

INFORMATION PROVIDED BY THE CZECH REPUBLIC
TO THE UNODC NOTE CU/2018/78/DTA/CEB/CSS
CONCERNING VAST QUANTITIES OF ASSETS (UNCAC)

With respect to the above-mentioned UNODC note and to the resolution 7/2 entitled “Preventing and combating corruption in all its forms more effectively, including when it involves vast quantities of assets, based on a comprehensive and multidisciplinary approach, in accordance with the Convention,” the Czech Republic provides below its answers to the questions raised in the aforementioned note:

1. Experiences and best practices on criminal and civil measures and remedies to enhance international cooperation and asset recovery related to corruption, when it involves vast quantities of assets; and

The basic presumption of a just punishment (in view of both individual repression and general prevention) should be the principle that crime must not pay. The primary prerequisite for the confiscation of proceeds of crime is a successful search and seizure thereof. The confiscation of proceeds from crime is the most effective tool to reduce the operation of criminal structures.

The issue of search, seizure and confiscation of proceeds of crime was identified in the Czech Republic by the Supreme Public Prosecutor’s Office and the Police of the Czech Republic in 2011 as one of the main priorities of their operations and almost instantly we witnessed a significant increase of seized and confiscated assets. In 2012 an informal network of specialized public prosecutors was established in the public prosecution system on the level of Regional and High Public Prosecutor’s Offices. These prosecutors have been engaged in this type of work methodically and in the long term, and attend joint meetings, seminars and conferences together with the representatives of police authorities where they share both their positive as well as negative findings and experiences. The activities of this informal network of specialists are coordinated by the Supreme Public Prosecutor’s Office.

Statistical data indicate that the percentage of seized assets to the damage caused has oscillated around 40 % for the past several years which is a remarkably high number even in comparison to other states (at this point we need to emphasize that between the years 2004 and 2010 this ratio was in the interval from 3 % to 7 %). Saying that, successful results demand a very close cooperation of the police authorities with the Public Prosecutor’s Offices, since certain seizure institutes can only be applied by a public prosecutor (e.g. securing a claim of an injured party, securing an execution of a financial penalty or a penalty of confiscation of assets); the police authorities need either a previous or a subsequent consent of a public prosecutor in order to issue a decision on seizure (only a public prosecutor may, for instance, request banking information). A complaint is admissible against decisions on seizure which are decided upon by a court, while statistical data indicate that courts only very rarely repeal the seizure decisions.

We have had a very good experience with establishing a Central Register of Bank Accounts which became effective as of 1 January 2018. The Public Prosecutor’s Offices can now receive a response from this central register within a few hours after submitting their request.

As far as the administration of seized assets is concerned, the so-called CENZA Unit of the Ministry of the Interior has proven to be a very efficient specialized body for the administration of assets seized in criminal proceedings (established as of 1 January 2017). In case of seizure of motor vehicles and movable assets (in particular electronics), an immediate sale is preferred to maintain the value of these assets in time and to prevent their de-valuation in case of longer-lasting criminal proceedings which may occur despite due governance.

A key element in this area is also a high-quality and prompt international police and judicial cooperation. In practice we have had a good experience with the creation of joint investigation teams which allow for a quick exchange of information, findings and evidence. A nonetheless important factor is also that the operative activities of the police should be focused on the search and tracing of proceeds of crime. A creation of specialized police task forces focused on conducting financial investigations and financial analyses, while being methodically coordinated by the Police of the Czech Republic, specifically by the National Center against Organized Crime of the Criminal Police and Investigation Service (hereinafter the NCOZ SKPV), which also operates within the framework of international police cooperation, also appears to be very practical. The police authorities from different countries cooperate on the basis of mutual legal assistance. In cases where joint investigation teams are established with foreign partners we appreciate that exchange of information takes place directly between the involved police authorities or public prosecutors, and also the fact that coordination meetings regularly take place between the members of each joint investigation team.

As regards police cooperation, we have also had a very positive experience within both formal and informal networks (on behalf of the Police of the Czech Republic, the NCOZ SKPV is a member of a number of police cooperation networks specializing on individual issues), while the most frequently used platform for tracing of proceeds of crime is the ARO platform (“Council Decision no. 2007/845/JHA of 6 December 2007 concerning cooperation between Asset Recovery Offices of the Member States in the field of tracing and identification of proceeds from, or other property related to, crime“ imposed an obligation to EU member states to establish or designate an authority for tracing of proceeds from crime – Asset Recovery Office, in short ARO). The exchange of information concerning the tracing of assets within ARO is realized through secure channels. A big advantage is that information from the ARO platform are received from foreign partners very quickly and moreover some foreign AROs have access to the Central Register of Bank Accounts.

2. Best practices in the identification of legal and natural persons, involved in the establishment of corporate entities, including shell companies, trusts and other similar arrangements which may be abused to commit or conceal crimes of corruption or to hide, disguise or transfer their proceeds of corruption to countries that provide safety to the corrupt and/or their proceeds.

In the Czech Republic there is a Public Record (register) established on the basis of an Act No. 304/2013 Coll., on Public Records of Natural Persons and Legal Entities and on the Evidence of Trust Funds, which is publically accessible and contains large volumes of information. The access to such information is free of charge. There is a number of applications and websites available on the Internet that allow the searching of information in this record and also the searching for various connections between the inquired persons,

and there is also a possibility of rendering graphic illustrations. As such, one may easily identify who is currently the governing body of individual companies or which other companies have their registered office at the same address. The police have other analytical tools allowing to process and analyze this data in greater detail.

In the past several years there were further legislative measures taken in the Czech Republic which facilitate a faster and more efficient searching for important information on true owners of companies. These include in particular:

- Act no. 368/2016 Coll., amending the Act no. 253/Coll., on Certain Measures against Money Laundering and Terrorism Financing, as amended, and other associated Acts – including the amendment of the Act on Public Records introducing the “records of information on true owners”;
- Act no. 460/2016 Coll., amending the Act no. 89/2012 Coll., the Civil Code, and other associated Acts – including the amendment of the Act on Public Records introducing the “records of trust funds”;
- an Implementing Regulation of the Ministry of Justice of the Czech Republic no. 323/2013 Coll., amended by the Regulation no. 459/2017 Coll. – Section 14a et seq., stipulates the conditions for a remote access of public authorities.

As of 1 January 2018 the above stated amendment of the Act on Public Records came into force, a part of which is also the record of true owners of legal entities. Based on this Act, legal entities are obliged to file a petition for entering their true owners to the record of true owners of legal entities, specifically on the form drafted by the Ministry of Justice. The deadline for compliance is 1 year in case of entities recorded in the Business Register, and 3 years in other cases. The law stipulates two methods of identification of the true owner. A primary one is linked to the factual influence on the entity – the true owner is thus a natural person who has a de facto or legal possibility to directly or indirectly exercise a decisive influence on a legal entity or trust fund. In case it is impossible to identify who has and exercises a decisive influence, other aspects come into consideration such as an equity interest, a membership in a governing body or other involvement in the entity concerned. A true ownership by a natural person is documented by an organigram depicting the ownership structure, extracts from the Business Register, status etc.

The record of true owners is a non-public record. Nevertheless, information therefrom is available upon request to entities that prove their legitimate interest in relation to the prevention of an enumerative list of crimes, they may even receive a remote access; this applies to public authorities and obliged entities according to the Act no. 253/2008 Coll., on Certain Measures against Money Laundering and Terrorism Financing, in relation to performing identification and control (includes e.g. attorneys, banks). The right of access must be requested from the Ministry of Justice. Based on the above-referred Regulation, the authorities involved in criminal proceedings have the possibility to gain a remote access to these records.

The data on true owners are available to the following authorities:

- 1) to courts for the purposes of judicial proceedings,

- 2) to the authorities involved in criminal proceedings – the law enforcement authorities (for the purposes of judicial proceedings),
- 3) to the Public Prosecutor's Offices for the purposes of exercising a non-criminal competence,
- 4) to tax authorities for the purposes of exercising a tax administration; also to the Financial Analytical Unit, the Czech National Bank and other authorities performing activities according to the law or according to the Act on Implementing International Sanctions; to the Czech National Bank also for the purposes of performing supervision over entities operating on the financial market,
- 5) to intelligence agencies, the National Security Authority, the Ministry of the Interior, the Supreme Audit Office,
- 6) to an obliged entity according to the Act no. 253/2008 Coll., in relation to performing the identification and verification of clients,
- 7) to the provider of public financial subsidies; to a governing body, an intermediary entity, a certification authority and an audit authority for the purposes of exercising their competencies according to the Funds Regulation (European Regional Development Fund, European Social Fund, Cohesion Fund, Agriculture and Rural Development Fund and European Fisheries Fund); to a payment agency and a certification authority for the purposes of exercising their competence according to the Regulation on Financing, Management and Monitoring of the Common Agricultural Policy.