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Alternative Energy & Power

Czech Republic
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PRK Partners

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CZECH REPUBLIC

Law and Practice

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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 263/20106 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 applicable also when it comes to the ownership of the movables and immovables related to the energy sector.

Also 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 usually appear 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 directives of the second and the third energy packages in connection to unbundling. Since 2005 unbundling rules are defined in Czech law in detail. The Third Energy Package (including Directive No 2009/72/EC) was implemented to Czech law through 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 that was focused mainly on energy efficiency, support of renewable sources of energy and better governance of the Energy Union.

Company Ownership

Nowadays, electricity generation and sale of electricity are fully unbundled in the Czech Republic and both retail and wholesale market are liberalised. The majority of the 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. – still one of the major players in the electricity industry – is the Czech Republic itself, holding almost a 70% share in the company. ČEZ, a.s. is vertically integrated in the Czech Republic as it operates in generation, distribution and also supply of electricity. Further, the Czech Republic is the sole shareholder of the Czech transmission system operator, ČEPS a.s., and also of OTE a.s., the Czech electricity market operator (for detailed information, please 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.s, a partially state-owned entity where the state holds a 69.78% share. ČEZ, a.s. 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., 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 a.s., which is a fully state-owned company (the Czech Republic is the sole shareholder of ČEPS). Based on an exclusive licence granted to ČEPS by ERO (Energy Regulatory Office), ČEPS ensures that the grid operates safely and reliably and 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, a.s., the Czech electricity and gas market operator, is a state-owned joint-stock company (the Czech Republic is the sole shareholder of OTE). OTE was granted a licence for market operator's activities by 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 the 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. E.ON Distribuce, a.s. covers the southern part 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 plynárenská, 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

In connection to 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 Union that will come into effect on 11 October 2020, the Czech government passed a new draft law on foreign investments screening recently. In the draft law, assets in any form that was or will be provided by a foreign investor for the purpose of performing an economic activity in the Czech Republic and which would simultaneously enable the foreign investor to perform effective amount of control over carrying out such economic activity are considered "foreign investment". The effective amount of control involves holding at least 10% of voting rights, as well as having the possibility to access information, systems and technologies that are important for the protection of Czech Republic's security and public order.

There are several definitions of the term "foreign investor" in the draft law. First of all, it is a natural person that is not a Czech or an EU member state citizen. Second, it is a legal person with its registered office located outside of the Czech Republic or an EU member state. Lastly, it is also any other person or entity, directly or indirectly controlled by the natural or legal person mentioned above. This provision would ensure that even investments of legal entities based in EU member states owned by entities outside of EU would be subject to the screening procedure.

The draft law currently counts with two different types of foreign investments that would be subject to the screening procedure: foreign investments to strategic sectors of industry and services, such as military development, administration and operation of critical infrastructure, etc, that would always need to obtain an approval of the Ministry of Industry and Trade or the government; and all other foreign investments (as defined in the draft law). The Ministry of Industry and Trade will continuously asses the influence of such other foreign investments on security and public order of the Czech Republic and, in case of any problems, official proceedings could be initiated. Moreover, such proceedings might be generally initiated even after the investment is completed (up to five years prior the completion).

In the near future, the draft law will be discussed in the Chamber of Deputies. According to the current version, it is expected that the draft law shall come into effect on the same day as the Regulation, ie, on 11 October 2020.

Protections
Foreign investors are protected under Czech law in the same way that domestic investors are. However, it 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.

Further, 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 and general laws will apply in cases of 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, as amended (the Business Corporations Act).

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.

There are no specific restrictions for the transfer of assets in the power industry; however, any entity doing business in the power industry needs to obtain a licence from ERO. Generally, an obtained licence is not transferable to another entity (with the exemption of transfer by the way of a merger and amalgamation, subject to certain conditions) and, therefore, a new owner of the entity or energy facility is obliged to obtain a new licence from ERO. This might be considered a restriction. Moreover, the sole Transmission System Operator (TSO) is obliged to receive a certificate of independency, which might be affected by a change in its ownership structure. Such change could therefore be subject to 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 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 for Protection of Competition. In the energy sector it co-operates closely with the ERO that supports the competition in the energy market. In some cases, the European Commission might also be the responsible regulator.

1.5 Central Planning Authority

There are several authorities in the Czech Republic overseeing the energy industry. The main authority is the Ministry of Trade and Industry (the Ministry) which is responsible mainly for regulation of the whole energy sector, the State Energy Policy and related strategic documents and relationships with competent foreign authorities.

The other responsible authority is the Energy Regulatory Office (ERO) which is an independent body deriving its authority from the Energy Act. ERO's competences include:

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

Transmission Grid Operation
However, the relevant entity that operates the transmission grid in the Czech Republic is ČEPS, a.s. (ČEPS). ČEPS is the TSO solely owned by the Czech Republic and provides its services based on an exclusive licence granted by the ERO under the Energy Act. ČEPS also obtained a certificate of independence in order to comply with the Energy Act.

The main responsibilities of ČEPS include:

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

ČEPS also actively participates on international co-operation with other TSOs in Europe. International co-operation is based on bilateral agreements (mainly with neighbouring countries) and membership in various international projects (such as ENTSO-E association, CIGRE, JAO and others).

1.6 Recent Material Changes in Law or Regulation

In January 2020, an amendment to the Act No 406/2000 Coll, on Energy Management (the Energy Management Act) and an amendment to the Emissions Allowances Trading Act and part of the Energy Act came into force. This amendment reflects mainly new rules regarding EU ETS that were made to meet the EU 2030 RES targets. However, some of the material parts of this amendment should come into force on 1 January 2021.

There is also a draft amendment of the Promoted Energy Sources Act to be discussed in the near future by the parliament. This amendment is to be adopted in order to meet EU targets in connection to 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 overcompensation controls. The amendment, if adopted, should come into force on 1 January 2021.

Further, an amendment to the Energy Act should come into force on 1 January 2021. The proposed amendment to the Energy Act mainly strengthens the protection of consumers with regard to concluding and terminating contracts on energetic products.

1.7 Announcements Regarding New Policies

In accordance with EU legislation, the Czech Republic finalised and adopted the National Energy and Climate Plan of the Czech Republic in January 2020.

Further, a new Act on Transition of the Czech Republic to Low-Carbon Energy, which should be adopted mainly in connection to the planned construction of new nuclear units in Czech nuclear power plants, is expected to be adopted in the future.

At the EU level, it is the European Green Deal (and especially the so-called Just Transition Fund) that will have significant

impact and will result in material changes for the power industry in the EU member states.

1.8 Unique Aspects of the Power Industry

One very interesting aspect for the Czech power industry is the fact that exports significantly exceed imports of electricity. According to the ERO, exports represented around 24.1 TWh, while imports were around 11.0 TWh; the net balance of electricity imports and exports amounted to 13.1 TWh for 2019.

Another unique aspect of the Czech power industry is that for the future nuclear power is presumed to be the main source for generation of electricity, with an approximately 50% share of the generation of electricity. However, current capacities are not sufficient to reach such a 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.

1.9 The Impact of COVID-19

It is very difficult to predict the impacts of COVID-19 on the alternative energy sector at this point. However, we can already see certain implications triggered by the COVID-19 crisis now. For example, the demand for electricity supply fell due to the pandemic as many companies had to shut down production and so did the price of the electricity in the market. Also, the supplies of necessary equipment were delayed in the world and this had an impact on the RES sector as well (mainly facilities under construction).

In the Czech Republic, in reaction to the COVID-19 crisis, ERO has changed its price decisions, which now allow customers, specifically businesses, to adjust their reserved capacity in a more flexible way, in order to suit their needs during the COVID-19 crisis. However, this measure is only temporary and should be applicable until June.

Further, the Confederation of Industry of the Czech Republic has submitted a proposal in the area of energy and climate, which could reduce the negative economic impacts of COVID-19 on Czech businesses without having to jeopardise the climate and energy commitments of the Czech Republic. The proposal deals mainly with the free allocation of allowances within the EU ETS system, temporary postponement of Best Available Techniques Conclusions requirements, or compensation in relation to indirect costs arising from EU ETS.

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 ERO No 408/2015 Coll, on the Rules of the Electricity Market, as amended; and
- Public Notice of 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 being 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 ERO. Generation, trade and supply of electricity are fully market operations where the price is made 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; this is mainly due to the fact that export of electricity to Austria and Slovakia has significantly exceeded its import.

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 are operating 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 Polish, Slovakian and Austrian grids via both 400 kV and also 220 kV connections.

The Joint Allocation Office 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 relevant market operators (in the Czech Republic by OTE), the 4M Market Coupling. By the end of 2020, a new multi-regional coupling project, Interim Coupling, shall be finished, which will ensure 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 ERO, the ratio of fuels and technologies used in gross electricity generation in the Czech Republic in 2018 was as follows:

- brown coal (lignite), 40%;
- nuclear fuel, 35%;
- natural gas, 6%;
- other gases, 3%;
- biogas, 3%;
- photovoltaic, 3%;
- hard coal, 2%;
- biomass, 2%;
- hydro, 2%;
- pumped storage, 1%;
- wind, 1%; and
- other, <1%.

2.4 Principal Laws Governing Market Concentration Limits

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

The Act on Protection of Competition, among others, stipulates which mergers are subject to approval from the Office for Protection of Competition (some mergers are subject to approval from the European Commission); it further sets the conditions of abuse of the dominant position on the market.

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

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, that stipulate the powers and competences of the Office for Protection of Competition. Besides protection of competition, the Office for the Protection of Competition (the Office) also supervises the procedure of awarding public procurement and co-ordinates and monitors provision of state aid.

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

In certain cases (and with the court's prior permission) the investigation might be also be conducted in other, related premises (homes of natural persons that are 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 to companies that are in breach of competition law. A fine up to CZK10 million, or up to 10% of 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

In order to comply with relevant EU legislation that introduced the EU Emissions Trading System, the Act on Terms of Greenhouse Gas Emission Allowance Trading was adopted in 2012. Other important acts are: Act No 201/2012 Coll on Air Pro-

tection, as amended; Act No 17/1992 Coll on Environment, as amended; and the Energy Management Act.

The main document regarding climate change and energy is the National Energy and Climate Plan of the Czech Republic adopted in January 2020 prepared based on the requirements of the Regulation of the EP and the Council (EU) 2018/1999, on the Governance of the Energy Union and Climate Action. Further, there is the Climate Protection Policy of the Czech Republic which 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.

Another very important policy is the State Energy Policy that stipulates the priorities and strategic intentions of the Czech Republic in the energy sector. According to the State Energy Policy, one the main purposes of this policy is to ensure a reliable, secure and environmentally-friendly supply of energy. Other important documents related to climate change are the Strategy on Adaptation to Climate Change in the Czech Republic, and the National Action Plan on Adaptation to Climate Change.

Limiting Emissions

The emissions are limited mainly 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 CO2.

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

There is no special national law specifically encouraging the early retirement of carbon-based generation of electricity. Indirectly, it is 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 retirement of coal-fired generation is the National Energy and Climate Plan of the Czech Republic.

Another important policy concerning the retirement of coal-fired power plants is the above-mentioned State Energy Policy. With regard to the State Energy Policy, ČEZ a.s. plans to shut down some of the older coal-fired power plants in 2020. It is expected that half of the coal-fired power plants should be shut down by 2035 and all remaining coal-fired power plants should be shut down by 2050.

Moreover, in July 2019, the Coal Commission was established as an advisory body to the Czech government. The Coal Commission consists of politicians, entrepreneurs, scientist and ecologists and the commission drafts plans of the coal phase out and also discusses the national supply mix of electricity.

3.3 Principal Law 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. Principal policies are the State Energy Policy, National Renewable Energy Action Plan and the National Energy and Climate Plan of the Czech Republic.

According to the Promoted Energy Sources Act, promoted sources are the renewable sources of energy (such as biomass and biogas energy, solar energy, wind energy, hydropower) and secondary sources. Also, high-efficient 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 prices.

As already mentioned in **1.6 Recent Material Changes in Law or Regulation**, an amendment to the Promoted Energy Sources Act is currently under preparation. 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 the support in so-called "energy auctions". However, the amendment excludes photovoltaic power plants from participation in the auctions. The amendment, if adopted, should come into force on 1 January 2021.

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 case of generation facilities with total installed capacity of 100 MW or more also 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 be applicable.

Generally, construction activities in the Czech Republic are subject to administrative proceedings set forth generally in Act No 500/2004 Coll, Code of Administrative Procedure, as amended.

Basic issues (eg, principles of administrative proceedings or delivery of documents) are generally regulated by this act.

Construction of the 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 case of nuclear energy).

Environmental Impact and Licences
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 a respective building office. The consent of other authorities might be required according to special laws (mainly in connection to 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. Further, detailed conditions are set forth in Decree No 8/2016 Coll, on details of granting licences for doing business in the energy sectors. In order to be able to operate a nuclear power plant, an 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 construction of a generation facility under Czech law are:

- an environmental impact assessment, according to the EIA Act;
- a zoning permit, according to the Building Act;
- a building permit, according to the Building Act;
- state authorisation for construction of generation facility granted by the Ministry of Industry and Trade, if applicable; and
- a licence granted by ERO/State Office for Nuclear Safety for operation of the facility is required.

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

Zoning Permit
The facilities have to be constructed in accordance with the zoning 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 location, the building office also takes into account general zoning plans, opinions of owners of the neighbouring parcels and utility network operators.

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

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

In certain cases only a zoning consent (a simpler form of a zoning permit) is issued. It may be issued if the intention of the investor or developer is situated within the developed area or an area with development potential, the conditions within the area do not materially alter and the intention does not need 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 condition for the construction). The building office revises the application and attached materials, ascertaining whether it is possible to realise the construction according to them. Specifically, it verifies whether:

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

According to the Building Act, in 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.

Further, in some cases the 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 case of generation facilities with a total installed capacity of 1 MW or more it would be also necessary to obtain a state authorisation for construction of such generation facility granted by the Ministry of Industry and Trade.

Licence for the Facility Operations
Within the licence proceedings the respective applicant shall prove that it has sufficient technical background and economic stability to safely conduct the licensed activity and that it fulfils 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 its comments within the course of the respective 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 it is not possible then within 30 days from the commencement of the zoning proceedings. The limit is extended to 60 or 90 days if:

- an oral hearing is ordered;
- the case is particularly complicated; or
- in 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 number of participants of the proceeding, it usually takes six months or more to obtain the zoning permit in the first instance and 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 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 course of the 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 the 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:

- term of validity of the licence –
  (a) in case of energy production the term of validity is up to 25 years;
  (b) in case of energy trading the term of validity is five years;
  (c) in other cases (such as distribution) the licence may be granted for an unlimited period of time;
- responsible representative (if the licence is granted to a legal entity, a physical person must be appointed as a responsible representative); and
- technical parameters of the licensed activity (eg, maximum permitted production in case of production).

4.4 Proponent's Eminent Domain, Condemnation or Expropriation Rights

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

- public works of transport and technical infrastructure;
- a public benefit measure;
- building 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 a land.

Other purposes for the 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, Expropriation Act, as amended, and, in certain cases, the Construction Acceleration Act.

The expropriation must be justly compensated. The amount of compensation corresponds 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 the compensation, the owner of the expropriated land or building is entitled to reimbursement of costs connected with the change of the place of business; compensation shall be determined in such a manner as to correspond to the material damage resulting from the expropriation. The price of land or building shall be always determined according to the actual status as of 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 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 a basis of a granted licence by the State Office for Nuclear Safety, which sets 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;
- once a year draw up and make available an 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;
- the funding of the decommissioning reserves use only for preparation and implementation of decommissioning;
- retain the above stated information for a period for 20 years from the complete 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": a complete decommissioning 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 by 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 to the operation of transmission facilities, the Energy Act is the principal law.

Major approvals with regard to the construction of transmission lines and associated facilities are the zoning and building permit and EIA. For operation of such facility a licence granted by the ERO is also required. For further details 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 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 shall obtain a "certificate of independence", also issued by the ERO.

For more information 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

Description of the expropriation rights to the land for the purpose of constructing and operating transmission facilities is similar to the ones connected to generation. For detailed information 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. ČEPS holds an exclusive licence from ERO for transmission of electricity in the territory of the Czech Republic. The TSO in the Czech Republic must not hold any other licence granted under the Energy Act. Therefore, it is a monopoly in the field of transmission services. Also in the Transmission Grid Code (a document made 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 therefore regulated by ERO and 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

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 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 services of electricity transmission, and controls electricity flows 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 above-mentioned Public Notice of ERO No 408/2015 Coll, on the Rules of the Electricity Market, as amended. The price for transmission is formed mainly from:

- 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 ERU is obliged to protect legitimate interests of customers and consumers in the energy sectors, and also regulate prices, promote competition in the energy sectors and protect the legitimate interests of licensees.

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 regulation of prices under Act No 526/1990 Coll, on Prices, as amended. The main regulation is the Public Notice of 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 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. Further, the ERO is obliged to consult the draft of the principles of price regulation and of the price decisions.

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

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

5.2.3 Open-Access Transmission Service

The TSO must provide transmission services to all subjects that request transmission service, are connected to the transmission grid and comply with the statutory requirements and condi-

tions set forth also by the Transmission Grid Code. They 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; the ERO 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. 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

Generally, similar regulation applies to construction of distribution facilities as for 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.

Major approvals with regard to the construction of distribution facilities are the zoning and the building permit and an environmental impact assessment. For 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**.

Licence for the DSOs

Please note that the distribution services in the territory of the Czech Republic may, under the conditions stated in the Energy Act, only be provided based on the 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; the northern part of the Czech Republic (the largest one) is operated by ČEZ Distribuce, a.s. In the south, E.ON Distribuce, a.s. distributes the electricity, while PREdistribuce, a.s. covers the distribution of electricity in the capital city of Prague.

6.1.3 Terms and Conditions Imposed in Approvals to Construct and Operate

For details regarding the requirements for construction-related approvals regarding facilities and also licences granted by 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 certain territories within the Czech Republic: ČEZ Distribuce, a.s., operating the distribution in the northern part of the Czech Republic (the largest one); E.ON Distribuce, a.s., in the southern part of the Czech Republic; and PREdistribuce, a.s., operating the distribution of electricity in the capital city of Prague.

In accordance with the Energy Act, all three DSO were 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 principle (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 ERO. Therefore, each individual distribution system is a relevant electricity distribution market from the geographical point of view, because these activities are irreplaceable for the concerned territory.

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

Provision of distribution services and regulation of distribution charges and terms of services are subject to regulation set forth generally in the Energy Act. Further, Public Notice of ERO

No 408/2015 Coll, on the Rules of the Electricity Market, as amended, is relevant as it stipulates, among others, what the price for distribution of electricity consists of.

In case of electricity distribution, also Distribution Grid Codes are important. These documents are made by each DSO individually and have to be approved by the ERO. Such 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 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 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 for distribution is formed mainly from:

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

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

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 of dispute resolution, corporate transactions, financing and restructuring and insolvency; it also helps businesses comply with environmental and competition regulations. Notable mandates include advising the energy trader Korlea Invest Holding on its acquisition of a Polish energy trader, representing Dalkia during the company's negotiations and subsequent acquisition deal with ČEZ, plus advising a consortium of international banks on the euro market financing of Transgas.

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