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# Alternative Energy & Power 2021

Czech Republic  
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PRK Partners

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# CZECH REPUBLIC

## Law and Practice

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## 1. GENERAL STRUCTURE AND OWNERSHIP OF THE POWER INDUSTRY

### 1.1 Principal Laws 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; of chief importance was implementation of the directives of the second and the third energy packages in relation to unbundling. Since 2005, unbundling rules have been defined in detail in Czech law. The EU Third Energy Package (including Directive No 2009/72/EC) was implemented into Czech law through an amendment to the Energy Act in 2011. In May 2019, the Council of Ministers formally adopted four remaining pieces of the so-called “Clean energy for all Europeans” package, which completed the adoption of this specific package, focused mainly on energy efficiency, support of renewable sources of energy and better governance of the Energy Union. Moreover, the EC’s and EP’s negotiators recently reached a provisional agreement on European Climate Law in which the objective of a climate-neutral EU by 2050 and the GHG emissions reduction target will be incorporated.

#### 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. 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 (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, BOHEMIA ENERGY entity, 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 of 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 Principal Laws 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 Czech Republic must keep at least a 67% share in the market operator's (OTE's) registered capital.

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 Authority**

The main authority is the Ministry of Trade and Industry (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 Material Changes in Law or Regulation

In January 2020, an amendment to Act No 406/2000 Coll, on Energy Management (the Energy Management Act), as amended, and an amendment to the Emissions Allowances Trading Act and part of the Energy Act came into force. This amendment mainly reflects new rules regarding EU emissions trading systems that were made to meet the EU 2030 renewable energy sources (RES) targets.

A draft amendment of the Promoted Energy Sources Act is also currently being discussed by parliament. This amendment is to be adopted in order to meet EU targets in connection with RES by 2030. The amendment focuses mainly on new types and forms of promotion of RES (such as “energy auctions”) and also sets rules and instruments for the so-called overcompen-

sation controls. The amendment is expected to be adopted in the near future.

Furthermore, parliament is discussing a proposed amendment to the Energy Act that will mainly strengthen the protection of consumers with regard to concluding and terminating contracts on energy products.

## 1.7 Announcements Regarding New Policies

In December 2020, the Czech Coal Commission recommended that the government phase out coal use by 2038. However, that deadline has yet to be discussed, as there are two other deadline options (2033 and 2043).

The draft of the Act on Transition of the Czech Republic to Low-Carbon Energy is currently being discussed in parliament and is expected to be adopted in the near future. It should be adopted mainly in connection with the planned construction of new nuclear units in Czech nuclear power plants.

Following on the European Green Deal, the EC’s and EP’s negotiators recently reached a provisional agreement on the European Climate Law, which implements a legal commitment to a climate-neutral EU by 2050.

## 1.8 Unique Aspects of the Power Industry

An interesting aspect for the Czech power industry is the fact that exports significantly exceed imports of electricity. According to the ERO, in 2020, exports represented around 23.5 TWh, while imports were around 13.4 TWh; making the net balance of electricity imports and exports amount to 10.2 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, the EC's Joint Research Centre recently concluded that nuclear fuel might be considered as sustainable under green investments.

## **2. MARKET STRUCTURE, SUPPLY AND PRICING**

### **2.1 Structure of 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 Imports and Exports of Electricity**

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).

## 2.3 Supply Mix for the Entire Market

According to the latest Yearly Report on the Operation of the Czech Electrical Grid published by the ERO, the ratio of fuels and technologies used in gross electricity generation in the Czech Republic in 2020 was as follows:

- nuclear fuel – 37%;
- brown coal (lignite) – 36%;
- natural gas – 8%;
- biogas – 3%;
- photovoltaic – 3%;
- biomass – 3%;
- hydro – 3%;
- other gases – 2%;
- hard coal – 2%;
- pumped storage – 2%;
- wind – 1%; and
- other – <1%.

## 2.4 Principal Laws 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 Agency Conducting 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 supervises 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 Principal Climate Change Laws and/or Policies**

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; and
- the Promoted Energy Sources Act.

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 EP 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 or, if they fulfil specific conditions, are entitled to receive a certain amount of free allowances. One allowance entitles the holder to emit one tonne of CO<sub>2</sub>.

#### **3.2 Principal Laws and/or Policies Relating to the Early Retirement of Carbon-Based Generation**

There is no national law specifically encouraging the early retirement of carbon-based generators of electricity. This is encouraged indirectly by the Promoted Energy Sources Act, which supports other sources of energy instead of coal and other fossil fuels.

However, the draft of the Act on Transition of the Czech Republic to Low-Carbon Energy is currently being discussed in parliament and is expected to be adopted in the near future. 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 concerning 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 Principal Laws and/or Policies to Encourage 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 two 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 purchase price.

As already mentioned in **1.6 Recent Material Changes in Law or Regulation**, an amendment to the Promoted Energy Sources Act is currently under discussion. One of the main changes is a new form of RES support. It is proposed in the draft that certain (larger) entities generating electricity from RES will compete for support in so-called “energy auctions”.

## 4. GENERATION

### 4.1 Principal Laws Governing 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 Regulatory Process for Obtaining All Approvals to Construct and Operate 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 conditions 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 (eg, electricity distribution systems (except buildings); gas distribution systems (except buildings); thermal distribution equipment (except buildings); buildings and installations for the production of energy with a total installed capacity of up to 20 kW – excluding construction of a water project; or water, sewage and energy connections).

## 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 techni-

cal 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 building 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 to Construct and Operate 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, etc).

### 4.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

#### 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 and heat energy distribution 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 Requirements for Decommissioning

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

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

#### 5.1.1 Principal Laws Governing the Construction and Operation of Transmission 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 Principal Laws Governing the Construction and Operation of Generation Facilities.**

#### **5.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Transmission 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 transmission system operator must obtain a “certificate of independence”, issued by the ERO.

See **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate Generation Facilities.**

#### **5.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate Transmission Facilities**

See 4.3 Terms and Conditions Imposed in Approvals to Construct and Operate Generation Facilities.

#### **5.1.4 Proponent's Eminent Domain, Condemnation or 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 Proponent's Eminent Domain, Condemnation or Expropriation Rights.**

#### **5.1.5 Transmission Service Monopoly Rights**

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.

### **5.2 Regulation of Transmission Service, Charges and Terms of Service**

#### **5.2.1 Principal Laws Governing the Provision of Transmission Service, Regulation of 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.



## 5.2.2 Establishment of Transmission Charges and Terms of Service

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 let 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.

## 5.2.3 Open-Access Transmission Service

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 Regulation of Construction and Operation of Electricity Distribution Facilities

#### 6.1.1 Principal Laws 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 Principal Laws Governing 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.

#### 6.1.2 Regulatory Process for Obtaining Approvals to Construct and Operate Distribution Facilities

For details on relevant approvals and processes, see **4.2 Regulatory Process for Obtaining All Approvals to Construct and Operate 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 northern part (the largest area);
- EG.D, a.s. in the south; and
- PREdistribuce, a.s. in the capital city of Prague.

#### 6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate

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 to Construct and Operate Generation Facilities**.

#### 6.1.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

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

#### 6.1.5 Distribution Service Monopoly Rights

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 PRE-distribuce, 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.

## 6.2 Regulation of Distribution Service, Charges and Terms of Service

### 6.2.1 Principal Laws Governing the Provision of Distribution Service, Regulation of Distribution 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.

### 6.2.2 Establishment of Distribution Charges and Terms of Service

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 **5.2.2 Establishment of Transmission Charges and Terms of Service.**

**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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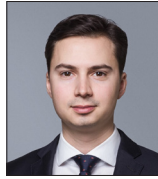
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