

Corruption in funding for SMEs in the CR and UK

Diploma Thesis

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Brno 2015

Acknowledgement

I would like to express my sincere gratitude to my supervisor Mgr. Ing. Jana Mikušová, Ph.D. for her valuable advice and constructive criticism during the writing of this diploma thesis.

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Brno, Czech Republic, 2nd January 2015

Abstract

ZÁKLASNÍKOVÁ, Iveta. *Corruption in funding for SMEs in the CR and UK*. Diploma thesis. Brno: Mendel University in Brno, 2015.

The purpose of this thesis is to make recommendations towards legislation and state authority activity in respect to the management of EU funding for small and medium enterprises in order to minimize corruption in this area in the Czech Republic. This will be achieved by obtaining information about legal cases and other fraudulent cases which are connected to EU subsidies for small and medium enterprises in the Czech Republic and United Kingdom. It will also be necessary to analyse legislation framework in both countries. Thus it will be possible to compare and research results and make recommendations for the Czech Republic afterwards.

Keywords

Corruption, bribery, fraud, European Union, EU funding, subsidies.

Abstrakt

ZÁKLASNÍKOVÁ, Iveta. *Corruption in funding for SMEs in the CR and UK*. Diploma thesis. Brno: Mendel University in Brno, 2015.

Cílem práce je navrhnout doporučení v oblasti legislativy a příslušných státních orgánů ve spojitosti s dotacemi z Evropského rozpočtu a malých a středních podniků. Tato doporučení tak přispějí k minimalizování korupce v této oblasti v České Republice. Proto je nezbytné vyhledat informace o případech spojených s korupcí či jiným podvodným chováním s Evropskými dotacemi, které již proběhly na území České Republiky a také Spojeného království Velké Británie a Severního Irska, jakožto země s nižším výskytem úplatkářství. Další nezbytnou částí této diplomové práce je porovnání nastavené legislativy v obou zemích. Tudíž bude možné výsledky zkoumat a porovnat a navrhnout tak vhodná doporučení.

Klíčová slova

Korupce, úplatkářství, podvody, Evropská Unie, EU fondy, dotace.

Content

1	Introduction	9
2	Aim and Methodology	11
2.1	Aim of This Thesis.....	11
2.2	Methodology	11
3	Literature Review	13
3.1	Corruption.....	13
3.1.1	Corruption in the EU.....	14
3.1.1.1	Authorities in the EU	15
3.1.1.2	International Anti-Corruption Cooperation	16
3.1.2	Public Procurement	18
3.2	EU Budget and Funding.....	19
3.3	Legal Framework	20
3.3.1	Legal Systems	20
3.3.2	Legislation in the Czech Republic	21
3.3.3	Legislation in the UK.....	23
4	Practical Part	30
4.1	Small and Medium Enterprises.....	30
4.2	European Union.....	30
4.2.1	European Commission’s Protection of the EU’s Financial Interest.....	30
4.2.2	European Public Prosecutor’s Office (EPPO).....	31
4.2.3	Detection and Reporting of Irregularities	32
4.2.4	Implementation of Article 325 TFEU	34
4.2.5	EU and Public Procurement	35
4.2.6	Whistleblowing in the EU.....	35
4.3	The Czech Republic	36
4.3.1	The CR and EU funds	36
4.3.2	Bodies Revealing and Investigating Corruption.....	39
4.3.3	Control over the EU funds.....	42
4.3.4	Cases	44

4.3.4.1	Corruption in EU Funding (Cases CR-A, CR-B, CR-C).....	44
4.3.4.2	Public Procurement and EU Funding (Case CR-D)	47
4.3.4.3	Frauds and EU Funding (Cases CR-E, CR-F, CR-G, CR-H)	48
4.3.4.4	Whistleblowing (Cases CR-I).....	52
4.4	United Kingdom.....	52
4.4.1	The UK and EU Funding	52
4.4.2	Bodies Investigating and Revealing Corruption.....	54
4.4.3	Controls over the EU Funds.....	57
4.4.4	Cases.....	58
4.4.4.1	EU Funding (Cases UK-A, UK-B, UK-C).....	58
4.4.4.2	Corruption (Cases UK-D, UK-E, UK-F).....	60
4.4.4.3	Whistleblowing (UK-G).....	61
4.5	Comparison.....	62
4.5.1	Comparison of the cases	62
4.5.2	Comparison of legislation.....	64
4.6	Recommendations.....	65
5	Discussion	69
6	Conclusion	73
7	References	76
A	Appendix: Statistics and surveys on corruption in the EU	88

List of Figures

Fig. 1 Operating Budgetary Balance (million EUR) in 2013 (% of GNI).....	20
Fig. 2 Irregularities Reported as Fraudulent and the Related Amounts, 2009-2013.....	33
Fig. 3 EU Funding in the CR in 2012, 4.5 billion EUR	38
Fig. 4 EU Funding in the UK in 2013, 6.3 billion EUR.....	53
Fig. 5 Control of Corruption in the EU in 2012.....	89
Fig. 6 Government Effectiveness in the EU in 2012	89

List of Tables

Tab. 1 Countries with the highest CPI in 2013	14
Tab. 2 European and UK Procurement Regulations	26
Tab. 3 European and UK Procurement Regulations	30
Tab. 4 Irregularities Reported as Fraudulent and the Related Amounts, the CR and UK, 2009-2013	34
Tab. 5 Incoming Information to OLAF from Member States in 2013	34
Tab. 6 Coverage of Whistleblower Protection Laws: Rating for EU Countries	36
Tab. 7 Corruption Perception Index (CPI) in the EU in 2013	88
Tab. 8 Areas with corruption and abuse of power in the CR and UK (in %)	90

1 Introduction

I made the decision to analyse corruption in EU funding in small and medium enterprises because I came across two unpleasant situations last year which really made me think about this problem. The first of these situations occurred whilst attempting to gain a subsidy for my new business, when it was suggested that I should give a bribe to a public officer in order to ensure that my application for funding was successful. I naturally refused to do this, and it then became quite clear that my application was sure to be rejected on the basis that I was not willing to compromise my ethics and commit a criminal offence by offering a bribe in order to secure the funding my new enterprise so desperately needed.

A few months later, I met a friend of mine who is father to two children and lives in a small village in the Czech Republic. He confided in me about fraudulent activity that his boss was involved in relating to EU funding. He told me that he could not talk about it publicly because he was worried that he would lose his job which provided financial stability for his family, and because he lived in a rural area he felt that it would be almost impossible to find new work, and even if he did decide to expose these activities, he did not even know who he should talk to about it. As a result he decided that the best thing to do was to just keep quiet about it in order to not create problems for himself and his family. He was not alone, in that most of his co-workers were in the same situation and bore the same secret.

These two unconnected but similar situations inspired me to find out more about this problem and so I decided to write this thesis on this topic. I wanted to investigate further into corruption and other fraudulent activities which are related to EU funding in small to medium enterprises (SMEs).

Taking a step back from my own personal experiences and looking at the statistics on the subject, I should probably not be that surprised with what I encountered. For example, In the Czech Republic, 71 % of companies find that corruption is the main barrier in doing business, and this percentage turns out to be the highest out of all the EU Member States. Moreover, 95 % of the population believes that corruption is widespread in the Czech Republic (European Commission, 2014g).

These numbers seem to highlight clearly the extent of the problem within the Czech Republic.

Corruption seems like a problem which is very often associated with public procurement, politicians, and public officers, however there are a lot of other areas where corrupt activities can be found.

According to the anti-corruption organisation Transparency International, the most corrupt areas in the United Kingdom for example are prisons and sport (Transparency International TI-UK, 2014).

However, it is necessary to be aware that corruption is also related to other kinds of fraud and is sometimes difficult to prove, therefore it is not always even revealed.

The European Commission specified in its Anti-Corruption Report that corruption costs the European economy around 120 billion Euros per year, which is almost as much as the annual budget of the EU (European Commission, 2014o, p. 3).

Citizens of the European Union are well aware of the funding that comes “from Brussels”. The main objective of these funds is to fulfil cohesion policy, in other words to achieve economic and social cohesion within Member States. Purposes of the funding from the

European budget are different and vary according to the specific needs of the different regions in the EU, e.g. the European Regional Development Fund, the European Social Fund and others.

EU funding provides many opportunities for corruption or other fraudulent behaviour to occur, thus it is necessary to ensure that a comprehensive control mechanism is in place, not only before the funding is allocated but during and after as well. These controls are put in place and are regulated primarily by the individual Member States and they are obliged to report any irregularities relating to the European budget to the European Commission. However, this varies drastically between Member States, for example where one Member State may report 300 irregularities, another may not report any, which is a cause for concern for the European Commission.

Another issue that the level of sanctions for fraud relating to EU financial interests varies among the Member States from no mandatory sentence to twelve years imprisonment. The same disparity also exists with the timeframe within which it is possible to investigate and prosecute offences (between one to twelve years) (European Commission, 2014e).

Thus, there has been recent discussion about setting up a European Public Prosecutor's Office which would be an independent body with the ability to investigate and prosecute crimes which affect the EU's finances. However, according to some Member States, it is in conflict with the "principle of subsidiarity"¹.

I decided that it would be most valuable to not only analyse corruption connected with EU funding for SMEs in the Czech Republic in isolation, but to compare this with another Member State which has lower levels of corruption in the same area. The United Kingdom has substantially lower levels of corruption as we can see according to Corruption Perception Index or indicators from World Bank in appendix A of this thesis. Other surveys and analysis shows that corruption is lower in the United Kingdom than in the Czech Republic. For example, according to Eurobarometer, 8 % of citizens answered that over the last twelve months they were asked to pay bribery or it was expected from them for a service in the CR. The average in the EU is even less, only 4 % and nobody (0 %) was asked to pay bribery in the UK (European Commission, 2014g).

Therefore it was a good country to draw a comparison with. Within this thesis I have analysed and compared corruption and other fraudulent cases related to the EU's financial interests in SMEs in the Czech Republic and United Kingdom. I have also analysed legislation frameworks in both countries, thus enabling me to fulfil the objective of this thesis which is to provide recommendations for ways that the Czech Republic could decrease its corruption levels in these areas.

¹ "The subsidiarity principle goes to when the Union should intervene. It expresses the political philosophy of self-government. Local decisions are, in principle, better than regional ones and national decisions are, likewise, better than international ones." (Chalmers et al. , 2014).

2 Aim and Methodology

2.1 Aim of This Thesis

The aim of this thesis is to make recommendations towards legislation and state authority activity in respect to the management of EU funding for SMEs in the Czech Republic so that corruption is minimized in this area. This aim will be achieved by obtaining information about legal cases and other fraudulent cases which are connected to EU subsidies for small and medium enterprises in the Czech Republic and United Kingdom. It will be also necessary to analyse legislation framework in both countries. Thus it will be possible to compare and research results and make recommendations for the Czech Republic afterwards.

Based on the findings of this thesis, the research questions will be as follows:

1. Is Czech legislation set up to fight against corruption?
2. Is it possible to get inspired by legislation and other processes of fighting against corruption in the UK and use it in the CR?

These questions will be answered in the conclusion of this thesis.

2.2 Methodology

The data for this thesis has been collected from several publications, statistical data, legislative documents, law cases, press releases, court decisions, regulations, newspaper articles and other available data. Due to the frequent changes related to this topic such as legislation changes or updates of corruption surveys and others, it was necessary to use current publications and other legislation sources and this is the reason why the thesis consists mainly of electronic sources. The sources are from official websites such as the European Commission, Transparency International global, Transparency International Czech Republic and United Kingdom and many others.

To acquire additional data related to the topic, the responsible Courts which judged defendants from chosen legal cases were contacted. Different relevant government departments were contacted, such as Ministry of Finance or Ministry of Interior in the Czech Republic or Department of Business Innovations and skills in the UK or UK's Serious Fraud Office and necessary questions were discussed through email or phone communication. It was also necessary to acquire information directly from European Anti-Fraud Office OLAF, the European Commission and AFCOS offices. Other crucial institutions were contacted those which are connected to EU funding in the CR or UK, such as for example Department of Management and Coordination of EU funds from Ministry of Regional Development in the CR.

The thesis is divided into two main parts - the Literature Review and the Practical Part.

The Literature Review is structured into three main areas which are corruption, EU budget and funding, and legal framework.

The corruption part specifies elementary insights of corruption and topics related to it, such as Corruption Perception Index, whistleblowing and others. It was also necessary to use specialized literature to analyse corruption in public procurement, international anti-corruption cooperation in the EU and information about bodies investigating or re-

vealing corruption at EU's level. This part is also supported by statistics from Transparency International organisation, the World Bank and other surveys which show lower levels of corruption in the United Kingdom. This data can be found in appendix A. The EU funding part specifies types of funds and the operating budgetary balances of the Member States. The last part of the Literature Review describes the difference between common and civil law as it is needed because the UK and Czech Republic use different legal systems. There is also specified legal framework related to the topic of both countries such as Acts against corruption and fraud, legislation connected to public procurement, EU funding and subsidies, criminal liability of legal persons and whistleblowing.

The Practical Part specifies statistics of small and medium enterprises in the EU and situation related to corruption in EU subsidies in the EU, in the Czech Republic and United Kingdom.

The EU part explains the strategy of the European Commission's protection of the EU's financial interests and gives information about the European Public Prosecutor's Office which is currently being discussed. This part provides statistics on reporting irregularities in EU funding by Member States to the Commission and Anti-Fraud Office OLAF and also gives information about Article 325 of the Treaty on the Functioning of the EU. The situation of public procurement in the EU is also described and the last part specifies the situation of whistleblowing at EU level.

The Czech part and UK part both specify similar information, so it is easy to draw a comparison between the situations in both countries and fulfil a main goal of this thesis. They specify the types of funding and the operational programmes for the period between 2007 and 2013 and also include data about the new period from 2014 to 2020. Following this, there are descriptions of the various bodies which reveal and investigate corruption, fraud, and provide support for whistleblowers, such as governmental agencies, the police, NGOs and other associations. The systems of control over the EU funds in both countries are also described. The next part looks at cases relating to corruption in EU subsidies, public procurement, fraud, and finally, whistleblowing.

This Practical Part is followed by a comparison between the cases and legislation of the UK and Czech Republic, at the end are seven areas of recommendation, which fulfil the main objective of this thesis. The thesis ends with a discussion and a conclusion, where the author summarises the acquired data and recommendations that have been made, and answers the research questions asked in the Aim of the Thesis.

3 Literature Review

3.1 Corruption

Sampford and collective defined corruption as a leakage of resources from institutions that should be used for social objectives. The corruption does not have to be always only large larceny of contract manipulation or embezzlement of funds. It can also be in the form of unofficial payments, under the table user fees, the sale of medication that should be for free or even free time from services which are not performed. All of these acts typify a misuse of public funds for private profit (Sampford et al., 2013).

Transparency International (TI) defines corruption as *'the abuse of entrusted power for private gain'* (Transparency International UK, 2014a).

TI (Transparency International UK, 2014a) specifies corruption as:

- Bribery.
- Fraud - *"To cheat. The act of intentionally deceiving someone in order to gain an unfair or illegal advantage (financial, political or otherwise)."*
- Collusion - a secret agreement between parties.
- Money Laundering - concealing the ownership, origin or destination of illegally obtained money and hiding them in legitimate business.
- Conflict of Interest – when an individual, a government, media, business or civil society organisation has to make a choice between their private interests and their position.
- Revolving Door - An individual who moves back and forth between public office and private companies.
- Nepotism - favouritism based on a familiar relationship.
- Lobbying - Any activity which influences government policies.

As Sampford and others presents in their book, specific types of bribery include:

- Influence-peddling, e.g. to influence on government decision-making. It is different to lobbying or legitimate political advocacy.
- Offering or receiving improper gifts, favours or commissions.
- Payoffs to avoid liability for taxes or other costs.
- Bribery in support of fraud, e.g. paying non-existent employees.
- Avoidance of criminal liability.
- Supporting unfair competition for benefits or resources.
- Bribery in the private sector, such as banking and finance officials.
- Payoffs to obtain "inside", confidential information (Sampford and col. 2013).

It is also necessary to mention whistleblowing in connection with the topic of corruption. The concept of whistleblowing is derived from the phrase "to blow the whistle". This expression indicates the act of individual raising the alarm and saying "watch out, something's wrong here." Whistleblowing is a situation when current or former employees of an organization point to unfair practices in the workplace, usually on practices endanger-

ing the public and going against the public interest (Transparency International TIC, 2014a).

Index CPI

Transparency International, the global coalition against corruption, rank 177 countries in the world according to *CPI - The Corruption Perceptions Index*. In other words, this index says how corrupt their public sector is perceived to be. The scale ranges from 0 - 100, where 0 means a high level of corruption exists and 100 means that the country is perceived as having a low level of corruption. Unfortunately, none of the countries achieved a CPI score of 100. Nevertheless, some of the EU countries ranked very highly out of all the countries that were researched (Transparency International, 2013a).

Tab. 1 Countries with the highest CPI in 2013

Country	Score
Denmark, New Zealand	92
Finland, Sweden	89
Norway, Singapore	86
Switzerland	85
Netherlands	83
Australia, Canada	81
Luxembourg	80
Germany, Iceland	78
United Kingdom	76

Source: Transparency International, 2013a, author's elaboration

3.1.1 Corruption in the EU

Corruption is a huge problem in the EU because the cost of it is around 120 billion Euros per year, which is almost as an annual budget of the EU.

Eurobarometer research (a survey among Europeans) shows that around 76 % of people think that the corruption is widespread and over half of Europeans think that corruption even increased over the last three years (European Commission, 2014a).

Corruption influences all Member States. The European Commission (2014b) unveiled its EU Anti-Corruption Report in February 2014 which presents the main trends related to corruption, such as:

1. Control mechanisms

- *Use of policies to prevent corruption.* Methods of preventing corruption vary between states in the EU.
- *External and internal control mechanisms.* Control mechanisms within public authorities (at local level) are weak in many EU states, especially internally.
- *Conflicts of interest.*

2. Prosecution and punishment

- *Criminal law* defines corruption as a criminal act with the standard of the Council of Europe, EU legislation and UN. Nevertheless, EU Framework Decision 2003/568/JHA on combatation corruption in the private sector has been used unevenly among EU states.
- *The efficiency of law enforcement, prosecution and judiciary in investigating corruption.*

- *Effectiveness of anti-corruption agencies.*
- *Corruption crime statistics* which should be thorough are missing in most Member States, thus comparison and evaluation is very difficult.

3. Political dimension

- *Political responsibility.* Integrity in politics is an issue in many states.
- *Financing political parties.*

4. Risk areas

- Risks are *higher at local and regional levels*, because internal controls are weaker.
- *Healthcare, urban development and construction, tax administration* are predisposed sectors.
- *Insufficient controls within state-owned companies.*
- *Petty corruption* is only in a few Member States.
- *Foreign bribery.*

Another very important area is the area of **public procurement**, because it is highly susceptible to corruption. Public expenditure on works, goods and services amount to approximately of one fifth of the EU's GDP every year (European Commission, 2014b).

3.1.1.1 Authorities in the EU

OLAF

An important organization in the EU is **OLAF (European Anti-Fraud Office)**, which investigates fraud connected to the EU budget, corruption cases within EU institutions and other EU authorities and it also reveals negligence by EU officers. OLAF was established in 1999 (König et al., 2009).

OLAF is an administrative and investigative department, thus it can only provide suggestions to EU organizations on how to deal with fraud. However, it supports EU institutions and authorities, especially the European Commission, to create and implement legal restrictions and policies to battle fraud. OLAF is part of the European Commission, but it is an independent subject while it investigates (European Commission, 2014u).

OLAF gathers information from different sources, such as Commission audits, Court of Auditors report, its own experience, open sources and others. This information is shared through different systems and is not public:

- IMS (Irregularity Management System) - data on fraud & irregularities, which is open to the Commission departments.
- CED (Central Exclusion Database) - information about individuals, companies and organisations that have been banned from receiving EU subsidies.
- TR-AIR (Transparent Aid) - an IT tool to avoid double-funding.
- Strategic Analysis - this analysis helps to identify threats and vulnerabilities in the EU's finances (European Commission, 2014v).

AFCOS

The Anti-fraud coordination service, is an operationally independent national authority. It protects the EU's financial interests from fraud. AFCOS shares information between the various national fraud-prevention authorities and OLAF. Each new EU country or mem-

bership candidate has a national fraud-prevention contact point. The main tasks are to coordinate legislative, administrative and operational obligations to protect EU finances. AFCOS also notifies the Commission in the case that it discovers instances of fraud or other irregularities (European Commission, 2014u).

"This year's report focuses on the requirement for each Member States to set up an Anti-Fraud Coordination Service (AFCOS) in accordance with Article 3.4 of Regulation (EU) No 883/2013. Setting up AFCOS aims to facilitate effective cooperation and exchange of information with the European Anti-Fraud Office (OLAF)." (European Commission, 2014u).

The regulation came into force in October 2013 and the responsibilities of AFCOS differs depending on the country. Twenty-three member states have already established AFCOS in their country. Ireland, Spain, Luxembourg and Sweden still have not established AFCOS in their countries but they all plan to do so by the end of 2014 or in Spain's case, within 2 years time. Germany re-confirmed their working cooperation arrangement with the Anti-Fraud Office (Eur-Lex, 2014).

The AFCOS was established in September 2007 in the Czech Republic and it is specified as a AFCOS Central Contact Point and its local contact points; September 2007 - Government Resolution No. 1010 based of which transition of the CCP AFCOS from the Public Prosecutor's Office (NSZ) to the Ministry of Finance - Department of Control.

The AFCOS in the UK is the City of London Police and was officially established in April 2014 under the legal act "City of London Police Act 1863" (Eur-Lex, 2014).

All the Member States indicated that AFCOS has a coordinating role, but only eight of them stated that their AFCOS is entrusted with certain investigative powers. The Supreme Public Prosecutor's Office is a local AFCOS contact point in the Czech Republic (Eur-Lex, 2014).

The Czech Republic indicated AFCOS as a coordination body and the information about the UK cannot be found in this report due to the establishment of AFCOS later in 2014.

Europol

The European Police Office is the EU's law enforcement agency. The main aim of Europol is to contribute to a safer Europe for its citizens. Europol assists the Member States in their combat against terrorism and international crimes. The Europol headquarters are in The Hague, in the Netherlands and investigate over 18,000 cross-border cases each year. The office has existed since 1999 (Europol, 2014).

Eurojust

The European Union's Judicial Cooperation Unit was established in 2002 and is also located in The Hague like Europol. The unit assists the competent authorities of Member States in dealing with terrorism, serious cross-boarder crime, drugs, cybercrime, sexual exploitation and many others. Eurojust also offer assistance to Member States and the Commission when crimes affect the EU's finances (Eurojust, 2014).

3.1.1.2 International Anti-Corruption Cooperation

Anti-corruption and law

The Council of Europe has been focusing on the fight against corruption. Its first activity was the adoption of an Action Programme for the Fight against Corruption in 1996. More significantly, the Council of Europe adopted two key documents relating to corruption. The first is the *Criminal Law Convention on Corruption* agreed in Strasbourg in 1999, in the

Czech Republic published under Act no. 70/2000 Coll. The basic objective of this Convention is to coordinate a wide range of comprehensive criminalization of corrupt practices and gradually harmonize very different national legislation so as to be consistent in the way those who commit corruption are prosecuted and to also speed up the prosecution of offenders (David et al., 2007).

The second important document adopted by the Council of Europe is the *Civil Law Convention on Corruption*. The basic objective of the Convention is to provide adequate legal protection to entities that have suffered damage as a result of corruption. According to the Convention, corruption means giving a direct or indirect request, giving or receiving a bribe, or any other undue advantage which distorts the proper performance of any duty or behaviour required of the recipient of the bribe (Civil Law Convention on Corruption).

The fight against corruption is regulated in Article 83 of the Treaty on the Functioning of the EU. The Article specifies a right for European Parliament and Council to adopt directives that set minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime including corruption.

The fundamental EU document relating to corruption is the EU Council Framework Decision 2003/568 / JHA on combating corruption in the private sector. Other examples of EU action in the fight against corruption are the *Convention on the protection of the European Communities' financial interests* from 1995 and the *Convention on the fight against corruption involving officials* of the EC in 1997.

In relation to the protection of financial interests, the European Commission set up the European Office for the Fight Against Fraud, which investigates fraudulent activity related to the EU budget and cases of corruption in EU institutions. Other examples of institutionalised forms of cooperation at EU level are the European Judicial Cooperation Unit (Eurojust) and the European Police Office (EUROPOL).

Monitoring and evaluation mechanisms

Nowadays, there are three main monitoring mechanisms to assess the effectiveness of anti-corruption policies in the EU:

- GRECO (Council of Europe Group of States against Corruption);
- OECD Working Group on Bribery;
- UNCAC (UN Convention Against Corruption).

These mechanisms provide an impulse to implement anti-corruption standards. Nevertheless, each of them has limited power to resolve problems with corruption in the EU (European Commission, 2011, p. 4-6).

GRECO is an important platform because all the Member States participate in it. The main activity of GRECO is to monitor compliance with legal standards in anti-corruption areas established by the Council of Europe, such as Criminal Law Convention on Corruption and its additional protocol, Civil Law Convention on Corruption and the Twenty Guiding Principles against Corruption. Thus, GRECO focuses less on specific areas of the EU legislation, e.g. public procurement. (European Commission, 2011, p. 5).

Nowadays, in GRECO comprises 48 European States and the USA (Council of Europe, 2014).

The OECD Anti-Bribery Convention sets out legally binding standards against the bribery of foreign public officials in international business transactions (Civil Law Convention on Corruption of the Council of Europe).

The focus of the Convention is only on the corruption of foreign public officials in international business transactions and cannot be implemented in other areas to fight against corruption in the EU (European Commission, 2011, p. 5).

The convention focuses on supply side of the bribery transaction and is comprised of 34 OECD member countries and 7 non-members; Argentina, Brazil, Bulgaria, Colombia, Latvia, Russia, and South Africa have adopted this Convention (OECD, 2014a).

Not all the Member States from the EU participate, but only 22 of them Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Luxembourg, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and UK (OECD, 2014b).

Transparency International have underlined in its seventh annual Progress Report that enforcement of this Convention has been uneven: active enforcement has occurred only in 4 EU Member States (European Commission, 2011, p. 5).

The EU joined the UN Convention against Corruption (**UNCAC**) in 2008.

There are a few features which limit the potential of UNCAC in the EU, such as the fact that it is an intergovernmental instrument, the members are states which may have lower anti-corruption standards than the EU, or recommendations which are not implemented can be pursued only limited number of times (European Commission, 2011, p. 5).

3.1.2 Public Procurement

Ochrana (2011) specifies the stages of public procurement. First of all, a contracting authority has to decide whether an intervention by the public sector is necessary. Then a selection of appropriate solutions must be specified and the authority has to ask whether the solutions are effective. Other steps are the preparation of documentation and an assignment of a public procurement. The contracting authority has to evaluate each proposal according to the rules and choose the most economically advantageous one. The selected proposal is realized, monitored and final performance audits are accomplished afterwards, thus the contracting authority executes an ex post audit.

Public Procurement Directives have achieved higher levels of competition and greater transparency, however an improvement is a necessary to simplify procedures and to strengthen anti-corruption and anti-fraud policy. Thus, the EC proposed a revision of the Directives. The EC proposed new legislation in the procurement of water, energy, transport and postal services and other areas. The proposal includes monitoring in public procurement and systems to detect corruption. The proposal is discussed in the Council and European Parliament nowadays (European Commission, 2014c, p. 23-24).

Bovis (2012) says that public procurement is very comprehensive process and centralized or decentralized systems vary among countries in the EU. There are over 250,000 authorities managing public procurement across Member States and there are over 2 million procedures for the award of public contracts every year. The total public expenditure in procuring goods, works and services amounts to over 2 trillion EUR in the EU.

3.2 EU Budget and Funding

There are different types of funding from the European Budget which fulfil the main goal of Cohesion Policy. Over 76 % of the EU budget is spent through 5 main Structural & Investment Funds (European Commission, 2014i):

A. Structural Funds

Structural funds enable economic and social cohesion to be achieved within EU members. These funds help less developed regions in the EU or regions that have structural problems (König et al., 2009).

There are four types of structural funds: ERDF, ESF, EAFDR and EMFF.

European Regional Development Fund (ERDF) was created as a basic tool for cohesion policy. Nowadays, it is the most important tool to help decrease problems in regions. ERDF financed projects focusing on infrastructure, job opportunities and employment, regional development, small and medium enterprises and research and development (König et al., 2009).

European Social Fund (ESF) was created to improve new skills at the labour market. For the period 2007-2013 the fund enabled a flexible labour market. It increased the adaptability of enterprises and workers too. The fund supports lifelong learning, labour market institutions, and has helped to fight against discrimination and social exclusion. ESF is a tool to increase employment and social progress. The main difference between ERDF and ESF is that ERDF supports investment projects, but ESF focuses on non-investment projects, e.g. training (Ministerstvo pro místní rozvoj ČR, 2012).

European Agricultural Fund for Rural Development (EAFRD) supports the modernization and improvement of agriculture within EU (König et al., 2009).

European Maritime and Fisheries Fund (EMFF) is one of the Structural and Investment Funds and it includes the Common Fisheries Policy which must contribute to efficient fishing activities (Hancher, 2012).

B. Cohesion Fund

This fund is mainly for large projects which support infrastructure and the environment. The Cohesion Fund can only be used for states that have a GNP lower than 90 % of the average GNP of the all EU members (Staab, 2011).

The *EU budget* is highly contested, especially because the costs of the budget are not equally divided. It is necessary to distinguish between “net contributors” and “net recipients” (Sweeney, 2014).

Figure 1 shows what a country receives from and pays into the EU budget. As we can see, the UK was a net contributor and the Czech Republic was a net receiver in 2013.

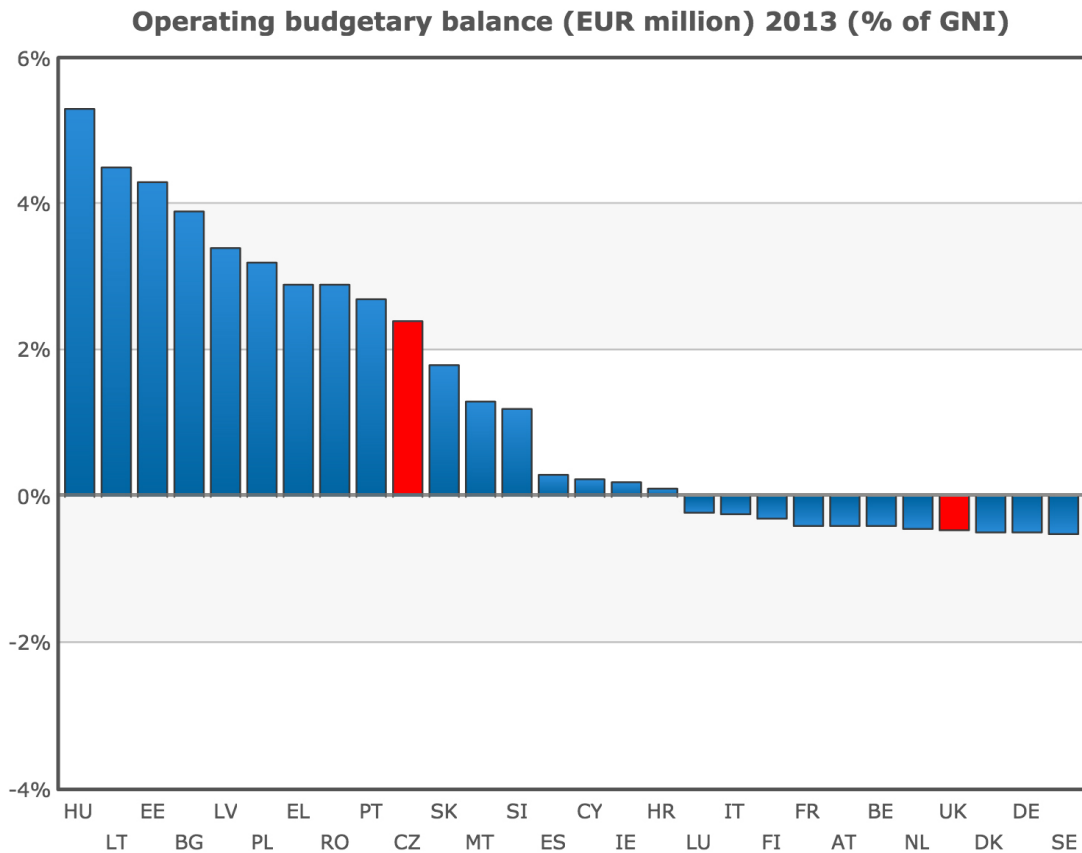


Fig. 1 Operating Budgetary Balance (million EUR) in 2013 (% of GNI)

Source: European Commission, 2014m

3.3 Legal Framework

3.3.1 Legal Systems

There are two different legal systems that are necessary to distinguish between (Slapper et al., 2014):

- **Common Law** (also called **Anglo-American law**) is a *precedent method which is used to decide in cases*. It means that the courts are governed by a judgment which has already happened before, thus the courts are actually making the law. The precedents are usually absolute, but in some cases, even a precedent can be rejected, although this does not happen very often. Common law is case-centred and judge-centred. It has been in use in England and in British colonies such as India, the United States, Canada, Australia, Hong Kong, Ireland, Jamaica, Zimbabwe, Pakistan, Cameroon and many others.
- **Continental Law** (so called **Civil Law**) derives from Roman law. This law can be specified as a codified body of general principles, which is based on Acts and other legislation. The legal acts are general and give instruction on how to solve the legal problem, thus the same cases can be discerned differently in different courts.

This legal system is used by almost all European countries.

3.3.2 Legislation in the Czech Republic

Criminal Code and Corruption

The Criminal Code does not define the expressions 'corruption' or 'corruption offenses'. The basis of criminal legislation on corruption is the third part of the tenth section of the Special Part of the Criminal Code. This part is called Bribery and contains three basic corruption offenses:

- § 331 Bribery-taking (punishment of up to twelve years imprisonment);
- § 332 Bribery-giving (punishment of up to six years imprisonment);
- § 334 Indirect bribery (punishment of up to three years imprisonment).

In addition to bribery the legal order contains other elements of criminal acts that define corrupt behaviour. The critical areas most prone to corruption that lie in the field of public administration, including the legislative and judicial powers, and in particular the specific acts of public officials are in the second part of the tenth Section of the Criminal Code, "Crimes of official persons":

- § 329 Misuse of powers of an official (punishment of up to twelve years imprisonment);
- § 330 Undermining the tasks of an official of negligence.

Other parts of the Criminal Code which cover corrupt behavior are:

- § 180 Unauthorized use of personal data;
- § 221 Breaches of the Duty to Administer Another's Property;
- § 255 Misuse of information and position in the market place;
- § 256 Negotiation advantages in the procurement, public tender or public auction;
- § 258 plotting against public auction;
- and some other elements contained in Title VI. and X. Special Part of the Criminal Code.

Public Procurement

In the Czech Republic public procurement is governed by the Act no. 137/2006 Coll., as amended by Act no. 110/2007 Coll. and further defined by EU Directive 2014/25/EC and EU 2014/24/ EC of 31st of March 2014.

The main principles of the law on public contracts and concessions based on the Treaty establishing the European Community and EU procurement directives. This is particularly *the principles of transparency, equal treatment, non-discrimination, mutual recognition and proportionality*. The main goal of the law on Public Procurement and Concessions Act is to secure efficiency and effectiveness of the management of public funds (Ministerstvo pro místní rozvoj ČR, 2014b).

The purpose of the Act on Public Procurement and Concessions Act is to comprehensively regulate the area of public procurement in the Czech Republic, especially in relation to the provisions of EU law in this area. In accordance with European directives, tendering is driven by efforts to create a modern, flexible and simpler legal framework for public procurement and concessions (Ministerstvo pro místní rozvoj ČR, 2014b).

§ 257 in the Criminal Code defines Manipulation of public procurement and competition in public (penalty of up to 10 years imprisonment).

Subsidies and EU Funding

A Breach of Budgetary Discipline

A Breach of Budgetary Discipline, defined by the *Act no. 218/2000 Coll.*, on budgetary rules in § 44, article 1, with most recipients is withheld or improperly used funds provided from the state budget, the state fund, the National Fund or state financial assets. Basically, it is a breach of the duty of specified recipients of legal regulation, decision or an agreement or violation of the conditions under which the funds were provided.

For breach of budgetary discipline, the beneficiary shall pay the contribution and penalties, the amount of which is defined in the *Act no. 218/2000 Coll.*, On budgetary rules in § 44a, articles 4 and 7. The payment and penalties are always removed by the local tax authority (Zákony Online, 2014).

Responsibility

Liability of a particular person can be seen at two levels in breach of grant conditions - the obligation to pay damages and criminal liability. When considering the payment of damages, it is necessary to determine what legislation is going to be used. If this is a person in an employment relationship, it is governed by the relevant provisions for compensation within the *Labour Code* (Bez Korupce, 2014a).

In the case of elected officials who do not have a labour relationship, the compensation is set according to the 4th Section of the Civil Code no. 89/2012 Coll. in § 2894 - § 2990 Liabilities of Torts.

In case of criminal responsibility, § 221 *Breaches of the Duty to Administer Another's Property in Criminal Code no. 40/2009* says that a person who causes damage which is not small by breaching a duty, imposed by law or undertaken contractually, to take care of and administer (manage) another's property shall be punished by a term of imprisonment of up to six months in some cases even *up to three years*.

Another important part of the Criminal Code is § 212 *Subsidy fraud*, which says that for this kind of fraud the accused can be sentenced *up to ten years imprisonment*. The Criminal Code also specifies § 260 *related to Damage of EU interest*.

Criminal Liability of Legal Persons

As in other countries in continental Europe and the Czech Republic is no exception, one of the fundamental principles of criminal law is the principle of *individual* criminal responsibility, therefore the adoption of the legislation concerning criminal liability of legal persons in the Czech Republic was not easy. Criminal liability of legal persons is in direct contradiction to the very foundations of criminal responsibility, which had worked in the Czech Republic for many years so far.

By joining the EU, the Czech Republic committed itself to undertaking steps that would lead to the criminalization of certain anti-social behaviour of legal persons. Finally in 2012, the Czech Republic adopted *Act no. 418/2011 Coll. the criminal liability of legal persons and proceedings against them* (so called TOPO) and lived up to its commitments in this area with the EU (as the last Member State). It was not only the obligations towards the EU, the pressure to adopt legislation TOPO stemmed from membership in other international organizations, which have formed a contract regulating the issue of sanctioning legal persons. These contracts could not be ratified by the Czech Republic due to the absence of criminal liability of legal persons.

A criminal act committed by legal person can result in, e.g.:

- a dissolution of the legal person;

- a fine;
- a ban in public contracts or in public tenders;
- a prohibition of subsidies;
- publication of the judgment and others (Zákon o trestní odpovědnosti právnických osob a řízení proti nim).

However, the fact that legal person is punished does not mean that individual person will not be punished too.

Whistleblowing

Currently, there is no law that would regulate comprehensively the issue of whistleblowing in the Czech Republic. This is a topic that is almost unknown in the Czech law. The concept of whistleblowing nor any other expression that would match the content is not used in any valid or effective regulation. Protection of whistleblowers is partially included e.g. in the Labour Code, the Criminal Procedure Code and some others.

Although it is theoretically possible to evaluate these provisions as not completely ineffective, they can not create security protection e.g. because the methods of giving notice or notice of any investigation are unclear. Although the Labour Code guarantees fair treatment of employees, it in fact, *does not provide any protection*. The affected employee must defend himself in court.

The Criminal Code provides as an obligation to report crimes, including those associated with corruption, but does not provide any protection in the context of defending the public interest. The Administrative Procedure Code allows employees to notify a supervisor confidentially and anonymously, but *no corresponding protection mechanisms* exist. *Also limited is the role of the Ombudsman*, who may well investigate individual cases, but his statements are *recommendatory* and not binding (Bez Korupce, 2014b).

In May 2013, the Minister Petr Nečas submitted a draft amendment to the Anti-Discrimination Act, which the Legislative Council of the government recommended for approval, but at the same time noted that the integration of the protection of whistleblowers in anti-discrimination law is not the best solution. Subsequently, the government fell, and with it any other solutions for the protection of whistleblowers (Bez Korupce, 2014b).

3.3.3 Legislation in the UK

The UK fights against corruption via the Bribery Act 2010, which exceeds the requirement of the OECD Anti-Bribery Convention. In the UK criminal law system there is no statute of limitations, neither is there general immunity from criminal prosecution for judges, prosecutors or Members of Parliament (European Commission, 2014w, p. 1).

Corruption, as defined in the Bribery Act 2010 and the Fraud Act 2006, and offences such as misconduct in public office have different requirements for conviction and sanctions². UK legislation allows for different targeting of prosecutions and thus appropriate penalties for different types of corruption. Nevertheless, the legislation framework complicates the collection of data on corruption which results in lower transparency of information on corruption data (European Commission, 2014w, p. 4).

² Fraud Act at <http://www.legislation.gov.uk/ukpga/2006/35/contents>;
Bribery Act at <http://www.legislation.gov.uk/ukpga/2010/23/contents>.

There are three different legal systems in the UK (Slapper et al., 2014):

- Law for England and Wales, which is Common law;
- Northern Ireland law is a type of Common law;
- Scottish law is a combination of Common and Civil law.

Due to a complex legal framework in the United Kingdom, the revealed cases are only from England and Wales, therefore where the expression “UK” is used in this thesis it represents only England and Wales.

European Justice (2012) describes on its website **Judicial System in England and Wales:**

- Administration of the Courts. For Court’s administration is responsible Her Majesty’s Courts and Tribunals Service in England and Wales (HMCTS). It is a body of the Ministry of Justice.
- Criminal cases are heard in the magistrates’ courts, the Crown Court, the divisions courts and the related divisions of Court of Appeal.
- Civil cases are heard in the country courts, the High Court and the civil divisions of Court of Appeal.

The new Supreme Court of the UK is the final court of appeal in case of criminal and even civil cases in the UK. However, Scottish criminal cases can not appeal to the Supreme Court.

Bribery Act

“The Bribery Act 2010, which came into force on 1 July 2011 places the UK among the countries with the strongest anti-bribery rules in the world. It not only criminalises the payment and receipt of bribes and the bribing of a foreign official but also extends criminal liability to commercial organisations that fail to prevent bribery committed on their behalf. Provisions on extra-territorial jurisdiction allow the Serious Fraud Office (SFO) to prosecute any company, or associated person, with a UK presence, even if the company is based overseas. Commercial organisations are exonerated from criminal liability if they had adequate procedures to prevent bribery. The accompanying Guidance to Commercial Organisations (GCO) by the SFO promotes awareness of the new legislative framework and guides businesses in a practical manner (including case studies) regarding their obligations under the Act to prevent or detect bribery. In line with a previous OECD recommendation, the GCO makes it clear that facilitation payments are considered illegal bribes and provides businesses with criteria to differentiate hospitality from disguised forms of bribery.” (European Commission, 2014a).

The Bribery Act creates four prime offences:

- offering, promising or giving of an advantage;
- requesting, agreeing to receive or accepting of an advantage;
- bribery of a foreign public official;
- an offence of failure to prevent a bribe or a business advantage by a commercial organisation (Transparency International UK, 2014b).

Organisations are not responsible as long as they tried their best to prevent bribery. Thus, companies have to make sure that they have a strong anti-corruption systems within their entities by e.g. providing anti-bribery training to staff, carrying out risk assessments for certain markets, or checking the people's backgrounds (Pieth et al., 2011).

If a UK company has a branch overseas, the parent company in the UK is responsible if the overseas branch commits a bribery offence whilst performing services for the UK parent, although the parent company would not be liable for failure to prevent bribery under Section 7 if the overseas branch is acting entirely on its own account. The parent company may still be liable in other ways such as false accounting offences or under the Proceeds of Crime Act 2002 (Transparency International UK, 2014b).

A foreign company which conducts any part of its business in the UK may be prosecuted for failing to prevent bribery, even when the bribery has taken place outside the UK and the resulting benefit from the bribery is intended to accumulate outside the UK as well (Transparency International UK, 2014b).

Penalties

Part number 11 in The Bribery Act states that an individual guilty of an offence under section 1 (*Offences of bribing another person*), 2 (*Offences relating to being bribed*), or 6 (*Bribery of foreign public officials*) is liable:

- “On summary conviction, to imprisonment not exceeding 12 months, or to a fine not exceeding the statutory maximum, or to both”;
- On conviction on indictment, to imprisonment for a term not exceeding 10 years, or to a fine, or to both.

In case of an offence under section 7 (*Failure of commercial organisations to prevent bribery*) the organisation is at risk of a fine.

The Ministry of Justice provides guidance for commercial organisations on the Bribery Act to avoid any risk of a breach of the law.

As the Overseas Anti-Corruption Unit City of London Police (2010) mentions, The Act also increases from 7 to 10 years imprisonment and an unlimited fine.

The new act completely repeals:

- Public Bodies Corrupt Practices Act 1889;
- Prevention of Corruption Act 1906;
- Prevention of Corruption Act 1916;
- and also changes other linked legislative instruments.

The Bribery Act applies to all parts of the UK, such as England, Wales, Scotland and Northern Ireland.

International anti-corruption enforcement was operated by the **US Foreign Corrupt Practices Act 1977 (FCPA)** until the Bribery Act came into force in 2011. Organisations may consider that their procedures are correct according to FCPA, but they have to make sure that they are also in harmony with the Bribery Act. There are differences, e.g. the FCPA includes only active bribery, but the Bribery Act includes also the receiving of a bribe (Norton Rose Fulbright, legal practice, 2011).

Public Procurement

Directives and regulations from the EU are implemented in national legislation. Directives and regulations related to public procurement in the UK are shown in the table below.

Tab. 2 European and UK Procurement Regulations

European Legislation	UK Implementation
Public Contracts Directive 2014/24/EU Procedures for the award of public works contracts, public supply contracts and public service contracts.	Statutory Instrument 2006 No. 5 The Public Contracts Regulations 2006 (see amendments below) Scottish Statutory Instrument 2012 No. 88 The Public Contracts (Scotland) Regulations 2012.
Utility Contracts Directive 2014/25/EU Procedures of entities operating in the water, energy, transport and postal services sectors.	Statutory Instrument 2006 No. 6 The Utilities Contracts Regulations 2006 (see amendments below). Scottish Statutory Instrument 2012 No. 89 The Utilities Contracts (Scotland) Regulations 2012.
Concessions Directive 2014/23/EU Procedures for the award of works and services concession contracts.	
Defence & Security Directive 2009/81/EC Procedures of entities operating in the fields of defence and security.	Statutory Instrument 2011 No. 1848 The Defence and Security Public Contracts Regulations 2011
Directive 2007/66/EC Remedies Directive Amends the existing Remedies Directives (89/665/EEC and 92/13/EEC) to improve the effectiveness of review procedures concerning the award of public contracts.	The Public Contracts (Amendment) Regulations 2009 The Utilities Contracts (Amendment) Regulations 2009 The Utilities Contracts (Amendment) Regulations 2009 Incorporated into The Public Contracts (Scotland) Regulations 2012 and The Utilities Contracts (Scotland) Regulations 2012 as above.

Source: Official Journal of the European Union, 2014

The Public Contracts Regulations 2006 & The Utilities Contracts Regulations 2006 have been amended as below:

- The Money Laundering Regulations 2007;
- The Public Contracts and Utilities Contracts (Amendment) Regulations 2007;
- The Public Contracts and Utilities Contracts (Postal Services Amendments) Regulations 2008;
- The Public Contracts and Utilities Contracts (CPV Code Amendments) Regulations 2008;
- The Bribery Act 2010 (Consequential Amendments) Order 2011;
- The Public Procurement (Miscellaneous Amendments) Regulations 2011 (Official Journal of the European Union, 2014).

The Cabinet Office has published new threshold levels for public procurement in the UK. These thresholds came into effect on the 1st of January 2014. The new thresholds show a small decrease, even though EU thresholds have been revised upwards. This is due to a fluctuation in exchange rates between the Pound Sterling and the Euro over the past two years (Gov.uk, 2013).

Criminal Liability of Legal Persons

Criminal responsibility of legal persons has existed in the UK since 1840. The most important law, which was accepted in this area is the Interpretation Act 1899 (Pieth et al., 2011).

As Pieth et al. (2011) mentioned “*under successive Interpretation Acts the word ‘person’ in a statute includes corporations.*”

Corporate criminal offenses were firstly developed through decided cases (by common law), but many cases were defined by statute in England and Wales “*and yet more are creatures of statute.*” (Pieth et al., 2011).

UK’s Practical Law (2014) has specified that the main legislations which are dealing with fraud related to corporations are the Fraud Act 2006 and the Theft Act 1968. Companies regulated by the Financial Conduct Authority (FCA) have to prevent financial crime. Corporate fraud is investigated via the police, FCA, BIS or SFO³.

Other statutory fraud offences, which include fraud such as Companies Act 2006, the Insolvency Act 1986, consumer protection, financial services and tax related legislation.

Common law fraud which involves a criminal offence to conspire to defraud.

“Corporate and senior officer liability. If an offence is committed by a company under the Fraud Act or the Theft Act with the consent or connivance of a director, manager, secretary or other similar officer of the company, or a person who was purporting to act in any such capacity, the individual (as well as the company) is guilty of the offence and may be prosecuted in addition to any prosecution of the corporate.” (Practical Law, 2014).

The Fraud Act 2006 applies in England, Wales and Northern Ireland. The Theft Act 1968 applies only to England and Wales. The Theft Act 1969 is for Northern Ireland and the Theft Act 1607 is used in Scotland.

According to the Fraud Act and the Theft Act the maximum penalty for legal person is unlimited fine. A power to fine is contained in Section 163 of the *Criminal Justice 2003*.

Whistleblowing

In the UK, whistleblowers are protected by law through the **Public Interest Disclosure Act of 1998** (the “**PIDA**”), which is *one of the most comprehensive protection laws for whistleblowers in the world*. It applies to employees of the public and private sectors. PIDA impact on the situation where an employee chooses to disclose information that has, will or may result in the commission of a crime; someone violates or may violate his duty to the law; has, will or may result in a miscarriage of justice; health and safety of persons have been, are or may be at risk; the environment was, is or may be damaged (Transparency International, 2013b, p. 10).

The law applies not only to employees but also to contractors, trainees, agency employees, police officers and others. The condition for protection under PIDA is that the employee makes the disclosure in good faith (Transparency International, 2013b, p. 11).

PIDA uses a unique “tiered” system by which whistleblowers can make their disclosures and be legally protected from retribution.

³ Please, see chapter 4.4.2.

PIDA provides three ways of protected disclosure (Bez Korupce, 2011, p. 16):

- **An internal notification** when the employee turns to the manager or director of the organization in which they operate, and this notification must be made in good faith and with reasonable suspicion that there is, or there may be misconducts.
- **The notification to a control authority** (authority for health and safety or tax office). To get the protection, the whistleblower must meet one hand test for internal notification and in addition must reasonably believe that the information and statements contained therein are essentially true.
- **Broader disclosure** where an employee may apply directly to the police, the media, MPs, NGOs, etc. The employee is protected if they comply with the control authority test for disclosure, and it is found that their motive is not for person gain. Furthermore, the whistleblower must have reason to believe that their disclosure will harm their employment, that there is a risk that evidence will be concealed or destroyed, or has already had communication with an internal publication or supervisory body.

In the case that the employee faced difficulties after the publication, such as bullying, discrimination or got fired from his work, he *can go to court and claim compensation, the possible amount of damages is not limited and depends on the amount of lost profits*. If the employee is only victimized and is not fired, they *may also require compensation for non-pecuniary damage*. If the employee has been fired, he may go to court within seven days with a petition for a preliminary injunction to remain in employment until the investigation finishes. In the case that such *the employee dismissed, the employer must prove that their dismissal is not related to the employee's disclosure*. Thus, PIDA in this case introduces "reverse the burden of proof" (Bowers et al., 2012).

"Employees subjected to retaliation can be compensated, including for aggravated damages and injury to feelings; the highest award to date is £5 million." (Transparency International, 2013b, p. 83).

In April 2013, PIDA was updated to include a "*public interest*" test, which define that employees will only be legally protected from retaliation if they disclosed the fact in the public interest. The part of PIDA which states that disclosure must be made in a *good faith was also omitted*, but if bad faith is found, whistleblower's compensation can be reduced by up to 25 per cent. Several countries have been inspired by PIDA and have used it as a template for their own legislation, e.g. Ireland and Japan (Transparency International, 2013b, p. 83).

However, Public Concern at Work, NGO that support whistleblowers, says that PIDA could be improved through greater promotion and support by government, or establishment of a specialist tribunal the hear whistleblower claims (Transparency International, 2013b, p. 84).

PIDA 1998 applies in England, Wales and Scotland (Public Interest Disclosure Act 1998).

Other legislation

SFO uses legislations such as (Serious Fraud Office, 2014b):

- **Criminal Justice Act 1987** is an important act mainly because it gives investigation powers to Serious Fraud Office;
- *Criminal Prosecution:*

- **Fraud Act 2006** (A person who is guilty of fraud is liable on conviction on indictment, to imprisonment for a term not exceeding 10 years or to a fine or both);
- **Theft Act 1968** (person guilty of theft shall on conviction on indictment be liable to imprisonment for a term not exceeding seven years);
- **Companies Act 2006 S 993.**
- and *others*, such as:
 - Serious Crime Act 2007;
 - Serious and Organised Crime and Police Act 2005;
 - Proceeds of Crime Act 2002 (POCA);
 - Criminal Evidence (Witness Anonymity) Act 2008 Section 2;
 - RIPA Regulation of Investigatory Powers Act 2000.

“Misconduct in public office is an offence at common law triable only on indictment. It carries a maximum sentence of life imprisonment. It is an offence confined to those who are public office holders and is committed when the office holder acts (or fails to act) in a way that constitutes a breach of the duties of that office.” (The Code for Crown Prosecutors, 2014).

Damage of EU’s Interest

After consultation with a British lawyer, the author of this thesis learned that there is not any specific UK law that has been written to address corruption and fraud relating to EU funding.

In his view, if someone had committed such an offence in the UK then prosecutors would tie the offence to existing legislation, such as the Bribery Act, Fraud Act etc. however, criminal law also allows prosecutors to prosecute on the basis of offences such as the conspiracy to commit crimes. Criminal law in England and Wales is not codified.

In terms of punishment, depending on the basis on which a prosecution is brought, offenders could face criminal penalties such as imprisonment or heavy fines. However, there is also the **Proceeds of Crime Act**, which allows the courts to force criminals to hand back any benefits they gained from their crime.

4 Practical Part

4.1 Small and Medium Enterprises

SMEs in the EU

Over 99 % of European businesses are SMEs and they make up two thirds of the private sector jobs. Their contribution to the total value added to the EU is more than half. The fact also is that nine out of ten businesses in the EU is micro-enterprise with in average two employees (European Commission, 2013).

SMEs in the Czech Republic

There are over 1 million SMEs in the Czech Republic, which is 99.84 % of all the business entities. The export contribution is around 51 % and import 56 %. SMEs are the main source of employment in many regions. Nowadays, they comprise almost two thirds of all employment in the Czech Republic. Thus, one of the key goals of the Czech government is to increase competitiveness of SMEs (Business Info, 2014a).

Tab. 3 European and UK Procurement Regulations

Micro enterprises (less than 10 employees)	95.5 %
Small enterprises (10 to 49 employees)	3.7 %
Medium enterprises (50 to 249 employees)	0.8 %

Source: Operacni program podnikani a inovace, 2014, author's elaboration

Nowadays, they have been creating around 35 % of GDP and the share on export is around 51 % and on import 56 % in the Czech Republic (Operační program podnikání a inovace, 2014).

SMEs in the UK

In 2013, there were around 4.9 million businesses in the UK, which employed 24.3 million people and out of that number SMEs employed 14.4 million. SMEs comprised 99.9 % of all private businesses, 59.3 % of private sector employment and 48.1 % of private sector turnover.

Only 27.5 % of employment was in financial and insurance sector in SMEs, whilst nearly a fifth of all businesses operated in the construction sector. Any region in the UK did not have more firms than London itself (Federation of Small Businesses, 2013).

4.2 European Union

4.2.1 European Commission's Protection of the EU's Financial Interest

European Commission has taken legal and administrative measures to protect the EU's financial interests in the period between 2009 and 2013.

In 2011, the Commission adopted multi-annual **Anti-Fraud Strategy (CAFS)**, which raised awareness of fraud amongst authorities of Member States. New spending provisions were introduced in the new spending programmes for 2014 - 2020 based on the CAFS (European Commission, 2014p, p. 5).

In 2012 and 2013, the Commission adopted proposals to protect the EU's financial interests, such as:

- a directive on the fight against fraud by criminal law, which should remove gaps between Member States' anti-fraud legislation;
- a regulation on the establishment of a *European Public Prosecutor's Office* (European Commission, 2014p, p. 29).

4.2.2 European Public Prosecutor's Office (EPPO)

The EPPO will be an independent body with a power to investigate and prosecute fraud and other crimes within EU, which may affect its financial interests.

As the European Commission says: Currently, only national authorities can investigate and prosecute instances of fraud in the EU. Their powers stop at their national borders. Existing EU bodies (such as OLAF, Eurojust and Europol) do not have and cannot be given the mandate to conduct criminal investigations. The EPPO will fill this institutional gap (European Commission, 2014q).

Some Member States are skeptical, because they see a conflict between EPPO and "principle of subsidiarity".

EPPO will be integrated into the judicial systems of the Member States and European Prosecutors shall carry out investigations and prosecutions in these States. After completion of the investigations, indictments would be forwarded to the appropriate national court. There will be one higher European Public Prosecutor who will be superior to all European Prosecutors and he will ensure that all countries operate in the same manner. The entire structure will make use of existing resources, therefore additional costs are very low. The courts of each country will be responsible for judicial review. This means that there will be the possibility to appeal to these courts against a decision of a European Public Prosecutor. Persons accused of fraud with EU funds will also have more legal rights, e.g. The right to interpretation and translation, the right of access to documents and the right to an attorney. The Commission also proposes extending the rights currently in force in some countries only: the right to silence, the presumption of innocence, access to legal assistance, the right to present evidence and the right to question witnesses (European Commission, 2014r).

Once EPPO will fully operate, OLAF will not be responsible for administrative investigations of fraud and other criminal activity that affects the financial interest of EU budget. OLAF will continue to investigate e.g. irregularities within EU staff (European Commission, 2014r).

The European Commission mentioned that *"The interpretation of what constitutes fraud to the EU budget differs from one country to another, as do the penalties. For example, the level of sanctions for fraud varies across the European Union from no mandatory sentence for fraud to 12 years imprisonment. Equally the time within which it is possible to investigate and prosecute offences varies widely, ranging from 1 to 12 years."* (European Commission, 2014s).

Also, only 46 % of cases referred to Member States are followed up by their national judicial bodies. The conviction rate is very low too. It is on average around 42 % (European Commission, 2014t).

Nowadays, there is a discussion as to whether EPPO should operate as one single Office. *"The concept of the single legal area means that the EPPO will not need to have recourse to instruments facilitating mutual assistance or of mutual recognition of judicial decisions in its work. The EPPO shall operate as one single Office, and all cooperation and interaction*

between the Central Office and European Delegated Prosecutors based in different participating Member States, as well as between European Delegated Prosecutors between them, shall be organised with full account taken of this principle.” (Council of the EU, 2014, p. 3).

Member States and EPPO

Commissioner for Justice, Consumer and Gender Equity Věra Jourová from the Czech Republic says that EPPO should be established by 2016. She said that proposed institution is crucial to the investigation of fraud. EPPO should obtain resources from the Office of the European Anti-Fraud Office (OLAF) and use an administrative support from Eurojust (České Noviny, 2014a).

The UK and Ireland have decided not to opt in to the EPPO. Theresa May, UK home secretary, said that the UK government see EPPO as an unnecessary. Barry Vitou of Pinsent Masons, the law firm behind Out-Law.com, noticed that UK organisations involved in spending money from the EU budget must ensure their anti-fraud policies are effective. Vitou also said that the UK's decision to opt out is largely irrelevant: *“The point is that the EU is turning up the heat on fraud on EU funded projects. If they find fraud it will be prosecuted, whether by UK or EU prosecutors is a minor detail to those in the cross hairs.”* (Out-Law.com, 2014).

The British government also said that EPPO would *“investigate, prosecute and bring to judgment”* at once therefore EPPO would be in conflict with the UK's system whereby investigation and prosecution functions are separate. The Government believes that the best way to protect EU's financial interests is to improve the current system, e.g. to increase reporting to OLAF and make even more effective communication with OLAF (Parliament.uk, 2013a, p. 9).

Lawyer Robert Zbíral from Law Faculty of University Palacký in Olomouc said that the emergence of the institution only for a few states would complicate life for all EU countries because the whole system would be vastly more complex than it is already (EurActiv, 2013).

4.2.3 Detection and Reporting of Irregularities

In 2013, 1609 irregularities were reported as fraudulent (both suspected and established fraud), involving 309 million EUR in EU funds. These irregularities comprise of:

- Expenditures, which includes 976 cases, e.g. agriculture market support and indirect payments (279), rural development (184) or cohesion policy (321 cases);
- Revenue, which includes 633 cases (European Commission, 2014p, p. 11).

15,779 fraudulent and non-fraudulent irregularities were reported to the Commission, to the amount of 2.14 billion EUR, of which approximately 1.76 billion EUR concern the expenditure sectors of the EU budget (European Commission, 2014p, p. 8).

There is a large difference in a number of reported irregularities between Member States, possibly due to different attitudes towards detecting fraud or different interpretations when applying legislation. The reported frauds on the expenditure side of the budget dropped between 2009 and 2011, but it is increasing again. Reported fraudulent irregularities have been decreasing in the EU budget revenues. In 2012 and 2013 there was a significant trend towards the use of falsified documentation being the most common way to commit fraud. The amount of irregularities *not* reported as fraudulent have increased, which reflects the fact that more operational programmes are being implemented and also

EU authorities and national audit services are paying more attention to the management of funds (European Commission, 2014p, p. 8).

The EC's results show that the amount of all reported irregularities decreased in 2011, but has been growing since 2012. On the other hand, financial amounts in relation to fraud are significantly different, e.g. 3.2 billion EUR in 2012, but "only" 2.2 billion EUR in 2013, even though the number of irregularities has increased in 2013 compared to previous year (European Commission, 2014p, p. 9).

Fig. 3 represents only fraudulent irregularities, non-fraudulent are not shown on this figure. As we can see, reported irregularities have decreased in amount from about 1,820 irregularities in 2010 to 1,190 in the following year. Nevertheless, the irregularities in millions of Euros differs. In 2010, the irregularities were in the amount of 630 million EUR and 302 million EUR in 2013, which is an enormous difference.

Table 4 describes number of fraudulent irregularities in the Czech Republic and United Kingdom in 2013. In the Czech Republic, there were 20 irregularities related to Cohesion and 15 to Agriculture. In the UK, only 1 related to Agriculture and 17 irregularities connected to Cohesion. The total amount of irregularities is over 13 million EUR in the Czech Republic and almost 11 million EUR in the UK.

As it is written in the Commission's Annual Report: *"The number of irregularities reported as fraudulent measures the results of Member States' work to counter fraud and other illegal activities affecting EU financial interests; it should not be interpreted as the level of fraud on the Member States' territories."* (European Commission, 2014p, p. 40).

The House of Lords mentions in its report 'Fight Against Fraud on the EU's Finances' that there is a lack of enthusiasm with Member States in regards to reporting fraud to the EC, and the fact that there is not unified approach amongst Member States in the definition of fraud does not help to the Commission to fight against fraud in the EU's finances properly (Parliament.uk, 2013b, p. 5).

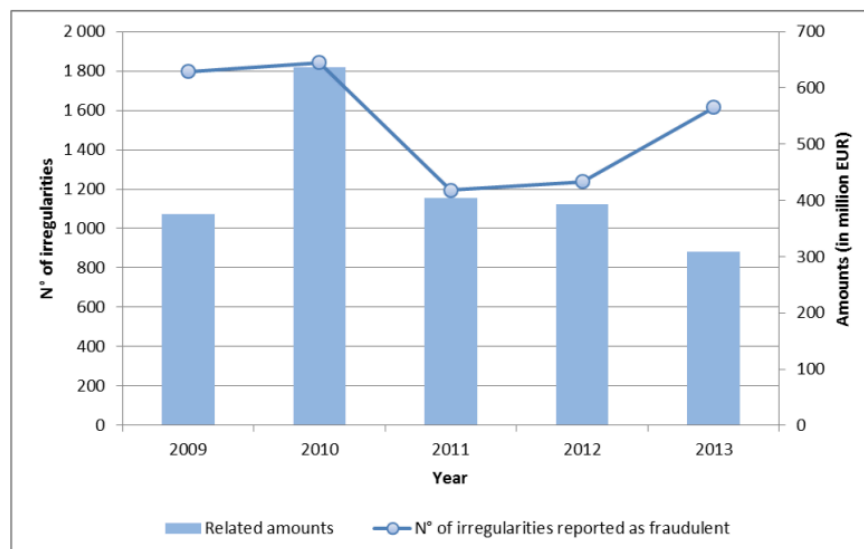


Fig. 2 Irregularities Reported as Fraudulent and the Related Amounts, 2009-2013
 Source: European Commission, 2014p, p. 12

Tab. 4 Irregularities Reported as Fraudulent and the Related Amounts, the CR and UK, 2009-2013

		CR	UK
Agriculture	No.	15	1
	EUR	1,509,736	14,278
Cohesion	No.	20	17
	EUR	11,879,090	10,878,059
Total	No.	35	18
	EUR	13,388,827	10,892,337

Source: European Commission, 2014p, p. 41, author's elaboration

OLAF's statistics

Table 5 shows a degree of cooperation between Member States and the Anti Fraud Office. In 2013, Germany reported the most cases - 38 of them. The United Kingdom reported 4 and the Czech Republic only 2.

Tab. 5 Incoming Information to OLAF from Member States in 2013

Member State	Number of items
Germany	38
Italy	7
Greece, Spain	6
Belgium	5
France, Lithuania, United Kingdom	4
Bulgaria, Ireland, the Netherlands, Romania	3
Czech Republic , Portugal	2
Austria, Croatia, Malta, Poland, Slovakia, Slovenia	1
Cyprus, Denmark, Estonia, Finland, Hungary, Latvia, Luxembourg, Sweden	0
Total	96

Source: OLAF, 2013, author's elaboration, p. 15

4.2.4 Implementation of Article 325 TFEU

Article 325 - Combatting Fraud of TFEU (Treaty on the Functioning of the EU) states that Member States have to, in cooperation with the Commission, submit a report each year to the European Parliament and the Council on the actions taken to implement this Article. Part of this report is the Article 325 questionnaire, which is sent to each Member State by the Commission. The questionnaire is answered by each Member State and then it is used to check anti-fraud measures within each country. Another part of the questionnaire is related to AFCOS (Eur-Lex, 2014).

According to the results from questionnaires from the period between the 1st of January and the 31st of December 2013, the most important measures which were taken by the Member States are in the *Public Procurement* area where legislative, organisational and administrative measures were taken. The *financial crime* area was next, followed by *conflicts of interest* and finally, *corruption* (Eur-Lex, 2014).

The Czech Republic focused the most on public procurement, financial crime, organised crime, conflicts of interest and fraud definitions, whilst the UK focused on public procurement, financial crime, corruption and conflict of interests (Eur-Lex, 2014).

As we can see, both countries have implemented measures in public procurement, which is an important area in relation to EU fraud. The UK also focused on corruption, whereas the Czech Republic did not in 2013.

The measures that were taken by each country in the area of public procurement were as follows (Eur-lex, 2014):

- The Czech Republic “*reported a new legislative measure which enables the police authorities to use operational means, such as interception of telephonic communications (pursuant to Section 88 of the Code of Criminal Procedure), in all cases where an examination or investigation is conducted in respect of a criminal act committed to the detriment of the EU's financial interests*”.
- The UK reported administrative and organisational measures to fight against corruption within public procurement and conflicts of interest, such as the EAFRD funded projects of lower and middle value becoming under increased detailed control.

4.2.5 EU and Public Procurement

As the European Commission mentioned in its European Anti-corruption Report, insufficient prevention of corruption in public procurement harmfully influenced the management of EU and national funds. Hence, the legislation aims to use public money efficiently, thus promoting a fair and transparent platform for public funds. Some of the Member States have legal arrangements to deal with corruption in public procurement. Nevertheless, most members deal with this through their general legislation on corruption (European Commission, 2014s).

Legal acts in the EU, secondary EU law, to coordinate assigning of public procurement concludes *The Utilities Directive, Directive of the European Parliament and Council Directive 2004/17/EC* of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors, as amended was replaced by a new *Directive of European Parliament 2014/25/EU on 28th of March 2014*. Other Directive - *The Public Procurement Directive 2004/18/EC* was replaced by directive *2014/24/EU*.

Due to the fact that the Directive shall enter into the force on the twentieth day following that of its publication in the Official Journal of the European Union, from the 17th of April 2014, the Czech Republic is obliged, as well as other Member States, to take the new rules into national law Regulations until the 17th of April 2016 (Ministerstvo pro místní rozvoj ČR, 2014b).

4.2.6 Whistleblowing in the EU

Transparency International conducted research into whistleblowing in Europe in 2013. TI assessed 27 EU countries⁴ according to the adequacy of whistleblower protection. The

⁴ Croatia became part of the EU on 1st of July 2013, thus it is not included in this research.

research emphasizes a need to improve protection for employees and also to increase appreciation of whistleblowing (Transparency International, 2013).

As we can see in Table 6 below, the United Kingdom belongs to the advanced group and the Czech Republic is in the middle group. Thus, TI evaluates the UK as a country with comprehensive or near-comprehensive provision and procedures for whistleblowers in the private and public sector, but the Czech Republic comes under the group of countries with partial provisions and procedures.

Tab. 6 Coverage of Whistleblower Protection Laws: Rating for EU Countries

ADVANCED A country's existing laws include comprehensive or near-comprehensive provisions and procedures for whistleblowers in the public and/or private sectors	PARTIAL A country's existing laws include partial provisions and procedures for whistleblowers in the public and/or private sectors	NONE OR VERY LIMITED A country's existing laws include no or very limited provisions and procedures for whistleblowers in the public and/or private sectors
Luxembourg Romania Slovenia UK	Austria Belgium Cyprus Czech Republic Denmark Estonia France Germany Hungary Ireland Italy Latvia Malta Netherlands Poland Sweden	Bulgaria Finland Greece Lithuania Portugal Slovakia Spain

Source: Transparency International, 2013b, p. 8

4.3 The Czech Republic

4.3.1 The CR and EU funds

The Czech Republic has gained, during the period from 2007 to 2013, around 26.7 billion EUR. There were 24 different operational programmes through which receivers could gain financial support from European funds. (Ministry of Regional development in the CR, 2012)

The Ministry of Regional Development analysis show that the most financial support from these funds have been approved to government institutions and organizations in the Operational Program "Transport". Other main receivers are cities and villages usually gaining finances for water management projects in the Operational Program "Environment". Other important groups are business entities. They have been receiving around one fifth of all financial support, mainly through Operational Program "Business and Innovations". The least support goes to the non-governmental nonprofit sector. Structural funds are not specified to particular groups of receivers, but these funds are used to fulfil pro-

jects to reach the strategic goals of Operational Programmes, regardless of who the realiser is (Ministerstvo pro místní rozvoj ČR, 2012).

Operational Programmes for SMEs in the Czech Republic

These Programs have been used to gain financial support from EU funds between 2004 and 2006 and between 2007 and 2013 (Strukturální Fondy, 2012a).

Period 2007 - 2013

There were 26 OPs in total, and 11 of them were used for SMEs. These Programmes are divided into the three economic and social cohesion policy objectives:

- Convergence Objective;
- Regional Competitiveness and Employment Objective;
- European Territorial Cooperation Objective (König and col., 2009).

We can distinguish two types of OPs for a Convergence Objective. First, according to a topic and the second group according to the regions. The next OP was to fulfil the Regional Competitiveness and Employment Objective (this OP was related only to Prague) and the last OP was related to European Territorial Cooperation Objective. (Marek et al., 2009).

A. Thematic Operational Programs (Marek et al., 2009):

- OP Environment
- OP Education for Competitiveness
- OP Research and Development for Innovations
- OP Enterprise and Innovations
- OP Human Resources and Employment
- OP Transport
- Integrated OP
- OP Technical Assistance

In 2013, OP Business and innovation was used up for SMEs in total around 1.30 billion EUR (36 236.4 mil. CZK). The sources were completed in ratio 85/15 from the government budget. Thus, there were around 1.30 billion EUR from the structural funds and 194.95 EUR (5 435.5 mil. CZK) were used from the government budget (Business Info, 2014c).

B. Regional Operational Programmes (ROP)

C. Prague Operational Programmes

D. OP for European Territorial Cooperation

Figure 4 shows that almost a third of EU funding was spent on Regional policy (72 %), 26 % of the budget was used for Agriculture and Rural development and the remaining 2 % was used for Growth and Jobs. The entire budget amount was 4.5 billion EUR in 2012.

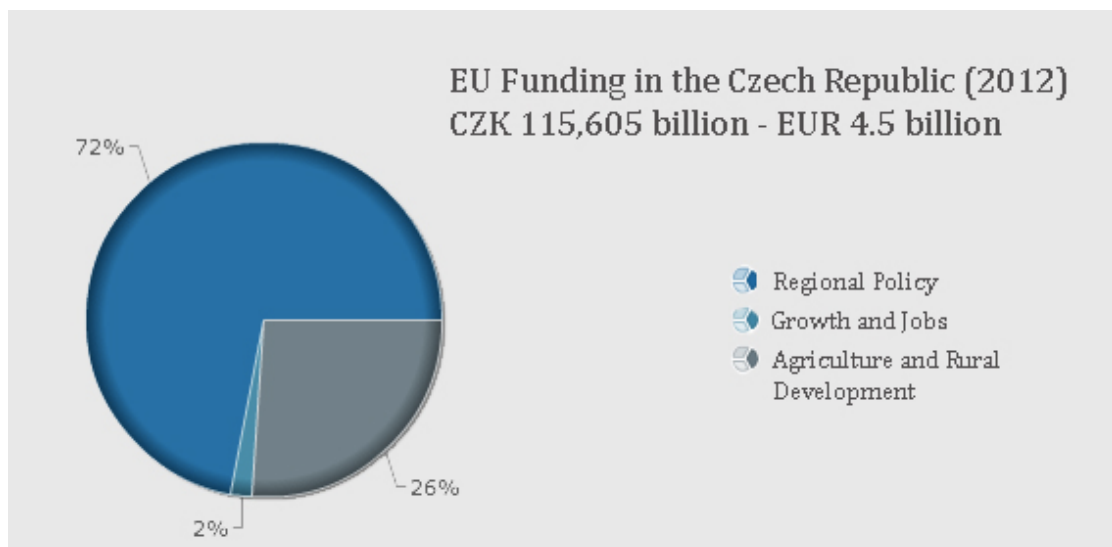


Fig. 3 EU Funding in the CR in 2012, 4.5 billion EUR

Source: European Commission, 2014k, author's elaboration

Period 2014 – 2020

Ministry of Regional development in the CR (Ministerstvo pro místní rozvoj ČR, 2014a) compared the new period with the 2007-2013 programming period. There are some innovations for the new period on the both European and Czech level. Among the most important are e.g.:

- expanding the number of participating funds (newly EAFRD and EMFF, that funds Rural development policy and the Common maritime and fisheries policy);
- a system setting pre-conditions;
- a higher measurability of the contribution of supported projects;
- a financial dependence on the speed and quality of drawdown (performance framework) and others.

In the Czech Republic the main innovations include:

- reducing the number of programmes (reducing the number of thematic OPs and the establishment of an integrated regional operational program instead of the original seven ROPs);
- the concept of a single methodological environment (to ensure the same rules throughout the entire system);
- an advanced functioning monitoring system (administrative simplification, the applicant will no longer have to print any paper).

Preallocations for the period 2014 - 2020 show that there is a total amount of *30.329 billion EUR* assigned to the Czech Republic from the EU budget. 21.983 for Total Cohesion Policy which includes Cohesion Fund, Less Developed Regions, More Developed Regions, European Territorial Cooperation and Youth Employment Initiative. There is also 8.315 billion EUR assigned for total CAP (Common Agricultural Policy) and 31 million EUR for European Maritime and Fisheries Fund (European Commission, 2014n).

4.3.2 Bodies Revealing and Investigating Corruption

Police

In addition to the locally competent police authority, citizens with information on corrupt activities can notify the Unit for Combating Corruption and Financial Crime Investigation Police with jurisdiction throughout the Czech Republic (Útvar odhalování korupce a finanční kriminality SKPV), which is devoted to examining and investigating the most serious forms of economic, financial and corruption crimes (Policie, 2014).

Financial Authorities

Financial authorities in the context of the verification of eligibility of subsidies control obligations under the law and obligations under the terms of the provider.

Supreme Audit Office

Nejvyšší Kontrolní Úřad (NKÚ) controls the management of state property and controls the state budget.

NKU carries out independent inspections in accordance with the relevant provisions of Act no. 166/1993 Coll., The Supreme Audit Office (Nejvyšší Kontrolní Úřad, 2014a).

In February 2014, NKU published results of the control of EU Funds of the OP Business and Innovations. The inspectors checked the Ministry of Industry and Trade and Business Development Agency CzechInvest and Investment - those who are responsible for the management and control of the program and approval of grants. NKU also reviewed 22 projects totalling 983 million CZK (37 million EUR). In seven of these, controllers have revealed shortcomings totalling 105 million CZK (3.8 million EUR). NKU therefore announced to the relevant financial authorities a breach of budgetary discipline in this amount. In checking the specific projects auditors found errors mainly in tenders and revealed a number of cases of ineligible expenditure, the recipients of grants cashed expenditure on the payment not right. Some aid recipients also present documents that were inconsistent with the facts. In the control action was filed *four criminal charges* (Nejvyšší Kontrolní Úřad, 2014b, p. 167).

Ministry of Finance

The Ministry of Finance is the central authority for financial control, which in accordance with the relevant provisions of the Act No. 2/1969 Coll., On the establishment of ministries and other central bodies of state administration of the Czech Republic, methodically manages, coordinates and is responsible for financial control (Ministerstvo financí ČR, 2014a).

The Ministry of finance is also a main contact point of AFCOS in case of administrative irregularities in EU funding.

BIS

Bezpečnostní Informační Služba - **Security Informational Service** is a body, which reveals danger in advance. In comparison with the police, BIS does not collect evidence to arrest someone and go to trial, but it aims to detect potential threats in advance, to give a warning and eliminate them (Bezpečnostní Informační Služba, 2014).

ÚOHS

Úřad pro ochranu hospodářské soutěže (ÚOHS) is **The Office for Protection of Competition**. The legality of public procurement (which is often part of the project for which funding is provided) is entitled to be reviewed by the Office. While the Office may initiate pro-

ceedings ex officio, in practice, the review is initiated either on a proposal from the vendor that failed in the tender, or at the initiative of any other person.

The basic difference in both cases is that the proposal must be preceded by a supplier's opposition proceedings with the contracting party and initiation of proceedings before the Office is conditioned by relatively high deposit of 1 % of the bid price of the petitioner (ÚOHS, 2014).

Audit Authority (AA)

The AA (Centrální harmonizační jednotka – Auditní orgán) is a department of the Ministry of Finance in the Czech Republic. The AA focuses on management and coordination of the performance of the entire system of financial control and analysis of reported irregularities. The department controls money flow from EU budget to the Czech Republic for programs, such as Structural Funds, CF and others. The AA provides performance audits at all levels of implementation of the operational programs co-financed from EU funds, validates the effectiveness of financial management systems and controls in all subjects. It organizes collaboration with partners in the Czech Republic and EU. It performs the functions resulting from membership in international financial control groups / groups of auditors (Ministerstvo financí ČR, 2014b).

NOK

"Národní orgán pro koordinaci" means National Coordination Authority. NOK is a central coordinator and creates a uniform framework for the implementation of Operational Programs, such as Structural Funds, the Cohesion Fund and the European Fisheries Fund in the Czech Republic (Bez Korupce, 2014a).

Managing Authority (MA)

MAs are the central administrations (ministries) or legal entities (given by law). MAs are responsible for the management, monitoring and implementation of operational programmes which are under their jurisdiction.

According to Act No. 248/2000 Coll. On regional development support, there were established bodies of the Regional Council. Managing Authorities maintain a central register of irregularities and implement appropriate program reporting the initial revelations of irregularities, including follow-up reports and quarterly summary reports of irregularities (Bez Korupce, 2014a).

Paying and Certifying Authority (PCA)

PCA is the central government body responsible for the overall financial management of the funds provided by the Czech Republic from the EU budget. This function is delegated to it by the Government Resolution no. 198/2006 of National Fund Department of the Ministry of Finance (Bez Korupce, 2014a).

Contact points AFCOS

In order to ensure communication with OLAF a network called AFCOS (*Anti-Fraud Coordinating Structure*) was created as contact point for relevant ministries, regional councils, Cohesion Region, City Hall of Prague, Police Presidium, Supreme Audit Office and Supreme Public Prosecutor's Office (Nejvyšší státní zastupitelství, 2014).

The essential part of communication between the national authorities and OLAF are enacted on two basic levels on the regular reporting of *criminal irregularities* and *administrative irregularities or law*. The first area is ensured by *the Supreme Public Prosecutor's Office* as the sole point of contact for criminal irregularities in the AFCOS network. The

second area is ensured by the Ministry of Finance as a central contact point for the collection of information from the individual contact points (Nejvyšší státní zastupitelství, 2014).

The Supreme Public Prosecutor's Office (NSZ - Nejvyšší státní zastupitelství)

NSZ ensures the exchange of information between the Czech prosecuting and investigating authorities and OLAF. NSZ also produces regular quarterly reports on irregularities in criminal matters in the management of EU funds relating to ongoing criminal proceedings in cases in which there is, or may cause, damage or injury to the financial or economic interests of the EU. This transmitted information is obtained primarily from subordinate public prosecutors and through cooperation of the Supreme Public Prosecutor's Office with the Police Presidium as well as from other points of contact within the AFCOS network (Nejvyšší státní zastupitelství, 2014).

Formally, NSZ cooperates with OLAF through the Department of Serious Economic and Financial Crimes (DSEFC). DSEFC monitors all criminal proceedings conducted at all levels of the Czech authorities active in criminal proceedings relating to offenses affecting the revenue and expenditure of the European Union if the damage exceeds 10,000 EUR. This area includes primarily the perpetrators in the provision of subsidies coming from EU sources, crime of unauthorized cuts of duties as one of the income of Europe's budgets, and crime posed by counterfeiting and expansion of counterfeit Euro currency (Nejvyšší státní zastupitelství, 2014).

There are other organizations which focus on corruption in the Czech Republic, such as:

Anti-corruption Department is an organizational unit of the Office of the Government in the Czech Republic.

Transparency International organization is an international organization founded in 1993 in Germany. TI is a non-governmental non-profit organisation that monitors and publicizes political and corporate corruption in international development. TI has over 100 chapters (local independent organisations) around the world (Transparency International, 2014).

Transparency International in the Czech Republic (so called TIC) is a very important organisation that publishes analyses related to the topic of corruption and also reveals cases. TIC also offers help to whistleblowers.

Oživení ("Revival" in English) is non-governmental organization founded in 1997. It is also known as **Bez Korupce**⁵ ("Without Corruption"). Oživení deals with the systematic detection of conflicts of interest and corruption in public administration and strives to increase the transparency of the public sector (Bez korupce, 2014c).

Ruzovy Panter ("Pink Panther") is non-governmental non-profit organization founded in 2002 in the Czech Republic. It monitors the space of corruption in public administration

⁵ www.bezkorupce.cz

including in clientelistic relations, government grants for companies with unknown owners and public procurement (Ruzovy Panter, 2014).

Nadační Fond Proti Korupci (“Endowment Fund for the Fight against Corruption”) is non-governmental organisation which was founded by Karel Janecek in 2010. NFPK fights again corruption and also awards those who are not afraid to speak - whistleblowers (Nadační Fond Proti Korupci, 2014).

WB is a civic association founded in 2011. It is a voluntary and non-governmental association that wants to contribute to the protection of the public interest wherever it leads to wasteful spending of public funds. The website is for whistleblowers and for those who want to announce corruption (WB, 2014).

4.3.3 Control over the EU funds

The main function of controls should be to determine whether public financial support was used for the purpose for which it was provided and whether it was used in accordance with the conditions set in the decision.

An irregularity indicates that there has been a breach of EU law or an infringement of Czech Law, which may cause a loss to the general budget of the EU or to the public budget of the Czech Republic.

Once an irregularity has been detected and confirmed, the relevant authority will seek a reduction of eligible project costs, but in some cases it may even lead to the withdrawal of the entire amount of the grant. It is an obligation to make payments for breach of budgetary discipline through local tax authority. Act no. 218/2000 also defines an obligation to pay a penalty for late payment of levy.

The definition of subsidies is contained in the *Act no. 218/2000 On Budgetary Rules* and other related acts. The expression ‘subsidies’ means the funds from the state budget, state financial assets or from the national fund provided to a legal or natural person for their intended purpose (Bez Korupce, 2014a).

The author of the thesis came to learn more information after a consultation with the Department of Management and Coordination of EU funds from Ministry of Regional Development. The regulation for the period between 2007 and 2013 was different than for the period between 2014 and 2020 in the Czech Republic.

Period 2007 - 2013

The basic regulation which sets out obligations and those who are responsible for dealing with irregularities in the programming period 2007-2013 is *Council Regulation (EC) no. 1083/2006* (General Regulation). The General Regulation stipulates that Member States shall prevent, detect and correct, and recover amounts unduly paid, together with interest on late payments. They shall send notification of these amounts and progress of any administrative and judicial proceedings to the Commission. The specific rules on investigation and reporting irregularities at the national level is regulated in the ‘Methodology of financial flows and control programs’ co-financed by the Structural Funds, the Cohesion Fund and the European Fisheries Fund for the programming period 2007-2013 issued by the Ministry of Finance.

The appropriate Managing Authority (MA) is responsible for announcement of irregularities in operational programmes. Bodies involved in the implementation of the programmes are required to notify any suspected irregularities promptly to the appropriate MA.

The system for reporting suspected irregularities involves reporting discrepancies between the bodies involved in the implementation of national programs ('The inner level of reporting irregularities') and reporting irregularities to the European Commission ('Outer level reporting irregularities'). The MA is responsible for proper reporting at an internal level and the AFCOS network is responsible for proper reporting at an external level. The Ministry for Regional Development in the role of the National Authority for the Coordination of EU funds cooperates with the central contact point of AFCOS, which is part of the Ministry of Finance. In the Czech Republic, this unit tackles challenges in dealing with irregularities and problems in the fight against fraud and cooperates with the European Anti-Fraud Office (OLAF).

Period 2014-2020

For the 2014-2020 programming period, there is an obligation to report irregularities directly from the general *Regulation EP and Council no. 1303/2013* laying down common provisions on the ERDF, ESF, CF, EAFRD EMFF, laying down general provisions on the ERDF, ESF, CF, EMFF and cancellations Council Regulation (EC) no. 1083/2006) - Art. 122 Sec. 2:

"Member States shall prevent, detect and correct irregularities and shall recover amounts unduly paid, together with any interest on late payments. They shall notify the Commission of irregularities that exceed EUR 10,000 in contribution from the Funds and shall keep it informed of significant progress in related administrative and legal proceedings.

The Member States shall not notify the Commission of irregularities in relation to the following:

(a) cases where the irregularity consists solely of the failure to execute, in whole or in part, an operation owing to the bankruptcy of the beneficiary;

(b) cases brought to the attention of the managing authority or certifying authority by the beneficiary voluntarily and before detection by either authority, whether before or after the payment of the public contribution;

(c) cases which are detected and corrected by the managing authority or certifying authority before inclusion of the expenditure concerned in a statement of expenditure submitted to the Commission.

In all other cases, in particular those preceding a bankruptcy or in cases of suspected fraud, the detected irregularities and the associated preventive and corrective measures shall be reported to the Commission.

When amounts unduly paid to a beneficiary cannot be recovered and this is as a result of fault or negligence on the part of a Member State, the Member State shall be responsible for reimbursing the amounts concerned to the budget of the Union. Member States may decide not to recover an amount unduly paid if the amount to be recovered from the beneficiary, not including interest, does not exceed EUR 250 in contribution from the Funds." (Regulation No. 1303/2013).

However, the regulation does not specify how the Member States shall notify irregularities, and leaves this to national legislation. The specific procedure for reporting irregularities is governed by 'Guideline Financial Flows' co-financed by the ESF, CF and EMFF for the

2014-2020 programming period (hereinafter GFF, version effective from the 1st of November 2014) in section 6.2.2. The outer level of reporting. According to GFF, the MA is responsible for reporting on an internal (national) level.

All entities involved in the implementation of EU Funds are obliged to immediately inform the MA about any irregularities found.

The outer level of reporting irregularities is closely related to the level of internal reporting and describes the information duties in relation to the EC. The fulfilment of this obligation is accomplished by setting a functioning network AFCOS. Reporting Irregularities to OLAF is always carried out within two months after the end of each calendar quarter through NIMS. This is stated in the Methodical Instruction of the methodology governing reporting on an external level to the Anti-Fraud Office (OLAF) for the programming period 2014-2020, approved by Government of the Czech Republic no. 473/2014.

4.3.4 Cases

4.3.4.1 Corruption in EU Funding (Cases CR-A, CR-B, CR-C)

Case CR-A⁶: ROP Northwest

(Case 8 Tdo 1376/2013)

This case was one of the largest corruption cases related to in EU funding in the Czech Republic.

The indictment alleged that certain officials and politicians influenced decisions on who receives subsidies. They intervened in the project for 1.4 billion CZK (50.7 million EUR⁷), of which 922 million CZK (32.2 million EUR) were actually reimbursed to the ROP. The prosecutor alleged that the individual defendants committed the offences of Misuse of powers of officials and harming the financial interests of the European Union.

The main defendant in this case was P.K., who was director of the Office of the Regional Council of Cohesion. P.K. and others had asked for at least 1.7 million CZK (61,554 EUR) from those who were interested in grants from EU. The police has investigated three cases - a hotel in Karlovarsko with a subsidy of 12 million CZK (43,450 EUR), a hotel with the subsidy 15 million CZK (543,124 EUR) and reconstruction of football ground.

For this case, we will look at how the law reacted and what the decisions of the courts were. The main defendants were: P.K., R.S. and V.I.H., all of whom denied being guilty.

Process:

P.K. was accused of:

- Taking bribery according to Criminal Code § 331 article 2 and 4 b)
- Misuse of powers of an official § 329 article 1 a)

R.S. was accused of:

- Taking bribery according to Criminal Code § 331 article 2, 3 a)

V.I.H. was accused of:

⁶ “CR-A” means the Czech Republic, case A.

⁷ Exchange rate is 1 EUR = 27.618 CZK which is an average exchange rate from 3rd quarter of 2014 according to CNB - Czech National Bank. Please, see <http://www.kurzy.cz/kurzy-men/historie/EUR-euro/2014/>.

- Taking bribery according to Criminal Code § 331 article 2, 3 a)
- Extortion according to Criminal Code § 175 article 1.

In 2012, the Regional Court in Usti nad Labem had accused seven people in this case (2 T 10/2011) – including the deputy governor of Usti nad Labem and a trio of former directors of the Regional Council of Northwest responsible for the distribution of EU subsidies in Usti nad Labem and Karlovy Vary. P.K. was sentenced to *7.5 years imprisonment* and received a *fine of 750,000 CZK (27,156 EUR)*, or *1 year* in prison if he did not pay the fine by the due date. He was also forbidden to manage EU funds for five and a half years.

R.S. and V.I.H. were both *sentenced to 5 years and a fine on 300,000 CZK (10,863 EUR)* or 8 months imprisonment.

Six of the accused appealed to the High Court. In January 2013, The High Court decided (8 To 124/2012):

P.K. was sentenced only for *5 years, and the fine and ban from managing EU funding was approved even by the High Court*. R.S. and V.I.H. also received smaller punishments - they were sentenced to *three years with the postponement of a trial period for five years*.

Conclusion:

The defendants appealed to the Supreme Court after the decision of the High Court was handed down. Nevertheless, in April 2014, Supreme Court has agreed with decision of High Court (Case 8 Tdo 1376/2013).

This affair is not over yet and a trial is still ongoing with other defendants.

However, according to the latest news, P.K. was *conditionally released from prison* in November 2014 as the District Public Prosecutor confirmed to a news provider, Lidovky. Reportedly, P.K. is also facing another charge of misuse of powers of an official and damage of EU's financial interests (Lidovky, 2014).

Conditional release from prison must meet the following conditions:

- that the convicted individual has already served the statutory pro rata portion of the sentence;
- that the convicted individual has demonstrated through their performance of obligations and behavior in prison that they will be able to lead an orderly life (Trestní řízení, 2014).

Case CR-B: ROP Southwest

(Case 9 To 10/2014)

This case began in 2008 when approximately fifty mayors from Southwest area challenged the petitions system for the allocation of subsidies for alleged machinations. Police started to investigate the situation a year later and has informed the Ministry of Finance and the Regional Council of Southwest about serious irregularities in the project evaluation process.

Hence, in 2010, the Finance Ministry recommended to stop the process of concluding agreements with successful applicants and make a new evaluation and selection of projects. (Česká televize, 2010).

Process:

In September 2011, the High Public Prosecutor's Office in Prague brought indictments against J.T. (Director of the Office of the Regional Council of the Cohesion Region South-west) and M. P. (Head of Regional Department program implementation České Budějovice of the same Office) for the alleged crimes of Misuse of powers of an official, manipulation of public procurement and public tenders, and harming the financial interests of the European Community. Misuse of funds had caused damage amounting to 3.3 billion CZK (119,487,291 EUR). Both defendants denied any guilt. Nevertheless, they faced up to 12 years in prison for handling the subsidies if convicted.

In 2012, the Municipal Court in Prague acquitted J.T. and M.P.

However, in 2013, *High Court in Prague rejected the Decision* made by the Municipal Court (9 To 30/2012).

Thus, in September 2013, the *Municipal Court has decided again* (40 T 3/2011), but this time Court has sentenced J.T. and M.P. to a *three-year suspended sentence*. The Court has also *forbidden them to work with subsidies* - J.T. for *five years* and M.P. for *four years*.

J.T. was accused of according to:

- Misuse of powers of an official under § 158 article 1a, 2c of Criminal Code no. 140/1961 Coll.
- Intrigues in public tenders and public auctions according to § 128 article 1, 2a of Criminal Code no. 140/1961 Coll.
- Damage of EU's financial interests under § 129 article 1, 4b. of Criminal Code no. 140/1961 Coll.

The defendants and also the state prosecutor appealed the verdict.

The Criminal Code no. 140/1961 Coll. is a previous version of Criminal Code no. 40/2009. The Criminal Code no. 140/1961 Coll. was used because of the time period when this criminal case has happened. The new Criminal Code consists changes of renumbering of sections and introduction of new sections.

Conclusion:

In June 2014, the High Court in Prague *acquitted M.P.* However, J.T. received *three-years conditionally with probation of five years and a ten year ban from working with subsidies* (Case 9 To 10/2014).

Case CR-C: Giving Bribery to Get Subsidies

Česká televize announced (2012) that J. Z. and M.S. had tried to bribe S.S. who is the assistant of deputy Michal Babak (Věci Veřejné) with 15 million CZK in order to receive subsidies for their project. M.H. gave S.S. 305,000 CZK (11,044 EUR) for the deputy. However, S.S. was already in cooperation with the police at that time.

The subsidy was supposed to be for the installation and construction of a private technical college for 250 million CZK from the Ministry of Education.

Process:

J.Z. and M.S., both entrepreneurs refused to accept blame. They claimed that they only gave a loan to their friend M.H. M.H. confirmed that it was indeed a loan, and also admitted that he was the one who gave the bribe.

Conclusion:

M.H. was sentenced to *one year conditionally*.

In April 2012, the Municipal Court in Prague has decided that J.Z. and M.S. had to pay *a fine of 100,000 CZK (3,621 EUR)* otherwise they would go to jail for six months.

The bribe in amount of 305,000 CZK (11,044 EUR) was taken by the Court. All three men consistently argued at the trial that M.H. received the money as a business loan. The District Court, however, called his testimony absolutely false, dedicated and loyal to J.Z. and M.S. (Česká televize, 2012).

4.3.4.2 Public Procurement and EU Funding (Case CR-D)**Case CR-D: Public Procurement & no Public Tender**

Organisation Oživení (Bez Korupce, 2012) had investigated this case when the City of Prague 10 realised in 2009 a project called "Office of friendly entrepreneurs" (Operational Programme Prague - Competitiveness - OPPK). Since implementation, the project has provided the City of Prague a subsidy of 10,929,387 CZK (395,734 EUR).

Prague City Hall said that The City of Prague 10 has not acted in accordance with the contract for the provision of financial support, in accordance with the terms of the program OPPK, did not follow the procedures specified in Project manual and did not act in accordance with the Act on Public Procurement. The City of Prague 10 *breached budgetary discipline*, because it *exceeded the legal limit and did not make tender according to the rules OPPK*⁸.

The City of Prague 10 signed an amendment to the contract of work with the selected contractor without a new procurement procedure. When the project is changing the works, while the emergence of some so-called "Extra work" created and called. "Cancelled work", which reduced the value of construction work and therefore Prague 10 felt that it may not be a re-tender procedure. However, the capital city noted that the assessment of additional works not take into account any cancelled work reducing the value of construction work but must be considered only extra work.

Process:

In 2010, the Municipality of the City imposed *a payment* on Prague 10 for the amount of *848,582 CZK (30,726 EUR)* for this misconduct.

In April 2012, anti-corruption association Oživení investigated whether the said amount had already been paid and also whether the responsible persons have been revealed and if the damage was claimed. The City of Prague 10 stated that it does not consider this as damage and at the same time, it cannot be determined who is liable.

In September 2012, Oživení called upon representatives from Prague 10 to recover the said amount, as they considered the reasons for non-enforcement of damages by Prague 10 to be irrelevant. Oživení then received a response from Prague 10 stating that they have decided *to recover damages out of court*.

⁸ Rules of the program OPPK can be seen here: http://www.bezkorupce.cz/wp-content/uploads/2012/10/L_Pokyny-pro-zad%C3%A1vac%C3%AD-%C5%99%C3%ADzen%C3%AD-na-dodavatele_1.2_od-2.2.09.pdf (only in Czech).

Conclusion:

Oživení had requested further information regarding the amount of damage claimed. Prague 10 claimed that it had collected nearly 350,000 CZK (12,673 EUR) from responsible persons⁹.

Due to the current practice of (un)recovery of damages for responsible persons, the procedure undertaken by Prague 10 may be considered as a positive precedent even though the amount of payment was smaller than Municipality of the City imposed (Bez Korupce, 2012).

The author of this thesis has learned, after a consultation on this case with a lawyer from the organisation Bez Korupce, that Bez Korupce aimed towards the recovery of the full amount, but the Prague 10 decided to enforce the claim only partially. Thus, the remaining *damage in amount of 498,582 CZK (18,052.7 EUR) was not paid by anyone.*

According to Labour Code no. 262/2006 Coll. § 250 - § 264, the employee shall reimburse the employer actual damage, in monetary terms, if the damage is not rectified to the previous state by the employee. The amount of damages caused by negligence required for employees shall not exceed the amount of 4.5 times of his average monthly earnings, which he has earned before causing the damage, according to Labour Code § 257 article 2. This restriction does not apply if the damage was caused by drunkenness or abuse of other addictive substances. It is not also valid for damage caused intentionally and in this case, the employer may require compensation for other damages (e.g. Loss of profit). When the responsibility for the damage is shared by a number of employees, each of them is required to pay a proportion of the damages according to the degree of his culpability. If the damage was also caused by the breach of the employer's duty, the employee's responsibility is limiting. In the case, the employee is obliged to pay only a proportion of the damage, according to the degree of his culpability.

4.3.4.3 Frauds and EU Funding (Cases CR-E, CR-F, CR-G, CR-H)

Case CR-E: Request for a grant with falsification of documents

(Case 8 Tdo 397/2008)

On 18 February 2005, President of the Board of Directors of company P., submitted a request for a grant, hand-signed and stamped it with name of the company. The request was for an investment for 56,577,600 CZK (2,048,577 EUR) from program JROP (Joint Regional Operational Programme). She also included a document, which was supposedly confirmation of planning consent, although no such consent was ever issued by the planning department, thus this document was clearly a counterfeit.

During an inspection of the application for a grant, this fact was revealed and the grant was never provided.

Legal Proceeding:

On 28th of November 2006, Judgment of the Municipal Court in Prague (2 T 3/2006) found MUDr. M. N. guilty of the crime of credit fraud under an attempted criminal offence of counterfeiting and falsification of public documents. She was sentenced to *five years in*

⁹ http://www.bezkorupce.cz/wp-content/uploads/2012/11/107447801_0_Oživení_odpoved_106_z_12.10.2012.pdf

prison. M.N. also received a fine of 500,000 CZK (18,104 EUR) and in the case that the fine was not paid in due time, the accused would receive an alternative punishment of six months imprisonment.

M.N. was accused of:

- Attempted offense § 8 article 1 of Criminal Code no. 140/1961 Coll.¹⁰;
- § 250b article 1 and 5 Credit Fraud;
- § 176 for Counterfeiting and forgery of public documents.

The accused appealed the judgment before the High Court. The High Court of 20.6. 2007 (9 To 19/2007) *rejected* the judgment of the Court of First Instance (the Municipal Court in Prague).

The High Court *changed the offense* of credit fraud and forgery and falsification of public documents and sentenced her to imprisonment for two years conditionally with probation of five years. There was also a fine imposed of 200,000 CZK (7,242 EUR). In the case that the fine was not paid within the prescribed time limit, a four months jail term would be imposed.

The defendant also appealed to the Supreme Court (Case 8 Tdo 397/2008).

Conclusion:

The Supreme Court decided to reject the appeal of the accused in the Court's Resolution in a closed meeting on 16. 4. 2008 (Case 8 Tdo 397/2008).

Case CR-F: A Returning of the Grant

Association Oživení describes a case (Bez Korupce, 2014d) when the State Agricultural Intervention Fund (SAIF) provided a grant 998,580 CZK (36,157 EUR) from rural development program for development strategies NUTS II Northeast for the reconstruction of a building in 2011. The receiver of the donation, Mr. Janata, was required to undertake the reconstruction of the building under the terms of the grant program. The purpose was to use the building (a gym) for five years for the development of tourism in Lovčice, a small village of 700 citizens.

Process:

In June 2012, the grantor performed a check of the project to ensure that the funds had been used for the intended purpose, and found out that the reconstructed building was not used from the beginning of the end of the reconstruction period (beginning of 2012) as was set in the conditions of the program. In other words the building was not used at all. The building was closed to the public from the beginning of 2012. Sanctions were put in place which stated that Mr. Janata was to reopen the building for the public and keep rec-

¹⁰ It is a previous version of Criminal Code no. 40/2009, as it was mentioned on page no. 47 of this thesis.

ord of organised events¹¹. The grantor did *not ask to repay* the subsidies, but *only set a time to correct the situation* till 31.12. 2013.

In November 2012, anti-corruption organization Oživení informed a higher authority - the Ministry of Agriculture of the investigation and informed the Ministry, that controlling mechanisms are not sufficient. The village had already received funding from a similar grant program funds for the reconstruction of the gym in 2009 (NUTS II Northeast, Priority axis 2: Development urban and rural areas, support area 3.2 Rural development, reg. Number CZ.1.13/2 March 00/02.00139, in amount of 5,912,537 CZK (214,083 EUR), delivery time March 1, 2009 to February 28, 2010), which was for exactly the same purpose as stated in the new grant application made a few months later by Mr. Janata. In addition, the village had already made plans for the construction of a new sports complex according to the village development plan for 2012-2016. Mr. Janata's proposals were separate from this.

Moreover, Oživení mentioned the fact that the original purpose of the grant according Fiche no. 2 Development of tourism, was intended to entice tourists, in particular to support catering and accommodation facilities, but in the project was presented as being beneficial to local citizens rather than tourists. It is therefore questionable whether the project meets all the criteria for its support in the subsidy program.

In March 2013, Oživení received information from the Ministry of Agriculture that the Ministry has recommended to SAIF to finish administration of this project and ask for the grant to be repaid. Thus, Oživení contacted SAIF to enquire as to whether if it has proceeded to recover the subsidy. The response showed that SAIF has started the process three days after Oživení had made their enquiry (Bez Korupce, 2014d).

Conclusion:

Mr. Janata did not take receipt of his mail, thus SAIF could not start administrative proceedings. Nevertheless, finally on 16.7.2014, SAIF demanded that Mr. Janata *return the grant in amount of 998,580 CZK (36,157 EUR) within 60 days* of receipt of this decision. The decision became final on 12.8.2014 and was enforceable since 25.9.2014 (Bez Korupce, 2014d).

As SAIF has explained under the Act No. 106/1999 Coll., On Free Access to Information to organisation Oživení, in the case that Mr. Janata will not repay the money back in the time frame, SAIF will send a second request to him. If Mr. Janata will not pay even after the second request, SAIF will collect the money back via a collection agency (Bez Korupce, 2014d).

In this case we can see, that the reaction by SAIF was insufficient. It is obvious, that controllers from SAIF department did not give a proper sanction Mr. Janata.

The question is, why Ministry did not announce the whole situation to a tax office? The author of this thesis has contacted anti-corruption organisation Oživení and asked a lawyer, if the Ministry did not have a duty to announce the whole situation to the tax office immediately. The lawyer did not want to take responsibility for answering this question. However, the author of this thesis is sure that the Ministry or even SAIF should announce

¹¹ Checklist from SAIF can be see here: <http://www.bezkorupce.cz/wp-content/uploads/2012/11/1-protokoly-o-kontrolu-projektu.pdf> (only in Czech).

the breach of law to the tax office, thus Mr. Janata should be punished according to Act no. 218/2000 Coll. § 44a for breaching budgetary rules. The late levy for a breach of budgetary discipline is 1 per mille of the transfer amount for each day of delay, but up to this payment. The penalty shall be calculated from the day following the date of the breach of budgetary discipline until the day when the funds were paid back. Conscriptio and penalty can be levied during the period of 10 years from the violation of budgetary discipline. It means, that overall, it is possible to request the whole subsidy twice.

Case CR-G: Punishment of Legal Person

(Case 49T 10/2012-410 & Case 49T 10/2012-445)

Civil association Athena in Ostrava - Society for Training and Development of Women was convicted of subsidy fraud in 2013.

According to the indictment, the director of the Association unduly paid wages for two months of work to a woman who has not worked there. The association, which focuses on working with unemployed women, has defrauded subsidies from the EU, in the amount of 51,882 CZK (1,876 EUR). The Association was paid 85 % from EU subsidies and 15 % from the state's budget.

Thus, she breached Criminal Code no. 40/2009 Coll. § 212 article no. 1, 4 Subsidy Fraud and criminal Code § 260 article 1 Damage of EU interest (Case 49T 10/2012-410).

Conclusion:

In February 2012, the director of the association, Mrs. H.D. had to pay damages to the court, give back the subsidy of 1,876 EUR to Ministry of Labour and Social Affairs and she had to also pay a fine of 70,000 CZK (2,535 EUR), and if she did not pay the fine within 30 days then she would be imprisoned for 30 days.

In March 2013, the Regional Court of Ostrava decided under Act no. 418/2011 Coll. that the association has to *publish the operative part of the judgment in the regional press* within three months. According to the court, this punishment was mainly preventive in nature (Case 49T 10/2012-445).

Case CR-H: Ongoing Case of Fraud with Subsidies

Detectives from the Unit for Combating Corruption and Financial Crime accused 16 companies and three individuals of abusing subsidies relating to the employment of people with disabilities. According to the police, about 600 million CZK worth of damage was caused between January 2008 and June 2012 (Eurozprávy, 2014).

One company formally employed invalids, therefore the company received a grant for each affected employee. The contribution was 8,000 CZK (290 EUR) for each invalid, but the employer paid only 2,000 CZK (72 EUR) of this to each employee. Three people were accused of subsidy fraud, which is punishable by five to ten years in prison according to law (Eurozprávy, 2014).

A supervisory prosecutor provided the author of this thesis with the information that 3 persons and 16 legal persons are being prosecuted for committing the particularly serious crime of *subsidy fraud under § 212 article 1, 2, 6 a) of the Criminal Code*. They deliberately administered requests for state contributions to support the employment of people with disabilities in accordance with *§ 78 of the Act. no. 435/2004 Coll., on Employment*, as amended, which included as an annex also lists of names of employees who are persons

with disabilities and thus intended to illegally obtain a contribution to support the employment of persons with disabilities pursuant to the provisions § 78 of the Act. no. 435/2004 Coll., on Employment, as amended, even though they knew that these payroll costs of employees with disabilities listed in the annex of the application for a grant are not true. Thus, they misled the staff of Labour Offices in the Czech Republic and caused damage in the amount of 590 million CZK (21.4 million EUR) and also tried to obtain a contribution of about another 11 million CZK (398,291 EUR).

Due to the fact that the pre-trial process is private, the supervisory prosecutor could not provide more information.

4.3.4.4 Whistleblowing (Cases CR-I)

Case CR-I Irregularity within public procurement

Mr. Lukáš noticed an irregularity in a connection with a public procurement, so he announced it to his company Deloitte. Employees of this company are trained how to behave in these situations and Lukáš announced the situation to the headquarters in New York, in accordance with company policy. He received a response four days later and it was then followed by a meeting with the director of the Czech Republic division, but no action was taken. Lukáš was then informed that he will not receive any further response on the matter. He was disappointed with the process and the response from his company, thus he filed a complaint against an unknown perpetrator to Supreme State Procurator.

Two weeks later, Lukáš was questioned by the police, and although he felt that they handled the matter in a professional manner, he was disappointed that protection was not offered to him.

After his announcement, Lukáš observed a number of changes in his job – he worked from home sometimes and the company cancelled his email box, his supervisor was fired and although he could not prove that it was due to his announcement, he was sure that the two occurrences were linked. Finally, Lukáš was dismissed from the company.

In addition to losing his job, Lukáš was afraid that his family might receive threats due to the lack of protection, thus the entire situation put him under a substantial amount of psychological strain. As a result of his experience, Lukáš concluded that the whistleblowing process in the Czech Republic was completely self-destructive and led to the loss of his job, because in his opinion it was not possible to continue working in the negative environment that resulted from him making his announcement (Bez Korupce, 2011, p. 16).

4.4 United Kingdom

4.4.1 The UK and EU Funding

The EU funding process in the UK is different to that in the Czech Republic.

Period 2007 - 2013

- European Structural & Investment Funds;
- European Regional Development Fund.

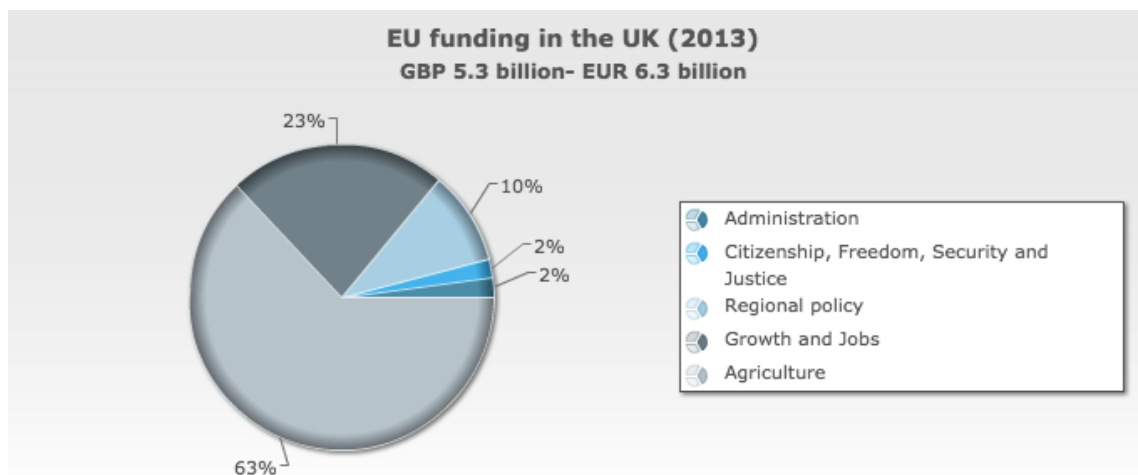
The government in the UK (2014) describes *Convergence funding* as being for the regions that have a GDP of below 75 % of the average in the EU. In the UK, only Cornwall and the Isles of Scilly receive this type of funding.

Regional competitiveness and employment funding is provided for all regions that do not receive convergence funding. The main goal of this is to strengthen competitiveness and decrease unemployment in the regions.

- European Social Fund;
- European Maritime and Fisheries and Agricultural Fund for Rural Development in Wales;
- European Regional Development, Agricultural Funds for Rural Development, Maritime and Fisheries and Social Funds in UK;
- Cohesion Fund (Northern Ireland);
- European Regional Development Funds in Scotland.

Figure 4 shows that the most funding was spent in the UK for Agriculture (63 %), then for Growth and Jobs (23 %). 10 % was used for Regional policy, 2 % for Citizenship, Freedom, Security and Justice, with the remaining 2 % being used for Administration. In 2013, the total amount spent was 6.3 billion EUR in the UK.

Fig. 4 EU Funding in the UK in 2013, 6.3 billion EUR



Source: European Commission, 2014m

Period 2014 - 2020

The United Kingdom's budget is assigned for this period is 39.428 billion EUR. The funding is assigned for Total Cohesion policy in the amount of 11.84 billion EUR, which consists of Transition Regions, More Developed Regions, Less Developed Regions, European Territorial Cooperation and Youth Employment Initiative. Other funding is for CAP Agriculture of 27.345 billion EUR and 243 million EUR are assigned for European Maritime and Fisheries Fund (European Commission, 2014n).

4.4.2 Bodies Investigating and Revealing Corruption

Institutional framework

The Committee on Standards in Public Life, the Parliamentary Commissioner for Standards, the Adviser on Ministerial Interests, and the Advisory Committee on Business Appointments all cooperate with each other effectively. The International Anti-corruption Champion coordinates activities across government and is housed in the Cabinet Office (European Commission, 2014w, p. 1).

There are many channels for citizens to report corruption, such as an online platform at the Serious Fraud Office¹², a police central point of contact on fraud¹³, reporting mechanisms for specific sections (healthcare, tax) and local level mechanisms. However, there is a lack of public awareness of their existence and having so many different channels may also be confusing for citizens. The British government has not yet attempted to streamline these corruption reporting channels (European Commission, 2014w, p. 1).

Law enforcement and judiciary

According to the UK Anti-corruption Report from 2013, law enforcement mechanisms were assessed as adequate and sometimes as an example for the purposes of the United Nations Convention against Corruption (UNCAC) (European Commission, 2014w, p. 2).

The Attorney General is the minister supervising the Crown Prosecution Service and the Serious Fraud Office (SFO). The SFO is the main agency for investigating and prosecuting cases of overseas corruption. Other national, regional and local authorities, such as the Metropolitan Police and others, deal with corruption, depending on the context and location (European Commission, 2014w, p. 2).

It is necessary to ensure a good cooperation between the wide variety of institutions dealing with corruption with overlapping competences. According to the Council of Europe's Group of States against Corruption (GRECO), the judiciary has a good reputation of independence, impartiality and integrity. There is no evidence of inappropriate influence on judges. GRECO also commended efforts to protect the integrity and impartiality of prosecutors (European Commission, 2014w, p. 2).

Serious Fraud Office (SFO)

Serious Fraud Office (2014b) is an independent government department that investigates and prosecutes serious fraud and corruption. The Office was established in 1988 and is part of the UK criminal justice system with jurisdiction in England, Wales and Northern Ireland but not in Scotland, the Isle of Man or the Channel Islands.

The SFO includes professional accountants, lawyers and investigators that take care of the most complex fraud and corruption cases within UK.

¹² <http://www.sfo.gov.uk/bribery--corruption/where-should-i-report-corruption.aspx>

¹³ Police passes the information the National Fraud Intelligence Bureau afterwards
<http://www.actionfraud.police.uk/home>

Metropolitan Police

The Police in the UK have Anti-Corruption teams that focus on corruption among police officers, staff and members of the public, which want to corrupt those in public office (Metropolitan Police, 2014).

Overseas Anti-Corruption Unit (OACU) in the City of London

The role of OACU is to investigate allegations of UK companies and individuals involved in Bribery in developing countries overseas. OACU is funded by the Department for International Development (DFID) (City of London Police, 2014).

Anti-Corruption APPG

Anti-Corruption APPG (2014) is the All-Party Parliamentary Group on Anti-Corruption. In other words, it is a group of Parliamentarians who are passionate about fighting domestic and international corruption.

APPG was established in 2011 to *"bring together interested Members of the House of Commons and House of Lords to raise awareness of the impact of international corruption and to enhance and strengthen UK anti-corruption policies and mechanisms including parliamentary scrutiny."* (Anti-Corruption APPG, 2014).

Action Fraud Police

Action Fraud Police is the UK's national fraud and internet crime reporting centre. The service is run by the City of London Police, which is the national policing lead for economic crime (Action Fraud Police, 2014).

The Audit Commission

The aim of this commission is to protect the public purse. The Commission appoint auditors to public bodies in the UK. Then they use information from auditors and publish data and analysis. (Audit Commission, 2014).

There are also the Audit Commission for Scotland, Auditor General for Wales and Audit Scotland, the Auditor General for Wales, the Auditor General for Scotland which have similar tasks to control conduct of public businesses in their location.

Accounts Commission for Scotland

The Commission focuses on the proper conduct of public business, value for money, fraud and corruption in local government bodies in Scotland (Accounts Commission, 2014).

National Audit Office

The National Audit Office (2014) examines public spending on behalf of Parliament. It is an independent office that informs Parliament and its goal is to help public service managers improve service delivery.

There is also Audit Scotland, Wales Audit Office and Northern Ireland Audit Office.

Financial Accountability and Anti-Corruption Team (FACT)

FACT is a part of the Department for International Development (DFID).

Financial Conduct Authority (FCA)

FCA (2014) regulates the financial services industry in the UK with its rule-making, investigative and enforcement powers. It aims to protect consumers, ensure the industry remains stable and promote healthy competition between financial services providers.

Fraud, Error and Debt Taskforce

The Fraud, Error and Debt Taskforce is the strategic decision-making body for all fraud and error, debt and grant efficiency initiatives such as ministers and officials from relevant government departments (Gov.uk, 2014).

National Crime Agency

The NCA replaced the Serious Organised Crime Agency in 2013. The main goal was to improve coordination in the fight against crime in the UK (European Commission, 2014w, p. 2).

The National Crime Agency (2014) focuses on criminals and groups which signify the biggest risks to the UK. It is non-ministerial government department which fights against serious and organised crime, fraud and cyber crime, and protects children and young people from sexual abuse and exploitation.

Crown Prosecution Service (CPS)

The Crown Prosecution Service (2014) is responsible for prosecuting criminal cases which are investigated by the police in England and Wales. The Crown Office & Procurator Fiscal Service (COPFS) in Scotland and Public Prosecution Service for Northern Ireland (PPS) in Northern Ireland has the same responsibility.

Transparency International in the UK

TI-UK is a chapter of Transparency International. The difference between Czech TI and Transparency International UK (2014c) is that UK does not investigate the cases, because they do not have the resources or legal expertise. Thus, they cannot give advice to those who want to report corruption. Nevertheless, visitors are recommended to contact the SFO or other organisations such as Citizens Advice or Public Concern at Work (please, see below) directly.

Corruption Watch

Corruption Watch is a NGO based in London since 2009. Its mission is to reveal corruption cases and their subjective and objective impact on democracy, human rights and development in the world and thus cause a strong action against corruption (Corruption Watch, 2014).

Whistleblowers UK

Whistleblowers UK is a non profit organisation run by whistleblowers for whistleblowers in the UK. The organisation offers advice and assistance to whistleblowers or those who may be thinking about to become whistleblowers (Whistleblowers UK, 2014).

There are two important organisations which are able to help and advise individuals, although they are not special anti-corruption organisations:

Citizens Advice

Citizens Advice is a charity that provides advice to people in need for the problems they face. Its website¹⁴ was launched in 1999 to provide its services. The aim is to improve the practices and policies that affect people's lives. Citizens Advice is the largest advice pro-

¹⁴ <http://www.citizensadvice.org.uk/>

vider in the UK. Many people use it to deal with a variety of issues such as debt, housing, employment and many others (Citizens Advice, 2014).

Public Concern at Work

PCAW is a whistleblowing charity founded in 1993. PCAW provides a framework for the promotion and protection of public interest whistleblowing. They monitor how the Public Interest Disclosure Act 1998 (PIDA) operates in the workplace and in the legal system (Public concern at work, 2014a).

4.4.3 Controls over the EU Funds

The Government departments manage EU funds in the UK, mainly the Department for Environment, Food & Rural Affairs (DEFRA) and Business, Innovation and Skills (BIS). Those departments are the best to detect, prevent and rectify fraud and irregularities against the EU's financial interests (Parliament.uk, 2013a, p. 4).

Since 2012, in the area of agriculture and rural development, the UK Co-ordinating Body (UKCB) has been responsible for reporting irregularities to the Commission's AFIS database for the UK as a whole. The Rural Payments Agency (RPA) was the main body which reported fraud before UKCS (Parliament.uk, 2013a, p. 5).

The BIS department is responsible for communication related to structural funds with OLAF. However, the Managing Authorities, such as Devolved Administrations in Scotland, Wales and Northern Ireland, DCLG (Department for Communities and Local Government) and DWP (Department for Work and Pensions) in England are in charge of reporting the irregularities in the Structural Funds. These Managing Authorities report cases directly to OLAF. BIS is the first point of contact with the Commission for training and offers advice on the best practice for reporting irregularities to the Managing Authorities. The Authorities report suspected fraud to the Commission via IMS (irregularity management system). According to the British Government, such information should be shared with all relevant Government agencies. The information is shared between the BIS and the Structural Funds authorities or HM Treasury and UKCB, but the sharing of information could still be improved (Parliament.uk, 2013a, p. 5).

Parliament.uk (2013a, p. 6) specifies checks and processes in place to fight against fraud:

The Managing Authority and Certifying Authority thoroughly control applications for Structural and Agricultural Funds:

- Applications are checked before being approved;
- Applications have to agree that their data will be shared with other Government bodies to prevent irregularities;
- Managing Authority verify projects (under Article 13 of EC Regulation 1828/2006);
- Audit Authority (under Article 16 of EC Regulation 1828/2006) makes independent controls and reports directly to the Accounting Officer and the EC;
- Applications can be audited by DG Regio and DG Agri or by another auditor from the European Court of Auditors.

Four UK Payment Agencies address potential fraud. There is the Rural payment Agency in England, the UK Paying Agency for Wales, for Scotland and Northern Ireland (Parliament.uk, 2013a, p. 11-14).

4.4.4 Cases

4.4.4.1 EU Funding (Cases UK-A, UK-B, UK-C)

Case UK-A: Theft of EU funds I & Other Frauds

OLAF's press release states (OLAF, 2010a) that in 2005, BI Industries (Holding) Ltd. received 121,425 GBP (174,000 EUR) in funding for the coordination of a research project to develop an alternative thickening agent to gelatine. The payment was to pay other companies participating in the project. Nevertheless, the director sent the funding into the account of a second company, of which he was also director. Both companies went into liquidation and the monies were not recovered.

Process:

The UK Department of Business Innovation and Skills, (BIS), contacted OLAF in January 2007. OLAF helped them find EU officials who could give evidence in court.

The director, Mr. Mulholland pleaded guilty to eight counts of fraudulently removing funds in amount of 931,157 GBP from another company where he was the sole director.

Conclusion:

In September 2010, he was *sentenced to 18 months imprisonment* for the theft (contrary to section 1 Theft Act 1968) and also sentenced to a further *two and half years imprisonment after* admitting to another eight fraud offences contrary to section 206(1)(b) and (6) Insolvency Act 1986 (Gov.uk, 2010).

This case shows an effective cooperation between OLAF and the UK Department of Business Innovation and Skills. The director was not sentenced for damage related to EU's financial interests, but UK courts sentenced him for the theft for one and half year in imprisonment.

Case UK-B: Theft of EU funds II & Legal Action by the EC

In May 2001, company director of Implants International Ltd received 170,000 GBP (284,000 EUR) in funding from the EU for a research project. The company was supposed to distribute these funds to research institutions for research which was about to improve the lifespan of orthopaedic devices for disabled people. However, the director, Mr. Emmanuel used the money for his own purposes and pulled out of the project in 2002 (OLAF, 2010b).

Process:

In February 2003, the *European Commission took legal action* against Implants International Ltd (Case C-279/03).

"The Applicant claims that the Court should:

-order the defendant to pay the applicant the sum of EUR 294,958.51, corresponding to EUR 284,000 as the amount due and EUR 10,958.51 as late payment interest;

-order the defendant to pay EUR 52.91 per day by way of interest from 1 May 2003 until the date on which the debt is repaid in full;

-order the defendant to pay the costs of the present action." (Case C-279/03).

OLAF's (OLAF, 2010b) press release stated that in February 2005, the European Commission obtained a judgement against Implants International Ltd at the Court of Justice in Luxembourg. An unsuccessful appeal followed and the Court of Justice order to the direc-

tor to repay the sum of 170,000 GBP (284,000 EUR), plus interest and costs. However, Mr. Emmanuel put Implant International Ltd into administration, then formed a new company with the same name and purchased assets from the first company.

Thus, *OLAF opened investigation* in March 2007 and informed BIS (Department for Business, Innovation & Skills in the UK) the following year.

In October 2010, Mr. Emmanuel changed his plea to guilty on 6th day of the trial.

Conclusion:

In October 2010, the director was *sentenced to 18 months imprisonment* at Newcastle Crown Court, having pleaded guilty *for theft (18 months imprisonment) and for fraudulent trading (18 months imprisonment), to run concurrently*. He was also disqualified from acting as a director of a limited company for *15 years* (OLAF, 2010b).

This case shows a high level of cooperation between OLAF and BIS in the UK.

The author of this thesis discussed this case with the European Court of Justice and was informed that the Court can make decisions which are related to EU's financial interests for different reasons. In the case above, the European Court of Justice became involved in, because Implants International Ltd and European Commission had agreed in their agreement, which included conditions of the project funded by EU.

As Article 272 from TFEU says "*The Court of Justice of the European Union shall have jurisdiction to give judgment pursuant to any arbitration clause contained in a contract concluded by or on behalf of the Union, whether that contract be governed by public or private law.*" (The Treaty on the Functioning of the EU, 2012).

In this case, the Commission was an administrative authority. If the Commission can not achieve its requirements through the administrative process, it must sue the person. The European Court of Justice is able to sue legal persons, but not individuals.

In the conditions of the tender it was stated that the competent court which will be used to resolve the dispute will be the European Court of Justice. Nevertheless, process continues in the UK, in the criminal Crown Court.

Case UK-C: Paying Back an EU grant

BBC News (2003) published an article in which the Welsh Joint Education Committee (WJEC) was made to pay back a grant from the EU budget in the amount of 1.3 million GBP.

WJEC faced an audit which showed that there was missing information on certain transactions, thus the grant from the European Social Fund was investigated by European Anti-fraud Office. OLAF forwarded information to the Serious Fraud Office and the Department of Work and Pensions (DWP) was also asked to make an audit of the WJEC.

The management of the European Unit in the WJEC from 1998 was a main subject of the investigation. There were significant financial problems and the WJEC faced a deficit in 1998/99. The report was created by auditors Price Waterhouse Cooper on the management of the European Unit.

The new board of WJEC criticized the previous board and the mismanagement of the European Unit.

Process:

In 2001, the board of WJEC received other auditors' reports and passed on the information regarding the European Unit to the police. The Welsh Assembly Deputy First Minister Mike German had been the manager of the European Unit and he resigned from his assembly government post during the investigation process.

Conclusion:

In 2003 the WJEC was ordered to pay back the grants in three payments of around 400,000 GBP (BBC News, 2003).

This case again shows a proper cooperation between OLAF and the UK's authorities. After two years of investigation the organisation was forced to pay the grant back, but no individual was accused of inappropriate management of the subsidies.

4.4.4.2 Corruption (Cases UK-D, UK-E, UK-F)

The author of this thesis has contacted many different government departments (BIS, DE-FRA, Audits), associations and organisations, police departments that fight against corruption, including OLAF and asked for cases which could provide further information on this topic, however, those that replied did not have relevant data or, due to a potential breach of data protection rules, were not able to release information about fraud and corruption related to EU funding. Thus, the following three cases are not related to EU funding. Nevertheless, they are an important part of this thesis and contribute to a further understanding of the whole issue around corruption and fraud. The fact that the author did not find more appropriate "EU funds cases" shows in all probability that the legislation and system of combatting fraud and corruption in SMEs in EU funding may be effective in the UK.

Case UK-D: Bribery & Misuse of Powers of an Official

Munil Pater was working as a clerk in London court and he was the first person who was sentenced under the Bribery Act 2010.

M.P. worked at Redbridge Magistrates' Court and took a 500 GBP bribe to avoid putting information regarding a traffic summons on a legal database for the Court (BBC News, 2011).

However, one of the motorists contacted The Sun newspaper and filmed the process of taking the bribery¹⁵(BBC News, 2011).

Process:

In 2011, Mr. Patel was accused and sentenced to three years for taking bribery and six years for Misuse of powers of an official at Southwark Crown Court. The process of manipulation involved at least 53 cases over a year and Mr. Patel gained over 20,000 GBP through his actions. The judge said that he manipulated the process to save offenders from fines and penalty points and his conduct was a very substantial breach of trust. Even though that he was only 22 years old and did not have any previous criminal record, he was sentenced to three years for taking bribery and six years for Misuse of powers of an official at Southwark Crown Court. The sentences were ordered to run concurrently, thus the total sentence was six years imprisonment (Halsbury's Law Exchange, 2012).

Conclusion:

As Halsbury's Law Exchange (2012) states in its article in 2012, the Court of Appeal reduced the total sentence from six to four years imprisonment. Thus, technically, the three year sentence under the Bribery Act does not mean that Mr. Patel would spend more time in prison, because it would run at the same time as the other sentence.

¹⁵ The case and bribery filmed by The Sun at <https://www.youtube.com/watch?v=tBcW9KlhVFQ>.

There are two types of prison sentence and a judge usually gives a sentence for each crime in the UK. A concurrent sentence means that the person charged serves more than one sentence at the same time. A consecutive type of sentence means that the defendant serves them back to back, or one after the other.

Before the Bribery Act, there was a similar regulation which dates back to 1906, but The Bribery Act covers also bribing a foreign public official and imposes a responsibility on legal persons to prevent bribery (Halsbury's Law Exchange, 2012).

Case UK-E: Giving Bribery to a Licensing Officer

The International law firm Ashurts (2014) announced a case of giving bribery. On the 5th of October 2011, Mawia Mushtaq offered around 250 GBP (315.6 EUR¹⁶) to a licensing officer to change the result of his test for a private hire taxi license, because did not pass his test and had failed many times previously. The licensing officer did not accept the bribe and reported the situation to his manager at Oldham Council. The manager reported the incident to the Greater Manchester Police.

Process:

Mr. Mushtaq was accused and convicted under the Bribery Act 2010 under Section 1.

Conclusion:

One year later, in December 2012, Mr. Mushtaq was sentenced *to two months imprisonment conditionally*, with probation of twelve months and a *two month curfew* order between 6 pm and 6 am.

Case UK-F: Giving a Bribery and a Replica Handgun

Another case mentioned by law firm Ashurst (2014) is about Yang Li, who was a student enrolled in a masters program at the University of Bath. He failed to achieve a pass mark on his dissertation, thus he could not finish the degree. Li offered his professor 5,000 GBP (3,960 EUR) in cash to "help him" finish his degree. However, the professor refused his offer. When he was putting the cash away, a replica of a handgun fell from Li's pocket.

Process:

Li was convicted of bribery according to *Section 1 of the Bribery Act 2010 and of possession of an imitation firearm*.

Conclusion:

He was sentenced *to twelve months imprisonment* and got a fine in the amount of *4,880 GBP (3,865 EUR)* in prosecution costs.

4.4.4.3 Whistleblowing (UK-G)

This is a case from Public Concern at Work (2014b) organisation, when company behaved badly.

¹⁶ Exchange Rate GBP 1 = EUR 1.2625 from the 21st of November 2014 according to ECB
<https://www.ecb.europa.eu/stats/exchange/eurofxref/html/eurofxref-graph-gbp.en.html>

Jo worked as a manager for a well known food chain. She enjoyed her job and valued the company's ethics. A new Divisional Manager (DM) was then hired and began to do things in his own way. He told managers that they should fill in the staff satisfaction surveys, rather than allowing the staff to complete them, as this would boost their bonuses. Jo thought that this was wrong and, in accordance with company policy, reported her concerns to the Compliance team in the United States. They informed Jo that they would investigate the situation and promised to protect her confidentiality, so she was surprised to learn that the DM was telling other managers that she had reported him. Jo found the whole situation to be highly stressful and had to take sick leave as a result.

Jo was then asked to a meeting with the head of Human Resources, so before attending the meeting she contacted Public Concern at Work for advice. They explained to her how she could benefit from legal protection. She told them how her employer's promises of confidentiality were not upheld and they reassured Jo that she had not done anything wrong. When Jo met with HR, she was told that she shouldn't rock the boat as the DM was a high flyer. They also suggested that she should take more time off. Jo rang the US to ask what was happening and they appointed their own investigators.

The investigators met with Jo and said that her claim stood up. Two weeks later Jo was called to a meeting to explain two incidents: one occurred a year ago and the other occurred on her day off work. Public Concern at Work advised Jo that they may be trying to set her up and that she should stay calm. At the meeting Jo was told she would receive a final written warning. As she left the meeting, the DM was outside the room and Jo confronted him. She was then suspended. She asked Public Concern at Work to put her in contact with litigation lawyers who helped her bring a Public Interest Disclosure Act (PIDA) claim. At the door of the tribunal, her case was settled for over 100,000 GBP.

4.5 Comparison

4.5.1 Comparison of the cases

Giving Bribery (CR-C and UK-E & UK-F)

In the case CR-C M.H. was sentenced for one year conditionally, because he offered a bribe in amount of 305,000 CZK (11,044 EUR).

If we compare this with the case UK-E, we see that in this case the licensing officer refused the bribe in amount of 250 GBP (316 EUR) and reported it. Thus the accused person was sentenced for two months imprisonment conditionally with probation of twelve months and also received two months curfew order. The bribe in this case was much smaller than in the case CR-C, thus we could expect a lower punishment to be given (even though that both accused persons' punishment are under the condition). Thus, we see that the British legislation was stricter than the court in the Czech Republic.

The case UK-F is different. The bribery of 5,000 GBP (3,960 EUR) is much higher than in case UK-E and the fact that the defendant was in possession of a replica firearm did not help his cause. He was sentenced to one year in prison and had to pay a fine, which was similar amount to the bribe he was offering.

CR-C and UK-E are very similar and we can see that the court in the UK was more strict on the defendant and decided to impose a curfew as punishment.

The curfew in the Czech Republic - "House arrest" is specified in the Criminal Code under § 60 and § 61. The court may impose a sentence of house arrest for up to two years in the Czech Republic.

Taking Bribery & Misuse of Powers of an Official (CR-A & UK-D)

In the first case CR-A it is obvious that the defendant deserved the five years imprisonment for taking bribes and misuse of his position as a public official. He also received a fine of 10,863 EUR and was banned from managing EU funding for five years.

The defendant from the case UK-D misappropriated a large sum of money similarly to the defendant from CR-A, but the British jurisdiction decided to impose a lower sentence of four years imprisonment in the end.

Even though the defendant received a more severe punishment in the CR case than the one in the UK case for a similar accusation, the defendant from the Czech Republic was conditionally released from the prison after only serving 16 months of the sentence.

The sentence in the UK was actually only a technicality, because defendant was sentenced for three years for taking the bribery and six years for Misuse of powers of an official running concurrently, thus sentenced for six years in total. The Court of Appeal ruling reduced the sentence to four years in total, thus the Bribery Act did not have any "real" effect in the end.

Returning of the subsidies (CR-F & CR-D & UK-A & UK-B & UK-C)

As we can see, these cases are very similar, but not the same. In case CR-F Mr. Janata did not fulfil the conditions of the agreement of the subsidy, so Czech authorities decided demanded that he rectify the situation within one and a half years time. However, organisation Oživení was not satisfied with the process of this case and the actions taken by the State Agricultural Intervention Fund. Thus, Oživení contacted the Ministry of Agriculture for the investigation, which asked the receiver to pay the money back. Nevertheless, the receiver did not pay the money back, even after almost two and half years. If Mr. Janata, will not pay the funding back, SAIF stated that the collection of the grant will be pursued by a debt collector.

If we compare this CR-F case and we take a look at similar case, such as UK-A (subsidy of (174,000 EUR), we can see that there is significant difference. The process of investigation began in 2007, but the director was sentenced in 2010, however without any doubts, the UK legislation sentenced the director to one and half years imprisonment for the theft according to section 1 Theft Act 1968. Compared to the Czech case, where the receiver in the first place received notice from responsible body to correct the situation within one and half year.

In case UK-B, the receiver was also sentenced to 18 months imprisonment, but in this case the European Commission took legal action and in the first place has asked the receiver, the legal entity, to pay the grant (284,000 EUR) back plus interest and other costs. The EC could not achieve its requirement, thus the UK's legislation had to take action, because the European Court of Justice is not able to sue individuals, but only legal persons. Again, the director of this company BI Industries was sentenced to 18 months imprisonment for the theft.

Case CR-D shows that there is also difficulty in getting back a subsidy from public entity, because Prague 10 claimed the money from employees, but the amount was limited by the Labour Code.

Case UK-C describes a situation where the Serious Fraud Office cooperated with OLAF and investigated into accounting irregularities of the Welsh Joint Education Committee. In this case, the Committee paid back the subsidies from European Social Fund, thus a judicial process was not needed, however no individual was accused of any wrongdoing.

Thus, we can see that the Czech authorities did not react sufficiently, as it is mentioned on page 51, because Mr. Janata should have been penalised immediately according to Act no. 218/2000 Coll. § 44a for a breaching budgetary rules.

Whistleblowers (CR-I & UK-G)

These two cases are very clear examples of the situation in both countries relating to whistleblowers.

In the Czech Republic, the whistleblower followed the rules of the company and gave a notice about the irregularities in a public procurement to the headquarters of the company. However, he was later on fired from his work and he describes the whole experience as a very destructive part of his life.

The whistleblower in the UK did not want to fulfil the requirement of her manager and also gave notice to management in her company. However, everything seemed to go against her and she was suspended from her work in the end. However, in this case, she received guided help from an association which provides help to those in need. She also made a PIDA claim against the company and was eventually compensated in the amount of 100,000 GBP.

Even though the British case is not related to public procurement like the Czech one, it is obvious, that the whistleblower in the UK had more protection and was also given help from the organisation Public Concern at Work.

4.5.2 Comparison of legislation

Comparison of maximum punishment

If we take a look at the legislation frameworks of both countries, we can see differences in the maximum punishments. In the Czech Republic, taking *bribery* can receive a sentence of up to twelve years imprisonment and up to six years for giving bribery, whereas a court in the UK can hand down a sentence of up to ten years imprisonment and an unlimited fine for the same crimes.

Corruption is very often connected with *public officers* and it is necessary to punish those who give or accept bribery in this position, because it is their responsibility to protect public finances. Misuse of powers of an official can be given a maximum sentence of twelve years imprisonment in the Czech Republic, but life imprisonment can be imposed in the UK for the same crime.

Punishment for fraud with *subsidies* can be punished as § 212 Subsidy Fraud according to Criminal Code and sentenced up to ten years imprisonment in the Czech Republic. In the Criminal Code no. 40/2009 Coll. is also considered *Damage of EU interest* in § 260. This damage can be punished also by ten years. The UK legislation does not include specific punishment for a crime, which relates to EU interests. However, there is Theft Act 1968, which can punish a thief by up to seven years. There is also Fraud Act 2006, which can penalize a defendant up to ten years imprisonment and unlimited fine.

Criminal liability of *legal persons* is specified in the Act no. 418/2011 Coll. in the CR. This legislation can punish a legal person with a fine, a ban from public contracts and tenders or a ban from receiving subsidies and can also even dissolve the corporation. There is

also a more lenient punishment which involves a public announcement of the judgment as can be seen in the case CR-G. In the UK a legal person can receive unlimited fine punishment.

Comparison of sentencing

Case of Taking Bribery & Misuse of Powers of an Official (UK-D) shows that the Bribery Act did not have “real impact” on the punishment of the defendant, because the defendant was sentenced to three years imprisonment for the theft and four years imprisonment for the misuse of powers of an official. Both sentences ran concurrently, thus he was sentenced to four years.

In the Czech Republic, the defendant was sentenced to four years imprisonment as a summary punishment (for the same crimes), because the Czech legislation does not distinguish if it is concurrent or consecutive sentence.

In order to compare the sentencing between the two countries we will look at scenario involving “person A” from the UK and “person B” from CR.

After one year in the prison, person A and person B are exonerated from the second crime for the misuse of power of an official. In this case, there are two different outcomes depending upon which country the sentencing is given:

- In the UK, the defendant would stay in the prison, because he was also sentenced for three years for the bribery.
- In the Czech Republic, the defendant would be set free in this scenario, because the sentencing was combined into one summary punishment.

We can see, that the jurisdiction is more powerful in the UK than the Czech one in the situation that one of the sentences becomes invalidated whilst the defendant is incarcerated.

4.6 Recommendations

I. Bribery Act

The Czech Republic should consider incorporating some parts of the UK’s Bribery Act 2010 into its own legislation. As has been demonstrated in this thesis, the Bribery Act has been an integral part of the UK’s legislation since 2011, and has helped to control corruption. The key component of this Act is the fact that it places responsibility on companies to prevent fraud and corruption and this level of accountability is something which the Czech authorities could benefit from. If a similar Act was put in place in Czech legislation it would seem, based upon the analysis in this thesis, that it could significantly reduce the incidences of corruption and fraudulent practices in the Czech Republic.

It is also important to guide businesses before and after the implementation of new legislation, so they are aware of the best ways in which bribery can be prevented. Corporations would need to create anti-corruption strategies and this would definitely contribute to lower levels of corruption.

By incorporating these new measures into Czech legislation they could also support the Act no. 418/2011 Coll. Criminal liability of legal persons and thus provide stronger punishment against fraudulent corporations.

II. Whistleblowing

Whistleblowing is another important area that the Czech Republic should improve on in comparison to the UK. Protection of whistleblowers in the UK is ensured by the Public

Interest Disclosure Act of 1998 (PIDA). It is considered a very good tool in protecting whistleblowers.

It is necessary to protect confidentiality and discretion for whistleblowers and also ensure that legal protection is put in place. The current situation in the Czech Republic is not conducive to disclosure by whistleblowers, because there is often fear of reprisal or punishment by the employer, so that the employee is often reluctant to announce their suspicions to their supervisor or manager. This is compounded by the fact that quite often, supervisors and managers are themselves also involved in the misconduct.

The author of this thesis sees the greatest need to protect those who want to announce fraud or other irregularities in their company via *implementation of the expression "whistleblower" and its protection* into Czech legislation. The legislation should give the power to the whistleblower *to demand compensation* from the employer in case that the employee/whistleblower was fired from their work, was discriminated against, or was a victim of bullying at work as a result.

The Public Interest Disclosure Act 1998 allows for a petition for preliminary injunction to stay in employment until an investigation of employee's notice finishes. In other words, if an employer fires the whistleblower, *the employer has to give a proof* that the dismissal was not given due to the whistleblowing. This is a very good example of protection for whistleblowers, however it is necessary to make sure that employees can not use this legislation on purpose to harm the employer with the goal of obtaining compensation. The UK legislation states that - if *the bad faith* of the whistleblower is found, the compensations can be reduced by up to 25 %, so incorporating a similar legislation into the Czech system would also protect against this.

So far, Transparency International and civil association WB have established a web page where employees can obtain more information about whistleblowing and also report irregularities in their company. It is very positive to see that there is an outlet where people can find a place to "speak". It would be also beneficial to set up *an institution* that will be responsible for the proper investigation of reported cases in the Czech Republic or support these two organisations in its project to develop higher awareness about the website and its possibilities among citizens.

The author of this thesis would also focus *on the motivation of whistleblowers*, not only their protection. For example, the financial awards that are given to whistleblowers by the anti-corruption organisations Nadační Fond Proti Korupci are welcomed, however this incentive should really come from the government. The amount of the award should also be great enough, so that employees would be motivated and willing to speak out against fraud and corrupt practices within companies.

In the Czech Republic, the act of whistleblowing can make the individual feel like an informer or a traitor, which obviously stems from the history of the country, thus it is necessary to inform citizens that to give a notice about bad practices within their company is not anything bad, but on the contrary. In other words, there has to be *sufficient publicity* of the legislation related to whistleblowing and its protection and this also includes financial awards to motivate the public, and of course, it is necessary to make sure that citizens are aware of the organisations which take care of whistleblowers and guide them through the process.

The author of the thesis is sure, that whistleblowing is a very important practice when it comes to preventing corruption in EU funding, not only in small and medium enterprises, but in large corporations as well. The Czech Republic should use PIDA as a template for its legislation, as other countries have already done, such as Japan and Ireland.

III. Supporting NGO organisations

The government should focus more on offering support to non-for-profit organisations, such as Transparency International, WB or Oživení. It is necessary to invest money into these organisations, because they have been actively revealing corruption and other fraud in the public and private sectors in the Czech Republic. The author of this thesis is confident, that such money from state's budget would be very well spent, as we can already see very good results from these organisations. Higher budgets would allow these organisations to hire more staff and lawyers, investigate even more corruption and fraud cases, and thus ensure a more transparent environment in the Czech Republic.

For example, Transparency International gained its financial resources in 2013 from from Operation Programmes (20 %), from the European Commission (13 %), and from the Czech budget (25 %, which is around 2.9 million CZK or 105,004 EUR) (Transparency International TIC, 2014b).

It is a lot of money, but support should be even higher.

IV. House arrest

The house arrest punishment is welcomed in the Czech Republic, but there are difficulties, because this process requires the use of electronic bracelets for defendants, and this process of implementing these bracelets has taken already five years. In May 2014, a tender for a purchasing the bracelets was withdrawn by the Minister of Justice Mrs. Válková, because she was not satisfied with the transparency of the process (České Noviny, 2014b).

In the autumn of 2014, the Ministry of Justice started to discuss a new project for electronic bracelets for monitoring the house arrest. Electronic bracelets will be used not only to control house arrest, but it will also replace custody in some situations and it will be used for a control of conditionally released defendants too (E15.cz, 2014).

The author would recommend speeding up the process, because it has taken a lot of time already, although the new tender should be monitored closely. The electronic bracelets may be used also for house arrest punishment in case of giving bribery too, if the defendant is sentenced conditionally. Obviously, this penalty is used for some reason in the UK, and the author assumes and it is to ensure that sufficient punishment is given in a case of conditionally sentencing. Courts could also use it for many others modest crimes. Due to the electronic bracelets visits by control officers could be less frequent, however if the control officer found out that the defendant was not at home, it could be followed by a heavy fine. Defendants could also contribute to the purchase of electronic bracelets.

As the Deputy of Minister of Justice said, to electronically watch a prisoner it costs 165 CZK (6 EUR) per day, but to watch a prisoner in a jail costs 1,000 CZK (36 EUR) (Česká Televize, 2012b).

This is obviously a very significant difference, thus the Ministry should consider the urgent implementation of this tool.

V. Process of returning subsidies

It is necessary to improve the process of gaining subsidies back for those who do not fulfil the conditions of an agreement for EU funding. As it is demonstrated in this thesis, in the case CR-F, it is obvious that the Ministry or even SAIF should announce the breach of law to the tax office immediately, thus the receiver of the funds should be penalised according to Act no. 218/2000 Coll. § 44a for breaching budgetary rules.

The government should provide and control an effective communication between Ministries and other public bodies. There should be an institution, responsible to super-

wise fluent communication between public authorities if dealing with EU funding. So far, there have been organisations such as Oživení or Transparency International which have been taking care of these issues, however there should be an automatic control and immediate rectification if a public body does not fulfil its responsibility while managing the EU finances.

As it was shown in the case CR-F, the staff from SAIF did not react properly. There should be emphasis places on providing training to those who manage controls of projects which are funded. The public staff should be aware of the correct process how to deal with irregularities relating to EU funding and there should be a specialised training, and if they do not act in accordance with the rules then they should be punished by legislation.

VI. State Fund Against Corruption

The last four recommendations lead towards an idea to create a State Fund Against Corruption. The author is aware, that to create the institution mentioned in recommendation no. II (for whistleblowers) or the institution mentioned in recommendation no. V (to watch fluent communication when public bodies secure a process of giving back EU funding) would be costly. Thus there could exist a Fund, which would gain revenues from fines payed by defendants in legal cases related to bribery. Expenditure of this Fund would be efficiently spent for the institutions mentioned above, to provide financial awards for whistleblowers and to ensure adequate publicity of whistleblowing in the Czech Republic. The Fund could also provide finances to NGOs or even contribute the cost of electronic bracelets for house arrests. The Fund could also provide a professional training for those who manage controls of EU funding or other staff that work in connection with EU funds.

VII. Concurrent and consecutive sentence

The choice between concurrent or consecutive sentencing gives not only stronger power to the courts, and in the case of concurrent sentences it also ensures that a defendant will receive a punishment even in the case of being acquitted from one of the other crimes. Thus, in the case that the defendant is sentenced for more than only one crime and is acquitted from one of them whilst in prison, he or she will still have to serve the rest of the punishment.

Concurrent and consecutive sentencing does not currently exist in Czech legislation and its adoption could ensure that crimes to do not go unpunished.

5 Discussion

This thesis looks at sixteen different cases, nine of them are from the Czech Republic and the rest are from the United Kingdom. Most of these cases are directly related to EU funding in these countries. Even though the author was able to find enough data on the topic and was able to fulfil the goal of this thesis, she still had difficulties obtaining information on bribery and fraudulent cases, because this data is usually under protection. The author had to initially search for the cases through news articles, public releases and other non protected data sources. She was then able to find more information about these cases afterwards by contacting the Courts responsible for the cases and other associated authorities. The author was able to find out information on similar legal cases in both countries, thus she could make comparisons between them and draw appropriate conclusions.

There are two very similar cases (Case CR-C and UK-E) related to giving bribery and even the decisions of the Courts resemble each other. Both defendants were found guilty of giving bribes and both of them were sentenced for one year conditionally. But the defendant from the UK also received a two month curfew as part of their sentence. The curfew is called House arrest in the Czech Republic. It is described in Criminal Code under § 60 and § 61. This punishment is welcomed in the Czech Republic and the author of this thesis has used this type of punishment as one of the recommendations in the conclusion of this thesis. The example UK-F describes how a student was trying to corrupt his professor, and how during this situation it was discovered that he was also in possession of a replica handgun. In this case, the British Court decided differently. He did not receive a curfew, but was sentenced to one year of imprisonment and had to pay a fine. We can only estimate how a Czech court would react in similar case.

The comparison of cases relating to public officials and taking bribery (cases CR-A & UK-D) describes that in these two examples, both of the defendants were sentenced for taking bribes and misusing of their positions. The Czech defendant was sentenced to five years imprisonment and had to pay a fine and was also banned from managing EU funding. On the other hand, the British defendant was sentenced for three years for corruption and four years for Misuse of powers of an official. However, both punishment ran concurrently, thus in total had to go to the prison for four years. Nevertheless, even though the Czech defendant was sentenced for five years, he was released conditionally from the prison after 16 months. The author of this thesis has included having the choice between concurrent or consecutive sentencing as one of the recommendations for the Czech Republic in the conclusion. However, the Czech Courts do not always hand out strong decisions. As the CR-B case shows, the defendant was accused of Misuse of powers of an official, intrigues in public tenders and public auctions and also for damage to EU's financial interests, but he was sentenced by the High Court to three years conditionally with probation of five years and a ban from working with subsidies for ten years.

The author also compared the process of returning subsidies. There are four cases. CR-F describes a situation whereby controllers from the State Agriculture Intervention Fund did not react properly once they found out that a receiver of funds did not fulfil conditions of the program. Instead of asking to pay the subsidies back, the controllers asked them to rectify situation. The anti-corruption organisation Oživení noticed the process and asked the superior body, the Ministry of Agriculture, to remedy it. After two and half years, the

money was not paid back by the receiver of the funding. This case shows that both bodies, the Ministry and even SAIF did not react properly, because there was a breach of budgetary rules according to Act no. 218/2000 Coll. § 44a and yet no penalty was handed out. Thus, one of the recommendations is to provide specific training for staff that are involved with the management of EU funds. The wilful rotation of public officers dealing with EU subsidies is also a problem, due to the lack of consistency that can occur.

Another case is related to public procurement in the Czech Republic. CR-D describes a situation when the city of Prague 10 breached a budgetary discipline, because it exceeded the legal limit and did not make a public tender according to the rules set out, however the full payment of 30,726 EUR was not given back as requested by the Municipality of the City. Anti-corruption organisation Oživení saw a problem with the payment and started to investigate the situation. In the end, only 12,673 EUR was paid back and the money was collected from the employees that were responsible. Prague 10 decided to recover damage out of court and also decided to enforce the claim only partially. Another fact is that Labour Code no. 262/2006 Coll. § 257 article 2 states that in the case of negligence, that amount of damages required from employees shall not exceed the amount of 4.5 times of his average monthly earnings, which he has earned before causing the damage. The author of this thesis assumes that 4.5 times the average of his earnings sounds reasonable, but somebody should be responsible for the rest of the payment. It does not seem right that Prague 10 is essentially a guilty party but can decide if it will claim only part or all of the payment back, even though that Prague 10 is responsible for the mistake with public finances. The author believes, that if the Labour Code limits the amount which can be claimed from employees, a responsible head of the office should pay the rest of the money owed, because the most important point here is that it is public money. There is finally a new Civil Service Act 234/2014 Coll. which came into force from the 1st of January 2015, although there has been a Service Act 2002, it has never come into force.

The process of recovering subsidies in the UK is introduced in the case UK-A. The defendant was sentenced to one and half years imprisonment for the theft, in accordance with section 1 of the Theft Act 1968. In case UK-B it is mentioned that legal action was firstly taken by the European Commission, however after asking to pay back the legal entity, the UK had to take action and sue directly the director of the company. He was also sentenced to one and half years imprisonment as was the defendant in the previous example UK-A.

Case UK-C shows that the Serious Fraud Office in cooperation with OLAF was successful when it investigated accounting irregularities of the Welsh Joint Education Committee. In this case, the Committee paid back the funding and no judicial process was needed.

Stories from two whistleblowers are also mentioned in this thesis. Both of them are very similar, but the Czech whistleblower ended up losing his job and the Czech legal framework did not help him. The UK's whistleblower, on the other hand, submitted a PIDA claim and was compensated in the amount of 100,000 GBP. It is necessary to also mention that the highest compensation paid by an employer in the UK is 5 million GBP. PIDA is a very successful act and the author recommends that the Czech Republic follows its measures. Another exemplary act is Bribery Act 2010, which is also explained in the recommendation in the conclusion of this thesis.

On the other hand, a very positive aspect of the Czech legislation is the implementation of Act no. 418/2011 Coll. and the criminal liability it places on legal persons, as is shown in the case CR-G. In this case, not only the director of the association was punished by a fine and had to pay back the subsidies, the association as a legal entity was punished also. The association had to publish the operative part of the judgment in the regional press within three months, which is a modest sanction. The liability of legal persons is still quite new, as it has only been in place for two years, however the fact that implementation and a use of the law became operative, it can be considered as a successful step towards stronger power of the Czech courts against fraud, theft, corruption and other crimes.

Currently, there is another open case of fraud with subsidies where 16 companies and 3 individuals have been accused of abusing posts on employment of people with disabilities in the Czech Republic. The defendants received a grant for each employee, but paid only 25 % of it to the employees. The damage was estimated at 21.4 million EUR. Hopefully, the legal persons will be sentenced according to the Act no. 418/2011 and individuals will be punished too. However, it is necessary to mention that whilst the criminal liability of legal persons has applied in the Czech Republic for over two years, it has been in existence since 1840 in the UK.

Another successful case is CR-F when the defendant was trying to gain subsidies through the falsification of documents. However, the subsidy was not granted and the defendant was sentenced to two years conditionally with probation of five years and also had to pay a fine.

In the end, it is necessary to discuss communication between EU institutions and Member States. We cannot judge the size of fraudulent behaviour in States according to the numbers of announced cases to European Commission and OLAF by Member States. The statistics show that numbers of reported cases are obviously too low in some countries. As an example, in 2013, the Czech Republic has reported 35 irregularities as fraudulent in Agriculture and Cohesion to the Commission. 18 cases were reported by the UK, but Italy has reported 302 cases and Ireland did not report any. The European Commission said that Member States must prevent and report fraud affecting EU budget. It was commented in EurActiv that Italy *"led by Matteo Renzi has a tendency to be too diligent in reporting fraud, which will be further monitored in the coming years."* (EurActiv, 2014).

There has been a requirement since 2013, in accordance with Article 3.4 of Regulation (EU) No 883/2013, that each Member State must set up Anti-Fraud Coordination Service AFCOS, which is responsible for sharing information between the national fraud-prevention authorities and OLAF. The Czech Republic has its contact point from 2007 – the Ministry of Finance and the Public Prosecutor's office. The UK had to follow the EC's regulation and the City of London Police became AFCOS in 2014. The competences of AFCOS services among Member States vary significantly. As an example, it has been mentioned in this thesis, that only eight of them are entrusted with certain investigative powers (e.g. Belgium or Romania). Thus, it is very difficult to measure an effectiveness of these units.

The European Public Procurement Office (EPPO) will be an independent body with the ability to investigate and prosecute fraud within the EU which may effect EU finances. A current problem is the fact that the system of penalizing crimes varies from one Member State to another. For example, from no mandatory sentence for fraud to 12 years imprisonment. Some countries do not accept the EPPO proposal because it is against the principle of subsidiarity. The UK is one of the countries, which does not accept EPPO, because it

would be in conflict with the UK's system whereby investigation and prosecution functions are separate.

In March 2014, the European Parliament confirmed its support of the Commission's proposal for EPPO. According to EU Treaties, Denmark will not participate in EPPO and the UK and Ireland decided not to opt-in (European Commission, 2014t).

According to the author, there should be only one contact point AFCOS which should have an expert team who would be responsible for reporting irregularities to the EC and cooperate with OLAF. The fact that some Member States have several AFCOS contact points, whereas others only have one in one, makes the system confusing and not transparent enough. The author believes that there should be a single AFCOS contact point in each country and that they should all have the same competences. They should release annual anonymous reports detailing specific cases of fraud and other irregularities in their country. These reports should be public so any citizen would be able to see the current situation with public EU finances, and also non-profit organisations could investigate any other irregularities. The author learned, out of consultation with NGO's, that they would welcome these reports. The other benefit of these reports would be that the Member States themselves would have a clearer understanding about the extent of fraudulent activity in their country and thus the Commission could implement appropriate steps toward fighting fraud related to EU's financial interests.

The author of this thesis encourages other students interested in this topic that a following new study could be focused on the effectiveness of AFCOS points in Member States, following with a proposal of which common competences and obligations AFCOS offices should have.

6 Conclusion

The main objective of this thesis is to give recommendations to the Czech Republic towards legislation and the activities of state authorities in regards to funds allocation for small to medium enterprises in order to minimize corruption. This objective was fulfilled through extensive research of legislations, law cases, publications, press releases, newspaper articles and other data connected to the topic in the both the Czech Republic and also the UK. Thus, it was possible to compare results and similar cases and the author could give recommendations for the Czech Republic.

There are seven recommendation areas related to:

- Bribery Act;
- Whistleblowing;
- Supporting NGOs;
- House arrest;
- Process of Returning Subsidies;
- State Fund Against Corruption;
- Concurrent and consecutive sentence.

The author was inspired by the Bribery Act 2010 used in the UK. This Act is well known and includes number of measures against corruption. It is considered as a one of the best Acts for fighting corruption in the world. The recommendation is to combat corruption in corporations via implementing a responsibility for businesses to prevent corruption within them in the Czech Republic. The author also emphasizes that this implementation has to be guided properly by government and it must also inform corporations of their duty. Corporations would have to train their staff, perform background checks, and assess risks for certain markets before entering them. They would have to build a strong anti-corruption system and it would definitely help to prevent corruption in small and medium enterprises, because they would be aware of the high punishment fines attached to misconduct. This implementation in the law would be very helpful and would support the criminal liability of legal persons.

As it was mentioned in the introduction of this thesis, the author also focused on whistleblowing. The second recommendation is related to whistleblowing, which is a very important mechanism in the fight against corruption.

The UK's Public Interest Disclosure Act 1998 (PIDA) has been used as a template in other countries, such as Ireland or Japan and should be used as an inspiration for the Czech Republic too. The author recommends the incorporation of the expression "whistleblower" into Czech legislation and to ensure that adequate protection is provided. The legislation should power to a whistleblower to demand compensation from an employer in the case of bullying or discrimination. So far, there is no such a legislative measure such as this.

The burden should also be placed on the employer to provide evidence that the employee was not dismissed as a result of whistleblowing practices, however it should include a protection for the employee to cover against whistleblowing in bad faith, as it is in the UK.

Even though the anti-corruption association Fond Proti Korupci financially awards whistleblowers, motivation to blow the whistle should be provided by the government too and all these actions should have a sufficient publicity so citizens will have higher awareness about this problem. It would be beneficial to set up an institution that will be responsible for the proper investigation of reported cases in the Czech Republic and the government should definitely support organisations such as WB or Transparency International which investigate whistleblowing issues as mentioned below.

The third recommendation is related to NGOs. The Czech government should support non-profit organisations, which fight against corruption and investigate irregularities related to fraud and corruption. Most of them are dependant on help from funds and donations. The author of this thesis is sure that support of these organisations would help to reduce corruption, because there would be more resources actively seeking corrupt practices.

As it was mentioned in the practical part of this thesis, Czech authorities are trying to implement the use of electronic bracelets for house arrests in the last five years. The last obstacle was seen by Ministry of Justice, who stopped tender because she doubted transparency of the tender as she has noticed some irregularities.

The court may impose a sentence of house arrest for up to two years in the Czech Republic according to the Criminal Code. The electronic bracelets will be used to keep track of individuals under house arrest, to control conditionally released people or they can even replace custody in some cases. The author of this thesis believes that Czech courts should use house arrest to punish giving bribery too, once electronic bracelets are finally introduced into the Czech Republic. It will be a very powerful tool for the Courts which will save a lot of money, and this measure will hopefully reduce incidences of crime also. Finally, defendants should contribute to the purchase of electronic bracelets.

The fifth recommendation is to focus on deeper investigation into the recovery of misappropriated subsidies. According to the cases that have been analysed in this thesis, it is obvious that the process of recovering subsidies seems to be inappropriate in the Czech Republic (as we can see in the Case CR-F).

The cases show that the control authority did not penalise a receiver of the funding properly and that flexible communication among government authorities was missing. Thus, the author believes that the government should ensure effective communication exists between bodies that deal with EU subsidies by setting up an appropriate institution. The government should also provide better training for controllers and those who monitor funded projects and manage EU funding. In the case that errors are made by the controllers after receiving thorough training, they should be punished accordingly.

Another recommendation is to establish a State Fund Against Corruption that could ensure financial flow from corruption legal cases into the specific areas mentioned above. Revenues of this fund would be generated from the fines paid by defendants that are sentenced for corrupt behaviour. Expenditures would be used for setting up an institution which would protect and provide financial awards for whistleblowers, and to ensure public awareness of whistleblowing in the Czech Republic. Other expenditure could secure financial support for NGOs or to contribute to the purchase and implementation of electronic bracelets for house arrests. The fund could also finance an institution which would

monitor communication between government authorities dealing with EU funding or provide training for public staff working with EU subsidies.

The final recommendation is related to the penalty system. The UK Courts can decide to run sentences concurrently or consecutive. Thus, it has the power to ensure that a defendant will stay in a prison, even if he or she is acquitted from one of the crimes during the time in the prison. According to the author of this thesis, this is a competency of the courts which is missing in Czech legislation. The Czech Courts should also have the power to decide whether the sentence will be concurrent or consecutive, instead of the summary sentencing which is generally used.

According to the findings of this thesis questions asked in the Aim of this thesis can be answered. They are following:

- *Is Czech legislation set up to fight against corruption? Yes, it is.* Czech legislation is set up to fight against corruption through the Criminal Code and Acts related to public procurement or subsidies and EU funding. The legislation also ensures punishment of legal persons for criminal behaviour which is very positive. However, there are many ways in which the situation of corruption could be improved in the Czech Republic, as it is described above.
- *Is it possible to get inspired by legislation and other processes of fighting against corruption in the UK and use it in the Czech Republic? Yes it is.* It is definitely possible to get inspired by legislation and the system used against corruption in the UK. As it is described above, Bribery Act 2010 or Public Interest Disclosure Act 2010 are crucial and should act as inspiration for the Czech legislation. The use of curfew sentences (or house arrest) is seen as an effective punishment and even the system of sentencing is seen as something that the Czech Republic could benefit from as demonstrated in this thesis.

The author of this thesis believes that all seven recommendations would be very helpful. She is also aware that new changes in legislation takes a lot of time, however even if only one of them was introduced, it would definitely contribute to the decrease of corruption levels in the Czech Republic.

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Appendixes

A Appendix: Statistics and surveys on corruption in the EU

Transparency International and CPI

Tab. 7 Corruption Perception Index (CPI) in the EU in 2013

No.	Country	Score	No.	Country	Score
1.	Denmark	91	15.	Poland	60
2.	Finland	89	16.	Spain	59
3.	Sweden	89	17.	Lithuania	57
4.	Netherlands	83	18.	Slovenia	57
5.	Luxembourg	80	19.	Malta	56
6.	Germany	78	20.	Hungary	54
7.	United Kingdom	76	21.	Latvia	53
8.	Belgium	75	22.	Croatia	48
9.	Ireland	72	23.	Czech Republic	48
10.	France	71	24.	Slovakia	47
11.	Austria	69	25.	Italy	43
12.	Estonia	68	26.	Romania	43
13.	Cyprus	63	27.	Bulgaria	41
14.	Portugal	62	28.	Greece	40

Source: Transparency International, 2013a, author's elaboration

Table 7 shows that the countries with the lowest corruption levels in the EU are Denmark, Finland and Sweden. Greece, Bulgaria and Romania received the worst rating, which indicates highest corruption levels. The UK received a CPI score of 76, which is the 7th best score out of the EU Member States. The Czech Republic received a CPI scored of 48 which is the 23th best, or the 6th the worst, out of the EU Member States.

World Bank Indicators

Control of Corruption

"Reflects perceptions of the extent to which public power is exercised for private gain, including both petty and grand forms of corruption, as well as "capture" of the state by elites and private interests." (World Bank, 2012).

Figure 5 ranks the EU Member States in order of how well they control corruption, from the lowest (0 % control) to the highest (100 % control). Control of corruption is the best in Denmark, Sweden and Finland. The United Kingdom (with a percentile rank 90) is the 7th best EU Member State at controlling corruption. The Czech Republic is evaluated as the 8th worst controller of corruption in the EU (61 %).

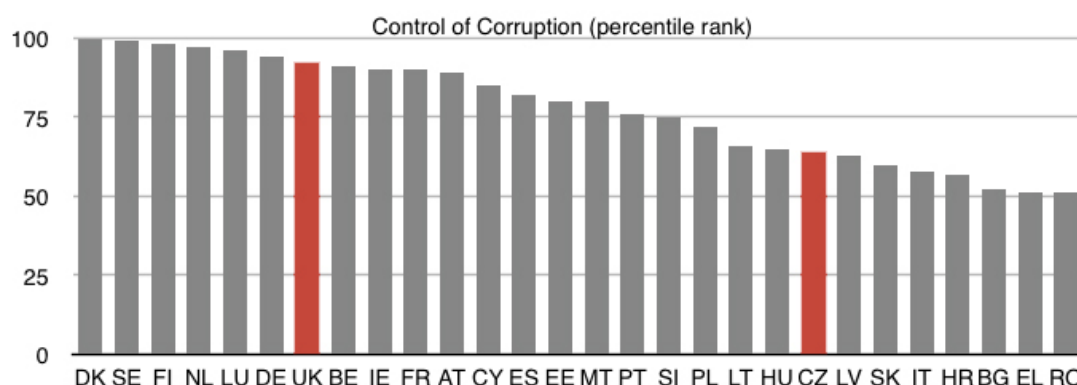


Fig. 5 Control of Corruption in the EU in 2012

Source: World Bank, 2012, author's elaboration

Government Effectiveness

"Reflects perceptions of the quality of public services, the quality of the civil service and the degree of its independence from political pressures, the quality of policy formulation and implementation, and the credibility of the government's commitment to such policies" (World Bank, 2012).

Figure 6 shows that the UK's government effectiveness is ranked 10th (88 %), with the Czech Republic ranked 18th (76 %).

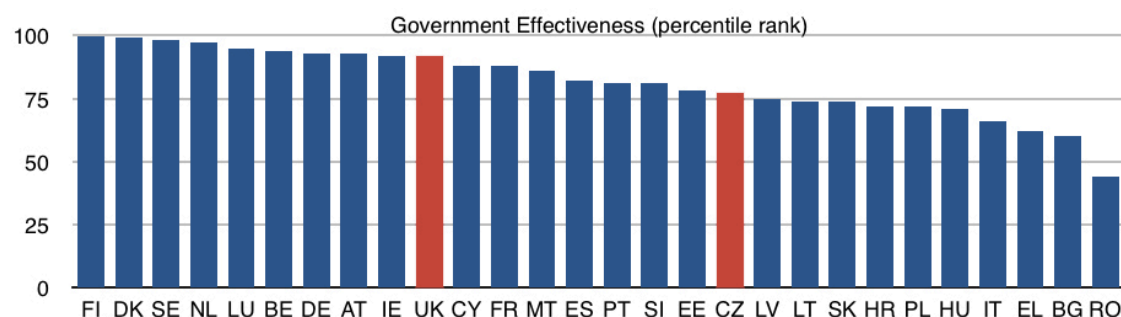


Fig. 6 Government Effectiveness in the EU in 2012

Source: World Bank, 2012, author's elaboration

Eurobarometer survey

According to European survey Eurobarometer from 2013, 95 % of people agree with the fact that *corruption is widespread* in the Czech Republic and it is more than the EU average (76 %). 71 % of Czech businesses said that corruption is the main barrier in doing business there, which is the *maximum percentage* in the whole EU and Czech people see the government effort to combat corruption as being of little effect (European Commission, 2014d).

On the other hand, 64 % of citizens think that corruption is widespread in the UK. Even though it is large percentage, it is still under the EU average. On average, the consideration that corruption is a problem for companies when doing business in the UK is 43 %,

but *only 4 %* of businesspeople see corruption as problem in the UK (European Commission, 2014e).

Eurobarometer results said that *69 %* of the respondents see *corruption in official awarding of public tenders* in the Czech Republic compared to the EU average of *45 %* (European Commission, 2014f).

The EU Anti-Corruption Report 2014 shows that *public procurement*, government and utilities expenditure on works, goods and services were in amount of 36.70 billion EUR in 2011, which is *23.5 %* of GDP in the Czech Republic (European Commission, 2014g).

In the UK, it was 377.94 billion EUR, which means that the total expenditure was *21.6 %* of GDP (European Commission, 2014e).

Another Eurobarometer survey asked citizens¹⁷, if corruption and abuse of power for personal gain is widespread among different areas. The results shown in Table 8 indicate that in the Czech Republic, people see the most problem with political parties (*73 %*), politicians (*69 %*) and officials awarding public tenders (*69 %*). All three areas have higher percentages than EU averages. The research also shows that the UK's 3rd most corrupted area is banks and financial institutions (*47 %* of citizens think that), which is even more than EU average (*36 %*) and more than in the Czech Republic (*36 %*).

Tab. 8 Areas with corruption and abuse of power in the CR and UK (in %)

	CR	UK	EU average
Political parties	73	56	59
Politicians at national, regional or local level	69	55	56
Officials awarding public tenders	69	33	45
Banks and financial institutions	36	47	36

Source: European Commission, 2014h, 2014f, author's elaboration

Public Procurement Survey

32 % of companies in the Member States say that they did not win a contract because of corruption. The companies are usually from construction and engineering sectors. Red numbers are especially in countries such as Bulgaria, Cyprus, Slovakia or the Czech Republic where more than half of the companies specify this reason. As Eurobarometer survey from 2013 shows that the most respondents think that there is widespread corruption amongst officials awarding public tenders in countries such as the Czech Republic (*69 %*), then the Netherlands (*64 %*), or Slovenia (*60 %*). On the other hand, the most positive perceptions are in Denmark (*22 %*), Finland (*31 %*), Ireland (*32 %*) and the UK (*33 %*) (European Commission, 2014c, p. 25).

Whistleblowing

A survey from 2007 by Ernst & Young found that *86 %* of **UK** senior executives said they felt free to report corruption or fraud. This number is very positive compared to *54 %* in other European's countries (Transparency International UK, 2014a).

¹⁷ 1,000 interviews in the CR, 1,308 in the UK and 26,786 interviews in the EU.

The association Public Concern at Work conducted research amongst 1,000 whistleblowers. The results show that 39 % of whistleblowers have worked in the company for less than two years, thus newer employees are most likely to blow the whistle. 60 % of whistleblowers said that they have never received any answer from management. 15 % of them were dismissed and 16 % said that developed a health problem due to stress caused. 20 % were still at work and 80 % were on sick leave (Public Concern at Work, 2013).

Only 15 % of citizens thought that legislation could protect them in the case of whistleblowing in 2009 **in the Czech Republic**. They usually did not believe the responsible institutions or even did not know who they should contact. Almost 60 % said that they are sure that there is fraud at their work. 10 % of the citizens said that they have experienced bribery at their work. Two thirds of employees that experienced serious fraud at their work did not solve the problem or just shared their opinion with their colleagues. 25 % contacted their supervisor and only 4 % of people contacted the police or other authorities (labour office, lawyers etc.). The employees who did not give notice about irregularities said that they were afraid or did not believe that it would solve the problem. More than 35 % of whistleblowers experienced a negative outcome, usually whereby relations with a supervisor were not like before. 33 % of citizens admit that they would be part of illegal or non-ethical behaviour in the case that they could lose their job and would be under pressure at work (Transparency International TIC, 2009).