# FROM CORRUPTION TO INTEGRITY

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# THE GOVERNMENT ANTI-CORRUPTION STRATEGY

# FOR THE YEARS 2013 AND 2014

approved by
the Government Resolution No. 39 of 16th January 2013

as amended by
the Government Resolution No. 381 of 22nd May 2013
the Government Resolution No. 851 of 13th November 2013

Office of the Government of the Czech Republic
The Government Anti-Corruption Department

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# I. Government's Anti-Corruption Declaration

VISION:
FROM CORRUPTION TO INTEGRITY

The Government hereby presents its Anti-Corruption Strategy for the years 2013 and 2014 (hereinafter only "Strategy"), which follows the Government's Anti-Corruption Strategy for the years 2011 and 2012. The mentioned documents are a result of the Government Resolution No. 283 of 4th August 2010, the Coalition Agreement on the Formation of a Coalition of Budgetary Accountability, the Rule of Law and the Fight Against Corruption as well as other documents containing bases for formulating the anti-corruption measures.

The Government understands that effective Anti-Corruption Policy must be comprehensive and long-term oriented. A change in the corruption situation in the Czech Republic will not be caused by a simple implementation of a new law or personal measure. The Anti-Corruption Policy must go through the standard process of public policy execution, which lies in formulating targets and measures, their fulfilment, monitoring, evaluation and refinement.

The Government also understands that having a professional and open public administration is necessary to adopt conceptual, systematically interconnected, solutions. Those must be implemented so that in the end, they will not be contra-productive and will lead to general satisfaction of the majority of the Czech population with public service and its credibility. Transparency of the public administration is a long-term goal and to achieve it is necessary to have a close cooperation and targeted dialogue across the whole political spectrum, expert public and civil society.

Therefore, the Government sets its main goal to focus on ensuring transparency, professionalization and stability of the public administration. It is also necessary to remove pro-corruption factors in the private sphere. Along with the mentioned areas, the Government is focusing on improving the efficiency and independence of the law enforcement authorities. The Government believes that each significant project aiming at a particular goal, which the Strategy undoubtedly is, needs to have personal, material and financial support. The Government's priority is not to create brand new institutions and adopt special laws; although without independent institutional background, it is not possible to reach the goals in a way the public expects. However, the proposed measures might not be efficient enough. Despite the continuing economic crisis and the Government budget cuts, it is desirable to allocate funds from the state budget to increase the transparency of the public administration, since the allocated funds will certainly render a good return on investment by eliminating corruption in the public sector, improvement of the status of the law enforcement authorities and result in the improvement of the social climate, credibility of the Czech Republic for foreign investors and the improvement of the standard of living for the citizens of the Czech Republic.

It follows from the above mentioned that the goal of the Strategy is to improve the enforceability of law, improvement of the efficiency and the functioning of the public service and elimination of the corruption potential in the public administration. To achieve that, it is necessary to gradually adopt anti-corruption measures constructed so that they will not cause substantial doubts about their efficiency and that their implementation will reduce the corruption climate in the Czech Republic.

# II. Corruption in the Czech Republic and its perception

## 1. Introduction

The scale and nature of corruption in the Czech Republic are not systematically and long-term empirically monitored. Nevertheless, the accurate targeting of the Anti-Corruption Policy requires accurate information about the scale and nature of corruption and the "modus operandi" of a typical corruption activity. If such information are not available, the discussion about the Anti-Corruption Policy measures is based more on media reality, personal experience and images of its actors rather than being based on statistics and precise information.

Today, there is a lot of different material enabling us to roughly identify the scale of the corruption problem in the Czech Republic, the typology and prevalence of corruption activities and the anti-corruption potential in the society. On the other hand, the existing empirical and other analytical documents do not enable us to unambiguously describe a "map" of corruption and it's the trends of its development. This is true specifically for police and judicial statistics, which provide information about the activities of these bodies, but do not reflect the rate of corruption in the Czech Republic and its development.

The absence of credible data about corruption sometimes leads to conclusions that corruption is not widespread in the Czech Republic and that it is only a fringe phenomenon related to individuals without any systematic nature or corruption being an artificial bubble created by the media. Or maybe corruption is exaggerated and the Czech Republic is being portrayed as one of the most corrupt states of the world. Academic research of this phenomenon is therefore an important tool against various clichés connected to this issue. That enables us to aim the Anti-Corruption Policy and its tools at the heart of the problem, not just scratching the surface.
The available empirical sources and the qualitative analysis help us to answer the following questions:

- How serious is the social perception of corruption in the Czech Republic?

  (The answer to this question will help us to prioritize the tasks of the Anti-Corruption Policy)

- What is the scope of corruption in the Czech Republic compared to other countries in international indexes?

  (The answer will show how the Czech Republic is perceived by foreign investors and what is the standing of the Czech Republic among comparable countries in Central Europe)

- What is the real experience of respondents with accepting or offering bribes?

  (The answer will show which part of the population gives or receives bribes on a regular or semi-regular basis)

- What trends can be observed in corruption development?

(The answer will show that it is possible to find clear development trends in the perception of corruption in the Czech Republic and will open the question of evaluating the efficiency of the Anti-Corruption Policy)

- Which sectors of the society are, in the opinion of the respondents, strongly infested with corruption?

  (The answer will hint at the corruption burden of individual sectors and will show necessary aims of the Anti-Corruption Policy)

- What is the corruption climate in the Czech Republic? I.e. what is the willingness of the respondents to resort to corruption as a solution for their needs or problems?

  (The answer will show to what extent is the corruption viewed as a necessary part of life and a necessary evil or to what extent it is considered a vice, which the people wish to minimize)

- What are the opinions on the Government's Anti-Corruption Policy?

  (The answer will provide feedback to how the people perceive the efficiency of the Anti-Corruption Policy)

- How are the respondents willing to participate in the anti-corruption effort?

  (The answer will show us the level of active public support which the Government may count on)

- What is the anti-corruption potential of the private sector?

  (The answer will show how corruption is affecting the private sector and how is the private sector prepared and willing to participate in combating corruption)

- What are the economic consequences of corruption in the Czech Republic?

  (The answer will roughly show the economic costs of corruption)

- How successful and efficient is the investigation of corruption?

  (The answer will show us what are the corruption prosecution possibilities and its manifestations in the Czech Republic, what tools are available and how are they used)

It is necessary to point out that the real corruption rate and its virtual media picture are quantities affecting each other and which affect the psychology of individual actors of corruptive relations. Conviction that a bribe is necessary to ensure some results affects the decisions of an individual, who then more often considers the bribe as an effective tool to achieve his/hers goal. On the other hand a strong, visible and credible Anti-Corruption

Policy reduces the willingness of individuals to use bribes as means to achieve their goals and strengthens their anti-corruption mind-set.

**It follows from the above that even if the real corruption rate was significantly lower than what the general belief and media picture suggests, a robust Anti-Corruption Policy has its meaning, as it battles the strengthening of corruption climate in society.**

## 2. Defining corruption

The term corruption covers social phenomena which differ in their nature. There are different forms of bribes (money, payment in kind, reciprocal service, social advantages), sizes of bribes (from several hundred CZK to hundreds of millions), numbers of interested persons (from two to dozens), variable difficulty (from primitive handover of the bribe to elaborate cash flows) and the duration of the processes (from one-time corruption to long-term organized activity). Aside from bribery, the main forms of corruption are nepotism and clientelism.

There is a number of approaches to the classification of corruption forms. For example the GfK agency uses for the purpose of their surveys a classification into 4 types:

- **Banal corruption**: petty corruption of a common person, which includes e.g. various gifts, non-taxed payments to craftsmen etc.
- **Municipal corruption**: corrupt activities of public administration workers at the local level;
- **Large individual corruption**: corrupt behaviour of high state clerks, politicians and people from the private sphere;
- **Large institutional corruption**: corrupt activities, which is done by individual in favour of institutions (political parties).

A more simple and perhaps more accurate classification is the one that separates petty corruption of common clerks, police servants and public service providers, i.e. "the common life" corruption and "big corruption", connected to stealing and abusing of public funds, benefits from privatization etc.[1]

Differences in the individual corruption types are shown in the following summary (table 1).

**Table 1: Overview of differences in various corruption types**

| **Characteristic** | **Petty corruption based on bribery** | **Organized corruption and systematic abuse if public resources** |
|---|---|---|
| **Relationship of the briber and the bribed** | Situational character | Systematic, prepared, long-term |
| **Amount of resources** | Small, usually cash | Large resources |

[1] Dančák, B., Hloušek, V., Šimíček, V. *Korupce. Projevy a potírání v České republice a v Evropské unii*. Brno: 2006, p. 13.

| | | |
|---|---|---|
| **related to corruption** | | |
| **Financial transfers** | Cash handover | Funds go through a sophisticated complex of channels or it can also be a barter |
| **Discoverability by common monitoring tools** | Easily traceable | Unlawful behaviour is difficult to trace or to qualify, sometimes the behaviour is not sanctioned by law at all |
| **Level of organization and secrecy** | No networks, relatively low level of secrecy | A network is necessary for execution of the plan |
| **Investigation** | Use of operative tools is efficient, investigation is simple, the issue lies in the number of cases | Very difficult, necessary cooperation of various bodies, often possible to prosecute only a part of the organized corruption |

Source: Transparency International – Czech Republic 2012, own sources

It is sometimes difficult to subsume the real behaviour under the definition of corrupt behaviour used in the Criminal Code. For the use in police statistics the corrupt activities include particularly: accepting a bribe (§ 331), bribery (§ 332), indirect bribery (§ 333), intrigue in bankruptcy proceedings (§ 226), breach of rules of the economic competition [§ 248 section 1 letter e)], arranging advantages when issuing a public contract, during a public tender and public auction (§ 256 par. 1, 3), intrigue when issuing a public contract and during a public tender [§ 257 par. 1 letter b) a c)][2], or intrigue during a public auction [§ 258 par. 1 letter b) a c)]. Due to the fact that the new Criminal Code came into effect rather recently (§ 2 of the Criminal Code), it is always necessary to consider similar criminal acts according to the Criminal Act No. 140/1961 Coll.

It is also possible to add to these criminal acts, which have a character of corruption activity in certain special situations, criminal acts of breaching obligations during administration of somebody else's property (§ 220 and § 221) and abuse of information and status in a trade relationship (§ 255).[3] The Government's Anti-Corruption Strategy for the years 2011 and 2012, apart from accepting a bribe, bribery and indirect bribery, also listed criminal acts closely related to corruption, namely the abuse of the public authority (§ 329) and obstruction of the tasks of a public authority due to negligence (§330).

**Conclusion:**

**From the point of view of social harmfulness, it is possible to describe corruption as a shift from the pursuit of public interest and abuse of public resources in order to achieve individual or group interests; as abuse of someone's own status for self-**

[2] See the order of the Director of the Department for Uncovering Corruption and Financial Crimes No. 10 of 18th January 2011.

[3] Report on the activities of the state prosecution in 2011 (text part). Brno, 20th June 2012, p. 12.

**enrichment or enrichment of someone else in the private sphere. The motive is to gain unjust advantage for the person itself or someone else, who is not entitled to it.**

**Similarly to other areas of public policies the Anti-Corruption Policy must also be based on a thorough knowledge of the phenomenon, which it tries to suppress. The knowledge of the rate, character and forms of corruption in the Czech Republic enables to appropriately aim the Anti-Corruption Policy. There is a number of empirical data at our disposal, especially about the perception of corruption committed by the citizens, which allow to formulate certain conclusions for the Anti-Corruption Policy. Despite the fact that the perception of corruption is necessarily subjective, it acts as a real social power and must be reflected in the Anti-Corruption Policy.**

**Corruption is a complex social phenomenon with a wide variety of individual manifestation. There are two main groups of corruption manifestation: petty random corruption and systematic abuse of public resources. Corruption is a wide phenomenon even regarding its criminal law definition.**

**The Anti-Corruption Policy must reflect the complex nature of corruption as a social phenomenon and cannot one-sidedly accentuate its individual aspects, especially if they would only reflect the subjective ideas of its authors. Especially, it cannot be narrowed down only to the criminal act of bribery.**

## 3. Perception of corruption

### 3.1. How serious issue is corruption in the eyes of the Czech people?

Corruption in the Czech Republic has recently been a subject of various surveys. In general, it is possible to state that the Czech people consider corruption to be one of the most significant social issues. This fact follows from the annual survey by the Public Opinion Centre of the Sociological Institute of the Academy of Sciences, which researches the opinions of the public about the urgency of solutions to certain social issues.

**Table 2: The most urgent areas of public life that need to be addressed**

| | 2010 | | 2011 | | 2012 | |
|---|---|---|---|---|---|---|
| **The most urgent issue** | Unemployment | 79 % + 17 %[4] | Healthcare | 79 % + 16 % | Corruption | 80 % + 15 % |
| **2nd issue** | Corruption | 68 % + 22 % | Corruption | 74 % + 20 % | Unemployment | 74 % + 21 % |
| **3rd issue** | Social securities | 66 % + 22 % | Unemployment | 72 % + 21 % | Stat of public finances | 70 % + 23 % |

Source: CVVM[5], own sources

[4] The first value shows the percentage of respondents, who rated the problem as "very urgent", the second value shows the answer "quite urgent".

[5] Surveys from individual years (2010 – 2012) available at: http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a3739/f3/101015s_pops100301.pdf, http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a3838/f3/101116s_po110310.pdf, http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a6773/f3/po120306.pdf.

It follows from the contents of the table that corruption remained among the most urgent issues of the Czech Republic and the public perceives its solution as a priority. Moreover more and more people consider corruption an issue that demands urgent solution. In 2010 this was 90 % of all respondents, in 2011 94 % and in 2012 as many as 95 % respondents. Corruption thus became the most pressing issue in the Czech Republic. It is therefore no surprise that in a "reverse" survey, which mapped satisfaction with individual areas of public life, corruption ended in the last place. In 2012, 92 % of respondents stated their dissatisfaction with the corruption rate in the country, only 1 % was satisfied. Compared to the previous years this is the worst result despite corruption appearing regularly among the lowest positions.[6]

Not only are the Czech citizens dissatisfied with corruption and demand swift solutions, but they also perceive it as ubiquitous. The survey conducted by the Centre for Public Opinion (hereinafter only "CVVM") of April 2012[7] recorded the highest percentage of people convinced that corruption is widespread so far. Almost three quarters of the population (74 %) believe that almost all public actors are participating in corruption. This also represents an increase compared to previous years, when the values were 65 % (2010) and 68 % (2011).

The attitude of citizens is to a degree parallel to the negative opinions about corruption of the majority of the EU citizens; however in the Czech Republic these values are above the EU average. According to the Eurobarometer survey on corruption of 2012[8] 90 % of Czech citizens consider corruption a serious issue while the European average is 74 %. According to the Czechs corruption is present at all levels of administration, i.e. in local (87 %), regional (92 %) and national (95 %) authorities.

The STEM agency also conducted several surveys on this issue in recent years, always with the same high and alarming results. In 2011 93 % of respondents answered "yes" to the question "Do you think that corruption of politicians is a serious problem in our country?"[9] Moreover 83 % of citizens believe that the majority of state clerks are corruptible and 77 % view the corruption of state clerks and politicians in the Czech Republic as worse than in the Western Europe. Similarly, the more recent surveys on corruption and problems in the Czech Republic from 2012 show that 90 %[10] or 85 %[11] of respondents consider corruption to be one of the biggest problems of this country.

There are not many surveys that would focus on the opinions about corruption of individual population groups. The exception is the survey done by the Human in Need organization and the Millward Brown agency[12], conducted in 2012 among young people, which places corruption among the main problems of the Czech Republic, namely in the third place (behind the coexistence with the Roma minority and political representation). It is interesting that contrary to a similar survey from 2009, there has been a significant shift to the worse in the area of corruption, concerning it being perceived as one of the main problems of the Czech Republic.

[6] http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a6865/f3/ps120709.pdf.
[7] http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a6798/f3/po120405.pdf.
[8] http://ec.europa.eu/ceskarepublika/news/120216_eurobarometr_cs.htm.
[9] http://www.stem.cz/clanek/2240.
[10] http://www.stem.cz/clanek/2312.
[11] http://www.stem.cz/clanek/2400.
[12] http://www.jedensvetnaskolach.cz/download/pdf/jsnspdfs_520.pdf.

The survey by Ernst & Young from 2012, which mapped the opinions of managers, showed that 80 % of respondents consider corruption to be a widespread phenomenon, which again contrasts with the worldwide average, where only 39 % respondents consider corruption to be a widespread phenomenon.[13]

**Conclusion:**

**It is clear from the previously mentioned data that corruption is a problem considered by many people to be a serious one. Corruption regularly appears in the top places of surveys on the major problems of our country and therefore, it is a priority for the people. Corruption gradually reached the top place in the list of the most serious problems of the country. This shows a certain amount of scepticism regarding whether corruption is a priority for the Government and whether the declared fight against corruption yields results.**

**Therefore, the fight against corruption must be our real political priority with all organizational and budgetary consequences. As has been said already, regardless of whether the perception of corruption by respondents reflects the real problem adequately, the opinions of the citizens have a real influence on the social and political life and the state and its political representation must adequately react to that.**

### 3.2. International indexes comparing the general corruption rate of countries

The index showing the general corruption rate in various countries represents a value, which can indicate the country's standing in international comparisons. If the index is monitored long-term with a similar methodology, it can also show the development curve of the phenomenon in the country. The value of the index itself is secondary to some extent. In the case of international surveys and indexes, the position of the country among other comparable countries has a bigger information value. Referential countries for the Czech Republic are particularly Slovakia, Hungary and Poland. Comparison with other countries, especially non-European ones, is of limited significance. However, it shows how the Czech Republic is perceived by foreigners, especially investors.

The index attempting to measure the corruption rate is the **Corruption Perception Index, CPI**, which has been calculated for many years by Transparency International. The CPI index observes the perception of corruption; it is therefore a survey of subjective opinions about corruption. In the period 1995 – 2011 the corruption rate in the country was measured on a scale from 0 to 10 points, where 0 means the maximum corruption rate and 10 means zero corruption. In 2012 Transparency International changed its methodology – it started using a more simple approach, which is more easily applicable, comprehensible and better suited to record changes in the perception of the corruption rate during time. This was enabled by a higher number and higher quality of available source surveys monitoring the perception of corruption in various countries. Due to the difference in new methodology, the scale has been changed as well to 1 – 100. A list of evaluated countries is created based on the results. The perception of corruption can be influenced by the real corruption rate as well as varying sensitivity to certain corruption manifestations. E.g. the same "gifts" can be viewed as corruption in some states and not in others. Another factor can be the public discussion

[13] Global Fraud Survey 2012.The report uses results of the survey on frauds and corruption with focus on the Czech Republic, Prague, 23rd May 2012, with the kind permission of Ernst & Young.

about corruption: in countries where such a discussion is absent, people may view corruption as an unpleasant necessity. The listed factors may significantly influence the changes in perception of corruption between European and non-European countries. Despite that, we consider the situation particularly in Central Europe to be so homogenous that the index has a comparative information value.

In 2011 the Czech Republic achieved a value of 4.4 points in the CPI index and ranked together with Namibia and Saudi Arabia on the 57$^{th}$ – 59$^{th}$ place out of 183 countries.[14] This ranking puts the Czech Republic behind Poland (5.5) and Hungary (4.6) and above Latvia (4.2), Slovakia (4.0), Italy (3.9) or Greece (3.4). In 2012 it achieved 49 points and ranked together with Latvia, Malaysia and Turkey on 54$^{th}$ – 57$^{th}$ place of 176 monitored countries.[15] Poland ranked 41$^{st}$ (58), Hungary 46$^{th}$ (55), Slovakia 62$^{nd}$ (46), Italy 72$^{nd}$ (42) and Greece 94$^{th}$ (36).

Interpretation:
*Presented results are bad compared to the group of advanced countries, among which the Czech Republic strives to belong[16] as well as in relation to other post-communist countries of Central Europe. The development trend shows that the situation is deteriorating, as will be shown later. The lagging behind Hungary and Poland is sufficiently long-term, and in the case, too robust to be excused by a methodological mistake or a random deviation.*

Another international project, which offers international comparison via an index, is the **Global Integrity** project. Within the Global Integrity project, the Czech Republic was evaluated only once in 2010.[17] The survey ranks it as average (it achieved 74 points on a scale 1-100). This average value conceals significant differences between individual areas of evaluation. The legislative framework has been ranked as relatively strong (84), while the implementation area was ranked as weak (64).

Hungary achieved 73 points in the same year, whereas its legislative framework achieved 83 points and implementation 62 points. Poland received 80 points, its legislative framework achieved 86 points and implementation 71 points. Germany received 78 points, its legislative framework achieved 78 points and implementation 76 points.

Interpretation:
*It shows that the Global Integrity index, although constructed completely differently to the CPI, brings similar results, i.e. the Czech Republic is comparable to Hungary and is lagging behind Poland. It also shows that the main difference between CR and Germany is particularly the big difference between the legislative framework and its implementation.* ***Efficient implementation therefore seems to be more important than the existence of the legal framework itself, no matter how elaborate it may be, which is also proven by the results of the National Integrity Study by Transparency International.[18]***

[14] http://www.transparency.cz/index-cpi-2011/.
[15] http://www.transparency.cz/hodnoceni-ceske-republiky-indexu-vnimani-korupce-cpi-2012-od/.
[16] It belongs to the 34 most advanced economies of the world, as it is a member of the OECD.
[17] http://www.globalintegrity.org/report/Czech-Republic/2010.
[18] National Integrity Study by Transparency International–Czech Republic, Prague 2011 (http://www.transparency.cz/doc/TIC_Studie_narodni_integrity_www.pdf).

The third most important international survey is the so-called Global Competitiveness Report issued by the World Economic Forum.[19] This study evaluates countries by several criteria. While CR ranked quite well in the overall ranking of competitiveness for 2012-2013 (39th place from 144 countries), it ranked 74th in direct bribery and 82nd in the quality of government institutions. In international comparison of this criterion it means that CR is behind India (70th) or Ethiopia (74th), but is above Italy (97th), Slovakia (104th) or Greece (111th).[20] As for factors with the most negative influence on entrepreneurship, most respondents listed corruption in the first place (19.1 %), followed by inefficient government bureaucracy (15.1 %).[21] In many criteria the Czech Republic ranks very low, the development in recent years is shown in the following table.

**Table 3: Competitiveness of the Czech Republic according to individual criteria – development in recent years[22]**

| | 2008-2009 | 2009-2010 | 2010-2011 | 2011-2012 | 2012-2013 |
|---|---|---|---|---|---|
| Global Competitiveness Index – overall ranking of the CR | 33. (of 134) | 31. (of 133) | 36. (of 139) | 38. (of 142) | 39. (of 144) |
| Quality of institutions | 72. | 62. | 72. | 84. | 82. |
| Direct bribery | - | - | 67. | 73. | 74. |
| Factor that restricts entrepreneurship the most - corruption | 13,3 % | 13,5 % | 15,4 % | 17,2 % | 19,1 % |
| Factor that restricts entrepreneurship the most- inefficient bureaucracy | 17 % | 15,2 % | 15 % | 15,1 % | 15,1 % |

Source: Global Competitiveness Report (results for 2008-2013), own source

**Conclusion:**

**All three listed international surveys are based on a completely different methodology and are in line with the opinion of the majority of the population that corruption presents a very serious problem. It is possible to dispute the individual values; however, the overall image of the Czech Republic is dismal and impossible to ignore. The resulting numbers are so bad that they affect foreign investors considering to enter the**

[19] Schwab, K. *The Global Competitiveness Report 2012-2013*. Geneva: World Economic Forum, 2012; http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf.
[20] Same source, p. 16-17
[21] Same source p. 150-151
[22] Available at: http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf, http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2009-10.pdf, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2008-09.pdf.

**Czech market. Efficient fight against corruption is also a priority regarding the economic development and international competitiveness.[23]**

### 3.3. Concrete experience of citizens regarding corruption – "self -reports"

Surveys, which pose a direct question whether the respondent experienced corruption, i.e. if he took or gave a bribe, are very rare. However, they are the only ones that reflect the real content of corruption. It is necessary to point out, however, that in their form they cover only petty corruption, which the respondents are willing to admit. It is hard to imagine that someone, who is involved in systematic stealing, money laundering and organized crime, would answer "yes".

One of the few surveys that investigate the real scope of bribery was the survey conducted for Mladá Fronta Dnes by the Median agency in 2011.[24] To the question "Have you faced corruption in the last five years?", i.e. "Did someone asked a bribe from you or someone close to you?" 63.2 % respondents answered "no", 20.5 % "yes" and 16.3 % did not answer.

In the Eurobarometer survey[25] from 2012, when they were asked, 61 % of respondents answered that they do not experience corruption in their daily life.

According to the GfK survey from 2008 48 % of people gave a bribe in the last 12 months with 13 % claiming that repeatedly.[26]

For a comparison: in Austria the number of respondents, who answered positively in the GfK survey was about 7 %.

In the case of corruption connected to providing public services, the real numbers are even lower. This observation is also proven by the data from the Global Corruption Barometer survey from 2010. Only 14 % of Czech respondents stated that they had to provide a bribe in the last 12 months to obtain one of the nine public services (education, healthcare, tax authorities, registers, justice…).[27]

**Conclusion:**

**The percentage of respondents, who directly experienced corruption (i.e. they provided a bribe or they were asked to do so or they received a bribe), is high, but does not reflect how significant problem the respondents consider corruption to be. Even though we might take into account the respondent's fear to admit corruption, the numbers are relatively small. High perception of corruption as a serious social problem can be down to the fact that corruption was a significant part of the pre-election fight in 2010 and may thus reflect a number of serious corruption cases, which were recently discovered and publicized. However, even this media reality cannot fully explain the difference between the strong perception of corruption's significance and the limited number**

[23] Mejstřík, M. and others. *Framework Competitiveness Strategy*.Prague: Office of the Government, Government's National Economic Council (NERV), 2011, p. 61.

[24] Source:http://zpravy.idnes.cz/sazebnik-uplatku-za-ridicak-25-tisic-stavebni-povoleni-za-milion-pwi-/domaci.asp?c=A101026_074045_domaci_bar.

[25] http://ec.europa.eu/ceskarepublika/news/120216_eurobarometr_cs.htm

[26] Corruption Climate, GfK survey results, October 2009, not published

[27] http://www.transparency.org/policy_research/surveys_indices/gcb/2010/in_detail.

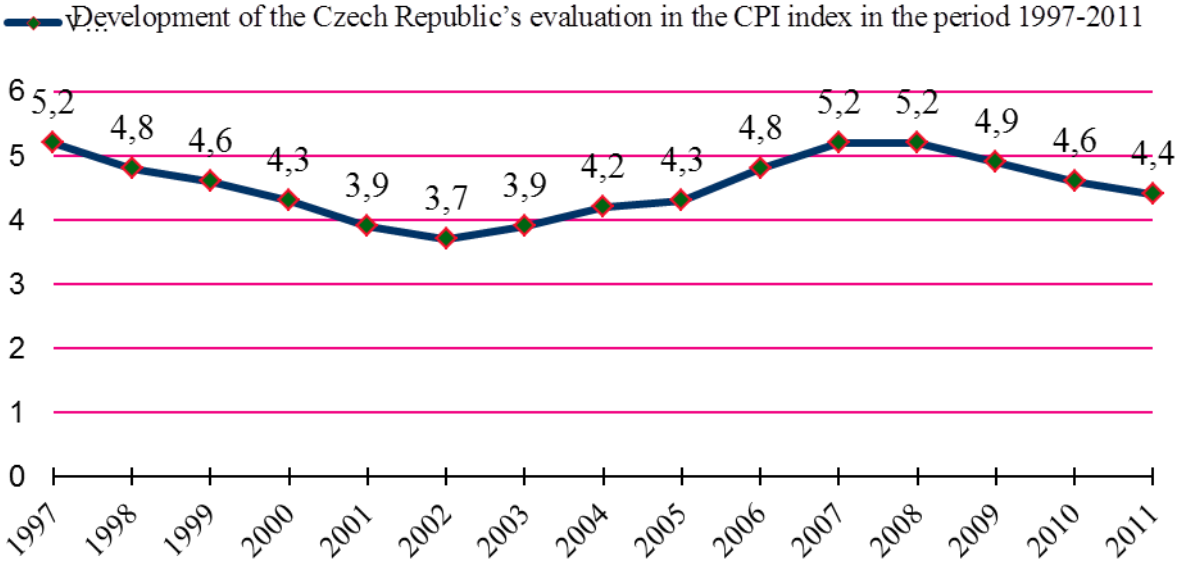
**of respondents, who gave or received bribes. The explanation probably lies in the form of corruption in the Czech Republic, which concentrates more on "large" corruption related to the abuse of public resources, from public contracts to grants, and not on the petty corruption of clerks related to public services. This conclusion is further evidenced by the data listed below.**

### 3.4. Development trends of corruption in the Czech Republic

There is de facto no survey, which would provide data comparable anachronously. The only exception is the CPI index, which is calculated since 1995, uses comparable methodology and includes the Czech Republic since 1996.

The CPI index is not constructed based on year-on-year comparisons, however the development of the Czech Republic's evaluation has some information value (see picture 1).

**Picture 1: Development of the Czech Republic's evaluation in the CPI index in the period 1997-2011**




Source: Transparency International, own sources

Interpretation:

*The above listed results cannot be interpreted unambiguously. The chart shows the real subjective sentiments of the respondents given also by the scope of the public discussion about the issue of corruption. The deterioration in perception of corruption in the years 1997 -2002 can be put down to the ongoing privatization and the growing belief that it has been largely complemented by corruption.*

*The turning point in the trend and the start of improvement of the situation can be explained by two processes, which took place at that time. One of them was the final phase of pre-accession talks to admit the Czech Republic into the EU, which was accompanied by a large-scale adoption of European legislation and an overall implementation of a modern legislative framework. Also during this period the first Anti-Corruption Policy of the Government was created (first Anti-Corruption Strategy was adopted in 1999). The turning point towards the deteriorating trajectory, which occurred in years 2007 and 2008, is probably related to the elections result in 2006.*

**Conclusion:**

**There are three distinct phases in the development of the perception of corruption in the Czech Republic. The first is the deteriorating situation in the nineties. In that period corruption was not a topic and there was no Anti-Corruption Policy. At the same time the mass privatization took place together with the reallocation of large volume of public resources. In both cases these are probably determining reasons for the deteriorating corruption situation. At the beginning of the 21st century there were intensive legislative changes related to the accession to the EU and the influx of resources to strengthen "good governance" and the rule of law. Also since 1999 there has been a Governmental Anti-Corruption Policy in place, which bore some fruit despite its half-measures and criticized aspects. The interpretation of the third phase, i.e. the deterioration of the situation after 2007, is the most difficult one. Most probably, it is the utter formality and not taking any actions to fulfil the Anti-Corruption Strategy from 2006.[28] Another important factor could be the information about possible corrupt activities related to the highest political levels, to which there was no adequate reaction.**

### 3.5. Which part of the society is most affected by corruption according to the Czech respondents?

The most corrupted environments, in the eyes of the people, are regularly politics, authorities, police and justice.

In the GfK survey about the corruption climate in the Czech Republic from 2009[29], regarding the occurrence of corruption, the first place went to political parties (22 % of respondents considered them the most corrupt area). This result was a bit of a surprise, it was the first time the political parties were at the top of the ranking and surpassed authorities (17 %), which topped these rankings since the start of these surveys, i.e. since 1998. The people also viewed ministries (14 %) and the government (10 %) as the most corrupted areas. The areas that were the least connected to corruption were education, customs, non-profit sector and banks.[30]

**Table 4: Areas with most widespread bribery – ranking of institutions**

| | year 1998 | year 2001 | year 2002 | year 2003 | year 2006 | year 2009 |
|---|---|---|---|---|---|---|
| 1. | public services | authorities | authorities | authorities | authorities | political parties |
| 2. | courts | courts | healthcare | healthcare | police | authorities |
| 3. | healthcare | police | police | police | government | ministries |
| 4. | police | healthcare | courts | courts | political parties | government |
| 5. | services | ministries | customs | customs | ministries | courts |

[28] *National Integrity Study*. Prague: Transparency International –Czech Republic, 2011, p. 36.
[29] Corruption climate, GfK survey results, October 2009, not published, also available at: http://www.gfk.cz/imperia/md/content/gfkpraha/press/2010/100406_nejzkorumpovanejsi_jsou_politicke_strany.pdf.
[30] Same source

| | | | | | | |
|---|---|---|---|---|---|---|
| 6. | education | customs | ministries | ministries | private sphere | private sphere |
| 7. | hospitality | banks | education | education | courts | police |
| 8. | military | military | banks | banks | healthcare | healthcare |
| 9. | | education | military | military | customs | military |
| 10. | | | | | education | education |
| 11. | | | | | military | customs |
| 12. | | | | | Non-profit sector | Non-profit sector |
| 13. | | | | | banks | banks |

Source: GfK, own sources

Very similar results can be found in the CVVM survey "Opinion about the spread and rate of corruption of public actors and institutions".[31]According to this survey, almost three quarters of the inhabitants (74 %) believe that all or the majority of the public actors are participating in corruption. It is therefore clear that in the eyes of the public, all sectors are significantly affected. Similarly, the results of the Eurobarometer survey about corruption spoke about corruption spread over authorities at all levels – local, regional and national.[32]

It is possible to differentiate between areas which are more problematic than others. However, if we return to the CVVM survey, it is interesting to focus on one fact. In this survey the institutions were awarded grades 1-5, where 1 means non-existent corruption and 5 high corruption. In general it is possible to state, that grades 1 and 2 were used very rarely, which in itself speaks volumes about the corruption rate and the people's opinions. As for concrete institutions, the political parties retained the worst results as more than 4/5 of citizens believe they are the most corrupt sphere (81 %), followed in the second place by ministries and central authorities (69 %), which also supports the already mentioned results. Contrary to the GfK survey (also due to a different methodology and categories) the third place went to building authorities (53 %) and relatively high in the fourth place was healthcare. Unlike GfK CVVM includes political parties in this kind of surveys for a longer period and it is possible to state that they rank first in the corruption list since 2001. Similarly the ministries and central authorities rank second regularly.[33]

The survey conducted by the SANEP agency in 2011[34] has again a slightly different categorization, but similar results. According to it 33.2 % of respondents believe that corruption is present in all government institutions. Therefore, respondents do not differentiate between the most problematic areas, but lose confidence in all governmental institutions. As for differentiation, 15.4 % respondents considered the government to be the most corrupt area, 11.2 % ministerial clerks and 10.5 % judges. Other corrupt institutions with 5 % or less respondents were the Parliament, municipal authorities, the Prime Minister, police

[31] http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a6798/f3/po120405.pdf.
[32] http://ec.europa.eu/ceskarepublika/news/120216_eurobarometr_cs.htm.
[33] http://cvvm.soc.cas.cz/media/com_form2content/documents/c1/a6798/f3/po120405.pdf.
[34] SANEP, 2011. Available at: http://www.protext.cz/zprava.php?id=14060.

and regional authorities. The institutions that had the best results in this ranking were the Constitutional Court and the Senate (maximum of 1 % respondents connects them with corruption).

Also the survey done by Ipsos Tambor[35], focusing on the spread of corruption in individual areas showed that people are convinced that the most corrupt are the political parties, authorities and ministries. An interesting result was the opinion of people whether the actors of corruption acts support each other and cooperate: 92 % respondents answered "yes". This result deserves attention also due to the connection with the Eurobarometer survey[36], in which the percentage of Czech people, who indicated that corruption is often tied to organized crime, was the highest in all Europe (CR in this regard surpassed even states like Italy).

According to the already cited survey Global Corruption Barometer[37] the respondents believe that the most corrupt institution in the country are the political parties, graded 3.8 on a scale of 1 (best) to 5 (worst). The Parliament achieved similar results (3.7) as well as the public administration clerks (3.6). The best results were achieved by religious institutions (2.6) and the media (2.8).

A more detailed analysis in the mentioned Global Integrity Survey shows which society segments decrease the overall acceptable resulting integrity index. These areas are public administration and its professionalism. In this area, the Czech Republic received the lowest score; in the "safeguard against conflict of interest" it received only 44 points out of 100.[38]

Particularly remarkable in the Global Competitiveness Report is the subindex "public trust in politicians", where the Czech Republic ranked 139$^{th}$ out of 144. Other negatively valued aspects are clientelism in governmental clerks' decisions (123$^{rd}$), transparency of the governmental policy (98$^{th}$) or waste of public resources (119$^{th}$). The look at the ranking of the Czech Republic among other countries in recent years shows a rather negative development in these areas, whereas in categories such as public trust in politicians, clientelism and waste of public resources means the worst recent years results for the Czech Republic in 2012-2013.[39]

[35] http://www.ipsos.cz/sites/default/files/TZ_Exkluzivni%20vyzkum%20Ipsos%20Tambor%20pro%20Zlatou%20korunu_20110613.pdf

[36] http://ec.europa.eu/ceskarepublika/news/120216_eurobarometr_cs.htm.

[37] http://www.transparency.org/policy_research/surveys_indices/gcb/2010/in_detail.

[38] http://www.globalintegrity.org/report/Czech-Republic/2010/scorecard.

[39] Available at:http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2012-13.pdf, http://www3.weforum.org/docs/WEF_GCR_Report_2011-12.pdf, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2010-11.pdf, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2009-10.pdf, http://www3.weforum.org/docs/WEF_GlobalCompetitivenessReport_2008-09.pdf.

**Table 5: Czech Republic's results in the Global Competitiveness Report – development of selected criteria in recent years**

| | 2008 - 2009 | 2009 - 2010 | 2010 - 2011 | 2011 - 2012 | 2012 - 2013 |
|---|---|---|---|---|---|
| public trust in politicians | 117. | 115. | 121. | 134. | 139. |
| clientelism in governmental clerks' decisions | 110. | 104. | 107. | 123. | 123. |
| transparency of the governmental policy | 104. | 103. | 102. | 96. | 98. |
| waste of public resources | 106. | 87. | 95. | 117. | 119. |

Source: Global Competitiveness Report (results from 2008-2013), own presentation

**Conclusion:**

**All listed surveys confirm the conclusion that the core of the corruption problem in the Czech Republic lies in the area of functioning of political parties and the overall functioning of state authorities. The public administration as a place making decisions about the use of public resources seems to be the area most affected by corruption and at the same time as the weakest link in the anti-corruption effort. On the other hand the surveys show that corruption of individual clerks and other employees of the public sector related to providing public services is not among the most corrupted areas that much. Almost non-present among the areas affected by corruption is education and healthcare also does not seem to be highly affected by corruption, at least according to the results of the surveys. This differentiates the Czech Republic from countries with a high rate of corruption, such as Ukraine or Russia. This also supports the conclusions of previous chapters that the problem in the Czech Republic is not petty corruption, but systemic corruption, an organized abuse of public resources with direct connection to the political structures. It is possible to state that corruption in the Czech Republic approaches a phase, which literature describes as "State capture".[40]**

[40] The term "state capture" is defined by the World Bank as activities of individuals, groups and companies both from the private and public spheres, which aim to influence the creation of laws, regulations, decisions and other governmental processes to their own benefit as a result of illegal and non-transparent commissions to public officials… due to informal, non-transparent and preferential access channels. This happens also through unclear alliances between political and trade interests of public officials…" (according to Dančák, V., Hloušek, V., Šimíček, V. *Korupce. Projevy a potírání v České republice a v Evropské unii*. Brno: 2006, p. 15)

### 3.6. Corruption climate

The corruption climate[41], i.e. "a set of collective ideas, norms and cultural models, which make the abuse of authority and bribery natural and excusable behaviour for the inhabitants of the given state", has been researched relatively thoroughly, whereas one of the largest surveys comes from the GfK agency.[42] The term corruption climate contains two elements. Firstly, it shows to what extent the corrupt behaviour is considered natural and how often people have the inclination to solve problems with bribery. It also shows the rate of tolerance to such behaviour among people.

The GfK surveys deal with two categories: rate of acceptance of corruption norms and the rate in which they are respected. The surveys are conducted regularly, which makes it possible to monitor the development of individual values in time.

In 1998 85 % of the respondents considered bribery immoral, in 2009 it was only 74 %. This means that the number of respondents, who shun corrupt behaviour, is decreasing steadily. The aforementioned facts bare relation to the fact that almost one third of respondents (30 %) is of the opinion that who can take bribes and does not do it, harms himself and his family. This group is growing relatively fast recently, between 2006 and 2009 their number increased by 9 %. Also as many as 63 % of Czech people agree with the statement that "everybody can be corrupted". As for the acceptance of corruption norms, it can be summarized that the acceptance rate is growing significantly among the people. The majority still considers corruption to be immoral and is not willing to agree with the given "rules of the game". The already mentioned general deterioration of the corruption situation in the Czech Republic after 2006 is confirmed here as well.

Unfortunately there is no improvement in the area of respecting corruption laws either. On the contrary, the results of the last available survey (2009) are the worst since 1998, i.e. since the start of the surveys (41 % is willing to respect corruption norms). Another evidence of the strengthening of the corruption climate is the increasing tolerance of corruption acts. Half of the people agree that if there is no other option, a person shouldn't be afraid to bribe (this value increased from 39 % in 2006 to 50 % in 2009). Another result, which confirms the high tolerance of corrupt behaviour, is the fact that people do not even view some forms of corruption as corruption. It is usually the case of the so-called petty corruption (e.g. patient leaving the doctor's office gives him a bottle of expensive alcohol etc.). People are becoming more tolerant towards corrupt behaviour in this area as well.

Sadly it is possible to continue in this list of facts. 63 % of Czech citizens consider corruption a natural part of their lives. Almost half of them (48 %) are convinced that the things that are still functional in the state apparatus wouldn't be without bribes. As for corruption in public contracts, even more people have a negative attitude – 65 % respondents agree with the statement, that without bribes no company is able to receive a state or municipal contract. The results in all three cases are the worst since the start of the surveys.

**Conclusion:**

**The listed surveys are hard to interpret. It may be concluded that a high percentage of people see corruption as a necessary evil. Moreover, it seems that particularly**

[41] This sub-chapter uses results of the GfK Survey: Corruption Climate, October 2009, not published
[42] GfK Survey: Corruption Climate, October 2009, not published

**between 2006 and 2009 the number of people, who accept corruption or who resigned to deny corruption, has increased significantly. However, as mentioned in the previous text, the majority of the population views corruption as a significant problem demanding solution. The key cause of this conflict can be identified as absence of positive role models, absence of strong proponents of the anti-corruption ethos and a lack of faith that the political representation could become such proponent.**

**No matter how the Anti-Corruption Policy is primarily an issue of setting the system, the real effort of the political representation (or at least its part) in the fight against corruption, is an important condition of success.**

**The strengthening of the feeling of opposition to corruption is also closely connected to the efficiency of repressive bodies. To strengthen the anti-corruption attitudes, it is necessary to have clear examples confirming that corruption does not pay nor it is rewarded.**

### 3.7. Opinions about the Government's Anti-Corruption Policy and desirable measures and solutions for corruption

Assessing the efficiency of the Government's anti-corruption measures is closely related to the respondents' opinions about what measures are efficient and desirable against corruption and which should be implemented. It is these questions that were a part of the already mentioned survey conducted by Ipsos Tambor.[43] At the general level respondents mostly agree with vigorous methods of combating corruption (e.g. execution of property, wiretapping, protection of key witnesses or agents provocateurs).[44] Concrete steps or changes, which should contribute to the restriction of corruption in the Czech Republic, are, according to the people, the following. The fight against corruption will be best supported by systemic changes, especially by a fundamental reform of the state administration (29 %). This value can be taken into context with the previously presented information regarding the most affected areas, where the authorities, ministries and institutions ranked in top positions. Also important for combating corruption are harsher punishments for corruption (27 %) and the peoples' morality (17 %). Even though political parties are viewed as a corrupt environment, not many people believe that higher transparency of political parties' funding may be a significant anti-corruption tool (4 %). As for other measures, which the people consider important for restriction of corruption, it is possible to mention criminal liability for wrong decisions during administration of public property (83 % of people believe that the fight against corruption is just a likeable political claim) and transparency during the issue of public contracts.

What is worth mentioning is that if there are signals about the political representation really willing to combat corruption, the pessimism of the people would quickly disappear. Another survey, also by GfK[45], shows that citizens are waiting for a signal from the Government that it is ready to face corruption. In autumn 2009, when the scepticism regarding the anti-corruption zeal of politicians grew, 47 % of respondents believed that the corruption will

[43] http://www.ipsos.cz/sites/default/files/TZ_Exkluzivni%20vyzkum%20Ipsos%20Tambor%20pro%20Zlatou%20korunu_20110613.pdf.

[44] The age group of 55-65 is a strong proponent of these methods, while the young generation (18-24) is for softer measures.

[45] GfK Survey: Corruption Climate, October 2009, not published

continue to grow and only 4 % believed that the situation will improve. The pessimism of respondents grew by a high 11 % since 2006.[46] In 2010 the fight against corruption has become an important topic during the Parliamentary elections. The people reacted to this election programme positively and with expectation. The survey in July 2010 (i.e. shortly after the elections) reported a sharp increase in optimism. A total of 46 % respondents believed that the political representation is willing to combat corruption and 33 % respondents were convinced the Government will succeed in implementing efficient anti-corruption measures and restricting corruption.

**Conclusion:**

**Important conclusion is that the distrust of respondents towards the Government's Anti-Corruption Policy is not a permanent trait and attitude, but that they are sensitive towards signals, which come from the political sphere. The surveys also clearly showed that citizens are interested in real results, i.e. the restriction of corruption and systematic abuse of public resources. They are not interested in administratively reported successes, such as adopted laws or percentage of "ticked" points of the Anti-Corruption Strategy. At the same time it is no surprise the respondents have simplified ideas about corruption and its suppression. That may be demonstrated by the public demand for harsher punishments which cannot help exceeding the goal when the whole system of investigation is not working and if the courts do not issue harsh punishments.[47] The analysis of the public opinion must therefore be complemented by surveys among experts.**

**The listed surveys also confirm the key role of the state administration as a source of corruption and also a tool for its restriction. They also showed the inner conflicts of the respondent's opinions and the unclear relationship between the problem and its solution. Regarding this point of view, the information value of these surveys is questionable.**

### 3.8. What is the willingness of Czech citizens to participate in anti-corruption activities?

As has been already outlined, tolerance and respect of corruption laws is closely connected to the concrete actions of people, be it a bribery or a concrete action against corruption, e.g. in the form of reporting it. The fight against corruption and personal activity in the Czech Republic is determined by a specific attitude of people. There is a widespread opinion that the fight against corruption is the responsibility of the state and not the people. This opinion remains unchanged in the long term (see GfK surveys from 1998-2009)[48] and is shared by 82 % of the Czech population.

Anti-corruption activities can be divided into collective activities, e.g. demonstrations, and active resistance of individuals. There is a higher willingness to participate in a collective resistance – ca. one third of the Czech citizens would participate (32 %). However, the vast majority of the people is not willing to demonstrate civil engagement and would not stand up against corruption (61 %). These numbers remain practically unchanged during the years

[46] In 2006 the Parliamentary elections took place and the left-centrist coalition has been replaced by a right-centrist coalition.
[47] See chapter II./5 (Investigation of corruption)
[48] GfK Survey: Corruption Climate, October 2009, not published

the surveys have been conducted (since 1998), the readiness for collective support ranges between 30 and 40 %. The willingness to stand up against corruption reaches highest values among young people at over 40 %.[49]

The other type of participation in the anti-corruption fight is the individual activity, e.g. reporting corruption or behaviour of attempted corruption. The willingness rate is lower than in the case of participation in a collective action. Only 22 % of citizens would turn to the police. Of this minority only 6 % would be willing to testify in court, remaining 16 % do not trust the police and would rather report anonymously. The positive fact is that the percentage of those, who would have the courage to report to the police, grows steadily since 2003 and in the last survey from 2009 the number is the highest in history (the same number was only at the start of the surveys in 1998).

However, the people who are willing to actively stand up against corruption are in minority; contributing to this is the above mentioned fact that people rely on the Government with the anti-corruption fight (although they rate the state as one of the most corrupt areas). The high corruption climate in the Czech Republic also does not contribute to the willingness of the people to participate in the anti-corruption effort; on the contrary, the prevalent feeling is that of apathy and despair. As many as 44 % people believe that it is hopeless to fight corruption and that it always has been and will be present in the Czech Republic. Even though the majority (53 %) of the people believe that it is worth it to combat corruption, it is a narrow majority and the current resignation rate is the highest in the whole period of the surveys. A slight shift (see the data from 2009 as listed above) can be seen in the more recent survey by Ipsos Tambor from 2011[50], where 70 % of the people stated that the fight against corruption has meaning and it is therefore possible that the people's resignation is not final.

**Conclusion:**

**The surveys clearly confirm the conflict between the general concern about the high rate of corruption and personal willingness to change things. The evidence shows that despite all collective and individual initiatives it is the state and its political representation, who have to initiate real measures against corruption and must persuade the citizens about their necessity and efficiency.**

### 3.9. The business sector

The role of the business sector in the fight against corruption is generally given little attention. The attention is usually centred on corruption in the private sector. Nevertheless in a majority of corruption cases the business sector participates in the corruption as such, be it as the one who offers bribes or the one who positively reacts to a demand for bribes.

The fact that the core of corruption is the meeting of the public and private sectors, especially in the case of public contracts, is evidenced by the representative survey ordered and prepared by the Association of Small and Medium Enterprises of the Czech Republic in 2010. In this survey among entrepreneurs to the question "Do you think that it is possible to obtain a public contract in the Czech Republic without a commission or a bribe?" 29.4 % respondents

[49] http://www.gfk.cz/imperia/md/content/gfkpraha/press/2010/100413_korupce_tu_by- la_a_bude.pdf.

[50] http://www.ipsos.cz/sites/default/files/TZ_Exkluzivni%20vyzkum%20Ipsos%20Tambor%20pro%20Zlatou%20korunu_20110613.pdf.

answered "absolutely NOT" and 29.9 % "probably NOT", whereas "definitely YES" only 7.1 % and "probably YES" 23.3 %. The result contrasts with the answers to a question, whether it is possible to obtain a contract without commission or bribe in the private sector, where the vast majority (74 %) expressed their belief that it is possible. The result shows that the corruption rate is much lower in the private sector in the case of issuing contracts and that the competition does not provide managers of private companies such a degree of corrupt behaviour as in the public sphere. It is therefore easier for the entrepreneurs to get a contract in the private sphere than in the public one, the survey authors conclude.[51]

Similarly to the question in Global Corruption Barometer from 2012,[52] posed to the entrepreneurs, whether their company lost a contract due to an alleged bribe by a competitor, 37 % answered positively. The average result from 30 surveyed countries is 27 %. The Czech Republic's result is closest to Russia (39 %) and India (36 %). The businessmen are most convinced about the loss of a contract due to a bribe in Malaysia (50 %), Mexico (47 %) and Indonesia (47 %). The best results were recorded in Japan, where only 2 % businessmen are convinced about this.

When asked about what is the cause of corruption, the Czech businessmen and managers believe that the main reason of high corruption rate is that "corruption is a widely accepted social phenomenon" (35 %). A similar number of respondents believe that the cause is the „unethical behaviour, which is widely spread among clerks" (33 %) while the opinion that "corruption cases are insufficiently prosecuted" is held by 23 % of respondents.

Only 8 % respondents believes that the "business sector takes corruption lightly". Similar results can be seen in Nigeria and Brazil (5 %), Egypt (8 %) and Hungary (7 %). On the contrary, insufficient sensitivity of the business sphere to corruption is considered a significant problem in Japan (28 %), Germany (28 %) and Poland (31 %), i.e. countries where corruption is less widespread. The business sector in these countries searches for problems in its own sphere and strives to set anti-corruption tools in the sector. Countries that are more affected by corruption tend to see problems elsewhere and play down their own insufficient anti-corruption measures.

The situation of anti-corruption measures in companies and to what degree they implement anti-corruption measures is shown in the following table.

**Table 6: Use of anti-corruption measures in the business sector**

| Measure | CR | World |
|---|---|---|
| Ethical codex | 46 % | 74 % |
| Anti-corruption company policy | 36 % | 51 % |
| Regular anti-corruption seminars | 16 % | 34 % |
| Corruption prevention is included in risk management | 29 % | 52 % |

[51] http://www.amsp.cz/uploads/soubory/pruzkum4_web_final.pdf.
[52] Global Corruption Barometer 2012, Transparency International, not published yet

| | | |
|---|---|---|
| Reporter protection measures | 10 % | 43 % |
| Ban on commissions | 36 % | 68 % |

Source: Global Corruption Barometer

It is interesting to compare the Czech Republic to other countries. Czech Republic has the worst results in reporter protection (only 10 % of companies use it), followed closely by Hungary (11 %), Russia and Poland (17 %). Same situation is with the ban on commissions – CR (36 %) followed by South Korea (37 %) and Egypt (39 %). In the category of regular seminars the Czech Republic is the third worst with 16 % after Poland (14 %) and Russia (13 %). Similar results apply for Anti-Corruption Policy and ethical codex. As for including corruption into risk management the CR is again the worst.

Similar results can be found in the Ernst & Young survey[53], e.g. in the area of implementation of anti-corruption measures in customer relationship management, when transferring liability for the action to business partners or when implementing due diligence processes during acquisitions.

This unfavourable situation is not affected only by corruption in the public sector, i.e. by requests for bribes from key figures in the public sector. It is also the consequence of the willingness of the private sector to solve business matters with corruption or other actions. An important aspect completing the situation of corruption in the country and the social potential of resistance against it is, in this case, the rate of willingness of the managers to resort to corruption. In the previously mentioned survey by Ernst & Young 58 % of Czech managers stated that in order to receive the contract, the above-standard costs for representation are justifiable (the average in Central and Eastern Europe is 28 %, Western Europe 26 %). 28 % of respondents were willing to consider a bribe (the average in Central and Eastern Europe is 15 %, Western Europe 11 %).

The aforementioned opinions are not supported by the low enforceability of laws and regulations in the area of bribery and corrupt practices in business. According to the same survey, 27 % respondents worldwide believe that state authorities are willing to prosecute corruption and are efficient in their ability to get the case to the court ruling. In a closer specification it shows that in advanced economies this is the opinion of 29 % respondents and in developing economies of 14 % respondents. Only 8 % of respondents are convinced about the successful enforceability of law in the area of corruption. A slightly positive fact is that this number is increasing (6 % in 2011).

Concerning the nature of corruption in the Czech Republic, it is also important to answer whether business considers a bigger problem petty corruption related to bureaucratic obstacles or the systematic corruption related to public contracts. In the survey by the Association of Small and Medium Enterprises, when respondents were asked "what represents the largest burden for the businesses of the respondents from the provided options?" 31 % answered that both present the same burden, 19 % that larger corruption related to public contracts burdens them more and only 7 % stated that they are burdened by petty corruption of clerks related to obtaining permissions etc. This result breaks the common conception that the biggest obstacles for businesses are bureaucratic obstructions of low-level clerks who demand bribes.

[53] Global Fraud Survey 2012.The report uses results of the survey on frauds and corruption with focus on the Czech Republic, Prague, 23rd May 2012, with the kind permission of Ernst & Young

The results of what do the managers and businessmen consider to be the best anti-corruption tool is important as well. Considering the prevalent way of thinking, according to the Ernst & Young research, 80 % of the managers think that monitoring by the regulatory and state bodies should be more strict in the future to reduce the risk of corruption and fraud. Only 61 % of respondents are of this opinion in the Western Europe.[54]

Very surprising is the high share of managers supporting the introduction of law that would financially reward people who report corruption (whistleblowers). There are 66 % of respondents who are absolutely for introduction of such measures in the Czech Republic, while in Western Europe the average is only 38 % of all respondents.[55]

It is fair to say that there are not only negative views of the private sector on the low spread of anti-corruption measures, but there are positive initiatives as well. Significant was the initiative of the American Trade Chamber oriented at increasing the transparency of public contracts[56] which united representatives of the business sector, politicians and experts on corruption and public contracts and prepared comprehensive stimulus for the amendment of the Public Contracts Law. The self-regulating initiative "Recommendations for Suppliers of Public Contracts" has been established in connection to the Platform.[57] The signatories of the Recommendations agree that they will voluntarily uphold higher standards of transparency when submitting offers within public tenders. The Recommendation is understood to be a temporary initiative step before the higher standards are implemented into the Act on Public Contracts.

**Conclusion:**

**The conclusion of other parts of the analysis that the core of the corruption problem is the allocation of public resources via public contracts proves to be true once again. At the same time it is possible to state that the anti-corruption awareness and activities of the business sector are low and the proven anti-corruption tools are implemented at a very low rate in the business sector. We may conclude that implementation of anti-corruption measures by companies participating in the Czech market is often prompted by the need of their parent companies or other business partners to comply with the requirements of strict anti-corruption laws valid in the UK (UK Bribery Act 2010) and USA (Foreign Corrupt Practices Act). The implementation of anti-corruption measures in the public sector therefore must be accompanied by the support of anti-corruption measures in the private sector. The cooperation and support of the business sector institutions taking part in the fight against corruption is vital.**

### 3.10. The conclusion of the chapter on the perception of corruption

The sociological surveys provide a relatively complex set of data mapping the perception of corruption by Czech respondents. All surveys clearly confirm a very serious concern of a vast majority of the Czech public regarding the spread of corruption in the country. Corruption is considered to be the foremost problem in the Czech Republic. At the same time

[54] Global Fraud Survey 2012.The report uses results of the survey on frauds and corruption with focus on the Czech Republic, Prague, 23rd May 2012, with the kind permission of Ernst & Young
[55] Same source
[56] http://www.transparentnizakazky.cz.
[57] Can be found at the same website

most of the respondents expect crucial anti-corruption measures from the state. There is a feeling of scepticism towards the anti-corruption efforts of the governments. The higher rate of acceptance of corruption is not an unchangeable trait of the Czech society. The society sensitively reacts to the signals of real anti-corruption effort of the political representation.

The surveys show significant difference between how important the respondents consider the phenomenon of corruption to be and the real rate of bribery among the respondents. Based on other surveys, the explanation of this difference could be that the corruption in the Czech Republic is focused mainly on the area of abuse of public resources (public contracts, administration of public property) and not on petty corruption regarding public services. We may conclude that according to the public opinion surveys the problem in the Czech Republic is the so-called large-scale organized corruption focused on the abuse of public resources, which is transforming into the state of the so-called "state capture". The surveys also show significant weaknesses in the anti-corruption resistance of the business sector. At the same time this sector itself represents a large part of the Czech corruption problem, particularly if it enters into relationships with the public administration.

It is necessary to remind the reader that a number of important pieces of knowledge are still missing. One of the good examples are the long-term repeated surveys with the same methodology which could provide a more accurate description of the development in the Czech perception of corruption. Missing are also specialized surveys monitoring the corruption issue in individual sectors of the society, e.g. in healthcare, justice or police. A coordinated and massive criminological and sociological survey is necessary for further specification of any Anti-Corruption Policy.

# 4. Qualitative analysis of the economic context of corruption

The price that we pay for corruption cannot be quantified with scientific accuracy or can be calculated with immense difficulty due to the limited amount of data and the range of the factors. Because of that, a systematic macroeconomic and statistical analysis is still missing. However, there are studies (e.g. by sectors or levels of state administration), which can be used for basic orientation and are able to demonstrate the scope of economic consequences of corruption.

## 4.1. Economic costs of corruption

### *The NERV study*[58]

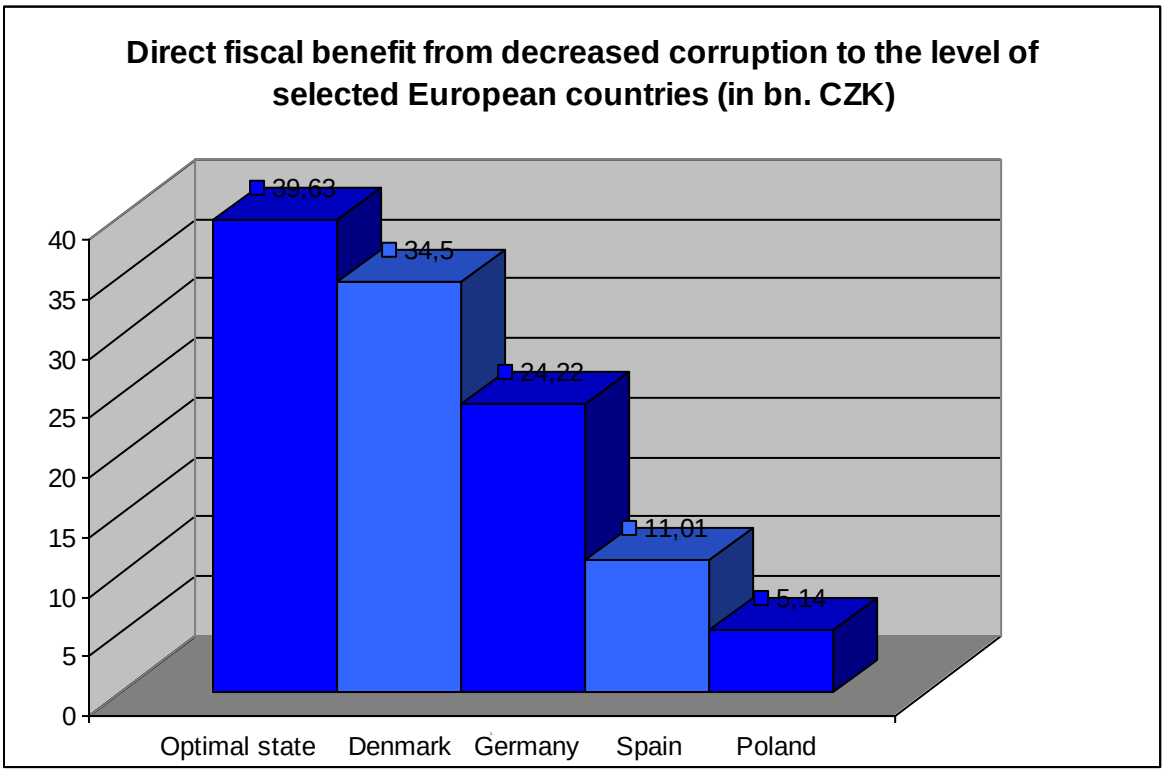
The Government's National Economic Council (hereinafter referred to as "NERV") used empirical facts to illustrate the negative influence of corruption on the life of Czech people.

The empirical study focused on the causal effect of corruption, expressed by the CPI index, onto the public budgets, particularly on the total public debt and the state of the budgetary deficit. The study regarded new EU member countries and the results showed that higher rate of corruption bares the same negative impact on deficits and public debt as the economic

[58] Kohout, P. (ed.gr):*Boj proti korupci.Sborník textů pracovní skupiny pro boj proti korupci Národní ekonomickérady vlády (NERV).*Prague: Office of the Government, Government's National Economic Council (NERV),2011.

regulation does. We may express the negative effect of corruption as an amount of money which the budget loses on a yearly basis. The study calculates how much the Czech Republic loses by the fact that the corruption level is higher than in the neighbouring countries. The picture No. 2 shows the direct financial benefit for the state budget if the level of corruption in the Czech Republic would drop to the levels of Poland, Spain, Germany or Denmark, which have the best results in Europe. In addition to this analysis, it also shows the perfect situation, when there is a zero level of corruption. From the calculations, we may see, that corruption costs the state budget 39 billion CZK a year (calculated for 2010). However, these are only direct economic losses. Apart from those there are also secondary influences on the economic growth and the quality of life, which manifest themselves later and in the long-term.

**Picture 2: Direct fiscal benefit from decreased corruption to the level of selected European countries (in bn. CZK)**




Source: The NERV study

Corruption does not cause only direct economic damages, but also influences for example the perception of quality of public services or a tendency to evade taxes. As concluded by the NERV study, the dissatisfaction of citizens with public services results in a higher inclination to commit tax evasions which are further reducing public resources. The companies involved in corruption and grey economy obtain a comparative advantage and force law observing companies (regardless of whether they are more efficient) out of the market. The indirect effects of corruption also include the strong negative relationship between corruption and the rule of law, political instability and lower rate of foreign investment. Measuring these effects proves to be more difficult than the direct ones. However, with the estimated overall effect of corruption on the economic development in the form of the decrease of GDP growth by 0.5 percentage point for every decreased CPI point the study concludes that with CPI at the level of Germany (7.9) the Czech Republic's growth could be increased by 1.6 percentage points annually and with CPI at the level of Denmark (9.2) by 2.3 percentage point a year.

***Economic losses in public contracts – TIC study*[59]**

Transparency International – Czech Republic (TIC) prepared an original methodology of surveys focusing on economic losses caused by the inefficiency and corruption in public contracts (with the use of the data of Ministry of Finance, Supreme Auditing Authority and a number of contracting authorities). The conclusions of this research were not very positive. In 2004 15 billion CZK of the total amount of public resources were used inefficiently at the local level and 17.4 billion at the central level. The total estimate of losses due to inefficiency and non-transparency of the issuing of the public contracts was 32.4 billion CZK in 2004. However, the amount of resources spent within the public contracts grew quickly each year and on average it was 17.5 % GDP (ca. 640 billion CZK in 2010). The survey was not repeated, but if we used the same average percentage estimate of inefficiency (ca. 15 %); in 2010 we could have an estimate of losses in the amount of 90 billion CZK.

***Economic losses in healthcare – TIC study*[60]**

The TIC sector analysis from 2007 focused on estimating the economic losses in six selected branches of healthcare (i.e. not in the whole healthcare sector). Based on the performed analysis the amount of losses (i.e. inefficiently spent resources) in the healthcare system in 2005 can be estimated to at least 20.1 billion CZK. This amount is equivalent to 0.67 % of GDP and 9.5 % of resources spent in healthcare. If we added the losses in the health insurance system, which currently functions separately, the estimate would increase to 27.6 billion CZK.

**Conclusion:**

**All available studies, regardless of their methodology, point out to the economic losses for the national economy in the magnitude of tens of billions CZK a year. This includes only the direct losses, showing the inefficiency of public spending and misappropriation of public budgets. However, the losses must be increased by the impact to the restriction of the business activity of the society and transaction costs, relations with the grey economy and the inclination of the citizens and companies to avoid the tax duty, including other psychological reactions of citizens to the corruption rate in the country, which affects economic decisions.**

**From the above clearly follows that the fight against corruption has a very important macroeconomic dimension. Restriction of corruption is therefore one of the forms of promoting budgetary responsibility.**

### 4.2. State and municipal companies

The reports of the Czech Counter-Intelligence Service (the Czech abbreviation is BIS) repeatedly hint at economic and corruption risks connected with the administration of state property. Public contracts have been repeatedly pointed out as the problematic area. For example the BIS annual report for 2010 states: "there have been failures of some of the

[59] Estimate of ineffectively spent resources in public contracts in 2004. Prague: Transparency International – Czech Republic, 2007, available at http://www.transparency.cz/doc/vz_odhad_neefektivity.pdf.

[60] Pavel. J.and others. *Odhad ekonomických ztrát ve zdravotnictví.*Prague: Transparency International – Czech Republic, 2007, available at http://www.transparency.cz/doc/tzdrav_studie02052007.pdf.

state representatives, who participated in transferring property out of state institutions. BIS identified non-standard and non-transparent behaviour of both competitors and the contracting authorities in tenders for state contracts. Frequent occurrences were the interconnection of the contracting authority and the public contract applicant, effort to award the public contract without a selection procedure, adjustment of tender documentation conditions in favour of a previously selected candidate, overestimation of the contract, influencing of the evaluation commission's members or issuing contracts for unnecessary services. Economic interests of the state in case of various types of selection procedures were endangered also by mutual agreements of applicants about the price and the winner of the contract".[61]

The environment of companies owned or partially owned by the state or municipality is considered exceptionally vulnerable to corruption. "A long-term phenomenon, which negatively influences these companies, is the relatively weak position of the owner, which makes it easier for the management to conduct inefficient activities. The management in some companies deliberately restricted the controlling and monitoring role of the state. They used e.g. inaccurate or incomplete information for the supervisory board, personal relationships between the management and representatives of auditory and regulatory bodies. The inconsistent role of the state as the owner is then the decisive factor providing a relatively large space for possible damages to state-controlled companies in favour of private subjects via manipulated public tenders, bypassing the Act on Public Contracts, overestimation of the acquisition value, disadvantageous sale of property or purchase of unnecessary marketing, advisory or legal services. Other risks were represented by unfavourably set contracts on providing services or property to other private subjects for their own business activities".[62]

This critical view of the functioning of state and municipal companies with an insufficient ownership policy is confirmed by the analysis conducted by the Ecological Legal Service (EPS).[63] This analysis states that 13 largest companies owned by the state or municipality had a total revenue of 299 billion CZK in 2010 (for comparison: non-mandatory expenses if the state budget were ca. 317 billion CZK in 2010). The total profit of these companies was ca. 40 billion CZK in 2011 (from that 34 bn. ČEZ). However, these companies received in the same year ca. 35 billion CZK in subsidies, so their profit was de facto only 5 billion CZK.

The EPS study further states that the Act on Public Contracts is too benevolent towards sector contracting authorities and enables the state companies to issue the majority of public contracts freely and does not require them to publish almost no information about them. The total costs of external services and goods supplies of 15 largest contracts amounted to 350 billion CZK in the last four years – according to the Act on Public Contracts the companies only issued 169 billion CZK. Only token information can be found bout the unregistered billions. The major problem regarding transparency is the possibility to trade with companies with unclear ownership. As for the amount the risk is even bigger than in the case of state administration. While e.g. the largest anonymous supplier for the state administration was the EDH Holding, which in the last four years received 3.2 billion CZK, the Appian Company with anonymous ownership received at least 17 billion CZK from ČEZ and Czech Railways companies in recent years. Also according to the mentioned study, there is no state (neither municipal) ownership policy in the Czech Republic.

[61] BIS Annual Report 2010, p. 3, available at: http://www.bis.cz/n/2011-09-07-vyrocni-zprava-2010.html#1.
[62] Same source
[63] EPS – Do the state and municipal companies need stricter rules? Available at: http://aa.ecn.cz/img_upload/a6fff2d4939ff74268dd80e1c2102b42/SOE_Informacni_podkladTISK_2.pdf , more information at: http://www.eps.cz/resime/tema/tunelovani-statnich-firem.

Out of 23 recommendations from the OECD regarding the administration of the state-owned companies[64] the Czech Republic fulfills only 5 and only partially.

**Conclusion:**

**The state and municipal companies represent in terms of the amount of abused public resources via corruption methods one of the riskiest sectors of the society. With just a few exceptions (new rules for appointments to the management of state companies, improving the competences of the Supreme Auditing Body) they were not paid sufficient attention within the existing Anti-Corruption Policy, the public control is limited and the influence of behind-the-scenes actors is significant.**

### 4.3. Territorial self-government

The BIS Annual Report for the first time directly shows the corruption risks in the activities of local administrations. "In a number of cities there are groups which are able to influence the decisions of councils and eliminate the influence of administration's officials, who do not accommodate them. The investigations of serious cases, where there is a suspicion that a criminal act occurred, are complicated by political consequences and possibly the partiality of local bodies active in criminal proceedings.[65] During transactions of public property the representatives often become connected to associated companies, which leads to a conflict of interests and a suspicion of abuse of public authority."[66]

The report states that the critics of the situation have to face the pressure of the business lobby. Typical for some statutory towns are unfavourable sales, subsidy frauds or rents and machinations with property, when influential persons at the city hall profit from administration, rents and privatization of the city infrastructure. This practice demonstrates the strong influence of structures that include businessmen, investors, current or former councillors and city hall employees."[67]

The report also points out the growing rate of political corruption, which influences the performance of representation democracy: "The influence groups, particularly business groups as well as local movements with political ambitions try to "preventively" influence electoral procedures by purchasing votes, calculated changes of permanent residences of citizens-sympathizers, non-transparent support of election campaigns, discrediting of inconvenient persons etc. It shows that the interconnection of the business and communal sphere is the source of corruption phenomena during transactions of public property and that

[64] OECD Guidelines on CorporateGovernanceofState-ownedEnterprises; http://www.oecd.org/corporate/corporateaffairs/corporategovernanceofstate-ownedenterprises/34803211.pdf.

[65] The mentioned risk of partiality is to some extent eliminated at the state prosecution level by a legal provision included in § 15 of the regulation No. 23/1994 Coll., on the Rules of Proceedings of the State Prosecution, establishment of branches of some public prosecution offices, and on performance of judicial trainees, according to which in case of crimes of abuse of public authority, bribery and indirect bribery, if they were committed in relation to uncovering or investigation of crimes against property or economic crimes, the role of the supervising state prosecutor in the preliminary proceedings falls to a state prosecutor from a high prosecutor's office and not to the local prosecutor.

[66] BIS Annual Report 2010, p. 7, available at: http://www.bis.cz/n/2011-09-07-vyrocni-zprava-2010.html#1.

[67] Same source p. 7-8

clientelistic and corruption practices affect large (statutory) cities as well as small municipalities."[68]

**Conclusion:**

**A lot of attention has been given to the issue of transparency and anti-corruption measures at the municipal level (also due to the strengthening of budgets and the influx of financial resources from European funds). It is important to push through and implement measures contained in the Government Anti-Corruption Strategy for the years 2011 and 2012 and monitor and evaluate their impact.**

**At the same time it is important to significantly support the activities of the public sector focused on the monitoring of corruption causes and other cases of possible abuse of public resources and property by local administrations.**

### 4.4. Organized crime and money laundering

The most relevant sources of information for this issue are the BIS reports. For example the 2011 report alerts to the interconnection of corruption with elements of organized crime with impact on the security and economic interests of the state. "Also in 2011 these manifestations laid mostly in the promotion of particular interests via non-standard influencing of the decisions of the state administration, local administration and justice bodies. The BIS also recorded efforts to illegitimately influence the legislative process at the central level. Although these activities often led to the damage of public budgets and property, their negative influence on the state's interests far outreached purely economic dimension. There have been cases of breach of legality of the execution of state authority and legitimacy of decisions of state bodies. Such cases contributed to the dereliction of the people's trust in public institutions, which in the end endangers the democratic bases of the rule of law."[69]

According to the BIS report, standing behind these activities are "mostly informal non-institutionalized structures, which took on the shapes of influence and clientelistic networks. In some cases these networks created parallel power structures, which endangered or directly undermined the functioning of the bodies of state or local administration. In exceptional, nonetheless serious cases, these subjects were connected to concrete legal entities. These were often business subjects, which were hardly punishable due to the nature of their activities – attorney offices or tax, advisory and media companies. One of the characteristic traits of a representative of these subjects was their social status and contacts. Ties to representative of the Czech justice or political, economic and social elite made it even more difficult to repress them by the appropriate authorities. The main methods are corruption, activation of clientelistic relations, obstruction of investigation, application of economic influence or pressure, media manipulation, use of companies in the legal economy or misuse of the structures of political parties and non-government organizations."[70]

The BIS lists the concrete example that the representative of the gambling lobby influenced the legislative process, which adjusted and made more strict conditions for gambling businesses through institutions, where the decisions about the new legislation had been made.

[68] Same source, p. 7-8
[69] Same source, p. 5
[70] Same source p. 5

The findings about corruption growing into organized crime correspond with the opinions of the citizens (see analysis of empirical surveys in chapter III.). The survey of the Center of Analyses and Empirical Research [71]shows that a significant majority of the respondents (82.6 %) is of the opinion that corruption in the state administration has grown into such proportions that it directly threatens the democratic order in the Czech Republic.

**Conclusion:**

**The research of the organized crime's interconnection with corruption in the Czech Republic is still in its beginnings. Despite that it shows that systematic corruption takes on the shape of organized crime. It is not appropriate to speak about the organized crime growing through the state administration, because such term gives rise to the image that the classic organized crime (drugs, human trafficking and illegal alcohol) influences state administration. Of course, this happens as well. However the new trend is that the activities leading to the misuse of public resources are at an increasing rate organized by legal business entities connected to the key figures of the public sector, whereas this activity may border on the illegal or be beyond this border. Crucial in this respect seems the much more intensive cooperation of key institutions – the police, state prosecution, Financial and Analytical section of the Ministry of Finance and financial authorities during the investigation of profits and money laundering.**

### 4.5. Public contracts

More than 650 billion CZK a year has been recently spent on public contracts in the Czech Republic, which represents 17 % GDP. In the last year the public contracts decreased to ca. 14 % GDP.[72]

***Openness of public contracts – study of the Oživení citizens' association[73]***

According to the analysis conducted by the Oživení association the tender selection procedures in the Czech Republic are much less open in comparison with other EU states.

The Czech Republic belongs to the group of states, which use limited and quickened procedures the most. The use of other than the open types of the selection procedure increases possibilities to influence public tenders. The contracting authorities also use minimum of preliminary announcements of tenders, which have the goal to inform suppliers about the tender in advance. The analysis showed that during the years 2007-2010 the amount of resources allocated through open public tenders decreased gradually (in 2008 it was 64 %, in 2010 only 47 %). At the same time in relation to the number of accepted offers the contracting authorities received in the 2006-2010 period the most offers within open tenders. According to the analysis the contracting practice shows that some qualification and evaluation criteria are of a significantly manipulative nature and restrict competition.

The use of other than the open tenders significantly increases costs, because it limits competition. It also creates space for corruptive influence of the selection procedures.

[71] SANEP, 2011, available at: http://www.protext.cz/zprava.php?id=14060.
[72] Pavel, J.*Zpráva o stavu veřejných zakázek v ČR*.www.verejna-politika.cz.
[73] Kameník, M. (ed.): *Otevřenost zadávacích řízení v ČR.* Praha: Oživení, o.s., 2011, available at: http://www.bezkorupce.cz/wp-content/uploads/2011/06/Otevrenost_final1.pdf.

***Evaluation of submitters of public contracts – the zIndex study***[74]

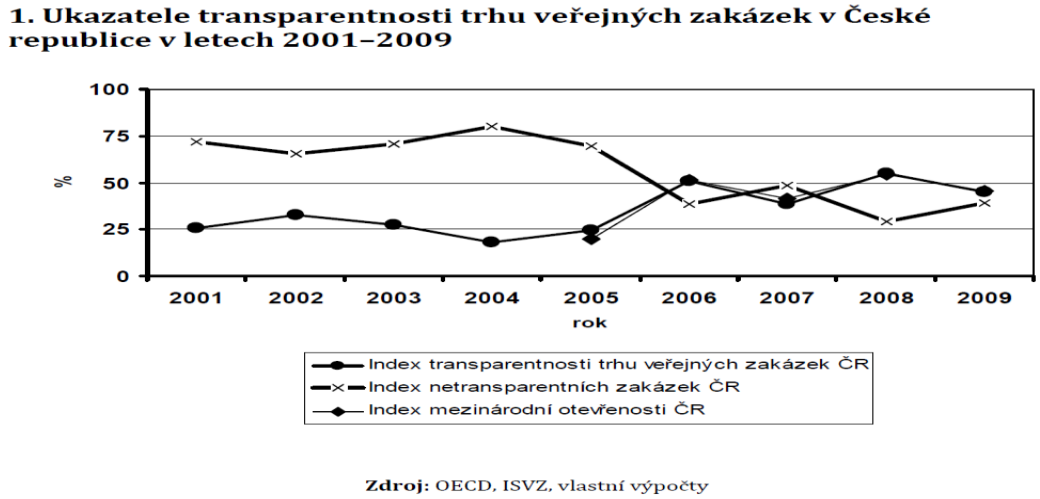
The method of announcement of tenders, their course, number of participants and many other criteria influence whether corruption and non-transparency in this area will be prevented or whether the insufficient rules will provide space for corruption. The zIndex project evaluates these criteria based on the recommended rules for submitting public contracts according to the anti-corruption materials of the OECD, Ministry for Local Development or Transparency International.

The published part of the survey, investigating the purchases by ministries in the period 2006-2010, provides a rather unflattering view. More than 80 % of the ministries' public contracts were awarded non-publicly or without a tender. A total of 67 % purchases took place outside the Information System of Public Contracts (ISVZ) and 14 % of the contracts were the so-called canapés, i.e. orders with the same number of participants and winners (in most cases only one). Only 33 % of all purchases by ministries went through the ISVZ. If we project these numbers into real amounts then these non-public contracts represent 228 bn. CZK and the canapés with only one competitor 48 bn. CZK out of the total 340 bn. CZK. In total this means that 276 bn. CZK were issued via non-transparent processes (which is the equivalent of 1/5 of the current state debt).[75]

***Transparency of the public contracts – the TI study***[76]

The study by Transparency International (conducted by the economist Jan Pavel), which attempted to formulate the so-called Index of Public Contract Transparency, provides a more positive picture. Its development in the years 2001-2009 is shown in the following chart (picture 3)[77]. The chart of the development of the transparent and non-transparent public contract markets shows a radical improvement in the years 2005 and 2006, where the transparent market index for the first time surpassed the non-transparent market index.

**Picture 3: Indicators of the transparency of the public contract market in the Czech Republic in the years 2001-2009**




**Zdroj:** OECD, ISVZ, vlastní výpočty

[74]Presentation of the project results, seehttp://www.zindex.cz/data/110126-ZINDEX-MEDIA.pdf.
[75]Press release from January 2011, see http://www.zindex.cz/data/2011-01-25-TZ_projektu_zIndex.doc.
[76]Pavel, J.*Ukazatele transparentnosti trhu veřejných zakázek v České republice*.Prague: Transparency International – Czech Republic, 2006, available at: http://www.transparency.cz/doc/vz_index_transparentnosti_metodika.pdf.
[77] Kohout, P. and others. *Boj proti korupci*. *Sborník NERV*. Prague: Office of the Government, 2011, available at: http://www.vlada.cz/assets/ppov/ekonomicka-rada/dokumenty/NERV-Boj-proti-korupci--sbornik.pdf.

Legend to Picture No. 3:
*The public contract market transparency index* shows the percentage of resources spent within the public contracts in a calendar year that have been allocated via an open tender.
*The public contract market non-transparency index* shows the percentage of resources spent within the public contracts in a calendar year that have been allocated via small-scale contracts, outside the Act on Public Contracts and in unpublished proceedings.
*The international openness index* shows the percentage of the public contract market that is issued in the form of over-limit contracts.
Source: OECD, ISVZ, own calculations
Taken from: NERV Almanac, 2011

**Conclusion:**

**The chapter II./3. on the perception of corruption shows that public contracts represent the most significant corruption risk in the eyes of the public. The above listed studies confirm that the corruption risks are influenced not only by the set legislation, but to a significant extent by managerial decisions of individual public bodies, the professionalism of the administration of the contracts and efficiency of supervisory and auditory institutions.**

**The example of the zIndex project also shows how important the analytical studies about the issuing of public contracts are. After adopting the amended Act on Public Contracts it is necessary to concentrate on managerial responsibility of issuing public contracts, supervision of efficiency and improving both the process and supervision. The establishment of the Public Investment Authority could represent the key part in building the necessary anti-corruption infrastructure and a tool for collecting important data on public contracts and their analysis.**

### 4.6. Conclusion of the chapter on qualitative analysis of economic aspects of corruption

The BIS reports and other analytical materials show an increased risk of corruption in local administrations and companies owned wholly or partially by state or local administrations. Combined in these entities are problems identified in other parts of the analysis, i.e. especially the area of public tenders and non-transparent influence of political parties. The most serious findings are that corruption in the Czech Republic transforms at an increasing rate in organized crime and money laundering, which presents a crucial social and macroeconomic problem for the state.

## 5. Uncovering and investigating corruption

### 5.1. Analysis of available statistics

Statistics available to the police and justice provide little information about the real occurrence of corruption, as stated in the 2011 annual report of the Supreme Prosecutor's Office.[78] Information provided by these statistics are related more to the quality of work of the law enforcement authorities than anything else.

[78] 2011 Annual Report on the Activities of the State Prosecution (text part). Brno, 20. 6. 2012, p. 12.

**Table 7: The number of uncovered and solved crimes of bribery and selected crimes closely related to corruption acts committed in the Czech Republic in the years 2002-2011**

| Year | § 158 / § 329 abuse of public authority | | § 159 / § 330 obstruction of the tasks of a public authority due to negligence | | § 160 / § 331 accepting bribes | | § 161 / § 332 bribery | | § 162 / § 333 indirect bribery | | Total bribery | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | Uncovered | Solved | Uncovered | Solved | Uncovered | Solved | Uncovered | Solved | Uncovered | Solved | Uncovered | Solved |
| 2002 | 376 | 269 | 33 | 31 | 48 | 38 | 116 | 109 | 7 | 6 | **171** | **153** |
| 2003 | 384 | 335 | 23 | 23 | 49 | 43 | 102 | 103 | 4 | 4 | **155** | **150** |
| 2004 | 248 | 205 | 18 | 18 | 126 | 125 | 149 | 147 | 12 | 11 | **287** | **283** |
| 2005 | 212 | 170 | 19 | 18 | 39 | 33 | 94 | 92 | 5 | 5 | **138** | **130** |
| 2006 | 160 | 124 | 16 | 15 | 43 | 35 | 89 | 87 | 6 | 4 | **138** | **126** |
| 2007 | 187 | 112 | 16 | 14 | 40 | 34 | 62 | 58 | 1 | 1 | **103** | **93** |
| 2008 | 228 | 132 | 18 | 14 | 46 | 29 | 99 | 88 | 5 | 4 | **150** | **121** |
| 2009 | 204 | 137 | 14 | 9 | 38 | 27 | 75 | 68 | 8 | 8 | **121** | **103** |
| 2010 | 198 | 141 | 14 | 7 | 53 | 27 | 124 | 96 | 4 | 2 | **181** | **125** |
| 2011 | 240 | 139 | 23 | 21 | 85 | 54 | 169 | 139 | 13 | 8 | **267** | **201** |

Source: Report on the Situation of Inner Security and Public Order in the Czech Republic in 2011, Ministry of Interior

*Interpretation:*

*It is possible to confirm the relatively dramatic decrease of investigated corruption crimes in the years 2005-2009, which could not be explained by the decreased occurrence of this phenomenon in the society, due to the high latency rate of corruption crimes and completely different perception of the corruption rate by citizens in this period. We must look for the reasons in the efficiency of law enforcement authorities or in the willingness of citizens to report corruption crimes. The presented statistical phenomenon deserves a more thorough analysis.*

**Table 8: Punishments for crimes of bribery and selected crimes closely related to corruption in the Czech Republic in the period 2002 – 2011**

**The summary of the number of accused and convicted persons according to the selected sections of the Criminal Code**

| Year | § 158 / § 329 abuse of public authority | | § 159 / § 330 obstruction of the tasks of a public authority due to negligence | | § 160 / § 331 accepting bribes | | § 161 / § 332 bribery | | § 162 / § 333 indirect bribery | |
|---|---|---|---|---|---|---|---|---|---|---|
| | Uncovered | Solved | Uncovered | Solved | Uncovered | Solved | Uncovered | Solved | Uncovered | Solved |
| 2002 | 332 | 104 | 12 | 6 | 45 | 26 | 120 | 108 | 3 | 3 |
| 2003 | 288 | 110 | 14 | 11 | 30 | 20 | 96 | 53 | 3 | 2 |
| 2004 | 221 | 127 | 7 | 5 | 41 | 23 | 103 | 74 | 6 | 0 |
| 2005 | 216 | 89 | 7 | 19 | 91 | 24 | 82 | 82 | 2 | 1 |
| 2006 | 144 | 75 | 9 | 4 | 40 | 27 | 96 | 45 | 3 | 2 |
| 2007 | 151 | 64 | 10 | 0 | 37 | 51 | 65 | 51 | 2 | 1 |
| 2008 | 156 | 70 | 2 | 1 | 42 | 33 | 78 | 61 | 6 | 0 |
| 2009 | 112 | 64 | 11 | 3 | 31 | 28 | 67 | 51 | 3 | 1 |
| 2010 | 130 | 73 | 7 | 3 | 31 | 21 | 82 | 53 | 3 | 1 |
| 2011 | 231 | 76 | 10 | 5 | 48 | 22 | 155 | 78 | 9 | 3 |

Source: Statistical almanac of crime, Ministry of Justice

*Interpretation:*

*Judicial tables necessarily (although with a delay) copy to some extent the data from the police statistics. The decrease in the monitored values is again present in the period 2006-2009. On the other hand there is no clear tendency e.g. towards the decrease of the rate of convicted related to the number of accused. It is possible to conclude that the police and state prosecution do not succumb to external pressures, such as for example accusations in disputable cases, which the courts then have to correct.*

**Table 9: Cases solved by the Department for Investigation of Corruption and Financial Crimes of the Criminal Police Service in the period 2006-2012**

| | 2006 | 2007 | 2008 | 2009 | 2010 | 2011 | 2012 (until 31. 8.) |
|---|---|---|---|---|---|---|---|
| Total processed cases (files) | 120 | 102 | 65 | 61 | 86 | 118 | 87 |
| Number of prosecuted cases in the given year | 53 | 43 | 34 | 35 | 54 | 62 | 25 |
| Own findings | | 13 | 9 | 13 | 17 | 22 | 7 |
| Total number of investigated persons | 266 | 217 | 131 | 133 | 176 | 256 | 197 |
| Number of files where prosecution started in the given year | 26 | 15 | 11 | 7 | 16 | 33 | 13 |
| Number of accused persons in the given year | 48 | 46 | 51 | 18 | 37 | 85 | 53 |
| Total number of accused persons | 110 | 85 | 58 | 62 | 94 | 159 | 114 |
| Number of files finished by submitting a motion for prosecution | 26 | 21 | 8 | 8 | 11 | 24 | 17 |
| Number of persons finished by submitting a motion for prosecution | 65 | 39 | 20 | 10 | 17 | 101 | 69 |
| Number of stopped files | 2 | 2 | 0 | 0 | 0 | 1 | 0 |
| Suability (number of persons finished by submitting a motion for prosecution/total finished persons) | 92 % | 93 % | 100 % | 100 % | 100 % | 99 % | 100 % |
| Number of suspended files | 36 | 45 | 31 | 24 | 26 | 31 | 25 |
| Average duration of investigation in days from the start of the criminal proceedings for finished cases | 328 | 251 | 312 | 249 | 222 | 250 | |

Source: Department for Investigation of Corruption and Financial Crimes

*Interpretation:*

*The basic information provided in the table above is that there is a growing dynamic of uncovering and investigating corruption. Due to the low number of cases, which were*

*started by the police's own operative work, the increasing number of cases can be explained by a change in the social atmosphere, increased sensitivity of citizens to corrupt behaviour and their increased willingness to report corruptive actions.*

*It is also necessary to point out the positive fact that the duration of investigation is decreasing compared to 2006 showing more efficient police work.*

Among the crimes of bribery a significant role traditionally belongs to this type of crime committed by members of the police. At the same time the Czech Police Inspection (since 1st January 2012 the General Inspection of Security Corps) does a good work in uncovering and investigating corruption of police servants. According to the annual report of the Czech Police Inspection the numbers of bribery crimes (§ 160-162 of the Criminal Code) in the period 2005-2009 as follows: 10 criminal acts in 2005, 7 in 2006, 12 in 2007, 13 in 2008 and 20 in 2009.[79]

Reliability examinations have been in place since 2009. In 2009 there were 14 of them (they begun in September due to the necessary training of the department's employees and equipment of the office with technical tools for appropriate documentation of their course); in 2010 the number of performed examinations was 62.

More information about the efficiency of uncovering and investigation of crimes provides the analysis conducted within the Government Anti-Corruption Strategy for the years 2011 and 2012, which analysed in detail 237 criminal cases of corruption, among others with respect to the difficulty of investigated cases and the source of information about the crime.[80]

The difficulty of investigation was designated as very high in 26 cases, high in 73 cases and low in 130 cases. The stated facts show that investigation does not deal predominantly with easy cases as is often believed. It is also necessary to point out that the analysis does not include definitions of "high" or "low" difficulty. The classification of the particular case under one of these categories was left to the subjective judgment of the author. Also the difficulty of the case should not be confused with the significance and severity of the corruption activity. In a number of very difficult cases committed by large or even organized groups of perpetrators bribery serves as a support activity, committed in order to enable, to facilitate or conceal the primary criminal activity. In these cases, although the case itself is very difficult, the corruption activity itself may fall into the category of petty bribery.

As for the form of obtaining information necessary to start criminal proceedings, the classification of the mentioned 237 cases is as follows: criminal complaint by natural persons – 83, criminal complaint by legal entities – 16, findings from another file – 18, findings from court proceedings – 2, own findings obtained by operative investigative activities – 61, other sources (police departments, military police, media etc.) – 57. It would be useful to further differentiate whether the criminal complaint from the legal entity came from a public institution or a private subject, in order to be able to evaluate the efficiency of supervisory measures of public institutions. It is possible to state that the external sources, particularly criminal complaints and other submissions continue to be the majority. Own findings and findings from other files amount to only 33.3 %. The number of findings found by own

[79] Report on the activities of the Czech Police Inspection and criminal activity of members of the Czech Police, available at http://www.mvcr.cz/docDetail.aspx?docid=7768&doctype=ART&lang=c. .

[80] *Analýza efektivity Policie ČR při provádění úkonů trestního řízení v oblasti trestných činů korupce.* Prague: Ministry of Interior, 2011, availableat:www.mvcr.cz/soubor/analyza-efektivnosti-korupce-pdf.aspx.

operative activities has a growing trend in the last two years, however, it is desirable to achieve even larger share of findings from own sources, as it is often this way the latent corruption activity gets uncovered when none of the parties has any interest in its discovery.

**Conclusion:**

**The results of the analyses confirm practical experience that the most efficient investigation is in cases where the law enforcement authorities receive information about them early, i.e. either during the course or preparation of this criminal activity. Receiving early information about the crime based on corruption is therefore the first condition of its efficient investigation.**

**The previously mentioned information show that one of the key tasks of the Anti-Corruption Strategy is to ensure that the law enforcement authorities receive early information about the corruption crime in order to support the investigative activities of the police. This is possible both by improving own operative investigative activities of the police and through legal and institutional support of whistleblowers and other subjects who report corruption.**

### 5.2. Using special tools of the Criminal Code

Another important question is to what extent the police utilises the authorization given to it by the Criminal Code. According to the previously mentioned analysis of the efficiency of the Czech Police[81] the situation in the period 1st January 2010 – 31st March 2011 as follows:

- **Wiretapping and telecommunication records** according to § 88 of the Criminal Code: Of all 237 cases the proposal was submitted in 48 cases (20.3 %) and then approved in 45 cases, whereas in 24 of them (43.3 %) the obtained records were used as evidence to convict the perpetrator. Of 150 specific cases, which the police began to solve before the criminal activity finished, the proposal was submitted in 37 cases (24.7 %) and approved in 35. The obtained records were used as evidence to convict the perpetrator in 22 cases (62.9 %)
- **Data on the realized telecommunication traffic** according to § 88 of the Criminal Code: requested and approved in 37 cases (15.6 %), obtained data were used as evidence in 18 cases (48.6 %). Out of 150 specific cases, which the police began to solve before the criminal activity finished, the proposal was submitted in 27 cases (18.0 %) and approved in 27. The obtained data were used as evidence to convict the perpetrator in 16 cases (59.3 %)
- **Fake transfer** according to § 158c of the Criminal Code: requested and approved in 12 cases (5.1 %), in 11 cases (91.7 %) it contributed to the conviction of the perpetrator. All 12 cases fall logically into the 150 specific causes, which the police began to solve before the criminal activity finished.
- **Surveillance of persons and property** according to § 158d of the Criminal Code: requested in 49 cases (20.7 %) and approved in 48 cases, in 30 cases (62.5 %) this contributed to the conviction of the perpetrator.

[81] Same source

- **The use of an agent** according to § 158e of the Criminal Code: requested in 5 cases (2.1 %) and approved in 4 cases, in 1 case (25.0 %) this contributed to the conviction of the perpetrator.
- **Concealing the identity of a witness** according to § 55 para 2 of the Criminal Code: used in 3 cases in which the criminal proceedings against concrete persons had begun.

The listed tools from the Criminal Code may be applied particularly in cases, where the corruption activity is in motion or the bribe or any other illegal advantage is still being prepared. Their use is therefore strongly influenced by how early the law enforcement authorities start to investigate these cases. The vast majority of the success of the institute of fake transfer must lead to contemplations about more frequent use of this tool in solving corruption cases.

It is appropriate to complement the listed conclusions with an opinion of the High Public Prosecutor's Office: The High Public Prosecutor's Office in Prague views as a problem the activities of the police, when in most of the "big" cases the police acts only subsequently based on all external stimuli at a time, when it is not realistic to expect a successful investigation result. A significant role in this area of crime belongs to hidden investigation methods, including the use of operative investigation tools. It is also necessary to lead further discussion about the efficiency of the law, even though the current tools are not being used sufficiently. Based on practical experience it is possible to state that these tools (e.g. the use of an agent according to § 158e of the Criminal Code) are being used in banal bribery affairs of private subjects or subject of a local administration and not in cases of a significant society-wide importance."[82]

**Conclusion:**

**Special tools of the Criminal Code (i.e. particularly the wiretapping and recording of telecommunication traffic according to § 88 of the Criminal Code, fake transfer according to § 158c of the Criminal Code, surveillance of persons and property according to § 158d of the Criminal Code and the use of an agent according to § 158e of the Criminal Code) are effective tools for uncovering and investigating corruption and often represent a condition to successfully secure a court's judgement. Despite these tools are not being used sufficiently. The limits of their use are set by the availability of quality equipment (lack or insufficient quality thereof are subjects of a long-term criticism from the active police servants) and by the level of specialized training of police servants and the overall organization of police work.**

**It is necessary to pay special attention to the technical support and specialized training of police servants to efficiently use the operative equipment. In case of big corruption cases the sufficient equipment of nationwide police units is a crucial factor.**

### 5.3. Conclusions of analyses of court rulings

Based on the task given by the Office of the Government of the Czech Republic to Transparency International – Czech Republic, Transparency International concluded a review of 233 final judgements issued in the period 2007-2009 (hereinafter as "analysis

[82] Report on the activities of the state prosecution in 2011 (text part). Brno, 20th June 2012, p. 13.

of judgements 2007-2009")[83], i.e. decisions, which became final before the Act No. 40/2009, Coll., Criminal Code, entered into force, and 247 final judgments issued in the period of 1st May 2010 – 30th April 2012 (hereinafter as "analysis of judgments 2010-2012")[84]. The aim of the analysis was apart from the assessment of the accordance of issued judgements[85] with the generally accepted theoretical doctrine also the evaluation of the way the corruption crimes are committed and to find out the general characteristics of perpetrators.

Based on the results of both analyses it is possible to state that the vast majority of judged cases falls into the "petty corruption" category, i.e. among cases with a lower level of social harm or less significant cases. "Large corruption" cases were definitely a minority in the analysed sample; however if these cases resulted in prosecution, in a number of cases the result was either acquittal or imposition of a punishment of the lower half of the range.[86] Cases of sophisticated corruption committed by organized crime groups are missing completely. An interesting fact is that in the analysed period of 2010-2012 there are absolutely no cases of accepting bribes by the members of the Czech Police in relation to traffic controls, although the period 2007-2009 was no exception.[87]

The vast majority of the cases were related to bribery in relation to the execution of public authority. On the contrary, cases of bribery in the private sector are very rare. Only eleven such cases were recorded in the analysed period.

This is also reflected in the structure of the discovered perpetrators, where in cases of accepting a bribe, the most numerous group are the members of the Czech Police. In cases of bribery the most numerous group are the drivers, who offered bribes in relation to a committed traffic offence. This type of crime is usually committed by persons without any previous record. If the perpetrator has any criminal history, he usually commits active bribery, mostly in connection to another criminal activity.

With regard to the characteristics of the discovered bribery activities it is necessary to state that cases, when a member of the Czech Parliament or another person of high social or economic status is among the accused, are very rare. In the analysed period 2007-2009 there was no such case.

[83] *Analýza soudních rozhodnutí vydaných v letech 2007 až 2009 ve věcech úplatkářských trestných činů.* Prague: Transparency International – Czech Republic, o.p.s., 2012.

[84] *Analýza soudních rozhodnutí vydaných v letech 2010 až 2012 ve věcech úplatkářských trestných činů.* Prague: Transparency International – Česká republika, o.p.s., 2012.

[85] The decisions were obtained via the Act No. 106/1999 Coll., on Free Access to Information, based on which copies of all final judgements in corruption crime cases, which became final in the analysed period, were requested. The analysed sample consists of all judgements the courts provided. When comparing the data with data contained in the statistic almanac of criminality it becomes obvious that these are not all judgements issued in the analysed period. Neither the relevant courts nor the Ministry of Justice as the author of the statistics were able to explain this disproportion. However the available judgements represent the vast majority of the issued decisions, i.e. a sufficient amount of rulings to serve as a representative "analysed sample". The below listed conclusions result from the relevant meritorious decisions, not from the complete files; however this fact shouldn't influence the core of the discovered facts, as the decisions should provide information of all known circumstances, which led the court to the given judgement (§ 125 of the Criminal Code).

[86] The analysis of judgments 2010-2012 (p. 171) even states that "if even despite that the cases were successfully uncovered, their perpetrators were frequently acquitted or inadequately low punishments were imposed."

[87] This fact may be related to the application of reliability examinations, which were implemented by the Act on Czech Police; the evaluation of the examinations is one of the partial tasks of this strategy (see task 4.3.1.)

In regard of the overall preventive function of Criminal Law, the fact that the decision practice of Czech courts is not uniform or even standardized is discouraging. That includes the most serious cases as well. There are deviations from the generally accepted doctrine and previously issued decisions and even serious cases end with acquittal due to mistakes made by law enforcement authorities.[88]

The results of the analysis did not prove the overuse of procedural tools affecting fundamental rights and freedoms. When discovering and investigating bribery the most important evidence seems to be the records and protocols from surveillance of persons and property, which were found in the analysed sample in a total of 36 cases. Wiretapping and records of telecommunication traffic, which were used in 38 cases, also play an important part in providing evidence of bribery. At the same time these are institutes, which have a high success rate when implicating the perpetrator. In the analysed sample of judgements the use of surveillance records led to conviction in 80 % of the cases. If there were wiretapping records among the evidence, it led to conviction of the perpetrator in 81 % cases. It is also necessary to add that there is much less acquittals than convictions in the analysed sample.

However, some of the institutes of the procedural law, which can be in some cases very effective for uncovering large corruption, are almost not used at all. One example could be the use of the police agent, which has not been found in one single case, or the fake transfer, which had been used only in four cases despite its 100 % success rate. This fact cannot be attributed to insurmountable procedural conditions for the applications of these institutes.

In cases of large corruption it also seems to be crucial that the bodies active in the criminal proceedings carefully observe all legal conditions. Typical for perpetrators of large corruption is the use of all available legal remedies. Even the slightest mistake in the legality of obtaining evidence during the preliminary proceedings in these cases often leads to the full acquittal of the perpetrators of very serious crimes. The analysis' results also show that the issue of fulfilment of all legal and constitutional conditions is investigated very thoroughly, particularly by higher court instances. It would be desirable if similar level of attention was paid by the district courts, because it is often not the case. In this regard it is necessary to consider the change in subject matter jurisdiction so that corruption crimes, where it is possible to expect extensive and difficult evidence, would be in the first instance tried before the regional courts [the considered criteria could be defining the crime according to the persons, to which it is related (e.g. persons of authority), areas which it affects (e.g. public contracts), its forms (organized) etc.]. A typical example, where this jurisdiction should be changed is the crime committed in connection to public contracts, which, although they are

[88] The first group of reasons for acquittal consists of serious mistakes consisting of non-observance of conditions for wiretapping and surveillance records according to the relevant provisions of the Criminal Code. These mistakes, which happened during the preliminary proceedings, were typical for the first monitored period, i.e. 2007-2009. In the 2010-2012 period there were not as many such failures, however there is still an apparent lack of thoroughness in the evaluation of observance of constitutional limits. The second group consists of mistakes concerning the application of material law terms, where these mistakes occurred much more rarely than the above mentioned procedural mistakes, however these mistakes occurred in much more significant cases and also the majority of these decisions, according to the author of the analysis, give the impression that the relevant court tried perhaps too hard to deviate from the standard theory and judicature and almost always in favour of the perpetrator. In these cases it is worth to point out that the public prosecutor doesn't always uses the legal remedy, despite the decision being in conflict with the material law set in the Criminal Code. The correction of such excesses is then done in the appeal procedure after a multiple abolition of the first-instance decision, whereas the change of the trial board is not an exception. With regard to the general preventive function of the criminal law this procedure has a negative influence as it is a prolonged solution of serious failures, which otherwise do not occur in the common ruling practice.

punished by lesser penalties than the general bribery crimes, are accompanied by a large file material.

With regard to the imposition of penalties it is possible to state that the courts do not use all tools provided by the criminal law, although it is possible to trace a trend towards a higher diversification of imposed penalties (significant improvement) in the 2010-2012 period. According to the author of both analyses the vast majority of imposed penalties is still of a lenient, rather educative nature[89], considering the severity of the cases; the imposed sentences are usually suspended. If there is a custodial sentence, it is usually in cases where it is connected to other forms of crime. The courts often do not observe the principles for imposing penalties set in the Criminal Code[90]. Only a minimal number of judgments take into account the issues of general prevention and even if it is the case, these judgements are often abolished by a superior court as overly harsh. Regarding the person of the perpetrator the courts usually take into account only their clean record, not their social status or function. At the same time when imposing penalties the court does not take into account all circumstances of the crime and the actions of the perpetrator after the crime was committed.

**Conclusion:**

**The results of the analysis of the decision practice of general courts show that the police and judicial statistics do not provide and even cannot provide a full picture for the evaluation of efficiency of law enforcement authorities during the uncovering and investigation of bribery-related crimes or corruption.**

**At a closer look on the individual analysed decisions it becomes clear that in the vast majority these are cases of petty corruption, i.e. of lesser significance. The cases of large corruption are much less numerous, on the other hand such cases are much more demanding on the law enforcement authorities, particularly in case of application of certain procedural tools. The results of the analysis showed that the courts rather strictly supervise the observance of legal and constitutional conditions of the application of these procedural tools, which interfere with some of the human rights granted by the Czech Constitution. At the same time these tools proved to be the most successful in uncovering corruption crime.**

**To successfully uncover and investigate serious corruption cases it seems to be necessary to improve the expertise of the national police units as well as providing sufficient and high-quality equipment for their work. These units should have an appropriate specialized counterpart within the system of state prosecution. This is confirmed also by the fact that in a number of difficult cases the reason for acquittal was the failure to observe legality during the application of some of the procedural institutes. The establishment of a specialized body within the system of state prosecution is a necessary prerequisite for thorough suppression of serious, sophisticated corruption and economic crime. It also seems that for a certain segment of the corrupt activities, court specialization would prove beneficial. Not in the sense of establishment of a special**

[89] This statement is based on the comparison of this penalty in relation to the nature and severity of the case and the person and the situation of the perpetrator in the concrete case, not solely on the penalty's size. For more details see analysis of judgements 2010-2012, p. 172.

[90] The main problem, which the analysis of judgements 2010-2012 (p. 172) pointed out, is that the practice of general courts demonstrates significant reserves in individualization of penalties, because these are imposed without thoroughly characterizing the nature and severity of the crime and the perpetrator's situation, including possibilities of his correction and his behaviour after committing the crime. In other words, exceptions aside, the more serious cases of corruptions aren't reflected in the imposed penalty.

**court, but rather in changing the subject matter jurisdiction in favour of regional courts and their specialized panels.**

### 5.4. Conclusion of the chapter on the uncovering and investigation of corruption

**Police and judicial statistics do not provide information about the corruption scope and trends due to the continuously high rate of latency of this phenomenon. However, they confirm an increased activity of the police in uncovering and investigation of corruption crimes and also its higher efficiency. To assess whether the success rate of investigation is also improving, with special focus on key cases, is not possible without conducting a more detailed analysis.**

**With regard to uncovering, investigation and prosecution of corruption crime the key factor appears to be the early reporting of the planned or performed corruption activity. In this regard the crucial factors are support of the operative investigative activities of the police, cooperation with other state agencies (Financial Analytical Department, Counter-Intelligence Service) and institutional support of reporting subjects.**

**To successfully solve corruption crimes it is crucial to fully utilize the tools, which are provided to the police by the Criminal Code. The conducted analyses clearly show that some tools, e.g. wiretapping, are clearly not being overused by the police, on the contrary, to efficiently combat corruption they should be used more frequently.[91] High-quality equipment and high expertise of the bodies active in criminal proceedings play a decisive role in this matter.**

**With regard to the high latency of corrupt activities it is necessary to consider other anti-corruption tools, which significantly restrict legalization of revenues from criminal activity and perform an analysis of the possibility to draw property, which comes from illegitimate sources with non-criminal tools. The aim of this analysis should be the definition of legal institutes, which could be implemented into the Czech law and which would greatly improve the efficiency of drawing of revenues from criminal activities. Therefore one of the proposed measures for the years 2013 and 2014 is the preparation and presentation of an analysis of the issue and a draft concept for creating a new mechanism in the area of civil law for drawing of property, which comes from criminal activity or where there is a strong probability that it comes from criminal activity.**

[91] Analysis of judgements 2010-2012, p. 170

# III. Strategic directions

## 1. Results and outcomes of the analytical part

Based on the previous analytical part (chapters II./2. – II./5.) we come to four conclusions about the state of corruption in the Czech Republic.

a) Corruption in its widest definition is perceived as a crucial problem in the Czech society. The vast majority of Czech citizens, in principle across all professional groups, consider the corruption rate in the country to be very high and corruption to be the most serious problem of the society. This critical assessment of the state of corruption in the Czech Republic deteriorates steadily since 2008. Corruption is for a long time considered to be the most serious social problem. Any responsible government must adequately react to this social feeling.

b) The analytical part clearly proves that corruption in the Czech Republic is connected with the problems of the functioning of the state authority and misuse of public resources. Flawed administration of public resources creates conditions for wasteful, non-transparent and inefficient use of public resources and enables their corruptive misuse. The bureaucratized and not very functional system of supervisory and auditory mechanism and a hardly functional sanction system guarantee to a great extent impunity to activities related to the misuse of public resources. The state ceases to fulfil its role of a guarantor of public interest and becomes prey to personal and group interests. Literature sometimes defines this situation as "state capture".

   A related problem is also the functioning of political parties, which are perceived by the public as the carrier of the problem, not as means for its solution.

c) Empirical results clearly show that the fundamental problem does not lie in petty corruption of various persons of authority, who would abuse their status in their daily lives and condition the execution of their duties with bribes. This does not mean that this problem is not present, but unlike other countries, which are burdened with a high rate of the so-called "customary corruption" this type of corruption is not massively evidenced in the Czech Republic.

d) Another crucial conclusion is the absence of a high-quality base for the Anti-Corruption Strategy. The Anti-Corruption Strategy lacks political genuineness, informational and expert background and last but not least resources for its efficient and target-oriented implementation. Current Anti-Corruption Strategy suffers from fragmentation, orientation on individual legal regulations without long-term monitoring of their anti-corruption impact. There is no specialized and methodological support of the anti-corruption effort in individual social sectors.

Therefore we may define several basic directions of the Anti-Corruption Strategy for the next period, from which it will be possible to derive individual measures.

The Anti-Corruption Strategy must be complex and permanent. The change in the corruption situation in the Czech Republic will not be caused by simple implementation of a new law or a personal measure. The Anti-Corruption Strategy must go through the standard procedure of public policy execution, which lies in formulating the targets and measures, their fulfilment, monitoring, evaluation and refinement.

## 2. Fundamental directions of the Anti-Corruption Strategy

### A) Professionalization of the state administration

The insufficient quality of the state administration stands together with the problems associated with the functioning of political parties at the imaginary top of the causes of corruption in the Czech Republic.

The goal is to create apolitical and professional state administration, which will in a professional manner identify and analyse society's problems, present proposals for systematic solution, elaborate on the tasks processed by the political representation, operate explicitly within the borders of legal authorization, supervise the clarity, transparency and inambiguity of the legal system and strive for a high level of legitimacy. The quality of public administration represents the base for the national Anti-Corruption Strategy.

The main instruments to achieve the aforementioned goals are:

- Solve the legal status of state clerks. A legal regulation of the clerks' status is a necessary requirement for creation of an apolitical public administration. Implement clear rules of personal policy in the public administration. Selection of qualified employees with high personal integrity is and their motivation for long-term service to the state must be a permanent tool of the Anti-Corruption Strategy. Create structures, which would strengthen the coordination of the functioning of the state administration and will be bearers of modernization and improved efficiency of the state administration. Strengthen personal responsibility of managers within the public administration for their decisions, including material liability.
- Improve management processes in the state administration. Internal anti-corruption programmes contribute to this as well.
- Manage daily operation of the public administration with approved long-term strategic intents.
- Review supervision processes with the aim to make supervision at all levels an efficient tool to supervise legality, usability, economy and efficiency of the functioning of administrative bodies.
- Improve the high level of transparency of activities at all levels of administration.
- Continue to search for an optimum balance between the sovereignty of self-government bodies and necessary state regulation.
- Improve the anti-corruption resistance of clerks and other employees of the state administration. Clerks and employees must know the corruption risks of their activities and procedures to prevent these risks and how to solve corruptive situations. They have to understand the conflict of interests and know procedures to avoid it.

  *Tools:*
  - *Adoption of a an Act on State Clerks (1.1.)*
  - *Implementation of personal policy in state administration (2.1.1.)*
  - *Assessment of the efficiency of the Act on Conflict of Interests and correction of its flaws (1.2.)*
  - *Adoption of a high-quality Act on Financial Supervision in Public Administration (1.6.)*

- *Providing protection to whistleblowers (1.5.)*
- *Publishing information about advisors and advisory bodies (2.2.4.)*
- *Improving the efficiency of measures aimed at restricting corruption and non-essential bureaucracy in immigration (visa) practice (2.4.4.)*
- *Education of clerks (5.2.)*
  - *Update of Rules of Education of Employees in Administrative Bodies (5.2.1.)*
  - *Implementation of education in the area of combating corruption via eLearning (5.2.2.)*
- *Education of members and employees of the Czech Customs Service (4.4.1.)*
- *Education of members and employees of the Czech Prison Service (5.5.1.)*
- *Internal departmental anti-corruption programmes (6.2.1.)*
- *Supervision over executive activities (6.4.3.)*
- *Prevention of manipulation with notary files (6.4.4.)*
- *Improvement of the protection of public interest in administrative justice (6.4.6.)*

**B) Administration of public resources**

Corrupt activities aimed at the misuse of public resources for private, collective or illegal partisan interests are at the core of the corruption problem in the Czech Republic. These happen due to the access to public resources outside the legal framework or in conflict with public interest. The corruption groups try to parasitize on the majority of the non-mandatory spending from the state budget. The responsibility of individual administrators of budgetary chapters and operation originators is irreplaceable.

The key role continuously belongs to the public contracts, grants and EU funds, administration of the property of the state, regions and municipalities and the management of companies owned or partially owned by the state or administrative units.
The goal of the Anti-Corruption Strategy in this area is the maximization of efficiency, economy and utility when spending public resources. The efficiency, economy and utility is a function of clear and well-founded rules, responsible management, efficient supervision and a high rate of transparency.

The main instruments to achieve the aforementioned goals are:

- Improve the overall transparency of public budgets enabling expert and public supervision of public spending.
- Monitor and evaluate the functioning of the processes of public contracting, provide support and feedback to contracting authorities, e.g. by providing examples of good practice, promote high level of transparency of public contracts including sufficient informational base, which will enable public supervision.
- Formulate and consistently apply ownership policy towards companies owned or partially owned by the state, regions or municipalities. Ensure the adoption and proper application of OECD Guidelines on Corporate Governance of State-Owned Enterprises.
- Improve the responsibilities of the management and political bodies for administration or fulfilment of social missions of state and municipal companies.

- Monitor and evaluate the efficiency of the outsourcing of activities performed by the public sector.
- Strictly pay attention that the drawing of European funds is directed towards the fulfilment of the goals of individual programmes, is useful, economical and efficient and is done fully within the legal framework.
- Improve transparent and economical method of managing public resources if possible by the use of public auction.

*Tools:*

- *Preparation of the Strategy of the State Ownership Policy (1.7.)*
- *Preparation of the Strategy and Methodology of Public Purchase (1.8.)*
- *Publishing of contracts and offers (2.2.2.)*
- *Publishing of offers for sale and lease of the state property (2.4.3.)*
- *Well-arranged state budget (2.2.3.)*
- *Improving the enforceability of audits by the Supreme Audit Office (2.4.1.)*
- *Analysis of the possibilities and efficiency of managing the Public Investment Authority (3.1.1.)*
- *Improvement of the electronisation of contracting procedures including higher utilization of electronic markets and the start of operation of the National Electronic Tool (3.1.2.)*
- *Preparation of the methodology for issuing small-scale public contracts (3.2.1.)*
- *Improvement of the efficiency of issuing public contracts co-financed from the EU funds (3.2.2.)*
- *Preparation of the Strategy of Construction of the Transport Infrastructure (6.3.1.)*

**C) Improving the anti-corruption tools in private sector**

The private sector represents a neglected yet integral part of the state's anti-corruption effort. It is the contact of the private sector with the public administration that, according to all available information, represents the fundamental area of corruption in the Czech Republic. However, available information do not provide us with facts whether the private sector is the initiator of corruptive behaviour or if it is rather a victim. What may be observed though is the weakness of the internal anti-corruption mechanism and low motivation of its representatives to efficiently prevent corruption.

The aim is to motivate the private sector so that it will be aware of shared responsibility for the corruption rate in the country, promote high level of integrity in actions of its representatives and use available tools to restrict corruption.

The main instruments to achieve the aforementioned goals are:

- Continue in the restriction of access of non-transparent business subject to public resources (public contracts, grants) and support the transparent forms of business.
- Strictly enforce the observance of measures aimed at the increase of transparency of the private sector (e.g. the fulfilment of existing obligations of companies to publish their accounting data in the Commercial Register) and impose penalties where these rules are breached.

- In cooperation with key representatives of the private sector and social partners (chambers, unions, associations, federations) support the implementation of anti-corruption tools in the private sector (whistleblowing lines, anti-corruption audits, due diligence, anti-corruption education, ethical codex, openly provided information).
- Support self-regulating processes in the private sector including the adoption of ethical codices of individual associations of business subjects, education and enlightenment.
- Continue to abolish bureaucratic burdens with focus on differentiating needless administrative steps from targeted regulation of the sector.
- Support tools for the strengthening of the state administration integrity in contact with the private sector,

  *Tools:*
  - *Uncovering the final owners – applicants for a public contract or concession (1.4.)*

**D) Strengthening of the political system and improving the transparency of political parties**

The functioning of Czech political parties regularly appears among the most often stated causes of corruption in the Czech Republic. It comprises both the inner democratic processes of the parties and their funding.

The Anti-Corruption Strategy of the state must support processes focused on stronger democracy inside the parties, transparent funding of their functioning and election campaigns and formalized processes of accountability towards voters as well as transparent promotion of political interests through the legislative process.

The goal is to have political parties, which represent legitimate interest of certain groups of voters through transparent legislative steps, parties, which are transparent economy- and programme-wise, which are accountable for the actions of their representatives in state bodies. Related is the improvement of formalized processes of promotion of political interests in the Parliament and other elected bodies.

The main instruments to achieve the aforementioned goals are:

- Improve the transparency of the legislative process leading to improved public supervision and openness.
- Set legal regulation of the political parties' management leading to a radical improvement of their transparency, apply it and evaluate its impacts.
- Establish an institution to supervise the management of political parties with sanction authority.
- Monitoring of cases of vote purchasing in elections and a possible adoption of a legal provision, should the amendment of the Criminal Code No. 330/2011 Coll., prove to be insufficient.

  *Tools:*
  - *Improvement of the transparency of the legislative process (2.3.)*

- *Creation of the eCollection and eLegislation projects (2.3.1.)*
- *Publishing of individual phases of the Government's legislative process (2.3.2.)*

**E) Uncovering, investigation and prosecution of corruption**

There has been a positive trend in uncovering, investigation and prosecution of corruption in recent years, particularly of its organized and more serious forms. The number of reported, investigated and prosecuted cases is increasing. The system of criminal repression still shows significant shortcomings though. The concentrated effort must lead towards the goal that the activities of all bodies active in the criminal proceedings are focused on punishing the most serious corruption cases in particular.

The goal is such dispensation of justice, which would contribute to the reduction of the impunity of perpetrators of serious corruption crimes. The activity of law enforcement authorities must observe the principles of general prevention.

The main instruments to achieve the aforementioned goals are:

- Continuously support whistleblowers as a key source of information about corruption cases, particularly their more serious types.
- Monitor and evaluate the investigation of corruption crimes.
- Improve the specialization of law enforcement authorities. The specialized activity of the Department for Uncovering Corruption and Financial Crime must be followed by specialized state prosecution departments and a support of specialization of individual judges.
- Improve the operative activities of the police and cooperation of national units (Department for Investigation of Corruption and Financial Crime, Department for Investigation of Organized Crime).
- Use the special tools of the Criminal Code, which include the cooperation of the accused, fake transfers as well as wiretapping and records of telecommunication traffic more often.
- Ensure sufficient economic and equipment base for the use of operative equipment and modern investigation methods (addition of experts).
- Support and extend the confiscation of revenues from criminal activities as one of the most efficient tools for suppressing corruption.

  *<u>Tools:</u>*
  - *Adoption of a law solving the protection of whistleblowers and preparation of an analysis of the possibilities of support and legal protection of whistleblowers (1.5.)*
  - *Establishment of a specialized state prosecution office (Act on State Prosecution) (1.9.)*
  - *Amendment of the Criminal Code establishing the obligatory forfeiture of the confiscated property (4.1.1.)*
  - *Implementation of the Offense Registry (2.4.2.)*
  - *Education of law enforcement authorities (5.3.)*
    - *Joint education of law enforcement authorities (5.3.1.)*
    - *Education of police servants (5.3.2.)*

- *Providing information about ownership structures of legal entities (4.2.1.)*
- *Bank secrecy and easier access to information from banking and the remaining financial sector (4.3.2.)*
- *Further breakthrough in tax secrecy in serious cases (4.3.3.)*
- *Analysis of the application of reliability examinations (4.3.1.)*
- *Improvement of the efficiency of administration of confiscated property (4.3.5.)*
- *Supervision of judicial activities (6.4.5.)*
- *Prevention of manipulation of attorney assignment (6.4.2.)*

**F) Improving the anti-corruption climate in the Czech society**

In the Anti-Corruption Strategy the systematic and legislative issues meet issues of morality and attitude. Prevalent in the attitude area is the refusal of corruption as an undesirable social phenomenon; however there is also a growing resignation and acceptance of corruption as a necessary evil. Regarding personal engagement the prevalent attitude is passivity and a belief that the state should be the bearer of the anti-corruption effort. Passivity is unfortunately caused by cases, when the party, which stands up against concrete proven cases of corruption, is being punished or disadvantaged while the bearers of the most dangerous forms of corruption are profiting and strengthening their own position. Reduction of the corruption rate in the country requires improvement in corruption rejection. It is particularly necessary to strengthen personal engagement leading to active actions against various forms of corruption.
The main instruments to achieve the aforementioned goals are:

- Improve the protection of whistleblowers and offer them support and counsel.
- Include anti-corruption education in the education of the youth, particularly towards the improvement of responsible citizenship.

*Tools:*
- *Adoption of the law dealing with protection of whistleblowers and preparation of an analysis of possibilities of support and legal protection of whistleblowers (1.5.)*
- *Education of children and students in schools and school facilities (5.1.1.)*

**G) Creating capacities for monitoring of corruption, formulation of the Anti-Corruption Strategy and its monitoring and coordination of individual steps. Strengthening of the resources for implementation of the Anti-Corruption Strategy.**

The aim is to complete the system of state and non-state institutions, which will ensure sufficient qualification of individual subjects of the Anti-Corruption Strategy, focused gathering and evaluation of information about the nature of corruption and efficiency of anti-corruption tools, which will provide monitoring of the corruption environment in the Czech Republic, provide expert counsel and education in the matter of combating corruption and support the anti-corruption engagement of the citizens.

Like any other public policy the Anti-Corruption Strategy cannot do without resources. Funding must be directed towards the establishment of the necessary infrastructure, to provide research and to support non-state organizations.

The under-funding of the Anti-Corruption Policy can be documented in the following table[92]

| | **Public budgets in 2010, million CZK** | **Grants for NGOs in 2011, million CZK** |
|---|---|---|
| Anti-Corruption Policy | not monitored | 5,5 |
| Roma minority policy | 86,7 | 19,6 |
| Anti-drug policy | 627,4 | 84,6 |
| Migration policy | not monitored | 6,5 |

The preliminary sources of the subsidizing departments show, that the total volume of subsidies from the state budget for projects of the NGOs in 2011 was ca. 6 billion CZK. State subsidy policy towards NGOs is divided into 15 main areas (e.g. sports, culture, social services, foreign activities, anti-drug policy, consumer protection and leases), whereas a separate area for combatting corruption is missing. Funding related to the anti-corruption effort is allocated only vie the grant program of the Ministry of Interior named "Prevention of Corrupt Activities" within the "risk behaviour" area. Within the same grant programme only 3.5 million CZK were allocated for 2013. The amount of financial resources hardly speaks in favour of the real intent of the Czech Government to be a government that fights corruption as declared in the Government's programme declaration.

To achieve this it is necessary:

- The priority should be to establish an anti-corruption agency or a similar body, which will meet the requirements of Article 5 of the UN Convention against Corruption or Article 20 of the Criminal Law Convention on Corruption of the Council of Europe, i.e. requirements of independence, sufficient resources and expertise of its employees, provided that the aforementioned requirements aren't met by the Section for Coordination of the Fight against Corruption of the Office of the Government of the Czech Republic. Special attention should be paid to the research of corruption spread in individual sectors of the society, such as healthcare, police etc. A wide-ranged quantitative survey must be complemented with a qualitative survey focusing on the analysis of the modus operandi of the most serious corruption crimes. Special research attention must be paid to the evaluation of the efficiency of the Anti-Corruption Policy.
- Support the activities of the NGOs fighting against corruption at the national or local levels. Prepare a new concept of the grant title for NGOs for combatting corruption and support of the Anti-Corruption Policy.

  *Tools:*
  - *Creation of the Programme of Combatting Corruption, which will serve to improve the knowledge base and to support the anti-corruption activities of NGOs and public institutions (1.10.)*

[92] Sources of information are publicly available materials such as state budget laws, Government resolutions, annual reports, grant titles, conceptions etc.

- *Analysis of the possibilities of establishment of an anti-corruption agency (6.1.1.)*

**H) Improving the transparency of the public sector**

Improving the transparency of the public sector's functioning is an issue of both the necessary legislation (Act on Free Access to Information) and its regular monitoring and implementation. Last but not least the improvement of transparency is the subject of daily managerial work of the public sector representatives.

*Tools:*

- *Act on Free Access to Information (1.3.)*
- *Open data (2.2.1.)*
- *Analysis of the possibilities of establishing the post of Information Commissioner (6.1.2.)*
- *Availability of the information for combatting corruption (6.4.1.)*

# IV. List of Anti-corruption Measures

The previous chapter states essential strategic directions of the long-term Anti-Corruption Policy which have followed from the analytical part of the document. In line with these directions and according to the current Government´s anti-corruption efforts the Government have set 10 specific priority tasks for the years 2013 and 2014.

In relation to the general definition of corruption issues in the Czech Republic, the list of individual anti-corruption measures which should be implemented in addition to the priorities in 2013 and 2014 is given hereunder.

## 1. Priorities

### 1.1. Public Servants Act

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| Author: Ministry of the Interior |
| Co-author: Prime Minister |
| Deadline – Performance indicator:<br>28 February 2014 – Submit the Government a proposal for a legislative solution to the employment or service contract and education of civil servants containing the following criteria (without limitation):<br>- Unambiguous definition of a border between politically occupied job positions and non-political clerical job positions which will be occupied on the basis of a selection procedure,<br>- Setting up the rules for depoliticization, professionalization and stabilization of public administration,<br>- Setting up a transparent and just remuneration system,<br>- Ensuring a special protection to whistleblowers of employer´s illegal conduct,<br>- Introducing a system of compulsory education including e.g. combating corruption. |
| Anticorruption effect: Clearly define basic duties of a servant. Depoliticize public administration. Reduce the risk for corrupting public administration servants and employees. |

Reasoning:

This is a task following from the previous Government Anti-Corruption Strategy for the years 2011 and 2012, No. 1.7, which has not been fulfilled yet. This task remains to be of key importance within public administration, therefore its inclusion into this strategy is more than justified.

Employment contracts of all the employees are governed especially by Act No. 262/2006 Coll., the Labour Code as amended. Employment contracts of territorial self-governing units are governed by special Act No. 312/2002 Coll. on servants of territorial self-governing units and a change of some laws, as amended. In contrast, there is no special fully-operable legal regulation on "servants" of state administration at present because Act No. 218/2002 Coll. On state employee service in the state administration and on renumeration of such employees and other employees in administrative offices (Service Act) as amended has not come in force

fully and it is unlikely to become so. This insufficient regulation of state servants is undesirable. The legal regulation of the position of public administration servants and employees is one of the access commitments to the European Union and its fulfilment is also presumed by Article 79 (2) of the Constitution of the Czech Republic. The Czech Republic has been reproached for its absence by the European Commission as well as e.g. by the Group of States against Corruption (GRECO) at the Council of Europe and numerous non-profit organisations for a long time. Moreover, enacting an act on servants and its entry into force is one of six ex-ante conditions which must be met so that the Czech Republic is allowed to draw financial funds from the EU Structural Funds in the programme period of 2014–2020. Billions of CZK which the Czech Republic could draw within the common strategic framework of the EU Structural Funds are at stake.

The objective of the new legal regulation is to introduce a special legal regulation of rights and obligations of public administration servnants and employees. This should result, among other things, in assuring a higher efficiency of state administration operation, the stabilization and professionalization of public administration, including the protection of servants at public administration performance, the openness and permeability of public administration, the depoliticization of public administration, increasing its transparency and strengthening combating corruption. Public administration permeability is understood, from the vertical point of view, as a permeability between the state administration and territorial self-government, from the horizontal point of view, as a permeability between individual administrative offices; more particularly, it means taking into account practice (years served) when transferring an employee/servant to another body.

The emphasis should be put especially on the guarantee for a professionally and personally highly sound servant, introducing a system sufficiently motivating to stay in public administration, the possibility to satisfy ambitions of professionally highly skilful servants, the possibility to increase education, skills and abilities, a system with higher personal responsibility and extended content of obligations compared to "common" employees (whether in private or public sector) and the higher demands for a servant should be properly financially and non-financially compensated for because without appropriate remuneration the quality of public administration will not increase.

The new act on servants, or the legislative solution to these issues, should be a complex system measure resulting in depoliticization (in the form of occupying managing positions of offices based on professionalism, not based on a political relation) and a clear increase in the efficiency of public administration performance and transparency. With regard to combating corruption, it does not matter whether there will be a single common act applicable to the entire public administration, or two acts, separate for "state servants" and territorial self-governing unit servants, or even three acts – the third one on education. In this regard it is also unimportant whether it will be a civil-right or public-right solution and/or their combinations.

The request for occupying job positions ("admitting state employees and servants of municipal and regional offices") on the basis of selection procedures at all the levels of public administration follows among others from a GRECO recommendation within the 2nd evaluation round in 2006 which has not been fulfilled yet. At the same time the act will have to resolve the question whether occupying vacant job positions should be performed exclusively on the basis of a selection procedure (as follows from the Government Resolution No. 329 dated 23 March 2009), or the selection procedure should be left as additional to occupying vacant job positions if they cannot be occupied by office´s own employees on the basis of the career system stipulated by an internal regulation of the specific office and only in the case the employer cannot occupy the freed job position on the basis of the

respective career system, the job position can be occupied on the basis of a selection procedure.

Briefly, the new act or legislative solution should especially enact a legal relationship of state administration workers (servants), their position, admission, remuneration, evaluation in relation to remuneration and further career promotion, education and incentive programmes, rights and obligations, the possibilities for revocation or dismissal, the protection when illegal conduct is announced, and the protection against political pressures as they follow from the European Principles for Administration, OECD as well as GRECO recommendations.

### 1.2. Conflict of Interest Act

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| Author: Prime Minister |
| Co-author: Ministry of Justice, Ministry of the Interior |
| Deadlines – performance indicators:<br>28 February 2014 – Submit the Government an analysis of the Conflict of Interest Act containing particularly the analysis of:<br>- Making sanctions stricter and making the control mechanism more efficient,<br>- Establishment of an office for conflict of interests as a united supervision authority,<br>- Establishment of a central notification registry,<br>- Introducing the notification obligation as of the date of position establishment,<br>- Extending the operation of the Act,<br>- Extending the restriction to pass to the public sector. |
| 30 June 2014 – Submit the Government a draft of legislative solution removing defects of the Conflict of Interest Act identified by the analysis. |
| Anticorruption effect: Increase transparency of incomes and proprietary relations of public officials. Eliminate the conflict of interests. |

Reasoning:

The Conflict of Interest Act should play the main role in these issues. The Czech Republic has committed itself to it, among other things at the international level, where the inspection of adherence to commitments within the Council of Europe has been entrusted to the Group of States against Corruption (GRECO). The first issues to be pointed out is the inspection of applying this act. The role of controllers of individual declarations of public officials´ honour should be fulfilled by registration authorities which unfortunately only collect individual declarations on word of honour and do not deal with their contents in any way. Moreover, if we consider quite difficult, and even obstructive process in some cases, a person has to undergo if he/she wants to view declarations, and a large number of public officials, it is obvious that in fact no functional inspection exists with most of them.

The aforementioned problem which is at the very beginning of the control mechanism stipulated by the Conflict of Interest Act later results in another problem, which

is an unsatisfactory sanction mechanism. With regard to the fact that no real inspection is carried out, no defects which would have to be addressed by the respective offence authorities exist. Servants at municipal offices with extended competence thus mostly only have the minimum awareness of the Conflict of Interest Act (e.g. they view already obsolete wording of the Act, they pass the offences back to registration authorities due to alleged incompetence and/or they mutually exchange elaborated documents with reasoning among authorities which follow from incorrect qualification etc.) because they have no experience in how to settle this kind of offences.

The sanction for breaching the Conflict of Interest Act for an individual public servant reaches the maximum of CZK 50 000. The preventive function of such a punishment can be questioned, nonetheless offence authorities do not even approximate to this threshold in practice when awarding a punishment. Within the performed analysis[93] of examinations, no punishment was most frequently awarded for the offence against the Conflict of Interest Act, or the punishment of reprehension or a fine at the range from CZK 1 000 to 4 000 was awarded. To sum up, the failing inspection and consequently the sanction mechanisms of the Conflict of Interest Act do not only enable its non-punishable non-observation by public servants, but they almost entirely paralyze this Act and put it into the position when it is necessary to start thinking of its change, particularly in the following areas:

***a) Sanction***

More efficient sanction mechanisms must be set up. The fine is now at the maximum rate of CZK 50 000, not only in the case of delay in filing respective notifications or declarations, but also in the case of giving untruthful information. The maximum amount of the fine as stated above is inadequate in some cases (giving untruthful information) and does not have preventive, educational not to say sanction effect. It therefore seems to be suitable to set a higher upper threshold and to diversify the sanction according to the nature of lapse. In the case of wilful provision of untruthful information in particular, the fine should also have a lower threshold and it should be disabled that a sanction for such notification could be e.g. the mere consideration of the offence. The sanction amount also needs to be diversified according to the position of public servant (whether he/she is a minister, deputy or an non-discharged deputy mayor or a councillor).

The sanction must also include the right of the public to be informed of results of proceedings, even in the case when the proceedings have been stopped or have not been commenced at all. The reality of the current offence proceedings is that although the whistleblower has the right "to be informed about taken measures" according to the Offence Act, if they ask for it, servants interpret this provision as if it said" "it has been proceeded pursuant to the Act on Offences" or even "the issue has been settled". In fact, the whistleblower is not informed about the real result of proceedings either. In the case of an attempt to obtain the decision on offences according to the Act on Free Access to Information, authorities sometimes refuse issuing the decision with the reference to the fact that the whistleblower is not a participant in the offence proceedings or even with the reference to the obligation to protect privacy of a politician who has been convicted of conducting an offence in accordance with the Conflict of Interest Act. To increase the sanction effect, we can consider the obligation to publish awards of decisions on the offence.

***b) Establishment of united supervisory authority***

In addition to the aforementioned facts it seems that offences against the Conflict of Interest Act are not often properly addressed as follows e.g. from a survey of Oživení, a civic

[93] http://www.bezkorupce.cz/nase-temata/stret-zajmu/monitoring-sz/.

association, which filed the total of 122 notifications of offences of politicians and other public servants in February 2012. A quarter of the filings was only procedurally terminated in a certain manner after two months and the result of the proceedings was only known for 8 cases. It seems necessary to define a united supervisory authority together with the revision to inspection and sanction mechanisms which do not operate sufficiently in practice.

***c) Establishment of the Central Notification Registry of Activities, Property and Incomes, Gifts and Liabilities***

The public inspection is further made more difficult by the fragmentation of information kept in the Notification Registry of Activities, Property and Incomes, Gifts and Liabilities (hereinafter referred to as the "Registry"). The Registry has had to be kept in the electronic form since 2008, however these electronic Registries are kept separately for individual registration bodies. The Central Registry of Registration Bodies (http://creo.justice.cz) has been established on the basis of the Government Anti-Corruption Strategy for the years 2011 and 2012, but it is only a guide post. It therefore seems to be suitable to centralize the registry of notifications, i.e. to make available all notifications of public servants at a single point, not only the Central Registry of Registration Bodies.

At the same time it is necessary to specify an access mechanism to the Registry so that awarding the access to a citizen is set for an indefinite period of time including avoiding obstructions at the award/application of access. Practical experience in obtaining the access to the Registry is very bad, in particular as far as individual regions are concerned. Numerous registration bodies had to be asked several times before they fulfilled the wording of the law. servants made the following mistakes: sending the access code to a different than required address, sending a non-functional code, setting the limit for the access to the Registry for 4 calendar days when these days also included the day of sending the shipment from the office and a weekend, which meant the code was not valid at the time of accepting the shipment etc.

***d) Introducing the notification obligation as of the date of position establishment***

Public servants have the notification obligation in accordance with the Conflict of Interest Act as of the regular date (30 June of the following calendar year) and as of the date of position termination (30 days upon the position termination). It seems to be desirable to introduce these notification obligations also at the moment of entry into service (it can be analogically e.g. 30 days upon the commencement of service performance), i.e. a kind of "entrance declaration" which could be used for comparing the monitored data. This will enable the public a wider inspection of public servants (e.g. the comparison of proprietary relations at the commencement and termination of service).

***e) Extending the application of the Act***

It is also necessary to deal with the question of application of the Act, i.e. whether it is sufficient. Within the 2nd round of evaluation, GRECO recommended introducing uniform regulations governing the conflict of interests not only for the categories of quite high servants, but also for all the state employees (i.e. workers in state administration) and workers of general and regional offices. This possibility at the full scope, however, seems to be disproportionate with regard to Article 10 of the Charter of Fundamental Rights and Basic Freedoms. A public interest which could justify this kind of intervention in the right to personal protection is seen where a specific servant (employee) decides on handling financial funds or is entitled to execute authoritative public administration and this requirement is thus acceptable. This extension is questionable with other servants (or even any employee) and it will have to be clarified. A weaker regulation in relation to executive

servants, whose information about property would not be available to the public, but only to the internal and external audit authorities, as it is regulated in Slovakia, is worth considering.

With reference to the respective judicial practice of administrative courts it is suitable to extend the notification of incomes, gifts and liabilities pursuant to Section 11 of the Conflict of Interest Act to the information about the wage, salary and premiums following from labour-law relationships of public servants because according to judicial practice this data can be published.

The question of remunerating the members of Parliaments of territorial self-governing units will also be settled in relation to the extension of the Act´s application. The current regulation does not apply to the remuneration of the members of Parliaments of territorial self-governing units who are not discharged on the long-term basis for the performance of service. However, it is a generally known fact that non-discharged members of Parliaments are also designated with representing municipalities and regions in legal entities with a share of such self-governing units. It often happens that they obtain such position as a certain replacement for not becoming the discharged members of the Council or Parliament. Moreover, the current regulation of unlimited responsibility of elected servants is often criticized and it should be restricted according to the rules valid for common employees or servants.

***f) Extending the limitation to the transfer to the private sector***

As far as situations when a servant passes from the public to the private sector (so called "revolving doors/pantouflage") are concerned, the provisions of Section 6 of the Conflict of Interest Act stipulates that a public servant stated in respective provisions of this Act must not become a partner or an employee of a company for the period of 1 year after the end of service performance (regardless of the fact whether it is a natural or legal entity) if such entrepreneurial entity concluded a contract with the state or a self-governing unit in the previous 3 years prior to the date of public servant´s end of service, if it was an above-the-threshold public procurement and if the public servant decided on such procurement contract. According to GRECO, this provision is too narrow because it is only restricted to awarding government procurements of a high value and only if they are decided by the respective public servant, which is insufficient.

***g) Legislative solution***

With regard to the scope of issues to be addressed by the amendment to the Conflict of Interest Act or a new act, an analysis of the aforementioned aspects with proposals to the solution will be elaborated at first, on the basis of which a legislative-technical solution will be prepared.

To conclude, we can add that the topic of the conflict of interests is the subject-matter of the 4$^{th}$ evaluation round of GRECO which will be commenced in the Czech Republic approximately in 2015. Therefore, it would be suitable that the issues of the conflict of interests are sufficiently regulated so that GRECO states in its evaluation report that the Czech Republic meets and adheres to its commitments.

### 1.3. Act on Free Access to Information

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| Author: Ministry of the Interior |
| Co-author: Ministry of the Environment |
| Deadline – performance indicator:<br>30 June 2014 – Submit the Government an amendment to the Act on Free Access to Information containing, without limitation:<br>- A proposal to the solution of an efficient mechanism preventing obstructions from the obliged entities (e.g. an information order or other sanction mechanism),<br>- More instructing wording of information provision in the case of conflict of two basic rights following from the judicial practice of administrative courts, e.g. about salaries and remuneration to servants and employees of public administration, on offence proceedings,<br>- Extend the repeated use of information and use of open data, re-word the mandatorily published information. |
| Anticorruption effect: Faster and easier access of the public to information. Higher public inspection of decision-making of public executive authorities. Make easier the identification of cases giving rise to the suspicion of corruption, when proprietary relations of public administration servants and employees are obviously disproportionate to their salaries. |

Reasoning:

The existing legal regulation of public access to information contained in Act No. 106/1999 Coll. on Free Access to Information as amended (hereinafter referred to as "IA") as well as in Act No. 123/1998 Coll. on the Right to Information about the Environment, as amended is deemed insufficiently enforceable in practice. It is not resistant to extraordinary cases of abuse of litigious requests, which motivates the obliged entities to obstructions. As a result, one of the basic tools for eliminating and minimizing the corruption environment in the form of the access of the public to information is weakened. The previous application practice shows that the rules contained in IA and the relationship to the other legal regulations are often ambiguous.

The Government Anti-Corruption Strategy for the years 2011 and 2012 imposed on the Minister of the Interior to submit the Government a document identifying problems associated with the free access to information including legislative proposals for the solution. As a result, the Analysis of Effect of the Act on Free Access to Information and the Summary of Legislative Changes were elaborated, the implementation of which is proposed for strengthening the effect of the Act on Free Access to Information and for removing its application defects with 15 measures recommended for implementation which were approved by Government Resolution No 3 of 4 January 2012.

The procedure of the Ministry of the Interior did not focus on the issue of law enforcement itself, although it was expressly required by the non-profit sector. It was not examined whether it was caused by the wording of the regulation and/or by the fact that with regard to the nature of the regulation there was an extraordinarily high resistance of the obliged entities to its observation. Such a phenomenon is quite common in international comparison. The level of bypassing of and obstructions to the law common for the obliged entities in the

Czech Republic is completely unthinkable e.g. in the German environment without any relation to a legal regulation. Similar problems with the enforcement of the right to information can be documented in numerous countries, regardless of the form of regulation. The analysis did not compare the sample of "failure" in decision-making of an obliged entity and a superior authority on the one hand, with judicial practice on the other. A large number of lapses of the obliged entities in IA implementation follows from the lack of knowledge of the judicial interpretation of the Act or the failure to adhere to it, or from extraordinary difficult situation when it is impossible to settle an application within deadlines set forth by IA even after prolonging the term set forth in IA. The amendment of the Act should therefore follow from the judicial practice and reflect it to the legislative wording as much as possible.

Furthermore, the previous attempts for remedy have focused especially on process changes. Due to financial reasons, there has been no attempt to institutionally strengthen the enforcement of the right to information, including institutional protection from extraordinary abuse of the Act.

The new amendment should take into account the aforementioned facts and it should follow from the following areas on the basis of the summary of legislative changes approved by the Government:

- Preserve the maximum level of already stabilized judicial practice, i.e. adopt the maximum from the previous regulation, particularly in the field of substantive regulation,
- Simplify the process of applying for information (the balanced improvement on applicant´s as well as provider´s part while adhering to the constitutional right to information),
- Availability and serviceability of data and information including the process and a competent body,
- Integration of related data (or the removal of multiplicity).

The amendment of the Act on Free Access to Information must be drawn up so that the access to information is made faster and more efficient and the protection from obstructions is prevented, including the relief from the processes of common administrative procedure. Information provision (satisfying an application) must require as few acts and administration as possible. The procedure for the settlement of an application should be as simple, non-formal and efficient as possible. This approach can be facilitated by making the digitalization of the proceedings easier. The current regulation also revealed a serious defect in the enforcement of active information obligation (mandatorily published information) and in the absence of any sanction. With regard to this fact an information order or another institute will be introduced by the amendment of the Act, or the search for an efficient sanction mechanism will be at least the subject-matter of the analysis according to task 6.1.2.

Current requirements imposed on this field show it is necessary to see the RE-USE principle as a key and strategic direction for public administration transparency development, i.e. the repeated use of information and "open data". In this regard, the supplemented amendment should contain e.g. publishing contracts, invoices and registers in the form of open data, specifying the re-use of information (the RE-USE principle), provider´s obligation to be technologically and organisationally helpful to information processors (a common regulation abroad), or anchoring the same weight of an application form question as an application for information, providing some defined databases in the form of open data and stipulating the competence of the supervisory body to specify data structures, a data

catalogue and organizing the publication in the form of open data and related processes. These aspects are specified in detail in the tasks included in chapter 2.2.

The establishment and use of these principles should result in further integration of related data or the removal of multiplicity. The principle of publication and availability should be the leading one, the aspect of addition or relation to factual agendas (awarding public procurements, handling the property) should be the secondary one. The objective is to enable working with these data in aggregate and in relations without the necessity to combine non-compatible data from various sector systems.

### 1.4. Revealing end owners

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| Author: Ministry for Regional Development |
| Deadline – performance indicator:<br>31 December 2014 – Submit the Government an amendment of the Act on Public Procurements and an amendment to Concession Act which will ensure revealing end owners of legal entities which are selected applicants for a public procurement or concession. |
| Anticorruption effect: Reach a higher level of transparency in legal relationships in which a public authority is on the one hand and a private-law entity applying for a public procurement or a concession is on the other hand. |

Reasoning:

On 31 May 2013 in the Collection of Laws the Act No. 134/2013 Coll. on some measures to increase the transparency of public limited companies and to amend other Acts was published. The goal of this legal regulation is to transform joint-stock companies with bearer share certificates in such a way that the owner of the joint-stock company can always be identified. Enacting the act was start the process of cancelling "anonymous shares".

The problem is that a shareholder need not always be the real owner of a joint-stock company, i.e. the beneficiary of public funds within the award of public procurements or concession procedure. It seems to be suitable to propose a regulation which would enact the information obligation of all legal entities entering the specified relationships (public procurements and concession proceedings) with public authorities to reveal their end owners. When defining who is an end (ultimate) owner, it can be followed from the currently used AML standards known to the practice and anchored in Act No. 253/2008 Coll. on some measures against legalizing the proceeds from crime and financing terrorism.

The task follows from Government Resolution No 892 of 5 December 2012.

### 1.5. Protection of whistleblowers

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| Author: Prime Minister |
| Co-author: Ministry of Labour and Social Affairs, Ministry of Justice, Ministry of Defence, Ministry of the Interior |
| Deadlines – performance indicators: |

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| 30 April 2013 – Submit to the Government a proposal for changes in acts related with addressing whistleblowing and the protection of whistleblowers. |
| 31 March 2014 – Submit to the Government an analysis of possibilities for the support and legal assistance to whistleblowers of crimes. |
| Anticorruption effect: Higher protection of people announcing a crime. |

Reasoning:

***Act on Protection of Whistleblowers***

An Analysis of Whistleblowing and Protection of Whistleblowers was elaborated on the basis of Task No. 1.18 of the Government Anti-Corruption Strategy for the years 2011 and 2012 and approved by Government Resolution No 409 of 13 June 2012 on the basis of which the factual intention of legislative solution to whistleblowing and the protection of whistleblowers was elaborated which was approved by Government Resolution No 851 of 21 November 2012. Whistleblowing and the protection of whistleblowers represent a new topic in the Czech Republic, although some aspects of whistleblowing has been regulated in various legal regulations. With regard to the conclusions of the said analysis and the factual intention, a new legal regulation is proposed to be enacted meaning a change of Act No. 198/2009 Coll. on equal treatment and legal means of protection from discrimination and a change of some acts (Antidiscrimination Act), as amended by Act No. 89/2012 Coll. and other legal regulations. The proposed institutes are introducing a new anti-discrimination reason and reverting the burden of proof of the employer.

***Analysis of possibilities for the support and legal assistance to whistleblowers***

Corruption informants – whistleblowers do not usually need only legal protection, but also the support in the form of unpaid legal and psychological consultancy. For this purpose, it seems to be suitable to establish a consulting office for whistleblowers which should be a highly professional, reliable and trustworthy contact centre for everybody who announced corruption or only thinks of doing so. People announcing corruption usually expose themselves to a high personal pressure and the risk of losing their job, threatening, in worse cases even blackmailing, abuse, filing a charge due to a false incrimination and libel. The experience acquired from the activity of the consulting office, whether it would be a newly established office or ensured by non-profit organisations, can be further used for potential legislative amendments concerning the topic of whistleblower protection. These are therefore additional non-legislative measures continuing the legislative solution in the form of a change to the Anti-discrimination Act and other acts.

Non-government non-profit organisations also call for the protection of corruption whistleblowers and for establishing legal and psychological consulting offices and in some cases they try to substitute for this activity themselves. We can mention e.g. the Whistleblower Consulting Centre of Transparency International – Czech Republic or the Legal Consultancy of Oživení, the civic association. Nonetheless, psychological and legal consultancy can also be provided in other forms. Therefore, an analysis of possibilities for the support and legal assistance to crime whistleblowers will be elaborated with the focus on the existence and purposefulness of a consulting office for informants/whistleblowers.

### 1.6. Financial control and audit

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| Author: Ministry of Finance |
| Deadline – performance indicator:<br>31 May 2013 / 31 March 2014 – Submit to the Government a draft of the Act on financial control in the public administration, including managerial control, internal audit and central harmonization. |
| Anticorruption effect: Higher law enforcement at the fulfilment of the Act on Financial Control in Public Administration. Better quality of financial management control, quality improvement of managing control, quality improvement of internal audit and assurance of the full functional internal audit independence. |

Reasoning:

Although numerous measures and tasks contained in this Strategy presume public inspection, the tools for eliminating corruptive behaviour inside the system remain at the first place. It needs to be ensured that the proposed internal control system is effective and efficient, particularly by ensuring significant legislative strengthening of independence of a professionally set-up internal audit system and a wider use of its results as well as enacting the enforcement conditioned by sanction of responsibility of managing employees for all the stages of the decision-making and control system. At the same time the proposed system must be adequate and exclude unjustified duplicities of inspections performed.

To fulfil the intention leading to the minimization of the risk for potential non-economical, ineffective and purposeless management of public funds and the elimination of conditions for corruption behaviour, the new legal regulation should ensure:

- Definition of personal responsibility for the setting-up functional controls and evaluation of the process of meeting conditions for drawing public budgets,
- Responsibility for the manner of approaching the settlement of risk and their management,
- Procedures for addressing discrepancies including procedures for recovery of financial funds used without authorization,
- Personal responsibility for non-/acceptance and non-/implementation of necessary corrective measures,
- Obligation to reflect requirements for management and control systems in internal regulations of public administration authorities,
- Implement the principle of involving audit services at various levels of public administration in a single integrated system with the removal of excessive overlapping and duplicities,
- Stipulating the separation of non-compatible responsibilities and powers of executive bodies and persons approving income and expenditure operations in public administration authorities in the detailed solution of financial management and control.

In relation to the applied principles of internal control system development within the European best practice with the required emphasis on management responsibility it seems to be necessary to elaborate and submit a draft of a new legal regulation to financial control

in public administration including management control, internal audit and central harmonization which will replace the obsolete Act No. 320/2001 Coll. on Financial Control. In addition to the management responsibility, the factual intention should focus on the following areas:

a) Strengthen the prerequisites for functionality of internal control systems,

b) Performance of audits focused on the correctness of mapping foreseeable risks, their timely identification and taking adequate measures for their management in financial control systems in individual public administration authorities,

c) Strengthen systematic management controls of central administration authorities,

d) Strengthen the quality verification of the setting-up of control systems in financial management systems,

e) Ensure the complete functional internal audit independence.

### 1.7. State ownership policy

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| Author: Ministry of Finance, other sectors |
| Deadlines – performance indicators:<br>30 April 2013 and 10 September 2013 (sectors) – Elaborate and send the Ministry of Finance a document containing the state ownership policy in individual sectors of economic and social life defining the property necessary and unnecessary for the performance of its tacks, evaluating the importance of the existence of state enterprises or state proprietary interest in business enterprises with regard to the long-term strategy in individual economic sectors with the potential proposal for their transformation or privatisation. |
| 30 April 2014 (MF) – Submit the Government a comprehensive document containing general outcomes of the state ownership policy in relation to the property which serves and will serve on the long-term basis for the performance of its tasks and functions in all the areas of public administration, a long-term state strategy of state ownership rights execution and basic aims and role of the state in the administration and management of state-owned enterprises and enterprises with proprietary interest of the state on the basis of partial documents including respective sectors. |
| 31 August 2014 (MF) - Submit the Government a proposal for the Strategy of the State Ownership Policy following from general outcomes of the state ownership policy and from recommendations of the Organisation for Economic Co-operation and Development. |
| Anticorruption effect: Make it impossible to implement procurements, projects and plans associated with corruption and inadequately high risks of corruption by state enterprises and enterprises owned by the state. |

Reasoning:

The task to process a draft of a strategic document called the State Ownership Policy has been assigned in relation to the current status analysis in the field of selection and nomination of professionals to positions of directors and members of Supervisory Bodies of state enterprises and to positions of members of bodies of business enterprises with the state proprietary interest, including the proposal for legislative, organizational and system measures

for improving the current status, removing negative phenomena and eliminating corruption in this field, approved by Government Resolution No. 569 of 25 June 2012. This should be a wider strategy which will be known to the public, transparent and which will define how the state sees its position as the owner of such enterprises. The adoption of the State Ownership Policy can be associated with the adoption of other anti-corruption measures because its introduction will certainly require changes in legal regulation of state enterprises, other state organizations and business enterprises with the state proprietary interest (hereinafter referred to as "Enterprises" for the purpose of this reasoning) – whether changes to relevant acts or at least changes in the Articles. This presumption follows from OECD recommendations for the content of the ownership policy.[94]

The Annual Report of Security Information Service (SIS) for 2010[95] according to which *"the Czech organized crime of the highest level (...) profits in particular from systematic enrichment from public budgets and enterprises with the state proprietary interest"* should be an important impulse for taking other anti-corruption measures concerning the enterprises. The Annual Reports of SIS for 2010 and 2011 point out serious issues[96] connected with awarding public procurements, where these issues also relate to the Enterprises – e.g. Lesy ČR, the state enterprise, Česká pošta, the state enterprise or some business enterprises with the state proprietary interest having the strategic importance for the state (Czech Airlines, Czech Railways, ČD Cargo, ČEZ, Czech Export Bank and Export, Guarantee and Insurance Company). In relation to awarding public procurements by so called sector contracting authority the Act on Public Procurements was bypassed in 2011 when ČEZ awarded procurements by means of its subsidiary Škoda Praha Invest.

Furthermore, the Annual Report of SIS for 2011[97] states in relation to organized crime that *"entrepreneurial entities which are difficult to be punished with regard to the nature of their activity – law offices or tax, consulting and media companies are behind the activities which resulted in detrimenting public budgets and influencing the state administration and self-government activities in some cases. One of the characteristic signs of representatives of such entities was their social position and influential friends."* A typical example can be the network of business companies which have entered into legal relationships with Dopravní podnik hl. m. Prahy, a.s. (the major shareholder of which is the Capital of Prague and it therefore can be considered an Enterprise) and which are parties of numerous causes associated with disadvantageous contracts for Dopravní podnik hl. m. Prahy, a.s.

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[94] In particular, they include OECD Guidelines on Corporate Governance of State-owned Enterprises, Guideline II. A, pages 13, 23 and 24; the document is available at: http://www.oecd.org/daf/corporateaffairs/corporate-governanceofstateownedenterprises/oecdguidelinesoncorporategovernanceofstateownedenterprises.htm. The state ownership policy and its formation is also dealt with in detail in Accountability and Transparency: A Guide for State Ownership; the document is available at: http://www.oecd-ilibrary.org/governance/accountability-and-transparency-a-guide-for-state-ownership_9789264056640-en.

[95] http://bis.cz/n/2012-02-24-vyrocni-zprava-archivu-bezpecnostni-informacni-sluzby-za-rok-2011.html, page 10.

[96] The Annual Report of SIS for 2010 deals with non-standard and non-transparent behaviour of both applicants, and contracting authorities in tender procedures to state procurements. According to SIS, the frequent phenomena included the inter-relation of the public contracting authority with the applicant for the procurement, the effort for the public procurement award without tender procedure, a modification to tender conditions in favour of a pre-selected applicant, overvaluation of the procurement, influencing the members of evaluation commission, or awarding procurements for unnecessary services or extending already concluded contract by disadvantageous addenda. The state economic interest at various types of tender procedures were also threatened by mutual agreements of applicants on the price and a winner of the procurement. Public procurements were also influenced by targeted restriction to the control and managing role of the state in the Enterprises. In principle, the same problems are specified in the Annual Report of BIS for 2011.

[97] http://bis.cz/n/2012-08-22-vyrocni-zprava-2011.html, page 5.

The document containing general outcomes for the comprehensive state ownership policy which will be continued by the Strategy of State Ownership Policy needs to be elaborated on the basis of partial documents provided by individual sectors including the definition of property necessary for performing duties by the respective ministry or another central administration authority, the evaluation of the importance and efficiency of state enterprise existence by their founders with potential proposal for their transformation or privatization and the evaluation of the importance of business companies with the state proprietary interest in individual economic sectors and the need for potential changes to the scope of state interest. On the basis of the document elaborated in this manner the Strategy of State Ownership Policy will be finished and it will reflect recommendations of the Organisation for Economic Co-operation and Development (OECD). Individual partial measures given below will be addressed depending on their character by means of Government resolutions or by enacting partial amendments to the valid legal regulations.

The following areas of problems will be addressed in relation to the Strategy of State Ownership Policy:

**1. State Ownership Policy**

The State Ownership Policy is a conceptual document which enables the state to behave as a transparent and foreseeable owner. It sets goals the state should achieve by means of its proprietary interest in the Enterprise, medium-term and long-term goals of individual Enterprises (performance requirements), the manner of filling the Enterprise bodies, remuneration to the members of the Enterprise bodies and manners of inspecting the adherence to the State Ownership Policy. The absence of such document is in contradiction with OECD standards and it can be said its absence is a fundamental obstacle to the improvement of administration and management of the Enterprises.

**2. Nomination Process**

Legal regulations of the Czech Republic do not regulate in any manner nominating people to become members of Enterprise bodies (the Board of Directors, the Supervisory Board etc.). It results in the high politicization of the nomination process when former and present politicians become members of the Enterprise bodies "as a reward", regardless of their abilities and characteristics. The act under preparation in fact only introduces the information obligation for ownership entities. Taking the following measures seems to be suitable supplementation to this minimalistic legal regulation (in the form of Government resolutions):

- Create a nomination committee within the Government – a special body which will actively search and recommend suitable candidates for members of Enterprise bodies,
- Establish the limit of a single period of office as a member of Enterprise bodies,
- Regularly change the composition of Enterprise bodies.

**3. Responsibility of Members of Enterprise Bodies for Service Performance**

Members of Enterprise bodies are only responsible for the proper performance of service, not for results of their activity. Despite this fact it is necessary that potential damages the Enterprise suffers are strictly asserted. State representatives should not be able to grant so called "approval of activities" at negotiations of the general meeting, nor should have they the possibility to additionally waive indemnification for damage caused by members of Enterprise bodies.

## 4. Concluding Contract among Enterprises and Other Entity

On the basis of experience and the analysis of published causes it is recommended that a binding solution is created (a Government resolution and its content is reflected in internal regulations of ministries, or a special act) which should result in a change to contractual processes in Enterprises as follows:

a) **Outsourcing of services** could only be ensured upon the prior economic analysis carried out by the ministry or an independent expert and upon the prior consent of the Supervisory Board. Outsourcing could not be contracted in the case that potential savings estimated in the analysis do not exceed a certain percentage level of the costs the Enterprise spends on the service (e.g. below 5 % of cost savings). This should prevent outsourcing of services disadvantageous to the Enterprises.

b) Consider adopting a provision expressly prohibiting the Board of Directors (or similar enterprise body) to conclude agreements and contracts outside the regime of the Act on Public Procurements with **business companies with unknown "ownership" structure** (joint-stock companies with bearer share certificates, off-shore companies) which are unable to submit the list of their shareholders or partners up to the level of individual natural persons. The prohibition could be either complete, or an exception justified in writing would be allowed from it, which the Board of Directors or similar Enterprise body would be responsible for. The same prohibition could also apply to the announcement of public tenders where business companies with unknown "ownership" structure should be prohibited to participate. Similar prohibition should also apply to sub-contractors the Enterprise concludes contracts with. This would cover in fact all the contractual relationships the Enterprise enters, which could disable profiting from contracts with the Enterprise to unknown entities and bypassing the Conflict of Interest Act.

c) **The Board of Directors (or similar Enterprise body) could be prohibited to announce non-transparent negotiated procedures without publication**. The Act on Public Procurements does not exclude such prohibition. This would exclude the possibility that the Enterprise only invites specific business companies in the tender procedure, including the invitation to a single applicant. The negotiated procedure without publication is the least transparent kind of award procedure. Its legal regulation is "at the very border" of compliance with the provision of Section 6 of the Act on Public Procurements which requires transparent, equal and non-discriminating approach of the contracting authority.

d) **It is possible to consider strengthening the responsibility and role of the Supervisory Board of Enterprises** so that the Board of Directors (or similar Enterprise body) could only conclude contracts with certain parameters with the prior consent or statement of the Supervisory Board (or at least upon the prior written statement of the Supervisory Board). Furthermore, according to the Articles of Dopravní podnik hl. m. Praha, the Articles of the Enterprise should exactly state the issues the Supervisory Board of the Enterprise must be informed of by the Board of Directors (or similar Enterprise body), the issues the Supervisory Board gives its statement to and the issues the Supervisory Board must give its written consent on to the Board of Directors (or similar Enterprise body). This can ensure significantly better overview of the Supervisory Board of the activities in the Enterprise and it will be much more difficult to take away money from the Enterprise through disadvantageous contracts.

e) **Possibility for mandatory publication of contracts if Enterprises are a contracting party to them.** All more important contracts where the Enterprises are a contracting party should be mandatorily published in a central electronic registry. Orders and invoices should be published in the same way. The contents of such documents will get under

public control, which will have a high preventive effect. This legal regulation has proven successful in Slovakia where contracts have been published since 2012.

## 5. Remuneration to Members of Enterprise Bodies

A remuneration committee should be formed in individual Enterprises which would propose the combination of financial and non-financial criteria for remunerating members of Enterprise bodies depending on the content of the state ownership policy. The amount of remuneration could not be approved by the Board of Directors of the Enterprise themselves[98]. A fixed amount of remunerations should correspond with the size or turnover of the Enterprise. Service contracts concluded between the Enterprise and members of Enterprise bodies should only be concluded for the definite period of time. At the same time the existing Principles for remuneration of managing employees and members of business company bodies with the state proprietary interest above 33 %, including state enterprises and other state organizations governed by the Act or a ministry could be considered to eliminate the issue of so called "golden parachutes" and so that these Principles do not only apply only to the variable, but also to the fixed components of incomes and premiums[99].

## 6. Inspecting and Evaluating the Performance of Members of Enterprise Bodies

The service and operation in the Supervisory Body of an Enterprise should be exactly defined in detail in the Articles of the Enterprise (what is approved by the Supervisory Body of the Enterprise, what it decides on, what it gives statements to, what it has to be informed about). A suitable solution also seems to be self-evaluation of the members of the Enterprise bodies as a part of annual reports of Enterprise bodies. The Supervisory Board should regularly evaluate the Board of Directors of the Enterprise. Service contracts should be available to all the shareholders or partners in the company.

## 7. Strengthening External and Internal Control of Enterprises

The Supreme Audit Office should have the power to check all the Enterprises including business companies which are at the same time listed at the Stock Exchange. The ownership entity should be published in a summary annual report about all the Enterprises every year. The Enterprises must strictly adhere to the Act on Free Access Information. A state Enterprise should publish data at the same scope as listed business companies and they should have their financial statements and annual report audited by an independent auditor. The Enterprises should adhere to international accounting standards if purposeful. The Enterprises must

[98] The concurrence of positions which is enabled by the Commercial Code, according to which a member of the Board of Directors is concurrently employed as CEO, which results in the situation when CEO proposes his/her wage and approves it as the chairman of the Board of Directors.

[99] Addressing the said issues which depends on concluding non-competition clauses requires thorough analysis at which positions their potential cancellation is suitable and vice versa where its cancellation can cause problems. Removing non-competition clauses could result in undesirable immediate transfer of the former "state" enterprise management to a private company with similar subject of business, which could result in hardly punishable obtaining a competitive advantage. If the non-competition clause is preserved, but the counter-performance from the enterprise in the form of "golden parachute" is completely removed, it would be an inadequate limitation to the management. It can be rightly presumed that such one-sided non-competition clauses would be cancelled in the case of judicial review or the courts would acknowledge a compensation for the impossibility for further professional activity at the rate similar to the cancelled golden parachutes. Furthermore, it would be necessary to analyze the possible proportionate decrease in the "golden parachute" for positions where preserving the non-competition clause is necessary, but its amount would be an adequate counter-performance for the impossibility for further professional activity and at the same time it would be set at the lowest band to ensure as low (indirect) impact on the state budget as possible.

strictly apply the "comply or explain principle" – an Enterprise either adheres to a codex of administration and management, or it has to explain why it does not).

### 1.8. Strategy and methodology of public procurement

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| Author: Ministry for Regional Development |
| Co-author: Ministry of Finance |
| Deadline – performance indicator:<br>31 December 2014 – Submit the Government a draft Strategy and Methodology of Public Procurement. |
| Anticorruption effect: Making transparent the management of public funds including their foreseeable allocation. |

Reasoning:

Public procurement involves high amounts of financial funds which should be managed according to the law efficiently, purposefully and economically. To map this area sufficiently, it is necessary to create a conceptual document at first which would be elaborated e.g. by a consulting panel of experts (domestic, foreign) containing the main objectives, priorities and tools of the Government policy together with the implementation schedule. The preparation of related legal regulations and/or other documents (acts, directives, methodologies) should follow.

Future policy of public procurements in the Czech Republic should contain, without limitation:

1) **Organization and coordination of public procurements and awarding public procurements**, which means:
   a) **An independent authority** which will check economic efficiency of important public projects in key project cycle stages, consultancy, methodological leadership of contracting authorities (defining standards for public procurement),
   b) **An agency for central procurements** for the needs of the whole public sector,
   c) Considering a suitable integration of this authority in the administration and management of EU funds in the programme period of 2014–2020;

2) **Methodological leadership of contracting authorities and the set of methodologies defining:**
   a) Management of procurements according to main expenditure categories of the public sector (category management),
   b) Economic standards,
   c) Technical standards,
   d) Project management standards,
   e) Tender standards,
   f) Contractual standards,
   g) Information standards;

3) **Ensuring the efficient feedback which serves for further innovations and system corrections**, namely:

a) Systematic monitoring and evaluating the functionality and efficiency of the public procurement system (not only the statistics of award procedures, but also the statistics of economic results of public procurements),
b) Price benchmarking of individual procurement categories,
c) Collection of best practice cases.

### 1.9. Act on Public Prosecutor´s Office

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| Author: Ministry of Justice |
| Deadline – performance indicator:<br>31 March 2013 – Submit the Government a draft of the new Act on Public Prosecutor´s Office which will contain, without limitation:<br>– Establishing an Office for persecuting corruption,<br>– Strengthening the independence of the Public Prosecutor´s Office and responsibility for the performance of the entrusted power,<br>– Change in the manner of appointing and revoking chief public prosecutors by enacting the performance of the office for the definite period of time,<br>– Change in the manner of supervisory power of superiors,<br>– Change in the manner and form of giving binding instructions,<br>– Change in the manner of allocating cases. |
| Anticorruption effect: Higher independence and responsibility of public prosecutors in criminal cases. |

Reasoning:

The analysis of the previous operation of the Public Prosecutor´s Office system shows the necessity for elaborating a new legal regulation which will completely newly regulate fundamental questions of the activity and organisation of Public Prosecutor´s Office, the position, role and competence of individual public prosecutors. At the same time it is necessary to address also all the continuing issues so that the system of Public Prosecutor´s Offices can properly operate without unjustified interventions in the procedure of the Public Prosecutor´s Office and public prosecutors and so that adequate conditions for the performance of its powers are created. It therefore shows to be necessary to create a balanced system in which politicians as bearers of legitimacy responsible for appointing chief servants of Public Prosecutor´s Office are on the one hand, and on the other hand, the Public Prosecutor´s Office will operate without the direct political influence. The independence of the Public Prosecutor´s Office is of a different type than the independence of judges which is anchored in the Constitution of the Czech Republic. The independence of the Public Prosecutor´s Office is a necessary condition for the proper operation of this system which has to be freed from any political influences and pressures on decision-making, in particular in the fulfilment of the basic duty of the Public Prosecutor´s Office – representing a public action in penal proceedings before court. The independence perceived in this manner is applied in all democratic countries.

### 1.10. Anti-corruption programme

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| Author: Ministry of the Interior |
| Co-author: Prime Minister |
| Deadline – performance indicator:<br>30 April 2013 – Submit the Government a proposal for creating a financial programme for the prevention and combating corruption including particularly the following areas:<br>- Strengthening the subsidy programme for non-government non-profit organizations,<br>- Earmarking funds for sociological and other surveys on corruption environment,<br>- Earmarking funds for the education of public administration employees in anti-corruption issues,<br>- Programme of purposeful non-investment subsidies for public institutions for the support to their anti-corruption policies. |
| Anticorruption effect: Systematic analyzing of corruption in the Czech Republic. |

Reasoning:

To achieve efficient combating against corruption, the cooperation with non-government non-profit organisations and academic institutions is necessary. Non-profit sector organizations often focus in detail on individual partial topics of corruption (e.g. the corruption at municipal level, public procurements, IT contracts etc.) and potential cooperation with state authorities in the form of elaborating professional analyses, amending legislative drafts or preparing their own legislative drafts, holding public workshops and professional discussions and other forms of consulting activities are missing. Similar work can also be performed by respective academic workplaces (particularly faculties with legal, economic and sociological fields of study). Without ensuring financing for Anti-Corruption Policy it is impossible to achieve effective results in combating corruption.

It can be stated on the basis of preliminary documents of subsidizing sectors that the total amount of subsidies from the state budget for projects of non-government non-profit organisations achieved approximately CZK 6 billion in 2011. The state subsidy policy towards non-government non-profit organizations is divided since 2014 to 17 main areas (e.g. physical education and sport, culture, social services, foreign activities, anti-drug policy, consumer protection and lessor-lesee relationship protection), and a separate area for combating corruption is a newly incorporated until 2014. Financial funds related to combating corruption are only allocated by means of a subsidy programme of the Ministry of the Interior called “Prevention to Corruption Behaviour” originally within the “risk behaviour” field. This subsidy programme only allocated CZK 3.5 million for 2013. The amount of financial funds only hardly speaks for the benefit of a real intention of the Czech Government to be the Government combating corruption.

# 2. Public Administration

## 2.1. Officials

### 2.1.1. Human Resources in Public Administration

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| Author: Ministry of Interior |
| Co-Author: Prime Minister |
| Deadline – performance indicator:<br>31 January 2014 – Submit to the Government a draft resolution stipulating mainly the following rules:<br>- The obligation to organize transparent selection procedures;<br>- Disclose selection procedures also for so-called internal competitions;<br>- The obligation to publish professional CVs of managerial employees (deputy ministers, senior directors, directors of departments) in central administration and of senior employees (directors and deputy directors) in deconcentrated administration;<br>- Introduce obligatory annual written performance assessment of employees. |
| Anticorruption effect: Introduce human resources policy in public administration. |

Reasoning:

There is no unified human resources policy in public administration as a whole. The human resources policy is fragmented to every agency or even parts thereof; key steps in the field of human resources are difficult to find and check. Non-existence of the obligation to organize selection procedures makes it possible to appoint people to important positions arbitrarily, and not based on their competencies and skills. The system makes it possible to hire (on all levels of public administration) friends, family members, politically related persons and politicians who failed in the election, as well as persons willing to cover corruption practices. Practical experience also shows that not even existence of a "public service act" can prevent manipulation in selection procedures. Avoiding the purpose of the Security Forces Service Act in selection procedures for senior positions has even received a special name – "frog-jumping". A public official act can stipulate a basic legal framework. The regulation includes numerous important institutes, such as general introduction of selection procedures. Such an act, however, should also be supplemented with rules to be adopted and human resources policy to be coordinated throughout public administration. There are numerous details, which would burden the wording of the regulation, but which are important to fulfil its purpose – the composition of selection committees, disclosure of selection procedures, criteria and results, methodology of employee performance assessment, etc. Specifications of those issues should not be left within powers of administration agencies.

## 2.2. Active Disclosure of Information

### 2.2.1. Open Data

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| Author: Ministry of the Interior |
| Co-Author: All departments |
| Deadlines – performance indicators:<br>31 December 2013 – Prepare a methodology for disclosure of the Czech Republic's public sector open data. |
| 31 December 2013 – Create a catalogue of the Czech Republic public sector open data. |
| 31 July 2014 – Prepare legislative conditions for the open licensing of the use of open data. |
| Anticorruption effect: Making available the data created within the public sector. |

Reasoning:

The aim of open data in the public sector is to make available the data created and collected by the public sector to both the professional and general public, in the way providing for the repeated use of such data for various purposes and in numerous different software applications. The applications are created by the public themselves (typically by the professional public), which fact can even result in reduced public costs of data presentation to the public. Besides, the obligation of data and information disclosure is contained in the Government Resolution No. 243 of 4 April 2012, Action Plan of the Czech Republic – Partnership for Open Governance.

The public sector open data are disclosed as a matter of fact in the world (e.g. in the United Kingdom or in the U.S.A.). The Czech Republic's public sector also discloses certain data; however, numerous requirements for open data, such as an open and machine-readable format, data completeness, or clear specification of the conditions for their use, are not met. The public sector publishes its data on many sites; therefore, it is difficult to find out what data are published and where the data are published. That is why many interesting data are difficult to find for the public and their potential is not used.

A catalogue of open data can help resolve those problems (the catalogue is not central data storage, it is a mere guidepost offering searching services). Data will be stored on servers of data administrators who will be authorized to insert links and references in the catalogue and who will be responsible for the correctness of data in the catalogue. The public administration bodies will be able to create entries in the catalogue, describing what types of data are disclosed and where such data can be downloaded. The public will be able to search in a unified way the catalogue entries using various criteria in a user-friendly environment. The public (as well as public administration) will have a single-site survey of open data disclosed by the public sector of the Czech Republic.

Simultaneously, a methodology for disclosure of the Czech Republic's public sector open data will be prepared so that the entities disclosing their data have guidelines, and a legislative framework will be created for the open licensing of the use of open data; this will be implemented mainly by respective provisions in the Free Access to Information Act and by creation of a set of sample license agreements. This will be a solution providing for the

openness of data; however, it should accommodate (avoid discrimination and preferential treatment, protect investments, etc.) all relevant groups (authors, commercial users, non-commercial users, etc.) and it should not collide with the Czech legal regulations (Free Access to Information Act, Copyright Act) or European regulations (PSI Directive that is been revised, INSPIRE Directive, etc.).

The characteristics of the public sector open data are defined in the Concept of Catalogization of the Czech Republic's Public Sector Open Data[100]. The public sector open data should be:

a) Complete – data are disclosed to the maximally possible extent;
b) Easily available – data are available and searchable using usual ICT tools and means;
c) Machine-readable or disclosed in another structured text format – data are in a format structured in such a way that the requested (selected) information can be achieved using a software application;
d) Using standards with free available specifications (open standards);
e) Disclosed under clearly defined conditions of use (licence) with minimal restrictions;
f) Available to users with minimal costs of their acquisition.

Furthermore, the public sector open data should be:

g) Primary (original) data – the information disclosed by their author in the form in which such information was created as the primary (original) data;
h) Disclosed without delay;
i) Should not restrict access – the data should be disclosed in such a way that does not discriminate individuals or groups of persons;
j) Available continually – the data are on-line available for the time stated by their provider.

For more information see the Methodology of Disclosure of the Czech Republic's Public Sector Open Data[101].

### 2.2.2. Disclosure of Contracts and Bids

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| Author: Ministry of Finance |
| Co-Author: Ministry of the Interior, Prime Minister |
| Deadline – performance indicator:<br>30 April 2014 – Present to the Government a proposal for legislative solution providing for a simplified and extended access to the information on disposals of the state-owned assets and on expenditures from public budgets. |
| Anticorruption effect: Transparent disposals of the state-owned assets and transparent use of the funds from public budgets, as well as strengthened public control of such disposals and use. Easier identification of the cases of evidently disadvantageous disposals of the state-owned assets and disadvantageous use of the funds from public budgets, which can be due |

[100] http://www.vlada.cz/assets/ppov/boj-s-korupci/otevrene-vladnuti/aktuality/Koncepce-katagolizace-otevrenych-dat.pdf.
[101] http://www.vlada.cz/assets/ppov/boj-s-korupci/otevrene-vladnuti/aktuality/Metodika-publikace-otevrenych-dat.pdf.

to corruption.

Reasoning:

The scope of information on disposals of the state-owned assets and on the use of the funds from public budgets is still perceived as insufficient and, simultaneously, very fragmented by the public. Although the public has many tools to find information (disclosure of tendering procedures, certain contracts, applications subject to the Free Access to Information Act, etc.), the access to such information is lengthy and complicated.

The legislative solution of the disclosure of relevant data on disposals of state-owned assets should extend both to the organization units of public administration and to all other state-controlled organizations using state-owned assets and, possibly, also to the Land Fund of the Czech Republic, unless it is replaced by the State Land Office. According to the conducted Analysis of Solutions to Provide for Maximal Transparency in Disposals of State-Owned Assets and Local Administration Assets and in the Use of the Funds from Public Budgets ("Analysis" hereinafter), which was approved by Government Resolution No. 802 of 8 November 2012 and which identifies the groups of information to be disclosed, the obligation to disclose relevant information should focus on:

a) the conditions and criteria for selection or other similar procedures to identify and select a suitable applicant for purchase, lease or other similar form of acquisition of state-owned assets or title to such assets;

b) the results of those selection or other similar procedures as mentioned under a);

c) the legal and other similar measures disposing of the state-owned assets;

while the scope of disclosed information within those groups should be fulfilled, depending on their nature, especially by the contents of relevant documents demonstrating those stages of disposals of state-owned assets (e.g. signed contracts).

For the purposes of disclosure, a central register could be established (an equivalent of the Slovak Central Register of Contracts, which is available at http://crz.gov.sk/ or the portal Open Contracts available at http://www.otvorenezmluvy.sk/), or the information could be disclosed centrally on a single site (the Government portal seems to be the best site). In addition to the other groups of information as mentioned above, disclosure should pertain mainly to all relevant contracts or to all relevant commitments to which the state is a party. That is because contracts are the main source of information about economic relations of the entities using public funds; therefore, disclosure of such information is the very basis of transparency of disposals of assets.

With regard to the access to the information on expenditures from public budgets, the preparation of an amendment to Act No. 250/2000 Coll., on budget rules for local budgets, as amended, should be completed.

The aim of those measures is to increase transparency of disposals of state-owned assets and expenditures of local administration units, as well as increase the numbers of bidders, increasing in this way the volume of generated funds (simultaneously with increased numbers of people conducting public control, if they are interested in the matter). Referring to the Analysis, a limit of CZK 50,000 (excl. VAT) is considered as "relevant" for the purposes of disclosure for the municipalities and CZK 200,000 (excl. VAT) for the regions and state. In relation to the local administration units, the task pertaining to the regulations within the power of the Ministry of the Interior is fulfilled by presentation of the "anti-corruption amendment" to the acts on local administration units.

For the sake of completeness, it is stated that during preparations of this strategy Members of Parliament had presented their bill (Parliament Document No. 740, 6th electoral term), which would introduce, if it is passed, a register of contracts as a public list of contracts to be disclosed obligatorily, or their ID data and information on orders and invoices; the bill is in the form of amendments to the Free Access to Information Act, Civil Code, Commercial Code and Public Procurement Act. Nevertheless, the bill does not cover in a complex way the issues described in the Analysis.

As regards public procurement it is noted that contracts signed according to the Public Procurement Act must be disclosed at the contracting authority's profile. Since the system is fully functional and it complies with EU requirements, "centralization" will be in the form of a link. (According to sec. 147a of the Public Procurement Act, the following information is disclosed at the contracting authority's profile:

a) Awarded public contracts including amendments and annexes;

b) The actually paid price for the public supply/service;

c) A list of subcontractors to the public contract.)

Bids in public contracts will not be disclosed.

### 2.2.3. Transparent State Budget

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| Author: Ministry of Finance |
| Deadlines – performance indicators:<br>1 May 2013 – Provide disclosure of State Budget by each chapter and item |
| 1 January 2014 – Provide disclosure of National Accounts by each chapter and item |
| Anticorruption effect: Open information on the funds entrusted to the State Budget. Public control. Simplified identification of the cases where assets acquired for the budgeted funds evidently do not correspond to their amount, which can be due to corruption. |

Reasoning:

Transparent Budget ("Drop-Down Budget" hereinafter) is a web application, which enables the public to see details of the income and expenses in a given budget (State Budget). The aim of the Drop-Down Budget is to provide information on the assumed (i.e. budgeted) expenses and actual expenditures (i.e. drawing of funds) throughout the public sector, i.e. in all State Budget chapters (by ministries) and in all state-controlled organizations, i.e. organization units of the state and legal entities established by ministries. The level of detail of displayed information should be appropriate so that the disclosed entities do not incur any detriment. The Drop-Down Budget should be especially a tool for the public control over the use of the State Budget and for prevention of corruption in the public sector, because any citizen would be able to access such information using a web service. Furthermore, it is one of the bases for the budget management and control and for the budget use both by managers of respective organizations and by their supervisory and control bodies. The application is successfully used abroad, where it serves as a tool for the public, which can check and draw attention to useless expenditures or discrepancies, making leaks of public funds more difficult. That means the Drop-Down Budget makes the use of public funds more transparent, it informs the public how the state uses public funds; this should increase the trust in politics and provide for

understanding of respective transactions. That is why a web application Drop-Down Budget should be created (e.g. an application like http://budovanistatu.cz/), which would offer a detailed classification of the State Budget by chapters and final accounts, down to individual levels, using a user-friendly drop-down system and using general terms and simplifications so that the system is understandable for the public. For the case of the extended effect of the increased public awareness of the State Budget structure, there is an educative modification from Estonia (http://meieraha.eu/).

### 2.2.4. Disclosure of Advisors and Advisory Bodies

Author: All ministries

Deadline – performance indicator:

1 July 2013, in subsequent years always as of 15 February and 15 August of the calendar year – disclose or update a list for the previous six months of:

- advisory bodies and working teams established by ministers, heads of other central administration agencies and offices with national competence and heads of other organizations units of the state, and their deputies or vice-chairmen including staffing of these bodies, statutes and rules of procedure;
- advisors, consultants, analysts (natural persons) of ministers, heads of other central administration agencies and nationwide agencies and heads of other organizational units of the state, and their deputies or vice-chairmen, in case these positions are paid from public funds assuming they do not perform standard activity of the agency provided for by Competence Act or any other legislation;
- advisory and other external firms operating on the basis of agency agreement or other contract;
- lawyers and law offices with whom they signed contracts for legal services;

on websites of ministries, other central administration agencies and offices with national competence, as well as organizations reporting to them

and including agreed or contractual remuneration for work including the sum paid.

Anticorruption effect: Availability of information. Elimination of clientelism and corruption practices.

Reasoning:

Disclosure of lists of advisory bodies and, especially, their staffing can help improve the public trust in those groups and, consequently, it will result in improved transparency of public administration. It is especially an external activity that is not performed as standard activity of agencies within the meaning of performance of agenda under Competence Act and other legislation or Deed of Foundation. Such groups would include, for example, advisory bodies or external working teams, not including liquidation committees, damage assessment committees, appeal committees comprising employees or advisory, enterprising and consultative bodies established by law (this will not apply to e.g. members of evaluation committees under the Public Procurement Act, Councils of National Park, Central Flood Commission).

The advisory position carries a significant risk of attempts to corrupt the person in the position of advisor. It does not matter whether the advisor is a regular employee of a public agency (working under a contract) or an "external" employee with a non-employment contract, but the decisive factor is degree of influence of these persons on decision making within the organization (by which in the case of the disclosure of the information outweighs public interest over personal data protection). The public should also be informed about advisory firms that render advisory and other external services (e.g. external audits, consultations, reports) to a public agency or organization under contracts signed in line with generally applicable regulations (e.g. agency agreements, contracts for work). These are therefore such services which are accounted for under budget item 5166 of Notice No. 323/2002 Coll. marked as „Consultation, advisory and law services".

According to the 2011 Annual Report of the Security Information Service, certain lawyers and law-offices and other similar entities are co-accountable for damages caused to the State Budget; those entities use their contracts for legal services to influence activities of central and local administration. Besides, the cases of illegal practices of the public-law entities cooperating with lawyers or law offices are very difficult to reveal and prosecute due to their exceptional position and statutory obligation of non-disclosure[102]. At present, the internal control mechanisms of associations of lawyers cannot be relied on. Certain entities from the public sector outsource legal services from external lawyers and law offices, although such entities employ sufficiently skilled employees. Disclosure of a list of law offices is not prohibited by law; on the contrary, the information on representation and certain related data can be asked for even now under the Free Access to Information Act (Section 9 Subsection 2). This measure should contribute to improve the trust in those institutions, because they will proactively provide information about the lawyers and law offices they cooperate with and they will have to cope with cases of suspected inefficient employment of law-offices' services and respond to requests for information on particular lawyers or law offices according to the Free Access to Information Act. This is not a measure, which should reveal all clientelistic connections between lawyers and public-law entities, but this is the first step, which could force lawyers and law offices out of the "grey zone" and closer to social responsibility.

## 2.3. Increasing Transparency of the Legislative Process

### 2.3.1. eCollection and eLegislation

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| Author: Ministry of the Interior |
| Co-Author: Chair of the Government Legislative Council |
| Deadline – performance indicator:<br>31 December 2013 – Present to the Government a bill on the Collection of Acts and Collection of International Agreements and on electronic preparation of legal regulations. |

[102] It is noted, however, that the very substance of legal profession is based on strict observance of the client's right to confidentiality and intimacy of his/her relation with his/her attorney at law. The Czech Bar Association believes it is incorrect to perceive as an issue the attorney's obligation of confidentiality in relation to such processes, because it is the client – a public-sector institution in this case – who has his control and supervisory mechanisms and who should be able to eliminate any illegal practices within those processes. This cannot be substituted by the Czech Bar Association, which is a self-governing professional organization and which supervises over compliance with quite different legal constructions and principles.

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| Anticorruption effect: Availability of a basic publication source of complete legal regulations in an electronic way, without barriers. Increased transparency of the legislative process. |

Reasoning:

The electronic Collection of Acts and Collection of International Agreements (eCollection) will provide for legally binding publication of applicable and effective laws in the Czech Republic without any barrier and in the electronic form. A proposal for a legal regulation of the electronic preparation, creation and discussion of legal regulations (eLegislation), including electronic processing of RIA and CIA, should also be presented to the Government. The projects eCollection and eLegislation will significantly enhance orientation in the legislation for people; they would improve availability of law sources, increase comprehensibility of legal regulations, improve and make more efficient creation of laws, and increase transparency of the legislative process. The launch of the systems eCollection and eLegislation is scheduled for 1 July 2015.

### 2.3.2. Disclosure of Every Stage of the Government's Legislative Process

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| Author: Office of the Government of the Czech Republic – Director of the Office of the Government |
| Deadline – performance indicator:<br>31 July 2013 – Provide for public availability of a broader group of materials to be discussed by the Government. |
| Anticorruption effect: Revealing corruption risks during preparation of legal regulations. Legislative process open to the public control. |

Reasoning:

The legislative process should be available to the professional and general public as much as possible. This is one of the elements of transparency. This task has already been implemented to certain extent by means of the created Library of Legislation under Preparation, which is part of the project ODok (circulation of documents among central administration bodies, Parliament and the Office of the President of the Republic), based on the Czech Republic's Government decision (Government Resolution No. 816 of 18 July 2007). Materials of legislative nature to be discussed by the Government are disclosed in this way to the general public. The public should be more informed about this project. The scope of the information disclosed in this way should, however, be broader; this would result, amongst other, in cultivation of the commenting procedure. That is also why the Electronic Library of the Legislative Process of the Office of the Government of the Czech Republic (eKLEP) should be "opened", namely by means of expanding the existing Library of Legislation under Preparation and adding a public access to the materials of non-legislative nature (except materials by which disclosure could harm interests of the Czech Republic – e.g. materials related to processes of preparation of negotiations and negotiations itself on the international scene and proposals to settle a dispute out of court), after their approval by the Government, and to the opinions of the Government Legislative Council, which is the Government's commitment as contained in the Government programme declaration in the form of increased participation of citizens in the creation of law. The task is fully in

compliance with the Czech Republic's commitments arising from the initiative Partnership for Open Governance.

## 2.4. Tasks from the Preceding Strategy

### 2.4.1. Enforceability of the Supreme Audit Office Inspections

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| Author: Ministry of Justice |
| Co-Author: Supreme Audit Office |
| Deadline – performance indicator:<br>30 September 2013 – Present to the Government an analysis of options how to strengthen enforceability and the way of checks of corrective measures. |
| Anticorruption effect: Increase efficiency of the Supreme Audit Office inspections. |

Reasoning:

The Government promised in its programme declaration to present an amendment to the Constitution of the Czech Republic and an amendment to the Supreme Audit Office Act so as to provide for inspections of the use of assets owned by local administration agencies and other public corporations. Both amendments had already been presented on 9 May 2011 (Parliament Documents Nos. 351 and 352, 6th electoral term) to the Parliament. Not even one of these bills has been adopted. But subsequently, proposals solving this matter (parliamentary Presses No. 918 and 919; 969 and 970, sixth term) have been made by parliamentary iniciatives. However, the Government also promised to conduct once a year a regular check of implementation of corrective measures as arising from the Supreme Audit Office's findings. Irrespective of neither the amendment to the Constitution of the Czech Republic, nor the amendment to the Supreme Audit Office Act have been passed, it would be possible to prepare and present an analysis of options how to strengthen enforceability and the way of checks of corrective measures, because according to the regulations in force, the Supreme Audit Office's findings are only published in the Supreme Audit Office bulletin and sent to the Parliament, Senate, Government and, upon request, to the ministries, and only a call for correction in the form of a resolution passed by the Parliament's Control Committee or Government's measure is the highest sanction possible. Probably the most efficient tool the Supreme Audit Office currently has is the possibility to file a complaint with law enforcement authorities based on identified offences according to sec. 8(1) of the Criminal Procedural Code and the Supreme Audit Office's obligation to disclose to tax administrators the data from inspection protocols, which pertain to tax administration according to sec. 59 of the Tax Procedural Code.

### 2.4.2. Registry of Offences

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| Author: Ministry of the Interior |
| Co-Author: Ministry of Justice |
| Deadline – performance indicator: |

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| 31 March 2013 / 30 June 2014 – Present to the Government a draft amendment to the Offences Act, including sanctions for repeated cases of selected major offences, especially by means of different degrees of the existing sanctions or by means of introduction of new sanctions or protective measures; simultaneously with the draft amendment, present to the Government a proposal for a new regulation of the registry of offences and related amendments to certain other acts. |
| Anticorruption effect: Reduction of offence delinquency. Strengthened supervision over offence proceedings and enforcement of fines. |

Reasoning:

The Government promised in its programme declaration to create conditions for creation of a registry of offences as a public administration information system with the aim to increase accountability for recurring offences, including potential accountability for selected kinds of recurring offences under the criminal law. The Ministry of Justice has prepared a proposal for creation of a registry of offences as part of the Registry of Criminal Records, stipulating that recurring offences against property, peace and public order according to the Offences Act can be prosecuted under the criminal law. The Government Legislative Council, however, disapproved of this solution because of serious doubts whether the solution complies with the Constitution (due to violation of the principle of equal treatment before the law) and because of conceptual objections to the proposed criminal prosecution of certain recurring offences. Based on the opinion of the Government Legislative Council and based on presentation of the Minister of Justice, the Government passed at its meeting held on 3 October 2012 Resolution No. 714, ordering that the Minister of the Interior prepare, in cooperation with the Minister of Justice, and present to the Government by 31 March 2013 a proposal for a new regulation of offences, which would address recurrence of selected major offences by means of different degrees of sanctions, as well as certain new sanctions or protective measures. The task will be implemented by amendments to Act No. 200/1990 Coll., on offences, Act No. 269/1994 Coll., on the Registry of Criminal Records, and possibly to certain other special acts. The amendments will result in creation of a central registry of selected offences. Such regulation could be more efficient rather than a prison sentence in the case of recurring offences (if accountability under the criminal law is introduced), it could reduce opportunities for committing further offences, discourage offenders from repeated minor delinquency without their social exclusion.

### 2.4.3. Disclosing Offers to Sell and Lease State-Owned Property

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| Author: All ministries |
| Deadline – performance indicator:<br>Continually – until enactment of a new regulation of disclosure of information on disposals of state-owned property, disclose the offers of sale and lease on the websites of ministries and organizations controlled by ministries. |
| Anticorruption effect: Transparency of sales of state-owned property. Higher public control over the disposals of state-owned property. |

Reasoning:

Following up Task No. 1.17 of the Government's Anti-Corruption Strategy for the years 2011 and 2012, it is proposed to continue disclosing offers of sales (and, as a new measure, of leases) of state-owned property, if such property becomes useless for the state and no organization unit of public administration is interested in such property. This way proved efficient not only in terms of transparency of offers, but also in terms of efficiency of generated revenues. Sales and leases of state-owned property lacking transparency are ideal opportunities for corruption practices. Higher transparency along with introduction of price competition can eliminate those opportunities.

### 2.4.4. Improving Efficiency of Measures to Prevent Corruption and Useless Bureaucracy in Immigration (Visa) Procedures

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| Author: Ministry of Foreign Affairs |
| Deadline – performance indicator:<br>Continually – Evaluate the implemented personnel and technical measures to prevent corruption and useless bureaucracy in immigration (visa) procedures and inform the Government and propose improvements of efficiency or introduction of further measures, under the regular reporting on the status and method of implementation of tasks contained in the Anti–Corruption Strategy of the Government. |
| Anticorruption effect: Higher control of the state over immigrants and enforceability of taxes, contributions, etc. |

Reasoning:

Based on Task 3.16 The Government Anti-Corruption Strategy for 2011 and 2012, the Ministry of Foreign Affairs has implemented several anti-corruption measures to prevent corruption and useless bureaucracy in immigration (visa) procedures. The measures include monitoring of activities of visa departments at embassies, putting into operation of an electronic registration system for applicants for visa (VISAPOINT), a system of training for employees delegated to embassies, as well as a project of embassy categorization by risk. However, since corruption and useless bureaucracy in immigration (visa) procedures cannot be considered as eliminated already, it is desirable that the Ministry of Foreign Affairs continue the implemented anti-corruption measures and implement further measures whenever a new field appears in which anti-corruption measures are needed. For that purpose the Ministry of Foreign Affairs is required to inform every year the Government about the situation and way of implementation of those measures and propose improvements of their efficiency or further measures.

# 3. Public Procurement

## 3.1. Public Investments and Electronization of Public Procurement

### 3.1.1. Analysis of Potential Establishment of an Office for Public Investments

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| Author: Ministry for Regional Development |
| Deadline – performance indicator:<br>30 June 2014 – Submit to the Government an analysis of potential establishment of an Office for Public Investments or other proposal on security of the institutional solution of public investment in the Czech Republic . |
| Anticorruption effect: Savings of financial funds. |

Reasoning:

The purpose of establishment of a new office is to unify partial regulations of the investment process to create a functional unit; i.e. take over certain partial powers of the existing offices and add the missing ones. Concentration of the contents of investment policy in a single specialized office should result in higher quality of preparation of projects and provide for reasonable realization of investments in due time. Therefore, it is proposed to prepare an analysis of potential establishment of such a new office.

The reason for potential establishment of a new office should consist, amongst other, in the need to strengthen the state's methodical role in the field of investment policy, public procurement and concessions and, simultaneously, in the need to strengthen independence on other public administration bodies. The objective is to professionalize public administration, render efficient assistance to contracting authorities and provide them with electronic tools and current or future transparent registries relating to this subject. The Office for Public Investments should also play a role in the field of structural funds for the new programming period, because most errors in projects seem to exist within the process of awarding public contracts.

### 3.1.2. Strengthening Electronization of Public Procedures

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| Author: Ministry for Regional Development |
| Deadlines – performance indicators:<br>30 June 2013 – Present to the Government a draft resolution expanding the list of commodities to be procured and renewed through an electronic marketplace, in case the annual report on operation of electronic marketplaces indicates a need to expand the list of those commodities. |
| 31 March 2014 – Complete and put into operation from 1 April 2014 the National Electronic Tool for uploading and disclosing all information about public procurement so that a unified access to all information be available for everybody. |
| 31 December 2014 – Present to the Government a proposal how to strengthen electronization of procurement procedures above the scope of the Public Procurement Act. |

Anticorruption effect: Strengthened transparency of tendering procedures and equal access to tendering procedures for all contractors, improved quality of tendering procedures in public procurement.

Reasoning:

Electronization of tendering procedures and disclosure of information on public contracts result in higher transparency and, undoubtedly, help in the fight with corruption. Electronization of tendering procedures provides for higher competition and equal access for contractors also in the case of contracts awarded outside the regimen of Act No. 137/2006 Coll., on public procurement, as amended. Electronization of tendering procedures would provide for support to the entire "lifecycle" of public procurement, limiting potential manipulation. Especially the following measures will be implemented to strengthen electronization of tendering procedures:

***a) Increased Employment of Electronic Marketplaces***

The Government approved in its Resolution No. 451 of 15 June 2011, amongst other, a list of commodities to be acquired and renewed through electronic marketplace ("list of commodities" hereinafter). To increase transparency and equal access to tendering procedures for contractors, it is proposed to further expand the list of commodities based on evaluation of the operation of electronic marketplaces, which is included in the annual report presented to the Government always as of 30 April, if the annual report indicates a need to expand the list of commodities.

***b) National Electronic Tool***

The National Electronic Tool ("NEN" hereinafter) is a tool designed for public procurement of the commodities, which are difficult to standardize. The launch of NEN will be a help for contracting authorities with administration of tendering procedures for public contracts, competitions for design, concession procedures, selection of subcontractors according to the Defence Directive (DEFENCE) and selection of subcontractors according to the Concession Act. The NEN will support any scope of electronization, from record-keeping for tendering procedures to fully electronic procedures, and it can be used also for the public contracts, which cannot be evaluated using automatic methods, e.g. for complex services, building works including large construction projects, supplies of technological installations, etc. The NEN would also provide for interconnection with internal systems of contracting authorities and contractors or with eGovernment systems in the Czech Republic. It will fully support planning activities, because it will be frequently used for public contracts within long-term investment projects.

The NEN is currently in the stage of preparation. The NEN pilot operation is expected to begin in September 2013. It should be put into regular operation during the fourth quarter of 2013. The NEN is designed especially for the contracting authorities that cannot invest in electronic tools of their own, but wish to use a robust solution guaranteed by the state. The Ministry for Regional Development guarantees that NEN's functionality will comply with applicable regulations. According to the Ministry's assumptions, the obligation to use the NEN would be implemented in two stages. During the first stage the obligation to use the NEN would be stipulated for central administration agencies and selected organizations controlled by them, while other contracting authorities could use the NEN on a voluntary basis. Upon evaluation of the first stage of the NEN operation, the Ministry for Regional Development will decide whether the obligation to use the NEN should be stipulated also for other categories of contracting authorities according to sec. 2 of the Public Procurement Act

(Stage 2). Implementation of Stage 2 is preconditioned by an amendment to the Public Procurement Act.

One of the key objectives of implementation of the NEN consists in a contribution to improvement of public procurement procedures in the contracting authorities' organizations with the aim to support compliance with the principles of the Public Procurement Act and 3E principles (economy, efficiency and effectiveness). When spending public funds, contracting authorities should observe not only formal rules as stipulated in the Public Procurement Act, but they should keep looking for more economic and efficient ways of acquiring services, supplies and building works. The NEN would make it possible to strengthen the 3E principles, because it would offer functionality for analyses of expenditures in public contracts (it is assumed that the contracting authority would describe in a structured way the subject-matter of a public contract and use standardization parameters of commodities), assess the registered public contracts in terms of potential misuse of exceptions and in terms of the awarding procedures and employ optimization institutes as stipulated in the Public Procurement Act (e.g. centralized tendering procedures, electronic auctions, dynamic purchasing system, etc.), etc.

## 3.2. Small-Scale Public Contracts

### 3.2.1. Methodology for the Awarding of Small-Scale Public Contracts

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| Author: Ministry for Regional Development |
| Deadline – performance indicator:<br>30 September 2013 – Prepare the methodology and explanation thereof for the awarding of small-scale public contracts and publish them in a way providing for remote access. |
| Anticorruption effect: Providing public contracting authorities with a technical explanation pertaining to the awarding of small-scale public contracts as prevention in the fight with corruption. |

Reasoning:

Errors in tendering procedures do not necessarily have to be due to corruption; quite frequently such errors can be caused by lacking technical knowledge and skills on the side of public contracting authorities. While the methodology tool for the awarding of below-the-limit and above-the-limit public contracts is quite extensive, the existing methodology tool for the awarding of small-scale public contracts is very brief. Therefore, it seems as appropriate to prepare and publish detailed guidelines. Clear rules, methodical aids and explanation for the awarding of small-scale public contracts can be useful especially for small-sized contracting authorities (small municipalities, other legal entities, subsidized contracting authorities).

### 3.2.2. Awarding of Public Contracts Co-financed from EU Funds

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| Author: Ministry for Regional Development, Ministry of Finance |
| Deadlines – performance indicators: |

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| 30 June 2013 (Ministry of Finance) – Prepare a methodology environment providing for compliance with the 3E principles (i.e. effectiveness, efficiency and economy) in the employment of EU funds. |
| Continually (Ministry for Regional Development) – Update the processes in the awarding of contracts co-financed from EU funds, which are not subject to Act No. 137/2006 Coll., on public procurement, so that they can be used in the programming period 2014-2020, and provide for the maximal possible unification of such methodological procedures within every programme. |
| Continually (Ministry for Regional Development) – Evaluate the legislative setup in the Czech Republic in terms of preparations for the new programming period 2014-2020 in the Czech Republic and also with reference to EU legislation under preparation, which is applicable to the programming period 2014-2020. |
| Anticorruption effect: Set up a legislative environment in public procurement in the Czech Republic with the aim to improve efficiency of public expenditures, stressing more the equal competition and control over compliance with the principles of economy, effectiveness and efficiency. |

Reasoning:

The present situation, when the methodology is prepared by public contracting authorities for their individual needs, brings about different interpretations.

It is necessary to prepare a unified methodological environment prepared on a central level for the employment of EU funds in the programming period 2014-2020, which would provide for higher transparency and which would be consistent with the 3E principles (i.e. effectiveness, efficiency and economy) in the employment of such funds.

Unlike in the programming period 2007-2013, it is proposed to simplify procedures and processes in the key fields of the implementation system of EU funds employment during preparations of the programming period 2014-2020, reduce the administrative burden for applicants and beneficiaries and increase transparency of EU funds employment. Electronization of the entire process should be supported (from preparation of project applications to applications for payments), which would improve availability of data and information relating to the decisions to employ the public financial support. Obligatory guidelines for public procurement, as requested by individual programmes, should also remove ungrounded differences, which often complicate procedures for public contracting authorities and which can be a source of potential identified errors in their procedures.

The results of the conducted analysis of the programme implementation process with regard to corruption risks are reflected in preparations of the programming period 2014-2020. It is appropriate to set up such methodical environment, which would be more user-friendly, for the entities of programme implementation structures, and implement preventive measures in the fight with corruption (e.g. clear roles and responsibilities of every entity, disclosure of information, set up effective and efficient control mechanisms). For example, the European Code of Best Practices Facilitating Access by SMEs to Public Procurement Contracts can be used as a source of information[103].

[103] http://ec.europa.eu/internal_market/publicprocurement/docs/sme_code_of_best_practices_en.pdf.

# 4. Law Enforcement Authorities

## 4.1. Amendments to Criminal Law Regulations

### 4.1.1 Amendment to the Criminal Code

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| Author: Ministry of Justice |
| Deadline – performance indicator:<br>31 March 2014 – The amended Criminal Code including the introduction of obligatory confiscation of proceeds of crime shall be presented to the Government. |
| Anticorruption effect: Weaken motivation to corruption behaviour. |

Reasoning:

Following up the task The Government Anti-Corruption Strategy for 2011 and 2012, Task No. 3.8 "Strengthening the restitution function of criminal proceedings, including the confiscation of proceeds of crime", it is proposed to re-address this subject. Police of the Czech Republic currently records an unprecedented growth in confiscation of proceeds of crime, which is also due to the conceptual and methodical work conducted based on the tasks arising from The Government Anti-Corruption Strategy for 2011 and 2012. Currently, the volume of confiscated assets exceeds the volumes which had been confiscated before 2011 fourfold. In this context, however, both investigators and prosecutors repeatedly face the approach of judges who either omit to remove the clearly identified proceeds of crime (forfeiture or confiscation), or they expressly reject such a solution, arguing that in case the proceeds are confiscated by the state, the offenders would own nothing to indemnify their victims in a subsequent civil law procedure.

The task to stipulate in legislation the obligation of confiscation of proceeds of crime was formulated as one of the recommendations for the Czech Republic in the final EU Evaluation Report on the Fifth Round of Mutual Evaluations, focusing on financial crime and financial investigations.

Proceeds of crime are any economic advantage arising for the offender or another person from crime; a decrease in assets, which did not occur due to the offender's offence, is also considered to be the proceeds of crime (for example, if the offender fails to pay a tax, the sum saved by the offender due to such failure is considered to be the proceeds of crime). Inherently, the offender can never acquire a good title to the proceeds of crime, because the proceeds were acquired illegally. Naturally, it is possible that an offender acquires what belongs to another person; in such a case it is not confiscated by the state, but it is returned to its owner – aggrieved party as early as during the preparatory procedure. As regards compensation for damage incurred by the aggrieved party due to a crime, however, damages should be paid from the offender's legally held assets, not from the assets not owned by the offender, because in such a case the paid damages would not be any detriment for the offender (the offender would pay by what belongs to other person). That is why the aforementioned argumentation of courts cannot be accepted without reservation. On the contrary, to prevent frustration of the work of investigators and prosecutors who made it possible to find and seize the proceeds of crime, a strict approach should apply and any and all identified proceeds of crime should be considered as things held illegally by the offender and, as such, those things should be removed from the offender in favour of the state. Considering rightful interests of the aggrieved party, various modifications can be taken into account, which would enable the aggrieved party to recover in preference its assets from the values confiscated by

the state, e.g. the aggrieved party's claim would pass onto the state and the state would collect it from the offender. However, the aggrieved party's interests cannot be of a higher priority than the state's interest in removing the proceeds of crime, without certainty that the aggrieved party would ever claim damages and what damages would be awarded.

As regards the issue of independence of courts in imposing punishment, it is stated that our Criminal Code already includes a similar regulation; section 70 stipulates that the judge always confiscate what the offender holds in violation of law. Therefore, that would not be a first breakthrough in the principle of the judge's decision on the kind and amount of punishment.

## 4.2 Availability of Information on Ownership Structures of Legal Entities

### 4.2.1 Providing Information on Ownership Structures of Legal Entities to Law Enforcement Authorities

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| Author: Ministry of Justice, Ministry of the Interior |
| Co-Author: Ministry of Finance |
| Deadline – performance indicator:<br>30 September 2013 – An analysis, including legislative proposals on how law enforcement authorities can gather information on ownership structures of legal entities, shall be presented to the Government. |
| Anticorruption effect: Improve the possibilities for prosecuting organized crime committed through non-transparent structures of legal entities. |

Reasoning:

The law enforcement authorities face the issue that they do not have sufficient means to gather information on ownership structures of legal entities. Such structures can be used to generate values (assets), which are subsequently used for corruption or which are subsequently laundered.

The objective should be to identify issues which are encountered in practice, analyze the existing possibilities for the law enforcement authorities, and/or propose a legislative solution so as to enable the law enforcement authorities to work efficiently in the criminal proceedings.

## 4.3 Tasks from the Preceding Strategy

### 4.3.1 Reliability Tests

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| Author: General Inspection of Security Forces |
| Deadline – performance indicator:<br>30 June 2014 – Evaluation of how the tool "Reliability Tests" is used and proposals for extending the tool also to other persons involved in public administration authorities shall be presented to the Government. |

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| Anti-corruption effect: Testing reliability of government officials. Preventive effect due to awareness of possible reliability tests. |

Reasoning:

The new Police of the Czech Republic Act introduced reliability tests as a tool used by the Inspection of the Police of CR in the fight against illegal activities inside the police force. The adopted General Inspection of Security Forces Act extended application of the tool (from Czech policemen and Police employees) also to officials and employees of the Czech Prison Service, Czech Customs Administration, and General Inspection of Security Forces. Reliability tests consist in inducing a situation to be resolved by the tested person. That means reliability tests mock conditions, to which the tested person is exposed during his/her ordinary course of work, so as to verify whether the tested person performs his/her obligations duly and in line with applicable regulations. Reliability tests may not lead to imminent risk or danger to life or health of people, their property or freedom. Reliability tests should respect dignity of people. Inspectors performing reliability tests must not provoke crime and they must not proactively take part in another way in the creation of an action so as to invoke, directly create or direct the tested person's will, which did not exist before, to commit an illegal act (the simulated situation must not exceed the borderline of provocation). Reliability tests are performed to prevent, avoid and reveal illegal activities. Reliability tests should especially result in such situation, which would feature preventive effects, not in the attempts to test massively officials or politicians. That means reliability tests with similar rules could be used as a preventive measure also for other persons involved in public administration authorities.

It is proposed to prepare and present to the Government an evaluation of results and employment of reliability tests in practice and proposals for extending the tool also to other persons involved in public administration authorities.

### 4.3.2 Bank Secrecy

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| Author: Ministry of Finance |
| Co-Author: Ministry of the Interior, Ministry of Justice |
| Deadline – performance indicators:<br>30 June 2013 – Analyse the law enforcement authorities' costs of information collection within financial investigations and propose reductions of those costs. |
| 30 November 2013 – Present to the Government for decision a material with several options dealing with the collection of information from the banking and other financial sectors, using conclusions of the prepared analysis pertaining to the establishment of a national bank account register and the analysis of the law enforcement authorities' costs. |
| Anticorruption effect: More efficient and less expensive collection of information on the assets potentially arising from probable crime. |

Reasoning:

***Analysis of the law enforcement authorities' costs of information collection within financial investigations***

More extensive activities of the law enforcement authorities in the field of financial investigations bring about higher costs of the collection of required information. In general, it becomes more expensive for the law enforcement authorities to secure enough relevant information without exceeding the limits stipulated by their department budgets. Financial investigation, which is a necessary precondition to prepare the offender's property profile and other related persons' property profiles with the aim to identify as much as possible proceeds of crime, as well as identification of their legal property so as to seize a substitute value instead of the proceeds not found and funds to be used to satisfy the victims' claims, makes it necessary for the law enforcement authority to address and ask numerous institutions whether the investigated person has any property recorded with them. Unfortunately, many private institutions charge fees for providing such information, which often renders it impossible to carry out the necessary identification of property due to the department's budgetary cuts. Requests to the Central Depository of Securities and investment funds, or requests to executors are very expensive; considerable fees are charged even for filing a question. (For example, the fee for the question pertaining to one legal entity or natural person is CZK 226 per request filed on a structured form, which is posted on CDCP website, and if the question is not filed using the form, the fee for the question is CZK 402. If the question is complex, the fee is CZK 1561; that means the fee for a question pertaining to multiple natural persons and legal entities can amount to thousands, while the response can read that relevant entities hold no securities.)

Therefore, it is proposed to prepare a list of fees to be paid by law enforcement authorities to various institutions for the collection of information within financial investigations, and propose ways to reduce or optimize such fees.

***Proposed options for the collection of information from the banking and other financial sectors***

The law enforcement authorities include a strong repressive component to the detriment of the preventive component in the fight with corruption. Tasks should necessarily be directed not only to corruption-related activities as indicated by their names alone, but measures should be applicable also to the entire field of economic and financial crime. The state-of-the-art trends in the criminology stress preventive effects of removal of criminal profits. The trend, represented by the slogan "Crime Must Not Pay", is supported as a way how to discourage offenders from repeating crimes; research demonstrates that this approach is more efficient than imprisonment. That is why most proposed tasks are directed to the field of financial investigation and removal of proceeds of crime because this field is assessed as having the highest potential both in prevention and in repression.

The law enforcement authorities need the information protected by bank secrecy both as evidence and as necessary data to identify cash flows in money-laundering; such information is also needed to prepare the offender's property profile with the aim to identify the offender's proceeds of crime and seize substitution value for it or seize the offender's property to be used for indemnification of the offender's victims. Currently, several weeks or even months are required to collect such information, which is not appropriate with regard to the need of securing financial funds. The method used at present also includes a high risk of potential deconspiracy. Last but not least, the method which checks whether an entity has accounts with financial institution bears an unpleasant effect for the entity's reputation in banks. Many banking institutions must be asked to find out where the person has his/her

bank accounts, which indicates that someone is "interested" in that person. Besides, the person is not always a suspect or accused, he/she can be just a family member of a potential offender, etc.

The task will be performed using conclusions of the already prepared feasibility study, which examined how the process of information collection by authorized bodies from the financial sector could be made more efficient (the proposal to establish a "National Bank Account Register"), namely the parts of the study that are applicable and that correspond to the current situation. The conclusions demonstrated that the existing system of information collection within financial investigation is not suitable for the present needs and trends.

The National Bank Account Register is an institution, which would clearly have a positive impact on promptness, efficiency and economy of the collection of information which is important not only for criminal proceedings. The National Bank Account Register can also be used by many other public administration bodies which are authorized to require the information protected by bank secrecy from banks and other institutions, and it will consequently have a positive impact on certain private law entities.

All aforementioned issues would be eliminated by a National Bank Account Register, either in the form of a central system or transaction system; in addition to its promptness, the system would also be beneficial for the persons subject to examination. The National Bank Account Register would be an added value also for financial institutions, which face a dramatic growth of inquiries upon introduction of data boxes and had to hire new employees to process them.

Creation of a National Bank Account Register was also formulated as one of the recommendations for the Czech Republic in the final EU Evaluation Report on the Fifth Round of Mutual Evaluations, focusing on financial crime and financial investigations.

Therefore, it is proposed to present to the Government for decision a material with several options dealing with the collection of information from the banking and other financial sectors, using conclusions of the analysis prepared in 2011 within Task No. 3.11 of The Government Anti-Corruption Strategy for 2011 and 2012.

### 4.3.3 Tax Secrecy

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| Author: Ministry of the Interior |
| Co-Author: Ministry of Finance |
| Deadline – performance indicators:<br>28 February 2013 – Evaluate the tax secrecy breakthrough after the first year of application, modify the numbers of so-called special-purpose cards according to the needs of the fight with tax frauds, and propose legislative changes to break through tax secrecy also for the authorized custom authorities in the position of law enforcement authorities. |
| Anticorruption effect: More efficient collection of information on tax-payers in connection with investigation of crimes. |

Reasoning:

The corresponding amendment (section 71a of the Police of the Czech Republic Act), resulting from fulfilment of Task 3.3 of The Government Anti-Corruption Strategy for 2011 and 2012, provided the Police of the Czech Republic with sufficient legal powers to collect

information from tax proceedings. Based on internal agreements between the Ministry of the Interior and Ministry of Finance, however, those legal powers could not be used to the extent required by the Police of the Czech Republic, especially because the power to break through tax secrecy was not given to economic crime departments of Regional Police Directorates, which investigate most tax crimes and economic crimes in general.

At present, there is a requirement, which is respected, to issue a very limited number of so-called special-purpose cards whose holders are personally authorized to use the power; on the other hand, however, there is a prevailing opinion that legislation gives the police force much more opportunities for using the power than those, which are actually used at present. The police force does not wish to collect inefficiently the information protected by tax secrecy, its sole and only objective is to fight tax frauds and, simultaneously, make more efficient financial investigations performed by specialists who seize proceeds of crime and identify and investigate the cases of money-laundering; therefore, based on statistical outputs pertaining to the numbers of tax cases and numbers of applications for information from tax proceedings using the special power, upon comparison of the numbers of such applications filed directly by the Unit Combating Corruption and Financial Crimes (UOKFK) and mediated for the departments not having this power, including those that could not have been met on grounds of capacity, it is proposed to determine - upon agreement with the Ministry of Finance after one year of application of this regulation - new numbers of cards authorizing to break through tax secrecy so that the numbers of authorization correspond more adequately to the needs of the fight with corruption, terrorism, organized crime, tax, financial and serious economic crime and money-laundering.

As regards the proposed anti-corruption effect in the form of more efficient collection of information on tax-payers, it is proposed that the authorization to break through tax secrecy in the form of special-purpose cards be given also to the customs authorities (Customs Administration of the Czech Republic), because their position and function of law enforcement authorities arise from section 12 (2) of the Code of Criminal Procedure.

### 4.3.4 Management of the Seized Assets

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| Author: Ministry of the Interior, Ministry of Justice |
| Co-Author: Ministry of Finance |
| Deadlines – performance indicators:<br>31 May 2013 (Ministry of the Interior) – Present to the Government an analysis of more efficient management and simplified sales of seized assets. |
| 31 March 2014 (Ministry of Justice) – Based on the approved analysis, present to the Government a proposed amendment to Act No. 279/2003 Coll., on the seizure of assets and things in criminal proceedings and amendments to certain acts, as amended. |
| Anticorruption effect: More efficient and economic management of the assets seized in connection with criminal proceedings. More efficient removal of property profits arising from crime (including corruption). |

Reasoning:

Because of the growing volumes of seized assets, their management becomes an issue; it demands both finance and capacity and it poses a further economic burden for the police services. That is why it is absolutely necessary to modify the regulation of management of the seized assets in several aspects:

a) **A sale of the seized assets before a final decision in the case**, that means the seized things are transformed to cash – the current regulation is based mainly on the generally formulated hypothesis that seized assets lose their value, which is difficult to interpret in practice and results in minimum application of such provisions;

b) **Management of the seized immovables** - the current regulation stipulates that the law enforcement authority carry out property management; on the other hand, it does not stipulate any authorization for the state (as a manager of the seized property) to enter buildings or decide on the right of use, lease or other rights related to the seized immovable; this situation results in dubious interpretation as regards the scope of property management;

c) **Management of other assets**, especially shareholdings in commercial companies – the situation is same as that in the case of immovables; the current regulation stipulates that the state carry out assets management, however, no legal tools are provided for such purposes.

This task will have to be performed by changes of regulations, in particular by amendment to Act No. 279/2003 Coll., on the seizure of assets and things in criminal proceedings and amendments to certain acts, as amended, or by amendment of the Code of Criminal Procedure; this task arise also from the schedule of tasks stipulated in the Concept of Fight with Organized Crime for 2011-2014, as approved by Government Resolution No. 598 of 10 August 2011, according to which the Ministry of Justice and Ministry of the Interior should present amendment to the regulation of management of the seized property, reduce administration thereof, change financing of management and reinforce the options of sale of such property for the sake of economy.

### 4.3.5 Removal of Assets

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| Author: Ministry of the Interior, Ministry of Finance, Ministry of Justice |
| Deadlines – performance indicators:<br>30 June 2013 (Ministry of the Interior and Ministry of Finance) – Provide for cooperation of joint ad hoc teams consisting of representatives of law enforcement authorities and tax administrators, focusing on the fight with serious financial crime, and inform the Government about the course and results of the cooperation and propose further measures. |
| 31 March 2014 (Ministry of the Interior and Ministry of Justice, in cooperation Ministry of Finance) – Present to the Government an analysis of options for specific allocation of removed proceeds of crime and for financial motivation for law enforcement authorities in the form of a percentage transferred to the budget of the service/prosecutor's office/court, which participated in the identification, seizure and removal of the proceeds of crime. |
| 31 March 2014 (Ministry of Justice and Ministry of Finance) – Present an analysis of the issue and a draft concept for creation of a new mechanism (outside criminal law) to remove |

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| assets arising or very probably arising from crime including assessing the feasibility of a possible application of the concept of equity returns. |
| 30 September 2014 (Ministry of Finance) – on the basis of the analysis approved by the Government present the Government with a proposal for the regulation to be used in the situations of evident discrepancy between the taxpayer's income as reported in his/her tax return and the taxpayer's actual property or lifestyle. |
| Anticorruption effect: Consistent prosecution of identified cases of corruption, including removal of illegally acquired assets, discourage persons potentially inclining to corruption. Strengthen motivation to reveal corruption by law enforcement authorities. |

Reasoning:

***Options for removing assets arising from illegitimate sources using non-penal means***

Following up the task No. 4.4 of The Government Anti-Corruption Strategy for 2011 and 2012, the Government was presented for discussion an Analysis of Available Non-Penal Means to Remove Proceeds of Crime. The Government acknowledged the analysis by its resolution No. 153 of 14 March 2012 (with regard to Tasks Nos. 1, 3 and 4).

Removing assets acquired illegally is an efficient response to organized crime, which is very often accompanied by corruption. Where it is not possible to demonstrate in the criminal proceedings that certain property arises from crime, but this is highly probable and the holder of the property cannot explain in a credible way how he/she acquired the property, other than penal ways for removing such assets should be looked for. Such removal should be conducted using a tax administration tool or civil-law means for removing so-called UFO profits, i.e. profits from unidentified sources. The property is acquired illegally, but it is held by persons whose criminal activities were either never exposed or never investigated or whose criminal activities were investigated, but traces to the proceeds of crime were extinct, or the property is held by persons who were not proved guilty of criminal activities, or by persons who did not commit themselves any criminal activities. A missing demonstrable link between the property and committed criminal activities is a characteristic feature in such cases. Opponents of non-penal means to remove UFO profits consider such tools as a breakthrough in the presumption of innocence. A partial shift of the burden of proof could be a solution; that, however, applies only to demonstrating the scope of assets, if a person is not able to demonstrate the origin of extensive property or property, which is evidently connected to criminal activities. Such property would be confiscated or taxed considerably.

A wider shift of the burden of proof to the finally sentenced taxpayer could be a measure, which can be taken into account in this context. Such a shift of the burden of proof would be in the form of obligation to explain in detail one's property for several years back so as to confirm that the tax according to the tax return is correct. A contemplated breakthrough in the period for tax assessment (similarly to the cases of final sentence for a tax crime) is, however, a follow-up measure to be discussed by professionals; i.e. the option to assess tax for an already precluded tax period, in which the income should have been taxed. However, both measures should respect the principle of prohibition of true retroactivity. Also, it is necessary to take into account the principle of legal certainty, which follows up the course of time. Respecting this principle is the reason for existence of preclusion periods; a breakthrough in preclusion periods should be justified by a higher public interest, which must outweigh the individual's interests protected by the constitution.

***Stipulation of the option of specific allocation of removed proceeds of crime and financial motivation for law enforcement authorities in the form of a percentage transferred to the budget of the service/prosecutor's office/court, which participated in the identification, seizure and removal of the proceeds of crime***

This task (the second one) was highlighted many times at CEPOL international workshops as a measure, which can provide for sufficient activities and cooperation of the three stages of law enforcement authorities during identification of the proceeds of crime, proposing confiscation thereof and subsequent confiscation thereof.

Currently, the assets, which are acquired by the state because its law enforcement authorities manage to identify and subsequently remove such assets as proceeds of crime, are included in the state budget without specific allocation. The issue of specific allocation of such assets has been discussed for a long time, and especially recently during preparation of the new act pertaining to victims of crime. Foreign models, which use assets acquired in this way, mostly include the option that such assets can be given to various funds to help victims of crime; the practice that part of the assets goes to law enforcement authorities is not sporadic either. Such assets should be used to improve the fight with crime generating proceeds, especially in the form of purchases of IT and SW and development of information systems. In practice, this model proves to be highly motivating, especially where the allocated percentage goes directly to the service/prosecutor's office/court which contributed to the identification/removal of the proceeds of crime.

As mentioned above, the Police of the Czech Republic managed to make the seizure of proceeds of crime considerably more efficient. In addition to methodological and other activities, this development is partially due also to the support by police managers, which is, however, preconditioned into certain extent also by the fact that The Government Anti-Corruption Strategy for 2011 and 2012 stipulated as one of the tasks the obligation to reflect results of the seizure of proceeds of crime in the financial remuneration of management of every service.

This assumption, however, did not come true; by itself, this measure is significant only for the Police of the Czech Republic, and it would not impact at all on the other law enforcement authorities. On the other hand, the specific allocation and inclusion of removed assets in the budgets of all law enforcement authorities would be strong motivation also for prosecutors and, especially, for judges, because options for motivation of judges are very limited with regard to their independent position.

Therefore, it is necessary to prepare an analysis of options (which requires adequate statistical outputs as regards removed values; such analysis should include at least four other evaluation periods) how the Czech Republic should use the assets acquired from the removed proceeds of crime, including an analysis of several foreign models, taking into account especially the option to use the assets for motivation of law enforcement authorities so as to maintain and develop activities in this field.

# 5. Education

## 5.1 Education of the Young

### 5.1.1 Education of Children and Pupils in Schools and Educational Facilities

Author: Ministry of Education, Youth and Sports

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| Co-Author: Prime Minister |
| Deadlines – performance indicators:<br>30 September 2013 – Prepare a survey of sources pertaining to corruption in secondary education as a basis for teachers and publish it on the Ministry's website. |
| 30 September 2013 – Define subjects and their contents for children and pupils during pre-school and primary education and determine in what approximate ages children and pupils should be made familiar with the issue. |
| 31 March 2014 – Prepare proposals for completion/inclusion of those subjects in the general education programs for pre-school and primary education. |
| 31 March 2014 – Prepare a survey of sources pertaining to corruption in pre-school and primary education as a basis for teachers and publish it on the Ministry's website. |
| Anti-corruption effect: Awareness raising and increased basic knowledge of corruption and legal liability; awareness of consequences in the event of illegal practices. |

Reasoning:

Numerous tasks included in this strategy presuppose participation of the public in the control and disclosure of corruption practices. A certain level of awareness of corruption is required for the public to proactively participate in the fight with corruption. Currently, public awareness of the issue is formed mainly by non-profit organizations and/or media. However, it is the responsibility of the state to "educate" citizens, provide them with sufficient information to allow identification of corruption while creating a preventive effect as well.

This task focuses on education of children (pre-school education) and pupils (primary and secondary education). Involvement in the public and political life and trust in the politics are very low among people, which forms conditions for growing problems in the future; that is why it is necessary to stress anti-corruption education and information, mainly among children and pupils.

Therefore, the task is to prepare complete materials for developing legal awareness of children and pupils in the initial stages of education in the field of corruption, corruption practices, civil-law and criminal-law liability, which includes implementation of the following sub-tasks:

a) Define subjects and their contents for children and pupils in the initial stages of education and determine in what approximate ages children and pupils should be made familiar with the issue (determine the subjects and scope thereof, as well as approximate timing in relation to the child's or pupil's age); the issue is already included in the general education programs for secondary schools.

b) Prepare proposals for completion/inclusion of those subjects in the general education programs (preparation of materials to be added to the general education programs); this pertains only to the general education programs for pre-school and primary education;

c) Prepare a survey of sources pertaining to the issue as a basis for teachers and publish it on the Ministry's website (a survey of sources that can be used as information for tuition); because the issue is included in the general education programs for secondary education, this survey of sources should be the first task, whereas the survey for pre-

school and primary education should be prepared after completion of the general education programs.

## 5.2 Education of Government Officials

### 5.2.1 Rules for Education of Employees of Public Administration Authorities

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| Author: Ministry of the Interior |
| Co-Author: Prime Minister |
| Deadline – performance indicator:<br>30 June 2014 – Present to the Government updated Rules for Education of Employees of Public Administration Authorities containing education in the fight with corruption, ethical behaviour and integrity. |
| Anti-corruption effect: Increased knowledge of corruption and awareness of consequences in the event of corruption practices. |

Reasoning:

It is desirable to continue the measure which pertains to systematic education of public administration employees in the fight with corruption, referring to Government Resolution No. 329 of 23 March 2009, and extend it also to the fields of ethical behaviour and integrity. The measure should be reflected in lifelong education of public administration employees. Implementation of lifelong education of public administration employees is one of the options how to reduce the corruption risk within public administration activities. Education in the fight with corruption will form part of technical competence (this applies to local administration officials), as well as of initial training (this applies to central administration officials).

### 5.2.2 Education in the Form of eLearning

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| Author: Ministry of the Interior |
| Co-Author: Prime Minister |
| Deadline – performance indicator:<br>30 November 2013 – Implement the eLearning form of anti-corruption education in the obligatory education programs for all categories of public administration employees |
| Anti-corruption effect: Increased knowledge of corruption and awareness of consequences in the event of corruption practices. |

Reasoning:

The main advantage of the eLearning form of education consists in its wide availability for public administration employees. This solution saves time, because it does not require participation of trainees at a particular time and particular place, but it can be adapted to preferences of trainees. Personal costs are spent only when training materials are prepared

or updated; no additional costs, such as travel expenses, lease of rooms, etc., are incurred. Training modules can be more diversified (by selection of levels, options) according to the trainee's schooling, trainees can be tested and test results can be promptly checked, etc. Therefore, it is proposed to implement the eLearning form of anti-corruption education in addition to other forms of education.

### 5.3 Education of Law Enforcement Authorities

#### 5.3.1 Joint Education of Law Enforcement Authorities

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| Author: Ministry of Justice |
| Co-Author: Ministry of the Interior, Ministry of Finance (General Directorate of Customs) |
| Deadline – performance indicator:<br>Continually – education of law enforcement authorities |
| Anti-corruption effect: Increased knowledge of corruption and awareness of consequences in the event of corruption practices. |

Reasoning:

The employees of law enforcement authorities also form a risk group with regard to their potential exposure to corruption practices. Their function is associated with a general need of more extensive and more specialized education in the field of corruption and mechanisms of corruption prevention and detection. As indicated by the findings of the Academy of Justice, it is necessary to pay attention to education of law enforcement authorities especially in the following fields:

***a) Education activities focusing on crime in the field of public procurement and subsidies***

It is necessary to train judges and prosecutors in the field of the current regulation of key rules for contracting authorities, which award public contracts, and basic rules of the appeal procedure before the contracting authority and administrative procedure before the Office for the Protection of Competition according to the Public Procurement Act, as demonstrated on the current case law.

***b) Education activities in the form of joint education of policemen, customs servants, prosecutors and judges, focusing on financial investigations, cases of money-laundering, identification and seizing of proceeds of crime***

Preferably in the form of one-day regional training courses, including case studies and practical training of skills, methodology, options for the police force when searching for assets, case studies.

***c) Education activities focusing on proofs in the cases of bribery, stressing their specific procedural features in investigation and collection of proofs of corruption, stressing the constitutional limits of the procedural criminal law***

It is necessary to stress strict conditions as stipulated for the collection of certain kinds of proofs, especially those associated with interference with fundamental human rights and freedoms. The Academy of Justice prefers the form of joint education of policemen, prosecutors and judges, because representatives of all three target groups provide for the legal

conditions in the employment and subsequent use of such proofs for criminal proceedings (the police forces provide for legal conditions for the collection of such proofs, the prosecutor propose their use and the judge allows such proofs). Therefore, education activities should focus on the following procedural institutions: secret witness; monitoring and recording of telecommunication contacts; identification of data on telecommunication contacts; operative searching means; pretended transfer, surveillance of persons and things, employment of agent; house searches, searches of other facilities and land, entering a dwelling, other facilities and land; detaining and opening consignments, replacement and monitoring of consignments.

### 5.3.2 Education of Policemen

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| Author: Ministry of the Interior |
| Deadlines – performance indicators:<br>30 June 2013 – Extend the implemented system of lifelong education of policemen in the fight with corruption to include an education program focusing on the corruption issues also for other specific target groups of policemen in higher tariff classes and police-force employees exposed to a higher risk of corruption offers. |
| 30 September 2013 – Create education activities focusing on insolvency of policemen. |
| 30 September 2013 / continually – Provide for education of policemen in managerial positions. |
| Anti-corruption effect: Increased knowledge of corruption and awareness of consequences in the event of corruption practices. |

Reasoning:

Education of policemen should be stressed in law enforcement authorities. Their professional skills and knowledge are of key importance for the detection of offenders. Besides, policemen are enormously exposed to corruption activities. It is proposed to focus education of policemen on the following fields:

***a) Continuation of the system of lifelong education in corruption-related subjects***

It is proposed to extend the implemented system of lifelong education of policemen in the fight with corruption to include an education program focusing on the corruption issues also for other specific target groups of policemen in higher tariff classes and police-force employees exposed to a higher risk of corruption offers.

On similar grounds as those mentioned under 5.2.2., it is proposed to implement the eLearning form of anti-corruption education as a supporting education program in the fight with corruption and a contact source of information pertaining to corruption issues with preventive and methodological orientation.

***b) Education activities focusing on insolvency of policemen***

Because of the conditions, especially of economic character, which keep worsening policemen more and more frequently face situations affecting their personal and professional lives; therefore, it is necessary to respond to the situation and develop corresponding education activities to minimize the risks associated with corruption activities of policemen.

### *c) Education of policemen in managerial positions*

This field includes education adapted to the special needs of police managers, especially the detection of corruption signs and the ability to identify situations and issues with high corruption potential.

## 5.4 Education of Customs Servants

### 5.4.1 Education of Members and Employees of the Customs Administration of the Czech Republic

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| Author: Ministry of Finance (General Directorate of Customs) |
| Deadline – performance indicator:<br>30 June 2013 / continually – Implement a system of lifelong education of members and employees of the Customs Administration of the Czech Republic in the fight with corruption. |
| Anticorruption effect: Increased knowledge of corruption and awareness of consequences in the event of corruption practices. |

Reasoning:

The Customs Administration of the Czech Republic is one of three important security forces and, in addition to the Police of the Czech Republic and Prison Service of the Czech Republic, education of custom servants is required and should be stressed. Professional skills and knowledge of customs servants are of key importance for the detection of serious crime. Besides, customs servants are also extremely exposed to corruption activities. Therefore, it is proposed to include in the existing complex system of lifelong professional education of members and employees of the Customs Administration of the Czech Republic an obligatory component focusing on the fight with corruption and make the existing system of lifelong education more efficient. Respective education programs should include training of professional decision-making in specific situations of corruption offers.

Based on the existence and identification of educational needs, prepare a lifelong education program with this orientation for target groups of members and employees of the Customs Administration of the Czech Republic who are exposed to a higher risk of corruption offer.

The aim of those measures is to reinforce anti-corruption attitudes among members and employees of the Customs Administration of the Czech Republic.

## 5.5 Education of the Prison Service Staff

### 5.5.1 Education of Members and Employees of the Prison Service of the Czech Republic

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| Author: Ministry of Justice (General Directorate of the Prison Service of the Czech Republic) |
| Deadlines – performance indicators:<br>30 June 2013 / continually – Implement a system of lifelong education of members and employees of the Prison Service of the Czech Republic in the fight with corruption. |
| 31 October 2013 – Within the research conducted by the Academy of Education of the Prison |

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| Service of the Czech Republic, carry out a psychological analysis of specific features of corruption pressures and corruption practices focusing on the members and employees of the Prison Service of the Czech Republic. |
| Anticorruption effect: Increased knowledge of corruption and awareness of consequences in the event of corruption practices. |

Reasoning:

Include in the existing complex system of lifelong professional education of members and employees of the Prison Service of the Czech Republic an obligatory component focusing on the fight with corruption and make the existing system of lifelong education more efficient. Respective education programs should include training of professional decision-making in specific situations of corruption offers.

Based on the existence and identification of education needs, prepare a lifelong education program with this orientation for target groups of members and employees of the Prison Service of the Czech Republic who are exposed to a higher risk of corruption offer.

Within the research conducted by the Academy of Education of the Prison Service of the Czech Republic (previously the Institute of Education of the Prison Service of the Czech Republic), it is proposed carry out a psychological analysis of specific features of corruption pressures and corruption practices focusing on the members and employees of the Prison Service of the Czech Republic.

The aim of those measures is to reinforce anti-corruption attitudes among members and employees of the Prison Service of the Czech Republic.

# 6. Other

## 6.1 Institutional Provisioning for the Fight with Corruption

### 6.1.1 Analysis of Options to Establish Anti-Corruption Agency

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| Author: Prime Minister |
| Deadline – performance indicator:<br>28 February 2014 – Present to the Government an analysis of options to establish anti-corruption agency as an independent body dealing with the issues of the fight with corruption. |
| Anti-corruption effect: Complex, professional and independent anti-corruption activities in the non-penal field. |

Reasoning:

There is no overarching anti-corruption agency at present in the Czech Republic, which would address the fight with corruption as an important social phenomenon. The position of such an anti-corruption agency is substituted to certain extent mainly by non-profit organizations, which situation is not in line with the requirements for this type of institution for the Government's Anti-Corruption Policy. Ideally, the anti-corruption agency should be an independent body with professional staff, focusing on the complex issues of corruption. The existence and independence of such a body, though not necessarily in the form of anti-corruption agency, are stipulated, for example, in the UN Convention Against Corruption from 2003, which was signed by the Czech Republic in 2005, though not yet confirmed [confirmation has been approved by the Parliament of the Czech Republic – Parliament Document No. 787 ($6^{th}$ electoral term) and Senate Document No. 410 ($8^{th}$ electoral term)], namely in Article 6 entitled Preventive anti-corruption body or bodies; as stipulated in paragraph 1: *"Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies, as appropriate, that prevent corruption by such means as: a) implementing the policies referred to in article 5 of this Convention and, where appropriate, overseeing and coordinating the implementation of those policies, and b) increasing and disseminating knowledge about the prevention of corruption;* according to paragraph 2: "*Each State Party shall grant the body or bodies referred to in paragraph 1 of this article the necessary independence, in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out its or their functions effectively and free from any undue influence. The necessary material resources and specialized staff, as well as the training that such staff may require to carry out their functions, should be provided.* The existence of a specialized body is required also by the Council of Europe Criminal Law Convention on Corruption, which was confirmed by the Czech Republic on 8 September 2000 (declared by Ministry of Foreign Affairs Notice No. 70/2002 Coll., the updated wording was declared under No. 43/2009 Coll.). This Convention stipulated in Article 20 that "*each Party shall adopt such measures as may be necessary to ensure that persons or entities are specialised in the fight against corruption. They shall have the necessary independence in accordance with the fundamental principles of the legal system of the Party, in order for them to be able to carry out their functions effectively and free from any undue pressure. The Party shall ensure that the staff of such entities has adequate training and financial resources for their tasks.*

An analysis of providing for the existence of such a body or bodies will be prepared based on the aforementioned international commitments, focusing on establishment of anti-corruption agency that, however, should not substitute any activities of law enforcement authorities including, without limitation, those of the Unit Combating Corruption and Financial Crimes (UOKFK, the so-called Anti-Corruption Police) and of the Ministry of Finance Financial Analytical Unit (FAU); on the contrary, the agency should be "a piece in a jigsaw puzzle" within all measures designed to reduce corruption in the Czech Republic. In addition to its focus on different activities, the agency will differ mainly in that it will be an independent body.

The specialized unit or units, as required by international conventions, should perform the analytical task (the collection and analysis of information on corruption) and the public information and educational task. Within those activities relevant legal tools and administrative measures should be continually analyzed with the aim to assess their suitability for the purposes of corruption prevention and elimination, implement anti-corruption policies and where appropriate, supervise over those policies and increase and disseminate knowledge of corruption prevention.

The analysis should assess, amongst other, the existing competences and powers of the Government Committee for Coordination of the Fight with Corruption and Department for Coordination of the Fight with Corruption at the Office of the Government of the Czech Republic, whose activities could be fully or partially taken over by the agency, if it comes into existence.

### 6.1.2 Analysis of Options to Appoint Information Commissioner

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| Author: Ministry of the Interior |
| Co-Author: Prime Minister |
| Deadline – performance indicator:<br>30 April 2014 – Present to the Government a comparative study of the existence of information commissioner in the world, focusing on efficiency of options to support access to information, including mainly:<br>- An assessment of options to appoint information commissioner in the Czech Republic;<br>- Identification of system causes of low enforceability of the right to information and delays in processing;<br>- Draft solution of an effective sanction mechanism.<br>The material will also include the analysis of compatibility of law of the Czech Republic with Council of Europe Convention on Access to Official Documents with a proposal of signature and ratification of this Convention or with the recommendation not to ratify the Convention. |
| Anti-corruption effect: More efficient enforcement of access to information. |

Reasoning:

A system and institutional change in the solution of the issue of access to information requires above all a change in the attitude towards access to information, which should presume

openness and a system element of the Government policy supporting competitiveness. Because of the extent of requirements which would necessarily impact the entire field of providing information due to such a change, it is fully appropriate to consider establishment of an independent supervision body having the full appeal, mediation and methodological roles as parts of management. Appointment of information commissioner is one of the options. Therefore, it is proposed – before eventual appointment of information commissioner – to prepare a comparative study of how the access to information is efficiently enforced in the world, including assessment of establishment of such an institute in the conditions of the Czech Republic. The study will also include a list of system causes of low enforceability of the right to information and delays in processing and a draft solution of an effective sanction mechanism. With regard to the incompatibility of the current version of the Law on Free Access to Information with Council of Europe Convention on Access to Official Documents and the consideration of the Government to sign and ratify it, the analysis of compatibility of law of the Czech Republic with the Convention will be part of the Study.

## 6.2 Internal Anti-Corruption Programs

### 6.2.1 Departmental Internal Anti-Corruption Programs

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| Author: Prime Minister |
| Co-Author: Departments |
| Deadlines – performance indicators:<br>30 June 2013 – Present to the Government a scheme of internal anti-corruption program to be prepared by Interdepartmental Coordination Group for the Fight with Corruption. |
| 30 April 2014 – Update departmental internal anti-corruption programs in line with the scheme approved by the Government so that they correspond to the structure mentioned in the reasoning of this task. |
| 30 September of every calendar year – Evaluate on a regular basis, once a year, and/or update the departmental internal anti-corruption programs and publish the programs on respective department's website. |
| Anticorruption effect: Anti-corruption risk management. Transparency of anti-corruption programs and measures. |

Reasoning:

Internal anti-corruption programs are tools for anti-corruption risk management in public administration authorities. With regard to specific features of every department and its internal organization, it is quite difficult to determine a single form, scope or obligatory particulars of such an internal anti-corruption program. Nevertheless, since all departments execute central administration, at least minimum requirements should be stipulated for every internal anti-corruption program. That means the internal anti-corruption program should include a catalogue (map) of corruption risks and it should address the department's personnel policy, include a reference to its ethical code and departmental "anti-corruption ombudsman" who can be contacted by employees with their reports on alleged illegal activities in the office, management, rendering and disclosure of information and, last but not least, specific features of every department, e.g. the published internal guidelines pertaining to public

procurement, financial fund allocation, management of established/controlled organizations, etc.

The internal anti-corruption programs should be updated on a regular basis and published on respective department's website, because corruption risks are variable, and the issue should be addressed continually and it should reflect experience of departments acquired in the long term. Publishing of internal anti-corruption programs results in reinforced transparency of public administration.

## 6.3 Transport Development

### 6.3.1 Strategy of Transport Infrastructure Development

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| Author: Ministry of Transport |
| Deadline – performance indicator:<br>30 June 2013 – Present to the Government the Obligatory Middle-Term Strategy of Transport Infrastructure Development. |
| Anticorruption effect: Reduce inefficient projects with corruption potential. |

Reasoning:

Development of the transport infrastructure is a highly professional activity and it is also an activity, which is exposed to enormous corruption pressures due to the extensive public funds and public assets employed. Therefore, creation of a concept or strategy of transport infrastructure development as a preventive tool is of crucial importance.

Analyses, plans, concepts, prospects and other strategic documents should form a decision-making framework to decide whether the available public funds are to be used to finance the transport infrastructure. The development of a network of highways and roads is a procedure of capital expenditure, which demands lot of finance and lot of time, notwithstanding the complex decision-making process that can be affected by numerous different players during different stages (state authorities, local administration, civil initiatives, land owners). That is why it is desirable to plan and coordinate the development and modernization of the transport infrastructure within a unified transport policy elaborated in strategic documents, which stipulate actual needs and calculate real sources available for their fulfilment in the middle term and long term. All planning and decision-making processes should be transparent and intelligible, with clearly defined rules for participation of players and their powers, stipulating obligatory decision-making outputs.

According to the conclusions of certain civil associations in the Czech Republic, there are no politically binding long-term objectives of the development of transport infrastructure, feasibility of which would be confirmed by a socioeconomic evaluation, including the environmental impact assessment. Due to the absence of decisions on the order of construction works and schedule of their preparation and implementation, low efficiency of public expenditures results in decreased effectiveness of the program financing. Purposeful underestimation of acquisition costs of construction works being prepared brings about a high risk of a general lack of financial sources.

Therefore, a binding middle-term strategy of the development of transport infrastructure should be a system change of long-term nature and it should reduce the problems of non-conceptual development with sudden changes of financial funds. The strategy will be based

on technical transport and socioeconomic criteria and it will stipulate mainly the order of priorities for construction works.

## 6.4 Tasks from the Preceding Strategy

### 6.4.1 Availability of Information on the Fight with Corruption

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| Author: Deputy Prime Minister |
| Deadline – performance indicator:<br>31 May 2013 – Establish new webhosting for the domain www.korupce.cz so that the domain is user-friendly, and post relevant information on the fight with corruption on the website. |
| Anticorruption effect: Information for the public. |

Reasoning:

Because the fight with corruption is a very complex issue, it is necessary that as many as possible pieces of information on this subject can be found at a single place. The Office of the Government of the Czech Republic, operating the website www.korupce.cz, which already contains large volumes of information and links, shall cooperate with other central administration authorities, police forces and non-governmental organizations to extend the website and add further information on activities in the fight with corruption. Currently, the domain is redirected to the Government's website (to the Government Committee for Coordination of the Fight against Corruption), which means that it is necessary to respect the editorial system of the website www.vlada.cz, where it is only possible to use about a fourth of the screen.

All relevant information on the fight with corruption should be posted on the website so as to increase awareness of the public and willingness to personally join the fight.

### 6.4.2 Prevent Manipulation of Counsels Designation

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| Author: Ministry of Justice |
| Deadline – performance indicator:<br>31 August 2013 – Modify the information systems for designation of counsels so that counsels are designated evenly. |
| Anticorruption effect: Increase transparency of the process of designation of counsels in criminal proceedings. |

Reasoning:

The aim of this task is to increase transparency of the process of designation of counsels to defendants in criminal proceedings through the mediation of the respective court's information system so as to prevent corruption practices. Counsels are designated in line with section 39(2) of the Code of Criminal Procedure.

Based on information arising, amongst other, from inspections of courts, it was found out that sections 39(2) and in particular 39(3) of the Code of Criminal Procedure are not always observed consistently. Courts mostly keep alphabetic lists in hardcopies and designation of counsels can be manipulated, which can be associated with corruption. Modification of the court information systems so that counsels are designated evenly by the information system (using the so-called round) will reduce the opportunity of interference with certain cases and also the opportunity of corruption practices.

### 6.4.3 Supervision over Distrainment Activities

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| Author: Ministry of Justice |
| Deadline – performance indicator:<br>31 August 2013 – Unify the parameters of supervision over distrainment activities (instructions of the Ministry of Justice). |
| Anticorruption effect: Increase foreseeability of procedures undertaken by state supervision bodies. Reduce non-standard processing of motions pertaining to the state supervision. Unify the assessment of errors in the distrainment proceedings with regard to the principle of equality of persons subject to disciplinary proceedings (the same disciplinary measure for the same offence). Preventive effects towards inspected entities, i.e. court distrainers. |

Reasoning:

According to the Distrainment Rules there are numerous equal state supervision bodies over distrainment activities. State supervision is carried out by the Ministry, Chamber, distrainment court and court in the district of which the distrainer's office is registered. There is no reporting relation among supervision bodies. Therefore, unification of the supervision practice is a necessary precondition for the efficient state supervision. Disciplinary decisions strongly affect the way how distrainment proceedings take place in general. This is the basic purpose of existence of the state supervision in the form of preventive influence on activities of court distrainers, because the state does not have any other tool to intervene into distrainment, since almost a million distrainment decisions are issued every year and supervision bodies examine only hundreds or thousands of motions.

It is assumed that the Ministry of Justice will issue instructions how courts should carry out the state supervision over distrainment activities, that cooperation with the Distrainment Chamber of the Czech Republic on a professional level and mutual sharing of information on disciplinary actions will improve, that professional workshops with disciplinary prosecutors and representatives of the Supreme Administrative Court will be organized, and that relevant disciplinary case law will appear.

### 6.4.4 Eliminate Manipulation with Notarial Documents

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| Author: Ministry of Justice |
| Deadline – performance indicator:<br>Continually – Inspection of notarial activities should focus on the fight with corruption. |

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| Anticorruption effect: Reduce potential manipulation with notarial documents containing deeds made out by notaries. |

Reasoning:

Improved quality or register-keeping reduces potential manipulation with notarial documents containing deeds made out by notaries. Corruption in the field of notarial activities can be motivated only by attempts to affect the contents of deeds at variance with truth (mainly by antedating). The only way how to identify and/or demonstrate such fact is to determine a discrepancy between the deed contents and allocated serial number, date of its registration, dates in associated deeds, etc. (it is not appropriate to disclose other specific ways of examination). The task should be fulfilled by means of focusing inspection on recording tools and consistent examination of seemingly minor defects in the keeping of registers.

### 6.4.5 Supervision over Courts

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| Author: Ministry of Justice |
| Deadline – performance indicator:<br>31 August 2013 – Unify parameters of supervision over decision-making by courts. |
| Anticorruption effect: Increase foreseeability of procedures undertaken by state supervision bodies. |

Reasoning:

How courts act and decide in proceedings is monitored and evaluated (with regard to compliance with the principles of dignity of court proceedings and court ethics, and whether undue delay occurs in proceedings) by the Ministry of Justice, chairpersons of the Supreme Court, Supreme Administrative Court, High Court, Regional Court and District Court. There is no reporting relation among those supervision bodies. Such plurality of disciplinary prosecutors is not bad in principle; on the contrary, it reduces the corruption potential, but the practical disadvantage is that similar offences are assessed differently by different disciplinary prosecutors. This is reflected adversely in disciplinary proceedings, because persons subject to disciplinary proceedings can argue with a "legal opinion" and in connection with different assessment by different supervision bodies, in the form of a motion to supervision, which is often processed formally only, they can achieve different conclusions in similar cases. Therefore, unification of the supervision practice is a necessary precondition for efficient supervision, especially because decisions of disciplinary senates of the Supreme Administrative Court are carefully monitored not only by the professional public, but also by the general public. Disciplinary decisions are of crucial importance for the way of supervision and control over court proceedings. The experience gained during supervision and inspection over courts indicates that it is necessary to properly coordinate steps with court functionaries so that inspection and supervision are efficient and that adequate and just sanctions and disciplinary measures are proposed for offences, if any. The circumstances mentioned in section 125(1) of the Code of Criminal Procedure should be analogically taken into account in this direction. This is fulfilment of the basic purpose of the existence of supervision in the form of preventive influence on activities of judges, because

the state does not have any other tool to intervene into the decision-making by courts. Subsequent repressive measures should always be taken only as *ultima ratio* means.

The task will be fulfilled mainly by means of more extensive cooperation with District and Regional Courts on a professional level. Assumed are mutual sharing of information on disciplinary actions, professional workshops with disciplinary prosecutors and representatives of the Supreme Administrative Court and continual unification of disciplinary prosecutors' opinions on types of potential errors by judges, taking into account the conditions, under which such errors are considered to be the judge's disciplinary offence, and the fact that disciplinary case law will be unified due to establishment of extended disciplinary senate.

### 6.4.6 Reinforcement of Protection of the Public Interest in Administrative Judiciary

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| Author: Ministry of Justice |
| Deadline – performance indicator:<br>31 July 2014 – Present to the Government a draft amendment to the Code of Administrative Proceeding, which would contain extension of prosecutors and ombudsman' legitimation in administrative judiciary to file a complaint in the public interest. |
| Anticorruption effect: Reinforce institutional protection of the public interest. Preventive threat of abolition of administrative decisions, measures of general nature or other acts of administrative bodies taken due to corruption practices. |

Reasoning:

The Chief Public Prosecutor's power to file administrative complaints in the serious public interest was established by Act No. 150/2002 Coll., Code of Administrative Proceeding, which came into effect on 1 January 2003. Under the legal situation before the effective date of the Code of Administrative Proceeding, it was not possible to file complaint in public interest against illegal decision of an administrative body because there was no entity legitimated to file administrative complaint in public interest. Illegal decisions of an administrative body could have been made in favour of a single party to the administrative proceedings and motivated by unjust advantage; before 1 January 2003 there was nobody to file an administrative complaint against such a decision, even in case such decision was motivated by corruption, because it cannot be seriously expected that such a complaint would be filed by party receiving unjust advantage. Currently, the ombudsman is legitimated to file such complaints (effective from 1 January 2012). This power enables the ombudsman to respond quite quickly in justified cases to the findings of his/her examination (subsequently, the court decides with authority). Besides, the ombudsman's findings gained during his activities indicate that administrative bodies issue decisions in certain administrative proceedings (e.g. in the field of building regulations or protection of the environment) that are absolutely at variance with the public interest, sometimes showing signs of certain corruption practices or purposeful influence (and often, such decisions cannot be corrected under the "standard" proceedings because of time-limitation). That is why this power was given to the ombudsman.

In some other proceedings, however, the absence of the public prosecutor or ombudsman's legitimation to file administrative complaints still has an adverse effect (for example, in purposeful modifications of zoning plans, etc.). That is why it would be appropriate

to extend the power to file administrative complaints also to certain other cases in addition to the decisions of administrative bodies (for example, against measures of general nature and against illegal interventions by the public administration, etc.). Such administrative complaints could be understood as security against cases where an administrative body is motivated by clientelism or other corruption practices. Such extended power to file administrative complaints will also have certain preventive effects.

It is especially the sphere of application of administrative law where such conditions should be created so that regulations pose obstacles to potential corruption practices. The proposed measure would be a threat that an administrative decision, measure of general nature or other act taken by an administrative body at variance with law and public interest due to corruption practices (promising or giving bribe or other unjust advantage) can be cancelled by court, which can help in the fight with corruption.