



# Electricity Regulation

in 27 jurisdictions worldwide

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# Czech Republic

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## 1 Policy and law

What is the government policy and legislative framework for the electricity sector?

The electricity sector in the Czech Republic, as an energy sector subsystem, is regulated by a range of legal regulations of different legal power. The conditions for doing business, regulation and public administration in the energy sectors are set forth in Act No. 458/2000, the Energy Act. Act No. 406/2000 on Energy Management (Energy Management Act) sets forth measures for increasing the effectiveness of the use of energy and obligations of natural persons and legal entities related to the handling of the energy, as well as rules for preparation of the State Energy Concept, Regional Energy Concept and National Programme for Energy Saving and for Utilisation of Renewable Energy Sources. It also sets forth requirements for the ecological design of energy appliances. Act No. 165/2012 on Promoted Energy Sources (Promoted Energy Sources Act), which repeals, as of 1 January 2013, Act No. 180/2005 on Promotion of Electricity Generation from Renewable Sources (Alternative Energy Act) extensively covers generation from renewable sources and secondary energy sources, as well as high performance combined electricity and heat production and decentralised electricity production. The Czech electricity sector regulation has implemented the so-called Third Energy Package of the EU, including Directive No. 2009/72 EC (on the common rules for the internal market in electricity) and Directive No. 2009/28/EC (on the promotion of the use of energy from renewable sources). EC Regulation No. 714/2009 covers electricity cross-border exchanges.

The Energy Regulation Office (ERO), as the energy regulation public authority, issues decrees and decisions on the basis of the powers delegated thereto in the Energy Act. Among the most important decrees within the wide scale of regulations we should mention Decree No. 541/2005 on the electricity market rules, the principles for setting the prices for activities of the market operator and on implementing some other regulations set forth by the Energy Act; Decree No. 401/2010 that regulates contents of the relevant transmission or distribution system rules; Decree No. 140/2009 on the manner of regulation of prices in energy sectors and Decree No. 426/2005 on details regarding the energy sector business licensing. The Ministry for Industry and Trade (MIT) also issues decisions and decrees within the powers delegated thereto by the Energy Act and the Energy Management Act, for instance, Decrees No. 80/2010 and No. 79/2010, both focusing on regulation of certain issues regarding the state of emergency in the energy sector. The ERO and the MIT have been empowered by the Promoted Energy Sources Act to issue several implementing decrees to this act.

Electricity policy in the Czech Republic closely follows the EU Energy Policy. Apart from the Energy Act, the Energy Management Act and the Promoted Energy Sources Act, Czech electricity policy is expressed in the State Energy Concept (SEC), which constitutes a strategic document with a 30-year outlook. It determines the scope of energy management in accordance with the necessities of economic and social development and environmental protection.

The SEC was initially prepared by the MIT pursuant to the Energy Management Act and approved by the Czech government in 2004 and has been subject to periodical revisions. The last version was made available in July 2012. As a rule, the fulfilment of the scope, priorities and tools set therein is reviewed by the MIT periodically, not later than every five years, when the MIT informs the government of its conclusions. Where necessary, the MIT submits proposals to the government to amend the SEC. According to the last version of the SEC, apart from the inclination towards nuclear generation as one of the Czech electricity generation pillars, support of cogeneration in connection with the further development of the central heating systems (in particular with respect to coal energy), development of the transmission grid (including the protection of the land to be used as transmission corridors) and shift of regulation from generation to the consumption sector, the main requirements stipulated by the SEC include energy source diversification, electricity supply safety and reliability, integration of the energy markets within Central Europe, fair competition and sustainable development. This is in line with the EU Energy Policy. Pursuant to the SEC, regional energy plans are developed by the Czech regions, the City of Prague and the 'statutory cities' of the Czech Republic.

Pursuant to the requirements set forth by the respective EC directives, since 2005, the Czech Republic has been submitting national reports on the electricity and gas energy sector for the relevant year to the European Commission and updating it on the developments in these sectors. The reports are accessible online and contain much useful information about the Czech Republic's energy sector.

## 2 Organisation of the market

What is the organisational structure for the generation, transmission, distribution and sale of power?

The electricity market in the Czech Republic is composed of the following participants defined in the Energy Act: electricity producers, the transmission system operator (TSO), distribution system operators (DSO), the market operator, electricity traders and customers.

All the business activities within the electricity market, namely, electricity generation, transmission, distribution, trading and the activities of the market operator, are subject to licensing. Licences are granted by the ERO. The licences for electricity transmission and market operation are exclusive. All licences, except for trading (five years) and market operation (fixed term of 25 years), are granted for a period not exceeding 25 years. The Energy Act sets out the implementation schedule for the complete liberalisation of the electricity market. The electricity market was opened in several progressive steps, which took place from 2002 until 2006. Since 1 January 2006, when the last group of customers – households – obtained the right to choose an electricity supplier, the market has become fully liberalised.

Only activities of a monopoly-like nature remain regulated, such as transmission and distribution of electricity and activities related to

ensuring the electrical grid stability both from a technical and commercial point of view (eg, prices of services provided by the market operator are regulated by the ERO). By implementing the EC Directive No. 2009/72/EC, the Energy Act adopted a certification procedure for the TSO, which must obtain and hold a special certificate of independence issued by the ERO. Any changes in the structure of the TSO's control, which might affect its independency, shall be subject to a certification procedure.

The company CEPS a.s. (CEPS), is the only TSO operating the sole electricity transmission grid in the Czech Republic (consisting of 400kV, 220kV and selected 110kV power lines). CEPS is responsible for transmission of electricity through the transmission grid, as well as for development of the grid and for providing system services to ensure a secure and reliable operation of the grid. CEPS is also responsible for cross-border electricity transmission. The 2011 amendment of the Energy Act introduced the ownership unbundling requirement, with an exception for CEPS (TSO) and CEZ (the dominant electricity producer) both controlled by the state (the exception was granted with the argument that stakes in both undertakings are held by different ministries). Moreover, according to the current version of the SEC, the state intends to retain its exclusive stake in CEPS and its dominant control over CEZ in the future.

Distribution of electricity is provided by three regional DSOs, each having more than 90,000 customers; their facilities are connected directly to the transmission system. Pursuant to Directive No. 2003/54/EC and the implementation legislation (namely, the Energy Act), the unbundling procedure began as of 1 January 2007; DSOs with more than 90,000 customers have not been allowed to hold, simultaneously, the licence for electricity generation, electricity transmission and electricity trading. Apart from the regional DSOs, there are local DSOs connected to the regional distribution grids. These DSOs distribute electricity in the areas set forth in the distribution licences. Pursuant to the 2011 amendment of the Energy Act (adopted in connection with the EU Directive No. 2009/72), the 'unbundling' rules have been elaborated in more detail; at the present time, the DSOs must adopt internal policy for avoiding discrimination with respect to the electricity market participants, which are not affiliated with the DSO, and appoint an independent auditor for the supervision of the fulfilment of such rules.

ERO Decree No. 140/2009 on the Manner of Regulation of Prices in Energy Sectors and Procedures for Regulation of Prices stipulates the structure of prices for electricity in accordance with Act No. 526/1990 on Prices, as well as the Energy Act. The price of electricity for the customers, including households, is composed of regulated and non-regulated components. The regulated components include the prices for transmission and distribution of power to the customers, coverage of expenses for transmission and distribution of power in the neighbouring distribution grids, last-instance supplier power (by material coordination) and system services. At the present time, the aforementioned decree also regulates the manner of regulation of the price for contribution for promotion of renewable sources energy, cogeneration payment and also the contribution for generation from secondary electricity sources (according to the law provisions applicable in 2012). New regulations relating to the coverage of the expenses incurred in connection with the Promoted Energy Sources Act commencing from 2013 are expected. The market operator's services, consisting of assessment, clearing and settlement of the imbalances, as well as organisation of the day-ahead market, are also included in the regulated part of the price.

Production, supply and business activities connected with power supply to the customers are fully subject to market mechanisms. Until 2007, electricity had been traded on a wholesale basis via annual auctions and bilateral agreements between the individual electricity market participants. Since 2007, when the Prague Energy Exchange, at present named 'Power Exchange Central Europe' (PXE), was established, futures and spot trades (with financial or physical settlement) have taken place on the PXE. Day-ahead and intra-day spot trades

also take place on the PXE. Information about price determination is thus more accessible to the public, in particular via the internet. Due to PXE's activities, the price for power is now constituted with the demand-supply mechanism.

The PXE's regulated market is organised and controlled mainly pursuant to Act No. 229/1992 on commodity stock exchanges. Trading on the PXE is allowed only to the licensed electricity traders, which are also subject to clearing of imbalances ensured by the market operator. The possibility of trading on the PXE is established on the basis of a contract between the electricity trader and PXE; electricity traders must fulfil certain requirements before the conclusion of such a contract. Trades can be concluded only in electronic form and in euros; trading takes place every business day.

The market operator is a joint-stock company established by the state and the state must keep, at least, a 67 per cent stake in the market operator's registered capital. It is the holder of an exclusive licence for electricity market operation. The market operator's main activity in the electricity market is the organisation of short-term electricity trading and processing and publishing data and certain information regarding the electricity market. It is also responsible for ensuring and providing the real values of supplies and takeover of electricity for the electricity market participants. It organises the balancing market for regulation energy in collaboration with the TSO and performs certain statistical and other duties. The market operator is also responsible for certain activities related to the limitation of greenhouse gas emissions (National Registry for Emissions Trading). Starting from 2013, the market operator shall become responsible for the fulfilment of certain duties pursuant to the Promoted Energy Sources Act, including the payment of the green bonuses, compensation of the relevant part of the purchase price incurred within the obligatory purchase of the electricity from promoted energy sources, issuing of the guarantee of origin and many others.

On the basis of contracts on settlement of imbalances, the market operator performs the valuation of contracted and actual supply and takeover of electricity and performs the assessment, settlement and clearing of the imbalances. This activity is monopolised and the prices for such services are therefore regulated.

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## Regulation of electricity utilities – power generation

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### 3 Authorisation to construct and operate generation facilities

What authorisations are required to construct and operate generation facilities?

As a first step, certain contemplated power plants would be subject to the procedures set forth in Act No. 100/2001 on Environmental Impact Assessment (EIA).

For the construction of a power plant with total installed capacity of 100kW or more a state authorisation granted by the MIT must be obtained. The state authorisation shall cease to exist in the case that the authorisation holder fails to apply for the zoning permit within the prescribed time period. The MIT may also cancel the authorisation in certain cases.

As with any other building activity, construction of generation facilities in the Czech Republic is generally regulated by Act No. 183/2006 (Construction Act). As a next step, the zoning permit, the construction permit and, finally, the permit for use of the completed generation facility must be issued. For issuance of the aforementioned three permits under the Construction Act, consents must be issued by the relevant authorities that protect the public interest, for example, the water, air, soil and health protection authorities and many others.

Certain special kinds of power generation constructions require further or special administrative procedures and permits. For example: hydroelectric plants require a special construction permit from the respective water authority, instead of a construction permit under the Construction Act and also a water disposal permit to be issued



by the water authority; combustion units with nominal heat capacity above 50MW require the integrated pollution prevention permit pursuant to Act No. 76/2002 on Integrated Pollution Prevention.

On generation, transmission, distribution and trading licensing, see question 2. A special licence according to the Energy Act must be obtained for power generation. There is no special licence required by energy-related legislation to operate a generation facility (only the relevant business licences must be obtained, including the licence for electricity producers, should power generation also be the business of the operator).

Pursuant to the Energy Management Act, each producer of electricity from heating processes with an installed capacity exceeding 10MW is obliged, when installing a new generator or changing the construction of the existing generators, to submit the building documentation or technical documentation to an energy audit in order to evaluate the possibilities of heat production. Also pursuant to the Energy Management Act, each energy producer is obliged, when installing a new generator or changing the construction of the existing generators, to ensure the maximum efficiency of energy use set forth in the implementation regulations.

#### 4 Interconnection policies

What are the policies with respect to interconnection of generation to the transmission grid?

The technical and business conditions for interconnection of generation to the transmission grid are set out in Decree No. 51/2006 on the conditions for connection to the electricity grid and in the Transmission System Code developed by CEPS and approved by the ERO. Pursuant to the Energy Act, CEPS will provide anyone, upon request, with the conditions and time period necessary for the connection to the transmission grid. It will provide the transmission services to anyone who is connected to the transmission grid (upon request), provided that it meets all the conditions set out by the Transmission System Code and the relevant legislation, unless there is a demonstrable insufficiency of the transmission device capacity or the reliable and safe operation of the transmission grid is jeopardised. The technical details for interconnection are also set out in the operation instructions of the TSO control centre.

Decree No. 51/2006 sets out general conditions and requirements for application for interconnection to the transmission grid. The TSO may require the applicant to provide a feasibility study for connection; the application must be submitted before the construction or interconnection of the respective generator. The consent of the owner of the land on which the respective generator is located must also be provided and, in cases of generators with certain installed power, timetables for construction and for obtaining consents from public authorities must also be provided. The detailed conditions are set forth in the Transmission System Code. The interconnection fee is regulated by the ERO.

After the TSO approves the interconnection, the TSO concludes a contract with the applicant and the applicant has a duty to pay, within 15 days from the conclusion of the contract, an advance payment in the amount of 50 per cent of the expenses to be paid by the applicant in connection with construction alterations in the transmission grid necessary to facilitate the connection (to be calculated according to the above-mentioned Decree; such advance payment shall not exceed 50 million koruna). The term for connection of the generator to the transmission grid should be agreed by the parties. In the case of solar powered plants, generators must be connected within 180 days and, in the case of a solar powered plant with an installed capacity of over 30MW, within one year, from the conclusion of the respective agreement, otherwise the agreement shall cease to exist.

The current Transmission System Code is effective as from January 2012.

#### 5 Alternative energy sources

Does government policy or legislation encourage power generation based on alternative energy sources such as renewable energies or combined heat and power?

Yes; the Alternative Energy Act regulates promotion of power generation from renewable energy and implements Directive No. 2001/77/EC on the promotion of power generation from renewable energy sources in the internal electricity market. Commencing from 2013, the Promoted Energy Sources Act, as a completely new act repealing the Alternative Energy Act and implementing Directive No. 2009/28/EC, shall take effect.

The Promoted Energy Sources Act sets out the rules for the promotion and support of the electricity, heat and biomethane produced from the renewable energy sources (ie, non-fossil natural energy sources, including wind, solar radiation, water, soil, air, biomass, landfill gas, sludge gas from wastewater treatment plans and biogas), secondary energy sources, high performance combined electricity and heat production and decentralised electricity production. The act also sets out rules for the content and preparation of the National Action Plan for renewable sources energy, conditions for the issue of the guarantees of origin of the power from renewable sources as well as the financing of the costs related to the promoted energy support.

Power generated from energy sources promoted by the Promoted Energy Sources Act enjoys preferential treatment – the power generators must be connected to the relevant transmission or distribution grid with preference (except that there is insufficient capacity or the safe and reliable operation of the electricity grid is jeopardised), the electricity producer must be provided with the information necessary for the connection and there are special payment surcharges, so called green bonuses (or, in the case that special conditions are met, the special purchase price) for power so generated.

Power generation from renewable energy has been also encouraged, for example, by higher feed-in tariffs and certain tax incentives (for instance, ‘tax holidays’) that have, however, been substantially reduced from the beginning of 2011. Due to the inappropriate subsidising methodology adopted in the Czech Republic that led to the substantial increase of the electricity price (directly linked to the sustainable energy promotion), the actual position of the public is reflected by the government, which is now reluctant to grant any further subsidies to renewable energy projects.

#### 6 Climate change

What impact will government policy on climate change have on the types of resources that are used to meet electricity demand and on the cost and amount of power that is consumed?

Government policy regarding climate change strictly follows the policy of the European Union. Pursuant to the current SEC, government energy policy will concentrate on maximisation of energy effectiveness, ensuring the effective amount and structure of consumption of primary energy sources and maximisation of an environmentally friendly approach. By 2020, at least 13 per cent of electricity must be generated from alternative sources in the Czech Republic, although this percentage may still be adjusted according to the EU Climate Package, adopted in 2009. The principles of the promoted energy policy are based on preferential connection of the power generators to the grid and special rules relating to the purchase of the power produced from the promoted energy sources. Such preferential rules for the purchase are implemented via so-called green bonuses or special purchase prices for the power so generated. Only certain electricity producers (generating electricity from water energy with the installed capacity of up to 10MW or from renewable sources with installed capacity of up to 100kW) shall have the right to choose between the green bonuses and special purchase prices; other producers shall be entitled to the green bonuses only.

The green bonuses, which constitute a special payment depending on the amount of the power produced by the electricity generator using the promoted energy sources, shall be paid by the market operator, upon request (accompanied by the relevant documents) of the electricity producer.

In the case that the eligible electricity producer chooses the option of the special purchase price, the electricity trader set out by MIT (or, in special cases, the last instance supplier), is obliged to buy out the electricity produced by the eligible electricity producer at the special purchase price set out in accordance with the Promoted Energy Sources Act.

The Promoted Energy Sources Act sets out certain cases when the right for the payment of the green bonuses or the obligation of the electricity trader to buy out the electricity produced does not occur, (eg, in the case that on the relevant day the offer and request do not meet on the day-ahead market organised by the market operator).

As a result of the recent proliferation of photovoltaic power plants in the Czech Republic, the current Alternative Energy Act and also the Promoted Energy Sources Act sets forth a special charge to solar energy producers whose solar plants were constructed from 1 January 2009 to 31 December 2010 in order to help mitigate the negative effects on the electricity price for the end consumer. Solar energy from solar plants with installed capacity up to 30kW and placed on the roofs or walls of buildings is exempted from the charge. The charge is to be paid for each month of production of solar energy in the period from 1 January 2011 until 31 December 2013.

The ERO shall independently determine, each calendar year in advance, the purchase prices and green bonuses for promoted energy based on the rules set out in the Promoted Energy Sources Act. The purchase price or green bonus cannot exceed 4,500 koruna/MWh in the first year of operation of the power generator. The purchase prices set forth by the ERO for the upcoming calendar year cannot be lower than 95 per cent or higher than 115 per cent of the purchase prices valid for the current year; the limited annual decrease of guaranteed purchase prices set forth by the ERO for the upcoming calendar year shall not apply to renewable energy sources with respect to which the investments recovery time is shorter than 12 years (being the case of PVs). In such a case, the purchase prices for the upcoming calendar year may see a further decrease. Moreover, the ERO is entitled in the course of the year to correct the amount of the green bonuses relating to the high performance combined electricity and heat production according to certain parameters.

In the case that the total renewable sources power actually produced in the past exceeds the presumed power production set out in the National Action Plan prepared by ERO, ERO shall not determine the support for the power generators, the operation of which commences in the future. Information about the actual amounts of renewable sources power produced is to be published in the ERO bulletin.

## 7 Government policy

Does government policy encourage or discourage development of new nuclear power plants? How?

According to the current version of the State Energy Concept, nuclear power represents one of the main instruments for ensuring an optimal fuel mix and for ensuring sufficient reserves and stability of energy production. Therefore, the development of nuclear power is one of the goals of the current government. According to the SEC, nuclear energy should, in the long term, replace the dominance of coal energy and reach at least a 50 per cent stake in the fuel mix for energy production. It is desirable that the heat energy produced by nuclear sources be used for the heating of urban agglomerations. The SEC sets out that the new nuclear blocks of the Temelin plant are intended to be built by 2025 and the service life of the older Dukovany plant is intended to be extended up to 60 years (including the construction of another nuclear block by 2040).

## Regulation of electricity utilities – transmission

### 8 Authorisations to construct and operate transmission networks

What authorisations are required to construct and operate transmission networks?

The operation of transmission networks in the Czech Republic is performed in the public interest. The licence for transmission of electricity is issued by the ERO as an exclusive licence for the entire territory of the Czech Republic. The transmission networks operator is not allowed to hold any other licence pursuant to the Energy Act. It must obtain a special certificate of independence from the ERO that confirms that it is the owner of the transmission grid and it is independent from any other person or entity involved in the electricity sector. At the present time, the licence holder for operation of transmission networks in the Czech Republic is CEPS, which is responsible for transmission of electricity at the transmission networks level, as well as for the development of the transmission system and for providing the system services necessary for ensuring secure and reliable operation of the electricity network. CEPS is controlled by the state (holding 100 per cent of the shares issued by CEPS). Also, according to the SEC, the state intends to keep its 100 per cent stake in CEPS in the future.

The development of the transmission grid is fully under state control and performed in the public interest.

As regards the requirements related to construction, these also include protection of the environment (for example, protection of wildlife, forest or agricultural land). Usually, prior consent or at least an acknowledgement must be obtained from the respective environment protection authorities.

Also other consents, such as those of the Civil Aviation Authority, telecommunications service providers, etc, must be obtained according to the features of the relevant project. Where power lines are to be installed underground, further requirements regarding soil protection and underground activities are also to be met. In addition, as a general rule, the consent of all respective landowners must be obtained before starting the relevant construction. The same applies with respect to the construction of distribution networks.

### 9 Eligibility to obtain transmission services

Who is eligible to obtain transmission services and what requirements must be met to obtain access?

Transmission services are provided in the public interest. Access to the transmission grid is regulated. Transmission services shall be provided to anybody who is connected to the transmission grid, requests such services and fulfils the statutory conditions and the conditions set by the Transmission System Code, unless there is a demonstrable insufficiency of the transmission device capacity or the safe and reliable operation of the transmission grid would be jeopardised.

The producers of energy from promoted energy sources have the right to be connected on a preferential basis, subject to the conditions set out in the Promoted Energy Source Act.

Transmission services are provided based on a contract on transmission of electricity concluded between the TSO and electricity producers, electricity traders or any customer and such entity undertakes to pay the regulated price.

### 10 Government incentives

Are there any government incentives to encourage expansion of the transmission grid?

No; the transmission grid is operated and developed by a state-controlled company on the basis of an exclusive licence. CEPS has a long-term investment plan with an outlook up to 2023, which contemplates, among other things, the strengthening and modernisation of the transmission grid as the Czech Republic has a strategic position in Central Europe with respect to cross-border electricity

transmission. The aim of further development of the transmission grid is also contemplated in the current State Energy Concept. CEPS plans to invest 4.5 billion koruna in development of the transmission grid on an annual basis.

In the following years, CEPS intends to increase the transmission capacity in the north-south corridor of the transmission grid and also towards the east.

#### 11 Rates and terms for transmission services

Who determines the rates and terms for the provision of transmission services and what legal standard does that entity apply?

The prices for transmission services are regulated by the ERO in accordance with ERO Decree No. 140/2009 on the Manner of Price Regulation in the Energy Sector, the Act on Prices and the Energy Act. The prices are determined according to a regulation formula set forth in the aforementioned Decree, where certain parameters to be inserted into the formula are described by the ERO:

- for the respective regulation period (namely, five consecutive calendar years) there are a number of parameters – in this case seven items, for example, the effectiveness factor; and
- for the respective regulation year (namely, the next calendar year), there are 26 different items to be announced by the ERO, for example, the consumer price index (CPI).

In certain cases (for instance, where certain data used in the announcement of the ERO were incorrect or legislative changes have occurred after the respective period), it is possible that the parameters will be modified by the ERO during the respective regulation period or regulation year.

The price for transmission of electricity is made up from the price for the reservation capacity and the price for the use of the transmission grid.

The parameters are to be announced to the licence-holder within six months before the beginning of the respective regulation period at the latest; certain parameters have to be announced at an even earlier time (for answers regarding the legal regulations, see question 12).

According to the Promoted Energy Sources Act, in the case that the payments provided from the state budget for the purposes of supporting the promoted energy sources are not sufficient for covering the market operator's costs, the ERO shall include the remaining market operator's costs into the regulated price for electricity transmission and distribution.

#### 12 Entities responsible for assuring reliability

Which entities are responsible for assuring reliability of the transmission grid and what are their powers and responsibilities?

CEPS, as the transmission grid operator with an exclusive licence, is responsible for ensuring transmission grid reliability. It is also responsible for the development of the transmission grid and for provision of transmission services as well as managing the electricity flow in the transmission grid with respect to the transmission of power between the interconnected grids of other countries in cooperation with the distribution grid operators. It is responsible for ensuring the grid support services on the transmission system level.

CEPS is not allowed to hold any other licence under the Energy Act and it must obtain the certificate of independence from the ERO.

The powers and responsibilities of CEPS are set forth in the Energy Act. CEPS is allowed, among others, to acquire (at lowest cost possible) support services and electricity for covering losses of electricity in the transmission grid and for its proper use. CEPS may restrict or suspend the power supply to the participants of the electricity market in certain circumstances and modify or suspend power supply from generators, as well as import power from abroad or export power to ensure reliable transmission grid operation. CEPS is also allowed to install and operate transmission grid facilities on third-party land under conditions stipulated by law.

CEPS and the DSOs (and their dispatching service divisions) have certain duties and rights, which are set forth by the rules on emergencies in the energy sector and on energy dispatching (see Acts Nos. 80/2010 and 79/2010).

CEPS has many duties including, among others, to set out conditions and terms for interconnection to the grid upon request of the applicant and to provide transmission services to anyone who is connected to the grid and fulfils the relevant conditions and ensuring non-preferential treatment for transmission of electricity to any party in the electricity market. In addition, CEPS must establish and maintain a technical control centre and issue and apply the Transmission System Code.

CEPS is obliged to issue a 10-year investment plan for development of the transmission grid.

In general, CEPS is responsible for all activities necessary for the provision of transmission services and its powers are determined in the Energy Act mainly in connection with the necessity for a due and reliable provision of the transmission services and other related activities.

### Regulation of electricity utilities – distribution

#### 13 Authorisation to construct and operate distribution networks

What authorisations are required to construct and operate distribution networks?

The construction and operation of a distribution grid is performed in the public interest and only on the basis of a licence granted by the ERO for a certain area, defined in the licence. Once such licence has been granted, it is possible to develop the distribution grid only on the basis of the procedures set forth in the Construction Act and the Energy Act and related legislation, including the Transmission System Code. Construction and operation of the distribution network must also comply with the particular distribution licence.

As regards the requirements related to the construction, see question 8, where the requirements for construction of transmission networks are dealt with; the requirements for construction of transmission networks apply similarly to construction of distribution networks. The Energy Act specifically sets forth that all newly constructed high-voltage power line masts must be equipped with technical means for the protection of birds.

The Energy Act and its implementation legislation, as well as the Transmission System Code, regulate in detail the particular technical requirements that must be met in order to ensure, among others, the security and reliability of the transmission system in the Czech Republic.

#### 14 Access to the distribution grid

Who is eligible to obtain access to the distribution grid and what requirements must be met to obtain access?

Anyone who submits a request for interconnection to the distribution grid, shall have the right to be provided with the conditions and time period necessary for the interconnection. The DSOs are obliged to provide the distribution services to anyone, upon request, who is interconnected to the distribution grid and complies with the conditions set by the Energy Act, its related legislation (in particular Decree No. 51/2006 on rules for the interconnection to the electricity grid) and the Distribution Grid Operation Rules, unless there is a demonstrable insufficiency of the distribution facilities or the safe and reliable operation of the distribution or transmission grid is jeopardised. The rules for interconnection described under question 4 apply similarly to connection to the distribution grid as both rules are governed by Decree No. 51/2006.

Distribution Grid Operation Rules are developed by DSOs, must be in compliance with the Transmission System Code and are subject to ERO approval.



**15 Rates and terms for distribution services**

Who determines the rates or terms for the provision of distribution services and what legal standard does that entity apply?

The prices for distribution services are regulated by the ERO in accordance with the ERO Decree No. 140/2009 on the manner of regulation in the energy sector, the Act on Prices and the Energy Act. The prices are determined according to regulation formulas set forth in the aforementioned Decree, independently for the distribution of electricity by the regional DSOs and by the local DSOs. The rules for determination of parameters to be inserted into the formula are similar to those set forth for the transmission services.

The price for distribution of electricity is composed of the price for the reservation of capacity and the price for the use of the distribution grid; in the case of low-voltage level distribution, the reserved capacity is determined by the power value of the main circuit breaker; and the Decree allows the division of prices into high and low tariff. The price also includes the coverage of costs for transmission services and distribution in adjacent distribution grids and by coverage of a part of expenses for higher voltage levels of the distribution grid. According to the Promoted Energy Sources Act, in the case that the payments made from the state budget for the purposes of supporting the promoted energy sources are not sufficient for covering the market operator's costs, the ERO shall include the remaining operator's costs into the regulated price for the electricity transmission and distribution.

The terms of the distribution services are set forth mainly in the Energy Act and the Rules for Operation of the Distribution Grid, which are issued independently by each DSO and must comply with the Transmission Grid Code. Among the obligations of the DSOs set forth in the Energy Act are: the obligation to ensure the reliable operation of the distribution grid and its development within the territory set forth in the licence; the obligation to enable distribution of electricity based on the contracts concluded; and the obligation to manage flows of power in the distribution grid by respecting the exchange of power between the distribution grids and the transmission grid. DSOs may restrict or suspend the power supply to participants of the electricity market in certain circumstances and modify or suspend power supply from generators. DSOs have many duties including, among others, providing anyone upon request with the conditions and time periods for the connection into the grid and ensuring non-preferential treatment for distribution of electricity to any party in the electricity market.

In addition, DSOs must establish and maintain a technical control centre with respect to distribution services at the 110kV level and issue and observe the Rules for Operation of the Distribution Grid. It must also adopt its own antidiscrimination policy (and ensure the control of fulfilment of such policy). The Energy Act sets forth other particular duties of the DSOs.

**Regulation of electricity utilities – sales of power****16 Approval to sell power**

What authorisations are required for the sale of power to customers and which authorities grant such approvals?

A licence for electricity trading is necessary in order to sell power (with certain exceptions – see question 2). It is issued by the ERO for a maximum period of five years. The conditions for granting licences in the energy sector are set out in the Energy Act and the ERO implementation Decree No. 426/2005, setting forth details for granting licences in the energy business. For a natural person to obtain a licence, the applicant must be at least 18 years of age, legally competent, of a good moral character and specially qualified (or must nominate a representative with such qualification). Where the applicant is a legal entity, members of the entity's statutory body must fulfil the conditions set forth for the natural person and a specially qualified representative must be nominated. The applicant must also provide evidence of the qualification and have sufficient financial resources to be capable to ensure payment of its obligations for a period of at least five years.

A person who, or entity that, has a licence for electricity trading in another EU member state, has the right to conduct the electricity trading business in the Czech Republic once the ERO acknowledges the electricity trading licence issued by another EU member state.

**17 Power sales tariffs**

Is there any tariff or other regulation regarding power sales?

The sale of electricity is regulated by the Energy Act and by ERO. At the present time, Decree No. 408/2009 and Decree No. 140/2009 regulate the manner of setting forth the electricity sale tariffs. The price for electricity is divided into two parts: the regulated part (transmission, distribution, system services, etc) and the non-regulated part (the sale of the actual power to the customers).

The customers are divided into different groups based on the manner of power utilisation and the voltage level. The two main groups are electricity producers and electricity traders on one side and customers on the other side.

There is a wide scale of contracts in the electricity market. A typical contract for sale of power to the customer is the contract on associated services of electricity supply through which the electricity producer or electricity trader supplies both power and related services to the customer; in such an instance, the price is made up of the unregulated price for power and the liability of the provider for imbalances and the regulated price for distribution and other services. The other types of contracts regulated by the Energy Act include contracts on provision of transmission services or distribution services, contract on cross-border transmission services or contracts on provision of support services.

Contracts available in power trading include, for example, contracts on access to the short-term electricity market, on bilateral trades between the electricity market participants, contracts on access to the balancing market with regulation electricity and on supply of regulation energy.

The sales of power take place mainly at the PXE, but also through the market operator with respect to the electricity balance market, which is organised by the market operator. The sales of electricity through these two entities are organised on the basis of contracts between the participants. In order to become a participant and to be able to sell and purchase electricity on these markets, it is necessary to conclude contracts with the respective entities and fulfil certain conditions prescribed by law and the internal regulations of these entities.

**18 Rates for wholesale of power**

Who determines the rates for sales of wholesale power and what standard does that entity apply?

Since 2007, the existing system of wholesale of power organised by means of annual auctions by CEZ, as the main electricity producer in the Czech Republic and by means of bilateral contracts between the electricity producers and the electricity traders, was replaced by continual trading on the PXE.

At the present time, the rates for sales of power are not regulated and are subject to trading mechanisms.

**19 Public service obligations**

To what extent are electricity utilities that sell power subject to public service obligations?

First, as previously mentioned, DSOs and TSOs must, broadly speaking, provide anyone who submits a request, with the list of conditions and time period necessary for the connection to the grid and provide anyone, who is connected to the grid, upon request, with the transmission and distribution services, if such an applicant fulfils the requirements set forth in the relevant regulations, and unless it is not technically possible to do so.



Second, any electricity producer is required to offer operationally and commercially redundant generation capacities, upon instructions of the TSO and DSOs, for the purposes of ensuring the security and reliability of the electricity system operation and for prevention and solution of emergency states. In the case of a state of emergency declared by CEPS, the electricity producers must follow the instructions of the electricity dispatchings, including mandatory generation, to eliminate the consequences of the state of emergency (with no right for compensation for damages or lost profit). The electricity producers and the DSOs are furthermore obliged to provide their services outside the scope of their licences in the case of emergency, in the public interest and pursuant to a decision of the ERO, which must be issued for a determined period of time, which cannot exceed 12 months. The accounting for such activities must be performed independently in order to show the losses incurred. In order to prevent or mitigate emergency states, even the generators, which do not fulfil the air protection limits, can be used by the grid operator.

The last-instance suppliers are defined by the Energy Act as electricity traders who, before the unbundling procedure in the Czech Republic was completed, formed the same group of companies with the respective DSO holding the licence in the relevant territory. The last-instance suppliers are obliged to supply electricity to the customers, the former supplier of which has terminated its activities, upon notification from the market operator to the last-instance supplier. Such obligation persists for no longer than six months. According to the Promoted Energy Sources Act, the last instance supplier is obliged to buy out the promoted energy under the fixed prices set out by the ERO and is responsible for the relevant imbalances, until the responsible purchaser pursuant to the act is appointed by ERO.

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## Regulatory authorities

### 20 Policy setting

Which authorities determine regulatory policy with respect to the electricity sector?

The primary legislation is adopted by the Czech parliament (the draft laws are usually prepared and submitted by the government) and the public authority bodies adopt secondary acts for implementation of the primary one; in the case of the Energy Act, such authorities are the ERO and the MIT.

The Czech regulations implement the energy legislation of the European Union in order to ensure compliance with such legislation. The EU adopts legislation in accordance with the EU Common Energy Policy.

The entities with partial regulatory powers, but not being public authorities, are the market operator (which issues the commercial terms and conditions of the market operator), the TSO (which issues the Transmission System Code) and the DSOs (which issue the distribution system operation rules).

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### 21 Scope of authority

What is the scope of each regulator's authority?

As regards the public authorities involved in the electricity sector, the MIT is involved in regulation of the energy sector and in preparation of the SEC. In the electricity sector, it mainly issues authorisations for construction of new power plants pursuant to the Energy Act and it is in charge of ensuring out of court settlement of disputes in energy sector. The MIT is also involved in fulfilling the obligations ensuing from international agreements, including obligations to inform the EU Commission pursuant to EU energy legislation and cooperation with foreign authorities. It is also responsible for issuing tenders for new production capacities, when necessary.

The ERO mainly determines regulated electricity prices, issues licences in the energy sector and certificates of independence, imposes obligations to provide services beyond the scope of the licences and

imposes obligations to offer operationally and commercially redundant generation capacities of the electricity producers, supports economic competition in the energy sector, promotes utilisation of renewable and secondary sources and protects consumers' interests in the energy sector segments where competition is not possible. The ERO supervises and creates conditions for satisfaction of all reasonable requirements for supply of electricity and is the arbitrator with respect to certain disputes in energy sector. It also exercises its powers pursuant to the EC Regulation No. 714/2009. ERO's position has been substantially strengthened in 2011 and it has many duties ensuing from the Energy Act, including those performed in cooperation with the Office for Protection of Competition.

There are also other public authorities that are involved in the electricity sector, mainly the State Energy Inspection, which oversees the compliance with obligations set forth by the Energy Management Act, the Promoted Energy Sources Act and the Act on Prices. The Ministry of Environment, as well as the Czech Environment Inspection, are involved in environmental protection. The market operator as a private entity has an exclusive licence for performing the activities of the market operator and will have certain duties under the Promoted Energy Sources Act.

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### 22 Establishment of regulators

How is each regulator established and to what extent is it considered to be independent of the regulated business and of governmental officials?

The MIT is the supreme state administration body and was established by law. It issues the implementation legislation pursuant to the Energy Act, while respecting the policy of the government and internal regulations. The head of the MIT, the minister, is a member of the Czech government.

The ERO is also a supreme state administration body, which was established pursuant to the Energy Act and Act No. 2/1969. Under the 2011 Amendment the ERO became fully independent, bound only by legal regulations and may not be influenced by anybody, be it the government, parliament, the president or any authority, office, or legal entity or person. In addition, under the EU Third Liberalisation Package, Czech Republic is obliged to increase the level of the ERO's financial independence and therefore the amended Energy Act has established the obligation of the energy market participants to pay a special fee to the ERO through the market operator, which will collect the payments.

CEPS was established in 1998 as a joint-stock company by CEZ (the largest electricity producer in the Czech Republic), as the formation of an individual transmission grid operator was required by EC Regulation No. 96/92/EC (see question 12).

The market operator was established in 2001 on the basis of the Energy Act as a joint-stock company, owned by 100 per cent by the state (see question 2).

The DSOs are private entities with certain powers and responsibilities granted by law.

In connection with the above it is important to note that the Transmission System Code, Distribution System Operation Rules and distribution tariffs are subject to approval by the ERO. The market operator's terms and conditions are also subject to approval by the ERO.

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### 23 Challenge and appeal of decisions

To what extent can decisions of the regulator be challenged or appealed, and to whom? What are the grounds and procedures for appeal?

As a rule, the procedures for issuing individual decisions under the Energy Act and the Act on Energy Management are subject to regulations set forth by the Administration Procedure Code (Act No. 500/2004, as amended).

The Administration Procedure Code, among other rules, determines the rules for initiation, course and termination of the administration proceedings and also determines the possible remedies against decisions of the relevant bodies. In addition, the Code of Administrative Court Procedure determines the full jurisdiction of the Czech courts for the administration matters and thus the remedy to the independent court is possible.

Decrees or decisions of a regulatory body that are generally binding may be modified only by the authority that issued such decree or decision. Alternatively, this decision may be abolished for conflicts with constitution laws, primary laws or international treaties.

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## Acquisition and merger control – competition

### 24 Responsible bodies

Which bodies have the authority to approve or block mergers or other changes in control over businesses in the sector or acquisition of utility assets?

The Office for the Protection of Competition (OPC) is the central state administration authority entrusted with protection of competition in the Czech Republic and is responsible for approving the concentration of undertakings. If trade between European Union member states may be affected, the European Commission may have the authority instead of the OPC.

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### 25 Review of transfers of control

What criteria and procedures apply with respect to the review of mergers, acquisitions and other transfers of control? How long does it typically take to obtain a decision approving or blocking the transaction?

In cases of concentration without community dimension, the provisions of Act No. 143/2001 on protection of economic competition shall apply.

The concentration of undertakings is subject to the consent of the OPC, provided that:

- the net turnover of all concentrating undertakings achieved in the last financial year in the Czech market is higher than 1.5 billion koruna and at least two of the concentrated undertakings achieved a net turnover that exceeds 250 million koruna in the Czech market in the last financial year; or
- the net turnover achieved in the last financial year exceeds 1.5 billion koruna in the Czech market and the net turnover achieved worldwide by another concentrating company in the last financial year exceeds 1.5 billion koruna.

The procedure of assessment of the OPC is initiated upon notification. Since the initiation of the procedures is published in the Commercial Bulletin (and by electronic means), objections may be raised. Where the OPC has no concerns with respect to the proposed concentration, the proceedings shall be finished by approval within 30 days. In certain cases the OPC may request the Commission to perform the assessment. Where the OPC does not issue the decision within five months of submitting the proposal, the consent is deemed to be issued. In the case that the undertakings, which are subject to concentration, have a joint interest in the relevant market with a stake of less than 15 per cent and none of them has an interest in a market vertically related to the relevant market, or their stake on each of such vertically related markets is below 25 per cent, a simplified procedure shall apply pursuant to which the OPC shall issue a decision within 20 days from the commencement of the proceedings if it requires a normal procedure to take place, otherwise the concentration shall be deemed to be approved.

The concentration has a Community dimension where either: (i) the combined aggregate worldwide turnover of all the undertakings concerned is more than €5 billion and the aggregate Community-wide

turnover of each of at least two of the undertakings concerned is more than €250 million and none of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same member state; or, (ii) the thresholds set forth in point (i) are not met, but:

- the combined aggregate worldwide turnover of all the undertakings concerned is more than €2.5 billion;
- in each of at least three member states, the combined aggregate turnover of all the undertakings concerned is more than €100 million;
- in each of at least three member states included for the purpose of the second point above, the aggregate turnover of each of at least two of the undertakings concerned is more than €25 million; and
- the aggregate Community-wide turnover of each of at least two of the undertakings concerned is more than €100 million and none of the undertakings concerned achieves more than two-thirds of its aggregate Community-wide turnover within one and the same member state.

Where one of the above conditions is satisfied, the EU Commission must assess the notification of concentration pursuant to EC Regulation No. 139/2004 and can refer the case to the OPC.

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### 26 Prevention and prosecution of anti-competitive practices

Which authorities have the power to prevent or prosecute anti-competitive or manipulative practices in the electricity sector?

The OPC and the EU Commission are responsible for prosecution and preventing manipulative and anti-competitive practices; however, certain anti-competitive practices, such as unfair competition, are directly subject to court proceedings. The ERO is responsible for control of fulfilment of the price regulations in the electricity sector and may impose sanctions for breach of the obligations of the electricity sector participants.

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### 27 Determination of anti-competitive conduct

What substantive standards are applied to determine whether conduct is anti-competitive or manipulative?

The standards are determined directly in articles 101 and 102 of the Treaty on the Functioning of the European Union. All agreements between undertakings, decisions by associations of undertakings and concerted practices that may affect trade between member states and that have as their object or effect the prevention restriction or distortion of competition within the common market or abuse of a dominant position are determined as anti-competitive conduct.

The Act on Protection of the Economic Competition defines the anti-competitive conduct similarly.

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### 28 Preclusion and remedy of anti-competitive practices

What authority does the regulator (or regulators) have to preclude or remedy anti-competitive or manipulative practices?

All agreements between undertakings, decisions by associations of undertakings or concerted practices that lead or may lead to effects on the competition are generally forbidden and invalid unless the law sets forth otherwise or the European Commission or the OPC allows an exception. The OPC has the authority to withdraw the exception in the case that the agreement concerned does not meet conditions stipulated by law.

The OPC has the power to initiate an investigation upon receipt of a complaint or at its own instigation. It can request information necessary for conducting the investigation from any entity operating on the market or from state bodies (for example, ERO). Upon completion of proceedings, the OPC may issue a decision prohibiting further performance of an anti-competitive agreement or practice or a decision prohibiting to continue abusive behaviour. The OPC is

further empowered to impose fines (according to Czech law, even fines in the amount of up to 10 per cent of the net turnover of the respective undertaking can be imposed) or remedial measures. It is also allowed to apply articles 101 and 102 of the Treaty on the Functioning of the European Union.

### International

#### 29 Acquisitions by foreign companies

Are there any special requirements or limitations on acquisitions of interests in the electricity sector by foreign companies?

There are no special limitations for acquisitions of interests in Czech companies, except as mentioned in question 2 with respect to CEPS, market operator and the DSOs.

#### 30 Cross-border electricity supply

What rules apply to cross-border electricity supply, especially interconnection issues?

The conditions of access for the cross-border electricity trading are set forth in the EC Regulation No. 714/2009, as well as in the Energy Act, the Transmission System Code and ERO Decree No. 541/2005 on electricity market rules. Cross-border trade can be effected only up to the amount of the capacity reserved on the basis of explicit auctions organised by Central Allocation Office GmbH (a company established in Germany by eight transmission system operators within the Central and Eastern Europe region); such auctions are organised on yearly, monthly and day-ahead basis. The rules for allocation are described in the auction rules of the Central Allocation Office. At the present time, the Czech and Slovak cross-border transmission does not require reservation of capacities and the day-ahead transmission capacity is allocated pursuant to implicit auctions.

In 2011, the representatives of the Czech Republic, Slovakia and Hungary concluded the memorandum on the creation of a functioning, interconnected and integrated inner electricity market. This project, called CZ-SK-HU Market Coupling, is expected to be put into operation in the fourth quarter of 2012. Subsequently, the day-ahead spot markets in these three countries will be interconnected based on price market coupling principle.

Pursuant to the aforementioned ERO Decree on electricity market rules, the regulated access to the transmission grid and to the distribution grid can be effectuated on the basis of an agreement on cross-border electricity transmission concluded with the TSO; the TSO undertakes to transport a certain amount of electricity abroad or from abroad or from one transmission grid to another in such an agreement. An agreement with the market operator on settlement of eventual imbalances must also be concluded.

### Update and trends

In 2011, the representatives of the Czech Republic, Slovakia and Hungary concluded the memorandum on the creation of a functioning, interconnected and integrated inner electricity market. Following that, several tests have been performed in order to develop the project called CZ-SK-HU Market Coupling. The project is expected to be put into operation in the fourth quarter of 2012. Subsequently, the day-ahead spot markets in these three countries will be interconnected, based on the price market coupling principle.

In 2012, the new act, regulating in an exhaustive manner alternative energy production, has been adopted. Pursuant to the new legislation, a completely new regulation regarding the promotion and support of the alternative energy will come into force from 2013.

In the case of insufficient capacity, certain limitations of the access to transmission capacity can be applied.

The EC Regulation No. 714/2009 sets forth framework rules for cross-border exchange of electricity and establishes a harmonised compensation mechanism and system of transmission charges, as well as a harmonised system for allocation of available capacities of the respective national transmission systems.

### Transactions between affiliates

#### 31 Restrictions

What restrictions exist on transactions between electricity utilities and their affiliates?

The transactions within groups of entities are generally restricted by the regulations on business groups set forth in the Czech Commercial Code (Act No. 513/1991) and Czech tax laws. Pursuant to these laws, all transactions within business groups and with affiliates must be at arm's-length and must comply with certain formal requirements.

#### 32 Enforcement and sanctions

Who enforces the restrictions on utilities dealing with affiliates and what are the sanctions for non-compliance?

Company shareholders or creditors apply for enforcement of the restrictions in this respect and the courts adopt the relevant decisions. Certain activities, which are in conflict with mandatory provisions of law, can even be invalid and the damage caused thereby must be reimbursed. The remedies thus have prevalently a private law nature.



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