

Information requested from States parties in relation to strengthening the role of supreme audit institutions in the prevention of and fight against corruption (Resolution 8/13 of the Conference of the States Parties to the United Nations Convention against Corruption)

Czech Republic

1. Please describe (cite and summarize) the measures/steps that your country has taken, if any, (or is planning to take, together with the related time frame) to implement the relevant provision of the Convention and to promote the implementation of resolution 8/13.

In relation to article 9, paragraph 2 and measures/steps that have been taken, States parties may wish to consider including the following:

- Measures taken to promote, in accordance with the fundamental principles of the legal systems, the independence of the supreme audit institution;

The existence of the Supreme Audit Office of the Czech Republic has been enshrined in the Constitution of the Czech Republic, and in contrast to the past, its mandate is conceived in an entirely new way. The SAO performs its functions independently, being dependent neither on the legislative power (parliament) nor on the executive power (government). To the maximum degree, political influences on its work are eliminated. The SAO thus represents one of the specific elements of parliamentary democracy. The Constitution of the Czech Republic, besides legislative, executive and judicial power and other constitutional elements, defines the status of the SAO as an independent body in a separate chapter, with provisions that

- it shall audit the management of state property,
- its President and Vice-President shall be appointed by the President of the Republic upon the proposal of the Chamber of Deputies for a term of nine years,
- its status, powers and organizational structure shall be defined by law.

Also based on these principles is Act No. 166/1993 Coll. on the Supreme Audit Office, which came into effect as of July 1, 1993.

- Measures taken to implement policies for the effective operation of the supreme audit institutions in accordance with the principles and standards formulated by the International Organization of Supreme Audit Institutions,
 - with regard to ensuring the proper management of public finances and public property, and
 - in areas such as public procurement;

The SAO Czech Republic adopted the Audit Standards of the Supreme Audit Office Czech Republic, where the SAO Czech Republic accepted the principles of international standards stipulated by the International Organization of Supreme Audit Institutions (INTOSAI). The SAO Czech Republic accepted these standards in accordance with its position, authority

and competence in legal arrangement of the Czech Republic. The Audit Standards of the SAO Czech Republic were issued on 1st. April 2016.

The SAO Czech Republic audits the management of state property (including state public procurement), finances collected pursuant to the law for the benefit of legal persons (e.g. health insurance) and financial resources received from abroad (including EU funds). It expresses its opinion on the final state accounts and oversees the implementation of the state budget.

The SAO Czech Republic performs audits in line with the legal regulations, which encompass legality audits, financial audits, and performance audits. The SAO examines whether the activities audited comply with the legislation, reviews the substantive and formal accuracy of these activities and assesses whether they are effective, economical and efficient. The SAO's financial audits check whether the audited entities' financial statements give a true and fair view of the subject of the accounting in accordance with the legal regulations.

- Measures taken to promote transparency and accountability in the management of public finances, including through a system of accounting and auditing standards and related oversight;

The Ministry of Justice of the Czech Republic is responsible for the Ministerial Internal Anti-Corruption Program Framework which sets out the minimum framework for ministerial internal anti-corruption programs. Its application in ministries, individual central administrative authorities and in other public authorities ensures a standardized structure and form of the (ministerial) internal anti-corruption programs as the initial (ministerial) internal documents in the fight against corruption, corresponding to the current anti-corruption documents of the Government. This program contains and promotes also ground rules and standards of transparency including corruption risk assessment and management and control monitoring as well as procedures to follow when corruption is suspected. There are specifically mentioned transparency procedures including making information available to employees and to the public as well as publishing this information centrally in a format that allows it to be easily processed regarding the management of public funds. The aforementioned information includes budget information, information related to the selection of suppliers including public procurement, information related to the provision of subsidies or repayable financial instruments, information related to the management of state property, information on completed public contracts and information on advisers and advisory bodies.

The Ministerial Internal Anti-Corruption Program Framework is periodically evaluated and updated accordingly.

Furthermore, the Czech Republic is a member of the Open Government Partnership (OGP) initiative and the government has already approved its fifth Action plan for years 2020 – 2022. One of its objectives is to hold consultations on the possibility of creating a comprehensive publicly accessible open-data aggregated databases of providers and recipients of public funds from grants since there is none at the moment. This process would include participation of the members of the civil society and would ultimately promote transparency in the area of management of public funds.

The Government also periodically approves short term Anti-Corruption Action Plans (currently for 2021-22) that are based on the Government Anti-Corruption Conception (currently for 2018-2022). The Action Plans are public and contain a chapter solely dedicated to the effective use of the state property. For example, the current Action Plan includes educational activities provided for both contractors and suppliers, preparation of methodological documents, reformation of the work of the Office for the Protection of Competition in the area of supervision of public procurement and strengthening the powers of the Supreme Audit Office. Fulfilment of the obligations set out in the action plan is subject

to periodical evaluation that is subsequently presented to Government and published.

- Measures taken to promote examining, periodically or as necessary, the applicable financial and accounting frameworks and procedures, in order to determine their effectiveness in the fight against corruption;
- Measures taken to ensure that the audited entities respond to the findings of the audit reports, implement the recommendations of the supreme audit institutions and take appropriate corrective action, including criminal prosecution, to ensure the proper management of public affairs and public property;

Prior the initiation of criminal prosecution the police authority is obliged, based on their own findings, criminal reports and incentives from other persons and authorities, which may lead to conclusions on a suspicion that a criminal offence has been committed, to make all necessary investigations and take measures to reveal the facts indicating that a criminal offence has been committed and aimed towards identifying the offender. They are obligated to take the necessary measures for prevention of criminal activity. (Sec. 158 of the Act No. 141/1961 Coll., Criminal Procedure Code).

If the matters of facts ascertained and justified in the course of verification according to Section 158 indicate that a criminal offence was committed, and if the conclusion that it was committed by a certain person is sufficiently substantiated, then the police authority will immediately decide to initiate the criminal prosecution of this person as the accused (Sec. 160 Criminal Procedure Code).

- Measures taken to involve the supreme audit institutions and the internal audit units in the country reviews under the second cycle of the Mechanism for the Review of Implementation of the United Nations Convention against Corruption, in particular in relation to the review of the implementation of chapter II, on preventive measures, including in the country visits, where applicable;
- Measures taken to promote integrity and honesty through the application of codes of conduct in the supreme audit institutions and in particular measures for aligning these

codes of conduct with the Code of Ethics promulgated by the International Organization of Supreme Audit Institutions;

The SAO Czech Republic adopted the Code of Ethics based on the Code of Ethics promulgated by INTOSAI on 2nd October 2008.

- Measures to increase trust in supreme audit institutions, anti-corruption bodies and governmental and public institutions as a whole;

As mentioned above, the Czech Republic is a member of the Open Government Partnership initiative which supports its members to take steps and commitments towards greater openness and increased availability of information, transparency, the fight against corruption, increasing civic engagement and the use of new technologies for the benefit of civil society. The action plans, which are published, have so far included the commitments to: adopt a new law on the civil service ensuring depoliticisation, professionalization and stabilization of the state administration and its implementation in practice; streamlining the system of free access to information; making data and information available; implementation of quality management principles in public offices; open justice; disclosure of decisions of lower courts; raising awareness of whistleblowing and introducing open data on education.

The abovementioned Anti-Corruption Action Plan includes strategies in the area of transparency, independent executive, open access to information and an effective use of the state property. More specifically the Anti-Corruption Action Plan for Years 2021-2022 contains e.g. measures aimed at: adoption of codes of conduct for members of Parliament; finalization of the legislative process on the Bill on Lobbying and the Amendment to the Law on Free Access to Information, launching of the electronic Collection of Laws and the electronic legislative process; creation of a methodology for awarding public contracts and publishing relevant contracts within the state of emergency. All of the above is supposed to promote transparency and trust into public institutions also in the area of management of public funds.

The primary role in formulating proposals for anti-corruption measures that go beyond the national or international obligations of the Government plays the Government Anti-Corruption Council. The Council is composed of the representatives of relevant actors in the field of the fight against corruption (i.e. ministries, law enforcement authorities, municipalities and regions, professional chambers, CSOs, academia). The resolutions of the Council and the minutes of its meetings are published as well.

The SAO President presents all approved audit conclusions without delay to the Chamber of Deputies, the Senate, the Government of the Czech Republic, the Czech National Bank, and upon request to ministries concerned. They are also published in the SAO Bulletin. Audit protocols and other data pertaining to the approved audit conclusions are made available by the SAO, on request, to the Chamber of Deputies, its bodies and the Government of the Czech Republic. Hearing in parliament of audit reports is open for public. The follow up of these reports is often presented by audited body through media.

- Measures taken to build and strengthen relations between national legislatures and supreme audit institutions, and to encourage national legislatures to be aware of the findings of supreme audit institutions so that they may be taken into account when exercising parliamentary functions;

Every audit conclusion is sent to the Chairpersons of both Chambers of the Czech Parliament and to the Czech Prime Minister immediately after being approved. The SAO also sends these institutions its Annual Report, its opinion on the State closing account, and its opinion on the implementation of the State budget. The discussion on audit conclusions is the most fundamental aspect of cooperation between the Czech Parliament and the Czech Government

on the one hand and the SAO on the other hand. The SAO's key partner in the Parliament is the Committee on Budgetary Control of the Chamber of Deputies (CBC). This Committee discusses the SAO's audit conclusions, its Annual Report, the draft budget chapter of the SAO, its closing account, the SAO's opinion on the State closing account, and other materials.

Audit conclusions are usually discussed by the CBC in the presence of the SAO President or Vice-President, the SAO Member who managed the audit in question, and representatives of the auditees. For every audit conclusion, the CBC adopts a resolution acknowledging the audit conclusion in question. If an audit conclusion has already been discussed by the Czech Government, the CBC acknowledges both the audit conclusion in question and the opinion of the concerned Government department on the audit conclusion. Resolutions often state the identified shortcomings and at the same time instruct the Government, or the Ministry or Minister in question, to remedy the state of affairs or (if appropriate) to submit additional materials.

The Czech Government discusses all audit conclusions. Audit conclusions are sent to the Prime Minister, who passes them on to the relevant Ministry for an opinion. The audit conclusion and the Ministry's opinion are then discussed at a session of the Government in the presence of the SAO President. It adopted a resolution acknowledging each audit conclusion as well as the opinion or information provided by the Ministry concerned. In most cases, these resolutions had a section issuing instructions; there was often also a deadline by which the Minister concerned had to inform the Government about the implementation of remedial measures.

- Measures taken to strengthen the national, regional and international coordination and cooperation among the bodies involved in the prevention of and fight against corruption;

Besides the abovementioned bodies (OGP, Government Anti-Corruption Council, Ministry of Justice) and their work at the national and regional level, it is worth mentioning that the Czech Republic is a member and an active participant in several international anti-corruption (in a broader sense) organizations such as EPAC/EACN, GRECO, OECD, NEIWA and MONEYVAL and their expert groups and specialized bodies. The Ministry of Justice and its Anti-Corruption Unit (part of the Conflict of Interests and Anti-Corruption Department) is particularly engaged in discussions and fora about lobbying, whistleblowing, foreign bribery, integrity of public officials and open government. As for the latest activities that stand out, representatives of the Anti-Corruption Unit have been active participants at the meetings of the European Commission Expert Group on 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, sharing their experience as a first EU country that submitted transposing national legislation to the Parliament. The Anti-Corruption Unit also organized an Expert Meeting of Anti-Corruption Authorities for the V4 countries + Austria, Croatia and Slovenia in order to exchange good practice regarding the lobbying and whistleblowing legislature and practices.

- Measures taken to improve the exchange of information between anti-corruption bodies, supreme audit institutions and other governmental bodies operating in the field of combating corruption, including for consultative purposes;

Besides the information stated above, the Anti-Corruption Unit of the Ministry of Justice of the Czech Republic plays important role in the process of drafting legislative and conceptual documents. Its members check all of those for corruption risks (they conduct the so called Corruption Impact Assessment) as a part of the interdepartmental comment procedure. The issues being flagged are than a subject to discussion with other stakeholders.

There are also several working commissions of the Government Anti-Corruption Council and other thematic expert groups composed of the representatives of different stakeholders

(including so that focus on specific anti-corruption matters (lobbying, whistleblowing, money laundering, effective management of state property, transparency and open government, conflict of interests, anti-corruption training etc.) and share information and good practice.

If the SAO while auditing, discovers facts that indicate criminal offence or contravention of legal regulations, the SAO President notifies the appropriate law enforcement authorities.

- Measures taken to promote transparency including by publishing findings of both the anti-corruption bodies and the supreme audit institutions;

As mentioned above, the resolutions of the Government Council for the Coordination of the Fight against Corruption and the minutes of its meetings are published. Also the evaluations of various anti-corruption strategies, documents and plans are made public. The Conflict of Interests and Anti-Corruption Department of the Ministry of Justice of the Czech Republic also shares information about its work, anti-corruption activities at the Government level and on current events in the field of the fight against corruption on its website.

The SAO of the Czech Republic publishes his findings on regularly basis since SAO was established in 1993. The findings are published by SAO in audit reports. These reports are discussed with the Government and are available for general public as well. There is no need for change in respect of the Resolution 8/13.

2. Please provide examples of the implementation of those measures, including related court or other cases and available statistics.

In relation to article 9, paragraph 2 and examples of implementation of those measures, States parties may wish to consider including the following:

- Reports prepared by the supreme audit institutions, national legislatures of body or bodies that prevent corruption;

The abovementioned Anti-Corruption Action Plan contains a chapter solely dedicated to the effective use of the state property. Measures included therein consist for example of educational activities provided for both contractors and suppliers, preparation of methodological documents, reformation of the work of the Office for the Protection of Competition in the area of supervision of public procurement and of strengthening the powers of the SAO. Fulfilment of the obligations set out in the action plan is subject to periodical evaluation by the Ministry of Justice that is subsequently presented to the Government and published. The abovementioned yearly evaluation report is adopted and published in the 1.Q of the following year.

- External reports on the operation of the supreme audit institutions;

Information requested from States parties in relation to the role of national parliaments and other legislative bodies in preventing and combating corruption in all its forms (resolution 8/14 of the Conference of the States Parties to the United Nations Convention against Corruption)

3. Please describe (cite and summarize) the measures/steps your country has taken, if any, (or is planning to take, together with the related time frame) to promote the implementation of resolution 8/14.

The Conflict of Interests and Anti-Corruption Department of the Ministry of Justice of the Czech Republic provides the Office of the Chamber of Deputies with an ad hoc expert assistance in the field of the fight against corruption, e.g. regarding the preparation of the Code of Conduct of the Deputies.

In relation to measures/steps that have been taken to promote the implementation of resolution 8/14, States parties may wish to consider including the following:

- Measures taken to support the role and strengthen the capacity of parliaments and other legislative bodies to prevent and combat corruption, including in areas where they have a mandate for review or oversight;
- Measures taken by national parliaments or other legislative bodies to identify and implement any legislative or other measures that may be necessary to implement the Convention and address relevant recommendations emerging from the Mechanism for the Review of Implementation of the United Nations Convention against Corruption;
- Measures taken to strengthen interparliamentary dialogue and cooperation, including in coordination with the Inter-Parliamentary Union and similar organizations, as appropriate, to promote the exchange of good practices relating to legislation, review and oversight controls in the fight against corruption, and measures taken to consider implementing those good practices in domestic law;
- Measures taken to recognize the important role of parliaments and other legislative bodies in strengthening the implementation of the Convention, with a view to effectively preventing and combating corruption in all its forms and preventing money-laundering related to corruption by, inter alia, promoting transparency and accountability in the management of public finances, exercising budget oversight, criminalizing corruption offences and facilitating the asset recovery process, in accordance with chapter V of the Convention;

Concerning the criminalization of the corruption offences, the Act No. 40/2009 Coll., the Criminal Code, contains a.o. the following basic criminal offences regarding corruption:

Accepting bribes (Sec. 331):

(1) Whoever himself or through another person accepts a bribe or a promise of a bribe for himself or for another in relation to procuring matters of general interest, or whoever himself or through another person accepts a bribe or a promise of a bribe for himself or for another in relation to conducting own business or business of another person, will be sentenced to imprisonment for up to four years or to prohibition of certain activity.

(2) Whoever, under the circumstances referred to in sub-section (1) requests a bribe, will be sentenced to imprisonment for six months to five years.

(3) An offender will be sentenced to imprisonment for three to ten years or to confiscation of assets, if he

- a) commits the act referred to in sub-section (1) or (2) with the intention to gain substantial profit for himself or for another, or
- b) commits such an act as a public official.

(4) An offender will be sentenced to imprisonment for five to twelve years, if he

- a) commits the act referred to in sub-section (1) or (2) with the intention to gain extensive profit for himself or for another, or
- b) commits such an act as a public official with the intention to gain substantial profit for himself or for another.

Bribery (Sec. 332):

(1) Whoever himself or through another person provides, offers or promises a bribe to another person or for another person in relation to procuring matters of general interest, or whoever himself or through another person provides, offers or promises a bribe to another person or for another person in relation to conducting own business or business of another, will be sentenced to imprisonment for up to two years or to a pecuniary penalty.

(2) An offender will be sentenced to imprisonment for one year to six years, to confiscation of assets or to a pecuniary penalty, if he

- a) commits the act referred to in sub-section (1) with the intention to gain substantial profit for himself or for another, or to cause substantial damage to another person, or another especially serious consequence, or
- b) commits such an act against a public official.

Trading in influence (Sec. 333):

(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.

Sec. 334 includes common provisions which focus on definition of bribe, public official and procuring matters of general interest.

(1) A **bribe** will be understood as an unauthorized advantage consisting in direct asset enrichment or another profit that is to be given to the bribed person or with his consent to another person and to which he is not entitled.

(2) A **public official** according to Sections 331 to 333 will be understood, in addition to the persons referred to in Section 127, also as any person

- a) holding an office at the legislative body, judicial authority, or another public authority of a foreign state,
- b) holding an office or employed or working at an international judicial body,
- c) holding an office or employed or working at an international or multinational organization established by states or other subjects of international public law or within a body or institution thereof, or acting on behalf of such organization, or
- d) holding an office at an enterprising legal entity in which the Czech Republic or a foreign state has a decisive influence,

if performance of such functions, employment, or work is connected to a competence in procuring matters of general interest, and the criminal offense was committed in connection to such a competence.

(3) Procuring matters of general interest will be understood also as maintaining an obligation imposed by a legal regulation or assumed by contract, the purpose of which is to ensure that damage or unjust enrichment of parties to business relationships or persons acting on their behalf is avoided in such relationships.

Under Sec. 127 other public officials are defined:

- a) a judge,

- b) a public prosecutor,
- c) the president of the Czech Republic, a member of Parliament or a Senator of the Czech Republic, a member of the government or another person holding an office in another public body,
- d) a member of a city council or a responsible official of local authorities, public administration or another body of public authority,
- e) a member of the armed forces or a security corps or a police officer of the local police,
- f) a judicial executor when performing execution duties and duties arising from a assignment by a judge or a public prosecutor,
- g) a public notary when performing duties in inheritance proceedings as a judicial commissioner,
- h) a financial arbiter or their deputy,
- i) a natural person assigned by woodland guard, nature guard, hunting guard or fishing guard, if he fulfils the duties of a state or community and therein uses the assigned powers.

There are other criminal offences connected to corruption such as abuse of information and status in business relations (Sec. 255), machinations in commission of public contract and public tender (Sec. 257), machinations in public auction (Sec. 258), abuse of power of public official (Sec. 329), breach of duty in administration of property of others (Sec. 220) or machinations in insolvency proceedings (Sec. 226).

Facilitating the asset recovery process (under Article 53 b) and c) of UNCAC):

An aggrieved person is a person to who suffered bodily harm, material damage or non-material harm by a criminal offence, or those at whose expense has the offender enriched himself by a criminal offence (Sec. 43 of Act No. 141/1961 Coll., the Criminal Procedure Code). He/she is entitled to petition the court (the state prosecutor or police authority in pre-trial proceedings) to impose an obligation on the defendant in the convicting judgment to compensate in monetary terms the damage or non-material harm caused to the victim 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. The petition must be filed at the trial before the commencement of evidentiary proceeding at the latest.

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. (Sec. 47 of the Criminal Procedure Code)

Confiscation of assets

Under the provisions of the Criminal Code the court may impose on the convicted person (among others) these punishments – confiscation of assets, pecuniary penalty and confiscation of an item. The court may decide to impose also a protective measure (among others) forfeiture of an item, forfeiture of a portion of assets.

The confiscation of proceeds and instrumentalities of crime is possible in the context of any conviction for a criminal offense and apply to assets of any kind, whether corporeal or incorporeal, movable or immovable, and legal documents and instruments evidencing title to or interest in such assets. Confiscation measures can be applied against property held by third parties, the Czech legislation also permits for asset recovery efforts to extend to property held by or in the name of legal entities

- Measures taken, in the framework of States parties' preparations for the special session of the General Assembly against corruption, to be held in 2021, to address the strengthening of the role of parliaments and other legislative bodies in preventing

and combating corruption in all its forms, while duly respecting the independence of the legislative authorities;

- Any good practices in relation to the role of parliaments and other legislative bodies in preventing and combating corruption.

4. Please provide examples of the implementation of those measures, including related court or other cases and available statistics.

In relation to examples of implementation of those measures, States parties may wish to consider including the following:

- Reports by national parliaments or other legislative bodies on their efforts to implement the Convention;
- Reports on good practices in relation to the role of national parliaments or other legislative bodies in preventing and combating corruption, either by such legislative bodies or third-party observers.