

CORRUPTION IN ARMS TRADE

CORRUPTION IN ARMS TRADE

Mgr. Filip Pospíšil



This paper was written and published thanks to the kind financial support of Saferworld, a British non-governmental organisation.

1. Introduction	3
Purpose of the Paper	3
Definitions	3
Sources	4
Measuring and Evaluating Corruption	4
Scope of the Issue	6
2. Corruption Risks Factors	9
A. Public Procurement Policy	9
Shortcomings of the Public Procurement Act	9
Secrecy of Contracts	11
Complexity of Contracts and Offsets	11
Unclear Czech Military Arming Strategy and the Changes Thereof	12
B. Industry and Handling of National Reserves	13
Public Support by Awarding Needless Contracts	13
Insufficient Control of Subsidies for Research and Development	14
Indirect Subsidies by Providing Government Loan Guarantees	15
Non-Transparent Public Support of Exports	15
Insufficient Information on other Forms of Public Support	16
Participation of Former High-Ranking Military Officers in Private Companies Supplying Materials for the Armed Forces	16
Secrecy of Information on Handling Surplus Reserves	17
C. Arms Exports	19
Corruption Abroad	19
Shortcomings of the Licensing Process	20
Deficient Parliamentary Control	23
Insufficient Public Control	23
3. Conclusions and Recommendations	26

PURPOSE OF THE PAPER

This paper, drafted under the umbrella of a Transparency International-Czech Republic (TIC) project **Working Group on Arms Trade Control**, identifies the leading risk factors which support corruption in arms trade in the Czech Republic. It provides a complex overview of the problem and attempts to propose measures needed to reduce corruption in this particular area. The proposed solutions primarily follow principles stipulated in the Government Program to Combat Corruption¹ and documents issued by the Council of Europe², the European Union³, OECD⁴ and the United Nations.⁵

DEFINITIONS

The Czech legal system does not have a proper definition of corruption. In the text, the author uses the term as defined in various corruption related documents of the Czech government, which define corruption as *"the abuse of a person's office and violation of the impartiality principle in decision-making, motivated by a desire of profit. Corruption is a mistake in the decision-making (governing) process. The elements of corruption relationship are the decision-maker; the decision-maker's power to deviate from prescribed rules; making such a deviated decision in exchange for a certain benefit; and the wrongfulness and immorality of such an exchange. The capability of institutions to subdue and combat corruption indicates the quality of such institutions and of the institutional system as such."*⁶

- ¹ Resolution of the Government of the Czech Republic No. 125 of 17 February 1999 – Governmental Program of Combating Corruption.
- ² Criminal Law Convention on Corruption CETS No.: 173.
- ³ Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, EC Action Plan to Combat Organized Crime, Council Resolution on the Prevention of Organized Crime with Reference to the Establishment of a Comprehensive Strategy for Combating It.
- ⁴ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.
- ⁵ UN Convention Against Transnational Organized Crime, UN Convention Against Corruption, UN Declaration Against Corruption and Bribery.
- ⁶ Resolution of the Government of the Czech Republic No. 473 of 19 May 2003 concerning the Report on Corruption in the Czech Republic and on Meeting the Schedule of Measures adopted under the National Program for Combating Corruption (hereinafter "The Report on Corruption in the Czech Republic").

In this paper, the term “foreign arms trade” covers both exports and imports of military materials as defined by law,⁷ but also exports and imports of so-called sporting arms and hunting weapons as defined by other legal instruments⁸. Arms trading in the Czech Republic refers to business activities as defined by relevant legal regulations.⁹

SOURCES

This study is based on open government sources related to corruption and national security; interviews of the author of this paper with numerous public officials; reports of foreign NGOs, especially Saferworld and Human Rights Watch; and other public sources, especially media news. The author realizes that information drawn from the above sources could not have been further verified. The sources served primarily to make general conclusions and recommendations for improvement, not to prove or comment on various negative examples. In both its methodology and contents, this paper builds on a research produced by the British branch of Transparency International on corruption in official arms trading.¹⁰

MEASURING AND EVALUATING CORRUPTION

There are several methods of evaluating the extent of corruption. Each of these methods has certain drawbacks and benefits. The main drawback of direct methods of corruption measurement is that the data on the scope and specific instances of corruption are not easily accessible. Apart from that, evaluating the volume of bribes paid may disregard other corruption behaviour where the bribes are not of a financial nature, but involve other, non-monetary benefits. On the other hand, it is problematic to measure the mere number or frequency of corruption activities, since the various instances may differ in scope and nature. Moreover, focusing merely on the frequency and quantity may prevent us from searching for the causes of corruption.

⁷ Act No. 38/1994 Coll., on foreign trade with military material and on the amendment of Act No. 455/1991 Coll., on trade licensing (Trade Act), as amended, and on the amendment of Act 140/1961 Coll., Criminal Code, as amended, hereinafter referred to as the “Act on Foreign Trade with Military Material”.

⁸ Act No. 62/2000 Coll., on some measures concerning exports and imports of products and on licensing proceedings and on the amendment of some acts and related Government Regulation No. 185/2000 Coll. which lays down the products which may be imported into or exported from the Czech Republic only based on the license pursuant to Act 60/2000 Coll., and on some measures concerning the export and import of products and on license proceedings and on amendments of some acts.

⁹ Act No. 119/2002 Coll., on fire-arms and ammunition and on the amendment of Act No. 156/2000 Coll., on verification of fire-arms, ammunition and pyrotechnical objects and on the amendment of Act No. 288/1995 Coll., on fire-arms and ammunition (Fire-Arms Act), as amended by Act No. 13/1998 Coll., and Act 368/1992 Coll., on administrative fees, as amended, and of Act 455/1991 Coll. on trade licensing (Trade Act), as amended, hereinafter referred to as “Fire-Arms Act”; Act 156/2000 Coll., on verification of fire-arms, ammunition and pyrotechnical objects and on the amendment of Act 288/1955 Coll., on fire-arms and ammunition (Fire-Arms Act), as amended by Act 13/1998 Coll. and Act 368/1992 Coll., on administrative fees, as amended.

¹⁰ Catherine Courtney: Corruption in the Official Arms Trade. Policy Research Paper 001, Transparency International UK, edited by: Laurence Cockcroft and David Murray.

Therefore, the more frequent method to describe and evaluate the scope and mode of corruption is describing perception of corruption or corruption tendencies in a particular country or institution. Some social scientists identify the following four main approaches:¹¹

1) Research based on expert opinions

This approach has been used by the authors of the International Country Risk Guide (ICRG), a study issued annually since 1982 by an organisation called Political Risk Services. Based on the opinions of well-informed experts, it publicizes an ICRG Corruption Index, which indicates the inclination of low, middle, and top government officials to request and accept bribes.

2) Studies based on surveys in the business community and the wide public

This approach was adopted primarily by the authors of Global Competitiveness Report (GCR) and World Development Report (WDR), published by the World Bank since 1996.

3) Studies compiling results of other reports

An example serves the annual Corruption Perception Index (CPI), published annually since 1995 by Transparency International (TI), an international NGO. The CPI is calculated from the weighted average of approximately 17 surveys of various scope and focus. Apart from the CPI, TI has also been publishing the Bribe Payers Index (BPI, since 1999). BPI ranks exporting countries according to their inclination to bribery. The very recent survey for the year 2002 ranked 15 developing market economies based on 835 interviews with senior executives of various local and foreign companies, banks, and accounting and law firms.

4) Studies working with more objective data

An exceptional example of this approach is the so-called Neumann Index, published in 1994. The authors interviewed numerous German exporters to determine the percentage of business cases which succeed thanks to bribery.

Even though the above methods differ, their results are very similar. They prove their value in a regression analysis in which they show similar results. One of their drawbacks, however, is that they measure primarily the perception of corruption, rather than the objective, precise, and quantitative extent of corruption.

For the purposes of this study, the author, with the exception of the following chapter, did not use any of the aforementioned methods for his goal was not primarily to estimate the level of corruption or measure its perception but rather to describe the existing corruption mechanisms in the field of arms trade in the Czech Republic. The author tries to identify the risk factors which provoke and support corruption behaviour and focus on mechanisms that may lower the risk of both current and future corruption.

¹¹ WEI, SJ. Corruption in Economic Transition and Development: Grease or Sand? 2001b. (Preliminary version), <http://www.unece.org/ead/sem/sem2001/papers/Wei.pdf>.

The risk factors enhancing the danger of corruption are the following: distribution of government subsidies; trading restrictions; inconsistent and non-transparent decision-making of the public bodies; inefficient sanctioning and monitoring mechanisms designed to combat corruption; lack of public and parliamentary control; and the conflict of interests.

SCOPE OF THE ISSUE

As early as 1998, the Czech government had acknowledged the seriousness of corruption in the Czech Republic and subsequently defined the fight against corruption as one of its priorities.¹² In the following year, it adopted¹³ the Government Program of Combating Corruption, which it has been circulating annually since then.

As regards indirect corruption criteria, the Czech Republic ranked 54th among the world countries with the score of 3.9, according to the Corruption Perception Index (CPI), published by Transparency International in 2003. The Czech Republic was not included in the Bribe Payers Index (BPI), published by the same organization in 2002, ranking the exporting countries of the world according to their tendency to use bribery. However, a survey conducted among senior private business officials in the developed countries revealed that 38 percent of the respondents believe that the highest bribes in their country are being paid in the defence industry. According to the US Department of Trade, almost 50 percent of bribes in the U.S. are paid in connection with defence industry contracts.¹⁴ In the Czech Republic, no such indirect quantitative review of corruption in the arms trade has yet been performed.

Apart from institutional barriers and the extent of the aversion of society against corruption, the total scope and level of corruption obviously depend on the total volume of funds involved in the respective area of trade (i.e. in the arms trade). The scope of arms trading in the Czech Republic is nowhere near the figures involved in certain developed countries (especially the United States). The tables below provide a general overview of the volume of financial transactions in Czech domestic and foreign arms trade. However, the outline does not intend to suggest that the figures are directly related to the scope of corruption in this industry. They should merely serve as a framework for better understanding of the scope and importance of the arms trade for the national economy.

Foreign trade in arms and ammunition ¹⁵	Import (CZK)	Export (CZK)
2003	1,221,943,000	2,208,868,000
2002	559,797,000	2,425,313,000
2001	375,271,000	2,534,947,000
2000	387,489,000	2,685,771,000

The official data provided of the Ministry of Industry and Trade show that the total volume of military materials exported in 2003 was € 82.9 million (approximately CZK 2.69 billion); the total volume of civilian firearms and ammunition exported was € 87.4 million (approx. CZK 2.85 billion); the total volume of armaments imported was € 120.4 million (approx. CZK 3.92 billion), and the total volume of civilian firearms and ammunition imported was € 14.4 million (approx. CZK 469 million).¹⁶

The above figures show that data in various official statistics regarding foreign trade in military materials may vary to a great extent. This paper, however, does not intend to explain the discrepancies between such statistics. It is up to the relevant authorities to explain the differences thus improving the credibility of the data presented.

The most important part of the “domestic” arms trade are the acquisitions of the Czech military. Exact figures are not being published in this field, and the total expenses for the procurement of arms and ammunition may only be roughly inferred from the Ministry of Defence annual reports, or from reports submitted by the Czech Republic to the UN.

Expenditures of the CR in CZK	Year 2003	Year 2002	Year 2001	Year 2000
Ammunition and arms procured by the military ¹⁷	9,950,813,000	9,629,240,000	10,232,260,000	9,866,603,000
Defence research & development	530,555,000	398,446,000	396,620,000	282,554,000
Arms procured by the Ministry of Interior ¹⁸	148,775,000	244,111,000	167,240,000	1,277,000
Ammunition procured by the Ministry of Interior	42,663,000	44,444,000	38,113,000	13,873,000

In the upcoming years, we may expect a certain increase in the volume of arms procurement for the military, in connection with the recently launched process of modernization of the Czech military, and in connection with the

¹² Statement of Government Policy of the Czech Republic, Praha, August 1998, <http://www.mzv.cz/>.

¹³ Resolution No. 125 of 17 February 1999 of the Government of the Czech Republic.

¹⁴ US Department of Commerce: “The National Export Strategy”. Trade Promotion Coordinating Committee Report, March 2000, page 11.

¹⁵ Based on statistical data of the harmonized system of the Czech Statistical Office, <http://dw.czso.cz/pls/stazo/stazo.stazo>.

¹⁶ Ministry of Industry and Trade: List of Results of the Practical Application of Licensing Regime in the Area of Foreign Trade with Military Material and Other Firearms, Ammunition and Explosives in 2003.

¹⁷ Czech Republic military expenditures according to the UN Register of Conventional Arms, <http://disarmament2.un.org/cab/milex.html> and <http://www.army.cz/avis/pdf/rozpocet.pdf>.

¹⁸ Response to author’s query from the Economic Department of the Ministry of Interior of 16 March 2004.

planned purchase of 240 wheel transporters (worth CZK 25 billion)¹⁹, and the loan of 14 Gripen supersonic aircrafts (worth CZK 19.65 billion).²⁰

Apart from the aforementioned areas of arms trade, the Czech Republic has witnessed a rapid boom in the sale of small arms for sports, hunting and self-defence purposes in the 1990's. The growth has slowed down somewhat in recent years. However, the volume of arms trade in this field is nowhere near the trading in "military" arms and foreign arms trade. Information concerning the precise figures in this field of arms trade have not yet been published. We may only estimate the scope of this from data concerning the number of registered small arms owned by the holders of gun licences and arming licences. According to the data contained in the relevant government report, the Czech Republic had 574,245 gun licence holders and 28,358 arming licence holders in 2002.²¹

In order to estimate the importance and scope of arms trade in the Czech Republic, we should take into consideration the information on the number of commercial entities involved in the field. In 2003, 99 companies have been involved in foreign trade in military materials. The total number of companies authorized to trade in arms designated as military material has dropped from 142 to 123 in the course of the year 2003.²² As of the end of 2003, 206 companies have held the licence to sell civilian arms.

¹⁹ Resolution No. 1205 of the Government of the Czech Republic of 26 November 2003.

²⁰ Resolution No. 596 of the Government of the Czech Republic of 9 June 2004.

²¹ For details about the accession of the Czech Republic to international negotiations about small arms, volume of production, export, import and number of guns owned by holders of gun permits and gun licenses in the territory of the Czech Republic in the year 2002, see website of the Czech Ministry of Foreign Affairs www.mzv.cz.

²² Ministry of Industry and Trade: TZ – Statistical Overview of 19 March 2004 of the Export and Import of Military Material in 2003.

2. CORRUPTION RISKS FACTORS

A. PUBLIC PROCUREMENT POLICY

SHORTCOMINGS OF THE PUBLIC PROCUREMENT ACT

In the past years, the EU bodies, NGOs, and professional associations and chambers have criticized provisions of the Public Procurement Act.²³ In its last evaluation report, the EU²⁴ criticizes both selected provisions of the above Act and the inefficiency of its enforcement. In the recent years, the Act has been amended numerous times. The last amendment intended to harmonize the Czech legislation with the EU norm in this particular area had been approved by both chambers of the Parliament, signed by the President and came to force in full on May 1, 2004²⁵. However, even this last amendment has been met, as a result of its inadequate anti-corruption measures, with fierce criticism. In March, the European Commission, in its “Warning Letter”, drew attention to the fact that the newly amended Public Procurement Act was not fully approximated to the EU legislation.²⁶ NGO's, such as Transparency International Czech Republic²⁷, and representatives of the business community have criticized the newly amended act for its failure to allow public access to information on the content of contracts and their appendices. An independent report prepared for TIC²⁸ also points out that the newly amended Act:

²³ Act No. 199/1994 Coll. on Public Procurement, as amended.

²⁴ European Commission, Regular Report on Czech Republic's Progress towards Accession, November 5, 2003 “The adoption of the Act on Public Procurement still needs to be finalised, to ensure equal access for Community companies through abolition of the national preference clause, alignment on remedies, transparency, time limits and thresholds. The Ministry of Regional Development has overall responsibility for public procurement legislation. The lack of qualified staff working at the ministry in this area should be urgently addressed. The Office for the Protection of Economic Competition exercises the surveillance of adherence to the Act on Public Procurement when awarding public contracts. The level of administrative capacity seems sufficient. Staff in both organisations, as well as in other relevant institutions (ministries, regional bodies, etc.) will need re-training once the adoption of the new, aligned public procurement act is finalised.”

²⁵ Act No. 40/2004 Coll. on Public Contracts.

²⁶ Czech Press Agency, March 10, 2004, in: *European Commission criticizes the Czech Republic for the Known Shortcomings*.

²⁷ Czech Television Channel 1, in: *Events and Commentaries*, dated February 18, 2004.

²⁸ JUDr. Ing. Filip Dienstbier: Public Procurement Act – selected anticorruption provisions – Prague, February 2004.

- stipulates solely the minimum price of the future contract,
- limits the term public procurement to subcontractor, service, and construction contracts,
- limits the interim provisions guiding the private contractors to those contracts where the public stake amounts to minimum 50 per cent of the contract,
- allows for more exceptions from the law,
- allows for more exceptions from the force of the Act,
- gives the contractor free hand in selecting the type of the selection process – fully open procurement process or an invitation for bid,
- further complicates the proposal for a review process by a supervisory body by introducing high administrative fees simultaneously with a non-returnable advance deposit,
- fails to introduce proper provisions guiding bid bonds by subcontractors and bidders whose bid process are not known,
- fails to introduce a deadline for the ruling of a supervisory body on a preliminary measure or any other remedy to discontinue the challenged act of a contractor,
- fails to provide for a mechanism to review the evaluation of the bids by the selection commission by a supervisory body,
- introduces incorrect remedies and sanctions and its selected provisions may be impossible to apply and may make the Act unenforceable.

The amended Act has a negative impact in the field of prevention of corruption in the arms trading. The main problem is that the Act excludes from its force the sale of the redundant military material from the warehouses of the Czech military as well as arms acquisitions for the use of the military. The previous Act²⁹ excluded from its force the sale of the redundant military material as well as procurement of “strategic property and services approved by the Government of the Czech Republic and related to the accession and membership of the CR in NATO.” However, in §4, the new Act³⁰ further limits its force by excluding from its force contracts “should they concern secret facts or matters”, “should it be necessary in order to protect fundamental national security interests”, or “should such contracts concern production, procurement, or maintenance of arms, weapon systems, ammunition, or supply of other military material to defend or protect national security”. Under the new Act, such contracts do not require a government approval and do not fall under the supervision of the anti-monopoly authority (Office for Protection of Economic Competition – ÚOHS). The older version of the Act had withdrawn ÚOHS from supervising the sale of excess weaponry from the military warehouses³¹ and the new Act now stipulates that the anti-monopoly office shall not supervise procurement of weapons for the military either. Public spending in acquisition and sale of weapons is thus excluded from (the already

²⁹ Act No. 199/1994 Coll.

³⁰ Act No. 40/2004 Coll.

³¹ Reply of JUDr. David Raus, Ph.D., Director, Legislative and Legal Department, ÚOHS to a question posed by the Working Group on Arms Trade Control (Sept. 3, 2003).

limited) public control. The same is true for supervision by more or less independent subjects. The legislators, however, not only failed to justify the exclusion but also forgot to replace the abolished supervision mechanisms by substitute control provisions. By doing so, they invalidated one of the most important anti-corruption tools in the field of the arms trading.

Even though the MoD has introduced some positive changes to its public procurement practice, especially in the field of internal control mechanisms – partially structuring the public procurement process³² and introducing internal MoD control mechanisms³³ – and provided wider access to information regarding both planned and implemented public contracts on the web pages of the MoD³⁴, such measures fail to replace independent control over the matter.

SECURITY OF CONTRACTS

In case of large public contracts to acquire armament for the Czech military, the authorities, in keeping with the Act currently in force have often used provisions, which allow for limiting the procurement process to an invitation for bid to a group of pre-selected bidders or solely to a single bidder. Such process, combined with the widely used provision of the Commercial Code, which guides events of business secret³⁵ and “protection under the Act on Protection of Secret Facts”³⁶, has led to suspicions of corruption and non-transparency of the public procurement process³⁷.

COMPLEXITY OF CONTRACTS AND OFFSETS

One of the risk factors, which the experts blame for widespread corruption and difficulties in its detection,³⁸ is the complexity of contracts and their appendices concerning offsets. The offsets allow government representatives justify contracts given out to bidders whose quality and price are far from perfect by saying that their offsets will bring investments in a form of side or additional investment programs. In some cases, such investments may be in the hands of business entities in which the decision makers hold substantial stakes. On top of it, enforcement of the provisions

³² Order of the Minister of Defence RMO No. 36/2001; MoD Economic section – Expert command to implement decentralized procurement, February 26, 2004.

³³ MoD, Economic section, Acquisition policy office.

³⁴ <http://www.army.cz/scripts/detail.php?id=170&PHPSESSID=18b7dd846f704a82b1f083e483a0a6dc>.

³⁵ §17, Act No. 513/1991 Coll., Commercial Code, as amended.

³⁶ §3, Act No. 148/1998 Coll. of June 11, 1998, on Protection of Secret Facts and on amendment of selected other Acts as amended by the Act No.164/1999 Coll., Act No.18/2000 Coll., Act No.29/2000 Coll., Act No.30/2000 Coll., Act No.363/2000 Coll., Act No.60/2001 Coll., finding of the Constitutional Court No. 322/2001 Coll., Act No.151/2002 Coll., Act No.310/2002 Coll. and Act No.320/2002 Coll.

³⁷ *The Guardian has accused the British government for covering up for BAE bribes in the Czech republic*, Radio Praha ČRo 7, dated June 12, 2003; *Aircrafts without a tender – commission*, Czech Television ČT1, dated: October 22, 2003; *Military contracts under cross-fire*, Střední Čechy, dated: November 25, 2003.

³⁸ Catherine Courtney: Corruption in the Official Arms Trade, Policy Research Paper 001, Transparency International UK, edited by: Laurence Cockcroft and David Murray.

regarding offsets is often disputable. Regardless of the risks, the Czech Government, in its decisions regarding the largest strategic public procurements, viewed offsets as an important part of the bids³⁹.

Among other risks, which may lead to corruption, are unclear evaluation criteria that may even change in the course of the procurement process. Such criteria may be used to influence the key decision makers and to cover up for potential corruption behaviour. Non-transparent evaluation criteria and suspicions of their changes in the course of the procurement process have been present in the selection process for the supersonic aircrafts for the Czech military (worth CZK 19.65 billion) and threaten to influence the upcoming contract for wheel transporters (worth CZK 25 billion).⁴⁰

UNCLEAR CZECH MILITARY ARMING STRATEGY AND THE CHANGES THEREOF

The Czech government adopted the first National Security Strategy of the Czech Republic back in February 1999,⁴¹ i.e. before the Czech Republic joined the NATO. It was the key strategic document of the national security policy and as such it has been revised several times since then. Since 1993,⁴² the government has annually adopted its revised Czech Military Development Concept. Regardless of the two documents, the Czech armed forces in the past few years have witnessed substantial changes in decision-making concerning its concept, scope, goals, and armament requirements. A number of decisions were made concerning expensive armament acquisitions, only to be cancelled several years later, resulting in billions of wasted funds. In the following chapter, the author analyses several such cases. This development, as well as the fact that there have been no political or criminal sanctions for wrongly invested public funds, has been repeatedly criticized both by experts⁴³ and the media.⁴⁴ The lack of a clearly defined concept or the frequent changes thereof, as well as the failure to assign responsibility for specific wrong decisions, increase the risk of unlawful influence of commercial entities interested in the results of the decision making process over government officials.

³⁹ *The Army Wants Swedish Gripen*, Hospodářské noviny on March 3, 2004; *Gripen Negotiation Started by Experts*, Právo on December 23, 2003; *Not To Compare Would Be Better*, Euro on December 22, 2003; *Any Advice Is Beyond Price*, Euro on December 1, 2003; *Slowly It Flows But Fast It Burns*, Euro on December 1, 2003.

⁴⁰ *ibid.*

⁴¹ Government of the Czech Republic, Resolution No. 123 of 17 February 1999 to the Security Strategy of the Czech Republic.

⁴² Government of the Czech Republic, Resolution No. 297 of 9 June 1993, on the Negotiation of the Construction Concept of the Army of the Czech Republic until the year 1996.

⁴³ Ivan Gabal, Antonín Rašek and working group: Politicians will decide about the future of the Army of the Czech Republic. Prague, September 2003, page 2: "...As always, the Ministry of Defence and the Army of the Czech Republic have been left to their own devices and unaided, without any assignments and unsupervised, without any obvious tasks and objectives. No one questions the senior officials of the Ministry about their goals, no one has to defend any long-term strategies in front of the public, there is no control whatsoever concerning the due implementation of any intentions and plans. No responsibility has ever derived from any of the unbelievably incompetent as well as extremely costly decisions in the area of armament acquisitions or modernization programs..."

⁴⁴ E. g. *Tvrdik Miscalculated, Kostelka Must Economize*, Hospodářské noviny, 1 August 2003.

B. INDUSTRY AND HANDLING OF NATIONAL RESERVES

Public subsidies represent one of the risk areas where “*the abuse of a person's office and violation of the impartiality principle in decision-making, motivated by a desire of profit*” is more likely to occur than in any other area. Public subsidies to industrial plants or corporations are common both in the Czech Republic and all over the world. At the same time, they are at an extreme risk of corruption. Public subsidies in the Czech Republic are guided by the Act on Public Subsidies⁴⁵ and supervised by the Office for Protection of Economic Competition (ÚOHS).

In general, public subsidies in the field of arms trade in the Czech Republic may be described as:

a) relatively high; b) considerably non-transparent; c) frequently kept secret.

PUBLIC SUPPORT BY AWARDING NEEDLESS CONTRACTS

In 1997, the cabinet of Václav Klaus approved the acquisition of 72 subsonic aircrafts L-159, in the attempt to avert the bankruptcy of Aero Vodochody at the time of the negotiations concerning the entry of Boeing into Aero as a new strategic partner.⁴⁶ In 2003, however, the Ministry of Defence reported that the armed forces actually did not need 53 of the aircrafts ordered.⁴⁷ The military expended a total of CZK 43 billion to acquire the aircrafts.⁴⁸ In relation to the aircraft acquisition, the government had also ordered and partially funded a controversial project of the research and development of the PLAMEN aircraft cannon⁴⁹. It had also awarded a contract worth CZK 400 million for the development of a flight simulator for this aircraft without a proper selection procedure.⁵⁰ A similar procedure, summarized in the title of this chapter, had been used in the case of the modernisation of T-72 tanks. In 1995, selection procedures had commenced to find the suppliers of modernisation components, counting on the adjustment of up to 353 of these tanks for military purposes.⁵¹ The army had then ordered the modernisation of 250 tanks, but reported in 2003 that would only use 30 of them and keep another five for spare parts. However, the Defence Minister stated that the army would keep “80 percent of the modernized tanks to support national industry and its exporting efforts, and 20 percent for the necessary training.”⁵² The costs of modernising the definitive number of tanks, according to a contract concluded with the state-owned Military Repair Works (Vojenský opravárenský podnik (VOP 025, s. p.) Nový Jičín) in 2001 should have been approximately CZK 6 billion. However, this figure did not include the previous government investments in research and development.⁵³

⁴⁵ Act 59/2000 Coll., on public support.

⁴⁶ *There Will Be Investigations!*, Euro, 23 February 2004.

⁴⁷ *Army Will Scrape Along with Thirty Tanks and Borrowed Jets*, Metro, 11 July 2003.

⁴⁸ *Hard Landing*, ČT1, 20 October 2003.

⁴⁹ *PLAMEN: Striking the Blow*, Profit, 6 January 2003.

⁵⁰ *Playing Soldiers for 400 Million without Tender*, Hospodářské noviny, 18 December 2003.

⁵¹ Michal Zdobinský: “Modernized T-72 Standing on Starting Blocks”, A report 5/2002.

⁵² *Army Will Scrape Along with Thirty Tanks and Borrowed Jets*, Metro, 11 July 2003.

⁵³ Michal Zdobinský: “Modernized T-72 Standing on Starting Blocks”, A report 5/2002.

INSUFFICIENT CONTROL OVER SUBSIDIES FOR RESEARCH AND DEVELOPMENT

A new act on the public support of research and development came into force on 1 July 2002.⁵⁴ It sets standards for the provision of public support for research and development, stipulates the terms and conditions for public tenders in this field, and introduces substantial elements of public control into the system. However, in the field of arms acquisition, the act allows the Ministry of Defence to evade disclosing the terms of public tenders in certain situations. Such a procedure requires the previous consent of the Research and Development Council.⁵⁵ In 2003, the Research and Development council drafted their opinions on research & development programmes, namely to public tender proposals in research & development, including the proposals for defence R&D programmes “Professionalisation of the Czech Military” and “Reform of Armed Forces in the Czech Republic”, presented by the Ministry of Defence, and on the proposal to extend the Ministry of Interior programme “Gravest Security Risks”. The Council also presents the government with an annual analysis and evaluation of the state of research & development in the Czech Republic, comparing them to the situation abroad. In November 2003, it submitted such a report for the year 2003, which was acknowledged by the government.⁵⁶ The preceding analysis accepted by the government⁵⁷ states that when investigating the practical use of applied research & development projects completed in the years 1998–2001, the Ministry of Defence recorded the most unexploited project results (14 projects). Also, the majority of projects commissioned by the MoD had not achieved the anticipated results (21 projects), and the majority of projects had remained unexploited due to the MoD’s lack of interest in the project results (27 projects) and due to the lack of funds (22 projects).⁵⁸ The report does not make clear whether any conclusions have been drawn from this indicator. Following the assessment of data concerning research & development projects in years 2000–2001, the Council stated that the departments supporting research & development had so far focused on initiating research & development, failing to devote due attention to the assessment of the results thus obtained.

In 2001, the government adopted a decree⁵⁹ on the establishment and operation of central registration⁶⁰ of subsidised research & development project, designed for better monitoring and accessibility of public support information, and of the results of publicly subsidised projects. The individual sections of this database contain a brief description

⁵⁴ Act. No. 130/2002 Coll. on State Support to Research and Development from the Public sources (Research & Development Support Act).

⁵⁵ Article 17, Section 6 of Act 130/2002 Coll.

⁵⁶ Government Resolution No. 1167 of 19 November 2003.

⁵⁷ Government Resolution No. 516 of 22 May 2002, “Analysis of the Development and the State of the Research and Development in the Czech Republic, Comparison with Foreign Countries, and a Proposal of the Preparation Procedure for the new National Research and Development Policy of the Czech Republic for the Period from 2003 to 2008.”

⁵⁸ Government Resolution No. 516 of 22 May 2002, “Analysis of the Development and the State of the Research and Development in the Czech Republic, Comparison with Foreign Countries, and a Proposal of the Preparation Procedure for the new National Research and Development Policy of the Czech Republic for the Period from 2003 to 2008.”

⁵⁹ Government Regulation 88/2001 Coll. of 31 January 2001 on terms and conditions for the targeted funding of research and development and transfer of data to the central Files of projects financed from the government budget.

⁶⁰ See <http://www.vyzkum.cz>.

of project assignment and results, and information on the funds granted. However, the information on the results of various projects (e.g. for the year 2003) commissioned by the MoD is insufficient, since it does not allow to evaluate the actual implementation of the declared research goals.

In November 2003, the government adopted a general document concerning the focus of future defence research & development programmes in the context of professionalisation of the Czech military and the reform of Czech armed forces. It also ordered the Ministry of Defence to invite tenders for the various programmes, and award contracts in accordance with the Public Procurement Act.⁶¹

INDIRECT SUBSIDIES BY PROVIDING GOVERNMENT LOAN GUARANTEES

Indirect public subsidies to state co-owned companies active in the arms production include the government taking over guarantees for those companies' loans. In 1998, the government decided to undertake a government guarantee for the loans of Aero Vodochody, a. s., manufacturer of the L-159 aircrafts. In February 2004, the government realized that Aero Vodochody was not doing well and admitted that the impact on the government budget caused by the payment of the company's obligations due to the state guarantee may reach up to CZK 3.3 billion in 2004, and up to CZK 6 billion in 2005. The government had also decided to initiate negotiations with Boeing concerning its withdrawal from Aero Vodochody and to find a new strategic partner in order to facilitate the company's restructuring.⁶² A new act on budgetary rules came into force in 2000,⁶³ substantially restructuring the possibilities of uncontrolled taking over of state guarantees, stipulating that each individual case must be approved by the Czech government, and subsequently adopted as an act of the Parliament. Regardless of that, the Supreme Audit Office (NKÚ) claims that the Czech legal system keeps lacking satisfactory definition of non-standard government guarantees, thereby providing a wide opportunity for their abuse. The Supreme Audit Office⁶⁴ also finds the current budgetary rules to control granting of such non-standard guarantees insufficient.

NON-TRANSPARENT PUBLIC SUPPORT OF EXPORTS

In one of the above chapters we discussed the public support of the production and export of arms through awarding needless contracts. Supposedly aiming at the improvement of exporting possibilities for certain products of domestic companies, Czech armed forces keep ordering arms that they do not need for their own activities or need a much

⁶¹ Resolution No. 1133 of 12 November 2003 of the Government of the Czech Republic on the programs of defence research and development for the professionalisation of the Army of the Czech Republic and on the reform of the armed forces of the Czech Republic.

⁶² Minutes of the press conference of 11 February 2004, after the government meeting at Office of the Czech Republic Government.

⁶³ Act 218/2000 Coll. on budgetary rules and on the amendment of some related acts (Budgetary Rules).

⁶⁴ *Expenses Loom Large in the Budget*, Právo, 5 March 2004.

smaller quantity thereof. Commercial/economic departments of Czech embassies abroad and Czech government representatives on visits abroad also support arms exports. There are no records, however, of funds spent for such promotion (including the expenses of private company representatives travelling together with official delegations) or the number of such activities, let alone the number of businessmen participating in such missions. Moreover, the Ministry of Foreign Affairs refused to provide comprehensive information on the number of cases when Czech state representatives lobbied in favour of Czech arms trading companies in meetings with their foreign partners.⁶⁵

INSUFFICIENT INFORMATION ON OTHER FORMS OF PUBLIC SUPPORT

In 1998, the Ministry of Finance launched the testing and trial operation of the Central Subsidies Register (CEDR). At the end of 1998, it launched the trial operation of the CEDR II subsystem, designed to provide revenue offices with information on the recipients of state mortgage benefits or subsidies. In the middle of 1999, it has launched the operation of the CEDR III system, a central register of budgetary subsidies. This system⁶⁶ contains information on the recipients of non-investment subsidies from the government budget in the years of 1999 to 2002, granted by various providers (ministries, agencies). Therefore, it allows partial monitoring and public control over certain types of public support provided to arms manufacturers or traders. The most frequent types of support in this field include the recoverable and irrecoverable subsidies for the support of industrial research and development, employment support subsidies, subsidies for the payment of social security and health insurance, and compensation for the impact of arms trade embargos.⁶⁷ However, the register does not contain complete information on all types of subsidies. At present, the Czech Ministry of Finance is said to be preparing for a public access to information on all types of subsidies from the Czech government budget, and on subsidies provided from the EU funds. It is not clear, however, when this should happen. The MoF estimates that the entire system might be put into operation within a year or two.⁶⁸

PARTICIPATION OF FORMER HIGH-RANKING MILITARY OFFICERS IN PRIVATE COMPANIES SUPPLYING MATERIALS FOR THE ARMED FORCES

In recent years, the Czech Republic has experienced a dangerous phenomenon, sometimes known as the Revolving Door Syndrome. This involves situations when former high-ranking government officials or military officers “retire” to jobs in private companies in fields of their interim specialization in the public service. Several foreign studies have warned that such cases help create mutually dependent personal networks or lead to conflicts of interest, where responsible behaviour of such officials is difficult to enforce.⁶⁹

⁶⁵ A response of the Department of Public Information of the Ministry of Foreign Affairs of CR of 6 April 2004 to author's query.

⁶⁶ See <http://cedr.mfcr.cz/>.

⁶⁷ Different types of state subsidies registered within CEDR III were paid to ALIACHEM, a. s., for instance (formerly SYNTHESIA a. s., a well-known explosives manufacturer), amounting to the subsidies of CZK 113 425 132 from 1999 to 2002. Omnipol, a. s. a company well-known for its trading with arms, received state subsidies of CZK 50 242 091 from 1999 to the end of 2002 to compensate for the impact of arms embargos on the company's sales.

⁶⁸ Response of ing. Hana Domínová, Dep. 381 of the Ministry of Finance of the CR, to the author's query of 24 March 2004.

⁶⁹ Catherine Courtney: Corruption in the Official Arms Trade. Policy Research Paper 001, Transparency International UK, edited by: Laurence Cockcroft and David Murray.

In the Czech Republic, for example, the former chief of the General Staff, lieutenant general Jiří Šedivý, left the military in 2002. The media report that less than a year later he launched *Generals, s. r. o.*, a company specialised in commercial consultancy to companies wishing to get military contracts.⁷⁰ His company organised a tour for senior executives of a US company General Dynamics to meet top military officers and MoD officials. General Dynamics were interested in a contract for 243 armoured transporters, worth approximately CZK 25 billion. In relation to this contract, *Generals, s. r. o.* employed two reserve brigadier generals, Karel Blahna and Ladislav Kozler. Another well-known example of the involvement of former high-ranking military officers in arms trading or manufacturing companies serves general Ladislav Klíma, former chief air force commander, who became, after his retirement from the military⁷¹, an employee of the most important arms producing company in the Czech Republic, Aero Vodochody. At present, the so called Revolving Door Syndrome is not guided by law. The issue was even not included in the act⁷² guiding the conditions for obtaining retirement benefits, severance payment and settlement for professional military members. The government also failed to guide the issue in its Public Interest Protection Act, the Conflict of Interests Act or any other mechanisms which may protect the country from the Revolving Door Syndrome.

SECURITY OF INFORMATION ON HANDLING SURPLUS RESERVES

During the last ten years or so, the Czech military forces have been reducing dramatically their military technology and armaments. This reduction has been prompted by the Treaty on Conventional Armed Forces in Europe, modernization of the Czech military armament, and the reform of the Czech military in relation to the Czech Republic entry in the NATO. However, the Ministry of Defence is not able to provide comprehensive statistical data concerning the volume of surplus reserves it had disposed of, and of the volume resold to private entities for further exportation abroad. According to the fragmented data from the end of 2002, the Ministry of Defence has sold, since 1993, more than 95,000 of small arms (including 30,000 handguns and 57,000 automatics), 412 tanks, 130 combat vehicles, and 115 rocket launchers and cannons.⁷³ In 2002, the MoD sold 15 thousand tons of ammunition for over CZK 110 million, 318 tanks and armoured transporters for CZK 11 million, 34 artillery systems for CZK 19 million, and about 50 thousand small arms and optical tools for CZK 27 million. In 2003, private entities bought 14 thousand tons of ammunition for CZK 77 million, 730 tanks and armoured transporters for CZK 31 million, 140 artillery systems for CZK 9 million, and about 80 thousand small arms and optical tools for CZK 25 million.⁷⁴

According to various national security sources, the discarded military materials have constituted the majority of both legal and illegal exports from the Czech Republic. Poor warehouse records gave illegal dealers a good source of military materials.⁷⁵ The following tables show the reduction in technological equipment of the Czech military, and

⁷⁰ *Generals Ltd.*, Euro, 2 February 2004.

⁷¹ *The Military Gains Influence at the Ministry and in Private Companies Alike*, *Hospodářské noviny*, 25 September 2003.

⁷² Act No. 221/1999 Coll. on professional soldiers.

⁷³ Response to author's query sent by Andrej Čírtek, PR Department of the Ministry of Defence of CR of 3 December 2002.

⁷⁴ Response to author's query sent by Mgr. Jan Pejšek, Department of Communication Strategies of the Ministry of Defence of the CR, of 14 April 2004.

⁷⁵ *Czech Official Talks about the Investigation of Illegal Dealing of Czech Companies Trading with Weapons*, *Právo* (website version), 9 November 2001, source: David Isenberg's Weapons Trade Observer.

the volumes of the discarded surplus equipment. However, these figures do not fully correspond to the above data regarding surplus military material reserves sold by the Czech military.

Main types of combat technology and armament of the Czech military⁷⁶

Year	Tanks	Armoured vehicles	Cannons, rocket launchers, mortars	Combat aircrafts	Combat helicopters
1993	2135	2989	2262	294	37
1997	948	1367	767	120	36
2000	652	1211	648	97	34

Quantities of technology put out of service (according to MoD yearbooks)

Year	Combat tanks	Infantry armoured vehicles and armoured technology ⁷⁷	Cannons and rocket launchers	Combat aircrafts	Total
2002	81	–	52	13	146
2001	30	122	63	9	224
2000 ⁷⁸	75	1	7	–	83
1999 ⁷⁹	98	19	–	–	117

This paper does not try to explain the discrepancy between the above official data. On the contrary, the Ministry of Defence should attempt to clarify the questionable or contradictory data. In 2003, the South Bohemian regional branch of the non-governmental Society for Sustainable Development (STUŽ) has requested from the MoD information on the sales of redundant military material from the ministry reserve warehouses, including the names of commercial entities the stock was sold to, and the possible export destination countries. However, the Ministry refused to provide such information on the grounds of trade secrecy.⁸⁰ The NGO's action filed with the administrative court against the

⁷⁶ Based on data supplied by the Ministry of Defence of the CR.

⁷⁷ BVT – infantry armoured vehicle; OT – armoured transporter.

⁷⁸ Information about the actually disposed items pursuant to the Ministry of Defence of CR, Ročenka 2000, Praha 2001.

⁷⁹ Information about the actually disposed items pursuant to the Ministry of Defence of CR, Ročenka 1999, Praha 2000.

⁸⁰ Response of the Ministry of Defence of the CR, Department for the Disposal of Redundant Property, of 31 January 2003 to the query of the Association for Sustainable Development – South Bohemian regional branch of STUŽ, ref. No. 11645/32/2003-7947.

Ministry's decision has not yet been heard.⁸¹ The Ministry thus prevents the public and the media from subjecting the area of the disposal and sale of surplus reserves to greater public control. In spite of its seriousness, the issue of the reselling of surplus arms reserves has not yet come into the attention of the parliamentary control bodies.

Apart from redundant armament, the Czech military also possesses extensive stock of at least 80,000 tons of redundant ammunition. It has already discarded part of this stock; however, frequent information of insufficient liquidation and loss records have appeared.⁸² The disposal of ammunition by the Czech military in the years 2000–2002 has even been investigated by the Supreme Audit Office (NKÚ). However, the conclusions of this NKÚ audit are classified information, which is a highly unusual practice. According to a section of the classified report published by the media, the audit office has criticised the fact that the ammunition liquidation could have been commenced earlier and carried out in greater scope.⁸³ The Czech military intends to resell a part of this ammunition stock. However, the Ministry of Defence has again concealed the exact scope of completed or planned redundant ammunition sales. In 2003, an initiative working group of deputies has been established to investigate the issue of redundant ammunition liquidation.⁸⁴ However, the results of the group's work are unknown.

C. ARMS EXPORT

CORRUPTION ABROAD

International business relationships involve a high risk of corruption and for that reason, at least in the recent years, have been in the centre of attention of both international and intergovernmental organisations. The Czech Republic has joined a number of international initiatives and mechanisms to prevent corruption in this field. In 2000, the Czech Republic acceded to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; in 2002, the Criminal Law Convention on Corruption of the Council of Europe came into force, followed by the Civil Law Convention on Corruption in 2004. The Czech Republic has also joined the GRECO group (Group of States against Corruption), working under the Council of Europe. In 2003, the Council issued a number of recommendations particularly for the Czech Republic, which were aimed at reducing corruption, such as restriction of the parliamentary immunity of the Czech deputies against criminal prosecution.⁸⁵ However, the Czech Republic has not yet joined several important international mechanisms and it has not ratified the UN Convention Against Transnational Organised Crime. One of the reasons for not ratifying is the non-existence in the Czech law of the criminal liability of legal entities, which is required by the text of the Convention.⁸⁶ The Czech Republic has also not yet signed the UN Convention Against Corruption, adopted by the UN General Assembly in November 2003.

⁸¹ See <http://www.zbrane.ecn.cz/cz/informace.html>.

⁸² *Finback Whale*, ČT 1 – Fakta, 29 September 2003.

⁸³ *When Soldiers Start Doing Business*, Profit, 29 September 2003.

⁸⁴ Author's interview with Deputies Mr. Jan Vidím and Mr. Antonín Seda.

⁸⁵ Evaluation Report on the Czech Republic, Adopted by GRECO, Strasbourg, 28 March 2003, <http://www.greco.coe.int>.

⁸⁶ The proposal for the amendment of legal regulations that would allow for the introduction of criminal responsibility of legal entities was discussed by the Legislative Council of the Government during the preparation of this study.

SHORTCOMINGS OF THE LICENSING PROCESS

Arms exports in the Czech Republic are subjected to a two-tier licensing process. A company wishing to offer, advertise, purchase or sell military material must first obtain a general permit. Such permit is issued by the Ministry of Industry and Trade, based on a consent of the Ministry of Foreign Affairs, the Ministry of Defence, and the Ministry of Interior and may be granted only to legal entities registered in the Czech Republic in which Czech citizens hold a majority stake and which possess sufficient technical and financial resources. Senior company executives must be vetted by the National Intelligence Office (NBÚ). The companies which obtain the permit must then apply for a special licence for each export. Export licences are issued by the Ministry of Industry and Trade, following a consultation with the Ministry of Foreign Affairs, which has to assess the application with regard to foreign policy consequences and a proof of the end purpose. In case of the export of important military material, the licence application has to be reviewed by the Ministry of Defence as well.

Primarily due to the security measures adopted following the terrorist attacks against the USA in September 2001, the current control system has been revised several times over the recent years. In November 2001, the Czech government announced that it would review a number of business licences, especially older ones, in order to obtain information concerning companies trading in arms, their business transactions, plans and traded goods destinations. The Central Crisis Headquarters established a new investigation committee within the National Action Plan for Combating Terrorism, in order to ascertain whether Czech companies were involved in supply chains providing military materials to terrorist groups. The new committee, led by Petr Ibl, Deputy Minister of Interior, consists of the representatives of the Czech intelligence, the Czech police, and the Ministries of Interior, Foreign Affairs, and Defence. It has reviewed the arms trading licences already granted.⁸⁷ Jiří Růžek, chief of the Czech Security Intelligence Service (BIS), said that the Czech arms trade requires “further security improvement”, and in agreement with this, the Minister of Interior Stanislav Gross claimed that some licence holders should be closely monitored, “since they are, for example, new companies that nobody knows much about.”⁸⁸ The committee has audited a total of 132 legal entities, and initiated the administrative proceedings for the withdrawal of a foreign trade permit for military materials in the case of a single company, due to the criminal prosecution of a member of the company's statutory body and of the company's joint owners.⁸⁹ However, the audit also involved legal entities that had allegedly attempted illegal arms export in the past, albeit no culprits have been convicted. According to media reports, shortly after the completion of the audit one of these “verified” companies (with a record of previous discrepancies in exports) has attempted an illegal export of tanks into Congo.⁹⁰

⁸⁷ *Czech Official Talks about the Investigation of Illegal Dealings of Czech Companies Trading with Weapons*, Právo (website version), 9 November 2001, source: David Isenberg's Weapons Trade Observer.

⁸⁸ *Czechs have the Arms Export under Control*, ČTK, 9 November 2001, source: David Isenberg's Weapons Trade Observer.

⁸⁹ Response to the author's query of 22 May 2003, on the issue of the control of export and import of military weapons and equipment, civilian weapons and merchandise and double-use technologies, as described in the National Action Plan for Combating Terrorism, Ministry of Interior of the CR, 27 May 2003.

⁹⁰ *Weapons for Congo*, ČT1 – Klekánice, 15 July 2003.

As part of the anti-terrorist measures adopted in 2003, the government ordered the Ministries of Industry and Trade, Interior, and Defence to submit their evaluations of the functioning of the existing foreign trade of military material control regime.⁹¹ In July 2003, it adopted a series of measures proposed by the final document.⁹² It decided to include supervisory board members in companies applying for a foreign trade permit for military materials in the group of physical persons subject to security audits. The government also extended the deadlines within which the Ministries have to issue their opinion on the licence application. Moreover, it requires the Ministry of Industry and Trade to immediately notify the Ministry of Interior of all licence applications received, and allows the Ministry of Interior to refuse an application should the export concerned threaten national security interests. It also requires the Ministry of Industry and Trade to establish, following the accession of the Czech Republic to the EU, an information exchange between the Ministry and the EU bodies concerning denials (denied export licences).

Apart from the measures adopted by the government, the Ministry of Foreign Affairs revised their existing licence procedures in the second half of 2003.⁹³ The Ministry established a unique database of export licence applications, the record of its decisions concerning these applications, and a database of licence applicants. It also organised a training of Ministry officials concerning the rules of the European Code of Conduct on Arms Exports, and held a workshop for the officials of other ministries on this topic.

All of the above measures represent a step in the right direction, strengthening the internal control mechanisms of the authorities involved, standardising the decision-making process and extending the scope of information-sharing between the ministries throughout the licensing procedure, which has been somewhat problematic so far. They also support systematic decision-making during licensing procedures and cross-control between various public authorities. However, in spite of all of these measures, certain gaps remain.

The Czech authorities have long been considering the establishment of a central registry of all administrative sanctions, recording the offences of companies and individuals against the administrative law. At the beginning of 2004, the government accepted the Ministry of Interior's proposal of the Analysis of Options for Establishing a Registry of Certain Administrative Sanctions.⁹⁴ The analysis identifies the creation of such register as the key step among anti-corruption measures. The government then issued a decree ordering the Ministry of Justice to submit a proposal for the registry of selected offences by 30 June 2004. However, it is not clear when such a registry will be established, or even if it should be established. At present, there is no source of information concerning arms trade that would provide the relevant records of past offences of the entities involved, thus enabling the bodies involved in the licence procedure, export supervision (Customs Service of the Ministry of Finance), or procurement procedure to obtain important information to prevent possible unfair conduct or repeated offences of such entities. Within the existing licence procedure, similar databases are maintained by various authorities (Ministry of Industry and Trade Licensing

⁹¹ Resolution No. 227/V of 3 March 2003 of the Government of the Czech Republic.

⁹² Resolution No. 685 of 9 July 2003 of the Government of the Czech Republic.

⁹³ Oral response of the Deputy Minister of Foreign Affairs for Security Policy JUDr. Jan Winkler at a meeting of 18 November 2003.

⁹⁴ Government Resolution No. 78 of 21 January 2004.

Administration, Ministry of Foreign Affairs, Customs Service of the Ministry of Finance), but they are not shared. This prevents both proper control and systemisation of the public authorities' decision-making process.

A number of arms export permits granted recently casts doubts on whether the authorities involved in the licensing procedure base their decisions on clearly defined rules. As early as 1998, the Czech Republic declared adherence to the European Code of Conduct on Arms Exports. It also declared observation of the EU and UN embargos. In spite of that, the Czech authorities permitted the export of 16 RM-70 rocket launchers and 41 T-55AM-2 tanks to Sri Lanka between 2000 and 2001. In 2001, they also permitted the export of an unspecified number of machine guns into the country. Shortly prior to the imposition of EU sanctions against Zimbabwe in 2000, The Czech Republic had exported six RM-70 rocket launchers, 1,000 RPG 7 anti-tank weapons, and an unspecified number of rifles and automatic weapons. In 1999, the Czech Republic exported twelve Albatros subsonic into Yemen, followed by dozens of T-55AM-2 tanks between 2000 and 2001.⁹⁵ Apart from these, large volumes (exceeding hundreds of thousands) of small "sport and hunting" arms have flown from out of the Czech Republic to Yemen. The above exports have constituted a violation of the European Code of Conduct on Arms Exports, and a violation of the officially-declared Czech policy.

The most recent incident expensively discussed in the media and raising questions concerning the authorities' impartiality and adherence to clearly defined rules in licensing procedures, was the attempt to export Vera passive radar systems into the People's Republic of China. Omnipol, the Czech arm export company, obtained a permit to export the systems into this destination in the middle of January 2004, despite the fact that the EU has imposed an arms export embargo on China. The Czech government has finally decided on 20 May that the respective Ministry should withdraw the export permit granted for foreign policy reasons.⁹⁶ Deputy Foreign Minister Jan Winkler stated on TV that the Ministry of Foreign Affairs had raised objections against the export even during the licensing procedure, but that they "agreed to a compromise in certain cases".⁹⁷ However, the Ministry has not explained the reason for making such compromises. The Respekt weekly voiced suspicions of Miroslav Kalousek, leader of KDU-ČSL (Christian Democratic Party which is part of coalition government) and a friend of Omnipol boss Richard Háva, intervening in the licensing procedure in favour of the export company.⁹⁸

None of the measures adopted to date, not even the government amendment of the Act on Trading in Military Materials, currently discussed by the Senate⁹⁹, attempt to reduce the risks of illegal exports concerning re-export to other countries by establishing a procedure of performing audit of the end user stated in the export permit application

⁹⁵ According to the report "Arms production, exports and decision-making in Central and Eastern Europe," Saferworld, July 2002, <http://www.saferworld.co.uk>.

⁹⁶ *Government Stops Radar Sales to China*, Hospodářské noviny, 21 May 2004.

⁹⁷ *Czech Arms Export*, ČT1 - Události, komentáře, 14 May 2004.

⁹⁸ *Vera Waits for a Visa*, Respekt, 17 May 2004.

⁹⁹ House Print No. 573/0 of 29 January 2004, Government Bill amending Act No. 38/1994 Coll., on foreign trade with military material and amending Act 455/1991 Coll., on trade licensing (Trade Act), as amended and Act 140/1961 Coll., the Criminal Code, as amended, amended by Act 310/2002 Coll.

after a certain time period, and the imposition of automatic sanctions on both the exporter and the customer for violations of permit conditions.

DEFICIENT PARLIAMENTARY CONTROL

Public and Parliamentary debate of these issues is still at an early stage in the Czech Republic. So far, only a few isolated deputies or senators have protested in the media against the export of Czech arms into Sri Lanka, Yemen,¹⁰⁰ Somalia and Georgia. The deputies have not had the opportunity to discuss the national reports on arms transactions executed and debate the policy for controlling arms trade. Neither of the chambers has yet reviewed annual reports on trading in small arms published so far. Unlike deputies in other European countries, such as Sweden, the Czech politicians may not advise the executive bodies in controversial cases of granting permits for planned arms exports. At present, it is not even clear which parliamentary body or committee could control arms export.¹⁰¹

INSUFFICIENT PUBLIC CONTROL

In recent years, the course and outcome of various licensing procedures concerning arms export from the Czech Republic has become the subject of attention of several non-governmental organisations, as well as the media. However, public debate is being limited by lack of information concerning licensing procedures provided by public authorities.

Since 1993, the licensing authority of the Ministry of Industry and Trade has been drafting classified annual reports concerning foreign trade in military materials.¹⁰² These reports contain information on the destination, volume and types of arms supplied, export and import figures, number of licence holders and the number of countries involved. Furthermore, they include information on major arms supplies, a list of top ten countries trading arms with the Czech Republic, a list of companies with the largest volume of trade, current trends in the foreign trade in military materials, and information on established cases of violation of the Act on Foreign Trade in Military Materials.¹⁰³ The reports have been kept a secret on the grounds of the Act on Classified Information¹⁰⁴ and the government list of classified information of 1998.¹⁰⁵ According to this list, classified information includes, among other things, “information

¹⁰⁰ Cf. Petr Nečas's opinion in: *Czech Weapons for Al Queda*, Respekt, 14 July 2003.

¹⁰¹ Oral information by the chairman of the Committee for Defence and Security of the Chamber of Deputies of the Parliament of the Czech Republic Mr. Jan Vidím during meeting of 25 February 2004.

¹⁰² The annual statistical reports were restructured in 1997 to include the data about state interventions against organized crime.

¹⁰³ Based on the “Arms production, exports and decision-making in Central and Eastern Europe” report, Saferworld, June 2002, <http://www.saferworld.co.uk>.

¹⁰⁴ Act No. 148/1998 Coll. on protection of classified information and amendment of some acts, as amended by Act 164/1999 Coll., Act 18/2000 Coll., Act 29/2000 Coll., Act 30/2000 Coll., Act 363/2000 Coll., Act 60/2001 Coll. Act, judgment of the Constitutional Court published as 322/2001 Coll., Act 151/2002 Coll., Act 310/2002 Coll. and Act 320/2002 Coll.

¹⁰⁵ Annex 8 to Government Regulation No. 246/1998 Coll., List of Classified Data within the sphere of the Ministry of Industry and Trade.

concerning negotiations on cooperation in the field of foreign trade in military materials and other types of sensitive goods, as long as concealment of such information reflects the agreement or interests of the parties involved, and the lists of individual permits issued, as well as comprehensive statistical or other data concerning the executed exports and imports of military material, should it be possible to use such data to identify: the products concerned, the volume and value thereof and the country of supplier or customer, when the transaction involves important military material or other military material.” However, the Ministry of Industry and Trade publishes a press release containing general statistical data and trends in arms export for the relevant year.¹⁰⁶ In 2004, the Ministry of Industry and Trade published a list of companies holding foreign trade licences for military material on its website.¹⁰⁷

In January 2003, the STUŽ, a non-governmental organisation, requested the list of licences granted, the list of licences rejected, and the list of permits issued by the Ministry of Industry and Trade for the export and import of military material for the year 2002.¹⁰⁸ The NGO also requested copies of the opinions of the Czech Ministry of Foreign Affairs on the applications of legal entities for the permit for foreign trade in military material.¹⁰⁹ Both these requests had been denied by the Ministries. In the first case, the Ministry referred to the Act on the Protection of Classified Information and the government decree defining classified information; to sensitive trade information and the Personal Data Protection Act. In May 2003, the NGO challenged both these decisions in an administrative proceeding filed with the Municipal Court in Prague. The court has not yet issued a decision in the case.

Since 2000, the transparency of the arms trade in the Czech Republic has greatly improved due to publication of annual reports on the export and import of small arms.¹¹⁰ This and other reports in the subsequent years have been drafted by the interdepartmental working group for small arms, and issued by the Ministry of Foreign Affairs. The reports analyse the approach of the Czech Republic toward international negotiations concerning small arms owned by firearm licence holders in the Czech Republic. However, they fail to report data on the number of small arms owned by the Czech Army. Similar limitations apply to the information on the production, permitted exports and permit denials. Moreover, the last report published¹¹¹ has failed to provide information on export destinations of small arms from the Czech Republic, even though it had been contained in all previous reports. However, in response to the objections raised by NGO groups associated in the Working Group on Arms Trade Control, Deputy Foreign

¹⁰⁶ See for example the Ministry of Industry and Trade of the CR: TZ – Statistical Overview of the Export and Import of Military Material in 2003, 19 March 2004.

¹⁰⁷ Ministry of Industry and Trade, Holders of Licence to Conduct Foreign Trade with Military Material, <http://www.mpo.cz>.

¹⁰⁸ Request for information by Association for Sustainable Development, South Bohemian regional branch, to Ministry of Foreign Affairs of 20 January 2003.

¹⁰⁹ Request for information by Association for Sustainable Development, South Bohemian regional branch, to Ministry of Industry and Trade of 20 January 2003.

¹¹⁰ Information about the accession of the Czech Republic to international negotiations concerning small arms, export, import and number of gun permits and gun licenses in the territory of the Czech Republic in the year 2000.

¹¹¹ Information about the accession of the Czech Republic to international negotiations concerning small arms, export, import and number of gun permits and gun licenses in the territory of the Czech Republic in the year 2002.

Minister Jan Winkler promised that the missing information would be included in the 2003 report.¹¹² Furthermore, in several interviews for the media¹¹³ the Deputy Minister promised the NGOs that the newly published annual report would include information on all types of arms exported, the export destinations, and possibly even the financial value of the individual transactions. He also confirmed that the Czech Republic was prepared to share the information on arms export permit denials with other EU countries. However, no details concerning the contents of the forthcoming annual government report have been made known to the date of drafting this paper.

¹¹² Response of the Deputy Minister of Foreign Affairs of the Czech Republic Mr. JUDr. Jan Winkler of 30 September 2003 to the open letter of the Working Group on Arms Trade Control.

¹¹³ E. g. *Control of Arms Exports*, ČT1 – Události, 9 October 2003.

3. CONCLUSIONS AND RECOMMENDATIONS

As indicated by this paper, should the Czech government truly wish to succeed in combating corruption in the field of the arms trade, it needs to implement a number of changes to limit the corruption behaviour. The most needed and most important measures are the following:

:: Amendment of the Public Procurement Act

An amendment should limit the number of exemptions from the force of the Act, including the arms trade; to restrict the contracting authorities' free choice of the type of the selection process; to simplify the process of proposing reviews of the contracting authority's actions; to introduce a system allowing for a review by a supervisory body of bid evaluations performed by evaluation committees; and to introduce active remedies and sanctions for the violation of provisions of the Act.

:: Improved Transparency and Simplification of the Selection Process

Contracts and evaluation criteria should remain unchanged throughout the entire selection process, which should always be open and simple to the maximum extent. Bid evaluations should not take into consideration offset proposals.

:: Public access to Information on Public Subsidies of Research, Development and Sale of Arms

The central registry of subsidies should be extended to include information on all types of government subsidies.

:: Transparent Conditions for Allocating Government Subsidies

The government should favour neither indirect support nor "classified" support over the public or parliamentary control. Should the government provide its subsidies via awarding needless contracts, the key officials involved shall bear full personal, political, or criminal responsibility.

:: Introducing Preliminary and Follow-Up Parliamentary Arms Trade Control

The MPs should receive regular information on the government policy in the field of arms trade and should have the possibility to comment on such policy.

:: Publishing Regular Detailed Reports on the Arms Trade for the Use of the General Public

© 2004 Transparency International-Česká republika
Designed by Václav Pišoft – Studio Pí
Set in STF Sebastian
Printed by Artprint