

# NATIONAL REPORT

## Czech Republic



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# Corporate Governance in Czech state-owned companies

Regulatory review

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# State-owned enterprises – Prevention of corruption and “State capture”

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## EXECUTIVE SUMMARY

State-owned enterprises (SOE) are a major player on the market in the Czech Republic. The turnover of publicly-owned enterprises exceeds CZK 680 billion (EUR 25 billion), which counts for about two thirds of the Czech state budget. Most of the publicly owned enterprises are corporations at least partly owned by regions or municipalities; the number of SOEs is about a hundred, but they are more significant than regionally or municipally owned enterprises.

According to the legislation, the Czech state may conduct business in two ways. The first way is through its participation in a joint-stock company or a limited liability company. The second way is via a state enterprise (“státní podnik”). In this study, we consider both types of companies as state-owned enterprises, provided that the state, a region or a municipality holds a majority stake therein.

Most companies owned and controlled by the Czech Republic are business corporations under private law. These business corporations usually are of strategic importance of whose activity pursues a specific interest. The particularity of the Czech Republic (and other countries which were governed by the communist regime before 1991) is the existence of a significant number of state enterprises. Today, the majority of 280 state enterprises are in liquidation, only 106 of them are active. Compared to business corporations, the state enterprises have a closer connection with the state and state has greater control over the property of the state enterprise. Lesy České republiky (Forests of the Czech Republic) and Česká pošta (Czech Post) are among the most important state enterprises, therefore we decided to include them in the case study. The business corporations included in the study are České dráhy (Czech Railways), ČEZ, Dopravní podnik hl. m. Prahy (Prague Public Transportation Company) and the state contributory organization Ředitelství silnic a dálnic (Road and Motorway Directorate).

The importance of SOEs is growing, mainly because SOEs dispose of plenty of resources. The Czech legislation does not contain a sufficient legal framework for a reasonable transparency of management of the state-owned enterprises. The law enables the political representatives to interfere with the functioning of the SOE but does not contain the sufficient restraints against the possible conflict of interests of politicians, the state, and SOE. According to a study published by Transparency International Hungary, the excessive political influence is a common and serious problem for all Visegrad Four Countries.

The Czech legislation regulates the issue of SOEs very briefly. Czech Republic fulfils only five recommendations out of 20 OECD recommendations for state-owned enterprises, which are perceived as a standard for the good practice of SOEs. The most significant problem seems to be the non-existence of the state ownership policy, which both Czech and foreign experts repeatedly criticize. In addition, Czech legislation does not cover the rules for the appointment of persons to SOE's bodies, which makes the early detection of the conflict of interest challenging and does a service to clientelism. The Czech Public Procurement Act is too lenient and enables the corruption and clientelism; some of the practices were traced back and prosecuted before the courts. The Czech Republic also has a loophole regarding the supervision of economic activities for SOEs – for example, the companies such as ČEZ do not fall under the jurisdiction of the Supreme Audit Office. The public control also falls flat as SOEs fail to respect the Free Access to Information Act.

## STATE OWNERSHIP POLICY

According to the OECD recommendations, the State should act as an informed and active owner and therefore the State should have a clear and consistent ownership policy. The state ownership policy ensures that the management and administration of the SOE are carried out in a transparent and accountable manner, and the goals defined in the policy are a prerequisite for other tools of the good governance, such as the personnel policy or remuneration.

However, the state ownership policy does not exist in the Czech legislation, which was also criticized by the Czech Supreme Audit Office. Because of the inexistence of the state ownership policy, the Czech state cannot provide the SOE and the public with the criteria on which the State would assess the performance of individual SOEs and provide the SOE with the necessary autonomy in decision-making when the conflict of interest is present. Besides that, there are no clear rules which stipulate what actions should the Supervisory Board be overseeing, and it is not clear what are the criteria by which the members of the Board of Directors and the Supervisory Board should be remunerated. The ownership policy is the necessary basis for the proper functioning of SOEs, without which it is nearly impossible to carry out other policies.

## APPOINTMENT PROCESS OF TO THE BOARDS OF SOES

The OECD recommends the State to determine a structured and transparent system of nominations to the state-owned enterprises and actively participate in the nomination process to SOE bodies. Members of these bodies ought to be equipped with the necessary skills and objectivity to perform the strategic governance and control over the management, have no criminal record and be responsible for their actions. A good practice may be to establish a nomination committee, which would oversee the nomination process to the SOE's bodies and/or limit the number of functions performed by one person simultaneously.

However, the Act on Transparent Appointment Process to the Boards of SOEs was not adopted yet. The first draft of the Bill was introduced to the Chamber of Deputies in 2012, even though criticized by the anti-corruption NGOs: the Bill regulated the appointment process insufficiently, did not address the composition and rules of operation of the Ministries' nomination committees and did not specify the qualification and personal requirements of the candidates. After twists and turns, the Government introduced a draft of the legislative intent of the new law in June 2016. The draft included the exclusion of deputies and senators of management, supervisory and control boards of the SOE four years after the expiry of their mandate or a proposal for the establishment of a government nomination committee consisting of experts. Nevertheless, we do not expect an easy adoption of the Law.

The seeming improvement in the transparency of the appointment process was the establishment of the nomination committee in 2014. However, the role of the committee is only advisory, and the experts criticize its activity as insufficient. The personal composition of the Committee is also questionable – the committee consists of only three members who are appointed and removed from office by the designated members of the Government, therefore their independence is rather doubtful.

Besides the insufficient appointment legislation, the risk of the conflict of interests is also regulated poorly. The current Act on Conflict of Interests regulates the incompatibility of certain functions, but on the other hand allows the public officials to be members of the Supervisory Boards in SOEs and other controversial positions, either simultaneously or consecutively. The phenomenon known as “revolving door”, when influential people in politics switch from important posts in the state administration to private companies and vice versa, is common in the Czech Republic.

As for the remuneration, the first rules for the pay of members of the bodies of SOEs were not adopted until 2010 (Principles of Remuneration of Senior Executives and Board Members of Companies with the State Ownership Over 33%). However, the Principles are not respected enough – the ministries fail to comply with their obligation to inform the Government, and the Ministry of Finance does not have the right to control the Ministries’ compliance with the Principles.

## **PUBLIC PROCUREMENT PROCESS**

Regarding public procurement, the Czech Republic ranks among the worst countries in the European Union – in 2015, one third of public procurement engagements were contracted without a tendering process and there is an increase in the number of cases where the contracting authority was selecting the supplier out of one bid. The Supreme Audit Office has been criticizing contracts with one competitor for many years, as these contracts limit competition and negatively affect the profitability of state purchases. Strengthening the transparency of public procurement is also recommended by Transparency International.

The quality of legislation of public procurement is inconsistent. In 2006, the stricter Act on Public Procurement was adopted, but since 2013, due to the increase in the limits, the Act is only used for the large contracts and the contracting authority does not have to call off the tender if only one bid is presented. The new Act on Public Procurement was passed in April 2016. While the Act offers contracting authorities the tools to take into account the quality of offers and requires the successful tenderer to reveal the final owner, the Act also changes the limits so that more of the tenders will fall into the less transparent regime of contracting.

Access to information regarding the public procurement was until recently covered only by the Act on Free Access to Information, according to which authorities must make basic information public and furthermore, anybody can request further information without providing a reason for the request. Nevertheless, public institutions have different opinions about which SOEs must comply with the Act. For this reason, the provision of information is difficult to enforce.

The Act, which should bring more transparency to the public procurement process, is the Act on the Registry of Contracts. This Act, effective since 1 July 2016, orders SOEs to publish their contracts with suppliers on the internet and therefore makes public finances more transparent. For now, the Act is still under an annual testing period – the sanction of nullity of the contract if not published does not apply. The Act might have been weakened by the Deputies, who proposed an amendment which would enable an exception from the law for some SOEs, such as ČEZ or Budvar, but the amendment did not pass.

## **SUPERVISION OF ECONOMIC ACTIVITIES OF SOES BY AN INDEPENDENT AUTHORITY**

In the Czech Republic, it is the Supreme Audit Office who controls the public financial management of SOEs. Even though according to Transparency International Hungary the Supreme Audit Office is among the most potent institutions in fighting corruption and clientelism in the Czech Republic, the legislation of the controlling of the public financial management of SOEs is insufficient, and its enforcement is difficult. Even though the independence of the Supreme Audit Office is incorporated in the Constitution and the Act on the Supreme Audit Office, this authority might also be found in the conflict of interest – 5 out of 7 members of the collegium of the Supreme Audit Office between 2005 and 2012 were former members of the Czech Parliament.

The Act on the Supreme Audit Office does not include among the competencies of the SAO the external control of the administration and the public financial management of SOEs. According to the independent experts, this Act should be amended and the competencies of SAO broadened. The Czech NGO Rekonstrukce státu proposes that the Act should also cover the control of the financial management of SOEs where the Czech state, the region or the municipality have major stake (above 50%). The Chamber of Deputies tries to amend the Act since 2013, but it has been voted down by the Senate three times already.

## **OVERVIEW OF THE CASE ANALYSIS**

In the Czech Republic, the quality of the legal framework for SOEs is very poor - the framework legislation exists, but there are no or little provisions. The quality of monitoring mechanisms for SOEs is also insufficient. The government cannot assess the performance of SOE management due to the lack of the state ownership policy, the public control fails because many SOEs refuse to provide information required by law and the Supreme Audit Office competences are too narrow. The Czech Republic needs to adopt the rules that would address the issues that SOEs have and keep on pushing on more transparent approach.

The quality of the legal framework for SOEs in the selected sectors (transportation, energy, environment and delivery services) is also poor; in spite of existing framework legislation, there are no specific provisions or the application of the provisions is weak. The main problems in the selected sectors are the excessive political influence and non-transparency in the management decision-making process. A persistent problem is the non-existence of the state ownership policy, which leads to a chaotic strategic management of the SOE. Nevertheless, the Czech legislation insists on non-financial reporting as a part of the annual report of the company and usually contains a sufficient amount of information.

The selected state-owned enterprises have a lot in common. The clientelism in these companies is a wide-spread phenomenon and the appointment process into the SOE bodies are under a political influence and non-transparent. For example, the energy company ČEZ, when under the direction of Martin Roman, had excellent relationships with the Czech politicians and lobbyists, the prime minister “bribed” his political opponent with a promise of a position in the Supervisory Board of the company České

dráhy and the general director of Lesy ČR was to be chosen by the lobbyists, not the politicians.

Among the selected sectors, all of the companies were sanctioned by the Anti-monopoly Office. The fine for the company České dráhy was even the highest fine of this type in the Czech history, CZK 25 million, due to a flaw in the public procurement tender. Ředitelství silnic a dálnic and Dopravní podnik hl. m. Prahy were fined too. ČEZ was sanctioned by the Anti-monopoly Office in 2004, Lesy ČR was sanctioned in 2010. Česká pošta was sanctioned repeatedly, mostly for the flaws and non-transparency in the public tender. Recently, the Anti-monopoly Office is investigating Česká pošta for abusing of dominant position.

## 1. GENERAL OVERVIEW OF CZECH STATE-OWNED ENTERPRISES

State Owned Enterprises (SOE) are significant players in the Czech Republic. The turnover of publicly-owned enterprises exceeds 680 billion CZK, or about two-thirds of the Czech state budget, and is still growing<sup>1</sup>. Most of the publicly-owned enterprises are corporations with an ownership interest in territorial self-governing units; while the state-owned companies make up a much smaller part, but their significance is for that bigger.

According to Czech legislation, the state can take part in the business in two ways. The first way is the participation of the state in a joint stock company or a limited liability company<sup>2</sup>, the other is through a state enterprise<sup>3</sup>. In this study, both types of companies are considered to be state-owned enterprises provided the state or municipality have more than half ownership interest in them.

Most corporations owned and controlled by the state are, in terms of the private law, commercial corporations that are of strategic importance or whose activities follow a specific interest. The specificity of the Czech Republic as a state governed prior to 1991 by the Communist regime is the existence of a large number of state-owned enterprises. At present, most of the 280 state-owned enterprises are in liquidation<sup>4</sup>, with 106 remaining active. Compared to commercial companies, the state enterprise has a closer personal interdependence with the state and more control of the state over the property of the enterprise. The most important state-owned enterprises include Lesy Česká republika and Česká pošta (the Forests of the Czech Republic and the Czech Post Office), which we have decided to include in a case study.

The importance of public enterprises is growing, especially as public enterprises handle large resources of which volume is growing. The Czech legislation does not contain a sufficient legal framework for the acceptable transparency of the administration of state-owned enterprises. The legislation allows political representation to interfere with the functioning of the state-owned enterprises but does not contain sufficient barriers to possible conflicts of interest of politicians, the state and the SOE. According to a study by the Hungarian branch of Transparency International<sup>5</sup> undue political influence on institutions is a common and serious problem for all Visegrad countries.

### 1.1 OVERVIEW OF LEGISLATION ON STATE-OWNED ENTERPRISES

Czech legislation regulates the issue of state-owned enterprises very briefly. Of the 20 OECD recommendations for state-owned enterprises, which are taken as a standard of good practice in the management of public enterprises, the Czech Republic fulfils five, and only partially<sup>6</sup>. The most significant problem seems to be the absence of a state ownership policy, the absence of which is repeatedly pointed out by Czech and foreign experts. The Czech Republic still does not have established rules for the appointment of persons to the SOE bodies, making it difficult to detect conflicts of interest on a

<sup>1</sup>Centre of Applied Economics: Political Control and Corruption Potential of Publicly Owned Enterprises, 2013 Available at <http://www.zindex.cz/data/2013-09-10-SOEs-studie.pdf>

<sup>2</sup>Act No. 90/2012 Coll., On Commercial Companies and Cooperatives (Commercial Corporations Act), effective from 01/01/2014

<sup>3</sup>Act No. 77/1997 Coll., On State Enterprise

<sup>4</sup>Miloš Nagy: State Enterprise. Graduation thesis, Charles University in Prague, Faculty of Law, 2014

<sup>5</sup>Transparency International Hungary: Corruption Risks in the Visegrad Countries, 2012. Available at [http://www.transparency.sr/wp-content/uploads/2012/07/visegrad\\_net.pdf](http://www.transparency.sr/wp-content/uploads/2012/07/visegrad_net.pdf)

<sup>6</sup>Haló newspaper: The Czech Republic as trafiká paradise, 2013. Available at <http://www.halonoviny.cz/articles/view/8883065>

timely basis and plays into the hands of clientele links. The Czech Public Procurement Act is too benevolent and in the past, has given the possibility of corrupt practices and clientelism, which have been documented and some of them prosecuted. The Czech Republic also has a gap in controlling the management of state owned companies where companies such as CEZ do not fall under the authority of the Supreme Audit Office. Public control fails, SOE often do not fully respect the law on free access to information<sup>7</sup>.

### 1.1.1 State ownership policy

According to the OECD’s recommendations<sup>8</sup>, the state should act as an informed and active owner and should therefore have a clear and consistent ownership policy. The state ownership policy ensures that governance and ownership of state-owned companies are conducted in a transparent and accountable manner, and the goals defined therein are a prerequisite for other good governance tools such as personnel policy or remuneration<sup>9</sup>.

In the Czech Republic, however, the state’s ownership policy does not exist<sup>10</sup>, which was also criticized by the Supreme Audit Office<sup>11</sup>. Because of this, the state cannot provide companies or the public with criteria to measure the performance of individual SOE and to provide the SOE with the necessary autonomy in decision-making in cases where there is a conflict of interest between the SOE and the State. The Supervisory Board also does not have a clear definition of what specifically to supervise, and it is unclear on what basis the members of the Board of Directors and the Supervisory Board should be rewarded. Ownership policy is a necessary foundation without which other policies can only be implemented with difficulty.

### 1.1.2 Appointment of persons to bodies of state-owned enterprises

The OECD recommends<sup>12</sup> that the State establishes a structured and transparent nomination system for state-owned companies and actively participate in nominations to its bodies. These authorities should have the necessary capabilities and objectivity to exercise strategic management and management control, be irreproachable and accountable for their actions. Good practice may be the appointment of a nomination committee that oversees the nomination process to the SOE bodies or a limitation of the number of functions performed simultaneously by one person.

In the Czech Republic, however, the law on the transparent occupation of bodies of state-owned institutions has not yet been adopted. The first draft of the law appeared in the Chamber of Deputies in 2012 but was criticized by anti-corruption not-for-profit organizations for its shortcomings: the draft did not sufficiently regulate the nomination process, did not address the composition and rules of the Ministerial Commissions’

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<sup>7</sup>Act No. 106/1999 Coll., On Free Access to Information

<sup>8</sup>OECD Guidelines on Corporate Governance of State-owned Enterprises.

<sup>9</sup>Ecological legal service: Problems of State Owned Firms Management, 2012. Available at <http://www.statnifirmy.cz/problemy-rizeni-statem-vlastnenych-firem>

<sup>10</sup>Petr Bouda, Martin Fadrný: Transparency and Responsibility in the Management of Commercial Companies Controlled by the State and Local

<sup>11</sup>Authorities, 2011. Available at [http://www.statnifirmy.cz/sites/default/files/podklady\\_-\\_pracovni\\_snidane\\_1.pdf](http://www.statnifirmy.cz/sites/default/files/podklady_-_pracovni_snidane_1.pdf)

<sup>12</sup>Supreme Audit Office: Checklist of audit engagement No 15/05, 2015. Available at <http://www.nku.cz/Ron-zavery/K15005.pdf>

nomination committees, and did not specify the qualifications and other personality assumptions of the candidates<sup>13</sup>. Following the peripetia the government submitted in June 2016 a proposal for a substantive intent of the new law, including the suspension of deputies and senators from the managing, supervisory and controlling bodies four years after the end of their mandate, or a proposal to establish a government nomination committee made up of experts. However, we do not expect easy adoption of the law.

Moving forward the transparency of nomination processes was the establishment of the nomination committee in 2014, the Government Committee for Personnel Nomination. However, the Committee has only an advisory role and its activity is criticized by experts as insufficient<sup>14</sup>. The Committee can also be criticized for its staff composition - it consists of only three members who are appointed and dismissed by designated members of the government; their independence can therefore be doubted.

In addition to insufficient regulation of nominations, the legislation also regulates unsatisfactorily the risk of conflict of interest. While the current law<sup>15</sup> regulates the incompatibility of certain functions, it allows public officials to be members of the supervisory board in state-owned companies and other controversial positions, both concurrently and consecutively. There is also a phenomenon known as the “Revolving Door,” where influential policymakers move from important positions in government administration to private companies and vice versa<sup>16</sup>.

Regarding remuneration, the first rules on the remuneration of members of the SOE were approved only in 2010 by a government resolution called Principles of Remuneration of Management Employees and Members of Corporate Company Bodies with State Ownership over 33%, including state enterprises and other state organizations established by law or Ministry. However, the principles are not sufficiently respected - individual ministries do not fulfil their duty to inform the government and the Ministry of Finance has no right to monitor compliance with the Principles<sup>17</sup>.

### 1.1. 3 Public procurement

With regard to public procurement, the Czech Republic ranks among the worst countries in the European Union<sup>18</sup> - in 2015 one third of public contracts went to the hands of companies without tenders and there cases where only one bid was selected were on the increase<sup>19</sup>. Contracts with one contestant have been criticizing the SAO for a long time, because they are restricting the competitive environment and negatively affecting the economic advantage of state purchases<sup>20</sup>. Strengthening the

<sup>13</sup>Reconstruction of the state: Expert nominations to supervisory boards, 2016. Available at <http://www.rekonstrukcestatu.cz/cs/odborne-nominace-do-dozorcich-rad>

<sup>14</sup>Frank Bold, Our politicians: Analysis: The Government Committee for Nominations to Supervisory Boards did not solve the problem of dangerous trafikas, 2014. Available at [http://www.rekonstrukcestatu.cz/tiskove-zpravy/20140721\\_tz\\_rs\\_analyza\\_trafiky-je-mozne-dale-rozdat.pdf](http://www.rekonstrukcestatu.cz/tiskove-zpravy/20140721_tz_rs_analyza_trafiky-je-mozne-dale-rozdat.pdf)

<sup>15</sup>Act No. 159/2006 Coll., on Conflict of Interests

<sup>16</sup>Transparency International Hungary: Corruption Risks in the Visegrad Countries, 2012. Available at [http://www.transparency.sk/wp-content/uploads/2012/07/visegrad\\_net.pdf](http://www.transparency.sk/wp-content/uploads/2012/07/visegrad_net.pdf)

<sup>17</sup>iDnes.cz: Show salaries and contracts. Babis will crack down on state-owned managers, 2014. Available at [http://ekonomika.idnes.cz/babis-proveri-hospodareni-statnich-firem-spadajicich-pod-rezorty-ano-lkl-/ekonomika.aspx?c=A140221\\_224348\\_ekonomika\\_zt](http://ekonomika.idnes.cz/babis-proveri-hospodareni-statnich-firem-spadajicich-pod-rezorty-ano-lkl-/ekonomika.aspx?c=A140221_224348_ekonomika_zt)

<sup>18</sup>Jan Sůra: Contract without tenders are on the increase. The Czech Republic is one of the worst in the Union. iDnes, 2016. Available at [http://ekonomika.idnes.cz/jedna-firma-prece-staci-tretina-zakaze-bez-soutezi-fhp-/ekonomika.aspx?c=A160223\\_135630\\_ekonomika\\_chrs](http://ekonomika.idnes.cz/jedna-firma-prece-staci-tretina-zakaze-bez-soutezi-fhp-/ekonomika.aspx?c=A160223_135630_ekonomika_chrs)

<sup>19</sup>Jan Sůra: Contract without tenders are on the increase. The Czech Republic is one of the worst in the Union. iDnes, 2016. Available at [http://ekonomika.idnes.cz/jedna-firma-prece-staci-tretina-zakaze-bez-soutezi-fhp-/ekonomika.aspx?c=A160223\\_135630\\_ekonomika\\_chrs](http://ekonomika.idnes.cz/jedna-firma-prece-staci-tretina-zakaze-bez-soutezi-fhp-/ekonomika.aspx?c=A160223_135630_ekonomika_chrs)

transparency of public procurement is also recommended by a study of the Hungarian branch of Transparency International<sup>21</sup>.

Public procurement legislation has been over the last 15 years rather benevolent, relatively satisfactory and again too benevolent. Following a too benevolent law<sup>22</sup> a stricter public procurement law was adopted in 2006<sup>23</sup>, but in 2013 the limits setting the amounts at which the application of the Public Procurement Act was obligatory were increased and the obligation to cancel the tender had been removed in the event that only one tender had been received<sup>24</sup>. In April 2016, a new Public Procurement Act was adopted, which introduced tools for taking into account the bid quality during the procurement process, but also shifted part of the tenders into a less transparent procurement regime<sup>25</sup>. Also, all public procurement winners will have to completely uncover their owners up to the end owner<sup>26</sup>.

Until recently the access to public procurement information has been governed only by the law on free access to information<sup>27</sup>, under which public authorities must disclose basic information and anybody may request further information without giving any reason. However, different state institutions regulate differently whether certain companies owned by the state fall under this law. For this reason, the enforcement of provision of information is in practice not easily enforceable.

Transparency in public procurement is to be brought about by the law on the register of contracts<sup>28</sup>. This law, with effect from 1.7.2016, orders state-owned companies to publish contracts on the Internet, thereby allowing transparency in the management of public money. The law still works in an annual test period where non-publication of the contract is not penalized by invalidating the contract. MPs tried to significantly weaken the law when they proposed in 2016 an amendment allowing for an exemption for some SOEs, such as ČEZ or Budvar.

#### 1.1.4 Control of the management of state-owned companies by the Independent Authority

The Supreme Audit Office (SAO) is the authority controlling the SOE management in the Czech Republic. Although, according to a study by the Hungarian branch of Transparency International<sup>29</sup> the Supreme Audit Office is one of the strongest institutions in the Czech Republic as regards the fight against corruption and clientelism, the control of state-owned companies' management is insufficiently

<sup>20</sup>Jan Šůra: Contract without tenders are on the increase. The Czech Republic is one of the worst in the Union. iDnes, 2016. Available at [http://ekonomika.idnes.cz/jedna-firma-prece-staci-tretina-zakazek-bez-soutezi-fhp-/ekonomika.aspx?c=A160223\\_135630\\_ekonomika\\_chrs](http://ekonomika.idnes.cz/jedna-firma-prece-staci-tretina-zakazek-bez-soutezi-fhp-/ekonomika.aspx?c=A160223_135630_ekonomika_chrs)

<sup>21</sup>Transparency International Hungary: Corruption Risks in the Visegrad Countries, 2012. Available at [http://www.transparency.sk/wp-content/uploads/2012/07/visegrad\\_net.pdf](http://www.transparency.sk/wp-content/uploads/2012/07/visegrad_net.pdf)

<sup>22</sup>Act No. 40/2004 Coll., on Public Procurement

<sup>23</sup>Act No. 137/2006 Coll., on Public Procurement

<sup>24</sup>Jan Šůra: Contract without tenders are on the increase. The Czech Republic is one of the worst in the Union. iDnes, 2016. Available at [http://ekonomika.idnes.cz/jedna-firma-prece-staci-tretina-zakazek-bez-soutezi-fhp-/ekonomika.aspx?c=A160223\\_135630\\_ekonomika\\_chrs](http://ekonomika.idnes.cz/jedna-firma-prece-staci-tretina-zakazek-bez-soutezi-fhp-/ekonomika.aspx?c=A160223_135630_ekonomika_chrs)

<sup>25</sup>Frank Bold: What will the new Public Procurement Act bring?, 2016. Available at <http://frankbold.org/poradna/kategorie/obce-a-kraje/rada/coprinese-novy-zakon-o-zadavani-verejnych-zakazek>

<sup>26</sup>iDnes.cz: DIGESTEDLY: Ten Biggest Changes in the Public Procurement Act, 2016. Available at [http://ekonomika.idnes.cz/pravidla-pro-600-miliard-Obu-/ekonomika.aspx?c=A160429\\_2242644\\_ekonomika\\_chrs](http://ekonomika.idnes.cz/pravidla-pro-600-miliard-Obu-/ekonomika.aspx?c=A160429_2242644_ekonomika_chrs)

<sup>27</sup>Act No. 106/1999 Coll., On Free Access to Information

<sup>28</sup>Act No. 340/2015 Coll., On the Special Conditions for the Effectiveness of Certain Contracts, the Publishing of these Contracts and the Register of Contracts (Law on the Register of Contracts)

<sup>29</sup>Transparency International Hungary: Corruption Risks in the Visegrad Countries, 2012. Available at [http://www.transparency.sk/wp-content/uploads/2012/07/visegrad\\_net.pdf](http://www.transparency.sk/wp-content/uploads/2012/07/visegrad_net.pdf)

legislatively established and problematic in practice. Independence of the SAO is effectively set by the Constitution and the Act on the Supreme Audit Office<sup>30</sup>, but the question about possible conflicts of interest hangs around the SAO - 5 out of 7 members of the SAO board appointed between 2005 and 2012 were former Members of Parliament<sup>31</sup>.

Depending on how the SAO's competencies are set out in the SAO Act, the SAO's competencies do not include external control of the management and administration of state-controlled companies. According to independent experts<sup>32</sup> this law should be amended and the SAO's powers expanded. The State Reconstruction proposes that the Act include, among other things, control of the management of the property of legal entities in which the Czech Republic or the territorial self-governing entity has at least 50% of the ownership interest<sup>33</sup>. The Chamber of Deputies has been actively attempting to make an amendment since 2013, but three times the law was rejected by the Senate.

## 1.2 MAIN CHALLENGES OF TODAY

The main shortcoming to which others are bound is the absence of state ownership policy. For the current government, ownership policy is not a priority, and it is likely that in the next few years ownership policy will not be adopted as there is not even its proposal. The absence of ownership policy at state level causes chaos in the management of the SOE, which contributes towards the non-transparent environment, the wastage of public money and the inefficiency of the state administration.

The biggest challenge is and will be lobbying and clientelistic groups that prevent the adoption of laws that would effectively allow adequate and transparent administration of the SOE. The 2010 Security Information Service BIS annual report also warns of the dangers of clientelism: “Czech organized crime at the highest level takes the form of influential (clientelistic) networks and entrepreneurial-power structures. It benefits through legal entities in particular by systematic enrichment from public budgets and companies with state-owned participation”<sup>34</sup>.

If the government continues to implement the policy recommended by the State Reconstruction Initiative, i.e. the approval of nine laws aimed at eradicating or at least mitigating corruption, clientelism and opaque state management, the efficiency of the SOE governance could be improved. The main challenge, therefore, is not to join the world wave of populist movements and continue to adopt legislation according to good practice.

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<sup>30</sup>Act No. 166/1993 Coll., On the Supreme Audit Office

<sup>31</sup>Transparency International Hungary: Corruption Risks in the Visegrad Countries, 2012. Available at [http://www.transparency.sk/wp-content/uploads/2012/07/visegrad\\_net.pdf](http://www.transparency.sk/wp-content/uploads/2012/07/visegrad_net.pdf)

<sup>32</sup>For example, Transparency International, Reconstruction of the State, EconLab, Frank Bold.

<sup>33</sup><http://www.rekonstrukcestatu.cz/cs/rozsireni-kontrolnich-pravomoci-nru>

<sup>34</sup>2010 Annual Report of the Security Information Service. Available at <https://www.bis.cz/vyrocní-zpráva2b2d.html?ArticleID=27>

### 1.3 PERSPECTIVE FOR THE FUTURE

Regarding the future, a positive step towards transparency is the adoption of a law on the register of contracts, which will make the public procurement practice more transparent and support the law on free access to information. The news is the new Public Procurement Act, where opinions differ, and there is a need to wait for the new law to settle in order to assess its true effectiveness.

Regarding the appointment of Supervisory Boards and pursuant to the Commercial code stipulation of the duty of 1/3 of the members of the Supervisory Board to be the employees of the company functioned as a stabilizing element.<sup>35</sup> However the new Act on Commercial Corporations<sup>36</sup>, effective since 2014, does not include this obligation, which is likely to increase the political influence on members of the Supervisory Boards and also allow them more flexibility. A helpful step towards the transparent placement of people in the bodies was the provision of the Governmental Committee for Personnel Nomination, but it would be necessary to extend its competencies, accountability and independence, and finally to pass the law on the transparent occupation of bodies of state-owned enterprises.

We consider as very positive the functioning of the Supreme Audit Office, whose effectiveness would be increased by the extension of its competencies to control important SOE. As the Chamber of Deputies continues in trying to amend it for the fourth time, we assume that the amendment to the Act on the SAO and the Constitution will be finally passed by the Senate.

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<sup>35</sup>Act No. 513/1991 Coll., Commercial Code

<sup>36</sup>Act No. 90/2012 Coll., On Commercial Companies and Cooperatives (Commercial Corporations Act)

## 2. GENERAL OVERVIEW OF CZECH STATE-OWNED COMPANIES

From an economic point of view, state-owned companies are highly significant. According to a study published by the CAE<sup>37</sup>, the Czech public administration owns 1096 companies with a turnover higher than 1 million CZK, and the total turnover of these companies is 680 billion CZK. The largest share of this turnover is ČEZ (110 mld.), ČEPRO (78 mld.) and České dráhy (Czech Railways) (21 mld.). The SOE assets also grow faster than the economy - while between 2007 and 2011 the Czech economy grew by 9%, the assets of state-owned companies rose at a double rate (18%). In its study, CAE argues that there is no economic justification for this growth, and asks whether investments or transfers leading to asset increases have been driven by political decisions.

### 2.1 SECTOR SPECIFICITIES

In this study, we have decided to include companies from the sectors that best illustrate the situation of state-owned companies in the Czech Republic and are also among the most economically important. Since the state owns companies of strategic importance or their activities are pursuing public interest, the study focuses on the transport, energy, environment and delivery services sectors.

Most companies modified in the study are central, operate across the Czech state and are managed from one headquarters. The only regional company in the study is the Dopravní podnik hl. města Prahy (Transport company of the Capital city of Prague) which is owned and operated by the Capital City of Prague on its territory.

Generally speaking, the different sectors are not very different from each other, and the problems lie mainly in the ineffective regulation of general principles, which is reflected in all sectors in a similar way.

### 2.2 OVERVIEW OF SELECTED CASES

In the study, we focused on the following six companies: České dráhy/Czech Railways, Ředitelství silnic a dálnic/Motorways and Roads Directorate, Dopravní podnik hl. m. Prahy/Prague Public Transportation Company, ČEZ, Lesy České republiky/Forests of the Czech Republic and Česká pošta/Czech Post Office. Two of these companies are state-owned enterprises (Lesy České republiky/Forests of the Czech Republic/ and Česká pošta /Czech Post Office/), Ředitelství silnic a dálnic/Motorways and Roads Directorate/ is a Public-benefit corporation and the other entities are joint-stock companies in accordance with the private law.

All of these companies are dominant in their respective sectors: České dráhy, Ředitelství silnic a dálnic and Dopravní podnik hl. m. Prahy have a monopoly position in their respective sectors; ČEZ is the main producer of energy, Lesy České republiky manage almost 86% of all state forests<sup>38</sup> and Česká pošta is the most important

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<sup>37</sup>Centre of Applied Economics: Political Control and Corruption Potential of Publicly Owned Enterprises, 2013 Available at <http://www.zindex.cz/data/2013-09-10-SOEs-studie.pdf>

<sup>38</sup>Lesy ČR: About the company Lesy České republiky, s.p. (s.e.), 2016 Available at <http://www.lesy.cz/o-nas/Stranky/default.aspx>

delivery and service provider with a monopoly in certain services such as Czech Point, Centrální adresy (Central addresses) and KIVS - Komunikační infrastruktura veřejné správy (Communication Infrastructure of Public Administration).

Four of these SOEs are among the top 10 employers in the Czech Republic (Česká pošta/Czech Post Office, ČEZ, České dráhy/Czech Railways and Dopravní podnik hl. m. Prahy/Prague Public Transportation Company)<sup>39</sup>. CEZ has ranked second in the amount of revenues (after Škoda Auto); in 2015 revenues of České dráhy, Česká pošta and Dopravní podnik hl. m. Prahy/Prague Public Transportation Company were in excess of 15 milliard CZK<sup>40</sup>. An auditor of four of the six selected companies was one of the so-called Big Four, a label used for four of the world’s largest auditing firms, KPMG, PwC, Deloitte and EY.

The total assets of these six SOEs amount to 1.3 billion CZK and their turnover for 2015 came to almost 300 billion<sup>41</sup>. As state-owned companies, they should be subject to some degree of public scrutiny, but it is difficult to obtain information beyond what is disclosed by private entities<sup>42</sup>.

All central companies are subordinates of the designated Ministry: Czech Railways and the Road and Motorway Directorate are subordinated to the Ministry of Transport, CEZ is subordinated to the Ministry of Finance, Forests of the Czech Republic are subordinated to the Ministry of Agriculture and Czech Post to the Ministry of the Interior. Prague Public Transportation Company as a representative of a regional company is subordinated to the Capital City of Prague. The CAE study notes<sup>43</sup> that really big and problematic orders are not in the hands of ministries but of their subordinate organizations where political responsibility and supervision are weaker.

With regard to public procurement, the association EconLab at Charles University publishes rankings of public companies according to the quality of public procurement, in so called zIndex<sup>44</sup>, which measures good public procurement practices. zIndex suggests that the approach to good practice differs between the selected companies; the Forests of the CR ranked first as zIndex did not detect any bigger mistakes; the Prague Public Transportation Company ranked sixth from the end, where the study found serious mistakes in the competition proceedings. However, the main shortcomings of the observed SOE are in the provision of information and quality of data on the profile and in public procurement (the proportion of orders for total purchases, a small number of suppliers or competitors, lack of transparency or non-compliance).

<sup>38</sup>Lesy ČR: About the company Lesy České republiky, s.p. (s.e.), 2016 Available at <http://www.lesy.cz/o-nas/Stranky/default.aspx>

<sup>39</sup>Annual reports of selected companies for 2015, available at [www.justice.cz](http://www.justice.cz)

<sup>40</sup>Annual reports of selected companies for 2015, available at [www.justice.cz](http://www.justice.cz)

<sup>41</sup>Annual reports of selected companies for 2015, available at [www.justice.cz](http://www.justice.cz)

<sup>42</sup>Centre of Applied Economics: State enterprises, 2011 Available at <http://www.zindex.cz/data/SOEs-final.pdf>

<sup>43</sup>Centre of Applied Economics: Bad Practice in State Owned Enterprises: Case of Czech Post, 2013. Available at <http://www.zindex.cz/data/2013-05-27-ceska-posta-position-paper.pdf>

<sup>44</sup>zIndex. Available at <http://www.zindex.cz/data/SOEs-final.pdf>

Table 1: Overview of selected Czech State-Owned enterprises

Sector	Type	Enterprise	Description
Transportation	Central	<b>Czech Railways</b>	National railways operator for passenger and freight transport
	Central	<b>Road and Motorway Directorate</b>	Manages motorways and 1st class roads
	Regional	<b>Prague Public Transportation Company</b>	The operator of public transport in Prague and its surroundings
Energy	Central	<b>ČEZ</b>	The most important energy company in the Czech Republic
Environment	Central	<b>Forests of the Czech Republic</b>	Manages state-owned forests and nearly 40 000 km of rivers and streams
Delivery services	Central	<b>Czech Post Office</b>	Czech postal services

Source: Author

## 2.3 GROUNDS FOR SELECTED CASES

As mentioned above, companies have been selected for their strategic and economic importance. In addition, selected companies also illustrate both, the good aspects and, in particular, the bad aspects of state-owned enterprises.

In the Czech Republic, the transport undertakings are generally dependent on state subsidies to use for operational purposes or for the purchase of tangible fixed assets<sup>45</sup>. In its annual reports<sup>46</sup> the BIS highlights the postponement of solutions to the SOE management problems, especially in the case of transport companies, where the management delayed adoption of unpopular but necessary decisions led to unsystematic solutions that caused cumulative economic damage.

A non-existent property ownership policy makes it difficult for the state to oversee the SOE management. In some cases, there is at least a general concept (Transport Policy of the Czech Republic or the Principles of the State Forestry Policy), however most of the SOE do not have specific objectives defined. The Prague Public Transportation Company does not have any business strategies, priorities or goals expressed by specific indicators, which is signified by its performance. ČEZ is a similar case, where the ownership policy is not implemented, which leads to an unreadable, even contradictory strategy of the company.

<sup>45</sup>Centre of Applied Economics: State enterprises, 2011 Available at <http://www.zindex.cz/data/SOEs-final.pdf>

<sup>46</sup>2012 Annual Report of the Security Information Service. Available at <https://www.bis.cz/pdf/2012-vz-cz.pdf>

When nominating the members of supervisory boards of selected companies, the personal integrity of those appointed is not taken too much into account. Often persons nominated to the SOE Supervisory Boards are associated with suspected cases of an economic nature, and these are often known in the time before their appointment<sup>47</sup>. Nominations tend to be political, they are cases of a division of influence and power, and members of supervisory boards have rarely the necessary knowledge and experience. In its Annual Report of 2015, the Security Information Service (BIS) even claims that in many cases the management of the company de facto controls the Supervisory Board, which thus ceases to fulfil its essential role and the State as a shareholder loses a fundamental instrument of control during the periods between the General Meetings. According to the BIS, state representatives are failing mainly in promoting state interests insufficiently<sup>48</sup>.

The dependence of the members of the supervisory boards on the political cycle is clearly demonstrated by the CAE study<sup>49</sup>, according to which, in the years leading up to the elections, 88% of the chairmen of supervisory boards of companies owned by municipalities<sup>50</sup> and similarly with regional companies were replaced. The CAE summarizes its study as follows: *“Public corporations are politically controlled so are state institutions or local governments. In contrast, however, a weaker public procurement law applies to public corporations who are also not subject to any other control mechanisms. Possible corrupt behaviour is therefore easier within public enterprises.”*<sup>51</sup>

Another major problem area is the above-standard relationships between the contracting authority and the contractor<sup>52</sup>. These conflicts of interest are typical of cases where one person holds a position in the SOE, which is a public tenderer, and at the same time is linked to another company that is winning the contracts. Non-standard links between politicians and their business partners are a frequent phenomenon. In two cases, the Prague politician on the top of it co-owned the company and chaired the board of directors of the company that received millions of public contracts<sup>53</sup>.

The problem is the lack of a politically independent control of SOE management - with the exception of state-owned enterprises, SOE cannot be controlled by the Supreme Audit Office. Public control by the law on free access to information is also ineffective, and these companies often unjustifiably refuse to provide information (such as ČEZ for example).

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<sup>47</sup>Petr Bouda, Martin Fadrný: Czechia, the land of trafikars. Problems of administration and management of state and municipal enterprises in the Czech Republic, 2014. Available at [http://frankbold.org/sites/default/files/publikace/cesko\\_zeme\\_trafik.pdf](http://frankbold.org/sites/default/files/publikace/cesko_zeme_trafik.pdf)

<sup>48</sup>2015 Annual Report of the Security Information Service. Available at <https://www.bis.cz/pdf/2015-vz-cz.pdf>

<sup>49</sup>Centre of Applied Economics: Political Control and Corruption Potential of Publicly Owned Enterprises, 2013 Available at <http://www.zindex.cz/data/2013-09-10-SOEs-studie.pdf>

<sup>50</sup>The study includes companies with a turnover over 100 million CZK.

<sup>51</sup>Centre of Applied Economics: Political Control and Corruption Potential of Publicly Owned Enterprises, 2013 Available at <http://www.zindex.cz/data/2013-09-10-SOEs-studie.pdf>

<sup>52</sup>Centre of Applied Economics: Connections - Study on Conflict of Interest in Public Contracts, 2012 Available at <http://www.zindex.cz/data/konexe-studie-o-stretu-zajmu.pdf>

<sup>53</sup>Centre of Applied Economics: Connections - Study on Conflict of Interest in Public Contracts, 2012 Available at <http://www.zindex.cz/data/konexe-studie-o-stretu-zajmu.pdf>

## 2.4 SECTOR ANALYSIS

If we compare the selected sectors with good practice, we get quite negative results. Although some of the sectors have set rules to be followed (the Czech Republic’s Transport Policy for 2014-2020, the Principles of the State Forestry Policy), it is not a state ownership policy, as recommended by the OECD.

Membership in the state-owned supervisory boards is often used as so-called ‘trafika’, i.e. a reward posts for former politicians, which guarantees them profits reaching millions of crowns annually and indirect influence on the selection of suppliers<sup>54</sup>. Conflict of interests also has the potential for clientelism - in 2010, the newspaper reported the cause of social democrat Miroslav Poche, who donated to ČSSD a part of CZK 1.6 million, which he received for the position of the Supervisory Board of Pražská energetika, a joint stock company, of which majority owner is the capital city of Prague<sup>55</sup>. Similarly clandestine was the sending of money to the CSSD by the head of the Prague CSSD, Petr Hulinský<sup>56</sup>. The SOE are under strong political influence, as evidenced by data and media-related cases, and often serve as an instrument for the abuse of public funds for private and political interests<sup>57</sup>.

All the sectors examined also have a history of penalties received from the Office for the Protection of Competition due to many mistakes in the award of public contracts; Czech Railways even received the biggest fine in the history of the Office. Selected sectors are also successfully avoiding the audit of the Supreme Audit Office.

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<sup>54</sup>Transparency International Hungary: Corruption Risks in the Visegrad Countries, 2012. Available at [http://www.transparency.sk/wp-content/uploads/2012/07/visegrad\\_net.pdf](http://www.transparency.sk/wp-content/uploads/2012/07/visegrad_net.pdf)

<sup>55</sup>iDnes.cz: The CSSD candidate has revealed a trick on how to fill the party’s cashbox. Forced to leave the office, 2010. Available at [http://zpravy.idnes.cz/ kandidat-cssd-prozradil-trik-jak-plnit-stranickou-kasu-musel-opustit-funkce-1st-/domaci.aspx?c=A101007\\_112821\\_domaci\\_jj](http://zpravy.idnes.cz/ kandidat-cssd-prozradil-trik-jak-plnit-stranickou-kasu-musel-opustit-funkce-1st-/domaci.aspx?c=A101007_112821_domaci_jj)

<sup>56</sup>iDnes.cz: The head of Prague’s CSSD Hulinský has earned 19 million in urban companies, 2010. Available at [http://zpravy.idnes.cz/sef-prazske-cssd-hulinsky-si-v-mestskych-firmach-vydelal-19-milionu-1du-/domaci.aspx?c=A101012\\_114524\\_domaci\\_bar](http://zpravy.idnes.cz/sef-prazske-cssd-hulinsky-si-v-mestskych-firmach-vydelal-19-milionu-1du-/domaci.aspx?c=A101012_114524_domaci_bar)

<sup>57</sup>Petr Bouda, Martin Fadrný: Czechia, the land of trafikas. Problems of administration and management of state and municipal enterprises in the Czech Republic, 2014. Available at [http://frankbold.org/sites/default/files/publikace/cesko\\_zeme\\_trafik.pdf](http://frankbold.org/sites/default/files/publikace/cesko_zeme_trafik.pdf)

### 3. CASE STUDIES

This study includes six state-owned enterprises that are of major strategic or economic importance. The selected SOE group includes three transport companies and three other companies engaged in energy, environmental and delivery services. Two of these companies are state-owned enterprises (The Forests of the CR and the Czech Post Office), the other three are joint stock company majority owned by the state (Czech Railways and the Prague Public Transportation Company 100% state ownership, CEZ 69.78% state ownership) and the last is the Public-benefit corporation (Roads and Motorways Directorate).

For a quick comparison of these SOE we used the zIndex indicator, a tool for benchmarking Contracting Authorities. The zIndex was developed by researchers from Charles University to measure how correctly corporations award public tenders. The zIndex measures the conduct of legal entities to see how much it is in line with internationally recognized good practice in public procurement, as described, for example, by OECD, EU or Transparency International<sup>58</sup>. It consists of 11 sub-indicators monitoring specific public procurement issues such as transparency, existing competition and the possibility of control<sup>59</sup>. The higher the zIndex value, the more the SOE approaches internationally recognized good practice.

#### 3.1 ČESKÉ DRÁHY, A.S. /CZECH RAILWAYS JOINT-STOCK COMPANY

Czech Railways (ČD) are the national railway carriers with a dominant position on the Czech market. In 2015 the ČD turnover was in the amount of 33 billion CZK<sup>60</sup>, while employing 24 thousand employees, the loss was in the amount of 1.2 milliard CZK<sup>61</sup>. Czech Railways have assets of 88.8 billion CZK<sup>62</sup>. Ownership rights to ČD are performed by the Ministry of Transport and the auditor is Deloitte Company.

Czech Railways ranked on the 25th place among 64 state-owned companies under the zIndex indicator; zIndex value of the Czech Railways is 69. The biggest gaps are in providing information on request<sup>63</sup> and publishing the information required by law in its profile. The OPC (Office for the Protection of Competition) has found in the case of the Czech Railways a much greater number of mistakes in public procurement than in other state-owned enterprises, but the positive fact is that most of the purchases took place under the Public Procurement Act<sup>64</sup>.

Although there is no state ownership policy, the government in 2013 approved for the transport sector a document titled Transport Policy of the CR for 2014-2020 with a forecast up to 2050<sup>65</sup>. However, the Ministry of Transport still does not have a conceptual document to mediate the assignment of specific tasks. The transport policy of the

<sup>58</sup>zIndex: About the project, 2016. Dostupné z [http://www.zindex.cz/about\\_project/](http://www.zindex.cz/about_project/)

<sup>59</sup>zIndex: zIndex – Assessment of Contracting Authorities, 2016. Available at <http://wiki.zindex.cz/doku.php>

<sup>60</sup>Annual Report of the Czech Railways Group, 2015. Available at [www.justice.cz](http://www.justice.cz)

<sup>61</sup>Annual Report of the Czech Railways Group, 2015. Available at [www.justice.cz](http://www.justice.cz)

<sup>62</sup>Annual Report of the Czech Railways Group, 2015. Available at [www.justice.cz](http://www.justice.cz)

<sup>63</sup>Act No. 106/1999 Coll., On Free Access to Information

<sup>64</sup>zIndex: Assessment of contracts of the state firms, 2016. Available at [http://www.econlab.cz/wp-content/uploads/2016/02/zIndex\\_statni\\_firmy\\_2012-2014.xlsx](http://www.econlab.cz/wp-content/uploads/2016/02/zIndex_statni_firmy_2012-2014.xlsx)

<sup>65</sup>Transport Policy of the Czech Republic for 2014-2020 with a forecast up to 2050, 2013. Available at [https://www.dataplan.info/img\\_upload/7bdb1584e3b8a53d337518d988763f8d/dopravni-politika-2014-2020-schvalena.pdf](https://www.dataplan.info/img_upload/7bdb1584e3b8a53d337518d988763f8d/dopravni-politika-2014-2020-schvalena.pdf)

Czech Republic contains only very general objectives<sup>66</sup> and is not specified by other strategic documents that would set specific measurable targets to be implemented by the SOE.

The Czech Railways Steering Committee, established on the basis of the Railways Act<sup>67</sup>, is political - it is made up of three government officials of the Ministry of Transport and by one government official appointed by the Ministry of Finance, Defence, Local Development and Industry and Trade. However, the rules for the exercise of shareholders' rights in this case do not exist and their performance is marked by inconsistency<sup>68</sup>. Ownership policy should therefore be created by the government at the suggestion of the Ministry of Transport, but in practical terms it is not taking place. The Ministry of Transport does not participate in setting objectives and results to be achieved by ČD<sup>69</sup> on the grounds that the exercise of the rights of the shareholder for the state is entrusted to the ČD Steering Committee.

Nomination of persons to the Supervisory Board of the Czech Railways is non-transparent, in addition, they do not respect the practice presented by the Government Committee for Personnel Nomination. Nominations to the nine-member Supervisory Board are not submitted by the Ministry of Transport, but by the members of the Czech Railways Steering Committee. But this process is not regulated by any rules<sup>70</sup>. In 2012, this issue was publicized by a scandal that echoes even four years after that<sup>71</sup> - then Prime Minister Nečas is accused of having bribed former MPs' Tluchoř, Fuksa and Šnajdr by promising them positions in the management of state-owned companies, including the Czech Railways. In 2015 Milan Kucharčík, a former manager of the Agrofert group, owned and up to recently headed by the leader of the second largest government party, Andrej Babiš, was appointed to the Supervisory Board<sup>72</sup>.

According to the BIS, in the case of the Czech Railways, the course of public contracts, strategic decisions and personnel issues were affected. Certain sales of the Czech Railways assets raised considerable doubts about their transparency and benefits derived by the state<sup>73</sup>.

### 3.2. ŘEDITELSTVÍ SILNIC A DÁLNIC / ROAD AND MOTORWAY DIRECTORATE

The Road and Motorways Directorate (RMD) is a state Public-benefit corporation set up by the Ministry of Transport of the Czech Republic, whose main activity is the exercise of state ownership rights to motorways and first-class roads. RMD has assets of 437

<sup>66</sup>For example, one of the objectives is to “Prepare the Concept of Further Ownership Development of the Business Segments of the Czech Railways Joint Stock Company”.

<sup>67</sup>Act No. 77/2002 Coll., On the joint-stock company Czech Railways, the state organization Railway Infrastructure Administration and amending Act No. 266/1994 Coll., On Railways, as amended, and Act No. 77/1997 Coll. on State Enterprise, as amended (Railways Act)

<sup>68</sup>Petr Bouda, Martin Fadrný, Michal Voda: Apolitical ownership of the Czech Republic in the transport sector or Who runs the Czech Railways and other transport companies? 2015. Available at [http://frankbold.org/sites/default/files/zpravodaj/analyza-vlastnicka\\_nepolitika.pdf](http://frankbold.org/sites/default/files/zpravodaj/analyza-vlastnicka_nepolitika.pdf)

<sup>69</sup>Petr Bouda, Martin Fadrný, Michal Voda: Apolitical ownership of the Czech Republic in the transport sector or Who runs the Czech Railways and other transport companies? 2015. Available at [http://frankbold.org/sites/default/files/zpravodaj/analyza-vlastnicka\\_nepolitika.pdf](http://frankbold.org/sites/default/files/zpravodaj/analyza-vlastnicka_nepolitika.pdf)

<sup>70</sup>Petr Bouda, Martin Fadrný, Michal Voda: Apolitical ownership of the Czech Republic in the transport sector or Who runs the Czech Railways and other transport companies? 2015. Available at [http://frankbold.org/sites/default/files/zpravodaj/analyza-vlastnicka\\_nepolitika.pdf](http://frankbold.org/sites/default/files/zpravodaj/analyza-vlastnicka_nepolitika.pdf)

<sup>71</sup>iDnes.cz: Expremier Nečas and his wife await a court in December because of trafikas, 2016 Available at

[http://zpravy.idnes.cz/soud-necase-v-kauze-traffic-dcd-/hrimi.aspx?c=A161114\\_200448\\_hrimi\\_cen](http://zpravy.idnes.cz/soud-necase-v-kauze-traffic-dcd-/hrimi.aspx?c=A161114_200448_hrimi_cen)

<sup>72</sup>E15.cz: ČD is supervised by the former manager of Agrofert and the controversial head of the agricultural fund, 2015. available at <http://zpravy.e15.cz/byznys/doprava-a-logistika/cd-pohlida-byvaly-manazer-agrofertu-a-kontroverzni-sef-zemedskeho-fondu-1254996>

<sup>73</sup>2011 Annual Report of the Security Information Service. Available at <https://www.bis.cz/pdf/2011-vz-cz.pdf>

billion CZK, 2015 turnover of 1.1 milliard CZK and profit of 11 million CZK<sup>74</sup>.

Within the zIndex indicator, the Road and Motorways Directorate ranked at the bottom of the ranking scale on the 61st out of the 92 state administration bodies surveyed; zIndex of the RMD is 61. RMD has shortcomings in both dubious public procurement and disclosure<sup>75</sup>. Auditor of the RMD is NEXIA AP a.s. Joint-stock company. A well-known figure of the RMD became its former executive director, Michal Hala, notorious for his 30th birthday celebration, attended by representatives of large construction companies, to which the RMD distributes money within the scope of public procurement<sup>76</sup>.

As far as public procurement is concerned, the RMD has awarded a large number of contracts without open competition (26% of all contracts)<sup>77</sup> and, under the control of the Supreme Audit Office, seriously violated the Public Procurement Act, namely awarding contracts without open competition, splitting tenders to smaller and discriminating contenders<sup>78</sup>. An example of this may be the case of 2014, when the RMD called for a public tender in the value of 40 million crowns for the supply of crash barriers for a section of a motorway where barriers were already installed<sup>79</sup>.

At the beginning of 2016, the Office for the Protection of Competition again fined the RMD for splitting a contract<sup>80</sup> - the RMD split the subject of a public contract into four smaller public contracts, despite the fact that local, time and factual contexts were created, thus reducing the estimated value below the statutory financial limits. However, sanctions for violation of the Public Procurement Act are not too strict, the RMD had to pay only a fine of 180 thousand crowns. After the SAO audit, no significant changes took place.

### 3.3 PRAGUE PUBLIC TRANSPORTATION COMPANY, JSC

Prague Public Transportation Company (DPP) is a joint stock company, which is 100% owned by the City of Prague<sup>81</sup>. DPP is the operator of public transport in Prague, i.e. metro, buses and trams, and also the operator of the city railways on which it operates. RMD has assets of 80.7 billion CZK, 2015 turnover of 18 milliard CZK and profit of 1.7 million CZK<sup>82</sup>. The Prague Public Transportation Company is dependent on state money and mostly ends in red numbers. The DPP auditor is Deloitte Company.

Of the 64 SOEs surveyed, the Prague Public Transportation Company ranked 58th, the value of the zIndex is only 55. The largest gap is in providing information on demand<sup>83</sup>,

<sup>74</sup>2015 Annual Report of the Road and Motorway Directorate Available at [https://www.rsd.cz/wps/wcm/connect/ad8a778a-6243-4a9d-b307-be9aac289ccl/vyrocní\\_zpráva\\_2015\\_web.pdf?MOD=AJPERES&attachment=true&CACHE=NONE&CONTENTCACHE=NONE](https://www.rsd.cz/wps/wcm/connect/ad8a778a-6243-4a9d-b307-be9aac289ccl/vyrocní_zpráva_2015_web.pdf?MOD=AJPERES&attachment=true&CACHE=NONE&CONTENTCACHE=NONE)

<sup>75</sup>zIndex: Assessment of contracts of the state firms, 2016. Available at [http://www.econlab.cz/wp-content/uploads/2016/02/zIndex\\_statni\\_firmy\\_2012-2014.xlsx](http://www.econlab.cz/wp-content/uploads/2016/02/zIndex_statni_firmy_2012-2014.xlsx)

<sup>76</sup>Lidovky.cz: Controversial Officer Hala definitively departs from the Road and Motorway Directorate, 2010 Available at [http://byznys.lidovky.cz/kontroverzni-urednik-hala-definitivne-opusti-reditelstvi-silnic-s-dalnic-lbt-/doprava.aspx?c=A100126\\_131744\\_In-doprava\\_nev](http://byznys.lidovky.cz/kontroverzni-urednik-hala-definitivne-opusti-reditelstvi-silnic-s-dalnic-lbt-/doprava.aspx?c=A100126_131744_In-doprava_nev)

<sup>77</sup>zIndex: Assessment of contracts of the state firms, 2016. Available at [http://www.econlab.cz/wp-content/uploads/2016/02/zIndex\\_statni\\_firmy\\_2012-2014.xlsx](http://www.econlab.cz/wp-content/uploads/2016/02/zIndex_statni_firmy_2012-2014.xlsx)

<sup>78</sup>Aktuálně.cz: According to the SAO, the RMD seriously violated the Public Procurement Act 2014. Available at <https://zpravy.aktualne.cz/domaci/rsd-podle-nku-vazne-porusovalo-zakon-o-verejnych-zakazkach/r-3b658320efc811e3bc790025900fea04/?redirected=1480458853>

<sup>79</sup>Anti-Corruption Endowment Fund: The RMD and RCD and mobile central crash barriers, 2014. Available at <http://www.nfpr.cz/rsd>

<sup>80</sup>Office for the Protection of Competition: The Road and Motorways Directorate has been fined for the division of a contract, 2016. Available at <https://www.uohs.cz/cs/verejne-zakazky/aktuality-z-verejnych-zakazek/2084-reditelstvi-silnic-a-dalnic-byla-ulozena-sankce-za-deleni-zakazky.html>

<sup>81</sup>[www.justice.cz](http://www.justice.cz)

<sup>82</sup>2015 Annual report of the Prague Public Transportation Company Available at [www.justice.cz](http://www.justice.cz)

<sup>83</sup>Act No. 106/1999 Coll., On Free Access to Information

but the main warning signal is a large number of public contracts awarded without open competition (50%). Also, only a small number of companies compete for a public contract - in almost 20% of cases only one bid was submitted, and four or more bids were submitted only in 16% of cases. The only positive point is that the range of suppliers that receive public procurement is wide and suppliers are not among the risky ones<sup>84</sup>.

The most well-known case of the DPP public procurement and clientelism is the overpriced tickets case that reveals the politicization of the DPP authorities and the functioning of clientele groups that have been misappropriating SOE resources in the form of unfavourable public contracts. In that cause, the DPP failed to call for standard tenders for the supply of paper tickets and entered into a contract directly with Neograph, a company with ties to the infamous lobbyist Rittig and influential lawyers, among other things. DPP, has committed itself through Neograph to pay 17 cents from each ticket to an intermediary Cokeville Assets Inc. based in the British Virgin Islands, in which the ultimate owner of the company was not known<sup>85</sup>. The overpriced contract caused estimated damage of half a milliard crowns<sup>86</sup>. The police are convinced that the syndicate operated as an organized group, 5 people were charged with offenses in the handling of foreign assets and the legalization of proceeds from crime<sup>87</sup>.

Political influence on the DPP Supervisory Board is striking. In the 2006-2010 election period, all members of the Supervisory Board who were elected by the General Assembly, were politicians and 67% of them were sitting in the bodies of two or more companies. After the 2010 elections, 80% of the members of the Board of Directors and 83% of the members of the Supervisory Board who were elected to the office by the General Assembly were replaced. In the 2010-2014 election period, 90% of the members of the Supervisory Board elected by the General Assembly were politicians and 60% of them were sitting in the bodies of two or more companies. In addition, there were 40% of city councillors in the Supervisory Board during 2010-2014<sup>88</sup>.

Qualification requirements for members of the bodies are not enshrined in the statutes or other formal DPP document. There are only criteria for choosing the CEO and other top management members - these requirements are clearly formulated and the winner is selected by a nine-member committee in three rounds<sup>89</sup>.

The City of Prague does not apply a comprehensive ownership policy towards DPP, DPP does not have at its disposal business strategies, priorities or targets expressed by specific indicators. Absence of ownership policy is a significant systemic shortfall preventing DPP to apply responsible and rational management and control of its performance<sup>90</sup>.

<sup>84</sup>zIndex: Assessment of contracts of the state firms, 2016. Available at [http://www.econlab.cz/wp-content/uploads/2016/02/zIndex\\_statni\\_firmy\\_2012-2014.xlsx](http://www.econlab.cz/wp-content/uploads/2016/02/zIndex_statni_firmy_2012-2014.xlsx)

<sup>85</sup>Bez korupce: Overpriced tickets of the DPP, 2014 Available at <http://www.bezkorupce.cz/2014/04/predrazene-jizdenky-dpp/>

<sup>86</sup>Petr Bouda, Martin Fadrný: Czechia, the land of trafikas. Problems of administration and management of state and municipal enterprises in the Czech Republic, 2014. Available at [http://frankbold.org/sites/default/files/publikace/cesko\\_zeme\\_trafik.pdf](http://frankbold.org/sites/default/files/publikace/cesko_zeme_trafik.pdf)

<sup>87</sup>Naši politici (Our politicians): The first of the DPP cases going to the court? Anticorruption police detained Ivo Rittig, David Michal, Jan Janů, Peter Kmet, 2014. Available at <http://www.nasipolitici.cz/cs/clanek/95-prvni-z-kauz-dpp-pred-soud-protikorupcni-policie-zadrzela-ivo-rittiga-davida-michala-jana-janru-petera-kmete#sthash.u78qQEVf.dpuf>

<sup>88</sup>Revival: Transparency of City Companies: Example of 5 Transport Companies in the Czech Republic, 2015. Available at [http://www.bezkorupce.cz/wp-content/uploads/2014/08/Analyza\\_MOS\\_DP.pdf](http://www.bezkorupce.cz/wp-content/uploads/2014/08/Analyza_MOS_DP.pdf)

<sup>89</sup>Revival: Transparency of City Companies: Example of 5 Transport Companies in the Czech Republic, 2015. Available at [http://www.bezkorupce.cz/wp-content/uploads/2014/08/Analyza\\_MOS\\_DP.pdf](http://www.bezkorupce.cz/wp-content/uploads/2014/08/Analyza_MOS_DP.pdf)

<sup>90</sup>Revival: Transparency of City Companies: Example of 5 Transport Companies in the Czech Republic, 2015. Available at [http://www.bezkorupce.cz/wp-content/uploads/2014/08/Analyza\\_MOS\\_DP.pdf](http://www.bezkorupce.cz/wp-content/uploads/2014/08/Analyza_MOS_DP.pdf)

### 3.4 ČEZ, A. S. (JSC)

ČEZ is a joint stock company, the majority owner of which is the Ministry of Finance (69.78%)<sup>91</sup>. ČEZ is the largest producer of electricity in the Czech Republic and supplies energy to seven countries. Value of ČEZ assets amounts to 603 billion CZK. 2015 turnover of 210 billion CZK and 26.9 billion CZK profit<sup>92</sup>. ČEZ auditor is EY Company.

ČEZ ranked 53rd among the 64 surveyed state-owned companies under the zIndex indicator; zIndex value of the ČEZ is 58. The biggest gaps are in providing information on request<sup>93</sup>, ČEZ also fails to publish sufficient amount of information in its profile as required by law. ČEZ's weakness is the low share of public procurement in total purchases, only 4%, and a small number of companies which compete for contracts - only one bid submitted in the 52% of the cases and almost 70% of the volume of contracts is delivered by two companies, Tedom and Škoda Js. Positive aspect is that the OPC did not find any mistakes regarding the Public Procurement Act<sup>94</sup>.

The absence of ČEZ's ownership policy and long-term goals underlines the company's poorly readable strategy. On the one hand, since 2006, governmental parties are promoting the completion of the 3rd and 4th unit of the Temelín nuclear power plant, on the other hand ČEZ declares that it wants to focus more on small projects and the development of new technologies, is implementing a series of capital investments which overlap with the starting of TNPP's completion, or is considering preferential completion of the Dukovany nuclear power plant<sup>95</sup>. Also controversial is the modernization of the Prunéřov thermal power plant - in 2012 ČEZ concluded for this purpose contracts in the amount of 25 billion crowns in spite of the fact that there is no coal in the Czech Republic for the operation of this power plant<sup>96</sup>.

ČEZ also claimed that as a market-based joint stock company, it is not a public institution and therefore does not have to disclose information that a public institution must publish according to the law on public access to information. In 2009, however, the Supreme Administrative Court issued a judgment<sup>97</sup> in which it concluded that ČEZ is a public institution and therefore, as a public resource company, is obliged to inform citizens about how it handles these public funds. However, not even in 2012 was ČEZ able to provide information who the contract suppliers were in one full third of orders totalling 5.5 billion crowns. Furthermore between 2007 and 2012 ČEZ awarded 81.9% of contracts in negotiated procedure without publication in the total value of 16.05 milliard crowns<sup>98</sup>.

<sup>91</sup>2015 ČEZ Annual Report Available at [www.justice.cz](http://www.justice.cz)

<sup>92</sup>2015 ČEZ Annual Report Available at [www.justice.cz](http://www.justice.cz)

<sup>93</sup>Act No. 106/1999 Coll., On Free Access to Information

<sup>94</sup>zIndex: Assessment of contracts of the state firms, 2016. Available at [http://www.econlab.cz/wp-content/uploads/2016/02/zIndex\\_statni\\_firmy\\_2012-2014.xlsx](http://www.econlab.cz/wp-content/uploads/2016/02/zIndex_statni_firmy_2012-2014.xlsx)

<sup>95</sup>Petr Bouda, Martin Fadrný: Czechia, the land of trafikas. Problems of administration and management of state and municipal enterprises in the Czech Republic, 2014. Available at [http://frankbold.org/sites/default/files/publikace/cesko\\_zeme\\_trafikr.pdf](http://frankbold.org/sites/default/files/publikace/cesko_zeme_trafikr.pdf)

<sup>96</sup>Anti-Corruption Endowment Fund: Thwarted Investment by the State Enterprise ČEZ, 2012. Available at <http://www.nfpk.cz/tiskove-zpravy-cez/1974>

<sup>97</sup>Judgment of the Supreme Administrative Court of 6 October 2009, file no. 2 Ans 4/2009. Available at [http://www.nssoud.cz/files/SOUDNI\\_VYKON/2009/0004\\_2Ans\\_0900093A\\_prevedeno.pdf](http://www.nssoud.cz/files/SOUDNI_VYKON/2009/0004_2Ans_0900093A_prevedeno.pdf)

<sup>98</sup>Hospodářské noviny: Check out tabularly arranged ČEZ's non-transparent contracts, 2012. Available at <https://ihned.cz/c3-56310160-000000-d-56310160-projdete-si-netransparentni-zakazky-cez-prehledne-serazene>

State control over the energy giant ČEZ is also in poor state, CEZ management limits access to information to the Supervisory Board, i.e. to the State as the owner. In 2014, the Finance Minister enforced against the will of CEZ managers a change in statutes that improved the members of the Supervisory Board conditions to access information about ČEZ and the replacement of members of the Supervisory Board. However, members of the original Supervisory Board changed the Rules of Procedure of the Supervisory Board before the end of their term of office, which more or less negated the recent change in the statutes. Newly the members of the Supervisory Board must inform the other members of the Supervisory Board of their intention to request information and must make requests for information and putting questions through a member of the ČEZ Board of Directors Michaela Chaloupková; documents can be perused only at designated premises<sup>99</sup>.

CEZ has an exception to the Contract Registry Act, as it does not need to publish contracts on the Internet as a listed public company. This exception is perceived as controversial and enforced by lobbying groups and, in our view, not only weakens the law but goes against its main meaning. CEZ is also not controlled by the Supreme Audit Office, although experts<sup>100</sup> have repeatedly stressed the need to allow SAO control of all companies controlled by the state and local government, which is also CEZ.

### **3.5 LESY ČESKÉ REPUBLIKY, S. P./ FORESTS OF THE CZECH REPUBLIC, STATE ENTERPRISE**

Forests of the Czech Republic is a state enterprise owned by the Ministry of Agriculture. The main activities of the Forests of the Czech Republic are the management of more than 1.3 million ha of state-owned forest assets and the care of more than 38 000 km of designated watercourses and torrents<sup>101</sup>. The Forests of the CR enterprise has assets of 70 billion CZK, 2015 turnover of 11.8 milliard CZK and profit of 6.5 million CZK<sup>102</sup>. The Auditor of the Forests of the Czech Republic enterprise is Kreston A&CE Audit, s.r.o. (Ltd)

The forests of the Czech Republic ranked in 1st place out of the 64 examined state-owned companies with the zIndex rating of 88. All purchases of the Forests of the Czech Republic were executed between 2012 and 2014 according to the Public Procurement Act; the negotiated procedure without publication took place only in 5% of cases. The Forests of the CR enterprise can select from a wide range of suppliers, selecting from more than 10 suppliers in 47% of cases. In 13% of cases, only one offer was made during the bidding competition<sup>103</sup>.

In 2012 the government approved the State Forest Policy Principles<sup>104</sup>, but they are very vague and immeasurable. The long-term objectives and plans of the Forests of

<sup>99</sup>Petr Bouda, Martin Fadrný: Czechia, the land of trafikas. Problems of administration and management of state and municipal enterprises in the Czech Republic, 2014. Available at [http://frankbold.org/sites/default/files/publikace/cesko\\_zeme\\_trafik.pdf](http://frankbold.org/sites/default/files/publikace/cesko_zeme_trafik.pdf)

<sup>100</sup>E.g. Reconstruction of the State, Našipolitici.cz, Transparency International or Frank Bold.

<sup>101</sup>Lesy ČR: About the enterprise. <http://www.lesy.cz/o-nas/profil-firmy/Stranky/default.aspx>

<sup>102</sup>2015 Annual Report of the Forests of the Czech Republic enterprise. Available at [www.justice.cz](http://www.justice.cz)

<sup>103</sup>zIndex: Assessment of contracts of the state firms, 2016. Available at [http://www.econlab.cz/wp-content/uploads/2016/02/zIndex\\_statni\\_firmy\\_2012-2014.xlsx](http://www.econlab.cz/wp-content/uploads/2016/02/zIndex_statni_firmy_2012-2014.xlsx)

<sup>104</sup>Principles of the State Forest Policy, 2012. Available at [http://www.apic-ar.cz/data\\_ar/12/1/LesPolitikaZasady2012.pdf](http://www.apic-ar.cz/data_ar/12/1/LesPolitikaZasady2012.pdf)

the CR have been defined since 2011 in the Concept of the Ministry of Agriculture on the economic policy of the Forests of the Czech Republic state enterprise, the so-called Wood Book<sup>105</sup>. On its basis the Ministry of Agriculture must inform the Government by 1 March of the status, progress and evaluation of the contractual relations arising from the forestry contract and the fulfilment of the control system over the implementation of the forestry contract. In this respect, the Forests of the Czech Republic enterprise is clearly an exception - most state-owned enterprises do not have such long-term plans<sup>106</sup>. The Forests of the Czech Republic enterprise processed for the period 2015-2019 the Concept of Strategic Development of the Enterprise<sup>107</sup>.

In 2010, an audit engagement No. 10/26<sup>108</sup> was carried out and the SAO stated that the CEO of Forests of the Czech Republic state enterprise was in a conflict of interest. The CEO performed in parallel the position of the Vice-Chairman of the Board of Directors of a joint-stock company, whose subject of business was, in some activities, the same as that of the Forests of the Czech Republic enterprise. This not only put him in a conflict of interest, but such incompatibility of functions is also not allowed by law.

The selection procedure for the CEO of the Forests of the Czech Republic state enterprise in 2013 also did not take place transparently - the government did not find the candidates recommended by the selection committee suitable so the Minister of Agriculture cancelled the selection procedure. The media loudly speculated that no one was chosen as a CEO because there were still battles going on between lobby groups<sup>109</sup>. Following the nomination process criticism, Daniel Szórád, who is not known to be linked to a lobbying group, was selected as the CEO of the Forests of the Czech Republic state enterprise<sup>110</sup>.

The Forests of the Czech Republic s.e. have tried to claim that they are not a public contracting authority and therefore do not have to comply with the Public Procurement Act. In 2011, the Supreme Administrative Court ruled that Forests of the Czech Republic are a public contracting authority and therefore the same rules apply to them as for state institutions<sup>111</sup>.

There was a social pressure on the Forests of the Czech Republic state enterprise for greater transparency and openness of the contracts<sup>112</sup>. In 2013, for example, the Anti-Corruption Police investigated orders of the Forests of the Czech Republic s.e. for Information Technology, which allegedly caused damage of about 350 million crowns. Police have investigated the case for suspected offenses of breaching the duty to administer foreign assets and legalize proceeds from crime<sup>113</sup>.

<sup>105</sup>Concept of the Ministry of Agriculture on the Economic Policy of the Forests of the Czech Republic state enterprise from 2012, 2012. Available at <http://eagri.cz/public/web/mze/lesy/lesnictvi/koncepce-a-strategie/koncepce-mze-lr-hospodarske-politice.html>

<sup>106</sup>Petr Bouda, Martin Fadrný: Czechia, the land of trafikas. Problems of administration and management of state and municipal enterprises in the Czech Republic, 2014. Available at [http://frankbold.org/sites/default/files/publikace/cesko\\_zeme\\_trafik.pdf](http://frankbold.org/sites/default/files/publikace/cesko_zeme_trafik.pdf)

<sup>107</sup>Lesy ČR: The Concept of Strategic Development of the Forests of the Czech Republic state enterprise for the period 2015-2019, 2014. Available at [http://www.lesy-cr.cz/o-nas/dokumenty-ke-stazeni/Documents/Koncepce\\_LCR\\_2015-2019.pdf](http://www.lesy-cr.cz/o-nas/dokumenty-ke-stazeni/Documents/Koncepce_LCR_2015-2019.pdf)

<sup>108</sup>SAO (NKÚ): Checklist of audit engagement No 10/26, 2010. Available at <http://www.nku.cz/kon-zavery/K10026.pdf>

<sup>109</sup>Czech TV (ČT): Nagyová also assisted in a role of an adviser during the selection of the CEO of the Forests of the Czech Republic state enterprise, Bendl canceled the proceedings, 2013 Available at <http://www.ceskatelevize.cz/ct24/ekonomika/1111849-ct-pri-vyberu-sefa-lesu-cr-radila-i-nagyova-bendl-rizeni-zrusil>

<sup>110</sup>Czech TV (ČT): The new CEO Daniel Szórád is to restore the reputation of the Forests of the Czech Republic state enterprise, 2014. Available at <http://www.ceskatelevize.cz/ct24/ekonomika/1038648-lesum-cr-ma-napravit-reputaci-novy-reditel-daniel-szorad>

<sup>111</sup>Judgment of the Supreme Administrative Court of 31.5.2011, file no. I Afs 98/2010. Available at [http://www.uohs.cz/download/sbirky\\_rozhodnuti/rozsudky\\_VZ/IAfs\\_98\\_2010\\_399.pdf](http://www.uohs.cz/download/sbirky_rozhodnuti/rozsudky_VZ/IAfs_98_2010_399.pdf)

<sup>112</sup>Centre of Applied Economics: State enterprises, 2011 Available at <http://www.zindex.cz/data/SOEs-final.pdf>

<sup>113</sup>Czech TV (ČT): Nagyová also assisted in a role of an adviser during the selection of the CEO of the Forests of the Czech Republic state enterprise, Bendl canceled the proceedings, 2013 Available at <http://www.ceskatelevize.cz/ct24/ekonomika/1111849-ct-pri-vyberu-sefa-lesu-cr-radila-i-nagyova-bendl-rizeni-zrusil>

### 3.6 CZECH POST OFFICE S.E. (ČESKÁ POŠTA, S. P.)

The Czech Post Office ((Česká pošta, s. p.) is a state enterprise, the founder of which is the Ministry of Interior and which operates postal services in the Czech Republic. The Czech Post Office has assets of 22 billion CZK, 2015 turnover of 18.5 billion CZK and profit of 302 million CZK<sup>114</sup>. The Czech Post Office Auditor is PwC Company.

In terms of zIndex rating the Czech Post Office 22 place out of the 64 state-owned companies surveyed is considered rather good; zIndex of the Czech Post Office state enterprise is 70. The Czech Post Office biggest gaps are in providing information on request<sup>115</sup> and publishing the information required by law in its profile. A relatively large number of public procurement contracts took place without competition, under a negotiated procedure without publication (18%). However, most purchases (96%) are conducted under the Public Procurement Act and the portfolio of suppliers is wide<sup>116</sup>.

The Centre of Applied Economics has even chosen the case of the Czech Post Office s.e. as a demonstration of bad practice in the administration of public property<sup>117</sup>. It points out the orientation of the Czech Post Office to the IT sector, namely the development of eGovernment. In recent years, the government has launched a number of favourable projects, which could be in a way called quasi-monopolies, thanks to which the Czech Post Office has acquired new advantageous agendas (such as Electronic Signature, Czech Point, Central Addresses or KIVS) without having to compete or to prove the suitability and economy of the solution it applied<sup>118</sup>.

The most obvious case of maladministration is the case of data boxes, the use of which is de facto mandatory for all legal entities operating in the Czech Republic. However, the Czech Post Office does not operate the system but is outsourcing it to Telefónica O2 Company. According to the CAE study, the Czech Post Office receives 500 million CZK per year for the operation of data boxes and pays Telefónica Company for their management 415 million CZK per year. It is unclear on what the Czech Post Office spends the remaining 85 million CZK and what is the added value of the Czech Post Office<sup>119</sup>.

Frank Bold’s organization analysis in 2011 showed that the remuneration of the members of the Supervisory Board of the Czech Post was not directly proportional to the company’s profit; on the contrary, while the profit between 2007 and 2010 declined, the remuneration of the members of the Supervisory Board increased<sup>120</sup>. Nominations in the Supervisory Boards are politically coloured<sup>121</sup>, and massive changes are made to the Supervisory Board of state-owned companies in the period just after the election, as the BIS notes<sup>122</sup>. Political changes in supervisory boards lead not only to less effective management of the enterprise but also to the fact that the qualifications of some members of supervisory boards can be perceived as embarrassing.

<sup>114</sup>2015 Annual Report of the Czech Post Office state enterprise. Available at [www.justice.cz](http://www.justice.cz)

<sup>115</sup>Act No. 106/1999 Coll., On Free Access to Information

<sup>116</sup>zIndex: Assessment of contracts of the state firms, 2016. Available at [http://www.econlab.cz/wp-content/uploads/2016/02/zIndex\\_statni\\_firmy\\_2012-2014.xlsx](http://www.econlab.cz/wp-content/uploads/2016/02/zIndex_statni_firmy_2012-2014.xlsx)

<sup>117</sup>Centre of Applied Economics: Bad Practice in State Owned Enterprises: Case of the Czech Post Office, 2013. Available at <http://www.zindex.cz/data/2013-05-27-ceska-posta-position-paper.pdf>

<sup>118</sup>Centre of Applied Economics: Bad Practice in State Owned Enterprises: Case of the Czech Post Office, 2013. Available at <http://www.zindex.cz/data/2013-05-27-ceska-posta-position-paper.pdf>

<sup>119</sup>Centre of Applied Economics: Bad Practice in State Owned Enterprises: Case of the Czech Post Office, 2013. Available at <http://www.zindex.cz/data/2013-05-27-ceska-posta-position-paper.pdf>

<sup>120</sup>Petr Bouda, Martin Fadrný: Czechia, the land of trafikas. Problems of administration and management of state and municipal enterprises in the Czech Republic, 2014. Available at [http://frankbold.org/sites/default/files/publikace/cesko\\_zeme\\_trafik.pdf](http://frankbold.org/sites/default/files/publikace/cesko_zeme_trafik.pdf)

<sup>121</sup>Hospodářské noviny: Control over milliards. Politicians of the ČSSD AND KSČM are occupying the supervisory boards of regional companies in

<sup>122</sup>2013. Available at <http://domaci.ihned.cz/c1-59915980-dozorci-rady-politici-čssd-ksčm-ods-roalice-lrajske-firmy>

<sup>122</sup>2014 Annual Report of the Security Information Service. Available at <https://www.bis.cz/pdf/2014-vz-cz.pdf>

#### 4. EXPERT SURVEY: OVERVIEW OF FINDINGS

The quality of the legislative framework on state-owned companies is weak in the Czech Republic. There is a legislative framework, but provisions are very general. Similarly, the quality of monitoring mechanisms is insufficient. The government cannot assess the performance of SOE management due to the absence of a state ownership policy. Public control fails because many SOEs refuse to provide the information required by law, and the powers of the Supreme Audit Office (SAO) are too limited. The state needs to adopt rules that would better address SOEs control while pushing for more transparency.

The quality of the regulatory framework for SOEs in the transport sector is poor in the sectors examined (transport, energy, environment and delivery services); framework legislation exists, but either there are no specific provisions or provisions exist, but their implementation is imperceptible. The main problems are the excessive political influence on SOE management and the lack of transparency of its decision-making. The persistent problem is the lack of state ownership policy that causes chaotic leadership in the sectors' enterprises. A positive element is that the Czech legislation insists on non-financial reporting as part of the company's annual report, which usually contains sufficient information.

The State-owned enterprises that we have included in the survey have many common features. Nominations of persons in SOEs are politically influenced and non-transparent, there are many publicly known cases of clientelism. For example, the CEZ company led by Martin Roman had excellent relations with political representatives and lobbyists, the prime minister “bribed” his political opponent by promising him the post in the Supervisory Board of the Czech Railways and the Chief Executive Officer of the Forests of the CR was not selected by politicians, but by lobbyists.

There was also not one among the selected sectors, which would not be sanctioned by the Office for the Protection of Competition. The highest fines in the history for mistakes in the award of public contracts were received by the Czech Railways; the Road and Motorway Directorate and the Prague Public Transportation Company were also penalised. CEZ was sanctioned by the Office for the Protection of Competition in 2004, and the Forests of the Czech Republic state enterprise in 2010. The Czech Post Office was sanctioned by the Office for the Protection of Competition repeatedly and recently investigated for suspicion of abuse of a dominant position.

## FINAL SUMMARY OF THE LEGISLATIVE ENVIRONMENT

In conclusion, the legislation on state-owned enterprises in the Czech Republic is rather inadequate. The scope of the legislation does not reflect the fact that the size of the funds handled by SOEs is equivalent to about two-thirds of the state budget and should therefore be subject to greater public and state control. From this perspective, it is no surprise that the Czech Republic fulfils only five of the 20 OECD recommendations for state-owned enterprises, despite the objections of independent organizations such as the State Reconstruction or Frank Bold.

There is no state ownership policy in the Czech Republic, a fact due to which neither the state nor SOEs can determine the criteria according to which the members of its bodies should be governed and basis on which they should be evaluated. The law on the transparent occupation of bodies of state-owned enterprises does not even exist. Despite the establishment of the government nomination committee, the process of appointing persons to SOE bodies is not transparent, and the nomination committee’s activity is criticized as insufficient. People are politically appointed, and the bodies often lack the necessary expertise, integrity, and independence. The work of the Supervisory Boards is also insufficiently regulated; it can be said that the Supervisory Board does not know what to supervise and the state does not know on what basis the Supervisory Board’s activity must be evaluated.

Regarding the regulation of public procurement, the Czech Republic ranks among the worst countries in the European Union. The Czech legislation is inconsistent. In 2016 the third Public Procurement Act was adopted in the past 15 years. The Act brings greater transparency with the requirement to expose the final owner of the public contracts’ winner, but also transfers part of the tender to a less transparent procurement regime. The transparency is reinforced by the law on free access to information and the new law on the register of contracts. The Free Access to Information Act requires public authorities to disclose basic information, and anyone can apply for additional information without giving a reason. The Contract Registry Act orders state-owned enterprises to publish their contracts on the Internet.

Governance of state institutions is controlled by the Supreme Audit Office, but it does not have the power to control all SOE. The Chamber of Deputies has tried already three times to extend the SAO’s competence to control the management of the property of SOEs, but the law was rejected three times by the Senate.

Although the Social Democrats Government of Bohuslav Sobotka has been publicly proclaiming the adoption of laws to improve the situation of SOEs since winning the 2013 elections, the nearing elections and Sobotka’s Social Democrats (CSSD) rivalry with the ANO political movement is likely to slow down the adoption of other pro-transparent laws.

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