

Regarding the need to establish a branch for the provision of financial services in the Czech Republic

- | | |
|------------|---|
| Regulation | <ul style="list-style-type: none"> • Act No. 21/1992 Coll., on banks, as amended (the “AoB”) • Act No. 256/2004 Coll., on capital market undertakings, as amended (the “AoCMU”) • Act No. 277/2009 Coll., on insurance, as amended (the “AoI”) • Act No 284/2009 Coll., on payments, as amended (the “AoP”) • and others |
| Provisions | <ul style="list-style-type: none"> • Articles 5a(1), 5c(1) and (2) and 5e(1) of the AoB • Articles 3(1)(s) and (t), 21, 22 and 28 of the AoI • Articles 21, 22, 24 and 25 of the AoCMU • Articles 29, 52m and 135a of the AoP • and others (see Appendix 2 hereto) |

Question	When can services be provided based on a notification under the freedom to provide services, without establishing a branch?
----------	--

Answer	<i>I. Introduction</i>
--------	------------------------

The fundamental freedoms on which the internal market of the European Union (the “EU”) is built include the freedom of establishment (Articles 49–55 of the Treaty on the Functioning of the European Union – the “TFEU”) and the freedom to provide services (Articles 56–62 of the TFEU).¹ According to Article 49 of the TFEU, restrictions on the freedom of establishment of nationals or “companies or firms” of a Member State in the territory of another Member State are prohibited. This prohibition also applies to restrictions on the setting-up of agencies, branches or subsidiaries by nationals or “companies or firms” of any Member State established in the territory of any Member State. Establishment within the meaning of this provision of the TFEU is a very wide concept, allowing in general a person to participate, on a stable and continuous basis, in the economic life of a Member State other than their State of origin and to profit therefrom. Under Article 56 of the TFEU, restrictions on freedom to provide services within the Union are prohibited in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended. Articles 49 and 57 of the TFEU and their interpretation in the judgements of the Court of Justice of the European Union mentioned below show that while establishment is in general of a permanent nature and may also be of a short-term nature, freedom to provide services is defined as temporary provision of a service.

This division of the form of pursuit of activities² in the territory of another Member State into establishment and freedom to provide services is reflected in related secondary EU law, specifically the sectoral directives regulating the provision of financial services and the taking up and pursuit of the business of credit institutions, insurance undertakings, reinsurance undertakings, investment firms, management companies, etc., although it does not directly specify a criterion for distinguishing activities pursued under the freedom of establishment from those pursued under the freedom to provide services. This is also reflected in the relevant legal regulations that transpose these directives into Czech law. These legal regulations regulate the pursuit of business in a Member State (the host State) other than the Member State where the financial institution – within the

¹ The advantages of the single European passport apply to the entire European Economic Area, which was established under an international treaty expanding the applicability of the four freedoms of the single EU market (free movement of goods, persons, services and capital) to the territories of Iceland, Liechtenstein and Norway as from 1 January 1994.

² Both Czech and EU law use various terms in this context – “provide services”, “pursue activities”, “pursue business”, “perform activities” – but they all have the same meaning. Generally, we incline here towards “pursue activities”, but a different term may occasionally be used if it appears in the text of the relevant sectoral legal regulation.

meaning of an entity subject to supervision under EU law – has its registered office and where it obtained authorisation to carry on business (the home Member State) under the single European passport, through a branch (freedom of establishment) or on the basis of cross-border provision of services (freedom to provide services).

The distinction between the forms of pursuit of activities is important from various perspectives. For instance, it affects the manner of notification by the financial institution, the scope of the professional care duties which the financial institution must adhere to in the host Member State, “the public interest”, the scope of reporting and the scope of supervision by the competent supervisory authority in the home or host Member State. Whether the financial institution will carry on activities in another Member State and what the scope of these activities will be depends on the business decision made by this financial institution. This decision, or plan, is then reflected in the choice of the form in which it will provide services. If it intends to provide services permanently, it will choose establishment through a branch. If it intends to provide its services only temporarily, it will choose freedom to provide services. In all cases these services are of a gainful nature,³ i.e. their recipient provides consideration for them.

Doubts about whether an activity is pursued in the Czech Republic on a temporary or permanent basis arise mainly in a situation where the financial institution concerned does not settle in the Czech Republic in the form of an organisational unit, but pursues its activities on a permanent basis only through electronic communication or uses independent agents to pursue its activities.

The rules for assessing whether an activity is pursued in the form of establishment or freedom to provide services are harmonised to only a limited extent by EU law and by the standards and recommendations of international supervisory authorities. It is thus possible that a financial market supervisory authority of another Member State will have a different interpretation. Where possible, the Czech National Bank follows EU and international documents in this field and especially the case-law of the Court of Justice of the European Union.⁴

The answer below relates only to the question of whether it is necessary to establish or give notification of a branch in order to pursue activities, or whether it is not necessary and such pursuit of activities is temporary and corresponding notification of the freedom to provide services will be given. The issue of where the service is provided is addressed in a separate CNB answer to the question on the interpretation of the concept of providing financial services in the Czech Republic.⁵

This answer to the question on the distinction between freedom of establishment and freedom to provide services, or the need to establish or give notification of a branch, is primarily intended for

- entities having a registered office in another Member State which are authorised by a competent supervisory authority of the other Member State and wish to provide financial services in the Czech Republic under the single European passport, and
- entities which have a registered office in the Czech Republic and have an authorisation issued by the Czech National Bank which also authorises them to pursue their activities in another Member State under the single

³ The exception is cases where a company was not established to make profit or was established to mutually support its members (e.g. insurance undertakings may pursue activities not only in order to make profit, but also on the basis of reciprocity).

⁴ Commission Interpretative Communication *Freedom to provide services and the interest of the general good in the second banking directive* (SEC(97) 1193 final), Commission Interpretative Communication *Freedom to provide services and the general good in the insurance sector* (2000/C 43/03), Communication from the Commission *The application of conduct of business rules under Article 11 of the Investment Services Directive* (93/22/EEC) (COM/2000/0722 final), C-205/84 EC vs. Germany, C-55/94 Gebhard, C-97/09 Schmelz.

⁵ http://www.cnb.cz/miranda2/export/sites/www.cnb.cz/en/faq/providing_financial_services_in_czech_republic.pdf

European passport (subject to the need to verify the approach in the target State, which may differ).

As a rule, this answer does not apply to entities having a registered office outside the European Economic Area, as in such cases the option of providing services in the Czech Republic in any scope, even temporarily, is usually subject to obtaining authorisation from the Czech National Bank, and one of the conditions for such authorisation is establishment of the entity in the Czech Republic through a branch in the form of an organisational unit.

When assessing specific cases, all the criteria set out below must be taken into consideration. Practical examples of the application of the criteria given in this answer are listed in Annex 1 hereto. A general overview of selected legislative provisions in the field of financial services regulation governing the manner of provision of financial services in the Czech Republic by financial institutions from other Member States is given in Annex 2. If a service provider has doubts about whether its activities in another State display features of establishment or the freedom to provide services, it is advised to give notification and adhere to the same duties that pertain to establishment, i.e. the provision of services through a branch, in order to avoid the risk of carrying on unlawful activities.

II. Criteria for determining establishment – branches

Establishment means participation, on a stable and continuous basis, in the economic life of a Member State other than the financial institution's State of origin (C-97/09 Schmelz). If a financial institution provides its services in the territory of the Czech Republic on a stable and continuous basis, it is exercising the right of establishment. Establishment is thus characterised by some degree of stability and continuity of the provision of the service. Nevertheless, stability does not mean forever, it means continuously, i.e. not sporadically for a single business case, even if it is a long-running one.

“Branch” is defined in numerous financial market directives. Under Directive 2004/39/EC on markets in financial instruments (MiFID), a branch is a place of business other than the head office which is a part of an investment firm, which has no legal personality and which provides investment services and/or some ancillary services; all the places of business set up in the same Member State by an investment firm with headquarters in another Member State shall be regarded as a single branch. Under Regulation (EU) No. 575/2013 of the European Parliament and of the Council on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, a branch is a place of business which forms a legally dependent part of an institution and which carries out directly all or some of the transactions inherent in the business of institutions. Under Directive 2002/83/EC concerning life assurance, a branch is “an agency or branch of an assurance undertaking. Any permanent presence of an undertaking in the territory of a Member State shall be treated in the same way as an agency or branch, even if that presence does not take the form of a branch or agency, but consists merely of an office managed by the undertaking's own staff or by a person who is independent but has permanent authority to act for the undertaking as an agency would.”⁶ Although this is the only definition of a branch to emphasise the element of permanency, there are no reasonable grounds for not applying this element to other financial market sectors in the light of the case-law of the Court of Justice of the European Union and the interpretative communications of the European Commission.

The permanence of the provision of a service must be determined in the light of its duration, frequency, periodicity and continuity (C-55/94 Gebhard). Of

⁶ Directive 2009/138/EC on the taking-up and pursuit of the business of insurance and reinsurance (Solvency II) replacing Directive 2002/83/EC, also mentions the permanent presence of a branch (Article 13 item 13 in conjunction with Article 145(1)).

prime importance is the duration of the provision of the service in the foreign State, the frequency of individual cases, regularity, mutual relations and continuity of activities in the foreign State.⁷ The deciding factor for the assessment, therefore, is not just whether a branch has been set up formally, but rather the actual scope of its activities. A financial institution is not established in the Czech Republic if

- no business (i.e. in particular gainful) activity is pursued,³ or
- the financial service is not provided in the territory of the Czech Republic (see the CNB's separate answer above to the question on the interpretation of what constitutes providing financial services in the Czech Republic).

Nevertheless, if a branch has been formally set up in the Czech Republic as an organisational unit entered in the Companies Register, it can be deemed that the financial institution provides its clients in the Czech Republic with services through this branch unless the circumstances clearly indicate the opposite.

An agency of a financial institution, even if it is a permanent one, will not be a branch within the meaning of the financial market regulations if it does not do business in the Czech Republic and has been set up primarily for advertising purposes. In the case of the banking sector, the agency must be registered with the Czech National Bank under Article 39 of the Act on the Czech National Bank. In other sectors registration is not required, but it may be useful to inform the Czech National Bank in order to prevent any uncertainty arising.

In addition to the typical cases of establishment in the form of a branch as an organisational unit of a financial institution, establishment also includes cases where an electronic device with certain properties is placed in the Czech Republic on a long-term basis or a network of dependent business agents operates in the Czech Republic (see section IV below).

III. Criteria for determining temporary nature in the case of the freedom to provide services

The criterion on temporary nature is based on Article 57 of the TFEU. The time limit for the pursuit of individual activities is not a deciding factor. Activities of both a short-term nature (e.g. a one-off purchase of foreign securities) and a long-term nature (e.g. a contract for management of securities portfolios) can be pursued in this manner. The temporary freedom to provide services is characterised by being transitory in nature. Longer-term pursuit of activities in respect of existing clients thus in itself does not necessarily imply establishment. However, if the financial institution in question expands the group of recipients of the services it provides, this might constitute establishment. As in the case of establishment, the temporary nature of the provision of a service must be determined in the light of its duration, frequency, periodicity and continuity (see section II).

The temporary nature of the pursuit of activities does not mean that the financial institution cannot be equipped with some form of infrastructure (e.g. an office) in order to pursue the activities. The existence of such infrastructure does not constitute the exercise of the right of establishment. Nevertheless, the freedom to provide services may not be abused for the purpose of avoiding the rules which would be applicable to the financial institution if it were established in the Czech Republic (C-205/84 European Commission vs. Germany). In particular, the number of instances of the provision of the service and again the intent to pursue a certain activity continuously will be assessed here.

⁷ See also p. 77 in Pihera, V., Smutný, A., Sýkora, P. *Zákon o bankách. Komentář*. 1st edition. Prague: C. H. Beck, 2011.

IV. Borderline cases

- The use of persons established in another Member State

These are cases where a financial institution pursues activities in another Member State through third parties (e.g. business representatives, intermediaries or other agents) without building any infrastructure or having any employees in that State for the purposes of providing the service. In the light of the case-law of the Court of Justice of the EU,⁸ the activities of a financial institution can be deemed exercise of the freedom of establishment if the person used in the target Member State meets the following conditions:

1. he is subject to the direction and control of the financial institution he represents;
2. he is authorised to commit the financial institution;
3. he has a permanent mandate.

By contrast, an authorisation regarding the freedom to provide services is sufficient for the use of other relatively independent persons who are not linked to the financial institution in this manner and to this extent.

- The use of electric machines

In this case, doubts arise mainly from the fact that the service is provided through an electronic machine without the physical presence of another person as a service provider. Although such cases are rare, they cannot be ruled out in practice, especially in the light of technological progress. If the electronic machine is only an accessory, or equipment, of a branch or agency, it is assessed as being part of such branch or agency. For such a separate electronic machine to be capable of being treated as an establishment, it must generally fulfil the definition of this term ensuing from the aforementioned case-law of the Court of Justice of the European Union referred to in subparagraph 1:

1. it must be established in the host Member State on a long-term basis;
2. it must enable repeated provision of the service to multiple recipients of the financial service;
3. it must provide a financial service;
4. it must contain an element of decision-making relating to the service provided⁹ (especially decision-making on the conclusion of a contract between the financial institution and the service recipient).

As a rule, the other cases where the aforementioned elements of establishment are not fulfilled will involve the freedom to provide services into the host Member State where such independent persons operate or where the electronic machine is located.

V. Exceptions

The rules on the freedom to provide services in the TFEU justify potential restrictions on the freedom to provide services to temporary activity. However, the Czech legal regulations may go beyond the framework of the freedoms under EU law and may grant a freer regime to foreign entities. EU law represents the minimum, not the maximum, standard in this area.

This is the case with non-bank investment firms, reinsurance undertakings, institutions for occupational retirement provision and management companies, in

⁸ C-14/76 De Bloos, C-33/78 Somafer, C-139/80 Blanckaert.

⁹ Commission Interpretative Communication *Freedom to provide services and the interest of the general good in the second banking directive* (SEC(97) 1193 final), p. 13, Commission Interpretative Communication *Freedom to provide services and the general good in the insurance sector* (2000/C 43/03), p. 12.

respect of which a requirement of establishment is not laid down in Czech law, i.e. establishment is not required.

In such cases, not even permanent pursuit of activities on a cross-border basis currently gives rise to a duty to obtain authorisation to do business in the Czech Republic through a branch. Generally, however, the Czech National Bank prefers the existence of a branch even in these cases, as this provides for a much better, or more easily available, protection of clients.

VI. Additional information

A financial institution is entitled to undergo the notification procedure regarding establishment under the single European passport even if it provides services in the relevant territory on a temporary basis only. It may also provide services simultaneously through a branch and in the form of the freedom to provide services directly from its head office (or a branch in another Member State). In this case, however, it must be ensured that the pursued activity will be clearly identifiable as the former or the latter form of service provision.

This answer concerns only the permanence of the pursuit of activities as regards the assessment of the application of public law regulation of providers supervised by the Czech National Bank. It therefore cannot be applied to financial services providers that are not subject to supervision by the Czech National Bank. The application of the private law of a given country and tax issues are entirely different issues and are not covered by this opinion.

Importance of the answer for those to whom it is addressed

This answer expresses the opinion of Czech National Bank staff members. The courts and the Bank Board of the Czech National Bank may be of a different opinion. When performing financial market supervision, however, the Czech National Bank will consider action that is in accordance with the answer – within the bounds of the answer and its assumptions – to be action that is in accordance with the law, unless it is apparent from the circumstances that the answer is not applicable to the case in question.

Contact person: Petr Jiška, petr.jiska@cnb.cz
Date: 4 February 2014

Annex 1

Examples of the practical application of the criteria for assessing the need to establish a branch for the provision of financial services in the Czech Republic

A) Banks

1. The financing of the construction of an apartment complex by a domestic developer in the Czech Republic

A French bank is planning to finance the construction of a large apartment complex by a domestic developer in Prague. It intends to pursue no other activities in the Czech Republic. It does not advertise its services to other potential clients in any way. The construction work will take three years to complete and the loan is scheduled to be repaid over five years.

Solution: Establishment is governed by Article 5c et seq. of the AoB; the same provisions lay down the possibility of carrying on banking activities without establishing a branch provided that the pursuit of such activities “does not have the character of permanent economic activity” (Article 5c(2) of the AoB). The provision of the service by the French bank will be of a one-off and temporary nature even though the loan is of medium-term maturity. As it does not advertise its activities, the conclusion of another loan with a client in the Czech Republic would be only accidental. The French bank may carry on the activity described above without establishing a branch. Therefore, notification pursuant to Article 5i of the AoB (free movement of services) is sufficient.

2. The issuance, distribution and operation of a system of prepaid payment cards in the Czech Republic

A UK bank is planning to introduce prepaid payment cards onto the Czech market using the distribution channels of two domestic companies, one of which would be responsible for offering and advertising the prepaid cards and the other would take care of their distribution and cash reloading. In this context, the UK bank intends to authorise another company (established in Ireland) to perform technical and operating functions connected with the prepaid card programme, including training, IT support, risk management and dealing with complaints. This mandate would not include the sale of services and goods relating to the cards in the Czech Republic. The Irish company would not have any physical presence in the Czech Republic and all local activities in the Czech Republic would be carried on via the two aforementioned domestic companies.

Solution: The envisaged activities of the Irish company do not display the features of financial service provision in the Czech Republic and are therefore not subject to a notification procedure with the Czech National Bank. By contrast, the activities of the UK bank consisting in the continuous offering, issuance and administration of prepaid payment cards in the Czech Republic would mean financial service provision in the Czech Republic and are therefore subject to the notification procedure under the Act on Banks. This would be a case of establishment (i.e. the establishment of a branch under Article 5c(1) of the AoB) and not only the exercise of the freedom to provide services.¹⁰

B) Insurance undertakings

An Italian insurance undertaking specialising in the insurance of boats and ships is planning to extend its activities to the Czech Republic, where, however, it has no employees. To this end, it enters into an open-ended contract on exclusive representation with a domestic insurance intermediary to intermediate the conclusion of insurance policies with the owners of inland vessels registered in the Czech Republic. At the same time, it grants the intermediary a power of attorney to sign such contracts on behalf of the insurance company and to collect premiums from policyholders. The intermediation of such insurance will be governed by instructions from the Austrian branch of the insurance undertaking, to which any contracts concluded are also submitted for checking. The contracts will be concluded mainly at trade fairs where boats and ships are offered for sale, and possibly also in cooperation with their sales representatives.

¹⁰ The pursuit of activities consisting in the issuance and administration of payment instruments and devices for accepting payment instruments is subject to a requirement of notification of payment service activity in accordance with the definition given in Article 4(3) of Directive 2007/64/EC, on payment services in the internal market, as mentioned in item 4 of Annex I of Directive 2013/36/EU, on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC.

Solution: Establishment is governed by Article 28 et seq. of the Aol; the same provisions lay down the possibility of carrying on insurance activities without establishing a branch, “on the basis of the freedom to temporarily provide services” (Article 28(1) of the Aol). In this case, the scope of the insurance activities carried on by the Italian insurance undertaking is not limited in any way (especially in terms of time, but neither by the number of contracts or by the amount of premiums collected). The contract with the insurance intermediary establishes exclusive representation. Moreover, the intermediary is entitled to directly commit the Italian insurance undertaking on the basis of the power of attorney. Last but not least, it is directed and controlled by the Italian insurance undertaking through its Austrian branch. Although it will offer and conclude insurance policies only at a limited number of trade fairs, which are only temporary, the activity is repeated and systematic and expected to be long-term in nature. This implies that the insurance intermediary will satisfy the definition of a branch. The Italian insurance undertaking will thus be required to give notification on the basis of the right to establish a branch pursuant to Article 29 of the Aol.

C) Investment firms

A Cyprus-based investment firm that is not a foreign bank has concluded, on the basis of a one-off information campaign targeted at large financial institutions, several securities management contracts, under which it will manage clients’ securities portfolios for an extended period of time.

Solution: Establishment is governed by Article 24 of the AoCMU and the freedom to provide services is governed by Article 25 of the AoCMU; Article 25 does not contain a temporariness condition and therefore allows permanent pursuit of activity in this form. Therefore, it is up to the Cypriot investment firm to decide whether it will be established in the Czech Republic through a branch or will only give notification under the freedom to provide services without establishing a branch.

D) Management companies

At the request of a Slovak bank, a Maltese management company authorised pursuant to Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) has started to establish standard funds in the Czech Republic according to parameters specified by the bank and intends to distribute them to its clients through branches in Poland and Slovakia. Neither the number nor the duration of the managed standard funds is specified or limited.

Solution: Establishment is governed by Article 338 of the Act on Management Companies and Investment Funds (AoMCIF) and the freedom to provide services is governed by Article 339 of the AoMCIF; Article 339 does not contain a temporariness condition (in connection with the explicit prohibition of the establishment requirement in the Directive) and therefore allows permanent pursuit of activity in this form. Therefore, it is up to the Maltese management company to decide whether it will have a branch in the Czech Republic or only give notification under the freedom to provide services, i.e. without establishing a branch, even though the pursuit of its activities in the Czech Republic is permanent (especially with regard to the number of funds, but also with regard to the duration of service provision).

E) Bureaux de change

During a world championship taking place in a nearby Czech city, a German bureau de change is planning to carry on bureau-de-change activities directly at the championship venue for several weeks. To this end, it has signed a short-term lease for a commercial space (office), where it will carry on its activities; its employee will commute there every day from Germany.

Solution: Only a person authorised by the Czech National Bank may carry on bureau-de-change activities in the Czech Republic.¹¹ One condition for issuing such authorisation is that there must be a registered office, business or organisational unit established in the Czech Republic (Article 6 of the Act on Bureau-de-change Activity). Therefore, free movement of services without establishment is not

¹¹ Bureau-de-change activities are explicitly excluded from the scope of Act No. 222/2009 Coll. on Free Movement of Services, as amended (Article 2(1)(a)).

permitted. The bureau de change must apply for authorisation pursuant to the Act on Bureau-de-change Activity.

F) Payment institutions

An Irish payment institution provides a money remittance service for the transfer of money earned as remuneration for summer jobs or seasonal work by employees established in the Czech Republic. Given the seasonal nature of these activities, opening payment accounts with bank providers of payment services is not attractive for these employees, as the transactions concerned are mostly one-off in nature; moreover, the remuneration is often paid in cash and the bank fees for one-off cash transactions may be unfavourable to the users.

Solution: The Irish payment institution will establish a branch in the Czech Republic or hire agents for the purpose of ensuring easy, fast and safe money transfers. The money will not be transferred outside the payment institution and its branches and agents, except to the recipient of the funds. As this activity is repeated and systematic and expected to be long-term in nature (the seasonal workers return every year), this way of providing payment services in the Czech Republic will be viewed as payment service provision based on the right of establishment. However, it is possible that such activity may be linked with a temporary project, in which case it may also be carried on under the freedom to provide services.

Annex 2

Selected legislative provisions in the field of financial services regulation governing the manner of provision of financial services in the Czech Republic by financial institutions from other Member States

A) Banks and eligible financial institutions

The establishment of foreign banks having their registered office in the territory of another Member State is governed by Article 5a(1) and Article 5c(1) of the AoB. Article 5c(2) of the AoB lays down the possibility for these entities to carry on banking activities without establishing a branch provided that the pursuit of such activities “does not have the character of permanent economic activity”. Therefore, the AoB requires the establishment of a branch for permanent economic activity in the Czech Republic. If a foreign bank does not enjoy the advantages of the single European passport, it cannot carry on its activities in the Czech Republic through a branch without a licence granted by the Czech National Bank pursuant to the AoB (Article 5c(3)). Similar legal rules apply to financial institutions meeting the conditions laid down in Article 5e(1) of the AoB.

B) Credit unions

Credit unions or other similar credit institutions having their registered office in the territory of another Member State are regarded as foreign banks under Czech law and are governed, *mutatis mutandis*, by the rules for foreign banks having their registered office in the territory of another Member State laid down in the AoB (see above).

C) Insurance undertakings

Establishment is governed by Articles 28(1) and 29 of the Aol. Articles 28(1) and 30 of the Aol lay down the possibility of carrying on insurance activities without establishing a branch, “on the basis of the freedom to temporarily provide services”. Additional obligations of an insurance undertakings from another Member State carrying on activities in the Czech Republic are governed, for example, by Article 31 of the Aol.

D) Reinsurance undertakings

Pursuant to Article 46 of the Aol, a reinsurance *undertakings* from another Member State is entitled to carry on reinsurance and related activities in the Czech Republic on the basis of the right to establish its branches or on the basis of the freedom to temporarily provide services to the extent specified in its authorisation to carry on reinsurance activities in its home country. No details on the notification procedure are given in the Aol and Directive 2005/68/EC on reinsurance, which means that reinsurance undertakings from another Member State do not give notification under the Aol if they intend to carry on their activities in the Czech Republic; therefore, it is irrelevant whether they do so through a branch or on the basis of the freedom to provide services.

E) Insurance intermediaries

An insurance intermediary from a Member State other than the Czech Republic is entitled to carry on its activities in the Czech Republic on the basis of the right to establish a branch or on the basis of the freedom to temporarily provide services (Article 9 of the Aoll), where a branch means any permanent presence (Article 3(l) of the Aoll); therefore, an insurance intermediary intending to permanently provide its services in the Czech Republic must give notification of the branch, which will also be entered in a register (Article 12(4) of the Aoll).

F) Independent loss adjusters

Independent loss adjusters from another Member State do not enjoy the advantages of the single European passport. If they want to carry on their activities in the Czech Republic, regardless of whether they want to provide services on a permanent or temporary basis, they must be registered in accordance with Article 10 of the Aoll in a register maintained by the Czech National Bank.

G) Investment firms

Establishment is governed by Article 24 of the AoCMU and the freedom to provide services is governed by Article 25 of the AoCMU; Article 25 does not contain a temporariness condition and therefore allows permanent provision of services in this form.

H) Investment intermediaries

An investment intermediary is an entity providing investment services on the basis of an exemption from Directive 2004/39/EC on markets in financial instruments and does not enjoy the advantages of the single European passport. An investment intermediary must be registered with the Czech National Bank (Article 24(2) of the AoCMU); registration is conditional, among other things, on establishment in the Czech Republic.

I) Central depository

Only an entity that has been granted authorisation by the Czech National Bank (Article 103(1) of the AoCMU) may provide the services of a central depository pursuant to Article 100(1) of the AoCMU in the Czech Republic. However, such authorisation can only be granted to an entity having a registered office in the Czech Republic (Article 103(2)(a) of the AoCMU). A financial institution from another Member State may not provide these services in the Czech Republic through a branch or on the basis of the freedom to provide services.

J) Operators of settlement systems with settlement finality

Only an entity that has been granted authorisation by the Czech National Bank (Article 90(1) of the AoCMU) may be an operator of a settlement system with settlement finality which is governed by Czech law and has obtained a guarantee of settlement finality on the basis of notification to the Czech National Bank. Such authorisation can only be obtained by an entity having a registered office in the Czech Republic (Article 90a(1)(b) of the AoCMU) or an entity having a registered office in the territory of another Member State provided that it also operates a settlement system with settlement finality under the law of the other Member State (Article 90a(2)(b) of the AoCMU). Such a foreign entity need not be established in the Czech Republic and therefore may permanently provide this service with no requirement of establishment through a branch.

K) Organisers of markets in investment instruments

Only an entity that has been granted authorisation by the Czech National Bank may organise a regulated market in investment instruments in the Czech Republic (Article 37 of the AoCMU). However, such authorisation can only be granted to an entity having a registered office in the Czech Republic (Article 38(1)(b) of the AoCMU). A financial institution from another Member State may not provide these services in the Czech Republic through a branch or on the basis of the freedom to provide services.

An entity having a registered office in the Czech Republic or in the territory of another Member State may be the operator of a multilateral trading facility. The operator of a multilateral trading facility having a registered office in another Member State may choose whether to provide its services in the Czech Republic through establishment or on the basis of the freedom to provide services. Article 69(8) of the AoCMU does not contain a temporariness condition and therefore allows permanent provision of services with no requirement of establishment through a branch.

L) Bureaux de change

Only an entity that has been granted authorisation by the Czech National Bank and, among other things, has “a registered office, business or organisational unit in the Czech Republic” (Article 6 of the Act on Bureau-de-change Activity) may carry on bureaux-de-change activity. Exercise of the freedom to provide services without establishment is therefore not permitted.

M) Management companies

A foreign entity entitled to manage a standard fund pursuant to Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) may manage a Czech standard fund with or without establishing a branch in the Czech Republic (Articles 338 and 339 of the AoMCIF). In connection with the explicit prohibition of the establishment requirement in the Directive, Article 339 does not contain a temporariness condition and therefore allows permanent provision of services in this form.

A domestic alternative investment fund (special fund or fund for qualified investors) may be managed, even without the establishment of a branch, by a foreign entity (from the EU or a third country) authorised by the competent supervisory authority of a Member State to manage alternative investment funds pursuant to Directive 2011/61/EU on alternative investment fund managers (AIFMD). A foreign entity having a registered office in a third country which has been granted authorisation by the Czech National Bank pursuant to Article 481 of the AoMCIF may manage a domestic alternative investment fund or an alternative fund having its registered office in another EU Member State. The establishment of a branch in the Czech Republic is not required in such case, but the foreign entity must provide for the activities listed in Article 481(1)(e) of the AoMCIF through an entity established in the Czech Republic.

N) Institutions for occupational retirement provision

Only an institution for occupational retirement provision that has the relevant authorisation in its home Member State and has duly notified the Czech National Bank of its activities pursuant to Articles 4 and 5 of Act No. 340/2006 Coll., on the Activities of Institutions for Occupational Retirement Provision, as amended, may carry on occupational retirement provision activities in the Czech Republic. Articles 4 and 5 of this Act do not contain a temporariness condition and therefore allow permanent pursuit of activities with no requirement of establishment through a branch.

O) Electronic money institutions

The AoP makes no distinction between establishment and the freedom to provide services for the purposes of the notification procedure. An electronic money institution that has authorisation to carry on activities pursuant to Article 46(2) of the AoP granted in its home Member State may also carry on these activities in the Czech Republic following notification pursuant to Article 52n of the AoP. However, the distinction between establishment and the freedom to provide services is relevant from the perspective of supervision (Article 135a(2) of the AoP).

P) Payment institutions

The AoP makes no distinction between establishment and the freedom to provide services for the purposes of the notification procedure. A payment institution that has authorisation to carry on activities pursuant to Article 8 of the AoP in its home Member State may also carry on payment services in the Czech Republic following notification pursuant to Article 31 of the AoP. However, the distinction between establishment and the freedom to provide services is relevant from the perspective of supervision (Article 135a(2) of the AoP).

R) Operator of a payment system with settlement finality

Only an entity that has been granted authorisation by the Czech National Bank may be an operator of a payment system with settlement finality which is governed by Czech law and has obtained a guarantee of settlement finality on the basis of notification to the Czech National Bank. Such authorisation can only be obtained by an entity having a registered office in the Czech Republic or an entity having a registered office in the territory of another Member State provided that it also operates a payment system with settlement finality under the law of the other Member State. Such a foreign entity need not be established in the Czech Republic (Article 71 of the AoP) and therefore may permanently provide this service with no requirement of establishment through a branch.