

## Briefing on Implementation of Civil Service Act, Czech Republic<sup>1</sup>

Until 2014, the Czech Republic was the last EU member state with no specific regulation of civil service. Although a law which was meant to ensure professionalization and independence of the Czech civil service was passed by the Czech parliament in 2002 within a package of measures required for the Czech Republic's accession to the European Union, its entry-into-force date was repeatedly postponed and the act never became legally effective. It was—or so it seems—the threat from Brussels that it would freeze drawing of EU funds until the regulation of civil service is successfully adopted which eventually moved the Czech government into action. The new Civil Service Act no. 234/2014 Coll. was adopted at the end of 2014, replacing its predecessor—the Act no. 218/2002 Coll., on Civil Servants, from 2002. With the new Act entering into force on January 1, 2015, the 12 years of haggling over the Czech civil service legal regulation ended; however, only a limited number of the Act's provisions had been put into practice by that time.

This briefing summarizes the current state of implementation of the new Act, assessing the extent to which the new legislation and practice fulfil the conditions of the Partnership Agreement and achieve the goal of depoliticization and professionalization of the Czech civil service. The briefing is published at a time when the OGP evaluation is about to be released, and while the neighbouring Slovakia is undergoing a process of amending its existing civil service regulation.<sup>2</sup> It can complement and “shadow” the upcoming OGP evaluation, and can also provide relevant information for the second EU Anti-corruption report which is due in early 2016.

### Summary

A case can be made that a professional civil service independent of direct political pressures is one of the keystones of any effective anti-corruption reform. This has been recognized by the European Commission, the Czech Government, as well as the coalition of Czech anti-corruption NGOs “Reconstruction of the State”.<sup>3</sup>

Despite the fact that the new Czech Act on Civil Servants entered into force on January 1, 2015, the practical implementation of most of its provisions required adoption of delegated legislation, including numerous governmental decrees, ministerial orders and methodical guidance issued by the Section for State Service. This implementing legislation was supposed to be adopted by June 30, 2015.<sup>4</sup> Even after this deadline, however, most of the recommendations by the European Commission remain only partially implemented.

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<sup>1</sup> The briefing is current as of October 1, 2015.

<sup>2</sup> Slovak Governance Institute and Frank Bold are currently working on a comparative study on entering into civil service, selection procedure and remuneration in civil service in the Czech Republic, Poland, and Slovakia. The study shall be published in late 2015 / early 2016.

<sup>3</sup> A coalition of 18 anti-corruption NGOs and other partners aiming at the adoption of nine key anti-corruption laws. For more information see [www.rekonstrukcestatu.cz/en](http://www.rekonstrukcestatu.cz/en). Frank Bold, author of this briefing, is an initiator and a main coordinator of the coalition.

<sup>4</sup> It should be noted here that a constitutional complaint against the Act that was lodged by the President of the Czech Republic. It was rejected by the Czech Constitutional Court on July 9, 2015.

While the legislation might formally fulfil the EU requirements; in practice, much more needs to be done in order to achieve the goal of professional and independent civil service. The most problematic areas include:

- **depoliticization of the civil service** which is not sufficiently guaranteed by the Act itself but is only ensured by the current government's good will; and
- **civil service stabilization** through systemization and the conditions of civil servants' lawful dismissal.

## EU concerns and recommendations

In previous years, the Czech Republic has been repeatedly criticised by GRECO,<sup>5</sup> OGP<sup>6</sup>, and European Union (both Commission and Council) for the absence of legal regulation of civil service and for the lack of protection of whistleblowers. It was also criticised by OECD for the "destructive reform reversal".<sup>7</sup> The 2012 country-specific recommendation on public administration mentioned the need to increase the efficiency of public administration; while the 2013 country-specific recommendation stated that only limited progress has been made in adopting the Public Servants Act which was "of outstanding priority"<sup>8</sup>. The 2014 country-specific recommendation was similarly critical.<sup>9</sup> Also, in the first EU Anti-corruption report published in early 2014, the practical absence of the legal regulation of civil service and the lack of protection of whistleblowers were mentioned in the Czech Republic country chapter. The recommendations in the report included adoption of legislation on the civil service that addresses conflicts of interest, ensures merit-based recruitment, and provides safeguards against political interference and arbitrary dismissals, as well as additional guarantees for whistleblowers.<sup>10</sup>

<sup>5</sup> GRECO, Evaluation report on the Czech Republic, May 15, 2006:  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2%282005%297\\_CzechRepublic\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoEval2%282005%297_CzechRepublic_EN.pdf),  
[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2%282008%293\\_CzechRep\\_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round2/GrecoRC2%282008%293_CzechRep_EN.pdf),  
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<sup>6</sup> <http://www.opengovpartnership.org/sites/default/files/AP%20OGP%202014-2016%20Czech%20republic.pdf>. The adoption of the Act on Civil Servants was also one of the three commitments made by the Czech Republic for the Open Government Partnership. The Czech Government released a version of a self-assessment report for public consultations during August 2015 and the IRM researchers (Independent Research Mechanism) will also publish their evaluation soon.

<sup>7</sup> Referring to the repeatedly postponed Act no. 218/2002 Coll., on Civil Servants. See <http://www.oecd-ilibrary.org/docserver/download/5kml60pvjmbq.pdf?expires=1443633648&id=id&accname=guest&checksum=8079DE35A3A6EA420BE7C5086D5B006A>.

<sup>8</sup> The 2013 Country-specific recommendation for the Czech Republic declared that the new legislation on civil service will need „to adequately separate political appointees from non-political staff, guarantee independence of state officials and create a well-functioning career system to reduce high staff turnover“. See [http://ec.europa.eu/europe2020/pdf/nd/csr2013\\_czech\\_en.pdf](http://ec.europa.eu/europe2020/pdf/nd/csr2013_czech_en.pdf), page 5.

<sup>9</sup> [http://ec.europa.eu/europe2020/pdf/csr2014/csr2014\\_council\\_czech\\_en.pdf](http://ec.europa.eu/europe2020/pdf/csr2014/csr2014_council_czech_en.pdf), page 4.

<sup>10</sup> [http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014\\_acr\\_czech\\_republic\\_chapter\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_czech_republic_chapter_en.pdf), page 4, 6 and 11.

Importantly, the quality of public administration is also one of the ex-ante conditionalities for the usage of EU funds in the programme period 2014–2020.<sup>11</sup> According to the Partnership Agreement, the Act on Civil Servants and its secondary legislation should:

1. define the principles and core values of civil service that the civil servants should pursue;
2. enhance the stability of public administration;
3. provide that the functioning of the state administration bodies should be based on a thorough analysis of the available sources and related policies, and should be supervised by a special body such as the Directorate General for Civil Service;
4. clearly define the interaction and borderline between political and apolitical positions in civil service;
5. ensure that the recruitment and exam system based on transparent testing of qualifications and conditions for performing civil service will be developed;<sup>12</sup>
6. ensure that the remuneration system with a transparently defined performance component of the salary will be established.

All essential documents for the implementation of the Act shall take effect and be fully applied by the end of 2015. According to the ex-ante conditionality, the approval of the operational programmes for the period 2014–2020 depends on the fact that both the Act and all of its implementing legislation enter into force. Representatives of the European Commission conducted a series of meetings with the representatives of the Czech Government and Section for State Service, during which the implementation of the Act and its progress were discussed, including the issue of remuneration of civil servants, exams for the civil servants with less than four years of experience, and the overall scope of the Act.<sup>13</sup>

The necessary implementing legislation was adopted on July 1, 2015 which means that the ex-ante conditionality was formally fulfilled. However, the formal adoption does not mean that the Act had been fully implemented in practice as of this date.

## Current state of implementation and possible risks

Below we provide a brief evaluation of the aforementioned six aspects of the new civil service regulation; particularly of the selection and appointment of civil servants, their remuneration, and protection of whistleblowers in civil service.<sup>14</sup> We also mention possible risks related to the further implementation of the Act.

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<sup>11</sup> <http://www.dotaceeu.cz/getmedia/92b600c0-fa29-4467-a758-9696268dcefb/CZ-PA-adopted-by-EC-20140826.pdf?ext=.pdf>, page 66 and following, and [http://www.strukturalni-fondy.cz/getmedia/2a5b9c43-5b22-4f51-a9b9-c30775c8ad47/CZ-PA-Annex-EACs\\_adopted-by-EC-20140826.pdf?ext=.pdf](http://www.strukturalni-fondy.cz/getmedia/2a5b9c43-5b22-4f51-a9b9-c30775c8ad47/CZ-PA-Annex-EACs_adopted-by-EC-20140826.pdf?ext=.pdf), page 75 and following.

<sup>12</sup> The Partnership Agreement also mentioned that a uniform educational system for civil servants is completely absent.

<sup>13</sup> <http://www.mvcr.cz/migrace/docDetail.aspx?docid=21921664&doctype=ART>, and <http://denik.obce.cz/clanek.asp?id=6696652>.

<sup>14</sup> In this briefing, we use the following scale to assess the extent to which a particular aspect or recommendation has been implemented: “fully implemented” means that it has been fully achieved in practice; “substantial improvement” means it has been addressed but there is room for improvement; “partially implemented” signifies that the implementation of the Act is underway and it might be implemented in a satisfactory manner but the process has not yet been completed; “unsatisfactory” refers to the situation when a particular aspect of the civil service reform is addressed in the Act but has

1. **Principles and core values of the civil service** — fully implemented

The principles and core values of civil service are described in the Act itself.

2. **Stability of the public administration** — unsatisfactory

On one hand, the public administration has been stabilized as a result of almost all of the state employees becoming civil servants according to the transitional provisions of the Act. On the other hand, until July 1, 2017 all civil servants will have to undergo a new selection process for the positions they occupy. Since most members of the selection committees are appointed by responsible ministers, there is a substantial risk of politicization of the committees.

Also, the reasons for lawful dismissal based on the system of personal appraisals considerably limit the civil service stability under the new regulation. The civil servants may be dismissed after failing twice in their personal appraisal—an assessment which has to be carried out every year by their direct superiors.<sup>15</sup> Despite the fact that the appraisal system is specified in the secondary legislation, which reduces chances of arbitrariness of the assessment, the Act allows civil servants' dismissal after two consecutive appraisals with negative results. Heads of the civil service authorities may be posted away after only one negative personal assessment; although rather than being dismissed from the civil service altogether, they would be demoted.

3. **Systemization of positions and independent supervision** — partially implemented

Functioning of the state administration bodies is based on systemization of the civil service positions determining the political and apolitical positions. Being based on the national budget, a new systemization must be adopted every year. This means that the stabilization of civil service is achieved only for very short periods of time. On the other hand, additional changes to the already adopted systemization for a particular year are strictly limited.<sup>16</sup>

Due to a strong political opposition among the legislators, the politically independent Directorate General for Civil Service was dissolved in favour of Section for State Service. This newly formed Section for State Service is a part of the Ministry of Interior, an arrangement which may cause problems in the future. Such problems might include insufficient authority of the Section which has a coordination role and issues various guidelines on one hand, but is formally subordinate to the minister on the other. Also, while the Director General for Civil Service was meant to be independent, the current "Super Civil Servant" (Head of the Section for State Service) is a part of the Section, which is unlikely to guarantee his independence from the minister and resulting potential political pressure.

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not been achieved in practice and there is a little chance for future improvement; "not implemented" means that the goal in this area has not been achieved at all, neither in the legislation nor in practice.

<sup>15</sup> If the regular appraisal is negative, for whatever reason, for example based on the civil servant's poor performance, the second appraisal must be conducted after 6 months. A civil servant must also undergo a personal assessment every time he or she is transferred to a new public body.

<sup>16</sup> Note that the Act also allows limited changes in the pay class (moving one class down or up to two classes up) of a particular civil servant, which seems to be contrary to the civil service stabilization. However, we have not yet observed such changes in practice.

4. **Clear separation between political and bureaucratic positions** — partially implemented

The borderline between political and apolitical positions has been established mainly by the adoption of the first systemization. The Act also prohibits heads of the civil service authorities and other high-ranking civil servants from exercising any function in a political party or movement; although they may retain their membership in political parties and movements. Despite the fact that the separation between political and apolitical ministerial deputies seems to be respected by the current government, there is a risk that it will not last long after the change of the cabinet. The Act itself does not provide the necessary safeguards which would guarantee that the civil service remains apolitical in a moment of crisis.

Also, the possibility of replacing a head of the civil service authority after only one negative personal appraisal—particularly when combined with the substantial influence of ministers over the composition of the selection committees—means that the risk of fluctuation of high-ranked civil servants remains. The political deputy ministers have basically the same powers as the respective ministers; however, their legitimacy is derived neither from the elections nor the selection procedure.

5. **Recruitment system and improved expertise** — partially implemented

The new rules for the selection procedure for civil servants should contribute to both depoliticization and professionalization of the civil service. In practice, these goals have been achieved only partially.

The new selection procedure, as stipulated by the Act, was first used to select the Deputy Minister for State Service; and despite the first unsuccessful attempt to find a suitable candidate, the position was finally filled on February 2, 2015. Subsequently, the selection process for the positions of state secretaries began, with all of the vacancies being filled by the end of June 2015. It should be noted here that the state secretaries are the highest apolitical civil servants in the Czech civil service whose responsibilities include HR competences such as appointing deputy ministers and directors of departments. However, the influence of ministers on the composition of the respective selection committees remained undiminished (more than half of the committee members had been appointed—or dismissed—on the minister's proposal), and the risk of the civil service politicization thus remains.

The selection procedures for the mid- and low-ranking civil servants have yet to be implemented. Pursuant to the articles 186 to 190 of the Act, the current civil servants remained in their positions after the Act entered into force at the beginning of 2015. The Deputy Minister for State Service shall announce a new selection procedure for these positions until June 30, 2016 and June 30, 2017 respectively.

Despite the fact that the selection procedure of civil servants became more transparent, the vacant positions will be filled primarily by other civil servants with only the last round being opened to the general public (with the exception of the lowest positions that are opened to anyone). This may create a barrier for independent experts to enter civil service and thus hamper the civil service professionalization. The system of obligatory continuous development of civil servants that could contribute to further professionalization of civil servants also yet remains to be implemented, with the deadline of July 1, 2017. Entry exams that any civil servant appointed to a position in civil service must pass during the 12

months following his or her appointment are already prepared; however, there are numerous exceptions from this duty for the current civil servants.

**6. Remuneration system with a transparently specified performance component — partially implemented**

The new transparent remuneration system, regulated by articles 144 to 152 of the Act (which refers to the Act no. 262/2006 Coll., Labour Code), has also been implemented only partially.

According to this legal regulation, the wage of every civil servant consists of a “regular” pay and of various non-entitled components of the wage (bonuses). The regular pay has been determined by the governmental decree no. 304/2014 Coll. According to this decree, every civil servant has been assigned a particular tariff intended for a particular pay class determined by a position in civil service, and for a particular pay grade in which the state employee is subsumed. Because the tariffs, pay classes and pay grades are determined by law, there is no room for the superiors’ arbitrariness and the remuneration is transparent. As for the bonuses, the most important form of the non-entitled component of the wage is the “personal allowance”, a performance-based pay determined by the civil servant’s results (based on his or her annual personal performance appraisal). The personal performance appraisal, prescribed in the article 155 of the Act, is specified to the last detail in the governmental decree no. 134/2015 Coll. and its annexes which leave no room for arbitrariness. Other forms of bonuses are similarly well regulated and provide transparent and predictable remuneration of civil servants.

However, according to the article 199 of the Act, this remuneration system will not become effective before January 1, 2017.<sup>17</sup> Until then, the civil servants will be remunerated in accordance with their employment contracts (that had been concluded under the Labour code), and only some forms of non-entitled components of wages will be determined accordingly with the new regulation. This means that the substantial difference in wages of civil servants working on the same positions but in different public bodies remains unchanged.

**7. Protection of whistleblowers — partially implemented**

As for the protection of whistleblowers in civil service, the Act was implemented by the governmental decree no. 145/2015 Coll., issued on June 15, 2015, that provides legal protection and anonymity to the civil servants who report cases of corruption or unlawful actions of their colleagues in civil service. However, the whistleblowers are not protected when reporting unlawful behaviour of persons that are not civil servants. Another problem is caused by the civil servants’ duty of silence, as it is unclear whether this duty may be breached by the act of whistleblowing or not. The current experience with whistleblowing in civil service shows that only a very few civil servants have filed reports of unlawful actions.<sup>18</sup>

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<sup>17</sup> The final form of the remuneration system for civil servants remains unclear as the working group was supposed to submit their proposals regarding the new remuneration system to the government until the end of September 2015.

<sup>18</sup> <http://www.novinky.cz/domaci/381771-prosetrovatele-na-uradech-nemaji-do-ceho-pichnout-nikdo-nechce-udavat.html>

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## Background

Frank Bold is a public-interest law organization with offices in the Czech Republic, Poland and Brussels, Belgium. At the EU-level, we are a steering group member of the European Coalition for Corporate Justice, which promotes corporate responsibility within the EU; a member of ALTER-EU, promoting lobby transparency across Europe; and a founding member of the Justice & Environment network. In the Czech Republic, Frank Bold is a main coordinator and a steering committee member of the anti-corruption NGO coalition Reconstruction of the State.

Reconstruction of the State is a joint national programme of Czech anti-corruption organizations, politicians, independent experts, business partners, and active citizens, aiming at the adoption of transparency and anti-corruption legislation. Professional and independent civil service is one of the nine issues the initiative monitors and advocates. More information is available upon request and at [www.rekonstrukcestatu.cz/en](http://www.rekonstrukcestatu.cz/en).



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