

Transparency International on progress by the Czech Republic

The Czech Republic has scored 56/100 in the 2024 Transparency Corruption Perceptions Index (CPI), with the country now ranked 46th out of 180 countries. The Czech Republic's score is down by a single point on last year, highlighting ongoing concerns about public procurement processes, lobbying transparency and political influence over public institutions. Despite progress in anti-corruption efforts, bribery and related offences remain critical challenges for businesses and public institutions. The Czech branch of Transparency International

has pointed to continuing difficulties in long-term strategic planning in terms of the Czech Republic's introduction of new anti-corruption laws, with regular delays in the implementation of new EU obligations.

Below, we provide a short overview of the legal framework governing criminal liability for bribery in the Czech Republic, in which we highlight key aspects of national and international relevance, including cross-border compliance considerations.

1. Bribery and corruption

A bribe can be anything that constitutes an undue advantage. There is no set form or minimum value for an advantage to be considered a bribe, meaning there is no clear distinction between acts of bribery and lawful acts such as hospitality, gifts, travel expenses or meals.

Czech criminal law comprehensively covers all forms of bribery. Bribery can be active (offering, promising or giving a bribe) or passive (accepting or soliciting a bribe). Requesting a bribe (explicitly or implicitly) is also punishable. Therefore, all forms of bribery are punishable regardless of the number of intermediaries between the parties.

Bribery cases most frequently involve influencing public officials (in a broad sense), bid rigging, bribery in public tenders and trading in influence (bribery of third persons to exert influence over public officials).

Both public and private bribery are criminalised. While there is no clear definition as to what constitutes public bribery, public bribery is generally deemed to occur whenever an activity pertains to things of general interest, as decided by the courts on a case-by-case basis.

Bribing a public official is an aggravating circumstance but is not a standalone offence. The offices that give rise to the status of "public official" are explicitly defined in the Criminal Code. In a bribery context, this definition is extended to include a list of foreign public officials.

2. Corporate criminal liability (including bribery offences)

A company is liable for a crime if it was committed by a wide spectrum of its personnel, including managers, employees, board members and shadow directors. Criminal liability is incurred not only if the crime is carried out in the company's interest but also if it is committed as part of its commercial activities.

A company cannot avoid criminal liability simply by changing its legal form, or by way of restructuring or transformation. For example, in mergers with another company, the criminal liability will fall proportionally on each of the acquiring and new companies. Criminal liability can also be transferred through a company's key assets. If a criminally liable company transfers key assets to another company, the company that acquired these assets might be found criminally liable.

3. Duty to report bribery

The duty to report a crime (reporting duty) is a legal obligation falling on all individuals and companies to immediately report or prevent altogether a catalogue of crimes to the enforcement authorities. Both active and passive bribery must be reported. Failure to report a crime is itself a criminal offence.

Individuals (whether employees or subcontractors of a company, or third parties) are personally required to report these crimes even where such reporting could incriminate the company. Apart from limited exceptions, Czech attorneys are the sole persons exempt from this reporting duty. If there is a risk that a reporting duty will be triggered, a Czech attorney should be engaged to review the issue.

4. Legal privilege and cross-border investigations

The concept of legal privilege (or attorney-client privilege) does not exist in the same form as in some other jurisdictions, with only Czech attorneys covered by legal privilege to the full extent. Czech attorneys are bound by a confidentiality obligation stemming from the Legal Profession Act and from constitutional rights to a fair trial of their clients and, consequently, must maintain confidentiality over all information which they have acquired in connection with their legal services to their clients.

Therefore, special care must be taken where companies conduct cross-border investigations as, mostly, foreign investigators do not enjoy legal privilege in the Czech Republic even if they are attorneys in their home country or if they are inhouse lawyers.

5. Whistleblowing

Companies with more than 50 employees must implement a whistleblowing management system for reports relating to (potential) breaches in specific areas (including bribery). They must also appoint a whistleblowing investigator and must investigate reports diligently, impartially and independently.

Recent whistleblowing legislation has resulted in a significant rise in whistleblower activity. This can carry a risk of triggering a reporting duty on the part of those receiving the whistleblowing reports if they are not protected by legal privilege.

6. Cooperation with prosecutors

Launching an internal investigation and being willing to cooperate with the prosecuting authorities, or even disclosing any misconduct, can arguably be considered

a sign of effective compliance. However, the company does not derive any automatic statutory benefit from voluntary self-reporting or cooperating with prosecutors. The law does not make explicit provision in matters of cooperation with prosecutors or about companies that wish to cooperate. Therefore, companies must rely on the mutual trust built up between their attorneys and prosecution authorities.

7. Non-trial resolution of bribery cases

The practice of non-trial resolution of bribery cases in the Czech Republic, including out-of-court settlements, is limited.

The only practical option for companies is to negotiate a Guilt and Sanctions Agreement with the public prosecutor. Upon concluding negotiations, the company must admit that the facts as presented by the prosecution are accurate and agree to the proposed sanctions. The primary benefit of this instrument is that if the company can demonstrate that it took sufficient compliance measures, it may negotiate a more lenient sentence, such as a monetary penalty or a reduced sanction. The Parliament is currently considering a bill to formally introduce non-trial resolution agreements as an option in proceedings.

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