Annex I

State Measures for Strengthening Business Integrity

In line with a number of resolutions of the Conference of the States Parties to the United Nations Convention against Corruption (UNCAC), including, inter alia, resolutions 5/6, 6/5, 9/6 and 9/8, as well as the commitments made by States parties in the political declaration entitled "Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation", adopted by the General Assembly at its special session against corruption held in 2021, the secretariat is seeking information on good practices, practical examples and lessons learned by States parties on the engagement of the private sector and the use of sanctions and incentives to strengthen business integrity in the last decade. The answers provided by States parties will be used to update the 2013 UNODC publication "A Resource Guide on State Measures for Strengthening Corporate Integrity" (English - Spanish - Russian) and to develop an e-learning tool that will further support States parties' efforts to strengthen business integrity.

The Resource Guide provides a catalogue of measures that States parties can adopt to promote business integrity and the reporting of corruption involving the private sector. The Resource Guide features three chapters: i) The United Nations Convention against Corruption and the private sector, which describes the articles of the Convention that frame State interaction with the private sector; ii) Engaging the private sector, which outlines the business case for countering corruption with an emphasis on governance and other factors that can drive business integrity; and iii) Using sanctions and incentives, which describes the range of sanctions and incentives that have been developed to prevent and address corruption involving the private sector.

The secretariat invites States parties to disseminate this questionnaire among relevant stakeholders, with a view to identifying internal measures adopted by private sector organizations to prevent and counter corruption. Respondents may choose to answer the whole questionnaire or only sections that are applicable and relevant to a State party. The secretariat would especially welcome the provision of illustrative examples.

Respondents' contact details will be kept confidential, but submissions will be made public unless a State party requests otherwise. The secretariat may contact a respondent to seek additional information.

To facilitate the process of providing information, the Government may wish to complete the online questionnaire (English only). Alternatively, the Government may wish to submit the questionnaire to the secretariat by email to florian.lair@un.org and sabrina.dandrea@un.org at its earliest convenience but no later than **31 October 2022**.

Questionnaire

Chapter 1 – The United Nations Convention against Corruption (UNCAC) and the private sector

Background: It is important that States' legislative and other measures contain sufficient detail to inform the private sector of their requirements and scope of application. In line with the principle of legal certainty, it is important to have clear provisions outlining prohibited conducts and consequences to the private sector.

1(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote business integrity and/or reporting of corruption in the private sector in line with the United Nations Convention against Corruption.

1(b) What challenges (if any) did you encounter in developing and/or enforcing such measures?

1(c) Please describe the steps you took to overcome such challenges (if any).

Guidance on 1(a) and 1(b): Measures could, for example, include policies and/or laws and regulations designed to achieve the following:

- Prevent bribery of national public officials, bribery of foreign public officials and officials of public international organizations, and bribery in the private sector
- Promote private sector transparency
- Promote cooperation between law enforcement agencies and private entities
- Promote cooperation between national authorities and private entities
- Prevent trading in influence
- Prevent conflicts of interest
- Prevent embezzlement of property in the private sector
- Promote the development of standards and procedures to safeguard the integrity of companies
- Ensure that companies have sufficient internal auditing and controls to assist in preventing and detecting acts of corruption
- Introduce or strengthen the liability of legal persons
- Promote public-private communication, cooperation and partnership (e.g., with business associations, networks, individual companies, small and medium-sized enterprises)

- Prevent bribery of national public officials, bribery of foreign public officials and officials of public international organizations, and bribery in the private sector

With regard to bribery prevention and based on the initiative of the Supreme Public Prosecutor, the first Round Table meeting on "criminal liability of legal entities and compliance" in April 2018 was held in which besides representatives from Supreme Public Prosecutor's Office, Supreme Court and Police also representatives from the Czech Compliance Association, the Czech Bar Association, the Czech Banking Association, the Czech Chamber of Commerce, the Union of Towns and Municipalities of the Czech Republic, the Union of Corporate Lawyers of the Czech Republic and business corporations (Czech Railways, Czech Aeroholding etc.) and others also participated. The meetings repeated several times and were very successful.

- Promote private sector transparency

Public Registers in general

The Czech Republic has established public registers in which all private companies are required to be registered. Public registers provide all users with detailed information about legal persons. Usage of public registers is free of charge and it is possible to access them online (https://or.justice.cz/ias/ui/rejstrik).

Pursuant to Act no. 304/2013 Coll, Act on the Public Registers, multiple public registers exist, including the Register of Associations, the Register of Foundations, the Commercial Register or the Register of Publicly Beneficial Associations. No legal entity can be established without registration.

Public registers are maintained by competent courts. The information system is centrally managed by the Ministry of Justice. Each public register can be accessed directly through internet. It is also possible to electronically request an officially certified extract of any entry in any public register.

The information in the public registers is valid and applicable to all persons who are not aware that the actual state does not correspond with the information in the Register (for details see Section 8 and 9 of the Public Registers Act). This means that the persons registered will be bound by such legal action taken on the basis of the facts recorded in the public register, even if they do not correspond to the actual state of affairs. For example, a statutory body of a company may bind the company to legal acts even after it has ceased to be a statutory body, but this fact had not been entered in the public register and the third party was not aware of it. This protects the good faith of third parties.

If there is a factual change in the recorded facts, it is necessary to initiate without undue delay an amendment of the entry in the public register to correspond to the actual situation. The length of the period of undue delay shall be assessed individually according to the fact to be registered. The length shall depend in particular on the possibility of providing documents to prove the fact to be recorded and other circumstances on the part of the persons to be recorded. In any event, it is in the interests of the persons to be registered that the registration take place as soon as possible.

In addition to the obligation to provide and keep updated ownership information in the Public Register, legal entities are required to maintain list of their shareholders/founders/members etc. in accordance with the Business Corporations Act. A registered share are registered in the register of shareholders kept by the company. Where a company issued book-entry shares, the articles of association may provide that the register of shareholders is substituted by a book-entry securities register (Section 264 of Business Corporations Act).

Bearer shares may only be issued as book-entry securities or as immobilised securities. The shareholders are not entitled to demand that their immobilised shares be released from global custody (Section 274 of Business Corporations Act).

The English translation of the Act on the Public Registers can be downloaded here: http://obcanskyzakonik.justice.cz/images/pdf/Act_on_Public_Registers1.pdf

Since 2018, the Czech Public Register (the Commercial Register) has been interconnected with other European commercial registers. Through the so-called BRIS (Business Registers Interconnection System), it is possible to obtain basic data on all capital companies (limited liability company and joint stock company) and their branches throughout the European

Union. The Czech Commercial Register is interconnected with the commercial or similar registers (central, corporate) of other EU Member States through an interface for the European central platform. Transfer of the relevant data between the commercial registers takes place automatically.

Transparency of trusts

The Register of Trusts is regulated in Sections 65a-65g and 118a of the Public Registers Act. It has been functioning since 1st January 2018. The Trust Register is an information system of public administration that records statutorily defined data on Czech and some foreign trusts. The register is partly non-public and is maintained by the registrar courts. The register also includes a collection of instruments. All trusts and similar arrangements operating on the territory of the Czech Republic are obliged to register themselves in the Register of Trusts. It is impossible to establish a trust without providing all the necessary information that law requires.

The register is partly non-public and is maintained by the registrar courts. However, it is fully accessible to competent public authorities. The register also includes a collection of instruments. All trusts and similar arrangements operating in the territory of the Czech Republic are obliged to register themselves in the Register of Trusts. The only exception is a trust fund established by a death grant, which is created by the death of the settlor and is entered in the register of trusts after its creation.

The registration of trusts enables the public authorities to obtain information about the persons involved in the trust and thus acts as a preventive measure against the possible misuse of trusts for unlawful conduct. Public information on the trustee can also serve as a certain proof of the trustee's authority to dispose of the trust property.

An application for registration of a trust in the Register of Trusts, as well as an application for amendment or deletion of the data recorded in the Register of Trusts, shall be made by the trustee. Changes to the facts entered in the register must be initiated without undue delay after the occurrence of the relevant fact. Whenever there is a change in the fact to be recorded, it is necessary for the trustee registered to initiate the change.

In accordance with Section 65d of the Public Registers Act, the information filed shall be: designation of the trust; the purpose of the trust or, if any of the latter exists, the object of activities, business or subsidiary economic activity of the trust; date of establishment and termination of the trust; identification number; name, residence address or address of stay of the trustee - if the trustee is a natural person, his name and personal number; the number of trustees and the manner in which they act; residence address or address of stay of the settlor - if the settlor is a natural person, his name and personal number; in a personal trust, residence address or address of stay of the beneficiary - if the beneficiary is a natural person, his name and personal number; residence address or address of stay of the protector, if the person is a natural person, his name and personal number; information on the encumbrance of a business enterprise; other facts stated by the statute and date of registration.

Information regarding the settlor, beneficiary and the protector is not publicly available. Copies of an entry in the Register of Trusts are available only to the trustee or to a person who proves legal interest. Copies of an entry are also available via remote access to a

multitude of public authorities, including all authorities and obliged entities carrying out activities in relation to Act No. 253/2008 Coll, AML Act.

In addition to information available in the Register of Trusts, identity and beneficial ownership information on trusts is also available with trustees based on their AML/CFT obligations.

From 1 January 2021, a new provision (Section 2(1)(m) came into effect requiring all trustees to register as obliged persons under the AML Act. There is also new obligation for TCSPs to register with the Trade Licensing Office. Under the AML Act the obliged persons must among other identify beneficial owners of the trusts for which they operate as a trustee or have business relationship with.

Transparency of beneficial ownership

The Czech definition of beneficial owner is based on the AML Directive but is more detailed. The definition of the beneficial owner of a legal person or legal arrangement is regulated in Sec. 2(c-e) and Sec. 4 – 6 of the Act no. 37/2021 Coll., on Beneficial Ownership Register (BOR Act).

The general definition is developed in relation to corporations in new Section 4 and in relation to legal arrangements and foundations (and similar legal persons) in the new Section 5a. It is clear from these provisions what is meant by 'owns or controls'.

The Register of Beneficial Owners is partially accessible to the public, free of charge on the Internet on the website of the Register of Beneficial Owners (here: https://esm.justice.cz/ias/issm/rejstrik). Through the web page, electronic extracts from the register can be obtained online. Anyone can thus obtain confirmed basic data on the BO of any legal entity registered in the register. Access to a wider range of data, or to all data, is then limited to entities selected by law.

There are three types of access to the Register of Beneficial Owners: for the public, for the registered person and for privileged authorities.

The public is given access to information on the name, state of residence, year and month of birth and nationality of the beneficial owner of the legal entity and on the nature of the beneficial owner's status and the size of the beneficial owner's shareholding, if the shareholding gives rise to his status. The information which is the result of an automatic transcription and is therefore already available in the public register is also public. In the case of registered beneficial owners of legal arrangements, the register is generally non-public.

Anyone can search the register by entering the identification number or the name of a particular legal entity. Anyone can also obtain directly from the website an electronic extract or a confirmation that no data are recorded for the entity in question.

Access to all data, including historical data, is provided to the legal person itself and the beneficial owner. The registrant can obtain an extract directly from the registry website, after authentication and authorization via the data box information system (the legal entity must have a data box).

Public authorities have the most extensive access. The scope of the information publicly disclosed is governed by the AML Directive. The scope of the public information on the beneficial owner of a legal person is the name, country of residence, year and month of birth, nationality of the beneficial owner, the nature of the beneficial owner's status, the size of the beneficial owner's direct or indirect shareholding, if such shareholding gives rise to the beneficial owner's status, the date from which the natural person is the beneficial owner and the date until which the natural person was the beneficial owner.

In the case of trusts, the publication of identifying information about the beneficial owner shall be subject to the consent of the beneficial owner. Public disclosure of beneficial owner information is not required by the AML Directive.

A full extract can only be provided to certain entities such as tax authorities, the Czech National Bank and other public authorities. These authorities have remote access to the Register. The purpose of remote access is the quick availability of the necessary information to a legally privileged group of subjects. Selected entities can remotely access the data in the register of beneficial owners through an internet interface managed by the Ministry of Justice.

A complete extract from the register of beneficial owners can be obtained by remote access. Remote access and the processing of the remote access request are free of charge.

The BO Register is kept by the registrar courts, of which there are 7 in the Czech Republic. The Ministry of Justice provides the technical aspects of the BO Register. However, it is possible to entry information to the Register through notary.

In principle, the notary and the court are equivalent authorities in terms of entering data in the register of beneficial owners, but the court is reserved for resolving discrepancies in the register of beneficial owners. Notarial entries are not subject to direct preventive control or review by the court.

Section 13 of the BOR Act provides an exhaustive list of recorded information about the beneficial owner and other related facts. These are (1) information identifying the beneficial owner's person and identity, (2) information explaining the basis for the beneficial owner's position, including information about the structure of the relationship, if any, (3) information about the duration of the beneficial owner's position, and (4) information about the legal entity or legal arrangement of which the beneficial owner is the beneficial owner. In addition, (5) data relating to the procedural aspects of the registration of the particulars (when they were made or made available) are also subject to registration. Finally, (6) data relating to the resolution of discrepancies in the records under Part Three of Title Six of the proposal are recorded. The provision transposes Article 30(1) and (3) to (5) and Article 31(1) and (3a) and (5) of the AML Directive.

Discrepancies in the BO register are reported by those entities that deal with the issue of beneficial owners and their identification within their activities. In this case, these are the public authorities that encounter irregularities in the course of their activities, as well as the obliged entities under the section 2 of the AML Act. These include credit institutions, financial institutions, and other entities. Qualified findings are forwarded to the court that maintains the beneficial owner register Most discrepancies are reported by obliged entities under the AML Act.

The records are changed whenever there are entries about the ownership structure in the public registers (in the case of automatic transcription). It is the duty of the persons to ensure that the data are entered in the register of registered owners (Section 9(1) of the BOR Act). The registering persons are both the legal persons themselves and, in the case of legal arrangements, their trustees. The registration can be ensured either proactively (by a motion to the court or a request to a notary) or by using the so-called automatic transcription.

The registration must be initiated within a specified period of time without undue delay after the occurrence of a decisive fact. A person other than the registering person, e.g., the beneficial owner, may also initiate the registration under the conditions of Section 26(3) of the BOR Act. Failure to comply with the registration obligation is subject to a fine of up to CZK 500,000. In addition, Sections 52 et seq. of the BOR Act provide for negative private law consequences of non-compliance with the registration obligation (see bellow).

A large number are automatically overwritten from the public registers and are thus automatically updated every time a public register entry is changed. The automatic overwriting is in principle independent of the activity of the registering person and occurs automatically if the situation in the public register (or the register of trusts) corresponds to the legal prerequisites. The automatic transcription is not a one-off event but represents a dynamic link between the status of the entry in the public register and the register of beneficial owners. The automatic transcription does not relieve the registrant of the obligation to enter the correct details if the transcription does not correspond to the actual situation or is incomplete.

All entries in the public registers and the BO Register must be supported by documents proving the information entered. Moreover, the proper fulfilment of information and other obligations imposed by the BOR Act, or their enforcement, is further ensured by establishing a procedure in the event of discrepancies in the register of beneficial owners.

- Promote cooperation between law enforcement agencies and private entities

Law enforcement authorities develop a number of cooperation activities with private entities in the subject area. For the public prosecutor's office, the following can be cited as an example:

- Issue of **methodological material "Application of Art. § 8 par. 5 of the Act on Criminal Liability of Legal Entities and Proceedings Against them"** - publicly available here:

https://verejnazaloba.cz/wp-content/uploads/2020/11/Metodika-NSZ-k-%C2%A7-8-odst.-5-ZTOPO-2020.pdf

This material, which is regularly updated and transparently published in its third edition, represents a methodological guide and is intended as a practical aid to take into account relevant circumstances when assessing criminal liability legal entities under the jurisdiction of the public prosecution body.

- The Prosecutor General's Office together with the Czech Compliance Association organized several **round tables on the issue of compliance** in the presence of law enforcement authorities, attorneys, compliance specialists and representatives of large business companies.

The Covid-19 pandemic interrupted these regular meetings, but we plan to resume them next spring.

- The Prosecutor General's Office joined a **nationwide awareness campaign against so-called foreign bribery**. An information booklet and contacts for reporting suspected conduct are publicly available here: https://verejnazaloba.cz/nsz/boj-s-korupci/zahranicni-podplaceni/

- Public prosecutors, as well as representatives of other law enforcement agencies, regularly **participate in educational events and conferences** on business integrity and fight against corruption aimed mainly at the professional public.

- Promote cooperation between national authorities and private entities

As for the prosecutor's office - see above.

- Prevent trading in influence

Preventing trading in influence refers to article 18 of the Convention. In this context criminal offence of trading in influence pursuant Section 333 of the Criminal Code is applicable (see below).

An undue advantage (bribe) can be promised, offered or actually given to a public official or any other person. Section 333 subsection (2) of the Criminal Code does not make the distinction between a "public official" an "other persons", but generally refers to "another person", thus covering the "public officials" as well. The Act No. 287/2018 Coll. amending the Criminal Code explicitly clarified that this criminal offence may be committed also through another person (i.e. bribe can be given also through the person different from the person who wants to obtain an undue advantage from an administration or public authority; the undue advantage, that is sought can be for the initial instigator of the act or for any other person).

Criminal Code

Section 333 Trading in Influence

(1) Whoever himself or through another person requests, accepts promise of or accepts a bribe for that he will use his influence or influence of another person to affect the exercise of powers of a public official, or for that he has already done so, will be sentenced to imprisonment for up to three years.

(2) Whoever himself or through another person provides, offers, or promises a bribe to another person for reasons referred to in sub-section (1), will be sentenced to imprisonment for up to two years.

- Prevent embezzlement of property in the private sector

Preventing embezzlement of property in the private sector refers to article 22 of the Convention. The Czech Republic does not distinguish in its criminalisation measures between private and public sector.

There are following applicable measures falling under the article 22 – embezzlement, unauthorized use of an item of another, breach of duty in administration of property of another. Since the amendment of the Criminal Code in 2020 the threshold of damage

(section 138 CC) in regard to the embezzlement (section 206 CC) has risen up to the lowest level of 10,000CZK for a damage "non insignificant" (previously it was 5,000CZK). In regard to the unauthorized use of an item of another (section 207 CC) and breach of duty in administration of property of another (section 220 CC) the "not a small value/damage" has risen from 25,000CZK to 50,000CZK. In case of "substantial damage" for negligent breach of duty in administration of property of another (section 221 CC) the threshold has risen from 500,000CZK to 1,000,000CZK.

The main reason for increasing the lower limit of damages in criminal proceedings was primarily the fact that this limit is intended to reflect the degree of social harmfulness of the conduct in question with regard to the economic development in society. In 2002 the limits of damage were established, the inflation systematically expanded the range of cases that had to be treated as a criminal offence, as the prices have risen, too. Therefore, it was needed to stop tightening criminal repression, where even cases that were not previously considered as criminal offences were treated as criminal offences only due to the rise in prices.

Criminal Code

Section 206 Embezzlement

(1) Whoever misappropriates an item of another person that has been entrusted to him and thus causes damage not insignificant on the property of another person, will be sentenced to imprisonment for up to two years, prohibition of certain activity or confiscation of an item.

(2) An offender will be sentenced to imprisonment for six months to three years, if he commits the act referred to in sub-section (1) and if he was condemned or sentenced for such an act in the past three years.

(3) An offender will be sentenced to imprisonment for one year to five years or to a pecuniary penalty, if he causes larger damage by the act referred to in sub-section (1).

(4) An offender will be sentenced to imprisonment for two to eight years, if he

a) commits the act referred to in sub-section (1) as a member of an organized group,

b) commits such an act as a person who has a special obligation to protect interests of the aggrieved person,

c) commits such an act in a state of national peril or state of war, during a natural disaster or another event seriously endangering lives or health of people, public order or property, or

d) causes substantial damage by such an act.

(5) An offender will be sentenced to imprisonment for five to ten years, if he

a) causes by the act referred to in sub-section (1) extensive damage, or

b) commits such an act with the intention to enable or facilitate commission of a terrorist criminal offense of Terrorism financing (Section 312d) or Threat by terrorist criminal act (Section 312f).

(6) Preparation is criminal.

Section 207 Unauthorized Use of an item of Another

(1) Whoever takes possession of an item of another person of a not small value or a motor vehicle with the intention to temporarily use it, or

whoever causes damage not small on property of another person by temporarily using such an item that was entrusted to him without authorization,

will be sentenced to imprisonment for up to two years or to prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for six months to three years or to prohibition of certain activity, if he

a) commits the act referred to in sub-section (1) as a person who has a special obligation to protect interests of the aggrieved person,

b) commits such an act as a member of an organized group, or

c) causes substantial damage by such an act.

(3) An offender will be sentenced to imprisonment for one year to five years or pecuniary penalty, if he

a) causes extensive damage by the act referred to in sub-section (1), or

b) commits such an act with the intention to enable or facilitate commission of a terrorist criminal offense of Terrorism financing (Section 312d) or Threat by terrorist criminal act (Section 312f).

Section 220 - Breach of Duty in Administration of Property of Another

(1) Whoever breaches a duty to procure or administer property of another person imposed by law or assumed by contract, and thus causes damage not small on to another, will be sentenced to imprisonment for up to two years or to prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for six months to five years or to pecuniary penalty, if he

a) commits the act referred to in sub-section (1) as a person who has a special duty to defend interests of the aggrieved person, or

b) causes substantial damage by such an act.

(3) An offender will be sentenced to imprisonment for two years to eight years if he causes substantial damage by the act referred to in sub-section (1).

Section 221 - Negligent Breach of Duty in Administration of Property of Another

(1) Whoever by gross negligence breaches an important duty to procure or administer property imposed by law or assumed by contract and so causes substantial damage to another person, will be sentenced to imprisonment for up to six months or by prohibition of certain activity.

(2) An offender will be sentenced to imprisonment for up to three years, if he

a) commits the act referred to in sub-section (1) as a person who has a special duty to protect interests of the aggrieved person, or

b) causes extensive damage by such an act.

Section 138 - Thresholds of Damage, Profit, Costs for Liquidation of Environmental Damage, and Value of an item

1) For premises of this act will be understood as

a) damage not insignificant damage amounting to at least 10 000 CZK,

b) damage not small damage amounting to at least 50 000 CZK,

c) larger damage damage amounting to at least 100 000 CZK,

d) substantial damage damage amounting to at least 1 000 000 CZK and

e) extensive damage damage amounting to at least 10 000 000 CZK.

(2) The amounts as specified in sub-section (1) will apply mutatis mutandis to assess the amount of profit, cost for removing environmental damage and value of an item.

- Promote the development of standards and procedures to safeguard the integrity of companies

Regarding the jurisdiction of the public prosecutor's office, we refer again to **methodological material "Application of Art. § 8 par. 5 of the Act on Criminal Liability of Legal Entities and Proceedings Against them".** This material is very useful in setting up and developing a compliance management system in private companies and for this reason it can also be used for the needs of internal audits and control in order to prevent and detect corruption crimes.

Information on the application of criminal liability to legal entities is a regular part of the annual reports on the activities of the public prosecutor's office. These reports are publicly available here:

https://verejnazaloba.cz/nsz/cinnost-nejvyssiho-statniho-zastupitelstvi/zpravy-o-cinnosti/

The facts stated in these reports can have a methodical and criminal preventive effect on legal entities.

Information on corruption crime and the fight against it is also part of the annual report of the national correspondent for the fight against corruption. The 2021 report is publicly available here:

https://verejnazaloba.cz/wp-content/uploads/2022/07/Zpr%C3%A1va-NK-za-rok-2021-Pavl%C3%ADk.pdf

- Ensure that companies have sufficient internal auditing and controls to assist in preventing and detecting acts of corruption

As for the prosecutor's office - see above.

- Introduce or strengthen the liability of legal persons

In the area of criminal law, there is a special Act regulating criminal liability of legal persons stipulating the conditions of criminal liability of legal persons (Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them) in accordance with requirement of article 26 of the Convention.

The amendment to this Act (Act No. 183/2016 Coll., which has entered into force on 1 December 2016) has amended Section 7 of the Act which newly explicitly enumerates criminal offences for which legal persons cannot be held criminally liable. Every other criminal offence defined by the Criminal Code, which is not included in the exhaustive list of Section 7, may be therefore committed by a legal person, including criminal offences related to corruption or money laundering. Before the date of entry into force of the amendment, Section 7 of the Act included a positive list of criminal offences for which legal persons can be held criminally liable (legal person could be held liable for criminal offences defined by the Convention also before adoption of the respective amendment) – the abovementioned amendment therefore extended range of criminal offences for which legal person can be held criminally liable.

The condition of attribution of a conduct to the legal person according to Section 8 of this Act must be fulfilled. This does not preclude possible parallel civil or administrative proceedings against legal person for any other offence of civil or administrative law.

From Section 9 (3) of this Act explicitly follows that criminal liability of natural and legal persons is independent on each other and may be applied also parallel. That means sanctions may be imposed not only to legal persons but also to individual members of this legal person if they commit criminal offence regardless of their involvement in legal person.

Legal person may also commit criminal offence as an accomplice (last sentence of Section 9 (3) of the Act). Criminal liability of a legal person is not precluded by the fact that a particular natural person who has acted in a way specified in Section 8 (1, 2) cannot be identified (Section 8 (3) of the Act)

Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them

Section 7 - Criminal Acts

Criminal acts for the purpose of this Act are to be understood as misdemeanours or felonies stipulated in the Criminal Code, with the exception of Manslaughter (Section 141 of the Criminal Code), Murder of a Newborn Child by its Mother (Section 142 of the Criminal Code), Accessory to Suicide (Section 144 of the Criminal Code), Brawling (Section 158 of the Criminal Code), Intercourse among Relatives (Section 188 of the Criminal Code), Abandoning a Child or Entrusted Person (Section 195 of the Criminal Code), Negligence

of Mandatory Support (Section 196 of the Criminal Code), Maltreatment of a Person Living in Common Residence (Section 199 of the Criminal Code), Breach of Regulations on Rules of Economic Competition (Section 248 (2) of the Criminal Code), High Treason (Section 309 of the Criminal Code), Abusing Representation of State or International Organization (Section 315 of the Criminal Code), Collaboration with Enemy (Section 319 of the Criminal Code), War Treason (Section 320 of the Criminal Code), Service in Foreign Armed Forces (Section 321 of the Criminal Code), Liberation of Prisoners (Section 338 of the Criminal Code), Violent Crossing of State Borders (Section 339 of the Criminal Code), Mutiny of Prisoners (Section 344 of the Criminal Code), Dangerous pursuing (Section 354 of the Criminal Code), Insobriety (Section 360 of the Criminal Code), criminal offenses against conscription stipulated in Chapter XI of the Criminal Code, Military criminal offenses stipulated in Chapter XII of the Criminal Code and Use of Forbidden Means and Methods of Combat (Section 411 of the Criminal Code).

Section 8 - Criminal Liability of a Legal entity

(1) Criminal act committed by a legal entity is an unlawful act committed in its interest or within its activity, if committed by

a) statutory body or member of the statutory body or other person in a leadership position within the legal entity, who is entitled to act on behalf of or for the legal entity,

b) a person in a leadership position within the legal entity, who performs managerial or controlling activities, even if they are not a person as mentioned in paragraph a),

c) a person with a decisive authority on management of this legal entity, if his/her act was at least one of the conditions leading to a consequence establishing criminal liability of a legal entity, or

d) employee or a person with similar status (thereinafter "employee") while fulfilling his/her duties/tasks, even if they are not a person as mentioned in paragraph a) to c),

provided that the act can be attributed to the legal entity in accordance with sub-section (2).

(2) Commission of a criminal act as specified in Section 7 can be attributed to a legal entity, if committed by

a) action of bodies or persons referred to in sub-section (1) a) to c), or

b) an employee referred to in sub-section (1) d) on the grounds of a decision, approval or guidance of bodies of the legal entity or persons referred to in sub-section (1) a) to c), or because the bodies of the legal entity or persons referred to in sub-section (1) a) to c) did not take measures required by other legal regulation or that can be justly required, namely that they did not perform obligatory or necessary control (supervision) over the activities of employees or other persons they are superiors to, or they did not take necessary measures to prevent or avert the consequences of the committed criminal act.

(3) Criminal liability of a legal entity is not precluded by the fact that a specific natural person who has acted in a way specified in sub-section (1) and (2) cannot be identified.

(4) Sub-section (1) and (2) will apply also if

a) the activity specified in sub-sections (1) and (2) took place prior to incorporation of the legal entity,

b) the legal entity has been incorporated, but the court decided on nullity of the legal entity,

c) the legal act establishing authorisation for acting on behalf of the legal entities is invalid or ineffective, or

d) the acting natural person is not criminally liable for such criminal act.

(5) The legal entity will be relieved of criminal liability according to sub-section (1) to (4) if it made every effort which could be reasonably required of it in order to prevent the commission of the unlawful act by the persons referred to in sub-section (1).

Section 9 - Perpetrator, Accomplice and Participant

(1) A perpetrator of a criminal act is a legal entity to which a breach or endangering of an interest protected by the Criminal Code by means specified in this Act can be attributed.

(2) A perpetrator is also a legal entity that used other legal or natural person for the commission of a criminal act.

(3) Criminal liability of legal entity is without prejudice to criminal liability of natural persons specified in Section 8 (1) and criminal liability of these natural persons is without prejudice to criminal liability of the legal entity. If the criminal act has been committed by means of a joint action of more persons, where at least one of them was a legal entity, every each one of these persons is liable as if the person committed the act on their own.

In the opinion of the Prosecutor General's Office, the criminal liability of legal entities is established in the Czech Republic by the Act on Criminal Liability of Legal Entities and Proceedings Against them (Act. No 418/2011 Coll.) and to a sufficient extent. At the same time, it is also fulfilled in practice of LEAs, even in relation to large commercial companies (it is possible to mention the publicly known criminal case of the company Metrostav, which is one of the largest construction companies in the Czech Republic).

Chapter 2: Engaging the private sector

Background: Anti-corruption programmes, commonly referred to as compliance programmes, are a primary tool used by companies to advance ethical business practices. They provide a framework for articulating the values, policies and procedures used by a company to educate its employees and to prevent, detect and counter corruption in its business operations.

2(a) Please describe (cite or summarize) good practices and/or examples of measures taken by your country to promote integrity through anti-corruption programmes in the private sector.

Guidance on 2(a) and 2(b): Measures and good practices could, for example, include those designed to:

- Raise awareness of business integrity
- Encourage the private sector to establish anti-corruption policies, procedures and/or programmes
- Promote training and education on anti-corruption in the private sector
- Provide trainings or guidance, or develop model anti-corruption programmes or policies for companies to use and adapt
- Provide appropriate reporting channels
- Encourage public reporting of efforts to prevent and counter corruption in the private sector

- Encourage the private sector to establish anti-corruption policies, procedures and/or programmes
- Promote training and education on anti-corruption in the private sector
- Provide trainings or guidance, or develop model anti-corruption programmes or policies for companies to use and adapt

The Ministry of Regional Development of the Czech Republic conducts training on conflict of interests and corruption in public procurement in general towards both contracting authorities and suppliers.

2(b) Please describe (cite or summarize) good practices and/or examples of measures you have used to encourage transparency, public reporting and/or public participation through your anti-corruption programmes (both for the public and private sectors).

Concerning the encouragement of public reporting, as a reaction to 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* gaining a direct vertical effect since the transposition period passed on December 17, 2021, we have taken several actions to address this issue. One of them is establishing the so-called external reporting channel which is operated by the Ministry of Justice. Anyone who wishes to report a breach of law that is covered by the material scope of the above-mentioned Directive, can do so through this channel. The reporting person (a whistleblower) gains protection against retaliation through such an action. The Ministry of Justice also started a website – oznamovatel.justice.cz, where the whistleblowers can find all the relevant information about reporting, the protection mechanism etc. The Ministry has also held a series of webinars and workshops where the public entities that are obliged to create internal reporting channels based on the direct effect of the Directive were informed of their duties and their inquiries were answered as well. The Ministry of Justice also continues to provide methodological support regarding the whistleblowers' protection to anyone who asks. The commitment on raising the awareness on whistleblower protection wasalso included in both previous and currently prepared national action plans of the Czech Republic within the Open Government Partnership. The implementation progress of the above-mentioned commitment was in a participative way gradually shared with the general public (mainly on-line through webpages dedicated to OGP) and at the meetings of the dedicated

working commissions of the Government Anti-Corruption Council that is one of the Government advisory bodies.

2(c) What was the impact of the measures described above (2a and 2b)?

As for the establishment of the external reporting channel and the support the Ministry of Justice provides regarding this issue, since the December of 2021 the Ministry has received 11 reports, 3 of which turned out to be substantial and were forwarded to the public bodies responsible for investigation of the wrongdoings reported. Many of the public entities obliged to establish the internal reporting channels have managed to do so also thanks to guidance and help of the Ministry of Justice.

2(d) What challenges (if any) did you encounter in implementing the measures above (2a and 2b)?

The lack of financial resources has been a challenge mainly with regard to the technical parameters and available solutions of the external reporting channel.

Chapter 3: Using sanctions and incentives

Background: While effective sanctions for corruption offences are required under the United Nations Convention against Corruption, the Convention also recognizes the essential role of incentives that encourage and reward corporate self-reporting and preventive efforts.

Part A - Sanctions

3(a) Please describe (cite or summarize) good practices and/or examples of sanctions used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(a): Sanctions could, for example, include any of the following:

- Monetary sanctions for legal persons (companies) liable for the participation in an offence of corruption
- Incarceration or other criminal sanction of natural persons (individuals) who have committed an offence of corruption acting on behalf of a company
- Confiscation of proceeds of corruption for both companies and individuals who acted on their behalf
- Contract remedies and other means to communicate and enforce anti-corruption contractual provisions
- Suspension and/or debarment of contractual partners from government processes
- Denial of government benefits (fiscal or otherwise)
- Liability for damages and compensation of victims of corruption
- Reputational damages to hold wrongdoers publicly accountable
- Any other type of sanctions not listed above

- Suspension and/or debarment of contractual partners from government processes

The Public Procurement Act, in accordance with the transposition of Directive 2014/24/EU (the Procurement Directive), allows contracting authorities to exclude a participant from a procurement procedure if the participant has committed corruption.

Regarding suspension and/or debarment of contractual partners from government processes there is a provision (section 4b) of the Act on Conflict of Interests no. 159/2006 Coll. which prohibits participation in public procurement proceedings for such business companies, in which a public official mentioned in Section 2 (1) (c) of the Act on Conflict of Interests (i.e. cabinet member or direction of a central public administration office) or an entity controlled by them owns interest of at least 25 %. The contracting authority is obliged to exclude such business company from such public tender.

Act on Criminal Liability of Legal Entities and Proceedings Against them (Act. No 418/2011 Coll.) establishes the following types of Sentences and Protective Measures:

Section15
Types of Sentences and Protective Measures

(1) For criminal acts committed by a legal entity, only the following sentences can be imposed
a) dissolution of the legal entity,
b) confiscation of property,
c) monetary penalty,
d) confiscation of items,
e) prohibition to perform certain activity,

f) prohibition of keeping and breeding animals

g) prohibition to perform public contracts or to participate in public tenders,
h) prohibition to receive endowments (grants) and subsidies,
i) publication of a judgement.
(2) Protective measure of forfeiture of items can be imposed for criminal acts committed by a legal entity.
(3) Punishments and protective measures referred to in sub-section (1) and (2) can be imposed
to a legal entity separately or concurrently. However, it is not possible to impose a sentence of
monetary penalty concurrently to confiscation of property and a sentence of confiscation of items to forfeiture of the same items.

- Monetary sanctions for legal persons (companies) liable for the participation in an offence of corruption

  Criminal sanctions which may be imposed on a legal person for criminal offences are enumerated in Section 15 of the Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them. When determining the type and extent of the sanction, the court shall take into account the criteria listed in Section 14 of the Act; criteria applicable to natural persons according to Criminal Code shall apply in a subsidiary manner.

Assessing the property owned by a legal person will have its practical meaning when determining the extent of sanctions affecting the property of a legal person. As far as "impacts and effects of the sanction that can be anticipated to future activity of the legal person" are concerned, the court should try to anticipate whether it can be expected that a sanction imposed will have a positive impact on activity of a legal person (e.g. whether legal person adopts measures to prevent committing of any other criminal activity or measures to strengthen its control and supervisory apparatus etc.). It is also assessed what impact the penalty imposed will have on the legal person (i.e. whether it will be able to continue its activities) as well as impact on third persons (in particular, injured parties and creditors of legal persons but also employees, business partners, associates or customers).

This broad range of criteria designated for imposing of sanctions towards legal persons enables to impose such sanctions which are sufficiently proportionate, effective and dissuasive in given case.

Legal person may be imposed a sanction of monetary nature affecting the property of a legal person which include following types of sanctions: confiscation of property, monetary penalty and confiscation of items. Rules for imposition of these particular sanctions are described in Sections 17, 18 and 19 of the Act.

Besides that, it is also possible to impose protective measures on legal persons under the conditions stipulated by Criminal Code. By protective measure of forfeiture of items mainly dangerous things or other things used to commit criminal offences are being forfeited from the criminally responsible legal person or from other persons. Protective measure of forfeiture of a part of property may be imposed on legal person in case of certain criminal offences under the circumstance that legal person obtained or tried to obtain profit for itself or for another and the court believes that a certain part of its property is derived from crime given the fact the value of property acquired or transferred by the legal person to another person or to a trust fund within a period of no more than five year prior to commission of such criminal offense, in time of its commission or after its commission, is grossly disproportionate to the legally gained income of the legal person or it there are other matters of fact justifying such conclusion.

The aim of the Act No. 330/2020 Coll. (in force as of 1 October 2020) was to encourage an increase in the number of monetary penalties imposed (also in relation to legal persons) and to adjust the legal framework for the imposition and enforcement of monetary penalties accordingly. In this regard, this amendment among others removed some of the harshness of this Act by introducing new rules for extinction of the effects of convictions of legal persons which contributes to successful enforcement of monetary penalties imposed on legal persons.

Act No. 418/2011 Coll., on Criminal Liability of Legal Persons and Proceedings against them

Section 14 - Proportionality of Punishment and Protective Measure

(1) While deciding on type and terms of punishment the court will consider the nature and seriousness of the criminal act, situation (circumstances) of the legal entity, including its actual activities and property owned; in doing so the court will consider whether the legal

entity conducts activity in public interest, has strategic or hardly replaceable significance for national economy, defence or security. Furthermore the court considers the activities of the legal entity following the commitment of the criminal act, above all its effective effort to restore damage or eliminate other harmful effects of the criminal act. Impacts and effects of the punishment that can be anticipated to future activity of the legal entity are to be taken into account as well.

(2) A protective measure cannot be imposed to a legal entity, if it is not proportionate to the nature and seriousness of the criminal act as well as to the situation of the legal entity.

(3) While imposing criminal sanctions the court will also consider the consequences the imposition might have for third parties, namely legally protected interests of injured parties and creditors whose claims towards the criminally liable legal entity arose in good faith and do not originate in or are not connected to the criminal act of the legal entity.

Section 15 - Types of Sentences and Protective Measures

(1) For criminal acts committed by a legal entity, only the following sentences can be imposed

a) dissolution of the legal entity,

b) confiscation of property,

c) monetary penalty,

d) confiscation of items,

e) prohibition to perform certain activity,

f) prohibition of keeping and breeding animals

g) prohibition to perform public contracts or to participate in public tenders,

h) prohibition to receive endowments (grants) and subsidies,

i) publication of a judgement.

(2) Protective measure of forfeiture of items can be imposed for criminal acts committed by a legal entity.

(3) Punishments and protective measures referred to in sub-section (1) and (2) can be imposed to a legal entity separately or concurrently. However, it is not possible to impose a sentence of monetary penalty concurrently to confiscation of property and a sentence of confiscation of items to forfeiture of the same items.

Section 17 - Confiscation of Property

(1) The court may impose the sentence of confiscation of property, if the legal entity is convicted of an extremely serious criminal act, by means of which the legal entity acquired or tried to acquire property benefit for itself or for another.

(2) Without meeting the conditions stipulated in sub-section (1) the court may impose the sentence of confiscation of property only in cases where the Criminal Code allows imposition of such a sentence for the committed criminal act.

(3) Confiscation of property affects the whole property of a legal entity or the part designated by the court.

(4) If the legal entity is a bank or foreign bank which branch operates in the territory of the Czech Republic based on a banking licence granted by the Czech National bank or on the basis of joint (unified) banking licence (European Banking Licence) according to another legal enactment, the court may impose the sentence of confiscation of property after an opinion of Czech National Bank on possibilities and consequences of its imposition has been delivered; the court considers such opinion. The first sentence will apply accordingly to insurance company, branch of an insurance company, reinsurance company, branch of a reinsurance company, pension fund, investment company, investment fund, securities dealer, branch of a securities dealer, savings and credit co-operative (bank), central securities depositary, electronic money institution, branch of electronic money payment institution, payment institution, operator of a settlement system and operator of markets in investment instruments (vehicles).

Section 18 - Monetary Penalty

(1) The court may impose a monetary penalty to a legal entity, if the legal entity is convinced of intentional criminal act or a criminal act committed by negligence. Imposition of the monetary penalty cannot affect the rights of the injured person.

(2) Daily rate is no less than 1000 CZK and no more than 2 000 000 CZK. While determining the amount of a daily rate, the court takes into account the property owned by the legal entity.

(3) Section 17 (4) will apply accordingly.

Section 19 - Confiscation of Items

The court may impose a sentence of confiscation of items, including confiscation of equivalent value, under the conditions stipulated in the Criminal Code.

Section 26 - Forfeiture of Items

The court may impose a protective measure of forfeiture of items to a legal entity, including forfeiture of equivalent value or files and devices, or instead of forfeiture items order modification of the item, removal of a specific device, labelling or otherwise altering or restricting disposition with the item under conditions set out in the Criminal Code.

Section 26a - Forfeiture of part of property

The court may impose a protective measure on a legal person by forfeiting of part of its property under the conditions set out in the Criminal Code.

In recent years, the Prosecutor General's Office has focused on the imposition of property sanctions, especially monetary penalties. Significant progress can be seen from the following table:

The total amount of monetary penalties in the years 2010 - 2021

Year	Natural persons	Legal entities
2010	137 611 070 CZK	---
2011	132 775 892 CZK	---
2012	137 333 507 CZK	---
2013	122 408 166 CZK	---
2014	161 344 520 CZK	525 000 CZK
2015	146 390 224 CZK	742 000 CZK
2016	161 555 510 CZK	10 953 000 CZK
2017	260 342 554 CZK	2 615 000 CZK
2018	317 005 898 CZK	2 900 000 CZK
2019	436 083 324 CZK	9 235 000 CZK
2020	432 752 284 CZK	10 555 000 CZK
2021	607 989 836 CZK	28 549 000 CZK

In connection with the issue of monetary penalties, a significant increase in the number of monetary penalties imposed on convicted individuals and legal entities was again recorded in 2021. Overall, 24.5% of fines were imposed in 2021 (12,206 fines compared to 49,912 convicted natural and legal persons) and this is an increase of 2.8% compared to 2020. At the same time, this is a several-fold increase in the number of fines imposed compared to 2015, at the end of which the Supreme State Prosecutor's Office drew attention for the first time to unsatisfactory results in this area (the number of fines to the number of convicted persons reached 5.9% in 2015).

Overview of penalties imposed on legal entities in 2021:

- dissolution of the legal entity – 45 legal entities
- confiscation of property – 3 legal entities
- monetary penalty – 97 legal entities
- confiscation of items – 8 legal entities
- prohibition to perform certain activity – 91 legal entities
- prohibition to perform public contracts or to participate in public tenders – 1 legal entity
- prohibition to receive endowments (grants) and subsidies – 10 legal entities
- publication of a judgement – 8 legal entities

An overview of penalties of previous years can be obtained from reports on the activities of the public prosecutor's office, which are available here:

https://verejnazaloba.cz/nsz/cinnost-nejvyssiho-statniho-zastupitelstvi/zpravy-o-cinnosti/

- Incarceration or other criminal sanction of natural persons (individuals) who have committed an offence of corruption acting on behalf of a company

The Prosecutor General's Office does not have these statistical data. With regard to the shortness of the deadline for answering this questionnaire, it would not even be possible to collect data from the whole public prosecution service.

- Confiscation of proceeds of corruption for both companies and individuals who acted on their behalf

For the successful implementation of property criminal sanctions and the satisfaction of the legitimate property claims of injured entities, it is often necessary to ensure the future enforcement of the property penalty or claim of the injured party already during the preliminary proceedings. In total, in 2021, police authorities and public prosecutors secured property values in the amount of CZK 7.0 billion, which resulted in an increase in secured property compared to 2020 (in 2020, property was secured in criminal proceedings in the amount of 6.68 billion CZK and in 2019 it was assets in the amount of CZK 5.75 billion). In 2021, the ratio between the secured property and the overall damage also remained at a high level, reaching 32% (in the period 2004 - 2010, property was secured in criminal proceedings in an average annual amount of CZK 1.3 billion, with a ratio of total damage caused in an annual average of only 5.1%). The financial investigation that accompanies the criminal proceedings itself helps to reveal the often sophisticatedly hidden illegal profits and proceeds of crime. Property values secured in this way are returned to the injured parties during the criminal proceedings serves to enforce property sanctions imposed by the court (in the event that the reason for the security ceases to exist, the security is cancelled).

- Denial of government benefits (fiscal or otherwise)

The Public Procurement Act, in accordance with the transposition of Directive 2014/24/EU (the Procurement Directive), allows contracting authorities to exclude a participant from a procurement procedure if the participant has committed corruption.

- Liability for damages and compensation of victims of corruption

Czech criminal law standardly regulates the possibility of injured parties to claim compensation for damages or other harms in criminal proceedings. PGO has no information from the field of corruption crime that there are any major problems in this direction. Some injured parties object to the fact that their claim was not decided directly by the criminal court, but was referred to civil proceedings. At the same time, there have also been recorded cases (albeit isolated) that some entities (including public entities) do not want to quantify the damage that should have

occurred to them by committing a crime, with regard to a certain relationship with the perpetrator of the crime. However, the above is procedurally solvable and LEAs deal with it.

The Czech Republic does not provide for the definition of "victims of corruption". However, the Criminal Procedure Act provides a definition of an aggrieved person in its section 43 par. 1 as a person who suffered bodily harm, material damage, or non-material harm by a criminal offence, or at whose expense has the offender enriched himself by a criminal offense. This person has the position of one of the parties in the criminal proceedings, they can be also in the position of witnesses. Aggrieved person does not have to attend the criminal proceedings, it is only their right not duty, the aggrieved person may also waive their procedural rights. Aggrieved person is granted with certain rights in criminal proceedings for example the right to make proposals for additional evidence, the right to inspect files, the right to attend the trial and public session held on an appeal or on the approval of an agreement on the guilt and punishment, right to comment on the matter before the proceeding is concluded, the right to attend negotiations of an agreement on the guilt and punishment.

Also, an aggrieved person has the right to petition the court to impose an obligation on the defendant in the convicting judgment to compensate in monetary terms the damage or non-material harm caused by the commission of the criminal offence, or to surrender any unjust enrichment which the defendant obtained at the expense of the aggrieved person through the criminal offence In regards the compensation of damage or for the surrender of unjust enrichment the rights of the aggrieved person are transferable also to their statutory representative. The aggrieved person might petition directly the court orally or in writing or the public prosecutor or the police authority. At the latest, the petition must be filed at the trial before the commencement of evidentiary proceeding. The petition must clearly show on what grounds and in what amount is the claim for damage or non-material harm being exercised or on what grounds and to what extent is being exercised the claim for the surrender of unjust enrichment. The aggrieved person in obliged to prove the grounds and amount of damage, non-material harm or unjust enrichment.

The court awards damages in the convicting judgment. If the court acquits the defendant of the charges, they will always refer the aggrieved person with his/her claim for monetary compensation or non-material harm or for the surrender of unjust enrichment to proceedings in civil matters or to proceedings before another competent authority. In case of convicting judgment, the aggrieved person is also referred to civil proceedings or proceedings before another competent authority in case there are no ground for imposing an obligation to pay monetary compensation or non-material harm, or for the surrender of unjust enrichment on the basis of the results of evidentiary procedure, or if further evidence would be necessary for any decision on the obligation of compensation which would significantly delay the criminal proceedings. It is possible to refer the aggrieved person to civil proceedings only in a part of the claim (the part which e.g., requires further evidence) and to award damages in the rest of the claim. In this case the court in civil proceedings is only bound by the convicting judgment only to the extent that the crime has been committed and who has committed it and no longer by a decision on the damage.

Regarding the enforcement of compensation judgments, the aggrieved person has the opportunity to demand compensation from the convicted person immediately, and if he/she does not fulfil his/her obligation, the aggrieved party may initiate the execution proceedings.

The aggrieved person who has been granted a claim for damages in criminal proceedings or in civil proceedings may apply to Ministry of Justice to satisfy this claim from the proceeds of criminal property sanctions (such as punishment of confiscation of assets, pecuniary penalty, confiscation of an item, forfeiture of equivalent value as protective measure, etc.) if it was imposed on the offender by the court.

Under the civil law, if someone has suffered damage as a result of corruption he or she will be entitled to claim damages from the perpetrator.

Under Section 2910 of the Civil Code a tortfeasor who is at fault for breaching a statutory duty – corruption is also such a case –, thereby interfering with an absolute right of the victim, shall provide compensation to the victim for the harm caused. A tortfeasor also becomes obliged to provide compensation if he interferes with another right of the victim by a culpable breach of a statutory duty enacted to protect such a right.

If a tortfeasor causes damage to the victim by breaching a statutory duty, he is presumed to have caused the damage through negligence (Section 2911 of Civil Code).

Damage is compensated by the restoration to the original state. If this is not reasonably possible, or if so requested by the victim, damage is payable in money. Non-pecuniary harm is compensated by appropriate satisfaction. Satisfaction must be provided in money unless real and sufficiently effective satisfaction for the harm incurred can provide for satisfaction otherwise (Section 2951 of Civil Code).

The actual damage and what the victim lost (lost profit) is paid. If the actual damage consists in the creation of a debt, the victim has the right to be released from the debt or provided with compensation by the tortfeasor (Section 2952 of Civil Code).

Also Section 2998 of Civil Code might be relevant in these cases. It provides that if a party performed consciously to make the other party do something for a prohibited or completely impossible purpose, the former is not entitled to require that restitution of that performance be made. However, if a person wished to prevent an unlawful act by giving something to the person who wished to commit the act, the former may require restitution.

- Reputational damages to hold wrongdoers publicly accountable

Under Section 135 of Civil Code a legal person which has been affected by having its right to a name disputed or which has suffered harm due to unlawful interference with that right, or which is under threat of such harm, in particular by unauthorised use of the name, may claim that such unlawful interference be refrained from and its consequence remedied. A legal person enjoys the same protection against anyone who, without a lawful reason, interferes with its reputation or privacy, unless for artistic or scientific purposes or for print, radio, television or similar coverage; however, neither such an interference may be in conflict with the legitimate interests of the legal person.

Regarding this question, the Prosecutor General's Office registers the interest of legal entities in the expansion of quick alternative ways of ending criminal proceedings, which are motivated precisely by the effort to limit damage to the reputation (the most common ones are DPAs or NPAs, of course with appropriate property compensation for the state). The Prosecutor General's Office is open to these discussions.

- Any other type of sanctions not listed above

If it concerns legal entities, there is a clear preference for the use of property sanctions. In connection with the aforementioned criminal case of Metrostav, it is currently the subject of expert discussion whether and to what extent the penalty of prohibition to perform public contracts or to participate in public tenders is effective, taking into account the large social impacts of such a penalty for large companies (large employers), on the clients of such companies and on intervention in the specific part of business environment.

Securing claim of aggrieved person

If the aggrieved person suffered damage or non-material harm by the criminal offense or if the accused person gained unjust enrichment at his expense, the claim may be secured on the assets of the defendant up to the probable amount of damage or non-material harm, or up to the probable extent of unjust enrichment even before the court decided about the compensation in the final judgment. The securing is decided on by the court upon a motion of the public prosecutor or the aggrieved person, in pre-trial proceedings by the public prosecutor upon a motion of the aggrieved person. In pre-trial proceedings may the public prosecutor decide to secure the claim even without the motion of the aggrieved person, if it is required to protect his interests, especially if there is a risk of delay. In the resolution on securing the claim, the court or the public prosecutor will prohibit the accused person from transferring the assets referred to in the resolution.

3(b) What were the main challenges (if any) your country faced in enforcing these sanctions?

Regarding the above-mentioned prohibition in Section 4b of the Act on Conflict of Interests the main issue is the contracting authority's potential lack of knowledge concerning the ownership of the business company. If the company does not voluntarily disclose the fact that a public official owns interest of at least 25 %, the contracting authority has to do its own research on the topic.

3(c) What steps did you take to overcome those challenges (if any)?

Regarding the above-mentioned prohibition in Section 4b of the Act on Conflict of Interests there are registers which can significantly help the contracting authority reveal the ownership of a business company participating in public procurement proceedings. Such registers are mainly the Register of Beneficial Owners, the Business Register (also known as the Companies'

Register) and the Central Register of Declarations where public officials are obliged to submit their declarations of activities, assets, and obligations under the Act on Conflict of Interests.

Part B - Incentives

3(d) Please describe (cite or summarize) good practices and/or examples of incentives used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(d): Incentives could, for example, include any of the following:

- Penalty mitigation – encourages self-reporting of offences, credits companies' preventive efforts
- Procurement preference – rewards good practice through procurement preference
- Preferential access to benefits – rewards good practice with preferential access to government benefits and/or services
- Reputational benefits – encourages good practice through public recognition
- Whistle-blower protection and awards – encourages reporting of potential violations by individuals
- Any other types of incentives not listed above

The Office for the Protection of Competition (hereinafter referred to as "the Office") has a so-called Leniency programme, which is a common tool of competition authorities enabling reduction or even remission of fines for cartel participants in case of disclosing the existence of a cartel agreement or for their cooperation during the authorities' investigation by bringing evidence forward.
In accordance with the Leniency programme, the Office offers participants of cartel lenience, and, eventually, also the possibility to cancel the imposition of a fine. If an undertaking notifies of a cartel agreement and provides the Office with all available information and proof, it may avoid a sanction completely or at least achieve a significant decrease in the fine imposed. More information can be found on the website of the Office: https://www.uohs.cz/en/competition/antitrust/new-leniency-programme.html

- Penalty mitigation – encourages self-reporting of offences, credits companies' preventive efforts – NSZ, ÚOHS

The imposition of penalties (their type and extent) in **Czech criminal law** is subject to legal regulation in the Criminal Code and also in the Act on Criminal Liability of Legal Entities. As with natural persons, so also with legal persons, a number of factors are taken into account for the choice of the type and extent of punishment (especially Art. 39 and Art. 41 of CC and Art. 14 of ACLLE), and of course the legislation also allows for a certain mitigation of sanctions, if there are reasons for this provided by law.

Criminal Code:

Section 39
Determination of the Type and Extent of Punishment

(1) When determining the type and extent of the punishment, the court will take into account the nature and gravity of the criminal offense committed, of the personal, family, property and other relations of the offender and his previous way of life and the possibility of his personal

reform; furthermore, the offender's behavior after the act will also be taken into account, in particular their efforts to compensate any damage or mitigate any other detrimental effects of the act, will also take into account his attitude towards the crime in the criminal proceedings, whether he negotiated a plea agreement, pleaed his guilt or declared the decisive facts undisputed, and where the offender has been designated as a co-operating accused; moreover will be taken into consideration the extent to which the offender has contributed to the clarification of a felony committed by members of an organized group, in connection with an organized group or in favor of an organized criminal group. The court will also take account of the effects and consequences that may be expected from the punishment in terms of the offender's future life.

(2) The nature and gravity of a criminal offense is particularly determined by the importance of the protected interest affected by the act, by the method in which the act was committed and its consequences, the circumstances under which the act was committed, and by the offender himself, the extent of his culpability fault and motives, intentions or objectives.

(3) When determining the type and extent of the punishment, the court will take into account any mitigating and aggravating circumstances (Section 41 and 42), the time that has lapsed since the criminal offense was committed, any change in the situation, and the length of criminal proceeding should it take a disproportionately long time. When assessing the proportionality of the length of a criminal proceeding, the court will take into account the complexity of the case, the actions taken by the authorities involved in criminal proceedings, the importance of the criminal proceeding for the offender and his conduct as a result of which they may have contributed to delaying the criminal proceeding.

(4) A circumstance constituting a statutory characteristic of a criminal offense, including such circumstances that conditions imposition of a more severe punishment, cannot be regarded as a mitigating or aggravating circumstance. A circumstance justifying an extraordinary reduction of the extent of a sentence of imprisonment cannot be taken into account as a mitigating circumstance.

(5) An aggravating circumstance will be taken into consideration

a) where a more serious consequence is considered, including where the offender caused it out of negligence, except for cases in which the criminal law also requires intentional culpability,

b) where another fact is involved, including such facts which the offender did not know of, even though given the circumstances and his personal situation, he should or could have known about it, except when the Criminal Code requires the offender's knowledge of such a fact.

(6) When determining the type of punishment and its extent, the court will take into consideration

a) in the case of accomplices, the degree to which the activity of each accomplice contributed to the commission of the offense,

b) in the case of an organizer, instigator or assistant, the significance and nature of their participation in the commission of the offense,

c) in the case of preparation of an especially serious felony or an attempted offense, how close the offender's activity came to completing the offense, as well as the circumstances and grounds on which the crime was not completed.
(7) When determining the type of punishment and its extent, the court will consider whether the offender acquired or attempted to acquire profit; if it is possible with regard to offender's property and personal situation, the court will consider the amount of the profit and impose, wither as an individual sentence or in addition to another sentence, a punishment that is to affect offender's property, if it is not contrary to his property or personal relations (Section 66 – 72).

Art. 41

Mitigating Circumstances

The Court may consider following circumstances as mitigating, particularly when the offender:
a) committed the criminal offense for the first time and under the conditions not depending on him,
b) committed the criminal offense under distraction, out of compassion or by lack of life experiences,
c) committed the criminal offense under dependence or subordination,
d) committed the criminal offense under duress or compulsion,
e) committed the criminal offense under oppressive personal or family circumstances, which he did not cause himself,
f) committed the criminal offense in the age close to the age of juveniles,
g) committed the criminal offense by averting an attack or any other danger without fully meeting the conditions for necessary defense or extreme necessity or otherwise exceeding the limits of admissible risk or limits of other circumstance precluding the unlawfulness,
h) committed the criminal offense in legal error, which could be avoided,
i) caused lower damage or any other less harmful consequence by committing the criminal offense,
j) participated in elimination of the harmful consequences of the criminal offense or voluntarily compensated the caused damage, k) reported his criminal offense to the authorities,
l) assisted in clarification of his criminal activity or significantly contributed to clarification of a criminal offense committed by another,
m) contributed as a cooperative accused to clarification of criminal activity committed by the members of an organized group, in connection with an organized group or in benefit of an organized criminal group,
n) regretted sincerely the criminal offense,
o) led an upright life before committing the criminal offense.

Act on Criminal Liability of Legal Entities

Art. 14

Proportionality of Punishment and Protective Measure

(1) While deciding on type and terms of punishment the court will consider the nature and seriousness of the criminal act, situation (circumstances) of the legal entity, including its actual activities and property owned; in doing so the court will consider whether the legal entity conducts activity in public interest, has strategic or hardly replaceable significance for national

economy, defence or security. Furthermore the court considers the activities of the legal entity following the commitment of the criminal act, above all its effective effort to restore damage or eliminate other harmful effects of the criminal act. Impacts and effects of the punishment that can be anticipated to future activity of the legal entity are to be taken into account as well.
(2) A protective measure cannot be imposed to a legal entity, if it is not proportionate to the nature and seriousness of the criminal act as well as to the situation of the legal entity.
(3) While imposing criminal sanctions the court will also consider the consequences the imposition might have for third parties, namely legally protected interests of injured parties and creditors whose claims towards the criminally liable legal entity arose in good faith and do not originate in or are not connected to the criminal act of the legal entity.

The Criminal Code allows the negotiation of a plea agreement to be taken into account in the form of a reduced sentence in the following way. According to § 39, paragraph 1 of the Criminal Code, when determining the type of punishment and its amount, the fact that the accused has negotiated an agreement with the public prosecutor is also taken into account. If, due to the circumstances of the offender and the nature of the criminal activity committed by him, it can be considered that his correction can be achieved with a sentence of shorter duration, according to § 58, paragraph 3 of the Criminal Code, a prison **sentence below the lower limit of the criminal rate** can be negotiated in the agreement. It should be emphasized that the negotiation of an agreement does not establish a legal right to reduce the prison sentence below the lower limit of the criminal rate in the sense of § 58, paragraph 3 of the Criminal Code. This is an extraordinary procedure, which is bound to the fulfilment of other legal conditions mentioned in this provision, which are also subject to dictative interpretation. In the case of using an extraordinary reduction of the prison sentence, it is always necessary to observe the limits set out in § 58, paragraph 4 of the Criminal Code, below which the sentence cannot be negotiated or imposed. An extraordinary reduction of the sentence according to § 58 of the Criminal Code can only be applied in relation to a sentence of imprisonment, for other types of sentences it is therefore necessary to always respect the minimum rate established by law.

The Prosecutor General's Office is currently **preparing methodical material** that would give guidelines to prosecutors for negotiating plea agreements, including the conditions for mitigating sentences within the negotiated agreements. Methodical material is currently being discussed in the public prosecutor's office.

- Procurement preference – rewards good practice through procurement preference

Act No. 134/2016 Coll. on Public Procurement, in accordance with the transposition of the Procurement Directive, allows references to be taken into account for certain selected services (as specified in the procurement directive) in the evaluation (for persons with a significant impact on the performance of the public contract). Such a method seems to be quite effective for e.g. architectural services, or e.g. legal services, i.e. services with value-added professional requirements, or it allows contracting authorities in procedures not covered by the procurement directive.

3(e) What is the main impact of such incentives?

See above.

Part C - Additional measures

3(f) Please describe (cite or summarize) good practices and/or examples of any other additional measures used to strengthen business integrity and/or reduce corruption in the private sector in your country.

Guidance on 3(f): Additional measures could, for example, include any of the following:

- Integrity pacts – written agreements between government agencies and companies to strengthen integrity in public procurement, usually overseen by an independent monitor
- Collective action – collaborative initiatives that bring companies and other relevant stakeholders together to prevent and counter corruption and raise standards of business integrity
- Public sector reform – civil service and/or regulatory reforms that reduce the opportunities for corruption
- Public education – activities that raise public awareness of corruption and its harmful effects

- Integrity pacts – written agreements between government agencies and companies to strengthen integrity in public procurement, usually overseen by an independent monitor

The Ministry of Regional Development cooperates on the commitment "public involvement in monitoring public procurement together with Transparency International Czech Republic o.p.s. The subject of the cooperation is "The involvement of an independent monitor in the procurement procedure and the implementation of public procurement strengthens the anti-corruption resilience of public procurement. One of the tools is Integrity Pacts, whose wider use is hindered by low awareness of the tool among contracting authorities and the public. Through systematic public information, training or other educational and awareness-raising events, the general public will be informed about the possibilities, meaning and purpose of involvement in public procurement and implementation, thereby motivating the public to become involved".

- Public sector reform – civil service and/or regulatory reforms that reduce the opportunities for corruption
- Public education – activities that raise public awareness of corruption and its harmful effects

With regard to public sector and civil service regulatory framework that reduces the vulnerability of ministries and other central authorities with regard to corruption risks stemming also from the private sector there is the 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. The Framework Ministerial Internal Anti-Corruption Programme itself serves as the primary internal anti-corruption strategy. The

Framework Ministerial Internal Anti-Corruption Programme 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 that all follow the structure given by the framework document. At the same time, the programmes of ministries and their subordinate bodies and agencies are tailored to their individual needs and to the corruption risks they may face. The compliance of individual anti-corruption programmes with the Framework Ministerial Internal Anti-Corruption Programme is evaluated every two years by the ministries and authorities themselves. Subsequently a summary report is published by the Ministry of Justice. The Framework Ministerial Internal Anti-Corruption Programme is updated either on the basis of the evaluation findings or sooner if the circumstances (e.g. new relevant legislation) demand it. The appropriate changes are subsequently approved 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 the Interministerial Anti-Corruption Coordination Group serves as a coordination body where all ministries and other central administrative authorities can exchange their views and best practice with regards to their internal anti-corruption measures and strategies. This Group discusses individual aspect of Framework Ministerial Internal Anti-Corruption Programme, its strong and weak points, methodological issues and also possible ways of updating and enhancing it. This working group is run and presided by the Ministry of Justice.

With regard to public education and awareness raising the Ministry of Justice provides financial resources through the subvention programme focused on prevention of corruption behaviour with the allocation of approx. 204 000 EUR. Within this programme the supported NGOs also perform educational and awareness raising activities targeted on students in schools within their citizen education curricula and also on general public. These awareness and education activities also complement government efforts with regards to whistleblowers.

Additional information

Is there any other information that you wish to share which has not been addressed by the previous questions?