

**THE GOVERNMENT ANTI-CORRUPTION STRATEGY
FOR THE YEARS 2011 AND 2012**

Contents

- Contents 1**
- Introduction 4**
 - Contents and Objectives 4
 - What is Corruption 5
 - Prosecution of Corruption in the Czech Criminal Law 6
- Corruption in the Czech Republic 6**
 - Statistics 6
 - The Corruption Perceptions Index (CPI)..... 12
 - The Anti-corruption Hotline - 199 13
- Priorities..... 14**
 - Public Servants Act to enhance performance and stability of public administration 14
 - Introduction of stricter rules to manage municipal and regional public property and of stricter liability for damage 14
- 1. Public administration 15**
 - Legislative measures..... 15**
 - 1.1 Introduction of stricter rules to manage municipal and regional public property and of stricter liability for damage 15
 - 1.2 Enhanced transparency of regional or municipal authorities' voting process in matters relating to public property, public procurement, subsidies, and grants..... 16
 - 1.3 Introduction of modified conditions pertaining to the management of legal entities established by central authorities or regional self-governing units as well as partially publicly-owned entities 17
 - 1.4 Extended access of territorial self-governing units' councils to information 17
 - 1.5 Division of competences between municipal or regional councils and executive boards to prevent avoidance of law 18
 - 1.6 Introduction of measures to prevent abuse of municipal periodicals 19
 - 1.7 Public Servants Act to enhance performance and stability of public administration 19
 - 1.8 'Credibility testing' of other individuals active in the public service..... 20
 - 1.9 Introduction of reinforced Supreme Audit Office's audit and control powers over territorial self-governing units 21
 - 1.10 Enhanced standardization of control processes in public administration 22
 - 1.11 Amendment to the Financial Control Act..... 22
 - 1.12 Misdemeanour Record 23
 - 1.13 Legislating for the responsibility of public authorities to draft and publish internal Codes of Ethics.. 23
 - 1.14 Comprehensive life-long education of public servants in anti-corruption matters 24
 - Non-legislative Measures 25**
 - 1.15 Enhanced access to information in keeping with No. 106/1999 Coll., on free access to information, as amended..... 25
 - 1.16 Coordination of the process of implementation of SMART Administration with the digital agenda .. 25
 - 1.17 Privatization of public property..... 26
 - 1.18 Analysis of whistleblowing and protection of whistleblowers 26
 - 1.19 Support and cooperation with anti-corruption NGOs..... 27
 - 1.20 Support and development of the 199 anti-corruption hotline 27
 - 1.21 Central anti-corruption Website 28
- 2. Public procurement 29**
 - Legislative measures..... 31**
 - 2.1 Amendment to the Public Procurement Act 31

| | |
|---|-----------|
| 2.2 Centralized Procurement | 33 |
| 2.3 Single URL..... | 33 |
| 2.4 Amendments of law guiding subsidies and grants..... | 34 |
| Non-legislative measures..... | 34 |
| 2.5 A catalogue of document templates..... | 34 |
| 2.6 Annual Report of Public Procurement in the Czech Republic | 35 |
| 3. Law Enforcement Agencies – Police of the CR | 36 |
| Legislative Measures | 36 |
| 3.1 Introduction of stricter rules pertaining to the cooperating witness | 36 |
| 3.2 Amended conditions for the use of interception of telecommunications (wire tapping) and agents in keeping with the Code of Criminal Procedure..... | 37 |
| 3.3 Law Enforcement Access to tax Related Information..... | 38 |
| 3.4 Completion of the Foreigners’ Police Service Transformation | 38 |
| 3.5 Security Forces Inspection Agency | 39 |
| Non-legislative Measures | 39 |
| 3.6 Analysis of the Potential of Effective Repentance | 39 |
| 3.7 Analysis of effectiveness of corruption investigation in the Czech Republic | 40 |
| 3.8 Reinforcement of the restitutive function of criminal proceedings including seizure and forfeiture of proceeds from crime | 40 |
| 3.9 Police of the CR Data Protection and Sharing..... | 42 |
| 3.10 Electronic Criminal Proceedings..... | 43 |
| 3.11 Streamlining of the flow of information from the financial sector to law enforcement bodies | 43 |
| 3.12 Developing Guidelines of Police Anti-corruption Conduct | 44 |
| 3.13 Introduction of life-long education and training of members of the Police of the CR in anti-corruption matters and aspects of detection and seizure of proceeds from crime | 44 |
| 3.14 To sign the Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization | 45 |
| 3.15 Establishment of an Office of Police ombudsman | 46 |
| 3.16 Introduction of measures to prevent corruption and bureaucracy in immigration (visa) practice | 46 |
| 4. Law Enforcement Bodies – Offices of Public Prosecution and Courts | 47 |
| Legislative Measures | 47 |
| 4.1 Reinforced independence and accountability of Offices of Public Prosecution for the execution of their entrusted powers | 47 |
| 4.2 Introduction of stricter penalties for corrupt conduct of public officials..... | 47 |
| Non-legislative Measures | 47 |
| 4.3 Change of local competences of law enforcement bodies in cases of crimes related to public administration and self-governments..... | 47 |
| 4.4 Feasibility analysis of non-conviction based confiscation of criminal proceeds..... | 48 |
| 4.5 Reinforced supervisory and disciplinary powers of the Ministry of Justice over legal professions | 49 |
| 4.6 Special tribunals and dedicated units of Offices of Public Prosecution to fight corruption and financial crime | 49 |
| 4.7 Life-long education of judges and public prosecutors..... | 49 |
| 5. Law-making Power..... | 51 |
| Legislative Measures | 51 |
| 5.1 Introduction of a central register of record-keeping bodies in keeping with the Conflict of Interest Act | 51 |

| | |
|--|-----------|
| 5.2 Amendment of the Rules of Procedure of the Parliament of the Czech Republic and the Rules of Procedure of the Senate of the Czech Republic | 51 |
| 5.3 Draft Corporate Criminal Liability Act | 52 |
| Non-legislative Measures | 53 |
| 5.4 Enhanced transparency of political parties' financing | 53 |
| 5.5 Feasibility analysis of comprehensive regulation of lobbying | 54 |
| 5.6 Introduction of mandatory Corruption Impact Analysis (CIA) | 54 |
| 5.7 Introduction of a Code of Ethics for all elected representatives | 55 |
| 5.8 Feasibility analysis of fighting corruption in the private sector | 55 |

Introduction

Contents and Objectives

The Government's Anti-corruption Strategy for the years 2011 and 2012 (hereinafter only the 'Strategy') is hereby submitted to the Government pursuant to the Government Resolution No. 283 of April 19, 2010 adopting the Report on implementation of the Government Anti-corruption Strategy for 2008 to 2009. The Resolution, in its Article II, requires the Minister of the Interior to draft and submit to the Government, no later than October 31, 2010 a Government Anti-corruption Strategy for 2011 to 2012. By its Resolution No. 648 of September 15, 2010, the Government postponed this deadline.

This Strategy builds on the Government Anti-corruption Strategy for 2006 to 2011, which was adopted by the Government Resolution No. 1199 of October 25, 2006, was amended by the Government Resolution No. 676 of June 18, 2007, and updated by the Government Resolution No. 329 of March 23, 2009. The Strategy developed three key pillars – **Prevention, Transparency, and Repression** – to be implemented and enforced appropriately. Most tasks defined in the Strategy have been already implemented and a few of them were abolished for various reasons. The process of implementing the Strategy was communicated to the Government by ways of the following two documents – the 2006 to 2007 Implementation Report, which was adopted by the Government Resolution No. 492 of April 28, 2008 and the 2008 to 2009 Implementation Report, which was adopted by the Government Resolution No. 283 of April 19, 2010.

Since many measures to support prevention and transparency are universal, the new Strategy breaks them down in line with which aspect of public life they pertain to. In all chapters, prevention and repression measures are kept in balance.

The areas most prone to corruption are public administration, law-making, and the judiciary. Corruption is most often perpetrated in matters related to public finance and services. The Strategy therefore includes a separate chapter dedicated solely to the public procurement process. It proposes an amendment to Act No. 137/2006 Coll. on public procurement and other non-legislative measures to reinforce transparency and public control of the public procurement process.

There is a separate chapter on public administration, defining measures to be implemented both on the central level and on the level of territorial self-governing units.

The Strategy pays an increased attention to Police-related measures and promotes a set of comprehensive non-legislative preventive measures to complement repression. The same is true for the chapter pertaining to courts and Offices of Public Prosecution.

The chapter concerning the law-making process focuses primarily on prevention and transparency of legislators' conduct.

The Strategy promotes anti-corruption education and training of public servants, policemen, judges, and public prosecutors as one of the most powerful prevention tools. Anti-corruption agenda in pre-schools and schools was, in line with the interim Strategy, included in the relevant curricula. The Ministry of Education, Youth and Sports should pay more attention to the anti-corruption education and review the current practice in order to propose measures to improve anti-corruption education.

Some provisions of the Strategy are rather general, since agencies and institutions responsible for their implementation have their own efficient and powerful mechanisms already in place. For the above reason, some points do not include any background information and given measures are formulated as performance indicators. Moreover, the Ministry of the Interior

established a Minister of the Interior Anti-corruption Advisory Board composed of representatives of NGOs, the Police, and Offices of Public Prosecution. The intra-agency communication is provided by the Ministry of the Interior anti-corruption task force and cooperation and coordination of activities with other Government agencies is in the hands of the Inter-agency anti-corruption task force. There is a Public procurement task force under the umbrella of the Ministry for Local Development. Agencies responsible for the implementation of individual tasks are ready to cooperate with relevant experts and NGOs. Some measures can benefit from reinforced international cooperation, too.

Some objectives embedded in the Coalition Agreement and the Czech Government Policy Statement, this Strategy is partially derived from, have been already implemented. Some others are planned for the second half of the Government's term of office and will be a part of the new Strategy for 2012 to 2014. Many tasks in this current Strategy require analyses of problems and challenges to be submitted to the Government in the years 2011 to 2012. The Strategy will be subsequently evaluated and used to determine the new Strategy for 2012 to 2014 which may, next to new tasks, include objectives which have not been implemented yet. Necessary measures revealed by the above analyses will be implemented under the umbrella of the new Strategy to 2014.

What is Corruption

There is no universal definition of corruption (lat. corrumpere – spoil, destroy, corrupt, bribe). Corruption is a promise, offer, or payment of a bribe with the intention to influence recipient's conduct or decision. Corruption is also a solicitation of bribe or its acceptance. There are more forms of bribes other than cash or monetary. Providing of information, gifts (jewellery) and other favours, services (construction work, expensive holidays, sex), or facilitation of advantages for friends and family (nepotism) can also constitute a bribe. A bribe may also be in the form of an agreement offering conspicuously favourable terms to a relative of the public servant (nepotism) whose decision the bribe-giver wishes to influence. Clientelism is yet another demonstration of corruption (a form of favourism shown to close friends and acquaintances).

Corruption is closely related to conflicts of interest, which can be one of the first indicators of corruption. A conflict of interest exists when a public official has competing professional obligations or personal or financial interests that would influence the objective exercise of his duties. Such conduct threatens public confidence in his impartiality.

The public often perceives lobbying as an expression of corruption, too. Legal lobbying is used to promote interests of a certain interest group in the decision-making process. In the Czech Republic, however, the line between the two tends to be very narrow. Lobbying can develop into corruption, especially in cases of non-transparent lobbying practice.

In most cases, corruption is a transaction between two parties. One party solicits a bribe in return for an unjustified advantage in favour of the party offering the bribe. Corruption is the type of crime in which all the involved perpetrate crime and benefit from such crime. It is very difficult to infiltrate the scheme unless one of the perpetrators decided to report the crime because it is no longer bearing the deserved results. In fact, this type of crime has no direct victims. On the other hand, there are many indirect victims – all of us, citizens and taxpayers, who have to pay higher taxes, and, in return, receive low quality public services. Corruption poses an enormous threat to the entire society and as such it demands increased effort. There are no measures or tools to miraculously remove corruption from our lives. To solve the problem, we will have to gradually limit corruption opportunities and promote

zero public tolerance of bribery and corrupt conduct. In combination with repression tools, our efforts should soon bear fruit. But, in a larger sense, corruption is an ethical and moral failure of each individual involved.

Corruption has a negative impact on the public confidence in the rule of law. It helps create unofficial non-democratic power structures. Corruption results in non-transparent allocation of public money, it distorts competition, and adds extra costs to business thus decelerating the economic growth. It makes the gap between the rich and the poor even deeper and suppresses equal opportunities. Corruption is a popular tool of organized crime groups. It may pose a significant threat to democratic public institutions, the market economy, and both internal and external security.

Prosecution of Corruption in the Czech Criminal Law

The Criminal Code (Act No. 40/2009 Sb.) defines corruption as bribe-taking (Article 331), bribe-giving (Article 332), and indirect bribery (Article 333). At the same time, it defines (in its Article 334) selected key terms, such as the 'bribe'. Since the public sector is most prone to corruption, the Criminal Code stipulates selected offences perpetrated by public officials, namely abuse of power of a public official (Article 329) and public official's negligent failure to perform (Article 330). Even though the Criminal Code focuses primarily on the public sector and impartial and objective public procurement, it includes provisions on corruption in the private business and private-law aspects.

Crimes involving corruption under certain circumstances include: breach of trust (Article 220 and Article 221), conniving in a bankruptcy procedure (Article 226), insider trading (Article 255), facilitation of privileged treatment in the public procurement process, public tender, or public auction (Article 256), conniving in the public procurement process (Article 257), conniving in the public auction (Article 258).

The Czech Constitution is the key document defining the conflict of interest. It prohibits concurrence of certain public offices. Provisions of the Constitution are further developed in the Conflict of Interest Law (Act No. 159/2006 Coll.), provisions of which prevent conflict of interest of public officials. To a certain extent, this Act proscribes business activities of public officials as well as accumulation of public offices. There are other, and equally important, limitations deriving from bylaws (prejudice) and other laws (e.g. Article 83 of the Act on Municipalities or Articles 74 and 76 of the Public Procurement Act).

Corruption in the Czech Republic

Statistics

Crime statistics (crimes detected and crimes solved) are kept in the central Police information system (Central Database of Crime Statistics), data pertaining to persons accused and convicted were provided by the Ministry of Justice.

Corruption statistics developed by the Police (since 2000)

The period of January 1 to September 30, 2010 shows a positive trend in the detection of corruption. When compared to the same period in 2009, the Police detected 31 corruption cases more (27 of these cases concerned bribe-giving), i.e. 34,4 per cent increase in the detection rate (see Table 2).

The low number of documented crimes of bribery since 2000 shows that corruption has remained highly latent and its detection complicated.

In 2004, the incidence of bribery was at its peak. The Police detected 287 crimes of bribery and solved 281 of them (the statistics include bribe-taking, bribe-giving, and indirect bribery).

The lowest incidence of bribery was recorded in 2007 when the Police detected 103 crimes of bribery. In 2009, it was 121 crimes marking the second lowest figure since 2000 (see Table 1).

| Year | Article 158 / Article 329 abuse of power of a public official | | Article 159 / Article 330 public official's negligent failure to perform | | Article 160 / Article 331 bribe-taking | | Article 161 / Article 332 bribe-giving | | Article 162 / Article 333 indirect bribery | | bribery in total | |
|-----------------------------|--|--------|---|--------|---|--------|---|--------|---|--------|------------------|------------|
| | detected | solved | detected | solved | detected | solved | detected | solved | detected | solved | detected | solved |
| 2000 | 367 | 350 | 18 | 18 | 38 | 37 | 133 | 131 | 3 | 3 | 174 | 171 |
| 2001 | 390 | 381 | 18 | 18 | 28 | 28 | 171 | 171 | 4 | 4 | 203 | 203 |
| 2002 | 376 | 269 | 33 | 31 | 48 | 38 | 116 | 109 | 7 | 6 | 171 | 153 |
| 2003 | 384 | 324 | 23 | 23 | 49 | 42 | 102 | 101 | 4 | 4 | 155 | 147 |
| 2004 | 248 | 202 | 18 | 18 | 126 | 123 | 149 | 147 | 12 | 11 | 287 | 281 |
| 2005 | 212 | 167 | 19 | 18 | 39 | 32 | 94 | 92 | 5 | 5 | 138 | 129 |
| 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 (1.1.-30.9.) | 128 | 94 | 13 | 8 | 31 | 19 | 85 | 62 | 5 | 3 | 121 | 84 |

Table 1: Number of corruption-related crimes detected and solved in the Czech Republic in 2000-2009

| Year | Article 158 / Article 329 abuse of power of a public official | | Article 159 / Article 330 public official's negligent failure to perform | | Article 160 / Article 331 bribe-taking | | Article 161 / Article 332 bribe-giving | | Article 162 / Article 333 indirect bribery | | bribery in total | |
|-----------------------------|--|--------|---|--------|---|--------|---|--------|---|--------|------------------|------------|
| | detected | solved | detected | solved | detected | solved | detected | solved | detected | solved | detected | solved |
| 2009 (1.1.-30.9.) | 163 | 98 | 9 | 7 | 25 | 19 | 58 | 53 | 7 | 6 | 90 | 78 |
| 2010 (1.1.-30.9.) | 128 | 94 | 13 | 8 | 31 | 19 | 85 | 62 | 5 | 3 | 121 | 84 |
| | -35 | -4 | 4 | 1 | 6 | 0 | 27 | 9 | -2 | -3 | 31 | 6 |
| % | -21,5 | -4,1 | 44,4 | 14,3 | 24,0 | 0,0 | 46,6 | 17,0 | -28,6 | -50,0 | 34,4 | 7,7 |

Table 2: Year to year comparison (January 1 to September 30) in 2009 to 2010



Chart 1: Bribery cases detected and solved

Bribery statistics - territorial breakdown

Most crimes of bribery were committed in the **Municipality of Prague**, followed by **Brno, Kladno, Pardubice, Ostrava, Cheb, Karviná**, etc. (see Chart 2).

In 2009 (see Chart 3), bribery concentrated in the following counties¹: Municipality of Brno, Prague I., Cheb, Kladno, Prague III., and Hodonín.

Maps 1 and 2 offer an alternative view of territorial distribution of corruption cases detected (county-based). The higher the corruption, the darker the colour.

¹ Municipality of Prague is divided into four Police districts.

**Okresy ČR s nejvyšším počtem zjištěných trestných činů
úplatkářství v letech 2000-2009
kdy zjištěno > 20**

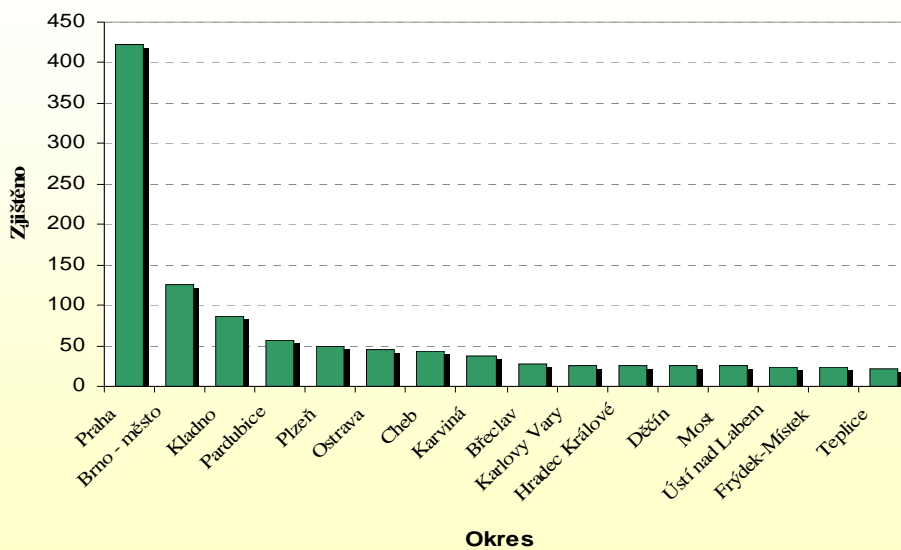


Chart 2: Detected crimes of bribery in 2000-2009 (per county)

**Okresy ČR v roce 2009 s nejvyšším počtem zjištěných tr. činů
úplatkářství celkem**

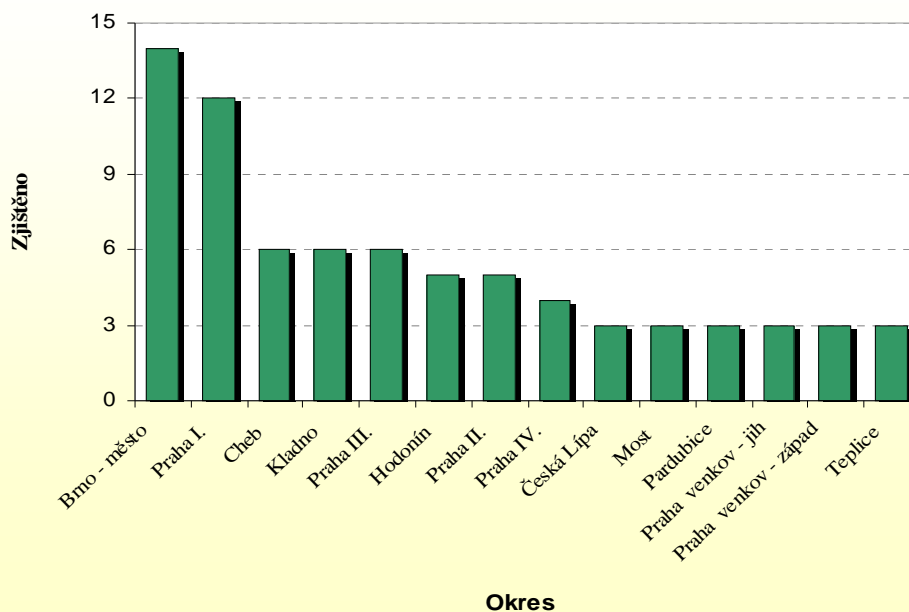
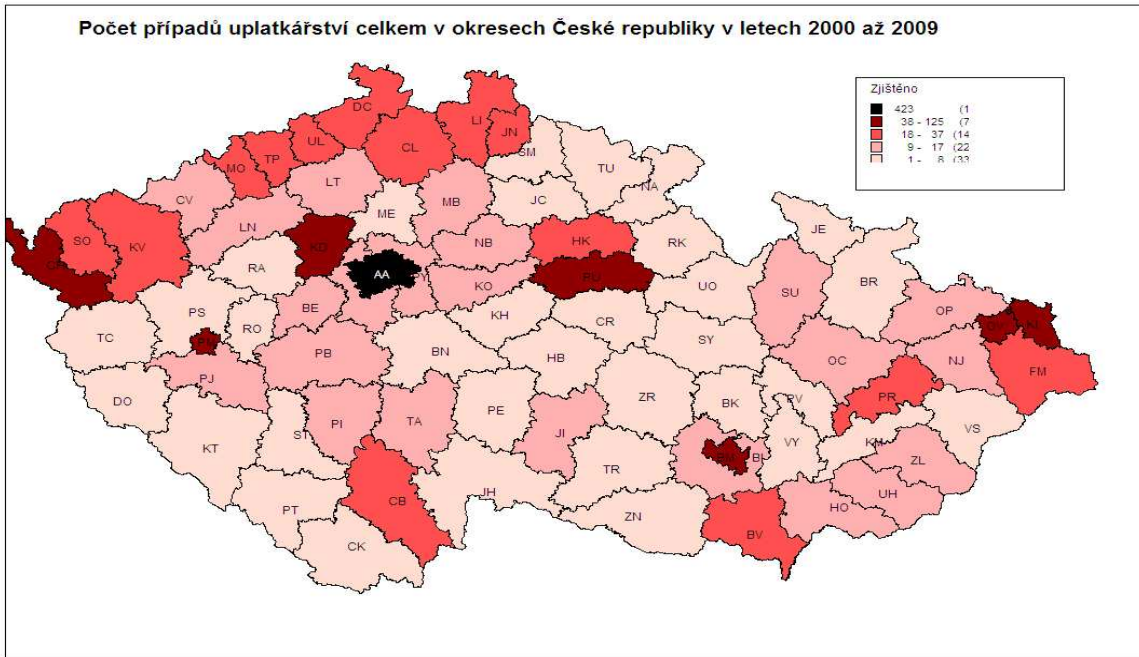
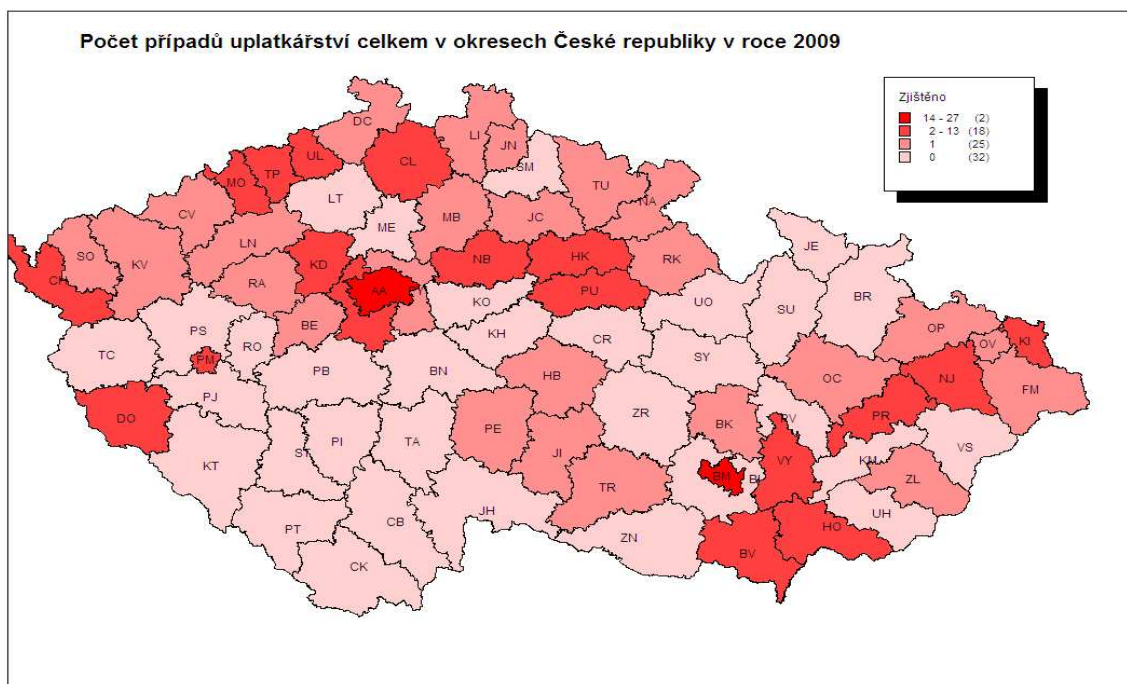


Chart 3: Detected crimes of bribery in 2009 (in total, per county)



Map 1: Detected crimes of bribery in 2000-2009 (per county)



Map 2: Detected crimes of bribery in 2009 (per county)

The Ministry of Justice bribery statistics (since 2000)

Table 3 shows the highest number of perpetrators convicted (137) in the year 2002, while in 2006, the number of convicts (74) was the lowest. Between 2005 and 2009, the courts pronounced a guilty verdict over 440 perpetrators while in 2000 to 2004 it was

541 perpetrators. Obviously, the recent five years mark a decreasing trend. The highest ratio of perpetrators convicted to perpetrators indicted was in 2007 (99 %).

| Year | Article 158 / Article 329 abuse of power of a public official | | Article 159 / Article 330 public official's negligent failure to perform | | Article 160 / Article 331 bribe-taking | | Article 161 / Article 332 bribe-giving | | Article 162 / Article 333 indirect bribery | | bribery in total | |
|------------------------------|--|-------|---|-------|---|-------|---|-------|---|-------|------------------|------------|
| | indic. | conv. | indic. | conv. | indic. | conv. | indic. | conv. | indic. | conv. | indic. | conv. |
| 2000 | 232 | 100 | 6 | 3 | 48 | 49 | 106 | 68 | 4 | 1 | 158 | 118 |
| 2001 | 262 | 99 | 8 | 1 | 51 | 28 | 149 | 83 | 1 | 3 | 201 | 114 |
| 2002 | 332 | 104 | 12 | 6 | 45 | 26 | 120 | 108 | 3 | 3 | 168 | 137 |
| 2003 | 288 | 110 | 14 | 11 | 30 | 20 | 96 | 53 | 3 | 2 | 129 | 75 |
| 2004 | 221 | 127 | 7 | 5 | 41 | 23 | 103 | 74 | 6 | 0 | 150 | 97 |
| 2005 | 216 | 89 | 7 | 19 | 91 | 24 | 82 | 82 | 2 | 1 | 175 | 107 |
| 2006 | 143 | 75 | 9 | 4 | 39 | 27 | 96 | 45 | 3 | 2 | 138 | 74 |
| 2007 | 151 | 64 | 10 | 0 | 37 | 51 | 65 | 51 | 2 | 1 | 104 | 103 |
| 2008 | 156 | 55 | 2 | 1 | 42 | 26 | 78 | 50 | 6 | 0 | 126 | 76 |
| 2009 | 112 | 64 | 11 | 3 | 31 | 28 | 68 | 51 | 3 | 1 | 102 | 80 |
| 2010 (1.1.-30.9.) | 89 | 49 | 6 | 2 | 24 | 19 | 58 | 37 | 2 | 0 | 84 | 56 |

Table 3: Individuals indicted and convicted in keeping with the Criminal Code

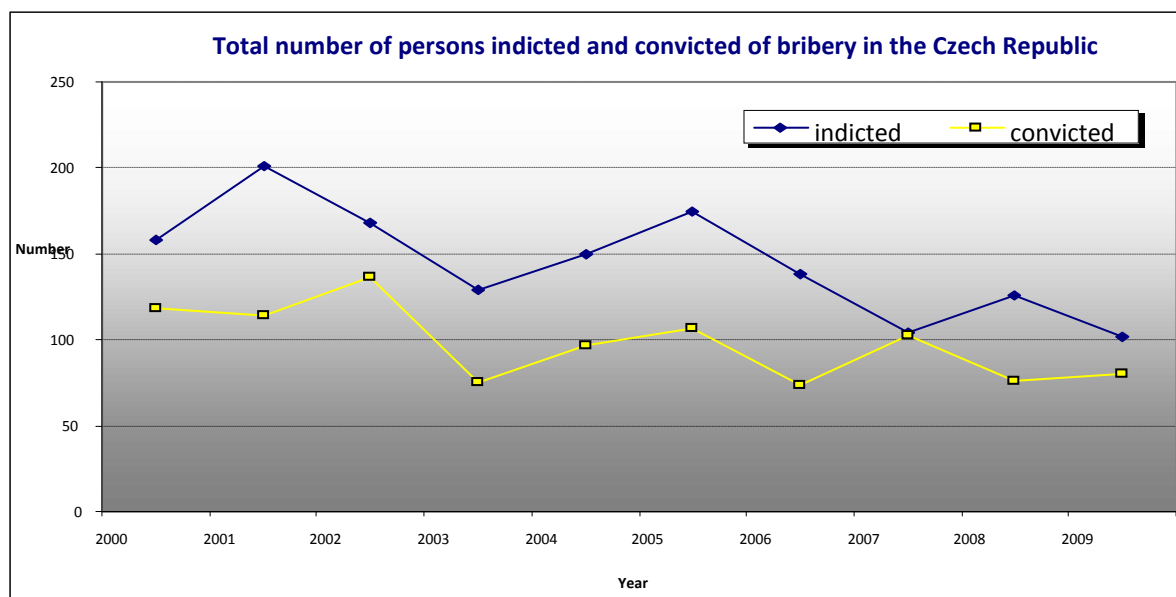


Chart 3: Total number of persons indicted and convicted of bribery in the Czech Republic

The Corruption Perceptions Index (CPI)²

The CPI ranks countries according to the perception of corruption in the public sector (politicians and public officials). It reflects opinions of business people and analysts in a number of countries world-wide. Transparency International defines corruption as the abuse of entrusted power for private gain. CPI is a subjective business opinion survey of perception of public sector corruption. CPI has been criticized for its limited resources used to compile the survey.

Transparency International has been compiling the CPI since 1995 (41 countries rated). In 2010, TI rated 178 countries (in 2007-2009 it was 180 countries). The CPI brings together different assessments and business surveys carried out by independent institutions. The 2009 index drew on 13 data sources provided by independent and reputable institutions. Countries are rated 10 (lowest perception of corruption, most frequently it is New Zealand or North European countries) to 0 (high perception of corruption; the lowest rated country in 2010 was Somalia - 1,1).

In 1997 to 2002, the CPI of the Czech Republic kept decreasing (it hit the bottom in 2002 when the CR was rated 3,7). In 2003, the index started going up.

| <i>Year</i> | <i>Rating of the CR</i> | <i>Number of countries rated</i> | <i>CPI</i> | <i>Best results in the given year</i> | <i>Worst results in the given year</i> |
|-------------|-------------------------|----------------------------------|------------|---------------------------------------|--|
| 1998 | 37. | 85 | 4,8 | 10,0 Denmark | 1,4 Cameroon |
| 1999 | 39. | 99 | 4,6 | 10,0 Denmark | 1,5 Cameroon |
| 2000 | 42. | 90 | 4,3 | 10,0 Finland | 1,2 Nigeria |
| 2001 | 47.-49. | 91 | 3,9 | 9,9 Finland | 0,4 Bangladesh |
| 2002 | 52.-56. | 102 | 3,7 | 9,7 Finland | 1,2 Bangladesh |
| 2003 | 54.-56. | 133 | 3,9 | 9,7 Finland | 1,3 Bangladesh |
| 2004 | 51.-53. | 146 | 4,2 | 9,7 Finland | 1,5 Bangladesh, Haiti |
| 2005 | 47.-50. | 159 | 4,3 | 9,7 Island | 1,7 Bangladesh, Chad |
| 2006 | 46.-48. | 163 | 4,8 | 9,6 Finland, Island, New Zealand | 1,8 Haiti |
| 2007 | 41.-42. | 180 | 5,2 | 9,4 Denmark, Finland, New Zealand | 1,4 Somalia, Myanmar |
| 2008 | 45.-46. | 180 | 5,2 | 9,3 Denmark, New Zealand, Sweden | 1,0 Somalia |
| 2009 | 52.-53. | 180 | 4,9 | 9,4 New Zealand | 1,1 Somalia |
| 2010 | 53. | 178 | 4,6 | 9,3 Denmark, New Zealand, Singapore | 1,1 Somalia |

The interim Strategy of 2006 and its implementation in the following years have had positive impact on perception of corruption in the Czech Republic in the recent years.

² Source: Transparency International: <http://www.transparency.cz/>

The Anti-corruption Hotline - 199

Transparency International – CR, o.p.s. (TIC) has been operating the 199 free anti-corruption hotline since September 19, 2007.

In its pilot operation (September 19, 2007 to February 29, 2008) the hotline operators received 727 calls of which 339 were analysed as corruption-related. In this period, TIC itself filed five criminal charges. The calls referred most often to corruption in the private sector, ownership rights, justice, policing, and construction business.

The 199 hotline has been fully operable since March 1, 2008 (see below for its results):

| | No. of calls *) | No. of new clients **) | Other approach ***) | No. of open cases (from 199 + other approach) ****) | No. of criminal complaints filed by TIC *****) |
|----------------------------------|------------------------|-------------------------------|----------------------------|--|---|
| 1. 3. 2008 – 31. 12. 2008 | 1 500 | 435 | 184 | 29 + 27 | 6 |
| 1. 1. 2009 – 31. 12. 2009 | 2 000 | 459 | 240 | 38 + 58 | 4 |
| 1. 1. 2010 – 30. 6. 2010 | 1 200 | 227 | 197 | 11 + 9 | 3 |

*) Calls received by 199 hotline operators.

***) No. of new 199 hotline clients, i.e. clients calling for the first time in the given period and whose call was identified as corruption-related.

****) No. of clients who used other means but the 199 hotline (email, personal, call to TIC, etc.) and their decision to approach TIC was based on its 199 hotline.

*****) No. of open cases requiring an active intervention by TIC.

*****) Number of criminal complaints filed directly by TIC.

Areas referred to by the hotline clients have remained almost the same. Most calls complain about aspects under the responsibility of the Ministry of the Interior (Police of the CR), Ministry for Local Development (construction, public procurement), Ministry of Justice (Offices of Public Prosecution), and Ministry of Finance (employees of tax authorities below the central level).

Priorities

Primarily, this Strategy builds on the Policy Statement of the Czech Government and the Coalition Agreement. However, it includes a number of tasks and measures planned to remove deficiencies in law or current practice. Last but not least, its authors took into consideration a number of proposals coming from the NGO sector. Even though all anti-corruption measures defined in this document are important and necessary, the ones below will have priority and will receive preferable treatment. Priorities 1 to 11 are of equal top importance. The last column indicates the respective task in the text of the Strategy³:

| | | |
|-----|---|------|
| 1. | Amendment to the Public Procurement Act | 2.1 |
| 2. | Public Servants Act to enhance performance and stability of public administration | 1.7 |
| 3. | Introduction of stricter rules to manage municipal and regional public property and of stricter liability for damage | 1.1 |
| 4. | Introduction of modified conditions pertaining to the management of legal entities established by central authorities or regional self-governing units as well as partially publicly-owned entities | 1.3 |
| 5. | Introduction of reinforced Supreme Audit Office's audit and control powers over territorial self-governing units | 1.9 |
| 6. | Development and completion of the process of digitalisation of the public administration | 1.16 |
| 7. | Enhanced free access to information | 1.15 |
| 8. | Reinforced independence and accountability of Offices of Public Prosecution for the execution of their entrusted powers | 4.1 |
| 9. | Draft Corporate Criminal Liability Act | 5.3 |
| 10. | Reinforcement of the restitutive function of criminal proceedings including seizure and forfeiture of proceeds from crime | 3.8 |
| 11. | Analysis of whistleblowing and protection of whistleblowers | 1.18 |

By ways of conclusion, this Strategy strives to reduce corruption opportunities by means of gradually introducing individual anti-corruption measures, both preventive and repressive, and by increasing transparency of related procedures.

³ The text of the given priority does not always correspond with the task headline in the text of the Strategy.

1. Public administration

Legislative measures

1.1 Introduction of stricter rules to manage municipal and regional public property and of stricter liability for damage

Responsible agency: Ministry of the Interior, Ministry of Justice

Deadline: December 31, 2011

Implementation indicators: To negotiate - with the Association of Regions of the Czech Republic, Union of Towns and Municipalities of the Czech Republic, and Association of local self-governments - a draft amendment of Act No. 128/2000 Coll., on municipalities (municipal administration), as amended, Act No. 129/2000 Coll., on regions (regional administration), as amended, and Act No. 131/2000 Coll., on Municipality of Prague, as amended and submit the above proposals to the Government in order to reduce corruption risks. By introducing these newly amended instruments, we wish to clarify legal conditions under which municipalities and regions should manage their entrusted assets. Last but not least, this measure should promote personal liability for mismanagement of public assets and improper handling of municipal or regional public property. To introduce an active right of action, e.g. by an Office of Public Prosecution, in public interest to counter unlawful handling of public property.

Expected impact on corruption: More transparent handling of public assets on the municipal and regional level; personal liability of public servants as well as elected public officials for damage caused.

Background information:

By law, public assets managed by territorial administrative units - municipalities and regions – shall be duly administered. The law stipulates that public authorities shall enforce damages caused to any administrative unit and such payment of damages shall not be statute-barred. On the other hand, there are no provisions stipulating direct sanctions for such failure to meet one's obligations. Nobody but empowered representatives of the territorial administrative unit, has the right to appeal against invalidity of a legal act performed by a territorial self-governing unit or to claim damages caused to the territorial self-governing unit by a third party. However, active citizens and/or members of municipal councils, often point out that their municipality has failed to enforce obligations embedded in various contracts with third parties and that such obligations are later statute-barred. It is therefore necessary to develop a mechanism which would allow another subject to act in case that the respective municipality or region had failed to act themselves (e.g. a motion in public interest filed by a public prosecutor). Damages, be they caused by negligence or corruption, would be claimed by a qualified and independent public authority, which could use public input as an important source of information.

Authorities and primarily public servants issuing decisions in administrative proceedings are most often not liable for their decisions. This practice of regressive compensation derives from Act No. 82/1998 Coll., on liability for damages caused in line of public duty by a decision or deficient official procedure and on the amendment to Czech National Council Act No. 358/1992 Coll., on notaries and their practice (Notary rules of procedure), which

is not, however, often applied in full. This frequent failure to apply the above provision of law causes certain ‘anonymity of costs incurred by official malpractice’. In most cases, damages are covered from the public budget and public officials have very little motivation to avoid decisions violating law (regardless of what their motivation to violate law are - corruption, clientelism, or any other reasons). As a result of this practice, the public lost their trust in independent and just public administration. In case that malpractice of public servants is obviously caused by a fatal professional failure or intention, person responsible for such misconduct should be required to pay damages and may be subject to sanctions.

The current law guiding management of public property on the level of territorial administrative units as well as remedies and sanctions for violations are inadequate and incapable of protecting public property from fraud. Simultaneously, the Czech Republic has failed in finding means to claim damages from a territorial self-governing unit in case of its misconduct. For the above reasons, we recommend to re-launch a wide public debate on how to amend laws guiding management of territorial self-governing units and how and when to introduce other relevant legislative measures. In light of our ongoing anti-corruption efforts, we recommend to consider the following:

- To introduce a possibility to file civil action in the form of (among others) a motion in public interest filed by an Office of Public Prosecution against perpetrators of misconduct in the management of public assets,
- To introduce a requirement on territorial self-governing units to disclose, in their letter of intent to dispose of public property, details of the decision-making process and the method of selection of the winning bidder.
- To extend the period for which the intent to privatize public property has to be posted publicly to stipulate the requirement to keep the privatization plans posted publicly not for a limited period of time, but until the deliberations of the responsible authority,
- To increase liability of individuals (in line with territorial self-governing unit inspections).
- To ensure enforcement of at least those responsibilities (or sanctions for their violations), which threaten to cause damage to the respective territorial self-governing unit,
- To require all administrative authorities to publish and keep a proper record of all their decisions rejected by administrative courts, together with costs incurred,
- To strictly enforce recovery of damages from those public servants responsible for misconduct.

1.2 Enhanced transparency of regional or municipal authorities' voting process in matters relating to public property, public procurement, subsidies, and grants

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> December 31, 2011 |
| <u>Performance indicator:</u> To negotiate, together with the Association of Regions of the Czech Republic, Union of Towns and Municipalities of the Czech Republic, and Association of local self-governments, and subsequently submit to the Government draft amendments of relevant laws and bylaws to introduce changes such as a requirement to release information on how individual members of relevant self-government bodies voted on matters pertaining to public property, public procurement, subsidies, grants or other self-government expenses with the exception of matters under the umbrella of the Act on protection of confidential information (information must also be posted on the Internet). |

Expected impact on corruption: To enhance transparency of the elected representatives' vote, to allow for increased individual liability for bad decisions, and to increase public awareness of how voted representatives vote on important public matters.

Background information:

Name list of pro/con/abstained votes can be made public (in line with the Act on Free Access to Information). Our intention is to make such release of information compulsory, especially in matters related to the public budget.

1.3 Introduction of modified conditions pertaining to the management of legal entities established by central authorities or regional self-governing units as well as partially publicly-owned entities

Responsible agency: Ministry of Finance

Co-responsibility: Ministry of the Interior

Deadline: June 30, 2011

Performance indicator: To submit to the Government a draft report on legislative, logistical, organizational, and other measures to ensure that representatives of the public sector appointed as members of statutory bodies of entities, which are partially publicly owned (or representatives of territorial self-governments appointed as members of statutory bodies of entities, which are partially publicly owned) were selected based on their experience and expertise and their remuneration was made public (information must be also posted on the Internet).

Expected impact on corruption: To better inform the public, curb clientelism and nepotism.

1.4 Extended access of territorial self-governing units' councils to information

Responsible agency: Ministry of the Interior

Deadline: December 31, 2011

Performance indicator: To submit to the Government a draft amendment of Act No. 128/2000 Coll., on municipalities (municipal administration), as amended, Act No. 129/2000 Coll., on regions (regional administration), as amended, and Act No. 131/2000 Coll., on Municipality of Prague, as amended, to extend and specify rights of access of council members to information and documents pertaining to their territorial self-governing unit.

Expected impact on corruption: To provide for timely and extensive information to all council members prior to their vote.

Background information:

For a municipality to function properly, it is extremely important to secure a watchful eye of the council members, primarily those in opposition. Municipal politics and officials are not

in the centre of media and regulatory bodies' attention as much and as frequently as Government agencies or the Czech Parliament. All council members should therefore have free and unlimited access to all information pertaining to the self-governing activities of the given municipality.

Access to information in keeping with the Act on Municipalities provides, unlike the Act on free access to information, council members with access to all information, including protected ones (personal data, business secrecy, etc.). The person receiving such information is further liable for its protection. The only limitation council members may theoretically be exposed to in line with the current law is the 30 day statutory period public officials and councillors have to provide information – this statutory period often means that a member of the council will either have no or late access to information.

Members of municipal councils are now disadvantaged in their access to information and this practice must be removed. Statutory periods stipulated in legislation pertaining to municipalities, regions, and the Municipality of Prague and the Act on free access to information must be harmonized in order to enact shorter statutory periods. Furthermore, it is important to differentiate a simple request of a councillor for information from a query, request for a position, or analysis of matters pertaining to the authority of the territorial self-governing unit.

1.5 Division of competences between municipal or regional councils and executive boards to prevent avoidance of law

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> December 31, 2011 |
| <u>Performance indicator:</u> To submit to the Government a draft amendment of Act No. 128/2000 Coll. on municipalities (municipal administration), as amended, Act No. 129/2000 Coll., on regions (regional administration), as amended, and Act No. 131/2000 Coll., on Municipality of Prague, as amended, guiding the division of competences between the council and executive board of the territorial self-governing unit; to tackle this issue in relation to the plan to introduce direct election of mayors, as well as measures to facilitate enhanced transparency of administration of local self-governing units' property. |
| <u>Expected impact on corruption:</u> To prevent avoidance and abuse of law. |

Background information:

Data collected by the Ministry of the Interior (primarily deriving from complaints and supervision of self-governing bodies), as well as findings of several experts in self-government, show that the authorities not only fail to respect division of competences between individual bodies of a territorial self-governing unit (resulting with mutual interference into restricted competencies), but also avoid law in order to keep information from the watchful eye of the public. E.g. the executive board is competent to make decisions on rent agreements and loans, executive board meetings are non-public; the council, however, is competent to make decisions on procurement and privatization of real estate, council meetings are always public. The executive board may therefore conclude a rent agreement for a period of 99 years. At the same time we recommend to review whether the restricted competences of executive boards are justifiable and right.

1.6 Introduction of measures to prevent abuse of municipal periodicals

Responsible agency: Ministry of Culture

Deadline: December 31, 2011

Performance indicator: To submit to the Government an amendment of Act No. 46/2000 Coll., on rights and responsibilities of publishers of periodicals and on the amendment of selected other laws (the Press Law), which will include provisions guiding the rights and responsibilities of publishers of territorial self-governing units' periodicals. Such periodicals shall be required to provide objective and proportionate information. The information objectiveness and proportionality rule shall be enforced in all media, be it printed, radio, TV, or the Internet. The draft amendment will also propose introduction of an internal control mechanism to supervise compliance of publishers of 'municipal periodicals' with the relevant law.

Expected impact on corruption: The public in territorial self-governing units will receive objective information on activities and deliberations of their elected representatives.

Background information:

An extensive survey of municipal periodicals performed by *Oživení*, a civil association, has shown that most local, municipal, and regional periodicals in the Czech Republic lack objectivity and are often abused to circulate information promoting primarily the political forces currently in power. Such periodicals rarely ever give space to dissenting opinions. In their periodicals, municipal and regional authorities tend to avoid confrontation and fill their pages with sports and culture news rather than opening important and often burning issues currently on the table of the elected representatives. Dissenting opinions or inconvenient articles are rejected, respectively not published. The public will rarely get to know that debates in meetings of elected representatives and their advisory are not always peaceful and that some members deliver dissenting opinions and promote different solutions. Final solutions are presented to the public as unanimous and the only possible and correct. This practice has had a permanent detrimental impact on the public opinion of the political process, which is no longer perceived as a dialogue, sharing of opinions, and political competition. One possible solution would be to give a mandatory share of space in each periodical of to all political parties or associations so that they may report to the public on their dissenting opinion or vote (as it is e.g. in France). At the same time, we recommend to introduce an internal control mechanism to supervise compliance of publishers of 'municipal periodicals' with the relevant law (i.e. a possibility of legal protection of inhabitants concerned).

1.7 Public Servants Act to enhance performance and stability of public administration

Responsible agency: Ministry of the Interior

Deadlines - Performance indicators:

March 31, 2011 – to submit to the Government a consultation paper on the proposed Public Servants Act, provisions of which will make a clear distinction between political appointees and civil servants in public authorities, stipulate means making the public administration less

political, and more professional and stable, determine a system of remunerations, and propose a transparent and reasonable rule to guide acceptance of gifts by representatives of public authorities. We recommend paying increased attention to key responsibilities of civil servants, including mandatory life-long learning provided by instructors recruited from the public sector.

December 31, 2011 - to submit to the Government a draft Public Servants Act.

Expected impact on corruption: Introduction of disciplinary measures, allocation of responsibilities, and clear determination of key civil servants' duties. Public administration will be less dependent on politicians and politics as such.

Background information:

There is no *EU acquis* guiding public service and it is up to national governments to legislate. National laws most often include provisions on commencement and termination of service, including changes in the course of public service, stipulate rights and responsibilities of civil servants, their welfare, professional discipline, liability, remunerations, and education and training. The draft bill, however, will have to take into consideration certain international agreements. One of the key priorities of the Czech Republic upon its accession to the EU was to enact a civil service act. Both the European Commission and the Council of Europe's Group of States against Corruption (GRECO) have been requesting the Czech Republic to speed up its effort and bring the act to force.

The Czech Republic has, however, two acts, which concern the above issue: Act No. 312/2002 Coll., on Officials of local self-government units, as amended, and Act No. 218/2002 Coll., on Civil servants in administrative authorities, on their remuneration and on remuneration of other employees of administrative authorities (service act), as amended. New legislation shall introduce clear rules for civil servants on the central, regional, and municipal level. Its entry in force will put an end to the abounding bureaucracy, make public administration less dependent on politics, remove corruption, discontinue the practice of biased decision-making, and stabilize the civil service by giving it uniform organizational and management structure, clear system of life-long education, and transparent remuneration rules. The overall objective is to provide better service to the public. Act No. 312/2002 Coll. has been in effect since January 1, 2003 while Act No. 218/2002 Coll. will, in line with its most recent amendment, come to effect on January 1, 2012. The main reason for these repeated delays of full effect of the above instrument is the lack of political and expert support of the proposed provisions. Furthermore, authorities responsible for the delays keep pointing out the high costs and complexity of its enforcement.

The absence of clear rules guiding public servants has been criticized repeatedly by most NGOs involved in counter-corruption, as well as by the public. To make the civil service more efficient, to make it more impartial, independent, and apolitical and to curb corruption and corrupt conduct, we shall adopt a law guiding public servants in central public authorities.

1.8 'Credibility testing' of other individuals active in the public service

Responsible agency: Ministry of the Interior

Deadlines - Performance indicators:

April 30, 2011 – To submit to the Government a feasibility analysis of 'credibility tests'

of other individuals active in the public service.

June 30, 2011 – To submit to the Government, pursuant to the above analysis, a draft legal instrument proposing feasible and executable solution to test credibility of individuals active in public service. The proposed solution should determine who should be the individuals concerned and which body should take responsibility for such ‘credibility testing’.

Expected impact on corruption: Preventive increase of responsibility.

Background information:

The new Police Act introduced credibility testing as a Police of the CR’s inspection tool to detect and combat violations of law by members of the Police of the CR. The only individuals who may currently take the test are members of the Police, inspectors, and staff of the Police and the Inspectorate. The tested individual is asked to solve a simulated situation. In the course of the test, the testing authority simulates situations and conditions the tested person is exposed to in line of his everyday duty. The objective is to determine, whether the tested individual duly performs his duties in compliance with law. The test must not pose any direct threat to property or health. In the course of testing, inspectors must not provoke crime or otherwise actively shape or influence the situation to induce, raise, or shape the so far non-existent intent of the tested person to violate law (simulation must not embark on provocation).

All tests are audio and video recorded. The test results (the audio/video recording and the official test protocol) may serve as grounds to initiate criminal proceedings, to apply for a permission to use technical or other means of investigation (surveillance, assisted delivery) or to initiate disciplinary proceedings. Recordings are admissible as evidence in criminal proceedings.

Credibility tests are performed to prevent and detect unlawful conduct. It is primarily about creating conditions and simulating situations to prevent crime and not about massive testing of politicians and civil servants. **The above tests could be developed (while maintaining conditions similar to the Police tests) to help test other individuals in the public service.**

1.9 Introduction of reinforced Supreme Audit Office’s audit and control powers over territorial self-governing units

Responsible agency: Ministry of Justice (*Government Legislative Council*)

Co-responsibility: Ministry of the Interior

Deadlines – Performance indicators:

December 31, 2011 – To submit to the Government a draft proposal to amend the Constitution of the Czech Republic in order to extend the Supreme Audit Office’s control and supervisory powers to audit management of property administered by territorial self-governing units and public corporations.

December 31, 2011 – To submit to the Government feasibility analysis of enforcement and control of remedies.

Expected impact on corruption: Introduction of Supreme Audit Office’s control powers

to audit management of property administered by territorial self-governing units and public corporations.

Background information:

In line with our recent experience, it is necessary to extend the Supreme Audit Office's control powers to allow it audit other public budgets (territorial self-governing units, partially publicly owned legal entities and public corporations such as public institutions of higher learning, public research institutes, Czech Television, Czech Radio, etc.) and other entities not covered by the current Supreme Audit Office's control powers.

1.10 Enhanced standardization of control processes in public administration

Responsible agency: Ministry of the Interior

Deadlines - Performance indicators:

December 31, 2010 – To submit to the Government a report analysing audit and control of territorial self-governing units in 2006-2010. The report should include an outline of measures proposed to make a clear division of competences among the Supreme Audit Office, Ministry of Finance, and other public supervisory authorities.

June 30, 2011 – In line with the above analysis, we propose to submit to the Government a draft bill on public service audit in order to harmonize audit and control processes and avoid duplicity and ambiguity of audit and control of public administration.

Expected impact on corruption: To remove duplicity and anomalies in audit and control activities performed by public audit and control bodies and to enact rights and responsibilities of both controlled and controlling authorities. To facilitate horizontal exchange of information pertaining to central public authorities and gathered in the course of auditing territorial self-governing units.

1.11 Amendment to the Financial Control Act

Responsible agency: Ministry of Finance

Co-responsibility: Ministry of the Interior

Deadline: March 31, 2011

Performance indicator: To submit to the Government a draft amendment of Act No. 320/2001 Coll., on financial control in public administration, as amended.

Expected impact on corruption: To improve financial control as an anti-corruption tool.

Background information:

Financial control in public administration is guided by Act No. 320/2001 Coll., on financial control in public administration, as amended. This act introduced public assets management and control systems after the accession of the Czech Republic to the EU. With regards to the changing conditions, system upgrades, and numerous modifications, it is recommended

to draft an amendment to facilitate introduction of financial management best practices, an integral part of which is control as a tool to prevent and detect corruption, fraud, and abuse of EU and national public assets. The amendment is meant to introduce standardized and more transparent procedures and to support a general system of effectiveness and efficiency control of public spending.

1.12 Misdemeanour Record

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadlines - Performance indicators:</u> June 30, 2011 – To submit to the Government a feasibility analysis for misdemeanour record as a public administration information system to supplement the system of key public administration registers. The new record would facilitate efficient administration and subsequent enforcement of sanctions, making perpetrators strictly liable for their misconduct, primarily in case of selected repeated misdemeanours, perpetrators of which could be made criminally liable. |
| June 30, 2012 - To submit to the Government a draft amendment of Act on misdemeanours to introduce provisions stipulating conditions for an introduction of a misdemeanour record/s, including criminal liability in selected repeated misdemeanours. |
| <u>Expected impact on corruption:</u> Enhanced supervision (prevention of bribery) of misdemeanour proceedings and enforcement of fines. |

1.13 Legislating for the responsibility of public authorities to draft and publish internal Codes of Ethics

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadlines - Performance indicators:</u> December 31, 2010 - To submit to the Government a draft resolution stipulating measures to introduce a requirement on public authorities to draft and publish internal Codes of Ethics. |
| December 31, 2011 – To submit to a Government a report on legislative measures proposed to introduce a requirement on public authorities (primarily in territorial self-governing units) to draft and publish internal Codes of Ethics. |
| <u>Expected impact on corruption:</u> Introduction of clear rules of public servants’ conduct. |

Background information:

The Public Servants’ Code of Ethics (hereinafter ‘the Code of Ethics’) was adopted on March 21, 2001 by a Government resolution No. 270. It was introduced to improve prestige, credibility, and positive public perception of civil servants. The resolution recommended adopting Codes of Ethics also on the level of local self-governments.

A working Code of Ethics outlines clear rules of conduct in order to guide employees and help them avoid situations in which their personal interests may be in conflict with the public

interest. It remains a question whether a central Code of Ethics, an umbrella document, open to modifications by respective public authorities or self-governing bodies in line with their specific requirements, should be so detailed that it would describe particular situations. Nevertheless, the current Code of Ethics is far too general and is no longer adequate as a central instrument. That is why we propose to amend its provisions.

The current Code of Ethics does not contain any provisions on compliance checks and enforcement. Even though the Code of Ethics is primarily a recommendation, it is document guaranteeing high quality of services provided by public servants. It remains a key text to help curb and prevent corruption. In general, experts recommend that all codes of ethics be binding and compliance enforced. Codes of ethics, however, are mostly non-binding, contain sets of recommendations and norms of conduct, and appeal to their users to promote proper and moral conduct in their workplace. Rights and responsibilities embedded in such codes of ethics are often non-binding. Therefore it is necessary to develop tools to enforce measures to curb corruption contained in the respective code of ethics. We recommend making such measures legally binding. Experts have been working on developing a mechanism to include responsibilities stipulated by the code of ethics to the Czech legal system so that they become enforceable and legally binding. It is necessary to secure maximum level of enforceability of measures stipulated by the code of ethics to come. It may, for example, form an integral part of the job contract or work rules and violations of its key provisions should be sanctioned.

1.14 Comprehensive life-long education of public servants in anti-corruption matters

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadlines - Performance indicators:</u> June 30, 2011 – To create mandatory anti-corruption education programmes for all categories of public servants, to establish a general education framework, to stipulate mandatory training required for each position within the public administration and to link the above with the envisaged law guiding aspects of public service and employment in public authorities. |
| December 31, 2011 – To submit to the Government a draft legal instrument guiding comprehensive life-long education of public servants in anti-corruption matters. |
| <u>Expected impact on corruption:</u> Increased awareness of corruption; increased awareness of consequences of corrupt conduct. |

Background information:

All categories of public servants (including those working in offices most prone to corruption) receive the same anti-corruption, ethics, and integrity training. Moreover, such training is not compulsory. The GRECO, in its Second evaluation report of the Czech Republic adopted in May 2006, criticized this approach and recommended that the Czech Republic introduced rules enforcing regular and on-going anti-corruption training and training in ethics and perusal integrity for all public servants and employees of municipal and regional administrative authorities. It is recommended to introduce mandatory anti-corruption, ethics, and integrity training for all civil servants. The only difference envisaged is that individual categories of public servants would receive varied training and most training should be, for financial reasons, in the form of eLearning. Public servants in high-risk positions or offices should receive such training more frequently and focus more on anti-corruption measures, ethics, and

personal integrity. This requirement should be embedded in the new Public Servants Act. Before the new law will have come to force, we have to act in compliance with the current law – Government resolution No. 1542 of November 30, 2005 on Education and training of employees in public administration and Act No. 312/2002 Coll., on Officials of Local Self-Government Units, as amended (for the purposes of training and education of civil servants working in territorial self-governing units).

Non-legislative Measures

1.15 Enhanced access to information in keeping with No. 106/1999 Coll., on free access to information, as amended

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Co-responsibility:</u> Ministry of Foreign Affairs |
| <u>Deadlines – Performance indicators:</u> December 31, 2011 - To submit to the Government a report outlining key challenges of the free access to information, including proposed solutions. |
| December 31, 2011 - To submit to the Government a proposal to sign and ratify the Council of Europe’s Convention on Access to Official Documents. |
| <u>Expected impact on corruption:</u> Enhanced and faster public access to information; improved public control over decisions made by public administration authorities. |

Background information:

The current law guiding free access to information in keeping with Act No. 106/1999 Coll. fails to prevent delayed access to information. Remedies against unlawful denial of access to information are lengthy and often bear no fruit. We have documented cases where complainants spent over a year repeatedly filing appeals and receiving verdicts without any judicial protection. Moreover, the requested information was never released. We recommend to analyse the key deficiencies of the current law on free access to information and to remove problems in its implementation.

1.16 Coordination of the process of implementation of SMART Administration with the digital agenda

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government an information report. |
| <u>Expected impact on corruption:</u> Curbing of corruption. |

1.17 Privatization of public property

| |
|---|
| <u>Responsible agency:</u> all central administrative authorities |
| <u>Deadline:</u> December 31, 2010 |
| <u>Performance indicator:</u> To increase transparency and to address a number of potential buyers we recommend announcing all plans to privatize public property (above a certain threshold) well in advance on relevant official pages. |
| <u>Expected impact on corruption:</u> Transparent process of public property privatization. Enhanced public control over management of assets held by public authorities. |

1.18 Analysis of whistleblowing and protection of whistleblowers

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Co-responsibility:</u> Ministry of Labour and Social Affairs |
| <u>Deadline:</u> December 31, 2011 |
| <u>Performance indicator:</u> To submit to the Government an analysis of the current situation and key challenges (including proposed logistical and legislative solutions) of whistleblowing. |
| <u>Expected impact on corruption:</u> Transparent and objective processing of reports of alleged corruption. |

Background information:

Whistleblowing is defined as ‘reporting of unlawful or non-ethical conduct or practice at work’. It is recommended to support whistleblowers by giving them a chance (especially concerning civil servants, employees, or complainants who are in contact with the authority concerned) to report their suspicion of corruption or any other unlawful or unethical conduct via channels other than their hierarchical superior or the Police. Many people find it very difficult if not impossible to approach the Police to report a crime committed by a colleague or superior. Moreover, how does one know whether it is crime or not? Many people fear to debate their suspicion with their hierarchical superior or a representative of the authority concerned for their reaction may not be positive. Moreover, the suspect may not be investigated and prosecuted but may find out who the whistleblower was. Confidentiality and anonymity are therefore a must. The current key tool to protect whistleblowers ‘inside’ a corrupt office is the Labour Code which limits employers’ chances to lay such ‘troublemaker’ off. The labour Code, however, may be in the future amended to introduce increased labour flexibility and therefore it is necessary to look for extra protection of whistleblowers.

In its Second evaluation report on the Czech Republic adopted in May 2006, the GRECO (Council of Europe's Group of States against Corruption)⁴ recommended that the Czech

⁴ Greco Eval II Rep (2005) 7E was adopted at the 28. GRECO Plenary session in may 9 to 12, 2006.

Republic introduced clear rules requiring civil servants and local/regional officials to report suspicions of corruption and to ensure that civil servants and local/regional officials who report suspicions of corruption in public administration in good faith are adequately protected from retaliation. This recommendation has not yet been adopted in full.

To facilitate protection of whistleblowers in the Czech law, we can use the Transparency International project *Whistleblowing and protection of whistleblowers*.⁵

1.19 Support and cooperation with anti-corruption NGOs

| |
|---|
| <u>Responsible agency:</u> all central administrative authorities |
| <u>Deadline:</u> on-going |
| <u>Performance indicator:</u> To support targeted and efficient activities of anti-corruption NGOs and to cooperate and coordinate with them. |
| <u>Expected impact on corruption:</u> Support of projects and activities of anti-corruption NGOs. |

Background information:

In the Czech Republic, several NGOs are active in countering corruption, either as their main activity or as a complementary effort resulting from an immediate need or situation. *Transparency International – Česká republika, o. p. s.* is the biggest and most advanced anti-corruption organization in the Czech Republic. Members of *Oživení, o. s.*, focus on local self governments, *Otevřená společnost, o. p. s.*, has been for many years promoting free access to information as the key anti-corruption tool, and *Růžový panter, o. s.* concentrates on corruption in public administration. There are regional anti-corruption NGOs in regions, too, such as *Čmelák, Společnost přátel přírody* (Liberec) or *Ekologický právní servis* (Brno, Tábor).

1.20 Support and development of the 199 anti-corruption hotline

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> 31. March 2011 |
| <u>Performance indicator:</u> To analyse and submit to the Government a report on the 199 operation so far, including measures to develop and enhance its performance. |
| <u>Expected impact on corruption:</u> Support of the 199 anti-corruption hotline. |

Background information:

The 199 anti-corruption hotline was established as a special anti-corruption tool under the framework of the Government Anti-corruption Strategy. The line provides free-of-charge legal advice to citizens who contact it after having experienced corrupt conduct in public or private sector. The line is operated by *Transparency International - Česká republika, o. p. s.* (TIC),

⁵ For more information, visit: http://www.transparency.cz/pdf/TIC_whistleblowers_2009_cz.pdf

an NGO with long-term experience in providing legal support to citizens experiencing corrupt behaviour.

1.21 Central anti-corruption Website

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> on-going |
| <u>Performance indicator:</u> To keep updating the www.korupce.cz |
| <u>Expected impact on corruption:</u> Public awareness of corruption. |

Background information:

Countering corruption is a comprehensive issue and it is absolutely necessary to concentrate information in one location. The Ministry of the Interior currently operates www.korupce.cz, its own Website, where visitors find extensive information and a number of links. In cooperation with other central public authorities, the Police, and NGOs, the Ministry will develop this Website and post more information there on its own activities, activities of other central public authorities and the Police, examples of best practice (local and international), information on relevant NGO activities and international effort. Moreover, the Website will offer relevant links to other anti-corruption or related Websites.

2. Public procurement

Background information:

Public procurement is the process whereby Czech public authorities buy goods and services or commission work spending about 17% of GDP (in 2009 it was CZK 630 billion).

Even though the current law guiding public procurement (especially Act No. 137/2006 Coll., on public procurement) is rather comprehensive and, for the purposes of guiding the selection of a winning bidder, comprehensive and sufficient, the Czech Republic has been experiencing repeated problems in its implementation. Public procurement processes for often non-transparent, subjects of procurement – goods, services, work – are manipulated, and conditions modified, making the procurement process prone to conflict of interest, corruption, and mishandling of public assets.

Due to the financial impact of any procurement, it is necessary, should there be a plan to change any aspects of the procurement process, to keep in mind existing business and economic relations. Procuring entities vary in their human and material resources and (at least for some of them) changes in the process can be rather difficult to administer.

One of the most often criticized problems is the lack of transparency of both the instituting of the procurement process, selection of bidders, and the procurement itself. A transparent procurement process will allow for clear, open, justified and verifiable decisions in all phases of the public procurement process, be it the instituting of the procurement process or announcing of relevant conditions, selection criteria, and deadlines. It is recommended to clearly stipulate the relationship between the Public procurement act and provisions of the Act on free access to information to limit information disclosure bans given by law to the minimum (business secrecy or confidentiality of information). At the same time, it is necessary to protect the selection of bidders from any improper external influence which could hamper objectivity of the process and may be in violation of the principle of procuring entity's responsibility for the process. Increased attention should be paid to proper dissemination of procurement process related information to facilitate equal access to both local and foreign bidders.

However, there are other problems, such as the often non-transparent ownership structure of bidders in the public procurement process. It is nearly impossible to detangle the ownership structure and disclose relationships of individuals and groups (who control joint stock companies through their bearer shares) with the procuring entity or subjects which administer the bidder selection or make final decisions of the winning bidder. This potential conflict of interest may have a detrimental impact on the costs and quality of the goods or services finally procured. Bearer shares render any control of a potential conflict of interest impossible. The law stipulates that a supplier whose ownership structure is in compliance with law and who has met all conditions required is an admissible bidder. The above problem cannot be solved by an amendment to the Public procurement Act for the Czech Republic has to meet obligations deriving from its membership in the EU such as free movement of services and non-discrimination principle. Therefore the issue of subcontractors, complicated chains of local and foreign suppliers, owners holding anonymous bearer shares, etc. currently has no real and functional solution. In the course of the public procurement, we can disclose information on ownership structure or suppliers, but potential sanctions have to be related to conflict of interest.

Yet another burning public procurement related problem is that procuring entities intentionally break their procurement down to smaller procurement activities to avoid complicated public procurement process. One public procurement project, be it above

or below the limit (which would otherwise be subject to compulsory public procurement process), gets divided into smaller lots – size-wise as well as time-wise (one public procurement project which would normally take up to three years is divided into three lots, each lasting one year only). Such practice deforms the otherwise correct tendering environment and gives advantage to selected bidders. Moreover, it can have a negative impact on the final price. The same is true for purposeful aggregating of public procurement subjects into enormous corporations, significantly limiting the number of eligible bidders. It is up to the procuring entity to determine the size and nature of the subject and this responsibility cannot be guided by law, for the procuring entities have to keep discretion in determining their public procurement subject in light of their need or situation.

Therefore it is recommended to decrease the threshold for compulsory instituting of a public procurement process. The definition of small public tenders would change and Czech legislators could decide to amend the regime guiding public procurement under the limit, which is fully in the competence of the Czech Republic. At the same time, we recommend to introduce stricter rules for repeated procurement of the same nature for one single supplier (supplementary procurement rule).

Evaluation committees, and/or their membership, pose yet another problem. One or more members of the evaluation committee may be linked to one of the bidders, or had been influenced/bribed by one of the bidders. Members of evaluation committees are appointed by procuring entities. Procuring entities have to be diligent and are required to appoint an expert committee which will evaluate bids received without any side motivations.

One of the most frequent problems in public procurement is tender criteria being determined by the procuring entity. Such criteria may be set to favour one single bidder and, as a result, the winner is determined from the very onset. Provisions of the current Public Procurement Act prohibit such practice, but procuring entities do not hesitate to violate the law. To solve this problem, we recommend giving the Office for the Protection of Competition more powers in prosecution such violations of law. Qualification criteria set to the discretion of the procuring entity pose a clear corruption risk. If we manage to curb this practice and introduce transparency to the process of determining and evaluating procurement tender criteria, we will significantly limit corruption opportunities in the public procurement process.

The public procurement process is very complex and the procuring entity may violate the law just for its lack of expertise and experience. The Public Procurement Act stipulates that procuring entities may use a central supplier thus saving money and time. It is recommended to analyze feasibility of central suppliers catering to all central administrative authorities and local self-government units. Administration of the system of central procurement would certainly incur administrative costs and is not suitable for all commodities or procuring entities. On the other hand, if used properly, it saves time and money.

Even though the Public Procurement Act provides for detection of negligence or misconduct on the side of the procuring entity, there are no comprehensive mechanisms to enforce liability of individuals involved in the public procurement process. Claiming of damages suffered by the institution is often entrusted in the hands of those who had caused the damage. Therefore it is highly recommended to divide responsibilities so that the body responsible for the public procurement is different from the one responsible for claiming of damages.

One of the key deficiencies of the public procurement in the Czech Republic is that entities involved tend to violate binding rules and there are no sanctions in place for violations of supplementary legal instruments, such as the Act on conflict of interest, Act on financial control, or Act on public property. All measures should include enforceable sanction mechanisms to sanction violators of regulated aspects of public procurement process.

Last but not least, we recommend reviewing what and who will be impacted by the new rules and what will be their financial impact. We shall take into consideration the expected costs of the implementation of the new rules, so that they remain proportionate to the impact of the measures proposed.

Legislative measures

2.1 Amendment to the Public Procurement Act

| |
|---|
| <u>Responsible agency:</u> Ministry for Regional Development |
| <u>Co-responsibility:</u> Ministry of the Interior, Office for the Protection of Competition |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government a draft amendment of Act No. 137/2006 Coll., on public procurement, as amended (on March 31, 2011 the draft amendment will be circulated for interagency round of comments), provisions of which will stipulate primarily the following issues: |
| <ul style="list-style-type: none"> – The public procurement process should be open only to those bidders who disclose their entire ownership/control structure; |
| <ul style="list-style-type: none"> – An electronic record of all data pertaining to the public procurement process should be maintained and archived to post them in full on the internet, including tender documents, evaluation criteria, details of the procurement process, contracts and their appendices, invoices issued, and names of the procuring entity and the evaluation committee; |
| <ul style="list-style-type: none"> – Provisions of contracts concluded in keeping with the PPA should be made public. |
| <ul style="list-style-type: none"> – The bottom threshold for compulsory institution of public procurement should be lowered to CZK 1 million, and/or to CZK 3 million. Pursuant to this change, we shall amend the rules guiding public procurement under the threshold and the overall Office for the Protection of Competition process of compliance with law. |
| <ul style="list-style-type: none"> – Evaluation committee members should be selected by lottery; the pool of eligible evaluators should be composed of independent experts. |
| <ul style="list-style-type: none"> – Entities violating public procurement rules should be excluded from public procurement processes. |
| <ul style="list-style-type: none"> – Selected subjects and commodities should be required to use electronic marketplaces. |
| <ul style="list-style-type: none"> – Procuring entities should be required to use, where applicable, electronic auctions. |
| <ul style="list-style-type: none"> – Authorities should strictly enforce prohibition of limiting and discriminating |

| |
|---|
| criteria. |
| – Authorities should take into consideration and value (in the course of an audit) the 3E principle (economy, efficiency, effectiveness), to prevent manipulation of law through limiting the subject of public procurement and selecting improper and disqualifying evaluation criteria. |
| – To introduce mandatory opposition procedures as a necessary condition of larger public procurement processes. |
| – To introduce open tendering and selection of bidders based on bid price only in all transportation infrastructure procurements. |
| – To allow for abridged public procurement processes; |
| – To introduce a requirement, in large procurements exceeding e.g. CZK 100 million), to identify at least five companies which have a capacity to participate in the tendering process. To request, in highly specialized areas, an explanation of why there are less than five eligible companies. |
| – To clarify PPP projects – the issue of concession law versus independent internal sectoral rules (a ban on companies active in organizing concession proceedings to perform opposition procedures). |
| – To stipulate in the law a Ministry of Finance price audit in tenders expected to have high value. |
| – To enforce the requirement to make extensive use of electronic tools in instituting public procurement processes. Electronic means will support the procurement process throughout its life-span and will limit opportunities to manipulate the process. |
| – Bidders liable for bid rigging shall be entered onto the public procurement blacklist (database of entities prohibited from participation in public procurement process). |
| – In line with the conflict of interest law, members of evaluation boards should sign a no conflict of interest declaration. |
| – A requirement to justify qualification and evaluation criteria used in the public procurement process. |
| – That the public and sectoral procuring entity cannot act simultaneously. |
| – A requirement to terminate the public procurement process should there be one single bidder only. |
| – A requirement to make all contracts, their appendices, and the final price of the bid public. |
| – A requirement to complement the business conditions with a provision stipulating |

| |
|---|
| the procuring entity's right to withdraw from the contract; |
| – To limit the notion of confidential information. |
| – To limit the use of abridged process. |
| – A requirement to register as many qualified bidders as necessary for proper competition. |
| <u>Expected impact on corruption:</u> Introduction of anti-corruption measures and tools in the process of instituting the public procurement process and evaluating bidders; to enhance transparency, to improve dissemination of information, and to introduce tools to improve enforcement of sanctions. |

2.2 Centralized Procurement

| |
|--|
| <u>Responsible agency:</u> Ministry for Local Development |
| <u>Deadlines - Performance indicators:</u> March 31, 2011 – To submit to the Government a feasibility analysis of a possible requirement on the Government and its subordinated authorities to procure selected commodities and services via the so-called central procurement process in line with the PPA (the use of a central supplier). The bidders' own supplies may become one of the qualification and/or evaluation criteria in the public procurement process for individual commodities. |
| June 30, 2011 – To submit to the Government for approval, pursuant to the above feasibility analysis, a resolution on central procurement (which would include information on how to proceed further). Such Government resolution would include a recommendation to other public procuring entities (especially local self-governments) to join the central procurement of selected commodities. |
| <u>Expected impact on corruption:</u> Reduced public spending and enhanced transparency of central procurement processes. The process does not allow for any modifications to meet varying requirements of individual procuring entities. |

2.3 Single URL

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Co-responsibility:</u> Ministry for Local Development, Ministry of Finance |
| <u>Deadlines - Performance indicators:</u> December 31, 2010 – To submit to the Government draft amendments of law to enhance transparency of management of public property and property administered by local and regional self-governing units and of all public spending. |
| June 30, 2011 – To prepare, in line with the above amendments, a solution to introduce |

a single URL as a platform offering information on privatization or rental of property, managed by the central authorities or by the local and regional self-governing units, all data pertaining to public procurement processes instituted by public procuring entities, and information concerning subsidies and grants. Moreover, to propose related amendments of law to enact the requirement on all procuring entities and public authorities to post data on such Website.

Expected impact on corruption: Concentration of all data on one central Website to enhance transparency of transactions with public property and assets administered by local self-governing units.

2.4 Amendments of law guiding subsidies and grants

Responsible agency: Ministry of Finance

Co-responsibility: Ministry for Local Development, Ministry of Trade and Industry

Deadlines - Performance indicators:

June 30, 2011 – To submit to the Government draft amendments concerning subsidies and grants from the public budget in order to introduce principles and rules similar to those guiding the public procurement procedure. We envisage that the draft provisions would include, among others, the following principles – applicants for grants or subsidies will be required to disclose all available information concerning their ownership and organisational structure, including information on who has the real control over the given entity, names of proxies, etc. All data pertaining to grant and subsidy procedures, including contracts, will be released and made public.

June 30, 2012 - To submit to the Government a similar draft legislation to guide subsidies, grants, and gifts originating from local self-governing units' budgets. The new legislation should minimize administrative burden on the respective authorities.

Expected impact on corruption: Enhanced transparency and introduction of new information requirements.

Non-legislative measures

2.5 A catalogue of document templates

Responsible agency: Ministry for Local Development

Co-responsibility: Ministry of Finance, Ministry of Trade and Industry

Deadline: December 31, 2011

Performance indicator: To compile a catalogue of public procurement documents templates and to create a database of prevailing prices of standardized commodities. Optionally – a list of standard qualification criteria.

Expected impact on corruption: Prevention of modifications of public procurement criteria.

2.6 Annual Report of Public Procurement in the Czech Republic

Responsible agency: Ministry for Local Development

Deadline: annually, no later than May 31 of the following calendar year

Performance indicator: To compile and submit to the Government an ‘Annual Report of Public Procurement in the Czech Republic’ describing the system with the help of selected indicators (e.g. an average number of bids received, percentage of public budget spent through of small scale public procurement, etc.). The report will be used to analyse the impact of measures implemented. The indicators should be developed on central, agency, regional, municipal, and institutional level (key public institutions only).

Expected impact on corruption: Enhanced public awareness of the public procurement process. A new tool to evaluate the measures enforced and their anti-corruption potential.

3. Law Enforcement Agencies – Police of the CR

Legislative Measures

3.1 Introduction of stricter rules pertaining to the cooperating witness

| |
|--|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government an amendment of the Criminal Code and the Code of Criminal Procedure in order to facilitate more frequent use of cooperating witnesses and to introduce a withheld sentence under strictly defined conditions. To become eligible for the withholding of sentence, the accused would have to either prevent the organized group he is a member of from accomplishing its crime or to significantly contribute to the prosecution of the key perpetrator or organized of the criminal scheme. |
| <u>Expected impact on corruption:</u> Enhanced detection and prosecution of extremely serious organized crime and related corruption. |

Background information:

The institute of cooperating witness has been embedded in the Czech law in the past. It allows the court to abridge the sentence pronounced on perpetrators who had cooperated with the law enforcement bodies, under relatively flexible conditions. Should the cooperating witness deliver a statement which significantly contributed to the conviction of an extremely serious crime and provided they have met all relevant conditions stipulated by law, the judge may decide to pronounce an abridged sentence. The disadvantage of this approach is, however, that it can be used only in most serious cases, i.e. crimes, where the law stipulates a prison sentence of minimum ten years of imprisonment. Moreover, it is upon the judge’s discretion to decide whether to use it or not. The cooperating witness, even when having delivered a convincing and incriminating testimony, has no guarantees that the judge will finally use his power to abridge the sentence. On one hand, there is no guarantee of an abridged sentence and on the other hand there is an extremely high risk of retaliation (especially in case of testimonies against organized crime).

The withholding of sentence does not mean the cooperating witness – provided he committed a crime – would not be convicted of crime. The verdict of guilt will be by all means pronounced for it is the statement of guilt which is necessary for the purposes of legal certainty, protection of victims and the damaged party, and liability issues. The withholding of sentence means that the court will not impose, under clearly defined conditions, any criminal sanctions. This possibility to avoid criminal sanctions should motivate perpetrators participating in the organized crime to cooperate with the law enforcement and to testify against key perpetrators and gang bosses. One of the conditions of the withholding of sentence is that the cooperating witness did not intentionally cause any serious bodily harm or death and his crime is not more serious than the crime the accomplishment of which he had prevented or the detection of which he contributed to.

3.2 Amended conditions for the use of interception of telecommunications (wire tapping) and agents in keeping with the Code of Criminal Procedure

| |
|---|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Deadline:</u> February 28, 2011 |
| <u>Performance indicator:</u> To submit to the Government a draft amendment of the Code of Criminal Procedure to amend provisions stipulating the use of interception of telecommunications (wire tapping) and agents. This amendment will introduce a list of corruption-related crimes, in the investigation of which the authorities will have the power to use interception of telecommunications (wire tapping) and agents. The current Articles 88 and 158e of the Code of Criminal Procedure are no longer sufficient. |
| <u>Expected impact on corruption:</u> A possibility to prosecute more individuals suspected of corruption-related crimes. |

Background information:

Interception and documenting of telecommunications under Article 88 of the Code of Criminal Procedure is subject to an approval by a judge as part of criminal proceedings against perpetrators of extremely serious crime or other intentional crime prosecution of which is enforced by an international treaty.

Extremely serious crimes were defined by Article 41, Para 2 of the old Criminal Code as crimes stipulated by Article 62 of the Criminal Code and those intentional crimes, in respect of which the Code of Criminal Procedure stipulates a minimum punishment of at least eight years of imprisonment. The new Criminal Code, however, increased the threshold pertaining to extremely serious crimes to no less than **ten years**, when it concerns the maximum term. The 10 year threshold removed a number of serious merits of crime from the list of extremely serious crimes. It has reflected primarily in crimes perpetrated by organized groups and in property crimes where the amended Criminal Code lowered the penal rates to maintain proportionality with higher penal rates pronounced to perpetrators convicted of crimes against life and health.

The higher penal rate imposed on perpetrators of extremely serious crimes now prevents the law enforcement bodies from using interception of telecommunications (wire tapping) and agents in investigating a number of crimes, where such interceptions of telecommunications and the use of agents had been possible prior to December 31, 2009. Moreover, interception of telecommunications and the use of agents are often the only powerful and efficient tools to disrupt certain types of crime (primarily the organized crime). It is important to keep in mind, that organized crime groups regularly perpetrate corruption and/or abuse of official power. The amended penal rates have had negative impact on the use of a cooperating witness which is possible only in cases of extremely serious crime. A recent Ministry of the Interior analysis revealed that tools given to the Czech law enforcement by various international instruments the Czech Republic is bound by cannot be used in their full extent.

Both tools – the interception of telecommunications (wire tapping) and the use of agents – often have to rely on provisions of international instruments, which often lack uniform interpretation thus raising arguments over the legitimacy of their implementation. Moreover, the Police now spend more time analyzing international law than investigating crime. It is rather troublesome that the domestic law has failed to provide law enforcement bodies

with powers necessary to investigate crime and that such powers have to derive from the international law.

3.3 Law Enforcement Access to tax Related Information

| |
|--|
| <u>Responsible agency:</u> Ministry of Finance |
| <u>Co-responsibility:</u> Ministry of the Interior |
| <u>Deadline:</u> April 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government a draft amendment of Act No. 280/2009 Coll., the Tax Code, as amended, to enforce the provisions in force since the end of 2010 to maintain unchanged the list of merits of crime for which access to tax related information can be enforced. The new amendment will stipulate which services of the Police and under which conditions will have access to tax related information. |
| <u>Expected impact on corruption:</u> The law enforcement will regain their access to tools necessary to successfully investigate and prove illegal proceeds from crime. |

Background information:

The new Tax Code does not envisage, for the purposes of criminal proceedings, a direct access to tax-related data for the special Police forces responsible for combating legitimization of proceeds of crime, terrorism and terrorist financing, serious economic crime, corruption, and organized crime. These special units and services, however, have been, in keeping with provisions in force up to December 31, 2010, making an extensive use of this access especially in their efforts to investigate serious crime and have valued this tool extremely high and near to indispensable. Annually, the Police access such information in at least 1000 cases.

The new text of the Tax Code (in force as of January 1, 2011) allows for the ‘breaking of tax secrecy’ in criminal proceedings concerning crimes, failure to report or disrupt is considered criminal. It, however, limits the number of crimes to which the law enforcement may apply the ‘breaking of tax secrecy’ tool. However, the list of merits of crime to which the tax authority shall, upon state prosecutor’s request, submit to the law enforcement tax related information does not meet the law enforcement needs and does not offer enough support necessary to detect and prosecute crime. On the other hand, access to tax related information remains an efficient tool to detect illegal proceeds from crime, investigate their legitimisation, and detect financing of terrorism and the unlawful conduct.

3.4 Completion of the Foreigners’ Police Service Transformation

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> December 31, 2010 |
| <u>Performance indicators:</u> To support a draft bill to finalize transformation of the Foreigners’ Police into a more efficient service; to finalize the process of transferring residence-related agenda to the Ministry of the Interior (making residence-related issues civil) and to reduce |

| |
|---|
| Police of the CR expenses (e.g. by downsizing the service). |
| <u>Expected impact on corruption:</u> Disruption of the corruption chain in the process of issuing residence permits by the Foreigners' Police, breaking of mediator networks, introduction of enhanced and advanced handling of foreigners' affairs. |

3.5 Security Forces Inspection Agency

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government a draft bill on Security Forces Inspection Agency. |
| <u>Expected impact on corruption:</u> An independent inspection of security forces. |

Non-legislative Measures

3.6 Analysis of the Potential of Effective Repentance

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Co-responsibility:</u> Ministry of Justice |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> Submit to the Government a report analyzing and evaluating cases in which the authorities used the special provision on effective repentance (in keeping with Article 163 of Act No. 140/1961 Coll., as amended) and to propose reintroduction of the special effective repentance provision or other alternative solutions to bribery cases. |
| <u>Expected impact on corruption:</u> Development of an efficient anti-corruption tool. |

Background information:

The old and no longer enforced Criminal Code (Article 163 of Act No. 140/1961 Coll.) stipulated the application of effective repentance in corruption cases as follows: the bribe giver (the individual offering a bribe in a corruption or indirect bribery case) will not be punished (i.e. will no longer be criminally liable) should they promise or give a bribe locally (i.e. not to representatives of foreign entities) after having been requested to do so and reported such request in their free will and without any undue delay (with all due respect to external and his personal circumstances) to the Police or a public prosecutor.

International organisations which monitor Czech Republic in the light of its implementation of various international obligations (primarily the OECD and the Council of Europe) have been rather negative about the use of effective repentance are have feared its abuse. Most

of their reservations concern corruption abroad.⁶ Even though effective repentance was meant to become an efficient anti-corruption tool, there is no typology or statistics of cases in which the authorities actually resorted to this instrument (e.g. the Supreme office of prosecution in Slovakia listed one case back in 2007 and 6 cases of suspended indictment).

GRECO, which, unlike the OECD, monitors primarily corruption on the national level, has also expressed its concerns. It fears abuse of effective repentance because of its power to remove, automatically and fully, criminal liability of the perpetrator regardless of the size of the bribe and seriousness of the case. Some countries have recently received recommendations to review their effective repentance practice and to introduce remedies. International organisations have reported negatively about countries which dared to ignore their recommendations concerning implementation of international instruments. GRECO, however, understands that the automatic extinction of criminal liability is an integral part of the effective repentance as such.

The Czech Republic should therefore think twice before reintroducing the effective repentance. We have to keep in mind that there is no analysis of cases in which effective repentance was successfully used. Moreover, it is not recommended to extend application of effective repentance beyond the old practice. It is important to motivate the bribe givers to communicate with the Police immediately after having promised a bribe but before actually giving it (the transaction can therefore be documented as fictitious transfer). It is also important to make sure that a bribe which had already be given got confiscated and end up back in the hands of the giver. There are other tools, however, which may have the same impact as the effective repentance – e.g. the cooperating witness tool. Say, a bribe giver gives a ‘bribe’ with the intention to get evidence and immediately reports such bribe-giving to the Police. It is also possible to report the case to the Police before the bribe-giving and act as an ‘agent’.

3.7 Analysis of effectiveness of corruption investigation in the Czech Republic

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government a report on results of corruption investigation led by the Police of the CR including measures proposed to amend potential deficiencies (together with relevant deadlines). |
| <u>Expected impact on corruption:</u> Outline of information necessary to improve policing of corruption in the Czech Republic. |

3.8 Reinforcement of the restitutive function of criminal proceedings including seizure and forfeiture of proceeds from crime

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
|---|

⁶ In case that a Czech entrepreneur reported to the Police of the CR his bribe given to a foreign official only after having returned to the Czech Republic, the law enforcement bodies will not have sufficient grounds to intervene against such corrupt official, to collect evidence, and/or to challenge the decision made.

Deadline: June 30, 2011 / on-going

Performance Indicators: To draft an analysis of a rollout of measures introducing comprehensive, logistical, organisational, and other changes to:

– Pave the way for restructuring of the Unit for Detection of Corruption and Financial Crime (ÚOKFK) and to establish a dedicated workplace to detect and seize proceeds from crime and prevent their legitimization. We need experts - financial investigators - on all levels of the Police of the CR organisational structure. All levels of the Police of the CR shall reinforce their restitutive approach to the prosecution of criminals with the aim to seize criminal assets or perpetrators' property in order to satisfy justified claims of victims of such crime and to facilitate payment of damages.

– Increase the number of the Unit for Detection of Corruption and Financial Crime instructors and to create an active and efficient system of financial investigation training (complemented by new and upgraded equipment).

– Make sure that financial crime investigation teams consist of both financial investigators and investigators of general crime. Detection and investigation of proceeds from crime should not be limited to economic crime only.

– Make sure that general investigation of complex cases is from the very onset complemented by financial investigation (not administrative but pro-active) led by a financial investigator who is available and not overburdened with his own cases. In less complicated cases, the investigator in charge of the file may be simply assisted and guided by a financial investigator.

– Adopt measures allowing for personal liability of the Police management for the detection and seizure/forfeiture of proceeds from crime including bonuses/sanctions for the success/failure of the given case (applicable throughout the entire Police service).

– Instruct all investigators in the sense that the seven key questions asked by each investigator (what, who, where, when, how, why, and for whom?) should be complemented by others, such as 'for how much?' or 'Where are the proceeds? All investigators on all levels have to be aware of the proceeds issue.

– Improve cooperation in between the law enforcement and tax authorities;

– Request mandatory and reviewable uniform statistics.

– Regularly draft statistical reports and to submit them to the Police management together with a comprehensive analysis and proposed measures.

Expected impact on corruption: A reinforced system of detection and seizure/forfeiture of proceeds from crime and detection of attempts to legitimise such proceeds. Introduction of a comprehensive approach to investigation led by experts in economic, financial and general crime.

Background information:

Seizure of proceeds from crime is much more than a tool of combating corruption. Successful detection, investigation seizure and, primarily, forfeiture of criminal assets will reduce the incidence of crime for perpetrators, having lost their proceeds, will lack motivation to commit crime. It is extremely important in combating the organized crime, perpetrators of which ‘invest’ a part of their proceeds to maintain friendly relations with the public authorities. Seizure and forfeiture of such assets has a powerful anti-corruption potential since the diminishing profit from crime leaves no room for the payment of bribes or kickbacks. Hand in hand with seizure and forfeiture of proceeds, we shall fight legitimisation of such assets.

Seizure and forfeiture of proceeds from crime have become key priorities of both the Police Presidium and the Regional Police Headquarters. Some regions, however, offer little support in this respect.

One of the flagrant examples of Police support of seizure and forfeiture of proceeds from crime is dissemination of relevant guidelines and methodology. The key responsibility for guidelines was entrusted, several years ago, in the hands of the Unit for Detection of Corruption and Financial Crime. The Unit, however, appointed one single member to take responsibility over the issue. Given the complexity of seizure and forfeiture of proceeds from crime and the extensive need of expertise, such situation is more than unbearable.

It is highly recommended to establish, under the umbrella of the Unit for Detection of Corruption and Financial Crime, a taskforce dedicated to seizure and forfeiture of proceeds from crime. At the same time, all levels of the Police of the CR organisational structure will have to employ trained financial investigators. All levels of the Police of the CR shall reinforce their restitutive approach to the prosecution of criminals with the aim to seize criminal assets or perpetrators’ property in order to satisfy justified claims of victims of such crime and to facilitate payment of damages.

In most complex cases, criminal proceedings and evidencing of crime should include active financial investigation (more pro-active than a simple administrative search of databases from the investigator’s desk). Such financial investigation shall not be limited only to the detection and documenting of proceeds from the crime currently investigated, but should be extended to a comprehensive investigation of the suspect’s wealth. Such financial investigation should be entrusted in the hands of an experienced financial investigator who should cooperate and coordinate with the lead investigator.

3.9 Police of the CR Data Protection and Sharing

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> on-going/ December 31, 2012 |
| <u>Performance indicator:</u> To create, within the Police of the CR, proper conditions for safe and controlled data sharing, especially in the field of serious economic crime, financial crime, and corruption, including analytical information. The objective is to enhance and reinforce cooperation of units with nation-wide responsibilities with other Police of the CR services. We recommend developing new Police of the CR information systems and databases in order to increase transparency, efficiency, and speed of Police proceedings. |
| <u>Expected impact on corruption:</u> Protection is the best tool to prevent corrupt abuse of data. |

3.10 Electronic Criminal Proceedings

| |
|--|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Co-responsibility:</u> Ministry of the Interior |
| <u>Deadlines - Performance indicators:</u> on-going- To support the Electronic Criminal Proceedings project. |
| December 31, 2010 – To submit to the Government a report on electronic criminal proceedings together with proposed steps to develop such system. |
| <u>Expected impact on corruption:</u> Transparent file keeping in criminal proceedings. |

3.11 Streamlining of the flow of information from the financial sector to law enforcement bodies

| |
|--|
| <u>Responsible agency:</u> Ministry of Finance |
| <u>Co-responsibility:</u> Ministry of the Interior |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government a feasibility study of technical, costs, and legislative aspects of the proposed process of streamlining the flow of information from the financial sector to the law enforcement bodies. The study should include analysis of necessary legislation changes and costs (to be paid from the central budget) as well as a comprehensive comparison of operational costs on one hand and private and public savings on the other. ⁷ |
| <u>Expected impact on corruption:</u> An effective process of receiving information from financial institutions. |

Background information:

To receive confidential information from a financial institution (primarily bank secrecy protected), the Police has to seek approval of a public prosecutor in criminal proceedings (in keeping with Article 8, Para. 2 of the Code of Criminal Procedure) and await response which may take weeks to come. This delay is clearly of benefit for perpetrators of economic crime who have enough time and space to perform transactions in order to move their assets

⁷ Government Decree No. 222 of March 22, 2010 on the following steps to implement tasks stipulated by the Information on the implementation of tasks defined by the National Action Plan of Combating Terrorism and the Government Strategy to Combat the Organized Crime and on reinforcing the system of information flow from financial institutions to the authorities empowered to receive such information.

abroad. Moreover, this elaborate process of exchanging numerous queries and answers overburdens both law enforcement bodies and financial institutions.

Our objective is to maintain the level of the law enforcement access to information protected by bank secrecy while accelerating and streamlining the first query (identification of the financial product and its owner) and the answer to it.

3.12 Developing Guidelines of Police Anti-corruption Conduct

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To develop guidelines of Police conduct in corruption situations; to create a training manual for members of the Police of the CR. |
| <u>Expected impact on corruption:</u> Professional approach of the Police to citizens reporting a suspicion of corruption. |

Background information:

To complement the manual of useful information and recommendations to citizens who may be exposed to corruption and wish to assist the authorities in detecting and curbing this type of crime, we wish to develop a similar manual for the purposes of other individuals who, in line of their duty, receive bribe offers.

The above guidelines to be used as a training tool in Police schools and an everyday companion of, primarily, members of the order and traffic Police, will reinforce Police professional competences and readiness to apply professional standards in all corruption-prone situations as well as serve as a tool to prevent corruption of policemen on duty.

3.13 Introduction of life-long education and training of members of the Police of the CR in anti-corruption matters and aspects of detection and seizure of proceeds from crime

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To complement the current system of life-long Police training and education with a compulsory body of life-long anti-corruption training and to reinforce the current system of Police dedicated training in detection and investigation of corruption and serious crime as well as in seizure and forfeiture of proceeds from crime and their legitimisation. To develop the current curricula to add extra training hours dedicated to decision-making capabilities and professional anti-corruption conduct. To create curricula of life-long anti-corruption training and education for particular target groups of policemen who face an increased risk of bribery. |
| <u>Expected impact on corruption:</u> Reinforced Police anti-corruption attitude; awareness rising of the negative impact of corruption. |

Background information:

Police education and training is designed and managed by the Ministry of the Interior – Department of Education and Management of Police Schools. The department is responsible, among others, for designing a comprehensive system of Police life-long education and training. The system guarantees professional education of all members of the Police provided in line with respective entry-level training and further expert training curricula. In cooperation with the Police Presidium of the CR, we recommend to create a comprehensive system of dedicated life-long anti-corruption education and training designed for target groups of policemen who face an increased risk of bribery and to reinforce the current Police training in detection and investigation of corruption and serious crime as well as in seizure and forfeiture of proceeds from crime and their legitimisation.

3.14 To sign the Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Co-responsibility:</u> Ministry of Justice |
| <u>Deadline:</u> December 31, 2010 |
| <u>Performance indicator:</u> To submit to the Government a proposal to sign the Agreement for the Establishment of the International Anti-Corruption Academy as an International Organization so that the Czech Republic became one of the Academy founding members. ⁸ |
| <u>Expected impact on corruption:</u> Establishment of a dedicated anti-corruption research and education institute which will develop policies and procedures to prevent and combat corruption. |

Background information:

The United Nations Office on Drugs and Crime (UNODC) and the Republic of Austria had initiated an establishment of an International Anti-corruption Academy – IACA (hereinafter only the ‘Academy’). The Academy will serve as a centre of excellence for anti-corruption research, degree-based learning and the development of policies and procedures to prevent and combat corruption.

The Academy will facilitate exchange of experience of members of the academia, students, civil servants, and experts from the private sector as well as representatives of international organisations and NGOs worldwide. Primarily, it will focus on the training of policemen, judges, public servants, and representatives of private companies engaged in fighting corruption. The Academy will significantly reinforce competences of the respective experts regardless of where they come from. It will boost international cooperation, exchange of information and expertise, networking, and common standards.

⁸ Based on the Agreement, the academy is to become an international organisation. For that very reason, it shall be ratified by the President pursuant to its ratification by both chambers of the Czech Parliament.

The Czech Republic will actively participate in the Academy activities. The Police of the CR, Offices of prosecution, courts, and other public authorities will send their representatives to not only to attend training but also to act as teachers and instructors. Last but not least, the Czech Republic will offer financial support to the Academy.

3.15 Establishment of an Office of Police ombudsman

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> March 31, 2011 |
| <u>Performance indicator:</u> To establish, within the organisational structure of the Ministry of the Interior, an office of the Police ombudsman to protect interests of policemen who may suspect unlawful conduct in the Police of the CR. |
| <u>Expected impact on corruption:</u> Reinforcement of an independent source of information on potential corruption in the Police of the CR membership. |

3.16 Introduction of measures to prevent corruption and bureaucracy in immigration (visa) practice

| |
|--|
| <u>Deadlines (responsibility, co-responsibility) - Performance indicators:</u> On-going and regularly prior to March 31 of the following calendar year (responsibility: Ministry of Foreign Affairs, co-responsibility: Ministry of the Interior) – To introduce HR and technical measures to prevent corruption and necessary bureaucracy in immigration (visa) practice, to provide for their regular reviews and annual reports to be submitted to the Government. |
| December 31, 2012 (responsibility: Ministry of Labour and Social Affairs, co-responsibility: Ministry of the Interior) – To submit to the Government o draft bill introducing stricter rules regulating activities of ‘facilitators’ and similar agencies arranging jobs for foreigners. Such job agencies should be made more responsible for the circumstances of the given foreigner’s stay and work in the territory of the Czech Republic and held liable for potential abuse of foreigners in the labour market. |
| <u>Expected impact on corruption:</u> To prevent unfair conduct of job agencies targeting foreign clients. Reinforced public control of immigrants, enhanced collection of taxes, enforcement of compulsory insurance, etc. |

4. Law Enforcement Bodies – Offices of Public Prosecution and Courts

Legislative Measures

4.1 Reinforced independence and accountability of Offices of Public Prosecution for the execution of their entrusted powers

| |
|---|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Deadline:</u> August 31, 2011 |
| <u>Performance indicator:</u> To submit to the Government draft amendments of relevant laws and bylaws to reinforce the independence of offices of prosecution and their accountability for the execution of entrusted powers. To propose a new system of appointing and recalling chief public prosecutors, to amend supervisory powers of hierarchical superiors, to change the process and form of binding decrees, and, last but not least, to change the system of case assignments. |
| <u>Expected impact on corruption:</u> Reinforced independence and accountability of Offices of Public Prosecution in criminal proceedings. |

4.2 Introduction of stricter penalties for corrupt conduct of public officials

| |
|--|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Deadline:</u> December 31, 2010 |
| <u>Performance indicator:</u> To submit to the Government a draft amendment of Criminal Code to enact stricter penalties for corruption, especially corruption of public servants. |
| <u>Expected impact on corruption:</u> To deter the potential perpetrators of corruption and to reduce the incidence of corruption related crime. |

Non-legislative Measures

4.3 Change of local competences of law enforcement bodies in cases of crimes related to public administration and self-governments

| |
|--|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Co-responsibility:</u> Ministry of the Interior |
| <u>Deadline:</u> September 30, 2011 |

Performance indicator: Submit to the Government a feasibility analysis of measures to free law enforcement bodies from the influence of regional interests in cases of crimes perpetrated by public servants in public administration and local self-administration and to propose new and powerful provisions.

Expected impact on corruption: Objective investigation of crime, reduction of clientelism and nepotism.

Background information:

Article 18 of the Code of Criminal Procedure stipulates that court proceedings shall be carried out by the court in the judicial district in which the crime was committed. Crimes related to public servants (representatives of either the public administration or local self-administration), with the exception of crimes under the competence of the Unit for detection of Corruption and Financial Crime, Service of the Criminal Police and Investigation, in the given region, and provided the case does not fall under the material competence in line with Article 17 of the Criminal Code or unless the crime scene was outside the given region, are investigated and prosecuted by the local Police, local Office of Public Prosecution, and by the local County Court. Representatives of the above mentioned public authorities often have very close relationship which generates grounds for clientelism (these individuals are either friends, acquaintances, or even relatives, towns and municipalities provide them with service housing, etc.). It is therefore very difficult to provide for objective criminal proceedings or investigation of a complaint, where the complainant or the damaged party is a municipal authority.

Even though it is possible, in keeping with Article 30 of the Criminal Code, to exclude a law enforcement body from criminal proceedings, such measure would be dysfunctional since it is up to the discretion of the given body to decide, whether it feels biased against the case or individuals involved and complaints are directed to hierarchical superiors.

4.4 Feasibility analysis of non-conviction based confiscation of criminal proceeds

Responsible agency: Ministry of Finance

Co-responsibility: Ministry of Justice , Ministry of the Interior

Deadline: June 30, 2011

Performance indicator: To submit to the Government a feasibility analysis of non-conviction based confiscation of criminal proceeds primarily via taxation.

Expected impact on corruption: Reinforced confiscation of criminal proceeds.

Background information:

In some cases, the authorities fail to prove that assets, the owner of which has failed to prove the origin of the above, are in fact proceeds from crime. The feasibility analysis shall develop on our capacity to tackle such assets while maintain presumption of innocence and protection of ownership rights in a democratic rule of law. The analysis should therefore concentrate on possibilities of indirect confiscation of such assets primarily via taxation, introduction of reinforced powers of tax authorities, and enhanced cooperation of tax authorities with law

enforcement bodies especially in the field of information exchange and subsequent control activities. Last but not least, the analysis should develop on feasibility of a special form of taxation which would depend on a final and conclusive court judgement of perpetrator’s guilt of intentional crime generating or meant to general criminal profit. The analysis should include a general description of the issue and potential confiscation of illegal proceeds through taxation.

4.5 Reinforced supervisory and disciplinary powers of the Ministry of Justice over legal professions

| |
|---|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government a feasibility analysis of reinforced supervisory and disciplinary powers over court sworn experts and interpreters, executors, notaries, and insolvency agents. |
| <u>Expected impact on corruption:</u> Reinforced public supervision of selected professions. |

4.6 Special tribunals and dedicated units of Offices of Public Prosecution to fight corruption and financial crime

| |
|--|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Deadline:</u> September 30, 2011 |
| <u>Performance indicator:</u> To submit to the Government a report on feasibility and potential development of Special Tribunals and Dedicated Units of Offices of Public Prosecution to fight Corruption and serious Financial Crime. |
| <u>Expected impact on corruption:</u> Efficient and transparent court and public prosecution activities in combating corruption. |

4.7 Life-long education of judges and public prosecutors

| |
|---|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To facilitate life-long education and training of judges and public prosecutors at the Judicial Academy in fighting corruption and seizure/forfeiture or proceeds from crime. |
| <u>Expected impact on corruption:</u> Increased awareness of corruption as well as harmonized judicial practice in prosecuting corruption related cases. |

Background information:

Even though the Justice Academy (a part of the organisational structure of the Ministry of Justice) offers comprehensive curricula in all necessary areas, it does not have any dedicated corruption-related courses. Moreover, judges and public prosecutors are not required to take any courses at all and participation is voluntary.

5. Law-making Power

Legislative Measures

5.1 Introduction of a central register of record-keeping bodies in keeping with the Conflict of Interest Act

| |
|---|
| <u>Responsible agency:</u> Ministry of Justice |
| <u>Co-responsibility:</u> Ministry of the Interior |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To establish a central register of record-keeping bodies in keeping with the Conflict of Interest Act in order to facilitate public access to relevant information on the Internet. |
| <u>Expected impact on corruption:</u> Enhanced public control of public officials. |

Background information:

One of the key provisions of the Conflict of Interest Act guides the introduction of registers in which public officials disclose information concerning their assets, income, and liabilities. Access to such registers is free (pursuant to a written application) and is also available on the Internet. Such registers are an important tool of public control and therefore there is a universal right to report incorrect or incomplete record. The record-keeping body shall inform the complainant about measures taken to correct the record. The use of this right may make public affairs significantly more transparent and may lead to disclosure of unfair or even unlawful conduct.

To facilitate easier and comprehensible access to information, we propose to establish a central database of record-keeping bodies, which maintain, in keeping with the Conflict of Interest Act, databases of activities, property records, and records of income, gifts, and liabilities.

5.2 Amendment of the Rules of Procedure of the Parliament of the Czech Republic and the Rules of Procedure of the Senate of the Czech Republic

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadlines - Performance indicators:</u> August 31, 2011 – To submit to the Government a draft amendment of the Rules of Procedure of the Parliament of the Czech Republic which will allow for amendments of law to be submitted in the second reading committees, groups of MPs or an individual MP only after having been debated in the respective committee. |
| August 31, 2011 - To submit to the Government a draft bill to amend the legislative process in the sense that all submitters, including MPs and Senators, will be required to draft |

a Regulation Impact Analysis (RIA) and a Corruption Impact Analysis (CIA) to all draft bills, respectively to all amendments. The draft legislation should include a provision prohibiting submission of supplementary and unrelated draft provisions of law.

August 3, 2011 - To submit to the Government a draft amendment of the Rules of Procedure of the Parliament of the Czech Republic to prevent non-transparent distribution of financing through amendments to the Central Budget Act (referred to as 'bear portioning' – a process by which MPs propose subsidies in the course of adopting the public budget. It has been widely criticized by the public and NGOs as non-transparent).

Expected impact on corruption: Removal of the practice of submitting draft inconsistent amendments of law, which are very hard to implement in practice. Enhanced transparency of distribution of the central public budget.

Background information:

Debates on draft amendments submitted in the Czech Parliament are guided by the Rules of Procedure of the Parliament of the Czech Republic and the Rules of Procedure of the Senate of the Czech Republic (Acts No. 90/1995 Coll. – Part XII and No. 107/1999 Coll. – Part VII). The Rules of Procedure of the Parliament of the Czech Republic allow the parliamentary committees to submit, in the second reading, recommendations and draft amendments of law. Individual MPs also have the right to submit their draft amendments of law. Pursuant to that, the 72 hour statutory period before that may be voted on in the third reading would commence when the draft amendments of law are sent to all MPs. Senators also have the right to submit their own amendments of law in the course of their debate in the Senate. The law-making initiative (draft bills) pertains to the Senate as a whole. Should the Government, MPs, senators, or representatives or regions wish to present a draft bill to the Parliament such draft must include an explanatory report to which the submitter(s) attach an impact analysis (on the public budget or, for example, equal opportunities). Amendments of law, however, do not require such reports. That is why laws are often of low quality. The possibility to submit amendments of law without any proper explanation reports supports lobbyists and NGOs in their efforts to influence MPs. Certainly, corruption may be involved.

5.3 Draft Corporate Criminal Liability Act

Responsible agency: Ministry of Justice

Deadlines - Performance indicators:

December 31, 2010 – To submit to the Government a draft bill on criminal liability of legal persons. The enactment of corporate criminal liability is a condition for ratification of the UN Convention against Corruption (UNCAC). It will stop the Council of Europe complaints about insufficient compliance of the Czech Republic with the Criminal Law Convention on Corruption and the OECD cautions for non-compliance with the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

June 30, 2011 – The Government meet all conditions required for the Czech Republic to ratify the UN Convention against Corruption (UNCAC), signed by the Czech Republic on April 22, 2005 and to comply with provisions of the Council of Europe Criminal Law Convention on Corruption, signed by the Czech Republic on October 15, 1999 and the OECD Convention on Combating Bribery of Foreign Public Officials in International

| |
|---|
| Business Transactions, signed by the Czech Republic on December 17, 1997. |
|---|

| |
|---|
| <u>Expected impact on corruption:</u> Corporate criminal liability for selected crimes, including corruption. |
|---|

Background information:

The new legislation should introduce a functional mechanism to make legal persons criminally liable for corporate conduct defined as criminal. The new law will not only enact criminal liability but also stipulate, which bodies will be responsible for the detection, investigation, analysis, and sanctioning of such conduct. Most international conventions do not include any provisions concerning the nature of corporate liability or sanctions for criminal conduct. International conventions only conclude that contractual parties shall adopt measures to enact corporate criminal liability for conduct guided by the respective convention (contractual parties may adopt criminal, administrative, or civil liability for unlawful conduct). As for sanctions, international conventions mostly limit themselves to a declaration that sanctions imposed on corporate entities shall be efficient, proportionate, and deterring.

Most democratic countries opted for corporate criminal liability for the following reasons:

- Corporations shall be held liable for corporate crimes investigated in the respective criminal proceedings;
- Law enforcement bodies have sufficient expertise, capacity, and powers,
- Law enforcement bodies can use international legal aid,
- Criminal proceedings facilitate proper supervision of the case by an independent court.

Non-legislative Measures

5.4 Enhanced transparency of political parties' financing

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
|---|

| |
|--------------------------------|
| <u>Deadline:</u> June 30, 2011 |
|--------------------------------|

| |
|--|
| <u>Performance indicator:</u> Submit to the Government a proposal to legislate in order to enhance transparency of political parties' financing. |
|--|

| |
|--|
| <u>Expected impact on corruption:</u> Transparent financing of political parties as well as transparent financing of election campaigns. |
|--|

Background information:

Audits of political parties' financing most often criticise its lack of transparency. Their annual reports do not reveal expenses properly and are structured so that it is not possible to find out how the given party manages its assets. The Parliament checks the completeness of annual reports and does not perform any independent audit. Moreover, parties have the discretion to select auditors to their liking. It is recommended to require all political parties to keep their accounts in the Czech National Bank.

5.5 Feasibility analysis of comprehensive regulation of lobbying

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> December 31, 2012 |
| <u>Performance indicator:</u> To submit to the Government an analysis of lobbying regulation in the Czech Republic. The Czech Republic will have to find the best approach to regulation and clarify issues such as transparent relationship between politicians and civil servants on one side and lobbyists on the other, define lobbying, a lobbyist, and contacts with lobbyists. Lobbyists will be required to register (register of lobbyists will be available on the Internet and the law will stipulate sanctions for violations of law and their enforcement). |
| <u>Expected impact on corruption:</u> Clear rules of legal lobbying and its clear distinction from unlawful corrupt conduct. |

Background information:

Lobbying is generally perceived as an integral part of a democratic process and a typical demonstration of advanced democracy. As such, it should be transparent and legitimate. In the Czech Republic, however, lobbying has rather negative connotations and is often perceived as closely related to corruption.

In the Great Britain, lobbying is regulated in the context of the parliament and there is a professional association of lobbyists. Members of the parliament as well as members of the association have to observe a Code of Ethics. One of the key conditions of membership in the association is compliance with the Code of Ethics while MPs have to register their financial interests. The Committee on Standards in Public Life enforces high ethics in public officials' conduct. In the US, there is the Lobbying Disclosure Act, which requires lobbyists to register themselves after their first lobbying activity or after having accepted an offer to perform such activity. Lobbyists are required by law to draft regular activity reports. The Lobbying Disclosure Act prohibits lobbying in selected organisations and there is a list of public positions holders of which are required to refrain from lobbying for the period of one year after leaving the position. Members of the United States House of Representatives, Senate, and the American Association of lobbyists are also bound by a Code of Ethics. Individual states have their own legal norms to regulate lobbying, which are often far more strict than the above federal law. Regulation of lobbying in the EU institutions is far more complicated. The three most important institutions – the European Commission, European Council, and the European parliament have introduced a system of voluntary registration of lobbyists, which has never been unified. In the past years, the EU officials have been considering a stricter and more unified approach.

5.6 Introduction of mandatory Corruption Impact Analysis (CIA)

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> June 30, 2011 |
| <u>Performance indicator:</u> To propose to the Government an introduction of mandatory corruption impact analysis as an integral part or the explanatory report attached to draft bills submitted to the legislative process. To propose retroactive corruption impact analysis |

| |
|---|
| of some acts adopted in the past. |
| <u>Expected impact on corruption:</u> To prevent adoption of laws which include a risk of corruption. |

5.7 Introduction of a Code of Ethics for all elected representatives

| |
|---|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Deadline:</u> December 31, 2011 |
| <u>Performance indicator:</u> To submit to the Government for approval a sample Code of Ethics of elected representatives (MPs, Senators, members of municipal councils). |
| <u>Expected impact on corruption:</u> Clearly defined rules of conduct of elected representatives. |

Background information:

A Code of Ethics is a bylaw, which is voluntarily adopted by a group of people (in this respect by elected representatives) or imposed by the central authority (to regulate public servants' conduct). Codes of Ethics are sets of guidelines for public officials designed to secure impartiality and prevent conflict of interest. They promote honest and fair treatment of the public and colleagues. Codes of Ethics can be very different and there are no rules guiding their contents. Neither the Parliament nor the Senate has a Code of Ethics. Elected representatives' Codes of Ethics on the local level are quite rare, but the situation keeps improving.

By all means, Codes of Ethics are an integral and important element of healthy political culture and their existence indicates the will of the elected representatives to be transparent and fair. Codes of Ethics are here to make meetings of municipal councils more transparent and to facilitate public access to information which is often kept confidential (e.g. remunerations and gifts). Codes of Ethics, however, are not an automatic guarantee of transparent and fair conduct of elected representatives, but often serve as a good tool in building efficient and transparent self-government.

Codes of Ethics enhance the public confidence in their elected representatives who bound themselves to comply with their provisions. By his vow to observe the Code of Ethics, the elected representative expresses his awareness of his personal accountability and liability towards the public. Codes of Ethics are a good tool in the hands of the public to require their elected representatives to act ethically and in line with standards set forth in the norm.

5.8 Feasibility analysis of fighting corruption in the private sector

| |
|--|
| <u>Responsible agency:</u> Ministry of the Interior |
| <u>Co-responsibility:</u> Ministry of Justice |
| <u>Deadline:</u> December 31, 2011 |
| <u>Performance indicator:</u> To submit to the Government an analysis of anti-corruption efforts in the public sector, including the key challenges and their potential solutions. |
| <u>Expected impact on corruption:</u> Less corruption in the public sector. |

