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Evaluation Report on the Czech Republic

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I. INTRODUCTION

1. The Czech Republic is the 32nd GRECO Member to be examined in the 2nd Evaluation Round. The GRECO Evaluation Team (hereafter referred to as the "GET") was composed of Mr Andrej LAZAR, Adviser of the Office against Corruption at the Police Headquarters, Presidium of the Police Force, Anticorruption Division (Slovak Republic); Mr William A. KEEFER, formerly the Assistant Commissioner, Office of Internal Affairs, United States Customs and Border Protection (United States of America); and Mr. Pierre-Christian SOCCOJA, Secretary General of the Central Service for the Prevention of Corruption (France). This GET, accompanied by a member of the Council of Europe Secretariat, visited the Czech Republic from 13 to 16 September 2005. Prior to the visit the GET experts were provided with replies to the Evaluation questionnaire (doc. Greco Eval II (2005) 3E) as well as copies of relevant legislation and other relevant documentation.

2. The GET met with officials from the following governmental organisations: the Supreme Court, the High Court, the registry court, the Public Prosecutor' s Office, the Supreme Audit Institution, the Office of the Governor of the Královéhradecký Region, the Ministry of the Interior (several departments), the Unit for the Detection of Corruption and Financial Crime (ÚOKFK) and the Unit for the Detection of Illegal Proceeds and Tax Crime (ÚONVDK) of the police, the Ministry of Justice (several departments), the Office of the Government, the Ministry of Finance (Tax Department and Audit Department), the Financial Analytical Unit and the Public Defender of Rights / Ombudsman. The GET also met representatives of the following non-governmental institutions: the Association of Municipalities and Cities of the Czech Republic, the Chamber of Commerce, the Chamber of Auditors, the Chamber of Accountants, the Trade Union for Public Employees, and Transparency International.

3. It is recalled that GRECO agreed, at its 10th Plenary meeting (July 2002), that, in accordance with Article 10.3 of its Statute, the 2nd Evaluation Round would deal with the following themes:

   - Theme I - Proceeds of corruption: Guiding Principles 4 (seizure and confiscation of proceeds of corruption) and 19 (connections between corruption and money laundering/organised crime), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS No 173), by Articles 19 paragraph 3, 13 and 23 of the Convention;
   - Theme II - Public administration and corruption: Guiding Principles 9 (public administration) and 10 (public officials);
   - Theme III - Legal persons and corruption: Guiding Principles 5 (legal persons) and 8 (fiscal legislation), as completed, for members having ratified the Criminal Law Convention on Corruption (ETS No 173), by Articles 14, 18 and 19, paragraph 2 of the Convention.

4. The present report was prepared on the basis of the replies to the questionnaire and the information provided during the on-site visit. The main objective of the report is to evaluate the effectiveness of measures adopted by the authorities of the Czech Republic in order to comply with the requirements deriving from the provisions indicated in paragraph 3. The report contains a description of the situation, followed by a critical analysis. The conclusions include a list of recommendations adopted by GRECO and addressed to the Czech Republic in order to improve its level of compliance with the provisions under consideration.

II. THEME I – PROCEEDS OF CORRUPTION

a. Description of the situation

Forfeiture and other deprivation of instrumentalities and proceeds of crime

5. Czech legislation does not mention the term 'confiscation', but instead uses the term 'forfeiture'. The Criminal Code (hereafter CC) provides for two types of forfeiture, 'forfeiture of assets' (Section 55 CC) and 'forfeiture of property' (Section 51 CC). Both types of forfeiture are penal sanctions and can only be imposed on natural persons. The two forfeiture sanctions differ in respect of the situations in and offences for which they may be imposed.

6. Section 55 CC provides for forfeiture of assets[1] (including bribes) which are directly related to the offence, either because "they were used or intended to be used to commit the offence, acquired in relation to the offence or were received as a reward for or (partial) result of the offence". The court may order forfeiture only if the assets in question belong to the offender. The GET was told that this type of forfeiture sanction is usually imposed in combination with imprisonment, but that in case of a minor offence the court may decide to impose forfeiture as an independent sanction.[2]

7. Forfeiture of property on the basis of Section 51 CC differs from forfeiture of assets in that it can affect everything an offender owns irrespective of whether the property to be forfeited has any relation to the crime. A court may - if it convicts someone to an unsuspended term of imprisonment – order the forfeiture of the property (as a whole or in part) of the offender, if it has convicted the offender for a serious crime[3] by which s/he has acquired or tried to acquire material benefit, if it imposes an exceptional sentence[4] or if the section defining the offence specifically allows the court to do so. Cases of aggravated bribery can be considered serious crimes allowing for the forfeiture of the property of an offender.

8. The GET was informed that the court could also impose a monetary sanction (similar to a fine) on the basis of Section 53 CC for crimes by which the offender has obtained or has tried to obtain economic benefit (or for crimes for which this sanction is explicitly listed in the section defining the

[1] In the English translation of the Criminal Code the term 'thing' is used instead of 'asset'. While no definition is given of a 'thing', Section 89 CC specifies: "the term 'thing' shall also mean a manageable natural force [i.e. electricity etc.]. The provisions on things also apply to securities."

[2] The offender will then be considered as not having been convicted and will not have a criminal record solely on the basis of the conviction that resulted in the forfeiture of assets. In order for the court to do so, the CC must mention the possibility of this sanction in the section defining the offence (only then can it be considered as the main and possibly the only sanction for the offence in question) and the court must be of the opinion that it is not necessary to impose another sanction in order to achieve the purpose of the conviction. With regard to various corruption offences the CC does not give this possibility (i.e. it does not list 'forfeiture of assets' as a possible sanction in the sections defining the respective corruption offences) and forfeiture of assets may therefore only be imposed as an additional sanction for corruption offences.

[3] Two categories of "serious crimes" exist: "especially serious crimes", which are crimes for which a prison sentence of at least 8 years can be imposed (which includes certain cases of passive bribery listed in Section 160, paragraph 4, CC) and "serious crimes". It is at the discretion of the court to deem an offence a serious crime of the latter category if it is of the opinion that one or more aggravating circumstances listed in Section 34 CC (for example the importance of the interest at stake, the extent of economic benefit obtained etc.) or one or more special aggravating circumstances listed in the section defining the offence, applies. With respect to passive and active bribery (Sections 160 and 161 CC) two special aggravating circumstances are listed: (1) if the act is committed with the intent of procuring a substantial benefit or of inflicting substantial damage to or other particularly serious repercussion on another person, or (2) if the act involved a public official.

[4] Exceptional sentences cannot be imposed for corruption offences. Exceptional sentences are prison sentences of a term of 15 to 25 years or life, which may only be imposed when the section defining the offence explicitly allows the court to do so. Subject to certain conditions the imposition of an exceptional sentence is limited to murder offences, crimes of treason (resulting in an intentional death), terrorism or terrorist attack, crimes which endanger public safety and genocide.

offence). A monetary sanction can have a value of 2,000 CZK to 5,000,000 CZK (approx. €70 to €174,000) and can be imposed as an alternative to forfeiting assets pursuant to Section 55 CC. It can be imposed as an independent sanction (for minor offences, including certain cases of passive bribery) or in combination with a term of imprisonment, but not together with a forfeiture of property sanction. The GET was told that a judge when imposing a monetary sanction would consider the seriousness of the crime, the damages that were caused and the economic position of the offender.

9. Both types of forfeiture (and also the monetary sanction) have a discretionary character, and are imposed by the court acting *ex officio* or upon request of the public prosecutor.

10. Forfeiture requires as a main rule a prior criminal conviction. Nevertheless, *in rem* forfeiture is possible in some limited cases if the court decides to apply a 'protective measure' on the basis of Section 73 CC, which allows for the forfeiture of assets if the abovementioned sanction on the basis of Section 55 CC (forfeiture of assets used in a crime or required as result of a crime) has not been or cannot be imposed. Conditions for the application of the protective measure are that the assets belong to a person who cannot be prosecuted or sentenced[5], from whose sentencing the court has refrained, or if it is "in the interest of the security of people and property" for the asset to be forfeited.

11. Instrumentalities may be forfeited either on the basis of Section 55 CC ("assets used or intended to be used to commit an offence") or on the basis of Section 73 CC as a protective measure.

12. Forfeiture of criminal proceeds is possible for primary as well as secondary criminal proceeds. Section 55, paragraph 1(d) CC expressly provides that the court may also impose this sanction on assets that were acquired by the offender in exchange for assets obtained through the offence.[6]

13. Value forfeiture – with regard to assets to be forfeited on the basis of Section 55 CC - is not possible. However, amendments to the Criminal Code are proposed, which would allow for the forfeiture of alternative economic value, if the offender prior to forfeiture destroys, damages, uses, disposes or otherwise renders useless the asset that was to be confiscated on the basis of Section 55 of the Criminal Code.

14. When a person convicted of a crime has transferred assets to be forfeited to a third party with the intent of avoiding a forfeiture sanction, the assets can be exacted from the third party if the third party is convicted of "handling or receiving goods acquired in relation to a criminal offence" or money laundering (Sections 251, 252 and 252a CC). If the third party has acquired the assets in good faith or can otherwise not be convicted in relation to the transferred assets, the assets can only be forfeited if the court imposes the 'protective measure' of Section 73 CC, which is described in greater detail above.

15. The burden of proof lies with the prosecution and cannot be reversed, nor is it possible to lower the standard of proof with regard to the origin of the assets to be forfeited on the basis of Section 55 CC. The criminal origin of the assets has to be proven beyond reasonable doubt.

[5] For example, if the offender has volunteered to stop the preparation of the commission of a crime, cases where criminal proceedings were not brought or were terminated.

[6] Unless the value of the secondary assets is much higher than that of the original assets. For example, if a bribe of 2,000 CZK was received and if this bribe was then used to pay a car worth 3 million CZK, the car cannot be forfeited.

16. As a general rule assets and property forfeited (on the basis of Sections 55 and 51 CC) accrue to the State. The GET was informed that, because it would not be possible to use forfeited property for the satisfaction of (private) claims, the court would refrain from imposing a forfeiture order when a person claiming damages could not be compensated other than by the property or asset which is intended to be forfeited. Upon sentencing the court may on the basis of Section 228 of the Code of Criminal Procedure order that a third party will be compensated for damages caused by the crime for which the offender has been convicted (if a claim to this effect has been put forward by the third party).[7]

Interim measures

17. The Code of Criminal Procedure (Act No. 141/1961; hereafter CCP) regulates the freezing or seizure of instrumentalities and proceeds of crime. Sections 78 and 79 CCP allow for the seizure of assets (including bribes, but also bank, commercial and financial records) by order of the court (or in pre-trial proceedings the public prosecutor or police) to secure them to be used in criminal proceedings. Sections 79a and 79c CCP cover, respectively, the freezing of bank accounts and securities by the court (or, in pre-trial proceedings, the public prosecutor or the police), when the securities or monies in the bank account are suspected of being used to commit a crime or represent the proceeds of crime. Section 347 CCP foresees the seizure of property specifically to ensure the enforceability of a 'forfeiture of property' sanction. Pursuant to this provision, the court (or the public prosecutor in pre-trial proceedings) may secure the property (wholly or in part) of the offender if there are concerns that the future execution of the forfeiture sanction under Section 51 CC (forfeiture of property, see above) may be hindered. Because an interim measure on the basis of Section 347 CCP can only be imposed when a forfeiture sanction is to be expected on the basis of Section 51 CC, the application of this interim measure in relation to corruption offences is limited to cases of aggravated bribery.

18. There is no obligation to conduct special investigations aimed at identifying, tracing and freezing proceeds of crime when certain serious crimes are detected, but the Czech authorities have reported that it is standard practice to carry out such investigations.

19. As to the management of seized assets, the Czech Republic has in 2004 implemented a new law on *inter alia* the administration of seized proceeds of crime (Act No. 279/2003), i.e. to secure claims of injured persons, to ensure the execution of a forfeiture sanction and to satisfy mutual legal assistance requests. Under Section 9 of this law the court may appoint either the "Office for the representation of the state in proprietorship issues" or the court's executor in the district where the seized property is located to manage the property. However, this law (Act No. 279/2003) is not applied to assets seized on the basis of Sections 79, 79a and 79c CCP (items relevant for use in criminal proceedings and monies in a bank account and securities representing the proceeds of crime). Amendments to the CCP to fill this void are expected to be adopted in the near future.

[7] The victim of the offence can file for compensation of damages to either the criminal or the civil court. If the claim for compensation is submitted to the criminal court, it can either refer the claim to the civil court or it can decide on it in the course of the criminal proceedings against the offender. If the criminal court decides on the claim, it must - upon sentencing the offender - take the effect of a forfeiture sanction upon the claim for compensation into consideration. In such instances, the court is required not to forfeit property that is to be used to cover the damages claimed by the victim of the crime.

Statistics

20. With respect to statistics on interim measures the Czech authorities have stated that, in 2002, one case of corruption was reported, in which assets were seized with a value of approximately 30,000,000 CZK (approx. €1,045,000). In 2003 two cases of corruption were reported, but no assets were seized in either case. In 2004 three cases of corruption were reported. In all three cases assets were seized, in the amounts of 5,000 CZK (approx. €174), 175,000 CZK (approx. €6,000) and 900,000 CZK (approx. €31,000).[8]

21. Regarding statistics on forfeiture, the Czech authorities have provided the following statistics on forfeiture of assets (Section 55 CC) in bribery cases:

	2002		2003		2004	
Section	total convictions	forfeiture of assets	total convictions	forfeiture of assets	Total convictions	forfeiture of assets
S. 160 - passive bribery	26	1	20	2	23	1
S. 161 - active bribery	108	27	53	12	74	25
S. 162 - indirect bribery	3	-	2	-	-	-

There was however no information available on the value and nature of the assets forfeited in these cases. Forfeiture of property (Section 51 CC) has not been imposed for corruption offences in the period 2002-2004.

International co-operation for interim measures and confiscation

22. The Czech Republic has ratified several international instruments in the field of criminal law, in particular the Criminal Law Convention on Corruption (ETS No. 173)[9], the Civil Law Convention on Corruption (ETS No. 174), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) and the European Convention on Mutual Assistance in Criminal Matters (ETS No. 030)[10]. The Czech Republic has furthermore concluded over 20 bilateral agreements with a view to facilitating mutual legal assistance. The GET was informed that these agreements were directly applicable, but that in the absence of a treaty legal assistance could also be provided on the basis of a guarantee of reciprocity. At the national level, Sections 375-379, 425-441 and 449 CCP establish the legal framework for mutual legal assistance in criminal matters concerning interim measures and confiscation/forfeiture of proceeds of crime, including but not specifically dealing with corruption-related offences. The provisions of the CCP apply when there are no treaty provisions applicable to the specific request for assistance, for example in situations when no treaty on mutual legal assistance has been concluded with the requested or requesting state. In all other cases, the relevant treaty takes precedence over the provisions on mutual legal assistance in the CCP.

[8] The GET was informed, after the visit, that 173 cases of bribery were reported in 2002, 155 cases in 2003, 287 cases in 2004 and 138 cases in 2005. However, no information was available on the use of interim measures in these cases.

[9] Upon depositing its instrument of ratification the Czech Republic made a reservation that it would establish active and passive bribery in the private sector, as defined by Sections 7 and 8 of the Convention, as a criminal offence under its domestic law only in as far as it would come under any of the definitions of criminal offences laid down in the Criminal Code of the Czech Republic.

[10] Upon depositing its instrument of ratification the Czech Republic made the reservation that the execution of letters rogatory for search and seizure of property will be made on condition that the offence motivating the letters rogatory is punishable under both the law of the requesting Party and the law of the Czech Republic and the execution of the letters rogatory is consistent with the law of the Czech Republic.

23. When the Czech Republic is the requesting state, Sections 426, 427 and 428 of the CCP provide the legal basis for requests for assistance by prosecutors or courts to foreign authorities. Prosecutors will send their requests via the Supreme State Prosecutor's Office, the courts will send their requests via the Ministry of Justice. Information received or an act, such as seizure of assets, undertaken on the basis of these requests can be used in Czech criminal proceedings if the information was obtained or the acts undertaken in compliance with the laws of the requested country or the laws of the Czech Republic. If there is no international treaty providing for legal assistance, the principle of reciprocity applies and the Czech Ministry of Justice may grant the assurance of equal treatment on the side of the Czech Republic to the requested state.

24. With respect to requests to the Czech Republic, law enforcement authorities can respond to requests for mutual legal assistance in broad terms: unless otherwise provided, any kind of assistance not contrary to Czech law may be provided. On the basis of Section 441 CCP, which deals with requests to take interim measures, a prosecutor or court in whose jurisdiction the assets - which may serve as evidence in foreign criminal proceedings and/or be the proceeds or instrumentalities of crime - are located decides on request of a foreign state concerning the seizure and handing over these assets. The GET was told that if the assets were located in more than one region this could be a relatively slow procedure and that therefore the Supreme State Prosecutor's Office (SSPO) was authorised to appoint one prosecutor to deal with a request in relation to assets located in different regions. The GET was also made aware of the instruction manual for prosecutors which the SSPO has issued to facilitate the procedure of providing assistance.

25. Enforcement of foreign forfeiture orders can take place if a requesting state has entered into a convention, treaty or agreement with the Czech Republic to this end. A request should be sent to the Czech Ministry of Justice (central authority), which will forward it to a regional court to transpose the foreign confiscation order in a Czech judgment. However, the Czech court is only allowed to enforce this confiscation order if it would have rendered a similar sanction had the offence taken place in the Czech Republic. Czech legislation does however allow the court to transpose the foreign confiscation order into another sanction. Foreign confiscation orders, if transposed into a Czech forfeiture sanction, are satisfied for the benefit of the Czech state, although the court can decide that someone else will receive the forfeited assets. Although a treaty on *inter alia* asset sharing has been concluded with the United States, asset sharing is not yet possible due to the current absence of legislation implementing these treaty provisions in the Czech Republic.

Money laundering

26. Sections 252 and 252a CC cover money laundering offences. These provisions establish an "all-crimes" approach to money laundering. Section 252a CC provides that "a person who conceals (or tries to obstruct an inquiry into) the origin of a 'thing' or other economic benefit, which was obtained by the commission of an offence, with the aim of making it appear that this 'thing' or benefit was acquired legally, or a person who enables another person to commit such an act, will be sentenced to imprisonment for up to two years or a monetary sanction." Certain circumstances, such as membership in a criminal organisation or 'considerable benefit'[11], allow for an increase in the sanction to 5 years imprisonment; if the offence has been committed in relation to drug trafficking, has been facilitated by abuse of one's position or has resulted in 'major benefit'[12] the term of imprisonment can be increased up to 8 years (or forfeiture of property).

[11] Considerable benefit refers to an amount of 500,000 CZK or more (approx. €17,400).
[12] 'Major benefit' differs from considerable benefit in that it refers to an amount of 5,000,000 CZK or more (€174,000).

Section 252 CC provides: "a person who by negligence conceals the origin or transfers to him/herself or someone else a 'thing' of significant value, which was acquired through a criminal offence committed by another person, will be sentenced to imprisonment up to six months or a monetary sanction". Again the commission of an offence in relation to drug trafficking and obtainment of 'considerable benefit' allow for an increase in the sanction up to two years imprisonment, or up to three years in the case of 'major benefit'.

27. A wide range of institutions - including banks, stockbrokers, casinos, insurance companies / intermediaries, tax advisors, real estate agents, but also persons and institutions trading in so-called cultural goods and persons and institutions who accept cash payments of a value exceeding €15,000 in a single transaction – are, on the basis of Section 7 of the Anti-Money Laundering Act (Act No. 61/1996), required to report suspicious transactions to the Financial Analytical Unit (hereafter FIU). Notaries - who became subject to reporting requirements shortly after the visit of the GET - and lawyers report to the FIU through their own chamber or bar association. Supervision of the reporting requirements is carried out by authorities that already have some supervisory tasks on the basis of other legislation, such as the National Bank and the Czech Trade Inspectorate. The GET was told that failure to report suspicious transactions is covered in the provisions on money laundering by "enabling a person to commit such an act" and can accordingly be prosecuted as a money laundering offence.[13]

28. The FIU has a staff of 27, which in 2006 will be reduced to 25. It does not conduct criminal investigations, but analyses the suspicious transaction reports it receives and forwards reports for further investigation to the police, usually the Unit for the Detection of Illegal proceeds and Tax Crime (ÚONVDK) and, in some cases, also the Unit for the Detection of Corruption and Financial Crime (ÚOKFK). In 2004 the FIU received approximately 3300 suspicious transaction reports of which 103 were forwarded to the police.[14]

29. There has not been any investigation, prosecution or conviction for the offence of money laundering where the predicate offence was corruption.

b. Analysis

30. The GET found the system in place for the use of interim measures and forfeiture of the instrumentalities and proceeds of crime (including corruption) very complex. The GET was however particularly concerned that forfeiture seems to be used as an additional sanction, thus substantially reducing the length of a prison sentence (rather than as a genuine measure aimed at depriving offenders of the benefits of their crimes). Initially, the GET had the impression that the use of interim measures and forfeiture sanctions was very limited, but from the statistics that were provided it seems that 'forfeiture of assets' (Section 55 CC) is imposed much more often than the GET had been led to believe.[15] Forfeiture of property (Section 51 CC) can only be imposed for a limited number of grave offences, covering those cases of (aggravated) bribery qualified as 'serious crimes' by discretion of the court. It was regarded as a very severe sanction

[13] Negligent failure to report a suspicious transaction is covered by Section 252 CC in a similar fashion ("A person who by negligence enables another person to conceal the origin…"). However, no information has been provided whether these provisions have ever been used in cases of failure to report a suspicious transaction.

[14] In 2003 the FIU received approximately 2000 reports of which 114 were forwarded to the police. The sharp increase in the amount of transaction reports the FIU received in 2004 was brought about by changes in the law.

[15] However, as no information could be provided on the value and nature of the assets seized, the statistics provided after the visit did not allow the GET to get a clear understanding of the effectiveness of the provisions (on forfeiture of assets) in place.

and the GET was told that for this reason it was almost never imposed.[16] As mentioned in the descriptive part, there is no possibility to forfeit assets/property without a criminal conviction, except for some cases in which the protective measure pursuant to Section 73 CC (forfeiture of assets belonging to a person who cannot be prosecuted or convicted) can be used. Even if a person is convicted of a proceeds-generating crime, the standard of proof required for forfeiting assets is relatively high. There are no provisions in Czech law allowing for assumptions to be made (post-conviction) as to the criminal origin of the assets. In the light of this, the GET recommends 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).

31. Concerning interim measures, the GET took note of the fact that the application of Section 347 CCP is limited to securing the execution of a 'forfeiture of property'-sanction on the basis of Section 51 CC, which considerably reduces the practical application of this section for corruption offences. The Czech authorities however indicated that instrumentalities and proceeds of corruption could always be seized on the basis of Sections 78 and 79 CCP (objects important for criminal proceedings) or if deposited in a bank account or related to securities on the basis of Sections 79a and 79c CCP[17]. It was nevertheless acknowledged that seizure of immoveable assets and of income and benefits from illegal property was problematic. In this connection, the investigators and prosecutors met by the GET also expressed doubts whether funds deposited in a bank account after a freezing order was made and dematerialised securities could be seized on the basis of the aforementioned provisions in the CCP. Amendments to the CCP are however foreseen which are meant to remedy these problems and to address the current lacunae in the regulatory system for the management of seized assets, by providing that the new law on management of seized assets (Act No. 279/2003) will also apply to assets seized on the basis of Sections 79, 79a and 79c CCP. The GET recommends 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 immoveable 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.

32. Turning to forfeiture, the GET recalls that the Czech system makes a difference between two types of forfeiture, forfeiture of property (Section 51 CC) and forfeiture of assets with a direct relation to the crime (Section 55 CC). Both types of forfeiture can only be applied to assets/property belonging to the offender. Bribes received by an offender are however considered as assets belonging to him/her. Although the provisions on 'belonging' were thus not believed to be an obstacle, difficulties did seem to exist with forfeiting property and assets which were not in the hands of the offenders but transferred to third parties. Property and assets held by third parties in bad faith can only be forfeited after a successful prosecution of the third party for money laundering or for handling 'stolen' goods. The 'protective measure' of Section 73 CC provides for the possibility to forfeit instrumentalities and proceeds of crime without having to secure a criminal conviction (*in rem*), but the prosecuting authorities met by the GET during the

[16] The GET however failed to see the exceptional severity of this sanction considering that the court has ample discretion to impose forfeiture on only a part of the property of the offender.

[17] These sections allow for seizing/freezing the content of a bank account and securities when there are indications that these are intended for committing a crime, have been used to commit a crime or represent the proceeds of crime.

on-site visit acknowledged the difficulties in applying this 'protective measure'[18], especially with regard to immovable property. It should also be noted that the Czech legal system does not provide for criminal liability of legal persons (see theme III below). Property held by legal persons can therefore not be subject of a forfeiture sanction (although – again - it would to some extent be possible to apply the 'protective measure' of Section 73 CC). Considering these difficulties, it is particularly problematic that value forfeiture is not possible. The GET was told that in cases where the proceeds of the crime had disappeared, the court could resort to imposing a monetary sanction (Section 53 CC, which is *inter alia* applicable to crimes in which the offender has gained or tried to gain economic benefit).[19] The GET was however not made aware that in ascertaining the amount of a monetary sanction any consideration was given to the value of the benefit gained by the offender.[20] The GET recommends 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).

33. Turning to money laundering, GET commends the Czech authorities for the changes made to the anti-money laundering legislation in recent years. It noted with satisfaction the broad range of institutions and professional bodies that are required to report suspicious transactions, the 'all crimes'-approach that has been introduced in Czech legislation and the powers given to the FIU to postpone transactions and freeze bank accounts (without prior permission of the prosecution service). The GET noted however that the definitions of money laundering in Sections 252 and 252a CC relied heavily on 'concealing the criminal origin' and also did not fully correspond to the definitions used for the purpose of reporting suspicious transactions under the anti-money laundering act (Act No. 61/1996). The GET furthermore noted that Act No. 61/1996 explicitly provides that it is not decisive whether the offence took place (in part or entirely) on the territory of the Czech Republic. However, with regard to the money laundering offences under 252 and 252a CC, the GET received conflicting answers to the question whether offences, including corruption, committed abroad constitute predicate offences to money laundering in the Czech Republic. The GET recommends 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.

34. A concern for the GET was the overall effectiveness of the response of law enforcement to money laundering. Considering the number of fraud offences and misappropriation cases investigated, by comparison few money laundering cases seem to have arisen from such investigations. The GET was left with the impression that, despite the training that had already been given and the increase in specialisation by the prosecution service, no concerted efforts were being made to 'follow the money' in major proceeds-generating offences, with a view to prosecuting money laundering and seizing the proceeds generated in order to secure a forfeiture

[18] The GET was nevertheless informed by the prosecution service that the Supreme Court had recently endorsed the possibility of using this provision for the forfeiture proceeds of crime held by third parties.

[19] The Czech authorities have reported that this monetary sanction had been imposed 2913 times in 2004. After the visit more detailed statistics were provided on the number of times monetary sanctions have been imposed for bribery offences and the average value of these sanctions. For example, in 2004 monetary sanctions were imposed in 6 passive bribery cases in an amount of (on average) 32,500 CZK (€1,180). In the same year 29 monetary sanctions were imposed in an amount of (on average) 24,200 CZK (€ 880).

[20] Although the GET was told that in imposing a monetary sanction the judge would also consider the damage that was caused by the crime, the GET took the view that this was not the same thing as considering the value of the benefit gained by the offender. After the visit the Czech authorities reported that, when deciding on the level of the monetary sanction to be imposed, judges will also consider the value of the benefit obtained by the offence. The GET took note of this, but is of the opinion that it would be preferable to include explicit provisions on value forfeiture in the Criminal Code.

sanction. The GET considers that following the proceeds of crime in major proceeds-generating offences should be more of a priority for law enforcement. Once cases are passed by the FIU to the police, the CCP provides for the utilisation of a wide range of investigative techniques, including interception and recording of private communications and undercover operations. It was unclear how widely these techniques were used in money laundering investigations. The GET merely notes that in other jurisdictions proactive use of these techniques has produced positive results in investigations into economic crimes, including corruption and money laundering. The GET recommends 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.

III. THEME II – PUBLIC ADMINISTRATION AND CORRUPTION

a. Description of the situation

Definitions and legal framework

35. There is no legal definition of the term "public administration". The term is however commonly identified with the State's executive power performed by the Government, ministries and other administrative offices at central level, as well as the authorities appointed at the local/regional self-government level. Czech public administration has undergone a process of decentralisation culminating in the entry into force of legislation establishing the 14 regional governments ('Kraje') on 1 January 2001. The current structure of public administration is therefore of a relatively recent nature, with much legislation either just enacted or not yet in force.

36. In the Czech Republic a distinction is made between administrators employed within the administration at the state level (civil servants) and administrators working at the local and regional level (local or regional officials). The Public Service Act (Act No. 218/2002), once enacted, will provide for a new regulatory framework for civil servants. Although this act has already been approved by Parliament, it will not enter into force before 1 January 2007 and may be even further delayed. The Labour Code (Act No. 65/1965) provides the general employment regime and contains special provisions for all employees working in the public sector. For local and regional officials, the Labour Code complements the Act on Officials of Local Self-Government Units (Act No. 312/2002), which entered into force on 1 January 2003.

Anti-Corruption Policy

37. The "Programme for the Fight Against Corruption" was adopted in 1999. It includes specific measurable objectives in three different areas, i.e. legislation, organisational measures and international co-operation. The Ministry of the Interior has responsibility for the co-ordination of anti-corruption measures in general and the implementation of the programme in particular, and chairs the Interdepartmental Co-ordinating Group for Combating Corruption, which was set up in 2003. An update of the programme, including a report on the progress made in implementing the measures it outlines, has been published annually since 2001. As of 2005 future updates and progress reports are only issued every two years.

Transparency

38. The main rule on access to information is contained in Section 17 (5) of the Charter of Rights and Freedoms, which provides that all state bodies are "to provide information about their activities on request". The Free Access to Information Act (Act No. 106/1999) further stipulates that state administrative bodies, local and regional self-government bodies and institutions managing public funds are to provide information upon request. The Act does not apply to personal data. Further exceptions include records which are designated under special laws and regulations to be classified, personal data and information labelled as trade secret, information obtained by public authorities under tax, pension, health insurance or social security laws, documents related to a person's private property, internal instructions and personnel regulations of the public body concerned and information related to the deliberations of public bodies before coming to a decision.

39. Any natural person or legal entity may request information, which can be made in writing or verbally. Applicants do not have to prove a legal interest in the information sought. As the title of the Act indicates there is no application fee for access to information. Public authorities may however charge for expenses incurred in connection with retrieving, copying and sending the requested information to the applicant. Appeals to decisions rejecting the request for information, including failures to provide information within the set time limit[21], can be lodged with the authority which (should have) issued the decision. If the (in)decision is not altered, the (in)decision can be challenged before a regional administrative court.

Control of Public Administration

40. Section 53 of the Administrative Procedure Act[22] ('Spravni Rad', Act No. 71/1967) provides for an internal review of administrative decisions. An application for review of a decision must be lodged with the body that issued the administrative decision within 15 days of the decision being taken. The authority reviewing the decision can be the authority that issued the contested decision or its direct hierarchical superior. There is no second instance internal administrative procedure to appeal against the outcome of the review, but an "exceptional" renewal of proceedings may be initiated if factual errors[23] led to the reviewed decision. In addition, the Act on Administrative Judiciary (Act No. 150/2002) provides for the possibility of a judicial review by a regional administrative court in first instance and, ultimately, the Supreme Administrative Court.

[21] Information or a decision rejecting the request for information must be provided by a written application within 15 days, to be extended with another 10 days under certain circumstances.

[22] The Administrative Procedure Act (Act No. 71/1967) has been replaced by a new Act on Rules of Administrative Procedure (Act No. 500/2004), which entered into force on 1 January 2006. The Czech authorities have reported that the provisions for challenging administrative decisions have been amended as follows. The new law provides for a "appeal procedure" and a "review procedure". With regard to the appeal procedure, it is provided that an appeal to a decision must be lodged with the body that issued the administrative decision within 15 days of the decision being served. The administrative body may cancel or amend the original decision on appeal, if this does not negatively affect the participants in the proceedings. In all other cases, the file is transferred to the appellate body (usually the direct hierarchical superior). A 'renewal of proceedings' may be initiated, if formerly unknown facts have come to light, if former evidence is subsequently deemed to be inaccurate or if the decision on which the decision in question was based has been amended or cancelled. A person may apply for a renewal of proceedings within 3 months of having become aware of the grounds for renewal, but no later that 3 years after the original decision has entered into force. In addition, the new law provides for a "review procedure", which is initiated *ex officio* when doubts have arisen about the legality of an administrative decision.

[23] An exhaustive list of such errors is included in Section 62 of the Administrative Procedure Act ('Spravni Rad', Act No. 71/1967): new facts or evidence that have arisen, decision was based on false evidence, etc. An application for renewal of proceedings has to be made within 3 months of having become aware of the grounds for renewal, but no later that 3 years after the original decision has come into force.

41. The Public Defender of Rights (Ombudsman) is entrusted with the protection of citizens' rights against maladministration and acts which are at variance with the law or democratic principles of the state, and in respect of general inaction by bodies vested with public authority[24]. The Ombudsman does not have an explicit mandate to combat corruption, but corruption would fall within its wider remit of investigations into maladministration and acts contrary to law. The Ombudsman's inquiries are based on complaints from the general public, but s/he can also initiate investigations *ex officio*. In 2003 the Ombudsman received 4421 complaints, of which 2435 were admissible, and conducted 44 inquiries *ex officio.* The Ombudsman can propose to initiate disciplinary proceedings, to initiate proceedings to have the decision or act reviewed, to execute acts in order to remove "inactivity", to provide for compensation of damages or to take legal action with regard to an administrative or criminal offence. The Ombudsman may also propose to amend, cancel or adopt legislation/regulations and may recommend to the Supreme State Prosecutor to start proceedings in a given case, if the Ombudsman considers it to be in the public interest to do so.[25] If the Ombudsman in conducting inquiries into possible abuse of power by state officials comes across possible corruption offences s/he is obliged to report this to law enforcement authorities (on the basis of Section 8 CCP which obliges all public authorities to do so). Since 1999, the Ombudsman has come across suspicions of corruption in four cases and has submitted one of these cases to the Prosecution Service.

42. Further control of public administration is provided for by internal audit departments within the ministries and the Supreme Audit Office (SAO). The SAO is an independent body which reports to both the government and the parliament. It employs 349 auditors and has responsibility for auditing the management of state property and sums of money collected by the state on the basis of relevant legal provisions. It carries out 32-35 (financial and performance) audits a year. If an audit carried out by the SAO gives rise to suspicions of a criminal offence, the matter is referred to the prosecution service (in case of mismanagement of EU-funds to the Supreme State Prosecutor's Office). If internal inspections by the ministerial audit departments uncover corruption offences the information is passed on to the police. The GET was told that the audit department of the Ministry of Finance alone would come across 2 to 3 incidents of possible corrupt conduct a month.

43. Local and regional authorities can only be audited by the SAO in as far as they receive money directly from the state budget or make use of state property. The GET was told that a draft law to extend the mandate of the SAO with regard to local and regional authorities was defeated in parliament in 2004. Audits of local and regional authorities - with regard to the management of funds that do not directly derive from the state budget - are carried out by either one of the regional audit units (concerning audits of local authorities), the Ministry of Finance (with respect to audits of regional authorities) or private auditors.

Recruitment, career and preventive measures

44. The GET was informed that at present each ministry regulates its own internal selection procedure. Hiring practices vary widely between Ministries and do not always provide for transparent and competitive recruitment procedures, screening of potential employees or other

[24] These include authorities performing administrative tasks at state level, such as ministries, and authorities of local and regional self-government units in relation to powers delegated to them by the state, as well as the Czech National Bank (when exercising administrative authority), police, army, prison service and public healthcare companies. The Ombudsman does not have competence in relation to acts by Parliament, the President, the Government, the Supreme Audit Office, intelligence services, law enforcement authorities, prosecution services and the courts.

[25] The state body concerned must inform the Ombudsman of the actions taken upon his/her proposal within 60 days. The Supreme State Prosecutor must do so within 3 months.

preventive measures. The Public Service Act – once in force - will establish that certain requirements on nationality, age, legal capacity will have to be met and will prescribe that persons who apply for the public service are required to have a clean criminal record, meet the requirements for the post in question (i.e. relevant education / training) and pass a competition for the position. However, as noted above, the Public Service Act will not enter into force before 2007 and may even be further delayed. With regard to local and regional officials, the Act on Officials of Local Self-Government Units (Act No. 312/2002) provides that an open and competitive recruitment procedure is a condition for any appointment of officials for an indefinite period and senior officials. The GET was however told that this provision was not always adhered to.

Training

45. Training is provided at both the entry-level and throughout the administrative career of civil servants. An entry-level course is mandatory for all newly recruited civil servants and includes training on the topic of ethics in public service.[26] Further training is optional. The available optional courses address both the topic of ethics in general and the topic of precautionary measures to prevent corruption in the public service. The training is provided by the State Administration Institute.

Conflicts of interest

46. According to Section 73 of the Labour Code (Act No. 65/1965), all persons employed by the state and local and regional self-government units are required to avoid any action that may undermine confidence in the impartiality of decision-making, to refrain from behaviour that could lead to a conflict between public and personal interests and not to misuse information acquired in the course of their duties.[27] Additional safeguards to prevent conflicts of interest consist of a prohibition on being a member of a governing body of a business entity and limitations on engaging in business activities, unless specifically allowed by the employer. The Act on Officials of Local Self-Government Units (Act No. 312/2002, Section 16) furthermore provides that local and regional officials are to refrain from any conduct, that might lead to a conflict between public interest and his/her private interests, that might undermine the credibility of the local self-government unit and the trust in the impartiality of decision-making. The Public Service Act, when it comes into effect, will prohibit any type of paid activity (other than employment by the state). Failure to comply with the respective conflict of interest rules may lead to termination of the employment relationship on the basis of Section 46 of the Labour Code[28], or other disciplinary measures on the basis of the Act on Officials of Local Self-Government Units or, once enacted, the Public Service Act.

[26] After the visit, the Czech authorities informed the GET that an entry-level course on ethics was also mandatory for regional officials. This training is provided by the Local Administration Institute (Institut pro místní správu).

[27] In addition, the Czech authorities have reported that on 16 March 2006 a new Conflicts of Interest Law was adopted. This law will enter into force on 1 January 2007. It provides that Members of Parliament, Senators, members of the cabinet of ministers, heads of central state authorities, judges, members of the board of directors of the National Bank and of the SAO, the Ombudsman, directors of the intelligence service, members of local and regional public assemblies, mayors, public prosecutors, persons in a managerial position in state supervisory bodies, and police and custom officials who directly deal with public funding or with investigations into public funds, have to submit reports on their interests, activities, property and income, gifts and obligations to so-called 'registers of notification' established with the various bodies (for example, Members of Parliament submit reports to a Parliamentary Committee). If a 'register of notification' comes across irregularities in a report that has been submitted to it, it can initiate a procedure on 'infringement of duties' before the Administrative Court. Reports submitted to the 'registers of notification' are accessible to the public.

[28] Other than the possibility of terminating the employment relationship on the basis of Section 46 for severe or repeated breach of duties, the Labour Code does not provide for any disciplinary measures.

47. There is no system of regular, periodic rotation of staff.

48. There are currently no specific measures[29] in place to prevent public officials from moving to the private sector where they could abuse their contact networks and knowledge of administrative mechanisms and decision-making processes. The Public Service Act, once enacted, will include a provision to the effect of preventing certain senior civil servants (heads of units and directors) from taking part in any business activity in the same sphere in which they worked before, during the two years that follow termination of their public employment. Business activities carried out as a professional occupation on the basis of special regulations (lawyers, architects etc.) are exempted from this provision. A breach of this provision may lead to a fine of up to 200,000 CZK (approx. € 7,000).

Codes of conduct/ethics

49. A general Code of Ethics for all employees in public administration was adopted by Governmental Resolution No. 270/2001. The Code has a non-binding character and contains recommendations with respect to conflicts of interest, gifts, abuse of official position, and reporting of improper activities. No sanctions are provided for under the Code of Ethics, although some of its provisions have equivalents in administrative and criminal law (for example 'abuse of public office' under Section 158 CC) and may therefore be punished under these regimes. The Act on Officials of Local Self-Government Units (Act No. 312/2002) also includes ethical standards on impartiality, gifts, abstaining from actions which could lead to conflict of public interest with personal interest or which could violate the credibility of the local self-governmental unit. Finally, several authorities, such as the Ministry of the Interior, the Ministry of Finance and the Ministry of Labour and Social Affairs, but also the union of judges and the prosecution service, have adopted their own ethical codes.[30]

Gifts

50. The Labour Code prohibits the acceptance of gifts or advantages unless they are provided on the basis of an agreement with one of the trade unions[31] or by the employer. The Public Service Act, when enacted, will allow for a similar provision. Other than termination of the employment relationship for severe or repeated breaches of duties, the Labour Code does not provide for disciplinary measures. Future breaches of the provision on gifts in the Public Service Act may result in disciplinary sanctions, such as reduction in salary. The Code of Ethics of Public Administration Employees recommends that an employee does not accept gifts, favours or any kind of advantage that could influence or appear to influence decision-making, harm a professional attitude to a matter or could be considered as a reward for work that is his/her duty. In addition, several authorities (e.g. Ministry of the Interior, police) have adopted their own internal rules with regard to the acceptance of gifts. As for local and regional officials, the Act on Officials of Local Self-government Units (Act No. 312/2002) stipulates that a local official is not to accept gifts or other advantages.

[29] Section 29a of the Labour Code provides that the employer and employee may negotiate a non-competition provision, which precludes the employee from engaging in (business) activities that could be considered as competitive to the employer's activities. However, this provision also stipulates that the employer is to compensate the employee for the period in which the employee is prohibited from engaging in these activities and that this compensation should equal at minimum the average monthly wage of the employee. The GET was informed there were no instances known where such an agreement had been concluded in the public sector.

[30] The GET was informed, after the visit, that certain regions and municipalities have also adopted ethical codes.

[31] This relates to a gift (object, not money) for an anniversary or jubilee of trade union membership.

Reporting corruption

51. Section 8 CCP provides that "State authorities are (…) obligated to notify a state prosecutor or police authorities promptly of a fact indicating a criminal offence". The Code of Ethics furthermore recommends to report *inter alia* corruption to the hierarchical superior or to law enforcement. Failure to report is however not an offence.[32]

52. There are no legal measures in place to ensure confidentiality and protection of employees in public service reporting corruption from retaliation.[33]

Disciplinary proceedings

53. The legislative framework currently does not provide for any disciplinary proceedings against civil servants, other than proceedings to terminate an employment relationship on the basis of the Labour Code in cases of severe or repeated breaches of duty. The Act on Officials of Local Self-Government Units contains a similar provision as in the Labour Code. The Public Service Act (not yet in force) will foresee in the establishment of a two-tier disciplinary procedure through so-called internal disciplinary committees and the possibility to commence disciplinary proceedings against all civil servants (only administrators at state level), with the exception of Director-Generals and the General Vice-Directors. The sanctions envisaged by the Public Service Act are written reprimands, reduction in salary by up to 15% for a period of up to 3 calendar months, recall from a managerial position and dismissal (Section 72).

54. The GET was informed that if an internal investigation into 'minor' misconduct brought evidence of a criminal act to light, the investigation would be passed to the appropriate law enforcement authority.

b. Analysis

55. The Czech Republic's three tiers of public administration - central, regional and local - did not have a final structure until 2001, when legislation establishing the fourteen regional governments came into force. Laws regulating and enhancing the status of regional officials were not implemented until 2003, and the GET was informed that the regional governments were still in an early stage of development. The immaturity of these regional governments has made it difficult for them to establish and implement anti-corruption programmes to address widespread corruption[34] in the Czech Republic. The central government has attempted to fill this void, but many state institutions that promote transparency and integrity in government, such as the Supreme Audit Office and the Ombudsman, have no or very limited jurisdiction in regional (or local) administrations.

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[32] Section 168 of the Criminal Code provides that a failure to report the crimes listed in that section to the public prosecutor or police can be punished to up to three years imprisonment. Corruption is however not listed as one of the crimes to which this applies.

[33] The GET was informed after the visit that Sections 46 and 53 of the Labour Code provide for an indirect, but in the view of the Czech authorities rather strong, protection of employees, as the employment contract may only be terminated in certain specific situations and can be made subject to review by a (civil) court. The Czech authorities did not indicate whether or not these provisions had ever been used to redress retaliation against public sector employees.

[34] Approximately 30% of Czech respondents to a 2003 national survey by UNIVERSITAS claimed "that in the past year they had offered or accepted a bribe." (See also the "Report on corruption in the Czech Republic in the year 2003", published by the Ministry of the Interior, p.13) Representatives from the Chamber of Accountants told the GET during the evaluation that, in a survey of their members, 50% of respondents said that they had been asked by their clients to take actions that were either fraudulent or not in accordance with proper accounting practice.

56. The GET commends the Czech Republic for its anti-corruption strategy, which has been in place at the central level since 1999. The 'Programme for the Fight Against Corruption' tasks the central administration officials to take concrete legislative and organisational measures against corruption. Their progress is described in an annual Report on Corruption in the Czech Republic, a public document which is authored by the Ministry of the Interior. The reports are candid and informative, and permit interested parties to track the progress of anti-corruption legislation. Unfortunately, future reports will only be issued every two years. The Ministry of Interior also chairs an Interdepartmental Coordinating Group for Combating Corruption, but it was unclear to the GET if this group was authorised to establish or recommend government policies and priorities. In the GET's opinion an annual report publicly confirms the Czech Republic's commitment to the fight against corruption and also enhances the transparency of the government's legislative and organisational anti-corruption efforts. For these two reasons *the GET observes that Czech authorities should consider continuing issuing the Report on Corruption in the Czech Republic on a yearly basis.*

57. In the area of anti-corruption legislation, it should be noted that many laws of significance to the fight against corruption have either been recently enacted or are not yet in force. The transitional status of these laws complicates the GET's assessment of the government's anti-corruption efforts. This problem is clearly illustrated by the Public Service Act (Act No. 218/2002), a comprehensive and significant modernising of the Republic's dated public service laws for civil servants (at state level). The Act was passed by Parliament in 2002 but is not yet in force. It is currently scheduled to be implemented in January 2007; however, the GET was advised that implementation of the law had been delayed repeatedly because of the high costs involved, particularly the new salary provisions for civil servants. The GET also learned that there remains significant opposition to the law, and several persons interviewed by the GET stated or implied that the law may never be implemented.

58. The Labour Act (Act No. 65/1965) contains many of the Czech Republic's current public service laws. It applies to all employees in public service (both at the state and regional/local level)[35] and establishes a contractual relationship between employer and employee. Many of the Labour Act's provisions are dated and incomplete. The GET was advised that a new Labour Code was now under consideration, and noted that the current Labour Act does not adequately address significant areas of public administration in the Czech Republic that are susceptible to corruption. For example, the Act includes rudimentary provisions regarding the regulation of gifts and conflicts of interest, but provides no sanctions for violations. Similarly, there are no provisions in the Act for uniform disciplinary proceedings against employees in the public sector. Furthermore, the Labour Act's only post-employment restrictions are contained in Section 29a, a discretionary contract clause of extremely narrow scope that compensates a departing employee if he agrees not to engage in "competitive" employment for a limited period of time. The GET recommends 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.

59. As outlined in the descriptive part of this report, the Labour Act does not require competitive hiring for public sector employees, and current hiring practices vary widely between Ministries. At the local and regional level the Act of Officials of Local Self-Government Units (Act No. 312/2002)

[35] The Act on Officials of Local Self-Government Units (Act No. 312/2002) provides the main employment regime for local/regional officials and is complemented by the Labour Code.

does require open and competitive recruitment of certain posts (appointing officials for an indefinite period and high-ranking local/regional officials), but the GET was told that this requirement was not always applied in practice. The GET therefore recommends to enact and implement laws that require the competitive hiring of civil servants and local/regional officials, at all levels of public administration.

60. As noted in the descriptive part of this report, Czech law establishes public access to all levels of government information, both in the Charter of Rights and Freedoms and in specific legislation. However, the Free Access to Information Act (Act No.106/1999) has several restrictions that seem to unduly limit access to useful records. For example, Section 11 permits agencies to restrict the disclosure of information that "applies solely to the internal instructions and personnel regulations of the obligated entity." Although the GET did not meet with journalists to further explore this issue, it did learn that many agencies demand full reimbursement for every search and copy expense. In the GET's view, transparency of public administration is a critical element in the fight against corruption. Consequently, the GET recommends 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.

61. Although the Czech Republic's Ombudsman's office (official title: "Public Defender of Rights for the Czech Republic") does not have a specific anti-corruption mandate, it has done much to enhance the transparency and accountability of Czech public administration. In 2004, this large and well-organised office received more than 4000 complaints, held 16 press conferences and self-initiated more than 40 inquiries. The Ombudsman employs 44 lawyers and produces high quality reports regarding its activities both to Parliament and to the public. However, because its competence is limited to certain functions within the central government[36], nearly 45% of all complaints received by the Ombudsman's office are outside of its current mandate. In light of the Ombudsman's obvious and increasing visibility with the Czech Republic's citizens, *the GET observes that the Czech authorities should consider expanding the Ombudsman's jurisdiction to include issues that fall within the exclusive competence of regional and local administrations. This would allow the Ombudsman's office to address a number of complaints they now must decline or refer elsewhere, and would assist the struggling regional governments in effectively dealing with these important matters.*

62. With regard to reporting corruption, the GET was informed that most Ministries have established hotlines to receive corruption allegations, including anonymous complaints. The GET became aware, however, that the usefulness and effectiveness of these hotlines varied widely between Ministries.[37] Notably, the Czech Chapter of Transparency International offered to operate a corruption hotline to be funded by the Ministry of the Interior. This hotline became operational in December 2005.

63. The GET was furthermore told that the Ethical Code of Public Administration Employees, approved by Government resolution in March 2001, "encourages" and "recommends" that public administration employees report corruption to a superior or to a law enforcement official. The

[36] However, the GET was informed, after the visit, that in as far as regional and local authorities carry out activities which would normally be considered a function of the central government, the Ombudsman would also have the mandate to investigate those activities.

[37] Some hotlines, for example, are simply recordings that require callers to leave a message, while others discourage anonymous allegations. Some are effective and robust: the Ministry of Justice hotline received 400 allegations in 2004, 60 of which were referred to police authorities.

Code, which also contains ethical guidance on gifts, conflicts of interest, political activities and abuse of official status, is not binding. Several Ministries and agencies have individual Codes of Ethics or Codes of Conduct. The GET was advised that violations of the Code will often also violate other, enforceable legal provisions (e.g., oath of office), which can be used as a basis for disciplinary action. The legal provisions relevant in this respect are Section 168 of the Criminal Code and Section 8 of the Code of Criminal Procedure. Section 168 CC requires that a small number of serious crimes be reported to law enforcement authorities by providing that "Whoever reliably learns that another person has committed [enumerated crimes] and does not report such an offence without delay to a public prosecutor or police authority…shall be punished by [up to 3 years` imprisonment]". Although bribery is not one of the offences listed in Section 168, the GET was informed that state officials are obligated by Section 8 CCP to report all crimes.[38] The GET noted that this provision could also be interpreted to refer to an obligation upon the employer (the state authority concerned) to report crimes committed by an employee. Nevertheless, the GET was advised that failing to report a crime could be chargeable as negligent performance of duties. No statistics were available to determine whether a violation of this section has ever been pursued against any state employee. Furthermore, the GET was informed that the Czech Republic has no law or regulation protecting "whistleblowers" and that none were under consideration. Consequently, the GET recommends 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.

64. Turning to training, as detailed in the descriptive part of this report, all civil servants receive entry-level training on ethical conduct. Subsequent training on ethics, integrity and anti-corruption issues is voluntary. The Government Office advised the GET that they offer continuing training for managers in the central government on at least a quarterly basis, including a four-day course devoted to preventing corruption in the public administration. These courses are advertised on the government's website. The GET was not made aware of whether certain categories of civil servants (for example, those working in sectors considered to be vulnerable to corruption) would receive anti-corruption, ethics and integrity training more often than others. The GET was informed that the Interior Ministry is responsible for training within regional and local administrations, but the GET was not provided with specific information on training programmes for such officials.[39] A representative for the Union of Municipalities and Cities advised the GET that the union had published and distributed a book on ethics to all towns and municipalities in the Czech Republic. The GET recommends to establish rules requiring periodic and continuing anti-corruption, ethics and integrity training for all civil servants and local/regional officials.

[38] Section 8 CCP, paragraph 1, reads: "State authorities, legal entities and natural persons are obliged without needless delay and also, unless stipulated otherwise in a special regulation, without payment, to comply with requests from law enforcement bodies in performance of their duties. State authorities are also obligated to notify a state prosecutor or police authorities promptly of a fact indicating that a criminal offence has been committed."

[39] However, after the visit, the Czech authorities reported that the Local Administration Institute provides training to local officials. It was further reported that this Institute prepares special courses for high-ranking local officials on ten subjects, including "Ethics and Corruption". The latter is scheduled to take place during the second half of 2006.

IV. THEME III – LEGAL PERSONS AND CORRUPTION

a. Description of the situation

Definition of legal persons and establishment

65. The concept of legal persons is not explicitly defined in Czech legislation, but Section 18 of the Civil Code contains a typology of legal persons. Within the meaning of this section legal persons are: (i) associations of natural or legal persons, which include commercial companies, civic associations, political movements, the church and professional chambers such as the Bar Association; (ii) foundations / endowment funds; (iii) units of local self-government (regions and municipalities); (iv) other subjects, designated to be legal entities by special law, such as the Czech National Bank, Czech railway etc.

66. Commercial companies or business entities within the meaning of the first type can, on the basis of the Commercial Code, be subdivided into five different categories: (1) limited liability companies; (2) joint stock companies; (3) co-operatives; (4) general partnerships; and (5) partnerships limited by shares. Of these types of business entities limited liability companies are the most common, followed by joint stock companies.

(1) Limited liability companies, *spolecnost s rucenim omezenym (S.R.O.),* require at least one founder who has to have a minimum level of capital of 200,000 CZK (approx. €7,000) which must be paid prior to incorporation of the company. The company can have a maximum of 50 shareholders. Shareholders have joint and several liability for the obligations of the company up to the unpaid portion of their shares.

(2) Joint stock company, *akciova spolecnost (A.S)*, may be founded by more than one natural person or one or more legal entities. The capital is divided in shares and the number of shareholders is unlimited. The capital of an A.S. incorporated with the public offer of shares must be at least 20,000,000 CZK (approx. €696,000), without this public offer at least 2,000,000 CZK (approx. €69,600). In the Commercial register is recorded only the entire capital of A.S., not the value and appropriate portion of rights and duties of each share, contrary to S.R.O. Shareholders are not liable for the obligations of the company.

(3) Co-operatives, *druzstvo*, can be founded by at least five natural persons or at least two legal entities. The capital of a co-operative consists of the sum of the investments in the company of each founder and later members and must have a value exceeding 50,000 CZK (approx. €1,700). Members are not liable for the co-operative's obligations.

(4) General partnerships, *verejna obchodni spolecnost (V.O.S.)*, are used primarily by certain professions (lawyers, notaries, etc.) to carry out their business activities. They require at least two founders (natural persons, who must satisfy the general conditions for obtaining a licence to carry out certain trades on the basis of the License Act[40], or legal entities). The partners are fully liable for the obligations of the partnership.

(5) Partnerships limited by shares, *komanditni spolecnost (K.S.),* are primarily used by small family businesses. It requires two founders: a statutory body or general partner

[40] There are 3 different types of licences, with different conditions for obtaining them. All three types of licences require an excerpt of a person's criminal record not older than 3 months.

(*Komplementar*), who is liable for the obligations of the entity, and a limited partner or an investor (*Komandista*) who must invest at least 5,000 CZK (approx. €174).

Registration and transparency

67. The Czech legal system distinguishes between founding and registration of legal persons. Only when a legal person is officially registered does it exist properly and does it have the capacity to acquire rights and obligations. Registration in the Commercial Register is mandatory for all commercial entities.[41] After incorporation a commercial entity can make an application for registration to one of the Registry Courts, which are placed at the Regional Courts. All applications for registration are checked by judges.[42] If the application has not been reviewed by the Registry Court within a period of 10 working days, the company will be entered into the Commercial Register immediately thereafter without a check having been carried out. As of 1 July 2006 the registration period will be shortened to five working days.[43]

68. The requirements for registration vary according to the type of company involved, but include at minimum specification of the name of the company, its type, seat and subject of business and who is entitled to represent the company. The person(s) entitled to represent or act on behalf of the company are required to provide an excerpt, not older than 3 months, of their criminal record. Limited liability companies (*S.R.O.)*, joint stock companies (*A.S.*) and co-operatives (*druzstvo*) must furthermore also register their initial capital and – in the case of limited liability companies - the value and portion of rights and duties of each share. Any relevant changes in the company (fusions, audits, changes in statutory organs etc.) must be reported to the relevant Registry Court.

69. To ensure transparency all the information that has been submitted for the registration of the company and any subsequent changes reported by the company is entered in the Commercial Register, which is public. The Commercial Register can also be accessed on-line, through the web-site of the Ministry of Justice. There are certain restrictions on personal involvement in more than one legal entity, mainly on involvement in more than one limited liability company. There are no restrictions on the nationality of the founders, members or shareholders, nor are there any restrictions on the number of accounts a company may hold.

Limitation on exercising functions in legal persons

70. With regard to disqualification, Section 194 of the Commercial Code (Act. No. 513/1991), provides that only a person who is "irreproachable, within the meaning of the License Act (Act No. 455/1991)" can become a member of the board of directors of a company.[44] Section 6 of the

[41] Foundations / endowment funds are registered in Foundation Registries on the basis of Section 5 of the Foundation Act (Act No. 227/1997).

[42] After the visit, the Czech authorities reported that commercial companies are also required to submit a notarial deed with their application for registration. Consequently, some of the information to be submitted to the Registry is also checked by notaries.

[43] As of this date the information supplied by the company will no longer be reviewed by judges, but by court clerks.

[44] In addition, the GET was informed after the visit that Section 49 of the Criminal Code gives courts the possibility to impose the 'prohibition of a specific activity', if this specific activity is related to the crime (for example, a person convicted of bribing a public official in connection with a public tender in the construction industry, can be prohibited from carrying out building and construction activities). To this end, Section 49 CC provides: "(1) A court may order a prohibition of a specific activity for a period of one to ten years, if the offender in question has committed a crime related to such an activity.(…)" Section 50 furthermore provides: "(1)The sanction of prohibition of a specific activity consists in the offender being prohibited to perform a certain job (employment) or profession (occupation), or function or activity subjected to special license, or regulated by special provisions (rules). (2) Once the sanction of prohibition of a specific activity has been completed, the offender concerned shall be regarded as not having been convicted."

License Act provides that a person is not to be considered "irreproachable", if s/he has been convicted to a term of imprisonment of more than one year or if s/he has been convicted for a 'business-related' crime. A person who is not "irreproachable within the meaning of the License Act" is not eligible for a trading licence, which has to be obtained before registration of the company.[45] This non-eligibility for a license also applies to natural persons on whose estate a bankruptcy order has been issued for a period of 3 years. Without a trading license a company cannot be registered. If the 'trading prohibition' is ordered after registration and if the relevant Registry Court learns of the judgment, the name of the person in question can be deleted from the Commercial Register, the company can be asked to replace the person in question or ultimately the company can be liquidated.

Liability of legal persons

71. Under Czech law only natural persons can commit crimes. Criminal liability of legal persons is not provided for. The Government's proposal for an act to introduce criminal liability of legal persons was rejected by Parliament in November 2004. No plans for further proposals to establish criminal liability of legal persons are envisaged at this moment.

72. The general provision for civil liability is Section 420 of the Civil Code (Act No. 40/1964) which holds legal entities (on par with natural persons) liable for damage resulting from an illegal act. Illegal acts are acts contrary to law, whether civil, administrative or criminal law and include unfair competition (which in turn includes bribery[46]) as defined by the Commercial Code (Act No. 513/1991) and corruption and money laundering as defined by the Criminal Code, but not trading in influence. Acts of bribery as defined by the Commercial Code and acts of corruption or money laundering as defined by the Criminal Code committed by natural persons can be attributed to legal persons, if the legal person is the subject in whose interest the offence (under the Penal or Commercial Code) was committed.[47] In order to fulfil the definition of bribery under the Commercial Code the act of bribery does not have to be effectively realised and the advantage over the competition does not necessarily have to be obtained, but it does require the promise, offer or request of a bribe. Civil liability of the legal person does not hinder criminal proceedings against the natural person who was the perpetrator, instigator of or accessory to the act of bribery in question.

73. Administrative liability of legal persons exists, but not for corruption, money laundering or trading in influence offences.

74. There are no statistics or details available on civil proceedings instituted against legal persons or against natural persons holding managerial positions within legal persons for damages as a result of unfair competition / bribery as defined by the Commercial Code or as a result of corruption or money laundering within the definition of the Criminal Code.

[45] The licence is issued by the Trades Licensing Office of the municipality where the person wants to set up a trade. On the basis of Section 8 (5) of the Licence Act (Act. No. 455/1991) the Trades Licensing Office may waive the prohibition to carry out a trade for which a license is required if it is of the opinion that a person's financial situation and behaviour suggest that s/he will duly fulfil its undertakings in the performance of its trade.

[46] Bribery, defined by Section 49 of the Commercial Code (Act. No. 513/1991), is different from the definition of bribery in the Criminal Code (Act. No. 140/1961) in that it solely relates to competitors and does not have to concern an issue of public interest.

[47] Similarly, lack of supervision or control by a natural person in a leading position within the legal person will only invoke civil liability of the legal person, if the act that was facilitated by the lack of supervision was committed in the interest of the legal person.

Sanctions and measures for legal persons

75. As outlined above legal persons can at the moment not be held criminally liable and as such no sanctions can be taken against them for active bribery, trading in influence or money laundering. Administrative sanctions can be taken for (for example) breaches of public procurement regulations, but not for acts of corruption, trading in influence or money laundering. Measures against illegal acts by legal persons are very much dependent on the condition of damage sustained by a private party as a result of this act and on the willingness of private parties to take a legal person to court, to have them abstain from these illegal acts or to seek appropriate compensation of damages (which can be money or the handing over of whatever the unjust enrichment by the legal person amounts to).

Tax deductibility and fiscal authorities

76. Section 25, subsection 1, paragraph zf, of the Income Tax Act (Act No. 586/1992) explicitly stipulates that tax relief is denied for any sort of facilitation payment to foreign public officials (or to third parties on behalf of the foreign public official), even if this payment is not against the law of the country in question. No similar stipulation is provided in the Income Tax Act for bribes or other illicit payments in general (when not related to foreign public officials). However, pursuant to Section 24 of the Income Tax Act, only "expenses or costs incurred to generate, assure and maintain the taxable income shall be deducted in an amount documented by the taxpayer or in the amount stipulated in this Act and in other statutory provisions". If the provision of a payment is in breach of the law, the act for which the payment has been provided is invalid and cannot be approved fiscally. Consequently, bribes and other illicit payments are not considered an expense necessary to "generate, assure and maintain the taxable income".

77. Tax authorities have a duty to report fiscal offences and suspicious transactions (related to money laundering). On the basis of Section 4, paragraph 5, of the Anti-Money Laundering Act (Act No. 61/1996), tax administrators are required to report suspicious transactions - related to payments they receive themselves or to requests of tax payers to have their tax refund in excess of €15,000 sent to a foreign account - to the Financial Analytical Unit (the FIU) at the Ministry of Finance. By virtue of Section 24, paragraph 6 (g) and 5 (f) of the Tax Procedure Act the tax authorities must, if so requested, forward all relevant data in relation to possible money laundering offences to the FIU and can also not invoke tax secrecy provisions in relation to criminal investigations conducted by the police (ÚOKFK, the Unit for the Detection of Corruption and Financial Crime, and ÚONVDK, the Unit for the Detection of Illegal Proceeds and Tax Crime) into the proceeds of crime, terrorism and financing of terrorism, and economic crime (including corruption) and organised crime. Police officers of the ÚOKFK and ÚONVDK told the GET that they enjoyed good working relations with the tax authorities with regard to investigations into *inter alia* corruption. The tax authorities informed the GET that they would receive and respond to approximately 8 official (written) requests for information by the police a year and 6 so-called 'operative' requests a month.

Accounting Rules

78. By virtue of the Accounting Act (Act No. 563/1991) all legal entities based in the Czech Republic undertaking business activities (or other activities which are defined by special law) are required to keep accounting records for the whole period of their existence. Only natural persons undertaking business activities are exempted from this obligation.

79. Business entities must keep the company's accounts according to the provisions set out in the Accounting Act (Act No. 563/1991), which prescribes as a main rule that accounting units "shall keep their accounts in a complete manner, with proper support, and correctly, so that they fairly present the accounting events which are the object of accounting" (Section 7). A failure to keep accounts in accordance with the provision of the Accounting Act, which includes the use of false or incomplete information in accounting documents or destruction or hiding of accounting books, can be fined by the tax authorities. This fine may ultimately amount to up to 6% of the company's assets. Furthermore, the use of false or incomplete information in accounting documents may be considered as a criminal offence on the basis of Section 125 of the Criminal Code,[48] which deals with misrepresentation of data in economic and business records

Role of accountants, auditors and legal professions

80. It is mandatory for joint stock companies *(akciova spolecnost)* to have an auditor if their total assets are worth more than 40 million CZK (approx. €1,393,000), if their net turnover is 80 million CZK (approx. €2,786,000) or more a year or if they have 50 or more employees. All other companies are obliged to have an auditor if they satisfy two out of three aforementioned conditions. Foundations, political parties and other types of legal entities are only required to have an auditor if this is prescribed by special law. Auditors are required to follow international standards for auditing.

81. There are no specific measures aimed at involving accountants, auditors and other advising professions in detecting corruption offences. However, if auditors in the exercise of their function come across anything which they suspect might be an offence they are required by virtue of Section 15 of the Auditors Act (Act. No 254/2000) to report this to the statutory body of the audited company and ultimately the supervising entity of the company or in the case of entities falling under state regulations (banks, pension fund, health insurance companies etc.) to law enforcement authorities. Furthermore, accountants, auditors and a number of other advising professions are subject to the anti-money laundering legislation and required to report suspicious transactions on the basis of Section 7 of the Anti-Money Laundering Act (Act No. 61/1996) to Financial Analytical Unit (the FIU) at the Ministry of Finance.

b. Analysis

82. The GET considers the comprehensive classification of legal persons in the Civil Code, and more in particular the typology of legal persons with a commercial purpose in the Commercial Code, satisfactory. The GET noted that all forms of companies are compelled to register at the Registry Court. The staff of the Registry Court, which is composed of judges, must approve all entries into the Commercial Register, which is a decentralised register. An application for registration must be examined by the judges within 10 days. The GET was told during the visit that this time-limit of 10 days was a fairly recent amendment to the law. The reduction of this period is believed to have had a positive effect on reducing incentives for potential corruption (i.e. offering bribes to speed up the registration procedure). Nonetheless, in the opinion of the GET the examination of the documents provided by a legal person has now become a purely formalistic procedure, containing a high risk of registering companies which are being used as vehicles for criminal activities. This opinion was shared by staff of the Registry Court. The GET is of the strong opinion that a balance needs to be struck between – on the one hand - the efficiency of a registration

[48] This offence can be punished with 6 months to 3 years imprisonment, a fine or prohibition of a specific activity In case of substantial damage to someone else's property or some other particularly serious consequence the sentence can be increased to 1 to 5 years imprisonment.

system and the need to reduce possibility for corruption in the registration process, and the necessity to prevent legal persons being used to shield criminal activities, such as corruption, on the other hand. Another weakness in the current registration system is that there is no system envisaged for communicating to the Registry Courts whenever a person has been banned from engaging in business activities.[49] The GET learned that a reform of the registration system is foreseen for 2006 and that from this date applications for registration will no longer be examined by judges, but by officials of the courts (law clerks). In order to make the system more efficient, the registration period will be further reduced to 5 days. Although the GET appreciates the expectation that this will lead to a further reduction of the potential for corruption taking place in the registration procedure, it had some concerns that no provision appeared to be envisaged to improve control of data submitted to the Registry Courts. The GET however learned thereafter that commercial companies will have to submit a notarial deed with their application for registration and that consequently notaries will perform a check on some of the information to be entered in the Commercial Register. The GET recommends 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.

83. At the time of the visit of the GET, Czech legislation did not provide for criminal liability of legal persons. A draft act introducing this concept was rejected by Parliament in November 2004 under strong pressure from the business community. The GET was informed that after this rejection by Parliament, the government did not propose to amend current provisions on legal persons to provide for adequate liability of legal persons (whether administrative or civil, if not criminal). Czech legislation provides for liability under administrative law but not in respect of corruption, money laundering and trading in influence, and under civil law for damages incurred as a result of a criminal offence or unfair competition (which on the basis of the Commercial Code explicitly includes bribery). No sanctions - administrative or other – can be taken against legal persons concerning cases of corruption, money laundering or trading in influence. The GET concludes that in this respect Czech legislation is not in compliance with Article 18 of the Criminal Law Convention on Corruption. Consequently, the GET recommends to establish liability of legal persons in accordance with the Criminal Law Convention on Corruption and to provide for effective, proportionate and dissuasive sanctions.

84. Tax authorities are required to report suspected fiscal offences to law enforcement bodies and suspicious transactions to the FIU. Corruption is not mentioned in the list of the criminal offences to be reported to the financial police, but in the GET's opinion, tax authorities appeared to be sufficiently aware of their role in the investigation of corruption offences when asked by the police to provide information or data contained in files of taxpayers. However, even in the absence of specific requests by the police, tax authorities clearly play an active role in the detection of corruption. Consequently, *the GET observes that the Czech authorities should introduce an obligation for tax authorities to report corruption offences.*

[49] After the visit of the GET, the Czech authorities reported that Section 315, paragraph 3, of the Code of Criminal Procedure provides that "Measures necessary for the execution of sanctions and protective measures and for the enforcement of costs of criminal proceedings, particularly notification of other bodies and persons, which are to contribute to the execution of the decisions in question, are – unless otherwise provided- made by the chairman of the panel of the court, which decided the case in the first instance". However, in the light of the information gathered during the on-site visit, it does not appear that systematic notification of the Registry Courts (in case a ban on engaging in business activities has been imposed) is carried out in practice.

85. Auditors and accountants seemed to be well-informed about their obligations with regard to the declaration of suspicious transactions related to money laundering (Act No. 61/1996). If auditors, in the course of their work, come across anything that might be an offence they must report to the management of the audited company. The GET commends the training programmes and regular publications for accountants that have raised awareness in these professions concerning the reporting of suspicious transactions related to money laundering. However, the GET realises that the Chamber of Commerce was doing very little, if not nothing at all, to promote ethics in business. Consequently, *the GET observes that the Chamber of Commerce should be encouraged to play a more active role in promoting ethics in business.*

V. CONCLUSIONS

86. As is shown by the annual reports on the implementation of the "Programme for the Fight Against Corruption", the Czech government has in the last 5 years introduced various measures to prevent and combat corruption, for which it should be commended. In spite of this, corruption remains a serious problem, as is also evidenced by recent high-profile corruption scandals (as reflected in the media). Therefore, further efforts are required. More in particular, there is an urgent need to address conflicts of interest, competitive hiring of persons employed in the public sector at all levels, reporting suspicions of corruption and adequate protection for public officials who report instances of corruption in good faith. With regard to the proceeds of corruption, it should be a matter of priority for the Czech authorities to ensure that a comprehensive set of legal provisions on interim measures and forfeiture is in place to deprive offenders of the benefits of their crimes. Furthermore, as regards legal persons, there is a need to establish liability of legal persons for offences of corruption, money laundering and trading in influence and to provide for sanctions that are effective, proportionate and dissuasive, in accordance with the Criminal Law Convention on Corruption. In addition, the reform of the registration process for commercial legal persons should be assessed (in particular with regard to the material check on the information entered into the Commercial Register), and there is a need to notify the Registry Courts whenever a leading person in a corporation has been disqualified from engaging in business activities.

87. In view of the above, GRECO addresses the following recommendations to the Czech Republic:

i. 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) (paragraph 30);

ii. 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 immoveable 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 (paragraph 31);

iii. 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) (paragraph 32);

iv. 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 (paragraph 33);

v. 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 (paragraph 34);

vi. 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 (paragraph 58);

vii. to enact and implement laws that require the competitive hiring of civil servants and local/regional officials, at all levels of public administration (paragraph 59);

viii. 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 (paragraph 60);

ix. 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 (paragraph 63);

x. to establish rules requiring periodic and continuing anti-corruption, ethics and integrity training for all civil servants and local/regional officials (paragraph 64);

xi. 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 (paragraph 82);

xii. to establish liability of legal persons in accordance with the Criminal Law Convention on Corruption and to provide for effective, proportionate and dissuasive sanctions (paragraph 83).

88. Moreover, GRECO invites the Czech authorities to take account of the *observations* (paragraphs 56, 61, 84 and 85) made in the analytical part of this report.

89. Finally, in conformity with Rule 30.2 of the Rules of Procedure, GRECO invites the Czech authorities to present a report on the implementation of the above-mentioned recommendations by 30 November 2007.