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Czech Republic: Law and Practice

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PRK Partners



CZECH REPUBLIC



Law and Practice

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PRK Partners provides first-class legal services to clients operating in the energy market. The team comprises over 100 lawyers in Prague, Ostrava and Bratislava, and specialises in offering comprehensive legal advice on all matters in the field of energy. PRK Partners has recently been involved with the financing of wind and photovoltaic power plant projects, and completed assessments on the influence of building plans on public health and the environment. The firm advises energy-sector clients in the areas

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1. Structure and Ownership of the Power Industry

1.1 Law Governing the Structure and Ownership of the Power Industry

The principal law governing the power industry in the Czech Republic is Act No 458/2000 Coll, on Business Conditions and Public Administration in the Energy Sectors and on Amendment of Other Laws, as amended (the “Energy Act”), which also implements relevant EU legislation. Another important Act is Act No 165/2012 Coll, on Promoted Energy Sources and on Amendment of Other Laws, as amended (the “Promoted Energy Sources Act”). Due to its specifics, nuclear energy is regulated by a separate Act – Act No 263/2016 Coll, Atomic Act, as amended.

Generally, the ownership right is covered in the Constitutional Act No 1/1993 Coll, the Constitution of the Czech Republic, as amended in the related Charter of Fundamental Rights and Freedoms, and in Act No 89/2012 Coll, the Civil Code, as amended. Relevant provisions of the Civil Code are also applicable when it comes to the ownership of movables and immovables related to the energy sector.

In addition, Act No 143/2001 Coll, on Protection of Competition and Amendment of Certain Acts, as amended (the “Act on Protection of Competition”), and Act No 125/2008 Coll, on Transformations of Commercial Companies and Co-operatives, as amended (the “Companies Transformation Act”), are important acts related to the structure of the power industry, as mergers and acquisitions also commonly occur in the field of energy.

Implementing EU Legislation

The relevant EU legislation was implemented into Czech law mainly through amendments to the

Energy Act. Recent EU ambitions in decarbonising the energy sector and industry has brought many changes in EU legislation which the Czech Republic has implemented in the national laws. From the perspective of the energy sector, the Fit for 55 Package is significant as it primarily aims to increase the share of renewable energy sources in the EU overall energy mix up to 45% by 2030. Other major changes are to be made in the areas of methane emissions in the energy sector, energy efficiency, alternative fuels infrastructure or hydrogen and gas market.

In May 2022, the EU launched the REPowerEU strategy. The main goal of such a strategy was to reduce dependency of the EU on Russian fossil fuels, to save energy consumption, and to diversify the EU’s energy supplies. Later, in 2023, the European Commission stated that such goals were achieved and recently it launched the first tender for joint gas purchase under the EU Energy platform, which was initiated in April 2022.

Company Ownership

Nowadays, electricity generation and sale of electricity are fully unbundled in the Czech Republic and both the retail and wholesale markets are liberalised. The majority of entities doing business in the power industry in the Czech Republic have private shareholders.

However, some of the most relevant entities in the power industry are fully or partially state-owned. For example, the majority shareholder of ČEZ, a.s. (ČEZ) – still one of the major players in the electricity industry – is the Czech Republic itself, holding almost a 70% share in the company. Moreover, the Czech government has recently introduced its proposal to amend the Companies Transformation Act, which resulted in public discussions about the potential intention of the Czech government to obtain full con-

trol over ČEZ or its part and gain 100% of the shares in the near future.

ČEZ is vertically integrated in the Czech Republic as it operates in generation, distribution and also supply of electricity. Furthermore, the Czech Republic is the sole shareholder of the Czech transmission system operator, ČEPS, a.s. (ČEPS), and also of OTE, a.s. (OTE), the Czech electricity and gas market operator (for more information, see **1.2 Principal State-Owned or Investor-Owned Entities**).

1.2 Principal State-Owned or Investor-Owned Entities

Generation

The principal entity in electricity generation is ČEZ, a partially state-owned entity where the state holds a 69.78% share. ČEZ operates coal-fired power plants, nuclear plants, hydroelectric plants, solar and wind power plants, as well as a biomass and a biogas power plant. Other important entities in the generation of electricity are as follows: Severní energetická, a.s. (Sev.en Energy), Sokolovská uhelná, a.s. and Elektrárny Opatovice, a.s. These entities are owned by private investors.

Transmission

The Czech electricity grid is operated by ČEPS, which is a fully state-owned company (the Czech Republic is the sole shareholder). Based on an exclusive licence granted to ČEPS by the Energy Regulatory Office (ERO), ČEPS ensures that the grid operates safely and reliably, and it also ensures the development of the Czech transmission system. ČEPS also maintains the balance of electricity supply and demand within the Czech power system in real time. Moreover, ČEPS organises cross-border power exchanges (including transits).

Electricity Market Operator

OTE, the Czech electricity and gas market operator, is a state-owned joint-stock company (the Czech Republic is the sole shareholder). OTE was granted a licence for market operator's activities by the ERO. The main activities of OTE involve organisation of the short-term wholesale electricity and gas market, and evaluation and settlement of imbalances between the contracted and metered electricity supply and consumption.

OTE is also responsible for maintaining the publicly accessible register for trading greenhouse gas emission allowances in accordance with Act No 383/2012 Coll, on Terms of Greenhouse Gas Emission Allowance Trading, as amended (the "Emissions Allowances Trading Act").

Distribution

There are three distribution system operators (DSOs) in the Czech Republic. Each of the DSOs operates based on a licence granted by the ERO on a certain specified territory within the Czech Republic. The northern part of the Czech Republic (the largest one) is operated by ČEZ Distribuce, a.s., the southern part is covered by EG.D, a.s. and, finally, PREdistribuce, a.s. covers the distribution of electricity in the capital city of Prague.

Retail

Currently, the number of entities selling electricity is approximately 60. The leading entities selling electricity to end users in the Czech Republic are as follows: E.ON Energie, a.s., ČEZ Prodej, a.s., innogy Energie, s.r.o., CENTROPOL ENERGY, a.s., and Pražská energetika, a.s. However, as the electricity market is fully liberalised, end users have the opportunity to choose between many smaller entities selling electricity.

1.3 Foreign Investment Review Process The FDI Act

In connection with the Regulation (EU) 2019/452 of the European Parliament and of the Council establishing a framework for the screening of foreign direct investments into the EU that came into effect on 11 October 2020, the Czech Parliament adopted a new Act No 34/2021 Coll, on Screening of Foreign Investments (the “FDI Act”) that came into force on 1 May 2021.

In the FDI Act, assets in any form that were or will be provided by a foreign investor for the purpose of performing an economic activity in the Czech Republic and which will simultaneously enable the foreign investor to perform an effective amount of control over carrying out such economic activity, are considered “foreign investment”. According to the FDI Act, an effective amount of control involves the foreign investor:

- holding at least 10% of voting rights;
- having membership of a company body;
- being able to dispose of ownership rights to assets through which the target performs its business activities; and
- having the possibility to access information, systems and technologies that are important for the protection of the Czech Republic’s security and public order.

Definition of a “foreign investor”

There are several definitions of the term “foreign investor” in the FDI Act. Under the FDI Act, a foreign investor is primarily a person who made or intends to make a foreign investment in the Czech Republic and: (i) is not a Czech or an EU member state citizen; (ii) does not have its registered office located in the Czech Republic or an EU member state; or (iii) is directly or indirectly controlled by the person mentioned in points (i) or (ii) above. This provision ensures that even

investments of persons and entities based in EU member states, owned by entities outside the EU, would be subject to the screening procedure.

The screening procedure

The FDI Act names two different types of foreign investments that are subject to the screening procedure: foreign investments to strategic sectors of industry and services, such as military development, administration and operation of critical infrastructure (energy), etc, which would always need to obtain an approval from the Ministry of Industry and Trade or the government; and all other foreign investments (as defined in the FDI Act). The Ministry of Industry and Trade will continuously assess the influence of such other foreign investments on the security and public order of the Czech Republic and, in case of any problems, official proceedings could be initiated. Moreover, such proceedings might be initiated even after the investment is completed (up to five years after the completion). The FDI Act does, however, enable a foreign investor to submit a request for a consultation in order to prevent a retroactive ban on the investment based on a later-discovered security threat (discretionary screening).

In general, the Ministry of Industry and Trade is responsible for conducting screening procedures of FDIs. The screening might lead to allowing (including conditionally allowing), restricting or cancelling any contemplated or existing FDI.

In certain cases, a government resolution is required. The government has the power to conditionally approve and set conditions for the FDI, or limit or prohibit a contemplated FDI, or revoke an existing FDI.

Protections

Foreign investors are protected under Czech law in the same way that domestic investors are. However, this is not expressly stated in any law and it stems from the Constitution and the Charter of Fundamental Rights and Basic Freedoms. Such provisions are usually expressly stipulated in bilateral investment treaties and in certain multilateral international agreements. The Czech Republic is a signatory state of the Energy Charter Treaty and is also a member state of the Multilateral Investment Guarantee Agency.

Furthermore, the Czech Republic is a member state of the Organisation for Economic Co-operation and Development (OECD), and therefore meets (with some exceptions) the OECD standards for equal treatment of foreign and domestic investors.

Another way of protecting foreign investments is the recognition and enforcement of foreign arbitral awards. In the Czech Republic, this is governed by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958), of which the Czech Republic is a contracting state.

1.4 Law Governing the Sale of Power Industry Assets

There are no specific laws governing the sale of power industry assets in the Czech Republic. Therefore, the Energy Act, the FDI Act and general laws will apply in cases of the sale of assets related to the power industry. Other relevant laws include:

- the Act on Protection of Competition;
- the Companies Transformation Act;
- the Civil Code; and

- Act No 90/2012 Coll, on Commercial Companies and Co-operatives (the “Business Corporations Act”), as amended.

In accordance with the Energy Act, the market operator’s (OTE’s) shares must be owned either by the Czech Republic or by the transmission system operator (ČEPS). According to the commercial register, OTE’s sole shareholder is the Czech Republic.

Foreign investments in the energy infrastructure will be subject to a mandatory FDI screening procedure – see **1.3 Foreign Investment Review Process**. Any entity doing business in the power industry needs to obtain a licence from the ERO. Generally, an issued licence is not transferable to another entity and, therefore, any new owner of the entity or energy facility is obliged to obtain a new licence from the ERO. Moreover, the Transmission System Operator (TSO) is obliged to obtain a certificate of independency, which might be affected by a change in its ownership structure. Such change could therefore be subject to a new certification process.

Protection of Competition

The general Czech and EU rules governing protection of competition are to be taken into consideration. In accordance with the Act on Protection of Competition, certain mergers and acquisitions need to be approved by the Office for Protection of Competition (the “Office”) or by the European Commission (if there is an EU element).

Generally, the regulator responsible for protection of competition in the Czech Republic is the Office. In the energy sector it co-operates closely with the ERO, which supports competition in the energy market. In some cases, the European

Commission might also be the responsible regulator.

1.5 Central Planning Authorities

The main authority is the Ministry of Industry and Trade (the “Ministry”), which is responsible mainly for the regulation of the whole energy sector, the State Energy Policy and related strategic documents and relationships with the competent foreign authorities.

The other responsible authority is the ERO, which is an independent body deriving its authority from the Energy Act. The ERO’s competencies include:

- price control;
- support for competition in the energy industry; and
- supervision over markets in the energy industry.

Transmission Grid Operation

The relevant entity that operates the transmission grid in the Czech Republic is ČEPS, a Czech TSO solely owned by the Czech Republic which provides its services based on an exclusive licence granted by the ERO under the Energy Act. ČEPS also holds a certificate of independence in order to comply with the Energy Act.

The main responsibilities of ČEPS include:

- balancing the supply of electricity with the demand;
- operating, maintaining and further developing the Czech transmission system;
- ensuring the transmission of electricity between generators and distributors; and
- co-operating with other TSOs in Europe.

ČEPS also actively participates in international co-operation with other TSOs in Europe. International co-operation is based on bilateral agreements (mainly with neighbouring countries) and membership of various international projects, such as ENTSO-E (the European Network of Transmission System Operators for Electricity), CIGRE (the International Council on Large Electric Systems), JAO (the Joint Allocation Office) and others.

1.6 Recent Changes in Law or Regulation

In January 2023, an amendment to the Energy Act (so-called Lex OZE I), and an amendment to the Public Notice of the ERO No 408/2015 Coll, on the Rules of the Electricity Market, came into force. Lex OZE I simplified the conditions for the operation and construction of RES power plants up to the installed capacity of 50 kW, which particularly effected construction of photovoltaic power plants. Furthermore, electricity generating plants from renewable energy sources and low-carbon electricity generating plants with a total installed electrical capacity of more than 1 MW are now legally established and operated in the public interest, which in particular simplifies the permitting processes.

Additionally, an amendment to the Promoted Energy Sources Act came into force in January 2023, which reforms the system of Guarantees of Origin and evidence of the use of renewable energy sources in transport.

In reaction to the energy crisis, a “hardship” tariff was introduced in the Czech Republic which made a one-time across-the-board contribution to households to cover their energy costs, depending on the distribution rate. Later, in 2023, the tariff was replaced by capping energy prices. The government also approved a waiver

of renewable energy fees for businesses and households from October 2022 to the end of 2023.

For 2023, the electricity and gas prices have been capped. These prices apply to all gas and electricity supplies, in particular for households and state institutions, and to 80% of the maximum monthly value of electricity and gas for small and medium-sized entities and large entities that meet the specified conditions.

1.7 Announcements Regarding New Policies

In December 2020, the Czech Coal Commission recommended that the government phase out coal use by 2038; currently, the Coal Commission is analysing various scenarios of coal phase-out in connection with legislative and socio-economic implications.

Currently, the Ministry of Industry and Trade is addressing the comments to the amendment of the Energy Act, publicly known as Lex OZE II, which will implement into the Czech legal system Energy Communities, Renewable Energy Sources Communities, and the possibility of sharing electricity.

The Ministry of Industry and Trade recently presented the background for the update of the State Energy Policy which includes the requirement for expanding the use of nuclear energy and decreasing administrative barriers in constructing new electricity power plants using renewable energy sources. Further to the above-mentioned, the Ministry of Environment is updating the Climate Protection Policy of the Czech Republic, which should be completed by the end of 2023, and is also preparing amendments to the law allowing construction of solar power plants on land under agricultural land protection

(Act No 334/1992 Coll, on the Protection of the Agricultural Land Fund).

In the construction sector, major changes have yet to come in connection with Act No 283/2021 Coll, the New Building Act. An amended version of the Act was recently adopted by Parliament, while the effect of the New Building Act has been postponed until 1 January 2024, from which day on the Act will be applicable to construction projects related to larger power plants (100 MW and more), gas storage facilities, pipelines, highways, railways and similar infrastructure included in Annex No 3 to the New Building Act. However, for most construction projects, the New Building Act will come into force later on 1 July 2024 following a transitional period. One of the most significant features of the New Building Act that should simplify the procedure is that the Act will no longer differentiate between a so-called zoning proceeding and building proceeding, as there will be only one joint proceeding under the New Building Act.

The New Building Act also provides legal framework for digitalisation of building proceedings, which should make such proceedings more efficient. Investors and builders should be able to make all their submissions on one digital portal called the Builder's portal (in Czech: *Portál stavebníka*).

The New Building Act is followed by Act No 148/2023 Coll, on Unified Environmental Opinion, which simplifies the process of obtaining binding opinions from the authorities concerned with environmental protection, further simplifying the building process. The Act will come into effect on 1 January 2024.

Recently, the Council of the EU and the European Parliament reached a provisional political agree-

ment to raise the share of renewable energy in the EU's overall energy consumption to 42.5% by 2030, with an additional 2.5% indicative top-up that would allow the EU to reach 45%. The proposal (RED III) will first be submitted to the EU member states and then to the European Parliament for approval.

1.8 Unique Aspects of the Power Industry

An interesting aspect of the Czech power industry is the fact that exports significantly exceed imports of electricity. According to the ERO, in 2021, exports represented around 26.2 TWh, while imports were around 15.1 TWh; making the net balance of electricity imports and exports amount to 11.1 TWh.

Another unique aspect of the Czech power industry is that it is presumed that nuclear power will be the main source of electricity in the future, generating approximately 50% of the country's electricity. However, current capacities are not sufficient to reach this goal. Therefore, new blocks in nuclear power plants will have to be built and some of the current blocks will have to be modernised, which will represent a significant business opportunity in the near future. Moreover, nuclear fuel and gas have finally been included in the EU taxonomy as transition activities.

2. Market Structure, Supply and Pricing

2.1 The Wholesale Electricity Market

There are three main laws or regulations that govern the structure and function of the wholesale electricity market:

- the Energy Act;

- Public Notice of the ERO No 408/2015 Coll, on the Rules of the Electricity Market, as amended; and
- Public Notice of the ERO No 194/2015 Coll, on methods of price regulation and procedures for price regulation in the electricity and heating industries.

The wholesale electricity market is fully liberalised in the Czech Republic and might be divided in several ways. The market is split into:

- a market for long-term products;
- a short-term market; and
- a balancing market (with regulation energy).

In the long-term market, electricity is traded based on bilateral contracts concluded between relevant subjects on the market. The short-term market and the balancing market are both organised by OTE (the Czech electricity and gas market operator). However, the only purchaser on the balancing market is ČEPS, as it serves to maintain a power balance within the Czech power system.

The market is further divided between the part of the market where the price is not regulated and the part where the price is regulated by the ERO. The generation, trade and supply of electricity are fully market operations where the price is decided on the market and is not regulated. On the other hand, the transmission and distribution of electricity are inherently monopoly activities and, thus, this part of the market is regulated (including prices).

2.2 Electricity Imports and Exports

Generally, imports and exports of electricity to/from other jurisdictions are permitted in the Czech Republic. Due to its geographic position, the Czech Republic exports and imports

electricity to/from Austria, Germany, Poland and Slovakia (the neighbouring countries). In the last few years, electricity exports have exceeded imports.

Even though the Czech Republic borders four countries, the Czech transmission system is surrounded by a total of five TSOs from neighbouring countries: 50Hertz and TenneT in Germany, PSE in Poland, SEPS in Slovakia and APG in Austria. The Czech transmission grid is connected to the German grid via 400 kV connections and to the Polish, Slovakian and Austrian grids via both 400 kV and also 220 kV connections.

The JAO is responsible for the allocation of cross-border capacities and therefore organises auctions for cross-border transmission capacity. Regarding the interconnection to the Slovak grid, the coupling of electricity markets (Czech, Slovak, Hungarian and Romanian) is organised by the relevant market operators (in the Czech Republic by the OTE), into the 4M Market Coupling. In June 2021, a new multi-regional coupling project, Interim Coupling, was officially launched, ensuring the connection of the 4M Market Coupling countries with the Multi Regional Coupling (MRC). In June 2022, an implementation of the calculation of cross-border capacities using the Flow-Base method was completed in addition to improved method of capacity allocation, the so-called Flow-Based Market Coupling.

2.3 Supply Mix of Electricity

According to the latest information provided by ČEPS, the ratio of fuels and technologies used in gross electricity generation in the Czech Republic in 2022 was as follows:

- brown coal (lignite) – 39.6%;
- nuclear fuel – 37.3%;

- natural gas – 6.1%;
- biomass – 3.1%;
- biogas – 3.1%;
- hard coal – 2.9%;
- photovoltaic – 2.9%;
- hydro – 2.6%;
- pumped storage – 1.2%;
- wind – 0.8%;
- other – 0.3%.

2.4 Law Governing Market Concentration Limits

There is no specific law stipulating a percentage limit for the electricity supply that is controlled in the market. However, general laws regulating the protection of competition in the market apply. The principal law is the Act on Protection of Competition, which complies with relevant EU legislation (mainly Council Regulation No 139/2004/EC).

The Act on Protection of Competition stipulates, among other things, which mergers are subject to approval by the Office (although some mergers are subject to approval by the EC), and it further sets the conditions of abuse of the dominant position on the market.

The Czech authority responsible for the protection of competition is the Office. In the energy sector, the ERO has oversight of the competition and co-operates with the Office.

2.5 Surveillance to Detect Anti-competitive Behaviour

The principal laws governing competition in the Czech Republic are the Act on Protection of Competition, and Act No 273/1996 Coll, on Competence of the Office for Protection of Competition, as amended, which stipulates the powers and competencies of the Office. Besides protection of competition, the Office also super-

vises the procedure of awarding public procurement and co-ordinates and monitors provision of state aid.

Powers of the Office

In accordance with the Act on Protection of Competition, the Office is entitled to conduct so-called sector inquiries. Furthermore, the Office might conduct proceedings and investigations. When proceedings have been initiated, the employees of the Office or other authorised persons may enter the business premises of competitors under investigation, inspect business records that are located on the business premises or accessible from the business premises, or they may seal the business premises, cases or business records as evidence.

In certain cases (and with the court's prior permission) the investigation might also be conducted in other, related premises (homes of natural persons that are the statutory bodies of the competitor, etc) if business records might be located in such places. The competitors are obliged to provide the Office with all necessary co-operation.

Sanctions

The sanctions that might be imposed by the Office vary with regard to the type of breach of competition rules. The Office may, for example, impose nullification of an agreement that limits competition, or impose fines on companies that are in breach of competition law. A fine of up to CZK10 million, or up to 10% of the net turnover achieved in the last closed accounting period, might be imposed; however, fines vary according to the circumstances.

3. Climate Change Laws and Alternative Energy

3.1 Climate Change Law and Policy

The principal acts in relation to climate change are:

- the Act on Terms of Greenhouse Gas Emission Allowance;
- Act No 201/2012 Coll, on Air Protection, as amended;
- Act No 17/1992 Coll, on Environment, as amended;
- the Energy Management Act;
- the Promoted Energy Sources Act; and
- Act No 367/2021 Coll, on Transition of the Czech Republic to Low-Carbon Energy.

The main document regarding climate change and energy is the National Energy and Climate Plan of the Czech Republic, adopted in 2020 and based on the requirements of the Regulation of the European Parliament and the Council (EU) 2018/1999. Furthermore, the Climate Protection Policy of the Czech Republic was adopted in 2017. It represents the first long-term climate change strategy adopted by the Czech Republic under the Paris Agreement, of which, as an EU member state, the Czech Republic is a party.

In January 2021, the government adopted the new State Environmental Policy of the Czech Republic 2030 with an outlook to 2050, which reflects other state policies and sets strategic activities for future development. One of the areas covered by the State Environmental Policy is also the low-carbon circular economy.

Other important documents related to climate change are the State Energy Policy, the Strategy on Adaptation to Climate Change in the Czech

Republic, and the National Action Plan on Adaptation to Climate Change.

Limiting Emissions

Emissions are mainly limited through the EU Emissions Trading System that works on the “cap-and-trade” principle, and under which producers of emissions (not only in the energy sector) are obliged to buy allowances. One allowance entitles the holder to emit one tonne of GHG.

3.2 The Early Retirement of Carbon-Based Generation

The Act on Transition of the Czech Republic to Low-Carbon Energy came into force in January 2022. The purpose of this Act is to contribute to the protection of the environment by supporting the decarbonisation of electricity production. Furthermore, it aims to ensure energy security of the Czech Republic and to increase the share of electricity produced by low-carbon sources while restricting the impact of the measures on the prices for the consumers.

According to the Act, only power plants located in the Czech Republic with a nuclear reactor of a minimum installed capacity of 100 MW connected to the electricity grid after year 2030 are eligible for financing under the Low Carbon Act. The Act was adopted mainly in connection with the new NPP Dukovany project.

The early retirement is also encouraged indirectly by the Promoted Energy Sources Act, which supports other sources of energy instead of coal and other fossil fuels.

The main document containing key policy regarding the retirement of coal-fired generators is the National Energy and Climate Plan of the Czech Republic. Another important policy con-

cerning the retirement of coal-fired power plants is the previously mentioned State Energy Policy.

In December 2020, the Coal Commission – an advisory body to the Czech government consisting of politicians, entrepreneurs, scientists and ecologists – recommended to the Czech government that it should phase out the use of coal by 2038. The recommendation includes several scenarios on how to end the use of coal and further reduce the amount of carbon emissions.

3.3 Programmes for the Development of Alternative Energy Sources

The principal law governing the promotion of alternative energy sources in the Czech Republic is the Promoted Energy Sources Act. The principal policies are:

- the State Energy Policy;
- the National Renewable Energy Action Plan;
- the State Environmental Policy of the Czech Republic 2030, with an Outlook to 2050; and
- the National Energy and Climate Plan of the Czech Republic.

According to the Promoted Energy Sources Act, promoted sources include renewable sources of energy (eg, biomass and biogas energy, solar energy, wind energy and hydropower) and secondary sources. In addition, high-efficiency combined power and heat generation is promoted under the Promoted Energy Sources Act. Currently, in accordance with the Promoted Energy Sources Act, there are three forms of possible promotion. The first form of promotion is by means of green bonuses for electricity (in annual or hourly modes), the second is by “auction” bonuses, and the third is by purchase price.

4. Generation Facilities

4.1 The Construction and Operation of Generation Facilities

The most important acts regulating construction in the Czech Republic are the Building Act, Energy Act and Act No 100/2001 Coll, on environmental impact assessment, as amended (the “EIA Act”). In the case of generation facilities with a total installed capacity of 100 MW or more, Act No 416/2009 Coll, on accelerating the construction of transportation, water and energy infrastructure and e-communication infrastructure, as amended (the “Construction Acceleration Act”), would also be applicable.

Generally, construction activities in the Czech Republic are subject to administrative proceedings set forth in Act No 500/2004 Coll, the Code of Administrative Procedure, as amended. Basic issues (eg, the principles of administrative proceedings or the delivery of documents) are generally regulated by this Act.

Construction of generation facilities is subject to:

- zoning and construction regulations set forth in the Building Act; and
- specific laws with regard to the nature of the facility (eg, the Atomic Act in the case of nuclear energy).

Environmental Impact and Licences

The relevant authorities in the environmental impact assessment process are the Ministry of Environment or a respective regional office. The relevant authority in the process related to the zoning, building or use permit is the respective building office. The consent of other authorities might be required according to special laws (mainly in connection with the protection of the environment).

In accordance with the Energy Act, the operation of a generation facility is generally possible only based on a licence granted by the ERO. Furthermore, conditions are set forth in Decree No 8/2016 Coll, on the details of granting licences for doing business in the energy sectors. In order to be able to operate a nuclear power plant, authorisation from the State Office for Nuclear Safety is required.

4.2 Obtaining Approvals for the Construction and Operation of Generation Facilities

The major approvals that are required for the construction of a generation facility under Czech law are:

- an environmental impact assessment, in accordance with the EIA Act;
- a zoning permit, in accordance with the Building Act;
- a building permit, in accordance with the Building Act; and
- state authorisation for the construction of a generation facility granted by the Ministry of Industry and Trade, if applicable.

A licence granted by the ERO/State Office for Nuclear Safety for the operation of the facility is also required.

Environmental Impact Assessment (EIA)

The buildings, activities and technologies listed in Annex No 1 to the EIA Act (typically also generation facilities) are subject to an EIA. Projects under consideration in the EIA process include factories and facilities – newly built ones as well as modifications to existing buildings (eg, increasing capacity). A positive or negative statement is then issued as a result of the EIA proceedings for the decision to be issued under the Building Act.

Zoning Permit

The facilities have to be constructed in accordance with the zoning and planning documentation applicable to the respective land plot where the facility is to be located. The decision on the location of a facility (the zoning permit) is based on zoning planning documentation. When deciding on the facility's location, the building office also takes into account general zoning plans, the opinions of owners of neighbouring parcels and utility network operators.

Within the zoning permit proceedings, the respective building office considers whether the applicant's building project is in accordance with:

- the Building Act and its statutory implementing regulations, especially with general requirements for the use of the area;
- the requirements for public transport and technical infrastructure; and
- the requirements of special regulations and the opinions of the respective authorities pursuant to special regulations.

In certain cases only a zoning consent (a simpler form of a zoning permit) is issued. It may be issued if the building project of the investor or developer is situated within a developed area or an area with development potential, the conditions within the area do not materially alter and the building project does not introduce new requirements for the public and technical infrastructure.

Building Permit

After the zoning permit is issued, the developer has to apply for a building permit. The application for the building permit must be accompanied by detailed project documentation (the building permit specifies the binding condi-

tions for the construction). The building office revises the application and attached materials, ascertaining whether it is possible to realise the construction by following them. Specifically, it verifies whether:

- the project documentation is made in accordance with the conditions of the zoning permit;
- the documentation is complete and clear;
- access to the facility is ensured; and
- the submitted materials meet the requirements of the respective authorities.

According to the Building Act, in the case of generation facilities with a total installed capacity of 100 MW or more, the Ministry of Industry and Trade is the respective authority to issue the building permit.

In some cases, a building permit or notification to a building office might not be required. For example: electricity distribution systems (except buildings); gas distribution systems (except buildings); thermal distribution equipment (except buildings); buildings and installations for the production of energy from renewable sources with a total installed capacity of up to 50 kW – excluding construction of a water project. Such buildings further do not require a zoning permit if they are in accordance with the zoning and planning documentation – excluding construction of a water project, cultural monuments and buildings in a specially protected area, heritage reserve or heritage zone.

Joint Proceedings

Joint proceedings, in accordance with Article 94j et seq of the Building Act, allow the investor, under certain conditions, to have the Zoning and Building Permit issued in one joint proceeding, instead of two separate proceedings.

State Authorisation

In the case of generation facilities with a total installed capacity of 1 MW or more, it would also be necessary to obtain state authorisation for the construction from the Ministry of Industry and Trade.

Licence to Operate the Facility

Within the licence proceedings, the respective applicant must prove that it has sufficient technical background and economic stability to safely conduct the licensed activity, and that it fulfils the other statutory conditions.

Public Participation

Public participation is possible in connection with the proceedings, according to the Building Act and the EIA Act – ie, the public may submit comments within the course of the proceedings (comments must be submitted not later than at the oral hearing, in order to be taken into account).

Timing

The building office shall decide on a zoning permit without unnecessary delay, and if this is not possible, then within 60 days from the commencement of the zoning proceedings. The limit is extended to 90 days if:

- an oral hearing is ordered;
- the case is particularly complicated; or
- in the course of the proceedings, documents are delivered by public notice.

The same applies to the building permit and building proceedings. However, depending on the complexity of the case and the number of participants at the proceeding, it usually takes six months or more to obtain the zoning permit in the first instance and an additional three to six months to obtain the building permit. The build-

ing and zoning permit procedure may overlap to a certain extent.

The EIA process (which may be required) usually lasts around three to six months (depending on the involvement of the general public). As to the licence granted by the ERO, if no obstacles occur, the licence is usually granted within 30 to 60 days following submission of the application.

4.3 Terms and Conditions Imposed in Approvals for the Construction and Operation of Generation Facilities Terms and Conditions Related to the Construction

In the zoning and building permit the building office typically imposes terms related to:

- the organisation and safety measures to be taken in the course of construction;
- the timeline of the construction works; and
- certain technical aspects of the project to be constructed (in order to ensure that the construction works and the project itself will be in line with the just requirements of utility providers, neighbours, municipal planning and other stakeholders).

Terms and Conditions Related to the Operations

Typical terms and conditions given in the operation licence are:

- the term of validity of the licence:
 - (a) in the case of energy production, the term of validity is up to 25 years;
 - (b) in the case of energy trading, the term of validity is five years; and
 - (c) in other cases (such as distribution), the licence may be granted for an unlimited period of time;

- the responsible representative (if the licence is granted to a legal entity, a physical person must be appointed as a responsible representative); and
- the technical parameters of the licensed activity (eg, maximum permitted production).

4.4 Eminent Domain, Condemnation or Expropriation Rights

According to the Building Act, rights to lands and buildings may be removed or limited only if they are specified within the issued planning documentation and if they relate to:

- public works of transport and technical infrastructure;
- a public benefit measure;
- buildings and measures to secure the state defence and security; or
- redevelopment of the area.

The right to the land may be also removed or limited in order to create conditions for necessary access, proper utilisation of a building, or the access road to a building or land.

Other reasons for expropriation are stated in specific legislation, such as the Energy Act. According to the Energy Act, electricity transmission, gas transmission, electricity distribution, gas distribution, gas storage, heat energy generation, heat energy distribution and construction of electricity generating plants from renewable energy sources and low-carbon electricity generating plants with a total installed electrical capacity of more than 1 MW are activities pursued in the public interest, and, therefore, for realisation of the building, the ownership right to lands and buildings may be expropriated in accordance with the Building Act and Act No 184/2006 Coll, the Expropriation Act, as

amended, and, in certain cases, the Construction Acceleration Act.

Compensation and Reimbursement

The expropriation must be justly compensated, with the amount of compensation corresponding with:

- the amount of the usual price of a piece of land or a building (set by an independent sworn expert), including its accessories, if the ownership of them has been removed; or
- the amount of the price of the right corresponding to the easement, if the ownership right to the land or the building has been limited by establishment of an easement or if the right corresponding to the easement has been removed or limited.

In addition to compensation, the owner of the expropriated land or building is entitled to reimbursement of the costs connected with the change of place of business; compensation will be determined in such a manner as to correspond to the material damage resulting from the expropriation. The price of land or buildings shall always be determined according to the actual status as at the date of submission of a request for expropriation (the appreciation or depreciation in relation to the proposed purpose of expropriation shall not be taken into account).

4.5 Decommissioning a Generation Facility

Specific requirements for the decommissioning of power generation facilities are stated in the Czech Republic only in connection with nuclear facilities.

Decommissioning of a nuclear facility is possible only on the basis of a licence granted by the State Office for Nuclear Safety, which sets the

terms and conditions applicable with respect to the decommission process. Holders of such a licence shall:

- introduce a system of radioactive waste management, testing and monitoring taking into account the changes in the nuclear facility within the different phases of decommissioning;
- draw up and make available an annual evaluation report covering the different phases of decommissioning;
- draw up a proposal for the use of decommissioning reserves in accordance with the approved decommissioning plan;
- use the funding from the decommissioning reserves only for the preparation and implementation of decommissioning;
- retain the above-stated information for a period of 20 years from the date of completion of the decommissioning; and
- where the facility is a radioactive waste disposal facility, complete the decommissioning of the nuclear facility by closure of the radioactive waste disposal facility.

In total, the Atomic Act offers to the person performing the decommissioning of the nuclear facility, or a workplace with a source of ionising radiation, two ways of ending the facility's "life cycle": (i) an immediate dismantling after termination of the operation of the facility; or (ii) safe enclosure, in which case the facility is placed in a safe storage configuration during this time and the decommissioning is postponed.

Afterwards, decommissioning is completed with the achievement of a green field; or partial decommissioning, enabling further use of the facility in a different manner. In practice, there are often cases where the workplace or its individual facilities can be used in the future,

and therefore it is not cost-efficient to perform a complete decommissioning. Different requirements for individual methods of decommissioning are stated in the Atomic Act and related regulations.

5. Transmission Lines and Associated Facilities

5.1 Regulation of the Construction and Operation of Transmission Lines and Associated Facilities

The main laws related to construction of transmission facilities in the Czech Republic are:

- the Code of Administrative Procedure;
- the Building Act;
- the Energy Act;
- the Construction Acceleration Act; and
- the EIA Act.

In connection with the operation of transmission facilities, the Energy Act is the principal law.

With regard to the construction of transmission lines and associated facilities, the major approvals required are the zoning and building permit and the EIA. For the operation of such a facility, a licence granted by the ERO is also required. See **4.1 The Construction and Operation of Generation Facilities.**

5.2 Obtaining Approvals for the Construction and Operation of Transmission Lines and Associated Facilities

According to the Building Act, in the case of construction of transmission facilities, the Ministry of Industry and Trade is the respective authority to issue the building permit. Furthermore, the trans-

mission system operator must obtain a “certificate of independence”, issued by the ERO. See

4.2 Obtaining Approvals for the Construction and Operation of Generation Facilities.

5.3 Terms and Conditions Imposed in Approvals for the Construction and Operation of a Transmission Line and Associated Facilities

See 4.3 Terms and Conditions Imposed in Approvals for the Construction and Operation of Generation Facilities.

5.4 Eminent Domain, Condemnation and Expropriation Rights

Expropriation rights to the land for the purpose of constructing and operating transmission facilities are similar to the expropriation rights connected to generation. See 4.4 Eminent Domain, Condemnation or Expropriation Rights.

5.5 Monopoly Rights to Provide Transmission Services

In the Czech Republic, the sole TSO is ČEPS, which holds an exclusive licence from the ERO for the transmission of electricity. This means that ČEPS has a monopoly in the field of transmission services. Also, in the Transmission Grid Code (a document compiled by ČEPS and approved by the ERO, containing rules for operating the transmission grid), it is expressly stated that the transmission is a monopoly and such activity is regulated by the ERO under strict competition rules.

5.6 Transmission Charges and Terms of Service

The provision of transmission services and regulation of transmission charges and terms of services are subject to regulation set forth generally in the Energy Act and connected regulations, such as the Public Notice of the ERO No

408/2015 Coll, on the Rules of the Electricity Market, as amended.

According to the Energy Act, the provider of transmission services holds a licence for electricity transmission and, based on the concluded agreements, it provides electricity transmission services and controls electricity flow in the distribution systems, while respecting electricity transfers between connected systems of other states.

The Transmission Grid Code is also an important document as it contains technical terms and payment conditions for connection to the grid and electricity transmission.

Pricing

The price for transmission services is determined in accordance with a formula stipulated in the Public Notice of the ERO No 408/2015 Coll, on the Rules of the Electricity Market, as amended. The price of transmission is formulated mainly based on:

- the price for capacity reservation;
- the price for transmission grid use; and
- the price for exceeding the reserved capacity or power.

According to the Energy Act, the ERO is obliged to protect the legitimate interests of customers and consumers in the energy sectors, and also regulate prices, promote competition and protect the legitimate interests of licensees in the energy sectors.

Prices for capacity reservation and network use are set in the price decision issued annually by the ERO. Such decisions are then available on the ERO’s website.

According to Section 17, paragraph 6 (d) of the Energy Act, the ERO decides on the regulation of prices under Act No 526/1990 Coll, on Prices, as amended. The main regulation is the Public Notice of the ERO No 194/2015 Coll, on methods of price regulation and procedures for price regulation in the electricity and heating industries, and also the Public Notice of the ERO No 408/2015 Coll, on the Rules of the Electricity Market, as amended. Price decisions are subsequently published in the Energy Regulatory Bulletin by the ERO through the Public Administration Portal. Furthermore, the ERO is obliged to consult the draft of the principles of price regulation and of price decisions.

It is not clear under Czech law whether it is possible to challenge the price decision of the ERO. This is mainly due to the nature of the price decisions issued by the ERO. However, there have been court decisions stating that the price decisions are similar in nature to laws. Therefore, it is most likely that Czech laws do not provide a protection mechanism and remedies against the price decisions of the ERO.

Regarding the typical capital structure, ČEPS – as the sole TSO in the Czech Republic – is a joint stock company fully owned by the state.

5.7 Open-Access and Non-discriminatory Transmission

The TSO must provide transmission services to all subjects that request a transmission service, are connected to the transmission grid and comply with the statutory requirements and conditions set forth by the Transmission Grid Code. It must provide the aforementioned services to both natural and legal persons if they submit an application for transmission services or if they enter into a contract with a transmission entity.

The open access to transmission services is regulated by the ERO, which also publishes the ordinances regarding regulation of transmission. Through its ordinances, the ERO sets conditions for parties requesting transmission services. Conditions are specified for different types of services. The TSO provides access to the transmission grid and its services based on contracts with relevant subjects (eg, generators, traders).

6. Distribution

6.1 Law Governing the Construction and Operation of Electricity Distribution Facilities

Similar regulation applies to the construction of distribution facilities as to the construction of generation facilities, as described in 4.1 The Construction and Operation of Generation Facilities. The main laws connected to construction in the Czech Republic are:

- the Code of Administrative Procedure;
- the Building Act;
- the Construction Acceleration Act; and
- the EIA Act.

Regarding the operation of distribution facilities, the Energy Act is the principal law.

The major approvals required with regard to the construction of distribution facilities are the zoning and building permit and an EIA. For the operation of a distribution facility, a licence granted by the ERO is again required. However, unlike the licence for transmission, the licence for distribution of electricity is exclusive only for a certain part of the Czech Republic, not for the whole territory.

6.2 Obtaining Approvals for the Construction and Operation of Electricity Distribution Facilities

For details on relevant approvals and processes, see 4.2 Obtaining Approvals for the Construction and Operation of Generation Facilities.

Licensing for DSOs

Distribution services in the territory of the Czech Republic may, under the conditions stated in the Energy Act, only be provided based on a licence granted by the ERO. The licence for distribution of electricity is exclusive only for a certain designated area within the Czech Republic. There are currently three regional electricity DSOs in the Czech Republic:

- ČEZ Distribuce, a.s. in the north (the largest area);
- EG.D, a.s. in the south; and
- PREdistribuce, a.s. in the capital city of Prague.

6.3 Terms and Conditions Imposed in Approvals for the Construction and Operation of Electricity Distribution Facilities

For details of the requirements for construction-related approvals regarding facilities and also licences granted by the ERO, see 4.3 Terms and Conditions Imposed in Approvals for the Construction and Operation of Generation Facilities.

6.4 Eminent Domain, Condemnation or Expropriation Rights for the Construction and Operation of Electricity Distribution Facilities

For a detailed description of expropriation rights to the land for the purpose of constructing and operating facilities, see 4.4 Eminent Domain, Condemnation or Expropriation Rights.

6.5 Monopoly Rights for Electricity Distribution Entities

There are currently three DSOs operating in specific territories within the Czech Republic: ČEZ Distribuce, a.s. in the northern part (the largest area); EG.D, a.s. in the southern part; and PREdistribuce, a.s. in the capital city of Prague.

In accordance with the Energy Act, all three DSOs have been granted a licence by the ERO. As the DSO is a monopoly operator from a geographical point of view, the DSOs are obliged to provide their services on the basis of non-discriminatory principles (regardless of the connection in a vertically integrated entity).

The area of electricity distribution is a natural monopoly and the specific territory is defined in the licence granted by the ERO. Therefore, each individual distribution system is a relevant electricity distribution market from a geographical point of view, because these activities are irreplaceable for the territory concerned.

6.6 Electricity Distribution System Charges and Terms of Service

The provision of distribution services and the regulation of distribution charges and terms of service are subject to the Energy Act. Furthermore, the Public Notice of the ERO No 408/2015 Coll, on the Rules of the Electricity Market, as amended, is relevant as it stipulates, among other things, what the price for the distribution of electricity consists of.

In the case of electricity distribution, the Distribution Grid Codes are also important. These documents are compiled by each DSO independently and have to be approved by the ERO. These Distribution Grid Codes stipulate basic rules for the operation of the distribution grid.

Pricing

According to the Energy Act, the ERO decides on the regulation of prices under Act No 526/1990 Coll, on Prices, as amended. The main regulation is the Public Notice of the ERO No 194/2015 Coll, on methods of price regulation and procedures for price regulation in the electricity and heating industries, and also the Public Notice of the ERO No 408/2015 Coll, on the Rules of the Electricity Market, as amended. Price decisions are subsequently published in the Energy Regulatory Bulletin by the ERO through the Public Administration Portal.

The price of distribution is mainly calculated based on:

- the price for capacity reservation;
- the price for distribution grid use; and
- the price for exceeding the reserved capacity of power.

It is not clear under Czech law whether it is possible to challenge the price decision of the ERO. For more on this, see **5.6 Transmission Charges and Terms of Service**.

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