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**Executive summary**

**Note by the Secretariat**

**Addendum**

Contents

	<i>Page</i>
II. Executive summary .....	2
Czechia .....	2

\* [CAC/COSP/IRG/2019/1](#).



## II. Executive summary

### Czechia

#### 1. Introduction: overview of the legal and institutional framework of Czechia in the context of implementation of the United Nations Convention against Corruption

Czechia signed the Convention on 22 April 2005 and deposited its instrument of ratification with the Secretary-General on 29 November 2013. The Convention has entered into force for Czechia on 29 December 2013. Article 10 of the Constitution states that ratified international conventions form an integral part of domestic law and override any other contrary provision of domestic law.

Czechia is a parliamentary republic. Parliament is bicameral and consists of the Senate and the Chamber of Deputies. The President is elected directly by popular vote. The executive power is exercised by the Government, led by the Prime Minister. The Government is accountable to the Chamber of Deputies and must have the support of its majority.

The legal system of Czechia is based on civil law.

The anti-corruption legal framework in Czechia includes the Criminal Code (CC), the Code of Criminal Procedure (CCP), the Act on Criminal Liability of Legal Persons and Proceedings against them (ACLLP) and the Act on International Judicial Cooperation in Criminal Matters (Act No. 104/2013).

Czechia is a member of the European Union, the Organization for Economic Cooperation and Development (OECD), the Council of Europe's Group of States against Corruption (GRECO) and the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL).

#### 2. Chapter III: criminalization and law enforcement

##### 2.1. Observations on the implementation of the articles under review

###### *Bribery and trading in influence (arts. 15, 16, 18 and 21)*

Sections 331 and 332 CC criminalize active and passive bribery in connection with "procuring affairs in the general interest" or "business activities", and cover both public and private sectors. The involvement of a public official, as defined in sections 127 and 334, constitutes an aggravated offence. While the definition is broad, certain positions within the public sector (e.g., secretaries, interns and spokespersons) are not covered.

The elements of "promise", "offer", "giving", "solicitation" and "acceptance" are covered. Paragraph 1, section 334 CC refers to "bribe" and defines it broadly as an undue advantage covering both material and immaterial advantages. Small gifts (less than 300 Czech koruna or approximately \$14) and courtesy gifts are acceptable (sect. 77/j Civil Service Act and art. 9 of the Regulation of the Director General for the Civil Service on the Code of Ethics for Civil Servants). While third-party benefits are covered by both active and passive bribery provisions, the indirect bribery is only explicitly included in the provision on passive bribery. However, at the time of review, Czechia was in the process of amending section 332 to rectify this. Both acts and omissions are covered (sects. 112, 331 and 332).

Bribery provisions are applicable to foreign public officials and officials of international organizations (sects. 331–334). However, persons authorized by an international organization to act on its behalf are not explicitly covered. Trading in influence is criminalized by section 333 on "indirect corruption", but the provision does not address the indirect form and third-party benefits. Both of these deficiencies, however, are planned to be rectified by the aforementioned amendment.

*Money-laundering, concealment (arts. 23 and 24)*

Money-laundering is criminalized (sects. 216 and 217 CC). While the provision explicitly covers only concealment of the origin of proceeds of crime, this term is interpreted broadly and includes conversion, transfer, acquisition, possession and use. Sections 214 and 215 (on participation) cover the transfer and use of proceeds of crime, and section 366 (on favouritism) targets those who assist offenders to evade prosecution. Provisions on preparation (sect. 20 CC), attempt (sect. 21 CC), accomplice (sect. 23 CC) and accessory (sect. 24 CC) also apply.

Sections 214–217 adopt an all-crimes approach and cover all Convention offences as predicate offences, including those committed in Czechia or abroad. Dual criminality is required.

Self-laundering is criminalized for some behaviour (concealment or transfer), but not for the use of proceeds as this would be in conflict with the Czech Charter of Basic Human Rights and Freedoms and the principle of double jeopardy.

Concealment of proceeds of crime is covered by sections 214 and 215 CC, on participation.

*Embezzlement, abuse of functions and illicit enrichment (arts. 17, 19, 20 and 22)*

Embezzlement is criminalized through CC provisions on embezzlement, breach of duty in administration of property of another and unauthorized use of an item of another (sects. 206, 207, 220 and 221). The provisions do not distinguish between the private and public sectors, but only apply to cases of “non-insignificant damage”, which amounts to at least 5,000 Czech koruna (approximately \$230).

Abuse of functions is criminalized in section 329 CC.

Czechia has considered criminalizing illicit enrichment, but has not implemented the offence, owing to constitutional limits.

*Obstruction of justice (art. 25)*

Several CC provisions relate to obstruction of justice, namely those on blackmail (sect. 175), violence against public authority (sect. 323), threatening with the aim of affecting public authority (sect. 324), violence against a public official (sect. 325), threatening with the aim of affecting a public official (sect. 326), interference in the independence of courts (sect. 335) and false testimony and false expert opinion (sect. 346). Corrupt practices aimed at inducing false testimony or production of evidence are not covered where the witness, in the end, refuses to participate. However, it is expected that they will be addressed by a new criminal offence on “obstruction of justice”, which will be created by the aforementioned amendment.

*Liability of legal persons (art. 26)*

Criminal liability of legal persons is established through the Act on Criminal Liability of Legal Persons and Proceedings against Them. Section 7 lists the crimes for which legal persons cannot be liable and corruption offences are not listed. However, section 248(2) CC, on breach of regulations on rules of economic competition, which may be linked to corruption, is listed. Sanctions available under the Act include dissolution of the legal person, confiscation or forfeiture of property, monetary punishment, prohibition of activity or to perform public contracts, debarment from public procurement, prohibition to receive grants and subsidies and publication of a judgment (sect. 15). Criminal liability of legal persons does not affect criminal liability of natural persons (sect. 9/3).

*Participation and attempt (art. 27)*

Several general CC provisions are relevant, namely provisions on preparation (sect. 20), attempt (sect. 21), accomplice (sect. 23) and participation (sect. 24, which covers the behaviour of organizers, instigators and accessories). Attempt is

criminalized for all CC offences (sect. 21). Preparation is criminalized for felonies that are particularly serious (sect. 20) and as such covers only certain corrupt behaviour (e.g., money-laundering).

*Prosecution, adjudication and sanctions; cooperation with law enforcement authorities (arts. 30 and 37)*

Types of criminal penalties available in Czechia and the conditions of their imposition are listed in CC (sects. 36–80 and 96–104). The penalties prescribed for corruption offences include a maximum prison sentence of two to 12 years and pecuniary and other penalties, including forfeiture, monetary penalty or disqualification. Czechia provides for protective measures as alternatives to criminal sanctions, including protective therapy and non-conviction-based confiscation (sects. 96–104).

Members of Parliament can be prosecuted only with the consent of their respective chamber (art. 27(4) and (5) Constitution). The President cannot be prosecuted for any offence committed during his tenure, but the Senate may file a constitutional action against him for high treason or gross violation of the Constitution (art. 65 of the Constitution). The consent of the President must be given for the prosecution of judges. Other public officials do not enjoy any immunities or privileges.

Prosecution of offences is initiated ex officio based on the principle of legality (sect. 2(1)(3)(4) CCP). The CCP lists exceptional cases in which the prosecutor must (sect. 172(1), e.g., in the case of lack of evidence or insanity of the accused) or may (sect. 172(2), e.g., elimination of harmful consequences by other means) terminate the criminal prosecution. Such decisions are monitored and may be quashed by the General Prosecutor's Office (art. 174a CCP). In addition, a system of internal approbations of decisions by superior prosecutors is in place. The court may also terminate the criminal prosecution in certain circumstances (sect. 223 CCP).

Release pending trial is regulated (sect. 73 CCP) and Czechia has also introduced the replacement of custody by electro-monitoring. Bail in corruption cases is possible (sect. 73a CCP). The presence of the defendant in criminal proceedings is ensured through the provision on summons and compelled appearance (sect. 90 CCP) and arrest warrant (sect. 69). Early release is regulated (sects. 88 and 89 CCP).

Measures relating to the suspension of accused public officials are covered by the Act on Civil Service (ACS, sect. 48), the Act on the Courts, Judges and Lay Judges (ACJLJ, sects. 100 and 101), the Public Prosecutor's Office Act (PPOA, sect. 22), the Act on the Service Status of Members of the Police Forces (ASSMPF, sect. 40) and the Act concerning Services Relations of Members of the National Security Corps (ASRMNSC, sect. 21). Reassignment is not possible. Employment of these officials is terminated when they are convicted of a crime (sect. 74 ACS, sect. 94 ACJLJ, sect. 21 PPOA and sects. 42 and 100 ASSMPF).

Persons convicted of corruption can be disqualified (sect. 73 CC). This provision applies to public officials and employees of state enterprises, among others. However, this penalty, in principle, cannot be imposed separately and must follow another type of punishment envisaged for a criminal offence (sects. 53 and 73 CC). The prosecutor may refer a case to a competent disciplinary body or other authority for action (sects. 159a, 171 and 222 CCP). Disciplinary actions against public officials are regulated in ACS (sects. 87–89), ACJLJ (sects. 86–88), PPOA (sects. 27–30), ASSMPF (sects. 50 and 51) and ASRMNSC (sects. 27 and 28). Disciplinary proceedings are normally suspended during the course of ongoing criminal proceedings.

Reintegration of offenders is regulated through sections 49–57, 81–86, 88–91, 105 and 106 CC, the Act on Serving the Punishment of Imprisonment, the Decree on Imprisonment and the Act on Probation and Mediation Service. In October 2017, Czechia approved the concept of developing a probation and mediation project until 2025, aimed at better reintegration of convicted persons into society.

In determining the type and severity of the punishment, the courts of Czechia take into consideration factors including the defendant's level of cooperation with the authorities and the contribution to the clarification of a crime committed (sect. 39(1) CC), as well as mitigating and aggravating circumstances (sects. 41 and 42 CC). A cooperating accused (as defined in sect. 178a CCP) may be in certain circumstances given a mitigated punishment (sects. 39/3, 41/(1)(m) and 58 CC) or freed from any form of punishment (sect. 46 CC), provided that prescribed conditions are met (e.g., the crime committed is less serious than the crime to the clarification of which the accused contributed or the accused did not act as an organizer or an accessory (sect. 46 CC and sect. 178a CCP)). However, courts are not bound by agreements between prosecutors and cooperating defendants, which may weaken the concept. Plea bargaining is possible for less serious crimes (sects. 175a and 175b CCP). For certain crimes, including the promise of a bribe, the police or prosecutor may temporarily defer criminal prosecution for cooperating defendants (sect. 159c CCP).

*Protection of witnesses and reporting persons (arts. 32 and 33)*

The Act on the Special Protection of Witnesses and Other Persons in Connection with Criminal Proceedings (ASPW) provides for the protection of “endangered persons”, and witnesses and experts are covered by the Act. Measures available include personal protection, relocation or concealment of identity (sect. 3). Relocation to other countries is possible on the basis of international treaties on police cooperation. In addition, the CCP includes several evidentiary rules aimed at protection of victims, witnesses and experts (sect. 55 on confidentiality and anonymity, sect. 183a on presenting evidence outside of courtroom or by means of videoconference). Victims have a right to make oral or written declarations at any stage of the criminal proceedings (sect. 43 CCP). The Act on Victims of the Crime regulates the rights of victims.

No special legislation is in place to protect reporting persons and Czechia referred to the provisions of the ASPW and anti-discrimination provisions of the Labour Code (sects. 16 and 17) as relevant. A new regulation was adopted in 2015, which, among others, stipulated that civil servants reporting a crime cannot be punished or discriminated and created a post of “investigators” within public bodies responsible for investigating claims received and advising reporting persons. The Labour Code provides for a general protection of employees that report wrongdoings (sect. 7).

*Freezing, seizing and confiscation; bank secrecy (arts. 31 and 40)*

The CC provides for both forfeiture of proceeds of crime and instrumentalities, including value-based (sects. 70 and 71) and non-conviction-based (sects. 101 and 102) confiscation.

Identification, tracing and freezing of assets are regulated (sects. 78–79g CCP).

Czechia has an asset management system in place through a dedicated Act on Seizure of Property and Assets in Criminal Proceedings (ASPACP). ASPACP provides for various categories of managers of seized property, including courts, the Office for Government Representation in Property Affairs and court-appointed bailiffs (sect. 9). Manager rights and obligations are set out (sects. 8a and 10). The sale of seized property in certain circumstances is allowed (sect. 12).

While the CC does not explicitly call for confiscation of proceeds of crime that are transformed, converted into or intermingled with other property, the authorities of Czechia reported that CC sections 70/2b and 101/2b would cover these proceeds, and provisions on value-based confiscation are also applicable. As for benefits derived from the crime, these are considered “the fruit” of or an “accessory” to a thing under the Civil Code (sects. 491 and 510–513) and as such would be liable to the same confiscation measures.

There is a general duty set out in the CCP to respond to information requests from law enforcement authorities (sect. 8), and institutions must provide them with financial or other requested records (sect. 8 CCP). The CC establishes as a crime a failure to report a criminal offence to relevant authorities (sect. 368).

The 2017 CC amendment has introduced the possibility of extended confiscation in case the person convicted for certain criminal offences cannot demonstrate the lawful origin of his property in situations where there is gross disproportion between the value of his property and his legal income (sect. 102(a)). However, the convicted person cannot be forced to do so and authorities must gather their own evidence (sect. 102a CC). The Civil Code protects the rights of bona fide third parties (sects. 1100 and 1109–1113).

The prosecutor or the presiding judge may request information that is subject to bank secrecy (sect. 8 CCP). As of January 2018, a new register of all bank accounts has been established.

#### *Statute of limitations; criminal record (arts. 29 and 41)*

The length of the statute of limitations for corruption offences varies between three and 15 years (sects. 34 and 35 CC). It starts to run from the moment when the effect of the offence occurred or upon the completion of the conduct (sect. 34/2). For accessories, it starts to run at the moment of completion of the act of the main offender (sect. 34/2). The statute of limitations can be suspended (sect. 34/4) or interrupted (sect. 34/3).

Previous criminal convictions, including those in other States, are considered an aggravating circumstance (sect. 42p CC). However, criminal convictions within the European Union have the same legal effect as national convictions (sect. 11, para. 2 CC).

#### *Jurisdiction (art. 42)*

The CC of Czechia establishes territorial jurisdiction (sect. 4), jurisdiction aboard the aircraft and ships of Czechia (sect. 5), passive personality jurisdiction (sect. 7/2) and active personality jurisdiction (sect. 6). Preparatory acts to money-laundering fall under the principle of territoriality (sect. 4/3). Czechia establishes jurisdiction over offences when the offender is present in its territory and it does not extradite him or her (sect. 8). In line with the regulations of the European Union, Czechia has a duty to consult with other European Union member States on ongoing investigations and prosecutions (sects. 257–260 of the Act on International Judicial Cooperation in Criminal Matters).

#### *Consequences of acts of corruption; compensation for damage (arts. 34 and 35)*

A juridical act is invalid if it is contrary to good morals or contrary to a statute (sect. 580 Civil Code). In addition, a contract can be annulled or rescinded or a remedial action can be taken if an act had involved corruption per section 588.

Compensation for damage can be claimed on the basis of the provisions of the Civil Code (sects. 2909–2910) and the Act on Responsibility for Damage Caused during Execution of Public Authority by Decision of Improper Execution of Official Duties. In addition, a civil action can directly be initiated within criminal proceedings (sects. 43–47 CCP).

#### *Specialized authorities and inter-agency coordination (arts. 36, 38 and 39)*

Police, prosecutor's offices and criminal courts are the main bodies involved in the fight against corruption. At the Supreme Public Prosecutor's Office (SPPO) a special Department of Serious Economic and Financial Crime was created. At the police level, a new nationwide National Organized Crime Agency has been established playing a key role, among others, in high-level corruption cases.

Law enforcement authorities are obliged to assist each other in the execution of tasks under the CCP (sect. 7). Public authorities are required to respond to the requests from the law enforcement authorities and are obliged to notify them of facts indicating that a criminal offence has been committed (sect. 8(1) CCP).

Special agreements exist between national authorities concerning cooperation and information-sharing relating to corruption.

A broad range of training and capacity-building activities are provided to practitioners involved in corruption cases. In addition, the extranet platform assists prosecutors by providing access to guidelines, previous cases and templates. The platform “electronic records of criminal proceedings” allows access to all case documentation for police officers and prosecutors. However, obstacles were reported in sharing information between agencies as well. For example, SPPO cannot access a database developed by the Office for the Protection of Competition of Czechia cost-free.

Financial institutions are required to report suspicious transactions to the Financial Analytical Unit. Section 368 CC provides for a general duty for anyone to report a crime committed that they have become aware of. The whistle-blower protection system of Czechia is decentralized and each public body establishes its own reporting lines and hotlines.

## 2.2. Successes and good practices

- The provision in section 79g CC (seizure of equivalent value) (art. 31.2)
- The establishment of the national bank register (arts. 31.7 and 40)
- The introduction of extended confiscation procedure per section 102(a) of the Criminal Code can be regarded as a good practice conducive to the fight against corruption (art. 31.8)
- Provision of innovative and practical training activities, including case studies, to prosecutors and police officers (art. 36)
- Development of online platforms and databases (such as the extranet, ELVIZ or the “electronic criminal proceedings”) aimed at increasing knowledge and expertise of prosecutors and police officers (art. 36)

## 2.3. Challenges in implementation

- Broaden the definition of public officials to cover persons who have ancillary and not necessarily only decision-making powers (arts. 2(a) and 15)
- Consider introducing a system through which public officials record gifts received (art. 15)
- Amend the active bribery provision to explicitly cover its indirect form (art. 15(a))
- Ensure that the definition of foreign public officials in section 334 CC covers also persons authorized by an international organization to act on its behalf (arts. 2(c) and 16)
- Remove the threshold of 5,000 Czech koruna in section 206 CC on embezzlement (art. 17)
- Consider explicitly covering the indirect form of trading in influence in section 333 CC (art. 18)
- Amend section 216 CC on money-laundering to explicitly and comprehensively cover all forms of money-laundering in order to ensure legal certainty (art. 23(1))
- Take measures to explicitly criminalize corrupt behaviour to induce false testimony or to interfere in the giving of testimony or the production of evidence (art. 25(a))

- Consider removing section 248/2 CC from the list of offences for which legal persons cannot be held liable (art. 26)
- Consider calculating the statute of limitations from the time of discovery of an offence (art. 29)
- Continue to ensure a balance between immunities of members of Parliament, senators and judges and the possibility of effectively investigating and prosecuting offences committed by them (art. 30(2))
- Continue to ensure that the discretionary legal powers relating to the prosecution of persons for the Convention offences are exercised in accordance with article 30(3)
- Given the lack of examples of implementation, continue to ensure that proceeds of crime that are transformed, converted into or intermingled with other property, as well as benefits derived from such proceeds of crime, are liable to the confiscation measures set out in the Criminal Code, including by considering more clearly regulating these elements in the Criminal Code (art. 31(4)–(6))
- Czechia may want to consider additionally providing measures protecting the rights of bona fide third parties in confiscation proceedings in relevant criminal legislation (art. 31(9))
- Continue the efforts to strengthen measures to provide protection of reporting persons against unjustified treatment and retaliation (art. 33)
- Ensure the prosecutorial independence, including through the adoption of clear rules on the removal of the Prosecutor General, and provide the prosecutor's offices with sufficient resources to carry out their tasks (art. 36)
- Consider providing additional resources for joint anti-corruption training activities of police officers and prosecutors (art. 36)
- Consider strengthening the protection of cooperating defendants and strengthen the measures allowing for mitigated punishment (art. 37)
- Consider entering into agreements or arrangements in accordance with article 37(5)
- Continue encouraging the cooperation between national authorities, including through removing obstacles to information-sharing (art. 38)
- Consider taking additional measures to encourage the reporting of corruption by citizens (art. 39(2))

#### **2.4. Technical assistance needs identified to improve implementation of the Convention**

- Sharing of good practices (art. 37)

### **3. Chapter IV: international cooperation**

Extradition and mutual legal assistance (MLA) in Czechia are mainly governed domestically by Act No. 104/2013, the provisions of the CCP apply *mutatis mutandis* to the provisions of the Act, where relevant issues are not addressed in the Act and where the application of CCP is not precluded by the Act (sect. 3).

The provisions of Chapter IV of the Convention can be applied directly by Czechia based on article 10 of the Constitution.

Czechia confirmed that it would use the Convention as a legal basis both for extradition, MLA and law enforcement cooperation, in the absence of a bilateral treaty.

Overall, Act No. 104/2013 provides a comprehensive regulation of extradition and MLA.

### 3.1. Observations on the implementation of the articles under review

*Extradition; transfer of sentenced persons; transfer of criminal proceedings (arts. 44, 45 and 47)*

Act No. 104/2013 stipulates in section 90(1) that extradition is possible where the underlying conduct constitutes an offence under the law of Czechia with the upper limit of imprisonment of at least one year.

Czechia allows accessory extradition per section 90(3) of the Act subject to reciprocity.

It is not clear whether all the Convention offences are included in all the existing bilateral treaties of Czechia.

Section 91(1)(f) of Act. No. 104/2013 prohibits extradition “if the act, which the extradition is requested for, is of an exclusively political or military nature”.

Czechia does not condition the provision of extradition on the existence of a bilateral treaty. In the absence of any other treaty basis for extradition, it would regard the Convention as a legal basis for cooperation.

Extradition requests are received by the Ministry of Justice (MOJ) that forwards them to the Public Prosecutor’s Offices to perform preliminary investigation. The requests are then submitted to the regional courts for consideration of their admissibility. The decisions of the regional courts can be appealed. Once the court concludes that the request is admissible, it is submitted to the Minister of Justice who takes the final decision on the extradition.

Section 89(1)(c) of the Act states that the MOJ will refuse an extradition request before the initiation of preliminary investigation if the person concerned by the extradition may not be apprehended because of a privilege or immunity.

Simplified extradition is possible only where the person sought consents to be extradited per section 96 of the Act.

Preliminary custody of a person whose extradition is sought is possible under section 94 of the Act.

A citizen of Czechia cannot be extradited without his consent (sect. 91 of the Act). There are no specific provisions in the applicable legislation requiring the application of *aut dedere aut judicare* principle.

The Act provides detailed rules on the enforcement of foreign sentences in sections 118–135.

Generic fair treatment guarantees are contained in section 2 of CCP but not in the Act.

Article 44(15) is implemented in section 91.1(p) of the Act.

Extradition shall be refused if a fiscal matter is involved per section 91.1(g) of the Act. However, in cases based on the Convention, the provisions of article 44(16) will apply directly and will pre-empt the application of section 91.1(g).

Per sections 9 and 98 of the Act, the authorities of Czechia would request the requesting State to provide additional information. However, there are no requirements to consult with the requesting State to provide it with ample opportunity to present its opinions before refusing extradition.

Czechia participates in a significant number of multilateral and bilateral instruments on extradition.

Sections 137 and 138 of the Act provide a legal framework for the transfer of sentenced persons. Czechia also concluded corresponding agreements with a number of jurisdictions.

The Act provides a detailed procedure for transferring of legal proceedings in its sections 105, 106, 112 and 113.

*Mutual legal assistance (art. 46)*

Czechia indicated that it would be willing to provide the widest measure of mutual legal assistance to other States parties of the Convention. Incoming requests are processed within 2 to 5 months. Czechia also developed comprehensive internal instructions and guidelines for the prosecutors and judges on MLA process.

There are no legal impediments to the provision of MLA in relation to the offences for which a legal person may be held liable.

Czechia indicated that it could provide all types of legal assistance, including those listed in subparagraphs 3 (a)–(i) of article 46 of the Convention, based on section 47(1) of the Act under the condition that there are corresponding criminal proceedings being conducted in the foreign State and only for the purposes of these proceedings.

The assistance regarding the freezing of assets is regulated in sections 78–79g CCP.

The reviewing experts pointed out that section 135 of the Act authorizes only sharing of confiscated property, while the Convention in its chapter V requires the return of assets. However, the authorities noted that based on section 135 the full return to the requested State is also possible.

Specific legislative provisions on proactive sharing of information are contained in section 56 of the Act.

Czechia maintains the confidentiality of information obtained in the context of MLA based on sections 6(1) and 6(2) of the Act and sections 8a–8d of CCP.

Grounds for refusal of MLA are stipulated in sections 5, 47 and 54 of the Act and do not include bank secrecy.

Dual criminality is required only for the provision of coercive measures (sect. 47(2) of the Act).

The legislative basis for temporary surrender is provided for in sections 69 and 70 of the Act, though the requirements of article 46(12) are not addressed.

Czechia has two central authorities for receiving MLA requests. The Supreme Public Prosecutor's Office, based in Brno, is the central authority for the requests relevant to legal assistance in the pretrial period, and the MOJ, based in Prague, is the central authority for requests relevant to legal assistance during a trial period.

The requests need to be submitted in written form in Czech, English or French, but can be also made orally in urgent cases.

The requirements to the content of requests are listed in section 41 of the Act.

Section 58 of the Act provides a detailed regulation on hearing by a videoconference in the context of MLA.

The principle of speciality of the use of information and evidence obtained in the context of MLA is provided in section 7 of the Act.

The conditions for the refusal of MLA are stipulated in sections 5 and 54 of the Act. Section 54(1)(c) states that the execution of legal assistance can be also prevented by another serious reason without further explanation.

Section 53 of the Act stipulates that the execution of MLA may be suspended if its execution is temporarily impossible with regard to specific circumstances of the case. The reviewing experts particularly noted that this condition would benefit from further clarification.

There are no requirements to consult when considering whether assistance may be granted subject to other terms in the Act.

Section 44 of the Act provides certain guarantees of safe conduct to a witness, expert or other person for the purposes of article 46(27). However, the given guarantees may

be interpreted as narrower than the requirements of the Convention. For example, incarceration of such a person is permissible if he fails to appear at the procedural action for which he was summoned (sect. 44(2)(d) of the Act).

The ordinary costs of executing a request shall be borne by Czechia (sect. 11 of the Act).

The conditions on the provision of information as stipulated in article 46(29) of the Convention are not specifically regulated in the Act, though they can be provided based on other legal acts.

Czechia participates in many multilateral and bilateral instruments on MLA.

*Law enforcement cooperation; joint investigations; special investigative techniques (arts. 48, 49 and 50)*

Czechia participates in a number of law enforcement, asset recovery and financial intelligence networks including the European Police Office (Europol), the Camden Asset Recovery Inter-Agency Network, the European Partners Against Corruption, the global asset recovery focal points network of the Stolen Asset Recovery (StAR) Initiative and the International Criminal Police Organization (INTERPOL), and the Egmont Group of Financial Intelligence Units. Within the European Union, the law enforcement agencies of Czechia cooperate through the European Anti-Fraud Office.

Czechia has extensive experience of using joint investigative teams, including for investigation of corruption offences. The activities of the teams are supervised by the Supreme Prosecutor's Office and are addressed in detail in sections 71–73 of Act No. 104/2013.

Provisions on the use of special investigative techniques are contained in section 65 of Act No. 104/2013, sections 86–88 and 158 of CCP. Section 158b(3) CCP stipulates that audio, video and other records obtained from special investigative techniques may be used as evidence. Czechia would be ready to conclude arrangements on the use of special investigative techniques internationally with other States parties when necessary and as part of the MLA process.

### **3.2. Successes and good practices**

- The possibility of enforcement of foreign sentences per the relevant procedures in sections 118–135 of Act No. 104/2013 (art. 44.13)
- Internal instructions and guidelines on MLA issued by the Supreme Prosecutor's Office and Ministry of Justice (art. 46)
- Specific legislative provision on proactive sharing of information contained in section 56 of Act No. 104/2013 (art. 46.4)
- The detailed regulation of the hearing by videoconference in section 58 of Act No. 104/2013 (art. 46.18)
- The detailed regulation of transfer of criminal proceedings in Act No. 104/2013 (art. 47)
- Active cooperation with law enforcement agencies of other States, including via membership in various practitioner networks (art. 48)
- The detailed regulation of joint investigations in sections 71–73 of Act No. 104/2013 (art. 49)

### **3.3. Challenges in implementation**

It is recommended that Czechia:

- Fully criminalizes all the mandatory offences under the Convention and considers criminalizing other offences to satisfy the dual criminality requirement applicable per article 90(1) of Act No. 104/2013 (art. 44 (1–2))

- Ensures that the Convention offences are not considered or identified as political and are included as extraditable offences in its extradition treaties with other States parties (art. 44(4))
- Takes into account the purposes of the Convention as stipulated in its article 1, and the requirements of paragraph 2 of article 30 of the Convention, when considering the application of section 89(1)(a) of Act No. 104/2013 to the requests based on the Convention (art. 44(8))
- Endeavours to further expedite extradition procedures and to simplify evidentiary requirements related in respect of any Convention offence (art. 44(9))
- Ensures that whenever a person sought in respect of a Convention offence is not extradited to another State party solely on the ground of his or her being a national of Czechia, the case is submitted to prosecution in line with article 44(11) of the Convention, including by considering the adoption of corresponding amendments to Act No. 104/2013
- May want to consider to specifically provide for fair treatment guarantees in Act No. 104/2013 (art. 44(14))
- Considers specifically stipulating in Act No. 104/2013 that extradition may not be refused when the underlying offence is a Convention offence involving fiscal matters (art. 44(16))
- Considers specifically stipulating in Act No. 104/2013 the requirements of paragraph 17 of article 44 of the Convention
- Ensures the full implementation of the requirements of Chapter V, while dealing with the recovery of assets based on the Convention (art. 46(3)(k))
- Specifically incorporates the requirements stipulated in art. 46 (12), (26) and (29) in its domestic legislation and ensures that they are followed in MLA processes with other States parties based on the Convention
- Explores the possibility of relaxing the strict application of the double criminality requirement in cases of offences covered by the Convention (art. 46(9))
- Ensures that the refusal of MLA requests of other States parties can be made in compliance with the requirements of article 46(21) of the Convention
- Ensures that the requirements of paragraph 24 of article 46 are followed in MLA processes with other States parties based on the Convention
- Ensures that the requirements of paragraphs 25 and 27 of article 46 are followed in MLA processes with other States parties based on the Convention

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