



Strasbourg, 13 June 2008

Public
Greco RC-II (2008) 3E

Second Evaluation Round

Compliance Report on the Czech Republic

Adopted by GRECO
at its 38th Plenary Meeting
(Strasbourg, 9-13 June 2008)

I. INTRODUCTION

1. GRECO adopted the Second Round Evaluation Report on the Czech Republic at its 28th Plenary Meeting (9-12 May 2006). This report (Greco Eval II Rep (2005) 7E) was made public by GRECO, following authorisation by the authorities of the Czech Republic, on 14 June 2006.
2. In accordance with Rule 30.2 of GRECO's Rules of Procedure, the authorities of the Czech Republic submitted their Situation Report (RS-Report) on the measures taken to implement the recommendations on 30 November 2007 and provided additional information on 26 February 2008.
3. At its 26th Plenary Meeting (5-9 December 2005), GRECO selected, in accordance with Rule 31.1 of its Rules of Procedure, Finland and Slovak Republic to appoint Rapporteurs for the compliance procedure. The Rapporteurs appointed were Ms Helinä LEHTINEN on behalf of Finland and Mr Andrej LAZAR on behalf of the Slovak Republic. The Rapporteurs were assisted by the GRECO Secretariat in drafting the Compliance Report (RC-Report).
4. The objective of the RC-Report is to assess the measures taken by the authorities of the Czech Republic to comply with the recommendations contained in the Evaluation Report.

II. ANALYSIS

5. It was recalled that GRECO in its Evaluation Report addressed twelve recommendations to the Czech Republic. Compliance with these recommendations is dealt with below.

Recommendation i.

6. *GRECO recommended i) to review the current system of interim measures (in particular with regard to seizure) and forfeiture of assets and property to ensure that a comprehensive regime is in place for depriving offenders of the benefits of their crimes and ii) to consider simplifying the provisions on forfeiture, specifically with regard to ascertaining the benefits derived from crime (in particular as regards corruption-related offences).*
7. The authorities of the Czech Republic report that, in July 2006, a law (Act No. 253/2006 Coll.) amending the Criminal Code (Act No. 140/1961 Coll.) and Code of Criminal Procedure entered into force. This Amendment Act was adopted in connection with the transposition of the EU Council Framework Decision 2003/577/JHA of July 2003 and aimed to address certain imperfections in the law. It has introduced (amended) provisions to the Criminal Code and Code of Criminal Procedure on *inter alia* mandatory forfeiture of proceeds of crime¹, seizure and forfeiture of assets of equivalent value and third party forfeiture, prevention of the transfer or disposal of assets to be seized, seizure/freezing of money held on a bank account, seizure of immovable assets and other property value, management of seized assets and international requests for assistance in seizing instrumentalities and proceeds of crime. Furthermore, a new Criminal Code is currently being discussed in second reading by parliament. In the process of drafting this Code, the legal provisions on forfeiture and interim measures currently in force have

¹ To this end Section 55, paragraph 3, of the Criminal Code provides: "if the offender unlawfully or in violation of a special law possesses a thing or other property value stipulated under paragraph 1 and 2 [i.e. proceeds and instrumentalities of crime] in relation to which a forfeiture of a thing or other property value may be imposed, the court shall always impose such a sanction as well". The Czech authorities indicate that as the benefit of a crime is always considered to be 'unlawful possession' within the meaning of this paragraph, forfeiture of proceeds of crime is mandatory.

been reviewed. In this context consideration was given to reversing the burden of proof in respect of assets held by defendants. However, it was ultimately decided that the possibility – as is provided by the Criminal Code currently in force, and also included in draft Criminal Code, as discussed by parliament – to impose a so-called ‘monetary punishment’ of up to five million CZK / approximately €200,000, in addition to value forfeiture and/or third party forfeiture (for example, in cases in which the exact ‘things’ or assets, which are the proceeds of crime, cannot be identified, no longer exist or are not in the possession of the offender), is adequate in depriving offenders of the benefits of their crime.

8. GRECO takes note of the information provided. As regards the first part of the recommendation, it appears that perceived inconsistencies between interim measures and forfeiture have largely been addressed with the entry into force of the amendments to the Criminal Code and Criminal Procedure Code and that the regime for depriving offenders of the benefits of their crimes is now more comprehensive than it was at the time of the Second Round Evaluation Visit (which as regards value confiscation/forfeiture and third party confiscation/forfeiture, seizure/freezing of money deposited or interest received on a bank account after a seizing order is made, as well as immovable assets and the management of these assets will be analysed in further detail below). GRECO welcomes this. In addition, it would seem that a review of the system has taken place in the process of drafting the new Criminal Code, currently discussed in parliament. While it is not unequivocally clear if all GRECO’s concerns regarding the system of forfeiture, as expressed in its Evaluation Report, have been taken into account, GRECO accepts that due consideration has been given to simplifying the provisions on forfeiture and certainly hopes that the provisions on forfeiture in the draft Criminal Code will be less cumbersome to apply in practice.
9. GRECO concludes that recommendation i has dealt with in a satisfactory manner.

Recommendation ii.

10. *GRECO recommended to amend the legislation as foreseen, to (i) allow for the seizing/freezing of dematerialised securities, income and benefits from illegal assets / property, money deposited or interest received in a bank account after a seizing order is made, and immovable assets and (ii) extend the application of Act No. 279/2003 concerning the management of seized assets to all assets seized on the basis of the Code of Criminal Procedure.*
11. The authorities of the Czech Republic report - as regards the first part of the recommendation - on the abovementioned Amendment Act (Act No. 253/2006 Coll.), which came into force in July 2006. This law amended Sections 79a to 79f of the Code of Criminal Procedure, providing for the possibility to seize income and benefits from illegal assets, money deposited in a bank account after a seizing order is made and interest collected thereon as well as immovable assets. As regards dematerialised securities, the Code of Criminal Procedure has not been amended: the authorities have reportedly not come across any problems in the seizure of dematerialised securities and it has therefore been decided not to amend the provisions on shares and registered securities.
12. As regards the second part of the recommendation, the Czech authorities report that the aforementioned Amendment Act (Act No. 253/2006 Coll.) also extends the applicability of Act No. 279/2003 Coll. on the management of ‘things’ and other property value to all assets (‘things’ and other property value) seized under the amended provision of the Code of Criminal Procedure and designates the authorities – the law enforcement authority itself, the Office of Government Representation in Property Affairs or a court executor – responsible for managing seized assets

and securing immovable seized assets (providing *inter alia* that if the designated authorities are not equipped to manage the seized assets in question they can authorise another entity to do so and that in extreme cases property can be sold, if its value would otherwise decrease significantly). With the entry into force of the amendments to the Code of Criminal Procedure, Act No. 279/2003 Coll. on the management of 'things' and other property value now applies to all assets seized for the purpose of criminal proceedings, with the exception of assets used as evidence in court (which are in the custody of the court in question).

13. GRECO takes note of the information provided. It commends the Czech authorities for the swift enactment of the amendments to the Code of Criminal Procedure to address the deficiencies in the procedures for seizing and managing assets, as highlighted in the Second Round Evaluation Report. Although this report also mentions perceived difficulties in the seizing of dematerialised securities, GRECO trusts that this issue has been sufficiently examined in the process leading up to the adoption of the amendments to the Code of Criminal Procedure to allow for the conclusion that this is not a problem in practice.
14. GRECO concludes that recommendation ii has been implemented satisfactorily.

Recommendation iii.

15. *GRECO recommended to introduce legal provisions allowing i) the seizure and forfeiture of assets of an equivalent value to the proceeds of corruption and ii) the effective seizure and forfeiture of assets and property improperly transferred to third parties (including legal persons).*
16. The authorities of the Czech Republic report, as regards the first part of the recommendation, that – as already mentioned above – in July 2006, Amendment Act No. 253/2006 entered into force. This act amended the Code of Criminal Procedure and Criminal Code, introducing provisions in Section 79f of the Code of Criminal Procedure and Section 56a of the Criminal Code regulating, respectively, the “securing of substitute values”² and “forfeiture of an equivalent value”³. In addition, pursuant to the new Section 73a of the Criminal Code it is also possible to forfeit assets of equivalent value to the assets which are to be forfeited under the so-called ‘protective measure’ of Section 73, which provides for the possibility to forfeit “a ‘thing’ or other property value” belonging to a person who cannot be convicted.
17. As regards the second part of the recommendation, the authorities of the Czech Republic report that the aforementioned Amendment Act also provided for the mandatory forfeiture of ‘things’ and other property value transferred to a third party in bad faith. To this end, the abovementioned provision on the so-called ‘protective measure’ was amended to provide that “a ‘thing’ or other

² Section 79f of the Criminal Procedure Code now provides:

“If it is not possible to obtain delivery or seizure of a “thing” (Section 78 and 79) or to secure funds in an account (Section 79a and Section 79b), secure booked securities (Section 79c), immovable asset (Section 79d) or other property value (Section 79e) which are intended for the commission of a criminal offence or have been used for its commission, or are the proceeds of criminal activity, a substitute value corresponding, albeit only partly, to their value can be secured in their place; the procedure is similar to that under the applicable provisions regulating delivery or securing of such value (Sections 78 to 79e).”

³ Section 56a of the Criminal Code now provides:

“(1) If the offender destroys, damages, alienates, makes inapplicable or exploits, especially utilizes the “thing” or other property value, which could be forfeited by the court under section 55, before imposition of a sentence of forfeiture of a “thing” or other property value, the court shall impose forfeiture of an equivalent value to the amount which corresponds the value of such “thing” or other property value; value of a “thing” or other property value which could be forfeited by the court shall be determined by the court based on an expert report or professional expertise.

(2) – (3) (...).”

property value” which cannot be forfeited under the normal procedures of Section 55 can – pursuant to Section 73, paragraphs 1(d) and 2 – nevertheless be forfeited “if it was obtained, in part or in whole, by another person than the perpetrator, for another thing or property value obtained by the perpetrator as a result of or reward for an offence (...) if the value for the forfeited thing or other property value is not insignificant in relation to the value of the thing or property value obtained by the perpetrator” or if the “perpetrator or another person unlawfully or contrary to a special law possesses the thing or other property value referred to in paragraph 1, in relation to which it is impossible to impose confiscation of a thing or other property value”. Assets (“a thing or other property value”) can be forfeited on the basis of this article, regardless of whether the person possessing the assets is a legal or natural person.

18. GRECO takes note of the information provided. It welcomes the amendments made to the Criminal Code and Code of Criminal Procedure, providing for the seizure and forfeiture of assets of equivalent value as well as third party forfeiture. GRECO recalls that already in its Evaluation Report (paragraph 32) it mentioned the possibility of using the protective measure of Section 73 to forfeit assets held by third parties, but also noted that there were reportedly some difficulties in applying this protective measure in practice. Although GRECO finds that the amendments to Section 73 do not excel in clarity in terms of their applicability to assets held by third parties (in particular, in situations in which the offender has not received anything in return) and it has not received any information on whether the difficulties in applying this section in practice are no longer prevalent, it accepts that legal provisions on this issue have been introduced as required by the recommendation.
19. GRECO concludes that recommendation iii has implemented satisfactorily.

Recommendation iv.

20. *GRECO recommended to consider introducing explicit provisions in the Criminal Code stipulating that money laundering prosecutions can be brought in the Czech Republic where the predicate offence, including corruption, is committed abroad.*
21. The authorities of the Czech Republic report that an amendment to the Criminal Code addressing this recommendation is expected to enter into force in July 2008. This amendment (Act No. 122/2008 Coll.) stipulates that money laundering offences can be prosecuted in the Czech Republic when the predicate offence was committed abroad, by providing that a person who “conceals the origin or otherwise attempts to significantly obstruct or make impossible the determination of the origin of a ‘thing’ or other property value obtained through a criminal offence committed in the Czech Republic or abroad, or as a reward for such offence”, can be sentenced to four years’ imprisonment, a fine or forfeiture of a ‘thing’ or other property value or prohibition of activity. Upon adoption by the Senate, this amendment to the Criminal Code is expected to enter into force on 1 July 2008.
22. GRECO takes note of the information provided and considers that, by adopting the aforementioned amendment to the Criminal Code, the Czech authorities have gone beyond merely considering the introduction of an explicit provision in the Criminal Code stipulating that money laundering prosecutions can be brought in the Czech Republic where the predicate offence is committed abroad. GRECO welcomes this and hopes that the proposed amendment will enter into force as foreseen.
23. GRECO concludes that recommendation iv has been implemented satisfactorily.

Recommendation v.

24. *GRECO recommended to encourage law enforcement officers to make full use of investigative techniques in appropriate cases and to provide, to this end, further training to law enforcement officers in conducting modern financial investigations, particularly with regard to corruption.*
25. The authorities of the Czech Republic report that, in May 2008, an amendment (Act No. 135/2008) to the Code of Criminal Procedure entered into force. This amendment provides, *inter alia*, that undercover agents can be used in investigations into exceptionally serious intentional crimes, crimes committed for the benefit of a criminal conspiracy, passive bribery pursuant to Section 160 of the Criminal Code, active bribery pursuant to Section 161 of the Criminal Code, trading in influence pursuant to Section 162 of the Criminal Code or any other intentional crime which is to be prosecuted pursuant to an international treaty binding upon the Czech Republic (which would, for example, include the Criminal Law Convention on Corruption).
26. Furthermore, the Czech authorities report that, in July 2006, the Security Police Department in co-operation with the Police of the Czech Republic started a project "The reinforcement of capacity of the police of the Czech Republic to fight corruption and economic crime". An amount of €1.9 million has been earmarked for this project, which is scheduled to run until July 2008, of which €1 million has been reserved for improving the equipment of the police force. In the context of this project a Twinning advisor (from the Criminal Office of Baden-Württemberg) has joined the Unit for the Detection of Corruption and Financial Crime (ÚOKFK) and various courses have been provided to train the police in the use of modern investigative techniques in corruption investigations. In addition to training provided in the context of this project, police officers receive, throughout their career, training by the Police Academy on, *inter alia*, investigative techniques, use of intelligence and investigation of corruption offences.
27. GRECO takes note of the information provided. GRECO welcomes the project directed at enhancing the capacity of the police to fight corruption and economic crime and considers that this initiative, including the training organised, as well as the amendments to the Criminal Procedure Code as regards – amongst others – the use of undercover agents, will provide further impetus to law enforcement officers to use the available investigative techniques in appropriate cases and to make concerted efforts to 'follow the money' in proceeds-generating offences.
28. GRECO concludes that recommendation v has been implemented satisfactorily.

Recommendation vi.

29. *GRECO recommended to establish uniform regulations addressing actual and potential conflicts of interest, which should include standards on (i) receiving gifts, (ii) declarations of interests, (iii) engaging in ancillary activities, (iv) situations where civil servants and local/regional officials move to the private sector; these regulations should also provide for appropriate mechanisms which would allow for the enforcement of the aforementioned standards.*
30. The authorities of the Czech Republic report that, in January 2007, Act No. 159/2006 Coll. on Conflicts of Interest entered into force. This law is applicable to 23 categories of officials⁴ (including members of parliament, members of the government, judges, prosecutors and other

⁴ In June 2008, the Chamber of Deputies of Parliament adopted amendments to Act No. 159.2006 on Conflicts of Interest, providing that the law is not applicable to judges, prosecutors and directors of the security services. These amendments are expected to enter into force at the end of June 2008.

high-ranking public officials) and requires these public officials to perform their functions in such a way that conflicts between their personal interests⁵ and the interests they should promote and protect by virtue of their function are avoided.⁶

31. As regards declarations of interests and gifts, the public officials in question are required to declare any personal interests in matters in which they are involved in the course of their function and are to submit annual declarations on assets which they (or their spouses) have acquired in the course of exercising their function.⁷
32. As regards ancillary activities, the law provides that – with certain exceptions – the public officials in question may not engage in business activities or other paid employment, be a member of the statutory body, management, supervisory or auditing body of a business – unless provided for by special law or related to the management of his/her own property – or be employed in another capacity.⁸
33. As regards revolving doors/'pantouflage', Section 6 of the abovementioned Act No. 159/2006 Coll. provides that the public officials to which the law applies may not, in the period of one year after leaving their position, become an associate or be employed by a business (whether a natural or legal person), if that business was contracted in the last three years in "excess public procurement" (public procurement exceeding the limits set by the law on public procurement, Act No. 137/2006 Coll.) with the state or local/regional self-governing unit and if the public official concerned was the one who decided on the contract.
34. As regards enforcement of these provisions, Act No. 159/2006 Coll. on Conflicts of Interests prescribes the imposition of an administrative fine ranging from 30,000 CZK (approximately €1,200) to 500,000 CZK (approximately €20,000)⁹ for violations of its provisions, including for late

⁵ Personal interest is defined as "any interest which gives the public official any advantage or prevents the decrease of his property or other benefit."

⁶ To this end, Section 3 of the Act provides that, in case of a conflict of interest, the public official may not give priority to his personal interest over the public interest that s/he is bound to promote and defend. The law further stipulates that the public official may not hinder the public interest by, *inter alia*, making advantage from his/her position, authority or any information gathered during the exercise of his/her function for acquiring property or other benefits and advantages for him/herself or another person. In addition, the law foresees in certain incompatibilities of functions, by providing that a parliamentarian cannot be appointed to or have a decision-making function in a Ministry or other administrative authority, prosecution service, court, the security forces, army, Supreme Auditing Office, Office of the President, Office of the Chamber of Deputies, Office of the Senate, the Land Fund or other State Funds and the Office of the Ombudsman.

⁷ These declarations are to contain information on, *inter alia*, their property and other rights to immovable assets (including their value and the way in which they were acquired), movable assets if the value of these assets acquired in a year exceeds 500,000 CZK (approximately €20,000) and stocks and shares exceeding a certain value (i.e. more than 50,000 CZK / approximately €2,000 in case of one issuing entity or more than 100,000 CZK / approximately €4,000) in case of more than one issuing entity). The public officials concerned are also required to declare any monetary income and other property advantages, including gifts and other advantages, acquired during the exercise of his/her function which are not part of his/her salary if this exceeds 100,000 CZK (€4,000) a year - with the exception of gifts with a value of less than 10,000 CZK (€400) - as well as unsettled loans and other obligations if these amount to more than 100,000 CZK (€4,000).

⁸ The law obliges the officials to whom it applies to declare in writing, upon taking office, any ancillary activities s/he engages in, including business activities, membership of a statutory, supervisory or auditing body of a company or any other employment or similar relationship. Ancillary activities are to be declared annually; prohibited ancillary activities are to be terminated without delay, but no later than 30 days after taking office.

⁹ Amendments to the law were adopted by the Chamber of Deputies of Parliament in June 2008, providing that the maximum administrative fine to be imposed for violations of the act is to be lowered to 50,000 CZK (approximately €2,000). Upon entry into force of these amendments, these fines will no longer be imposed by the administrative court, but by the municipality in which the official concerned has his/her permanent residence. The amendments are expected to enter into force at the end of June 2008.

and non-submission of declarations of interests, assets and activities, provision of false information therein, and engagement in incompatible functions or activities.

35. The Czech authorities also report that Act No. 159/2006 Coll. on Conflicts of Interest is only applicable to the aforementioned categories of officials and not to civil servants and local/regional officials in general. Conflicts of interest involving civil servants (i.e. administrators in the state administration) would be regulated by the Public Service Act (Act No. 218/2002 Coll.), as adopted by Parliament in 2002. However, the entry into force of this act has been postponed (for the third time) to January 2009. A new law on officials in public administration is being drafted, which will apply to all public officials (at central, local and regional level) and will include provisions on conflicts of interest for these officials.
36. Conflicts of interest for both civil servants and local/regional officials are currently regulated by the new Labour Code (Act No. 262/2006 Coll.), which entered into force on 1 January 2007. This act includes certain conflicts of interest clauses specifically applicable to officials employed by the state (including the prosecution service, courts, police and army) and local/regional authorities and provides *inter alia* (in Section 303, paragraph 2) that the aforementioned officials are required to act and decide impartially, preserve the confidentiality of official information, cannot accept gifts or other benefits in connection with their duties and should refrain from any conduct which could lead to a conflict between the public interest and their private interests. In addition, employees cannot be managers or members of a supervisory body of a company, without prior written consent of their employer. Moreover, Section 310 of this act contains a so-called non-competition clause, which provides that the employer may conclude a contract with the public official (whether civil servant or other), in which the public official commits himself to refrain from certain paid activities similar to the activities which his/her former employer is engaged in, over a certain period of time (max. 1 year).
37. GRECO takes note of the information provided. GRECO welcomes the entry into force of Act No. 159/2006 Coll. on Conflicts of Interest. It notes however that the provision on revolving doors/'pantouflage' is very narrow (in that it is limited to procurement contracts of a large value and only if decided on by the public official concerned). Apart from the provision on revolving doors/'pantouflage', the law appears to provide by and large adequate provisions on conflicts of interest in general, gifts, declarations of interests and assets and ancillary activities for certain categories of high-ranking officials. However, as becomes also clear from the Second Round Evaluation Report, the recommendation requires uniform regulations on conflicts of interest not only for these categories of relatively high-ranking officials, but for civil servants (i.e. administrators in the state administration) and local/regional officials in general. Although the new Labour Code (Act No. 262/2006 Coll.) is applicable to all civil servants and local/regional officials, this law includes only very general provisions on gifts, lacks a meaningful regulation of declarations of interests and ancillary activities (other than managing or supervising a company) and, as before under the old Labour Code, contains a discretionary contract clause of extremely narrow scope that compensates a departing employee if s/he agrees not to engage in "competitive" employment for a limited period of time. As regards the last part of the recommendation, while it would seem that sanctions are provided for to enforce the standards of Act No. 159/2006 Coll. on Conflicts of Interest, GRECO was not informed of the existence of any mechanism which would allow for the enforcement of the conflict of interest standards contained in the new Labour Code (Act No. 262/2006 Coll.).
38. GRECO concludes that recommendation vi has been partly implemented.

Recommendation vii.

39. *GRECO recommended to enact and implement laws that require the competitive hiring of civil servants and local/regional officials, at all levels of public administration.*
40. The authorities of the Czech Republic report that the hiring of civil servants (administrators employed in the state administration) and local / regional officials is governed by the new Labour Code (Act No. 262/2006) and the Act on Officials of Local Self-Government Units (Act No. 312/2002). However, the new Labour Code does not contain any provisions on the competitive hiring of civil servants; the Act on Officials of Local Self-Government, on the other hand, prescribes the procedures¹⁰ to be followed for the (competitive) hiring of senior managers and persons employed on a contract of an indefinite period of time in a local or regional public entity. Furthermore, the Public Service Act (Act No. 218/2002) as adopted by the Parliament in 2002, which – after having been postponed for the third time – is now scheduled to enter into force on 1 January 2009, contains provisions on the hiring of civil servants and local/regional officials. However, a new draft law on officials in public administration is being prepared to replace the aforementioned Public Service Act (Act No. 218/2002) and Act on Officials of Local Self-Government Units (Act No. 312/2002). This new law will include requirements for the competitive hiring of employees.
41. GRECO takes note of the information provided. It recalls that it already noted in its Evaluation Report that the provisions on competitive hiring in the Act on Officials of Local Self-Government Units were reportedly not always applied in practice. In the absence of any further information on how it is ensured that these provisions are enacted and in light of the information that the new Labour Code does not contain provisions on the competitive hiring of public officials, GRECO considers that it would appear that no progress has been made in implementing this recommendation since the adoption of the Evaluation Report (also bearing in mind that GRECO already observed, at that time, that it could well be that the Public Service Act would never enter into force). GRECO notes that the implementation of this recommendation is foreseen with the law on officials in public administration, which is currently being prepared. It hopes that this new law will meet with less resistance than the Public Service Act and that the provisions on competitive hiring of civil servants and local/regional officials will be duly enacted.
42. GRECO concludes that recommendation vii has not been implemented.

Recommendation viii.

43. *GRECO recommended to ensure that the legal provisions on access to government information and their implementation are not inappropriately limiting the public's access to information and to consider the provision of training to those officials required to respond to requests for information.*
44. The authorities of the Czech Republic report that, in March 2007, with the adoption of Government Decree No. 221/2007, the Government instructed the Ministry of the Interior to conduct an analysis of the implementation of the Free Access to Information Act (Act No. 106/1999) as regards state, territorial self-governing units and other bodies linked to the state or regional/local administration. The outcome of this analysis was approved by the Government in January 2008. Pursuant to Government Decree 4/2008, the Minister of the Interior was tasked

¹⁰ Sections 7 to 9 of the Act on Officials of Local Self-Government Units (Act No. 312/2002 Coll.) *inter alia* prescribes that the relevant post is to be advertised, a Competitive Hiring Committee comprising three persons is to be set up, which is to review the application of the candidate for the post and hold interviews with persons eligible for the post.

with preparing draft amendments of the Information Act based on this outcome, which should provide for:

- an exact specification of the entities obliged to provide information, to include commercial companies and other legal persons of private law fully owned by the state or territorial self-governing units or controlled by them, and to provide for a procedure in case these entities refuse requests for information;
- amendments to the provisions on the procedures for requesting information, clarifying certain terms and bringing it in line with the Administrative Procedure Act (No. 500/2004 Coll.), to ensure that the provisions of the Administrative Procedure Act are, to the widest extent, applicable to requests for information and that the law on Free Access to Information is a complement thereto;
- further specification of possible reasons for refusing requests;
- the introduction of measures against the intentional violation of the Free Access to Information Act by the entities obliged to give out information and against obvious abuse or obstructive use of this act by applicants.

A working group has been set up, comprising not only representatives of entities falling under the scope of the Free Access to Information Act but also representatives of non-governmental organisations, which is to prepare the relevant amendments to the Free Access to Information Act. At a later stage, the amendments proposed by the working group will be subject to a public consultation procedure (via the web-site of the Ministry of the Interior).

45. Furthermore, Government Decree No. 4/2008 explicitly requires all ministers and heads of other central administrative authorities to provide support¹¹ to regional and local authorities in providing information under the Free Access to Information Act related to the competencies of their ministries and central authorities. In light of this Decree, the Ministry of the Interior organised a pilot seminar, in May 2008, for officials of local and regional authorities on the Free Access to Information Act, which was also attended by officials from other ministries. In light of the success of this pilot seminar, other seminars are planned on a more regular basis in future, focusing on different aspects of the act and the procedures for providing information. It is proposed that representatives of non-governmental organisations specialised in access to information will also be invited, so that these seminars can serve as a platform or exchange of views and good practice. Finally, the Ministry of the Interior, in co-operation with the University of International and Public Relations (*Vysoká škola mezinárodních a veřejných vztahů*), will organise training courses for officials of local and regional authorities, as well as central level, in the field of access to information.
46. GRECO takes note of the information provided. As regards the first part of the recommendation, GRECO commends the Czech authorities for conducting what appears to be a thorough analysis of the deficiencies of the Free Access to Information Act in practice, and for the preparation of amendments to this law to address these issues. As regards the second part of the recommendation, GRECO welcomes that the Czech authorities appear to have gone beyond merely giving consideration to the provision of training to officials required to respond to requests for information.
47. GRECO concludes that recommendation viii has been implemented satisfactorily.

¹¹ This support takes the form of guidelines and recommendations on specific issues related to the Free Access to Information Act and answers to questions from regional and local authorities.

Recommendation ix.

48. *GRECO recommended to introduce clear rules requiring civil servants and local/regional officials to report suspicions of corruption and to ensure that civil servants and local/regional officials who report suspicions of corruption in public administration in good faith are adequately protected from retaliation.*
49. The authorities of the Czech Republic report that Article 168 of the Criminal Code requires citizens – including public officials – to report suspicions of commission of a criminal offence. The authorities also state that provisions of the “Code of Ethics of Public Administration” encourage employees in public administration to report corruption to a superior or law enforcement official. In addition, amendments to the Criminal Code, which will – *inter alia* – stipulate that anyone who has knowledge of the commission of a bribery offence but fails to report this without delay to law enforcement authorities can be sentenced to three years’ imprisonment, are being discussed in parliament and are expected to enter into force in January 2009. Furthermore, specifically for officials employed by the tax authorities, Act No. 122/2008 amending the Criminal Code is expected to enter into force in July 2008. One of the provisions of this amendment act explicitly requires tax officials to report on any suspicions of corruption they come across in their work to the appropriate authorities. This provision was included in the law to address the observation GRECO had made on this issue in its Evaluation Report (paragraph 84).
50. As regards whistleblowers, protection of employees is said to be provided for by labour law. As mentioned before, a new Labour Code (Act No. 262/2006 Coll.) was adopted in 2006, repealing the old Labour Code (Act No. 65/1965 Coll.). However, no specific provisions on the protection of whistleblowers were included in this law.
51. Finally, as indicated above (see under recommendation vii), a new draft law on officials in public administration is being prepared which will replace both the Public Service Act (Act No. 218/2002, which, as already indicated above, never entered into force) as well as the Act on Officials of Local Self-Government Units (Act No. 312/2002 Coll.). This draft law will include provisions on reporting suspicions of corruption and the protection of whistleblowers. With regard to the latter, the discussion on what form this protection will take is still ongoing.
52. GRECO takes note of the information provided. GRECO recalls that in the Second Round Evaluation Report it already commented on the obligation to report certain offences contained in the Criminal Code, which did not appear to include bribery and the enforcement of which was ambiguous, as well as the non-binding code of ethics and the Labour Code. Nevertheless, GRECO welcomes the draft amendments to the Criminal Code on this issue, in particular the inclusion of a specific obligation for tax officials to report corruption offences, and the new draft law on officials in public administration, which will reportedly also include provisions on the protection of whistleblowers. However, none of the aforementioned drafts have entered into force yet. It can thus not be said that clear rules on reporting of suspicions of corruption and a mechanism to adequately protect officials, who report suspicions of corruption in good faith, have been introduced.
53. GRECO concludes that recommendation ix has been partly implemented.

Recommendation x.

54. *GRECO recommended to establish rules requiring periodic and continuing anti-corruption, ethics and integrity training for all civil servants and local/regional officials.*
55. The authorities of the Czech Republic report that all civil servants and local/regional officials participate in a system of professional training. Anti-corruption measures and ethical behaviour are part of several training programmes, not only in the context of the mandatory entry-level training provided to civil servants and local/regional officials but also in courses provided throughout civil servants' and local/regional officials' careers. These courses comprise accredited programmes of continuous training, including in the context of international projects. Currently a Czech-Finnish project for civil servants and local/regional officials is underway (EU Twinning Project "Reinforcement of Anti-Corruption Measures in the Public Sector"). In addition, the Ministry of the Interior has issued several textbooks on the problems of corruption, in co-operation with academia, which are to be used for ethics training of civil servants.
56. GRECO takes note of the information provided. It welcomes the provision of anti-corruption, ethics and integrity training for civil servants and local/regional officials. However, GRECO recalls that it already mentioned in the Second Round Evaluation Report that although civil servants (i.e. administrators in the state administration) receive mandatory training on ethical conduct upon entry into the civil service, "all subsequent training on ethic, integrity and anti-corruption is voluntary" (paragraph 64). GRECO therefore required the Czech authorities to place civil servants/officials under an obligation to attend anti-corruption, ethics and/or integrity training courses. Although such an obligation would be placed upon all civil servants and local/regional officials, it would need to differentiate between the different categories of officials/civil servants and the different sectors of administration, requiring, for example, those categories of officials/civil servants in high-risk functions or sectors to attend more often and/or more specialised anti-corruption, ethics and integrity training than others. Nothing from the information provided would suggest that such a mandatory training programme, tailor-made to different categories of civil servants/officials, has been devised, nor would it seem that civil servants/officials are under any obligation to attend ethics, integrity and anti-corruption training after the ethics seminar they receive upon entry in the civil service.
57. GRECO concludes that recommendation x has been partly implemented.

Recommendation xi.

58. *GRECO recommended to analyse the impact of the current reform of the registration process for commercial legal persons, with particular emphasis on the reliability of the information that is entered in the Commercial Register, and to ensure that the Registry Courts and other relevant authorities are notified, whenever a leading person in a corporation has been banned by a court from engaging in business activities.*
59. The authorities of the Czech Republic report on the first part of the recommendation that amendments to the Commercial Code (Act No. 513/1991 Coll.) and Law on Infractions (Act No. 200/1990 Coll.) came into force in March 2008 (Act No. 344/2007). These amendments provide for a form of public control on the accuracy of data registered in the Commercial Registry public. Business people are now obliged to inform the Commercial Registry of any changes in the information on their businesses entered in the Registry. In addition, they are required to publish accurate data on their web pages and to update them immediately in case of any change. The

amendments to the Law on Infractions (Act No. 200/1990) provide for new administrative offences, such as a breach of the obligation to use a trade name (as well as the seat of business, entry in the Commercial Registry or the Trade Registry or entry in another register under a special law) on every purchase order, business letter and invoice (or to use his/her name, surname and corporate name in case s/he does not have a trade name on such documents) as well as the aforementioned duty to publish truthful data on the internet, to apply for entry in the register, to change or delete entry in the Commercial Registry and the duty to deposit documents into the Collection of Documents.

60. As regards the second part of the recommendation, the Czech authorities report that Section 77, paragraph 1 (e) of the Internal and Office Rule for District, Regional and High Court (Instruction of the Ministry of Justice No. 505/2001-Org. of 3 December 2001) impose an obligation to inform the authority competent to register commercial persons about a final judgment involving a disqualification sanction. In addition, these Rules provide that information on the outcome of criminal proceedings involving business-related crimes shall be sent to the Registry Court. Based on this information, the Commercial Registry (the Registry Court) will initiate the procedures for deleting such a person from the Commercial Registry.
61. GRECO takes note of the information provided. As regards the first part of the recommendation, GRECO welcomes the amendments to the Commercial Code and the Law on Infractions. It recalls that, in its Second Round Evaluation Report, it expressed doubts about the accuracy of data entered in the register. In light of the ongoing reforms of the registration process and amendments shortening the process of registration, which could be of further detriment to a control of information entered in the register, GRECO called upon the Czech authorities to analyse the impact of this reform, specifically with regard to the reliability of data entered into the register. Although nothing in the information submitted by the Czech authorities would suggest that such an analysis has been carried out, GRECO accepts that the amendments to the Commercial Code and Law on Infractions will - at least to some degree - improve the accuracy of data entered in the Commercial Register and, considering that this information is published on the internet, will enhance (public) control over the reliability of data entered therein.
62. As regards the second part of the recommendation, GRECO notes that the Internal and Office Rule for District, Regional and High Court (Instruction of the Ministry of Justice No. 505/2001-Org. of 3 December 2001) were already in force at the time of the Second Round Evaluation Visit. The fact that the GET learned that there is "no system envisaged for communicating to the Registry Courts whenever a person has been banned from engaging in business activities" (paragraph 82, Second Round Evaluation Report), would suggest that the Registry Courts and other relevant authorities are not customarily informed in practice, despite the existence of the aforementioned Rules. The fact that the existence of these Rules was never mentioned, neither to the GET during the on-site visit nor in the process of adoption of the report by GRECO thereafter, would at the very least suggest that sufficient awareness of these Rules is lacking and that further measures are needed to make the notification of the imposition of a disqualification sanction to the Registry Courts effective in practice.
63. In light of the above, GRECO concludes that recommendation xi has been partly implemented.

Recommendation xii.

64. *GRECO recommended to establish liability of legal persons in accordance with the Criminal Law Convention on Corruption and to provide for effective, proportionate and dissuasive sanctions.*

65. The authorities of the Czech Republic report that, despite a number of attempts to legislate this issue in the past, the intention to provide for criminal liability of legal persons has not materialised, due to the fact that, currently, there is political consensus not to introduce corporate criminal liability. However, the Ministry of the Interior is now preparing a draft law, which would provide for administrative liability of legal persons for criminal offences, including bribery, money laundering and trading in influence. However, the difficulties of the proposed draft law are that, as liability of legal persons would be governed by administrative procedures, mutual legal assistance in criminal matters in respect of legal persons would not be possible and – as the administrative proceedings would only commence after the criminal proceedings against the natural person who committed the crime in the name or interest of the legal person has been finalised – judicial proceedings would take many years.
66. GRECO takes note of the information provided. It already noted in the Second Round Evaluation Report the various attempts to introduce corporate criminal liability in the Czech Republic. Although it would seem that steps have been taken since then to draft a law on liability of legal persons (and consequently to legislate the possibility of imposing effective, proportionate and dissuasive sanctions upon legal persons), the drafting of this law appears to be fraught with difficulties and at such an early stage of development that GRECO can only conclude that recommendation xii has not been implemented.

III. CONCLUSIONS

67. **In view of the above, GRECO concludes that the Czech Republic has implemented satisfactorily or dealt with in a satisfactory manner half of the recommendations contained in the Second Round Evaluation Report.** Recommendations ii, iii, iv, v and viii have been implemented satisfactorily and recommendation i has been dealt with in a satisfactory manner. Recommendations vi, ix, x and xi have been partly implemented and recommendations vii and xii have not been implemented.
68. GRECO welcomes the improvements that have been made, in particular as regards the first theme of the Second Evaluation Round, 'proceeds of corruption'. Nevertheless, it finds that the level of implementation of the recommendations issued to the Czech Republic leaves room for improvement. In this regard, GRECO has some specific concerns that only one out of the five recommendations pertaining to public administration (recommendations vi-x), the second theme of the Second Evaluation Round, has been implemented satisfactorily. GRECO accepts that implementation of some of the recommendations on this topic have been thwarted by the repeated delays of the entry into force of the Public Service Act (Act No. 218/2002). However, it should also be noted that GRECO already considered in its Second Round Evaluation Report that this law might never enter into force due to significant opposition against, *inter alia*, the new salary provisions for civil servants. In light of this and bearing in mind that measures ensuring the integrity of its civil service are vital for the credibility of the government's efforts to tackle corruption and the public's trust in these efforts, GRECO is of the strong opinion that determined action needs to be taken in this area. Furthermore, the continuing lack of any meaningful liability of legal persons for bribery offences, money laundering and trading in influence must be remedied as a matter of urgency. To conclude, GRECO thus urges the Czech authorities to speed up their efforts to provide for regulations addressing conflicts of interest, competitive recruitment procedures, reporting of corruption and whistleblower protection, and mandatory anti-corruption, integrity and ethics training of officials, as well as liability of legal persons.

69. GRECO invites the Head of the Czech delegation to submit additional information regarding the implementation of recommendations vi, vii, ix, x, xi and xii by 31 December 2009.
70. Finally, GRECO invites the authorities of the Czech Republic to authorise, as soon as possible, the publication of the report; to translate the report into the national language and to make this translation public.