

## A major amendment to the criminal law in the Czech Republic

### Conditional non-prosecution of legal entities

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**As part of a major amendment to the criminal law recently signed into law by the President of the Czech Republic, the Corporate Criminal Liability Act is being equipped with a new legal mechanism that will enable legal entities to avoid prosecution if they take certain remedial steps (“conditional non-prosecution”). But what will this mean in practice?**

From 1 July 2026, legal entities will have access to a new form of diversion in criminal proceedings: conditional non-prosecution. This mechanism is conceived as an alternative to the conditional discontinuance of criminal prosecution under Section 307 of the Criminal Procedure Code. However, to reflect the specific features of corporate criminal liability, conditional non-prosecution will be available to legal entities as early as the preliminary investigation stage; not only once a formal accusation has been filed against them. This is a tool designed exclusively for legal entities and will not be available to natural persons. Moreover, it can be granted even in cases where procedural steps have been taken against a legal entity prior to the date on which the new legislation takes effect.

In certain respects, the introduction of conditional non-prosecution marks a significant shift in the procedural landscape. Not only will it be available to legal entities before the commencement of the formal investigation phase but, chiefly, it opens up an entirely distinct procedural avenue from that of a plea agreement. Until now, companies have most commonly had to resort to a plea agreement, which often carries undesirable consequences. To enter such an agreement, companies are required to make an explicit guilty plea – a non-negotiable element of the agreement. This results in a conviction being entered, with all adverse effects that brings, including the formal imposition of a sentence akin to that applied in standard criminal proceedings against individuals.

In this regard, conditional non-prosecution introduces a material change in procedure. In particular, conditional non-prosecution:

- **does not require any guilty plea or confession.** In this sense, it is a prospective tool that rewards the responsible stance and active remediation efforts taken by the company.
- **is available even before the investigation moves into the prosecution phase** – conditional non-prosecution can be obtained once the preliminary investigation has concluded, when there is already a well-founded assumption that the legal entity committed an offence and would almost certainly be formally investigated as an accused in proceedings.
- creates incentives for legal entities to improve the design and functioning of their compliance management systems – as a condition for diversion, the imposition of **remedial and preventive compliance mechanisms may be required**. Compliance with these conditions is to be **monitored by lawyers specialised in compliance and by auditors**.

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- **provides a means of avoiding criminal prosecution** – and all associated negative effects, whether reputational, financial, or operational – if the legal entity responds to its misconduct in a responsible and socially constructive manner.

The conditional non-prosecution mechanism introduces several substantive changes in comparison to the conditional discontinuance of prosecution. The latter may be applied only once a specific legal entity is being prosecuted. A key prerequisite is that the accused must fully admit to having committed the offence – this is seen as a reasonable trade-off for the legal entity being allowed to avoid conviction by formal judgment, unlike under a plea agreement. However, the requirement of a confession – particularly in relation to certain offences, such as those involving corruption or the manipulation of public procurement processes – renders the conditional discontinuance of prosecution unpalatable for many legal entities.

## 1 Requirements for conditional non-prosecution

For a company to obtain conditional non-prosecution, it must, as a minimum:

- **make reparation for the harm caused or surrender any unjust enrichment**, or enter into an agreement to that effect with the injured party;
- **undertake to remedy or eliminate the consequences of the criminal offence**;
- **pay a financial sum into a court account** (or, in the preparatory stage, into an account held by the public prosecutor's office) **to be used for the benefit of victims of crime**. This sum must not be manifestly disproportionate to the seriousness of the offence or to the financial circumstances of the legal entity (this is to be assessed by the court, or in preparatory proceedings, by the public prosecutor).

Naturally, conditional non-prosecution also requires the legal entity's consent and, ultimately, the authorities involved in the criminal proceedings must consider the proposed solution sufficient in light of the public interest at stake.

In more serious cases where the basic conditions listed above would not be sufficient to serve the public interest, but the legal entity nevertheless seeks to obtain conditional non-prosecution, the legal entity may also be required to:

- **refrain from a particular activity** connected to the criminal offence; or
- design and implement an effective set of **preventive and remedial measures**; or
- appoint a third party to **monitor the effectiveness** of all measures implemented.

The legal entity will have to comply with the imposed measures for a period of between six months and two years. In the case of the additional measures described above, this period may be extended up to five years. Monitoring is carried out at the company's expense. In several foreign jurisdictions, the cost of monitoring is often higher than the financial penalties imposed.

The implementation of these measures is an integral part of fostering a functional compliance culture. Furthermore, it would be reasonable to assume that once a legal entity has been granted conditional non-prosecution, any repeated misconduct would very likely preclude access to the same form of leniency in future.

## 2 Monitored compliance framework: A shift in approach

Conditional non-prosecution promises to take into account both the existing level of a legal entity's compliance management system and its willingness to improve that level where it has proven insufficient to prevent a criminal

offence. Indeed, the new mechanism builds on the plea agreement model, in which – based on our own experience – the approach of the prosecuting authorities already tends to be influenced by the legal entity’s level of compliance. In this sense, the new mechanism offers a formal outlet for this trend.

A central role in this process is played by the “monitor” – either a lawyer with demonstrable specialism in compliance, or an auditor – who is nominated by the company itself, typically by submitting a shortlist of three potential candidates. The precise methodology for determining whether a lawyer has the required specialism in compliance has not yet been clarified.

Monitors are responsible for overseeing that a company complies with the preventive and remedial measures it has committed to. They must submit regular reports to the prosecuting authority and must be fully independent, professionally qualified and trustworthy. Their role is not limited to formal oversight but extends to actively managing the entire remediation process – from designing measures through to implementing and evaluating them. It is therefore imperative that companies have at their side a partner who understands both criminal procedure and the internal workings of commercial corporations and other legal entities.

The selection of a suitable legal representative is therefore a key juncture in the entire diversion process – not only in terms of obtaining court approval, but above all to ensure that **the remediation efforts are credible in the eyes of the public, business partners and the judiciary.**

The introduction of this mechanism brings the Czech legal framework more closely into line with the practices established in other jurisdictions, where active cooperation between legal entities and prosecuting authorities is viewed as a path toward remediation and reputation recovery. Although the Czech model draws inspiration from OECD recommendations, it diverges significantly from the French approach and the current Swiss legislative proposal – not least in its lack of detailed guidance for public prosecutors and courts, which will likely need to be developed through practice.

Nevertheless, **conditional non-prosecution** represents a promising alternative to prosecution: by engaging in the process, legal entities send a clear message that while they do not deny the misconduct, they accept responsibility for it and are taking all necessary steps to prevent its recurrence – a signal that is likely to be appreciated by shareholders, business partners and the broader public alike.

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