



Sustainability and Competition Law in Czech Republic

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5.1 Introduction

The Czech Republic is a member of the United Nations (UN), the World Trade Organization (WTO), the Organisation for Economic Co-operation and Development (OECD) as well as the European Union (EU). The Czech law shares the continental law tradition and reflects the international and regional commitments and obligations of the Czech Republic, including the call for sustainable development.¹ Namely, the concept of sustainability projected on the responsibility of all stakeholders, including businesses—see corporate social responsibility (CSR)—is recognized in the Czech Republic, and its application in various spheres is expected.² Indeed, sustainability rests on three pillars—economic, environmental and social—and all three need to be met while their objectives should be advanced

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¹CVIK, E. D. Cvik & R. MacGregor Pelikánová, The Significance of CSR during COVID-19 Pandemic in the Luxury Fashion Industry – A Front-Line Case Study, *European Journal of Business Science and Technology*, 2021, 7(1), pp. 109-129. DOI: <https://doi.org/10.11118/ejobsat.2021.005>.

²R. MacGregor Pelikánová and M. Hála. CSR Unconscious Consumption by Generation Z in the COVID-19 Era – Responsible Heretics Not Paying CSR Bonus? *Journal of Risk and Financial Management*, 2021, 14(8), pp. 390. DOI: <https://doi.org/10.3390/jrfm14080390>. Accessed 1 November 2022.

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simultaneously, if not synergistically, i.e. there should not be trade-offs. At the same time, it must be emphasized that the Czech Republic is not a pro-sustainability force *par excellence* and rather follows than leads these trends in the EU. These follow-ups are sometimes more and sometimes less enthusiastic, generally on time, but occasionally a national resistance can be identified.

A different picture appears when the focus goes exclusively to the competition setting, i.e. the Czech national law is fully harmonized in this arena; the Czech competition authority, i.e. the Office for the Protection of Competition, works closely with the European Commission, its DG COMP and the European Competition Network (ECN); and Czech case law does not deviate from EU case law.

In order to address the burning issues of the impact, if not the interplay, of sustainability and competition law in the Czech Republic, it must be reviewed the policy and law setting regarding competition, sustainability and their potential overlap (Sect. 5.2); the relevant cases (Sect. 5.3); and the critical institutions and agencies and trends embraced by them (Sect. 5.4).

5.2 Policy and Law Setting: The Potential Impact of Sustainability on the Protection of Competition

The law valid and applicable in the Czech Republic has sources from three legal systems – international, the EU and national. Namely, since its accession to the EU in 2004, EU law has applied on the territory of the Czech Republic, and especially regarding competition, the Czech Republic has not demonstrated resistance or contradicting trends. Basically, the only difference between national Czech competition law and EU competition law is in the intensity, i.e. effectiveness and efficiency, of their applicability. Indeed, for many years, despite the same policies and law provisions, the Czech Office for the Protection of Competition has had a rather low score of prosecuted cases ending with final sanctions.³ In sum, regarding the public law aspects of competition protection (anti-monopoly, anti-cartel, merger, state aid), Czech Act Nr. 143/2001 Coll., on the protection of competition (“Czech Competition Protection Act”), is aligned and harmonized, if not unified, with EU law, especially Article 101 et foll. of the Treaty on the Functioning of the European Union (TFEU), and there have not been objections regarding its wording. Similarly, regarding the private law aspects of competition protection (unfair competition), Czech Act Nr. 89/2012 Coll., Civil Code (“Czech Civil Code”), is compliant with EU law; see, e.g., Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market, aka the Unfair Commercial Practices Directive (UCPD).⁴

³R. MacGregor Pelikánová, Divergence of antitrust enforcements – where, and where not, to collude, *Antitrust – Revue of Competition Law*, 2014, 2, i-viii.

⁴R. MacGregor Pelikánová, Harmonization of the protection against misleading commercial practices: ongoing divergences in Central European countries, *Oeconomia Copernicana*, 2019, 10(2), pp. 239–252. DOI: <https://doi.org/10.24136/oc.2019.012>.

A hot topic of discussion, perhaps criticism, was merely about the manner of application of competition protection in individual cases by the Czech Office for the Protection of Competition and the courts. Namely, the Czech Office for the Protection of Competition has seen, fairly often, its cases quashed by Czech courts, in particular by the Regional Court in Brno and the Supreme Administrative Court, occasionally even by the Constitutional Court, i.e. Czech courts have had to cancel many of decisions of the Czech Office for the Protection of Competition and this is not typical. For example the CJ EU seldom cancel/change the decisions of the European Commission. To put this differently, the Czech Office for the Protection of Competition has issued a lot of controversial decisions and these decisions were cancelled by Czech Courts. Such a massive reversal of cases we do not see typically, especially not in the case of the review of CJ EU of decisions by the European Commission.⁵ However, it needs to be pointed out that improvement has progressively occurred, and currently, the difference in the effectiveness and efficiency of the application of competition law has diminished, and the success rate of the Czech Office for the Protection of Competition has increased.

Well, regarding sustainability, the Czech Republic still has a long journey ahead, and this concerning both national policies and national law. Many legal norms are based on ethical principles and other concerns pointing out that the development of business activities must not be justified by market power along with the exclusive command of maximizing immediate profits and gratification at any cost.⁶ At the same time, the Czech Republic has embraced a rather reluctant attitude and only slowly moves towards the inclusion of sustainability in its policies and law.⁷ The input and inspiration to do so have a clear UN and EU origin, and it must be emphasized that the Czech Republic and especially Czech businesses are becoming, over time, more compliant and committed in this respect, i.e. there is not a direct resistance or violation.⁸ Other stakeholders follow at varying time frames.⁹

The above-mentioned UN and EU goes back to the Report of the World Commission on Environment and Development Report: Our Common Future prepared

⁵R. MacGregor Pelikánová, R., The unbearable lightness of imposing e-commerce in a vertical agreement setting, *Antitrust – Revue of Competition Law*, 2015, 3, pp. 68-76.

⁶R. MacGregor Pelikánová, R. K. MacGregor. & M. Černek, New trends in codes of ethics: Czech business ethics preferences by the dawn of COVID-19. *Oeconomia Copernicana*, 2021, 12(4), pp. 973–1009. DOI: <https://doi.org/10.24136/oc.2021.032>.

⁷R. MacGregor Pelikánová, Corporate Social Responsibility Information in Annual Reports in the EU – Czech Case Study, *Sustainability*, 2019, 11, 237. DOI: <https://doi.org/10.3390/su11010237>.

⁸R. MacGregor Pelikánová, T. Němečková & R. K. MacGREGOR, CSR Statements in International and Czech Luxury Fashion Industry at the onset and during the COVID-19 pandemic – Slowing Down the Fast Fashion Business? *Sustainability*, 2021, 13(7): 3715. DOI: <https://doi.org/10.3390/su13073715>.

⁹R. K. MacGregor, W. Sroka & R. MacGregor Pelikánová, The CSR Perception of Front-line Employees of Luxury Fashion Businesses: Fun or Free for Sustainability? *Organizacija*, 2020, 53(3), pp. 198-211. DOI: <https://doi.org/10.2478/orga-2020-0013>.

by the Brundtland Commission and published as the UN Annex to document A/42/427 in 1987 (“Brundtland Report 1987”). It needs to be emphasized that the Brundtland report indicates that “Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. Consequently, it is proposed that the concept of sustainability is analogous to the concept of *usufructus*, i.e. the right to use another’s property without changing its substance, which is extended beyond the economic realm to cover the social and environmental aspects of human activities. The Brundtland Report 1987 led to UN General Assembly resolution A/RES/60/1 adopted via World Summit 2005, along with UN Agenda 21, which were paralleled by the EU strategy Agenda 2000, aka Lisbon Agenda 2000, which was agreed upon by the European Council in order to strengthen employment, economic reform and social cohesion as part of a knowledge-based economy in the EU.¹⁰ The following year, in 2001, the European Commission prepared its first strategy regarding sustainable development as COM/2001/0264 Communication from the Commission A Sustainable Europe for a Better World: A European Union Strategy for Sustainable Development. This proposal was discussed and approved by the European Council during the summit in Göteborg (Gothenburg) and was accepted by the European Council. In 2002, this strategy was expanded due to UN endeavours; see the summit in Johannesburg, and, even more importantly, in 2006, it was renewed, i.e. the Review of EU Sustainable Development Strategy—Renewed Strategy was adopted by the European Council (“EU Renewed Sustainability Strategy”). The determination of smart, sustainable and inclusive growth was cemented in 2010 by the European Commission with its 10-year-long strategy, aka Europe 2020, and by the UN Resolution made during a historic UN Summit in September 2015 and entitled “Transforming our world: the 2030 Agenda for Sustainable development” (“UN Agenda 2030”), which brought with it 17 Sustainable Development Goals (SDGs) and 169 associated targets and was adopted by world leaders. Importantly, SDG 8 deals with decent work and economic growth; SDG 9 means to build resilient infrastructures, promote inclusive and sustainable industrialization and foster innovation, including the increase of information system (IS)/information technology (IT) and affordable access to the Internet; and SDG 12 wants to ensure sustainable consumption and production patterns.¹¹ This was clearly appreciated by the European Commission of Jean-Claude Juncker; see endeavours and updates related to, e.g., Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings or Regulation 2019/2088 on sustainability related disclosures in the financial services sector (SFDR). However, this is even more advanced and heralded by the

¹⁰R. MacGregor Pelikánová & R. K. MacGregor, The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská. *Central European Business Review*, 2020, 9(3), pp. 74-108. DOI: <https://doi.org/10.18267/j.cebr.240>.

¹¹R. MacGregor Pelikánová & R. K. MacGregor, The EU puzzling CSR regime and the confused perception by ambassadors of luxury fashion businesses: A case study from Pařížská. *Central European Business Review*, 2020, 9(3), pp. 74-108. DOI: <https://doi.org/10.18267/j.cebr.240>.

strong drive for a “more green Europe” by the current European Commission of Ursula von der Leyen; see, e.g., Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation aka Taxonomy Regulation, which is designed to support the transformation of the EU economy to meet its European Green Deal objectives.

As mentioned above, regarding the Czech Republic, we can observe a delay and a kind of weaker trend. In 2004, the First Strategy for Sustainable Development was prepared and approved by the Czech Government via Resolution Nr. 1242.¹² This First Strategy for Sustainable Development was set as a consensual framework for sectorial policies until 2014, while endorsing certain goals targeting 2030, and is still valid.¹³ In 2006, the EU moved for a renewal; see the EU Renewed Sustainability Strategy, and the Czech Republic followed by doing basically the same the next year. Namely, in 2007, the Czech Republic renewed the Strategy for sustainable development, i.e. Resolution Nr. 1434 was prepared and approved by the Czech Government (“Czech Renewed Sustainability Strategy”).¹⁴ In the year of the adoption of Europe 2020, in 2010, the Czech Government approved, through its Resolution Nr. 37, a Strategic framework for sustainable development of the Czech Republic (“Czech Strategic Framework 2010”), which reflects the mentioned renewed EU Strategy for sustainable development from 2006. The Czech Strategic Framework sets the vision of sustainable development in a general manner, along with key principles and goals, to be applied in more detail and in more specific manners in various sectors.¹⁵ It rests on the conventional pillars—economic, environmental and social—which should be mutually well balanced and assure the prosperity of Czech society.¹⁶ Interestingly, the Czech Strategic Framework is structured towards five priority axis: PO1 company, individual, health; PO2 economics and innovations; PO3 territory development; PO4 ecosystems and

¹²Český statistický úřad (Czech Statistic Office). Udržitelný rozvoj v ČR (Sustainable development in the Czech Republic). , available at https://www.czso.cz/csu/czso/13-1134-07-2006-1_1___uvod. Accessed 1 November 2022.

¹³Ministerstvo pro místní rozvoj (Regional development Ministry). Základní dokumenty (Fundamental documents). available at <https://www.mmr.cz/cs/ministerstvo/regionalni-rozvoj/informace,-aktuality,-seminare,-pracovni-skupiny/psur/uvodni-informace-o-udrzitelnem-rozvoji/zakladni-dokumenty>. Accessed 1 November 2022.

¹⁴Český statistický úřad (Czech Statistic Office). Udržitelný rozvoj v ČR (Sustainable development in the Czech Republic). , available at https://www.czso.cz/csu/czso/13-1134-07-2006-1_1___uvod. Accessed 1 November 2022.

¹⁵Ministerstvo pro místní rozvoj (Regional development Ministry). Základní dokumenty (Fundamental documents), available at <https://www.mmr.cz/cs/ministerstvo/regionalni-rozvoj/informace,-aktuality,-seminare,-pracovni-skupiny/psur/uvodni-informace-o-udrzitelnem-rozvoji/zakladni-dokumenty>. Accessed 1 November 2022.

¹⁶Ministerstvo pro místní rozvoj (Regional development Ministry). Základní dokumenty (Fundamental documents), available at <https://www.mmr.cz/cs/ministerstvo/regionalni-rozvoj/informace,-aktuality,-seminare,-pracovni-skupiny/psur/uvodni-informace-o-udrzitelnem-rozvoji/zakladni-dokumenty>. Accessed 1 November 2022.

eco-diversity; and PO5 stable and safe society.¹⁷ In 2017, the Czech Government approved a new strategic framework—the Strategic Framework for the Czech Republic 2030 (“Czech Strategic Framework 2030”), which sets the principles of sustainable development. Sustainable development is a complex and dynamic system: diversity should be supported, human rights are to be observed, participation and transparency need to be advanced, learning needs to be boosted and global ideas with local implementations should be recognized.¹⁸ The Czech Strategic Framework 2030 reflects and directly refers to 17 SDGs and is presented via six chapters: 1) People and society, 2) Business model, 3) Resilient eco-systems, 4) Communities and regions, 5) Global development, and 6) Good government. Regarding the overlap of business competition and sustainability, the most relevant is Chap. 2. The business model includes 2.1) business institutions (the simplification of business conduct, support for small and medium-sized enterprises (SMEs) and start-ups), 2.2) innovations, 2.3) source management, 2.4) infrastructure and 2.5) public finances. In 2018, the Czech Government approved the Implementation Plan for Czech Strategic Framework 2030.¹⁹ Nevertheless, even the provisions of this advanced document remain rather abstract and not suitable for direct incorporation into legislative endeavors and acts.

This leads to a burning question of whether Czech law, in particular statutes, which are valid and applicable in 2022, includes a clear reference to sustainability and in particular to the impact of sustainability on competition law. A simple legislative research project using the keyword “sustainability” indicates the following statutes and their provisions:

- Act Nr. 134/2006 Coll., on public procurement – § 129 “sustainability” can be a criterion for quality selection.
- Act Nr. 256/2004 Coll., on doing business on the capital market – § 12 management of risks – “sustainability” of business models.
- Act Nr. 372/2011 Coll., on providing health services – § 73 “sustainability” of financing health care.
- Act Nr. 29/21/1992 Coll., on banks – footnote references to the Taxonomy Regulation.
- Act Nr. 240/2013 Coll., on investment companies and funds – § 220 reference to the Taxonomy Regulation.
- Act Nr. 353/2003 Coll., on consumption tax – § 3 definition and tax exemptions in relation to “sustainable” oil.

¹⁷ Ministerstvo pro místní rozvoj (Regional development Ministry). Základní dokumenty (Fundamental documents), available at <https://www.mmr.cz/cs/ministerstvo/regionalni-rozvoj/informace,-aktuality,-seminare,-pracovni-skupiny/psur/uvodni-informace-o-udrzitelnem-rozvoji/zakladni-dokumenty> Accessed 1 November 2022.

¹⁸ CR2030. Dokumenty ke stažení (Documents to be downloaded), available at <https://www.cr2030.cz/strategie/dokumenty-ke-stazeni/>. Accessed 1 November 2022.

¹⁹ CR2030. Dokumenty ke stažení (Documents to be downloaded), available at <https://www.cr2030.cz/strategie/dokumenty-ke-stazeni/>. Accessed 1 November 2022.

- Act Nr. 201/2012 Coll., on the protection of air – § 16 et foll. criteria for sustainable biofuel.
- Act Nr.406/2000 Coll., on the management of energy – § 4 territorial energetic concept and the competitiveness and sustainable use of energy.
- Act Nr. 541/2022 Coll., on waste management – § 3 hierarchy of principles – feasibility and “sustainability”.
- Act Nr. 277/2009 Coll., on insurance – § 8 reference to SFDR.
- Act Nr. 165/2012 Coll., on supported sources of energy – § 4 support of biofuel.
- Act Nr. 427/2011 Coll., on additional retirement insurance – footnote references to SFDR and the Taxonomy Regulation.
- Act Nr. 326/2004 Coll., on plant care – § 37 on plant variety and “sustainable” agricultural production.
- Act Nr. 248/2000 Coll., on the support of regional development – § 17e monitoring system and the life cycle of the set period of “sustainability”.
- Act Nr. 115/2001 Coll., on support for the sport – § 6b dotation (financial support) and the requirement of “sustainable” sport activity for 10 years.
- Act Nr. 23/2017 Coll., on rules about budgetary discipline – § 9 budget strategies and “sustainable” public finances.
- Act Nr. 340/2006 Coll., on the activities of institutions of employment retirement insurance – footnote reference to SFDR.

A cursory overview reveals that although sustainability is included in a myriad of Czech statutes, this inclusion is not a demonstration of proactive legislation towards sustainability in general or the competition sphere in particular. Namely, it appears that the Czech Republic merely respects its commitment to its EU membership and, when needed, goes ahead with the transposition of EU law (Directives) or the recognition of directly applicable instruments of EU law (footnote references to Regulations). Arguably, this impact is most noticeable in the sphere of biofuel and financial services.

Nevertheless, in order to double-check the absence of any Czech legislative consideration or any mention of sustainability as a factor or criteria for the assessment of competition cases, both sources of Czech competition law need to be reviewed (public law on the protection of competition via the Czech Competition Protection Act and private law on the protection against unfair competition via the Czech Civil Code). The Czech Competition Protection Act is a rather short statute with only 30 provisions that have a rather technical character and closely follow EU law, especially Article 101 et foll. TFEU, without any hint regarding sustainability. At the same time, it is plausible that the consideration and assessment of monopoly, cartel and similar cases could include the criterion of sustainability since for that, an explicit legislative mandate is not necessary. The Czech Civil Code includes unfair competition regulation in its § 2976–§ 2990, and again, sustainability is not directly or indirectly mentioned, although it is imaginable that misleading advertisement (§ 2977) or misleading labelling (§ 2978) or threat to health and the environment (§ 2987 Czech Civil Code) or other types of behaviour based on the general clause (§ 2976) can violate sustainability; see, e.g., “greenwashing”.

Hence, regarding sustainability, it can be summarized that Czech law is in compliance with EU law but is definitely not proactive in this field. Czech legislation does not include any definition of sustainability, and the role of sustainability in the competition law context is not specifically addressed, but still, it appears feasible. Although there are no specific rules regarding the overlap of sustainability and competition, there is great potential that this could happen based on case law. Therefore, the examination of and engagement with the judgments of the Czech Supreme Court, Czech Supreme Administrative Court and Czech Constitutional Court are indispensable.

5.3 Case Law on the Protection of Competition and the (Lack) of Sustainability Impact

Higher Czech courts have only seldom referred, and in an auxiliary manner, to the concept of sustainability. As a matter of fact, there are very few judgments mentioning sustainability as part of *ratio decidendi*, i.e. if sustainability is mentioned, it is done so rather as a part of *obiter dictum*. These rare decisions, genuinely decided based on, or in, a direct relation to sustainability, include the judgment of the Regional Court in Hradec Králové in 31 Ca 82/2000 from 31 October 2000, where it was stated that there is a public interest in the optimal development of the life of society and the co-operation of all subjects and activities in the territory, with the goal of achieving permanent sustainable development. This decision was about expropriation and land planning, and the key point was that no building activity is to be considered as mere and exclusive self-realization of the builder because building and developing land clearly have a public dimension. Well, undoubtedly, the concept of sustainability was involved but not exactly as understood by the UN and the EU, i.e. as a system of three balanced and not mutually excluding pillars – economic, environmental and social.

There are no cases manifestly founded upon the concept of sustainability. However, at the same time, the three-pillar structure underlines the importance of the interaction and balance of economic, environmental and social concerns and priorities and implies a strong potential that sustainability will be, if not directly then at least indirectly, included or implied in the sphere of competition law case law. Considering the growing importance of sustainability and CSR and their progressively growing inclusion in EU law, it is relevant to review cases from the last 5 years, ideally the very last year, that were decided by top Czech courts and are about either the public law branch of competition law or the private law branch dealing with unfair competition.

Regarding the public law branch of competition law cases, i.e. cases decided based on the Czech Competition Protection Act, the majority of recent cases decided by the highest Czech courts are about public procurement. From them, the following five cases had a strong potential to be centred around the concept of sustainability. First, the Czech Supreme Administrative Court decided in 4 As 214/2020 on 18 March 2021 (*Esox building*) concerning the rejection of an appeal against a

decision condemning bid rigging, i.e. the co-ordination of participation and the readjustment of offers in public procurement. The sued parties tried in vain to bring forth many arguments and mitigation circumstances but none concerning sustainability. The public procurement was for the reconstruction of a sports complex, and undoubtedly, sustainability and CSR concerns could be easily advanced. However, nobody from the large group of involved parties engaged in these concerns. Second, the Czech Supreme Administrative Court decided in *7 As 245/2019* on 13 January 2020 (*Seznam.cz*) regarding free access to information in the context of the application of the Czech Competition Protection Act. Arguably, one of factors that helped the claimant's case to prosper was its engagement in various constitutional values and the balancing of those values. So unlike *4 As 214/2020 Esox building*, in *7 As 245/2019 Seznam.cz*, there is at least a symbolic indirect reference to sustainability. Third, the Czech Supreme Administrative Court decided in *2 As 257/2018* from 20 March 2019 (*AV Media*) about the bid rigging and "fishing expedition" of the Czech Office for the Protection of Competition and rejected all objections by referring to the concept "a document within sight". It needs to be pointed out that this case was decided while taking into consideration the case law of the CJEU, such as *T-289/11*, *T-290/11* & *T-521/11 Deutsche Bahn AG v. Commission* and *T-325/16 České dráhy v. Commission*, and the case law of the European Court of Human Rights (ECtHR), such as *Nr. 97/11 Delta pekářny a. s. v. Czech Republic* from 2 October 2014. Fourth, the Czech Supreme Administrative Court decided in *1 As 80/2018* on 30 January 2019 (*Daich, Hochtief*) against a broad and excessive "fishing expedition". This case is to a certain extent similar to *2 As 257/2018 AV Media* and rests upon a similar case law of the CJEU and ECtHR case law, i.e. *Nr. 97/11 Delta pekářny a. s. v. Czech Republic* and *T-621/16 České dráhy v. Commission* (not *T-325/16 České dráhy v. Commission*). In this case, i.e. *1 As 80/2018 Daich, Hochtief*, the Czech Supreme Administrative Court found that the Czech Office for the Protection of Competition went too far with its "fishing expeditions", i.e. the Czech Supreme Administrative Court rejected the superficial approach and gave a clear indication that, at least in bid rigging, the multi-stakeholder approach, with a consideration of all aspects, is to be employed. Fifth, the Czech Constitutional Court decided in *IV. ÚS 2350/21* from 30 September 2021 (*Baby Direkt*) that there is not *per se* a right on the return of documents, which were not properly collected during a search. Manifestly, despite having potential, these cases either have not included sustainability concerns or have done it in an indirect and rather weak and implied manner. The future will show whether they can still become a precursor of a strong case law showing how sustainability can mitigate the prohibition given or implied by the Czech Competition Protection Act.

Regarding the private law branch of competition law, i.e. protection against unfair competition as stated in the Czech Civil, the majority of the recent cases decided by the highest Czech courts are about labelling, trademarks and domain names. The following five cases had a strong potential to be centered on the concept of sustainability. Firstly, the Czech Supreme Court decided in *23 Cdo 3500/2019* on 29 July 2020 (*Hemostop*) concerning the misleading labelling of alimentary health products for health that a deeper study and analysis of the *bonos mores* (good

manners) of the competition is needed while referring to a number of Regulations and Directives and the case law of the CJEU, such as *C-544/10 Deutsches Weintor eG v. Land Rheinland-Pfalz*. Secondly, the Czech Supreme Court decided in *23 Cdo 1538/2019* on 30 June 2020 (*Betonepox*) about the distinctiveness and association potential in the context of trademarks and referred to the classical CJEU case law, such as *C-251/95, SABEL BV v. Puma AG*, *C-39/97 Canon Kabushiki Kaisha v. Metro-Goldwyn-Mayer Inc.*, *C-342/97 Lloyd Schuhfabrik Meyer & Co. GmbH v. Klijsen Handel BV*. Indeed, *23 Cdo 1538/2019 Betonepox* brought a myriad of concerns and arguments, including constitutional aspects, but they did not involve sustainability, and this despite the involved building products, and ultimately, the court did not find a breach of *bonos mores*. Thirdly, the Czech Supreme Court decided in *23 Cdo 4554/2017* from 25 April 2018 (*NOVASTIM*) about fertilizers and their labelling while heavily referring to the EU law, such as *Regulation 1107/2009*, and clearly supporting the direct application and priority of EU Regulations. In this context and in relation to *bonos mores*, a number of social factors were considered, such as the social and health impacts on vulnerable groups. Fourthly, the Czech Supreme Court decided in *23 Cdo 4931/2017* of 16 April 2018 (*Tecomat*) that the use of the trademark of another person in advertisements, in the context of paid search engine optimization (SEO), is an infringement of the trademark and a violation of the law. Basically, the entire argumentation of this case was based on the case law of the CJEU: *C-236/08 to C-238/08 Google France SARL & Google Inc. v. Louis Vuitton Malletier SA* and *C-323/09 Interflora v. Marks & Spencer*. Fifthly, the Czech Constitutional Court decided in *II. ÚS 1641/19* from 9 January 2020 (*SEND Turist*) about the lack of the qualification excess and declined to reverse the finding of lower courts about the lack of the breach in the reputation. Manifestly, despite having potential, these cases either have not included sustainability concerns or have done so in an indirect and rather weak and implied manner. The consideration of the *bonos mores* appears a very suitable venue to bring the concept of sustainability in the arena of unfair competition decision-making. Similarly, to the decisions about the public law branch of the competition law, the highest Czech courts do heavily rely on the case law of the CJEU. Therefore, it might be assumed that once sustainability becomes an integral part of the decisions of the CJEU, it will progressively come from above down in the Czech case law. Probably, it will first appear as one of the factors for balancing and assessing, and later on will become both a shield and sword in the competition cases. This trend might be supported by the Czech Office for the Protection of Competition, i.e. this Czech Authority can be proactive and endorse the EU law and EU policies as well as Czech policies, see e.g. the Czech Strategic Framework 2030.

5.4 Agencies and Legislature for Sustainability

The agency *par excellence* to address competition and sustainability is the Czech Office for the Protection of Competition. Its www pages reveal a set of policies and guidelines in this direction. For example, the policy “Application of rules for public support in the environmental field” deals in great detail with the environmental pillar of sustainability, especially energy effectiveness and efficiency.²⁰ This policy includes a description of available exemptions while referring to EU law (de minimis, individual notification to the European Commission, regulation of block exemptions, adjustment payment for services in the general economic interest). Examples of other policies involving sustainability are policies on the use of EU structural funds,²¹ the modernization of public procurement rules²² and research and development.²³

In addition, the Czech Office for the Protection of Competition attempts to raise awareness; for example, in May 2022, it organized a public procurement conference with foreign guests, including representatives of the European Commission and supervisory bodies from Slovakia, Austria and Croatia, as well as academia. During this conference, sustainability was discussed and became one of the key points.²⁴

The Czech Republic had the presidency of the Council of the EU from July to December 2022, and this may further accelerate the EU’s impact and the transposition of sustainability into the Czech context, especially in the applicable law. Regarding the Czech Parliament, there are a number of committees that are, or at least should be, actively involved and concerned when it comes to sustainability, such as the *Committee for European matters*, *Committee for social policies*, *Committee for public administration and regional development* and *Committee for environment protection*. Occasionally, members of Parliament issue statements dealing with sustainability, but typically, these endeavors are not systematic and appear more as *ad hoc* declarations.

²⁰ÚOHS. Available at <https://www.uohs.cz/cs/verejna-podpora/vybrane-oblasti-verejne-podpory/aplikace-pravidel-verejne-podpory-v-oblasti-zivotniho-prostredi.html>. Accessed 1 November 2022.

²¹ÚOHS, available at <https://www.uohs.cz/cs/o-uradu/cerpani-ze-strukturalnich-fondu-eu.html>. Accessed 1 November 2022.

²²ÚOHS, available at <https://www.uohs.cz/cs/verejna-podpora/modernizace-pravidel-verejne-podpory.html>. Accessed 1 November 2022.

²³ÚOHS, available at <https://www.uohs.cz/cs/verejna-podpora/vybrane-oblasti-verejne-podpory/aplikace-pravidel-verejne-podpory-v-oblasti-vyzkumu-vyvoje-a-inovaci.html>. Accessed 1 November 2022.

²⁴ÚOHS, available at <https://www.uohs.cz/en/information-centre/press-releases/public-procurement/3321-may-2022-public-procurement-conference.html>. Accessed 1 November 2022.

5.5 Conclusion

The Czech Republic is part of the EU, and Czech law shares the continental law tradition. Czech competition law, both its public law branch protecting against abuse of monopoly and cartels and its private law branch protecting against unfair competition, is in compliance with EU law and meets the standards of the twenty-first century. The UN's and EU's drive for sustainability is recognized in the Czech Republic and has been projected in a myriad of Czech policies and strategic documents since 2004. However, so far, the move towards direct legislation and explicit inclusion in enforceable policies has not occurred, and even Czech case law is rather cautious. As a matter of fact, the top Czech courts – the Czech Supreme Court, the Czech Supreme Administrative Court and especially the Czech Constitutional Court – have, several times, already been invited, or at least allowed, to bring up sustainability in their judicial considerations and to decide cases while considering the concept of sustainability and its practical consequences. Great opportunities in this respect are various balancing test cases addressing public law aspects of competition and *bonos mores* linked to private law aspects of competition (unfair competition). The Czech Constitution and its Charter of fundamental rights and duties, perhaps even the EU, even allow the push for sustainability, along with the highest values. Nevertheless, so far, judges are rather reserved. Considering the impact of current crises, which typically magnify pre-existing trends, and the priorities of the current European Commission, the official entry of the concept of sustainability into the enforceable Czech law should be just a matter of time, perhaps months but definitely not long years.

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