



**Transparency of Beneficial Ownership  
Information for Corporate Entities  
and Trusts in the Czech Republic**

Technical Paper

Terence Donovan  
Jan Šamánek

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*Project to strengthen anti-corruption  
and anti-money laundering systems  
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**Programme Area 25: Capacity building and Institutional Cooperation between Beneficiary State and Norwegian Public Institutions, Local and Regional Authorities**

**Project to strengthen anti-corruption and anti-money laundering systems in the Czech Republic**

**Technical Paper:**

**The legal and institutional framework regulating conflict of interest in the Czech Republic: Assessment and Recommendations**

Prepared by Quentin Reed, Council of Europe Expert, based on material provided by Lenka Petrakova, *Oživení*



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For further information please contact:

Economic Crime and Cooperation Unit (ECCU)  
Action against Crime Department  
Directorate General of Human Rights and Rule of  
Law-DG I, Council of Europe

Tel: +33-3-9021-4550  
Fax: +33-3-9021-5650  
e-mail: [mustafa.ferati@coe.int](mailto:mustafa.ferati@coe.int)  
[www.coe.int/corruption](http://www.coe.int/corruption)

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## 1 EXECUTIVE SUMMARY

This paper provides an assessment of the Czech legal and institutional framework regulating conflict of interest, together with recommendations for improvement. The paper focuses on key categories of official, primarily elected officials and employees of central regional and local government. Initial data gathering was conducted by the Czech expert, and the paper was drafted by the international expert with further additions and analysis. The report mentions the findings of other reports and assessments where appropriate, notably the 2<sup>nd</sup> Round Evaluation Report of the Group of States Against Corruption (GRECO)<sup>1</sup>, an assessment of the regime for financial declarations by officials conducted by *Oživení*, an anti-corruption NGO<sup>2</sup>, the Government Anti-corruption Strategy for 2013-2014<sup>3</sup>, and the Government Concept of the Fight Against Corruption for 2015-2017 and its accompanying Action Plan.<sup>4</sup> The paper is intended as a source of analysis and recommendations for the Czech Government, which is expected to discuss draft amendments to the existing Conflict of Interest Law in March 2015.

The main findings of the paper are the following:

- The definition and concept of conflict of interest and related concepts are unclear or inconsistent in Czech law, with a tendency in particular to conflate conflict of interest with corruption.
- Provisions restricting the holding of multiple functions are inadequate – particularly for elected functions, as are restrictions on the political activities of state employees.
- There are gaps in restrictions on the external activities of public officials – notably failure to prohibit remuneration of regional and local elected officials for positions in statutory organs, and inadequate restrictions on the post-service activities of state employees.
- The legal obligations of elected officials in conflict of interest situations are inconsistent and inadequate.
- Prohibitions on gifts are poorly formulated and cover an insufficient range of officials.
- The system of periodic declaration of assets, income and interests by public functionaries is woefully inadequate, for a number of reasons, including the absence of the obligation

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<sup>1</sup> See [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports\(round2\)\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/reports(round2)_en.asp) to obtain the Evaluation Report, Compliance Report and Addendum.

<sup>2</sup> <http://www.bezkorupce.cz/nase-temata/stret-zajmu/#monitoring>

<sup>3</sup> From Corruption to Integrity: The Government Anti-corruption Strategy for the Years 2013-2014, [http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2013-2014/Strategie-2013-a-2014---aktualni-verze\\_1.pdf](http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2013-2014/Strategie-2013-a-2014---aktualni-verze_1.pdf) (Czech version); [http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2013-2014/Strategy-2013-a-2014\\_actually.pdf](http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2013-2014/Strategy-2013-a-2014_actually.pdf) (English version).

<sup>4</sup> See respectively: <http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2015-2017/Vladni-koncepce-boje-s-korupci-na-leta-2015-az-2017.pdf>; <http://www.korupce.cz/assets/protikorupcni-strategie-vlady/na-leta-2015-2017/Akcni-plan-boje-s-korupci-na-rok-2015.pdf>

to declare on taking office, an electronic declaration system or a central register of declarations (or even obliged persons).

- There is no central authority responsible for oversight of matters concerning conflict of interest, resulting in a number of deficiencies from the provision of training raising awareness to the management and oversight of the periodic declaration system. Sanctions for violations of the law are absent or inadequate.

The paper provides the following recommendations:

1. Adopt a definition of conflict of interest similar to that in the Council of Europe Model Code of Conduct for Public Officials - that conflict of interest arises from a situation in which the public official has a private or personal interest which is such as to influence, or appear to influence, the impartial and objective performance of his/her official duties. This definition should be used in - or at least clearly inform - all laws and regulations on conflict of interest.
2. Likewise, ensure that the concept of personal interest is defined properly and consistently across laws, especially those that overlap in terms of the officials they regulate – for example the Conflict of Interest Law on the one hand, and the laws on regional and local government or on State Service on the other.
3. Incorporate the 2012 Code of Ethics of Officials and Employees of State Administration as a clearly binding document through a service regulation.
4. Measures should be taken to prevent the holding of more than one major elected function at the same time – especially that of regional governor and Member of Parliament. If a legal prohibition on cumulation of function is constitutionally impossible, a commitment to refraining from such practices should be embedded in codes of ethics in the Parliament and in regional governments.
5. Any reforms related to the parallel performance of the function of MP and minister (such as the “floating mandate” option) should take into account all the consequences of the reform chosen.
6. Consider restricting the political activities of state employees, or at least certain categories (for example in central government) by prohibiting them from standing for elected office.
7. The Conflict of Interest Law should be amended to prohibit members of regional assemblies from being remunerated for sitting in the statutory organs of companies in which the state, region or municipality owns a stake.
8. The Conflict of Interest Law (Article 6) should be amended so that the officials covered by the Article are also forbidden from engagement in/with any company, where the official had regulatory responsibilities for the sector in which that company operates

(this could be expanded to include the range of duties listed in the recent proposal of the Office of the Government. 'Engagement' should be defined to include not only employment or representation on statutory organs, but also the provision of any expert/consultancy services to the company.

9. The Chamber of Deputies, Senate and regional assemblies should approve codes of ethics/conduct that would provide clear guidance on the obligations of elected members relating to conflict of interest. In addition, a procedure should be established under which the Parliament/assembly as a whole or the relevant body (e.g. committee) may formally recommend to a member in a non-binding fashion that s/he withdraw from a particular matter.
10. The exemption of "generally evident" interests from the duty to declare conflicts of interest in particular proceedings should be clarified in the Conflict of Interest Law so that it clearly applies only to interests that are held by a wider community, and not also to interests that are just known to a wider group of persons.
11. For both elected members and other public functionaries, declarations of conflict of interest in particular proceedings should be made available online along with information on any resolution taken by the relevant body and whether the functionary concerned participated in the proceeding concerned or not.
12. Amend the prohibition on gifts in the Law on State Service to delete the phrase "in connection with the performance of duty".
13. Establish similar restrictions on gifts for other public officials or regional and local government.
14. In line with the proposal of the Office of the Government, to introduce a system that ensures declarations are in electronic form, staged appropriately to ensure that implementation is realistic – for example beginning with ministers, MPs, functionaries of central government institutions, regional governors and members of regional assemblies including Prague City. Such a system need not be a full-fledged online declaration system: declarations may be submitted in writing formally, but at the same time as an electronic document that the central evidential organ may store. The electronic format should facilitate the automatic summarisation of data by category of asset/income/liability for the purposes of public disclosure (see Recommendation 15 below), as well as automatic verification against other databases.
15. Amend the Conflict of Interest Law to guarantee proactive publication of declarations online, for at least senior functionaries such as the ones listed in Recommendation 14 above. The information provided public may be summarised, for example to provide total real estate value without the addresses of individual properties, although provisions should be included to provide more detailed information to persons who can demonstrate a need.



16. Delete the restriction in the law on the use of information from asset declarations, with the possible exception of prohibiting its use for commercial purposes.
17. A central organ for oversight of asset declarations and conflict of interest should be established with the status of an independent institution (similar to those such as the Data Protection Office). The organ could be based on the model proposed in amendments to the Law on Political Parties and Movements drafted by the Ministry of Interior Department of General Administration June-July 2014. In light of the need to establish an oversight body for political party finance, the amendments envisaged that the institution would perform oversight for both political finance and conflict of interest/asset declarations.
18. The central organ should perform tasks in the area of conflict of interest and asset declarations that include the following:
  - a. Raising the awareness of public functionaries of the legal framework governing conflict of interest and their obligations through the provision of guidelines, training and guidance on request.
  - b. Ensuring the existence of and keeping/administering a list of all functionaries subject to the Conflict of Interest Law.
  - c. Receiving asset declarations from all public functionaries in physical and/or electronic form (see Recommendation 14).
  - d. Administering a central register of declarations and ensuring its availability to public scrutiny with appropriate summarisation.
  - e. Acting as an additional channel for complaints of alleged violations of the Conflict of Interest Law – not only concerning asset declarations.
  - f. Publishing of annual reports and violations against public officials detected.
  - g. Carrying out analysis of the legal framework and its practical application, and drafting or assisting initiatives for reforms where appropriate.
19. In the area of asset declarations, the activities of the central organ should be oriented primarily towards ensuring the uniformity and transparency of the declaration system, in order that the system functions effectively as a preventive mechanism. The organ should also conduct audits/checks of asset declarations selected by risk assessments, and on the basis of information provided from external sources such as the media or public.
20. In order to facilitate public oversight of the interests and assets of public functionaries, consideration should be given to providing access to the Land Register [*Katastr nemovitosti*] online free of charge.

21. Sanctions for violation of conflict of interest legal provisions should be reformed as follows:

- a. Fines should be made significantly more stringent in order that they provide a real incentive to comply with obligations to provide accurate financial declarations in particular.
- b. Sanctions should be differentiated according to seriousness. For example, the Conflict of Interest Law should provide that submitting a declaration late (missing the deadline for submission) results in a fine that is in a lower band than failing/refusing to submit entirely.
- c. Sanctions should be introduced in both the Conflict of Interest Law and other relevant laws (on State Service, Municipalities etc.) for failing to declare a conflict of interest, with the sanction graduated – for example, failing to declare an interest when making a decision on a matter of serious consequence (such as a regulatory decision) should be sanctioned more severely than failing to declare an interest in a proceeding where the decision is of less consequence or the participation of the functionary less important/central.

22. Proceedings which end with the imposition of sanctions on officials for violations of conflict of interest provisions should be made public where sanctioning decisions have final validity.

## **2 GENERAL CONSIDERATIONS ON CONFLICT OF INTEREST REGULATION**

All persons exercising public functions are likely to encounter situations in which they or individuals or entities to which they are linked have a personal interest that is affected by decisions or actions they take in the course of duty. Examples include situations where an official: sits on a recruitment panel interviewing candidates that include one of his/her relatives; is a member of a commission for a public tender for which a company belonging to a friend is bidding; or is a member of a policy committee advising on which medicine for a particular condition the government should select as provided at public cost, when s/he previously worked for a company that produces one of the medicines.

Conflict of interest situations may or may not involve misconduct, and may or may not lead to actual corruption: conflict of interest is not the same thing as corruption. Indeed, the way in which public officials address conflict of interest situations is an important component of official integrity. For this very reason, however, conflict of interest situations need to be prevented where feasible and resolved where they occur, in order to minimise the risk of corruption and maintain public trust in official integrity.<sup>5</sup>

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<sup>5</sup> Note that even if an official's personal interest happens to dictate the same decision by the official as the public interest (for example a decision to liberalise an insurance market where the official's relation owns an insurer that will benefit from such liberalisation), the fact that the decision affects his/her personal interest may still be a problem. Indeed, the public interest may not always imply a

A “personal interest” may be one that is not the private interest of the official concerned, but an interest of someone who is connected with him/her in some way. The personal interest may also be non-material. Conflict of interest regulations often cover the interests not only of the official but also some or all family members, as well as the interests of those who are linked to an official only through friendship; in either situation, a conflict of interest may arise even where the official personally does not stand to gain materially. Last but not least, an official him/herself may be influenced by the interests of a political organisation (such as party) to which s/he has links.

## 2.1 Purposes of conflict of interest regulation

The aims of conflict of interest regulation may be characterised as follows:

- Preventive – preventing certain conflicts from arising to the extent this is practical
- Mitigative - ensuring a functioning process to address and resolve conflict of interest situations that do arise, in order that they do not result in actual corruption/misconduct and/or undermine trust in public office.
- Assistive – helping officials to understand their ethical obligations in office, for example in borderline situations or ethical dilemmas.

## 2.2 Types of conflict of interest regulation

In order to achieve these aims, three main types of regulation exist:

- **Prohibitions on holding other public/official positions:** for example prohibiting elected members of a legislature from being judges.
- **Prohibitions/restrictions on external private activities:** for example prohibiting a minister from being involved in any business, or an official from holding a stake in any company subject to regulation by his department.
- **Obligations of public officials in conflict of interest situations.** These consist of one or more of the following: disclosure of the interest (internally and or publicly); disposal (getting rid) of an interest (for example selling the private company stake that is giving rise to the conflict of interest, or resigning from the public function); and recusal (withdrawal) from the official matter/process that the conflict of interest may affect.

In addition, in a number of countries officials of certain categories are obliged to submit **financial declarations**, the content of which will include one or more of the following: income, assets, liabilities and other interests. In a number of countries – and particular transition countries – financial declarations tend to be seen as the main component of conflict of interest regulation, with the emphasis being on revealing conflicts through

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particular decision (if this were so, then questions might arise about why democracy is needed). It is as much about whether a certain way of decision making is followed, in which those who make decisions are impartial and seen to be so.

control/audit of financial declarations; this is also the case in the Czech Republic, although - as this paper underlines - control of declarations is largely absent. A general point here is that placing too much emphasis on financial declarations may distract attention on the need to put in place processes and an environment in which officials deal with conflicts of interest on a case-by-case basis in a proper manner.

It is also important to note that the appropriate form of conflict of interest regulation depends to a large extent on the category of official involved. For example, prohibiting any business interest or professional commercial engagement is usually seen as more appropriate for permanent senior civil servants than for MPs or local elected members, given the temporary nature of elected office; for the latter, the emphasis is likely to be more on declarations of interests and declarations of conflicts of interest where these arise. Likewise, while it is reasonable to require a permanent civil servant to withdraw from a decision when s/he is subject to a conflict of interest, such requirements may be unconstitutional if applied to elected officials. In short, regulation should be tailored carefully to the functionary subject to it.

Related to this point, in long-established democracies, conflict of interest regulations are usually fragmented, in the sense that they have grown over time in response to the needs of individual institutions or branches of government. In transition countries, it is more common for there to be a 'conflict of interest law' of some kind applying to multiple categories of public official. In such cases, it is important for such a law to differentiate between officials, especially on concerning prohibitions on external activities and on participating in proceedings

### 3 LEGAL FRAMEWORK IN THE CZECH REPUBLIC

Conflict of interest is regulated by a number of different laws in the Czech Republic. The **Conflict of Interest Law** covers all "public functionaries", defined as the following:

- MPs (deputies, senators), members of the Government, full-time elected members of regional and local assemblies
- Mayors
- Prominent officials such as chairs and inspectors/members of regulatory bodies, National Bank, Supreme Audit Office, Ombudsman etc.;
- Officials in management positions in public administration, municipalities, regions and the capital city, and members of statutory/controlling organs of legal entities established by law or by the state/regional government, where they are responsible for financial transactions exceeding 250,000 CZK, are directly involved in decision-making on the allocation of public contracts, make administrative decisions or participate in managing criminal proceedings
- First and second level management positions in the police, fire service, customs, prison service, General Inspectorate of Security Services (intelligence services are not covered).

In addition, **other laws** regulating specific institutions or processes contain conflict of interest provisions, in particular: the Law on State Service (civil service law), the relevant provisions of which came into effect from 1 January 2015; laws on Regions, on Municipalities, on the Capital City of Prague, and on Officials of Self-Governing

Administrative Units; the Law on Public Contracts; and Law on State Enterprises. In addition, a **Code of Ethics** exists for state employees, and codes have been approved by three of the fourteen regional assemblies. Conflicts of interest involving judges and prosecutors are regulated by specific laws, and are not covered in this paper.

The following sub-sections outline the way in which these norms establish different areas of conflict of interest regulation – definition and general obligations, prohibitions on holding of functions (incompatibilities), prohibitions/restrictions on activities, obligations in situations of conflict of interest (declaration, recusal), and periodic financial declarations.

### 3.1 Definitions and general obligations

All categories of official are generally prohibited by one or more of the regulations mentioned above from abuse of position, powers or information, including referring/appealing to one's function in matters of personal interest, accepting payment or benefit in return for the use in a commercial advertisement of one's name in connection with one's function. Under the Conflict of Interest Law, when a conflict between the public interest and a public functionary's personal interest arises, s/he is prohibited from giving priority to his/her personal interest.

For the wider population of officials, the Law on State Service (LSS) provides that state employees must avoid any conduct/proceedings which could lead to a conflict between the public interest and personal interests. In particular they may not misuse information obtained in the course of duty for their own or others benefit. Employees must also observe the rules of ethics of state employees, to be issued in a service regulation. The 2012 Code of Ethics of Officials and Employees of State Administration (Article 6)<sup>6</sup> reiterates all of the obligations above, and also states that if an official or employee is not sure whether an activity is compatible with his/her public function, s/he is to discuss the matter with his/her superior. However, the Code has not been adopted a formal internal service regulation, in the sense envisaged by the LSS.

#### 3.1.1 Issues and problems

The way in which general provisions on conflict of interest are formulated in Czech legislation raise some immediate concerns:

- The **legal framework does not define conflict of interest clearly or consistently**. The only laws that come close to defining conflict of interest itself are the laws on Municipalities, on Regions and on the Capital City of Prague, which refer to conflict of interest as where an elected member's "participation in discussion and decision-making on a matter could mean an advantage or damage for him/her or a close person, or for a natural or legal entity s/he represents." However, this definition is problematic. There may be plenty of discussions and decisions in which an elected member participates and which affect his or her interests (for example a decision to build a highway or a hospital), even where there is no conflict of interest. Second, a conflict of interest is present where

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<sup>6</sup> [http://www.vlada.cz/assets/media-centrum/aktualne/Etický\\_kodex\\_uredniku\\_a\\_zamestnancu\\_verejne\\_spravy.pdf](http://www.vlada.cz/assets/media-centrum/aktualne/Etický_kodex_uredniku_a_zamestnancu_verejne_spravy.pdf)

an official has a personal interest in the outcome of a proceeding in which s/he participates, whether or not his/her participation affects the outcome. It may be that in fact his/her participation cannot affect the result of the proceeding (for example due to his/her small share in the overall proceeding, certainty that s/he would be outvoted, etc.), but this does not mean that a conflict of interest is not present.

- In a number of places Czech law refers to conflict of interest through the phrase “a conflict between **public and personal interest**.” However:
  - The **concept of ‘personal interest’ is not clearly defined** - different laws use different definitions and even terminology. The LCI defines “personal interest” as an interest that “brings personal advantage to the public functionary or prevents/averts possible reduction in advantages of a property or other nature.” The LSS uses the term “private interest”, defining it as any advantage for [the state employee], his/her family, close and related persons and legal or physical entities with which s/he has or has had business or political relations. Clearly, these two laws are in potential conflict – a public functionary who is a state employee, participating in a decision that may advantage a family member would be in compliance with the LCI but in violation of the LSS. The LSS also does not sufficiently specify what is meant by “family”, “close” or “related” persons.
  - It is **unusual to define conflict of interest using the term “the public interest”**. A much more standard approach is to define conflict of interest as a conflict between personal interest and “proper performance of duty”. The latter is easier to understand, and can for example be fleshed out for individual officials by referring to their specific duties - rather than (more vaguely) to the “public interest”.
- In particular, **no Czech law defines conflict of interest clearly as a *situation rather than a form of misconduct***, in the sense explained in Section 2. Perhaps due to the lack of a clear definition, the current regulations may easily give rise to a **conflation of conflict of interest with actual misconduct or abuse of office** – for example in the prominence given in the Conflict of Interest Law to the prohibition on actual corruption. This may be one of the reasons for what appears to be a widespread misunderstanding of the concept, in which officials dismiss accusations of conflict of interest on the grounds that they behaved in the public interest or that the interest did not influence their decision, etc.

### 3.1.2 Recommendations

It is important that legal drafters are clear about the objectives of conflict of interest regulation – and in particular that the objective is not just to prevent corruption. Specifically, the following steps are recommended:

1. Adopt a definition of conflict of interest similar to that in the Council of Europe Model Code of Conduct for Public Officials - that conflict of interest arises from a situation in which the public official has a private or personal interest which is such as to influence, or appear to influence, the impartial and objective performance of his/her official duties.

This definition should be used in - or at least clearly inform - all laws and regulations on conflict of interest.

2. Likewise, ensure that the concept of personal interest is defined properly and consistently across laws, especially those that overlap in terms of the officials they regulate – for example the Conflict of Interest Law on the one hand, and the laws on regional and local government or on State Service on the other.
3. Incorporate the 2012 Code of Ethics of Officials and Employees of State Administration as a clearly binding document through a service regulation.

### 3.2 Prohibitions on functions (incompatibilities)

The Czech Constitution, Conflict of Interest Law and Law on State Service contain numerous prohibitions on the combining of functions, for example being a member of both chambers of Parliament, being President and judge at the same time. MPs may not hold a range of other functions – paid positions in public administration, prosecution or courts, police, Supreme Audit Office, offices of the President or either chamber of Parliament, state funds or the office of the Ombudsman. Ministers may not be chair/vice-chair of Parliament or members of parliamentary committees or commissions. Employees of public administration may not hold a range of other functions, including most elected functions (except for non-full time members of regional or local assemblies), judicial positions, management positions in regulatory authorities, while heads/superiors (meaning any official with subordinates, down to head of a unit) may not hold any function in a political party/movement.

#### 3.2.1 Issues and problems

The provisions on incompatibilities exhibit two main problems. The first problem concerns the **holding of multiple elected functions** - notably local, regional and national. Neither the Conflict of Interest Law nor any other legal regulation prohibits such cumulation of functions, which has developed into an issue of some concern since the establishment of the system of regional government in 2001. It is common for regional governors (a position bringing equal if not more power and influence than that of minister) to be also members of Parliament and/or mayors. Cumulation of functions may be damaging due to the risk of absenteeism or inability to perform multiple functions properly. It may also however give rise to direct conflicts of interest between a functionary's interest as a local politician and his/her interest as a national politician: s/he may find him/herself in a position of fighting the corner of a region for budget share while voting as a national politician on budget allocation; perhaps more seriously, being a member of the national legislature may give a politician the ability to negotiate favourable allocations of resources to the region/municipality of which s/he is governor/mayor – and pork-barrel budget allocations ("*porcování medvědu*") have long been regarded as one of the less desirable phases of parliamentary approval of the state budget. Last but not least, in a country where the corruption of elected officials is generally regarded as a significant if not serious problem, the holding of multiple offices may increase the opportunities for such corruption due to the power and influence that comes with multiple functions.

One attempt has been made to prevent cumulation of functions. The Code of Ethics for Member of the Plzen Regional Assembly states that elected members may perform only one full-time public function (full-time member of a regional organ, city/municipal assembly, Member of Parliament) for which s/he is remunerated from public funds; where a person performs more than one such function, s/he must resolve the situation within three months [i.e. relinquish functions in order that s/he only performs one].”

Local observers have also levelled criticism at ministers who are members of parliament, on the grounds that their attendance in Parliament is lower than that of other members. Such criticism has led to suggestions that MPs should be prohibited from being ministers at the same time, for example by introducing a “floating mandate” under which MPs who become ministers have their mandate as an MP suspended for the duration of their ministerial role and occupied by the highest person on their party’s election list who was not elected. This solution is used in a number of countries, including certain Western European ones.

Such a solution should be considered with considerable care, however. In a parliamentary democracy, government emerges from the will of Parliament and depends on the support of Parliament. Effective law-making depends on effective cooperation between government and Parliament, and between governing politicians and the parliamentary caucuses of the parties that constitute the government. From this perspective, prohibiting the holding of both functions could undermine normal links between the executive and legislature. For reasons such as these, in many democracies (if not most) it is seen as entirely normal and even desirable for the government to be composed mostly of elected MPs. In the Czech Republic, the relationship between Government and Parliament is not governed by clear traditions of cooperation, and this might be a reason to consider carefully proposals to cut existing links.

Whether the solution is chosen or not, cooperation/coordination between government and parliament need to be established and/or consolidated. Under the current system, it is essential that ministers do participate in parliamentary proceedings to a sufficient degree, though this may not necessarily have to be as intense as for MPs with no other official engagement; the norms of parliamentary participation could be underpinned more strongly with codes of ethics for the two houses of Parliament (see Section 3.4.1). Under a floating mandate, extra efforts will be needed to ensure cooperation and coordination.

The second problem highlighted by local observers is **insufficient regulation to restrict the political activities of state employees**. In particular:

- The new Law on State Service prohibits full-time members of elected assemblies of regions or municipalities from being state employees, but does not restrict this at all for members who are not full-time. The Union of Town and Municipalities argued that such a restriction would have a negative impact due to the lack of sufficiently qualified persons at local level. While this may be a legitimate argument in the case of smaller towns and municipalities, it is less clear whether it applies also to regional assemblies or for example Prague.
- While it is legitimate for the Law on State Service to permit membership of political parties to state employees, it is questionable whether any state employees should be



permitted to occupy party functions, when as full-time public servants they are obliged to implement any policies that are determined by the political process (as noted above, currently only heads/superiors are prohibited from holding such functions).

- The Law on State Service effectively facilitates the movement of officials between public administration and politics. Article 33.4 states that where an official becomes ineligible to continue in function due to his/her assuming a prohibited function (which includes all full-time elected positions), his/her position is suspended; on completing a term of elected office, the official may return to the same position. International practice varies greatly on this issue. While in the United Kingdom or United States, civil servants are prohibited from standing for any elected office, and would have to resign in order to do so, in Germany they are actively encouraged to stand, with six weeks of paid leave during the election campaign, and additional non-paid leave for the duration of their elected mandate. However, the German system originates from a political culture emphasising consensus and regarding government as a largely administrative activity; in addition, it has been criticised for the risks of conflicts of interest it raises and also for other reasons.<sup>7</sup> In the Czech system, in which the politicisation of public administration has been a major concern, logic would suggest that this form of ‘revolving door’ should be restricted.

#### **Recommendations:**

4. Measures should be taken to prevent the holding of more than one major elected function at the same time – especially that of regional governor and member of parliament. If a legal prohibition on cumulation of function is constitutionally impossible, a commitment to refraining from such practices should be embedded in codes of ethics in the Parliament and in regional governments.
5. Any reforms related to the parallel performance of the function of MP and minister (such as the “floating mandate” option) should take into account all the consequences of the reform chosen.
6. Consider restricting the political activities of state employees, or at least certain categories (for example in central government) by prohibiting them from standing for elected office.

### **3.3 Prohibitions/restrictions on external activities**

The Conflict of Interest Law and other laws establish a number of restrictions on the activities permitted to functionaries and state employees:

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<sup>7</sup> Conradt D.P. and Langenbacher E., *The German Polity*, 2013, p. 223. The authors also highlight that the German system leads to overrepresentation of civil servants and underrepresentation of many key occupations in society.

- MPs may not receive remuneration for sitting in the statutory organs of commercial entities in which the state owns a stake.<sup>8</sup>
- Ministers or other heads of central organs of public administration and chairs/members of other major regulatory bodies<sup>9</sup> may not do business or engage in self-employed activity, be a member of the statutory or other organs of a business entity unless sanctioned specifically by law, or be in any employment or similar relationship or in a public service position unless it is his/her official function. These restrictions do not apply to a functionary's own scientific, educational, publishing, literary, artistic or sporting activities, as long as these are not conducted as a business.<sup>10</sup>
- State employees may not be members of the management or controlling organs of business entities unless they are appointed to represent the state and receive no remuneration from the business. They may perform other gainful activities only with the written consent of the institution, with similar exceptions as in the previous bullet point. Similar restrictions apply to officials of regional administrations.
- Managers and representatives of state enterprises and members of their supervisory boards may not directly or indirectly enter into contracts linked to the business activity of the company, mediate business with the company, or participate in the business (or performing the function of a statutory organ or member of the Supervisory Board) of another entity with a similar subject of business.<sup>11</sup>
- All public functionaries except for MPs, mayors/deputy mayors/members of councils of municipalities who are not full-time, and police, are prohibited for a period of one year after leaving office from becoming co-owners, members of statutory organs or employees of business entities that in the three years prior to him/her leaving office won a public contract exceeding thresholds for large contracts, and on which the functionary in question decided.<sup>12</sup> In the case of contracts for good and service the thresholds are 3,395,000 CZK for central government and budgetary organisations, 5,244,000 CZK for regional and local governments; for all public works contracts, 131,402,000 CZK.

### 3.3.1 Issues and problems

The regulations summarised above governing the external activities of public officials are in many respects appropriate and in line with good practices in other countries. However, there are important exceptions:

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<sup>8</sup> Conflict of Interest Law, effective from 1 January 2007.

<sup>9</sup> There are 15 of these (including the Office of the Government), and others include: the Data Protection Office; Office for Standards, Metrology and Testing; Telecommunications Office; Energy Regulation Office; Czech National Bank; Supreme Audit Office.

<sup>10</sup> Conflict of Interest Law, Article 4.1-4.2

<sup>11</sup> Law on State Enterprises, Article 14.

<sup>12</sup> Conflict of Interest Law, Article 6.

- While members of parliament may not receive remuneration for representation in the statutory organs of companies in which the state holds a share, members of regional assemblies are not subject to any such restriction and may for example sit on the Supervisor Board of a city or regional transport company in return for remuneration decided by the company. The risks of corruption created by this led directly to the prohibition on MPs, which was passed in the Conflict of Interest Law and is effective since 2007; in most cases, MPs gave up their positions and were replaced by officials nominated by ministries, who were more likely to be qualified in the area and are under closer supervision.
- The restrictions on the post-service engagements of public officials are very limited. “Cooling off” periods for public officials after leaving office are good practice not only due to contracts in which such officials may have been involved. Where an official holds responsibility for regulation in a sector (for example the Czech Telecommunications Authority, the broadcasting regulator, etc.), there are good reasons for restricting his/her engagement in a company operating in that sector following termination of office. Reasons include the risk of his/her using confidential information about other companies in the sector, or being employed by the company as a reward for favourable regulatory decisions or opinions given while s/he was in office. Moreover, the law currently only forbids engagement of the most obvious kind (ownership stakes, representation in statutory organs and employment), and does not cover other types of equally risky engagement such as the provision of expertise/consultancy, engagement on external contract, etc.
- The law does not restrict the participation of state employees in political campaigns. The Code of Ethics of Officials and Employees of Public Administration oblige officials and employees to ensure that they “refrain from anything that could undermine trust in [their] impartiality.” As mentioned in Section 3.1.2, it is necessary for the Code to be established through a service regulation as obligatory and enforceable.

### **Recommendations:**

7. The Conflict of Interest Law should be amended to prohibit members of regional assemblies from being remunerated for sitting in the statutory organs of companies in which the state, region or municipality owns a stake.
8. The Conflict of Interest Law (Article 6) should be amended so that the officials covered by the Article are also forbidden from engagement in/with any company, where the official had regulatory responsibilities for the sector in which that company operates (this could be expanded to include the range of duties listed in the recent proposal of the Office of the Government. ‘Engagement’ should be defined to include not only employment or representation on statutory organs, but also the provision of any expert/consultancy services to the company.

### 3.4 Obligations in conflict of interest situations

Czech legislation establishes the following duties of public officials in situations where a conflict of interest arises.

**All public functionaries** (i.e. all full-time elected officials, minister, mayors, most senior officials of regulatory bodies and officials in important management positions in public bodies (see introduction to this section). Under the Conflict of Interest Law (Article 8),

“[W]hen participating actively in proceedings of a constitutional, state or sub-national organ or organ of a legal entity established by law (i.e. addressing the proceedings, submitting a proposal or having the right to vote), a public functionary must declare his/her relation to the issue in proceeding if the outcome of the proceeding could result in personal advantage or damage or s/he has another personal interest therein. This obligation does not apply if the advantage or interest is generally evident. The declaration is made verbally during the course of proceedings, at the latest before voting occurs, and is always recorded in the minutes of the proceeding.”

The obligation to declare an interest does not apply if the interest or benefit to the public official is “generally evident”. According to a commentary on the law by one of the most prominent Czech legal experts (the closest thing to an official interpretation)<sup>13</sup>, “generally evident” may mean either that: i) the matter/issue being decided (in which the public functionary has an interest) has consequences for an undefined group of persons including the functionary but also at least all members of the relevant body involved in decision-making – a typical example being where an MP votes on changes to tax rates; ii) where the matter/issue at hand has consequences only for the functionary (i.e. not the other members of the body), but this is general known, at least to all the members of the body.

**Local elected officials.** Under the laws on Municipalities, on Regions and on the Capital City of Prague, all elected representatives must declare any conflict of interest before proceedings on a matter commence.<sup>14</sup> Three regional assemblies (Prague, Plzen and South Moravia) have also approved Codes of Ethics. The Plzen and South Moravia codes reiterate this obligation. The Prague City Assembly Code goes further, that elected members should in such cases not participate in the discussion or vote.

**State employees.** The Law on State Service and Law on Officials of Self-Governing Administrative Units oblige officials to avoid any conduct that could lead to a conflict of interest; this could be interpreted as implying that officials should withdraw from proceedings in which they have a personal interest. In addition, the Administrative Code (Article 14) states that any person directly participating in the exercise of powers of an administrative organ, where s/he has an interest in the result of a proceeding due to his/her relation to a matter or participants, and it is therefore reasonable to assume that his/her

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<sup>13</sup> Vedral J., *Zákon o střetu zájmů: Komentář*, 2<sup>nd</sup> edition, C.H. Beck, Prague 2012. 201 pp. 74-75.

<sup>14</sup> For example Article 83, Law on Municipalities.

impartiality is in doubt, is excluded from all official steps that could influence the result of the proceeding.

**Parliamentary procedures.** In addition, amendments to the Rules of Procedure of the Chamber of Deputies that come into effect on 1 March 2015 bring important changes to the legislative process. Article 43.1 states that for all parliamentary committee meetings minutes are kept, providing a full record of who chaired the session, who presented what proposals, who spoke, together with a full record of how each MP voted on the final resolution of the committee; a similar record of voting on other points is to be kept if any MP requests it. These amendments can be expected to increase the transparency of parliamentary proceedings considerably.

### 3.4.1 Issues and problems

The provisions of Czech law requiring officials to declare conflicts of interest exhibit the following problems.

- The provisions of the Law on Conflict of Interest require declaration of conflicts “during proceedings, or at the latest before voting or a decision takes place. The Law on Municipalities however requires elected officials to declare the conflict before proceedings commence. For local elected officials there are therefore two conflicting provisions.
- The fact that elected officials are not prohibited from participating or voting in a matter on which they have notified a conflict of interest has been criticised. Restricting participation or voting in the proceedings of elected bodies raises genuine constitutional issues and has been rejected as a solution during discussions prior to the passage of the Conflict of Interest Law. Unlike most elected assemblies in parliamentary democracies, neither the Chamber of Deputies nor Senate have a Code of Ethics or similar document that would set out obligations (even if non-enforceable) and guidelines for members.<sup>15</sup> Only two regional assemblies and the Prague City Assembly – out of 14 regions – have passed codes of ethics for elected members.
- The provision in the Conflict of Interest Law exempting “generally evident” benefits and interests from being declared is problematic under the interpretation of the law cited above. It is standard practice to exempt (from the duty to declare conflicts of interest) interests that are shared with a wider community. However, exempting interests simply on the grounds that all members of the body in question are aware of the interest is highly controversial. The point of obligations to declare interests is not just to provide information to the decision-making body but also - and especially in the case of an elected body – to inform the public.

### Recommendations:

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<sup>15</sup> See <http://www.korupce.cz/cz/protikorupcni-temata/ostatni/eticky-kodex-poslance-108312/>

9. The Chamber of Deputies, Senate and regional assemblies should approve codes of ethics/conduct that would provide clear guidance on the obligations of elected members relating to conflict of interest. In addition, a procedure should be established under which the Parliament/assembly as a whole or the relevant body (e.g. committee) may formally recommend to a member in a non-binding fashion that s/he withdraw from a particular matter.
10. The exemption of “generally evident” interests from the duty to declare conflicts of interest in particular proceedings should be clarified in the Conflict of Interest Law so that it clearly applies only to interests that are held by a wider community, and not also to interests that are just known to a wider group of persons.
11. For both elected members and other public functionaries, declarations of conflict of interest in particular proceedings should be made available online along with information on any resolution taken by the relevant body and whether the functionary concerned participated in the proceeding concerned or not.

### 3.5 Gifts

The Law on State Service prohibits state employees from accepting “in connection with performance of duty” gifts with a value exceeding 300 CZK (approximately 11 Euro). This provision is problematic for two main reasons:

- It is not clear whether the provision prohibits only individual gifts exceeding the stated value, or prohibits the acceptance of gifts with a total value exceeding 300 CZK in one year. This may not be a significant problem given the low threshold value for declaring gifts. However, if it applies to the total value of gifts within a year, the threshold may be too low.
- The phrase “in connection with the performance of duty” is problematic. It excludes from the prohibition any gift/benefit provided if this was not done “in connection with the performance of duty”. However, determining whether a gift was provided in connection with duties or not is complicated at a minimum; moreover, it appears to almost reduce the provision to a prohibition on corruption. Regulations on gifts usually contain simple prohibitions on gifts exceeding a certain value, without introducing qualifying clauses related to “motivation.”
- The law only applies to state employees, while employees of regional and local government are not subject to formal regulation of gifts.

#### **Recommendations:**

12. Amend the prohibition on gifts in the Law on State Service to delete the phrase “in connection with the performance of duty”.

13. Establish similar restrictions on gifts for other public officials or regional and local government.

### 3.6 Public contracts

The Law on Public Contracts forbids members of evaluation commissions from any bias in relation to a contract or to bidders, and specifically from playing any part in preparation of a bid, having a personal interest in the allocation of a contract, or having any personal, working or other relation to a bidder. Every member of an evaluation commission for a contract must declare that they are not biased in writing.

This regulation is appropriate and appears to be at least formally implemented in practice. More serious problems are found in direct corruption, including manipulation of tender conditions. In addition, there is no legal restriction on connections between companies implementing contracts and companies contracted to supervise contract implementation. Discussion of these issues would require more comprehensive review of public procurement regulations, which is beyond the scope of this paper.

### 3.7 Periodic declarations

Under the Conflict of Interest Law all public functionaries are obliged to submit in writing (or in electronic form with electronic signature) annual declarations (by 30 June of each year for the previous year, and within 30 days of leaving office) containing complete, precise and truthful information on the following:

**Activities (Article 9).** This part of the declarations should state whether the functionary: does business or engages in any other self-employment activity; is a co-owner, member, statutory organ or member of statutory organ of a legal entity engaged in business activity; or has an employment or public service engagement or equivalent different from the one s/he performs as a public functionary.

**Assets (Article 10).** Immovable property ownership rights acquired during the period of office, including price/s and method of acquisition; movable property rights acquired if these exceeded 500,000 CZK during the year; securities or other ownership stakes in commercial companies exceeding 50,000 CZK in value for a single issuer/company (or 100,000 CZK for more issuers/companies).

**Income, gifts and obligations (Article 11).** Any monetary incomes or other material advantages (especially gifts exceeding 10,000 CZK in value), remuneration, incomes from business or other self-employment activity, dividends or other incomes from participation in the activities of legal entities engaged in business activities, if the total of such incomes exceeds 100,000 CZK for the calendar year; unpaid financial obligations (including financial value and the creditor) especially loans, rental obligations, obligations from rental contracts with purchase rights, or bill obligations, if the total value of obligations exceeded 100,000 CZK as of 31 December of the reporting year.

Declarations are filed to the “evidentiary organ” using forms issued by the Ministry of Justice. The “evidentiary organ” is the institution to which functionaries file declarations, and is therefore different for each category of official – the Mandate and Immunities Committee of the Chamber of Deputies or Senate, ministry or other institution in which an official works, director of Regional Government Office, Director of the Prague City Administration, and secretaries of city/municipal offices (or mayor where there is no secretary). Declarations may be accessed by the public on request, either in person, in writing or in electronic form on provision of a password by the institution in question.

These obligations are reiterated in other documents, such as the Code of Ethics for the Prague City Assembly.

### 3.7.1 Issues and problems

The current system of periodic declarations has been subject to considerable criticism by Czech non-governmental organisations as well as international organisations. These criticisms are all reflected in the Anti-corruption Strategy for 2013-2014 adopted by the previous Czech Government, and to a lesser extent the Concept for the Fight against Corruption for 2015-2017.

The main problems in the current regulations/institutional framework are the following:

- Declarations do not have to be filed at the moment an official takes office or begins an electoral term. This undercuts one of the main supposed purposes of declarations, which is to reveal (or at least obligate officials to reveal and justify) changes in interests, assets and/or income that occur *during* his/her engagement as a public functionary.
- International experience suggests strongly that it makes more sense to require officials to declare significant changes in interests, assets or income *as they occur*, rather than requiring periodic declarations (annual).<sup>16</sup> A system of declarations submitted at predictable intervals is easier to circumvent than one requiring proactive declaration of changes.<sup>17</sup>
- Declarations are submitted in paper form, according to a template issued by the Ministry of Justice. Declarations may be submitted electronically only with an electronic signature. This system is cumbersome: it makes the process of declaration more complicated for functionaries, prevents the use of information technology to compare declarations against other relevant databases (such as the Land Register or Commercial Register) if this becomes necessary, and hinders provision of declarations to the public (either proactively or on request). Major improvements in the system could be made without the introduction of a full online electronic declaration system. For example, in

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<sup>16</sup> For example, this is the clear opinion of former officials at the Slovene Commission for the Prevention of Corruption, which has implemented probably the most effective asset declarations system in Europe.

<sup>17</sup> This is the experience of Slovenia, for example.



Slovenia, officials may submit declarations online with an electronic signature. However, most do not do so, and an interim solution is provided whereby officials fill out an electronic version of the declaration on the website of the Commission for the Prevention of Corruption. When they save it they can print out the document complete with a barcode, which when they deliver the declaration to the Commission ensures that the electronic version is transferred to the Commission's official database.

- The system of declarations is highly fragmented, with no central database or register of declarations. The evidence indicates clearly that most 'evidentiary organs' simply accept declarations and store them, and do not make any attempt to verify their accuracy (see Section 3.8 below).
- Although the law requires declarations to be made available to the public on request, the procedure for gaining access is cumbersome and unnecessarily restrictive. Information is provided only on written request (although this may be sent electronically), and must be viewed either at the location of the institution concerned (e.g. Parliament) or electronically if the declarations are stored in a public data network; in the latter case a password is provided to the requester. The Oživení study revealed widely differing practices in the provision of declarations: for example, some institutions failed to reply to requests, some provided electronic passwords to access declarations but with varying periods of validity.
- The restriction on using information from asset declarations is poorly formulated. The purpose of asset declarations is not only to reveal conflict of interest; it may also be to reveal evidence of corruption itself, which is not the same thing (corruption may occur without a conflict of interest situation arising in the sense of the law). It is not clear why there is a need for a specific restriction on the use of information provided

### **Recommendations:**

14. In line with the proposal of the Office of the Government, to introduce a system that ensures declarations are in electronic form, staged appropriately to ensure that implementation is realistic – for example beginning with ministers, MPs, functionaries of central government institutions, regional governors and members of regional assemblies including Prague City. Such a system need not be a full-fledged online declaration system: declarations may be submitted in writing formally, but at the same time as an electronic document that the central evidential organ may store. The electronic format should facilitate the automatic summarisation of data by category of asset/income/liability for the purposes of public disclosure (see Recommendation 15 below), as well as automatic verification against other databases.
15. Amend the Conflict of Interest Law to guarantee proactive publication of declarations online, for at least senior functionaries such as the ones listed in Recommendation 14 above. The information provided public may be summarised, for example to provide total real estate value without the addresses of individual properties, although

provisions should be included to provide more detailed information to persons who can demonstrate a need.

16. Delete the restriction in the law on the use of information from asset declarations, with the possible exception of prohibiting its use for commercial purposes.

### 3.8 Oversight, control and sanctioning

A fundamental problem of the asset declaration system is the absence of any real mechanism for the verification of declarations. There are thousands of 'evidentiary organs' – from the Parliamentary Committee to the mayor of the smallest municipality, and none of them performs any active control of the veracity of officials' declarations. At lower levels of public administration – for example in smaller municipalities, declarations are submitted by functionaries effectively to themselves. The Government Anti-corruption Strategy for 2013-2014 summarises the problem succinctly:

The task of controlling individual declarations [of assets] is supposed to be performed by 'evidential organs', but in reality these only collect declarations without dealing at all with their content. When in addition we take into account the relatively difficult – and sometimes even obstructive - process which one must go through in order to see declarations, and the large number of public functionaries obliged to declare, it becomes clear that there is practically no functioning control.<sup>18</sup>

The Strategy (not to be confused with the Government Concept for the Fight Against Corruption for 2015-2017 approved in December 2014) underlined the impact of the absence of sufficiently consolidated oversight, in particular minimal knowledge of the Conflict of Interest Law among officials responsible for imposing sanctions in municipalities. Perhaps one of the best indications of the lack of oversight is the fact that there is no official knowledge of the total number of public functionaries, i.e. those subject to the Conflict of Interest Law. According to information collected by the Office of the Government in February 2015, there are 5981 functionaries from institutions of central state administration, including organisations established by central state institutions; figures on regional and local government were not available and were estimated at 30,000.

Concerning sanctions, evidential organs notify the "competent organ of state administration", which may impose a fine of up to 50,000 CZK (1800 Euro) on functionaries for failure to submit a declaration, submission of incorrect information, performance of a function incompatible with one's position, and on members of evidentiary organs and others who come into contact with information in declarations for violating the duty to maintain the confidentiality of such information. The same fine may be imposed on anyone who uses or processes information from declarations for any other purpose than the detection of conflict of interest of a public functionary during the performance of duty. It should be noted that the law fails to establish any sanctions for failing to declare a conflict of interest,

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<sup>18</sup> Government Anti-corruption Strategy for the Years 2013-2014, p. 55 (Czech version), p. 57 (English version).

or for violating post-office restrictions (revolving doors). Last but not least, the law does not provide for sanctions to be made public.

The research conducted by Oživení checked the declarations for 483 officials for the year 2010 and in February 2012 submitted notifications of 123 alleged violations of the Law by functionaries. For 28 proceedings involving the highest functionaries (MPs and ministers), as of March 2013 fines of 500-5000 CZK (c. 18-175 Euro) had been imposed totalling 32,500 CZK; for functionaries in general, fines are typically not imposed at all. Such fines cannot be expected to provide any incentive to obey the law, and the fact that sanctions are not published removes the other crucial component of sanctioning – public exposure.

An additional consequence of the lack of properly established institutional oversight is a parallel failure of evidentiary organs or any other organs to play a role in educating public officials about their obligations under the Conflict of Interest Law, to raise awareness proactively. A typical consequence is the response by officials to accusations of conflict of interest of the type “Everything is fine because the interest did not influence my conduct”, which reveals fundamental misunderstanding of the concept of conflict of interest and the purpose of regulating it.

#### **Recommendations:**

17. A central organ for oversight of asset declarations and conflict of interest should be established with the status of an independent institution (similar to those such as the Data Protection Office). The organ could be based on the model proposed in amendments to the Law on Political Parties and Movements drafted by the Ministry of Interior Department of General Administration June-July 2014. In light of the need to establish an oversight body for political party finance, the amendments envisaged that the institution would perform oversight for both political finance and conflict of interest/asset declarations.
18. The central organ should perform tasks in the area of conflict of interest and asset declarations that include the following:
  - a. Raising the awareness of public functionaries of the legal framework governing conflict of interest and their obligations through the provision of guidelines, training and guidance on request.
  - b. Ensuring the existence of and keeping/administering a list of all functionaries subject to the Conflict of Interest Law.
  - c. Receiving asset declarations from all public functionaries in physical and/or electronic form (see Recommendation 14).
  - d. Administering a central register of declarations and ensuring its availability to public scrutiny with appropriate summarisation.

- e. Acting as an additional channel for complaints of alleged violations of the Conflict of Interest Law – not only concerning asset declarations.
  - f. Publishing of annual reports and violations against public officials detected.
  - g. Carrying out analysis of the legal framework and its practical application, and drafting or assisting initiatives for reforms where appropriate.
19. In the area of asset declarations, the activities of the central organ should be oriented primarily towards ensuring the uniformity and transparency of the declaration system, in order that the system functions effectively as a preventive mechanism. The organ should also conduct audits/checks of asset declarations selected by risk assessments, and on the basis of information provided from external sources such as the media or public.
20. In order to facilitate public oversight of the interests and assets of public functionaries, consideration should be given to providing access to the Land Register [*Katastr nemovitosti*] online free of charge.
21. Sanctions for violation of conflict of interest legal provisions should be reformed as follows:
- a. Fines should be made significantly more stringent in order that they provide a real incentive to comply with obligations to provide accurate financial declarations in particular.
  - b. Sanctions should be differentiated according to seriousness. For example, the Conflict of Interest Law should provide that submitting a declaration late (missing the deadline for submission) results in a fine that is in a lower band than failing/refusing to submit entirely.
  - c. Sanctions should be introduced in both the Conflict of Interest Law and other relevant laws (on State Service, Municipalities etc.) for failing to declare a conflict of interest, with the sanction graduated – for example, failing to declare an interest when making a decision on a matter of serious consequence (such as a regulatory decision) should be sanctioned more severely than failing to declare an interest in a proceeding where the decision is of less consequence or the participation of the functionary less important/central.
22. Proceedings which end with the imposition of sanctions on officials for violations of conflict of interest provisions should be made public where sanctioning decisions have final validity.