/ns_web.nsf/Edit/ONejvyssimsoudu-Statistiky?Open&area=O%20Nejvy%C5%A1%C5%A1%C3%ADm%20soudu&grp=Statistiky&lng=

¹⁰ There is a constitutional right to access to information and the corresponding obligation by courts and other bodies to publicly announce and publish court decisions, unless to do so conflicts with another constitutional right, e.g. national security. In such cases, the court decision is anonymised or certain sensitive parts are omitted (e.g. those that could impact national security).

¹¹ Pursuant to Act no. 106/1999 Coll., on Free Access to Information.

¹² Section 118g of Act no 304/2013 Coll., on Public registers provides a list of authorities that have or may obtain access to the register, https://e-justice.europa.eu/content_business_registers_in_member_states-106-cz-cs.do?member=1

¹³ Act no 304/2013: 256

¹⁴ Via an amendment of the Act no. 304/2013 Coll. This amendment implemented the requirements of the EU's 4th Anti-Money Laundering Directive.

¹⁵ This obligation is laid down by Section 29b(1) of Act no. 253/2008 Coll.

duties, and automatic transfer of data from other public registers.

Inadequacies in legal framework

The crime of foreign bribery is not separately identified in the Criminal Code. Whistleblower protection is only partial in the public and private sectors, under rules applicable to banks and through certain protections under a governmental regulation that applies to public-sector employees. The OECD WGB criticised both these points in its Phase 4 Follow-Up Report on the Czech Republic in 2017.¹⁶

The Ministry of Justice has submitted to the interdepartmental comment procedure a Bill on Protection of Whistleblowers, transposing the EU Whistleblower Protection Directive.

Inadequacies in enforcement system

Only one foreign bribery case has been prosecuted to date.¹⁷ Public prosecutors lack sufficient independence. The OECD WGB report in 2017 called for the Czech Republic to ensure the availability of adequate analytical resources for investigating foreign bribery cases. It further called for support to efforts by non-financial obliged entities to detect and report suspicions of money laundering related to foreign bribery, such as those in the real estate and gambling sectors, tax advisors and legal professionals. This situation remains unchanged.

There are insufficient resources for identification of breaches of the obligations arising under the Anti-Money Laundering Act and the Act on the Public Registers.

Recommendations

- Introduce more meaningful statistics on foreign bribery investigations, enforcement and resulting sanctions
- Ensure that the Register of Beneficial Owners is accessible to the public and introduce sanctions for entities that fail to apply for beneficial owner registration
- Ensure that comprehensive whistleblower protection legislation is enacted and implemented
- Amend the Criminal Code to

introduce a specific crime of foreign bribery, or procedural measures for prosecuting cases which relate to foreign bribery

- Ensure the Public Prosecutor Office Act is enacted and monitor compliance with it
- Increase resources to improve identification of breaches of the obligations arising under the Anti-Money Laundering Act and Act on Public Registers.

¹⁶ As included in the recommendations of the OECD Working Group on Bribery Phase 4 Report on Czech Republic, 2017, <https://www.oecd.org/corruption/the-czech-republic-must-take-significant-steps-to-enforce-its-foreign-bribery-laws-but-demonstrates-commitment-to-improve.htm>

¹⁷ Criticised by the OECD WGB, <http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf>