

# National Action Plan for Business and Human Rights

2017-2022

Minister for Human Rights, Equal Opportunities and  
Legislation

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## Introduction

The question of business and human rights was thrust into the public consciousness in the 1990s. With modern business no longer confined by the borders of nation states, production and extraction operations are free to roam in pursuit of the right raw materials, economic conditions and labour. State authority, on the other hand, cannot – bar the odd exception – cross state frontiers. Consequently, businesses look beyond borders in search not only of new markets, but also more benign legal landscapes. The diversity of legal systems can be a good thing as it is an opportunity to explore new avenues and it motivates governments to improve regulation. Yet if a country is too lax in the way it devises its rules, a competitive advantage becomes a threat. A fragmented and inconsistent legal regime can spawn unwelcome developments – tax avoidance ("aggressive tax planning") for one thing, and human rights abuses for another.

It is up to the state to protect human rights. Most countries have ratified international human rights treaties and oversee their application. Others, though, either have yet to ratify these treaties, or have ratified them but only pay them lip service. Here, a "regulatory loophole" is fashioned where respect for human rights is not enforced by public authority. That is not to say that human rights are snuffed out in these circumstances. Even if they are not legally upheld by the state, it is still morally and ethically incumbent on everyone to preserve human rights. In other words, these are rules we need to respect not because some government authority is forcing us to, but because certain behaviour is universally understood – by consensus of the international community – to be inherently undesirable. This is why human rights these days are treated as part of the international *jus cogens* and are hence binding on all countries of the world, whether or not they have ratified the corresponding international treaties.

For that reason, anyone doing business in a country that does not safeguard human rights is not then free to violate those rights. Businesses are morally obliged to respect human rights even if they are not being forced to by the state. Although the vast majority of businesses unquestionably abide by this obligation, there are times when we come across exceptions. The most blatant breaches of human rights have commanded media interest. Examples include Shell's massive oil spills in the Niger Delta, the Bhopal industrial disaster, and the Rana Plaza factory collapse. No matter how rare these cases are, they are extremely serious because they can afflict scores of people and cause damage on an extraordinary scale. This is precisely why we need to find effective legislative, administrative and judicial means of defending human rights efficiently.

Confronting this problem is in the interest of everyone – not just those who suffer first hand or the large swathes of potential victims, but also businesses themselves. The aberrations of a handful of individuals can tarnish the reputation of transnational business as a whole and denigrate the countries the miscreants come from. Doing business without a care for human rights warps the business environment and provides an unfair competitive advantage. For everyone to compete on a level playing field, we need to seal this regulatory loophole. While the state has a duty<sup>1</sup> to penalise human rights infringements, it is also beneficial for – and morally incumbent on – businesses

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<sup>1</sup> Positive state obligations have been recognised by the case-law of the European Court of Human Rights for more than half a century. The state's obligation to protect everyone from human rights abuses also stems from the Constitution of the Czech Republic – witness, for example, Order of the Constitutional Court I. ÚS 2886/13 of 29 October 2013 and the same court's Finding I. ÚS 1565/14 of 2 March 2015.

themselves to adhere to these standards, as will be explained below. In this vein, such an approach is also of relevance to the Czech Republic.

It is states, more than other entities, that are international-law stakeholders. Businesses cannot be party to international human rights conventions and there is very little opportunity to impose international-law obligations on them, despite the fact that they may be as economically powerful as certain countries. Nor can they face legal proceedings before international judicial or quasi-judicial bodies. Plugging this lacuna by authoritative means – by an act under international law – would prove unduly difficult today. A more practicable solution would probably be for states and businesses themselves, with the participation of all stakeholders, to work together to phase it out.

## **UN Guiding Principles on Business and Human Rights**

Various options, ranging from entirely voluntary instruments (such as the UN Global Compact<sup>2</sup>) to binding international treaties, have been contemplated in a bid to find a solution that fits. The UN Human Rights Council decided on a compromise in the form of the Guiding Principles on Business and Human Rights, which it mandated Professor John Ruggie to draw up and which were unanimously endorsed under Council Resolution 17/4 of 16 June 2011. The European Union urged its Member States to devise action plans for the implementation of the Guiding Principles in October 2011,<sup>3</sup> with the Council of Europe following suit in March 2016.<sup>4</sup>

Although the Guiding Principles should be viewed as a coherent system, they do allow a state to run individual assessments of its situation and take the specific measures that will enable it to contribute best to human rights protection. They comprise 31 principles resting on three pillars and encompass state power instruments on the one hand and voluntary commitments by businesses on the other:

- The first pillar, declaring the state duty to protect human rights, is directed at the state and public authority, which employs regulation and legal instruments to protect everyone's human rights.
- The second pillar, declaring the corporate responsibility to respect human rights, is aimed at businesses, who are responsible for not breaching human rights actively, not being directly involved in human rights infringements, and acting with due diligence to lay bare any such violations. While the first pillar sets its sights on improvements in the way state authority functions and on legal enforcement, the second targets businesses' moral responsibility, which is heeded even in those parts that public authority cannot reach. That is not to say that the second pillar has no role in a functioning rule of law. Here, it complements state authority and helps to stave off human rights violations perpetrated out of ignorance or negligence.
- The third pillar, declaring the common commitment of the state and businesses to come up with vehicles for remedies, is addressed to both the state and businesses as they work

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<sup>2</sup> <http://www.globalcompact.cz/cs>

<sup>3</sup> A renewed EU strategy 2011-14 for Corporate Social Responsibility, Brussels, 25.10.2011, COM(2011) 681 final.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0681:FIN:en:PDF>

<sup>4</sup> Recommendation CM/Rec (2016)3 of the Committee of Ministers to member States on human rights and business, adopted by the Committee of Ministers on 2 March 2016.

together to mould a coherent and efficient system that will deliver remedies when human rights are impaired.

The Guiding Principles are not a binding source of international law and do not create new legal obligations. They simply spell out stakeholders' existing legal and other obligations and interpret them in a new context. No matter how the state devises its rules, there must always be a definite minimum, universally recognised standard that cannot be undermined – in other words, human rights, as governed by the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights. Nor can the Guiding Principles be regarded as the abandonment of state responsibility for human rights and their transfer to businesses. Primary responsibility for the protection of human rights rests with the state. Businesses do not enforce human rights. Rather, they are asked not to violate human rights, whether wilfully or out of negligence, in situations where state authority is left floundering. Even though there is no oversight or enforcement mechanism for the Guiding Principles and other voluntary commitments, they still have a demonstrable positive impact.<sup>5</sup>

**This Action Plan sets out the Czech Government's measures to implement the guiding principles.**

## **National Action Plan – production and objectives**

A business and human rights working group, made up of representatives of state administration, businesses, non-profit organisations and trade unions, was set up in late 2015 by agreement of the Minister for Human Rights and the Minister for Foreign Affairs. The working group met roughly every two months and drafted the Plan's various measures. The body of the Action Plan was finalised in June 2017.

The point of the Action Plan is not simply to set tasks and make recommendations. The preparation of the Action Plan was an opportunity to take stock of past processes and measures being carried out in business and human rights independently of this Action Plan. Not least, the Plan aims to raise awareness of the concept of business and human rights. Businesses are able to avoid mistakes born of ignorance and negligence if they are well informed.

The concept of business and human rights is closely linked to corporate social responsibility. The two concepts overlap in many respects, but are essentially different issues. Businesses commit themselves to corporate social responsibility (CSR) with a view to investing resources, of their own accord, into improving the quality of life enjoyed by the local community and society at large. CSR encompasses areas such as a business's relationship with its employees, an interest in the impact that a business's operations have, charity projects, the support of civic engagement, environmental protection, and the setting-up and running of community facilities.

The concept of business and human rights, on the other hand, is rooted in the fact that certain unwelcome developments should not happen in the course of business activities per se. Respect for

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<sup>5</sup> For instance, one study showed, on a sample of 3,276 businesses, that voluntary commitments had a statistically provable effect on working conditions. BIRD, Yanhua Z.; SHORT, Jodi L.; TOFFEL, Michael W. Organizational Structures and the Improvement of Working Conditions in Global Supply Chains: Legalization, Participation, and Economic Incentives. 2017.

human rights is not inherently voluntary – modern-day slavery, child labour, and environmental over-exploitation cannot be dependent on corporate goodwill. However, this Action Plan's commitments to mitigate and suppress the risk of such occurrences in the absence of the state regulation that would prevent them directly are voluntary. They also make it easier for businesses to keep clear of such situations in their supply chains and among their business partners.

In the preparation of this Action Plan, one of the underlying assumptions was that the vast majority of businesses instinctively respect human rights in their operations. Those cases where violations have been identified were isolated aberrations that, for various reasons, were not spotted by the existing regulatory framework. Experience has shown that many businesses understand what human rights are and know that these must not be breached in their operations, even when "no one is looking". This is why businesses themselves have already adopted voluntary codes and standards to promote human rights protection. Likewise, businesses are mindful of the benefits yielded by a business environment that respects human rights. Consequently, when introducing the concept in the Czech Republic, we can build on both existing legislation and voluntary corporate commitments.

## **Corporate interest**

Experience gained in the preparation of action plans abroad indicates that their adoption is advocated by businesses themselves. A state protecting human rights, businesses respecting human rights, and smoothly functioning, effective means of remedy stand businesses in good stead in many respects as this:

- Protects a company's reputation and brand value.
- Attracts customers who, in their shopping habits, are increasingly taking into account ethical standards, especially when it comes to luxury goods and high-added-value products.<sup>6</sup>
- Attracts employees who speculate that there will be a better working environment at human-rights-conscious companies.
- Attracts highly skilled experts who are keen for their name to be associated with a company of high integrity.
- Prevents conflict inside and outside of a company (protests, strikes, sabotage).
- Forestalls compensation lawsuits and the attendant bad publicity.
- Facilitates access to institutional investors (pension funds, state-controlled investment funds), who are often required to factor in the non-financial aspects of business.
- Opens up the way to major public contracts and subsidies, where human rights standards are increasingly becoming an evaluation criterion.

## **Plan format and choice of themes**

An evaluation of the situation in the Czech Republic was essential to the preparations of the Action Plan. The Czech Republic enjoys the democratic rule of law, guaranteeing everyone the protection of their human rights. Human rights are defined in the Charter of Fundamental Rights and Freedoms, which is part of the country's constitutional architecture, and in a host of international conventions

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<sup>6</sup> E.g. <http://news.trust.org/item/20150311000038-6yn8t/?source=spotlight>

that have been incorporated into national law.<sup>7</sup> This means that they are legally protected and enforceable. Anyone who feels that their rights have been impaired may seek judicial protection. Likewise, there are certain cases under Czech law where Czech citizens and nationals can be prosecuted for violations of human rights abroad. These include the criminal-law tenets of personality and universality.<sup>8</sup> As a result, the Czech Republic has laid solid foundations and is systemically conditioned for human rights protection.

The concept of business and human rights, on the other hand, has yet to be systematically addressed in the Czech Republic, so the Action Plan could be interpreted as an opportunity to scrutinise how the law and public institutions work in this area, to review and sum up processes already under way in this field, and to identify areas where there is room for improvement. The Guiding Principles and the Action Plan seek not to create a new regulatory system, but to identify flaws in and enhance the existing regulatory situation.

The specific areas on which the Plan was to focus had to be singled out in a process underpinned primarily by the Guiding Principles themselves, which explicitly highlight particular issues. Documentation drawn up by the UN Working Group on Business and Human Rights<sup>9</sup> and, in particular, the action plans of other European Union Member States were consulted in order to interpret the Guiding Principles and apply them to certain areas. Specific tasks were formulated by the aforementioned Business and Human Rights working group, hence the draft encompasses those areas that this body believes to be crucial and where it believes the main problems lie. Consequently, the Action Plan deals, on the one hand, with themes perceived to be important in the Czech public debate and, on the other hand, with themes thought to be crucial worldwide. Unsurprisingly, these two sets of themes overlap somewhat.

## Existing plans, initiatives and strategies

The Czech Republic has long put great emphasis on the topic of human rights both generally and in connection with the activities of businesses. Human rights in a business context is covered, for example, by the following strategy documents:

- SME Support Concept 2014-2020<sup>10</sup>
- National Action Plan for Corporate Social Responsibility in the Czech Republic<sup>11</sup>
- Strategic Framework for Sustainable Development of the Czech Republic<sup>12</sup>
- Anti-corruption Action Plan<sup>13</sup>
- National Strategy to Combat Human Trafficking in the Czech Republic 2016-2019<sup>14</sup>

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<sup>7</sup> These treaties include the aforementioned International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the European Social Charter.

<sup>8</sup> Sections 6, 7 and 8 of Act No 40/2009, the Criminal Code.

<sup>9</sup> <http://www.ohchr.org/EN/Issues/Business/Pages/Reports.aspx>

<sup>10</sup> <https://www.mpo.cz/dokument119071.html>

<sup>11</sup> <http://narodniportal.cz/wp-content/uploads/2016/01/Aktualizovaný-NAP-CSR-schválený-Vládou-ČR.pdf>

<sup>12</sup> [http://www.mzp.cz/web/edice.nsf/9851E387370D44F2C125773F00347374/\\$file/OVV-Strategicky\\_ramec\\_udrzitelneho\\_rozvoje-20100611.pdf](http://www.mzp.cz/web/edice.nsf/9851E387370D44F2C125773F00347374/$file/OVV-Strategicky_ramec_udrzitelneho_rozvoje-20100611.pdf)

<sup>13</sup> <http://www.korupce.cz/assets/protikorupcni-dokumenty-vlady/na-leta-2015-2017/Akcni-plan-boje-s-korupci-na-rok-2017.pdf>



- Social Inclusion Strategy 2014-2020<sup>15</sup>
- Government Strategy for Gender Equality in the Czech Republic 2014-2020<sup>16</sup>
- Foreign Policy Concept of the Czech Republic<sup>17</sup>
- Strategy for the International Competitiveness of the Czech Republic 2012-2020<sup>18</sup>

The objectives of this Action Plan are consistent with the Strategic Framework of the Czech Republic 2030<sup>19</sup>, in particular its tenets of "Let's preserve and support diversity" and "Let's respect fundamental human rights". It supplements the Strategic Framework's activities in the key areas of "People and society" and "Economic model".

## **Pillar I – state duty to protect human rights**

*The tasks under the first pillar are directed at the state and state authorities, which carry the primary obligation to protect human rights. The way in which they do their duty takes many forms, including education and awareness-raising, assistance and guidance, and legal regulation, which encompasses, among other things, penalty mechanisms. It also incorporates increased state responsibilities when the state itself engages in business or establishes relations with businesses.*

## **Publication and dissemination of existing documents, education and awareness-raising**

### **Implements Principles 2, 3c and 8**

Increasing attention is paid to the theme of business and human rights in recent years. Many countries, international organisations and universities have produced numerous documents, model professional and theme-based codes of conduct, examples of good practice, recommendations and guidelines. Examples include recommendations and model codes published by the OECD, EU bodies, the Council of Europe and the ILO, as well as examples of good practice from the business community. However, these documents have not been gathered in one place. Businesses wishing to guard against human rights risks in their operations, perhaps by introducing new internal control mechanisms, adopting a code of conduct or incorporating human rights clauses into their contracts, may find it difficult to look up information.

A sound of response would be to find these documents, collect them in one place, classify them and, where necessary, translate them into Czech so that texts on business and human rights are made available to the general public. When new materials are drawn up, they should be written in plain language that a layman can easily understand.

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<sup>14</sup> <http://www.mvcr.cz/soubor/narodni-strategie-boje-proti-obchodovani-s-lidmi-v-cr-2016-2019.aspx>

<sup>15</sup> [www.mpsv.cz/files/clanky/17082/strategie\\_soc\\_zaclenovani\\_2014-20.pdf](http://www.mpsv.cz/files/clanky/17082/strategie_soc_zaclenovani_2014-20.pdf)

<sup>16</sup> [https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/Projekt\\_Optimalizace/Strategie-pro-rovnost-zen-a-muzu-v-CR-na-leta-2014-2020.pdf](https://www.vlada.cz/assets/ppov/rovne-prilezitosti-zen-a-muzu/Projekt_Optimalizace/Strategie-pro-rovnost-zen-a-muzu-v-CR-na-leta-2014-2020.pdf)

<sup>17</sup> [http://www.mzv.cz/jnp/cz/zahranicni\\_vztahy/analyzy\\_a\\_koncepce/koncepce\\_zahranicni\\_politiky\\_cr.html](http://www.mzv.cz/jnp/cz/zahranicni_vztahy/analyzy_a_koncepce/koncepce_zahranicni_politiky_cr.html)

<sup>18</sup> <https://www.vlada.cz/assets/media-centrum/aktualne/Strategie-mezinarodni-konkurenceschopnosti-Ceske-republiky.pdf>

<sup>19</sup> <https://www.cr2030.cz/>

The world's universities are also aware of how important this subject is. The "Teach BHR" platform, grouping together those who teach business and human rights at universities, currently has 240 members from 140 institutions in 32 countries. It also offers ready-made study materials, workshops and experience-sharing forums.<sup>20</sup> When it comes to Czech higher-education institutions, the University of Economics, Prague, runs a specialised course called "Business and Human Rights", and other colleges cover this topic, for example, as part of their business ethics courses.

#### **Current state of play:**

- The Quality Council of the Czech Republic runs the National CSR Information Portal.<sup>21</sup>
- The supreme judicial bodies publish summaries of key rulings, especially those relevant to human rights.
- Every year, the Government publishes a Report on the State of Human Rights and numerous other reports and documents analysing respect for human rights in the Czech Republic. Reports in the same vein are also published by other institutions, including the Ombudsman.
- The National Contact Point for the implementation of the OECD Guidelines for Multinational Enterprises is responsible for promoting the Guidelines and their instruments (seminars, training, promotional materials, etc.).
- The Ministry of Industry and Trade, in cooperation with the Czech Trade Inspection Authority has launched the "Consumer Protection" project to provide information on the latest developments in consumer law.<sup>22</sup>

#### **Tasks:**

- Propose changes to the website of the National CSR Information Portal.  
Coordinator: Ministry of Trade and Industry  
Co-coordinator: Ministry for Human Rights  
Deadline: 30 June 2018
- On the National CSR Information Portal, post documents and materials of business associations (the Czech Chamber of Commerce, the Confederation of Industry, the Confederation of Employers' and Business Associations of the Czech Republic, industry associations, and others), trade unions and NGOs active in corporate social responsibility for those businesses that take the voluntary decision to subscribe to human rights commitments.  
Coordinators: Ministry for Human Rights, Ministry of Industry and Trade  
Deadline: Running, following the completion of the previous task
- Translate the UN Guiding Principles and other key documents into Czech.  
Coordinator: Ministry for Human Rights  
Deadline: 31 December 2017
- Provide the National Portal administrator with business and human rights documents that the ministries have at their disposal and that concern their scope of responsibilities.  
Coordinators: All ministries

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<sup>20</sup> <http://bhrhandbook.org/>

<sup>21</sup> <http://narodniportal.cz/>

<sup>22</sup> <http://www.ochrancespotrebitele.cz/>

Deadline: Running

- Assess the vehicles in place to provide businesses with information on human rights risks in countries or regions where they are planning to set up operations.

Coordinator: Ministry of Foreign Affairs

Deadline: 31 December 2020

## **Criminal liability of legal persons in the field of human rights**

### **Implements Principles 1 and 3a**

Modern business is inconceivable without companies and cooperatives. They facilitate the concentration of funds, limit risk, and create opportunities for professional management. They are a means of implementing major business projects. However, like any other such means, companies may be open to abuse. Those who engage in crime can divide up responsibility for decisions and hide behind convoluted management structures. At large corporations, it can often be difficult to find a specific liable person. The Act on the Criminal Liability of Legal Persons<sup>23</sup> resolves this by making it possible to infer that a legal person as a whole is liable.

The most serious human rights abuses can be punished as crimes. According to the case-law of the European Court of Human Rights, too, the state duty to efficiently investigate and ultimately punish infringements is central to human rights protection. However, criminal prosecution is the strongest instrument of power the state can wield, and has repercussions for employees, shareholders, creditors, business partners and others who have nothing to do with criminal activity. In this light, legislation needs to be monitored and evaluated.

While the state carries primary responsibility for human rights protection in its territory, in today's interconnected age the stringent application of the principle of territoriality is impossible. The Czech Republic has decided that – whether unilaterally or on the strength of an international treaty – it will prosecute certain unlawful conduct by Czech nationals irrespective of where this conduct occurs. As such, it is assuming responsibility for the conduct of its nationals (including businesses) abroad, thus making it possible to fill in the regulatory gap to some extent in those cases where such conduct is not punishable under another country's law.

### **Current state of play:**

- The criminal liability of legal persons was introduced into Czech law in 2011 and covered an exhaustive set of criminal acts. In 2016, the concept underlying the definition of the criminal liability of legal persons was revised so that a legal person can now be liable for all crimes other than a narrow group of acts expressly precluded by law.
- Czech law allows a Czech citizen or a legal person established in the Czech Republic to be prosecuted even if they committed their crime abroad.
- Foreign nationals and legal persons perpetrating a crime to the benefit of a Czech legal person may also be prosecuted.

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<sup>23</sup> Act No 418/2011 on the criminal liability of and proceedings against legal persons.

- Under Czech law, the most serious human rights violations<sup>24</sup> can be prosecuted regardless of the perpetrator's nationality or where such violations occurred.
- The Czech Republic is party to a number of international treaties on legal assistance and on the prosecution of various types of international criminal activity, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.

**Task:**

- Evaluate the impacts and practical application of the new text of the Act on the Criminal Liability of Legal Persons. If it transpires that the legislation still has loopholes impeding or preventing the prosecution of serious violations of human rights, propose amendments to the law.

Coordinator: Ministry of Justice

Deadline: 31 December 2018

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<sup>24</sup> The criminal acts listed in Section 7(1) of Act No 40/2009, the Criminal Code.

## Disqualification of a member of a body

### Implements Principles 1 and 3b

If a company executive orders or, due to negligence or connivance, allows the company he or she manages to encroach on human rights, that executive must be found to be liable. It is always more advisable to prosecute specific culprits rather than a whole company. However, a criminal penalty is not always appropriate. Indeed, criminal prosecution appears to be too strict a response to minor or negligent breaches of the law.

One possible solution is disqualification – banning someone from holding corporate directorships. Professionals recommend disqualification as a lighter form of punishment for a number of acts directly associated with business activity.<sup>25</sup> Disqualification is a punishment that is suitably harsh for the perpetrator without carrying the stigma of criminal prosecution, and does not harm the company as a whole. Furthermore, judicial proceedings in such a case are simpler and more economical.

Although current Czech law does accommodate disqualification, this is restricted to a narrow set of offences and the maximum duration is limited. In this respect, we need to explore whether the present wording of constituent elements is sufficient, i.e. whether it is broad enough for the courts to have sufficient opportunity to apply this instrument, while being definitive enough so that members of company bodies know what acts are prohibited. We should also consider what the maximum duration of disqualification ought to be for the various acts.

### Current state of play:

- The disqualification of members of governing bodies from holding such office was introduced into Czech law in 2014 by the Business Corporations Act. This makes it possible to punish those who have bankrupted their company or have repeatedly and seriously breached the tenet of due diligence. They may be disqualified for up to 3 years.
- Members of governing bodies, influential persons and controlling entities may be disqualified.<sup>26</sup>

### Task:

- Assess the use and applicability of this concept and consider whether it needs to be revised. In particular, evaluate the breadth of constituent elements, how sufficient the definiteness and precision of the law is, as well as the maximum disqualification period and variations depending on the seriousness of the act, and consider extending this concept to other persons effectively exercising influence over the running of a company. Also consider revising this concept so that it is not limited to companies, but can also be applied to other types of organisation with a different legal form. In these assessments, focus on the punishability of acts where a member of a governing body enables human rights standards to be breached either wilfully or out of gross negligence. If the concept of disqualification proves to be hard

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<sup>25</sup> KHAN, Aaron. Rethinking sanctions for breaching EU competition law: is director disqualification the answer?. *World Competition*, 2012, 35.1: 77-102.

<sup>26</sup> Section 76(2) of Act No 90/2012 on companies and cooperatives.

to apply in these situations, consider revisiting the constituent elements so that disqualification is easier to impose in such circumstances.

Coordinator: Ministry of Justice

Deadline: 31 December 2020

## Protection of social service clients

### Implements Principle 5

States often delegate the performance of some of their tasks to private entities, though this does not relieve them of their human rights commitments. In fact, they must find ways of meeting their human rights duties even in these circumstances.

There are many situations where the roles of the state are transferred to a private entity. In order to protect human rights, increased attention needs to be paid, for example, to the social services sector. Clients in receipt of residence-based social services are particularly vulnerable and in many respects are dependent on the support and care provided within the scope of social services. The state should make sure that checks on respect for human rights are run especially for these types of social services. The same conclusion has been reached, for instance, by the Ombudsman in her reports on visits to retirement homes and other facilities.<sup>27</sup>

### Current state of play:

- The state runs checks on social service providers upon registration and during the provision of services. Control mechanisms also centre on checking respect for the human rights of social service clients.
- The law has yet to properly address and penalise the "illegal" unregistered provision of social services. Legislative instruments are being phased in that will make it possible to put a stop to the provision of such services. In August 2016, an amendment to the Social Services Act took effect that established the possibility of carrying out checks on natural and legal persons who have not been issued with a registration decision if there are grounds to suspect that those persons are providing social services without authorisation. The penalty for providing such services was also increased from CZK 1 million to CZK 2 million.
- An amendment has been proposed that will require delegated municipal authorities/military district authorities to actively seek out illegal social service providers and immediately report their suspicions that such illegal services are being provided in their territory to the competent municipal authority of a municipality with extended powers and to the regional authority.

### Tasks:

- Issue implementing legislation to establish staffing, material and technical standards forming a basis, in particular, for the registration of social services.  
Coordinator: Ministry of Labour and Social Affairs  
Deadline: The material and technical conditions of residence-based social services by 31 December 2018; the staffing conditions of social services by 31 December 2020
- Increase the methodological support for inspections of social service provision.  
Coordinator: Ministry of Labour and Social Affairs

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<sup>27</sup> This applies both to duly authorised and registered social service facilities (<http://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/zarizeni/zarizeni-socialnich-sluzeb/>), and facilities that have not been registered (<https://www.ochrance.cz/ochrana-osob-omezenych-na-svobode/neregistrovane-socialni-sluzby/>).

Deadline: Running

- Deliver a more precise legislative definition of penalties in situations where the rights of social service clients are infringed.

Coordinator: Ministry of Labour and Social Affairs

Deadline: 31 December 2020

- Increase staffing levels at the registering body and increase the number of checks carried out.

Coordinator: Ministry of Labour and Social Affairs

Deadline: Running

## **Most serious infringements of working conditions**

### **Implements Principles 1, 2 and 8**

Even in advanced countries, we come across cases where employees find themselves in a highly vulnerable position and are required to put up with undignified working conditions, and where their employer, for instance, refuses to pay them. The victims of this abuse are frequently foreign nationals as they have limited opportunity to defend themselves. Evidence of such practices can also be found in the Czech Republic.<sup>28</sup> Those working in other people's households are another risk group. Such actions have fallout for employees, for the state (which is robbed of taxes and insurance contributions), and for honest businesses, who cannot compete with such labour.

Whereas minor cases of labour-law violations are subject to checks by labour inspection bodies, more serious cases can be prosecuted as crimes. However, for these modern-day unfair practices to be detected and prevented effectively, there needs to be coordinated cooperation between many state bodies and social partners. There may be numerous labour-law violations in supply chains, via temporary employment agencies, or at entities that act as recruiters but do not hold a permit to do so. To make it possible to stamp out these most serious forms of abuse, businesses themselves should pay attention to working conditions at their partners and, if they detect any breaches of the law, they should either demand that corrective action be taken or sever ties. The state's role here is to create a functioning labour market that will not cater to illegal practices. This does not mean just the repression of the perpetrators, but also the shaping of conditions conducive to the legal employment of foreign nationals.

### **Current state of play:**

- The Czech Republic has ratified the International Labour Organisation's Private Employment Agencies Convention (Convention No 181).

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<sup>28</sup> In 2008, an organised group was detected that had been recruiting farmworkers abroad. These recruits, sometimes working between 12 and 18 hours a day, were paid only a fraction of the wages they had been promised (Judgment of the Supreme Court 7 Tdo 1261/2013 of 12 March 2014).

In 2009, there was a case where at least 22 construction workers were found to have been enslaved for up to 2 years (Judgment of the Supreme Court 4 Tdo 366/2013 of 14 May 2013).

Between 2009 and 2011, there were several cases of large-scale labour exploitation involving up to several hundred workers in the forestry sector (Finding of the Constitutional Court II. ÚS 3436/14 of 19 January 2016 and Finding of the Constitutional Court I. ÚS 3196/12 of 12 August 2014).



- Directive 2008/104/EC on temporary agency work, regulating this area at EU level, and Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals have been transposed into Czech law.
- A methodological guideline of the Inspector General of the State Labour Inspectorate Authority<sup>29</sup> has been issued to harmonise inspection procedures in checks focusing on temporary agency work.
- The constituent elements of misdemeanours and administrative offences in labour law are being clarified.
- A law is being drawn up that will tighten conditions for the establishment and operation of temporary employment agencies. Users drawing on the services of such agencies are to be made co-responsible for the observance of commensurable wage and working conditions for temporary employees, and compulsory deposits are being introduced for each agency.
- The Ministry of Labour and Social Affairs hosts the Interministerial Body to Combat the Illegal Employment of Foreign Nationals, which plays a coordinating role, and the Economic and Social Agreement Council's Working Group on the Mediation of Employment by Temporary Employment Agencies.
- A Concept for the Prevention of the Labour Exploitation of European Union Citizens in the Czech Republic has been produced.
- The Czech Republic actively combats human trafficking in accordance with the National Strategy to Combat Human Trafficking in the Czech Republic 2016-2019.<sup>30</sup>
- Czech law contains procedures to help victims of human trafficking to legalise their stay<sup>31</sup> and to find work.<sup>32</sup> Although victims can take their claims to the civil courts, lawsuits tend to be lengthy and arduous for someone who cannot speak the language, is unfamiliar with the legal system, and does not have the money for a lawyer. In criminal proceedings, victims may be represented by an agent, such as a non-profit organisation.<sup>33</sup>
- Under the National Strategy to Combat Human Trafficking in the Czech Republic 2016-2019, an analysis is being conducted of flaws in selected labour-law regulations that could contribute to an exploitative working environment (Task 1 of the National Strategy).

#### Tasks:

- Focus, via labour inspection bodies, on unravelling the illegal employment of foreign nationals and running checks on temporary employment agencies and other entities acting as recruiters without the necessary permit.  
Coordinator: Ministry of Labour and Social Affairs  
Deadline: Running
- Evaluate the implementation of Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals. The

<sup>29</sup>[http://www.suip.cz/\\_files/suip-e035a55e958114124f3e0aa506df1cad/07032016115824.pdf](http://www.suip.cz/_files/suip-e035a55e958114124f3e0aa506df1cad/07032016115824.pdf)

<sup>30</sup> <http://www.mvcr.cz/soubor/narodni-strategie-boje-proti-obchodovani-s-lidmi-v-cr-2016-2019.aspx>

<sup>31</sup> E.g. Section 42e of Act No 326/1999 on the residence of foreign nationals in the Czech Republic and amending certain acts, as amended.

<sup>32</sup> E.g. Section 97(d) and Section 98(p) of Act No 435/2004 on employment.

<sup>33</sup> Section 50 of Act No 141/1961 on criminal proceedings (the Code of Criminal Procedure).

evaluation will include an analysis of the extra administrative burden and the ramifications for businesses.

Coordinator: Ministry of the Interior

Co-coordinator: Ministry of Labour and Social Affairs

Deadline: 31 December 2022

- Assess whether illegal employment is genuinely being earnestly prosecuted.

Coordinator: Ministry of Labour and Social Affairs

Deadline: Running, with a comprehensive assessment on 31 December 2022

- Make arrangements to raise foreign nationals' awareness of their labour rights and obligations.

Coordinator: Ministry of Labour and Social Affairs

Deadline: Running

- Raise law enforcement agencies' awareness of issues specific to human trafficking, with a stress on victim protection and the non-punishment principle (i.e. the impunity and protection of those who have been forced into criminal activity). Take this principle into account in the preparation of legislation that may touch on human trafficking and modern-day slavery.

Coordinators: Ministry of the Interior, Ministry of Justice

Deadline: Running

## Trade in military equipment

### Implements Principles 5, 6 and 7

Trade in military equipment is one of the riskier sectors from the perspective of human rights. While the manufacture of military equipment and arms is a traditional segment of Czech industry, these are goods that are susceptible to abuse, so they must be subject to regulation. A legislative act<sup>34</sup> establishes procedures for the authorisation of trade, conditions for the granting and use of licences, and general inspections of trade in military equipment, including penalties.

In the Czech Republic, there are two stages to checks on external trade in military equipment. The first stage is authorisation to engage in external trade in military equipment. The authorisation specifies specific items of equipment in which the holder can trade, and lists the countries where trade is permitted. Authorisation is issued by the Ministry of Industry and Trade on the strength of opinions submitted by the Ministry of Foreign Affairs (encompassing foreign-policy interests, commitments under international treaties and membership of international organisations, including the protection of human rights), the Ministry of the Interior (encompassing public policy, security and protection of the population), and the Ministry of Defence (covering the provision of national defence).

The second stage is the licence for external trade in military equipment, which is required to carry out specific deals. The decision on whether to issue or refuse a licence rests with the Ministry of Industry and Trade, again in response to binding opinions from the Ministry of Foreign Affairs (other

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<sup>34</sup> Act No 38/1994 on external trade in military equipment and amending Act No 455/1991 on licensed trading (the Trading Act), as amended, and Act No 140/1961, the Criminal Code, as amended.

than applications for transfer licenses for EU Member States), the Ministry of the Interior and, where the military equipment is significant, the Ministry of Defence (these opinions cover the same areas as those addressed for authorisation to engage in foreign trade in military equipment).

Checks on the use of exported arms rely, in part, on information in the end-user certificate (EUC). If doubts have arisen or if there are reasons for heightened prudence, the state may reserve the right to conduct a subsequent spot check via its embassy, and/or to make the delivery of military equipment conditional on the presence of state representatives at the destination.

Although this process is consistent with standards within the European Union, it is occasionally castigated on grounds of transparency, the amount of information released by the state, and the timeliness of access to such information. Every year, the Ministry of Industry and Trade publishes an Annual Report on Checks on the Export of Military Equipment, Small Arms for Civilian Use and Dual-use Items and Technology. In view of the sensitivity of this whole issue, these reports are consulted with the National Security Council and are subsequently approved by the Government ahead of publication. The annual reports are relatively lengthy, respect the methodology for drawing up common annual reports of the European Union, and mainly contain summaries and statistics. So much data is processed, and it is so taxing, that these annual reports tend not to be approved by the Government until July of the following year. The EU's summary annual reports<sup>35</sup> are published with a time lag of more than a year, which has also been criticised.

The Czech Republic also reports regularly to the UN on international transfers of conventional arms, small arms and light weapons. In accordance with Article 13 of the Arms Trade Treaty, the Czech Republic also submits a report to the Treaty Secretariat for the preceding calendar year concerning authorised or actual imports and exports of conventional arms. Information on specific transactions may be reported to the extent permitted by the protection of classified information and trade secrecy. However, non-profit organisations such as Amnesty International continue to criticise the Czech Republic for exporting weapons to "high-risk countries".

#### **Current state of play:**

- Trade in military equipment is regulated beyond the framework of national legislation and at EU level, in particular by Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment. That Common Position defines eight binding criteria for assessment of applications to export military equipment, including the need to consider the risk of potential violations of human rights.
- The Czech Republic participates in a number of international schemes to regulate the arms trade. In particular, it is party to the Arms Trade Treaty (ATT), which provides that if there is a clear risk that the conventional arms to be exported might be used in the commission of serious violations of international humanitarian law, export will be denied.
- The Ministry of Industry and Trade publishes annual reports on trade in military equipment. Some information is provided by the Ministry at half-yearly intervals outside of that process.

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<sup>35</sup> In accordance with Article 8(2) of Council Common Position 2008/944/CFSP defining common rules governing control of exports of military technology and equipment.

- The Czech Republic regularly reports to international organisations or within the scope of international control regimes on the basis of binding international treaties.

#### **Tasks:**

- Expand the half-yearly overviews issued by the Licensing Administration to include further information releasable in accordance with legislation and Government resolutions.  
Coordinator: Ministry of Trade and Industry  
Deadline: 30 June 2019
- Hold regular meetings between the Ministry of Foreign Affairs, the Ministry of Industry and Trade and the non-governmental sector on issues of transparency and human rights in trade in military equipment.  
Coordinators: Ministry of Industry and Trade, Ministry of Foreign Affairs  
Deadline: Running
- Offer all necessary cooperation and assistance to the Parliamentary Subcommittee on Acquisitions of the Ministry of Defence, Trade in Military Equipment and Innovations of the Armed Forces of the Czech Republic so that regular assessments can be carried out of the human rights risks posed by export licences and by military equipment exports that have been made.  
Coordinators: Ministry of Industry and Trade, Ministry of Foreign Affairs  
Deadline: Running

## **Supply chains and conflict minerals**

### **Implements Principles 6 and 7**

Increasing attention is being paid to safety conditions at work (e.g. the use of slave and child labour in mining). Risks of this type are particularly serious in areas plagued by armed conflict, which can be attributed to the absence of state authority here. Raw materials imported from geopolitically unstable regions and flashpoints may be used as a source of funding to reconstruct the country and improve the conditions in which its inhabitants live. On the other hand, various groups may exploit slave or child labour in mining operations or in factories, and the proceeds from sales could then be used to pay for weapons and soldiers. The raw materials they have mined and the products they have made are then sold on the global market, often without the buyers knowing their provenance.

This is a problem that needs to be tackled internationally. One solution lies in certification schemes proving the origin of raw materials. The certification authority guarantees that workers' rights have not been infringed during mining or production. These certificates are issued by state and international organisations on the one hand, and private issuers on the other. Current legislation allows the public sector to take into account or to demand this certification in the course of procurement, in which case it is only necessary to comply with the conditions of transparency, equal treatment and non-discrimination.<sup>36</sup>

### **Current state of play:**

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<sup>36</sup> Judgment of the EU Court of Justice of 10 May 2012 in *European Commission v Kingdom of the Netherlands* (C-368/10).

- At EU level, a regulation on "conflict minerals" has been adopted in order to standardise procedure in all EU Member States.<sup>37</sup>
- European Commission is working with the OECD to establish criteria for internal control and regulatory mechanisms at businesses.
- Numerous voluntary certification schemes run by states and international organisations on the one hand and the private sector on the other attempt to map out the origin of raw materials and supply chains.
- The Dodd-Frank Act in the US requires a certificate of origin for certain raw materials. This is also relevant to the Czech Republic inasmuch as it also applies to foreign subcontractors.
- Under the new European rules on non-financial reporting, companies will also publish information on their supply chains.
- The Czech Republic was involved in the consultation and approval of the OECD-FAO Guidance for Responsible Agricultural Supply Chains. The Ministry of Industry and Trade and the Ministry of Agriculture will arrange for this Guidance to be published and publicised at their seminars and workshops.
- The Czech Republic was involved in the consultation and approval of OECD recommendations on the OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas and Due Diligence Guidance for Meaningful Stakeholder Engagement in the Extractive Sector. The Ministry of Industry and Trade is now considering how they can best be implemented in the Czech Republic.

#### **Tasks:**

- Establish one or more competent bodies responsible for the application, in the Czech Republic, of Regulation (EU) 2017/821 of the European Parliament and of the Council laying down supply chain due diligence obligations for Union importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, and notify that body (those bodies) to the European Commission.  
Coordinator: Ministry of Trade and Industry  
Deadline: 9 December 2017
- In the public sector's procurement of high-risk products and raw materials, consider giving preference to suppliers participating in recognised certification schemes.  
Coordinators: All ministries  
Deadline: Running

## **Non-financial reporting**

### **Implements Principle 3d**

Reporting on the activities of large companies works to the benefit not only of business partners and shareholders, but also other stakeholders. With this in mind, companies are increasingly reporting not only on their financial position, but so on the non-financial aspects of their operations. Information on the impacts that companies' operations have on the environment, social aspects,

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<sup>37</sup> European Commission – Press Release: EU political deal to curb trade in conflict minerals [http://europa.eu/rapid/press-release\\_IP-16-2231\\_en.htm](http://europa.eu/rapid/press-release_IP-16-2231_en.htm)

human rights and the protection thereof is disclosed in separate non-financial reports or as part of the annual report.

Many companies already engage in non-financial reporting entirely voluntarily because this is regarded as a matter of prestige and an opportunity to improve their market position. Nevertheless, the European Union, having decided to coordinate non-financial information, has issued a Non-financial Reporting Directive.<sup>38</sup>

The non-financial reports drawn up by certain large entities could become an important tool for transparency. The auditor examines whether an entity has drawn up non-financial information and disclosed it in the annual report or consolidated annual report, or whether it has produced a separate report. As non-financial reporting shoulders entities with a heavier administrative burden and extra costs, it is not compulsory for smaller entities, who will be able to decide for themselves whether or not to publish a non-financial report.

#### **Current state of play:**

- The Czech Republic has transposed the Non-financial Reporting Directive into Act No 563/1991 on accounting (in particular Part Eight thereof). Non-financial information will be disclosed by large public-interest entities with more than 500 employees. Information on respect for human rights will be a mandatory part of the report.
- The European Commission (DG FISMA<sup>39</sup>) has produced general guidelines for businesses on how to apply the Non-financial Reporting Directive.

#### **Tasks:**

- Publish the European Commission's general guidelines on the websites of the National CSR Portal, the Ministry of Industry and Trade and the Ministry of Finance, and in Finanční zpravodaj ("Financial Bulletin").  
Coordinator: Ministry for Human Rights, Ministry of Industry and Trade, Ministry of Finance  
Deadline: 31 December 2017
- Provide information on the guidelines as part of training courses or in guidance and informational materials on non-financial reporting.  
Coordinator: Ministry of Finance  
Deadline: Running

## **Public procurement**

### **Implements Principle 6**

In OECD states alone, public procurement accounts for 12% of GDP. Worldwide, public contracts are estimated to be worth more than EUR 1,000 billion.<sup>40</sup> On some markets, contracting authorities are

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<sup>38</sup> Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

<sup>39</sup> Directorate-General for Financial Stability, Financial Services and Capital Markets Union.

<sup>40</sup> <http://ec.europa.eu/trade/policy/accessing-markets/public-procurement/>

so prominent that they can influence standards and practices throughout a sector by utilizing their market strength. This is why numerous states have legislated the requirement of certain human rights standards among their suppliers. Other countries enable these standards to be incorporated into contracts. In addition, certain international standards, such as ISO 26000, contain criteria recommended for human rights risk assessments. EU law<sup>41</sup> expressly refers to "labelling", making it possible to incorporate labels and certificates attesting to the environmental, social and human rights properties of products or suppliers into procurement evaluations.

Aspects of human rights protection can be encouraged in public procurement after taking account of the nature of a contract and the deliverable; specific human rights requirements must reflect these aspects accordingly. In practice, human rights protection requirements can be factored into the conditions for participation in award procedure or into rules for the evaluation of bids and must be verifiable, for example, in the form of a label.<sup>42</sup> It is always advisable to reflect these requirements in the contract between the contracting authority and the supplier. The protection of and respect for human rights should also be taken into account in public procurement. In their public procurement, contracting authorities should know how to reflect and evaluate environmental and social requirements and the protection of human rights correctly in relation both to the supplier and, as far as practicable, the supplier's subcontractors. In this respect, guidance should be drawn up for award procedure in accordance with human rights. This guidance should encompass specific practical examples, including model contractual provisions and/or a model tender dossier. The guidance should be accompanied by an overview of international platforms and initiatives sharing experience and information on socially responsible public contracts. This guidance should be preceded by consultations and should be produced in collaboration with business associations.

#### **Current state of play:**

- The recitals of the Public Procurement Directive<sup>43</sup> expressly provide that, when selecting the most appropriate participant in award procedure, it is not always necessary to limit the assessment to the price. Requirements concerning environmental protection and the support of sustainable development can be set, and social aspects can be incorporated. This forms a framework for the interpretation of Czech law.
- ECJ case-law makes it possible (subject to compliance with the conditions of transparency, non-discrimination and equality) to demand, in public procurement, various certificates and labels attesting to the environmental, social, human rights and other similar impacts of the goods.<sup>44</sup>
- Under the Public Procurement Act, requirements relating to the environment and social consequences of a public contract may be applied to participants in the award procedure.<sup>45</sup>
- A number of local government authorities are involved in voluntary initiatives for socially responsible public contracts, such as Fairtrade Town.<sup>46</sup>

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<sup>41</sup> Recital 75 of Directive 2014/24/EU and Recital 85 of Directive 2014/25/EU.

<sup>42</sup> Section 94 of Act No 134/2016 on public procurement.

<sup>43</sup> Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on public procurement.

<sup>44</sup> Judgment of the EU Court of Justice of 10 May 2012 in *European Commission v Kingdom of the Netherlands* (C-368/10).

<sup>45</sup> Section 37(1)(d) of Act No 134/2016 on public procurement.

<sup>46</sup> <http://stary.fairtrade.cz/5-o-fair-trade/218-kampan-fairtradova-mesta-by-la-spustena/>

- Guidance on a responsible approach to public procurement and purchasing is being drawn up.

**Tasks:**

- Incorporate human rights issues into the guidance that is being drawn up.  
Coordinator: Ministry of Regional Development  
Co-coordinators: Ministry of Labour and Social Affairs, Ministry of Human Rights  
Deadline: 31 December 2017
- Incorporate information on the social and human rights context of public contracts – and on basic opportunities to take these issues into account – into training courses for contracting authorities.  
Coordinator: Ministry of Regional Development  
Deadline: 31 December 2018



## State aid, guarantees and subsidies

### Implements Principles 4 and 7

The Czech Republic supports exporters via the export bank Česká exportní banka, a.s. (CEB) and the export guarantee and insurance corporation Exportní garanční a pojišťovací společnost, a.s. (EGAP). The state has a duty to make sure that this support does not foster violations of human rights.

On 1 January 2004, the *OECD Recommendation on Common Approaches on the Environment and Officially Supported Export Credits* entered into force. That Recommendation includes a commitment by all Member States not to assist – through their institutions – environmentally harmful projects. In June 2012, the OECD Council adopted the *Recommendation on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence*, which expands and reinforces the original provisions on the environmental and social aspects of officially supported exports. The new Recommendation establishes simpler, more readily accessible procedure for the categorisation of projects according to their environmental and social impact in the countries where they are to be implemented. The main change is the greater stress on the social impacts of projects and the aspects thereof that have a bearing on human rights in the countries of implementation.

### Current state of play:

- In its activities, EGAP abides by the Recommendation of the OECD Council on officially supported export credits.<sup>47</sup>
- CEB and EGAP are subject to the European Union's sanctioning regimes. State aid will not be granted if it is to be directed towards states or individuals who have been sanctioned by the European Union.
- Aid applicants must submit a detailed environmental impact assessment for a selected export where CEB- and EGAP-backed projects have a larger-scale environmental and social impact.

### Task:

- Where possible, in subsidy agreements take account of social, environmental and other non-financial indicators and requirements concerning the beneficiary and the beneficiary's subcontractors.
- Coordinator: All ministries concerned
- Deadline: Running

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<sup>47</sup> Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence (the “Common Approaches”) <http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=TAD/ECG%282016%293&doclanguage=en>

## State enterprises and companies in which the state has a shareholding

### Implements Principle 4

The state owns important business assets. Although state enterprises and companies in which the state has a shareholding are autonomous legal entities,<sup>48</sup> in reality their operations can be influenced significantly by the state via ministries exercising owner or founder rights. The public is sensitive to this relationship and associates those enterprises' operations with the state. This link is perceived even more strongly if those enterprises operate abroad. The activities of such enterprises can hold significant sway over the home state's reputation.

If the state is to guarantee human rights, in the first place it must ensure that there is a high standard of protection at the enterprises it has established and at companies in which it has a shareholding. Both private and state entities have a legal obligation to respect human rights. State enterprises and companies in which the state has a shareholding, however, should comply with fundamental human rights standards even when they find themselves in a situation where the law does not expressly require them to. These sorts of situations might arise in particular if they operate in countries where the law provides for a lower standard of protection. These enterprises should ensure a high level of prevention in order to avoid becoming involved in violations of human rights indirectly (e.g. in supply chains).

### Current state of play:

- State enterprises and companies in which the state has a shareholding are not favoured under the law compared to private companies. In proceedings before state authorities, they are of equal status and enjoy no privileges or immunities.
- In fact, state enterprises and companies in which the state has a shareholding are subject to certain intensified obligations compared to private companies, e.g. in relation to transparency and disclosures.
- Guidelines on Corporate Governance of State-Owned Enterprises<sup>49</sup> are taken into account in the management of state enterprises and companies in which the state has a shareholding.

### Tasks:

- Recommend that the state's representatives holding office in the bodies of state enterprises and companies in which the state has a shareholding keep track of best practice relating to respect for human rights in the relevant field of economic activity, and that they ensure that measures are taken to achieve the highest possible standard of human rights protection.  
Coordinators: All ministries concerned  
Deadline: Running
- Recommend that state enterprises and companies in which the state has a shareholding insert clauses in new contracts that allow for the contractual relationship to be terminated if

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<sup>48</sup> The way they function is governed in particular by Act No 219/2000 on the assets of the Czech Republic and its conduct in legal relations, Act No 77/1997 on state enterprises, and Act No 90/2012 on companies and cooperatives (the Business Corporations Act).

<sup>49</sup> <http://www.oecd.org/corporate/guidelines-corporate-governance-SOEs.htm>

the counterparty or supply chain is found to seriously violate human rights or universally recognised ethical and moral standards.

Coordinators: All ministries concerned

Deadline: Running

- Recommend that state enterprises and companies in which the state has a shareholding, where relevant in view of their size and market position, exceed to the UN Global Compact.<sup>50</sup>

Coordinators: All ministries concerned

Deadline: Running

- In guidance for local government bodies, disseminate the document "My Business and Human Rights".<sup>51</sup>

Coordinator: Ministry of Finance

Co-coordinator: Ministry of the Interior

Deadline: Running

## External policy

### Implements Principles 7, 9 and 10

The protection of human rights is one of the pillars of the Czech Republic's foreign policy. The Czech Republic's foreign policy concept defines three global objectives: security, prosperity and sustainable development, and human dignity, including human rights. It also has two national objectives: a service to the public and the maintenance of the Czech Republic's reputation. The concept expects the individual objectives to be intertwined. The emphasis placed on human rights is then developed further in the Concept for the Promotional Human Rights and Transition Assistance of the Ministry of Foreign Affairs, the updated version of which was approved in September 2015.

Embassies also play a key role because they provide businesses with information on the local environment and local business culture, and are also able to provide assistance in those cases where human rights have been violated. Foreign materials are a source of inspiration – numerous European governments have produced manuals for their officials on how to proceed in the promotion of human rights abroad.<sup>52</sup>

Under the common commercial policy, the negotiation of commercial agreements is in the sole competence of the EU. Agreements are negotiated on behalf of the Union by the European Commission, which acts in the name of Member States (they must always mandate it to do so). The European Commission pursues the common commercial policy in furtherance of the principles and objectives of the European Union, i.e. *inter alia* by promoting democracy, the rule of law and human rights. Subject to the European Commission's approval, the Czech Republic may negotiate bilateral investment agreements.

### Current state of play:

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<sup>50</sup> The Global Compact is a voluntary corporate initiative. Businesses subscribe to Sustainable Development Goals and undertake to promote such goals in their operations. More information here: <https://www.unglobalcompact.org/>

<sup>51</sup> <http://bookshop.europa.eu/cs/m-j-podnik-a-lidsk-pr-va-pbNB3012163/>

<sup>52</sup> E.g. the United Kingdom: <https://www.gov.uk/government/publications/business-and-human-rights-toolkit>

- Human rights are on the agenda when constitutional officials go on foreign trips, including those accompanied by representatives of the business community.
- The Czech Republic is party to a number of international human rights treaties, including a set of International Labour Organisation conventions, the European Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights, and the International Covenant on Economic, Social and Cultural Rights.
- The Czech Republic has been a party to the OECD Anti-Bribery Convention since 2000, in accordance with which law enforcement agencies prosecute foreign corruption where the perpetrator is a Czech citizen.
- The Ministry of Foreign Affairs already provides enterprises with a wide range of information to help them do business abroad.
- The Czech Republic's model agreement on the support and protection of foreign investments makes references to internationally acknowledged CSR standards and principles and the OECD Guidelines for Multinational Enterprises.

#### **Tasks:**

- Encourage the adoption of the Guiding Principles and the production of action plans in other countries.  
Coordinator: Ministry of Foreign Affairs  
Deadline: Running, with an assessment in 2020
- Provide businesses abroad – through embassies – with advice and assistance to help them navigate the local environment, including the issues of the rule of law, human rights and corruption risks.  
Coordinator: Ministry of Foreign Affairs  
Deadline: Running, with an assessment in 2020
- Within the European Union, actively participate in the production of opinions in negotiations on international commercial agreements and, in the Czech Republic's viewpoints, balance the economic nature of those agreements with the objectives of promoting democracy, the rule of law and human rights.  
Coordinator: Ministry of Trade and Industry  
Deadline: Running
- In the negotiation of bilateral investment agreements, try to take into account not only economic interests, but also the issues of sustainable development and human rights protection by referencing respect for human rights and for the principles of corporate social responsibility, and/or the principles of sustainable development.  
Coordinators: Ministry of Finance, Ministry of Industry and Trade  
Deadline: Running

## Pillar II

**The Government of the Czech Republic expects Czech businesses, whether they operate in the Czech Republic or abroad, to respect – now and in the future – human rights in all of their activities, at least to the basic extent described below.** They should not directly cause, contribute to or otherwise be associated in any way with human rights abuses. They should make reasonable efforts to guard against violations of human rights, and should strive to prevent human rights abuses in situations in which they are involved and over which they exercise influence.

**The Government of the Czech Republic expects businesses operating in high-risk sectors and areas to take reasonable measures – beyond the scope of their legal obligations – to minimise the risk of human rights abuses.**

### **Pillar II baselines: Human rights as a moral and ethical obligation**

We should not be respecting human rights simply because the law tells us to. Although it is only states that are party to international human rights agreements, these agreements articulate the international community's consensus on certain minimum standards of conduct that should be respected under all conditions and should be guaranteed to all persons. Human rights standards encapsulate not only a legal commitment, but also moral and ethical responsibility independent of state authority and its enforcement of the law. Respect for human rights is both a legal obligation and the least that can be expected of business ethics. Most businesses these days respect human rights as a matter of course, and some of them have already adopted commitments that go beyond the norm and are intended to consolidate and practise that respect.

Pillar I centres on the state's duty to safeguard the protection of human rights primarily under the law and by enforcing the law. Pillar II defines the scope of businesses' responsibility to respect human rights, regardless of whether public authority in a particular state demands or enforces such respect. By subscribing to the second pillar's principles, businesses are making the statement that they view human rights as a moral and ethical duty. In this respect, Pillar II helps to protect human rights in situations where state authority itself is ineffective. However, subscribing to Pillar II also makes sense in countries where the state provides sufficient protection of human rights. Human rights abuses cannot always be put down to unworkable regulation in a country that fails to abide sufficiently by the tenets of the rule of law. They may be caused by ignorance or neglect. Measures adopted under Pillar II help to detect latent risks and efficiently stave off problems.

The introduction of efficient mechanisms to safeguard respect for human rights is not only moral and ethical, but also purely pragmatic: damages for human rights abuse can be sought in judicial proceedings. Modern legal systems allow high levels of damages to be awarded, and any such judgment could generate very bad publicity among customers, partners and the general public. Reasonable control mechanisms and thorough due diligence in keeping with best practice make it possible to work around – or at least curb – such risks even if damage has already been caused. To be sure, a code of conduct cannot let anyone off the hook in a situation where the law has introduced strict – or objective – responsibility, but in most cases the law does allow a business to be relieved of liability if it demonstrates that it has done everything that can reasonably be demanded of it to avert damage. The adoption of reasonable, genuinely functioning internal control mechanisms could be

used as evidence that a business has made sufficient efforts and that, ultimately, its culpability can be ruled out. Consequently, a business need not be held liable for damage and, at the very least, is in a position to contain its liability. In criminal proceedings, the steadfast application of these instruments could then exclude a business's criminal liability.<sup>53</sup>

### **Scope and content of the obligation to respect human rights**

For businesses, there are three dimensions to respect for human rights:

- **Do not commit violations of human rights:** This applies to a business's active conduct, the direct impacts of its decisions, and its operations, and may encompass:
  - o The health- or life-threatening working conditions of its employees.
  - o The refusal of a customer on grounds of race.
  - o The destruction of a source of water, permanent soil damage, and emissions that pose a threat to health.
- **Do not contribute to violations of human rights:** A business does not commit violations itself, but acts in a way that facilitates or smooths the way for violations. This may encompass:
  - o The disclosure of customers' personal data to an undemocratic regime.
  - o The marketing of products that could be harmful to health.
  - o Involvement in public contracts associated with activities that impair human rights.
  - o Pressure on suppliers to circumvent safety and labour-law standards.
- **Do not be associated with violations of human rights:** This applies to other parties' activities about which a business knows, on which it has a bearing, and/or which are closely related to its own business, and may encompass:
  - o Lending for a mining project that permanently damages the environment.
  - o The use of suppliers or subcontractors who exploit child labour or otherwise violate human rights in their activities.

**What human rights?** States bear liability for the full range of human rights. Businesses are required to respect those rights that could be affected by their operations, and must do so to the extent of a definite minimum, generally acknowledged fundamental standard deriving from:

- the Universal Declaration of Human Rights;
- the International Covenant on Civil and Political Rights;
- the International Covenant on Economic, Social, and Cultural Rights; and
- the International Labour Organisation's core conventions.<sup>54</sup>

These rights are fleshed out in a series of other specific instruments, such as the OECD Guidelines for Multinational Enterprises.

In practice, this concerns matters such as the ban on forced labour, child labour, and life- or health-threatening working conditions, the ban on workplace discrimination, the hindrance of association

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<sup>53</sup> Section 8(5) of Act No 418/2011 on the criminal liability of and proceedings against legal persons.

<sup>54</sup> There are eight such "core conventions", dealing with forced labour (the 1930 and 1957 conventions), freedom of association, the right to collective bargaining, equal remuneration, discrimination, minimum worker ages, and the eradication of child labour.

and collective bargaining, etc. As for the external impacts of a business's operations, this might encompass forced land seizure and population displacement, the ban on requisitioning or destroying natural resources that are vital to a local community, and the ban on destroying cultural heritage. In relation to a state, it is necessary to reject the abuse of violence and public authority in the interests of a business (e.g. requests for the violent repression of peaceful demonstrations) and non-transparent lobbying that could impair the standard of human rights in a country. This is not an exhaustive list; some businesses may face conflict with other rights and principles specific to a particular country or industry. For the sake of example, a manufacturer of military equipment should not supply goods to a regime if there is a deep-seated suspicion that they will be used against civilians, and should not make instruments of torture. And IT enterprise should not contribute to censorship or the gathering of personal data if there are no safeguards in place to prevent abuse.<sup>55</sup>

**Where does respect come into play?** Unlike a state, which is duty-bound to protect human rights everywhere in its jurisdiction, a business's liability depends on where it exercises genuine influence and what sort of control it wields over a situation:

- **The workplace and internal structure of a company:** It is here that the influence of a business is at its greatest. A business can affect a situation through the direct orders that managers place on subordinates, or through internal documents, directives and regulations.
- **Groups of companies:** Multiple businesses subject to the same management should be viewed as a single unit for the purposes of respect for human rights. This is determined by the situation on the ground rather than by legal factors. A parent company does not shed liability by transferring unwelcome activities to a subsidiary. While it is up to a business itself how to organise intra-group relations, it should never abandon the policing of such fundamental issues.
- **The supply chain and business partners:** Businesses should have a vested interest in ensuring that the components, raw materials and external services they use are not associated with violations of human rights (e.g. "sullied" by child labour). Although this is beyond the direct control of businesses, they could negotiate the corresponding contractual clauses and, in extreme cases, switch suppliers. Their toolkit here includes the tender conditions employed, human rights clauses in contracts (the possibility of terminating a contract if wayward conduct is detected and the possibility of running checks), the requirement of internationally recognised certification, etc.
- **The local community:** Businesses should be aware of how their operations affect the local community and strive to curtail any adverse impacts. Their benchmark should not be what is permitted or prohibited by law, but how people's lives are actually affected. Active communication and transparent cooperation are the primary channels here.
- **The Government and the state:** A business's role as a human rights stakeholder comes to the fore especially when the Government itself fails to respect international commitments or violates human rights in connection with a business's operations. In this situation, the options open to businesses include the public rebuffing of illegal practices, transparent

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<sup>55</sup> The Office of the United Nations High Commissioner for Human Rights has published "Human Rights Translated", a document explaining specifically what human rights mean to businesses, and includes numerous practical examples. <https://www.unglobalcompact.org/library/259>

lobbying, self-regulation, the creation of their own standards that extend beyond the confines of the law, and – as a last resort – departure from the country in question.

**How should respect be shown?** Recommended measures will differ depending on the size of a business, the market on which it is active, the sector, and a host of other factors. The UN Working Group on Business and Human Rights makes the following recommendations in particular:

- Adopt and outwardly communicate the **commitment** that the company will subscribe to its human rights responsibility.
- Introduce and apply the internal control mechanism of "**human rights due diligence**".
- Have **internal procedures in place to address** any violation of rights.
- **Inform the public** of these instruments.

These instruments will be described in more detail below. All businesses have the opportunity to put together their own mix of instruments that best reflects their situation and will prove sufficiently effective. Businesses should introduce measures in case risks of human rights violations could be associated with their activities, products, services or business relations. A business that does not apply any such measures should be ready to explain why they are not necessary.

## Commitment

A business faced with risks of human rights violations in its operations should make it publicly clear, in the first place, that it is aware of those risks and is ready to tackle them. This respect for human rights is expressed outwardly by a publicly communicated business commitment.

**The Government of the Czech Republic recommends that businesses adopt internal commitments in accordance with the recommendations below. It recommends, in the formation of commitments and codes of conduct, drawing on the aforementioned international conventions and Guiding Principles of the UN or other internationally acknowledged standards (such as the Global Compact or the sectoral recommendations of the OECD). The adoption of such commitments should not be reduced to a formal declaration, but should be followed up by specific steps for their implementation. Companies actively subscribing to human rights responsibility set a good example for the entire sector and help to spread the Czech Republic's good reputation abroad.**

**What should a commitment encompass?**

- A **definition** of whose human rights are affected by the commitment.
- **Conformity with national law and fundamental international legal standards:**<sup>56</sup> If national law is at odds with internationally acknowledged human rights requirements, businesses must find ways of respecting international standards that will not bring them into conflict with national law.
- **Human rights as a legal compliance issue:** Even if the host state's law does not enforce human rights standards, approach them within the framework of internal decision-making as though they were legal requirements.

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<sup>56</sup> In particular, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the ILO's core conventions.



- **Handling of borderline situations:** What to do if a commitment cannot be pursued completely, e.g. due to a conflict with the host state's law or the monopoly supplier's requirements.
- **Control,** evaluation and implementation **mechanisms.**
- **Frameworks for consultation** with the groups of the public affected or their representatives (this matter is covered by a separate section below).
- **Relations with partners:** Although an internal document cannot dictate how business partners are to conduct themselves, it can influence them indirectly. In this respect, businesses should specify – as part of their commitment – what standard of care they expect from their partners and suppliers and, status permitting, they should implement that standard in the form of tender conditions of contractual clauses or by other means.
- **Protection of whistleblowers:** This includes, on the one hand, instructions for employees on how to proceed if they detect unlawful conduct and, on the other, protection from retaliation.
- **Reasonable training, education and awareness-raising**
- **Mechanisms of redress and the resolution of disputes between a business and any victims within the business.**
- **Transparency, provisions on public information.**

For a commitment to be effective, it should also comply with the following formal and procedural criteria:

- **Approval by the highest echelons of management:** Board of directors, chief executive officer, etc.
- **Professional production:** For small businesses, it is enough to adopt any of the model documents. Multinational corporations with complex business dealings should devise a built-to-suit commitment.
- **Specific expectations of specific persons:** The commitment should not be a general declaration, but should have specific implications for employees and management alike, including a designation of liability for implementation and checks. It is essential for employees to be acquainted with the commitment and the consequences of breaching it.
- **Implementation:** Other internal policies, directives and instructions should be brought into compliance with the commitment, or new ones should be drawn up. Enforcement within the scope of internal processes is absolutely crucial.
- **Group-wide scope:** If a business has a de facto influence on the functioning of other businesses, stemming in particular from the controlling relations within a group, the commitment should also apply to them.
- **Updates:** The commitment should be regularly revised and updated.

Businesses may – and are encouraged to – modify tenets of the Guiding Principles and tailor them to their operations, provided that there is no loss of substance or purpose as a result. One example of this sort is the sectoral Electric Industry Code of Conduct, which fleshes out and applies the Guiding Principles to the specific needs of the electrical engineering industry. This Code was drawn up by the Electronic Industry Citizenship Coalition and has also been adopted by several companies in the Czech Republic.

A commitment is not merely an internal document. It is a statement by a business that it is aware of and serious about its human rights responsibility. Besides being posted on the corporate website, the commitment should also be incorporated into communications with suppliers, investors, business partners and other groupings. These communications should encompass the following information:

- How was the commitment **created**?
- What **target groups** (right-holders) does it concern?
- How will it be **disseminated** among those it concerns?
  - o Among those who are to implement it (employees, suppliers)?
  - o Among the right-holders who are to protect it?

## Due diligence

**The Government of the Czech Republic recommends that businesses consider introducing an internal due diligence mechanism to spot and eliminate human rights risks, or incorporate human rights risks – as another evaluation criterion – into their existing due diligence mechanisms.**

The term "due diligence" is broadly known in the business community and denotes in-depth review of a company or a business transaction. The UN Working Group on Business and Human Rights defines human rights due diligence as a **process to identify and evaluate human rights risks, a series of steps to understand how a company's activities can affect human rights. It must also include appropriate responses to the findings.** A fundamental difference between financial risk and human rights risk is that, while financial audits and financial due diligence explore the ramifications for the business itself, human rights due diligence examines the effects on third parties – the holders of human rights (customers and people living in the vicinity of a business or who are affected by its operations).

The search for and eradication of human rights risks should form part of all major commercial operations, not just because any violations of human rights that are exposed could lead to hefty financial losses (compensation, loss of customers, a tarnished reputation), but mainly because – unlike economic loss – human rights loss cannot be fixed so easily.

An effective due diligence mechanism should meet the following criteria:

- **Consider the internal risks** (stemming from the business's own operations) and **external risks** (particularly in relation to business partners and other entities with which the business works).
- **Identify existing risks** (with a view to eliminating them) and **potential risks** (with a view to preventing any loss or damage).
- **Adapt the mechanism** to the size of the business, the nature of its operations and specific local factors.
- **Implement the mechanism** in the internal management system.
- **Regularly update the mechanism** to reflect evolving conditions.
- **Leverage the experience and knowledge of independent experts** who operate externally or maintain a high degree of personal independence.
- **Engage employees**, as they should have the opportunity to draw attention to risks and provide assistance in the removal thereof.
- **Engage the public directly concerned**, stakeholders in the community and vulnerable groups in the formation of the mechanism.

Public engagement can take many forms. First of all, this may entail consultations with those affected by businesses' operations (holders of human rights) because these people are best placed to highlight the problems looming over them. Likewise, employees should be involved as they need to know how to deal with the knowledge they accrue in their work. Finally, public engagement may comprise external expert opinions, opposing views, etc.

Most companies have already introduced control mechanisms that can be tweaked so that they also apply to human rights risks. These tend to be compliance mechanisms, used by businesses to keep track of requirements imposed by legislation, regulators, investors and capital markets (the conditions for participating on the stock exchange etc.). Businesses should view the obligation to respect human rights as a legal compliance matter. Even if the duty to comply with human rights in the course of business operations may not derive directly from a particular country's legal system, businesses should act as though this were the case and attribute the weight of the law to moral and ethical rules in their internal decision-making. This will enable them to incorporate human rights protection into existing mechanisms used to run checks on legal obligations. As a result, businesses will comply with their duty to respect human rights and take due care at minimum extra cost, thereby making big savings.

Human rights auditing should extend beyond the actual business to some extent and touch on the activities of external entities, such as those in the supply chains. Businesses could have a hand in violations of human rights through their own negligence, including via their subsidiaries and suppliers. Such conduct, despite not being wilful or intentional, does not relieve a business of liability as it could be viewed – by the courts and the public – as a form of negligence or failure to engage in appropriate supervision.

Although it is impossible for a business to carry out due diligence at an external entity to the same extent as internal due diligence, those areas that are most at risk should be identified, someone should be singled out as liable for infringements of rights and, where possible and feasible, specific steps to eliminate these risks should be demanded. If external risks identified, businesses should exercise any influence they have to stave off those risks, for example by sharing good practices and their own experience. Businesses lacking such influence should leverage their links with other entities (customers, suppliers, business associations, trade unions and bodies of public administration). If they have no way of influencing such conduct, they should weigh up the option of terminating cooperation.

Businesses who decide to publish the results of due diligence should:

- Choose a **form** that the general public can readily **understand**. Besides conventional reports, they might consider personal meetings, online discussions and public hearings.
- Choose a scope and frequency that enables them to pass on all necessary information **without overwhelming the reader**.
- Publish not only the **risks that have been identified, but also the steps** to tackle them.
- Withhold information that could **encroach on the privacy or other legitimate interests** of employees and other persons, and refrain from disclosing business secrets.

## Removing the effects of loss or damage

The Government of the Czech Republic recommends that businesses who, even if only hypothetically, could encounter human rights risk should have procedures in place in case their operations cause human rights loss. The aim should be to find a peaceful solution to disputes and to provide a remedy.

Although everyone is entitled to take their dispute to a state body, i.e. an authority or a court, for an authoritative decision, judicial proceedings are not always the most appropriate way forward for all types of disputes. What is more, litigation could generate negative publicity for a business. Where the extent and nature of an infringement allow, it is advisable to seek an out-of-court settlement. While this is not suitable for all types of dispute, it can often be faster, less costly and more readily accepted by the victims.

Alternative dispute resolution can take the form of structured dialogue, mediation or arbitration. A wide panoply of remedies is available. Besides cash satisfaction, non-financial remedies should also be offered, in particular a public apology, the restoration of what has been damaged to its previous condition, the commissioning and payment of professional services (e.g. medical services, the clean-up of a water source), and the provision of non-monetary assets (e.g. replacement land, goods). The victims' wishes and interests are of particular importance when deciding how to proceed. Safeguards to prevent a recurrence of the infringement are integral to this mechanism.

Remedial mechanisms may be applied in cooperation with other (external) entities. For example, it is possible to draw on the services of certain state bodies providing services for the out-of-court settlement of consumer disputes (the Czech Trade Inspection Authority, the Czech Telecommunication Office, the Financial Arbitrator, and the Energy Regulatory Office).

If a dispute does end up in court, businesses should not back themselves into a defensive corner. In many cases, it may be more appropriate to admit to certain individual errors that cannot be disputed and then make an attempt at reaching an agreement or conciliation.

The logical end result is the adoption of measures preventing a recurrence of any such incident in the future.

## Transparency

The Guiding Principles set great store by openness and transparency, which in practice means communication with the public, with employees and with other stakeholders. Businesses should make public the fact that they are mindful of their responsibility, that they are not just assuming this responsibility for show, and that they accept it as part of their business ethics. This ongoing communication could include not only the public, but also investors, business partners and potential employees, for whom the business, by following this path, has become a more attractive partner or place to work. Communication may be one way (e.g. various forms of non-financial reporting) or bidirectional (e.g. public hearings on matters of general interest).

**The Government of the Czech Republic recommends that businesses where the activities, products, services or business relationships are associated with risks of serious human rights violations formally provide information on how they are dealing with those risks, even in situations where the law does not require them to do so. The government recommends all companies reporting on human rights to take account of the Reporting Framework for the UN Guiding Principles on Business and Human Rights.<sup>57</sup> Reporting should provide information of relevance without**

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<sup>57</sup> <https://www.ungpreporting.org/>

**overwhelming the reader. The Government also recommends that large-scale projects with a potential major impact be publicly presented and consulted.**

### **Voluntary non-financial reporting**

In the European Union, large companies are required to publish certain non-financial information, including information on human rights matters.<sup>58</sup> Small businesses, however, may report voluntarily, especially if they are active in sectors or in countries where there is a heightened risk of encroachment on human rights. Transparency is highly self-regulatory and makes it easier to appoint a responsible person in complex corporate structures. It enables a business to evaluate and map out risks, while making it clear to the public that the company does not underestimate them.

**What should be included in a report?** Human rights standards, as opposed to financial reporting, which is governed by sophisticated and internationally reputed respected standards, are still inchoate. Even so, the following information should not be left out of a report:

- **Whether a human rights commitment has been made**, how it has been devised, whose rights it affects, how it is communicated, and whether and how responsibility for compliance is addressed within the business.
- A **specification of key issues**, i.e. areas viewed by the company as operationally risky, or in which it is most involved. Information about how such issues have been identified and, if the company has operations in multiple countries, information as to which countries are affected.
- **Information on how these risks are addressed** and what measures have been taken.
- **Significant events** that have occurred in the past year.

A business may publish periodic non-financial reports in numerous forms, either as part of the annual report or entirely separately. In any case, they should be posted online on the business's website. The non-financial report should not be drawn up just for show, but should shed light on significant information relevant to an impact assessment of the business's operations. On the other hand, it should remain brief and concentrate on matters of relevance. Parent companies should include information on the activities of their subsidiaries.

Human rights commitments cannot always be assessed with precision. Businesses should retain the option of evaluating commitments according to their own internal schemes and criteria. Nevertheless, where possible standardised indicators, including historical developments, should be used. The application of internationally acknowledged standards for non-financial reporting is recommended. These include:

- Non-financial reporting standards based on the Guiding Principles on Business and Human Rights<sup>59</sup>
- Global Reporting Initiative, an independent international organisation specialising in the reporting of the impacts of business operations in the fields of human rights, the environment and corruption<sup>60</sup>

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<sup>58</sup> See Pillar I, Non-financial reporting.

<sup>59</sup> <http://www.ungpreporting.org/>

- Integrated Reporting (IR)<sup>61</sup>

### **Transparent consultation of matters of general interest.**

If a business is preparing a major project that could be linked – even if only potentially – with human rights risks, open communication with all stakeholder groups is recommended. Negotiations should be guided by the following principles:

- They should take place sufficiently early on.
- The top management, or at least those with enough decision-making powers, should be involved.
- The form taken by the negotiations should reflect the seriousness of the risks, the scale of the project, and the addressees' abilities and capacities (an online form, public meetings, personal visits).
- Plain language should be used in the negotiations. Complex legal or economic language may not be understood by the uninitiated and could be misinterpreted as an effort to conceal something.
- If the direct participation of a particular group is impossible, communication with their representatives or with experts familiar with the situation is an option.

## **Cooperation**

Businesses in the same industry or in the same geographical area are exposed to similar problems, so it is more efficient for them to tackle them together. Cooperation could result in the exchange of good experience and practical examples, and in the creation of new instruments (in particular the conclusion of sectoral agreements or the adoption of sectoral standards). Not only will businesses save money and leverage economies of scale, but will also be in a position to combat unfair competition from businesses that have forgone basic standards.

Chambers of commerce, industrial associations, professional organisations and voluntary initiatives facilitating the sharing of good practice and the exercise of informal influence over other businesses in the sector are ideal platforms for human rights issues. However, projects involving not only businesses, but also other stakeholders are best suited and the most effective here.

**The Government of the Czech Republic recommends that industry associations and voluntary business associations raise awareness of the Guiding Principles in their activities and urge their members to incorporate these Guiding Principles into their internal corporate documents.**

## **Documents and sources of information**

The Office of the Government of the Czech Republic collects model documents, guidelines and materials intended for businesses to improve the performance of tasks in this chapter, and posts them on the National Corporate Social Responsibility Portal:

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<sup>60</sup> <https://www.globalreporting.org/Pages/default.aspx>

<sup>61</sup> <http://integratedreporting.org>

<http://narodniportal.cz/>



## Pillar III

It is incumbent on states to protect human rights. This duty includes the provision of efficient and effective means of remedy for those whose rights have been infringed. Article 36 of the Charter of Fundamental Rights and Freedoms provides that: "*Anyone may claim, in the prescribed manner, their rights in an independent and impartial court and, where so provided, before another authority.*" The third pillar of the National Action Plan is designed to ensure that, in the field of business and human rights, this right is genuinely available to everyone without unnecessary obstruction, and that it results in efficient remedies.

That is not to say that the third pillar is simply a framework for the improved functioning of the courts. Extrajudicial remedies are also attainable. The third pillar also includes quasi-judicial tribunals, dispute resolution authorities, informal ombudsman-type institutions and mediation institutions (such as the National Contact Point,<sup>62</sup> a Government-devised<sup>63</sup> neutral platform to hear complaints about infringements of the OECD Guidelines for Multinational Enterprises). Ultimately, the ideal dispute is one that never arises in the first place. The third pillar also includes the means to prevent disputes at the businesses themselves.

The primary aim of the third pillar is to find remedies. Remedies may take various forms – an apology, the restoration of what has been damaged to its previous condition, financial or non-financial compensation, or the punishment of the guilty party. The aim is not just to remedy loss or damage, but also to prevent a recurrence by means of enforceable judicial rulings or other less formal guarantees.

**Judicial resources:** Although there are no fundamental legal obstacles in access to the courts in the Czech Republic, numerous de facto obstructions do exist here. The World Bank's Doing Business project rates the organisation of the courts and the quality of decision-making in the Czech Republic very highly, but criticises the duration and costs of proceedings for businesses. It takes an average of 611 days to enforce payment under a model contract, and the recovery costs can amount to as much as a third of the claim value.<sup>64</sup> Of that period, enforcement of the judgment per se takes an average of 113 days, with enforcement costs accounting for almost half of costs occasioned by the proceedings as a whole. Overall, the Czech Republic ranked 68th out of the 190 countries assessed. The Government of the Czech Republic systematically analyses the functioning of the judicial system and attempts to reduce the length of judicial proceedings and relieve the courts of unnecessary paperwork in order to streamline the entire judicial architecture. However, this must not be to the detriment of the quality of decision-making and the rights of parties to proceedings. Improvements in law enforcement are addressed by other government strategies, including the International Competitiveness Strategy and the Consumer Policy Priorities 2015-2020.

The following factors have been pinpointed as the main barriers to the prompt and efficient enforcement of the law:

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<sup>62</sup><https://www.mpo.cz/cz/zahranicni-obchod/narodni-kontaktni-misto/narodni-kontaktni-misto-pro-implementaci-smernice-oecd-pro-nadnarodni-podniky--223631/>

<sup>63</sup> See Government Resolution No 779 of 16 October 2013.

<sup>64</sup> <http://www.doingbusiness.org/data/exploreeconomies/czech-republic#enforcing-contracts>

- The courts are overloaded and the administrative work is excessive.
- There is little awareness of the forms and means of alternative dispute resolution.
- Professional legal assistance is very costly.

The Czech Republic views the courts as a fundamental means of redress for those who believe that their rights have been infringed. However, it must not be the only source of recourse.

**Extrajudicial state resources:** Other state bodies may also provide means of redress. These include both subsequent and preventive means.

Provisional protection permits various activities that may constitute a risk, in particular industrial operations with a major impact on the surrounding area. The public is entitled to participate in these proceedings. Arrangements must be in place so that public engagement is not complicated and so that the public is informed in plain language and in a readily accessible form. On the other hand, this engagement must not be exploited for obstruction or to make proceedings longer and more expensive than they need to be.

In proceedings on offences, authorities tend to provide subsequent protection – if there is a breach of the law, an authority may, *ex officio* or on a proposal, order a remedy and, where appropriate, impose penalties. It is imperative for authorities to be steadfast in identifying and prosecuting breaches of the law and for the penalties to be effective and enforceable.

Ultimately, authorities may deal with several types of dispute. As a rule, such proceedings are faster and less formal than judicial proceedings. Dispute resolution by an authority should really be selected only in those areas where this makes sense in view of the nature of the dispute. The decision must subsequently be reviewable by a court.

**Extrajudicial non-state resources:** The Czech Republic acknowledges the benefits and advantages of alternative dispute resolution. Alternative dispute resolution is often faster, cheaper, less formal and more accessible to the parties. As the parties to a dispute are apt to accept an amicable solution better than an authoritative ruling, the Czech Republic welcomes and supports the development of alternative dispute resolution platforms among non-state entities, especially consumer organisations, trade unions and industrial associations. Nevertheless, no means of alternative dispute resolution must restrict access to an ordinary court. This means that arrangements must always be in place to ensure that both parties have decided on alternative resolution knowingly and voluntarily, except in situations where participation in an extrajudicial solution is required directly by the law.<sup>65</sup> Under no circumstances, however, is the protection of the weaker party (e.g. the consumer) allowed to be violated.<sup>66</sup>

Nonetheless, it should be remembered, first and foremost, that the ideal situation is one where no dispute occurs at all. When an action is brought before a court, this is not the start of the dispute, but the final step after previous attempts to reach a settlement have failed. The businesses themselves should offer a formalised mechanism for the amicable settlement of disputes. The dispute resolution

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<sup>65</sup> This applies to vendors, i.e. businesses providing goods and services under a system for the extrajudicial resolution of consumer disputes in accordance with Section 20s of Act No 634/1992 on consumer protection.

<sup>66</sup> Businesses are required to take part in the system to ensure the due protection of the consumer.

instruments offered by the state should be geared towards prevention and actively assist in the search for an amicable solution.

Below, we list the areas where the Czech Republic sees most room for improvement, summarise the state of play and recent developments in those areas, and propose further measures.

## Representation in court, legal assistance

Judicial proceedings assessing matters of business and human rights can often be very complex and convoluted. Furthermore, the victims in these disputes tend to be the economically or de facto weaker party (consumers, employees members of minorities, etc.) unable to afford decent legal assistance. The European Court of Human Rights takes the view that effective access to a court, including affordable legal systems, is part and parcel of the protection of human rights.<sup>67</sup> The state, then, should take action to ensure that everyone, without fail, has the opportunity to seek judicial protection efficiently and effectively.

Representation in court is mainly the domain of lawyers, whose activities are regulated and guarantee a certain standard of quality, courtesy (to some degree) of checks conducted by the competent professional organisation, i.e. the bar association. However, for some types of proceedings it is advisable to permit representation by persons who, for example, possess specialised knowledge in a narrowly defined area of law or are willing to systematically provide representation free of charge. Even today, a trade union organisation may represent its members and associations may, in the course of their activities, represent victims of discrimination or foreign nationals in labour cases. It is worth considering expanding opportunities for representation by those organisations in the future. A trade union organisation could also represent other employees at the same employer; consumer protection associations could represent consumers; and associations that have long pushed for environmental protection in a particular place could represent plaintiffs in environmental cases. Other options could also be weighed up. Although these organisations can already provide representation, this is only as general agents (i.e. not systematically across a range of cases). Legislative enshrinement will enable them not only to pursue this activity systematically, but also make it possible to establish their liability more precisely, including, say, compulsory insurance.

### Current state of play:

- If a party to judicial proceedings cannot afford a lawyer, the court may waive the court fees and appoint a representative if this is necessary to protect the party's interests.
- In August 2017, a law entered into force that ensures that low-income groups can receive free legal assistance.
- The law allows certain legal persons (trade unions and associations) to represent parties to certain types of proceedings.<sup>68</sup>
- Environmental protection associations may enter into certain types of proceedings.<sup>69</sup>
- Associations whose members come from a certain place and whose activities depend on the state of the environment are treated as holders of the right to a favourable environment. Consequently, they have the full rights of a party to environmental proceedings and may even claim those rights in court.<sup>70</sup>
- The bar association may assign a low-income applicant a lawyer for the provision of free legal assistance or legal services.

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<sup>67</sup> Judgment of the European Court of Human Rights No 6289/73 of 9 October 1979 in *Airey v Ireland*.

<sup>68</sup> Section 26 of Act No 99/1963, the Code of Civil Procedure.

<sup>69</sup> Section 70 of Act No 114/1992 on the protection of nature and the landscape.

<sup>70</sup> Finding of the Constitutional Court I. ÚS 59/14 of 30 May 2014.

### **Tasks:**

- Analyse issues surrounding an extension to the set of situations where legal persons may represent parties to proceedings.

Coordinator: Ministry of Justice

Deadline: 31 December 2020

- Evaluate the way the system of free legal assistance for the poor and needy works, especially the cost to the state, the bar association and applicants, the speed at which lawyers are assigned, and how much paperwork is involved. Evaluate the possibility of adding to the group of those who provide legal assistance.

Coordinator: Ministry of Justice

Co-coordinators: Ministry for Human Rights

Deadline: 31 December 2020

## **Access to evidence**

Disputes deriving from the protection of human rights are complex in terms of their legal classification and from the aspect of precisely defining the action and the claim. Quantifying loss or damage in relation to non-economic rights is difficult, as is determining the extent to which a specific culprit is guilty.

Some of the evidence necessary tends to be in the complete control of the counterparty (e.g. minutes of the meetings of company bodies, internal instructions, and the working correspondence of employees). The Code of Civil Procedure recognises the "duty of release", where the court, on a motion from the plaintiff, may indicate specific evidence (documentation) in the possession of the counterparty and order it to be released. However, such procedure is possible only after proceedings have been opened (i.e. the action must already have been brought), even though this evidence may be required to formulate the action, its statement of grounds, and the precise definition of the relief sought. The documentation solicited must also be very clearly specified.

### **Current state of play:**

- The bill on compensation in competition includes the new concept of "proceedings to unlock evidence", making it possible to petition the court for the parties to disclose certain materials necessary to specify a claim before the proceedings have been opened. The bill encompasses not only the disclosure of such evidence (including a fine to penalise non-compliance), but also means of protecting business secrets (redacting of certain information or appointing an impartial person to examine the evidence).

### **Task:**

- Conduct a comprehensive analysis of how the existing provisions on the "proceedings to unlock evidence" under the said law function. In this respect, continuously monitor their use and effect by reference to data collected from the courts, with the possibility of drawing on expert assistance from the Office for the Protection of Competition and any experience it

might have of this issue, while respecting the business secrets of the entities concerned (especially competitors).

Coordinator: Ministry of Justice

Co-coordinator: Office for the Protection of Competition

Deadline: 31 December 2022

- On the strength of a comprehensive analysis, consider introducing the concept of "proceedings to unlock evidence" in other areas of law, or introducing general provisions in this respect.

Coordinator: Ministry of Justice

Deadline: 31 December 2022

## **Collective actions**

Historically (bar the odd specific exception), Czech law has not accommodated collective means for the protection of rights. In disputes where there are a large number of victims, they must all bring their own action and lodge their own claim separately. Actions may be joined, but even so each plaintiff has the status of a separate party. This is particularly problematic in disputes where the overall loss or damage is large, but is fragmented among a large number of people. The costs of judicial proceedings (and the risk of having to pay the counterparty's costs if the action fails) are disproportionate to the scale of the loss or damage, which deters people from lodging numerous claims that would otherwise be legitimate. This procedure is also expensive for the counterparty, which has to deal with scores – even hundreds – of actions, and even pushes up the cost to the courts in terms of the paperwork, the service of documents, the ruling per se, and the enforcement thereof.

The situation is much the same in the administrative judiciary in cases requiring the judicial review of decisions involving large numbers of parties. Here, too, there may be situations where a large number of persons feel that their rights have been infringed by a particular decision of a public authority, but the Code of Procedure of Administrative Courts does not let them file their claims collectively. Even if cases are joined within the scope of single proceedings, each plaintiff effectively acts independently.

### **Current state of play:**

- The Consumer Protection Act allows consumer associations to seek injunctions. In practice, however, these provisions are not particularly effective and can really only be used in a narrow set of situations.
- The Ministry of Justice is contemplating the introduction of collective actions, but no final decision on the concept of such provisions has been reached. The emphasis is on the efficiency of this scheme and its constitutionality. An explanatory memorandum for this law is to be prepared in 2017.

### **Tasks:**

- Prepare for the introduction of collective actions in civil proceedings before the courts.  
Coordinator: Ministry of Justice

Deadline: 31 December 2020

- Drawing on the experience of collective actions in civil proceedings before the courts, consider whether to introduce collective actions in the administrative judiciary.

Coordinator: Ministry of Justice

Deadline: 31 December 2022

## Accessibility of the courts

Judicial proceedings in the Czech Republic are still relatively protracted.<sup>71</sup> Although a lot of headway has been made in reducing the average length of proceedings in recent years, there is still room for improvement. The courts' main problem is that they are overloaded with a huge number of cases. Judicial proceedings are highly formalised, at great cost to both parties to the dispute and to the court itself. The paperwork associated with the running of the judiciary encumbers not only the judges, but also the courts' administrative machinery.

Sensitively and coherently used technology could play a major role in freeing the hands of the courts. Just like any other area of human activity, the judiciary could benefit from the advantages delivered by advanced technology. Numerous countries around the world are conducting studies and drawing up strategies on how to use such technology efficiently in the work of the judiciary.<sup>72</sup> These are tools that could be put to good use in the process of adjudication on the one hand (facilitating the taking of evidence, enabling hearings to be held without the physical presence of all persons) and in the paperwork and state administration of the courts on the other (file computerisation and automation). The technology must be used in such a way that it does not place an extra burden on the courts, and must be accompanied by the thorough induction training of court staff. Likewise, it must not reduce in any way the availability of or access to the courts and judicial protection.

Alongside the judges, an indispensable role in the smooth and problem-free functioning of the judiciary is played by judges' assistants, trainee judges and other employees of the judiciary. These positions need to be filled by highly skilled specialists who are well versed in the law and able to apply it, and they should be rewarded accordingly. The judiciary must offer conditions capable of attracting and retaining top-class lawyers. The Ministry of Justice, aware of this need, is preparing to increase the number of such workers and their pay in 2018. This is a positive trend that should continue in the years to come.

### Current state of play:

- The computerisation of the judiciary and the introduction of electronic files has long been discussed in the Czech Republic and is mentioned in many strategies and action plans (e.g. the Strategy for the International Competitiveness of the Czech Republic, and the Ministerial Strategy for the Development of eJustice 2016-2020).

### Tasks:

- Continue introducing electronic court files.  
Coordinator: Ministry of Justice  
Deadline: Running, with an assessment as at 31 December 2020

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<sup>71</sup> The Doing Business study claims that it takes 611 days to enforce a model contract at Prague District Court and that the costs are 33% of the claim value: <http://www.doingbusiness.org/data/exploreeconomies/czech-republic#enforcing-contracts> According to Ministry of Justice data (available here: <http://cslav.justice.cz/InfoData/prehledy-statistickyh-listu.html>) more than 10% of civil disputes before the courts last for over two years.

<sup>72</sup> For example, in 2017 the UK Ministry of Justice organised a competition for innovators and programmers to develop tools that would support the online judiciary.



- In the periodic and ongoing evaluation of the state of play and functioning of the judiciary, pay more attention to how accessible the judiciary is for laypersons and to user-friendliness for clients. Where possible, when evaluating these criteria, draw on the guidelines devised for this purpose by the OECD<sup>73</sup> and/or other generally acknowledged and respected international guidelines<sup>74</sup> so that the data collected can be compared in an international context.

Coordinator: Ministry of Justice

Deadline: Running

- Map out the latest trends and opportunities in the modernisation of the way the judiciary works, e.g. the use of modern technology in the judiciary and improvements in access to the judiciary, according to the observations and recommendations of the OECD.<sup>75</sup> Evaluate whether these observations can be put to practical use and applied in the Czech Republic.

Coordinator: Ministry of Justice

Co-coordinator: Ministry for Human Rights

Deadline: 31 December 2020

## Alternative and online dispute resolution

Judicial proceedings are inherently formalised and costly affairs. The calling of a judge is mainly to handle complex legal issues. Yet much of the agenda at the courts is filled with disputes that are legally and factually simple and could be dealt with by extrajudicial means. Ministry of Justice statistics indicate that half of the disputes that pass through the courts have a claim value of less than CZK 10,000. In other words, these are petty disputes. While it would be wrong to automatically dismiss petty disputes as simple in their facts, we can assume that this is the case in many instances. It may be more effective, in some cases, for these types of factually simpler disputes to be handled in certain special procedural regimes (e.g. by simplifying judicial hearings<sup>76</sup> or restricting appeals<sup>77</sup>), or a solution to them could be found out of court. If the courts no longer have to grapple with a surfeit of such disputes, they will have more capacity to address complex and fundamental legal issues.

However, it is difficult to estimate the actual number of such simplified disputes. Numerous low-value disputes do not even make it into court because the costs of proceedings would dwarf the claim value. Even plaintiffs who are sure of the legitimacy of their claim will not bring an action in a situation where the loss of the case and reimbursement of costs to the counterparty would make them destitute. Consequently, many such disputes are "latent", though that is not to say that they are non-existent.

In this light, the state needs to offer a functioning, effective and efficient alternative running parallel to the judicial system. This alternative system could take over some of the agenda handled by the courts, thereby making it possible to speed up and streamline the judiciary. This system, in a way,

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<sup>73</sup> <http://www.oecd.org/gov/access-to-justice.htm>

<sup>74</sup> E.g. The Hague Methodology (available at <http://www.hiil.org/project/measuring-costs-quality-of-access-to-justice>) or World Bank guidelines.

<sup>75</sup> <http://www.oecd.org/gov/delivering-access-to-justice-for-all.pdf>

<sup>76</sup> For example, payment orders.

<sup>77</sup> Restrictions related to the values of disputes for ordinary appeals and appeals on a point of law.

can already be found, e.g. in the extrajudicial resolution of consumer disputes.<sup>78</sup> However, it could also be developed in other areas (labour law and small claims).

Notwithstanding the above, any alternative dispute resolution system must be viewed genuinely as an alternative and must not hobble any party's access to the courts. In this regard, when parties opt for alternative dispute resolution, this choice must primarily be based on their express, free and knowing consent, and also with consideration for the possible weaker position that either of them may be faced with (e.g. consumers). This should never hamstring judicial protection and the right to a fair trial.

The modernisation of the judiciary, the development of alternative dispute resolution methods and the adaptation of the existing system to the requirements of the modern age are topics being addressed by most countries around the world. The Czech Republic has a solid foundation on which to build, but the existing systems need to be carefully assessed and the best foreign examples need to serve as inspiration.

**The Government of the Czech Republic recommends that businesses make use of vehicles for the alternative amicable resolution of disputes, support the formation and development of such vehicles, and offer them to their partners and customers as an option.**

**Current state of play:**

- The Czech Trade Inspection Authority, the Energy Regulatory Office, the Czech Telecommunication Office, the Financial Arbitrator and certain other authorised entities<sup>79</sup> form a state-guaranteed system of extrajudicial consumer dispute resolution.
- The Ministry of Industry and Trade may authorise further entities to engage in the extrajudicial resolution of consumer disputes should they so request and comply with statutory conditions.
- By law, vendors are required to inform consumers of the possibility of making use of alternative dispute resolution for consumer disputes.<sup>80</sup>
- Legislation on alternative and extrajudicial consumer dispute resolution, as coordinated by the Ministry of Industry and Trade, is monitored and will be evaluated within two years after it has taken effect (i.e. in 2018).
- Czech law covers mediation,<sup>81</sup> arbitration<sup>82</sup> and the possibility of the judicial resolution of disputes in certain specific areas.
- Individual businesses may set up their own systems to settle disputes with customers.
- The Code of Civil Procedure already requires courts to attempt to find an amicable solution to disputes, and lets them recommend or order mediation. However, these concepts remain little used and have not been that successful. In 2016, a mere 2.4% of disputes ended with conciliation, and mediation was ordered in just 0.15% of disputes.<sup>83</sup>

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<sup>78</sup> See Parts Three and Four (Section 20d et seq.) of Act No 634/1992 on consumer protection.

<sup>79</sup> Only two at the time this Plan was drawn up: the Czech Bar Association and the Czech Consumer Association.

<sup>80</sup> Section 14 of Act No 634/1992 on consumer protection.

<sup>81</sup> Act No 202/2012 on mediation and amending certain acts (the Mediation Act).

<sup>82</sup> Act No 216/1994 on arbitration and the enforcement of arbitral awards.

<sup>83</sup> <http://cslav.justice.cz/InfoData/prehledy-statistickyh-listu.html>

- The Ministry of Labour and Social Affairs is considering introducing vehicles for the extrajudicial and alternative resolution of disputes in labour-law cases.

**Tasks:**

- Raise awareness among consumers of the possibility of resolving consumer disputes extrajudicially.  
Coordinator: Ministry of Trade and Industry  
Deadline: Running
- Evaluate judicial and extrajudicial means of enforcing the law in the Czech Republic in cooperation with the representatives of businesses and other relevant stakeholders and, where appropriate, propose changes.  
Coordinator: Ministry for Human Rights  
Co-coordinators: Ministry of Justice, Ministry of Industry and Trade  
Deadline: 31 December 2020

## **Administrative courts and their opportunities to review and annul follow-up decisions**

It is often the case that complex authorisation proceedings do not take place as a whole, but comprise a many sub-proceedings and decisions that follow up on each other and are intertwined. If one decision is annulled by a special remedy (review proceedings or an administrative action), the downstream decisions formally remain in force even though they have been robbed of their basis. One example is building permit proceedings, where the issuance of a building permit hinges on the existence of a valid zoning decision. If a court annuls the zoning decision (or even part of the land-use plan forming the basis for the issuance of the zoning decision), the building permit remains in force. This falls foul of the principle of procedural economy (the annulment must take place in a separate process, even though this is a pure formality in the overwhelming majority of cases). It is also contrary to the requirement of legal certainty (the decision remains in force and enjoys the presumption of correctness, even though it obviously needs to be annulled), and is at odds with the principle of legality (because a decision that is clearly not legal remains in force).

**Task:**

- Analyse the finality and annulment of administrative decisions that are deprived of their legal basis in the form of the preceding decisions underlying their force. Evaluate how frequent such situations are and what the economic ramifications might be.  
Coordinator: Ministry for Human Rights  
Co-coordinators: Ministry of Regional Development, Ministry of Agriculture, Ministry of the Environment  
Deadline: 31 December 2019
- Depending on the result of the analysis, add provisions to the Code of Procedure of Administrative Courts so that when a court annuls an administrative decision, it also automatically annuls, with no need for any motion, downstream decisions that cannot stand on their own (without the underlying decision), or propose another solution to the problem.  
Coordinator: Ministry of Justice

Deadline: 31 December 2021

## Integration of authorisation proceedings

The lack of uniformity of provisions in administrative law is reflected negatively in the issuance of permits and opinions in particular. An investor intending to implement a large-scale plan affecting multiple areas requires numerous individual permits and opinions from various bodies. In this respect, the Czech legal system is highly fragmented. Permits are issued in accordance with laws on building, the protection of nature and the landscape, water, clean air and others.

This fragmentation logically also has a bearing on rules for the participation of the relevant public in individual proceedings. Conditions for the participation of the relevant public are subject to special provisions set out in a separate law, and, at the same time, the relevant public abides by general rules in accordance with the Code of Administrative Procedure. In this respect, it can be difficult for the general public to navigate their way round individual processes, no matter how long the proceedings themselves are.

Integration should be aimed at faster proceedings, coordination, reduced red tape, and a uniform vision for the engagement of the relevant public. The integration of multiple proceedings into one, or the greater coherence of individual proceedings, will yield numerous benefits – the parties and the relevant public will find the proceedings clearer, the proceedings will be faster, and there will be less of an administrative burden. On the flip side, there will be risks, too. For example, the annulment of a decision by a court could have repercussions for those areas that are otherwise free of defects. These aspects need to be carefully balanced and the risks need to be mitigated, for instance by setting appropriate rules on judicial review.

### Current state of play:

- An amendment to the Building Act adopted in 2017 led to the partial interconnection of zoning proceedings, building permit proceedings, EIA procedure and several other necessary authorisation proceedings.

### Task:

- Chart the authorisation proceedings coordinated by a particular ministry and assess whether they can be merged with the authorisation processes of other ministries, or whether procedural rules can be unified.

Coordinators: Ministry of Regional Development, Ministry of the Environment, Ministry of Industry and Trade, Ministry of Transport, Ministry of Agriculture

Deadline: 31 December 2020

- Actively cooperate with other authorities on the integration of authorisation proceedings coordinated by various different ministries.

Coordinators: Ministry of Regional Development, Ministry of the Environment, Ministry of Industry and Trade, Ministry of Transport, Ministry of Agriculture

Deadline: Running

## Conclusion

The approval of this Action Plan must not mark the end of the debate on "Business and Human Rights" in the Czech Republic. On the contrary, the Plan's approval should be an important factor triggering further debate. The Action Plan is a living document that needs to respond to the latest developments in the Czech Republic and around the world. The performance of tasks under this Action Plan will be assessed and, on the strength of the experience and new knowledge gained, the Plan may be updated. The evaluations of the Action Plan will draw on expertise and scientific research, which should be carried out by independent experts. For this reason, a scientific study will be carried out to evaluate the current situation in business and human rights on the part of both the state (laws and practices) and businesses. The study's conclusions will be used to develop and reinforce the protection of human rights against the backdrop of business.

This process will be coordinated by the Minister for Human Rights, Equal Opportunities and Legislation and, where appropriate, by other Government members whose remit includes human rights. Specific steps to carry out these tasks will be arranged by the Secretariat of the Government Council for Human Rights in collaboration with the Council itself. Evaluation will include dialogue with all stakeholders, i.e. representatives of state administration, civil society and social partners primarily affected by issues of business and human rights. As such dialogue proved to be highly beneficial and instrumental in the successful completion of the existing Action Plan, it would be useful to continue this cooperation and allow anyone who is affected by this subject and who is prepared to contribute to further public debate to become involved. With this in mind, an informal discussion platform will be set up to deal with matters related to business and human rights. That platform will meet as required to discuss questions of immediate interest. Representatives of state administration, businesses, the non-profit sector and trade unions will be invited.

### Tasks:

- Run checks on the implementation of the Action Plan and assess developments in the field of human rights in business.  
Coordinator: Ministry for Human Rights  
Deadline: Running
- Draw up an interim report on the implementation of this Action Plan.  
Coordinator: Ministry for Human Rights  
Deadline: 31 December 2020
- Draw up a final report on the implementation of this Action Plan.  
Coordinator: Ministry for Human Rights  
Deadline: 31 December 2022
- Commission research into the situation in the field of business and human rights in the Czech Republic.  
Coordinator: Ministry for Human Rights  
Deadline: 31 December 2020
- In the performance of tasks under the Action Plan, team up with business associations (the Czech Chamber of Commerce, the Confederation of Industry, the Confederation of Employers' and Business Associations of the Czech Republic, and industry associations), trade

unions and NGOs active in corporate social responsibility, and hold dialogue with them on the further development of topics related to business and human rights.

Coordinator: Ministry for Human Rights and all ministries concerned

Deadline: Running