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COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES

(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON THE CZECH REPUBLIC[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum prepared by
the Secretariat
Directorate General of Human Rights and Legal Affairs (DG-HL)

[1] Adopted by MONEYVAL at its 24th Plenary meeting (Strasbourg, 10-14 September 2007).

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I. PREFACE

Information and methodology used for the evaluation of the Czech Republic

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Czech Republic was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), together with the two Directives of the European Commission (91/308/EEC and 2001/97/EC), in accordance with MONEYVAL's terms of reference and Procedural Rules. The evaluation was based on the laws, regulations and other materials supplied by the Czech Republic, and information obtained by the evaluation team during its on-site visit to the Czech Republic from 10 to 16 April 2005, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of a number of relevant Czech state institutions and the private sector. A list of the bodies met is set out in Annex to the mutual evaluation report.

2. The evaluation was conducted by an assessment team, which consisted of M. Peter RASHKOV (Director of the Department for International Legal Assistance, Eurointegration and International Legal Co-operation of the Ministry of Justice of Bulgaria) acting as legal evaluator, M. Daniel GATT (Analyst, Financial Intelligence Analysis Unit of MALTA) acting as law enforcement evaluator and M. Arpad KIRALY (Head of Department, Financial Supervisory Authority of Hungary) acting as financial evaluator. These three examiners were assisted by a colleague from the FATF, Mrs Ana Filipa FIGUEIREDO (Banking Supervision Department of the Bank of Portugal) acting as co-financial evaluator. The experts reviewed the institutional framework, the relevant AML/CFT laws, regulations, guidelines and other requirements, and the regulatory and other systems in place to deter money laundering (ML) and the financing of terrorism (FT) through financial institutions and Designated Non-Financial Businesses and Professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. This report provides a summary of the AML/CFT measures in place in the Czech Republic as at the date of the on-site visit or immediately thereafter. It describes and analyses those measures, sets out Czech levels of compliance with the FATF 40+9 Recommendations (see Table 1), and provides recommendations on how certain aspects of the system could be strengthened (see Table 2). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

II. EXECUTIVE SUMMARY

1. Background Information

1. The Czech Republic is usually perceived as one of the most stable and prosperous of the post-Communist states of Central and Eastern Europe. As the examiners were advised on site, despite the progressive development of modern payment techniques, the economy is still heavily cash-based.

2. Like in previous years, criminal proceeds originate from all types of criminal activities carried out in an organised manner (drug trafficking, human trafficking and smuggling) and economic crimes (particularly fraud, tax evasion, misuse of information in business relations). Other major proceeds generating crimes include criminal offences against property, insurance fraud and credit fraud. Connections between organised crime and ML have been observed mainly in relation with activities of foreign groups, in particular from the former Soviet Union republics, the Balkan region and Asia. The Czech Republic would also be affected by certain llicit financial activities (credit/loan services, money remittance particularly in connection with the Asian community, and illegal foreign exchange business – taking place blatently on certain streets of the capital city).

3. The Czech authorities indicated that the types of financial institutions used for money laundering in the Czech Republic are mainly banks, credit unions, insurance companies and exchange offices, as well as companies/commercial networks operating international money transfer services. The use of cash outside the regulated sector and of businesses without real activity (e.g. restaurants) or where proceeds are mixed up with legitimate profits, and real estate transactions would also be common ways used for ML purposes. According to certain interlocutors, the gaming sector and casino industry would also be exposed to ML and infiltration by criminals.

4. On terrorism and FT, police representatives acknowledged that the Czech Republic is little exposed to this problem, although the country has occasionally been used temporarily by people who had connections to well-known terrorists. About 10 cases of terrorism would have been handled by the courts in the last 11 years; these cases were not politically motivated, but were connected with general serious crime activities (typically, bomb explosions connected with extorsion etc.).

5. There has been no specific strategy adopted on combating money laundering. The priority of the Government in this area is to fulfil the international commitments and to be in compliance with the international standards. The main objectives and tasks of the Czech Republics´ authorities in combating terrorism in general as well as terrorist financing are included in a material called “The National Action Plan to Combat Terrorism” (NAP).

6. Overall, there has been moderate progress since MONEYVAL’s second evaluation round.

2. Legal Systems and Related Institutional Measures

7. Despite some improvements which are commendable, the criminalisation of ML under Section 252a (on "Legalisation of proceeds from criminal activity) of the Criminal Code still does not contain a broad definition and coverage of ML. The position of the Czech authorities according to which it is by a combination of various Sections (Section 252 but also Section 251 on "Participation/sharing" and Section 252 on "Participation/sharing by negligence" that the international requirements pertaining to the ML definition are implemented was found unsatisfactory because of inconsistencies, a dilution of the ML concept (Sections 251, 252 and 252a are individually closer to the classical offence of receiving of stolen property). Furthermore, the Czech Republic has managed to obtain its first (four) convictions for ML, which is commendable. But the jurisprudence available illustrates that to date, Section 252a has mostly (possibly only) been applied to criminal offences which had more to do stolen goods (receiving, trafficking, selling), than with the laundering of proceeds. This raises the issue of effectiveness.

8. Furthermore, as the examiners could find out, there is no unanimity among practitioners about such an interpretation (some prosecutors and judges consider that only Section 252a is ML specific), and this alone shows that in practice, risks exist that ML offences would not necessarily be dealt with in a consistent way and with utmost effectiveness. New provisions (which would not have fundamentally remedied the situation though) were under preparation at the time of the on-site visit[2]. At the moment, there is a need to clearly criminalise the *conversion, transfer, acquisition, possession of property*, to use a simpler, less proof demanding definition of ML, to increase the level of sanctions, to introduce corporate liability.

9. There has been no conviction for FT to date. The efforts of the Czech Republic to progressively improve the legal framework for the criminalisation of FT are commendable. At present, there is a clear provision dealing with the financing of terrorist acts (Section 95 para 2: are punishable those who provide financial, material o rother support to a terrorist act). The financing of terrorist organisations is also present in Czech legislation, through more general provisions on criminal conspiracy (which, however, explicitly refer to the issue of terrorism). The financing of individual terrorists, as such, seems totally absent. Other elements also need to be provided for explicitly (*direct or indirect collection of funds, utilisation of funds in full or in part, prosecutability of the offence without a link to a specific terrorist act and withou the funds having been used effectively).* The examiners believe that a stand-alone provision (or series of provisions) would be preferable reflect the international requirements in a consistent way and with a sufficient degree of legal certainty[3].

10. The regime of final measures is as follows, by virtue of the Criminal Code: Section 51 and 52 regulate the *forfeiture of property,* Section 55 and 56 the *forfeiture of* [a] *thing*. Section 53 and 54 provide for a system of pecuniary punishment which can be used as an alternative punishment. These various measures are conviction-based and besides these, Section 73 provides for a system of *seizure of a thing* , as a final protective measure, also without conviction. Provisional measures are regulated basically by two sets of provisions of the Code of Criminal Procedure, namely Sections 347 and 348, and Sections 78 ("Liability to deliver a thing – production order") and 79, 79a, 79b, 79c ("taking away of a thing", "judicial seizure of a bank account", "securing the booked – immaterialised – securities"). Although there is much

[2] But finally rejected in 2006

[3]The Czech authorities do not consider that the creation of a specific body of offence for terrorism financing would lead to improvements in practice or to an increase in the number of cases prosecuted: "This is only a systems change and at the legislative level; it will not have substantial significance for the area of prosecuting financing of terrorism. In our opinion no relevant reasons based on practice have been given for such a change."

to be commended in respect of bits of certain provisions considered individually, at the end, there is an inconsistent and complex framework for seizure and confiscation which generates mis-matches between temporary and final measures, creates legal loopholes and misses various elements (including direct and indirect proceeds, equivalent confiscation, confiscation of assets held by third persons). The provisions are not applicable to legal persons. The effectiveness issue for confiscation is also at stake.

11. Concerning the freezing of terrorist assets under SR. III, the Czech Republic has extended the preventive ML regime to FT in 2004. But the country relies to a large extent on the EU instruments and a general domestic law would be needed to fully implement in a practical way the various UN requirements as regards listing and delisting, the regime applicable to frozen assets etc. The Czech authorities have produced in the "The National Action Plan to Combat Terrorism (NAP)" a comprehensive list of shortcomings and they are thus aware of these. The evaluators also concluded that there was a lack of guidance and information to the industry and the public in general, the effectiveness/proactivity of detection remains questionable, the coverage of FT needs to be improved in the AML Act.

12. The Financial Analytical Unit (hereinafter FAU) was established on 1 July 1996 as an administrative FIU under the umbrella of the Ministry of Finance. It has been a member of the Egmont Group in 1997. It has its own premises and facilities and is fully dedicated solely to the detection and prevention of ML and FT. The FAU has also overall supervisory competence to ensure the implementation of the AML Act by all obliged entities, which prevents in principle any loopholes in the institutional supervisory arrangements. Comprehensive statistics are kept on its work. The evaluators heard occasionally individual complaints about the quality of the analytical work performed by the FAU. The FAU is not explicitly referred to in the AML Act (the Ministry is) and there is a possible need for better guaranteeing in legislation the autonomy and independence of the FAU (including its Head). At the time of the visit, the FAU produced no annual report[4]. The evaluators found that more guidance on AML (to the non banking sector), and on CFT (to all institutions) should be given.

13. The Czech Republic has designated bodies to ensure that ML and FT-related offences are properly investigated. Unlike the situation in the past, where reports of the FAU were sent to all police bodies, the Illegal Proceeds and Tax Crime Unit is the sole destine of the reports forwarded by the FAU.

14. The examiners had difficulties to draw a clear demarcation line between the main competencies of the Criminal Police and Investigation Service (CPI)s' units, especially the Illegal Proceeds and Tax Crime Unit and the Unit for the Detection of Organised Crime, since both are competent to deal with terrorist financing cases. Overall, the distribution of competencies of the different courts/prosecution services, appears to be quite complex and based on elements which, in the examiners views, are not necessarily available at the very beginning of an investigation dealing with ML and FT (amount of assets and type of proceeds involved etc.). The legal framework for the use of special investigative techniques can be restrictive on occasions, but the evaluators were assured that a general legal mechanism provides for their wide application every time a crime is provided for in an international

[4] After the visit, the Czech authorities advised that since 2006, the FAU has been releasing a periodic report on the website of the Ministry of Finance, informing the public about its activities, new AML/CFT legislation and new trends of ML/FT. The first report produced covers the period 1996-2005. Future reports will be released on an annual basis.

instrument (which obviously includes ML and FT). At the time o fteh visit, there was a lack of staff in certain departments of the prosecution services and Ministry of Justice, especially those dealing with serious crime and mutual legal assistance.

15. Cross-border movements of cash and other instruments are regulated in detail by the AML Law. Art. 5 imposes a declaration duty and Art. 12a provides for a system of sanctions in case of non-compliance. The matter is also regulated by Decree N° 343 of 18 May 2004, which contains a specimen form to be used for declarations. The Czech Republic has opted for a declaration mechanism which is quite broad. It applies to currencies and to means of payments generally, traveller cheques, bearer securities, "any commodities such as precious metals and stones" etc. The Czech Republic has open borders with the European Community, which is in conflict with SR IX – in the absence of particular AML (and CFT) measuresin this area. Other shortcomings include: the reporting duty for suspicions of ML and FT needs to be clearly spelled out, effectiveness issue (low number of ML cases generated by the Customs compared to the criminal activity context of the Czech Republic), Customs need to be made more aware of AML/CFT issues as they rely a lot on the police as regards information in this field.

3. Preventive Measures – Financial Institutions

16. The Anti-Money Laundering Act which provides for the general preventive framework was adopted in 1996[5].Sector specific AML/CFT regulations exist only for the banking sector: in September 2003, the Czech National Bank issued a *Provision of the CNB N°1 on the Internal Control System of a Benk for the Area of Money Laundering Prevention.*

17. In principle, bearer passbooks will have been completely phased out in 2012. Although in general the customer identification procedures (not full CDD measures) are mostly in place, the examiners noted some shortcomings in relation to some criteria for Recommendation 5. Full CDD requirements should be introduced in the AML Act (including on-going due diligence and know-your customer, risk-based approach, consequences of incomplete CDD measures and application of CCD requirements to existing customer etc.), with appropriate guidance. The evaluators also found inconsistencies between the banking regulations and the AML Act on the issue of CDD measures on the occasion of operations with bearer passbooks. Financial institutions are not required to identify the originator and the beneficiary of funds transfers with the full data, and to renew customer identification and verification (if theer are doubts for instance). Also, a general legal requirement is missing on the identification of beneficial owners and on obtaining information about the ownership of all types of legal entities.

18. The issue of PEPs is not addressed through the AML Act. In practice, financial institutions are not complying with this recommendation, including the banking sector who lack guidance in relation to the basic relevant requirement that exists in bankig regulation. The issue of correspondent banking relationships, threats from developing technologies and non-face-to-face business relationships is addressed to some extent in the banking sector only. Recommendations were made by the examiners to address those issues.

19. Reliance on third parties to perform the CDD process is permitted to a limited extent and possibilities for introduced business are likely to be introduced soon, but for the time being,

[5] A revised draft has been prepared, which is expected to come into force on 15 December 2007

there are no general provisions allowing for access to customer identification in all cases and no general framework as yet on identification in such cases. Lawyers do act as intermediaries when companies establish first contacts.

20. The AML act suspends to a large extent financial confidentiality and secrecy but there are inconsistencies in regulations. Provisions in the AML Act might need to be clarified in relation with FT (as far as law enforcement/criminal police are concerned).

21. The requirements related to the registration and storing of information are basically in place in the AML Act. However, CNB regulations are less specific – which could create confusions in the sector under the responsibility of the CNB, and therefore, these regulations should be made consistent with the AML Act. Besides identification data, the regulations should also cover explicitly account files, and business correspondence, and any other relevant information (written findings on complex and unusual large transactions etc.). Th examiners also believed there is a need to maintain pressure on financial and other institutions to store data and documents in a computerised way that would allow to retrieve information in a timely manner.

22. The requirements of SR VII on wire-transfers have not been directly addressed in relation to some criteria (no regulation or policies applicable to the handling of transfers in case of incomplete identification data, no requirement to keep the originator information throughout the transfer chain etc.). The issue would need to be re-addressed in the context of the adoption of relevant EU regulations (which will apply automatically in the Czech republic).

23. For the time being, the requirements in respect of complex, unsusual and large transactions (R.11) are addressed satisfactorily in banking regulations. It is therefore recommended to expand the obligation of R.11, beyond the banking sector, to all financial institutions and other obliged entities. The basic requirement related to relationships and vigilance vis a vis risk countries R.21 are implemented in the AML Act and to some extent in the banking regulations also through the measures referred to for R.11. All requirements are not present though and existing measures have little impact in practice since there is over- reliance on the FATF list of NCCT which contained only two or three countries at the time of the on-site visit.

24. The system for reporting ML and FT put in place in the Czech Republic appears to be quite sound, if one excepts the issue of feedback which needs to be addressed. The protection against the consequences of reporting to the FAU does not extend explicitly to the disclosure of information (although it covers the suspension of transactions), beyond the obliged entity, to its management and staff.

25. The matter of internal AML/CFT programmes needs to be re-addressed in the AML Act due to several shortcomings which are only compensated to some extent for the banking sector (internal procedures are needed beyond the mere appointment of a responsible officer, the reporting officer needs to become a compliance officer appointed at managerial level and explicitly entrusted with broader responsibilities, an audit function and screening procedures for employees are needed, AML and CFT should be addressed explicitly and inconsistencies between the AML Act and the banking regulations need to be reviewed. Effectiveness is also an issue here. There are no explicit general AML/CFT requirements implementing R.22 on the applicability of domestic rules to branches located abroad.

26. Basic requirements are in place that ensure the non existence of shell banks in the Czech Republic. Some improvements are needed to ensure that correspondent banking relationships requirements are extended beyond the banking sector to all financial institutions (e.g. credit unions), and criterion 18.3 needs to be addressed

27. As regards supervision, the AML Act sets clear responsibilities for supervising the financial and other entities, which was very much welcome by the examiners. Supervisors are also required to report suspicions to the FAU. In their case, the fact that the reporting duty is based on the concept of "suspicious transactions" could be an obstacle. For the time being, with the exception of the CSC, financial supervisors seem to take their AML duties seriously and they have the means to do so. However, bearing in mind that supervision has mostly focused so far – with the exception of the CNB – on formal requirements and to a limited extent with technical on-site inspections to verify the implementation of AML measures in practice, the Czech authorities will need to remain vigilant on this issue. The examiners believe that the merger of financial supervisors under the CNB will further raise the standards further in practice and help solve certain issues (staffing and means of supervisors, a more consistent approach throughout the financial sector etc.).

28. Money transfer services provided by the Czech Post and the control of the agents of a license holder need to be better addressed. There are allegations of informal remittance activity in the Czech Republic. These need to be looked at.

4. Preventive Measures – Designated Non-Financial Businesses and Professions

29. The amendment to the AML Act, in 2004, has extended the list of non financial institutions to include those required by Article 2a of the revised EU Directive. The obligations applied to them are to a large extent same as those applied to the financial institutions. This includes identification, record keeping and reporting obligations with regard to suspicious transactions and also to facts of any other kind that might indicate a suspicious transaction. The only sector specific texts adopted that addresses the issue of AML/CFT are those of the Bar Association. One of them is the Resolution of the Board of the Czech Bar Association of June 2004 "defining the procedure to be followed by attorneys-at-law and the control Council of the Czech Bar Association for the purposes of compliance with legislation on measures against the legalisation of proceeds from crime".

30. The concerns expressed and weaknesses identified regarding Recommendation 5 for the financial sector apply also for DNFBPs. There are no particular additional weaknesses or shortcomings identified. In the field of reporting requirements, the application of the relevant FATF Recommendations to the non-financial sector – other entities or DNFBPs – appears to be broad. Specifically for DNFBPs, the problem of insufficient guidance and awarenss raising initiatives to their attention on AML/CFT issues was mentioned. Most of them (including supervisors) aknowledged being at an early stage of awareness or seemed to ignore CFT issues totally. Quite a lot needs to be done in respect of DNFBPs in that area.

31. Certain sectors of activities of DNFBPs are allegedly particularly exposed to ML, but there are no increased efforts from the authorities to address this (e.g. gambling, casinos, possibly accountants).

32. The examiners welcomed that the list of obliged entities goes beyond the international requirements. This being said, the Czech Republic should examine whether it would not be better to put "legal persons or natural persons authorised to broker savings, monetary credits or loans or brokering activities that lead to the signing of insurance or reinsurance contract" under the control of the financial supervisors. Finally, the examiners found that there is room for further measures to encourage the development and use of modern and secure techniques for conducting transactions, that are less vulnerable to money laundering.

5. Legal Persons and Arrangements & Non-Profit Organisations

33. The examiners found that the registration of business entities does not ensure an adequate level of reliability of information registered and of transparency of ownership; companies can issue freely transferable bearer shares (there seem to be no particular AML/CFT counter-measures in place). The interviews held on site have also pointed at integrity problems in the area of registration of companies and that the effectiveness of the measures in place was problematic. This is an important area that the Czech authorities need to look at.[6]

34. The Concept of trusts (and fiduciaries) is not part of the Czech Republic's tradition.

35. As regards Non-profit Orgnaisations, a developed legal framework with controls at the most sensitive levels seems to be in place but no real picture was available of possible AML/CFT strengths and weaknesses. The information is available from different databases only, which can make enquiries somewhat cumbersome. The examiners heard occasionally allegations of misuse of NPOs for criminal purposes but since there was no detailed information available, the Czech authorities may need to examine these further. For the time being, no formal review of the legal framework applicable to NPOs was undertaken.

6. National and International Co-operation

36. National coordination mechanisms are in place and there seem to be bases for an inter-institutional dialogue. The FAU and supervisory bodies manage to coordinate the supervisory work in a way that limits undue risks of overlapping or loopholes. However, for the time being, there is a lack of common understanding on certain issues and of a real concerted approach at national level that would bring on the same path the whole chain of institutions involved in the prevention, detection, investigation and prosecution of economic and other activities involving proceeds from crime. As a result, there are different "AML/CFT languages" spoken in the Czech Republic, with a tendency to transfer the responsibility for the lack of results on others: the industry criticizes the lack of guidance and the standards, the police critizes the FAU, judges critizes the police and prosecutors etc. The need for a strong concertation mechanism and shared responsibilities is obvious.

[6]the Czech authorities advised after the visit that the situation has very much impproved with the new legal changes of Law N° 216/2005, Law N° 79/2006 and the Regulation N° 562/2006 (on the the computerisation of data).

37. The Palermo Convention and the terrorist financing[7] Convention have not been ratified;

38. The Czech Republic is able to cooperate to a large extent with foreign counterparts in those areas which are relevant for AML/CFT purposes. It would seem that the major limitations to international cooperation are possibly linked to the incomplete Czeck legal framework on seizure and confiscation. Furthermore, certain staffing problems (Ministry of Justice, prosecutor's office) could be an obstacle to timely and effectice cooperation. These issues have already been addressed elsewhere in the report. Legal assistance is provided to the widest extent possible in the absence of dual criminality for less intrusive measures but they are still needed for intrusive measures such as seizure and confiscation. Except in cases where the European Arrest Warrant (EAW) is used, dual criminality is always required for the purposes of extradition.

39. In principle, the various state institutions appear to be able to cooperate broadly with their foreign counterparts. On paper, there seem to be some limitations as regards the use of information from certain financial institutions (Securities and insurancesector) that could hinder cooperation of the prudential supervisors with foreign entities.

7. Other Issues

40. Countries are allowed, under the Methodology, to have a risk based approach when determining priorities and imposing obligations on obliged entities. The examiners noted in this context, that part of the Czech authorities referred to the existence of such a risk based approach – including the FAU. However, there was a tendency to rely on assumptions rather than on assements. One of the results of this is the lack of unanimity on sectors really exposed to, and used for ML purposes. The examiners believed that a consistent risk based approach should be developped, based on accepted evaluations of given situations.

[7] The Czech Republic ratified the Convention on 27 December 2005; it entered into force on 26 January 2006

III. MUTUAL EVALUATION REPORT

1 GENERAL INFORMATION

1.1 General information on the Czech Republic

1. With 78,866 sq km and a total population of slightly more than 10 million inhabitants, the Czech Republic is a medium size country, located in the centre of Europe. The political transition to post-communism occurred in 1989, through a peaceful "Velvet Revolution." On 1 January 1993, the country underwent a "velvet divorce" into its two national components, the Czech Republic and Slovakia. The Czech Republic joined NATO in 1999 and the European Union in May 2004.

2. The Constitution of 1993 has established a parliamentary democracy. Administratively, the country comprises 13 regions (kraje, singular - kraj) and 1 capital city* (hlavni mesto); Jihocesky Kraj, Jihomoravsky Kraj, Karlovarsky Kraj, Kralovehradecky Kraj, Liberecky Kraj, Moravskoslezsky Kraj, Olomoucky Kraj, Pardubicky Kraj, Plzensky Kraj, Praha (Prague)*, Stredocesky Kraj, Ustecky Kraj, Vysocina, Zlinsky Kraj. The legal system is based on civil law.

3. The Czech Republic is usually perceived as one of the most stable and prosperous of the post-Communist states of Central and Eastern Europe. Growth in 2000-05 was supported by exports to the EU, primarily to Germany, and a strong recovery of foreign and domestic investment. Domestic demand is playing an ever more important role in underpinning growth as interest rates drop and the availability of credit cards and mortgages increases. The current account deficit has declined to around 3% of GDP as demand for Czech products in the European Union has increased. Inflation is under control. Recent accession to the EU gives further impetus and direction to structural reform. In early 2004 the government passed increases in the Value Added Tax (VAT) and tightened eligibility for social benefits with the intention to bring the public finance gap down to 4% of GDP by 2006.

4. The national currency is the Czech crown (for the purposes of this report, € 1 = approx CZK 30).

5. As the examiners were advised on site, despite the progressive development of modern payment techniques, the economy is still heavily cash-based.

1.2 General Situation of Money Laundering and Financing of Terrorism

Main sources of criminal proceeds

6. The Czech authorities indicated that overall, there have been no significant changes in the types of criminal activities regarded as the main sources of illegal proceeds since the previous evaluations. Like in previous years there are two main sources of illegal proceeds in the Czech Republic: all types of criminal activities carried out in an

organised manner (drug trafficking, human trafficking and smuggling) and economic crimes (particularly fraud, tax evasion, misuse of information in business relations).

7. There has been no overall research on the scale of proceeds generated by criminal activities. The FAU keeps statistics on amounts involved in proceedings initiated by the FAU:

- in 2002 : CZK 1,5 billions (approx EUR 50 millions);
- in 2003 : CZK 14,5 billions (approx. EUR 480 millions – CZKL 13 millions relates to one major case)
- in 2004 : CZK 730 millions (approx EUR 24 millions).

8. It was stressed that new legislation regulating business activities in fields that are vulnerable to money laundering (e.g.: savings co-operative, credit co-operative, pawnshops) is expected to limit increasing trends in those areas. However the number of investigations and prosecutions of such activities has risen significantly.

9. The authorities also stressed that although the illegal proceeds stem from both domestic and foreign predicate offences, domestic cases of illegal proceeds seem to be more easily detected by the law enforcement authorities.

10. From the point of view of the Financial Analytical Unit (FAU), the main sources of illegal proceeds in the Czech Republic are criminal offences against property and economic criminal offences, in particular fraud, insurance fraud and credit fraud. Tax criminal offences are a particular issue, since they are involved in the STRs most often and subsequently also in criminal proceedings initiated by the FAU.

11. Connections between organised crime and ML have been observed mainly in relation with activities of foreign groups, in particular from the former Soviet Union republics, the Balkan region and Asia.

12. During their stay, the members of the evaluation team observed in certain areas of Prague some kind of black market foreign exchange, the purpose of which was not fully clear (illegal currency exchange according to the authorities, people trying to defraud tourists and/or to sell discontinued notes including from foreign countries, according to exchange office employees that the team asked in the vicinity). This street business was taking place frequently and openly in the touristic places. The authorities explained that police authorities were at a stage of observing and learning about the business before intervening[8].

13. A representative of the Czech Gemological Association indicated that the Czech Republic is one of the few countries which possesses the technical capacity to transform poor quality gems (5 Czech commercial laboratories have this capacity). According to him, the Czech Republic would be an important transit centre for the illegal trade and smuggling with precious stones and metals (and therefore also an interesting place to observe and track this kind of activities). He also stressed that it would be quite common to pay for unofficial high-level transactions with rough gem

[8]At the time of the discussion of the report, the Czech authorities indicated that measures had been taken to eradicate this criminal activity (increasing of police presence in those areas, undercover police work, prosecutorial actions initiated etc.); it would now be under control.

stones (involving operators based in the Czech Republic but also Germany, Israel etc., as the illegal gem business is regularly moving from one place to another). Research carried out by the Association would have shown that close connections exist between the trade in precious stones and that of arms trafficking[9].

14. Representatives of the regulated financial sector mentioned that illicit financial activities, in particular credit/loan services, were offered by certain entities acting without license/being registered[10].

ML and FT trends and techniques

15. The Ministry of the Interior produces quite comprehensive regular reports on such topics as corruption, the general security situation, extremism, trafficking in human beings and prostitution. Some do address to some extent the issue of ML[11].

16. The replies to the questionnaire indicated that closest attention is paid to the banking sector, which is the most vulnerable as regards the misuse for the purpose of money laundering and at the same time STRs from banks represents 85% of all STRs.

17. The Czech authorities stressed that overall, the ML situation has not changed very much in the last four years. Since 2003 the FAU keeps statistics on transfers of funds abroad. From this data the FAU derived two ML-related model situations:

- depositing of cash (mostly in USD and EUR) on the private accounts of natural persons with a subsequent wire transfer abroad (in particular to the South-East Asia – China, Vietnam, Hong-Kong); the stated purpose of the payment is often "private transfer", "gift", "payments for the purchase of goods", "repayment of a loan";
- depositing of significant amounts of cash to private accounts of natural persons (mostly in CZK or EUR), exchange to USD and withdrawal of cash.

18. In 2003 the FAU has identified 173 such cases of transfers, totalling CZK 1,3 billions (approx. EU 43 millions) and in 2004 197 cases totalling CZK 1,01 billions. In most cases, the subjects stated in the STR are not registered in a tax register, which leads the FAU to suspect that the predicate offences are tax criminal offences. These transfers are seen by the FAU as one of the most significant problems in the Czech Republic and it is assumed that the source of proceeds is probably selling of forged goods on the „Asian" market halls near the boarders with Austria and Germany. The Customs in cooperation with the tax authorities and the Police have conducted several random controls at these halls.

19. The Czech authorities indicated that the types of financial institutions used for money laundering in the Czech Republic are mainly banks, credit unions, insurance companies

[9]The Czech authorities assert that the picture was exaggerated and not objective, and resulted from a minority opinion

[10]The Czech authorities indicated that the number of businesses or persons concerned is limited, compared to the number of banks, and that the loans are not very high; they also stress that this is mostly a regional problem happening in areas affected by economic reforms and unemployment.

[11] www.mvcr.cz/dokument/indexen.html#3 , see for instance the annual reports on public order and internal security

and exchange offices, as well as companies/commercial networks operating international money transfer services. Overall, the most common ways for laundering money are considered to be the following:

- part of business operations are carried out outside the financial regulations thanks to the use of cash;
- a significant amount of „dirty money“ is transferred abroad in cash or by wire transfers;
- Money is also laundered via restaurants without clients, legal companies which mix legal and illegal money, illegal banking, illegal security market, gifts sent abroad, real estate market etc.

20. Czech Customs representatives, on the other hand, stressed that criminals do not use the banking system anymore and prefer to keep assets under their permanent direct control ("they all have a safe at home").

21. It was occasionally indicated that ML mostly involves Czech and Asian (Vietnamese, Chinese) nationals. In relation to the latter, representatives of the police also mentioned that there were major problems of illicit financial activities (informal money transfers in particular) [12].

22. Representatives from the Casino industry and gaming sector controlling bodies unanimously shared with the examiners their concerns as regards the high vulnerabilities of the sector to ML and its possible infiltration by criminals. The existence of un-registered or unproperly registered gaming activities was mentioned.

23. Representatives of the real estate brokerage business indicated that their sector was also at risk.

24. There were sometimes diverging views among the insurance sector representatives met on site as to problems in their sector. Supervisors stressed that there have been ML cases with life insurance products and that these remain at risk. Representatives of the industry stressed that there was no particular difference in terms of risks between life-insurance and non life-insurance products.

25. On terrorism and FT, police representatives acknowledged that the Czech Republic is little exposed to this problem, although the country has occasionally been used temporarily by people who had connections to well-known terrorists. According to information provided by judges, 10 cases have been handled by the courts in the last 11 years; these cases were not politically motivated, but were connected with general serious crime activities (typically, bomb explosions connected with extorsion etc.).

26. General threats are examined and described in some of the above-mentioned reports. The *Report on Public Order and Internal Security in the Czech Republic in 2003* indicated the following:

[12]The Czech authorities indicated after the evaluation, that the a new phenomena has emerged, namely Asian traders using diplomatic couriers to make transfers related to trading happening at fairs

- "There are some factual indications showing the presence on the territory of the Czech Republic of contact persons from some foreign terrorist groups. These persons repeatedly transit through the Czech territory; an interest in purchasing weapons or technology on the side of persons suspected of co-operation with terrorist organisations was detected and there were also efforts to establish branches of foreign nongovernmental organisations suspected of supporting terrorism;

- although no classic terrorist action has been reported in the Czech Republic since 1989 the general public have been disturbed by several events, such as a recent (March - June 2003) wave of blackmailers requiring from the state huge amounts of money (these were not terrorist acts but crimes of extortion using methods marked by the media as terrorist) (…);

- the establishment of islamic centres may be a risk factor in the future – for example some Islamic centres in Western Europe serve as a hiding place for persons who are being pursued, or as warehouses of weapons, and so forth. The Muslim community in the Czech Republic is not very large, the low number of mosques and Islamic houses of prayer corresponds to the number of religious Muslims. On the basis of the experiences of other European countries it can be assumed that Muslim immigration supported by the Czech Republic's accession to the EU may cause tensions and the establishment of radical Islamic centres. The Islamic community in the Czech Republic is nowadays more and more intensively financially supported from some countries where Islam is a state religion. Some (…) students incline to radicalism, a significant role being played by [one structure] in particular. There is a risk that some members of [this structure] may maintain links [with certain well-known foreign violent islamic organisations]. (…)".

1.3 Overview of the Financial Sector and designated non-financial businesses and professions

Banking Sector and the financial sector under the responsibility of the Czech National Bank

27. As of 31 January 2005 the Czech banking sector consisted of 26 banks (of which 6 are building companies) and 10 branches of foreign banks (all falling under the EU single license regime). There are thus 36 banks and branches of foreign banks in total.

28. As of 31 December 2004, the total assets of the banking sector represented CZK 2 636 billions. Compared to the year 2003, this shows an increase of CZK 108 billions. At the end of 2003, in terms of total assets the banking sector represented 74 % of the financial market.

29. As of 31 December 2004, foreign capital represented 82.23% of the total capital of banks. In terms of total assets, 95.95% of the banking assets are under foreign control (direct or indirect ownership of more than 50% of capital of individual banks).

30. According to Article 1 of the Act No. 21/1992 Coll. (Act on Banks), a bank is authorised to accept deposits from the public, and provide credits. A bank may carry out the following other activities, provided that it is authorised (licensed) to do so:

a) investing in securities for own account,
b) financial leasing,
c) money transmission services,
d) issuing and administering means of payment, e.g. credit cards and travellers cheques,
e) providing guarantees,
f) opening letters of credit,
g) collecting payments,
h) providing investment services pursuant to a special legislative act, where the licence specifies the principal and ancillary investment activities the bank is authorised to carry on and the investment instruments concerned,
i) money broking,
j) acting as a depository,
k) foreign exchange activities (purchase of foreign currencies),
l) providing banking information,
m) trading currencies and gold for its own account or for clients,
n) renting safe deposit boxes,
o) activities directly associated with the acceptance of deposits and providing credits.

Foreign exchanges offices, money transmitters

31. As of 31 December 2004, the situation was as follows:

- 2 658 foreign exchange offices for purchasing foreign currencies licensed according to the Trade Act
- 246 foreign exchange offices for selling foreign currencies licensed by the CNB
- 26 money transmitters
- 36 foreign exchange dealers

32. The above activities represented in 2004 a turnover of approximately EUR 27.760 mil. (including activities performed by casinos).

Electronic money institutions (EMI)

33. So far, there are no EMI (in the meaning of EU Directive 2000/46/EC) operating in the Czech Republic. Such institutions would be created by an amendment to the Payment System Act No. 124/2002 Coll., which – at the time of the evaluation visit – was being prepared and would enter into force on 1st of October 2005. EMI will be legal persons issuing electronic money and authorised to perform connected activities (granting credits will be excluded). The new law foresees that the basic capital of EMI shall be at least CZK 35 mil. (EUR 1.17 mil.). EMI are to be licensed and supervised by the CNB.

Other persons issuing electronic money instruments

34. According to the Payment System Act, undertakings other than banks, branches of foreign banks and undertakings authorised to issue electronic money instruments under a single license may only issue electronic money instruments subject to the prior consent of the CNB. The essential elements of the application are set forth in a Decree No. 547/2002 Coll. The conditions are as follows: (a) the electronic money instrument issued to the holder is used to store electronic money of an amount of no more than CZK 4,500 (EUR 150) and the total amount of the issuer's liabilities relating to outstanding electronic money never exceeds CZK 150 mil. (EUR 5 mil.); and (b) the electronic money instruments are accepted only by a limited number of service providers which are parent undertakings or subsidiaries of the issuer or are subsidiaries of the same undertaking as the issuer or have a close financial or business relationship with the issuer, such as a common marketing or distribution scheme.

35. Undertakings issuing electronic money instruments shall notify the CNB of the volume of electronic money issued during the past six months and the number of electronic money instruments issued as of 30 June and 31 December of each calendar year. At the request of the CNB, such undertakings shall also provide other details concerning the issuing of electronic money instruments and electronic money.

36. As of 28 February 2005, the CNB has granted 11 authorisations, mainly to transport providers.

Securities market:

37. **The Czech Securities Commission** (hereinafter "CSC") performs state supervision above all over the activities of investment companies (including foreign ones active in the Czech Republic), investment funds, securities dealers, registered investment intermediaries and brokers. The CSC also performs supervision over issuers of listed securities in terms of their disclosure duty. It also supervises the stock exchange, commodities stock exchanges, the off-exchange market called RM-System, the Securities Centre or other legal entity authorized to maintain parts of registers of the Securities Centre as well as to perform its other activities, persons ensuring settlement of transactions with securities and pension funds in terms of the management of their assets. In certain cases, such as takeover offers, reporting shares in voting rights in companies with listed shares or the acquisition of own shares, the CSC performs supervision over duties prescribed to companies by the Commercial Code. Activities of the securities dealers that are banks are regulated by the CSC together with the Czech National Bank (hereinafter only "CNB"). Activities of the pension funds are regulated by the CSC only in the field of their investment; other activities are regulated by the Ministry of Finance and the Ministry of Labor and Social Affairs.

38. Obliged persons pursuant to the **Act no. 61/1996 Coll., on some measures against the legalization of the proceeds of crime** and on the amendment and supplementation of connected Acts, which are supervised by the CSC are these:

- **the Securities Centre** or other legal entity authorized to maintain parts of registers of the Securities Centre as well as to perform its other activities
- **organizer of a securities market** (stock exchange or OTC market organizer)
- **securities dealer**, that is not a bank
- **investment company**

- **investment fund**
- **pension fund**
- **commodities stock exchange**

39. The CSC is authorized to grant licence to persons entering the capital market to provide services or offer their products. Such persons are obliged to, before entering the market, fulfill a list of prerequisites stipulated by the legal provisions. The CSC examines fulfillment of these conditions in the licensing proceeding, the aim of which is to grant licence only to persons that fulfill the conditions of financial reliability, competence, and prerequisites for straight feasance. The actual list of the licensed entities is available at www.sec.cz in the section Lists.

40. **The Securities Centre** (hereinafter "the Centre") was established at the beginning of 1993 by the Ministry of Finance as a contributory organization (an organization partly financed from the state budget). The Centre's principal task is to keep records about book-entry securities and their owners. The Centre keeps issuer registers (records of securities issued by one issuer) and owner registers (records of securities owned by one owner). Owner accounts only include records about final owners, since effective legal regulations do not allow multi-level records (so-called omnibus accounts). Every owner of book-entry securities must have an account at the Centre, and the securities can only be transferred within the Centre's registers as records to the credit or to the debit of the relevant accounts. On the basis of a contract with the Centre and the CSC´ approval, a different legal entity may keep a part of the Centre's records. Details of the Centre's activities and the rules for keeping the records can be found in the Centre's Operation Rules, available on the Centre's website (www.scp.cz). The system of registering investment instruments and transactions settlement with those securities is unsatisfactory. The Act on Undertaking on the Capital Market includes the creation of a **central depository**, which will have to be granted an authorization by the CSC and will keep a central register of all book-entry securities issued in the Czech Republic. The existence of a unified system of settlement and the formation of a central depository are considered to be necessary preconditions for ensuring more effective and transparent functioning of the capital market in the Czech Republic.

41. The most important public securities market organizer in the Czech Republic is the **Prague Stock Exchange.** Trading on PSE was launched in 1993 in co-operation with experts from the Paris Stock Exchange. At the beginning, the system of trading was order-driven, but in 1998 a price-driven trading module called SPAD was launched; SPAD is based on continuous listing of the most liquid stock on the market and is used for more than 90% of all stock transactions on the exchange. From 2003, trading technologies supporting trading and settlement via Internet are being developed, which will lead to lower transaction costs for securities dealers. The governing bodies of the exchange are the General Meeting of Shareholders, the Exchange Chamber and the Supervisory Board. In June 2001, PSE became a member of FESE (Federation of European Securities Exchanges). Especially between 2000 and 2002 the exchange created a modern internal legislative framework and rules of trading according to European directives and FESE recommendations (among other documents, it issues its Stock Exchange Regulations and the Rules of the Stock Exchange), and today PSE is fully standardized. In 2001, the exchange extended the scope of published information in order to enhance transparency. PSE is based on the membership principle, which means that securities can only be purchased via a securities dealer that is a member of

the exchange. The list of members is available on the exchange's website (www.pse.cz). The preconditions for trading on the exchange are an account with the Securities Centre and access to the Clearing Centre of the Czech National Bank (directly or via its direct participants). The Prague Stock Exchange is an electronic exchange, in which transactions are performed using an automatic trading system (ATS). The system is based on electronic processing of buy and sell orders sent to the exchange by its members. At present, only spot deals are closed on the exchange. The exchange is prepared for derivative trading as well, but this project has been suspended because of a lack of interest on the part of members.

42. Settlement of stock exchange transactions is provided by the **Univyc** company (hereinafter „Univyc"), whose only shareholder is the Prague Stock Exchange. Based on instructions from Univyc, financial settlement is performed in the Clearing centre of the Czech National Bank as well as the registration of the ownership change in the Securities Centre (for book-entry securities) or in Univyc (for physical securities). Settlement of all types of stock exchange transactions may only be performed using the "delivery versus payment" (DVP) method. Settlement of SPAD transactions and automatic transactions is guaranteed by the Guarantee fund of the Exchange. The guarantees do not apply to block transactions.

43. **RM-System** is a joint stock company, which has been active since 1993 as the organizer of the **off-exchange securities market.** Any person including foreigners may trade directly in RM-System. Trading in RM-System may be performed directly, i.e. without using the services of a securities dealer. Registration in a RM-System office and an account in the Securities Centre are necessary. Orders for purchase or sale are paid and RM-System also charges a commission on performed transactions. RM-System is a fully automated electronic securities market. Transactions performed using this system are settled within seconds. Trading itself has the form of a continuous auction, during which the price changes continuously on the basis of submitted buy or sell orders. An allowable spread**,** i.e. the maximum and the minimum price, is set for each security every day. Transaction settlement is performed using the "delivery versus payment" method. RM-System also registers the so-called direct transactions, i.e. transactions between two entities that agreed on the transaction in advance. Those are, however, transactions concluded outside RM-System, and therefore outside the public market. The price is determined by agreement and the allowable spread does not apply to it. Auction transaction settlement is guaranteed by the system of pre-transaction validation, which is a controlling and securing procedure performed by RM-System when processing each order. Orders to sell securities are validated in the Securities Centre, orders to buy securities are validated in the register of CZK accounts in RM-System. Settlement is performed using the "delivery versus payment" method, in time of T + 0. Detailed information on trading in RM-System is available on the company's website (www.rmsystem.cz).

Trading outside the public markets

44. In the Czech Republic, transactions that are concluded neither on PSE nor in RM-System are regarded as transactions concluded outside the public markets. Such transactions are settled by Univyc or the Securities Centre. Settlement is performed depending on the requirements of the customers either as delivery versus payment or as delivery free of payment. The majority of transactions outside the public markets are

settled via Univyc, the share of transactions performed via the Securities Centre is almost negligible, not exceeding 1% in the long run. More information on these organizations and the system of settlement of transactions outside the public markets is available on their websites www.univyc.cz and www.scp.cz .

Provision of investment services:

45. Only licensed securities dealers may offer investment services and trade in securities in the Czech Republic. Since the late 1990s, there has been a continuous trend of consolidation of the investment services sector, connected with a decrease in the number of securities dealers. Investment services offered by securities dealers are **principal** investment services and **supplementary** investment services rendered to third parties as part of a business.

46. Principal investment services consist in:

a) receiving and forwarding instructions concerning investment instruments;
b) carrying out instructions concerning investment instruments for a third-party account;
c) trading in investment instruments for one's own account;
d) managing assets of a customer under a contract with the customer if an investment instrument is part of such assets;
e) subscription for or placement of issues of investment instruments.

47. Supplementary investment services consist in:

a) managing investment instruments;
b) safekeeping investment instruments;
c) providing a customer with credit or a loan in order to allow a transaction with an investment instrument in which the credit or loan provider has a share;
d) consultancy concerning a capital structure, industrial strategy and related matters as well as advice and services concerning corporate transformation or business transfer;
e) consultancy concerning investments into investment instruments;
f) carrying out foreign exchange operations connected with the provision of investment services;
g) services connected with the subscription for issues of investment instruments;
h) letting safe deposit boxes.

48. A principal investment service or a supplementary investment service (a may only be provided by a securities dealer unless provided otherwise by law.

Collective investment

49. At the end of the 1990s, foreign investment companies began entering financial markets in the Czech Republic more intensely. The amendment to the Investment Companies and Investment Funds Act of 2001 stipulated that from 1.1. 2002 they must have a license granted by the CSC. After the accession of the Czech Republic to the EU investment companies with a registered office in the EU can enter the Czech market on the basis of the so-called European passport. Standard funds (UCITS funds under the law of the European Communities) can be freely offered in all member states of the EU. The entry of foreign funds to the Czech market has been significantly extending the offer of investment opportunities and promoting competition in collective investment.

Collective investment is, together with pension funds, the most dynamically developing segment of the Czech capital market. Information about collective investment entities can also be obtained from the professional organization of the majority of Czech investment companies – the Union of Investment Companies (www.uniscr.cz). State supervision in the field of collective investment is regulated by the Act on Collective Investment and the Czech Securities Commission Act. Pursuant to these Acts, investment companies and investment funds are subject to state supervision performed by the CSC. The aim of state supervision is to secure protection of the interests of shareholders and unit certificate holders. The Commission performs supervision in order to ensure compliance with legal regulations in the field of collective investment and adherence to the provisions of the statutes of funds and unit trusts.

State-contributory supplementary pension insurance

50. State-contributory supplementary pension insurance is an optional component of the present-day pension system in the Czech Republic. At the same time, its business character makes it an increasingly important capital market segment.

51. Since the mid-1990s the sector has been consolidating, which is connected with the significant decrease in the number of pension funds. At present, almost all pension funds are established and controlled by major foreign and Czech insurance companies or banks. The financial situation of pension funds today may be viewed as stable. Information about the economic results of pension funds active in the Czech Republic is available on the website of the Association of Pension Funds of the Czech Republic (www.apfcr.cz). Supplementary pension insurance is regulated by the State-contributory Supplementary Pension Insurance Act. A person older than 18 years with permanent residence in the Czech Republic may become a participant in supplementary pension insurance. The supplementary pension insurance contract includes a pension plan, which contains a detailed specification of the terms of pension insurance, the conditions under which the insured person may claim supplementary pension insurance benefits and their payment by a specific pension fund. A pension fund is a joint stock company with registered offices in the Czech Republic. The license is granted by the Ministry of Finance after an agreement with the Ministry of Labor and Social Affairs and the CSC. A pension fund's management of assets is regulated by the State-contributory Supplementary Pension Insurance Act. This Act also specifies in what assets a fund may invest its resources. Legal regulation of state supervision is contained in the State-contributory Supplementary Pension Insurance Act and the Czech Securities Commission Act. State supervision over pension funds is performed by the Ministry of Finance. State supervision over pension funds with respect to their investments into the capital market instruments is performed by the CSC.

Statistics (February 2005):

Type of financial institution	***Number of licensed entities***
Investment companies	47
Investment funds	46
Open – end mutual funds	63
Close – end mutual funds	0
Depositories	24

Securities dealers	57
Brokers	1753
Settlement systems and its participants	3
OTC markets organizers	1
Subregisters	3
Pension funds	24
Registered intermediaries	5729
Stock exchanges	1
Foreign special funds	24
EU entities authorized to provide investment services in CR	164

Insurance companies:

52. There are 33 insurance companies having their seats in the territory of the Czech Republic. Unless stipulated otherwise by the Act no. 361/1999 Coll., on insurance and on amendment to some related acts (**the Insurance Act**), insurance or reinsurance activity in the territory of the Czech Republic may only be carried on by an insurance or reinsurance undertaking which has been granted an authorisation by the Office of the State Insurance Supervision in Insurance and Pension Funds (**Office**).

53. There are 8 insurance companies from other Member States of the EU – branches in the Czech Republic. An authorisation for insurance undertaking having its seat abroad to carry on insurance activity in the territory of the Czech Republic is granted by the Office.

54. There are no changes of consolidation during 2003 – 2005. There are only 4 cases of transfer of the entire or the part of insurance portfolio during 2003 – 2004.

55. According to the Act on Insurance:

- Section 4, paragraph 2 - Home insurance undertaking established as a joint stock company or a reinsurance undertaking shall be entitled to **issue shares** to which voting rights are attached **only in book-entry form.**

- Section 8, paragraph 1e) - The application for an authorisation to carry on insurance activity shall contain the amount of registered capital of a joint stock company and registered basic capital of a co-operative (hereinafter referred to as "registered capital") and **its source.**

- Checking the origin of capital in case of an increase of registered capital is not required by law

Pension funds:

56. The central piece of legislation is Act no. 42/1994 Coll., on state-contributory supplementary pension insurance and amending certain acts related to its introduction, as amended does not permit transfer between pension funds within EU.

57. A licence is necessary to incorporate and operate a pension fund pursuant to Act No 42/1994 Coll. The Office of the State Supervision in Insurance and Pension Funds is

granting the licences based on a written application filed by the pension fund´s founders. There are 11 pension funds licensed at the Czech Republic.

Credit unions:

58. On 1st of May 2004 Act no. 280/2004 Coll. entered into force, amending the Act on credit unions (Act no. 87/1995 Coll). The changes introduced include:

i. Legal entities are permitted to be members of credit unions.
ii. With the exception of banks and other credit unions, credit unions are entitled to accept deposits solely from members. Identification of members is guaranteed.
iii. Whenever financial means of other person is to be deposited on an account of member of the credit union, such a person has to be identified and the credit union is obliged to record the amount belonging to such a person.
iv. Members are allowed to obtain additional member's shares. Consent of the Credit Union Supervisory Authority is required if the member is to acquire holding exceeding 5 % of the capital of the credit union. The member acquiring such a holding has to disclose the sources of financial means used to obtain the stated holding.

59. The Credit Union Supervisory Authority currently supervises 25 authorised credit unions. The total amount of deposits of authorized credit unions performing the activities of credit unions currently surpasses 1.500 million CZK. Pursuant to the Act on credit union, this kind of entities are authorised to carry out the following business activities:

a) accepting deposits from members,
b) providing credits to members,
c) financial leasing for members,
d) money transmission services, clearance and issuance and administering means of payment for members,
e) providing guarantees for members' loans and credits,
f) opening letters of credits for members,
g) collecting payments for members,
h) purchase of foreign currency for members subject to a license under a special legal regulation,
i) rendering safe deposit boxes to members.

And, in the framework of the above activities, to:

a) allocate deposits in credit unions and banks and in branches of foreign banks,
b) accept credits from credit unions and banks,
c) acquire assets and manage it,
d) trading in foreign exchange and exchange-rate and interest-rate instruments for own account in order to secure the risks arising out of the activities specified in paragraph 1,
e) trading in registered securities for own account

Overview of DNFBP

Casinos

60. According to the Article 1a para 7 letter d) of the AML Act is „the holder of a (gaming) licence to operate betting games in a casino, odds-on betting or numerical lotteries" is among the obliged persons. The control of compliance of these subjects is carried on by the FAU and according to the Article 8 para 3 letter e) also by the State Supervision over Betting Games and Lotteries. The area of lotteries and other similar games is regulated by a) Act No. 202. of 1999 Coll. concerning lotteries and other similar games (hereinafter "Lotteries Act"); b) Decree 223 of 1993 Coll. on gaming machines; c) Decree 285 of 1998 Coll. On conditions of monitoring and record keeping in casinos.

61. According to the Czech authorities, the specific nature of this business is reflected also in the way this area is regulated. The majority of gaming licenses in this field are granted by the State Supervision over Betting Games and Lotteries of the Ministry of Finance.

62. According to the Article 46 of the Lotteries Act the supervision over this area is conducted by:

- Municipalities in those cases when they grant licenses to operate lotteries and other similar games;
- Relevant tax authorities, in whose territorial limits are found the individual gaming establishments (casinos, gaming halls, betting agencies), in those cases when the Ministry of Finance grants licenses to operate lotteries and other similar games.
- The State Supervision over Betting Games and Lotteries of the Ministry of Finance.

63. The Ministry of Finance grants the license to operate betting games in casinos when the following conditions are met:

1. the license may by granted only to a joint-stock company being settled on the territory of the Czech Republic whose shares in their entirety are registered shares. The registered capital of such a joint-stock company shall amount to at least CZK 30,000,000 (approx. EUR 1,000.000) and shall not be reduced below this minimum amount while the license is good (Article 4 para 8 of the Lotteries Act);
2. On the basis of the exceptions the licence may be granted also to domestic legal entities with a foreign ownership stake or to a legal entity in which such a corporation has an ownership stake (Article 4 para 5 of the Lotteries Act);
3. An applicant applying for a license shall furnish the Ministry of Finance with a document attesting integrity of individuals listed in the Article 4a para 1 of the Lotteries Act. This document (extract form the Criminal Record) may not be older than 3 months and have to have the extent prescribed in this Article;
4. In order to secure receivables to the state, municipalities and the payout of the winnings to bettors, the applicant shall be required to deposit in a special account with a bank a financial amount ("security deposit"), in the amount of CZK 20.000.000 (approx. EUR 670.000). The security deposit shall be handled by the operator only after the previous consent of the Ministry.
5. The operator deliver to the publicly beneficial purposes a portion of the proceeds in the amount stipulated in the table, at least 6% to 20% from the difference by which the operator's income, consisting of all the bets made in all the games operated by the operator exceeds the winnings paid out to bettors, administrative fees, local fees and state supervision costs (Article 4 para 2 of the Lotteries Act); This portion of the proceeds may be used only for the publicly beneficial purpose specified in the license (Article 16 of the Lotteries Act).

64. At of 31 December 2004, the Ministry of Finance has issued 27 licenses for games in casinos, on the basis of which 158 casinos in total operate in the country. 15 **casinos** are licensed also for foreign exchange (as of 31 December 2004) - of the foreign currency for the gaming currency and of winnings in the gaming currency for the foreign currency.

Lawyers

65. The Act on Legal Profession, No. 85/1996 Coll., as subsequently amended, constitutes the fundamental legal regulation governing activities of the legal profession. This legal regulation is further supplemented by implementing decrees regulating, inter alia, remuneration of lawyers, disciplinary proceedings applicable to lawyers and articled clerks to lawyers, and Bar examinations. At present time, activities of the legal profession are further governed in details by 24 professional regulations adopted by the Assembly of the Czech Bar Association or its Board within their powers and relevant authorizations; professional regulations are promulgated in the official Bulletin of the Czech Bar Association and they are also available on its website (www.cak.cz). The most important professional regulations include namely the so-called Code of (Legal Profession's) Ethics (resolution of the Board of the Czech Bar Association No. 1/1997 of the Bulletin), stipulating rules of professional ethics and rules governing economic competition applicable to lawyers in the Czech Republic, or the Czech Bar Association's Rules of Organization (resolution of the Assembly of the Czech Bar Association No. 3/1999 of the Bulletin), regulating in details activities of individual organs of the Bar. At present time regulations governing position and duties of lawyers in connection with measures against legalization of the proceeds from criminal activity also constitute important professional regulations – see ad 2 below.

66. According to the Act on Legal Profession, a lawyer is a person recorded in the list kept by the Czech Bar Association. A lawyer is entitled to provide legal services including representation in proceedings before courts and other authorities, defence in criminal cases, provision of legal advice, drawing up documents, producing legal analysis and other forms of legal assistance, if they are performed continuously and for consideration. A lawyer is also entitled to manage foreign person's assets, including management of bankrupt's estate and safekeeping of money, securities and other assets entrusted to his management (in such cases a lawyer is obliged to keep a special bank account and when doing so he is bound by relevant legal regulations governing payments – see the relevant legal regulation specified in ad 2 below.

67. It is possible to practice law (as an entrepreneurial/business activity) either as an independent lawyer, as a member of lawyers' association or as a partner of a general commercial partnership founded for the purposes of practicing law (only lawyers may become partners).

68. According to the up-to-date available information, the list of lawyers maintained by the Czech Bar Association includes 7,784 persons and the list of articled clerks to lawyers includes 2,297 persons. 80 general commercial partnership have been founded for the purposes of practicing law.

Tax advisors

69. Pursuant to Art. 1(a) of the Act no. 523/1992 Coll., the term "tax advisory services" (or "tax consultancy") denotes "provision of legal aid and financial and economic advice in the field of taxes, levies, fees and other similar payments (hereinafter referred to as "taxes" only), as well as in the fields which are directly connected with taxes".

70. Tax Advisers, i.e. the members of the Chamber of Tax Advisers can only be, pursuant to the Act no. 523/1992 Coll., those natural persons who are enrolled in the List of Tax Advisers, and tax advisory services are provided on the basis of a contract made between a Tax Adviser and his or her client.

71. The Chamber had 3822 members as of 31 December 2004.

72. Tax advisory services can be carried out also by legal entities, but only on the basis of the Commercial Code, if they provide tax advisory services through mediation of Tax Advisors – natural persons. These legal entities are not the members of the Chamber, and the Chamber therefore does not register their numbers, legal forms or size. These legal entities are not obligatory persons within the meaning of the Act no. 61/1996 Coll. either.

Notaries

73. Notaries in the Czech Republic perform their job under the status of entrepreneur. They are nominated to the notary office by the Minister of Justice and the total number of notary offices is limited - so called "numerus clausus". As of 31.12.2004 there were 445 notary offices in the Czech Republic.

74. Subject of notaries activity is specified under the §2 of notary order (Act No. 385/1992 Sb.) as follows: "Under this law, the notary activities consist of drawing up a public documents recording legal acts, authentication of legally significant matters and statements, acceptation of documents to deposit and acceptation of money and documents to deposit for the purpose of transfer to other parties." In addition to core notary activities, notaries can offer legal advise, trustee, trustee in bankruptcy and settling administrator in bankruptcy and balancing proceedings. Furthermore, under the Code of Civil Procedure, notaries can act as a probate officer.

75. There are no professional regulations for notaries preventing money laundering. Clause 6 of §56 of notary order covering notary discretion was changed as part of changes of Act No. 61/1996 Coll.. (AML Law) in a way that the performance of the obligations towards the FIU according to the AML Law is not the breach of the professional liability of discretion.

76. The acceptation to deposit of both money and documents is defined in the notary order. Technical rules for money and documents acceptation for bailment and trust management are prescribed in the notary office order (internal order accepted by notary assembly). The notary office order specifies as well a liability to report acceptation of money for bailment or trust management to the Central Information System of the Notary Chamber of the Czech Republic.

Auditors

77. Auditing services exist in the form of activities related to:

- the verification of financial statements or consolidated financial statements and annual reports or consolidated annual reports
- the verification of other facto according separate legal regulations,
- the verification of other economics information to the extent specified in a contract

78. These services are provided by audit companies (mostly limited liability companies) and sole practitioner. The importance of the sector is shown in the following table:

Year	Auditors	Assistant Auditors	Audit Companies
2001	1314	1145	309
2002	1354	1210	307
2003	1242	928	317
2004	1260	978	327

Court executors

79. A court executor performs forced execution of warrant of execution (fieri facias) and further activities according to the Act No. 120 of 2001 Coll. Code of Execution. The further activities are e.g. legal advice to legitimate party and to liable party after issuing of an executive warrant and in connection with executive activity; custody of money, documents and other things in relation to executive, court or other proceeding; delivery of court documentation; performance of so called voluntary auctions and others.

	by 31/12/2004
Number of executors	119
Number of applicants	11
Number of junior executors	113

Real estate agents

80. In spite of the fact that real estate agents are also "obliged subjects" in the sense of the AML Act, from the view of the Trade Law the real estate activity is classified as an "unlicensed trade". It means that in order to obtain a permission to conduct real estate activities it is necessary only to substantiate the application for the permission with the extract from the Criminal Record. There is not required neither professional education nor experiences in this area.

81. The Trade Law distinguish four various kinds of activities relating to real estates: intermediating real estate agencies, purchase and further sale of real estates, activities connected with building of real estates in order to its sale, real estate activity. All these activities fall under the category *"a legal person or a natural person authorised to trade in real estates or to broker a trade in them"* according to the Article 1a para 7 letter e) of the AML Act.

82. By 31.12.2003 it has been issued 36.940 permissions to conduct real estate activities, by 31.12.2005 it was 42.002 in total.

Dealers with diamonds, gemstones, precious metals, jewellery

83. The Czech authorities have provided the following estimate of the importance of this sector:

- Dealing with gemstones and processed diamonds: based on the internet information and import / export information, there are several tens of persons (both legal and natural) dealing actively with gemstones and processed diamonds. Furthermore, it can be estimated that a high percentage of the persons dealing and processing silver and gold jewellery is involved in gemstones and processed diamonds as well;

- Dealing and processing of rough diamonds: about 20 legal and natural persons. These have to be registered pursuant to the Act No. 440/2003 Coll. On Dealing with Rough Diamonds and On Import Conditions;

- Dealing and processing silver and gold jewellery and precious metals**: b**ased on internet information and other estimates, there are about 500 persons (both legal and natural) involved actively in dealing with silver and gold jewellery. Persons dealing with precious metals including jewellery should be registered pursuant to the Hallmarking Act No. 539/92 Coll. as amended (Act No. 15/2004 Coll.); based on the personal information from the Hallmarking Office, there are 8234 persons registered to date.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

84. The Commercial Code (CoC) provides for the following types of companies

- commercial companies, i.e. unlimited partnership[13], limited partnership[14], limited liability company[15] and joint stock company[16];
- cooperative;
- European company and European economic interest grouping, which are categorised as commercial companies by the Commercial Code, but primarily regulated by EC law and special laws.

85. Special regulations deal with the existence and functioning of:

- state enterprises,
- foundations,
- foundation funds
- beneficial societies.

86. The Czech legislation also provides for the following contractual arrangements:

- silent partnership contract ("tiché společenství")[17] pursuant to the Commercial Code
- association contract, pursuant to Civil Code.

87. Commercial companies, pursuant to Section 57 of the Commercial Code (CoC), must be founded by deed (contract) of association signed by all founders. Their signatures must be officially verified. Deed of limited liability company or joint stock company must be drawn up in the form of a notarial deed. If a single founder establishes a company, there is no deed of association, but "deed of formation" (founder's deed) that must be drawn up in the form of notarial deed. It must comply with all requirements that apply to a deed of association.

88. A company is constituted on the day it is entered into the Commercial Register. Registration applications must be filed within 90 days following the formation of the

[13] Or general business partnership – veřejná obchodní společnost, v.o.s.
[14] komanditní společnost, k.s.
[15] společnost s ručením omezeným, s.r.o., most usual type of SME
[16] akciová společnost, a.s.
[17] The website of PriceWaterHouseCoopers specifies that "The silent partnership is an unpublicised and unregistered written agreement by which the silent partner contributes funds or assets to a business, but takes no part in the business activities. The status of a silent partner is similar to that of a creditor."

company or a trade or other business licence was delivered; otherwise, those acts cannot serve as a basis for the application (S. 62 paragraph 1 of the CoC). The entry proposal is made by a person concerned, or by persons entitled to do so by law, or those authorised to do so in writing by such persons. Proposal (application) must be accompanied by documents relating to facts to be entered into Commercial Register and by documents to be deposited in the collection of documents (S. 31 paragraphs 1 and 2 CoC).

89. Application for entry of unlimited partnership into Commercial Register is signed by all partners and accompanied by partnership deed (S. 78 paragraph 2 CoC). Application for entry of limited partnership into Commercial Register is signed by all partners and accompanied by partnership deed (S. 96 CoC). Limited liability company may be founded by a single person. A limited liability company with a single founder cannot become a single founder or partner of another limited liability company. A natural person may be single partner in no more than three limited liability companies (S. 105 paragraph 2 CoC). Number of partners cannot exceed 50. Petition for entry into Commercial Register is signed by all executive officers. Apart from documents stipulated in S. 30 (see bellow) and S. 31 paragraph 2 (see above) a petition must be accompanied also by deed of association or founder's deed, proof of payment of part of initial investment as set by law and, if applicable, an expert opinion on valuation of non-monetary investments. (S. 112 CoC).

90. A joint stock company may be founded by single legal person, or otherwise by two or more persons. Concentration of shares in the hands of single person does not, however, make the company illegal or force the court to wind it up. If there are two or more founders, they shall draw partnership deed. Single founder established company by deed of formation. (S. 162 paragraph 1 and 2 CoC). Founders may establish a joint stock company through public offer of shares (S. 164 CoC). If the shares are subscribed on the basis of public offer of shares, a prospectus or limited prospectus must be published at least in the same time as the offer, unless special legal regulation does not require prospectus (limited prospectus) to be issued and other conditions set therein are fulfilled. The subscriptions of shares on the basis of a public offer under S. 164 paragraph 1 CoC is completed by entry into list of subscribers (S. 165 paragraph 1). Subscribers who fulfilled duties set by law are entitled to participate at constituent general meeting (GM). Founders shall convene constituent GM within 60 days from the day on which the proposed basic capital has been effectively subscribed (S. 169 paragraph 1 CoC). Constituent GM shall take place only if shares in the value of proposed basic capita were effectively subscribed and at least 30 per cent of their nominal value was paid (and, if applicable, share premium was paid) (S. 170 paragraph 1 CoC). If founders agree in the deed of association that they will subscribe in certain proportions all shares of company's basic capital, public offer or shares and constituent GM are not required (S. 172 paragraph 1 CoC).

91. The establishment of cooperatives requires that a constituent meeting of cooperative was convened. The constituent meeting determines the amount of basic capital, approves by-laws, elects management board and audit commission (S. 224 paragraph 1 and 2 CoC). A cooperative emerges when entered into the Commercial Register. Before the application is made, at least one half of basic capital must be paid. It is for the management board to apply for entry. It is signed by all members of management board and accompanied by copy of notarial record of constituent meeting of cooperative; copy

of notarial record on decision of constituent meeting to approve by-laws; by-laws and proof of payment of required part of registered basic capital (S. 225 CoC).

92. According to Art. 2 of Council (EC) Regulation No. 2157/2001 on the Statute of European Company (Societas Europea, SE) may joint stock companies established pursuant to legal rules of Member State, having their seat and administrative center (head offices) in the Community, form SE through merger provided that at least two are subject to legal rules of different Member States. Joint stock companies and limited liability companies established under legal rules of Member State, having their seat and administrative center in the Community, may form holding SE provided that at least two are subject to legal rules of different Member States or have for at least 2 years a subsidiary that is subject to legal rules of different Member State or branch located therein. Companies in the sense of Art. 48 paragraph 2 TEU and other legal persons subject to public or private law, established under legal rules of Member State, having their seat and head offices in the Community, may establish subsidiary SE by subscribing its shares, if at at least two are subject to legal rules of different Member States or have for at least 2 years a subsidiary that is subject to legal rules of different Member State or branch located therein. Joint stock company, established under legal rules of Member State, having its seat and head offices in the Community, may be transformed to SE, if it has for at least 2 years a subsidiary subject to legal rules of different Member State. According to Art. 1 paragraphs 1 and 2 of Council (EEC) Regulation No. 2137/85 on establishment of European Economic Interest Grouping (EEIG) a person intent on establishment of EEIG must conclude a contract and register. Such an association is, from the day of registration, capable to acquire rights and duties, conclude contracts, perform other legal steps and act before court. Art. 7 of the Council Regulation lists documents and data that must be deposited (entered) into Commercial Register.

93. A state is founder of state enterprise. On its behalf, founder's functions are performed by relevant ministry which has competence in the area of business activity of enterprise. (If state enterprise performs some tasks for state defence, competent ministry is either Ministry of Defence or other ministry upon consent of the Ministry of Defence). State enterprise may be founded only after the Cabinet (Government) gave its consent (S. 3 of act no. 77/1997 Coll., on state enterprise). A state enterprise if founded by a founding deed, issued by the relevant ministry on behalf of the state. Such deed is a document of association pursuant to S. 27a of CoC (S. 4 paragraphs 1 and 2 of act on state enterprise). A state enterprise emerges on the day it is entered into the Commercial Register. Application is made by founder. It is accompanied by founding deed, document on valuation (assessment) of property with which the enterprise is entitled to do business at the moment of founding, documents pursuant to special laws necessary for entry to Commercial Register (see below) and decree of Cabinet granting consent to founding the enterprise (S. 5 of law on state enterprise).

94. Law no. 277/1997 Coll., on foundations and foundation funds stipulates in Section 3 that foundation or foundation fund are established by written contract concluded between founders, or by deed of formation (if there is single founder) or by testament (foundation deed). In the first case the founders' signatures must be officially verified, in two latter cases such deed must be done in the form of notarial record.

95. Afoundations or foundation funds are constittuted emerge on the day of entry into the Foundation Register. This Register is maintained by the Registry Court. The register is public; it comprises the statutes of foundation (foundation fund) and their annual reports. Application for entry of foundation (foundation fund) to the Foundation Register is to be made by the founders, an executor of testament or person authorised in writing to do so. The authenticity of the signature of a person empowering another person to do so must be officially verified.

96. Act no. 248/1995 Coll., on beneficial societies, stipulates in its Sections 3 and 4 paragraph 1 that founders of beneficial society may be natural persons, the Czech Republic or legal persons. Beneficial society is established by contract of association signed by all founders. Authenticity of their signatures must be officially verified. In case of single founder a deed of formation must be made in the form of notarial record. A beneficial society emerges on the day of entry into Register of Beneficial Societies. This Register is maintained by Registry Court as well. Application for entry to Register is made by founder or person authorised in writing by him to do so. It is accompanied by founding document and proof of emergence and existence of founder – legal person. Such an application must be made within 90 days of establishment of beneficial society (S. 5 paragraphs 1 and 2 of act on beneficial societies).

97. Civil Code permits several persons to form an association to fulfil some agreed purposes, including business activities. Such associations are legal persons. They attain a capability to rights and duties by registration into registers of associations maintained by regional offices (law no. 129/2000 Coll.). Following data are entered into these registers: name and seat of association, type (object) of its activity, statutory bodies, name and address of persons performing competence of statutory bodies (S. 20i paragraph 2 of the Civil Code). All members are obliged to act in order to reach agreed purpose by manner stipulated in contract and refrain from any activity which could prevent or obstruct accomplishment of such purpose. (Sections 20f – 20j of the Civil Code). Property gained during performance of joint activity is co-owned by all participants. All members are jointly and severally liable for obligations to third persons. Unless provided otherwise by contract, members decide on procuring common things by unanimity. (Sections 829 – 841 of the Civil Code)

Contractual Arrangements without Legal Personality

98. Trusts and fiduciaries are not part of the Czech legal tradition.

99. Pursuant to contract on silent partnership ("tiché společenství") a silent partner is obliged to provide an entrepreneur with certain investment and join his business activity with this investment. Entrepreneur is obliged to pay a portion of net profit corresponding to the (relative size of) investment that joined his business activity. Silent partner is not entitled to controlling activity with regard to both his investment and the business of entrepreneur. Rights and duties in relation to third persons apply (exist) only with regard to entrepreneur.

100. There are two exceptions. Silent partner guarantees obligations of an entrepreneur if his/her name is in the firm (commercial name) of the entrepreneur, or if a silent partner declares to another person with which an entrepreneur negotiates about contract, that they both do business activities jointly. Unless law provides for otherwise, a silent

partner has legal position with regard to its investment equivalent to that of creditor with regard to its claim. Silent partner is not, however, entitled to require the investment be returned before the contract ceases.

101. The contract must be written (Sections 673 – 681 CoC). Normal accounting requirements and tax rules apply as regards the evidence of deposit and payments of portions of net profit (and repayment of deposit after the contract expires). For example, the income of silent partner is considered an income of capital property (S. 8 paragraph 1 (b) of Income Taxes Act no. 586/1992 Coll.) and is subject to income tax unless it is used for supplementing his/her investment up to initial value (i.e. to cover preceding losses of entrepreneur).

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

Money laundering

102. There has been no specific strategy adopted on combating money laundering. The priority of the Government in this area is to fulfil the international commitments and to be in compliance with the international standards. On this account the Government adopted and supported the last amendment to the AML Act which was aimed at transposing the Second EU Directive on money laundering into the Czech legislation. The priority for the immediate future is to ensure the implementation of the current legislation and to further raise awareness of the obliged entities and actors involved in the AML efforts in order to achieve results in terms of convictions and proceeds confiscated.

Terrorist financing

103. The main objectives and tasks of the Czech Republics´ authorities in combating terrorism in general as well as terrorist financing are included in a material called **"The National Action Plan to Combat Terrorism"** (NAP).

104. By Decree of the Government of the Czech Republic from December 19, 2001 N°. 1364, the Minister of Interior was for the first time entrusted with the task to submit to the Government a „National Action Plan to Combat Terrorism", conceived as a comprehensive, medium-term document containing a list of tasks to be implemented in order to reduce the Czech Republic's vulnerability to terrorist attacks against its own territory and its interests abroad. The text of the document was approved by the Resolution of the Government of the Czech Republic from April 10, 2002 No. 385, which also entrusted the Minister of Interior with responsibility for implementing the tasks anchored in the NAP, for evaluating and – if required – updating the Plan. Such updating took place in December 2002 and the NAP – "Current Wording for 2003" was adopted by Government Resolution in April 2003. A version 2004 was approved in May 2004. The document "National Action Plan to Combat Terrorism - Current Wording for 2004" became an overview of the already completed and

continuously/actually prepared measures, along the relevant developments at the EU level.[18]

105. After the attacks in Spain on 11 March 2004, the European Council discussed and during the March 25 – 26, 2004 approved the Declaration on Combating Terrorism. Annex I of the Declaration is the updated Action Plan of the European Council. The objectives, listed in the Declaration and in the Action Plan (including all of the evaluations of the Plan), are binding for the Czech Republic. The Resolution of the National Security Council of the Czech Republic from April 13, 2004 No. 107 gave the Minister of Interior the task to incorporate immediately the content of the Declaration on Combating Terrorism into the NAP version 2004. To reach this goal, the Ministry of Interior, in close cooperation with the Ministry of Foreign Affairs, issued a document entitled *"Analysis of the ability of the Czech Republic to meet the obligations, listed in the Declaration on Combating Terrorism of the European Council"* (hereinafter "The Analysis"). It was preferred to keep the „Analysis" as an independent document that will be:

- operatively and according to the outcomes of the individual ministries and other central state administration offices, that are entrusted with the realisation of tasks ensuing from the Analysis, continuously evaluated, extended a put into accord with the actual development at the EU-level;
- serving as the basis for the delegations, representing the Czech Republic in the Council of Ministers and in the relevant EU Council working groups, handling with the individual obligations, arising from the Declaration;
- evaluated at least alongside with the evaluation of the Plan.

106. The NAP is prepared annually by the Ministry of Interior (Security Policy Department), in close co-operation with the Ministry of Foreign Affairs. All the ministries and many other central administration authorities are involved in the preparation and evaluation process of the NAP. According to the NAP 2004, the following measures in the area of terrorist financing shall be taken:

- to perform immediate analysis of obstacles preventing the country to ratify the UN Convention on Suppressing the Financing of Terrorism (to find a possibility for ratifying the Convention)[19],
- to ratify and fully implement the UN Convention on Suppressing the Financing of Terrorism[20],
- with the aim to ensure smooth fulfilment of tasks stemming from Council Regulation No. 2580/2001 draft a special act enabling CR to meet these tasks[21].

107. The NAP is based on – and goes beyond - the EU Council Action Plan (10010/04) and describes the ways how the Czech Republic completes (or not) the commitments, that

[18] A new version of the NAP was prepared and approved by the Governement in 2005 (for the period 2005-2007); a revised version is being prepered and expected to cover the period 2008-2010.

[19] This work was completed in 2005; a way was found to sanction legal persons on an administrative basis (withdrawal of licence etc.) which would enable the Czech Republic to ratify the Convention, but the situation is not considered fully satisfactory and there are further plans to introduce a full regime of administrative liability of legal persons

[20] the Convention was ratified on 27 December 2005

[21] Act N° 69/2006 on the Implemention of International Sactions was adopted, and entered into force on 1 April 2006; the Ministry of Finance was designated as the main body for the implementation of international sanctions

are mentioned in the Road Map. It means that its (permanent) evaluation also helps to find the potential gaps in the area of the fight against terrorism.

108. The Ministry of Interior (Security Policy department) is also responsible for drawing up a **"Report on Public Order and Internal Security in the Czech Republic"**. Such a report is prepared annually and is submitted to the Government. The last Report on Public Order and Internal Security in the Czech Republic in 2003 was adopted by the Government in 2004. These reports are drawn up under the responsibility of the Ministry of the Interior but they are compiled from documents provided also by other ministries and other public administration bodies.

109. The Report summarises problems and findings with the main aim of:

• providing an overview of trends in crime and their dynamics, developments in individual types of crime, and the structures of delinquency and criminal offenders;
• providing an overview of developments in internal order and security;
• providing information on the activities of executive bodies in security policy, on drawing up strategies and legislative and non-legislative measures and enabling the use of information gathered to combat crime, in particular to prepare legislative decision making, strategic, and organisational objectives;
• identifying and highlighting those areas which public authorities need to devote special attention to.

110. *The principles of internal security policy are defined in the Security Strategy of the Czech Republic (prepared by the Ministry of foreign affairs) approved by Government Resolution No. 1254 of 10 December 2003.* The Security Strategy of the Czech Republic is a document reflecting the security interests and needs of the Czech Republic in the context of the developing environment of security. The Strategy can flexibly respond to substantial changes occurring in the security environment.

111. *Analysis of the Legal Powers of the Intelligence Services and the Police of the Czech Republic, that are Needful to Complete Their Tasks in the Fight against International Terrorism (Analysis).* The aim of this material is to analyse current extent of the legal powers of the intelligence services and the Police in the area of the fight against terrorism and to compare them with the extent of the powers of their counterparts abroad (especially in the EU Member States)[22]. The first outcomes of the comparing process says openly, that the powers of the Czech Republic bodies have to be extended to assure the effective co-operation and exchange of information between the domestic bodies and their foreign counterparts (as is described for example in the Council Regulation No. 2580/2001). The crucial areas that have to be amended are:

- the possibilities of receiving information from the public administration bodies and from some private entities;
- the steps, that are connected with the Act on Electronic Communications (conditions of wire-tapping, localisation of cellular phone, databases,

[22]On the basis of this Analysis, which has been taken note of by the Government Decree No. 737 of 15 June 2005, and on the basis of other identified areas of necessary improvements of legislative framework for activities of intelligence services and security bodies listed in the NAP, there are particular legislative initiatives prepared and discussed. These initiatives should be submitted to the Government at the end of 2007 jointly with a new Police Act and Internal Security Act.

jamming of electronic communication, the ways, how the Police can receive information aside of the prosecution mechanism, etc.);

- the agenda of the so called ”Central Register of Bank Accounts”;
- the exchange of information according to the Act No 133/2000 Coll., on the evidence of the inhabitants and their unique identification numbers and other sensitive data.

Future initiatives[23]

112. Currently in the area of combating money laundering after the relatively complicated discussion and adoption of the last amendment to the AML Act, which has transposed into the Czech legislation the 2nd EU Directive on money laundering the Czech Government does not plan any further independent initiative in this area. It is supposed that after the adoption of the 3rd EU Directive further legislative steps will be carried on. According to the Czech legislation the draft of the 3rd EU Directive was submitted by the Government to the Parliament in order for it to take a stand on it[24].

113. In the are of CFT, upon the initiative of the FAU the Government adopted the decision to authorise the Ministry of Finance and the Ministry of Interior to draft the bill of the new act on international sanctions which should solve this whole issue in the Czech Republic globally. It will designate one concrete body with appropriate responsibilities, experiences to coordinate general sanction measures. This bill was drafted independently by the FAU and was discussed by all relevant state bodies. Currently it has been submitted to the Committee for the European Matters of the Parliament. It is supposed that it should come into effect still in 2005.

114. Recently the Government has approved the proposal for ratification of the UN Convention on Suppression of Financing of Terrorism. One of the obstacles of this ratification was insufficient system of detection, freezing and confiscation of the funds intended to be used for the purpose of financing of terrorism. This obstacle has been removed by the last amendment to the AML Act (which came into effect on 1 September 2004) which newly stipulates that as a suspicious transaction shall be considered also transaction carried out under circumstances that arouse a suspicion that the funds used in a transaction are intended for the financing of terrorism, terrorist activities or terrorist organisations. In the list of examples of suspicious transactions are explicitly named transactions where the subject of the transaction is, even if only partially, sanctioned goods or services provided to a sanctioned subject or a sanctioned individual.

115. Another obstacle of the ratification was the implementation of the Article 5 of the Convention that requires creating of conditions for introduction of sanctions for legal

[23] The Czech authorities indicated after the visit that according to the NAP (2005-2007), the following measures in the area of terrorist financing had to be taken:

- to create conditions for increasing effectiveness of the system of obtaining information about owners of accounts administered by banks and other financial institutions operating in the Czech Republic for the needs of relevant public bodies (including the Police of the Czech Republic and intelligence services);
- to analyse the legal regulation of operation of foundations and other social organisations with special regard to their financial management; to formulate relevant recommenda-tions in this sphere based on the conclusions of the analysis;
- in the sphere of prosecution to set organisational and institutional conditions for deeper specialisation for the fight against organised crime and terrorism.

Furthermore, Act No. 69/2006 Coll., on the implementation of international sanctions, came into effect on 1 April 2006. Accompanying amendments to this Act were adopted by Act No. 70/2006 Coll., including *inter alia* an amendment to the Criminal Code (insertion of the new criminal offence of Breaching International Sanctions in Section 171d) and an amendment of the Act on certain measures against legalisation of the proceeds of crime.

[24] Since 1996, until the date of the evaluation, the AML Act was amended 6 times; between the date of the on site visit and the date of the discussion of the report in 2007, it was amended 5 times. In 2007, a completely new AML Act was drafted that will enter into force in December 2007 (it implements the third EU Directive).

entities when a person responsible for the management or control of that legal entity commits a criminal offence connected with terrorism financing. It was proposed to solve this liability by introduction of criminal liability of legal persons (which would be entirely new principle in the Czech Republic). The proposal of the Act on Criminal Liability of Legal Persons was elaborated by the Ministry of Justice and approved by the Government nevertheless the Parliament refused it on November 2nd, 2004.

116. The National Action Plan – version 2003 – required from the Ministry of the Interior to elaborate in cooperation with the Ministry of Justice and Ministry of Foreign Affairs and analysis of obstacles hindering the fulfillment of the obligations stemming from the Convention. This analysis has been elaborated and it concluded that there are some ways in which the Czech republic could meet the obligations under current situation until a special law on liability of legal persons will be adopted (e.g. using § 73 par. 1 c of the Criminal code etc.)

Discussion on the creation of a mechanism that would facilitate and speed up the process of acquiring information on bank accounts

117. The Ministry of Interior has initiated discussions about establishing a mechanism that would enable competent authorities including the police authorities to acquire information necessary for seizure of financial assets on bank accounts in a speedy manner. Such a mechanism - which does not have to be a central register of bank accounts but simply a mechanism that would enable the competent authorities to gain the necessary information by submitting one inquiry – would provide information on whether someone has a bank account (or a right of disposal to a bank account) and in which financial institution.

118. The institutions that would have access to such a mechanism would be those that have a legal competence to gain information it would provide. This means that the establishment of such a mechanism would not be followed by broadening competence of the respective authorities. The aim of establishing such mechanism is merely to shorten the period that is currently necessary for acquiring information on bank accounts. The establishment of such a mechanism would not only contribute to the acceleration of seizure of financial assets on bank accounts but it would also strengthen the capabilities of the Czech Republic to fight financing terrorism and enhance the capabilities of intelligence services in the area of internal and external protection of Czech Republic's security.

"**Strategy of the Fight Against Terrorist Financing"**

119. The Illegal Proceeds and Tax Crime Unit of the Service of Criminal Police and Investigation and more particularly its International Co-operation and Terrorist Financing Section is currently preparing a material called "Strategy of the Fight Against Terrorist Financing". This document seeks to describe the fight against terrorist financing in a conceptual way – from collecting, evaluating and verifying information, through analysis of information and operational work until criminal proceedings stage. It also includes a subchapter on participation in adoption and realisation of nation-wide as well as international measures related to fight against terrorist financing and further education and training in this area. It also includes a timetable (road map) of task to implement the Strategy.

b. The institutional framework for combating money laundering and terrorist financing

Ministry of Finance

120. **The Financial Analytical Unit** (FAU) performs the tasks and obligations stipulated for the Ministry of Finance by the AML Act. It collects and analyses data on suspicious transactions identified and reported by the obliged subjects and performs further tasks, which follows from these analyses. It ensures the performance of the conceptual activity in its scope and elaborates comprehensive proposals for development and improvement of the system of measures for combating legalization of proceeds from criminal activity in both national and international contexts. It deals with requests, gives opinions and makes legal interpretations in its scope. The FAU also makes the control of compliance with the obligations stipulated by the AML Act by all obliged subjects.

121. The **Office of the State Supervision over Insurance and Supplementary Pension Insurance** and the **State Supervision over Betting Games and Lotteries** are the Ministry's supervisory agencies for these respective sectors. Both are responsible also for ensuring compliance with the AML Act, besides their normal licensing, regulatory and prudential control functions.

Other supervisory bodies, not part of the Ministry of Finance

122. **The Czech National Bank (the central bank)** is (according to Act No. 6/1993, on the Czech National Bank) responsible for supervising of:

a) the activities of banks, foreign bank branches and any consolidated groups that contain a bank having its registered address in the Czech Republic, and of the sound operation of the banking system (banking supervision) pursuant to Article 2(2)(d) of the Act on CNB;

b) the activities of entities other than banks licensed pursuant to special legislative acts; (Foreing Exchange Act and Trade Licensing Act)

c) the safe, sound and efficient operation of payment systems.

123. Supervision shall include **licensing, on-site and off-site supervision and sanctioning**:

a) the assessment of licence and permit applications pursuant to special legislative acts; (Act on Banks, Foreing Exchange Act and Trade Licensing Act)

b) supervision of adherence to the conditions stipulated in licences and permits;

c) inspection of adherence to laws, insofar as the Czech National Bank has the power to conduct such inspections under this Act or special legislative acts (Act on Bansk, Foreign Exchange Act), and inspection of adherence to the decrees and provisions issued by the Czech National Bank;

d) the imposition of remedial measures and penalties where shortcomings are detected pursuant to this Act or a special legislative act. (Act on Banks).

124. The CNB is also entitled to issue by-law **regulations** (see Article 24 of the Act on CNB), such as for instance *Provision of the CNB N°1 on the Internal Control System of a Benk for the Area of Money Laundering Prevention,* which came into force on 1 October 2003.

125. **The Czech Securities Commission** (hereinafter "CSC") performs state supervision above all over the activities of investment companies (including foreign ones active in the Czech Republic), investment funds, securities dealers, registered investment intermediaries and brokers. The CSC also performs supervision over issuers of listed securities in terms of their disclosure duty. It also supervises the stock exchange, commodities stock exchanges, the off-exchange market called RM-System, the Securities Centre or other legal entity authorized to maintain parts of registers of the Securities Centre as well as to perform its other activities, persons ensuring settlement of transactions with securities and pension funds in terms of the management of their assets.

Ministry of Justice

126. The MoJ, through its organizational, managerial and supervisory activities, creates conditions for the courts' and prosecutors' offices' due performance of tasks resulting from the Constitution and from other laws. The Ministry fulfills its tasks especially by:

a) creating necessary conditions, in particular those personal, organizational, financial and material, for failure-free operation of the courts, prosecutors' offices and PMS and other bodies;
b) Stipulating forms and methods of managerial and supervisory activities of chairs of the courts during the exercise of their administrative functions and auditing the observance of these forms and methods;
c) Stipulating forms and methods of activities of lead public prosecutors during the exercise of their administrative functions and auditing the observance of these forms and methods;
d) Ensuring professional training and further education of judges, public prosecutors and other personnel;
e) Cooperating with the Czech Union of Judges, the Union of Public Prosecutors and other professional, as well as trade union, organizations of employees of courts and prosecutors' offices.

127. The MoJ performs the state administration of the Supreme Court and of the Supreme Administrative Court through their Presidents. The administration of the high and regional courts is performed usually directly or through their chairpersons, and the administration of district courts is performed usually through the chairpersons of regional courts. While performing its managerial and supervisory activities the Ministry fully respects the constitutional principle of independence of the judges in the performance of their office (Art. 82).

128. The MoJ is also involved in the mutual legal assistance circuit.

Courts and Judicial System

129. The judiciary consists of the Supreme Court, the Supreme Administrative Court, 2 High Courts, 8 Regional courts and 86 District/County Courts. The Supreme Court and the Supreme Administrative Court have their respective seats in Brno, and high courts in Prague and Olomouc, respectively. In Prague the City Court carries out the tasks of the regional court.

130. The Supreme Court hears, in particular, extraordinary means of remedy and is responsible for uniformity of judicial practice. The Supreme Court is the highest judicial body in matters falling under the jurisdiction of courts with the exception of matters decided by the Constitutional Court or the Supreme Administrative Court. Located in Brno, the Supreme Court oversees the enforceable judgements of the superior courts, and ensures the legality of the decision-making process among the higher courts and the lower courts within their territorial jurisdiction. It rules on extra-ordinary corrective measures, such as the breach of law complaint filed by the Minister of Justice, forms opinions on the interpretation of laws and other legal regulations, and decides in some other cases stated by law.

131. The Supreme Court, Supreme Administrative Court, high courts, regional courts and district courts that have more than 10 judges have their own **judicial councils.** The judicial councils issue their opinions with respect to candidates for appointments of presidents or vice-presidents of courts, assignments or transfers of judges to specific courts, they examine proposals of caseload sharing schedules and their changes, if any, and comment reports issued by presidents of courts with respect to the exercise of judicial functions and other activities by specific judges. The mandate of members of these judicial councils is limited to 5 years.

132. The Code of Criminal Procedure (CCP) gives jurisdiction in criminal matters to the county courts (district courts in Prague), regional courts (City Court in Prague), high courts and the Supreme Court. The criminal proceedings are governed by the „two instance" principle. This means that if a case is decided by a first instance court, the appeal against such first instance judgement is heard and decided by a second instance court whose decision cannot be challenged by any ordinary means of remedy. The county courts rule in the first instance in all criminal matters except where the CCP assigns jurisdiction to the regional courts (i.e. where the minimum potential punishment exceeds five years imprisonment, or where an « exceptional punishment » (15 to 25 years or life imprisonment) may be imposed). The main task of the regional courts is to serve as the court of appeal for the county courts.

133. The two high courts (located in Prague and in Olomouc) supervise the interpretation of laws and other legal regulations in cases set out in procedural law. They also express opinions on the interpretation used in judicial decisions of courts within their jurisdiction, and they examine legality of decisions by administrative bodies in cases stated by law. In addition, the high courts serve as the courts of appeal in criminal cases where first instance proceedings were conducted before the regional court.

134. A notable change concerns the allocation of cases to the courts: as from 1st January 2002, all complex cases dealing with economic and financial crimes are handled in first instance by the regional courts. There is no specialisation of courts in the Czech Republic as regards economic and financial matters (the only specialisation is available at the level of juvenile courts); instead, the Czech system relies on the use of external experts.

The Prosecutor's Office, the investigative process

135. A high level Instruction (N° 3/2000) was issued in 2000, which puts emphasis on the necessity to enhance the specialisation of prosecutorial staff in economic and financial

affairs (including money laundering). As a result, in October 2000 new sections specialised in serious economic and financial crimes were established at the Prosecutor General's Offices in Brno, Prague, Olomouc and Ostrava. The Decrees N° 311/2000 and 183/2001 provided them with specific responsibilities as regards: fraudulent activities of financial operators, bribery, and protection of the EU's financial and economic interests. The requirements for appointments to these new positions – notably in terms of high skills, including experience with foreign systems - are regulated by Instruction 3/2000 on the manner of establishing and assigning personnel at public prosecutors' offices. This has allowed for the specialisation focusing on (financing of) terrorism besides other specialisations, such as drug crime, economic and financial crime, criminal proceeds, international legal assistance etc.) at regional, high and Supreme prosecutors' offices (i.e. not at district offices, which do not handle such cases, even hypothetically). At present are terrorist cases, if arise, handled by specialists for general crime – especially serious violent crime, or organised crime. Explicit regulation of specialisation is not foreseen exactly due to minimum number of concrete matters that emerged in the period of 1991 – 2003 (there has not been single case of terrorist financing).

136. The Czech authorities stressed that with the amendments of 1st June 2001 to the Criminal Procedure Code (entered into force on 1st January 2002), the cooperation between the police and prosecution has been simplified and improved. So far, the investigators were quite separated from the police. With this amendment, the direct counterpart of the prosecution is the police, thus avoiding that two investigations are carried out in parallel. The amendments have also cancelled the distinction between two kinds of police bodies – the investigators, who had some authority over police and limited procedural autonomy in relation to public prosecutor, and other police bodies. Now, only single police body (organ) is recognised, and the police officer is subject to the public prosecutor's instructions in the course of penal proceedings.

Ministry of Interior

137. The Ministry of Interior carries out tasks in the area of public order and security, including issues of terrorism, and coordinates the proposed measures in the area of combating terrorism with other ministries and with requirements arising from international cooperation. It also carries out tasks in the area of asylum, refugees, entry and stay of aliens, integration of aliens, and Schengen cooperation; deals with issues of control mechanisms in the area of trading and other handling of weapons, ammunition, military equipment, including exports and imports of goods and technologies subject to international control regimes and develops relevant analytical and conceptual documents.

138. The Police of the Czech Republic is subordinated to the Ministry of Interior (Article 3 of the Act No. 283/1991 Coll., on the Police of the Czech Republic). Minister of Interior appoints the Police president with the approval of the government.

139. In the Czech Republic there is one unified Police force. The main act regulating the tasks and competences of the police is Act No. 283/1991 Coll., on the Police of the Czech Republic. The structure of the Police is centralised. The police is constituted by the Police Presidium of the Czech Republic, specialised units with authority over the

whole territory of the Czech Republic (that also have regional sub-branches/expositors) and units with territorially limited authority (7 regions + capital Prague).

140. Investigations are carried out by the Criminal Police and Investigation Service.

Bureau of the Criminal Police and Investigation Service

141. The criminal police merged with investigation offices in January 2002 (amendment to the Code of Criminal Procedure No. 265 of 2001). At the moment there are more than 11 000 police officers serving at the criminal police. The organisational units of the Criminal Police and Investigation Service (CPIS) exist at all lower levels of territorial competence (district, municipal and regional directorates). Certain units with nation-wide competence belong to CPIS as well (Organised crime unit, National drug headquarters, Corruption and financial crime combating unit, Illegal Proceeds and Tax Crime Unit, Special operations unit).

Illegal Proceeds and Tax Crime Unit of the CPIS

142. The Illegal Proceeds and Tax Crime Unit (the so-called "Financial Police") has been established on the basis of Governmental Resolution No. 829/2003 and the Order of the Minister of Interior No. 22/2007 and commenced its activities on July 1 2004. By setting up this Unit the Government declared its intention to intensify the fight against the most serious cases of tax crime, customs offences, and any of the related most serious forms of economic crime, including the financing of terrorism at law enforcement level. The Unit has a nation-wide competence and is responsible directly to the Deputy Police President for Criminal Proceedings. The Unit is staffed by approximately 300 persons and is headed by the Director and two Deputy Directors. The headquarters is in Prague, other territorial branches are located in Brno, Plzen, Ostrava, Ceske Budejovice, Hradec Kralove and Usti nad Labem. It consists of various subdivisions and in particular a Proceeds of Crime and Money Laundering Department, a Strategic Expertise and Methodology Department and an International Co-operation and Terrorist Financing Section. The Proceeds of Crime and Money Laundering Department is divided into the Proceeds of Serious Crime and Financial Crime Group and the Proceeds of Drug-Related and Organized Crime Group (it corresponds to the former division within the Corruption and Financial Crime Detection Unit). The Money Laundering Section is divided into two lines: the Intraterritorial Group and the Extraterritorial Group. Such a distinction of activities corresponds more closely to the needs of current practice. The International Co-operation and Terrorist Financing Section establishes contacts with foreign entities where a flow of financial means through more countries is presumed; furthermore, it ensures international cooperation in the field of policing and police education and deals with the issue of financing of terrorism in relation to foreign countries.

143. The unit's activities are focused on combating, detection and investigation of money laundering, withdrawing proceeds from crimes (on the basis of the seizure – confiscation), combating and detecting terrorism financing and investigation of the most serious economic crimes (namely tax crimes). The unit collects and uses economic and other information for a consequent evaluation with respect to the potential investigation of the most serious crimes in the economic and related areas. In the area of money laundering the unit detects, analyses and provides investigation of

predicative and associated crimes with the main aim to seize proceeds from crime and to affect and to destabilize groups with the impact in the Czech Republic – the Unit detects, seizes and documents assets owned by perpetrators of serious crimes and assets derived form serious crimes committed and submits proposals to investigative, prosecuting and adjudicating bodies to seize it or it seizes the assets based on its own decision in accordance with the law; such activities are carried out in the field of combating legalization of proceeds of crime upon request made by units with nation-wide competence or, in justified cases upon request made by regional police units based on prior agreement made by police officials. It also actively cooperates in detection and documentation of assets of persons and of proceeds of serious crime and takes measures to seize them based on request made from abroad in connection with rendering international legal assistance.

Unit for Detection of Organized Crime, CPIS

144. This Unit also has nation-wide jurisdiction in the field of the fight against organised crime and terrorism. It consists of :
- five central operational departments responsible to Deputy Director (Violent Crime Dept.; Arms, Explosives and ABC materials Dept.; Trade in Human Beings Dept.; Criminal Groups Dept., Counterfeiting Dept.);
- six regional offices responsible to Deputy Director;
- Terrorism and Extremism Dept., which is together with Logistics and Analysis Dept. responsible directly to the Director. It comprises the counter-terrorism section (handling with the topic of terrorism) and the counter-extremism section (handling the agenda of extremism, especially extremism with international dimension, that may have connection to the terrorism sphere or may cause large scale mass public disorders - in the Czech Republic so called "Street Parties"). The main duty of the Terrorism and Extremism Dept. (Counter-terrorism Section) is to monitor, document and disclose suspected and illegal activities, to take proactive and reactive measures, based on intelligence and information gathered from its own and other sources, to disclose terrorist subjects and bring them to justice.

Unit for Combating Corruption and Major Economical Crime of the CPIS

145. On 1 April 2003 in connection with reorganization of the Police of the Czech Republic two Police Units - Unit for Combating Corruption and Major Economic Crime of the Criminal Police and Investigation Service and the Financial Crime and State Protection Office have been merged into a new unit - Unit for Combating Corruption and Financial Crime of the Criminal Police and Investigation Service. The unit’s activity is focused on detection, documentation and investigation of the most serious forms of economic and financial crimes and corruption. The unit is focusing also on monitoring and analysis of illegal financial operations, suspicious activities and serious forms of economic crimes committed at the capital market. The Unit has a nation-wide competence and it has territorial agencies in districts.

Ministry of Foreign Affairs

146. The Ministry for Foreign Affairs is described by the Czech authorities as having a supervisory, monitoring and coordinating role and responsibility in the field of international aspects of CFT.

Committees or other bodies to coordinate AML/CFT action

147. In the Czech Republic there is no permanent inter-ministerial co-ordination body addressing exclusively the issue of the fight against terrorism[25]. In a broader context the National Security Council (NSC) is the formal co-ordination body for evaluation of the current risks and threats in the area of the security of the Czech Republic. The NSC has 9 members and is chaired by the Prime Minister. NSC's deputy chairman is the 1st Deputy Prime Minister and Minister of Interior. Other members of NSC are the Deputy Prime Minister and Minister for Foreign Affairs, the Deputy Prime Minister and Minister of Finance, the Minister of Defense, the Minister of Industry and Trade, the Minister of Transportation, the Minister of Health and the Minister of Informatics. NSC's meetings are further attended by the Governor of the Czech National Bank, the Chairman of the Administration of State Material Reserves and by the Head of the Office of the Government of the Czech Republic. NSC comprises 4 standing committees (Committee for Foreign Security Policy Co-ordination, Defense Planning Committee, Civil Emergency Planning Committee, Intelligence Activity Committee) and a Central Crisis Staff

c. Approach concerning risk

As regards enhanced or reduced CDD and other measures required from obliged entities

148. The examiners understood that the Czech Republic applies essentially a system of enhanced measures. Reduced measures are not totally absent but are limited in number. In particular, the AML Act allows reduced identification measures in case of credit or financial institutions operating in a country that imposes an identification duty upon this institution in a comparable manner to the Czech Republic.

At the level of policies and supervision

149. The Czech authorities indicated that the last amendment to the AML Act of 2004 takes into account the factor of ML/FT risks in the supervision by the FAU. The amendment has limited the range of the obliged subjects which are required to communicate their internal AML system/rules (and subsequent amendments) to the FAU to cover only: banks, savings or credit co-operatives, insurance companies, the Czech Consolidation Agency, the holder of a postal licence and legal entities or individuals authorised a) to trade with foreign currencies, b) to conduct or intermediate a cash or non cash transfer, c) to financially lease, d) to provide credit or monetary loans or to trade with them or e) to issuing non cash payment means. At the same time, the amendment required from the following entitites to deliver at present their internal systems to the Securities Commission: the Securities Centre or other legal entity authorised to maintain parts of registers of the Securities Centre as well as to perform its other activities, the organiser of a securities market, a securities dealer, that is not a bank, investment company, investment fund, pension fund and commodities stock exchange. The above mentioned limitation of the recording of internal systems and its operative controls and at the same

[25]In June 2005, a Joint Intelligence Group (Společná zpravodajská skupina) was established by the NSC to serve as a working and information exchange platform in the area of combating terrorism. It is subordinated to the Intelligence Activity Committee and is meeting normally each month. This Group includes intelligence agencies, the Ministry of Interior, the Police and the Ministry of Foreign Affairs.

time delegating powers to the Securities Commission would have enabled the FAU and the Securities Commision to focus consistently on the more important and exposed types of obliged subjects. The Czech authorities also stressed that the amendment also significantly widened and deepened control, supervisory and sanction powers of some regulatory and supervisory authorities with the aim to diversify the control and supervision of obliged subjects.

150. It was indicated that the Banking Supervision (by the CNB) applies a Risk-Based Approach (RBA) to the whole system of on-site examinations, including AML/CTF area. RBA is used not only in the field of bank selection for the on-site examination but also in the procedures which are applied during the on-site examination - i.e. choice of departments that will be visited during the on-site examination from RBA perspective in AML area, in sampling methods for on-site examination in AML area (types of transactions, client files, record keeping etc.).

151. Regarding foreign exchange activities, the CNB has prepared *The Internal Methodology Guidelines of the Foreign Exchange Control Execution* which came into effect in December 2003. It consists of a detailed description of what should be included in on-site control: control of the compliance with the licensing criteria and with the relevant legislation. The Internal Methodology Guidelines cover the duties of inspectors: to control the reporting duty, customer identification, renewal of customer identification information when doubts appear, records keeping, slips issuing in a prescribed form, foreign exchange ledger or a foreign exchange journal keeping, the inspector right to exchange money as a private person in the scope of their job, etc.

152. Since 2003, the CSC has also been applying a risk-based approach to the assessment of regulated persons. On the basis of the assessment of particular sectoral risks and probabilities of their realisation, the CSC compiles a risk profile of a particular regulated person. This profile than serve as a basis for the supervisory activities of the CSC in relation to this person. Riskiness of the persons is at first assessed within the licensing proceeding. By virtue of the assessment result of the fulfillment of the conditions set for granting a licence, the entity is entered into a certain risk group. Next, the CSC assesses the riskiness of regulated persons in terms of monitoring and the disclosure duty (e.g. capital adequacy requirement), and, not least, on the basis of the inspecting activity results. The CSC then pays particular attention to persons with high-risk potential, e.g. when planning inspections. This risk based approach helps the CSC to proactively concentrate on the potential problems and allocate its resources efficiently.

153. In general, risk based inspections is a new approach to supervising and monitoring financial markets in a more efficient way in the Czech Republic. Overall objectives of supervision are defined and risks that may threaten these overall objectives are identified and quantified. The approach starts with an impact assessment to sort out those companies a failure of which would have the most negative effects on the whole market. In the Czech Republic, similar to most other markets, only a few companies represent the majority of the respective market and therefore only a limited number of companies should be subject to special scrutiny. In a second step the probability of each risk that may threaten the overall objective will be evaluated. This will be done with the aid of a probability matrix which results in an aggregation and quantification of all risks.

154. AML measures are one of the risk elements of this new approach:

	Risk Groups	*1.5.1.1* **Risk elements**
Business Risks		
	Financial soundness	Capital adequacy and other economical indicators
	Nature of services, products and customers	Types of customers, products and services
Control Risks	Treatment to customers	Security of customers assets
		Dealing and managing
	Ownership structure and organization of group	Ownership structure and organization of group
	Internal systems and controls	Risk management
		IT system
		Measures against money laundering
		Internal audit and compliance
		Reporting and accounting policies
	Human resources and corporate governance	Human resources and corporate governance

d. Progress since the last mutual evaluation

155. The Second Round Mutual Evaluation Report of MONEYVAL (formerly PC-R-EV) had made several recommendations and/or comments for consideration by the Czech authorities. These are recalled beneath, together with the comments and information provided by the Czech authorities on possible follow up developments that had taken place until the time of the on site visit. Other changes took place after the on-site visit; these are mentioned under the relevant main parts of the report (chapters 2 to 7).

Legal field

156. *The penalty for negligent money laundering would be increased. The penalties however remain comparatively low for simple money laundering.*

"As regards this point, it should be pointed out that the draft *new* Penal Code, which is currently under discussion in Parliament (and should come into force since 1 January 2006), contains increased lengths of imprisonment for basic bodies of criminal offences of intentional

participation (S. 190) and of legalisation of criminal proceeds (S. 192) from 2 to 4 years. The increase as regards the negligent form of participation (S. 191) is from 6 months to 1 year. The qualified bodies of the offences will also warrant longer imprisonment (up to 10 years). The rates (lengths) are set so to remain proportionate with relation to predicate offence (the Czech Republic maintains "all-crimes approach") and to ensure that the perpetrator of money laundering is not subject to stricter sanction than the perpetrator of predicate crime."

157. *It remained unclear to the evaluation team why the Czech authorities have not spelled out in the Euroamendment clearly that the Czech Republic can exercise jurisdiction in a money laundering case where the predicate offence is committed abroad. Given the concerns expressed during the first round evaluation, and keeping in mind that the Czech authorities had indicated that they intended to clarify this issue, this is a significant weakness.*

"In accordance with the recommendation of MONEYVAL, the draft *new* Penal Code expressly covers not only the things and/or other property benefit obtained by the criminal offence committed in the Czech Republic, but also things and/or other property benefit obtained by the criminal offence abroad."

158. *The physical elements of the offence remain based on the concealment. The "acquisition, possession or use" of laundered proceeds apparently remains uncovered in the new money laundering legislation. Czech representatives met during the visit have indicated that this is covered by Section 251. However, the evaluation team considers that this issue remains debatable.*

"When considering the implementation of the Convention on laundering, search, seizure and confiscation of the proceeds from crime ("the Strasbourg Convention") by domestic legislation, it is necessary to take into consideration also the bodies of the offence of participation in its intentional form (S. 251 of *current* Criminal Code[26]) and eventually in its negligent form (S. 252 of current Criminal Code). These provisions stipulate that punishable shall be anyone who conceals, transfers to himself or to another or uses a thing gained by criminal offence committed by another person, or what has been obtained (acquired) for it. These provisions enable the prosecution of acquisition, possession or use of laundered proceeds, since under the interpretation of Czech Criminal Code the "acquisition" corresponds to terms "transfers to himself or to another" and the "possession" is covered implicitly in "transfers to himself". Participation under S. 252 (paragraph 2) of current Criminal Code provides for sanction of anyone, who negligently enables another person to obscure (cover) the origin of a thing obtained by criminal activity, which exceeds the requirements of the Convention."

159. *The team found it hard to see how the new Section 252a really improves the situation - other than cosmetically: the wording is very similar to that of the current Section 251a. The team believes that a fresh criminal offence, based clearly on the terms of the Strasbourg convention and clarifying all previous ambiguities would be far more helpful for the fight against money laundering. In view of the above, the evaluation team recommends to adopt a definition of money laundering that meets the standards of the definition in the Strasbourg Convention, already reflected in Act 61/1996. In this*

[26]in order to facilitate the analysis, current act on substantive criminal law (trestni zákon) is called „current Criminal Code" and this is maintained also with regard to its pending amendments, while completely new draft act (navrh trestniho zakoniku) is called „new draft Penal Code".

regard, it would be pertinent to use the word "property" (instead of "thing") as it is used in the Convention and to increase the level of sanctions.

"Article 6 paragraph 1 of the Strasbourg Convention requires to establish as criminal offences the types of conduct listed therein if committed intentionally. In the framework of the Czech criminal law an *intention* (S. 4 of current Criminal Code) and *negligence* (S. 5 of current Criminal Code) are the only forms of culpability that apply when considering liability for criminal offence.

It is the opinion of Czech authorities that the new body of offence of legalisation of proceeds from criminal activity contained in S. 252a of current Criminal Code in connection with bodies of offences of participation (current S. 251 and S. 252) and patronisation (current S. 166) covers all conducts established by the Strasbourg Convention. Creation of new body of an offence would bring about rather opposite effect, as it would interfere with judicial jurisprudence and established interpretations and practice. The development of new practice represents a task for several years. Therefore it cannot be recommended to disregard the notions already established, which are interpreted in accordance with the Strasbourg Convention.

The notion of "property" is used in the current Criminal Code only to cover the aggregate property values, while the proceeds may form just one thing or value. Thus, the usage of the term "thing or other property benefit", that covers all values assessable by money, is more appropriate."

160. *Prosecutors and investigators appear also to have had no explanatory guidance on minimum evidential requirements to prove the offences. This must be addressed if the Czech Republic is to achieve possible results. The evaluation team believes that without concerted efforts to provide explanatory guidance to the repressive authorities on the "Euro-amendment", there will be little improvement with the new provisions. Joint seminars and conferences are a good way to develop common understanding of money laundering issues, notably when it comes to the involvement of judges (due to the latter's independence). Consequently, maintaining and developing the existing awareness raising initiatives aimed at police officers, prosecutors and judges, would be a positive measure.*

"Public prosecutors and police bodies (and judges) could consult commented issue of „Euro-amendment" of Criminal Code (including Sections 252, 252a etc.) practically immediately after this amendment entered into force. In September 2002 commentary to Criminal Code and Code of Criminal Procedure has been issued by publisher Eurounion, authored by Novotný and others, that described in detail the bodies of these criminal offences; it also offered interpretation of amendment to Criminal Procedure Code no. 265/2001 Coll. At the same time publisher C.H.Beck issued commentary on Criminal Procedure Code authored by Šámal and others, which explored, even in more detail, main issues of interpretation and application of Criminal Procedure Code, in the wording of said amendment. In November 2003 publisher C.H.Beck issued extensive commentary to Criminal Code (fifth issue, authored by Šámal and others), which contained long deliberations with regard to S. 252 and 252a. In December 2004 the sixth issue of the same has been published, containing not only the interpretation of bodies of these offences, but also reference to first relevant jurisprudence.

"Euro-amendment" to Criminal Code has been subject of numerous seminars (organised by the Police presidium for police bodies and by newly established Judicial Academy for judges and public prosecutors).

The public prosecutors, who are to lead investigations and prosecutions under the Penal Code in cases of economic and financial crime (and corruption offences), are trained in special seminars, in particular in the framework of professional training provided by special institution - the Judicial Academy.

Further training is ensured by internships in the countries of the EU (in particular in the UK, Germany and Italy) in the framework of approved training programmes.

Training of judges and candidates for public prosecutors is performed by the Judicial Academy."

161. *The examiners consider that the preventive regime would also benefit from a criminal offence of failure to report underpinning it. The Czech authorities may therefore wish to consider this.*

"In the Czech Republic the principle of subsidiary penal recourse is applied, i.e. the solutions should primarily be sought in the area of prevention, supervision and non-criminal sanctions. The criminal sanctions apply only in most serious cases. Therefore, penal sanction for non-compliance with reporting duty regarding suspicious transactions would be applicable only when such non-compliance fulfils the body of offence under S. 167 of current Criminal Code (Failure to prevent a criminal offence). This provision stipulates, inter alia, the punishment for someone who learns in reliable manner than another person prepares or commits money laundering offence according to S. 252a paragraph 3 of current Criminal Code, or the offence of participation under S. 251 paragraph 3 of the same, and does not frustrate (prevent) commission or finalisation of commission of such an offence (without undue danger for himself etc.; prevention may be achieved by timely report to police or public prosecutor). This regulation seeks to balance important policy considerations by focusing on the most dangerous types of criminal conduct to be reported/prevented. The introduction of criminal offence covering all cases of mere non-compliance with reporting duty by institutions in relation to suspicious transactions does not appear appropriate, because there are many regulations stipulating reporting duties in relation to various facts, which are not enforced by criminal sanction. Therefore, introduction of such sanction with regard to one type of reporting would cause disproportion in terms of gravity of sanctioning regimes for failure to perform various reporting duties."

162. *Theoretically, the criminal liability of legal persons is not compatible with the Czech legal tradition. The evaluation team therefore welcomes the current attempts of the Czech Government to modernise the legal system with new provisions in this respect. Given the trends of organised crime described in the introductory part of this report, the draft legislation on corporate criminal liability to be prepared by the end of 2002 appears to be timely. Hopefully, the laundering of proceeds of crime will appear in the list of offences for which legal persons can be held criminally liable.*

"To implement fully (SR I) the International Convention for the Suppression of the Financing of Terrorism, it is necessary to create new legislation on liability of legal entities. The MoJ developed, in connection with the preparation of draft new Penal Code, a draft law on criminal

liability of legal persons and proceedings against them, which should introduce the concept of (criminal) liability of legal persons for criminal offences in the Czech domestic law. The Government approved this draft on 9 June 2004. According to it, a legal person would be liable to criminal sanctions for a list of criminal offences, including money laundering and terrorist attack (and the financing a terrorist attack) and all other criminal offences that the Czech Republic is obliged to hold legal persons liable for under relevant international conventions to which it is or intends to become Party. The sanctions applicable to legal entities would include dissolution and liquidation, forfeiture of property and forfeiture of a particular asset. Attention has been paid to ensure the seizure of funds used or earmarked by legal entities for the purposes of terrorist financing, and recovery of the proceeds.

This draft law was submitted to the Parliament that has refused it completely in the first reading and expressed, in this way, its reluctance to introduce criminal liability for legal entities. Therefore it is now necessary to quickly find another solution, which would enable the effective sanctioning of legal persons and fulfil the obligations of the Czech Republic in this field. Such new solutions are sought intensively at present time."

163. *Ambiguities and lacunae similar to those inherent to the criminalisation mechanism, remain, as the legal framework has not been amended since the first round evaluation. As a consequence, and given the existing jurisprudence briefly mentioned in the descriptive part of this report, the comments made during the first round evaluation remain timely as concerns Sections 51, 53, 55, 73, 251a of the Criminal Code (forfeiture is applied at the discretion of the Court, there are restrictive conditions to be met, forfeiture applicable only to a "thing" or as a fine, impossibility to confiscate assets intermingled with lawful proceeds and subsequent difficulties to confiscate property for an equivalent value etc.).*

"In the framework of draft amendment to Criminal Procedure Code and other legislation (that should come into force on 1 August 2005), which has been recently submitted to the Cabinet, the securing mechanisms are supplemented in order to enable efficient securing of all kinds of proceeds from criminal activity, and of equivalent (substitute) value when proceeds are destroyed. Also, confiscation mechanisms (sanction of forfeiture of a thing, protective measure of seizure of a thing) were supplemented to enable the confiscation of all criminal proceeds, as well as of equivalent value when it is not possible to confiscate proceeds.

The draft new Penal Code (discussed in Parliament, and expected to enter into force on 1 January 2006) amplifies the applicability of sanction of confiscation of property (or its part). Duty of the court to impose some of the sanctions that focus on perpetrator's property (pecuniary sanction, forfeiture of a thing, forfeiture of property) is introduced there, if the offender obtained or tried to obtain property benefit through the offence."

164. *Even with the new provisions of Section 252a (Section 252 does not foresee any measure of forfeiture), the penalty of "forfeiture" of laundered proceeds would only apply where the laundering is committed:*
    - *in relation to an offence of drug trafficking*
    - *where "very large benefit" is obtained*
    - *where there is a misuse of official position.*

"This is probably a misunderstanding. The sanction of forfeiture of a thing, that is primarily intended to enable withdrawal of criminal proceeds, may be imposed under S. 27 of current

Criminal Code besides (in addition to) another sanction, even if it is not explicitly mentioned in the specific list of sanctions applicable to particular body of offence in the Special Part of the Criminal Code. Money laundering (under current Sections 251, 252 or 252a) may be always punished by forfeiture of a thing. The limitations listed above concern the application of forfeiture of property, which focuses on all property of perpetrator (even legal). It is thus a very strict penalty for which the limitations are appropriate."

165. *Furthermore, the forfeiture/confiscation is – and would remain – discretionary and the courts would still need to define exactly the property status of the offender. Most other countries, whatever the ambiguities of their confiscation legislation, have provided for mandatory confiscation of laundered proceeds at the least where the money laundering offence has been proved. This is not the case in the Czech Republic. In view of the above, the Czech Republic might reconsider again reviewing the existing legal regime concerning the confiscation of proceeds of crime:*
    - *to increase the mandatory element of confiscation*
    - *the legal regime should clearly provide for the confiscation of property for a value equivalent to the proceeds of crime*
    - *the legal regime should provide for the confiscation of proceeds or property benefit from third persons (including legal persons) to which the assets were transferred in return of underestimated counter-values.*

"As mentioned [earlier], the draft new Penal Code amplifies the applicability of sanction of confiscation of property (or its part). Duty of the court to impose some of the sanctions that focus on perpetrator's property (pecuniary sanction, forfeiture of a thing, forfeiture of property) is introduced there, if the offender obtained or tried to obtain property benefit through the offence.

According to draft amendment to Criminal Procedure Code and other legislation (that is also contained in draft new Penal Code) it is also possible, in the framework of protective measure of seizure of a thing or other property value, to seize a thing belonging to third person, to which a perpetrator transferred the proceeds."

166. *The representatives of the police also mentioned another set of provisions, never seen before, that is those of Section 347 of the criminal Procedure Code, which provides for the "seizure of property for the purpose of execution of judgements". Finally, a further relevant Section is 349b of the Criminal Procedure Code, which contains general provisions on seizure and refers to other statutory provisions for the management of assets seized. The team was informed that these statutory provisions should have been drafted by the Ministries of Finance, Justice and Interior. But in fact, they never did so, despite an evident need for such rules and regular requests in this direction by the police (SPOK). Altogether, the legal framework applicable to provisional measures appears to remain inconsistent and unclear. The Czech Republic might wish to review, again, the existing legal framework so as to provide for clear and consistent provisions on provisional measures. The adoption of the statutory provisions referred to in Section 349b of the Criminal Procedure Code should be seen as a priority.*

[As indicated earlier] "On 1 January 2004 new law No. 279/2003 Coll. on execution of securing property and things in the course of criminal proceedings came into force. This law regulates the issue of handling property secured during criminal proceedings and its management."

167. *There is still some discrepancy between the modern standards proclaimed by the government in the action plan updated in 2000 on the one hand, and the results in terms of money-laundering cases and deprivation of assets obtained through the commission of offences on the other hand.*

"It always takes time to develop jurisprudence, practice and interpretation after new bodies of offences are introduced, thus resulting in delays between taking legislative action and developing efficient practice. Partial changes of legislation do not benefit the practice in particular. It is the opinion of MoJ that it is too early to evaluate the efficiency of newly introduced legislation and other tools, or even to undertake their change."

168. *Representatives of the police and the prosecution/judiciary conceded that until recently all their units were really dedicated to uncovering the guilt of the offender. The Czech Republic is not alone in that. However, all services now need to focus their priorities to follow the proceeds and target the sources of the financing of those operations that engage in organised crime. The prosecutors and the judges need to be as committed to this agenda as the new criminal assets police department, and if the Czech authorities are to make real progress against organised crime within their borders, they need a concerted and agreed common approach to the confiscation agenda by police, prosecutors and judges, backed up by an enabling legal regime which will ensure significant disruptive confiscation orders of the direct and indirect proceeds of crime including profits derived from those proceeds. A number of representatives have shown a clear will for this and the evaluation team would like to encourage the Czech authorities to respond positively to these initiatives. In this respect, the team believes that joint conferences and seminars are a good way to discuss legal and other obstacles and to reach a common understanding. Clear guidance should be given (i.e. in the form of ruling by judges or/and prosecutors) on the standard of proof, together with the necessary legislative changes (i.e. reverse the burden of proof for the purpose of confiscation of criminal assets).*

"At present time the Czech authorities devote increasing attention to the question of proceeds and efficient withdrawal thereof. An inter-ministerial group has been established to survey problematic parts of legislation regarding proceeds. This group should draft legislative proposals leading to further increase of effectiveness of legislation and to elimination of deficiencies."

169. *Thus, while support for anti-money laundering measures is there in principle, it still needs backing up by legislative change and resourcing. An adequate mechanism criminalising the offence of money laundering and providing for confiscation of proceeds of crime, and secondary legislation on the management of assets seized should be seen as priorities. Providing for wider possibilities to apply operative investigative means in financial and money laundering investigations would be necessary as well.*

"Current regulation established by Criminal Code and Code of Criminal Procedure, together with amendments that have been drafted recently, enables the prosecution of money laundering and withdrawal of criminal proceeds (…)."

Financial field

170. *To take measures, as may be necessary, to strengthen the effectiveness of the supervisory mechanism:*

- *control of compliance with the anti-money laundering obligations to be conducted in a more (pro-) active way, both on-site and off-site;*
- *formal <u>and</u> substantial checks of financial institutions' internal rules and procedures;*
- *adequate remedial measures (including sanctions) where this is necessary, and a certain level of public disclosure of such actions*
- *continuation and enhancement of dialogue, feedback and education by the FAU, supervisory bodies and professional associations; ideally, international experience should be combined with a local one to provide the market players with an actual overview of new trends and typologies in the area of money-laundering.*

Guidelines and clear job descriptions of what a compliance officer should be, would be a benefit to the system.

In the opinion of the evaluation team, such a central register [of bank accounts] *could be useful to provide entry points into account networks when it comes to operational measures or background checks (including the tracing of monies, rotating funds etc.).*

It therefore recommends to clarify or supplement the provisions of Section 2 para. 5 of Act 61/1996, so that the requirement also clearly applies to the identification of ultimate beneficial owners.

The evaluation team welcomes the (progressive) suppression of bearer passbooks as it was suggested in the first round evaluation. It also hopes that the new regulation which is likely to accelerate their suppression will be adopted soon. Taking into account the average deposits, the team believes that it would be worth considering to lower the identification threshold (e.g. down to CZK 20 000, which is the one applicable to foreign exchange offices), and/or to introduce automatic reporting of transactions exceeding this amount to the FAU.

<u>Banking Supervision:</u>

<u>2nd round evaluation report (Moneyval)</u>
With the increased responsibility of the CNB in the area of monitoring the compliance with the AML Act, the total number of on-site visits conducted in the supervised entities seems to be inadequate (para 104). – **see part 1.6 (7) (d)**

No separate piece of secondary legislation dealing with countering the money-laundering phenomenon in the banking sector has been issued by the BSD (para 108). – **see part 3.2**

<u>IMF/WB Detailed Assessment Report on AML and CFT</u>
The financial supervisors should give more practical guidance to the entities they regulate and supervise on monitoring client accounts and transactions (page 60, part III (4)).

- see part 3.2 and 3.12 + currently CNB/On–Site Banking Supervision Division is preparing an internal guidelines (including qualitative requirements – benchmarks) for on-site examination in AML area. At the same time this document will reflect the

amendment to the AML Act (effectiveness since September 2004) and knowledge (for example FAU´s statements to the certain parts of the AML Act, CNB´s explanation of AML Provision etc.) and experience gained from on-site examinations. Our intention is to prepare this document for external publication for banks by June 2006.

The FAU in cooperation with the supervisors should take it upon themselves to provide the financial institutions with more guidance on recognizing suspicious transactions. They could for instance make references to typologies reports of the FATF, other FATF-style regional bodies, and the Egmont Group to receive updates on the latest money laundering and financing of terrorism cases trends and methods. In addition, organizations of supervisors, such as IAIS and IOSCO, have also issued papers on and examples of money laundering, which can be useful for the specific financial sectors (page 60, part V (1)).
- see the answer to the previous point

The mission recommends the financial supervisors follow up their inspections with appropriate measures, and/or sanctions where needed, to ensure effective implementation of the AML/CFT regulatory framework (page 61 part VIII). – **see part 1.6 (7) (d)**

Although originator information is included in domestic and SWIFT transactions and banks follow up on transactions that do not contain this information, the authorities should take measures to ensure that this is done by all financial institutions, including money remitters (page 59, part II (4)) - **No changes since assessment done by IMF/WB in 2003 – see also 3.5 (wire transfer rules).**

<u>The FIU and Law enforcement field</u>

171. *To urgently review the staffing of the FAU's Legal and Inspection Department and/or the distribution of tasks within the FAU, with regard to the current and expectable future workload.*

172. *It would be welcome if the FAU was to reconsider the possibility of using liaison law enforcement personnel to assist it in the operational field. This would also allow to take a full advantage of the increased cooperation between the FAU and the police, and to support the work of SPOK and the criminal assets service given their own difficulties.*

173. *To address the issue of money laundering through legal business and companies as a specific problem.*

174. *To consider the feasibility and utility of a system for the reporting of cash transactions over a certain amount.*

"The system remains based on the reporting of suspicious transactions"

175. [The list does not yet include independent professionals, such as notaries, external accountants, tax advisors and other legal professionals, nor any dealers of high value goods (precious stones or metals etc.) considered vulnerable by the EU (Directive 91/308/EEC as amended by Directive 2001/97/EC)]. *The Czech authorities may wish to reconsider the possibility to involve these professions in the national anti-money laundering effort.*

"These professionals were included in the AML Act with the amendments of 1 September 2004 (Act 284/2004 Coll.)."

176. *Therefore, measures still need to be taken to enhance the level of awareness and compliance of under-reporting financial institutions*

177. *Appropriate feedback arrangements need to be be put in place (…) between the FAU and financial institutions.*

178. *The evaluation team believes, however, that seen from the point of view of reporting entities the system could appear to be complex and difficult to comply with. As regards the CZK 500 000 threshold, this is probably too high if one considers that bearer passbooks will still exist for some years, and that there is no limit at all concerning cash transactions. A decrease of this threshold should therefore be envisaged, down to CZK 20 000 in order to ensure some consistency (with exchange bureaus).*

179. *The situation of utilisation of operational investigative means is unsatisfactory – they can be used in money laundering cases only to a certain extent (if the upper limit of the punishment of imprisonment is at least eight years).*

"§ 158b of the Criminal Proceedings Code regulates the conditions of use of the so-called operational investigative means: If the law does not provide otherwise, it is the police body, provided it has been authorised by the competent minister, a unit of the Czech Police, provided it has been authorised by the Police president, a unit of Czech Security Information Service, provided it has been authorised by the director of this Service, or the Office for Foreign Relations and Information, provided it has been authorised by its director, which is entitled to use the following operational investigative means:
- pretended transfer,
- monitoring persons and things,
- use of [undercover] agent

In proceedings concerning intentional crime.

The use of these means cannot follow other objective than learning about facts, which are important for criminal proceedings. These tools may be used only when the objective cannot be achieved otherwise or if it would be considerably complicated. Rights and freedoms of persons can be limited only as necessary.

The use of these tools is not limited to the pre-trial proceedings, although they are governed by the provisions systematically placed in part of the Criminal Proceedings Code dealing with pre-trial proceedings, in course of which they are used the most. They can be used since the commencement of the criminal prosecution as well during the trial.
Video, audio or other records gathered by these investigative tools according to the relevant provisions may be used as evidence.

An intentional crime is such a crime, where an intentional fault is required by the law (negligence is thus excluded), whereas decisive are the facts written down in the record of commencement of the criminal proceedings, the description of the deed and the legal qualification in the decision about commencement of the criminal proceedings or in the accusation.

The use of agent in the sense of § 158e is permitted only in criminal proceedings concerning especially serious crime, a crime which is committed on behalf of criminal organization or other intentional crime, which has to be prosecuted according to a promulgated international treaty which is binding on the Czech Republic (§ 158e/1). The conditions are thus stricter than those for the pretended transfer and monitoring of persons and things. Extremely serious intentional crimes are defined in §§ 41 and 62 of the Criminal Code; § 62 of the Criminal Code contains a list of extremely serious crimes; § 41/2 deals with intentional crimes for which the term of imprisonment is at least 8 years. However, an agent can also be used in criminal proceedings concerning other intentional crime, which has to be prosecuted according to a promulgated international treaty, which is binding on the Czech Republic (which is for example the case of Council of Europe Convention on money laundering, search, seizure and confiscation of crime proceeds)."

180. The evaluation mission welcomed the creation of SPOK (Service for Detection of Corruption) and especially its Group for recovering proceeds from criminal activities. It however pointed out that the Group should have better resources (also in terms of personnel). It also recommended to the Czech organs to consider the possibility of the use of operational investigative means by the Group and extension of its scope of operation to detection of money laundering cases.

"The successor of SPOK – the Unit for Combating Corruption and Major Economical Crime has recently undergone organizational changes. As was mentioned above, on July 1 2004 the Proceeds of Crime and Money Laundering Department (established within this Unit in 2003) was detached from the Unit and formed the basis of the Illegal Proceeds and Tax Crime Unit ("Financial Police"), which was established on the same day.

As was described above, the Financial Police has a nation-wide competence, its headquarters is in Prague, and other territorial branches are located in Brno, Plzen, Ostrava, Ceske Budejovice, Hradec Kralove and Usti nad Labem. Among other sections it has a section of Proceeds of Crime and Money Laundering, a Strategic Expertise and Methodology and an International Co-operation and Terrorist Financing Section.

Its staff counts approximately 300 persons.

By setting up this Unit, the Government signalled to the public and experts abroad its intention to actively counteract the increasing trend towards tax frauds, to prosecute other illegal financial transactions that endanger the interests of the Czech Republic and to actively participate in solving cases of money laundering and financing of terrorism that usually go beyond the frontiers of a single state.

As was already mentioned, this Unit started to function as of July 1 2004 and already today it is possible to say that it is actively involved in fight against serious criminality, concentrating on "hurting the criminals where it hurts the most" - by detecting and seizing proceeds from criminal activities."

181. *The confidentiality of some information and data hinders the access of the police to some facts.*

“An amendment to the Act No 337/1992 Coll., on taxes and fees administration, which came into force in 2004, broke the confidentiality with regards to certain information from tax proceedings. According to amended § 24 confidentiality cannot be raised with regards to specialized police units authorized by the minister of interior to
1. detect legalization of proceeds from criminal activity,
2. fight terrorist activities and detect sources from which such activities are financed,
3. fight serious economic crimes, corruption and organized crime
if such unit requires data necessary for criminal proceedings concerning crimes committed in areas mentioned in points 1-3”.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

182. The Czech Republic has ratified the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention) in December 1989 and this Convention came into force in respect of the Czech Republic in September 1991.

183. The Czech Republic ratified the Council of Europe Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime in November 1996.

184. Furthermore, the Czech Republic signed the UN International Convention for the Suppression of the Financing of Terrorism on the September 6, 2000 and the UN Convention Against Transnational Organised Crime (Palermo Convention) in December 2000. The ratification of these instruments was being prepared at the time of the on site visit[27].

185. The Czech Republic has taken measures to implement the UN Security Council Resolutions 1373 (2001) and 1456 (2003). By virtue of Resolution 1373 (2001), It has submitted 5 reports to the Council, in December 2001, August 2002, March 2003 and March 2004, and January 2005[28] [29].

2.1 Criminalisation of Money Laundering (R.1, 2 & 32)

2.1.1 Description and Analysis

a) Current provisions

186. On 1 July 2002, an amended version of the Criminal Code (known as the "Euroamendment") came into force. It has slightly altered the drafting of Section 252a on the offence of "legalizing proceeds of criminal activity", which now reads as follows:

Section 252a Legalisation of the proceeds of criminal activity

(1) A person who conceals the origin or strives otherwise to seriously hamper or render impossible identification of the origin of a thing or other asset benefit [other translations made available use alternatively the words "financial benefit" or "property benefit] acquired by criminal activity with the aim of giving the impression (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

[27] The terrorist financing Convention was ratified on 27 December 2005

[28] A sixth report was submitted in July 2006. The reports are available at www.un.org/Docs/sc/committees/1373/c.htm

[29] Act N° 69/2006 on the Implemention of International Sactions was adopted, and entered into force on 1 April 2006; the Ministry of Finance was designated as the main body for the implementation of international sanctions

pecuniary punishment.

(2) An offender will be sentenced to imprisonment for one to five years

a) if he/she commits an act specified in paragraph 1 as a member of an organised group, or
b) if he/she acquires a considerable benefit by means of such an act.

(3) An offender will be sentenced to imprisonment for two to eight years or forfeiture of assets
a) if he/she commits an act specified in paragraph 1 related to a thing obtained by means of trafficking in narcotic or psychotropic substances or by means of another particularly serious criminal act;
b) if he/she acquires very large benefit by means of an act specified in paragraph 1; or
c) if he/she abuses his/her employment or job position for the commission of such an act.

187. This amendment had already been looked at during the second round evaluation (it was a draft at that time) and it was found that the new wording was not changing fundamentally the approach taken as regards the criminalisation. Nevertheless, it aimed at introducing two improvements, in line with recommendations made in the first evaluation round:

- criminalisation of self laundering
- the concept of criminal assets was expanded beyond "things" to also include "asset benefits"

188. As it was the case during the second evaluation round, the criminal AML approach followed in the Czech Republic (at least according to the central authorities) relies also to some extent on two other provisions, namely Sections 251 and 252 on *participation*, which basically deal with the concealment and transfer of a thing resulting from a crime.

Section 251 Participation (Sharing)

(1) A person who conceals or transfers to him/herself or to another person or uses
a) a thing acquired by a criminal offence committed by another person, or
b) what was acquired for such a thing,
will be sentenced to imprisonment for up to two years or pecuniary punishment.

(2) An offender will be sentenced to imprisonment for one to five years if he/she acquires a considerable benefit by an act specified in paragraph 1.

(3) An offender will be sentenced to imprisonment for two to eight years or forfeiture of property if he/she acquires very large benefit by means of an act specified in paragraph 1.

Section 252 Participation (Sharing) by negligence

(1) A person who by negligence conceals or transfers to him/herself or another person a thing of significant value which was acquired through a criminal offence committed by another person will be sentenced to imprisonment for up to six months or pecuniary punishment.
(2) A person who by negligence enables another person to conceal the origin or ascertaining of the origin of an item acquired by means of criminal activity will be punished by the same sentence.
(3) An offender will be sentenced to imprisonment for up to two years
a) if he/she commits an offence specified in paragraph 1 or 2 related to things obtained by means of trafficking

in narcotic or psychotropic substances or by means of another especially serious criminal offence, or
b) if he/she acquires a considerable benefit by means of such an act.
(4) An offender will be sentenced to imprisonment for six months to three years if he/she acquires very large benefit by means of an act specified in paragraph 1 or 2.

b) the draft new Criminal Code

189. The Czech authorities advised that a new draft Criminal Code was in Parliament. If adopted [30], the relevant (new) provisions, Section 190 to 192, would be the following:

Section 190 Participation (Sharing)

(1) Anyone who conceals, transfers to him/herself or another person or uses
a) a thing or other property benefit which was acquired through criminal offence committed in the Czech Republic or abroad by another person, or
b) what was obtained for such a thing or such property benefit
will be sentenced to imprisonment for up to four years, a pecuniary punishment, forfeiture of a thing or a ban on activity; if, however, he/she commits an offence in relation to a thing obtained through a criminal offence for which this Code stipulates a lighter sentence, he/she will be given this lighter sentence.

(2) Anyone who conceals, transfers to him/herself or to another person or uses a thing or other property benefit which was acquired by a misdemeanour under a special legal regulation committed by another person, or what was obtained for such a thing, although he/she has been prosecuted, convicted or sentenced for a similar offence in the last two years, will be given the same sentence.

(3) An offender will be sentenced to imprisonment for six months to five years or to a pecuniary punishment
a) if he/she has committed an offence specified in paragraph 1 as a member of an organised group;
b) if he/she has committed such an offence in relation to a thing, property benefit or what was obtained for such a thing or property benefit, of a higher31 value, or
c) if he/she obtains a higher benefit for him/herself or another person from such an offence.

(4) An offender will be sentenced to imprisonment for two to eight years or to forfeiture of property
a) if he/she has committed an offence specified in paragraph 1 in relation to an thing or property benefit obtained by means of trafficking in narcotics or psychotropic substances, preparations containing them, precursors and auxiliary substances used for unlawful production, or by means of another especially serious criminal offence, or in relation to what was obtained for such a thing or such property benefit;
b) if he/se has committed such an offence in relation to a thing or property benefit or what was obtained for such a thing or such property benefit, of a significant value
c) if he/she has obtained a significant benefit for him/herself or for another person by means of such an offence, or
d) if he/she has committed such an act involving a thing which is an object of cultural value or is in archives.

(5) An offender will be sentenced to imprisonment for three to ten years or to forfeiture of property
a) if he/she has committed an offence specified in paragraph 1 in relation to a thing or property benefit or to what was obtained for such a thing or property benefit, of a very large value;
b) if he/she has obtained a very large benefit for him/herself or another person by means of such an offence, or
c) if he/she has committed such an offence involving a thing belonging to a collection of a museum nature or involving a thing which is part of cultural heritage.

(6) Preparation is punishable.

[30] the Czech authorities advised after the visit that the draft – as a whole - was finally rejected by Parliament in March 2006 due to strong opposition to certain provisions not related to AML/CFT; a revised draft is under preparation but it is difficult to say, at the time of the discussion of the report, whether the new draft will retain the AML/CFT relevant changes contemplated in 2005.

Section 191 Participation (Sharing) by negligence

(1) Anyone who by negligence conceals or transfers to him/herself or another person a thing or property benefit of a higher value acquired by means of (through) a criminal offence committed in the Czech Republic or abroad by another person will be sentenced to imprisonment for up to one year or to a ban on activity.

(2) Anyone who by negligence enables another person to conceal the origin or ascertaining (identification of) the origin of a thing or property benefit obtained by means of a criminal offence committed in the Czech Republic or abroad will be given the same sentence.

(3) An offender will be sentenced to imprisonment for up to three years

a) if he/she has committed an act specified in paragraph 1 or 2 because he/she has breached an important obligation arising from his/her employment, profession, position or function or an important obligation imposed upon him/her by law;
b) if he/she has obtained a significant benefit for him/herself or another person by means of (through) such an act, or
c) if he/she has committed such an act involving a thing which is an object of cultural value or is in archives.

(4) An offender will be sentenced to imprisonment for one to five years

a) if he/she has committed an act specified in paragraph 1 or 2 in relation to a thing or property benefit obtained by means of trafficking in narcotics or psychotropic substances, preparations containing them, precursors and auxiliary substances used for unlawful production, or by means of another especially serious criminal offence;
b) if he/she obtains a very large benefit for him/herself or another person by such an act, or
c) if he/she has committed such an act involving a thing belonging to a collection of a museum nature or involving a thing which is part of cultural heritage.

Section 192 Legalisation of proceeds from criminal activity

(1) Anyone who conceals the origin or otherwise strives to seriously hamper or render impossible identification of the origin of a thing or property benefit acquired by criminal offence committed in the Czech Republic or abroad with the aim of giving the impression (making it appear) that such thing or property benefit was acquired in accordance with the law, or who enables another person to commit such an act, will be sentenced to imprisonment for up to four years, a pecuniary punishment, forfeiture of things or ban on activity; if, however, he/she has committed an offence in relation to a thing which originates from criminal offence for which law stipulates a lighter sentence, he/she will be given this lighter sentence.

(2) An offender will be sentenced to imprisonment for six months to five years or to a pecuniary punishment or ban on activity

a) if he/she has committed an offence specified in paragraph 1 as a member of an organised group;
b) if he/she has committed such an offence in relation to a thing or financial benefit of a higher value, or
c) if he/she has obtained a higher benefit for him/herself or another person by such an act.

(3) An offender will be sentenced to imprisonment for two to eight years or to forfeiture of property

a) if he/she has committed an act specified in paragraph 1 in relation to a thing or property benefit obtained by means of trafficking in narcotics or psychotropic substances, preparations containing them, precursors and auxiliary substances used for unlawful production, or by means of another especially serious criminal offence;
b) if he/she has committed such an act in relation to a thing or property benefit of significant value
c) if he/she has obtained a significant benefit for him/herself or another person by such an act, or
d) if he/she has abused his/her position in employment or his/her function for commission of such an act.

(4) An offender will be sentenced to imprisonment for three to ten years or to forfeiture of property

a) if he/she has committed an act specified in paragraph 1 in connection with an organised group operating in several states;
b) if he/she has committed such an act in relation to a thing or property benefit of a very large value, or
c) he/she has acquired a very large benefit for him/self or another person by suc an act.
(5) Preparation is punishable.

190. The aim of the revision, as far as Section 252a is concerned (future Section 192) is to increase the level of sanctions and to spell out clearly that ML is prosecutable in the Czech Republic when the predicate offence was committed abroad.

c) Analysis

[31] According to S. 420 of draft new Penal Code:„higher“ value/damage/benefit is at least 50 000 CZK; „significant“ value/damage/benefit is at least 500 000 CZK; “very large“ value/damage/benefit is at least 5 million CZK.

Recommendation 1

191. Criterion 1 requires that ML be criminalised in line with the United Nations Convention against illicit traffic in narcotic drugs and psychotropic substances (the Vienna Convention), and the United Nations Convention against Transnational organised crime (the Palermo Convention). As indicated above, the Czech Republic had ratified the Vienna Convention at the time of the on site visit.

192. The material elements required for the ML definition - when the act is committed intentionnally - are the following:

- The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;
- The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

and subject to the basic concepts of the countries 'legal system:

- The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

193. Strictly considered, the scope of Section 252a is narrower than that of the Vienna and Palermo Conventions. Section 252a has not adopted the systematic approach and wording similar to that of the international instruments and the Czech authorities take the view that Sections 251 and 252 - plus others such as Section 166 on "patronisation" (which is similar to aiding and abetting - see below) can be used where it is impossible to apply Section 252a in a given ML case.

Section 166
Patronisation

(1) A person who aids the perpetrator of a criminal act with intent to enable him/her to escape criminal prosecution, punishment or a protective measure or their enforcement will be sentenced to imprisonment for up to three years; however, if he/she so aids the perpetrator of a criminal act for which this Code stipulates a lesser sentence, he/she will receive that lesser sentence.

(2) A person who commits a crime specified in paragraph 1 for the benefit of a close person is not liable to punishment, unless he/she acted thus with intent

a) to assist a person who has committed a criminal offence of treason (Section 91), subversion of the Republic (Section 92), terror (Section 93), terrorist attack (Section 95), wilful damage (Section 96), sabotage (Section 97), espionage (Section 105 paras 3 and 4), participation in a criminal conspiracy under Section 163a paras 2 and 3, or genocide (Section 259), or

b) to provide a financial benefit for him/herself or another person.

194. The extension in 2002 of the scope of Section 252a beyond a mere *thing* is mostly welcome by the examiners, although it would have been preferable to use a wording

broad enough to clearly include all types of benefits[32], e.g. assets, proceeds, or property which is used in the provisions on confiscation.

195. The Czech authorities advised that the first portion of the first phrase of Section 252a ("conceal the origin (…) of a thing or other property benefit") is to be interpreted broadly as "keeping/making secret the information on the origin of a thing/benefit through a transfer of ownership, concealment of the true nature of the thing/benefit, its location or movement, concealment of disposition and concealment of information on ownership and other rights of persons on such a thing or benefit". According to this interpretation, the first two groups of requirements would globally be fulfilled. Likewise, Section 166 on patronisation would, according to the Czech authorities, also cover the first group of material elements required as it stipulates that anyone who assists the perpetrator of a criminal offence in order to enable him to escape the prosecution, punishment or protective measure or execution thereof, is liable to imprisonment for up to 3 years. The examiners noted that Section 166 provides for an exemption from liability of the offender where he/she acts to the benefit of a close person[33]. There are exceptions to this and whilst ML (Section 252a) is not listed under para. 2 a), para. b) would normally cover ML cases, due to the reference to "a financial benefit". It remains doubtful, in the examiners' view, whether this coverage is sound enough for AML (and CFT) purposes.

196. The Czech authorities also take the view that Sections 251 and 252 are meant to cover the *acquisition*, *possession* or *use* of laundered proceeds (which constitute the third group of material requirements, and part of the elements contained in the Strasbourg Convention), since Section 252a does not explicitly deal with those elements. It was explained that in accordance with the interpretation of the Czech Criminal Code, *acquisition* would be covered by the wording "transfers to himself or to another" and "possession" would be covered implicitly by the wording "transfers to himself". The concept of *use* is covered (only) under Section 251.

197. An immediate problem is the lack of consistency of such an approach since the scope of Section 251 and 252 is limited to the classical offence of receiving (concealment of "things"), whereas Section 252a is broader and addresses "things" and other "asset benefits"). Furthermore, Section 252a is dealing with (the proceeds of) a "criminal activity", whereas Section 251 and 252 deal with (the proceeds of) a criminal offence. A strict reading of Section 252a suggests that the proceeds from one or more isolated crime(s) that do not necessary qualify for a (regular, continuous) criminal activity would be excluded, but the Czech authorities advised that it is accepted in the available court practice that Section 252a also covers an isolated offence.

198. Finally, Section 251 and 252 look similar as they both cover, in principle, the same offence of *participation* (*participation by negligence* in the case of Section 252) but there are several differences, for instance:

- Section 251 covers the *use* (not Section 252)

[32]The Czech authorities stressed that according to the opinion of Supreme Court judges, the concept of "asset [or financial or property] benefit" is meant to cover all types of assets besides a "thing", including ownership rights and all forms of intangible assets.

[33] the concept of "close person" is not defined by reference to family relations, but to a broader principle of solidarity

- Section 252 covers *things of significant value* (Section 251 covers only *things*)
- Section 252 covers also the assistance to another person (not Section 251)
- the aggravating circumstances are sometimes more specific under Section 252 (they cover *criminal activity, drugs trafficking*)
- Section 252 never provides for the forfeiture of property (Section 251(3) does)

199. Therefore, it is doubtful that the Czech Republic can rely on a combination of various provisions, contained in the special part of the Criminal Code, to cover adequately and consistently the various elements required by the international standards. This is also an issue from the point of view of the sufficient degree of accuracy and legal certainty needed in the criminal law field.

200. The examiners also noted that the definition of ML contained in Section 1 of the AML Law is different from that of Section 252a. The former is almost identical to that contained in the international instruments, with the exception of the reference to proceeds from a criminal activity. The examiners are mindful of the importance of having a consistent treatment of a given case throughout the processing chain, from the reporting to, and analysis by the FAU (on the basis of the administrative definition) to the possible prosecution and final conviction (on the basis of the criminal law definition).

201. The examiners were also concerned that the level of proof for the mental element of the offence could be quite high, when considered in the context of the ML definition. Judicial authorities need to prove the intent of the criminal "to hide the origin or otherwise seek to essentially aggravate or disallow identification of the origin of a thing or other asset benefit (…) with the aim to pretend that such asset or financial benefits have been obtained in compliance with law". The examiners found that this requirement leads to a higher burden of proof on the prosecution side than that required by the international conventions.

202. Furthermore, the Czech authorities tend to oppose any significant redrafting of the ML offence, arguing that the combination of the various domestic provisions globally satisfies and sometimes exceeds the international requirements and that a substantial redrafting would interfere with existing and developing judicial practice [34]. The evaluation team welcomes that convictions for ML have been obtained thus far but would have liked to see more convincing court practice to support the above argument since the cases described as ML cases (where a conviction was obtained under Section 252a) were in fact dealing with crimes that qualify mostlt – in the examiners' opinion - for the offence of receiving (see beneath).

[34] "It is the opinion of the Czech authorities that the new body of offence of legalisation of proceeds from criminal activity contained in S. 252a of current Criminal Code in connection with bodies of offences of participation (current S. 251 and S. 252) and patronisation (current S. 166) covers all conducts established by the Strasbourg Convention. Creation of new body of an offence would bring about rather opposite effect, as it would interfere with judicial jurisprudence and established interpretations and practice. The development of new practice represents a task for several years. Therefore it cannot be recommended to disregard the notions already established, which are interpreted in accordance with the Strasbourg Convention. The notion of "property" is used in the current Criminal Code only to cover the aggregate property values, while the proceeds may form just one thing or value. Thus, the usage of the term "thing or other property benefit", that covers all values assessable by money, is more appropriate."

203. To sum up: the Czech Republic has a broader coverage of ML in the Criminal Code but it is difficult to conclude that it is sound and consistent. Section 192 will bring some improvements (e.g. ML activities carried out to the benefit of others are better covered, explicit jurisdiction of the Czech authorities for ML offences where the predicate offence was committed abroad, sanctions will be increased etc.) but the situation will not change fundamentally since there will still be reliance on the offence of sharing (Sections 190 and 191 in the draft new Code). The amendments foreseen for these two Sections, which are aimed at bringing them closer to Section 252a (and the future 192) and at insuring greater homogeneity between provisions are an interesting initiative in the context of the approach followed by the Czech Republic: Section 190 and 191 would also cover in future both "things" and "property benefit" and predicate offences committed abroad, they would contain a longer list of aggravating circumstances, the level of punishment would be increased etc. The examiners wondered whether the end result could not create more confusions and ultimately have a counter-productive effect for the development of a sound jurisprudence, which is the ultimate goal pursued. The examiners cannot depart from the idea that it would have been better to extend the content of Section 252a (Section 192) and fill the gaps.

204. Criterion 1.2 requires that the ML offence should extend to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. In this respect, Section 252a refers to the expression "a thing or other asset benefit acquired by criminal activity". During discussions held on site, it was admitted that the word "thing" remained a narrow concept even in Czech, although the jurisprudence has enlarged it considerably [35]. The concept of "asset benefit" (or "financial benefit" or "property benefit") was introduced as part of the Euroamendment of 2002. Clearly, this was an improvement, bearing in mind that the definition provided for in art. 1a of the AML Act has also retained a broad approach by using the concept of "proceeds" ("the legalisation of the proceeds of criminal activity is understood to be an action intended to conceal the illicit origin of the proceeds of this activity"). But it is unclear why the same concepts have not been retained in both the penal legislation and the AML Act.

205. Furthermore, in the absence of an explicit reference to direct and indirect proceeds from crime, some uncertainties remain in the light of the relevant court practice. The three cases described by the Czech authorities where final convictions under Section 252a have been obtained, dealt only with tangible proceeds which were the direct result from a crime, namely stolen vehicles. In each case, one person (in one case two persons) were convicted for ML because they had concealed the origin of stolen cars by changing identification features (colour, numberplates), and/or dismantling stolen cars to sell them as spare parts. The Czech authorities take the view, though, that implicitly both direct and indirect proceeds are included under Section 252a.

206. To convict a person for the offence of money laundering under Section 252a, it is necessary to prove that the assets derive from a crime but "hard evidence" in the form of a conviction for the underlying predicate offence is not required. Furthermore, it is acknowledged that there is no need to prove what particular crime(s) the proceeds result from. It is enough to prove that they are the result of crime. Judges met on site also stressed that it is not necessary to determine who committed the predicate offence.

[35] The Czech authorities advised that it includes controllable tangible objects that serve the needs of people, including financial funds in cash, flats, results of creative activity, controllable natural forces etc. Even booked (immaterialised) and paper securities are things. A thing must be individual and individually determined.

During the meetings with prosecutors, judges and representatives from the Ministry of Justice, it was confirmed that it is possible to infer the commission of the underlying offence from objective factual circumstances The examiners were also advised that an annotation in the Criminal Procedure Code[36] explicitly states that evidence for the commission of a predicate offence does not need to be based on a preliminary conviction. This is in line with criterion 1.2.1, although court practice could have been more convincing on this matter. In fact, according to the jurisprudence available to date, the courts concerned have dealt both with the facts attributable to the predicate offence and with the laundering of the proceeds stemming from the offence.

207. In line with criterion 1.3, the Czech legislation has adopted an "all crime" approach since it refers to (proceeds acquired by) a "criminal activity". Furthermore, as it was confirmed by the Czech authorities, the Penal Code provides for criminalisation mechanisms in relation with each of the 20 "designated categories of offences" in Annex 1 to the Methodology[37]**.** As underlined under the developments on criterion 1.1,

[36] Related to Art. 5 Section 5 – on the evaluation of evidence – and Section 6 – on the collection of evidence in favour of both the accusation and the defense – which are general rules of the criminal procedure.

[37]

Designated categories of offences	**Articles of the Criminal Code**
Participation in an organised criminal group and racketeering	S. 163a – Participation in a Criminal Conspiracy, S. 235 - Extortion
Terrorism, including terrorist financing	S. 95 – Terrorist Attack, S. 93 - Terror, S. 163a – Participation in a Criminal Conspiracy
Trafficking in human beings and migrant smuggling	S. 232a - Trafficking in Human Beings, S. 171a – Illegal Crossing of the State Border, S. 216a -Trafficking in Children
Sexual exploitation, including sexual exploitation of children	S. 241 – Rape, S. 242 and S. 243 – Sexual Abuse, S. 232a – Trafficking in Human Beings, S. 217a – Soliciting to Sexual Intercourse, S. 204 – Sexual Procuration / Pimping
Illicit trafficking in narcotic drugs and psychotropic substances	S. 187 – Illicit Production and Possession of Narcotic and Psychotropic Substance and Poisons
Illicit arms trafficking	S. 185 – Illicit Arming S. 124d, 124e, 124f – Violation of Statutory Provisions on Foreign Trade in Military Material
Illicit trafficking in stolen and other goods	S. 124 - Violation of Statutory Provisions on the Circulation of Goods in Contacts with Foreign Countries, S. 251, 252 – Accessorship, S. 252a –Money Laundering
Corruption and bribery	S. 160 – Bribe-Taking, S. 161 – Bribe-Giving, S. 162 – Indirect Bribery, S. 256b – Scheming in Bankruptcy and Composition Proceedings, S. 128a - 128c – Scheming in Public Tenders or Public Auctions
Fraud	S. 250 - Fraud, S. 250a –Insurance Fraud, S. 250b – Credit Fraud
Counterfeiting currency	S. 140 – Counterfeiting and Altering Money, S. 142 – Manufacture and Possession of Counterfeiting Equipment, S. 143 – Joint Provisions
Counterfeiting and piracy of products	S. 149 - Unfair Competition, S. 150 – Violation of Rights Relating to a Trademark, Commercial Name and Protected Designation of Origin, S. 151 – Infringement of Industrial Property Rights, S. 152 – Infringement of Copyright, Rights Relating to a Copyright and Rights to a Database
Environmental crime	S. 178a - Poaching S. 181a and 181b – Endangering and Injuring the Environment, S. 181c - Injuring a Forest by Cutting, S. 181e – Handling Hazardous Waste, S. 181f, 181g and 181h – Illegal Handling of Protected and Free-living Animals and Wild Plants
Murder, grievous bodily injury	S. 219 - Murder, S. 220 –Murder of New-Born Infant by Mother, S. 222 and 224 – Bodily Injury
Kidnapping, illegal restraint and hostage-taking	S. 216 - Abduction, S. 231 – Unlawful Restraint, S. 232 – Deprivation of Personal Freedom, S. 234a – Taking Hostages
Robbery or theft	S. 234 – Robbery, S. 247 – Larceny / Theft
Smuggling	S. 171a – Illegal Crossing of the State Border, S. 124 - Violation of Statutory Provisions on the Circulation of Goods in Contacts with Foreign Countries
Extortion	S. 235 - Extortion

one could argue that the reference in Section 252a to (proceeds of)"criminal activity" (as opposed to a "criminal offence" or "crime") could theoretically exclude proceeds generated by one or more isolated crimes which would not qualify for a (continuous) criminal activity.

208. According to the replies to the Questionnaire and meetings during the Evaluation visit a crime that has been committed in the Czech Republic is judged pursuant to the law of the Czech Republic. The crime is considered to be committed in the Czech Republic provided that the offender acted there, even though the breach or jeopardy of interest protected by the particular act of the Czech Republic occurred or had to occur fully or partially abroad, or when the offender breached or jeopardized interest protected by this act here, or if such consequence had to occur here at least partially, even though he acted in abroad (section 17 Criminal Code). A crime would also be judged pursuant to the law of the Czech Republic, provided that the crime has been committed abroad by a Czech citizen or a stateless person resident in the Czech Republic (section 18 Criminal Code).

209. According to Section 19, certain crimes (such as subversion, terror, evil-doing or marauding, sabotage, spying, money forgery and modification, use of counterfeit and modified money, manufacture and possession of falsification tools, assault on state body, assault on public figure, genocide, use of banned war means and preparations and illegal fighting, war cruelty, persecution of citizens, pillage in the area of war operations, abuse of internationally adopted and state signs and crime against peace) are punishable in the Czech Republic even when they have been committed by foreign nationals abroad or stateless persons having no residence permitted in the territory of the Czech Republic. Furthermore, a crime is punishable pursuant to the law of the Czech Republic if it has been committed by foreign nationals abroad or stateless persons having no residence permitted in the territory of the Czech Republic, provided that it is punishable pursuant to the law effective where it has been committed, and simultaneously provided that the offender has been apprehended in the Czech Republic and had not been transferred to a foreign state for criminal prosecution. Lastly, a crime is punishable pursuant to the law of the Czech Republic, provided that it is so stipulated by any international treaty that is binding on the Czech Republic.

210. Regarding criterion 1.5, the wording of Section 252a does not explicitly allow for the prosecution of ML domestically where the predicate offence was committed abroad and the general jurisdiction rules contained in Section 17 and 18 above do not provide

Forgery	S. 140 - Counterfeiting and Altering Money, S. 142 - Manufacture and Possession of Counterfeiting Equipment, S. 143 – Joint Provisions, S. 149 – Unfair Competition, S. 150 – Violation of Rights Relating to a Trademark, Commercial Name and Protected Designation of Origin, S. 151 – Infringement of Industrial Property Rights, S. 152 – Infringement of Copyright, Rights Relating to a Copyright and Rights to a Database, S. 176 – Forging and Altering a Public Document, S. 175b – Forgery of Medical Reports, Opinions and Findings, S. 176a – Illicit Making and Keeping of the State Seal or an Official Rubber Stamp
Piracy	S. 152 - Infringement of Copyright, Rights Relating to a Copyright and Rights to a Database
Insider trading and market manipulation.	S. § 128 – Misuse of Information in Business Relations

answers. This lacunae has already been underlined in previous evaluation rounds. Section 192 para. 1 of the new draft Penal Code will fill this gap as it now refers to a "criminal offence committed in the Czech Republic or abroad"[38]. This is commendable and in line also with earlier recommendations addressed to the country. Furthermore, it is foreseen that the two new draft Sections dealing with *Participation (sharing)* (i.e. Sections 190 and 191) will follow the same approach. At present, it is also not explicit from the criminal provisions whether ML could be prosecuted in the Czech Republic where the predicate offence was committed abroad but does not constitute an offence in that country (criterion 1.8). The Czech authorities explained that according to general principles of criminal law, the incrimination of the predicate offence in the foreign country is not a decisive aspect and ML can be prosecuted in the Czech Republic in any case.

211. Self laundering (criterion 1.6), has in principle been criminalised since the introduction of the so-called euroamendment of 2002. Section 252a does not explicitly cover it, but it is by reference to the earlier ML provision of Section 251a (which referred to the expression "enables another person" that was deleted in 2002) that this can be understood. The second round evaluation team had suggested that self-laundering should preferably be clearly addressed.

212. Concerning criterion 1.7, the Criminal Code provisions of Section 8 cover attempt, and Section 9 and 10 cover accessoryship and participation in committing a crime . Section 7 of the Czech Penal Code entitled "Preparation of a criminal offence"[39] covers a broad range of ancillary offences including conspiracy to commit a crime, "acquisition or adaptation of means or tools to commit a crime", instigation, providing of assistance. Interestingly, the list is not limitative, and includes "other intentional creation of conditions for committing a criminal offence".

213. Section 9 and 10 do apply in relation with Section 252a. To some extent, this is also the case for Section 7 – which applies only to serious criminal offences (ML being a serious crime only for the offences described under its para. 3 – see developments on the issue of Sanctions under Recommendation 2 beneath). Interestingly, para. 5 of the draft new ML provision of Section 192 states explicitly that "preparation is punishable". Counselling and facilitating (as required by criterion 1.7) are covered - as ancillary offences - under Section 10 on participation (para 1 lit. c refers i.a. to assistance through the providing of means, removing obstacles, providing advice, convincing a person to act criminally, promising assistance after the commission of the offence).

[38] the fact that a predicate criminal offence may be committed in the Czech Republic or abroad is also enshrined in the amendment which was approved by the Government and is expected to enter into force on 1 January 2008.

[39] Section 7 Preparation of a Criminal Offence

(1) Conduct which threatens society and which consists in the organizing of an especially serious criminal offence (Section 41 par. 2), the acquisition or adaptation of means or tools for the purpose of committing a crime or conspiracy, assembling, instigating or giving assistance for such purpose, or other intentional creation of conditions for committing a criminal offence shall be considered as preparation of a criminal offence, even if such criminal offence is not attempted or committed.

(2) Preparation of a criminal offence shall be punishable within the sentencing guidelines for the criminal offence which was prepared, unless in its Special Part this Code provides otherwise. (…)

Recommendation 2

214. Criterion 2.1 requires that the offence of ML should apply at least to natural persons that knowingly engage in ML activity. In principle, the offence of "legalization of proceeds from criminal activity" under Section 252a applies to cases where the offender acted intentionally in the manner outlined in that Section.

215. Negligent ML is not covered under Section 252a but the Czech authorities indicated that if the action was committed by negligence, the provisions in Section 252 should be used instead, since they refer explicitly to a negligent offence: "A person who by negligence conceals or transfers to him/herself or another person a thing of significant value which was acquired through a criminal offence committed by another person." However, Section 252 is quite restrictive in that – unlike Section 252a - it does not cover assets others than a *thing* and it is limited to goods of *significant value*. Section 252 also explicitly excludes self laundering (*offence committed by another person*). In fact, judicial practitioners met on site indicated that only Section 252a is ML specific.

216. The Criminal Code does not explicitly provide that the moral element of the offence (knowledge and intent) can be inferred from objective factual circumstances. This is acknowledged by the general rules on the producing of evidence, which is in line with the requirements of criterion 2.2. As seen earlier in para. 201, the way the money laundering offence is defined implies a mental element ("with the aim of giving the impression") of a certain level.

217. Criterion 2.3 requires that legal persons can be held criminally liable for ML and where this is not possible due to fundamental principles of domestic law, civil or administrative liability should apply. Currently, there is no criminal liability for legal persons in the Czech Republic. The National Action Plan to Combat Terrorism (in the version for 2003) required from the Ministry of Interior to elaborate, in cooperation with the Ministry of Justice and Ministry of Foreign Affairs, an analysis of the obstacles hindering the ratification of the UN International Convention for the Suppression of the Financing of Terrorism. It concluded that there are some ways in which the Czech Republic could meet the obligations under the current situation until the adoption of a special law on the liability of legal persons (e.g. using § 73 par. 1 c of the Criminal code etc.). The Ministry of Justice tried to introduce such a law and proposed a draft "Act on Criminal Liability of Legal Persons" which was approved by the Government. Eventually the Parliament turned it down on 2 November 2004.[40]

218. The liability of legal entities is frequently provided for under administrative law (but not for conducts considered as *criminal* offences). In the context of AML/CFT, Art. 12 and 12a of the AML Act provide for sanctions in case of non compliance with the Act.

219. But overall, there is a necessity for the Czech Republic to quickly find solutions which would enable the effective sanctioning of legal persons in case of a criminal ML act (for instance where the activity of the legal person was mostly criminal in nature, where due to a multiplicity of decision-making layers a collective responsibility of the entity would

[40]Following rejection of the draft Act introducing the criminal liability of legal persons, the Ministries responsible, the Ministries of Justice and the Interior, agreed on a solution which would introduce the administrative liability of legal entities (including for money laundering, terrorist financing and other offences provided for in international instruments). The content of this amendment is currently being discussed.

be more adequate, or where the organisational set-up within a legal structure does not allow to identify precise liabilities) and fulfil the obligations of the Czech Republic in this field. The evaluation team very much supports the efforts of the government in this direction.

220. Finally, criterion 2.5 requires the existence of effective, proportionate and dissuasive criminal, civil or administrative sanctions for the offence of ML.

221. The essential criminal sanctions for ML are provided for in Section 252a of the Criminal Code:

- up to two years imprisonment or a pecuniary punishment for a "standard" ML crime under para. 1);

- one to five years imprisonment if the offender concerned committed the crime as a member of an organised group or if he/she has acquired considerable profit through the crime – para. 2) lit. a and b;

- two to eight years imprisonment or forfeiture of property if the offender committed the crime in relation to assets from trade in narcotic and psychotropic substances or from another particularly serious criminal act, if the offender has acquired large-scale profits through the crime or if he/she has abused his/her position or function when committing such a criminal act - para. 3) lit. a, b and c.

222. According to Section 89 of the Criminal Code, a *considerable profit* amounts to at least CZK 500,000 (approx. € 17,000) and *large-scale profit* to at least CZK 5 million (approx. € 170,000).

223. By virtue of the classification of offences contained in the Criminal Code (Section 41), *very serious crimes* are those criminal offences enumerated in Section 62 (e.g. terror, sabotage, theft, embezzlement, fraud, unlawful production of addictive and psychotropic substances) and those intentional criminal offences punishable by a maximum term of imprisonment of at least eight years. Therefore, the offence of ML, as defined in Section 252a, constitutes a very serious crime only when the aggravating circumstances of para. 3 are met. In all other cases, including under para. 2 (ML committed by a member of an organised crime group and ML involving assets between € 17,000 and € 170,000), ML is not a very serious crime. The same goes for Section 251 where only the circumstances addressed under para. 3 would qualify for a very serious crime. Section 252 never falls into this category and neither does "patronisation" under Section 166. This has no real consequences for the efficiency of AML efforts (in particular ancillary offences and investigative methods applicable) [41]

[41] ancillary offences are applicable to a large extent to all the offences above and all special investigative techniques can be used independently of the level of seriousness of the offence (the Czech authorities advised that according to domestic legislation, all offences provided for in an international instrument qualify as crimes for the investigation of which these techniques are applicable).

224. Overall, the examiners found that the maximum level of sanctions under para. 1 of Section 252a is quite low[42]. Should Sections 166, 251 and 252 also be considered as ML offences, a consistent approach would normally require that, the level of punishment would in principle also need to be increased in some cases (Section 166 as a whole, Section 251 para 1, Section 252 as a whole).

225. Furthermore, the examiners found that the wording of the aggravating circumstances provided under the individual ML-related provisions could create certain inconsistencies: they are drafted in a way that could exclude from their scope various other cases of greater importance, including ML as a customary activity, ML transactions generating huge profits for third persons but not for the criminal him/herself etc.). These need also to be reviewed.

226. The examiners also wondered why – under Section 252a para. 3 - forfeiture of assets seems to be an alternative and not an additional punishment. The Czech authorities explained that both measures may be applied together[43].

227. The provisions on forfeiture of a thing state that "An offender who is only punished by forfeiture of a certain thing shall be regarded as not having been sentenced", which can be understood as a measure avoiding a criminal record. This approach has been retained also in the new provisions on confiscation (which were in the adoption process at the time of the on-site visit).

228. This system of sanctions is not dissuasive enough, even though according to the general part of the Criminal Code, both measures can be imposed cumulatively. The examiners also noted that according to the statistics available to date (see beneath), forfeiture has never been imposed for a case under Section 252a.

229. The Czech authorities, aware of certain insufficiencies, have indicated that the draft new Penal Code and the new Section 192 criminalising ML will increase the sanctions. The draft submitted to the evaluators contained a level of maximum punishment which is higher, with imprisonment for a term of up to 4 years as a minimum in all cases. But forfeiture of property is still an optional alternative only[44] (together with a professional ban in some cases).

230. As the second evaluation round report underlined, the moderate level of sanctions for ML and the complexity of offences has sometimes led judicial authorities in the past to prefer another qualification (e.g. that of the predicate offence).

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[42] **the team recalls that under the EU Council Framework Decision of 26 June 2001 on money laundering, the identification, tracing, freezing, seizing and confiscation of instrumentalities and the proceeds of crime:** Article 2 – Penalties: Each Member State shall take the necessary steps consistent with its system of penalties to ensure that the offences referred to in Article 6(1)(a) and (b) of the 1990 Convention, as they result from the Article 1(b) of this framework Decision, are punishable by deprivation of liberty for a maximum of not less than 4 years.

[43] It was also explained that the existence of specific provisions on forfeiture under Section 252a (and not under the other ML-related Sections) had been motivated by the need to put extra emphasis on confiscation for this type of offences – by introducing a sanction of universal confiscation of the entire property of the criminals; but confiscation is also applicable to crimes punished under the other Sections by virtue of the provisions of the general part. As indicated earlier, the 2006 amendments of the Criminal Code (Section 55 and 73) made confiscation of proceeds, instruments etc. is mandatory.

[44] With the amendments of law N° 253/2006, Section 55 (confiscation as a punishment) and 73 (confiscation as a protective measure) of the Criminal Code make the confiscation regime mandatory.

231. It is recalled that additionally, sanctions for a violation or failure to comply with the requirements set forth by the AML Act are a fine not exceeding CZK 2 million and in case of a repeated violation or failure to comply with a requirement for a period of 12 successive months, there may be a fine imposed of maximum CZK 10 million. It is also possible to pronounce the dissolution of a Business or withdraw a license. The Czech National Bank is authorised, under Section 26a of the Act on Banks, to impose remedial measures and a fine of up to CZK 50 million on banks and branches of foreign banks and, under Section 34 of the Act on Banks, to revoke the license of a bank and branches of foreign banks both for violation of the AML Act and other sector specific legislation.

232. To conclude on this issue, the evaluators found that in the context of the revision of the Penal Code, the sanctions for money laundering could be revised. The new draft provides for increased sanctions for the most serious forms of conduct. The evaluation team believes that there is a need to proceed with this revision, in order to increase the overall effectiveness and dissuasive effect of the Czech AML/CFT regime.

Statistics

233. The Czech authorities have provided the following statistical table, which contains the police statistics on money laundering cases (art. 252a only) for the whole country and for the period 2001 – 2004 (it was explained on site that these figures also include the cases forwarded by the FAU).

Year	Discovered	Clarified	in %	Crimes of recidivists	Persons charged	Damage in thousands CZK	
						Estimated	Seized
2001	41	41	100	16	14	1220	0
2002	80	74	92,5	6	16	92182	0
2003	27	24	88,89	4	7	172097	13647
2004	31	22	70,97	11	19	2880	59511

234. The Unit for Combating Corruption and Major Economic Crime provided separate statistics (partly covered by the above table) on criminal prosecutions under both art. 251a and 252a:

- 2001:0
- 2002:0
- 2003: in 4 cases, 8 persons – in 1 case a proposal for bringing charges against 2 persons was lodged
- 2004 (until June 30): 2 cases, 2 persons

235. Those of the Illegal Proceeds and Tax Crime Unit for instituted criminal prosecution for crimes under art. 251a and 252a are as follows: 2004 (from July 1 until December 31): 81 cases, 113 persons accused of legalization of proceeds from crime; out of these, the prosecution of 43 accused (in 36 cases) was terminated by the end of 2004.

236. Overall, there are at present 101 persons (in 67 cases) who have been subject to a formal accusation for a crime pursuant to art. 252a (money laundering). Out of these,

and in 2003, 8 cases (following 111 reports sent to the police) have been triggered by the FAU. There are no figures available for the other years.

237. As far as the number of convictions is concerned, the evaluation team sometimes received contradictory information. Whilst the FAU indicated on site that there had been no final conviction so far, the police representatives indicated that there had been two convictions. Information provided in a separate document during the visit indicated that "there have been several cases adjudicated pursuant to Section 252a of the Criminal Code, where a court decision is final and valid". The interesting document that was very much welcomed by the evaluation team provided for a brief description of 3 cases (with sanctions pronounced against 4 persons). A table annexed to the questionnaire contained the following figures, which also mention that 4 final convictions were pronounced in 2004 under Section 252a.

Overview of convicted persons (final decisions) (statistics from the Ministry of Justice)

	Section 251				Section 252				Section 252a			
	2001	2002	2003	2004	2001	2002	2003	2004	2001	2002	2003	2004
criminal offences total	1070	975	890	812	22	27	27	26	0	0	0	4
convicted persons total	**800**	**701**	**663**	**632**	**13**	**19**	**22**	**22**	**0**	**0**	**0**	**4**
unconditional imprisonments	74	74	50	56	0	1	0	2	0	0	0	0
up to 1 year	61	52	37	41	0	1	0	2	0	0	0	0
from 1 year to 5 years	13	22	13	15	0	0	0	0	0	0	0	0
from 5 years to 15 years	0	0	0	0	0	0	0	0	0	0	0	0
over 15 years	0	0	0	0	0	0	0	0	0	0	0	0
life sentences	0	0	0	0	0	0	0	0	0	0	0	0
suspended sentences	414	368	301	278	6	9	11	6	0	0	0	3
with probation		9	7	3		0	0	0			0	0
prohibition of activity	0	0	0	0	0	0	0	0	0	0	0	0
Publicly beneficial works		147	183	175		1	3	2			0	0
Forfeiture of property		**0**	**0**	**0**		**0**	**0**	**0**			**0**	**0**
Forfeiture of thing		**1**	**1**	**0**		**0**	**0**	**0**			**0**	**0**
pecuniary punishment	106	61	70	52	4	8	7	12	0	0	0	1
other punishments	153	0	0	0	2	0	0	0	0	0	0	0
non-imposition of sanction	53	47	56	51	1	0	1	0	0	0	0	0
Conditional non-imposition		2	2	1		0	0	0			0	0
additional sanctions:												
prohibition of activity	10	9	5	8	0	1	0	0	0	0	0	1
pecuniary punishment	13	13	9	12	0	0	0	1	0	0	0	1
other punishments	23	22	8	14	0	0	0	1	0	0	0	0

238. The prosecutors met on site confirmed these figures, these 4 convictions resulting from 3 cases prosecuted successfully.

239. This lack of unanimity about such a basic question as the number of successfully concluded cases or (final) convictions for ML raises certain interrogations as regards

the inter-institutional dialogue, the quality of information available to assess domestically the AML efforts as a whole, the issue of AML leadership etc[45].

240. The table reproduced above shows that extensive use is made of the provisions of Section 251 and to a lesser extent of Section 252. Section 252a is applied very seldom. The sanctions applied for the convictions registered under Section 252a are moderate (but this is not surprising given the limited importance of the cases dealt with until now (see below): 3 suspended sentences and one pecuniary punishment; a prohibition of activity and a pecuniary punishment were also applied as additional sentences. Forfeiture of property or of the *thing* was never applied.

Practice and effectiveness

241. The examiners were left with mixed feelings.

242. On the one hand, they welcome that the Czech authorities have managed to obtain a few final convictions for ML to date and that the criminalisation mechanism has been tested successfully.

243. On the other hand, there is a discrepancy between the information available on the phenomenon of ML in the Czech Republic and the results in terms of convictions.

244. Information available shows that certain relatively sophisticated *modus operandi* are used, including by organised crime groups: conducting of illegal financial activities, use of businesses to integrate dirty money, use of transactions or operations involving significant amounts of cash etc.

245. In comparison, the type of cases treated successfully at the date of the visit by the judicial authorities for ML are basic cases involving stolen goods of minor importance (cars). The spirit of ML provisions in general, and the reasons why the international community has insisted on the need to criminalise ML is primarily in order to tackle complex and significant operations that are used to launder larger amounts of proceeds generated by organised crime and other serious crime-related activities.

246. It could well be that this is due to an over-cautious approach or to some remaining high evidential requirements in practice/ the way the offence is defined, or to the need for further awareness-raising and training measures, or to a combination of two or more of these elements. The second evaluation round report had also underlined that the relatively low level of sanctions for ML together with the complexity of ML offences could have dissuaded, in the past, law enfocement/prosecutorial authorities from using the ML provisions.

247. On site, the evaluation team heard personal complaints from individual practitioners. The FAU was occasionally criticised by the police for its limited ability to generate real ML cases. The representatives of the judiciary spoke in similar terms of the police and prosecution services and mentioned their limited ability to generate ML cases of significant importance.

[45]The Czech authorities also explained after the visit that the discrepancies could be due to the difference of criteria used for keeping statistics

248. On the issue of sanctions following a final conviction, about half of the cases dealt with under Section 251 and 252, and 3 out of the 4 cases dealt with under Section 252a led to suspended sentences only. Unconditional imprisonment was only pronounced in less than 10% of final convictions, and the vast majority of prison sentences did not exceed 1 year**.**

249. There is thus a need to analyse the reasons for this discrepancy between the perceived ML crime situation and the apparent modest judicial response to it.

2.1.2 Recommendations and Comments

250. Despite some improvements which are commendable, the ML criminalisation under Section 252a still does not contain a broad definition and coverage of ML. The position of the Czech authorities according to which it is by a combination of various Sections that the international requirements pertaining to the ML definition are implemented is quite interesting but, in the present circumstances, not fully satisfactory because:

- there are inconsistencies - as regards the definition of the offence - between Section 251, 252 and 252a, which goes against a coherent treatment of the criminal phenomenon of ML and individual ML offences, and

- this fragmented approach leads to a dilution of the ML concept and therefore, Sections 251, 252 and 252a are individually closer to the classical offence of receiving of stolen property

- the jurisprudence available illustrates that to date, Section 252a has mostly (possibly only) been applied to criminal offences which had more to do stolen goods (receiving, trafficking, selling), than with the laundering of profits obtained through criminal activity and the three classical elements of ML (placement, layering, integration).

251. Furthermore, as the examiners could find out, there is no unanimity among practitioners about such an interpretation (some prosecutors or judges consider that only Section 252a is ML specific), and this alone shows that in practice, risks exist that ML offences would not necessarily be dealt with in a consistent way and with utmost effectiveness.

252. The new provisions on *participation (sharing)* (Sections 190 and 191) and on *Legalisation of proceeds from criminal activity* (Section 192) will not remedy this situation since the changes envisaged are minor.

253. Finally, as regards the level of sanctions, the Czech authorities have planned amendments which go in the right direction, with the notable exception of confiscation, which is likely to remain an optional alternative measure.

254. It is therefore recommended:

- to amend Section 252a (Section 160 in the new Criminal Code) so as to cover explicitly the various elements of the international requirements (notably the conversion and transfer of property, and the acquisition and

possession of property) and to use a simpler, less proof-demanding definition of ML;

- to provide clearly for the possibility to prosecute ML where the predicate offence was committed abroad (as planned in the new Section 192), and for self-laundering
- to make sure the ancillary offence of conspiracy covered under Section 7 on preparation apply in relation with the various elements of ML
- to increase the level of punishment for ML offences;
- to continue the efforts aimed at introducing the liability of legal persons, including for ML
- to provide in the relevant provisions for the mandatory confiscation of the proceeds of crime involved in ML in addition to the other sanctions
- to analyse the reasons for the apparent discrepancy between the ML phenomenon in the Czech Republic, and the type of cases concluded successfully in court for ML until now, and take further appropriate initiatives to counter this phenomenon.

2.1.3 Compliance with Recommendations 1, 2 & 32

	Rating	Summary of factors underlying rating
R.1	**PC**	Need to amend the criminalisation mechanism to bring it in line with international requirements (the conversion, transfer, acquisition, possession of property need to be explicitly provided for) and to use a simpler, less proof-demanding definition of ML; effectiveness issue
R.2	**PC**	Level of punishment needs to be increased; no corporate liability at present
R.32	**LC**	Figures are available, but those concerning convictions are inconsistent when different sources are compared, which raises some interrogations as to their usefulness for the authorities to review the effectiveness of the system, and as to the level of overall AML coordination.

2.2 Criminalisation of Terrorist Financing (SR.II & R.32)

2.2.1 Description and Analysis

255. The Czech authorities referred to Section 95 of the Criminal Code as the main provision covering terrorist financing. The Section entitled "Terrorist attack" was introduced and became effective as of 22 October 2004. Although the Czech authorities take the view that FT could be apprehended before 2004 by using a combination with the general provisions dealing with the preparation of a crime, this amendment is mostly commendable.

Section 95 Terrorist Attack

(1) A person who, with the intention to damage the Republic's constitutional system or defence capability, to undermine or destroy fundamental political, economic or social structure of the Republic or that of an international organization, to seriously intimidate the population or to unlawfully compel the government or other body of public power or an international organization to perform, omit or tolerate something,

a) commits an attack against the life or health of a person with the intention to cause death or serious bodily harm; b)takes hostages or commit an abduction; c) destroys or seriously damage public utilities, transport or telecommunication systems, including information systems, fixed platforms on continental shelf, electric energy and water supply, health service or other important facilities, public sites or public property with the intention to endanger human lives, safety of the facilities, systems or sites or to expose property to the risk of major damage; d) disrupts or stop the supply of water, electric energy or other basic natural resources with the intention to endanger human lives or to expose property to the risk of major damage; e) seizes or control an aircraft, vessel or other means of passenger or freight transport, and/or destroy, seriously damage or extensively interfere in the operation of navigation systems or facilities; or provide false information on important facts, thus endangering human lives and health, safety of the means of transport or exposing property to the risk of major damage; f) without due authorization, manufactures or otherwise acquires, stores, imports, transports, exports or otherwise delivers or uses explosives, nuclear, biological, chemical or other weapons with mass destructive effects; and/or engages in unauthorized research and development of nuclear, biological, chemical or other weapons or combat means or explosives prohibited by law or by an international treaty; or g) exposes human beings to the danger of death or serious bodily harm, or exposes the property of other persons to the risk of major damage by causing a fire or flood or the harmful effects of explosives, gas, electricity or similarly dangerous substances or forces; or commits a similarly dangerous act; or aggravates the imminent danger or obstructs the efforts to counter or alleviate it,

shall be sentenced to a term of imprisonment of five to fifteen years, and **possibly**[46] besides to this punishment also to forfeiture of property.

(2) The same sentence shall be imposed on a person a) who threatens to commit an act (conduct) under the paragraph 1, or b) who provides financial, material or other support to such act (conduct).

(3) An offender shall be sentenced either to imprisonment for a term of ten to fifteen years, and possibly [see above] besides to this punishment also to forfeiture of property, or to exceptional punishment, a) if he commits the act as a member of an organized group; b) if he causes serious bodily harm or death; c) if as a result of his act a considerable number of people have become homeless; d) if he stops the transport in a greater extent; e) if he causes very large damage by this act; f) if he commits such crime with the intention of acquiring very large benefit; g) if he endangers the international position of the Czech Republic or of an international organization of which the Czech Republic is a member by this act; h) if he commits the act during the state of emergency or state of war.

(4) The protection according to paragraphs 1 to 3 is afforded also to foreign state.

256. The FT offence is addressed under para. 2, according to which a person is punishable "who provides financial, material or other support to an act referred to under para. 1".

[46] instead of "eventually" (the word appeared in the text available initially) as the examiners were advised on site

The examiners noted that the list of offences contained in para. 1 is quite long and it broadly covers the various situations addressed in the specific UN terrorist conventions.

257. The Czech authorities advised that the introduction of Section 95 was made in pursuance of EU Council Framework Decision N° 2002/475/JAI on combating terrorism. They also specified that in the draft new Penal Code, this provision would be retained, with the sanctions under para. 3 increased (from 10 to 15 years' imprisonment at the time of the on-site visit) to 12 to 20. They also underlined that even before the introduction of FT specifically under Section 95, FT could be sanctioned by a combination with Section 10 on assistance to committing a crime.

258. SR.II requires the criminalising of the financing of terrorism, terrorist acts, and terrorist organisations and ensuring that such offences are money laundering predicate offences. The Methodology specifies that financing of terrorism should extend to any person who wilfully provides or collects funds by any means, directly or indirectly with the unlawful intention that they should be used in or in the knowledge that they are to be used, in full or in part:

1. to carry out a terrorist act(s);
2. by a terrorist organisation; or
3. by an individual terrorist.

259. The footnote to the Methodology and the FATF Interpretative Note to SR.II make it clear that criminalisation of financing of terrorism solely on the basis of aiding and abetting, attempt or conspiracy does not comply with SR.II.

260. A strict reading of Section 95 suggests that only the financing of a terrorist act is covered. The combination with general or other provisions would allow, according to certain Czech practitioners, to extend the scope of the criminalisation mechanism. In particular, Section 163 on "participation in a criminal conspiracy" was mentioned as offering several possibilities to prosecute the financing of a terrorist organisation since para. 3 explicitly provides for a linkage with Section 95. In the examiners' opinion, the question remains open for FT in relation with individual terrorists.

261. The Czech authorities take the view that as regards financing of an individual terrorist, it is necessary to proceed from the definition of terrorist, which is given by his/her certain relationship to terrorist acts. A person who supports a terrorist act financially under Section 95 para. 2 of the Criminal Code does not have to know for what specific terrorist act the finance is earmarked, but it is sufficient to know that he/she is providing funds to a terrorist (ie to a person connected in a certain way to terrorist acts) for the purpose of committing terrorist acts in general. This – in the Czech authorities' view - meets the requirement for financing a terrorist, for it is not decisive whether the funds provided were actually used for the commission of terrorist acts. An interpretative opinion of the Ministry of the Interior also makes a similar stipulation and states that: *"Section 95 para. 2 b of the Criminal Code criminalises financial, material or other support for an act specified in para. 1 of this provision. The provision of para. 2 is a separate fact, which must be satisfied for it to be possible for a perpetrator of the fact described in it to be prosecuted. The objective aspect consists in that the offender intentionally supports the commission of any terrorist criminal offences stated in Section 95 para. 1 of the Criminal Code Linkage to para. 1 in our view clearly does not*

imply a need to demonstrate that support under para. 2 is/was directed to a specific act which is criminal under this provision but what is characteristic is that support must be directed to criminal offences of the same type as those stated in para. 1. The subjective aspect must include intention to support the commission of a criminal offence under para. 1. This special form of criminal conspiracy in the form of a separate fact is also applicable where there has as yet been no attempt to commit a specific terrorist attack. So provision of support under Section 95 para. 2 in our view means provision of support to another person for certain terrorist activity either concerning a specific act or activity which may only give rise to a specific act. In view of what has been said above we think that supporting terrorist activities can be prosecuted without any need to demonstrate that this is support for a terrorist act that has already been specifically designated. It is enough to prove that support must lead to criminal offences of the same type as those stated in Section 95 para. 1."

Section 163a **Participation in a criminal conspiracy**[47]

(1) A person who establishes (founds), participates in the activities of or supports a criminal conspiracy shall be punished by imprisonment for a term of two to ten years or by forfeiture of property.

(2) The offender shall be punished by imprisonment for a term of three to ten years, if he commits the act described in paragraph 1 above in connection with a criminal conspiracy aiming or seeking to commit terror (Section 93) or a terrorist attack (Section 95).

(3) The offender shall be punished by imprisonment for a term of five to fifteen years, if he is a leading person or representative of a criminal conspiracy aiming or seeking to commit terror (Section 93) or a terrorist attack (Section 95).

(4) The provisions of Sections 43 and 44 shall not be applied to perpetrators of the acts described in paragraphs 1, 2 and 3 above.

262. The Czech authorities indicated that there has never been a criminal case so far brought to court for an FT-related offence, besides the few cases (8 files known) generated by the AML/CFT reporting regime and the implementation of international sanctions. These files are currently being processed by the police. There is thus no concrete practice that would illustrate how provisions are articulated and applied.

263. In the examiners' opinion, Section 95 para. 2b is not very eloquent and therefore it is hard to say to what extent such elements as the a) *collection of funds by any means*, b) *directly or indirectly* , c) *unlawful intention that they should be used in or in the knowledge that they are to be used*, d) *in full or in part* are included in Czech legislation. The same goes for Section 163a.

264. On the contrary, it is the view of the Ministry of Interior, that Section 95 para 2.b is more eloquent than necessary. It would be fully sufficient to say "whoever supports such conduct financially or otherwise". Authoritative legal literature (Šámal and others, Criminal Code – Commentary, 6th issue, C.H.Beck, 2004, page 734) explains that "other support is similar to help under Section 10 para 1.c. It may consist of e.g. propaganda, help to establish necessary contacts or to obtain and transmit necessary information etc." It simply means any support that is relevant (praying alone for terrorist's success would probably never qualify, while praying together could be shown that it e.g. strengthened resolve of terrorist). It includes without doubt support in

[47] „Criminal conspiracy" is defined under S. 89 para 17 of the Criminal Code:
(17) A criminal conspiracy is a group of a number of persons with an internal organisation structure and division of functions and activities which is aimed at systematic committing of intentional criminal activity.

form of organizing collection of funds (if the supporter himself does not provide his financial support). Explicit reference to Section 10 para 1.c points out that the concept of assistance (including "procuring of means") applies to support under Section 95 para 2 as well. It should be pointed out that even basic provision of Section 10 para 1.c does not expressly cover "procuring of means **by any means**", as the "means" cover "funds" and "by any means" goes without saying.

265. The Czech authorities also stressed that it is not customary in Czech law to use the wording "directly or indirectly" even if it is used in the convention to be implemented. For instance, the provisions on bribery do not refer to the "promising, offering or giving a bribe, directly or indirectly". They added that if the legislator wanted to limit the scope of the provision, it would be said explicitly, and that the absence of the expression "directly or indirectly" in the entire Criminal Code has not caused any problem.

266. The Czech authorities explained that intentions are inseparable from the subjective part of any offence and are described generally in Section 4. Sometimes the offence qualifies such intention, but that is not the case of Section 95 para 2 (as opposed to para 1). Legal literature (cf. Šámal, as cited above) specifies that "threat by conduct as described in para 1" according to Section 95 para 2.a must be done with the intent specified in para 1 (i.e. the offender threatens, with the intent under para 1, to commit at least some conduct under letters a to g). It is silent on whether the same applies to "support" under Section 95 para 2.b. The two available forms of intent (Section 4) cover all required cases. On the contrary, it is not very clear what "unlawful intention" means. If such phrase were inserted into Czech law it could be argued that some intentions to support terrorism are lawful and thus not punishable. Or, that such lawful intentions are in fact forms of negligence and therefore not punishable. Or something else. The effects would be quite unpredictable.

267. It was also added that it is not customary in Czech law to use the wording "in full or in part" even if it is used in the convention to be implemented. If the legislator wanted to limit the scope of the provision, it would be said explicitly. Since the intent may be indirect (offender provides a sum of money while not planning it usage in terrorist attack, but accepting such potential usage), it goes without saying that the intent may cover partial usage. There is single instance in the entire Criminal Code where the phrase "in full or in part" can be found. It is Section 259 - definition of genocide: "whoever with the intent to destroy wholly or in part some national, ethnic, race or religious group...". That use of the phrase is justified by the verb "destroy" which is absolute in itself. The words "in part" then clarify that it is forbidden to destroy part (e.g. children) of e.g. ethnic group. But such issue does not arise with verb "support" which is not absolute at all.

268. The evaluators noted that the form of support in Section 95 consists of financial, material or other support. This broad approach is in line with criterion II.1b. Nevertheless, the absence of an explicit reference to direct or indirect support suggests that both forms are in principle covered. Likewise, there is no reference to the legitimate or illegitimate origin of the funds. The Czech authorities indicated that in principle, there is no need to make such a difference; what prevails is the existence of support, not its form. Section 163a only refers to support, without further details.

269. There is no explicit reference in the law either that would state that it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act (criterion II.1c). On the contrary, the wording used in Section 95 suggests that there must be a close link between the FT and the committing of a concrete terrorist act. Furthermore, the list contained in para. 1 is limitative and the wording used, including under the aggravating circumstances, suggests primarily that the act must have been carried out. This being said, the first part of para. 2 ("The same sentence shall be imposed on a person who threatens to commit an act") suggest that by analogy, the FT offence could be applied in relation with a threat. It would still remain unclear, in the absence of jurisprudential developments, whether the threat can be objective (seen from the perspective of the authorities, without the threat having been formally expressed/announced by criminals). Section 163a is silent on those issues, but the authorities take the view (see comments above) that these cases are covered too.

270. Attempt to commit a criminal offence is covered under Section 8 of the Criminal Code and, in principle, applicable as regards Section 95 (2)b and Section 163a, in line with criterion II.1d.

271. As indicated under Section 2.1 of this report, the Criminal Code provisions of Section 8 cover attempt, and Section 9 and 10 cover accessoryship and participation in committing a crime . Section 7 of the Czech Penal Code entitled "Preparation of a criminal offence"[48] covers a broad range of ancillary offences including conspiracy to commit a crime, "acquisition or adaptation of means or tools to commit a crime", instigation, providing of assistance. As already stressed, the list is not limitative, and includes "other intentional creation of conditions for committing a criminal offence". Criminal acts under both Section 95 and 163a are particularly serious criminal offences due to the level of maximum punishment and there are no undue restrictions for the applicability of either of the ancillary offences provided for in the general part of the Criminal Code. This is in line with criterion II.1e (applying Art. 2.5 of the UN Terrorist Financing Convention).

272. The Czech Republic has adopted an all crime approach, therefore FT offences are in principle predicate offences for ML. As indicated under Section 2.1 of this report, one could argue that the reference in Section 252a (to the results of)"criminal activity" - as opposed to a "criminal offence" or "crime" - could theoretically exclude proceeds generated by one or more isolated crimes which would not qualify for a (continuous) criminal activity (e.g. one-off fund raising actions). As indicated earlier, the Czech authorities stressed that the concept of "criminal activity" includes also one or more isolated crimes.

273. As for criterion III.3, it was mentioned earlier that according to Section 19, certain crimes including those of Section 95 (and others which could possibly qualify as terrorist-related acts) are punishable in the Czech Republic even when they have been

[48] Section 7 Preparation of a Criminal Offence
(1) Conduct which threatens society and which consists in the organizing of an especially serious criminal offence (Section 41 par. 2), the acquisition or adaptation of means or tools for the purpose of committing a crime or conspiracy, assembling, instigating or giving assistance for such purpose, or other intentional creation of conditions for committing a criminal offence shall be considered as preparation of a criminal offence, even if such criminal offence is not attempted or committed.
(2) Preparation of a criminal offence shall be punishable within the sentencing guidelines for the criminal offence which was prepared, unless in its Special Part this Code provides otherwise. (…)

committed by foreign nationals abroad or stateless persons having no residence permitted in the territory of the Czech Republic. Furthermore, a crime is punishable pursuant to the law of the Czech Republic if it has been committed by foreign nationals abroad or stateless persons having no residence permitted in the territory of the Czech Republic, provided that it is punishable pursuant to the law effective where it has been committed, and simultaneously provided that the offender has been apprehended in the Czech Republic and had not been transferred to a foreign state for criminal prosecution. Lastly, a crime is punishable pursuant to the law of the Czech Republic, provided that it is so stipulated by any international treaty that is binding on the Czech Republic (Section 20a). Since the Czech Republic has not yet ratified the Terrorist Financing Convention of the UN[49], Section 19 applies, the scope of which is broad enough to cover, in principle, the requirements of criterion III.3. Section 19 also applies in relation to Section 163a, without the latter's restrictions contained in para.2.

274. In addition, Section 95 para. 4 extends the protective measures to other countries, which is mostly welcome by the examiners as it usefully complements the primary aim of Section 95 which is to protect the interests of the Czech Republic and international organisations, as well as specified interests of the international community.

Criterion II.4, applying criteria 2.2 to 2.5

275. As indicated earlier, the Criminal Code does not explicitly provide that the moral element of the offence (knowledge and intent) can be inferred from objective factual circumstances. This is acknowledged by the general rules on the producing of evidence. This has not been tested by jurisprudence in relation to FT, since the Czech republic has had no conviction for FT so far.

276. As indicated earlier in this report, the Czech criminal legislation does not provide for the principle of corporate criminal liability. The examiners were not informed of possible alternative provisions applicable to legal entities for FT.

277. By virtue of Section 95 para. 2, providing financial, material or other support to an act listed under para. 1 is punishable by a term of imprisonment of 5 to 15 years and the possible forfeiture of property. Under Section 163a para. 2, the level of punishment is 3 to 10 years' imprisonment.

278. By virtue of the classification of offences contained in the Criminal Code (Section 41), *very serious crimes* are those criminal offences enumerated in Section 62 (e.g. terror, sabotage, theft, embezzlement, fraud, unlawful production of addictive and psychotropic substances) and those intentional criminal offences punishable by a maximum term of imprisonment of at least eight years. Therefore, the offence of FT, as defined in Section 95, constitutes a very serious crime. The same applies to Section 163a due to the level of punishment contemplated under para. 2 and 3

279. The Czech authorities stressed that besides the main sanctions, other penalties may be imposed under the conditions set forth by Sections 31 to 57a of current Criminal Code, such as prohibition of a specific activity or forfeiture of a thing etc.

[49]The terrorist financing Convention was ratified on 27 December 2005 and entered into force on 26 January 2006

280. Overall, the examiners found the level of sanctions adequate. But they reiterate their concern expressed earlier on the criminalisation of ML, concerning the approach which consists in making forfeiture an alternative punishment to imprisonment - also under Section 95 – even though the judge can impose both by virtue of the general provisions.

Recommendation 32

281. As indicated in the introductory part of this report, on FT and terrorism in general, police representatives acknowledged that the Czech Republic is little exposed to this problem, although the country has occasionally been used temporarily by people who had connections to well-known terrorists. According to information provided by the judges met on site, 10 cases have been handled by the courts in the last 11 years[50].There has never been any conviction for FT pronounced in the Czech Republic so far and apparently no proceedings initiated either on this basis. For further information, see also the developments below concerning SR. III.

2.2.2 Recommendations and Comments

282. The efforts of the Czech Republic to progressively improve the legal framework for the criminalisation of FT are commendable. At present, there is a clear provision dealing with the financing of terrorist acts. The financing of terrorist organisations is also present in Czech legislation, through more general provisions on criminal conspiracy (which, however, explicitly refer to the issue of terrorism). The financing of individual terrorists, as such, seems totally absent.

283. The situation as regards the criminalisation of FT presents certain analogies with the criminalisation of ML: use and combination of different and sometimes non specific sets of provisions, extensive room for interpretation and theoretical combinations to comply with the international requirements with several elements that are not covered, or not covered explicitly enough.

284. The examiners believe that at the moment, a stand-alone provision (or series of provisions) on financing of terrorism would be preferable to cover explicitly the various elements of the international requirements in a consistent way and with a sufficient degree of legal certainty[51].

285. It is therefore recommended to introduce FT as a stand-alone offence that would be broad and detailed enough to better cover, besides the financing of terrorist acts, also the financing of terrorist organisations and individual terrorists. These provisions should:

- clearly cover the various elements required by SR.II, in particular the collection of funds by any means, directly or indirectly, and their use in full or in part for FT purposes;

[50]as indicated in the introduction, these cases were essentially bomb attacks and other violent acts connected with serious crime activities (extorison etc.) and were not politically or religiously motivated

[51]The Czech authorities do not consider that the creation of a specific bdy of offence for terrorism financing would lead to improvements in practice or to an increase in the number of cases prosecuted: "This is only a systems change and at the legislative level; it will not have substantial significance for the area of prosecuting financing of terrorism. In our opinion no relevant reasons based on practice have been given for such a change."

- spell out clearly that in order to be criminally liable it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act
- subject to the final introduction of corporate liability, provide for the liability of legal persons for FT

2.2.2 Compliance with Special Recommendation II & 32

	Rating	Summary of factors underlying rating
SR.II	**PC**	No explicit coverage of financing of terrorist organisations and individual terrorists, no explicit coverage of direct or indirect collection of funds/usage in full or in part, no explicit indication that offence is prosecutable without the funds being used or linked to a specific terrorist act; inconsistencies due to a combination of various provisions which should better be addressed by a stand-alone offence
R.32	**C**	

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3 & 32)

2.3.1 Description and Analysis[52]

Confiscation – criterion 3.1

286. The general regime on confiscation is regulated under the Sections 51 to 56 of the Criminal Code. Section 51 and 52 regulate the *forfeiture of property*, Section 55 and 56 the *forfeiture of* [a] *thing*. Section 53 and 54 provide for a system of pecuniary punishment which can be used as an alternative punishment. These various measures are conviction-based and besides these, Section 73 provides for a system of *seizure of a thing* , as a final protective measure, also without conviction.

Forfeiture of Property

Section 51

(1) Owing to the circumstances of the committed criminal offence and the offender's personal situation, the court may order forfeiture of his property, if the offender has been sentenced to an unsuspended term of imprisonment for a premeditated criminal offence by which the offender acquired, or attempted to acquire, a property benefit.
(2) The court may only impose forfeiture of property without the conditions under par. 1 being met if the Special Part of this Code permits imposition of such punishment; forfeiture of property may be imposed as a sole sentence if, because of the nature of the criminal offence and the person of the offender, imposition of another punishment is not considered necessary for achieving the purpose of punishing the offender.

Section 52

(1) Forfeiture of property shall apply to the entire property of the convicted offender, or only to a part of his property as determined by the court; forfeiture shall not apply to means or things that are required for satisfying

[52] Act 253/2006 Coll. has, after the visit, introduced several changes to the seizure and confiscation measures of the Criminal Code and Criminal Procedure Code

the wants of the offender or persons whose maintenance or upbringing is the offender's duty under statutory provisions.
(2) A sentence of forfeiture of property shall terminate shared ownership of property based on statutory provisions.
(3) The forfeited property shall escheat to the state.

Forfeiture of a thing

Section 55

(1) The court may impose forfeiture of a thing which
a) was used to commit a criminal offence,
b) was determined to be used to commit a criminal offence,
c) the offender acquired by his criminal offence, or as a reward for such a criminal offence, or
d) the offender at least partly acquired for another thing stipulated under c), unless the value of the thing under c) is negligible in relation to the thing acquired.
(2) The court may order forfeiture of a thing only if such thing belongs to the offender.
(3) The forfeited thing shall become the property of the state.
(4) An offender who is only punished by forfeiture of a certain thing shall be regarded as not having been sentenced, once the decision under which such punishment was imposed becomes valid (takes legal effect).

Section 56

A court may only impose forfeiture of a thing as the sole punishment where the Special Part of this Code permits imposition of this punishment and if, in view of nature of the committed criminal offence and the possibility of rehabilitating the offender, no other punishment is considered necessary for achieving the purpose of punishment.

Section 73 Seizure [taking away, expropriation]of a thing

(1) If the punishment of forfeiture of a thing mentioned by Section 55 paragraph 1 was not imposed, a court may decide on seizure of such thing,
a) if it belongs to the offender who cannot be prosecuted or sentenced,
b) if it belongs to the offender, punishment of which was not imposed by a court, or
c) if it is necessary due to safety of people or property, or due to another similar common interest.
(2) The state shall become owner of the thing seized.

287. At the time of the on-site visit, a new draft Penal Code had been prepared. It basically takes over the existing provisions. Sections 51 and 52 on forfeiture of property would thus become Sections 65 and 66, and Section 55 on the forfeiture of a thing would become Section 70.

288. Criterion 3.1 requires that laws should provide for the confiscation of property that has been laundered, and:

a) of property which constitutes proceeds from, instrumentalities used in; and instrumentalities intended for use in the commission of any ML, FT or other predicate offences
b) Property of corresponding value
c) Property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime, and all property referred to above, regardless of whether it is held or owned by a criminal defendant or by a third part.

289. Only Section 55 - which deals with the limited scope of forfeiture of a "thing"[53] - contains explicit references to the confiscation of some of the various elements contained under a) above. In particular, whereas Section 51 focuses on the concept of criminal benefit, Section 51 covers to some extent (due to the narrow concept of "thing") the concept of instrumentalities. Confiscation from persons other than the perpetrator is possible under Section 73 of the Criminal Code (on *seizure of a thing* [as a final measure]).

290. Sections 51-52 refers to the broader concept of "property", in accordance with criterion 3.1. This broad concept is welcome, although the distinction with the concept of "thing" was not totally clear to the examiners. As the Czech authorities explained, confiscation applies if the offender is sentenced to an exceptional sentence or to an unconditional prison term for a serious intentional offence through which he/she has acquired or tried to acquire a property benefit or if this punishment is explicitly provided for in the body of a particular offence.

291. In fact, looking back at Section 252a, confiscation for ML is contemplated only under para. 3 (although confiscation would also be possible – according to the Czech authorities - in most cases by virtue of the general provisions)[54], applicable to drug trafficking and "particularly serious criminal acts":

(3) An offender will be sentenced to imprisonment for two to eight years or <u>forfeiture of assets</u>

a) if he/she commits an act specified in paragraph 1 related to a thing obtained by means of trafficking in narcotic or psychotropic substances or by means of another particularly serious criminal act;
b) if he/she acquires very large benefit by means of an act specified in paragraph 1; or
c) if he/she abuses his/her employment or job position for the commission of such an act.

292. As indicated earlier, the category of *very serious crimes* or "particularly serious criminal acts" are those criminal offences enumerated in Section 62 (e.g. terror, sabotage, theft, embezzlement, fraud, unlawful production of addictive and psychotropic substances) and those intentional criminal offences punishable by a maximum term of imprisonment of at least eight years. The approach followed by the Czech Republic and the combination of Section 51 and 252a leads to the applicability of confiscation for ML only for the most serious predicate offences. This is an important gap.

293. Section 192 of the draft new Penal Code would broaden the applicability of confiscation for ML, but still not to all situations (conficsation is not provided for under (new) Section 192 para 2 although this para deals with a first series of aggravating circumstances), and not in a consistent manner (although Section 192 deals with the

[53] the concept was extended in 2006

[54] Confiscation (of property, of thing) may be used either if allowed in the definition of the offence, or if allowed by general provision on imposition of this type of sanction. For confiscation of property, one has to consider not only Section 252a para 3, but also Sections 28 and 51. For confiscation of a thing, Sections 28 and 53 apply in particular. In practice it means that the court is allowed to impose confiscation of property for offence under Section 252a para 1 or 2 only if it deems the offence "serious" and if the offender at least tried to gain property benefit, while it can always impose this punishment for offence under para 3.

laundering of "things" and "property benefit", confiscation for the basic offence under para 1 applies only in respect to a "things").

294. As for Sections 95 para. 2 (which adresses the financing of a terrorist act) and 163a para 2 and 3 (which address the financing of a terrorist conspiracy): confiscation is explicitly provided for as regards the former, but not the latter (para. 2 and 3 only contemplate prison sentences).

295. The Czech authorities confirmed that property of corresponding value cannot be confiscated under Czech legislation (when the original property has been destroyed etc.). It was indicated that in such a case, according to court practice, a pecuniary punishment is imposed – on the basis of Section 53: ranging from CZK 2000 to CZK 5 million. The examiners do not fully disagree with this argument; however, this approach introduces a limit to the maximum equivalent impact on a criminal patrimony, and this limit of equivalent € 167,000 could be moderate in the context of major cases.

296. Although under Section 52 the whole or only part of the property of the offender can be confiscated, there is no distinction being made between direct and indirect proceeds, and no reference to assets deriving from criminal proceeds. No such distinctions are made either under Sections 55-56.

297. Section 55 para. 2, explicitly states that only the property belonging to the offender can be confiscated. Therefore, criminal (tangible) assets transferred to another person (e.g. to hide or protect them) are thus not confiscatable under the "Forfeiture of thing" regime. There is no such clearly stated limit under the regime on "forfeiture of property" (Sections 51 and 52), but the wording used refers only to the property of the offender ("offender's personal situation", "his property" etc.). This restrictive approach could constitute a serious obstacle in the framework of the fight against ML, and above all FT: these mechanisms often involve third parties and complex schemes, certain operations such as fund raising (FT in particular), co-owned or co-managed assets etc. Furthermore, the need to establish a clear ownership link between assets and a given (series of) offender(s) can put an additional burden on prosecutorial bodies and police bodies[55].

298. Last but not least, confiscation is left to the broad discretion of the court (especially since it can constitute an alternative measure to imprisonment). Confiscation, in the case of FT (Section 95 and 163a) is also left to the discretion of the court, but as a possible additional sanction, which is unusual under Czech legislation as the examiners were advised on-site. Strictly speaking, this is not in contradiction with R.3, but from a criminal policy stand point and the need to target the proceeds of crime and FT, it could have been preferable to put certain limits to the courts' discretion.

299. There are thus gaps in the Czech confiscation regime: inconsistencies between the regimes applicable to things and property respectively, neither Section 51 nor Section 52 cover satisfactorily both the proceeds and the instruments of crime, no explicit coverage of property transferred to third persons, no explicit coverage of direct and indirect proceeds, the applicability is limited to a restrictive number of ML and TF circumstances etc.

[55] The 2006 amendments have introduced the concept of possession or control (instead of ownership only)

300. Furthermore, the system in place appears to be complex.

301. The provisions of the new draft Penal Code made available to the examiners at the time of the on site visit contained no significant improvement as regards the basic mechanisms of confiscation. However, two new Sections dealing with equivalent value confiscation would be inserted (Sections 71 on Forfeiture of substitute value, and Section 103 on seizure of substitute value). The Czech authorities referred to these new provisions as being those of (new) Sections 56a and 73. From the text of the new Sections 71 and 103 available, the examiners took that the equivalent confiscation would be limited to the equivalent of proceeds which are "things" only. The Czech authorities also indicated that the new Penal Code would also enable confiscation transferred to third persons (new Section 73) but a translation was not available. The examiners noted from the provisions at their disposition, however, that a new Section 417 would broaden the concept of ownership as follows: *A thing belongs to the offender, if at the time of the decision he/she owns it or effectively deals with it as an owner, while the rightful owner or holder of the item is not known.* This could indeed allow to some extent to deal with assets (but here again, the narrow concept of "things" applies again) transferred to third persons.

302. One last remark: the spirit and wording of the confiscation regime under Section 51 (and Section 65 in the new draft Code) is such that it puts emphasis on the application of measures to situations where the offender was seeking a benefit through his/her crime. Whereas this is conceivable for a large proportion of criminal offences, it raises the burden of proof unnecessarily and may deny the applicability to the area of AML/CFT since the primary objective of operations/crimes of certain professional launderers and of those who support terrorists (and those who raise terrorist funds) is not necessarily an immediate profit. This shows again the merits of the international standards, which are based on broad objective criteria, from which the Czech Republic could draw greater inspieration.

Provisional measures (criteria 3.2 to 3.6)

303. Provisional measures are regulated basically by two sets of provisions of the Code of Criminal Procedure, namely Sections 347 and 348, and Sections 78 and 79.

Section 347

(1) If an accused person is being prosecuted for a criminal offence for which, in view of the nature and seriousness of the offence and the circumstances of the accused, imposition of a sentence of forfeiture of property can be expected, and there are concerns that enforcement of this sentence will be obstructed or hampered, the court, and in pre-trial proceedings public prosecutor, may seize the assets of the accused. The court always seizes the assets of the accused if it has imposed a sentence of assets forfeiture in a judgement which has not yet come into legal force.

(2) A complaint is permitted against a decision on seizure.

Section 348

(1) Seizure applies to all property of the accused, and accruals and gains from assets seized, and also assets (property) the accused acquires after seizure. This does not, however, extend to financial and material means and things to which forfeiture does not apply under the law.

(2) For issuing decisions on seizure of property under paragraph 1, application is otherwise made of Section 47

paras 4 to 7.

Section 78 Liability to deliver a thing (production order)

(1) Anyone possessing a thing important for the criminal proceedings is obliged to submit the thing to the court, public prosecutor or police body based on call; if it is necessary to secure the thing for the purpose of criminal proceedings, the person is obliged to deliver the thing to the bodies on call. Upon the call it is necessary to notify the person that if he/she fails to meet the call the thing can be taken away from him/her as well as other consequences of the failure to meet the obligation (Section 66).

(2) The obligation under paragraph 1 does not apply to the written instrument the content of which relates to a circumstance for which prohibition of examination applies unless the release from the obligation to keep the matter confidential or release from the duty of non-disclosure has taken place (Section 99).

(3) The presiding judge is authorised to call for deliver of a thing; the public prosecutor or police body are authorised to do so in pre-trial proceedings.

Section 79 Taking away of a thing

(1) If the thing necessary for criminal proceedings is not issued on call by the person possessing the thing, it can be taken away based on order of the presiding judge and in pre-trial proceedings based on order of the public prosecutor or police body. The police body needs a prior consent of the public prosecutor for the issue of such order.

(2) If the body that issued the order to take away the thing does not execute the taking away itself, it shall be executed by the police body based on the order.

(3) The police body may issue the order without prior consent specified in paragraph 1 provided only that the prior consent cannot be achieved and the act must be performed immediately.

(4) A person not participating in the matter shall be eventually engaged in taking away of the thing.

(5) The report on delivery and taking away of a thing must also include a sufficiently accurate description of the thing delivered or taken away to allow for identification thereof.

(6) The person that delivered the thing or from which the thing was taken away shall be immediately given a written acknowledgement of acceptance of the thing or copy of the report by the body that carried out the act.

Section 79a Judicial seizure (Securing) of a bank account

(1) If the facts ascertained indicate that the financial means (funds) on a bank account are intended (determined, designated) for commission of a criminal offence or have been used to commit a criminal offence or they are proceeds of crime, the presiding judge and in pre-trial proceedings the public prosecutor or police body may decide to secure the bank account. The police body needs a prior consent of the public prosecutor for such decision. No prior consent of the public prosecutor is needed in urgent cases that must be performed immediately. In such event the police body shall be obliged to submit its decision to the public prosecutor within 48 hours; the public prosecutor shall either approve or cancel the decision.

(2) Decision under paragraph 1 must be delivered to the bank keeping the account, and to the account holder after the bank has secured the account. The decision shall specify the bank details, which means the number of bank account and code of the bank, further the amount of money in relevant currency to which the securing applies. Unless the authority responsible for criminal proceedings mentioned in paragraph 1 specifies otherwise, any disposal of the financial means placed on the account up to the amount of securing shall be restricted from the moment of service of the decision, except for execution of the decision. The financial means not affected by the decision on securing shall be used preferentially to pay any claim being the subject of execution of a judicial or administrative decision. Financial means covered by decision on securing may only be disposed of within the execution of decision after prior consent of the judge, and in pre-trial proceedings after prior consent of the public prosecutor; this does not apply when the decision is executed in order to satisfy the claims of the state.

(…)

Section 79b

For the reasons for which the bank account can be secured it is possible to decide on securing the financial means on the account with a savings and credit co-operative or other entities keeping accounts for third persons, on blockage of financial means of an contributory pension scheme with state benefit, blockage of drawing financial

credit, and blockage of financial lease. Provisions of Section 79a shall be used reasonably to carry on the decision-making to secure and cancel or reduce the seizure.

Section 79c Securing the booked (immaterialised) securities

(1) If the presiding judge or in pre-trial proceedings the public prosecutor decide to secure the booked securities, the person authorised to keep records of investment tools under special Act or the Czech National Bank shall open a special account for the holder of such securities, on which the securities shall be kept.

(2) The police body may also decide to secure the booked securities in exigent cases that must be performed immediately. The police body shall be obliged to submit its decision to the public prosecutor within 48 hours; the public prosecutor shall either approve or cancel the decision.

(3) Disposal of the securities covered by the securing is restricted from the moment of service of the decision on securing. The authority responsible for criminal proceedings mentioned in paragraphs 1 a 2 may specify in the decision, depending on the nature and circumstances of the crime, that no other rights may be executed in consequence of securing the book securities.

(4) Provisions of Section 79a shall be used as appropriate for the reasons for securing the book securities and procedure on making the decision to secure and cancel or reduce the securing.

304. Sections 347 and 348 are meant to secure the execution of a final decision based on Section 51 of the Criminal Code (forfeiture of property). As the Czech authorities explained, the measure applies to the whole property of a person who has been subject to a formal prosecution and it is impossible to secure only part of the property. The decision is made by the court or, in preparatory proceedings, by the public prosecutor. The measures apply if it is reasonable to expect that a forfeiture sentence will be imposed for the offence committed, and if it is feared that its execution may be hindered. During the process, the person who has been charged cannot perform any legal acts that would affect the seized property (such acts would be void).

305. Section 347 represents potentially a very powerful tool. This being said, although in principle the mechanism applies to the entire property, including "accruals and gains from assets seized, and also assets (property) the accused acquires after seizure", Section 348 excludes the imposition of those measures to "financial and material means and things to which forfeiture does not apply under the law" (this refers to civil law provisions which deal with subsistence needs). Although this exception was probably meant to avoid overlapping with the regime of Sections 78 and 79 (see below) applicable mostly to assets deposited with financial institutions, and to preserve property that is needed for subsistence, it remained unclear to the examiners how this universal freezing mechanism could apply in practice without including precisely financial and tangible proceeds. This is a particular issue from the point of view of AML/CFT.

306. Sections 78 and 79 are meant to secure evidence or the execution of a final decision based on Sections 55, 56 and 73 of the Criminal Code (forfeiture/seizure of a thing). As the Czech authorities explained, the measure applies primarily to movable property. Under the provisions, anyone who holds a "thing" relevant for criminal proceedings is obliged to submit/render that "thing" to a court, to a public prosecutor or to a police authority. Only if the person fails to comply with this obligation, the "thing" may be taken away from him/her. Sections 79a, 79b and 79c cover the freezing of bank accounts, of financial means kept on other types of accounts, and of securities in booked form, respectively. The fact that these measures are not limited to the assets of the suspect/offender is a positive step, although regretably there is inconsistency with

the confiscation measures (under Section 55, forfeiture of a "thing" is possible only in respect to property belonging to the offender).

307. Only Sections 347/348 deal globally with indirect benefits from assets, and assets aquired after the application of temporary measures. As seen earlier in respect of confiscation, this approach has not been followed by the corresponding Section 51 of the Criminal Code. Furthermore, Section 79a and 79b do not address those issues, which raises practical questions such as the seizeability of benefits and certain financial assets (interests, deposits made after the freezing of an account, increase of value of shares etc.).

308. Prosecutors met on site stressed that in practice, when dealing with criminal cases, the relevant seizure mechanisms are those of Sections 78 and 79 (including 79a/79b/79c) – which thus limits their use to tangible objects and to a limitative list of financial assets. Section 51 and 52 of the Criminal Code) and therefore Sections 347-348 of the Criminal Procedure code are very strict when it comes to their application. They confirmed that at the time of the on site visit, temporary measures cannot apply to immovable property, and to rights and financial participations/shares in a legal entity. These issues would be addressed in the new draft Criminal Procedure Code. It was also underlined that the system of temporary measures is complex, even from the standpoint of the Czech Republic and that in fact, the spirit of the curent system of seizure and confiscation and the distinction made between legal assets and illegal assets (only the latter can be confiscated, except under Section 51) have a significant impact in practice.

309. Bearing criterion 3.3 in mind, which requires that the initial application of temporary measures should be made without prior notice to the person subject to those measures, the examiners were concerned by the logic of provisional measures under both Sections 347/348, and Sections 78/79: in the first case, formal proceedings must have been initiated and in the second case, the responsibility for the application of measures lies primarily on the suspect him/herself. Section 78 para. 1 goes so far as to specify that "Upon the call it is necessary to notify the person that if he/she fails to meet the call the thing can be taken away from him/her as well as other consequences of the failure to meet the obligation." The Czech authorities explained that the procedure under Sections 78/79 involves in reality measures applied on-site without delay and possibility for the offender to evade the consequences of the procedure (the person is given a chance to cooperate voluntarily but measures can be applied mandatorily in case of refusal). This procedure (on the obtaining of evidence) is the one that is used in practice to secure swift measures and avoid that assets are hidden or dispersed.

310. Representatives of the police and prosecution services met on site were not concerned by their ability and powers to identify and trace property subject to possible confiscation (criterion 3.4). The police – on their own initiative and at an early stage - only have access to open sources (this excludes banking, financial, commercial and other information subject to confidentilaity/secrecy rules, but also tax information). These sources are accessible to the prosecutor (even without court order in the case of banking information), therefore the police would formally open a case to involve the prosecutor. The examiners were advised by the police themselves that this was done easily. The major time constraint experienced by the police is the 72 hours freezing/postponment period applicable in case of an STR, and the fact that according to the police, the FAU takes too much time to process an STR before forwarding it to

them. This matter was discussed and as a result, the preliminary analyses by the FAU have been shortened. In principle, financial enquiries and investigations carried out by any police body would normally involve a member of the Illegal Proceeds and Tax Crime Unit, who is familiar with this type of work.

311. Concerning the protection of rights of bona fide third parties (criterion 3.5), although confiscation from third parties is not allowed in principle, Sections 78 to 79c do not contain any restriction in this regard and the Czech authorities stressed that such temporary measures are applied to assets regardless of the real ownership. Temporary measures under Sections 78 to 79c are always subject to appeal and a bona fide third party can challenge the imposition of measures. However, the Czech authorities indicated that ownership rights of third persons with regard to things and means secured cannot be determined before the public prosecutor or the panel of judges in the course of criminal proceedings. This can only be done pursuant to civil law rules. If a third party requests the exclusion of certain objects or means (funds) from the assets seized, the prosecutor or chair of panel shall advise such person that his/her request cannot be taken into consideration, and refer him/her to civil proceedings, where his/her bona fide ownership right may be claimed by civil law action (action for recovery or action for determination)[56].

312. Secondary legislation was needed to sort out a number of practical problems connected with the administration of seized assets, as they were underlined in the second evaluation round report. Act no. 279/2003 Coll. *on execution of securing the property and things in criminal proceedings* came into force on 1 January 2004. It was said that this law has eliminated the previous deficiencies related to the administration of property subject to temporary measures (before this law came into force, law enforcement agencies were to manage such property, without being professionally or materially equipped or staffed to do so).

313. According to this law a body active in criminal proceedings may perform the administration of secured property either on its own, if possible, or entrust – depending on the type of property secured - either the Office for Representation of State in Property Matters or a judicial clerk. These subjects may then, if needed, sub-contract to other persons involved in the relevant area of business the management of the property. Besides that, the law regulates the procedure for securing the property in criminal proceedings by stipulating those actions that should lead to the identification and efficient safeguarding of the perpetrator's property (e.g. making a list of the property during home search; declaration by the obliged person on property; interrogation of witnesses; duties of debtors to pay the debt directly to the court; duty of relevant authorities to report that offender handles the secured property etc.). No further mechanisms was mentioned as regards the implementation of criterion 3.6.

Additional elements (criterion 3.7)

314. There are no special rules that provide for the confiscation of property that belongs to an organisation that was found to be primarily criminal in nature. The Czech authorities stressed that since the Czech criminal law does not regulate the criminal liability of

[56]information provided after the visit suggests that the situation described in this paragraph is not necessarily true in all situations and there are certain conditions that the judicial authority needs to observe before referring the claims to civil proceedings.

legal entities; it is impossible to impose forfeiture of a legal entity's property in criminal proceedings. The only exception is the situation where a "thing" that constitutes proceeds or an instrument of a criminal activity is subject to the measures applied pursuant to Section 73 ("seizure [taking away, expropriation] of a thing") if this is required by common interests; the measure can be applied against a legal person[57].

315. The same Section also provides for the possibility to apply this measure where the offender cannot be prosecuted or sentenced (however, it does not cover the situations where the offender is hiding abroad or deceased and it cannot be used to enforce a foreign confiscation order based on civil forfeiture)[58] but this is different from a *civil forfeiture* (or forfeiture based on civil standards of evidence) which is not recognised in Czech criminal law.

316. There Czech Republic has not introduced the reversal of the burden of proof post-conviction for confiscation purposes. There are no concrete plans to introduce such a mechanism in future.

Recommendation 32

317. The statistical information kept by the Ministry of Justice (see also the overall table under Section 2.1.1 of this report) indicates that, over the period 2001-2004, there have been no confiscation measures in respect of the four ML cases (under Section 252a) registered to date.

Overview of convicted persons (final decisions) (statistics from the Ministry of Justice)

	Section 251				Section 252				Section 252a			
	2001	2002	2003	2004	2001	2002	2003	2004	2001	2002	2003	2004
criminal offences total	1070	975	890	812	22	27	27	26	0	0	0	4
convicted persons total	**800**	**701**	**663**	**632**	**13**	**19**	**22**	**22**	**0**	**0**	**0**	**4**
suspended sentences	414	368	301	278	6	9	11	6	0	0	0	3
Forfeiture of property		**0**	**0**	**0**		**0**	**0**	**0**			**0**	**0**
Forfeiture of thing		**1**	**1**	**0**		**0**	**0**	**0**			**0**	**0**

318. Over the same period, and out of a total of over 2700 persons convicted, *forfeiture of thing* was applied in respect of offences falling under Section 251 on 2 occasions (one in 2002 and one in 2003). *Forfeiture of property* was never applied in relation to convictions under Section 251-252 recorded for the years 2001-2004.

319. Other figures provided and interviews held on site have shown a real dedication of practitioners to target the proceeds of crime in general:

> The Unit for Combating Corruption and Major Economical Crime – total amount of property seized
> 2001: 100 000 000 CZK
> 2002: 2 700 000 000 CZK

[57] The situation has changed with the amendments of 2006

[58] With the amendments of 2006, the confiscation of assets is possible where the offender is deceased or where the property has been transferred to a third party

2003: 756 147 000 – from this amount 116 000 000 CZK concerned money laundering cases
2004 (until June 30): 207 767 000 CZK - from this amount 124 809 000 CZK concerned money laundering cases

The Illegal Proceeds and Tax Crime Unit - total amount of property seized
2004 (from July 1):
Proceeds of Crime Section – 1 732 854 086 CZK in 21 cases
Money Laundering Section - 1 838 211 CZK in 2 cases

320. But overall, the figures available raise the issue of the effectiveness of confiscation in ML cases, but also other neighbouring offences (Section 251 and 252 allegedly used also for ML).

321. Finally, there are no consolidated overall statistics kept on proceeds seized and confiscated.

2.3.1 Recommendations and Comments

322. Interestingly, observations made earlier in this report regarding the coverage of ML and FT apply also to the area of confiscation and seizure. The Czech Republic is using a combination of various heterogenous and unnecessarily restrictive provisions to comply with the international requirements.

323. Although there is much to be commended in respect of bits of certain provisions considered individually, the end result is of such a complexity that it generates loopholes and probably constitutes a challenge for the Czech practitioners, if one looks at the current statistics. In particular, the system is very much focused on a distinction between "property" and "things", rather than, for instance, on "proceeds" and "instruments". Also, the temporary measures offer more opportunities (with the exception of their non applicability to such assets as immovable property, assets held as financial participations etc.) than the provisions on confiscation, whereas one would normally expect a match between these two series of provisions.

324. The Czech authorities stressed that at the beginning of January 2005, an inter-ministerial working group was established upon the Ministry of Interior's initiative to look at the area of proceeds from criminal activities and certain related questions. This group is composed of representatives from the Ministry of Interior, Supreme Prosecutor's Office, Ministry of Justice, Police Presidium and Unit for Detection of Illegal Gains and Tax Crime (part of Service of Criminal Police and Investigation). It aims at uncovering deficiencies in legal regulations applicable to the deprivation of proceeds and make proposals for legislative amendments.

325. This initiative is mostly commendable. In the immediate, the examiners formulate the following recommendations for improvements:

- The legal framework on confiscation needs to be reviewed to ensure consistency and fill the gaps, so that confiscation applies in respect of all kind of property that has been laundered, and:

a) of property of all kind which constitutes proceeds from, instrumentalities used in; and instrumentalities intended for use in the commission of any ML, FT or other predicate offences
b) all kind of Property of corresponding value
c) all kind of Property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime, and all property referred to above, regardless of whether it is held or owned by a criminal defendant or by a third part;

- confiscation should be provided for as an additional measure to the main punishment in all ML, FT and major proceeds generating crimes and the discretionary power of the courts should be limited; ideally, confiscation in such cases should be mandatory;

- the provisions on confiscation of property should not be based solely on the logic of the profit-seeking offender

- amendments are needed to ensure consistency between confiscation and temporary measures along the lines mentioned above, and to make sure the latter apply to all possible forms of assets including direct or indirect proceeds, real estate, financial participations and interests whatever their form etc.; (at the time of the evaluation, there was a succession of specific Sections dealing with specific types of assests - things, bank accounts, other financial accounts, securities etc.).

- Sections 347 and 348 on temporary measures may need to be amended so as to enable the application of temporary measures without prior notification of the suspect;

- the broad applicability of temporary and final measures should be introduced also in respect of assets held by legal persons;

- The Czech authorities should consider enhancing the protection of rights of bona fide third parties, and introducing the reversal of the burden of proof post-conviction for confiscation purposes.

2.3.2 Compliance with Recommendations 3 & 32

	Rating	Summary of factors underlying rating
R.3	**PC**	Inconsistent and complex framework for seizure and confiscation which generates mis-matches between temporary and final measures, creates legal loopholes and misses various elements (including direct and indirect proceeds, equivalent confiscation, confiscation of assets held by third persons); applicability to ML and FT only in a limited number of situations and spirit of provisons on confiscation of property is focused on profit-seeking; effectiveness issue for confiscation; temporary measures need to apply without prior notification of the suspect; measures not applicable to legal persons etc.
R.32	**LC**	No consolidated overall statistics kept on final and temporary measures

2.4 Freezing of funds used for terrorist financing (SR.III & R.32)

2.4.1 Description and Analysis

SR III.1.2-3 Laws and procedures to freeze funds/assets in accordance with UNSCRs 1267 and 1373

Generally

326. Like in other (especially EU-) countries, the situation in the Czech Republic appears to be quite complex and difficult to assess since the issue of the implementation of SR III is in principle addressed in both domestic and EU-level legislation.

327. The Czech authorities indicated that the freezing of funds on the basis of international commitments is regulated by Act No. 48/2000 on measures concerning the Afghan Taliban movement and, in general, by Act No. 98/2000 on the implementation of international sanctions for the purposes of preserving international peace and security. The latter substantially changed the domestic procedures relating to international sanctions. It abolishes the previous cumbersome practice, which required that each implementing government directive should be preceded by parliamentary approval of an ad hoc law.

328. Within the framework of Act No. 48/2000, the Government adopted Directive No. 164/2000 implementing the commitments under UN Security Council Resolution 1267 (1999), and Directive No. 327/2001 concerning further measures in respect of the Taliban movement, implementing the commitments under UN Security Council Resolution 1333(2000).

329. No further domestic measures were mentioned in respect of the other UN Security Council Resolutions.

330. After the Czech Republic joined the EU in May 2004, the EU regulations apply. In principle, the European regulations are directly applicable in European national systems without the need for domestic implementing legislation. Financial institutions are therefore required to directly implement these regulations and, as far as the EU lists are concerned, when new names are published, financial institutions which identify a customer who is listed should immediately freeze the account. Funds must be frozen without prior notification to the persons concerned. Decisions on the freezing of assets taken on the basis of the EC Regulations can be challenged before the European Court.

331. The Czech Republic relies to a significant extent on the mechanisms of the European Union to comply with SR III. To date, it has not adopted a specific legal framework to deal with the immediate freezing (and de-freezing) of assets belonging to listed persons, the issue of such a list and of sanctions for not applying freezing measures etc.

332. The *National Action Plan to Combat Terrorism* – version 2004, has highlighted in a frank and open manner – which is commendable - various technical problems

identified/perceived by the Czech authorities, as regards the implementation of international sanction mechanism(s):

"The Czech Republic's legal system, similarly to most other countries of the world, is based on the classical concept of international sanctions which has, up till now, been applied on the international scene, namely the territorial principle when the subject to be sanctioned is the state. Since September 11, 2001 the personal principle has been applied, i.e. application of sanctions against individuals or groups of persons connected with terrorist activities even though their common denominator is not a specific state territory or membership of a specific state. Some basic issues associated with the application of sanction have not yet been completely resolved either in the Czech Republic or internationally, namely:

- Protection of the rights of the individual and other subjects against whom sanctions are applied - i.e. the issue of responsibility for entering specific persons into a sanctions list, for freezing and confiscating their property, and the issue of eventual financial compensation for damages caused by unfounded freezing of financial means (whether this responsibility shall be borne by the state which put such persons on the list or by the UN Security Council or by the state which freezes funds or by the state whose nationals the pertinent persons happen to be); a solution to this would be the establishment of a body within the UN or EU providing the persons entered into such a list with an opportunity to defend themselves; under consideration is also the possibility of establishing an authority within the framework of the UN which would consider, in legal terms,
- as for the sanctions imposed by the European Council Directives, the persons entered into the sanctions lists pursuant to Article 230 Section 4 of the Treaty on the Establishment of the European Communities have the possibility to sue for the invalidity of their inclusion in the sanctions list. The first-instance court of the European Communities which is currently examining approximately 20 such actions has not yet decided in a single case. The possibility of providing special protection to sanctioned subjects going beyond the current scope of court protection is now considered even within the framework of the EU,
- Inadequate criteria for crossing a person out from the sanctions list
- Uncoordinated methodology for giving personal names in the lists. The lists do not contain identification data, are not supplemented with photographs, identification of individual persons is made more difficult by inadequate or uncoordinated transcription of their names
- the need to inform the person who has been entered into such a list
- Inadequate manner of updating the lists (establishment of a consolidated database of sanctioned persons under the auspices of the European Banking Federation is under consideration); in this context it is crucial to stress that over the past two years more than 4,000 persons allegedly linked to the organisation Al-Qaida or the Taliban movement have been detained in 102 countries. But the list of sanctioned subjects contains a substantially smaller number of people. This implies that not all the suspects have eventually been put on the sanctions lists and it can therefore only be surmised that many people have been detained without court proceedings, without arrest warrants on the basis of an internal ruling of some states. Also, it cannot be excluded that the fight against terrorism has, in some cases, been used to clamp down on domestic opposition.
- Problematic control of charity societies and humanitarian organisations.
- It is likewise necessary to take into account the existence of different types of lists (EU, UN Security Council, interbank or intelligence service lists etc.) that are known to have a different degree of binding effect and enforceability. "

333. Also, the document entitled *Analysis of the Legal Powers of the Intelligence Services and the Police of the Czech Republic, that are Needful to Complete Their Tasks in the Fight against International Terrorism (Analysis)* has analysed the legal powers of the intelligence services and the Police in the area of the fight against terrorism and compared them with those of their foreign counterparts (especially in the EU Member States). The first outcomes of the comparing process says openly, that the powers of the Czech Republic bodies have to be extended to assure the effective co-operation and exchange of information between the domestic bodies and their foreign counterparts. The areas where improvemenst were considered as crucial include:

- the possibility of receiving information from the public administration bodies and from some private entities;

- the steps, that are connected with the Act on Electronic Communications (conditions of wire-tapping, localisation of cellular phone, databases, jamming of electronic communication, the ways, how the Police can receive information aside of the prosecution mechanism, etc.);

- the agenda of the so called "Central Register of Bank Accounts";

- the exchange of information according to the Act No 133/2000 Coll., on the evidence of the inhabitants and their unique identification numbers and other sensitive data.

334. The Czech authorities, aware that the implementation of international sanction mechanisms was not yet satisfactory domestically, have decided to solve the various issues globally. The Government has adopted a decision authorising the Ministry of Finance and the Ministry of Interior to draft the bill of a new act on international sanctions. It will designate one concrete body with appropriate responsibilities to coordinate the general sanction measures in the Czech Republic. This bill was drafted by the FAU and discussed by all relevant state bodies. At the time of the visit, it had been submitted to the Committee for the European Matters of the Parliament. The Czech authorities anticipated that it would still come into force in 2005.

Resolution 1267 (1999)

335. The Czech Republic has in principle implemented United Nations Security Council Resolution 1267 (1999) and its successor resolutions under European Union Council Regulation (EC) No. 881/2002, which provides for measures against Al-Qaeda and the Taliban. This European Union Regulation has direct force of law in the Czech republic and requires the freezing of funds and economic resources belonging to persons designated by the United Nations Sanctions Committee and listed in the Regulation, and prohibits making funds or economic resources available to such listed persons. These lists are updated regularly by Regulations of the European Commission, and at this point assets are required to be frozen.

336. The European Union list of designated persons is the same as the United Nations list of persons and is drawn up upon designations made by the United Nations Sanctions Committee. There is no time delay in the Czech Republic, once the European Union list is created as no further regulation is issued. Thus theoretically, sanctions could be applied from the point of European Union listing.

337. As indicated earlier, the FAU has a special responsibility at operational level and – since 2004 - as overall coordinator, the latter being shared – as far as the international dimension is concerned – with the Ministry of Foreign Affairs. At the beginning, both the EU and UN lists were forwarded domestically to ……but no steps have been taken to make sure the final end-user had received the list and had checked the ownership of assets managed by the entity. The Czech authorities take the view that the information is now available on-line and that it is up to the financial (and other) institutions to keep themselves informed.

Resolution 1373 (2001)

338. This is implemented in a similar way in the Czech Republic as S/RES/1267 (1999). With regard to S/RES/1373 (2001), the obligation to freeze the assets of terrorists and terrorist entities in the European Union through Council Common Positions 2001/930/CFSP (Common Foreign and Security Policy) and 2001/931/CFSP. The resulting European Union Regulation is Council Regulation 2580/2001. It requires the freezing of all funds and economic resources belonging to persons listed in the Regulations and the prohibiting or making available of funds and economic resources for the benefit of those persons or entities. In the same way as RES 1267, the Czech authorities consider the list is self executing.

339. The authority for designating persons or entities lies with the Council of the European Union. Any member State as well as any third party State can propose names for the list. The Council, on a proposal from the Clearing House, establishes, amends and reviews the list. This list, as it applies to the freezing of funds or other assets, does not include persons, groups and entities having their roots, main activities and objectives within the European Union (European Union internals). European Union internals are still listed in an Annex to the Common Position 2001/931/CFSP, where they are marked with an asterisk, showing that they are not covered by the freezing measures but only by an increased police and judicial co-operation by the member States. National legislation is required to deal with European Union internals.

The criteria of SR.III

340. Criteria III.1 and III.2 require that a country should have effective laws and procedures to freeze without delay terrorist funds or other assets of persons designated by the UNSC under Resolutions 1267 and 1373.

341. It is difficult to assess whether the EU regulations are (considered as) self-executed in the country and whether entities in the industry felt entitled and committed to apply directly freezing measures. Discussions with the private sector have revealed limited awareness and commitment in this respect. Instead, the Czech authorities indicated that the freezing of funds are basically applied either in the course of criminal proceedings, or under the AML Act:

- Section 79a of the Criminal Procedure Code provides that if known facts indicate that funds in the bank account are determined to be used, or were used, for the commission of an offence, or are proceeds from crime, the chair of the panel (or the public prosecutor or the police in preparatory proceedings) may decide to secure such funds. This applies to financial means of both the perpetrator and third persons. Then, the owner of an account cannot dispose of frozen funds. The same mechanism applies to immaterialised securities and to non-banking financial institutions (Sections 79b and 79c). The insufficiencies of the current general penal law mechanisms have been discussed under Section 2.3 above;

- in situations not related to criminal proceedings, the freezing of assets and funds may be ordered under Article 6 of the AML Act. Since the last amendment of

the AML Act (which came into effect on 1 September 2004), the provisions on the suspension of the execution of an order from a client can be applied also to transactions that have the objective of legalising the proceeds from criminal activity with the objective of financing terrorism but also relate to the financing of terrorism from legally acquired funds. The suspension of a client order (freezing of funds) is only possible for a total period of 72 hours. If the suspicion is confirmed, the FAU submits a criminal notification to police bodies and the transaction is suspended for a further period of three days to enable the police bodies to decide on further steps in the procedure.

342. It remained unclear whether until 1 September 2004 – when the scope of the AML Act was extended to CFT - the authorities had acted proactively together with the industry to detect and "freeze without delay" the assets of listed persons, and applied measures based on the general criminal law. Since 1 September 2004, the Czech Republic complies to some extent with this duty since all obliged entities are required to report immediately and within 5 days at the latest (AML Act, art. 4) suspicious transactions, the definition of which includes, under Art. 1 of the AML Act

"*the funds used in a transaction* [that] *are intended for the financing of terrorism, terrorist activities or terrorist organisations (…)*"

343. The evaluation team found that the approach followed by the AML Act is quite limitative:

- it makes no general reference to assets held by persons appearing on the international lists, therefore, the effectiveness of the mechanisms relies a lot on additional awareness-raising, explanations and/or instructions given by the authorities;

- instead, it refers to (funds used in) *a transaction intended for*: this wording excludes in principle the reporting of dormant funds (where there has been no operation/transaction), and possibly also assets which are not funds.

344. Furthermore, although the broader reference to *the financing of terrorism, terrorist activities or terrorist organisations* is to be welcome, it is not reflected in the criminal law approach of terrorist financing contained in Section 95 of the Criminal Code, which is narrower. This could raise certain difficulties in respect of the transition of measures applied under the AML Act and then under the penal legislation.

345. The Czech Republic has no specific criminal sanctions for non reporting of STRs (the Czech authorities take the view that the ML provisions of Section 252a can apply in some cases). The general sanctions contained in the AML Act and which are imposable on the entity in case of non compliance with the Act can be used. Since failure to report is not criminalised (individually) in penal legislation, the mandatory character of the obligation to report has to rely on the internal disciplinary arrangements of the entity (see also the issue of sanctions under Section 3.10).

346. Criteria III.1 and III.2 also require that assets can be frozen without prior notice to the designated persons informed. This requirement is in principle covered by the general – and broad - confidentiality duty of art. 7 of the AML Act (see the developments on R.14 under Section 3.7.1).

347. It also remained unclear whether measures have been taken in respect of the issue of requests from third States (criterion III.3), and whether the Clearing House problem in relation to European internals has been solved in the Czech Republic.

348. Regarding criterion III.4, measures to freeze assets under the United Nations Resolutions must apply to funds or other assets owned or controlled wholly or jointly, directly or indirectly by the persons concerned etc., and to funds or other assets derived or generated from funds or other assets owned or controlled by such persons. The two European Regulations make no mention of the elements underlined. Therefore the definitions of terrorist funds and other assets subject to freezing and confiscation contained in the regulations do not cover the full extent of the definitions given by the Security Council (or FATF) – in particular the notion of control of the funds does not feature in Regulation 881 / 2002, in particular, the European Union Regulations implementing S /RES/1267(1999) simply direct the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated on the list [Article 2 (1)]. However, it is prohibited to make funds available directly or indirectly to or for the benefit of a natural or legal person, or group, or entity designated on the list [Article 2 (2)].

349. Turning to Criteria III.5 and III.6, these require from countries to have effective systems for communicating actions taken under the freezing mechanisms to the financial sector and / or the general public immediately. Particular measures to inform the public at large and the industry, to strengthen the dissuasive effect of the CFT mechanisms, have not been taken in the Czech Republic and it seemed that there was a heavy reliance on the fact that obliged entities would check the EU lists regularly. Guidance is very much needed for the obliged entities, as it turned out during interviews held on site.

350. Criterion III.7 requires countries to have in place effective and publicly known procedures for unfreezing (in the case of mistakes and namesakes). Formal de-listing procedures exist under the European Union mechanisms, both in relation to funds frozen under S/RES/1267 (1999) and S/RES/1373 (2001). For Resolution 1267, the European Council Regulation N°. 881/2002 provides that the Commission may amend the list of persons on the basis of a determination by the United Nations Security Council or the Sanctions Committee (Article 7). For Resolution 1373, (EC) N 2580 / 2001 provides that the competent authorities of each member State may grant specific authorisations to unfreeze funds after consultations with other member States and the Commission (Article 6). In principle, therefore, a person wishing to have funds unfrozen in the Czech Republic would have to take the matter up with the judicial authorities who then would turn to the Ministry of Foreign Affairs who, if satisfied, would take the case up with the Commission and / or the United Nations. The same procedure would apply to persons or entities inadvertently affected by freezing upon verification that the person is not a designated person, since the Czech Republic has no listing/delisting mechanism of its own (criterion III.10**).**

351. Turning to Criterion III.9, there are no specific provisions in EC No. 881/2002 for authorising access to funds frozen in accordance with S/RES1267 (1999). There is a specific procedure in EC No. 2580/2001 (implementing S/RES 1373) for release of basic expenses and related costs and application must be made to the competent

authority of the member State in whose territory the funds have been frozen (Article 5). In the Czech Republic, these issues are dealt with under the Criminal Procedure Code and the evalutors understood that these decisions are taken by the judicial bodies on an ad hoc basis since there was no specific national legislation to cover those issues at the time of the on-site visit.

Freezing, seizing and confiscating in other circumstances

352. The general criminal law framework and mechanisms on seizure and confiscation have been discussed earlier (see also Section 2.3). They constitute to a large extent the basis for measures under SR.III, pending the adoption of a general new law on the application of international CFT sanctions.

353. The rights of *bona fide* third parties (criterion III.12) are protected according to civil law rules. Under the criminal proceedings, the judicial authorities secure the entire property, irrespective of ownership rights of third persons. Ownership rights of third persons cannot be claimed before the public prosecutor or chair of the panel of judges in the course of criminal proceedings, but only pursuant to civil law rules. Even if such a third person requests the exclusion of certain goods or means (funds) from frozen property, a public prosecutor or chair of panel shall advise the person that such request cannot be taken into consideration, and refer him/her to civil proceedings, where his/her bona fide ownership right may be claimed by civil law action (*action for recovery* or *action for determination*).

354. The Czech authorities consider (see excerpt from the NAP 2004 above) that the issue of domestic and European measures on the protection of third parties's rights in the context of international CFT initiatives needs to be re-considered.

Monitoring

355. General monitoring (criterion III.13) is ensured by the Ministry of Interior, by virtue of the NAP which is a detailed and comprehensive document containing references to the implementation of all relevant instruments. However, representatives of the Security Police Department met on site underlined that they had no coordinative responsibility. The Intelligence Service also interacts with foreign counterparts and collects information from abroad which was useful to detect activities of religious integrist groups who were involved in operations in relation with the Czech Republic.

356. On a more operational level and as regards checks of compliance in the field, the responsibility lies in principle with the supervisory bodies responsible for ensuring the implementation of the AML Act, including the FAU.

357. The sanctions available to date for non compliance are therefore those contained in this text under art. 12 (fines) and 13 (withdrawal of a license) in particular. Fines can be imposed by the Ministry of Finance/the FAU as well as all the supervisory bodies – which broadens in principle the level of control - , and the withdrawal of a licence can be initiated by the Ministry of Finance/the FAU. The issue of sanctions is discussed in detail under Section 3.10 of this report.

358. There are no further, specific sanctions in the Czech republic in case of non compliance with the international freezing requirements, and the failure to report is not criminalised in the Czech Republic, apart from serious cases which would probably fall under the general rules of complicity. Furthermore, sanctions under the AML Act can only be imposed on the reporting entity, not

Additional elements, statistics, effectiveness (R.32)

359. The Czech Republic keeps no detailed information on an ongoing basis of the occurrence of measures applied in respect of CFT freezing, applied either spontaneously by the industry as a whole or by the authorities following their own inquiries/investigation.

360. The Czech authorities, as indicated in the introduction to this report, acknowledge that the country has on occasions been used as a basis or transit area for certain terrorists. But, as they say, "there has been no proven case of terrorist financing until now".

361. During the discussions held on site, it was said that the preventive system had led to two recent reports made by a bank and by a factory, concerning transactions related to persons listed by the EU. The funds were frozen immediately for a period of 72 hours and the cases were sent to the police for further investigation. These cases have been communicated to the EU. 6 earlier cases had been submitted in the same way to the financial police but there has been no evidence so far of terrorist involvement. No information regarding the amounts concerned is available.

362. There is no information available that would allow to assess to what extent the industry complies with the reporting duty related to CFT. Overall, most interlocutors representing the industry stressed that there has been little communication and above all guidance efforts to help them comply with the CFT reporting and freezing duties. It is the examiners' view that this is an issue that could severely undermine the impact of the measures in place.

363. Finally, representatives of the CNB acknowledged that the banking sector (which is assumed to be quite advanced in terms of compliance and means – including technical capacities) have not carried out checks related to older clients and transactions, the information storage tools (often inadequate IT tools and reliance on paper files) making controls particularly difficult in their respect.

2.4.2 Recommendations and Comments

364. The Czech authorities underline that the situation is not satisfactory at both domestic and European level, when it comes to implementing the international sanction mechanisms under the UNSC resolutions.

365. The situation is made worth in the absence of a comprehensive domestic law that could fill the gaps and impose not only a clear general duty to freeze assets held by the designated persons. A new law on sanctions is being planned, and as indicated in the introductory part, the Ministry of Interior has initiated discussions about establishing a mechanism that would enable the authorities including the police, to gather information

necessary for applying temporary measures in respect of financial assets on bank accounts in a speedy manner.

366. The evaluators encourage the authorities to complete the work undertaken in these directions.

367. For the time being, the country relies mostly on the EU regulations and the good will of the industry, and on the AML Act, the scope of which was extended in 2004 to FT. The evaluators commend the Czech authorities for that. Unfortunately, they feel that the reporting duty that would trigger the freezing measures is not designed in a way that would allow to detect all assets held in the Czech Republic by listed persons. Furthermore, a lot needs to be done in terms of awareness raising.

368. It is therefore recommended to:

- proceed with the improvements needed and already identified in the NAP and the *Analysis of the Legal Powers of the Intelligence Services and the Police of the Czech Republic, that are Needful to Complete Their Tasks in the Fight against International Terrorism*
- address together with the European partners the gaps in the EU regulations
- complete the work for the adoption of a general domestic law on the implementation of international sanctions that would address all those gaps, or at least those that cannot be filled at EU level
- adopt guidance and information initiatives for the industry and the public on CFT issues and the reporting/freezing duty
- carry out an analysis of the effectiveness of the reporting/freezing duty
- amend the AML Law to broaden the reporting duty to all assets held by persons listed, and not just funds involved in transactions, and to ensure the applicability of dissuasive sanctions also in case of non-reporting of such assets.

2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	**PC**	Loopholes in the EU and Czech regulations and need for a general domestic law to fill the gaps due to over-reliance on EU regulations; lack of guidance and information to the industry and the public in general; interrogations as to the effectiveness of detection; insufficient coverage of FT in the AML Act (including lack of sanctions in case of non reporting); in any event, the system is confronted with practical difficulties that hinder the retrieving of information on existing or older customers, earlier transactions etc.
R.32	**LC**	**A report is drafted annually that addresses the insufficiencies in a frank and open manner;** **But no figures available on assets frozen spontaneously by the industry as a whole; some information is available for proceeds reported to the FAU but it is not kept in a systematic way; no detailed information available showing the effectiveness of the freezing measures (e.g. level of compliance of the industry,**

		number of unreported assets).

Authorities

2.5 The Financial Intelligence Unit (FIU) and its functions (R.26, 30 & 32)

2.5.1 Description and Analysis

Recommendation 26

369. The Financial Analytical Unit (hereinafter FAU) was established on 1 July 1996 as an administrative FIU under the umbrella of the Ministry of Finnace. The legal basis for the activity of the FAU is the AML Act (Act No. 61 of 1996 Coll. on some measures against the legalisation of the proceeds of crime and on the amendment and supplementation of connected Acts). The organisation of the FAU is regulated by a decree of 24 June 1996.

370. The FAU is at the origin of two important by-laws: Decree 343 of 2004, which stipulates the specimen of the Form pursuant to Article 5 paragraph 5 of the AML Act (cross-border reporting) and Decree 344 of 2004, which gives more details to reporting persons as regards the fulfilment of the STR reporting obligation (including of the STR requirements). These texts replaced earlier versions of reporting instructions and forms.

371. Article 10 of the AML Act provides for the responsibilities of the Ministry of Finance in respect of the implementation of the Act. Although the FAU is not explicitly mentioned, it is understood that – by virtue of the Decree of 24 June 1996 - Article 10 refers to it. Thus, the FAU has the duty and power to:

- supervise all financial Institutions and other subject (obliged) persons.
- sanction non observance of the regulations contained in the AML Act by all obliged institutions.
- disseminate reports concerning suspicions to law enforcements agencies for further investigations
- request information in connection with its duties from any Government department and from any law enforcement agency in the Czech Republic.
- request information from financial institutions and other reporting persons.
- co-operate and exchange information with foreign counterparts on the basis of mutual agreements. Co-operation can also be given even in the absence of a treaty of a convention.

372. The functions of the FAU go beyond those required by criterion 26.1 as they include also supervision over all the obliged entities.

373. Reporting forms have been made available for both the reporting of STRs and cross-border movements of cash and other financial instruments, precious metals and stones etc. The FAU has issued three (3) CD ROMs concerning AML reporting and typologies/methodology for assistance of financial institutions and other reporting

bodies. It also organises a seminar once a year with competent authorities where numerous factors, including reporting, typologies etc. are discussed. According to the Czech authorities, banks are the institutions more at risk of money laundering. To counter this risk the FAU, through the Czech Banking Association, at least twice a year, informs banks about the modalities of reporting, present trends in the area of ML and the activity of the FAU. However, during the interviews conducted on site, most representatives of the various obliged entities complained about the lack of guidance given to them by the FAU and other supervisors/competent bodies. This was particularly striking for the non-banking sector, especially DNFBPs. The latter, even though many are newcomers to the area of AML/CFT, require to have more guidance from the FAU, their supervisor or SRO (criterion 26.2). Particularly, there is a need for more FT-specific initiatives.

374. The FIU has access to financial, administrative and law enforcement information (criterion 26.3 and 26.4). As regards financial information, banking and commercial secrecy is not opposable to the FAU. The obliged person has the obligation to inform the FAU upon request, within the deadlines determined by the FAU, of any information about the transactions to which the identification obligation refers or about which the FAU is carrying out an investigation. It shall submit documentation on these transactions or allow authorised employees of the FAU verifying the notification or carrying out control activity to have access to them and it shall provide information about the individuals involved in such transactions (Article 8 para 1 of the AML Act). As regards tax information, the FAU may during an investigation request information from the whole tax proceedings from the tax administrator if the matter cannot be sufficiently clarified in any other manner Article 8 para 2 of the AML Act). Information is available within the deadlines set by the FAU, and in case of urgency, the latter can (and does) send a staff on site to collect it[59].

375. As regards administrative and law enforcement information, it is mostly available upon request. The Police of the Czech Republic, intelligence services, state administration authorities and other state authorities are obliged to provide the FAU with the necessary information for the enforcement of its powers pursuant to the AML Act, if a special Act does not forbid them to do so (Article 10 para 5 of the AML Act). Earlier limitations regarding access to tax information were abolished in 2000.

376. As regards information held by DNFBP, there are some restrictions, in particular files of lawyers. Access to that kind of documentation requires the approval of the Bar Association.

377. In general, the FAU representatives met on site did not complain about undue restrictions regarding access to information, which is – in any event - broader than that of the police which often goes through the FAU to obtain information needed either for a specific case forwarded to them by the FAU or for the purposes of their own financial/ML investigations (criterion 26.5).

378. The major practical limitations are the same for all investigative bodies of the Czech Republic: access to information on holders of bearer shares, access to information on

[59]Furthermore, after the on site evaluation, the secured on line network between the FAU and the banks became operational.

multiple accounts belonging to/opened under the name of a given person (due to lack of a central register of bank accounts) etc. (see Section 2.6 underneath).

379. According to Art. 6 of the AML act, a transaction is supended for a maximum time of 72 hours and the FAU has to carry out the preliminary analysis and enquiries/investigations during that deadline, after which the transaction is normally executed. The representatives of the FAU indicated that this time frame was sufficient in practice. Police representatives stressed that following their request, the FAU had recently shortened the time needed for the analysis.

380. The structure of the FAU has undergone changes on various occasions. The Unit started its activities in 1996 as an "independent division" of the Ministry of Finance and was directed by the Deputy Minister of Finance, till 1 February 1998. From this date, the Minister of Finance directed the FAU himself. The FAU became a department with three divisions on 1 May 1998: Data Collection and Processing Division, Analytical Division and Legal and International Division. This structure was changed on 1 August 1999, when the FAU created four divisions: Data Collection and Processing Division, Analytical Division, Legal and Inspection Division and International Co-operation Division. The last change in the structure was on 1 January 2005. Since that date, the FAU is again, directed by the Deputy Minister and it has three divisions: 1) Division of International Co-operation, Data Collection and Processing; 2) Analytical Division and 3) Division for Analysis in Non Banking Sector, Legal Matters and Inspections. The successive changes of direct ministerial authority over the FAU do not seem to have raised controversies regarding the FAU's independence or autonomy. The Head of the FAU is appointed by the Minister of Finance without specific term. He enjoys employment protection under the general labour law (the Czech Republic has not adopted a general civil service law yet). The current Head has been in place since 1998. The FAU has its own budget for the purchase of software and hardware, maintenance of the hardware, data security and the physical security of the unit. The staff of the FAU is paid from the budget of the Ministry of Finance. Overall, bearing in mind criterion 26.6 and for the sake of clarity, the examiners believe that measures might be needed to better guarantee the FIU's operational independence and autonomy – including as regards the appointment of the Head.

381. Article 7 of the AML Act regulates the confidentiality of information gathered by the FAU in pursuance of the Act and in the course of its activities. Although the FAU is part of this Ministry, it has to be technically separated from other workplaces of the Ministry of Finance. Internally, it is required to apply organisational, personnel and other measures so as to guarantee that the information acquired through its activities does not come into contact with any unauthorised individuals, according to Art. 7 para 2. The access to the FAU's premises is secured and the FAU has its own information and data-processing system. Art. 7 (para. 2) also imposes a general confidentiality duty upon the employees of the Ministry. The duty applies also after termination of the employment relationship. Art. 7 (para. 6) also regulates the use of information: "information collected by the Ministry pursuant to this Act may only be used otherwise in proceedings before the authorities mentioned in paragraph 4". This last para. refers to a wide range of circumstances and authorities in/to which information gathered by the FAU can be made available. This is in line with the spirit of criterion 26.7, although it was not fully clear to the examiners which are the institutions of para. 4 covered by the concept of "authority" used under para. 6, the former also referring indirectly to other

bodies and individuals (notably those working for a supervisory body mentioned under art. 8 para. 3). In this context, one may also wonder about the adequacy of the drafting of the first sentence of Art. 7 para. 4 ("it is not possible to invoke the obligation of confidentiality (…) against…"). This exception deprives theoretically the FAU from a certain level of discretionnary control over the use of the information, e.g. in case the circumstances of the request would raise certain suspicions as to the real motivation of the applicant authority/body. This is probably a theoretical consideration but perhaps a reversal of the principle ("the FAU may disclose information to…") would introduce a better balance between the need to protect information held by the FAU and the needs of other authorities/bodies.

382. As indicated earlier, the AML Act does not refer explicitly to the FAU, but to the Ministry of Finance. For the sake of clarity, and also to ensure the existence of the FAU in legislation, the Czech authorities should preferably include in the AML Act explicit references to the Financial Analytical Unit.

383. The FAU does not release periodic public reports as required by criterion 26.8 and its representatives acknowledged this insufficiency, stressing that the existing workload was already quite heavy. They indicated that would soon publish a first such report[60].

384. The FAU has been a member of the Egmont Group since 1997.

385. Its representatives stressed that the Egmont Group Statement of Purpose and its Principles for Information Exchange are recognised and applied. In particular, they indicated that the FAU can cooperate with any other type of (police or administrative) FIU and that a formal agreement or memorandum of understanding is not a prerequisite to exchange information with foreign counterparts or other agencies dealing with AML/CFT. This is in line with a broader reading of Art. 7 para 4f) , which specifies that the confidentiality duty does not apply against "the relevant foreign authority in the handing over of information that serves to achieve the purpose stipulated by this Act, as a long as a special legal regulation does not forbid it". The examiners were advised on site that there is no such special regulatory limit preventing exchanges of information with foreign FIUs.

Recommendation 30

386. The functioning of the Financial Analytical Unit is regulated by a Decree of 24 June 1996, as subsequently amended.

387. Although being an integral part of the Ministry of Finance, the FAU has its own premises, facilities and equipment, which have progressively been improved over the years. The FAU has its own IT system which allows it to store and process the information received. The volume of information received according to the AML Act is reasonably important as the Czech reporting system is mostly based on STRs.

388. As indicated earlier, the internal structure of the FAU has changed over the years. Since 1 January 2005, it comprises three divisions: 1) Division of International Co-operation,

[60] After the visit, the Czech authorities advised that the FAU releases since 2006 a periodic report on the website of the Ministry of Finance informing the public about its activities, new AML/CFT legislation and new trends of ML/FT. The first report produced covers the period 1996-2005. Future reports will be released on an annual basis.

Data Collection and Processing; 2) Analytical Division and 3) Division for Analysis in the Non Banking Sector, Legal Matters and Inspections. This last change was motivated by the need to better take into account non-bank reporting entities.

389. The FAU is presently composed of 27 personnel, which is one less compared to the time of the second evaluation round. The examiners were advised on site that a recent audit had suggested to limit the staffing for budgetary reasons and there were fears that the FAU would not be able to retain all the current positions. Bearing in mind the recent increase in the number of obliged entities, the wide competencies of the FAU (including supervision) as well as the increasing number of STRs received in recent years, the examiners felt that the number of staff needed in fact further increasing to enable the FAU to effectively and efficiently carry out all its designated duties. In particular, part of this staff will need to be more involved in looking closer at under-reporting sectors, providing guidance and organising awareness-raising events, producing an annual report and therefore doing more strategic analytical work also on a more regular basis, maintaining a well documented internet presence, strengthening cooperation etc.

390. For the time being, the statistics available concerning on-site inspections (see below) are far from being impressive (31 controls over the 5 years 2000-2004, of which only one was done in 2004).

391. Also, the FAU is sometimes perceived in the Czech Republic with mixed feelings. Whilst some interlocutors stressed the professionalism and level of expertise of the Unit, others like the police – who work closely on the cases generated by the FAU – complained about the relevance of the cases sent to them and the added value of the preliminary analytical work done. The causes of this potential issue are difficult to assess within a few days spent on site and beyond the examiners' reach (staffing, working methods, motivation etc.?). From what the team heard on site, training is provided or available on a regular basis to members of the FAU and working tools/sources of information seemed adequate. This issue needs to be looked at by the Czech authorities/the management of the FAU.

392. For the sake of fairness, it must be said that the representatives of the judiciary spoke in similar terms of the police and prosecution services and mentioned their limited ability to generate ML cases of significant importance.

Recommendation 32

393. The FAU maintains comprehensive statistics on matters relevant to ML. The following data concerning STRs and their origin was made available by the Czech authorities:

Year	Number of STRs	Number of criminal complaints sent by the FAU to the Police
2000	1920	103
2001	1750	101
2002	1264	115
2003	1970	114
2004	3265	103

Type of the obliged person	STRs			
	2001	**2002**	**2003**	**2004**
Banks	1408	1122	1793	3083
Insurance companies	25	19	39	73
Money remitters	53	27	39	71
Lawyers	-	-	-	3
Exchange offices	3	4	6	4
Securities market	235	169	69	6
Real estate agencies	3	-	-	2
Pension funds	1	9	5	3
Leasing Company	1	-	-	2
Casinos	-	1	1	-
Auctioneers	-	-	1	2
Other supervisory bodies	12	7	15	13
Customs General Directorate	1	-	-	1
Liquidator	-	-	-	1
Foreign FIUs	-	-	-	1
Others	9	21	2	-
In total	**1751**	**1379**	**1970**	**3265**

394. For a few years now, the FAU has also been maintaining statistics related to the cross-border movements of cash and other assets and the occurrence of sanctions imposed for non reporting:

Statistic on Cash Cross-Borders Reporting (Number of reports received by the FAU from the Customs)	
Year	**Number of reports**
2000	1016
2001	973
2002	971
2003	1389
2004	1419

Number of sanctions imposed for failure to report (cross-borders)	
Year	**Number of sanctions**
2000	24
2001	36
2002	21
2003	66
2004	12

395. The following figures are available concerning the outcome of STRs received by the FAU:

Criminal reports (based on STRs) sent by the FAU to the Unit for Combating Corruption and Major Economical Crime
2001: 101 reports concerning 116 persons

2002: 115 reports concerning 133 persons
2003: 114 reports concerning 148 persons
2004 (until June 30) 29 reports concerning 37 persons

Criminal reports (based on STRs) sent by the FAU to the Illegal Proceeds and Tax Crime Unit
2004 (from July 1): 73 reports from FIU

The Unit for Combating Corruption and Major Economical Crime initiated criminal proceedings on the basis of the reports on STR
2001: 32 cases with 43 suspects
2002: 28 cases with 34 suspects
2003: 72 cases with 97 suspects
2004(until June 30): 27 cases with 34 suspects + 2 cases with 5 suspects (criminal proceedings initiated not on the basis of reports on STR but on the basis of own findings of the unit)

396. The FAU also keeps figures related to its supervisory function.

Number of on-site inspections conducted in years 2000 – 2004:	
Year	Number of controls
2000	14
2001	5
2002	6
2003	5
2004	1
In total	**31**

Number and amount of fines imposed by the FAU in connection with its control activity for the years 2000 – 2004:		
Year	Number of fines	Amount of fines imposed
2000	3	3 mil. CZK (100.000 EUR)
2001	14	12 mil. CZK (400.000 EUR)
2002	33	30 mil CZK (1 mil EUR)
2003	4	0,65 mil CZK (21.700 EUR)
2004	-	-
In total	**54**	**45,65 mil CZK (1,522.000 EUR)**

397. There was no breakdown available as to the type of criminal activities/proceeds underlying STRs filed with the FAU. But as indicated in the introductory part of this report, tax criminal offences are a particular issue, since they are involved in the STRs most often and subsequently also in criminal proceedings initiated by the FAU.

398. Globally, the situation is satisfactory as regards the level of statistics kept under the present Section.

2.5.2 Recommendations and Comments

399. The FAU appears to comply quite well with its duties. The FAU has now aquired a certain experience and its working methods are steadily improving.

400. This being said, the analytical work is occasionally perceived by the police as being further improvable and this possible issue needs to be examined.

401. There are also new trends and demands that are to be taken into account, which are connected with the need for greater transparency and public accountability, for guidance including on new issues connected with the AML/CFT requirements. Also, the list of obliged entities is constantly expanding, which creates an additional burden of work when it comes to developing a dialogue with those sectors, making them aware of and explaining their duties, supervising compliance with AML/CFT requirements etc. It is therefore recommended:

- to refer explicitly to the FAU in the AML Act[61]
- to consider the need for better guaranteeing, in statutory rules, the autonomy and independence of the FIU (including its Head)
- to provide more guidance on AML/CFT issues, with particular focus on the non-banking sector
- to publish a periodic report on the FAU's activities and AML/CFT issues, including statistics, typologies and trends; this report would explain the importance, difficulties, and the commitment entrusted to the FAU. This would help the Government and the public understand and appreciate the importance of such a unit and thus there would be a justification to allocate further funds for equipment and staffing to the Unit.
- to increase the staffing of the FAU to enable it to cope effectively with the multiplicity of tasks
- to analyse the possible reasons for the perceived insufficient quality of the analytical work done on cases forwarded for further investigation and to take remedial measures as appropriate
- to consider amending Article 7 of the AML Act, which covers various issues including the sharing of information held by the FAU domestically and internationally, to make it more accurate and enable the FAU to exert some discretionary power when sharing information.

2.5.3 Compliance with Recommendations 26, 30 & 32

	Rating	Summary of factors relevant to s.2.5 underlying overall rating
R.26	**LC**	Insufficient guidance to the non banking sector on AML, and on CFT for all sectors; no annual report published regularly; improvements possibly needed as regards the drafting/accuracy of Article 7 of the AML Act; possible need to better guarantee statutory autonomy of the FIU
R.30	**PC**	The FAU appears to be under-staffed given the wide range of duties; need to review the possible reasons for the perceived insufficient quality of analytical work done by the FAU
R.32	**C**	

[61]The FAU is explicitly mentioned in the revised AML Act of 2007; the Czech authorities expect it to enter into force on 15 December 2007

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30 & 32)

2.6.1 Description and analysis

Recommendation 27

Law enforcement units

402. The police is the main authority that has responsibility for ensuring that ML and FT offences are properly investigated. This includes the criminal police (Criminal Police and Investigation Service – CPIS) through its specialised sub-structures, which will be examined below.

403. Besides, the Intelligence Service is also involved to some extent in AML/CFT, but mostly in respect of intelligence-based work (they can check the background of persons on behalf of a licensing/supervisory body or the FAU in case of suspicions of FT-related funds etc.).

The Illegal Proceeds and Tax Crime Unit of the CPIS

404. The Illegal Proceeds and Tax Crime Unit (the so-called "Financial Police") was established in 2003 and commenced its activities in July 1 2004. By setting up this Unit the Government declared its intention to intensify the fight against the most serious cases of tax crime, customs offences, and any of the related most serious forms of economic crime, including the financing of terrorism at law enforcement level. The Unit has a nation-wide competence and is responsible directly to the Deputy Police President for Criminal Proceedings. The Unit is staffed by approximately 300 persons and is headed by the Director and two Deputy Directors. The headquarters is in Prague, other territorial branches are located in Brno, Plzen, Ostrava, Ceske Budejovice, Hradec Kralove and Usti nad Labem.

405. It consists of various subdivisions and in particular a Proceeds of Crime and Money Laundering Department, a Strategic Expertise and Methodology Department and an International Co-operation and Terrorist Financing Section. The Proceeds of Crime and Money Laundering Department is divided into the Proceeds of Crime Section (comprising the Proceeds of Serious Crime and Financial Crime Group and the Proceeds of Drug-Related and Organized Crime Group – which it corresponds to the former division within the Corruption and Financial Crime Detection Unit), and the Money Laundering Section (with an Intraterritorial Group and the Extraterritorial Group). The International Co-operation and Terrorist Financing Section establishes contacts with foreign entities where a flow of financial means through more countries is presumed; furthermore, it ensures international cooperation in the field of policing and police education and deals with the issue of financing of terrorism in relation to foreign countries.

406. The Czech authorities stressed that the Unit's activities are focused on combating, detecting and investigating money laundering, withdrawing proceeds from crimes, combating and detecting terrorism financing and investigation of the most serious economic crimes (tax crimes). The unit collects and uses economic and other information for a consequent evaluation with respect to the potential investigation of the most serious crimes in the economic and related areas. In the area of money laundering the unit detects, analyses and provides investigation of predicative and associated crimes with the main aim to seize proceeds from crime and to affect and to destabilize groups with the impact in the Czech Republic – the Unit detects, seizes and documents assets owned by perpetrators of serious crimes and assets derived form serious crimes committed and submits proposals to investigative, prosecuting and adjudicating bodies to seize it or it seizes the assets based on its own decision in accordance with the law; such activities are carried out in the field of combating legalisation of proceeds of crime upon request made by units with nation-wide competence or, in justified cases upon request made by regional police units based on prior agreement made by police officials. It also actively cooperates in detection and documentation of assets of persons and of proceeds of serious crime and takes measures to seize them based on request made from abroad in connection with rendering international legal assistance.

407. It was also indicated that the Financial Police draws up tactical and strategic analyses and evaluations of the security situation as regards the causes and paterns of tax crimes, legalisation of proceeds of crime and financing of terrorism and presents to the competent state administration bodies proposals on measures to prevent such crime.

Unit for the Detection of Organised Crime, CPIS

408. This Unit has a nation-wide competence in the field of the fight against organised crime and terrorism. It consists of :

- five central operational departments responsible to the Deputy Director (Violent Crime Department; Arms, Explosives and ABC materials Department; Trading in Human Beings Department; Criminal Groups Department, Counterfeiting Department), and six regional offices responsible to Deputy Director;
- the Terrorism and Extremism Department, responsible directly to the Director. This Department coprises a counter-terrorism section and the Counter-extremism section.

409. The main duty of the Terrorism and Extremism Department (Counter-terrorism Section) is to monitor, document and disclose suspected and illegal activities, to take proactive and reactive measures, based on intelligence and information gathered from its own and other sources, to disclose terrorist subjects and bring them to justice. The department:

- cooperates in investigating attacks and exposing additional terrorist networks within the framework of international police cooperation;
- screens the presence of persons or organisations suspected from terrorist activities and their possible activities on the territory of the CR;

- cooperates with the Service of Alien and Border Police in checking persons at border crosses and in granting visa;
- provides for information service and investigation of mass destruction weapons proliferation;
- provides for information service for NATO actions;
- cooperates with the Office of International Relations and Information and the Security Information Service in areas concerned;
- provides threat assessment and co-ordination of security checks concerning governmental subjects, foreign diplomatic representations and dignitary protection. It also includes investigation of anonymous letters and phone calls threatening governmental subjects and foreign dignitary visits (in co-operation with Protection Service);
- participates in investigation of bomb attacks the background of which is not based on organized crime, but on extremist activities;
- provides National Rapid Response Unit (URNA) with necessary intelligence in case of terrorist incident
- carries out general threat assessment concerning terrorist threats to the territory of the Czech Republic

410. The Counter-terrorism Section is involved in combating terrorism fundraising in the framework of disclosing and investigation subjects suspicious of links to terrorism. In addition to co-operation (exchange of relevant information) internally with other bodies involved in the fight against terrorism (law enforcement bodies, intelligence services and Prosecutor's Office), the „organised crime unit for the service of criminal police and investigations/counter terrorism section" co-operates with foreign anti-terrorist agencies, EU working groups and foreign liaison officers posted in the Czech Republic.

Unit for Combating Corruption and Financial Crime of the CPIS

411. On 1 April 2003 in connection with the reorganisation of the Police of the Czech Republic two Police Units – Unit for Combating Corruption and Major Economic Crime of the Criminal Police and Investigation Service and the Financial Crime and State Protection Office have been merged into a new unit – Unit for Combating Corruption and Financial Crime of the Criminal Police and Investigation Service.

412. The unit's activity is focused on detection, documentation and investigation of the most serious forms of economic and financial crimes and corruption. The unit is focusing also on monitoring and analysis of illegal financial operations, suspicious activities and serious forms of economic crimes committed on the capital market. The Unit has a nation-wide competence and it has territorial agencies in districts.

Prosecution bodies and access to information and evidence

413. The involvement of the prosecution service is required at an early stage of the investigation, since – as indicated earlier in this report – the police alone has only access to public information (and to tax information since more recently). The opening of a formal investigation at an early stage enables the investigators to have access to commercial, banking and other information and documents needed for ML investigations. The opening of a case does not require a high standard of quality of the

preliminary information available: it can be done on the basis of an information received from abroad or provided through the media.

414. The police can also obtain the information through the FAU, particularly where a case was submitted by the latter.

415. Depending on the seriousness of a given case (the level of sanctions, the categories of offences with serious consequences, and certain listed offences) it would be handled (in first instance) by either of the 4 levels of prosecutorial services attached to the corresponding competent court: district prosecutor/court, higher prosecutor's offices/court, Regional prosecutors' offices/court, and the Supreme Prosecution offices/Court.

416. On site, the examiners heard varying interpretations of this competence system in relation to ML. According to some interlocutors, a ML case it could be dealt with by the district prosecutor, but if the case involved securities, or an amount of assets above CZK 500,000, it would be a matter for the prosecutors attached to the Regional court. Likewise, if the assets exceed CZK 50 million, or the crime was committed by a bank or a broker and the damage exceeds CZK 100 million, the case would be dealt with at the level of the High Court. According to other interlocutors, ML is not among the categories of offences that qualify for the competence of prosecutors and courts other than those of district level (it would thus be tried by a judge of that level, without specialisation in criminal matters)[62].

417. In any event, the examiners found this system – which results from Section 17 of the Criminal Procedure Code – quite complex.

418. It is permitted to waive an arrest warrant in the Czech Republic (criterion 27.2). According to Section 159 b of the Criminal Procedure Code, as quoted by the Czech authorities, it is possible to temporarily suspend the initiation of a criminal prosecution if it is necessary for the detection of a criminal activity committed to the benefit of a criminal association or in case of an intentional crime or for the detection of its perpetrators. The police may suspend criminal action with the consent of the prosecutor for a period of two months (this period can be prolonged under certain conditions). It remained unclear to the examiners to what extent Section 159b is also applicable to ML and FT-related offences.

[62] additional information provided after the visit indicated that:according to Section 15 of the Decree of the Ministry of Justice No. 23/1994 Coll., as amended, the special scope of competency of the High Prosecutors' Offices is set as to include:
1: all intentional criminal offences:

a) committed in the course of activity of a bank, investment company or investment fund, securities broker, insurance company, health insurance company, pension fund, construction savings company or savings and credit cooperative, if damage caused by such offences was at least 100 million CZK;
b) of natural or legal persons committed in relation with unauthorized performance of activity of entities listed ad (a), if damage caused by such offences was at least 100 million CZK;
c) by which damage caused on state property or share of property was at least 50 million CZK;
d) under Chapter II or IX of the Special part of the Criminal Code, if committed for the benefit of criminal conspiracy (S. 89 para 17 CC) and further criminal offences of misuse of authority of public official under S. 158 CC, or criminal offences of bribery, acceptance of bribe or indirect bribery under S. 160 to 162 CC, if committed in relation to detection (uncovering) or investigation of criminal offences under Chapter II or IX of the Special part of the Criminal Code;

by which financial or economic interests of the European Union were affected.

419. A translation of the provision was not available to the examiners but the Czech authorities took the view that the provision also applies in relation to suspicions of a criminal act connected with ML and FT.

420. As regards investigative methods available (criteria 27.3 and 27.4), the Criminal Procedure Code provides for the following:

- Operations falling under Section 86 to 87b under the general Section "Intercepting and opening of consignments, replacing them and keeping them under surveillance"
- Intercepting and recording telecommunication operations (Sections 88 and 88a)
- Simulated transfers (Section 158c)
- Surveillance of persons and things, including by electronic means (Section 158d)
- Use of an [undercover] agent (Section 158e)

421. The last three techniques are regulated separately by the general provisions of Section 158b. Simulated transfers and Surveillance are subject to the authorisation by the President of the Police (or the competent Minister) and the case by case approval – in writing – by the prosecutor, but can be used immediately in case of urgency and for all types of crimes. The use of an under-cover agent requires in adition to be approved by the high court judge of the district concerned, upon the proposal of the high public prosecutor's office. It is permissible only for the investigation of "especially serious intentional criminal offences", in case of offences "committed to the benefit of a criminal conspiracy" or "another intentional criminal offence prosecution of which is obligatory under promulgated international treaty".

422. Operations under Section 86 to 87b are authorised either by the prosecutor (pre-trial proceedings) or judge depending on the stage of the measure (interception / opening / substitution). Controlled deliveries under Section 87b ("consignments kept under surveillance") are authorised by, and carried out on the prosecutor's instructions. The following conditions have to be fulfilled in case of controlled delivery:

a) A reasonable suspicion, that the delivery contains items stated in §87a (narcotics or psychotropic substance, poisons, precursors, radioactive material, counterfeited currency or stocks, shooting weapons or weapons of mass destruction, ammunition, explosives or other item, possession of which requires a special permission, "things designated for (determined for) the commission of a criminal act, or things acquired by means of a criminal act"),
b) b) it is necessary in order to clarify the crime committed or detect all of its perpetrators,
c) discovery of important facts in another way would not be effective or would be essentially distressed – subsidiarity principle of controlled delivery is present.

423. Intercepting and recording telecommunication operations under Sections 88 and 88a are requested by the prosecutor and authorised by the judge. They are applicable for criminal proceedings initiated for an "especially serious intentional crime" or, as indicated earlier, when the prosecution of the crime is required by virtue of an international treaty.

424. Information gathered by means of the above measures may be used as evidence in criminal proceedings.

425. Globally, the examiners found the provisions on special investigative techniques quite comprehensive and besides the above means, others exist (interception of mail etc.) They noted, however, that most of them are usable only for the most serious criminal offences (punishable by a maxium term of emprisonment of 8 years or more) or under such conditions that it excludes to a large extent ML and FT. As regards controlled deliveries under Section 87b (combined with Section 87a) in particular, the possible restrictive consequences of the reference to the concept of "thing" and "the commission of a criminal act" have been examined earlier in this report in the context of seizure and confiscation.

426. It was difficult to draw a clear picture of the conditions of use of special investigative techniques in relation with ML and FT and there were occasional contradictions. However, the restricted use of special investigative techniques was often confirmed and there was a large demand of the police in particular in favour of relaxing the conditions for the use of investigative techniques also in a broader range of offences, including ML. Furthermore, the Czech intelligence service indicated that with imminent changes in legislation they would loose their ability to intercept communications[63]. On the other side, the Czech authorities take the view that there are no undue limitations to the use of special investigative techniques for ML and FT, and that the legal criterion of the "internationality of the offence" (the offence is addressed in an international instrument) applies alternatively with the criterion of the seriousness of the offence - with its possible limitations[64].

427. As for criterion 27.5, the Police and Customs have carried out a number of combined operations (though not ML or CFT) under the supervision of the Public Prosecutor. Both Police and Customs have used special investigative techniques (ranging from controlled delivery to undercover work etc) depending on the importance of the case. Furthermore, it is a common practice to detach temporarily a member of the CPIS' units specialised in financial investigations, ML and assets recovery to another police unit dealing with a predicate offence.

428. International joint investigative teams have been included into the Criminal Procedure Code by an amendment effective as of November 2004. Joint investigative teams are being dealt with in Sections 442-444 of the amended Criminal Procedure Code. The provisions were quite recent at the time of the visit and practical experience was thus limited.

[63]The Czech authorities advised after the visit that the amendment finally drafted does not affect the intelligence services, but the criminal police

[64]The Czech authorities advised after the visit that the issue is subject to political discussions and that the recent trend is in favour of limiting the use of operative police techniques (after a period of wide use), instead of relaxing further the conditions for their use

429. As indicated earlier, a National Action Plan on terrorism is drafted annually by the police and made available to all agencies (a public version is also available on the Internet). FT techniques and trends are studied to some extent in this context (criterion 27.6).

430. Although the tasks of the CPI (especially the Illegal Proceeds and Tax Crime Unit) include the drafting of reports on ML, as the examiners were confirmed on site there has been no such general study drafted so far, and there is none planned for the near future. This lacuanae needs to be addressed urgently since there seem to be a variety of vulnerabilities to ML (and therefore also to FT) in the Czech Republic, known from different individual specialists but not necessarily acknowledged, discussed and addressed collectively.

Recommendation 28

431. The Czech authorities underlined that law enforcement authorities can obtain all the information, documents and evidence needed using the particular investigative mechanisms seen above or via a Search warrant. Searching persons and premises (Section 82 to 85b under the general Section "House and personal searches, searches of other premises and plots of land, entry into dwellings, other premises and plots of land" Searching persons or premises) are possible based on a search warrant issued by the judge.

432. It was also indicated that Section 8 of the Criminal Procedure Code provides for broad access to documentation held by banks and other legal entities. Para 1 deals with a general acces to information as it states that "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 wxith requests from law enforcement bodies in the performance of their duties." Access to banking information and data from the Securities register are subject to specific rules under para. 2 (formal criminal proceedings and the authorisation of the prosecutor – or the presiding judge where court proceedings have been initiated – is required. Access to tax information is made subject to the issuance of a special act).

433. Seizure of evidence is provided for under Sections 78 and 79 (see also *provisional measures* under Section 2.3 above).

434. The major problems seem to be related to access to information in the context of FT-related enquiries, that is before the formal initiation of criminal proceedings. As indicated earlier, a document called *Analysis of the Legal Powers of the Intelligence Services and the Police of the Czech Republic, that are Needful to Complete Their Tasks in the Fight against International Terrorism* was produced by the Czech police. The aim of this material is to analyse the legal procedural powers of the intelligence services and the Police in the area of the fight against terrorism and to compare them with those of their counterparts abroad (especially in the EU Member States). The first outcomes of the comparing process says openly, that the powers of the Czech Republic bodies have to be extended to assure the effective co-operation and exchange of information between the domestic bodies and their foreign counterparts (as is described

for example in the Council Regulation No. 2580/2001). The areas that would require amendments were identified as follows:

- the possibilities for receiving information from the public administration bodies and from some private entities;

- the steps, that are connected with the Act on Electronic Communications (conditions of wire-tapping, localisation of cellular phone, databases, jamming of electronic communication, the ways, how the Police can receive information aside of the prosecution mechanism, etc.);

- the agenda of the so called ”Central Register of Bank Accounts”;

- the exchange of information according to the Act No 133/2000 Coll., on the evidence of the inhabitants and their unique identification numbers and other sensitive data.

435. This issue was covered earlier, under SR.III.

436. Taking of witness statements is also permitted by both the general provisions on court hearings and specific provisions contained in the Criminal Procedure Code.

Recommendation 30

437. Assessing the needs of institutions is always a delicate task.

438. In general, the police and prosecution expressed satisfaction with their working conditions, means and resources available. The evaluaton team was not informed of particular controversies on the issue of operational independence and autonomy. Specialised on-going training is available and provided at regular intervals, including in an international context. It was underlined by the police representatives that they now have the capacity to train their staff themselves. As underlined in the second evaluation round report, a lot has also been done to offer skills to law enforcement agencies and others in the area of developing investigative methods such as crime analysis.

439. The evaluators were provided with information on the salaries of judges and prosecutors, and to some extent also of the police staff and there were no complains in this field heard on site. Measures are also in place to maintain high professional standards. For instance, the staff of the newly established Illegal Proceeds and Tax Crime Unit was chosen very carefully – every applicant for a job in this Unit had to undergo a detailed recruitment procedure.

440. However, it was acknowledged that little or nothing has been done on training on FT, let alone terrorism as a whole, and the programme of the police academy, for instance, does not address terrorist activities at all.

441. The major problem heard on site concerns the prosecutors. At the time of the on-site visit, 18% of posts had not been filled. The result is an increased pressure on the existing prosecutors. One needs to bear in mind their early involvement by the police in the course of investigations, and the fact that investigations dealing with ML, especially

in connection with organised crime activities and other sophisticated forms of crime, are work-intensive and require full dedication. The insufficiency of staff was also mentioned in respect of the Legal Assistance Department of the Ministry of Justice and the Foreign Relations department of the Supreme Prosecution Office.

442. The interlocutors of the team made no mistery of the fact that this could negatively impact on international cooperation especially the ability of the Czech authorities to act/react quickly.

443. Concerning judges and the courts (criterion 30.4), the examiners understood that the level of specialisation mostly depends on the degree of jurisdiction. First instance courts are normally competent for ML and FT cases, but the judges concerned ar generalists who deal with all kind of cases. The evaluation team was not informed of special training initiatives on ML and FT as far as they are concerned. It seemed that only those of the higher degrees, through their specialisation in criminal matters, have had access and the opportunity to be made more familiar with such cases. This being said, judges benefit since 2002 of increased training measures

Recommendation 32

444. Statsistics on seizures and confiscation have been provided earlier in this report (see Section 2.3). During discussions with members of the CPI, the evaluators felt real dedication to combating ML and major forms of serious crimes and targeting the proceeds of crime. It was underlined that it is now much easier to apply temporary measures to criminal assets and that – at least as far as the competent police services are concerned – staff are more familiar with ML issues and financial investigations. A CD-ROM on seizure of assets was recently developped for law enforcement staff.

445. From the statistics provided, it is also clear that there is no over-reliance on the FAU to generate ML cases.

446. The issue of a review of the effectiveness of thesystem is examined under Section 6.1 of this report.

2.6.2 Recommendations and Comments

447. The Czech Republic has designated bodies to ensure that ML and FT-related offences are properly investigated as required by criterion 27.1 (especially bearing in mind the footnote in the Methodology referring to the alternative responsibility of prosecution authorities). Unlike the situation in the past, where reports of the FAU were sent to all police bodies, the Illegal Proceeds and Tax Crime Unit is the sole destine of the reports forwarded by the FAU.

448. The examiners had difficulties to draw a clear demarcation line between the main competencies of the CPIs' units, especially the Illegal Proceeds and Tax Crime Unit and the Unit for the Detection of Organised Crime, since both are competent to deal with terrorist financing cases. But above all, the competencies of the different courts/prosecution services appear to be quite complex and based on elements which, in the examiners views, are not necessarily available at the very beginning of an investigation dealing with ML and FT (amount of assets and type of proceeds involved

etc.). The initiation of a general discussion on how to determine the different levels of jurisdiction and to ensure that specialist judges/prosecutors handle complex criminal cases would be beneficial.

449. In the light of the above, it is recommended:

- to review on a regular basis ML trends and techniques
- to initiate consultations on the opportunity of simplifying the competence of the various levels of courts/prosecutorial services, and by the same way to ensure that specialist judges and prosecutors handle complex criminal cases and can focus on those cases
- to consider reviewing the legal framework for the use of special investigative techniques – whilst providing for an adequate checks and balance system – so as to ensure the effective investigation of offences related to ML and FT
- to increase the staffing of the prosecution services, and those institutions which are involved in legal cooperation, in particular the Legal Assistance Department of the Ministry of Justice and the Foreign Relations department of the Supreme Prosecution Office)
- to include the topic of terrorism and FT in the relevant training programmes, in particular those of law enforcement and prosecution services.

2.6.3 Compliance with Recommendation 27, 28, 30 & 32

	Rating	Summary of factors relevant to s.2.6 underlying overall rating
R.27	**C**	
R.28	**C**	[insufficiencies related to FT are covered under SR.III]
R.30	**LC**	All positions of prosecutors are not filled (and insufficient staff in the international cooperation department of the Supreme prosecution); insufficient staff also in the legal cooperation department of the Ministry of Justice; training on terrorism and TF issues needs to be included in the relevant programmes
R.32	**C**	[the general effectiveness issue is discussed at the relevant Section]

2.7 Cross Border Declaration or Disclosure (SR.IX & R.32)

2.7.1 Description and Analysis

450. Cross-border movements of cash and other instruments are regulated in detail by the AML Law. Art. 5 imposes a declaration duty and Art. 12a provides for a system of sanctions in case of non-compliance with Art. 5 (para. 1 to 4).

Article 5 Reporting obligation in special circumstances

(1)A natural person entering the Czech Republic from an area outside the Community customs territory[13)] or entering into such an area from the Czech Republic, is obliged to declare to the customs office, in writing, the import or export of any valid means of payment in Czech or foreign currency, traveller's cheques or money orders exchangeable for cash, bearer securities or securities transferable to order or any highly valuable commodities such as, precious metals and precious stones, that has a sum total value in excess of 15,000 EUR.

(2) The duty mentioned in paragraph 1 must also be fulfilled by a legal person that imports or exports those items mentioned in paragraph 1 through an individual who carries these items on his/her person when crossing the border of the Community customs territory.

(3) An natural or legal person who sends anything, from the Czech Republic to an area outside the Community customs territory or who receives anything from that area by mail or other postal consignment that contains any items mentioned in paragraph 1 that have a sum total value of more than 15,000 EUR, is obliged to declare this consignment to the customs office and ensure that it is submitted for inspection.

(4) An natural person or legal person also has a reporting obligation pursuant to paragraphs 1 to 3 when imports or exports into/out of the Community customs territory or if accepts or sends a postal consignment of items mentioned in paragraph 1, that in the course of twelve consecutive months, have a sum total value that exceeds 15,000 EUR. The reporting obligation arises at the moment that the party becomes aware that the stipulated threshold will be reached.

(5) A report pursuant to paragraphs 1 and 2 is made on a form issued by the Ministry of Finance and is available at the customs office. The natural person, who is making the report, is responsible for the accuracy and completeness of the information contained thereon.

(6) An natural person or legal person discharge the reporting obligation pursuant to paragraph 3 at a customs office by the written record by the sender of the contents of the postal consignment in a customs declaration or in an international consignment note. The sender is responsible for the accuracy and completeness of the record, which must contain all the information required by the import/export declaration.

(7) Customs offices shall immediately pass on to the Ministry information about the observance of reporting obligation in travelling connections and declaration stating all the available information about the sender, recipient and the subject of reporting obligation connected with postal consignment, including those cases when this obligation was infringed.

(8) When converting money from a different currency to the Euro, the exchange rate announced for the relevant currency by the Czech National Bank and valid on the Friday of the previous calendar week, is used for a period of one calendar week. The Ministry of Finance advises the conversion rate of other currencies that are not mentioned on the exchange rate list, to the customs authorities. On the basis of a verbal request the customs office advises people of the exchange rate and the conversion rates for the purposes of observing their reporting duty pursuant to paragraphs 1 to 4. The value of securities and highly valuable commodities is understood to be their current market value or possibly the price set out in accordance with the exchange rate on official markets.

(9) Customs offices control the observance of reporting obligation pursuant to paragraphs 1 to 4.

451. The matter is also regulated by Decree N° 343 of 18 May 2004, which contains a specimen of the form to be used for declarations.

452. The Czech Republic has opted for a declaration mechanism which is quite broad. It applies to currencies and to means of payments generally, traveller cheques, bearer securities, "any commodities such as precious metals and stones" etc. The system applies to both the carrier and – where relevant – to the natural or legal person who is the sender or receiver. It also applies in respect to declarable items sent by a postal

13) Council Regulation (EEC) no. 2913/92, Article. 3 para. 1.

service. The threshold of € 15,000 (equivalent value) is in line with criterion IX.1. The declaration is to be made in writing with the Customs authorities.

453. The Czech Republic's declaration system is not applicable to the intra-European Community movements of assets. The Czech Republic has physical borders only with EU countries and as a consequence, all Customs offices have been removed and replaced by mobile units (each of the 54 offices has a mobile unit). Therefore, there is a permanent physical Customs presence in principle only at extra-Community entrance/departure points (airports).

454. The examiners noted that SR.IX, although it is the most recent (FATF) standard, does not contemplate any exception, nor does it foresee any possible exception. The interpretative note is also silent on this issue.

455. As regards criteria IX.2 to IX.5, according to Art. 5 para. 7, the Customs authorities must inform the Ministry [of Finance, in practice the FAU] immediately of the declarations made and the information contained therein. This also applies to undeclared currencies, bearer negotiable instruments etc.

456. Decree N° 343 specifies that "The stating of incorrect, illegible or incomplete information is considered to be a failure of the declaration duty." In all cases, the written form has to be filled (including by the Customs authorities in case of undeclared assets) which contains information on the declarant (name address, nationality, passport number etc.), the identity and address of the owner and intended recipient of the exported/imported assets, a description of the exported/imported assets (including the value, currency and total amount), their purpose, the route of carriage and the means of transport.

457. The table below provides an overview of the number of reports sent by the Customs to the FAU in relation to cross-border movements under art. 5 of the AML Law.

Statistic on Cash Cross-Borders Reporting (number of reports received by the FAU from the Customs)	
Year	**Number of reports**
2000	1016
2001	973
2002	971
2003	1389
2004	1419

458. Furthermore, the Customs report suspicions. These concern in principle ML, but also TF (on the basis of the limitative approach followed by the STR definition provided for in the AML Law). The team found no formal legal basis for such reporting by the Customs in the AML Law. It seems that the reporting results from a natural cooperation under the umbrella of the Ministry of Finance. The number of STRs made to the FAU is however very modest, as there have been two such reports made for the period 2001-2004.

Type of the obliged person	**STRs**			
	2001	**2002**	**2003**	**2004**

Customs General Directorate	1	-	-	1
(total STRS received by the FAU)	**1751**	**1379**	**1970**	**3265**

459. When the Czech Republic joined the EU in 2004, the powers of the Customs were increased. They now have the capacity to investigate on their own, they can carry out measures such as searches, interceptions of communications, infiltration and controlled deliveries across the border. The Customs can stop and interrogate a person to know more about him/her and the goods. Furthermore, under Art. 12a para. 2, a hearing must be conducted in case of an infringement to the declaration duty. Although they cannot apprehend a person solely on the basis of a suspicion, in case of undeclared assets the person can be kept in custody for a maximum of 48 hours, after that he/she would possibly be turned to the Police. It seems that the Customs still prefer to rely on the police as regards the investigative work in case of a criminal offence (including ML, FT and smuggling for instance). The Customs prefer to carry out preliminary intelligence work in that kind of situation.

460. Cooperation (criterion IX.6) is developed mostly with the immigration and other police bodies, which is the sole authority on-goingly present at the borders. There seem to exist established routines. For instance, before apprehending a person, the Customs would consult with the police. They would do the same in case they detect a suspicious person or have a suspicion of FT in general. It was admitted that the Customs would ask the (airport) police whether the person is among those listed internationally. From what the evaluators heard on site, there is no practice of using task forces, or joint operations as such.

461. The information collected by the team suggested that the Czech Customs can (and do) cooperate in various ways with foreign counterparts (criterion IX.7), especially within the EU territory. Various international agreements have been signed to this effect and it was stressed that information, suspicions etc. are also sent pro-actively to foreign counterpart agencies. The Czech Customs can ask foreign Customs bodies to carry out investigations. The data recorded by the Customs under art. 5 of the AML Act is primarily meant for the FAU and a strict reading of the AML Law and the confidentiality duty deriving thereof (Art. 7, in particular para. 2) suggests that the data obtained is confidential and it is only through the latter that this data can – in principle – be shared with foreign countries (under Art. 7 para. 4f).

462. As for sanctions in case of non compliance with the declaration duty (criteria IX.8 and IX.9), the matter is in principle dealt with – as indicated earlier – under Art. 12a of the AML Law. Para. 1 provides for the following:

> *If the customs office discovers that a physical or a legal person failed to comply with a reporting obligation pursuant to Article 5 paragraphs 1 to 4, it shall impose a fine of up to the value of the undeclared goods on it. The Customs office shall proceed in the same way in the case of incorrect or incomplete information in report pursuant to Article 5 paragraph 5 or in a record pursuant to Article 5 paragraph 6.*

463. The collection of fines is subject to a standard procedure. The Customs may also decide to seize the assets (para. 7) and should the individual not be in a position to pay the fine

within the deadline, the assets can – in lieu – be definitely confiscated. An appeal does not suspend the seizure.

464. A penalty ticket procedure is also applicable for fines to be paid on-the-spot, up to CZK 5000 (Art 12a, para 11 and 12) in case the violation of the declaration duty has been "reliably proved" – as the provisions say. It was not totally clear to the examiners what distinctive criteria would trigger the imposition of a penalty ticket instead of a fine in practice.

465. The table below gives an overview of the number of sanctions applied for failure to report cross-border movements of monies and other assets under Art. 5 of the AML Law.

Number of sanctions imposed for failure to report (cross-border transportation of currencies and other instruments)	
Year	**Number of sanctions**
2000	24
2001	36
2002	21
2003	66
2004	12

466. In case of a physical cross-border transportation of currency or bearer negotiable instruments related to TF or ML (criterion IX.9-IX-10), the police is normally competent as these offences fall under the criminal law provisions and the Customs have no competency to seize assets in this respect. As indicated earlier, if the Customs came across such a case, they would normally hand it over to the police or report it to the FAU under the suspicion reporting regime of the AML law. As indicated earlier, there have been two such occurrences, one in 2001 and one in 2004, which is a modest figure.

467. Furthermore, the general criminal law provisions are more adequate than the general Customs regime when it comes to applying sanctions, seizure and confiscation measures in the case of ML. The general criminal law regime is dealt with under Section Under the general Customs regulations, in case of a discovery of undeclared assets (other than those mentioned under Art. 5 of the AML Law), a fine of up to 80% of the value of the smuggled property is applicable. Legal persons are not subject to sanctions (as they are under the cross-border declaration regime) and the customs seizure is only applicable to secure the payment of the fine or in case the assets are subject to the general rules of illegal possession (counterfeited products, smuggling of cigarettes, illegal trading in weapons etc.)

468. As regards the application of measures under SR III to persons who are carrying out a physical cross-border transportation of currency or bearer negotiable instruments that are related to TF (criterion IX.11): the general regime described under Section 2.4 of this report would in principle apply. The strengths and weaknesses have already been underlined. The EU regulations – and to a lesser extent the Czech domestic provisions – requires the spontaneous freezing of accounts of internationally listed persons, and the reporting of transactions involving listed persons. The freezing of assets in relation to

cross-border movements is not covered as such. But as indicted earlier, the border police would a person's background in case Customs employees have a suspicion.

469. As indicated earlier, cross-border movements of precious metals and stones are equally subject to a declaration duty when their value exceeds the equivalent of €15,000. In the examiners' view, this creates a level of diligence which is comparable to that required under criterion IX.12 which puts emphasis on "unusual cross-border movements" of such products. The Customs representative stressed repeatedly the good quality of cooperation with foreign countries, including pro-actively from the side of the Czech Republic. The vigilance generated by the declaration system is complemented to some extent by the measures and cooperation taking place in the framework of the Kimberley certification process[65]. As indicated in the introductory part of this report, the Czech Republic is exposed to risks of illegal activities in relation to precious stones (rough gems, conversion of poor quality gems etc.).

470. In this context, it was alleged by a gemological expert that much more needs or could be done in the Czech Republic to increase national cooperation, controls in the gem business, the ability to detect the bad gems business, the familiarity of the Customs and police with those issues etc. (see also Section 4 and more particularly Section 4.3).

471. The information provided by the Customs has also shown that in the years 2003 to 2004, there was a significant activity of illegal export of financial funds from the territory of the Czech Republic. Most cases were exports by Vietnamese and Chinese nationals through the Custom offices at the Prague airport. Imports to the territory of the Czech Republic were and are mostly carried out by Czech and Slovak nationals. The Majority of these cases was processed as an administrative offence according to the Article 5 of the AML Act and the relevant Customs office inflicted a fine.

Recommendation 32

472. There are no ML or FT specific statistics available apart from the figures collected by the FCIS in respect of art. 14 of the LPML on cross-border declarations above LTL 50,000, and the occurrence of sanctions imposed for non declaration.

[65] The Kimberley Process Certification Scheme (KPCS) is a process designed to certify the origin of diamonds from sources which are free of conflict. The process was established in 2003 to prevent rebel groups and their rivals from financing their war aims from diamond sales. The certification scheme aims at preventing these "blood diamonds" from entering the mainstream rough diamond market. It was set up to try to assure consumers that by purchasing diamonds they were not financing war and human rights abuses.
The KPCS originated from a meeting of Southern African diamond producing states in Kimberley, South Africa in May 2000. In order for a country to be a participant, it must ensure
- that any diamond originating from the country does not finance a rebel group or other entity seeking to overthrow a UN-recognized government
- that every diamond export be accompanied by a Kimberley Process certificate proving (1)
- that no diamond is imported from, or exported to, a non-member of the scheme.

473. This is partly explained by the obvious lack of involvement in AML/CFT issues. The examiners noted that in 2005 (see tables under Section 2.5) there has been no suspicion of money laundering reported either by the Customs or the Border Guard.

474. Overall, the statistics available as to Recommendation 32 in relation with SR IX are satisfactory.

2.7.2 Recommendations and Comments

475. The system in the Czech Republic to deal with the control of cross-border movements of currencies, bearer negotiable instruments and other assets is quite comprehensive. The Customs also report their suspicions based on what seems to be a natural cooperation with the FAU. However, despite their recently increased powers, the Customs seem to rely significantly on the police when it comes to information and action in respect of ML and FT, and not only due to the recent removal of the territorial Customs border, which places a greater reliance on the border and immigration police services.

476. In view of the findings of the examiners, **it is recommended:**

- **To clarify in the AML Law the legal basis for the Customs to report suspicions of ML and TF and**
- **to review the adequacy of the number of STRs reported by the customs in the context of the Czech Republic and in this connection, take measures to make sure the Customs are adequately informed and involved in the AML/CFT efforts,**
- **to review, ideally in consultation with other EU countries, the EU exception to SR. IX**

2.7.3 Compliance with Special Recommendation IX & Recommendation 32

	Rating	Summary of factors relevant to s.2.7 underlying overall rating
SR.IX	**LC**	There are some minor shortcomings (reporting duty for suspicions of ML and FT needs to be clearly spelled out; the major insufficiency is the effectiveness issue (low number of ML cases generated by the Customs compared to the criminal activity context of the Czech Republic); Customs need to be made more aware of AML/CFT issues as they rely a lot on the police as regards information in this field. Community market exception needs to be clarified together with EU partners)
R.32	**C**	

3 PREVENTIVE MEASURES – FINANCIAL INSTITUTIONS

477. Preventive measures are dealt with primarily in the AML Act, which is a mandatory enforceable piece of legislation containing explicitly sanctions in case of non compliance with the requirements it sets forth. The AML act does not refer to a general Customer Due Diligence (CDD) or "know-your-customer" policy. Enhanced risks and particular attention required are addressed to some extent through the concept of suspicious transactions (which require increased attention) or lower risks (see below).

478. Reduced riks/requirements are accepted to the extent that identification is not necessary in certain cases: basically, where the customer is a domestic financial institution, or a foreign financial institution based in a country that applies identification requirments of a level comparable to the Czech Republic, or the identity of the customer (including a third party/intermediary) is "not in doubt" (Art. 2 (10) AML Act).

479. The CNB is authorised by the Act on Banks and the Act on the Czech National Bank to issue legally binding regulations on prudential standards. These are binding on banks and branches of foreign banks, except for branches of foreign banks operating in the Czech Republic on the basis of the freedom to provide financial services, that is using the EU single passport, which is now the case for all foreign bank branches – this is due to the fact that the regulation is issued under the authorisation stipulated in the Act on Banks. On the basis of these authorisations, in September 2003, the CNB issued a *Provision of the CNB N°1 on the Internal Control System of a Benk for the Area of Money Laundering Prevention*, which came into force on 1 October 2003 (No. 1 of 8 September 2003, hereinafter: CNB Provision N°1). The CNB Provision N°1 is based mainly on the recommendation of the Basel Committee of Banking Supervisor on "Customer Due Diligence for Banks", the FATF Recommendations and the CNB's experience in relation to AML inspections. The purpose of the CNB Provision N°1 is to set forth requirements, which banks must meet in order to minimise the risks arising from potential misuse of a bank for money laundering, as well as terrorism financing. By virtue of the basic banking legislation, the CNB is entitled to issue by-laws, which is the case of this Guideline, which is thus a mandatory, enforceable and sanctionable text.

480. The aim of the CNB Provision N°1 is not to duplicate the AML Act, but to address a limited number of issues in greater details (customer identification and acceptance policy, role of Money Laundering Reporting Officers, information systems of banks, duties of employees, training programmes, and some final provisions). The CNB Provision also requires from banks to have a risk-based approach – mostly based on enhanced risks/diligence for certain situations.

481. The CSC issued in October 2002 Decree No. 46/2002 on Detailed Organisational Rules for Internal Operations of Securities Traders and for Conduct in relation to Cutomers. The aim of this Decree is not the prevention of ML/FT.

482. The insurance sector has not issued specific texts that would be relevant in the AML/CFT context.

483. For Credit Unions, a Directive of internal principles, procedures and precautions against legalisation of criminal activity revenues was adopted but not made available.

484. Relevant sector specific texts as regards DNFBP are mentioned and addresed under Chapter 4 of this report.

Customer Due Diligence & Record Keeping

3.1 Risk of money laundering or terrorist financing

485. The AML Law is meant to address both money laundering and the financing of terrorism. FT, however, is addressed only to the extent that suspicious transactions to be reported to the FAU include "transactions intended for the financing of terrorism, terrorist activities or terrorist organisations", and particularly "those cases when a participant to the transaction is directly or indirectly a legal person or natural person against whom the Czech Republic is applying international sanctions pursuant to a special act and those cases where the subject of the transaction is, even if only partially, sanctioned goods or services provided to a sanctioned subject or a sanctioned individual"[66].

486. The Czech authorities indicated that the country has decided, when transposing the 2nd EU Directive on money laundering, to apply the widest extent of requirements to all subjects in accordance with Article 2a of the 2nd EU Directive. In accordance with Article 12, it has extended the scope of „obliged subjects" to cover also second-hand stores, pawn shops and dealers with articles of a cultural value.

487. The following are "obliged persons" according to the AML Act (under Art. 1a containing the definition of concepts):

- a bank, savings or credit co-operative, insurance company, the Czech Consolidation Agency, the holder of a postal licence and a legal entity or an individual authorised to trade with foreign currency on his own account or on a client's account, to conduct or intermediate a cash or non cash transfer of financial capital, to financially lease, to provide credit or monetary loans or to the trading with them or to issuing non cash payment means. The Czech authorities explained that in this provision are stated standard financial and credit institutions (also on the basis of Directive 2000/12/EC) providing monetary services. In addition, this provision covers also exchange offices, providers of cards and other similar means of electronic payment, systems of cross border wire transfers, leasing companies etc.;

- the Czech National Bank, in its activity of account-keeping and providing other banking services;

- the Securities Centre or any other legal entity authorised to maintain parts of registers of the Securities Centre as well as to perform its other activities, the

[66] A footnote in the AML Act refers to "for example the Act no. 48/2000 Coll., on measures in relation to the Afghanistani movement the Taliban, the Act no. 98/2000 Coll., on the application of international sanctions to maintain international peace and security"

organiser of a securities market, a securities dealer, that is not a bank, investment companies, investment funds, pension funds and commodities stock exchange;

- the holder of a (gaming) licence to operate betting games in a casino, odds-on betting or numerical lotteries; the Czech authorities explained that since 1 September 2004, this provision no longer covers gaming halls operating slot machines because on the basis of experience, their previous incorporation was found redundant and their use for the purpose of money laundering irrelevant;

- a legal person or a natural person authorised to trade in real estate or act as an intermediary in this trade;

- a legal person or a natural person authorised to buy up debts and receivables and to trade with them; the Czech authorities explained that this definition covers "factoring" and "forfeiting" activities which are considered as credit activities in the sense of the EU Directive 2001/12/EC;

- a legal person or a natural person acting as a broker with savings, monetary credits or loans or brokering activities that lead to the signing of insurance or reinsurance contracts; the Czech authorities explained that this provision includes so called "financial intermediaries" and "financial advisors" acting mostly on the basis of their own business license for one or more financial institutions, particularly insurance companies, banks, credit or leasing companies etc.insofar as far as their activity results in intermediation for the listed financial services;

- an auditor, tax advisor or accountant, if he is carrying out the relevant activity as his business; the Czech authorities underlined that it is not expected from this profession, in the framework of their activity, to directly participate in transactions in the meaning of the AML Act and thus comply with identification and record keeping requirements. The profession is meant to get knowledge about transactions of their clients only ex post facto and therefore also application of the provisions on the suspension of transactions would not come into consideration. Nevertheless they have to report to the FAU – in connection with their activities – if they come across a suspicious transaction or fact of any other kind that might indicate a suspicious transaction;

- a court executor when carrying out other activities of an executor pursuant to a special legal regulation – the AML Act applies to court executors only when carrying on other activities, such as custody or administration of a property, conducting of auctions;

- a lawyer, notary or other legal person or a natural person in a business capacity, if he executes or assist in the planning or execution of transactions for his client concerning the
  - Buying or selling of real estate property or business undertaking,
  - Managing or custody of money, securities, business shares or other assets of a client, including representing the client or acting on his behalf in connection with the establishment of a bank account at a bank or other financial institution or a securities account and the managing of such an account, or

- Acquiring and collecting finance or other values rateable by money for the purpose of establishing, managing or controlling a company, business group or any other similar department regardless of the fact that it is a legal person or not,

or he represents or acts on behalf of his client in any financial transaction or trading with real estate;

- a legal or natural person authorised to trade in second-hand goods (with cultural items or items of a cultural value) or to the brokering of such trading or to accept such things into pawn; the Czech authorities indicated that this provision includes all subjects dealing with any form of business with second-hand goods (including second-hand cars for instance);

- a legal person or natural person not mentioned above, if he/she is a businessman, as long as he/she, in the framework of an individual business or auction, accepts a payment in cash in an amount in excess of 15,000 EUR;

488. The AML Act applies without distinction to branches, subsidiary or business premises of a foreign legal or natural person mentioned above that functions on the territory of the Czech Republic.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8)

3.2.1 Description and Analysis

Recommendation 5 – Customer Due Diligence (CDD) Procedures

489. FATF Recommendation 5 contains basic obligations that need to be enshrined in law or regulation and be sanctionable in case of non compliance.

490. As regards the requirement that financial institutions should not be permitted to keep anonymous accounts or accounts in fictious names (criterion 5.1*), rules have been amended in several steps in order to eliminate the existing anonimity from the banking system. An amendment to the Civil Code stipulated that by the 1 January, 2001 deposit passbooks, deposit certificates or other forms of deposits may be issued or negotiated only on names. (Sections 782, 786 (6), 787 (3) of the Civil Code)

491. Existing bearer passbooks were abolished by an amendment to the Act on Banks of 31 December, 2002. The right of the depositor to the repayment of the balance of discharged deposit claim shall become statute-barred after the lapse of ten years from this date, that is by the end of 2012.

492. Since 1 May 2002, as a consequence of another amendment to the Act on Banks, only withdrawals are possible and any such withdrawal is subject to the identification procedure. In the opinion of the Czech authorities since that time the existence of "audit trail" for these products is fully ensured. However, the AML Act stipulates as follows: *"The obliged person, when entering into business relations, always identifies its participants, particularly if it concerns...e) Payment of the balance from cancelled*

deposit on bearer passbook, if the amount exceeds 15,000 EUR", which could be interpreted in a way that neither the identification, nor the audit trail is complete, and that the identification requirement can be circumvented (e.g. through splitting the payments). The Czech authorities advised that in practice this apparent inconsistency is irrelevant because the banking regulations provide for a general lower identification threshold of 100.000 CZK (about Euro 3500) applicable to any financial operation. It was also explained that the threshold of the banking regulations, in such cases, prevails over those of the AML Act. In the opinion of the evaluators, the situation – at least on paper – looks quite confusing. .

493. There is no prohibition in the Czech legislation of using numbered accounts. Numbered accounts are not used in practice though and according to the rules, the clients should be identified in these cases as well.

494. Overall, the situation is satisfactory, as the opening of anonymous accounts or similar products such as anonymous passbooks is prohibited and the existing ones are being gradually abolished. The evaluators noted the discrepancy between the banking regulation and theAML Act as regards the identification requirements in respect of bearer passbook-related operations. These will need to be addressed.

495. The AML Act does not use the concept of Customer Due Dilligence (CDD). Instead, it refers to the concept of identification, which is provided and defined under Art. 1a. Although the definition is quite detailed for both natural and legal persons, it is limited to requirements purely related to ascertaining the validity, accuracy and reliability of the identification information (including the statutory authority and majority associate in case of a legal person).

496. Identification is required from the financial institutions (criterion 5.2*) to the following extent by the AML Act:

a)when establishing business relations: according to Article 2 para 2 of the AML Act: "(*2) The obliged person, when entering into business relations, always identifies its participants, ...";* for the banking sector, this applies also to deposits (passbook, deposite certificates) and the renting of deposit boxes; specific provisions apply to the insurance sector (conclusion of agreements for life sinsurance if the annual premium exceeds EUR 1,000 or a single premium exceeds EUR 2,500, and in case of payments above those limits for life insurance contracts);

b) when carrying out occasional transactions above the applicable designated threshold, which also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked: Article 2 para 1 of the AML Act states that *"(1) If an obliged person is a participant to a transaction that has a value exceeding 15,000 EUR it always identify the participants of the transaction, as long as this Act does not state otherwise later on. If, at the time of the finalisation of the transaction or at any other later time, the exact amount of the whole fulfilment is not known, then the mentioned obligation arises at the time when it becomes obvious that the stipulated amount will be reached. If the transaction is implemented in the form of repeated fulfilments then the sum of the fulfilments for twelve consecutive months is decisive, if it does not concern a repeated participation in a lottery or other similar game pursuant to a special legal regulation.";*

c)when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII: the AML Act lists the obliged persons (Article 1a para 7), among which legal entities or individuals authorised to conduct or intermediate a cash or non-cash transfer of financial capital. In the opinion of the Czech authorities this also covers the system of cross-border wire transfers, hence clients have to be identified. More specifically, for cross-border transfers via SWIFT the accompanying information contains the account number and the name of the originator and the beneficiary (in the case of domestic fund transfer, the account number is always transferred and the name of the originator is usually also included). Having said this, the Czech legislation does not explicitly require financial institutions to identify neither the originator, nor the beneficiary of funds transfers through the payment chain. However, the Czech authorities take the view that in most situations, the originators of transactions are identified as the holders of bank accounts and for ad hoc transactions the general threshold of Euro 15,000 is applicable;

d)in case of suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds: Article 2 para 2 of the AML Act requires that *"(2) The obliged person, when entering into business relations, always identifies its participants, particularly if it concerns a) Suspicious transaction (…)"*Although in the AML Act, the concept of suspicious transaction is understood quite broadly under Article 1a para 6), the identification measures required remain essentially transaction based. This has, in principle, no real impact since suspicions trigger those measures whatever the circumstances or amount of the transaction.

e)When the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data: in the Czech Republic, there is no legal requirement to renew the identification when doubts have arisen about the identity of the customer or about veracity or adequacy of previously obtained customer identification data. This being said, Article 3 para 1 of the AML Act, requires obliged persons to continuously control and update the identification data. *„In the course of duration of contractual relationship or in further transactions, the obliged person controls the validity and complete character of the identification data mentioned in Article 1a paragraph 3 and keeps a note of their changes."* Nevertheless, the evaluators believe this is not the the required measure.

497. In view of the above, the evaluators conclude that improvements are needed since occasional transactions by wire transfers are not regulated and the repeated identification and verification in case of doubts about the customer identification data is – as such - missing from the measures to be taken by the financial institutions.

Required CDD measures (criteria 5.3* and following)

498. The **identification obligation** is enshrined in Article 2 of the AML Act. The identification requirements are determined in Article 1a, as follows:

a)for a natural person; ascertaining of his/her name and surname, possibly all his/her names and surnames, birth number or date of birth, sex, permanent or other address, verifying them from an identity card, if they are stated on it and further verifying the correspondence of an image with the photograph on the identity card and verifying the number and period of validity of the identity card and the authority or country which issued it; if it concerns a natural person who is carrying out a business activity, also ascertaining his/her business name, other

distinguishing information or any further marking or identification number,

b) for a legal person; ascertaining its business name or title including any distinguishing information or any other marking, its registered address, identification number or similar number assigned to it abroad, the name, possibly all the names and surnames, birth number or date of birth and the permanent or other address of persons who are it's statutory authority or it's member, further ascertaining the majority associate or the controlling body[2)] and the identification of the natural person acting on its behalf in the given transaction; if the statutory authority or it's member is a legal person, then ascertaining its business name or title including any distinguishing information or any other marking, its registered address and identification number or similar number assigned to it abroad, and ascertaining the identification details of individuals who are its statutory authority or its members.

Natural, or legal persons or legal arrangements

499. The identification requirement applies to natural and legal persons. The provisions are silent on the issue of legal arrangements such as trusts, which are basically unknown in the Czech Republic (leaving aside the *silent partnership* which is dealt with elsewhere in this report). According to the information available to the evaluators, activities of foreign trusts are not an issue either in the Czech Republic and it was indicated that should a foreign trust act as a customer in the Czech Republic, the general CDD requirements would apply.

Permanent or occasional customer

500. The amount of EUR 15.000 is a general threshold. For operations above this limit, every obliged person (with some sector-specific adaptation) has to perform identification of its client. If the client has been already identified by the obliged person at an earlier stage and the identification data is recorded and kept, it suffices – in the course of the business relationship – to perform only appropriate verification of identity which is possible to carry out e.g. on the basis of the personal knowledge, submission of the identification document(s), signature in conformity with the signature specimen or electronic communication with identity verification.

501. However, there is no legal requirement to renew the identification when doubts have arisen about the identity of the customer or about veracity or adequacy of previously obtained customer identification data. Identification is not necessary if the participant of a transaction is an obliged person pursuant to Article 1a paragraph 7 letter a) to c) of the AML Act or it is a credit or financial institution operating in a country that imposes an identification duty upon this institution in a comparable manner or when the identity of a participant to a transaction or the identity of a person acting in his favour is not in doubt.

502. The Act on Banks stipulates in its chapter relating to the deposit guarantee scheme (insurance to the deposit) certain obligations to banks concerning identification of customers. Article 41c para 3 reads as follows:

2) Section 66a of the Commercial Code.

„(3) A bank shall ensure identification of depositors when maintaining their accounts or when accepting their deposits in any other form and shall keep identification data on its depositors in its files. "Identification data" shall mean:
in the case of natural persons: the first name, surname, address and date of birth or birth index number or identification number,
in the case of legal entities: the commercial name or designation of the legal entity, its registered office and, for domestic legal entities, its identification number.
(4) The identification data referred to in paragraph 3 shall be stated in the account contract, in the deposit book and on the certificate of deposit, deposit slip or other comparable document evidencing the acceptance of the deposit."

503. A bank shall demand proof of a client's identity for each transaction exceeding CZK 100.000 – less than € 4000 (Article 37 (1) of the Act on Banks). At the time of the on site visit, there was a plan to cancel this special threshold and apply only the general threshold of EUR 15.000 stipulated in the AML Act.)

504. For foreign exchange offices, licensed by the CNB, the identification requirement is stipulated for cash transactions above CZK 100.000 (less than €4000) and for all non-cash transactions and money transfer services (without any threshold) – See Articles 7 and 20 of CNB Decree No. 434/2002 Coll.

505. The CNB Regulation covers among others the identification of clients and the customer acceptance policy of banks.

506. According to the CSC Decree issued in October 2002, the securities trader shall provide for the manner and conditions of obtaining information about customers by its own internal rules.

507. There are no special measures in special legislation for the insurance sector. Identification obligations are solely regulated by the AML Act in respect of insurances.

508. Overall, the Czech regulations largely comply with the first part of Criterion 5.3 as regards the identification, since in the majority of situations (i.e. when establishing business relations, or carrying out occasional transactions above the applicable designated threshold) the obliged persons have to perform the identification, if a client hasn't been identified earlier in the required extent. If the client has been identified the verification of the identity is sufficient. However, when carrying out occasional transactions that are wire transfers, the regulation is far from being complete, as it was discussed earlier.

Verification of identity

509. Recomendation 5.3* requires the obliged entities to verify the identified customer's identity using reliable, independent source documents, data or information (identification data). As seen earlier, Article 1a para 3 of the AML Act regulates the verification of customers' identity.

510. <u>In the case of natural persons</u> Article 1a para 3 of the AML Act stipulates the verification of identity data as follows:"*...verifying them from an identity card, if they are stated on it and further verifying the correspondence of an image with the*

photograph on the identity card and verifying the number and period of validity of the identity card and the authority or country which issued it; if it concerns a natural person who is carrying out a business activity, also ascertaining his/her business name, other distinguishing information or any further marking or identification number,"

511. For the purposes of the AML Act, "*an identification card is understood to be a valid official document issued by a State authority, from which it is possible to verify the likeness of the person who is meant to be identified, his name and surname, possibly all his names and surnames, birth number or date of birth, his nationality and possibly other identification data."* (Article 1a para 9).

512. The evaluators were advised on site that in practice, since all citizens of the Czech Republic have an identification document which should be carried by them, it is not a problem for the financial institutions to identify and verify the identity of their customers. In 2004, an amendment to the AML Act removed the differentiation between residents and non-residents in respect of their identity verification. For the identification of a client besides the identity card or passport, other documents are allowed also, for non-residents are admissible also permit for stay.

513. The identification of a natural person has to be performed always face to face, with only minor exceptions stated below.

514. As regards the legal persons the official document means a valid excerpt from the register, in which it is obligatorily registered or another valid document that proves its existence. This can be for example a valid extract (original or authorised copy) from the Company Register of Entrepreneurs Register (Commercial Register), the Foundation Register or the Register of Beneficial Societies.

515. Furthermore, the identification of a majority or significant owner (controlling body) is required. If it is not possible to underpin it with an official document, it has to be proven in another way, e.g. written declaration or confirmation of a legal representative of the legal person (for instance for bearer shares). However in case of silent partnership contract under the Commercial Code (or dormant partnership), the identification of owners is a problem in the Czech Republic. Bearer shares are also in use, which impedes the identification of real owners.

516. According to para 4 of Article 1a: "*The verification or the ascertainment of information stated in paragraph 3 may be carried out by means of electronic data transfer if the identification of such information is guaranteed pursuant to a special Act."* – This means that when the data are collected as required by the Act on electronic signatures (Act no. 227/2000 Coll.), the verification may rely upon non paper based documents.

517. Overall, the basic requirements to gather ID information are in place, and reference is made to verification from official documents (official identification card for natural persons and a valid extract from the commercial register in the case of legal persons – AML Act, art. 1a para 9).

518. Criterion 5.4 requires that for customers that are legal persons or legal arrangements, the financial institution should be required to: a)* verify that any person purporting to act on behalf of the customer is so authorised, and identify and verify the identity of

that person; b) Financial institutions should be required also to verify the legal status of the legal person or legal arrangement, and obtain information concerning the customer's name, the names of trustees (for trusts), legal form, address, directors (for legal persons), and provisions regulating the power to bind the legal person or arrangement.

519. The issue is dealt with under Article 1a para 3 of the AML Act, regulating the identification requirements. For legal persons the identification means *„the identification of the natural person acting on its behalf in the given transaction"*; among others. Furthermore, Article 2 para 3 of the AML Act stipulates the following: " *(3) If a participant to the transaction is represented on the basis of a power of attorney, then that empowered individual is identified pursuant to Article 1a paragraph 3 and further by the submission of the power of attorney with an officially authenticated signature. This power of attorney is not required, if the account holder has empowered a third person at the obliged person with a right of disposal on this account, and that person was identified pursuant to Article 1a paragraph 3 letter a) and signed the right of disposal in accordance with a specimen signature before an employee of the obliged person. In the case when an individual who does not otherwise have the right of disposal to this account, deposits cash into the account and at the same time sends to the obliged person the documents that have already been filled out and signed by the authorised person the power of attorney is also not required*." Para 4 of the same Article adds: "*(4) If, making the transaction, the obliged person discovers or has a suspicion that a participant to the transaction is not acting on his own behalf or that he is concealing the fact that he is acting for a third party, it will order him to declare, in writing, on whose behalf he is acting and to present the identification details about this third party pursuant to Article 1a paragraph 3. Everyone is bound to oblige this summons unless stipulated otherwise by this Act.*"

520. Financial and other institutions are obliged by law to identify the person who acts on behalf of the customer. As regards legal persons, the basis for the identification is a valid extract from the register, in which it is obligatory registered or another valid document that proves its existence. In case of a commercial entity it means an extract (original or authorised copy) from the Company/Commercial Register. The identification shall cover the following data: business name or title including any distinguishing information or any other marking, its registered address, identification number or similar number assigned to it abroad. The Foundation Register and Register of Beneficial Societies follow the rules applicable to Commercial Register unless relevant laws contain special regulation.

521. Thus, the AML Act requires the identification of the authorised persons in the following cases: 1) in a given transaction, 2) if the customer is represented by a power of attorney irrespectively to the type of the person (natural or legal) represented, 3) when a person is not acting on his own account. It is also clear from the AML Act that, in principle, natural persons authorised to act on behalf of a legal person must have been clearly designated beforehand in presence of a representative of the legal person. Specimen signatures of the person authorised to act on behalf of the legal person are to be kept. In the opinion of the evaluators, these cases cover all situations that may occur in the Czech Republic in practice, even though there is no explicit requirement to verify that the person is authorised to act on behalf of the legal person. The information about the managers (directors) for legal persons is available from the extract. The Czech

authorities specified that only statutory members can act and these are known; otherwise, transactions are made on the basis of a power of attorney – AML Act art 2 para 3.

522. As regards the identification of beneficial owners (criterion 5.5*), the identification of a majority or significant owner (controlling body) is required from the financial institutions. If it is not possible to support it with an official document (e.g. with an extract from the Company Register), it is necessary to prove it in other way, e.g. by written declaration or confirmation of a legal representative of the legal person. Financial institutions are not obliged to check the reliability of these documents. Bearer shares are in use in the Czech Republic and an other pending problem in the Czech Republic is the dormant partnership in which case the idententifation of the (beneficial) owners is not possible. In general, financial institutions are not required to identify and verify the identity of the ultimate beneficial owners or to take reasonable measures to identify and verify the identity of the ultimate beneficial owners.

523. Regarding beneficial owner the Act on Banks stipulates in Article 41f (5): *"(5) Where the real owner of the funds differs from the account holder, the compensation shall be paid to the real owner. The account holder shall notify the bank of this fact on opening the account or on the first occasion of disposing of the account and shall identify the real owner of the funds to the extent laid down in Article 41c(3). The bank shall record this information in the account contract or in another document the issuance of which is associated with the acceptance of the deposit, and in its records."* These provisions are related the insurance of deposit claims and thus they have no general bearing.

524. According to criterion 5.5.1*, for all customers, the financial institution should determine whether the customer is acting on behalf of another person, and should then take reasonable steps to obtain sufficient identification data to verify the identity of that other person. In this respect, Article 2 para. 4 of the AML Act adds: *"(4) If, making the transaction, the obliged person discovers or has a suspicion that a participant to the transaction is not acting on his own behalf or that he is concealing the fact that he is acting for a third party, it will order him to declare, in writing, on whose behalf he is acting and to present the identification details about this third party pursuant to Article 1a paragraph 3. Everyone is bound to oblige this summons unless stipulated otherwise by this Act."* There is not automated declaration from the client, the implementation depends on and relies upon external factors and the suspicion of the (employee of the) financial instituton.

525. As regards criterion 5.5.2, the only provision in respect of understanding the ownership and control structure of the customer is the identification of majority or significant owners (controlling body). It is neither required for companies to identify the natural persons with a controlling interest and the natural persons who comprise the mind and management of company nor to determine who are the natural persons that ultimately own or control the customer.

526. The examiners believe that the situation in the Czech Republic needs to be improved in this respect: first, it is not required in case of companies to identify the natural persons with a controlling interest and the natural persons who comprise the decision-making and management authority of a company (except staturory bodies and their members who have to be identified according to the AML Law), and second, it is not required to

determine who are the natural persons that ultimately own or control the customer. Furthermore, it is recalled that bearer shares are in use in the Czech Republic and also in the case of silent partnership, the identification of the (beneficial) owners is not possible.

527. By virtue of criterion 5.6*, financial institutions should be required to obtain information on the purpose and intended nature of the business relationship. The examiners noted that there is no such requirement in the AML Act.

528. However, CNB Provision N°1 requires from banks when opening a customer account, to establish the purpose of the of the account, assumed movements of financial funds in the account, the fact whether or not a customer is an employee, and whether or not the account is opened for business purposes, and which is the object of customer's business activities. The banks have to establish the origin of customer financial funds in those cases determined by the bank itself. Furthermore, Articles 47a and 47b of the Securities Act regulate which rules for internal operations and rules of conduct in relation to customers a securities trader must implement. Article 47b para 1 point d) sets out that a securities trader is obliged, according to the kind and scope of services a customer requires, to require information from such customer concerning his financial situation, experience in investing in investment instruments and goals that such customer pursues through a required service. Although these provisions primarily aims to serve investor protection, they can be used for anti-money laundering purposes as well.

529. There is no special provision applicable to the insurance sector. Insurance companies and intermediaries therefore, are not required to obtain information on the purpose and intended nature of the business relationship.

530. As regards the requirement that financial institutions should be required to conduct ongoing due diligence on the business relationship (criterion 5.7*) , there is no such general obligation in the AML Act. The CNB Provision N°1 requires ongoing diligence on the basis of a risk-based approachas part of the Customer acceptance policy enshrined in Art. 4). The requirements of criterion 5.7.1 (ongoing due diligence should include scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and where necessary, the source of funds) are therefore not covered either in the AML Act. According to the Czech authorities, CNB Provision N°1, art. 4, covers all the issues required by this criterion.

531. As regards the requirement that financial institutions ensure that documents, data or information collected under the CDD process is kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships (5.7.2), the AML Act (Article 3 paragragraph 1) stipulates that *„in the course of duration of contractual relationship or in further transactions, the obliged person controls the validity and complete character of the identification data mentioned in Article 1a paragraph 3 and keeps a note of their changes"*. In the case of banks, CNB Provision N°1 requires from the banks that during the contractual relationship, they check the validity and completeness of the information recorded about the customer and update such information. There are no further sector specific provisions on the update and review of existing records.

Risk

532. According to criterion 5.8, Financial institutions should be required to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

533. The AML Act does not contain explicitly such a general requirement that would apply to all financial institutions, and obliged entities in general. As indicated in the introductory part to Section 3 of this report, the AML Act contains an enhanced risk-based approach and requires particular attention through the concept of suspicious transactions, some elements of which require indirectly that reporting institutions know their customer (e.g. transactions which appear disproportionate or inadequate given the customer profile, transactions without economic reason etc. – see Section 3.7 of this report).

534. Under the CNB Provision N°1, the banks have to follow a (higher) risk approach in respect of identification, customer acceptance and identifying suspicious transactions. The provision also contains a non exhaustive list of higher risk factors (under Art. 2 dealing with the definitions):

1. the country of origin of a customer, the country of origin of an owner of a business customer and the country of origin of a founder of a non-business customer, wherever that country appears on the list of non-cooperative countries and territories issued by the Financial Action Task Force (hereinafter referred to as the "FATF") or on the list of countries that the bank considers risky based on its own evaluation (e.g. tax havens),

2. the country of origin of a person with which a customer executes a transaction wherever that country appears on the FATF's list of non-cooperative countries and territories or on the list of countries that the bank considers risky based on its own evaluation (e.g. tax havens),

3.the appearance of a customer, a founder of a non-business customer, an owner of a business customer, or an entity with which a customer executes a transaction on the list of persons and movements against which sanctions are being applied pursuant to special legal rules,

4.an unclear ownership structure of a customer that is a legal entity,

5.an unclear ownership structure of a founder of a non-business customer,

6.unclear source of a customer's funds,

7.facts giving rise to the suspicion that a customer is not acting on his own account or that he is concealing the fact that he is carrying out the instructions of a third party,

8. an unusual transaction pattern, in particular with respect to the type of customer, the subject, amount and settlement method of the transaction, the purpose of opening an account, and the line of business of the customer, where the customer is a business customer,

9. a fact giving rise to the suspicion that a customer is executing a suspicious transaction;

535. These criteria are reflected in the substantive part of Provision N°1. Banks are required to keep the information that is needed to establish whether a client is a "risky customer", to establish procedures for the acceptance of such customers etc. Besides, bank are required to pay special attention to holders of "significant public offices" (see below the developments on "politically exposed persons" – FATF Rec. 6).

536. As the examiners were advised on-site, it is sometimes difficult to implement those enhanced diligence measures: keeping a list of risk countries would be politically sensitive, the concept of holders of "significant public offices" is difficult ot apply in practice and guidance is needed etc. But overall, the examiners noted with satisfaction that a risk based approach as such is present in the banking sector – that is the dominant part of the financial sector – for higher risks categories of profiles. It would strengthen the AML/CFT policy of the country if a similar approach was followed for all financial and other entities.

537. Financial institutions can also apply reduced measures (criterion 5.9) in certain cases. The AML Act admits in Article 2 para 10 that "*(10) Identification is not necessary if the participant to the transaction is a obliged person pursuant to Article 1a paragraph 7 letter a) to c)* [basically, this refers to the financial institutions of the Czech Republic – see below] *or a credit or financial institution operating in a country that imposes an identification duty upon this institution in a comparable manner or when the identity of a participant to a transaction or the identity of a person acting in his favour is not in doubt."*

538. As regards non-resident clients the reduced diligence applicable to identification is applicable for all credit and financial institutions. For resident clients, it covers the following obliged subjects: banks, savings or credit co-operatives, insurance companies, the Czech Consolidation Agency, the holder of a postal licence, legal entities or individuals authorised to trade with foreign currency on their own accounts or on client's accounts, to conduct or intermediate cash or non cash transfers of financial capital, to financially lease, to provide credit or monetary loans or to the trading with them or to issuing non cash payment means, the Czech National Bank in the keeping of accounts and providing other banking services, the Securities Centre or other legal entities authorised to maintain parts of registers of the Securities Centre as well as to perform its other activities, the organisers of a securities market, securities dealers, investment companies, investment funds, pension funds and commodities stock exchange.

539. The examiners wondered about the implications in practice of the exceptions deriving from Art. 2 para. 10 seen above, in particular its application to clients and intermediaries whose identity "is not in doubt". Although this situation is usually self-evident in practice, bearing in mind the purposes of the AML Act and the need – according to FATF principles – to renew/update/verify on-goingly the identification information, it could become a source of problems in practice from the point of view of AML/CFT (e.g. offering arguments to accomplices employed by financial and other institutions to evade the consequences of possible negligences). Further problems could be generated by the fact that this provision is meant to be an exception to the general identification requirement. Whereas the FATF approach accepts that the full CDD measures are not applied, identification should remain an essential component in the customer relationship. Similar reservations can be made in respect of the rest of the provision since it is not fully clear what the concept of "participant" refers to (the financial institution as an intermediary or as a party to the transaction). As regards the reference to "comparable manner", the examiners wer advised on site that this was meant to address EU countries. In any event, there is much room for interpretation and the Czech authorities may wish to redraft this paragraph in more precise terms.

540. The CNB provision N°1 essentially deals with increased diligence, and does not explicitly contemplate lower risk situations.

541. According to criterion 5.10, reduced CDD measures to customers resident in another country should be limited to countries that are in compliance with and have effectively implemented the FATF Recommendations. As mentioned under the previous point concerning criterion 5.9, the AML Act allows reduced identification measures in case of credit or financial institutions operating in a country that imposes an identification duty upon this institution in a comparable manner to the Czech Republic.

542. During the discussions held on site, the examiners understood that in practice, this provision is interpreted as referring mostly to client institutions from the EU. In the examiners' view, this does not necessarily mean that all EU countries fully comply with the FATF Recommendations. The Czech authorities need to either implement a procedure by which financial institutions are advised of countries which the Czech authorities consider to have similar obligations or do not comply with the FATF standards.

543. The examiners noted that the enhanced/reduced CDD measures deriving from the AML Act are for the time being limited to identification (and to some extent to reporting). If the Czech Republic introduce broader CCD requirements in the Act, this would obviously have an impact on the risk-based approach beyond the issue of identification.

544. According to criterion 5.11, simplified CDD measures are not acceptable whenever there is suspicion of money laundering or terrorist financing or specific higher risk scenarios apply. Since – by virtue of the AML Act – the application of CDD measures is the general rule, especially in case of supicious transactions including transactions performed by persons appearing on the international CFT lists, and reduced CDD may be conducted only in limited cases, this is not an issue in the Czech Republic.

545. According to criteria 5.12, where financial institutions are permitted to determine the extent of the CDD measures on a risk sensitive basis, this should be consistent with guidelines issued by the competent authorities. The risk based approach is not fully introduced in the Czech regulatory system. Enhanced customer due diligence is required only from banks (see point 5.8) and the subjects of CNB Provision N°1. have to adhere to the regulatory requirements. Reduced CDD is allowed for all types of obliged persons, however there are no specific guidelines issued by the competent authorities on this issue and guidelines as a whole are needed in the Czech Republic.

Timing of verification

546. Criteria 5.13 and 5.14 relate to the verification of the identity of the customer and beneficial owner before or during the course of establishing a business relationship or conducting transactions for occasional customers.

547. Concerning the establishment of business relationships, as described above Article 2 para 2 of the AML Act stipulates that *„the obliged person, when entering into business relations, always identifies its participants..."* (which also includes explicitly certain financial/banking services or products, and insurance-specific provisions (subscribing

of life-insurance contracts and payment of such contracts where the premium or capital exceeds certain amounts).

548. As indicated earlier, it is not required in respect of companies to identify the natural persons with a controlling interest and the natural persons who comprise the mind and management of a company (except staturory bodies and their members who have to be identified according to the AML Law), and it is not required to determine who are the natural persons that ultimately own or control the customer. The verification obligation as such (using information from other sources) is mentioned for legal persons as regards the production of an extract of the Register, and for natural persons as regards the production of an official ID document. There is no legal requirement to renew the identification when doubts have arisen about the identity of the customer or about the veracity or adequacy of previously obtained customer identification data but obliged entities have to make sure the information kept in their files is up to date.

549. Concerning transactions conducted by occasional customers, these also trigger identification pursuant to Art. 2 of the AML act if isolated or inter-related, they exceed the threshold of EUR 15,000. The law foresees those situations where the amount is not known and identification has to take place when there is knowledge that the threshold will be reached/exceeded.

550. This is the sole explicit exception contained in the AML Act and the identification and verification is obligatory before the establishment of the relationship or when carrying out the transaction. As a rule, the completion of the identification process can not be delayed or postponed and therefore criterion 5.14.1 is, in principle, irrelevant in the Czech context.

Failure to satisfactorily complete CDD

551. In principle, it is not permitted to establish/commence a business relationship or perform a transaction without completion of the identification process (criterion 5.15).

552. According to the AML Act, obliged entities are not required in all cases to file an STR report in case they cannot comply with their identification/CDD obligations. The only situation contemplated is – as far as this concerns a transaction – in case this would be a consequence of an explicit refusal of the customer to provide the information needed. Art. 2 para 5 specified that: *"The obliged person will not perform the transaction in the event that an identification obligation pursuant to paragraph 1 or 2 is given and the participant refuses to undergo the identification process or if he refuses the identification of a the third person pursuant to paragraph 4. At the same time the obliged person will inform the relevant department of the Ministry of Finance (hereinafter, "Ministry") of this fact."* A positive point is that this applies to information related to both the customer or a third party (e.g the beneficiary), but there is no such requirement to refuse the establishment of a relationship and to report the fact in the same way to the FAU (leaving aside the fact that the STR definition includes the case of the opening of multiple accounts without justified economic reason).

553. The AML Act is silent on those situations (criterion 5.16) where the financial institution has already commenced the business relationship and it is unable to comply with the identification/CDD requirements, in which case it should be required to terminate the

business relationship and to consider making a suspicious transaction report. The identification/CDD process cannot be postponed totally or partially under the Czech regulations. The Czech authorities confirmed that obliged entities, as a general principle, cannot establish a business relationship without fulfilling the identification duty.

554. As regards criteria 5.15 and 5.16, it should be underlined that the CNB Provision N°1 follows a specific approach. Art. 4 says that *"the bank shall establish a customer acceptance policy, within which, having regard to risk factors, it shall* (…) *set forth the conditions under which the bank will not enter into contractual relations with a customer or will cancel an existing contractual relationship."* The fact that Provision N°1 addresses those issues is, in principle, a positive step.

Existing customers

555. Under criterion 5.17, financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. As it was mentioned above, the risk sensitive approach has not really been introduced into the Czech legal regulatory framework, apart from the banking sector. The AML Act (Art. 3 para 1) imposes a general duty to keep note of the changes of identification data, but in the opinion of the eveluators this does not reflect the requirement as such *to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times*. Therefore, the implementation of this criterion needs to be re-considered. The AML Act applied in principle to all (existing and new) customers at the time it was enacted.

556. Under criterion 5.18, financial institutions should be required to perform CDD measures on existing customers if they are customers to whom Criterion 5.1 applies. Opening of anonymous accounts is prohibited and the existing bearer passbooks will be abolished from the banking system, accompanied with identification obligation, although not in all cases: as seen earlier, according to the Act on Banks, any transactions on bearer passbooks are subject to identification procedures. However, the AML Act is less categorical: *"The obliged person, when entering into business relations, always identifies its participants, particularly if it concerns...e) Payment of the balance from cancelled deposit on bearer passbook, if the amount exceeds15,000 EUR"*.

Overall and practical considerations

557. During the discussions held on site, the examiners found that obliged entities and supervisors were quite aware of the identification duties imposed by the legislation as regards the client. However, various problems were acknowledged:

- there was limited experience with the concept of ultimate beneficiaries,
- there were practical obstacles to identify ultimate beneficiaries
- there was limited experience with the application of "know-your customer" principles,
- guidance was insufficient or the concept itself was unclear
- identification-related and other information concerning the customer is too often kept in paper form

Recommendation 6 – Politically Exposed Persons

558. There is no specific provision in the AML Act that requires financial institutions to perform specific CDD in relation with customers who would be politically exposed persons.

559. The CNB's Provision on the Internal Control System of a Bank for the Area of Money Laundering Prevention (CNB Provision N°1) refers under Article 3 (2) h) briefly to this issue. Accordingly, banks shall pay special attention to transactions executed on the account of persons who hold a "significant public office"; the bank shall define in an internal rule the public functions it considers significant.

560. However, the representatives of the Czech Banking Association (CBA) as of other banks reported several difficulties in identifying politically exposed persons and how to handle the concept. The examiners were told that the CBA had required guidance and a definition from the CNB but the latter would have refused[67]. For the time being, the information gathered by these financial institutions does not include data related with public functions.

561. According to the documents provided by the Czech Securities Commission, this issue is not addressed in the current rules. As indicated earlier, in the insurance sector, there is no specific regulation regarding a policy to combat money laundering and terrorist financing. The Office of State Supervision over Insurance and Pension Funds mentioned that they are preparing a new amendment to the Act on Insurance which will cover AML provisions, the issue of PEPs will not be addressed though.

562. There is thus a need in the Czech Republic to address generally the issue of politically exposed persons, preferably in the AML Act.

Recommendation 7- Correspondent Banking

563. There is no specific provision in the AML Act about correspondent banking. The matter is dealt with in the *Provision of the CNB N°1 of 8 September 2003 on the Internal Control System of a Bank for the Area of Money Laundering Prevention* (as seen earlier, this regulation is mandatory and enforceable).

564. According to Article 4 (4) a) of this text, banks shall only co-operate with correspondent banks:

- that apply anti-money laundering and terrorism financing regulations,
- that have their registered office and actual head office in the same state,
- whose commercial activities they are familiar with.

565. The provision covers both AML and CFT aspects, which is commendable. But it contains no further details and the implementation of these basic requirements is left to the individual banks. The examiners were advised that in practice, banks have adopted their own procedures and internal rules which have been elaborated on the basis of

[67]The evaluators were advised after the visit that the CNB published the web links to documents which are dealing with this topic including the Basel Paper „Customer due diligence";banks were also advised that they should create their own lists on the basis of these international documents.

model rules issued by the Czech Banking Association. Commercial bank representatives met on site indicated that prior to establishing a relationship, the proposal has to be accompanied by an opinion of the AML structure of the bank assessing the level/absence of risk in the country, the quality of supervision, the professionalism of the candidate correspondent bank and the industry etc. before the board in the Czech Republic approves the establishment of the relationship. The Czech authorities confirmed that compliance with the rules (including internal AML programmes) are checked by the CNB during their regular on-site examinations. The controls have shown that these rules are applied by the banks in practice.

566. The banking sector representatives informed the team that the banks have few correspondent banks and most of them have their headquarters in an EU country.

567. Although some basic requirements and practices exist that would meet the requirements of criterion 7.1 to 7.4 (i.e. gathering information about the respondent institution, assessing to some extent the respondent institution, obtaining senior management approval, agreeing on the responsibilities of each institution), the system would gain in soundness if the CNB Provision included clearly the various requirements of FATF Recommendation VII, including on the issue of "payable-through-accounts". The current approach relies a lot on the good will of the industry.

Recommendation 8 – Threats from new or developing technologies, non face to face transactions

568. The AML Act does not require obliged institutions to have policies in place such as those required by criterion 8.1.

569. Risks associated with technologiocal developments are dealt with under Article 6 of the CNB Provision N°1 "when executing transactions using technology that does not involve direct contact with the customer, the bank shall create and apply procedures which establish that it is executing a transaction with an already identified customer" (as seen earlier, this regulation is mandatory and enforceable). Representatives of an electronic banking institution met on site confirmed that the correct procedure for a first time identification of a customer has to be face-to-face.

570. The Czech Republic has not adopted specific regulations requiring obliged entities to have policies and procedures in place to address any specific risks associated with non-face-to-face business relationships or transactions (criterion 8.2). In principle, the requirement is strict for all obliged persons and the primary identification/establishment of business relationship always has to be face-to-face. However, there is a possibility of "intermediated identification", when a client can not present himself personally for objective reasons, and the identification may be carried out by a person authorised to perform the certification of signatures and documents. This possibility was introduced in Article 2) (6) to (8) of the AML Act

(6) Identification for the obliged person on its request, in which the purpose of the identification must be stated, may also be carried out by a person authorised to carry out the certification of signatures and documents pursuant to a special legal regulation. In such a case he/she will draw up a public document on the identification, which must contain;

a)who carried out the identification and upon whose request,

b) identification details mentioned in Article 1a paragraph 3,
c)information about which type of identity card and of what supplementary documentation the identification of the individual was based upon, or possibly on the basis of what type of identity card, the identity of the person acting on behalf of the identified legal person or the identity of the representative of the identified person, was verified,
d)a certificate of a statement of the identified natural person or a person acting on behalf of an identified legal person or a representative of the identified person, about the purpose of performed identification and on confirmation of the accuracy of the identification, or possibly about any reservations to the identification being carried out,
e)the date and place of the drawing up of the document on the identification, or possibly the date and place of the identification if they are different from the date and place of the drawing up of the document on identification,
f)the signature of the person who carried out the identification and the imprint of his/her official stamp.

(7) The person, who carries out the identification pursuant to paragraph 6, will attach copies of the relevant documents or their parts, from which the identification was made, to the public document on identification.

(8) If the identification and other tasks have been carried out pursuant to paragraphs 6 and 7, the documents therein stated must be deposited with the obliged person. Until then the obliged person will not undertake any transaction pursuant to this Act, with such an identified individual.

571. Besides, transactions can also be conducted by a third party on the basis of a power of attorney.

572. The CNB Provision N°1 also requires intermediaries acting on behalf of the bank to apply "know-your-customer" principles.

573. The Czech authorities stressed that on the basis of the increasing number of requests from various types of financial institutions and also on the basis of Article 3 para 10 of the Second EU Directive the relevant draft bill has been elaborated (amendment to the Act on Entrepreneurship on Capital Market). At the time of the visit, it had been sent for comment to all the relevant institutions.

574. This amendment (meant to come into force before the end of 2005) is aimed at amending the AML Act. According to the proposals, it would be possible to conclude a contract on financial services remotedly without the physical presence of the client under the following conditions:

- the first payment from this contract would be through an account kept by a bank located in the EU and over which the client would have an unlimited right of disposal,
- the client would need to send to the obliged person copies of the relevant identity card and at least one other supportive document. These copies would have to be readable and contain an identification picture;

575. Where the client (party to the contract on financial services) is a legal person it would have to be further ensured that:
- on its behalf is acting a person who has a right of disposal over the account of a legal person through which the first payment will be carried on;
- the client will have to send to the obliged person copies of identification documents of a natural person acting on its behalf and further documents for the identification of the legal person.

576. It is worth mentioning that the presence of the client is not required explicitly in all cases by the AML Act. The first exemption appears in Article 1a para 4 of the AML Act which allows the verification or the ascertainment of information to be carried out

by means of electronic data transfer if the identification of such information is guaranteed pursuant to a special act. The second exemption was created by an amendment to the AML Act, which introduced in Article 2 para 6 to 8 the possibility of the so called "intermediated identification". The third exemption derives from Article 2 para 3 of the AML Act, which regulates the cases when a participant to the transaction is represented on the basis of a power of attorney. Finally, the Czech authorities informed the evaluators, that a draft bill had been elaborated in order to make it possible to conclude a contract on financial services without a physical presence of the client. Taking into account this factors, it is fair to say that Recommendation 9 applies to the Czech Republic.

3.2.2 Recommendations and Comments

577. Although in general the customer identification procedures (not full CDD measures) are mostly in place, the examiners note some shortcomings in relation to some criteria for Recommendation 5. These shortcomings should be addressed in order to strengthen the impact of CDD measures. It is thus recommended to re-address the implementation of recommendation 5, including

- full CDD requirements should be introduced in the AML Act (including on-going due diligence and know-your customer, risk-based approach, consequences of incomplete CDD measures and application of CCD requirements to existing customer etc.), with appropriate guidance, beyond the measures currently applicable to identification only. The Czech authorities should also consider redrafting Art. 2 para. 10 and the exceptions contained therein as they leave room for misunderstanding and misuse for ML and FT purposes. Reference should be made to reduced CDD measures in case the country of origin applies and implements the FATF Recommendations.

- inconsistencies between the banking regulations and the AML Act on the issue of CDD measures on the occasion of operations with bearer passbooks need to be solved and the identification/CDD process guaranteed no matter what the threshold is;

- the legislation should be amended in order to require from financial institutions to identify the originator and the beneficiary of funds transfers with at least the following three data: name, address, account number[68] and require also the renewal of customer identification and verification when doubts arise about the identity of the customer or about veracity or adequacy of previously obtained customer identification data;

- to require by law the identification of beneficial owners and to obtain information about the owners of all types of legal entities.

[68] The Czech authorities indicated after the visit that this recommendation is in principle fulfilled as in accordance with Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (valid since 1 January 2007), complete information on the payer is necessary only in cases of transfers of funds from the Community to outside the Community (Article 7). However, in case of transfers of funds within the Community such transfers shall be required to be accompanied only by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer (Article 6).

578. The issue of PEPs is not addressed through the AML Act. In practice, financial institutions are not complying with this recommendation, including the banking sector who lack guidance in relation to the basic relevant requirement that exists in bankig regulation. The Czech authorities stressed that the topic would be addressed in the 3rd EU Directive on Money Laundering and will thus become part of the Czech legal system. It is therefore recommended that PEPs are recognised under the AML Act with specific enhanced customer due diligence requirements; obliged entities also need guidance – and possibly sector specific criteria – in this field.

579. The issue of correspondent banking relationships, threats from developing technologies and non-face-to-face business relationships is addressed to some extent in the banking sector only. Therefore, the implementation of the requirements of FATF Recommendation 7 and 8 needs to be reconsidered so as to apply to a larger number of obliged entities.

580. The evaluators regret that in addition to the AML Act, sector-specific AML provisions were made only for the banking sector by the CNB. Given that the non-bank financial institutions also need to better address the various elements of the AML requirements (including in particular CDD **measures), it is recommended that texts similar to the CNB Provision N°1 be adopted also for the insurance, securities, foreign exchange and other relevant sectors.**

3.2.3 Compliance with Recommendations 5 to 8

Rec	Summary of factors underlying rating	
R.5	**PC**	Full CDD requirements should be introduced in the AML Act (including on-going due diligence and know-your customer, risk-based approach, consequences of incomplete CDD measures and application of CCD requirements to existing customer etc.), with appropriate guidance; inconsistencies between the banking regulations and the AML Act on the issue of CDD measures on the occasion of operations with bearer passbooks; financial institutions are not required to identify the originator and the beneficiary of funds transfers with the full data, and to renew customer identification and verification (if doubts etc.); no general legal requirement on the identification of beneficial owners and obtaining information about ownership of all types of legal entities.
R.6	**NC**	A basic requirement is in place only as regards the banking sector, but it is quite narrow and limited to "significant public offices"; the requirement has a limited effect in practice, due to insufficient familiarity of the industry with the concept and the absence of guidance (effectiveness issue)
R.7	**LC**	Some basic requirements are provided for in the banking regulations, complemented by individual initiatives guided by the banking association. The banking regulations needs to better reflect the various requirements of R.7 and the scope of requirements need to be broadened beyond banks (although the latter, which are most importantly concerned are covered).
R.8	**PC**	The requirements are only addressed – to some extent – for the banks. The broader implementation of R.8 needs to be reconsidered.

3.3 Third parties and introduced business (R.9)

3.3.1 Description and Analysis

581. At the time of the on site visit, a strict interpretation of the AML Act suggested that it is not permissible in the Czech Republic to rely on intermediaries or third parties to perform the CDD process or to introduce business. This assumption is based on the identification process provided for in the AML Act, which is generally accepted in the Czech Republic as requiring direct contacts between the obliged institution and the customer.

582. The CNB Provision N°1 addresses the issue of third parties acting on behalf of the bank. These are understood to be third parties used by the banks to provide their services and products, which fall under the exception mentioned in the note to FATF Recommendation 9 on outsourcing and agency relationships.

In practice

583. The team was advised by representatives of the banking sector that in the Czech Republic, it is not uncommon in practice that foreign companies establish first contacts through lawyers, in which case, due to the confidentiality applicable to that profession, it can happen that the financial institution has to rely on the information provided where it is not available otherwise to identify/verify the real beneficiary. The representatives stressed however, that they would not open an account/establish a relationship if the lawyer refused to reveal his client/the beneficiary or when the beneficiary cannot be identified. The examiners believe that this issue needs to be re-addressed.

3.3.2 Recommendations and Comments

584. In the light of the above, it is clear that introduced business and reliance on third party for the CDD measures are not permitted in the Czech Republic.

585. Amendments aimed at introducing this type of relationship in the Czech Republic are planned, which will hopefully clarify certain aspects. **With the entering into force of the proprosed amendments allowing for the system of introduced business, increased attention will be needed to ensuring the applicability of Recommendation 9 in the context of the new provisions.**

3.3.3 Compliance with Recommendation 9

Rec	Rating	Summary of factors underlying Rating
R.9	**NA**	

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and Analysis

586. Financial institution secrecy and confidentiality is regulated in sector-specific provisions.

587. For instance, banking secrecy is governed by Articles 38, 38a, 38b and 39 of the Act on Banks (Act N° 21/1992 Coll. Of 20 december 1991 as amended. Banking secrecy rules apply to all bank businesses, financial services of banks, including account and deposit statements. It imposes a duty on bank employees and the members of its supervisory board to maintain confidentiality in business matters that concern the interests of the bank and its customers. This obligations continues after termination of the employment or similar relationship. The law defines some exemptions from this rule: information provided to the CNB, reporting of a criminal act, and reporting on the basis of a special act [note by the drafters: for instance the AML Act]. For the purpose of prudential requirements and assessing the financial soudness and trustworthyness of a client, information related to the latter can also be exchanged with other banks, including through other legal entitities. The information can also be made available, without the client's prior written consent, to various bodies upon their written request, including courts, law enforcement authorities on the basis of the Criminal Procedure Code, the Ministry of Finance, tax authorities etc.

588. The insurance sector is another example: confidentiality is governed there by Article 39 of Act No. 363/1999 Coll. On insurance and on amendment to some related acts (the Insurance Act). It applies to members of the statutory and supervisory boards, employees of insurance and reinsurance undertakings, liquidator, administrator, as well as persons acting for an insurance or reinsurance undertaking in other relationship than employment, insurance intermediaries, independent loss adjusters and further persons participating in the exercise of the state supervision. These persons are required to keep confidentiality on the matters concerning insurance of natural and legal persons, including after termination of their employment relationship or other relationship than employment. With the approval of the customer, information can be shared upon their written request, with the Ministry when exercising its supervision, a court, an authority acting in criminal proceedings, the Securities Commission when exercising supervision according to a special legal provision etc.

589. In the Securities Sector, Section 20 of the Stock Exchange Act – Act No. 214/1992 Coll. Provides that participants in a stock exchange's meetings, members of its committees, brokers, employees of the stock exchange and legal entities engaged in clearing and settlement of stock exchange transactions are obligated to keep confidential any information acquired from their position as an insider, i.e. information that is important for the development of the capital market, or that concerns the interests of individual participants. For the purposes of civil or criminal proceedings and when fulfilling the duty towards the appropriate organisational section of the Ministry of Finance under a special law [a footnote refers to the AML Act], these persons may be released from these confidentiality provisions. Such release may only be granted by the chairman of the stock exchange chamber.

590. The Securities Act – Act 591/1992 Coll. Also addresses the issue of confidentiality in section 80 in similar terms (including an explicit reference to the AML Act), but the communication of information is not subject to any preliminary approval (be it by the chairman of the stock exchange chamber or anybody else).

591. The AML Act (Art. 7) deals with the confidentiality duty of obliged entitites in relation to the reporting duty and the possible additional proceedings deriving thereof. Para. 4

provides for an exception to this confidentiality duty which is not invokable against certain entities/authorities, including a law enforcement authority if it carries out proceedings connected with ML or in relation with a reporting duty connected with ML (FT being addressed as an element of ML-related suspicious transactions), individuals performing supervision activities, licensing bodies, the Security Information Services and Military Defence Intelligence in the context of a security check, a foreign authority in the context of the achievement of the purposes of the AML Act etc.

592. Furthermore, Art. 8 deals broadly with the access of the Ministry [the FAU] to information held by obliged entities.

593. Overall, the Czech authorities stressed that the divergences between different texts are a "paper matter" and not an issue in practice.

3.4.2 Recommendations and Comments

594. Globally, thanks to the AML Act, the level of financial secrecy and confidentiality is not unacceptably high in the Czech Republic and information gathered can be shared with foreign bodies for the purposes of AML/CFT.

595. This being said, there are inconsistencies between the sector specific regulations (which sometimes provide for the prior approval by an authority or the customer) and the AML Act (which does not provide for a preliminary approval of any kind although it covers mostly the same beneficiaries of the information. There are also occasional inconsistencies within a given sector-specific regulatory framework (the Securities sector). Finally, Art. 7 is – on paper - quite tricky when it comes to the lifting of confidentiality in relation with FT and access seems broader for law enforcement in the case of ML (as opposed to FT) related investigations. The information would probably be available indirectly in practice through the Security Information Service or the FAU but for the sake of legal security, things should be clear as the criminal police has the main responsibility in the field of terrorism-related investigations.

596. It is therefore recommended to review the consistency of provisions on financial confidentiality to avoid contradictions between sector-specific regulations and the AML Act, and to remove in particular unnecessary preliminary authorisations in sector-specific regulations;

597. It is also recommended to consider clarifying in the AML Act the exceptions to confidentiality in the context of CFT enquiries and investigation so as to clearly enable law enforcement authorities to accede to information in that context.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	The AML act suspends to a large extent financial confidentiality and secrecy but there are, on paper, inconsistencies in regulations. Provisions in the AML Act might need to be clarified in relation with FT (as far as law enforcement/criminal police are concerned).

3.5 Record keeping and wire transfer rules (R.10 & SR.VII)

3.5.1 Description and Analysis

Recommendation 10 – Record Keeping

598. FATF Recommendation 10 contains basic obligations that need to be enshrined in law or regulation and be sanctionable in case of non compliance.

599. Record-keeping requirements for financial and other institutions are dealt with under Art. 3 of the AML Act. In accordance with these provisions, obliged persons have to record all details obtained for the purposes of identification and to control the validity and complete character of that information data. The information obtained has to be recorded in the data files of the institution, according to the rules of para. 2.

600. The records on customer identification have to be retained for a period of 10 years after the relationship ended with the client. The Czech authorities advised that under this rule, financial institutions do keep all the clients- and transactions-related information in practice. Furthermore, identified transactions-related data is kept for a period of 10 years also by virtue of the the general accountancy/tax regulations.

601. In addition, the obliged persons must also record all the information and documents of any transaction connected with the identification obligation for a minimum of 10 years from the date of completion of the transaction.

602. The above time limits thus exceed the 5 years limit of Recommendation 10. There is no formal possibility for the authorities to impose longer deadlines, but (indirectly) supervisors and the FAU can obtain and store themselves information from obliged entities for over 10 years.

603. These obligations apply regardless of the amount of the transaction, except for traders in second hand goods and cultural items, who must retain the information for 3 years in all cases, and 10 years where the value of the transaction is above EUR 10,000.

604. Similar rules exist in sectoral regulations for the banks and branches of foreign banks, as well as foreign exchange institutions which fall under the supervision of the CNB. Article 21 (2) of the Act on Banks and CNB Decree nº 434/2002 Coll. Provide for a record keeping of transactions for a period of ten years, without further precision/distinction. Since the AML Act is more specific (record keeping after completion of the transaction and after termination of the relationship), this could create confusions. The Czech authorities indicated there have been no particular problems experienced until now.

605. The AML Act further provides for an obligation to establish internal principles and measures. These should include (Art. 9 para 3)c) “a mechanism that allows for the information stored (…) to be made available to the Minsitry”. Also, Article 6 of the CNB Provision N°1 requires, however, banks to have an information system in place as follows (a footnote even refers to the AML Act):

(1)The bank's information system must enable it to ascertain, monitor and evaluate the information needed
a)to achieve the purpose of a special legislative act and
b) to meet the requirements set forth in this Provision.
(2) The responsible employees and MLRO must have appropriate access to information in the bank's information system, allowing effective use thereof for the evaluation of suspicious transactions.

606. Despite this, the CNB found that financial institutions under its responsibility need to improve their analytical tools and develop databases with the information about customer and transaction records in order to enable a better and timely access to the information requested by the authorities. Information and files are often only stored in paper form and it would be difficult to impose a strict requirement to modernise the storage systems (there would be resistances from the banks due to the extra costs this would generate). The AML Act should draw inspiration from this provision of the CNB Provision N°1. As far as the non-bank financial supervisors are concerned, these appeared to have conducted no AML/CFT controls and thus, there was no experience in respect of record keeping in practice in those sectors.

607. The information registered by obliged entities is in principle accessible to the FAU, law enforcement agencies (when a formal proceeding is initiated with the prosecutor) and the supervisors. This is a requirement of Art 9 of the AML Act according to which obliged entities must provide for "the technical and staffing measures to ensure that the Ministry is able to carry out in the obliged person the tasks pursuant to Articles 6 and 8 by the legal deadline".

608. One last point concerns the type of information and documents to be kept in the files. A strict reading of Art. 3 para.2 of the AML Act suggests that the record keeping is limited to the identification information and documents. Recommendation 10 is quite broad and requires also to keep account files, business correspondence.

Special Recommendation VII – Wire Transfers

609. At the time of the on site visit, the transfer of funds was regulated by the Act on Banks (Act no. 21/1992 Coll.), by the Payment System Act (Act no. 124/2002 Coll. on Transfer of Funds, Electronic Payment Instruments and Payment Systems), and by the Act on Postal Services (Act no. 29/2000 Coll.).

610. The Act on Bank lists the activities offerable by banks and non-banking financial institutions. Article 1 Para 3 lists „money transmission services" as one of those activites which can be pursued by a bank, but the other provisions do not prohobit other entities from conducting this type of business, although para 5 adds, that „*the carrying-on of some of the activities listed in paragraph 3 may be subject to authorisation pursuant to a special legislative act*". Since money transmission service is one of those activities which require authorisation, this activity may be permitted only after authorisation has been granted pursuant to the special legal rules.

611. There are two „special legislative acts" in respect of authorisation: the Payment System Act (PSA) and the Act on Postal Services. The PSA regulates the „transfer of funds in

the Czech currency within the territory of the Czech Republic" and cross-border transfer, as narrowed down in Article 2 para 2 of the Act. Article 2 para 2 of the PSA stipulates: „*Cross-border transfer shall mean a transfer of funds from one member state of the European Union or the European Economic Area to another member state of the European Union or the European Economic Area in a national currency of a member state of the European Union or state of the European Economic Area up to the equivalent of EUR 50,000."*. Save for cross-border transfers, postal remittances, as defined in the Act on Postal Services shall not be deemed transfers. Thus the scope of the applicable rules is limited.

612. Legal entities or individuals authorised to conduct or intermediate a cash or non-cash transfer of financial capital are subjects to the AML Act. In the opinion of the Czech authorities this also covers the system of cross-border wire trasfers, hence their clients have to be identified.

613. For cross-border transfers by SWIFT, the transaction information contains the account number and name of both the originator and the beneficiary.

614. For domestic wire transfers, the account number is always transferred and the name of the originator is usually also included.

615. At the time of the on site visit the Czech legislation did not require financial institutions to keep originator information on fund transfers through the payment chain.

616. Beneficiary financial institutions are not required to adopt effective risk-based procedures for identifying and handling wire transfers that are not accompanied by complete originator information. There is no regulation on the possible refusal of executing transactions if the payment instructions are not complete and comprehensive.

617. The regulation, supervision, monitoring and sanctions also apply in relation to the obligations under SR VII. However it is doubtful, whether the Czech Telecommunication Office is able to meet its obligations in respect of AML/CFT when wire-transfers are executed (see also the developments related to SRVI).

3.5.2 Recommendations and Comments

618. The requirements related to Rec. 10 are basically in place in the AML Act. However, CNB regulations are less specific – which could create confusions in the sector under the responsibility of the CNB, and therefore, these regulations should be made consistent with the AML Act.

619. Besides identification data, the regulations should also cover explicitly account files, and business correspondence, and any other relevant information (written findings on complex and unusual large transactions etc.)

620. It is also recommended to maintain the pressure on financial and other institutions to store data and documents in a computerised way that would allow to retrieve information in a timely manner.

621. The requirements of SR VII on wire-transfers have not been directly addressed, but some elements of those have been dealt with by different pieces of legislation. The team was informed that the Czech regulation and practice would be compliant with SR VII after the enactment of EU-Regulation on information on the payer accompanying transfer of funds and as a consequence of being a Member State of the EU, that would automatically become part of the Czech legal environment. From the information available, there is a need for the time being:

- to require financial institutions peforming wire transfers to keep originator information through the payment chain,
- to introduce effective risk-based regulations and procedures for identifying and handling wire transfers that are not accompanied by complete originator information, including on the possible refusal of executing transactions if the payment instructions are not complete and comprehensive.

622. The competencies and supervisory power of the competent authorities should be strengthened, especially in the case of the holder of postal licence as a provider of wire-transfer services.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	Requirements are in place but they should more explicitly cover account files and business correspondence as required under R.10; in practice, files and documents are too often kept in paper form (banking sector) which creates difficulties to retrieve information in a timely manner.
SR.VII	**LC**	Not directly addressed in relation to various essential criteria (no regulation or policies applicable to the handling of transfers in case of incomplete identification data, no requirement to keep the originator information throughout the transfer chain etc.). To be re-addressed upon adoption of relevant EU-Regulation.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 & 21)

3.6.1 Description and Analysis

Recommendation 11 – Complex, unusual large transactions

623. Obliged entities are required to identify transactions which qualify as suspicious and to report them to the FAU. The list of examples contained in the AML Act (Article 1a (6)) does include some transactions which show patterns similar to those mentioned under FATF Recommendation 11 (e.g. transactions without apparent economic purpose or which do not match the client's profile etc.). Strictly speaking, the obligation does not go beyond identification/reporting purposes.

624. This being said, there is no specific requirement for all financial or obliged entities to pay special attention to all complex, unsusual large transactions, or unusual patterns of transactions etc., to examine the background and purpose of such transactions and to set forth the findings in writing, and to file these findings for competent authorities and auditors for at least five years as required by criteria 11.1 to 11.3.

625. Only the CNB Provision N°1 (which is obligatory and enforceable) contains a general requirement under Art. 3 2)f) to pay special attention to all complex, unsusual large transactions, or unusual patterns of transactions etc. By virtue of Art. 5 para 7), it does also require banks to file and store internal reports on transactions, including those not reported to the FAU, which can be understood to include those addressed under Art. 3 2)f). The storage period is that of the AML Act for customer identification information (10 Years).

Recommendation 21- Relationships, vigilance vis a vis risk countries

626. The situation regarding R.21 is similar to that of R.11. The list of examples of STRs requiring identification/reporting obligations contained in the AML Act (Article 1a (6)) contains in subparagraph h) a reference to "transactions directed to countries that inadequately or not at all, apply measures against the legalisation of proceeds". The requirement is, strictly speaking, limited to transactions, and does not apply to business relationships. In practice, the list available is the updated NCCT list of the FATF which is published on the FAU website, which also includes a link to the EU list of sanctions.

627. For the Banking Sector, CNB Provision N°1 (which is obligatory and enforceable) states that banks shall establish procedures for ascertaining risk factors in respect of new customers. According to Article 2 g), risk factors of a customer include: i) the country of origin of a customer, the country of origin of an owner of a business customer and the country of origin of a founder of non-business customer, wherever that country appears on the list of NCCT issued by FATF or on the list of countries that the bank considers risky based on its own evaluation; ii) the country of origin of a person with which a customer executes a transaction wherever that country appears on the FATF's list of NCCT. The Provision also indicates "tax heavens" as an example of criteria for higher risk countries to be listed on the entities own list.

628. From the information provided on site, maintaining lists of risk countries is a politically sensitive issue, even for the industry.

629. The regulations are silent as regards the requirements of criteria 21.2 and 21.3.

3.6.2 Recommendations and Comments

630. For the time being, the requirements of R.11 are addressed satisfactorily in banking regulations. It is therefore recommended to expand the obligation of R.11, beyond the banking sector, to all financial institutions and other obliged entities.

631. The basic requirement of R.21 are implemented in the AML Act and to some extent in the banking regulations also through the measures referred to for R.11. All requirements are not present though and existing measures have little impact in practice

since there is over- reliance on the FATF list of NCCT which contained only two or three countries at the time of the on-site visit. **The implementation of R.21 should be re-examined.**

3.6.3 Compliance with Recommendations 11 & 21

	Rating	Summary of factors underlying rating
R.11	**PC**	This is covered for the banking sector only, under the CNB Provision N°1.
R.21	**PC**	Only part of the criteria are implemented in the AML Act (the coverage is broader only for the banking sector); the impact is very modest in practice due to over-reliance on the FATF NCCT list and EU list of sanctions and no other initiatives taken either by the authorities/supervisors, or the industry.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)

3.7.1 Description and Analysis

Recommendation 13 & Special Recommendation IV – Reporting of Suspicious Transactions.

632. FATF Recommendation 13 contains basic obligations that need to be enshrined in law or regulation and be sanctionable in case of non compliance. This is the case in the Czech Republic since all obligations contained in the AML Act – including reporting of STRs – are sanctionable by fines imposable on the entity. Since failure to report is not criminalised (individually) in penal legislation, the mandatory character of the obligation to report has to rely on the internal disciplinary arrangements of the entity (see also the issue of sanctions under Section 3.10).

633. According to Article 4 of the AML Act, all the obliged persons have a duty to report to the FAU "a suspicious transaction or a fact of any other kind that might indicate a suspicious transaction". In a certain way, the reporting duty is narrower than the FATF standards since it applies – according to the STR definition in the AML Act – to transactions which are possibly linked with ML (or FT), rather than with "funds that are the proceeds of a criminal activity" (FATF wording). On the occasion of a revision of the AML Act, the Czech authorities could use this looser requirement, which would facilitate further the detection and reporting of suspicious funds/transactions. On the other hand, the reporting duty applies to other facts that could indicate a suspicious transaction. This bears some features of the requirement of the EU Directive Art. 6.1a but to be fully in line with the latter, the AML Act should then refer to facts which might be an indication of money laundering (and FT).

634. The solution adopted by the Czech Republic to have a reporting duty and – separately – a definition of "suspicious transaction" is an interesting way of facilitating amendments and the extension of the scope of the reporting duty as necessary. This being said, the

reader has to carefully refer back to the definition of an STR to understand what the reporting duty applies to.

635. The reporting duty applies to (the laundering of) proceeds of all crimes, and as indicated earlier in this report, the ML definition contained in the AML Act is very similar to the international definitions. In particular, it is based on the all-crime approach.

636. The reporting duty also applies to FT insofar as the definition of an STR of Art. 1a para. 6) includes "funds used in a transaction [that] are intended for the financing of terrorism, terrorist activities or terrorist organisations. The examiners welcomed the broad wording but noted that it misses the element of "those who finance terrorism" required by criterion 13.2 and SR IV.

637. The report has to be done to the FIU immediately and no later than 5 days after discovering the transaction. Reports are sent directly and through the reporting officer to be appointed according to Art. 9, except for the profession of lawyers who report through the Bar Association. The reporting officer has to be in direct contact with the FAU. The report may be made orally or in writing. Article 4 para 2) provides for the possibility for the desk employee to report directly to the FAU. The reports has to include the identification details gathered about the customer, as well as information about "important circumstances of the transaction".

638. The AML Act does not specify the level of suspicion required and does not refer to a lower element such as "reasonable grounds to suspect". But looking at the wording used by the AML Act, the standard of suspicion is not unnecessarily high. On the occasion of a revision of the AML Act, the Czech authorities could use this looser requirement, which would facilitate further the detection and reporting of suspicious funds.

639. The AML Act makes no difference between completed and attempted transactions (criterion 13.3). The Czech authorities stressed that the latter are covered by the reference to "facts of any other kind that might indicate a suspicious transaction" (see also below). This should be clarified and both situations should be clearly contemplated. There are no thresholds for reporting, except as regards the specific reporting duties of employees of the tax administration who report suspicions where the tax collected or the tax refund exceeds EUR 15,000. Apart from that, tax matters are not provided as an exception to the general reporting duty (criterion 13.4).

640. Financial and other institutions are not required directly by the AML Act to report suspicions of other criminal acts, but Article 4 para 10 reminds them that reporting under the Act does not affect their other possible reporting duties concerning criminal acts by virtue of other pieces of legislation.

European Union Directive

641. As seen above, the reporting duty under the AML Act (Art. 4) applies to "a suspicious transaction or a fact of any other kind that might indicate a suspicious transaction" and it is – strictly speaking – also narrower than the money laundering indication concept of the EU. Art. 4 para. 10 (*the reporting of a suspicious transaction does not affect the*

duty stipulated in a special Act to report facts that indicate the committing of a crime) is understood as to refer to the reporting of crimes under the Penal Code.

642. Also, Article 7 of the Directive requires states to ensure that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities (unless to do so is impossible or is likely to frustrate efforts to pursue the beneficiaries of a suspected money laundering operation). The Czech legislation – Art. 6 Aml Act – covers this type of situation.

Recommendation 14 – Protection for disclosure, Tipping Off

643. Art. 6 of the AML Act provides for an exemption of liability, as required by criterion 14.1. The system in place transfers in fact the liability for possible damages to the Ministry of Finance. The protection is granted to the entity in respect of possible consequences of complying with Art. 6 (that is, suspending a transaction). Therefore, the protection is not explicitly granted to the institution's directors, officers and employees, and it does not cover explicitly the disclosure of information to the FAU (outside the context of a suspended transaction), which is dealt with under Articles 4 and 5. Although Art. 4 para. 6 states explicitly that "the performance of reporting obligation pursuant to the (…) provisions is not a breach of the legal duty of confidentiality imposed pursuant to a special Act", the examiners believe that for the sake of legal security, the protection should explicitly cover the disclosure of information. Also, interviews conducted on site revealed that this is an issue in practice, particularly since employees of reporting institutions occasionally have been called to testify in court and the fact that banking information was communicated has been a source of controversies in that context.

644. On the other side, the provisions on tipping off (criterion 14.2) contained under Art. 7 on the confidentiality duty are quite broad and cover all the employees of the obliged entity, and almost all the possible steps of the proceedings, including the reporting, the suspension and further enquiries by the FAU. The CNB Provision N°1 extends it to the investigative stage. Therefore, to be fully in line with the the 2nd EU Directive, the AML Act would need to contain a similar provision.

645. On the basis of the Decree No. 344 of 2004 on the fulfilment of reporting duties pursuant to the AML Act, it is possible to take measures to ensure that the name of reporting staff is kept confidential (the FAU has the possibility, if needed, to replace the name and details of the reporting employee by a code).

Recommendation 25 – Feedback on STRs (criterion 25.2)

646. During the evaluation it was learnt from various associations and entities that the FAU does not give any feedback to Financial Institutions and DNFBPs, although occasionally some had managed to know about the (negative) outcome of their reports e.g. the lawyers/Bar Association.

647. The FAU stressed that individual subjects are operatively provided with some feedback as each individual STR triggers a confirmation of the receiving of the STR. Entities are

always informed about the fact that the FAU lodged a criminal complaint following the suspension of a transaction. The FAU also closely cooperates with the reporting institution during the process of obtaining additional information.

648. The team was informed that the FAU is prohibited by law to give any information concerning STRs. This situation requires to be reviewed so that the FAU and as appropriate the supervisory authorities/self-regulatory organisations concerned provide adequate feedback to financial institutions and other reporting bodies in connection with reported cases of suspicious transactions, without necessarily doing so on a case by case basis or in real time. The examiners recall that in the absence of an annual report produced by the FAU, even an overall feedback/overview on an annual basis is not available, that could add to the motivation of obliged entities.

Recommendation 19 – Currency Transaction Reporting

649. The Czech Republic has not introduced a system for financial institutions to report currency or cash transactions above a certain amount. This possibility was examined in the past but it was prefered to stick to an STR-based regime to ensure a higher level of quality of information and not over-burden the FAU with vast amounts of reports.

650. Leaving aside the system on the declaration of cross-border movements of cash and other assets (see the developments on SR IX under Section 2.7 of this report), the only such system in place concerns certain business entities (see Section 4.4 of this report). Not already listed among the obliged persons, which, in the framework of an individual business or auction, receive a payment in cash in an amount in excess of 15,000 EUR. It was explained that this provision applies to all business entitites not already covered in the list regardless of the kind of activity, as far as a payment in cash for one-off individual business or auction exceeds EUR 15.000.

651. The examiners were aware of the already existing staffing constraints and of the additional and specific needs in terms of IT requirements that go with a system for reporting cash transactions. But the Czech authorities might wish to reconsider the merits of introducing a reporting duty for currency transactions above a certain amount (as suggested by Recommendation 19). This would help detect further transactions possibly connected with ML and FT, which otherwise are likely to remain undetected. The examiners noted in particular that the list of suspicious transactions to be reported according to the AML act, although it is not limitative, does not contain any patterns involving cash.

Recommendation 32 – Maintenance of Statistics

652. As indicated under section 2.5, the FAU keeps comprehensive statistics. The following were provided as regards the STRs received, and their origin, for the years 2001-2004. The information is detailed enough to show precisely the origin of the reports, which emanate to a large majority from the financial sector. Overall, and looking at the statistics - including the various tables reproduced at Section 2.5 (on the FAU), the reporting system seems quite effective as regards the financial sector. No separate statistics are kept on FT-related STRs.

Type of the obliged person	STRs			
	2001	**2002**	**2003**	**2004**
Banks	1408	1122	1793	3083
Insurance companies	25	19	39	73
Money remitters	53	27	39	71
Lawyers	-	-	-	3
Exchange offices	3	4	6	4
Securities market	235	169	69	6
Real estate agencies	3	-	-	2
Pension funds	1	9	5	3
Leasing Company	1	-	-	2
Casinos	-	1	1	-
Auctioneers	-	-	1	2
Other supervisory bodies	12	7	15	13
Customs General Directorate	1	-	-	1
Liquidator	-	-	-	1
Foreign FIUs	-	-	-	1
Others	9	21	2	-
In total	**1751**	**1379**	**1970**	**3265**

653. There is no similar requirement to keep statistics for the financial institutions and other obliged entities although both the AML act and the CNB Provision N°1 require to store information. Although one can assume that where ML reporting officers have been appointed, he/she would keep also statistical records (it is worth underlining that CNB Provision N°1 requires from the reporting officers in their annual assement of the internal measures to provide the bank management with a statistical overview).

3.7.2 Recommendations and Comments

654. The system for reporting ML and FT put in place in the Czech Republic appears to be quite sound, if one excepts the issue of feedback which needs to be addressed.

655. With such a good basis already in place, it would be beneficial if the Czech Republic made a few more efforts to fine-tune the reporting regime to facilitate its implementation.

656. The examiners made the following recommendations:

- to widen the scope of the CFT reporting obligation to include “those who finance terrorism”
- to introduce an explicit requirement to report attempted and completed transactions.
- to extend explicitly the benefit of protection measures to the disclosure of information and the obliged entities’ management and staff
- to provide appropriate feedback to financial institutions and other obliged entities besides general information and statistics on cases to be published in future in the FAU’s annual report
- to re-consider the merits and opportunity of introducing a system for the reporting of cash transactions.

3.7.3 Compliance with Recommendations 13, 14, 19 and 25 (criteria 25.2), and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**LC**	Reporting attempted and completed transactions is not clearly spelled out
R.14	**LC**	**The protection does not extend explicitly to the disclosure of information (although it covers the suspension of transactions), beyond the obliged entity, to its management and staff,**
R.19	**C**	
R.25 (25.2)	**NC**	No feedback provided due to strict application of legal confidentiality requirements by the FAU
SR.IV	**LC**	In addition to the general findings concerning the reporting obligations: no reference to "those who finance terrorism"

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)

3.8.1 Description and Analysis

Recommendation 15 – Development of AML/CFT Internal Programmes

657. Article 9 of the AML Act entitled "the system of internal principles and training programs" requires from all obliged persons to introduce and apply procedures of internal control and communication for the purpose of being able to comply with the obligations stipulated in the AML Act. This meets the requirement of criterion 15.1.

658. The system must contain the following elements:

a) "the detailed demonstrative enumeration of the indications of a suspicious transaction,
b) for the way of the identification of the client,
c) a mechanism that allows for the information stored pursuant to Article 3 to be made available to the Ministry,
d) the procedure of the obliged person from the detection of the suspicious transaction to the moment of delivery of the report to the Ministry so that the deadlines stipulated in Article 4 paragraph 2 are observed as well as the rules for processing the suspicious transaction and designating the people who will analyze the suspicious transaction,
e) the measures that will prevent the threatened danger that due to the immediate execution of the client's instructions, the securing of the proceeds could be spoiled or significantly hampered,
f) the technical and staffing measures to ensure that the Ministry is able to carry out in the obliged person the tasks pursuant to Articles 6 and 8 by the legal deadline."

659. This must be made in writing for all obliged institutions, but not for some DNFBPs (in general, the smaller ones). These written procedures must be forwarded by banks, insurance and some other financial institutions[69] to the Ministry (FAU) within 30 days of their adoption. The Czech Securities Commission is the destinee of procedures in writing from the securities sector[70]. Both the Ministry (FAU) and the Securities Commission have the explicit duty to verify the conformity of these procedures with the AML Act and to ask for the necessary improvements.

660. As indicated earlier in the report, full CDD information and transaction records are not explicitly addressed in the AML Act and basically, only identification information has to be retained.

661. Obliged institutions are also required to appoint an officer to fulfil the reporting obligation and to ensure an on-going contact with the Ministry (the FAU), unless this is done by the management itself. The Ministry is informed of the designation of this person by some of the obliged institutions (the institutions required to submit their procedures in writing, as well as holders of a gaming licence). The CNB Provision N°1 contains further details as to the role of the money laundering reporting officer – MLRO (further assement of the suspiciousness of the STR, access of the MLRO to the information stored) and a clarification as to the distinction between internal reporting to the MLRO and the FAU. None of the texts requires that the MLRO should be appointed at managerial level so that he/she could ensure compliance with the internal rules and the AML/CFT requirements. There are no requirements to develop appropriate compliance management arrangements besides the appointment of an officer, whose role appears to be limited to the reporting duty, as opposed to ensuring compliance. However, it appeared from the interviews held on site that banks in particular had granted larger responsibilities to their responsible officer. The examiners believe that the role of the appointed officer should be broadened in the AML Act to become a compliance officer.

662. There is no requirement in the AML Act to establish an audit function to test compliance with the internal procedures (criterion 15.2), nor is this role given to the reporting officer. The only provisions addressing these matters are those applicable to the banking sector: CNB Provision n°1 requires from the MLRO to submit to the the management of the bank a report evaluating the bank's anti-money laundering activities. Furthermore, a CNB Provision N°2 dated 3 february 2004 "on the internal control system of a bank" imposes a duty to have an internal control system in place and to evaluate periodically notably operational risks which include the losses derived from non-compliance with legal rules. It should be noted that the requirement deriving from Provision N°1 is limited to AML. In practice this is done by an external auditor ; as the CNB explained, theinterla audit of a bank is generally not competent for AML/CFT. This would theoretically be the task of a money laundering compliance department.

[69]The CNB, as well as a bank, savings or credit co-operative, insurance company, the Czech Consolidation Agency, the holder of a postal licence and a legal entity or an individual authorised to trade with foreign currency on his own account or on a client's account, to conduct or intermediate a cash or non cash transfer of financial capital, to financially lease, to provide credit or monetary loans or to the trading with them or to issuing non cash payment means

[70]The Securities Centre or other legal entity authorised to maintain parts of registers of the Securities Centre as well as to perform its other activities, the organiser of a securities market, a securities dealer, that is not a bank, investment company, investment fund, pension fund and commodities stock exchange

663. The AML act also requires from all the obliged entities to train on a regular basis (at least once in a period of twelve consecutive months) their employees who are likely to be in contact with STRs. The training has to include the detection of suspicious transactions and the application of the procedures provided for in the AML Act. This is globally in line with criterion 15.3.

664. Screening procedures for the hiring of employees are not a requirement for financial and other institutions.

665. Apart from the requirements for MLROs of banks to submit an annual report, there is no specific provision in the AML Act concerning the right for MLROs to report to their senior management (criterion 15.5).

666. Overall, financial and other institutions are normally required to appoint a reporting officer, to train their staff and to provide updated indicators for suspicious transactions. As the examiners were advised on site, the existence of internal procedures is the primary area of control of the FAU in its supervisory capacity, and the other supervisors – particularly the CNB, but also the CSC. The Czech Banking Association (CBA) and some commercial banks confirmed that banks have already established internal procedures and have designated a compliance (reporting) officer. The representatives of the banks also informed that their banks have an independent audit unit.

667. Given these positive factors, the examiners wondered why the interviews held on site have revealed a rather high level of disatisfaction, including in the banking sector, as regards the level of knowledge and awareness on AML-, and above all CFT-related issues. The examiners noted that explicit references to both AML and CFT are absent in the requirements of the AML Act (apart from the definiton of an STR), and in the CNB Provision N°1 which refers in fact only to the AML role of the MLRO. These factors, together with the discrepancy between the measures in place and the dissatisfaction heard on site, do raise interrogations as to the effectiveness of the measures in place. It is important that these measures in place are applied properly within obliged entities to ensure the functioning of the preventive AML/CFT system of the AML Act in practice. The money laundering compliance officer is a crucial element in the machinery.

Recommendation 22 – Applicability of Recommendation to cross-border branches and subsidiaries.

668. Besides the general provisions on consolidated supervision that can occasionally be found in sector-specific regulations (e.g. Act N° 21/1992 on Banks), there is no requirement in the AML Act or financial regulations that would ensure that foreign branches and subsidiaries of Czech financial institutions are subject to adequate AML/CFT requirements. Article 4(4) of the AML Provision issued by the CNB, only states that all banks shall require persons with respect to whom they are a controlling person to apply the "know your customer" principles to the same extent as the bank, unless the law of the country of origin of such persons prevents this.

669. In practice, there is only a limited number of branches of Czech financial institutions operating abroad (concerning the banking scetor for instance, only one branch of a Czech commercial bank is located abroad - in Slovakia- and thus subject to the Slovak AML/CFT requirements). But the issue needs to be re-addressed, particularly in the context of the globalisation of financial markets.

3.8.2 Recommendations and Comments

670. In the light of the above, it is recommended:

- to include in the AML Act a requirement to develop appropriate compliance management arrangements; the reporting officer should become a compliance officer with broader responsibilities, appointed at managerial level (the CNB Provision N°1 will need to be amended accordingly).
- to include in the AML Act an audit requirement for AML/CFT arrangements and the screening of employees
- AML and CFT need to be addressed more specifically in the various requirements of internal AML/CFT arrangements.

671. It is also recommended to consider implementing the requirements of Rec. 22 to make sure all branches of Czech financial institutions operating abroad are subject to AML/CFT requirements.

3.8.3 Compliance with Recommendations 15 & 22

	Rating	Summary of factors underlying rating
R.15	**PC**	Rec 15 needs re-addressing in the AML Act due to several shortcomings which are only compensated to some extent for the banking sector (internal procedures are needed beyond the mere appointment of a responsible officer, the reporting officer needs to become a compliance officer appointed at managerial level and explicitly entrusted with broader responsibilities, an audit function and screening procedures for employees are needed, AML and CFT should be addressed explicitly and inconsistencies between the AML Act and the banking regulations needed to be reviewed; effectiveness issue
R.22	**NC**	No explicit general AML/CFT requirements implementing R.22

3.9 Shell banks (R.18)

3.9.1 Description and Analysis

672. As a general principle, the establishment of shell banks is not allowed. According to Article 34 (2) of the Act on Banks, the licence may be revoked if: a) the bank does not start its activities within twelve months of being granted its licence or if it has ceased to

accept deposits from, or provide loans to, the public for six months or more, b) the licence was obtained through false information stated in the application.

673. By virtue of Article 4 (5) j) of the Act on Banks, the registered office of any future bank must be within the territory of the Czech Republic. Concerning branches of foreign banks, the foreign bank wishing to carry on activities through a branch within the territory of the Czech Republic must have its registered office and its head office in the same state, according to Article 5 (4) i). Specific provisions derived from the EU principles (single licence etc.) apply to branches of EU based entities.

674. According to Article 4 (4) a) of CNB Provision N°1, banks shall only co-operate with correspondent banks that apply AML/CFT measures and that have their registered office and actual head office in the same state. This can be broadly interpreted as meaning that banks are not permitted to enter into correspondent banking relationships with shell banks.

675. The question of correspondent banking relationships is dealt with in the *Provision of the CNB N°1 (of 8 September 2003 on the Internal Control System of a Bank for the Area of Money Laundering Prevention).*

676. According to Article 4 (4) a) of this text, banks shall only co-operate with correspondent banks:

- that apply anti-money laundering and terrorism financing regulations,
- that have their registered office and actual head office in the same state,
- whose commercial activities it is familiar with.

3.9.2 Recommendations and Comments

677. Basic requirements are in place that ensure the non existence of shell banks in the Czech Republic. Some improvements are needed to ensure that correspondent banking relationships requirements are extended beyond the banking sector to all financial institutions (e.g. credit unions), and criterion 18.3 needs to be addressed.

678. It is recommended to address the issue of correspondent banking relationship in the AML Act and to cover the requirements of criterion 18.3 (on the use of respondent financial institutions' accounts by shell banks).

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**LC**	Relationships with shell banks need to address all relevant financial institutions beyond the banks (e.g. credit unions). No provisions covering criterion 18.3

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system – competent authorities and SROs/ Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)

3.10.1 Description and Analysis

Recommendation 23 – Adequate Regulation and Supervision

679. The AML Act sets clear responsibilities in the field of specific AML/CFT supervision of the financial and other entities (criterion 23.2). According to Art. 8, the Ministry (FAU) has overall responsibility to ensure that all obliged financial and non financial institutions do comply with the obligations contained in the AML Act.

680. In addition, Art. 8 gives similar responsibilities to a series of prudential supervisors[71]:

- the Czech National Bank (CNB) as regards banks and other entities to which it grants a foreign exchange licence;
- the Czech Securities Commission (CSC) as regards the Securities Centre, organisers of a security market, securities dealers other than banks, investment companies, investment funds, commodities stock exchange;
- the Office for the Supervision of Co-operative Savings Unions (OSCSU) as regards co-operative savings banks and credit unions;
- the Office of the State Supervision for Insurance and Pension Funds (OSSIPF) as regards insurance companies and pension funds;
- the State Supervision over the Observance of the Act on Lotteries and Similar Games as regards casinos, lotteries, gambling halls, betting agencies etc.;
- The Czech Commercial Inspectorate, as regards traders in second hand goods, and goods of a cultural value and the like.

[71] In the summer 2005 it was decided by the government that integration will be done only in one phase and quicker. Since April 2006 the Office of the State Supervision over Insurance and Supplementary Pension Insurance, Credit Union Supervisory Authority and Securities Commission merged into the Czech National Bank. The CNB is now the consolidated financial market supervisor. Nowadays, the processes of supervision are unifying and integrating with emphasis on application of comparable qualitative requirements on internal control system, risk management system including anti money laundering system of concrete financial institution. Unified decree for all financial subject supervised by the CNB is in progress and will be based on provision valid for banks. Majority of recommendations will be fulfilled in this integrating process.

681. On site, the examiners met also another body, namely the Credit Union Supervisory Authority (CUSA)[72]. In May 2004, the Government decided to integrate gradually the financial sector supervision. During the first stage (end of 2005, beginning of 2006) supervision of credit unions would be integrated into the banking supervision (under the umbrella of the CNB) and the Czech Securities Commission would become responsible for supervising the insurance sector. In a second stage, connected with the Czech Republic accession to the Economic and Monetary Union, the two aforementioned supervisory agencies would be integrated into a single supervisory body.

682. All financial institutions, once licensed and authorised to operate, are subject to the AML Act and to the relevant sector-specific regulations, as well as general supervision (criterion 23.1). The fact that the FAU has a parallel supervisory power requires additional efforts in terms of coordination but it also prevents any loophole in the supervison/control system.

683. Furthermore, the supervsiors are also obliged to report their own suspicions (in the form of STRs) to the FAU, which broadly meets the requirements of Article 10 of the **EU Directive** (*Member States shall ensure that if, in the course of inspections carried out in the financial institutions by the competent authorities, or in other ways, those authorities discover facts that could constitute evidence of money laundering, they inform the authorities responsible for combating money laundering*).

684. The existing self-regulatory organisations (SROs) – such as the Bar Association, the Chamber of Notaries, the Chamber of auditors – have to be involved in an inspection that would be done by the FAU. In all other cases, the FAU can act on its own, or coordinate control initiatives with the sector-specific regulatory /supervisory body.

685. Supervision is mostly done by one specific department of the supervisor. In the case of the CNB, there are two. The On–Site Banking Supervision Division is in working contact with the Off-site Banking Supervision Division on a daily basis (according to the circumstances), for example in assessment if bank took adequate steps for improving the AML system after the on-site examination, sources of benchmarks for the assessment of AML systems of banks etc.

686. From the discussions held on site, the CNB, OSSIPF and CUSA are aware of their responsibilities and do ensure in practice that financial institutions under their control implement the requirements of the AML Act. Some of them use targeted inspections in respect of the requirmenst of the Act. Little information was available about CFT specific attention paid by the supervisors. The CNB indicated that they always check if financial institutions monitor their clients and compare them with the terrorist lists and if they are able to react on a situation when such a name corresponds with a name of their client.

687. The supervision has mostly focused on objective elements: existence of internal procedures including the appointment of a reporting officer. The agreement established between the FAU and other supervisors foresees that it is the FAU who agrees upon the internal procedures, the sectoral supervisors checking only that they have been updated.

[72]The authorities advised after the visit that the only body responsible for the supervision of credit unions is OSCSU (although the replies to the questionnaire and the visit on site refered to CUSA, as the examiners noted).

688. For some reason, and although the AML Act is quite clear on that, the OSSIPF consider that the appointment of a reporting officer is not an obligation for insurance companies, but it was advised that in practice, these officers are in place (in large companies, it is a member of the Audit department).

689. These basic requirements are thus in place and most of these supervisors had no particular difficulty to have the entitities comply (requests for changes have generally been sufficient). Also because the CNB regulations contain more specific requirements, controls in the sector under the supervision of the CNB have been more demanding (including also for the banks to explain unreported transactions, to improve identification mechanisms)[73]. In practice, the AML system of banks are also subject to evaluations carried out by external auditors. CUSA has also exerted pressure on Credit unions to include a risk management component. In general, the examiners felt some reluctance to ensure strict compliance with the information keeping requirements that are connected with AML/CFT purposes. Due to the consequences of this situation for the AML/CFT regime, supervisors should be stricter in this respect.

690. These controls have been done either on site, or off-site (e.g. when the AML Act was last amended in 2004, these supervisors have generally checked whether the internal procedures had been amended accordingly). CUSA admitted that some unions had not updated their internal rules. For the OSSIPF and CUSA, on-site AML supervision is mostly done as a part of the general prudential supervisory work.

691. As far as the CSC is concerned, the examiners could not draw a similar positive picture. On one side, representatives met at a first general meeting seemed well aware of the CSC's responsibilities under the AML Act and the examiners were advised that off-site controls were about to be completed to check whether the internal AML provisions had been updated (some entitites had not responded but the CSC would have pushed them). On the other side, the Sanctions and monitoring Department of the Securities Commission that the team asked to meet seemed unclear as to whether they had responsibility to ensure compliance also with the AML Act, they seemed reluctant to/unaware of their possibility to use the sanctions provided for in the Act, they regretted that "we have no legal background and cannot recognise STRs". Although market manipulation and insider trading are criminalised, they acknowledged difficulties to identify these acts, they had no views on the issue of ML risks in their sector and knew nothing of coordination within the SCS or with the FAU etc.

[73] On-site examinations in AML area comprise the following topics:
- System of Internal Polices, Rules and Procedures of the Bank Regarding AML System
- Customer Identification
- Customer Acceptance Policy
- Information System of the Bank (including system for detection of suspicious transactions)
- Evaluation of Suspicious Transactions and Reporting of Suspicious Transactions to FAU
- Duties of the Money Laundering Reporting Officer
- Record Keeping (in electronic and paper form)
- Training Program for Responsible Staff
- Sample Testing (choice and examination of the sample)
- Bank Internal Control System in AML area (including role of Internal Audit Department in AML system of a concrete bank)
- Overall Assessment of Effectiveness and Efficiency of AML System of the Examined Bank

692. Criterion 23.3 contains requirements to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.

693. The biggest part of the banking sector in theCzech Republic is owned by foreign banks (France, Germany, the United States). Only about two small banks are owned by Czech entities. During the licensing process, the Czech National Bank assesses the competence of persons having a qualifying holding in the bank to exercise shareholder rights in the bank's business activities (see Article 4(3)© of the Act on Banks). In addition, the consent of the Czech National Bank is required prior to any acquisition of a qualifying holding in a bank or prior to any increase of a qualifying holding in a bank above certain percentage levels (10%, 20%, 33%, 50%) (see Article 20(3) of the Act on Banks).

694. The essential elements of the application are provided for in CNB Decree No. 166/2002 Coll. (see Article 2(3)(f), Article 3(3)(h), Article 8(3)(a) and Article 9(3)(f)).

695. During the licensing process, the Czech National Bank assesses also the competence, trustworthiness and experience of persons nominated for executive managerial positions (see Article 4(3)(d) of the Act on Banks). A person convicted lawfully in the past of a willful criminal offence may not act in such a position (see Article 4(5) of the Act on Banks). The essential elements of the application are provided for in Decree No. 166/2002 Coll. (Article 7). On 13 December 2002, the Czech National Bank issued an official information regarding the assessment of the competence, trustworthiness and experience of persons nominated for executive managerial positions in a bank or a branch of a foreign bank. The Czech National Bank also requires documents on the origin of any contributions to the capital of a bank by persons having qualifying holdings or of any funds from which a qualifying holding was acquired in the bank (see Article 2(3)(c), Article 3(3)(e), Article 8(3)(b), Article 9(3)(e) and Article 10(2)(b) of Decree No. 166/2002 Coll.).

696. Regarding the insurance sector, imminent legal amendments were expected, which would improve the market entry and ownership control by the OSSIPF. At the time of the visit, "fit and proper" criteria for the managers of insurance companies and brokers did not exist. The application for an authorisation to carry on insurance activity has to contain the amount of registered capital of a joint stock company and registered basic capital of a co-operative and its source, but checking the origin of capital in case of an increase of registered capital is not required by law. The OSSIPF does not supervise the agent but relies on the information provided by the licence-holder.

697. The CSC representatives confirmed that a licence is delivered to national applicants following background checks taking also into account "fit and properness", the need for a clean criminal record. Foreign investors must present a copy of the criminal record and a certificate stating that the applicant has not been subject to administrative proceedings. The CSC can and does cooperate with foreign counterparts to carry out those checks. On the other side, no information was available as regards the control of the origin of funds by the CSC.

698. CUSA representatives indicated that until 2004, the sector of credit unions was extremely liberalised, poorly regulated and far from meeting the European and other standards. As of May 2004, the minimum capital was raised from CZK 500,000 to CZK 35 million, which has led to a sensible decreasing in the number of credit unions (there were no mergers). A Further decrease is expected with the CNB taking over the responsibility for this sector. Since then, the origin of assets and the background of applicants for a licence is checked, and the CUSA has to make sure that managers and/or the entity are "fit and proper". The latter applies to the history of the person for the last 5 years. Regarding foreign ultimate beneficiaries, CUSA admitted that they are at an early stage and need to develop international contacts to do the checking. In principle, the licence can only be delivered when CUSA has satisfied itself that the requirements are met. Bearer shares are not an issue in the sector of credit unions (they are not permitted).

699. Various supervisors acknowledged doing their best to understand as much as possible the origin of funds and identify the ultimate beneficiary. Information to carry out double checks is not always available and a certain degree of flexibility is required.

700. Banks, insurance businesses and collective investment schemes and market intermediaries are normally subject to the Core Principles (criterion 23.4). The Czech financial sector is increasingly familiar with issues such as risk management processes. From the information gathered on site, the regulatory and supervisory measures that apply for prudential purposes are applied for AML/CFT purposes, for the time being, only by the banks (the CNB Provision N°1 also requires a risk-based approach applicable to the clientele).

701. Concerning criteria 23.5, 23.6 and 23.7, the examinesr noted that foreign exchange offices are licensed for **purchasing** foreign currencies under the Trade Licensing Act by the Trade licensing authorities, and Foreign exchange offices are licensed for **selling** foreign currencies by the CNB. It was confirmed on site that the rules diverge to a large extent and the team heard controversies about this sector ("anybody can do foreign exchange business at the moment"). As it is stressed in the introductory part of this report, there is a significant illegal foreign exchange business taking place openly on the streets in Prague, which possibly involve fraudulent schemes. Therefore, this problem needs to be addressed by a consistent and stricter approach.

702. The examiners were also concerned about allegations of underground banking taking place in the Czech Republic and they understood that this could refer to so-called "loan sharks".

703. But the issue of informal money transfer/remittances was also underlined and acknowledged by the authorities. It appeared that it was difficult to draw a clear picture of the types of providers involved in this field (as either primary licence holders and/or business affiliated to money remittance networks. The CNB licenses money transfer services. The business is supervised by both the CNB and the FAU depending on whether the licenceholder or the ultimate affiliated business is concerned, but despite allegations of misuses of the sector for ML, the examinesr were struk by the absence of a clear picture of the providers involved which suggests that neither the CNB nor the FAU supervise comprehensively enough the sector. The Czech Post, which also offer money transfer services are supervised by the FAU. Controls have mostly been done

off-site (see also the developments concerning SR VI). These issues need to be examined as well.

704. Regarding criterion 23.7 in particular, there is no lower risk-based approach applicable to the financial sector on the basis of AML/CFT considerations. Risk assesments of that kind are not carried out as such and for the time being, the priority for the financial sector is to first become familiar with the AML/CFT matter. This being said, the CSC indicated that they perform state supervision over their sector using a risk based supervision approach. It was unclear whether AML/CFT controls are only triggered as part of this overall risk based approach.

Recommendation 30 – Adequate Resources

705. The FAU remains the main supervisor as it has the broadest scope of control and it is explicitly in charge of AML/CFT requirements. Before the restructuring, the department in charge of controls comprised only 2 staff. Since this department was merged with another one, the figure is still the same (2 staff dealing with controls). The FAU explained that the focus is now mostly on off-site controls.

706. Among the financial licensing/supervisory bodies, the CNB probably has the most developed services.The Banking Regulation and Supervision Department of the CNB is divided into various Divisions: Banking Regulation, Off-site Banking Supervision, On-site Banking Supervision, Licensing and Enforcement, and Supervisory Support. The total number of banking supervision staff is 97, 33[74] of them are working on the on-site banking supervision. The On-site Banking Supervision Division is responsible for on-site examinations of banks in the AML area and for the time being, this Division has only 2 employees for conducting on-site examinations in AML area in banks. But they are aware of the fact that this is not enough, and they plan to recruit one more inspector. If necessary, employees of the Licensing and Enforcement Division can also take part in AML on-site inspections.

707. The situation regarding the other sectors is variable. Whilst the OFSSIPF considered that their staff was sufficient to carry out their tasks, CUSA aknowledged that compared to the CNB, their means are limited to be an effective supervisor. The situation of the CSC remained unknown[75].

708. In general, the staff of the supervisory bodies are given means to develop their skills. Some have received specific AML training. As seen above, the lack of skills of those of the CSC compliance department was obvious.

709. The examiners anticipate that with the (planned) merger of the supervisors under the umbrella of the CNB, this will provide for opportunities to exchange experience and allow a greater degree of flexibility in the management of human resources to ensure as necessary that at times, larger teams are dealing with AML/CFT supervisory actions.

[74] One more staff was recruited after the visit

[75] Due to integration and ongoing organisational changes after the visit, the matter of staffing is now being assessed in the scope of the CNB as whole

710. Standards are in place as regards the integrity of staff working for the FAUI and financial supervisors. The principle of confidentiality is enshrined in Article 7 (2) and (3) of the AML Act and applicable to the FAU and the (financial) supervisors mentioned under Article 8. The duty does not expire with the termination of employment.

Recommendation 29 – Power to Supervise

711. The FAU as the "universal supervisor" has a broad access to information from all obliged entitities (except where professional secrecy applies such as lawyers) and can carry out on-site inspections. Its powers are provided for in Art. 10 to 13 of the LPML. From the information provided on site, the examiners understood that the CNB but also the other financial supervisory bodies, have the power, to request additional information and to carry out on site inspections to review policies, procedures, books and records and to carry out sample testing. It was said that all supervisors also have the power to compel the production of documents (without a court order) to all documents related to accounts, business relationships and transactions.

712. The FAU, the CNB and the other financial supervisors have generally the means and authority to obtain from the financial institutions and/or their managers ro comply with requirements (they can draw their attention to the insufficiency, issue warnings or reprimands etc.). By virtue of the AML Act, the FAU and the entities listed under Art. 8 can impose and levy fines in case of non compliance with the Act. These sanctions only may apply to the entitiy, not their managers or employees (except in the case of one-man companies or institutions). The issue of sanctions is examined in detail under Recommendation 17 underneath.

Recommendation 17 – Sanctions

713. Criminal sanctions are not available to sanction non-compliance with the AML/CFT requirements of the AML Act. Although it was recomended in the second round evaluation to underpin the preventive regime with establishing a criminal offence of failure to report, the Czech authorities have a different opinion on this issue. A (draft) bill to amend the laws so that financial institutions could be held criminally responsible for breaches of AML/CFT requirements was refused by the Czech Parliament.

714. In general, administrative sanctions are provided by Articles 12, 12a and 13 of the AML Act both against natural and legal persons. For a violation of or failure to comply with the requirements set forth by the AML Act the fine is an amount of up to CZK 2 million on an individual and in case of a legal person the imposed fine may be up to CZK 10 million. In case of a repeated violation or a failure to comply with obligations in a consecutive 12 month period it may be up to CZK 10 million if it concerns an individual and to CZK 50 million if it concerns a legal person. It is also possible to repeal a business or a self-employment license from the natural or legal person who has in the long term or repeatedly violated some of the duties stipulated by the AML Act or imposed by a decisoin issued pursuant to the AML Act.

715. It should be stressed that these sanctions can only be imposed on the business entity itself (whether it is carried out by a legal person or a self-employed natural person). This means that managers and employees are not directly sanctionable. This is contrary

to criteria 17.3 and 29.4. Therefore, although failure to comply with the reporting obligation is sanctionable, there the mandatory character of the obligation to report has to rely on the internal disciplinary arrangements of the entity. There is thus, at the moment, no guarantee that a person who fails to report a suspicion would be sanctionable other then through a reprimand from/revocation by his/her employer. This is a major lacuna from the point of view of the fight against money laundering and terrorist financing, especially since for the latter, there is currently heavy reliance on the AML Act.

716. By virtue of their sectoral regulations, financial supervisors also have remedial measures, although the evaluators understood that in principle these are for prudential purposes only, except for those of the CNB. For instance, if the CNB detects any shortcomings in the activities of a bank or a foreign bank branch, it is authorised under Article 26 para 1 of the Act on Banks, to impose remedial measures and a fine of up to CZK 50 million on banks and branches of foreign banks and, in case of serious shortcomings under Article 34 of the Act on Banks, to revoke the license of a bank or branches of foreign banks both for violation of the AML Act and for failure to comply with the sanctioning legislation.

717. The FAU provided the following data on sanctions:

Number and amount of fines imposed by the FAU in connection with its control activity – years 2000 – 2004		
Year	Number of fines	The amount of fines
2000	3	3 mil. CZK (100.000 EUR)
2001	14	12 mil. CZK (400.000 EUR)
2002	33	30 mil CZK (1 mil EUR)
2003	4	0,65 mil CZK (21.700 EUR)
2004	-	-
In total	54	45,65 mil CZK (1,522.000 EUR)

718. It was explained that there had never been a need to withdraw a licence for non compliance with the AML/CFT Act. Most insufficiencies detected to date could be solved in another way. During the years 2000 to 2004 the FAU has registered and monitored approx. 600 internal rules delivered by the obliged entities. The FAU has reviewed all of them and in 368 cases it sent to the obliged person in writing the requirement to eliminate within 30 days the shortcomings described and to then inform the FAU about the measures taken (or in cases of more serious shortcomings to send a revised version of the internal rules).

719. The financial sector supervisors have on occasions applied fines as well.

Other sectors

720. As indicated earlier in this report (see SR. IX), the cross-broder declaration duty is sanctionable as well (under Article 5 of the AML Act: fines of up to the value of the undeclared monies/assets or fine applied on the spot up to CZK 5000, by means of a penalty ticket procedure.

Recommendation 32 – Statistics on Examinations (and sanctions)

721. In the years 2000 to 2004, the number of on-site inspections and controls of (communicated) internal procedures conducted by the FAU were the following**:**

On site controls conducted by the FAU (2000-2004)	
Year	Number of controls
2000	14
2001	5
2002	6
2003	5
2004	1
In total	**31**

Number of communications from financial institutions to the FAU, related to internal procedures, (2000-2004)	
Year	Number of communications
2000	47
2001	206
2002	74
2003	27
2004	14
In total	**368**

722. In the framework of its control activity the FAU has imposed for violations or failure to comply with obligations in connection with AML/CFT fines for a total amount of CZK 45,65 millions (approx. Euro 1,5 millions).

Number and amount of fines imposed by the FAU in connection with its control activity in 2000 – 2004:

Year	Number of fines	The amount of fines
2000	3	3 mil. CZK (100.000 EUR)
2001	14	12 mil. CZK (400.000 EUR)
2002	33	30 mil CZK (1 mil EUR)
2003	4	0,65 mil CZK (21.700 EUR)
2004	-	-
In total	**54**	**45,65 mil CZK (1,522.000 EUR)**

723. Special attention has been paid to the examination of the systems of internal rules of banks (including branches of foreign banks) and of exchange offices. As a result it has been imposed 6 fines on banks for a total amount of CZK 6 millions (approx. EUR 200.000) for violations or non-compliance and 23 fines on exchange offices for a total amount of CZK 21,75 millions (approx EUR 725.000).

724. As regards the CNB:

Banks:

Period	Number of on-site examinations
2002	2
2003	9
2004	5
2005 – plan	7

Foreign exchange:

Year	2002	2003	2004	2005
No. of planed control	x	x	475 on-site 3 off-site	444
No. of finished control	305	306	477 on-site 214 off-site	
Total fines (EUR equiv.)	33,200	365,000	93,000	

All on-site inspections cover also AML issues.
If the CNB finds a suspicious transaction during foreign exchange control, the suspicious transaction report is sent to the FAU (2002 – 2 STRs; 2003 – 10 STRs; 2004 – 10 STRs).

725. As regards the CSC:

Securities market:

Year	Number of on-site controls (providing of investment services and collective investment)	Number of all CSC´s final sanction decisions in year in question	Suspicious cases referred to FAU by the CSC´s Monitoring Section
2001	36	398	0
2002	41	1094	2
2003	32	357	4
January – June 2004	11	36	1

AML/CFT measures are only one element of the on site examination process.

726. As regards the OSSIPF:

In 2003, the Office carried out 25 on-site inspections and in 2004 23 on-site inspections focused on money laundering and financing of terrorism

- In 8 cases insurance companies did not identify persons in accordance with the law

- In 4 cases internal directives did not include certain required legal provisions
- The Office enforced corrective action and imposed sanctions

No suspicious transactions were disclosed

Recommendation 25 – Guidance other than STRs

727. The FAU indicated that they closely cooperate with professional associations and organisations of obliged entitie. In the framework of this cooperation, the associations organise themselves for their members meetings and lectures where they are informed about relevant new legal regulations but also upcoming changes on both national and international levels (at the time of the on site visit: the preparation of the 3rd EU Directive on money laundering).

728. Most attention is spent on the banking sector, which is seen by the FAU as the most vulnerable to ML and also because STRs from banks represent 85% of all STRs. Through the Czech Banking Association banks are regularly (at least twice in a year) informed about the way their reports are handled and about the activity of the FAU including information about developments and assumed trends in this area. The FAU also participates in the preparation of the relevant Regulations of the Czech National Bank (CNB) which are mandatory for banks. In this process the FAU may apply its knowledge and experience gained in the course of its activity. The same applies also as regards the preparation of the relevant documents issued by the Czech Banking Association. Representatives of the FAU participates in regular meetings of the Security Commission of the Czech Banking Association which is the forum where such documents are being prepared but also where operational issues are being discussed.

729. In connection with the last amendment to the AML Act (entered into force in September 2004), the FAU's legal department has prepared and issued a publication containing a commentary to the Act and also linkages with other relevant national and international legislation.

730. As regards relations with other professional associations, this is done irregularly upon their request and mostly in the form of a participation of the representatives of the FAU to seminars organised by an association.

731. In 2004 the web sites of the FAU have been established (http://www.mfcr.cz/index.php?r=85) as part of the web site of the Ministry of Finance, where the FAU among others publishes general information regarding the interpretation of some provisions of the AML Act. The legal department of the FAU also provides obliged subjects upon request with written opinions as regards interpretions of the AML Act and its relation with other pieces of legislation, in urgent cases even provides consultation by telephone or by e-mail.

732. The issue of feedback was discussed earlier in this report. Initiatives mostly focus on banks.

733. The CNB (On–Site Banking Supervision Division) is preparing guidelines (including qualitative requirements – benchmarks) for on-site examination in the AML area. This document will reflect the last amendments to the AML Act and experience knowledge (for example FAU´s statements to the certain parts of the AML Act, CNB´s explanation

of AML Provision etc.) and experience gained from on-site examinations. Our intention is to prepare this document for external publication for banks by June 2006.

734. The CNB is preparing AML guidelines for all foreign exchange entities, which is expected to come into force in March 2005. The guidelines cover identification of clients, KYC principles, evaluation of suspicious transactions, duties of the money laundering reporting officer.

735. The CNB also published (on Internet) a guide to documents containing acknowledged principles and procedures in the AML area.

736. In 1997 the Czech Banking Association issued the Standard of Banking Activities focusing on the AML area (hereinafter the "Standard No.4"). Due to changes in relevant Czech legislation the Standard No. 4 was amended appropriately in 2000 and another substantive amendment to it is under preparation at the moment, mainly to reflect the AML provision issued by the CNB and the AML Act as amended in 2004. Though the Standard No. 4 is not legally binding, it is of great importance as a methodical provision. It includes among other things indicators of suspicious transactions, algorithm of notification of suspicious transactions process, specific recommendations or references to key international AML documents such as FATF Recommendation, BIS paper "Customer Due Diligence for Banks" etc. The amendment to the Standard No. 4, puts emphasis for example on the KYC principles or monitoring of so-called risk factors, and is intended to cover the CFT area as well.

737. The Czech banking Association has also issued separate Standards for the CFT area.

738. During the summer of 2004, the CSC prepared and published a document called *Procedure for prevention of the legalisation of the proceeds of crime and terrorist financing.* It contains recommendations to the obliged persons on how to deal with some requirements, which result for these persons from the AML Act. This document is not a legal regulation. It may be regarded as "best practice". The recommendations contained in this document result from findings acquired during state inspections and from recommendations of international bodies (including the FATF), and from consultations with the FAU and the Czech National Bank.

739. Overall, the examiners encourage the supervisors (in line with criterion 25.1) in their projects to elaborate new guidance documents which will assist the obliged entities in understanding and implementing their obligations. As indicated earler in this report, the obliged entities' demand for explanatory and illustrative documentation is quite high in the Czech Republic as regards both AML and CFT.

3.10.2 Recommendations and Comments

740. The AML Act sets clear responsibilities for supervising the financial and other entities, which was very much welcome by the examiners.

741. Supervisors are also required to report suspicions to the FAU. In their case, the fact that the reporting duty is based on the concept of "suspicious transactions" could be an obstacle.

742. For the time being, with the exception of the CSC, financial supervisors seem to take their AML duties seriously and they have the means to do so. However, bearing in mind that supervision has mostly focused so far – with the exception of the CNB – on formal requirements and to a limited extent with technical on-site inspections to verify the implementation of AML measures in practice, the Czech authorities will need to remain vigilant on this issue. The examiners believe that the merger of financial supervisors under the CNB will further raise the standards further in practice and help solve certain issues (staffing and means of supervisors, a more consistent approach throughout the financial sector etc.).

743. The evaluation team limited itself to those that would still be relevant after these changes. It is therefore recommended:

- to enlarge the scope of supervision for the entire financial sector beyond the mere existence of internal rules and their content, and to check whether the rules are applied in practice and how reporting officers – who need to become compliance officers – comply with their own duties. Supervisors should be stricter as regards information/file storage systems.

- to ensure targeted AML and also CFT controls take place in future for all financial sectors (including awareness of and training on CFT issues, efforts to detect FT-related assets, awareness of international lists etc.), and also apply to the agents (not just the licence holder) where the business is exposed to higher risks

- to ensure the staff responsible for the supervision of the securities markets are more involved and trained in AML/CFT issues and aware of their responsibilities and duties

- to include for the financial supervisor(s) a duty to report suspicions of ML/FT activities

- to ensure a consistent approach in the field of market entry conditions (checking the origin of funds including in case of increase in capital, checking the background of licence applicants and holders on the basis of fit and proper criteria) and ensure a clear policy that licences cannot be/are not delivered until the supervisor has satisfield himself that all conditions are met

- to review urgently the legal and supervisory framework applicable to foreign exchange activities and to take remedial actions to stop the illegal foreign exchange business. Licensing and supervision should be under the responsibility of a single authority

- to examine the allegations of the existence of a developed under-ground banking activity (possibly "loan-sharks") and informal money transfer business and to take the necessary remedial measures

- to issue further guidance documents on both AML and CFT, including for financial supervisory staff

744. The evaluation team believes that the absence of sanctions imposable on managers and staff needs to be addressed. This will become crucial with the supervisors raising their level of expectations and the AML Act being called upon to contain more requirements. It is therefore recommended:

- to provide for sanctions imposable on obliged entitities' managers and employees
- to consider again introducing a criminal offence for non reporting

3.10.3 Compliance with Recommendations 23, 30, 29, 17, 32, & 25

	Rating	Summary of factors relevant to s.3.10 underlying overall rating
R.17	**PC**	**Sanctions are in place and used in practice but no sanctions are imposable on entities' managers and employees; no individual sanctions for non reporting in legislation**
R.23	**PC**	Results seem quite positive but supervisors – with the exception of CNB – have so far focused on the formal (off-site) control of the existence of internal procedures; CSC is not fully committed to AML/CFT; no MLCO provided for as such (only MLRO); market entry and ownership/management control are not consistent enough; illegal foreign exchange business taking place openly and allegations of underground banking; insufficient focus on money transfer business; CFT not enough taken into account; excessive reliance on the licence holder and little or no controls over the agents despite allegations of misuse for ML purposes (life insurance, money transfer etc.)
R.25 (crit 25.1)	**PC**	The demand for guidance is high and the authorities/supervisors have not yet met the expectations of the industry; little has been done in the field of CFT so far
R.29	**C**	[insufficiencies on the issue of sanctioning managers and employees are addressed under R.17]
R.30	**LC**	staffing and expertise of supervisors seems to be an issue; they have mostly focused on formal AML aspects (except the CNB) for which large staff is not needed; but the issue will need to be re-examined after the merger of all financial supervisors and in the context of controls beyond the intial licence holder.
R.32 (crit. 32.2)	**C**	

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and Analysis (summary)

Description and analysis

Informal remittances and general considerations

745. The Czech authorities, as well as representatives of the financial business industry aknowledge the existence of informal money tranfer services operating in the Czech Republic, particularly in connection with the large asian community present in the country.

746. The replies to the questionnaire indicated that these, together with licensed money transfer services affiliated to the main networks operating on the market, are also used for ML purposes.

"Official" remitters

747. Although, in principle, both the CNB and the FAU have supervisory responsibilities over licensed operators providing money or value transfer services (hereinafter MVT), it was striking during the visit that none of them could provide an overview of the types and number of operators involved, whether as licence holders or ultimate service-providing agent affiliated to a licence holder or network.

748. Additional information provided after the visit for the sake of clarification indicated that 26 entities have been licensed to operate MVT. Out of these, 3 have got "agents". The total number of the agents is thus 155: 137 travel agencies, 10 hotels, 5 bureau de change, the Czech Post (which counts approximately 1700 branches) and 2 information centres.

749. In addition, many travel agencies also operate as bureau de change (foreign exchange office) and it is aknowledged that it is sometimes difficult to identify their main activity.

750. The evaluators were advised that until recently, all agents of remitters had to be licenced individually, but due to the workload generated, it was prefered in one case to license only the local representative of the MVT company, the licence being then valid for all the agents operating the service of the MVT.

751. According to law, only the following persons are entitled to perform money or value transfer (MVT) services in the Czech Republic:

- banks, including branches of foreign banks according to the Act no. 21/1992 Coll. (Act on Banks, Article 1 Para 3)
- credit unions, according to the Act no. 87/1995 Coll. (Act on Credit Unions)
- money transmitters, since the transmission of money is permitted for non-banking financial institutions (based on the Act on Banks)

- holder of the postal licence according to the Act no. 29/2000 Coll. (Act on Postal Services, Article 2 and Article 19)

752. A bank, a credit union or a money transmitter may offer money transmission services, provided that it is authorised to do so in its licence. In the Czech Republic the Czech National Bank[76] is designated as the competent authoritiy to licence this activity for the abovementioned entities and the Czech Telecommunication Office to licence this activity of the holder of the postal licence. The Czech National Bank maintains a list of the names and addresses of licensed MVT service operators, and is responsible for ensuring compliance with licensing requirements. The Czech Telecommunication Office supervises the the postal licence holder (and the special paostal licence holder). The list of supervised entities is publicly available on the website of the CNB, with the exception of money transmitters. The postal licence holder is the Czech Post.

753. According to the AML Act (Article 1a para 7) the banks, savings and credit co-operatives (credit unions) and the holder of the postal license are obliged persons, thus the AML rules (identification, verification, record keeping, reporting, etc.) are applicable to them.

754. Although it is not explicitly mentioned in the acts, the supervision of MVT service operators is the duty of the CNB for banks, credit unions and money transmitters (as license holders). In the course of the banking supervision, the CNB applies a risk based approach, including for the AML/CTF area. The risk based approach is used when selecting a bank for the on-site examination, and also in the procedures which are applied during the on-site examination – i.e. choice of departments that will be visited during the on-site examination, in sampling methods for on-site examination in AML area (types of transactions, client files, record keeping etc.). Important sources of information are discussions with representatives of FAU about specified banks, which are held prior the on-site examination. This information helps the CNB to identify the weaknesses of AML systems in banks and the risks of some types of transactions from AML perspective.

755. The Czech Post is a money transmitter on its own right and is an agent as well. In case of the Czech Post, under the current legislation, the Ministry of Informatics carries out state administration functions in postal services. Within its powers, the Ministry of Informatics drafts legal regulations and strategic and policy materials relating to the development of the postal sector. Under the amended Postal Services Act, the role of the postal services market regulator was transferred from the Ministry of Informatics to an independent regulatory body, the Czech Telecommunication Office, as from 1 April 2005. The Czech Telecommunication Office however is not responsible for supervision from AML/CFT aspects. This is done in principle by the FAU.

756. The regulation, supervision, monitoring and sanctions also apply in relation to the obligations under SR VI.

757. The evaluators understood that for the time being, the CNB has focused its supervision on the intermediaries, that is the primary licensed entity (who is the representative in the country for the international MVT provider). The CNB relies on the information

[76]At the time of the on site visit, the Credit Union Supervisory Authority was responsible for licensing credit unions.

provided by the licensees as regards compliance with AML/CFT of the ultimate business providing the service to the customers. It was not fully clear who would control the agents individually, if needed. In principle they fall under the authority of the CNB (as licensing authority), but certain businesses acting as agents (travel agencies, hotels etc.) are not part of the "normal" entities controlled by the CNB, in which case it would be the responsibility of the FAU.

758. The FAU has also focused its supervision over the holder of the postal licence (in practice, the FAU has checked the post's internal rules, which apply throughout the country).

759. The examinesr noted that money remitters do cooperate when it comes to reporting (see the figures available from the FAU statistics – which is not insignificant: almost 200 STRs registered for the period 2001-2004).

760. The team met with a representative of a remittance company which has 9 agents in the Czech Republic. The company is licensed by the CNB and operators are registered through a back-to-back agrement with the headquarter in the United Kingdom. All transactions go through the central system located in New York. The company has a compliance officer in each country who reports to the General Compliance Officer in London, but also in principle to the FAU in the respective country. He acknowledged that more feedback and guidance would be welcome and stressed the lack of familiarity with the patterns of STRs in his business. He confirmed that all transactions above CZK 1000 require identification with an official ID document (below that amount, a test question or code can be used).

3.2.1 Recommendations and Comments

761. The licensing process is adequately addressed under the respective relevant laws and the MVT service operators in general are subject to the applicable FATF Recommendations. The monitoring of MVT service operators are ensured by the competent designated authorities. However, the examiners believe that the case of agents needs further clarification as regards compliance with the AML Act. Also, the alleged informal remittance activity needs to be look at. It is recommended to review the situation of MVT agents and the Czech post to make sure there is no over-reliance on the supervision over and information provided by the licence holder.

762. The Czech Authorities may also wish to consider placing the licensing and supervison of the financial services offered by the Czech Post under the competence of the Czech National Bank for the sake of consistency.

763. The alleged presence of informal remittance activities in the Czech Republic needs to be better assessed.

3.11.2 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**PC**	Money transfer service provided by the Czech Post and the control of the agents of a license holder need to be better addressed; alleged informal remittance activity needs to be assessed.

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

764. The amendment to the AML Act, in 2004, has extended the list of non financial institutions to include those required by Article 2a of the revised EU Directive.

765. The obligations applied to them are to a large extent same as those applied to the financial institutions. This includes identification, record keeping and reporting obligations with regard to suspicious transactions and also to facts of any other kind that might indicate a suspicious transaction.

766. The only sector specific texts adopted that addresses the issue of AML/CFT are those of the Bar Association. One of them is the Resolution of the Board of the Czech Bar Association of June 2004 "defining the procedure to be followed by attorneys-at-law and the control Council of the Czech Bar Association for the purposes of compliance with legislation on measures against the legalisation of proceeds from crime" (the "CBA Resolution")

4.1 Customer due diligence and record-keeping (R.12)

(applying R.5, 6, 8 to 11, & 17)

767. FATF Recommendation 12 requires that the following businesses and professions are also subject to Recommendations 5, 6, 8 to 11 and 17.1 to 17.4:

a)Casinos (including internet casinos) – when their customers engage in financial transactions equal to or above USD/€ 3,000.
b) Real estate agents – when they are involved in transactions for a client concerning the buying and selling of real estate.
c)Dealers in precious metals and dealers in precious stones – when they engage in any cash transaction with a customer equal to or above USD/€ 15,000.

d) Lawyers, notaries, other independent legal professionals and accountants when they prepare for or carry out transactions for a client in relation to the following activities:

- buying and selling of real estate;
- managing of client money, securities or other assets;
- management of bank, savings or securities accounts;
- organisation of contributions for the creation, operation or management of companies;
- creation, operation or management of legal persons or arrangements, and buying and selling of business entities.

e)Trust and Company Service Providers when they prepare for and when they carry out transactions for a client in relation to the following activities:

- acting as a formation agent of legal persons;
- acting as (or arranging for another person to act as) a director or secretary of a company, a partner of a partnership, or a similar position in relation to other legal persons;
- providing a registered office; business address or accommodation, correspondence or administrative address for a company, a partnership or any other legal person or arrangement;
- acting as (or arranging for another person to act as) a trustee of an express trust;

- acting as (or arranging for another person to act as) a nominee shareholder for another person.

DNFBP should especially comply with the CDD measures set out in Criteria 5.3 to 5.7 but may determine the extent of such measures on a risk sensitive basis depending on the type of customer, business relationship or transaction.

768. According to the AML Act, art. 1a para. 7, the following businesses and professions fall under the category of DNFBP contemplated by FATF Recommendation 12:

a)The holder of a (gaming) licence to operate betting games in a casino, odds-on betting or numerical lotteries,
b)A legal person or a natural person authorised to trade in real estates or to broker a trade in them,
c)An auditor, tax advisor or accountant if he is carrying out the relevant activity as his business,
d)A lawyer, notary or other legal person or a natural person in a business capacity, if he executes or assist in the planning or execution of transactions for his client concerning the
- Buying or selling of real property or business undertaking,
-Managing or custody of money, securities, business shares or other assets of a client, including representing the client or acting on his behalf in connection with the establishment of a bank account at a bank or other financial institution or a securities account and the managing of such an account, or

-Acquiring and collecting finance or other values rateable by money for the purpose of establishing, managing or controlling a company, business group or any other similar department regardless of the fact that it is a legal person or not ,

or he represents or acts on behalf of his client in any financial transaction or trading with real estate,
e)a legal person or natural person not mentioned [above], if he is a businessman, as long as he, in the framework of an individual business or auction, accepts a payment in cash in an amount in excess of 15,000 EUR.

4.1.1 Description and Analysis

Application of Recommendation 5 – Customer Due Diligence Procedures

769. First of all, the relevant categories of DNFBP are covered by the AML Act, with the exception of trusts (which are not part of the Czech legal tradition) and company service providers (which are not covered as such) .

770. In general the analysis of Recommendation 5 and the findings and comments thereto as defined under Section 3 of this Report for financial institutions also apply to DNFBPs. In particular, as it was indicated earlier, the approach of the AML Act regarding CDD is mostly based on identification and does not include the full CDD process (including on-going due diligence and "know-your-customer" principles, risk-based approach, consequencss of an incomplete CDD process, no duty to verify as such from external sources the identification information submitted by the customer, no explicit requirement to identify the beneficial owners).

771. Casinos must identify their client when establishing a relationship, in practice, when the latter enters the casino (there is thus no threshold for a transaction triggering identification). By virtue of the regulations specific to the sector, all winnings are

identified since the code attributed to the customer at the entrance follows him/her during his/her stay.

772. Real estate brokers are covered. The Czech authorities explained that Art. 1a para 7 lit. l applies to all business entitites not covered by the previous provisions, regardless of the kind of activity, as far as a payment in cash for one-off individual business or auction exceeds EUR 15.000 (Article 2a point 6 of the **Second EU Directive**). It applies to payments and the offering/sale of individual goods or a service or a combination of services. This provision does not apply to situations when the value exceeds EUR 15.000 but part of the payment is not made in cash. The AML Act (Article 2 para 1) requires that fractioned payments over twelve consecutive months are also covered (to avoid smurphing). The dissociation of a given good or a group of goods for the purpose of avoiding the reporting requirement is not accepted. The Czech authorities take the view that this provision extends the relevant provision of the EU Directive and thus covers all cash payments over Eur 15.000 involving business subjects (article 2a of the EU Directive applies to all dealers in high value goods – not only dealers in precious metals and precious stones – whenever payment is made in cash in an amount of EUR15,000 or more).

773. Lawyers, notaries and acountants are covered as well. The circumstances under which lawyers are required to comply broadly match the requirements of criterion 12.1. The categories of lawyer activities not mentioned in the AML Act derive from the fact that these are not permitted under Czech law. The profession is also subject to a duty to identify the client by virtue of the Law on Advocacy and the profession's own internal regulations.

774. As indicated under Chapter 3 of this report, Art. 2 para 10 which provides for an exemption from the identification obligation in a series of circumstances is drafted in terms which can easily be misinterpreted, especially the derogation applicable "when the identity of aprticipant to a transaction or the identity of a person acting in his favour is not in doubt". Particularly for the sector of DNFBP, due to the type of activities which are often based on mutual trust, or due to the modest size of the businesses, this provision opens doors for abuses. It was recommended to redraft the exception.

Application of Recommendations 6 and 8 – Politically Exposed Persons; Threats from new or developing technologies

775. As already stated under Section 3 of this Report, Politically Exposed Persons (PEPs) and threats from new or devloping technologies are not generally addressed in the AML Act. The issue is not covered either in any of the DNFBP specific regulations.

776. This being said, the regulations of the gaming sector prohibit internet casinos in the Czech Republic.

777. The examiners were advised that serious threats exist in respect of the treatment of precious stones. The technical capacity of certain Czech laboratories enable them to manipulate gems, which has apparently attracted certain criminal activities to the Czech Republic. In this context, a global policy was considered desirable by a representative of the gemological association.

Application of Recommendation 9 – Third Parties and Introduced Business

778. As it was indicated for the financial institutions, reliance on third parties to perform parts of the CDD process is permitted to a limited extent. The issue will be addressed in a new amendment to the AML Act. The issue is not covered either in any of the DNFBP specific regulations.

779. In practice, it is not uncommon that lawyers act as busines introducers. Representatives of the Bar asociation met on site acknowledged that the profesionnal secrecy can of course be misused. But they knew of no critical case so far that would have been brought to their attention. The Bar association has issued its own ethical rules in the Act on Advocacy. These prevent in principle, abuses of the professional secrecy.

Application of Recommendation 10 – Record Keeping

780. Record-keeping requirements are provided for in the AML Act and the duration of information retention is in line with the FATF requirements. As it was indicated under Chapter 3, there is no requirement to retain all the relevant information and it happens that the storage facilities are inadequate (paper form). The banks would oppose significant improvements in this field due to the costs this would trigger. The examiners believe that this could also be an issue for the DNFBP.

Application of Recommendation 11 – Complex, Unusual, Large Transactions.

781. As indicated earlier in this report, there is no requirement in the AML Act to pay special attention to complex, unusual large transactions. The issue is not covered either in any of the DNFBP specific regulations.

Application of Recommendation 17 – Sanctions

782. As detailed under Section 3 of the Report, the initiation of procedures to impose sanctions for beaches of or non-compliance with the AML Act falls within the general competence of the FAU.

783. The State Supervision over the observance of the Act on Lotteries and other similar games of chance can also impose sanctions upon casinos based on the AML Act. The following statistics are available for the sector:

Number of control in casinos and the amount of imposed sanctions in 2004:

Number of controls	Number of fines	The amount of fines
1992	12	CZK 914.000 (approx. EUR 30.000)

784. The sanctions are the same for all obliged entities: fines up to CZK 50,000,000 and/or the withdrawal of licence (to be initiated by the FAU and applied by the competent licensing body. As indicated earlier, sanctions can only be imposed on the entity as such, not its managers or employees. There is thus no possibility to impose sanctions on employees who do not report an STR (there are no criminal sanctions either).

785. The sole exception applies to lawyers and notaries. If it is a lawyer or notary who violates or fails to comply with the obligations stipulated by the AML Act (and if such conduct is not an act that is more seriously punishable), then it is considered to be a disciplinary offence within the meaning of "a special legal regulation" (the profession's regulations) and it shall be examined by the relevant professional association (Bar Association, Chamber of Notaries). A hearing of a disciplinary offence proceeds pursuant to a special legal regulation. If a professional association or its employee violates an obligation stipulated by the AML Act, then the Ministry of Finance (the FAU) would issue a warning.

4.1.2 Recommendations and Comments

786. The concerns expressed and weaknesses identified regarding Recommendation 5 for the financial sector apply also for DNFBPs. There are no particular additional weaknesses or shortcomings identified. It is recommended, in line with R.12, to ensure the application of R. 5 to R.11 and R17 also in respect of DNFBP.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**NC**	Full CDD measures are not required; politically exposed persons, threats from new technologies, third parties/introduced business not yet addressed; record keeping requirements are basically in place but do not cover all the relevant information; no requirement to pay special attention to unusual, complex and large transactions; sanctions can only be imposed on the entity as such, not its managers or employees

4.2 Suspicious transaction reporting (R.16)

(applying R.13 to 15, 17 & 21)

4.2.1 Description and Analysis

787. DNFBPs are equally subject to reporting obligations, like the financial institutions. Various exceptions exist, which limit the reporting in the context of transactions exceeding a certain threshold or certain types of transactions/activities (see the first box under Section 4.1).

788. The findings for the financial sector as detailed under Section 3 of this Report remain valid and applicable to the DNFBPs. The reporting duty applies to both ML and FT, but is limited to STRs (or facts which could indicate an STR), it also applies to suspicions of ML as opposed to suspicions of proceeds of crime (which would lower the burden of suspicion for reporting), it does not specify explicitly the reporting of both attempted and completed transactions). Protection measures and measures against tipping of are in place but protection does not explicitly apply to the disclosure of information and to the protection of the entities' staff and management. Internal AML/CFT procedures are required by the AML Act, but they do not mention compliance management arrangements (the Act refers to "reporting officer" and not to a "compliance officer"), there is no AML/CFT audit nor employee screening requirement etc.

789. However, in the course of the evaluation, further weaknesses and shortcomings have been identified in relation to DNFBPs which call for the attention of the Czech authorities to consider and address.

Application of Recommendation 13 – Reporting of Suspicious Transactions

790. Since 2004, there are no special professional secrecy rules (lawyers, notaries) that would prevent them from reporting. All DNFBPs have to report directly to the FAU under the general conditions, mostly.

791. The sole exception are lawyers, who report through the Bar Association. The role of the Bar Association is clearly stated in the AML Act (Art. 4 para.9). In principle, the Association does not act as a filter (by virtue of the CBA Resolution it can refuse to forward an STR if the conditions for reporting by lawyers are not met). The Bar Association can join a comment to the STR when forwarding it to the FAU. The report must be sent within 5 days to the FAU, but in case of urgency, the lawyer can send it directly without going through the Bar Association.

792. The larger DNFBPs (e.g. an audit company) have appointed an officer (generally at managerial level – this is not a requirement of the Czech legislation), who receives the STRs from the employees.

793. The overall table of statistics on reported STR seen earlier shows that the reporting system works effectively as regards the financial sector. On the other side, one may wonder about the limited impact for the DNFBPs in general.

Type of the obliged person	**STRs**			
	2001	**2002**	**2003**	**2004**
Banks	1408	1122	1793	3083
Insurance companies	25	19	39	73
Money remitters	53	27	39	71
Lawyers	-	-	-	3
Exchange offices	3	4	6	4
Securities market	235	169	69	6
Real estate agencies	3	-	-	2
Pension funds	1	9	5	3
Leasing Company	1	-	-	2
Casinos	-	1	1	-
Auctioneers	-	-	1	2
Other supervisory bodies	12	7	15	13
Customs General Directorate	1	-	-	1
Liquidator	-	-	-	1
Foreign FIUs	-	-	-	1
Others	9	21	2	-
In total	**1751**	**1379**	**1970**	**3265**

794. Various explanations were given on site for this (casinos: multiplicity of transactions made by a single customer during one night makes it difficult to detect; notaries: STR

can only happen in practice when the notary accepts a deposit; real estate intermediaries: lack of guidance so far). Criminal influneces were also mentioned

Application of Recommendation 14 –Protection for disclosure and Tipping Off

795. There are no special rules applicable to DNFBPs apart from the AML Act. The AML/CFT exceptions to the confidentiality duty are strictly specified (and reminded in the CBA Resolution).

Application of Recommendation 15 – Development of AML/CFT Internal Programme

796. AML/CFT internal programmes need to be developped by DNFBPs as well. In practice, only the larger ones have adopted such rules. Some DNBPs, especially those who have an international/foreign experience such as auditors refer to their ML compliance officer, as opposed to a "money laundering compliance officer.

Application of Recommendation 17- Sanctions

797. The AML Act sanctions apply to all obliged entities and can be imposed for any insuffiency detected as regards the implementation of the AML Act. Disciplinary sanctions are also provided for, as regards certain professions (lawyers, notaries).

Application of Recommendation 21 – Relationships

798. There are no specific requirements for DNFBPs as regards vigilance vis a vis business relationships and risk countries.

4.2.2 Recommendations and Comments

799. The application of the relevant FATF Recommendations to the non-financial sector – other entities or DNFBPs – appears to be broad. Specifically for DNFBPs, the problem of insufficient guidance and awarenss raising initiatives to their attention on AML/CFT issues was mentioned. Most of them (including supervisors) aknowledged being at an early stage of awareness seemed to ignore CFT issues totally. It is therefore recommended to develop awareness raising measures and guidance for DNFBP and their supervisors on both their AML and CFT obligations under the AML Act and other relevant pieces of legislation.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**PC**	The reporting duty applies to both ML and FT, but is limited to STRs (or facts which could indicate an STR), it also applies to suspicions of ML as opposed to suspicions of proceeds of crime (which would lower the burden of suspicion for reporting), it does not specify explicitly the reporting of both attempted and completed transactions). Protection measures and measures against tipping off are in place but protection does not explicitly apply to the disclosure of information and to the protection of the entities' staff and management. Internal AML/CFT procedures are required by the AML Act, but they do not mention compliance

		management arrangements (the Act refers to "reporting officer" and not to a "compliance officer"), there is no AML/CFT audit nor employee screening requirement etc. In addition: strong lack of awareness of AML, and above all CFT, issues.

4.3 Regulation, supervision and monitoring (R.17, 24-25)

4.3.1 Description and Analysis

Recommendation 24 – Regulatory and Supervisory Measures

800. The control of compliance of casinos is carried out by the FAU and according to Article 8 para 3 letter e) also by the State Supervision over Betting Games and Lotteries. The latter admitted being unfamiliar with AML/CFT issues and not having the means and staffing to control the origin of capital (neither would there be a legal duty to do so). Detailed controls are not done at present. Casino representatives also indicated that the staff of the supervisor had no real experince with the gaming sector and that there was a crucial need to introduce basic requirments toprotect the sector against criminals. The current liberal approach was criticized in that context both by the industry and the supervisors.

801. In relation to this, another issue concerning the gambling sector is the apparent inadequacy of provisions. The distinction between casinos and gambling halls is insufficiently regulated. As a result, a number of bars, gambling halls etc. operate live games (where it is extremely easy to launder money) without a real casino licence and the more stringent requirements of the sector's regulations and those of the AML Act (notably on identification). The gaming sector is therefore sometimes abnormally developped (27 companies operating 158 casinos in the country, of which 13 companies operating 38 casinos are based in Prague only).

802. The very liberal approach also seems to apply to the real estate business, where no licence and no special requirements would be needed to be a broker. The real estate sector would have received, like the gambling sector, little attention so far. The acquisition of residential property is limited to residents. As a result, foreign investors would use "local representative" (strawmen) to circumvent the requirement.

803. The sector of accountants was also mentioned as too liberal. The Association of Accounts Union is trying to raise the standards in the profession and make it more homogeneous through a certification process, which implies- besides being examined – abiding to ethical standards and refusing to be involved in criminal/fraudulent schemes. Money launderers, as a result, would turn to other accountants it was said.

804. No particular issues were raised by the other DNFBP representatives.

805. As already indicated, the FAU has a general supervisory competence *vis a vis* all DNFBPs.

Recommendation 25 – Guidance for DNFBPs (other than STRs)

806. The Board of the Czech Bar Association has adopted two professional regulations: the resolution of the Board of the Czech Bar Association No. 6/2004 of the Bulletin of June 28, 2004, stipulating the procedure to be followed by lawyers and the supervisory board of the Czech Bar Association when complying with duties set by legal regulations on measures against legalization of the proceeds from criminal activity, and the resolution of the Board of the Czech Bar Association No. 7/2004 of the Bulletin of June 28, 2004, on safekeeping client's money, securities or other assets by lawyers. Both regulations were distributed to all lawyers.

807. Further texts are being prepared by other professions but altogether, guidance remains insufficient, as underlined earlier.

4.3.2 Recommendations and Comments

808. In view of the above, it is recommended :

- to strengthen the regulatory framework and supervision over DNFBPs exposed to risks of being used for ML/FT purposes (e.g. casinos, gambling in general, accountants)

- to review the legal framework applicable to the gambling sector to avoid loopholes that could be used by criminals, and to consider extending the scope of the AML Act – beyond casinos – to a broader range of gambling entities to ensure consistent coverage of the sector of games

809. The issue of guidance was discussed in general terms under the previous section.

4.3.3 Compliance with Recommendations 24 & 25 (criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**NC**	Certain sectors of activites of DNFBPs are allegedly particularly exposed to ML and there are no increased efforts from the authorities to address this
R.25 (Criterion 25.1)	**NC**	With a few exceptions, there is a lack of guidance for DNFBP

4.4 Other non-financial businesses and professions; Modern secure transaction techniques (R.20)

4.4.1 Description and Analysis

Other DNFBP

810. The AML Act contains further categories of DNFBP required to comply with it. According to Article 1a para. 7, these are:

- A legal person or a natural person authorised to buy up debts and receivables and to trade in them,
- A legal person or a natural person authorised to broker savings, monetary credits or loans or brokering activities that lead to the signing of insurance or reinsurance contract[7)],
- A court executor when carrying out other activities of an executor pursuant to a special legal regulation[8)],
- a legal person or natural person authorised to trade in second-hand goods, with cultural items or with articles of a cultural value or to the brokering of such trading or to accept such things into pawn,

811. The above DNFBP are subject to the standard requirments of the AML Act, with the exception of traders in second hand goods and cultural items, who must retain the identification information for 3 years in all cases, and 10 years where the value of the transaction is above EUR 10,000. The Czech Commercial Inspection is entitled, besides the FAU, to impose sanctions on the businesses.

812. The evaluators wondered whether the category of "legal persons or natural persons authorised to broker savings, monetary credits or loans or brokering activities that lead to the signing of insurance or reinsurance contract" shoul dnot preferably fall under the control of the financial supervisory bodies, for the sake of consistency.

Modern secure transaction techniques

813. The financial services offered by banks (credit cards, cheques etc.) and the banking presence itself are quite developped. The conditions for the introduction of e-money/electronic wallets were being prepared at the time of the on-site visit.

814. The CNB promotes non-cash payments, credit transfers being the main form. The CNB owns and operates interbank payment system CERTIS, which handles all interbank payments in the Czech Republic in CZK. Cross-border interbank payments are mainly carried out by means of correspondent banks and the SWIFT network.

815. Nevertheless, cash payments continue to play a predominant role in the Czech Republic and reliance on cash is still high. The CNB manages cash circulation according to the needs of banks. When issuing coins and banknotes, the main criterion is cost saving.

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7) Article 2 letter f) of the Act no. 363/1999 Coll., on insurance matters and on the amendment of some connected Acts (Act on insurance matters).

8) Article 74 to 86 of the Act no. 120/2001 Coll., on court executors and execution activities (executors code) and on the amendment to further Acts, as amended by Act no. 279/2003 Coll.

Therefore, the CNB has not envisaged limiting the production or issuance of large denomination banknotes (the largest banknote is however CZK 5,000/EUR 166).

816. According to the Act No. 254/2004 Coll., on Limitation of Cash Payments, payments exceeding EUR 15,000 (in a single sum or connected payments done within a calendar year) must be, with some exceptions, executed as non-cash payments Non compliance with this rule is, in principle, sanctionable by a fine of up to CZK 5,000,000/EUR 166,000, imposed by the territorial financial authorities or the Customs authorities.

4.4.2 Recommendations and Comments

817. The examiners welcome that the list of obliged entities goes beyond the international requirements. This being said, the Czech Republic should examine whether it would not be better to put "legal persons or natural persons authorised to broker savings, monetary credits or loans or brokering activities that lead to the signing of insurance or reinsurance contract" under the control of the financial supervisors.

818. The Czech Republic should continue taking measures to encourage the development and use of modern and secure techniques for conducting transactions, that are less vulnerable to money laundering.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**LC**	**Possible need to put certain DNFBP under the control of financial supervisors, due to the type of their activities; Reliance on cash is still high despite existing initiatives; there is room for further initiatives**

5 LEGAL PERSONS AND ARRANGEMENTS & NON-PROFIT ORGANISATIONS

5.1 Legal Persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and Analysis

Transparency concerning beneficial ownership and access to information (criteria 33.1 and 33.2)

819. Regional courts are entrusted with the administration of:
- The commercial registry
- The registry of foundations
- The registry of profit-making associations
- The registry of real estate (apartments/condominiums)

820. The commercial registry of Prague (city Court) alone counts about 50% of all registered companies.

821. The procedures for establishing a company and the type of companies that can be registered with the commercial register are described in Section 1.5 of this report. Art. 27a para 2 of the Commercial Code provides for a large amount of information to be provided when forming a company. It includes:

" a)the deed of association or partnership agreement or some other deed of corporate formation, a copy of the notarial deed containing the resolution of the constituent general meeting of a joint stock company or of the constituent members' meeting of a co-operative, the statutes of a joint stock company, limited liability company or co-operative etc.
(b) any resolution electing or appointing, or recalling or otherwise terminating the office, of persons who are the statutory organ or a member of such, liquidator, bankruptcy trustee, composition trustee (settlement administrator) or trustee (administrator) concerned with enforced administration, or the head (manager, director) of the enterprise's organizational component etc.
c)annual reports, ordinary, extraordinary and consolidated financial statements, a possible auditor's report on such statements, and interim financial statements, if their compilation is required by this Code; a balance sheet must be provided with the identification data of the persons who audited it in accordance with the law;
(d) the resolution winding up a legal entity, any (subsequent) resolution cancelling either the (previous) resolution on winding up the legal entity or the (previous) resolution on such entity's conversion, the judicial ruling (judgment) nullifying a company (section 68a), the report on liquidation under section 75(1), the list of members under section 75a(l) or the report (statement) on disposal of property under section 75(6);
(e) the resolution on conversion of legal form and the report on such conversion, the contract on merger, transfer of assets or division or its written draft terms etc.
(f) the judicial ruling (judgment) nullifying a general meeting's resolution on the conversion of legal form
(g) the report drawn up by an expert or experts on the valuation of a non-monetary (i.e. in-kind) investment contribution when a limited liability company or joint stock company is formed, or when such company's registered capital is increased etc.
(h) the judicial ruling (judgment) issued under the Bankruptcy and Composition Act;
(i)the contract on transfer of an enterprise or a part of such, the contract on lease (rent) of an enterprise or its part, including the notification of extension (prolongation) of such contract under section 488f(l), and, as appropriate, the deeds proving termination of such lease, and the judicial ruling (judgment) on acquisition of an enterprise by inheritance;
(j) the relevant controlling contract (section 190b) and the contract on profit transfer (section 190a), including amendments thereto, and, if appropriate, deeds documenting the cancellation of such contract;

(k) the document of the other spouse proving such spouse's consent to the use of property in joint ownership of the spouses (under other statutory provisions) for business activity, a copy of the notarial deed (record) on an agreement (contract) concerning a change in the scope of joint property etc.
(l) the contract on pledging a business share (ownership interest or holding), or a document on transfer of such business share;
(m) the general meeting's resolution under section 210 ".

822. Branches of foreign companies established in the EU are subject to lighter requirements, and only the documents listed under a), b) and c) are required.

823. As seen above, the commercial registry must be informed in principle of any important changes in the statutes, structure or ownership of a company and the latter must update the information that is held by the registry. Furthermore, according to Art. 27a para 6[77], missing documents are to be submitted without undue delay[78] and entrepreneurs who do not submit the required documents are subject to a fine of CZK 20,000 (approx. Euro 700). [79]

824. Annual financial statements are also to be submitted, including the auditor's report where mandatory audit applies, which is the case for the following entities:

- all banks and mutual funds
- foundations and certain other non-profit organizations
- joint-stock companies which in both the current and the previous accounting period meet at least one of the following criteria:
  - turnover exceeds CZK 80 million
  - total assets exceed CZK 40 million
  - average number of employees exceeds 50
  - other accounting units that meet at least two of the above criteria.

825. It remained unclear – mainly for joint stock companies – to what extent changes made to the initial share-holding structure (especially when they do not affect fundamentally the ownership or control of the company) must be reported and are reported in practice, so that the registry would keep fully updated and accurate information on the shareholding/owners. Representatives of the audit profession met on site advised that although the register is updated, it contained no information about the ownership structure.

826. Following the political and economic transition, the main priority for the registries was to ensure liberalisation, flexibility, efficiency and celerity. AML/CFT and the quality of data has thus not been a concern for the staff in charge of these registers so far and no specific initiatives were mentioned at this level to check out the situation of companies in this field (data comparison, cross-checks, analyses etc.). The team was told that it is quite easy with the right connections to register a company without having all the

[77] the relevant provision, at the time of the discussion of the report, is Section 38k para 1 and 2.

[78] (7) Every entrepreneur entered in the Commercial Register shall submit without undue delay, to the registration court two copies of the documents which are to be filed in the registry of documents. Judicial rulings (judgments) which are to be filed in the registry of documents shall be supplied by the court. Where a certain fact is entered in the Commercial Register and the corresponding document is not filed in the registry of documents, and the registration court ascertains this, the registry of documents shall note this and the entrepreneur concerned shall be invited to file such missing document in the registry of documents without undue delay.

[79] As from 1 January 2007, the collection of documents is being kept in electronic form and the documents submitted are available free of charge on www.justice.cz

documents or providing accurate information and courts have no real competence to cancel a registration (e.g. in case of a fictitious company) although the issue is dealt with under Article 32 of the Commercial Code. Therefore, the control exerted at this level is more of a formal nature.[80]

827. Representatives of the commercial register met on site advised that any person can register a company for someone else/provide company formation services, with a special power of attorney supplied together with a certified signature. All official documents have to be certified by a notary and the judge of the commercial register reviews the documents submitted. However, the examiners were also advised that in practice and with the adequate connections, one can carry out the registration on behalf of others without fulfilling the requirements.

828. The examiners' interlocutors admitted that, as a result, there is probably a number of fictitious or front companies in existence in the Czech Republic[81]. Section 125 para. 2 of the Criminal Code makes it an offence to operate a company without it being registered, to submit false or incomplete information, and to submit misleading information. But this mechanism would not have been really used in practice.

829. The examiners were advised at the time of the on-site visit, that a new procedure[82] was under discussion. Its aim is to accelerate and ease the procedure by using a single notarised certificate and abolishing the control of documentation by the judge of the register. It was anticipated that the new regime will still provide for the possibility to register a company without providing all the details, subject to the missing information being provided within 5 days. The examiners were concerned that accelerating the registration process would not improve the situation and could lead to a further decline in the accuracy and reliability of the information entered into the register.

830. As indicated earlier in this report, information submitted to the tax administration (whether by natural or legal persons), and which could be useful in the context of AML/CFT, is subject to the secrecy provisions of Act N° 337. The information is accessible only following the initiation of criminal proceedings (the FAU has access without the initiation of such proceedings though).

831. The Czech Republic also has the institution of the silent partnership (see Section 5.2 below).

Criterion 33.3

832. By virtue of the Commercial Code (art. 156 and following), shares can be issued as registered shares or bearer shares, and companies can freely issue bearer shares in certificated (paper) or non-certificated (non-paper) form. Bearer shares are freely

[80]the Czech authorities advised after the visit that the situation has very much impproved with the new legal changes of Law N° 216/2005, Law N° 79/2006 and the Regulation N° 562/2006 (on the the computerisation of data).

[81]The Czech authorities advised after the visit that the number of such fictitious companies is decreasing thanks to the recent legal amendments which strengthened the power of a court to open the procedure of dissolution of a company without a petition.

[82] The amendments have removed the obstacles which existed during the past and changed the procedure

transferable and transferability is unrestricted, unless the statutes of the entity provide otherwise.

833. The Czech Securities Commission (CSC) keeps a register of shareholders of companies that are listed on the stock market and acquisitions above 5% of the ownership must be authorised by the Commission.

834. Apart from that, one of the few ways to know who the shareholders of a company are at a given moment would be to look at the list of participants to the annual meetings. But bearer shares can be co-owned, in which case the co-owners can exercise the rights attached to shares themselves in accordance with their own agreement, or appoint a joint representative (proxy) to exercise those rights. The member of a company can also appoint a proxy to represent him/her in the general meetings of the company shareholders on the basis of a power of attorney. If the meeting report remains silent about the possible representation of shareholders, there is no information available.

835. The other way would be when the share(s) are redeemed and the value exceeds € 15,000, which would normally trigger identification and reporting to the FAU under the AML Act (by a broker, the company itself etc.).

836. The CSC representatives admitted that other "anonymous" products exist in the Czech Republic but could not say more as they were not familiar with the latter[83].

837. Law enforcement representatives confirmed during the interviews that bearer shares was a source of difficulties for their financial investigations.

5.1.2 Recommendations and Comments

838. The system in place (at the time of the on-site visit) for the registration of legal persons does not, in the given circumstances, ensure a sufficient level of reliability of the information registered and of transparency of beneficial ownership of legal persons. This is a particular issue given the current possibility for companies to issue bearer shares which are freely transferable, and which are seen as a problem by law enforcement agencies.[84]

839. It is therefore recommended to review the procedures applicable to the registry of commercial entities and the registration procedure, to increase the reliability and updating of information entered. This should include incentives to keep the registry up-to-date and measures to ensure a higher level of professional integrity of the courts' staff in charge of the registers.

840. It is also recommended to take appropriate measures to ensure that bearer transferrable shares are not misused for AML/CFT purposes.

[83]The Czech authorities advised that there are no further "anonymous" products which would be relevant in relation with legal persons, apart from bearer shares.
[84]See footnotes 80 to 82.

5.1.3 Compliance with Recommendations 33

	Rating	Summary of factors underlying rating
R.33	**NC**[85]	The registration of business entities does not ensure an adequate level of reliability of information registered and of transparency of ownership; companies can issue freely transferable bearer shares (there seem to be no particular AML/CFT counter-measures in place); risks of integrity problems in the area of registration of companies and effectiveness issue.

5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)

5.2.1 Description and Analysis

841. Although the concept of trust appears occasionally in the context of the notaries' activities description or certain commercial products (open and closed end unit trusts as a form of collective investment/financial products), trusts as a form of legal arrangement and as contemplated by the FATF Methodology are absent in the Czech Republic.

842. Other forms of legal arrangements include silent partners, which exist besides association agreements. The silent partnership is an unpublicised and unregistered written agreement by which the silent partner contributes funds or assets to a business, but takes no part in the business activities. The status of a silent partner is similar to that of a creditor. As indicated in the general introductory part of this report, the silent partner is not entitled to controlling activity with regard to both his investment and the business of entrepreneur. Rights and duties in relation to third persons apply (exist) only with regard to entrepreneur (with the two exceptions mentioned earlier).

843. The examiners were advised on site that if the silent partnership is not specified in the financial statements of the company or its meeting reports, it is difficult to know about the "partner".

5.2.2 Recommendations and Comments

844. Trusts, fiduciary companies and other legal constructions do not exist in the Czech Republic. However, the country has the institution of the silent partnership (besides the more classical partnership or association agreement), where the silent partner does not need to be declared or registered.

845. This kind of agreement can make the identification of and timely access to information on beneficial ownership difficult. No information is available as to how widespread this kind of agreements are. Nevertheless, like other arrangements which offer a certain level of opacity, they can be misused for ML and FT purposes.

[85] See footnotes 80 to 82.

846. The Czech Republic therefore needs to take measures to ensure a level of identification of silent partners which would be compatible with the requirements of the fight against ML and TF.

5.2.3 Compliance with Recommendations 34

	Rating	Summary of factors underlying rating
R.34	**NA**	

5.3 Non-profit organisations (SR.VIII)

5.3.1 Description and Analysis

847. The activities of non-profit organisations in the Czech Republic are governed by different rules, depending on the type of organisation. There are basically 4 types of organisations. The Czech authorities provided the information below.

848. Civic associations are governed by Law no. 83/1990 Col. On citizen associations. The association acquires the legal capacity after registration with the Ministry of the Interior. The creation needs to be declared by the Ministry to the Czech Statistical Office within 7 days. The latter keeps a register and the files related to associations. An association can be dissolved by voluntary dissolution, a merger with another association or dissolution by the Ministry.

849. Profit-making or "Beneficiary" associations are governed by Law no. 248/1995 Col. About beneficiary associations. Organisations belonging to that type have to keep separately in their book-keeping a register of income and expenditures connected with complementary activities, profit-generating services and the general management of the entity. Profit making associations have to prepare an annual balance sheet report. The report needs to be certified by an auditor in those cases where the association:

a) receives subsidies or other forms of income from a public entity (state, municipality, other local authority or state fund) and the total amount exceeds CZK 1,000,000 – approx. EUR 33,000 during the reference year;
b) has not established a supervisory board;
c) generates a benefit exceeding CZK 10,000,000 - +/- EUR 330,000;

850. The law states the type of information to be contained in the annual balance sheet report (overview of activities carried out in calendar year, statement of auditor if it was verified by an auditor, overview about monetary incomes and expenditures, a breakdown of income and expenditures by type of resources, the evolution and final status of funds at the end of the reference period, the circumstances and movements of assets and obligations, the total amount of costs, other data stated by the administration board, etc.).

851. A beneficiary association is established by a charter of foundation signed by all co-founders. The charter has to include information about the assets contribution of each

founder and an expert estimate of the value of those assets in case of in-kind contributions. Beneficiary associations acquire the legal personality after being entered in the register of beneficiary associations kept by the courts.

852. Foundations and foundation funds governed by Law no. 227/1997 Col. On foundations and foundation funds. The law regulates the use of assets, book-keeping and annual balance sheet reporting requirements. According to Art. 3, a foundation or foundation fund originates by written contract enclosed between founders or by a charter of foundation, if the founder is a single person, or by testament. The foundation deed has to contain among other information, the amount of assets transferred to the foundation or fund. Such assets can take the form of monetary means, securities, immovable and movable property ("things"), as well as rights and benefits attached to assets and values as long as they "fulfill the presumption of a constant income and there are no lines on them" (they are free from rights and debts). Foundations must be entered into the foundation register kept by the courts.

853. Churches and religious organisations are governed by Law no. 3/2002 Col. About freedom of religion and the position of churches. According to Art. 6, church and religious organisations acquire legal status from the time of their registration with the ministry of interior. This type of legal persons can be financed through:

- contributions from both physical persons and legal entities
- own income deriving from the sale and lease of movable, immovable and immaterial assets that belong to them
- deposit interests,
- gifts and inherited assets,
- collecting funds and receiving contributions on tehbasis of other special regulations
- loans and credits
- income from business or from another profit generating activity
- grants

854. Other laws which regulate areas that are relevant in the context of non profit organisations include:

- Law no. 198/2002 Col. About voluntary service
- Law no. 117/2001 Col. About public collections
- Law no. 202/1990 Col. About lotteries and other similar games.
- Tax legislation (for example law no. 586/1992 Col., in valid wording – about income tax and law no. 235/2004 Col., about value added tax)
- Law no. 563/1991 Col. About book-keeping

855. With the exception of profit making associations (which are subject to taxation) and charities (which are totally exempted), NPOs are in principle exempted from taxation as long as the annual income remains below CZK 1 million per year (+/- EUR 33,000). Donations to NPOs are possible up to 2% of the donating person's income.

856. The databases kept by the tax administration contain potentially useful information related to NPOs. As indicated earlier in this report, the information is confidential and only accessible following the initiation of criminal proceedings (except for the FAU).

857. The examiners were advised by representatives of the Tax Revenue Service that non profit organisations have been misused but they could not tell more about the context and the cases concerned.

858. No particular measures have been taken to protect NPOs from their misuse for FT purposes. The legal framework has not been reviewed in that context.

5.3.2 Recommendations and Comments

859. In view of the above, it is recommended:

- to carry out a review of the possible misuses of NPOs for criminal/ML/FT purposes, and as a result to examine the needs for a more consistent legal framework and centralised information, currently available through 3 or 4 different databases.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR. VIII	**PC**	A developed legal framework with controls at the most sensitive levels seems to be in place but no particular measures have been taken to protect NPOs from their misuse for FT purposes. The legal framework has not been reviewed in that context

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and coordination (R.31 & 32)

6.1.1 Description and Analysis

Recommendation 31 – National Cooperation and Co-ordination

860. At the general level: the Czech authorities advised that, with a view to improve co-operation at the national level, to unify all Czech outputs in relation to the European structures and to enhance mutual acquaintance on all new developments and changes in the field of AML/CFT, the FAU established in 2002 informal meetings of representatives from the various sectors. This Czech AML/CFT platform – called Clearing House – gathers representatives from the Ministry of Finance, Ministry of Interior, Ministry of Justice, the Czech National Bank, the Banking Association, Securities Commission and others. This informal union has meetings under the leadership of the FAU a few times per year. The Clearing House members, for example, were responsible for completing the 3rd round evaluation questionnaire. The FAU uses this group also for the discussion on the Czech positions in the framework of the process of preparation of the 3rd EU Directive.

861. As regards especially FT, the Czech authorities advised in the replies to the questionnaire that there is no permamnent coordination mechanism to deal with those issues, which somewhat contradicts the information given concerning the above mentioned Clearing House. The National Security Council, established in 1998, offers a framework for the coordination of actions and make proposals concerning the national security in general, including terrorism related matters in general.

862. Besides this, the Ministry of Foreign Affairs acts as the interface between international bodies such as the UN Security Council and the Council of the European Union, and the national authorities.

863. The Czech authorities also underlined that, at the supervision level coordination is an important issue in the context of the Czech Republic since both the FAU on the one hand, and the sector-specific regulatory bodies for the banking, insurance, securities and other sectors have supervisory responsibilities.

864. In this context, measures have been taken in favour of ensuring a certain level of cooperation between the supervisory authorities, in addition to the Clearing house platform mentioned above. A Memorandum of Understanding was signed between the Ministry of Finance, the Czech Securities Commission (CSC) and the Czech National Bank (CNB) to co-ordinate their activities in the areas of licensing, inspection activities and information exchange, while contributing to application of equal or compatible criteria or procedures of supervision and, consequently, to the improved efficiency of supervision.

865. Concerning the AML area in the banking sector, a cooperation agreement was signed between the FAU/Ministry of Finance and the CNB that includes such elements as the

exchange of requests for legal statements (regarding the AML Act), the coordination of on-site inspections in banks, cooperation in drafting regulation and organizing seminars for banks. These two authorities cooperate also with the Czech Banking Association, especially for the purposes of training programmes and seminars on AML/CFT.

866. The CNB also interacts with the Securities Commission in the AML area. Last year, the authorities met twice to exchange information and experience from practice in the AML area.

867. According to the AML Act (Art. 8), the sector-specific supervisors must provide the FAU with information and collaborate with it. The examiners were informed on site that the FAU is also kept informed about the other supervisors plans' of controls and supervision, but would not know about the FAU's own plans and inspections.

868. Overall, the examiners welcome that multiple fora and measures are in place to ensure national cooperation and coordination. During the discussions held on site, the examiners noted that these meetings have led to adjustments.

869. Despite the above measures, the examiners were confronted with inconsistent statistics on ML convictions, diverging views between the central authorities and field practitioners as regards the criminal law mechanisms, serious allegations of sectors vulnerable to criminals and ML without apparent initiatives being taken (gambling sector, life insurance products, precious stones industry, underground banking and foreign exchange activities, informal money remittances etc.

870. The examiners believe that there is room for strengthening the national coordination/cooperation in the area of AML/CFT. They also believe that the central role of the FAU should be better established. Experience from other countries suggest that a more formal approach could be useful, for instance through the setting up of a two committee system which enables to split up the members forming the committees depending on the issues to be dealt with. One committee could be made up of members who are to deal with sensitive/restricted issues of AML/CFT. The other committee could be made up of members coming from the Supervisory bodies, financial sectors, and DNFBPs:

- Central Committee consisting of representatives from all the competent authorities (CNB, CSC, Co-Operative Savings Union, etc) and the Enforcement authorities (Police, Customs, Public Prosecutor's Office(maybe also Secret Service) involved in AML/CFT. The committee may meet once every two months (or more frequently but not less than once every three months) to discuss sensitive/restricted issues concerning AML/CFT effectiveness and reviewing ailments detected in the system and strategies planned for the future.
- a Joint Committee consisting of representatives (or representatives of associations) of all subject (obliged) persons to discuss current AML/CFT issues, guidelines, current trends, objectives. Meetings to be held once every two/three months.

871. The FAU would be the central element of these two committees and it would be its task to co-ordinate actions emanating from the results obtained from these two committees. The use of the two committee system lends itself to being versatile and could have multiple benefits

Recommendation 32 Review of effectiveness of AML/CFT measures

872. The Czech authorities advised that various reports constitute the basis and opportunity for a review of the relevant measures in place in the country:

- **the National Action Plan to Combat Terrorism"** (NAP), which is drafted annually since 2002 by the Ministry of Interior (Security Policy Department), in close co-operation with the Ministry of Foreign Affairs. All the ministries and many other central administration authorities are involved in the preparation and evaluation process of the NAP;

- the Ministry of Interior (Security Policy department) is also responsible for drawing up a **"Report on Public Order and Internal Security in the Czech Republic"**. This report is prepared annually and is submitted to the Government. The last Report on Public Order and Internal Security in the Czech Republic in 2003 was adopted by the Government in 2004. These reports are drawn up under the responsibility of the Ministry of the Interior but they are compiled from documents provided also by other ministries and other public administration bodies. The Report summarises problems and findings with the main aim of: providing an overview of trends in crime and their dynamics, developments in individual types of crime, and the structures of delinquency and criminal offenders; providing an overview of developments in internal order and security; providing information on the activities of executive bodies in security policy, on drawing up strategies and legislative and non-legislative measures and enabling the use of information gathered to combat crime, in particular to prepare legislative decision making, strategic, and organisational objectives; identifying and highlighting those areas which public authorities need to devote special attention to.

- **the principles of internal security policy are defined in the Security Strategy of the Czech Republic** (prepared by the Ministry of foreign affairs) approved by Government Resolution No. 1254 of 10 December 2003. The Security Strategy of the Czech Republic is a document reflecting the security interests and needs of the Czech Republic in the context of the developing environment of security. The Strategy can flexibly respond to substantial changes occurring in the security environment.

- **Analysis of the Legal Powers of the Intelligence Services and the Police of the Czech Republic, that are Needful to Complete Their Tasks in the Fight against International Terrorism (Analysis)**: this document analysed the legal powers of the intelligence services and the Police in the CFT area and compared them with those of their counterparts abroad (especially in the EU Member States). The first outcomes of the comparing process says openly, that the powers of the Czech Republic bodies have to be extended to assure the effective co-operation and exchange of information between the domestic bodies and their foreign counterparts (as is described for example in the Council Regulation No. 2580/2001). The crucial areas that have to be amended are:

- the possibilities of receiving information from the public administration bodies and from some private entities;
- the steps, that are connected with the Act on Electronic Communications (conditions of wire-tapping, localisation of cellular phone, databases, jamming of electronic communication, the ways, how the Police can receive information aside of the prosecution mechanism, etc.);
- the agenda of the so called "Central Register of Bank Accounts";
- the exchange of information according to the Act No 133/2000 Coll., on the evidence of the inhabitants and their unique identification numbers and other sensitive data.

- **The Analysis of the Ways How the Czech Republic Will Go along with the Commitments Derived from the EU Council Action Plan against Terrorism**; this document mirrors the EU Council Action Plan (10010/04) and describes the ways, how the Czech Republic completes (or not) the commitments, that are mentioned in the Road Map. It means that its (permanent) evaluation also helps to find the potential gaps in the area of the fight against terrorism. The legal background of the document preparation is the Government Resolution of 19th May 2004 No. 479 (on the NAP 2004).

873. These various reviews are mostly commendable. In particular, the field of CFT measures seems well covered and studied. This appears to be in line with essential criteria 32.1 which lays down that "countries should review the effectiveness of their systems for combating money laundering and terrorist financing on a regular basis."

874. As far as AML measures are concerned, however, there has been no wider review of their effectiveness. As indicated in the introductory part of this report the priority of the Government in this area is to fulfill the international commitments and to be in compliance with the international standards. The Czech authorities indicated that the priority for the following period is to sufficiently implement the current legislation and further raising of awareness of relevant subjects about this issue in a way that would bring results as regards convicted perpetrators and confiscated proceeds.

875. The examiners regret that the good potential present in the Czech Republic for the drafting of studies and strategies has not been used equally, so far, in the AML field. This is even more crucial in the context of the number of alleged illegal activities potentially used for criminal and laundering purposes and the lack of common approach, the complexity of the legal framework, the limited results in terms of ML convictions so far etc. Such a review would also support the more concerted approach discussed earlier in relation to national coordination.

6.1.2 Recommendations and Comments

876. National coordination mechanisms are in place and there are good basis for an inter-institutional dialogue. The FAU and supervisory bodies manage to coordinate the supervisory work in a way that limits undue risks of overlapping or loopholes. However, for the time being, there is a lack of common understanding on certain issues and a real concerted approach at national level that would bring on the same path the whole chain of institutions involved in the prevention, detection, investigation and prosecution of economic and other activities involving proceeds from crime. As a result, there are

different "AML/CFT languages" spoken in the Czech Republic, with a tendency to transfer the responsibility for the lack of results on others: the industry criticizes the lack of guidance and the standards, the police critizes the FAU, judges critizes the police and prosecutors etc. The need for a strong concertation mechanism and shared responsibilities is obvious. It is therefore recommended to introduce a regular coordination body involving all the relevant parties, that would be able to set common objectives, to address the various critical AML/CFT situations and to trigger both policy-level and operational initiatives. One of the first taks should be to elaborate a picture of the ML phenomena and sectors affected and to propose rapid measures to address the causes.

877. The Czech Republic has the potential to carry out studies on the effectiveness of AML/CFT measures in place. It was used so far only in respect of terrorist and terrorist financing issues. Therefore, it is recommended to carry out periodic assessments of AML measures similar to those used on terrorism and terrorist financing purposes.

6.1.3 Compliance with Recommendations 31 & 32 (criteria 32.1 only)

	Rating	Summary of factors underlying rating
R.31	**PC**	Although there seems to be a good level of cooperation in the country, there is no real coordinated/concerted policy and measures that would produce better results; no apparent responses from the authorities to certain alleged situations of ML
R.32 (crit.1)	**PC**	**Well documented analysis of needed measures in the area of CFT but comparatively, no similar review of the effectiveness of AML measures despite the national situation (sectors exposed, complexity of legal framework, limited apparent results in ML cases)**

6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)

6.2.1 Description and Analysis

In General

878. International law prevails over domestic law and is directly applicable in the Czech Republic. Article 10 of the Constitution of the Czech Republic provides that promulgated international treaties, the ratification of which has been approved by the Parliament, and which are binding on the Czech Republic, are part of the Czech legal system; if such an international instrument stipulates differently from what is in legislation, the former shall prevail.

Recommendation 35

879. The Czech Republic has signed and ratified the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances ("Vienna Convention", 1988). It entered into force for the Czech Republic on 02/09/1991. Earlier

developments in this report pointed at certain insufficiencies in respect of the criminalisation of ML, TF, the complex and incomplete framework for temporary measures and confiscation of proceeds of crime in cluding ML and TF, the restrictive ability to apply special investigative techniques (only for the most serious offences, which excludes to a large extent ML and FT) etc.

880. The Czech Republic has signed in 2000 (but not yet ratified) the United Nations Convention against Transnational Organised Crime ("Palermo Convention" of 2000).

881. The Czech Republic has signed in 2000 (but not yet ratified) the United Nations Convention for the Suppression of the Financing of Terrorism (the "terrorist financing Convention", 1999)[86].

882. The Czech Republic has signed and ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990). It entered into force for the Czech Republic on 01/03/1997.

883. To comply with recommendation 35, there is thus a need for the country to ratify and implement the Palermo Convention and the terrorist financing Convention[87].

Special Recommendation I

884. As indicated above, the Czech Republic has signed, but not yet ratified, the United Nations Convention for the Suppression of the Financing of Terrorism of 1999[88].

885. The situation as regards the implementation of UN resolutions relating to the prevention and suppression of financing of terrorism is quite complex as it combines national legislation and directly applicable EU legislation.

886. As seen earlier under Section 2.4, the Czech authorities indicated that the freezing of funds on the basis of international commitments is regulated by Act No. 48/2000 on measures concerning the Afghan Taliban movement and, in general, by Act No. 98/2000 on the implementation of international sanctions for the purposes of preserving international peace and security. It was sais that the latter substantially changed the domestic procedures relating to international sanctions. It abolished the previous cumbersome practice, which required that each implementing government directive should be preceded by parliamentary approval of an ad hoc law.

887. Within the framework of Act No. 48/2000, the Government adopted Directive No. 164/2000 implementing the commitments under UN Security Council Resolution 1267 (1999), and Directive No. 327/2001 concerning further measures in respect of the Taliban movement, implementing the commitments under UN Security Council Resolution 1333(2000).

[86] The Czech Republic ratified the Convention on 27 December 2005; it entered into force on 26 January 2006
[87] see above
[88] see above

888. No further domestic measures were mentioned in respect of the other UN Security Council Resolutions, the most important of which were passed after September 2001 and therefore after the Czech legal acts on sanctions mentioned above.

889. The legal and practical obstacles encountered in practice to freeze *ex officio* accounts and more generally assets held by persons and organisations appearing on the UN and EU lists have been discussed earlier. These include the lack of guidance to, and familiarity of obliged institutions to identify, report and freeze accounts on the basis of the AML Act (that is after a reporting to the FAU), the absence of a clear and publicly known procedure (apart from the EU-level measures) for de-listing and unfreezing appropriate cases in a timely manner, the question whether an adequate monitoring is in place in practice to ensure compliance with the UNSC Resolutions. No formal statistics are kept on listed persons and entities detected in the Czech Republic but some measures have been taken in respect of a handful of persons. The proceedings were under way at the time of the on site visit. The question of the extent of control of compliance with the international freezing requirements also remains largely open.

6.2.2 Recommendations and Comments

890. It is recommended to ratify and implement the Palermo Convention and the UN terrorist financing [89] Convention as soon as possible (in addition to the recommendations made in relation to SRIII).

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	the Palermo Convention and the terrorist financing[90] Convention have not been ratified; insufficiencies as regards requirements under the Vienna Convention have been addressed in other parts of the report
SR.I	**PC**	As seen earlier: lack of guidance to, and familiarity of obliged institutions to identify, report and freeze accounts on the basis of the AML Act (that is after a reporting to the FAU), the absence of a clear and publicly known procedure (apart from the EU-level measures) for de-listing and unfreezing appropriate cases in a timely manner, the question whether an adequate monitoring is in place in practice to ensure compliance with the UNSC Resolutions. No formal statistics are kept on listed persons and entities detected in the Czech Republic but some measures have been taken in respect of a handful of persons. The proceedings were under way at the time of the on site visit. The question of the extent of control of compliance with the international freezing requirements also remains largely open.

[89] The Czech Republic ratified the Convention on 27 December 2005; it entered into force on 26 January 2006
[90] The Czech Republic ratified the Convention on 27 December 2005; it entered into force on 26 January 2006

6.3 Mutual Legal Assistance (R.36-38, SR.V, R.32)

6.3.1 Description and Analysis

Recommendations 36-38

891. Mutual Legal Assistance Mechanisms are regulated by Chapter XXV. Of the Criminal Procedure Code (Sections 375 – 460). As indicated earlier, treaties ratified by the Czech Republic are part of domestic legislation and the former shall prevail in case of divergences/contradictions. Thus, Sections 375 – 460 of the Criminal Procedure Code shall be applied only if the Czech Republic is not, in relation to a foreign country, bound by an international treaty or unless such treaty stipulates something different from domestic legislation.

892. Basic principles of international judicial cooperation under Chapter XXV. Of the Criminal Procedure Code include the rule of provision of assistance on the basis of reciprocity (S. 376); execution of request may be denied if endangering fundamental interests of the state (S. 377); duty to protect information submitted by requested state is also established (S. 378). Czech authorities may initiate the proceedings under this Chapter on basis of request of authority of foreign state, even if made by phone, fax or electronically pursuant to special regulations, unless they have doubts as to its reliability and the matter needs not to be performed without delay. The original of request must be subsequently provided in time set by requested authority (S. 379).

893. Authorities active in criminal proceedings perform legal assistance requested by bodies of foreign state in a manner stipulated in the Code of Criminal Procedure, unless international treaty binding on the Czech Republic provides otherwise. On the request of authority of foreign state it is possible to proceed according to legal regulation of another state, unless procedure requested is not contrary to interests of the Czech Republic listed in S. 377. Upon foreign request it is possible to hear witnesses and experts under oath. Performance of request may be postponed if it could endanger criminal proceedings pending in the Czech Republic. Denial of performance of request for MLA is possible only if such request does not comply with requirements set by international treaty or if its execution would be contrary to fundamental interests of state set in S. 377. In case of postponement or refusal, even partial, of execution of request the authority competent to perform request must provide reasons for its decision to the authority of foreign state (S. 430).

894. Authorities of foreign states cannot, in the territory of the Czech Republic, perform acts of legal assistance on their own. The presence of bodies of foreign states during legal assistance executed in the territory of the Czech Republic in the course of preliminary proceedings is permissible only upon consent of the Supreme Prosecutor's Office and, in the course of proceedings before a court, upon consent of the MoJ. If a promulgated international treaty binding on the Czech Republic allows for direct legal cooperation of judicial bodies, such consent would be granted by the court or, in preliminary proceedings, by the public prosecutor handling the request. If the body of a foreign state participates, pursuant to its request, in the interrogation in the Czech Republic, it may ask for possibility to ask additional questions to person interrogated through body active in criminal proceedings that conducts interrogation. Such body is obliged to

comply with such request unless asking or formulation of such question would be contrary to legal system of the Czech Republic (S. 432).

895. Provisions of Sections 435 – 446 regulate special types of requests, which may be divided into two groups – special types of requests available only pursuant to international treaty binding on the Czech Republic and special types of requests available on the basis of reciprocity. In the group of special types of requests available only pursuant to international treaty binding on the Czech Republic are:

- cross-border pursuit (S. 435);
- cross-border surveillance (S. 436);
- covert investigation (S. 437);
- joint investigative team (S. 442 and 443);
- interrogation through video-phonic devices and telephone (Sections 444 and 445).

896. The Group of special types of requests available on the basis of reciprocity includes:

- provisional handing over of person to abroad for the purpose of procedural steps (S. 438);
- provisional taking over of person from abroad for the purpose of procedural steps (S. 440);
- securing and handing over things and securing of property (S. 441);
- information from the Register of Punishments (S. 446).

897. Even in cases where international treaties do not apply the possibilities of international cooperation under Chapter XXV. Of the Criminal Procedure Code cover all types set by Criterion 36.1. The availability of measures required under Criterion 36.1.f) is limited to the extent such measures are established in domestic legislation (see responses to previous questions on securing, freezing, seizure and confiscation, in particular as regards real estate, other property value or substitute value). Direct cooperation of judicial authorities is always established by international treaty; therefore use of these powers in direct request from foreign judicial authority depends on relevant treaty.

898. The interpretation of reciprocity and dual criminality does not pose particular problems (recently, guarantee of reciprocity was given as regards e.g. service of documents in relation to two Eastern Asian countries). Less intrusive measures are not subject to the condition of dual criminality. Requests for MLA are not declined, pursuant to the Criminal Procedure Code, on the sole ground that the offence is also considered to involve fiscal matters, nor on the ground that it concerns confidentiality requirements (except the lawyers' duty of confidentiality pursuant to the Law on advocacy). The authorities advised that the practice is to take into account the elements of the offence in the foreign jurisdiction, rather than the classification of the offence.

899. Coordination of steps to be taken in criminal proceedings is possible under S. 447- 448 of the Criminal Procedure Code. There are no particular provisions for coordinated determination of the best venue for proceedings, but nothing prevents; under the EU-Eurojust judicial cooperation mechanism and the general principle of legal economy, this is possible and applied in practice.

900. In the absence of international treaty, a response to MLA requests aiming to identification, freezing, seizure or confiscation of assets defined in Criterion 38.1 related to commission of any criminal offence may be provided pursuant to Sections 441, 449 – 450 and 455 paragraph 3 of the Criminal Procedure Code.

901. Section 441 paragraph 1 provides for the securing and transfer of things and property that may serve as evidence or that were obtained (by a person to be transferred) through a given criminal offence or that was obtained for such a thing/property[91]. A broader application is stipulated in Section 441 paragraph 2, which allows for the execution of requests from a foreign judicial authority by referring to the application of the general provisions for securing things and property in domestic proceedings (see explanations regarding Sections 47, 78 – 79c and 347 of Criminal Procedure Code, also on legislative proposals related to corresponding value). In preliminary proceedings, the securing is performed by the district prosecutor. If the proceedings have been brought before a court, such securing is performed by the district court of the jurisdiction where property or its substantial part is located.

902. Sections 449 – 450 and 455 paragraph 3 of the Criminal Procedure Code apply to the execution of foreign court decisions (including confiscation orders). Such decisions do not need to be final –S. 449 letter f) on the execution of provisional securing of property or its part. Dual criminality is required, as are other conditions under S. 450 and, consequently, S. 452.

903. The Czech authorities indicated that coordinating action with other countries is possible with regard to all aspects of international cooperation, including seizure and confiscation actions.

904. The Czech Republic does not envisage the establishment of an "assets forfeiture fund" and its use for the purposes of bodies active in criminal proceedings.

905. Swift and smooth processing of international cooperation is, however, at present time hindered by the low number of lawyers working at the penal cooperation unit at the Ministry of Justice.

906. Foreign non-criminal confiscation orders are regulated pursuant to general provisions of the act no. 97/1963 Coll., on international private and procedural law. Pursuant to its Sections 63 and 64 it is possible to recognise and execute decisions of foreign judicial authorities, if:

- such decisions are final and valid;
- there is reciprocity (usually on the basis of international treaty) (reciprocity is not required if decision does not apply against Czech national or Czech legal person);
- the decision does not fall into exclusive jurisdiction of Czech authorities;
- there is not final and valid decision of Czech authority or recognized decision of third country's authority;
- the participant to the proceedings, against whom a decision is to be executed, was afforded full possibility to take part in proceedings (such as service of documents);
- recognition is not contrary to Czech public order.

[91] In the amendment implemented by Act No. 253/2006 Coll. *"other property value"* was also added to the provision for the purpose of harmonising terminology.

907. Special regulations apply to EU instruments.

SR V

908. The Czech Republic has mechanims in place to extradite persons, including for terrorism financing. As seen earlier, the Czech Republic has not yet ratified the UN Convention on terrorism financing, which is an important instrument for cooperation in this field. Furthermore, mutual cooperation could theoretically suffer from the current legal framework which does not criminalise (explicitly) the various FT elements, although a combination of different mechanims could fill part of these gaps.

Recommendation 32

909. The Ministry of Justice keeps statistics on an on-goin basis. The following ones were provided:

Statistics[92] of the MoJ

Procedure / Year	**2000**	**2001**	**2002**	**2003**
requests to abroad	40	198	92	173
requests from abroad	36	210	147	202
extraditions from abroad	96	247	104	116
extraditions to abroad	85	159	106	110
taking over of convict from abroad	20	27	11	12
handing over of convict to abroad	62	130	65	95
total cases of international cooperation in criminal matters	754	2483	1380	1272

910. There is no breakdown available for ML/FT cases, nor on the average time needed to handle a foreign request or possible refusal of assistance. From the information provided during on site discussions, the examiners understood that all foreign requests hade been processed in the recent past.

6.3.2 Recommendations and Comments

911. The Czech Republic is able to cooperate to a large extent with foreign counterparts in those areas which are relevant for AML/CFT purposes. It would seem that the major limitations to international cooperation are inherited from the incomplete Czeck Legal framework on seizure and confiscation. Furthermore, certain staffing problems (Ministry of Justice, prosecutor's office) could be an obstacle to timely and effectice cooperation. These issues have already been addressed elsewhere in the report.

912. The Czech Republic **should take care that the services dealing with legal assistance are adequately staffed to deal also with those issues. Also, more detailed statistics should be kept.**

[92] The MoJ coordinates MLA when cases are handled by the courts. Data relate to files started in a given year, not to extraditions etc. actually completed that year. The length of each procedure is very variable.

6.3.3 Compliance with Recommendations 36, 37.1, 38, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**LC**	**Legal conditions and practices seem to be largely in line with the requirements of R.36; this being said, the ability to cooperate in a timely and effective manner could be hindered occasionally by the Czech legal framework on seizure and confiscation (which excludes for instance on indirect proceeds, value confiscation), and shortage of staff (MoJ, prosecutors)**
R.38	**LC**	Same as for R.36
R.37.(crit 1)	**C**	
SR.V	**LC**	Except in cases where there is a European Arrest Warrant (EAW) dual criminality is always required for the purposes of extradition. Similar remarks as for R. 36-38
R.32	**LC**	Overall statistics are available but could be more detailed.

6.4 Extradition (R.37, 39, SR.V, R.32)

6.4.1 Description and Analysis

913. Except the cases where the European Arrest Warrant (EAW) is applied, dual criminality is always required for the purposes of extradition. The element of dual criminality is interpreted broadly, i.e. it is sufficient that the underlying conduct forms a criminal offence under legal system of both jurisdictions.

914. Money laundering offences are extraditable offences (S. 392 paragraph 1 of the Criminal Procedure Code). The Czech Republic does not extradite its own nationals (S. 393 paragraph 1 a) of the Criminal Procedure Code). It can surrender its own nationals only pursuant to the EAW (S. 403 paragraph 2 of the Criminal Procedure Code). Otherwise Czech nationals are prosecuted pursuant to domestic law (jurisdiction over conduct of nationals in abroad is established pursuant to S. 18 of current Criminal Code), in the same manner as if the offence was committed in the territory of the Czech Republic. In those cases, law enforcement bodies may use international cooperation, including the possibility to take over the prosecution of Czech national that was initiated abroad (S. 447 of the Criminal Procedure Code).

915. International cooperation in penal matters is handled by the Supreme prosecutor's office, by the Ministry of Justice and through direct contact of judicial authorities. Swift and smooth processing of international cooperation is, however, at present time hindered by low number of lawyers working at the penal cooperation unit at the Ministry of Justice.

916. Simplified procedures include direct contact between appropriate ministries and simplified extradition mechanism for those who give their consent. Either arrest warrant or judgment form sufficient basis for extradition.

917. Extradition can be performed on the basis of international treaties. The Czech Republic can also extradite persons in cases when no international treaty applies, on the basis of the Czech legislation (the Criminal Procedure Code, Second Section, Chapter 25 (section 379 and ff. of the Criminal Procedure Code), subject to a number of conditions described in section 21 of the Criminal Code (the case involves a criminal act qualified as such by criminal law in both countries for which extradition is permissible, the punishment for that offence can still be imposed, and a citizen of the Czech Republic is not involved).The Czech Republic does not extradite its nationals for criminal prosecution or to serve a sentence to foreign countries for any kind of criminal offence. However, the Czech Republic is competent to bring a criminal prosecution for any criminal offence committed by its own citizens, regardless of where this occurred. An amendment to the Constitution of the Czech Republic and an associated amendment to the Criminal Code are being discussed and prepared to allow the extradition of a citizen of the Czech Republic in cases stipulated by law or by the declared international treaty to which the Czech Republic is a signatory. Under the law of the Czech Republic, a criminal act committed abroad by an alien or a person without nationality, who has no permanent residence in the territory of the Czech Republic, can also be punished in the Czech Republic, if such an act proves to be a criminal act also under the provisions of the legislation valid in the territory where it has been committed. A Prosecuting Attorney is legally obliged to prosecute all criminal acts that come to his/her knowledge, unless stipulated otherwise by law or by the declared international treaty to which the Czech Republic is a signatory. *Extradition is the rule, with the –classical in civil law countries – exclusion of own nationals. There is, however, the possibility to take over the foreign prosecution if a Czech national is the suspect. No special difficulties were reported as far as extradition procedures are concerned.*

Recommendation 32

918. There have been two extradition cases dealing with ML.

- Extradition of a non-national of the Czech Republic to an East European country for the purposes of criminal prosecution related to, inter alia, money laundering. The minister of justice has granted extradition, which will be carried out after the person requested serves sentence imposed by Czech courts (for different criminal offences);

- Extradition of non-national of the Czech Republic to South European country for the purposes of criminal prosecution very probably related to, inter alia, money laundering (real property scheme). The minister of justice granted the extradition, which was carried out. Afterwards, the extradition was, upon request of that country, extended to cover prosecution for offences committed in different Central European state (which had transferred criminal prosecution to that South European country).

6.4.2 Recommendations and Comments

919. The situation as regards extradition looks overall satistifactory. The only recommendation to offer concerning this section concerns the adequate staffing of the Ministry of Justice and the Prosecutors Office. A request involving mutual legal assistance or extradition will definitely involve the offices of the two above indicated. Such request cannot be dealt in a timely manner considering that the department of those who would have to cater for such request are under staffed.

920. The Czech Republic could consider relaxing further (outside the context of the European Arrest Warrant) the dual criminality requirement.

6.4.3 Compliance with Recommendations 37 & 39, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.4 underlying overall rating
R.39	**LC**	Issue of staffing seen earlier
R.37 (crit. 2)	**C**	
SR.V	**LC**	Czech law provides that except in cases where there is a European Arrest Warrant (EAW) dual criminality is always required for the purposes of extradition; the legislation appears restricted concerning seizing/freezing of immovable property, other property value or substitute value. The Ministry of Justice and Prosecutors Office at present lack personnel to provide mutual legal assistance in a timely manner.
R.32	**C**	

6.5 Other Forms of International Co-operation (R.40, SR.V, R.32)

6.5.1 Description and Analysis

Recommendation 40 – Other forms of co-operation

921. Recommendation 40 requires that appropriate mechanisms are in place that facilitate the direct, either spontaneously or upon request, exchange of information relating to money laundering and predicate offences between the relevant competent authorities and their foreign counterparts.

In general

922. In this respect, the Czech Republic is a Party to various international instruments which provide for direct contacts between judicial authorities (Vienna Convention, Council of Europe Convention on laundering, Search Seizure and Confiscation of the Proceeds from Crime, Council of Europe Convention on Mutual Legal Assistance in Criminal Matters and its second additional protocol, Convention on mutual legal assistance in criminal matters between the Meneber States of the European union, Schengen

Implementing Convention, bilateral treaties). As an EU member, the Czech Republic (prosecution services) is part of such cooperation mechanisms as EUROJUST and the European Judicial Network. Exchange of information can take place even when the matter involves only fiscal matters (criterion 40.7). Furthermore, the tax authorities have their own cooperation channels and information exchange schemes with foreign counterparts. The examiners could not identify unduly restrictive requirements when it comes to information exchange (criterion 40.6). At the level of the FIU, information is exchanged on the basis of the Egmont principles for information exchange and art. 10 para 7 of the AML act. In the other cases, the matter is regulated by the treaties and agreements and the general principles (reciprocity, protection of national interests). As regards controls and sagefuards to ensure that information is used in an authorised manner (criterion 40.9): at the level of judicial authorities, information received from abroad is in principle protected by general provisions contained in the relevant treaties and agreements; as for the FIU, information received is in principle kept in the FIU. It can be shared with other Czech authorities with the foreign entity's approval (general principle on information exchange from the Egmont group).

FAU

923. The basic provision applicable is Art. 10 para 7 of the AML Act:

> (7) Within the scope determined by an international treaty binding for the Czech Republic, or on the basis of a reciprocity, the Ministry shall cooperate with foreign authorities that have the same real competence, particularly in the handing over and receiving of information that serves to achieve the purposes stipulated by this Act. On conditions that the information will only be used to achieve the purposes of this Act and that it will enjoy protection at least in the scope stipulated by this Act, the Ministry may also cooperate with other international organisations.

924. The primary international legal basis for international cooperation in this area is the Strasbourg Convention. But as the above provision states, cooperation can also be based – alternatively – on the principle of reciprocity.

925. It was also stressed that for the FAU to cooperate, it is not necessary to have a Memorandum of Understanding concluded. The evaluators noted that Art. 7 para 4 f) of the AML Act states explicitly that confidentiality is not opposable to "the relevant foreign authority in the handing over of information that serves to achieve the purpose stipulated by this Act, as long as a special regulation does not forbid it." The examiners understood that there are no such special limit in practice.

926. Nevertheless it is matter of practice to conclude such agreements which specify the cooperation and information exchange between the FAU and its foreign counterpart. The FAU has signed MoUs with FIUs of the following countries:

Country	Year		Country	Year
Belgium	1997		Slovakia	2001
France	1998		Poland	2001
Italy	1999		Russia	2002
Bulgaria	1999		San Marino	2003

Croatia	1999		Ireland	2003
Slovenia	1999		Romania	2003
Latvia	1999		Albania	2004
Lithuania	2000		Georgia	2004
Estonia	2001		Nether. Antilles	2004
Cyprus	2001		Ukraine	2004

927. The FAU has been a member of the Egmont Group since 1997 (currently it has three representatives in Egmont Working Groups) and the Moneyval Committee (PC-R-EV) since 1997. The FAU has also delegated two representatives to the Contact Committee of Experts on Money Laundering within the European Commission since 2003. Representatives of the FAU also participate in relevant meetings of the UNODC in Vienna.

928. The general figures available on FIU-FIU cooperation (including spontaneous referrals) are the following:

Requests sent to foreign FIUs

Year	**2001**	**2002**	**2003**	**2004**
Requests	**126**	**104**	**175**	**101**

Requests received from foreign FIUs

Year	**2001**	**2002**	**2003**	**2004**
Requests	**52**	**75**	**128**	**116**

929. The FAU explained that the figures on requests sent to foreign FIUs have been increasing in the last seven years, for two reasons essentially. A) the number of reliable counterparts has increased, b) demands of the analytical division are increasing. The figures on requests received from foreign FIUs have shown a similar trend.

930. It was stressed that the best FIU-FIU cooperation experience was made with those of new EU member states. The problem regarding responses to domestic requests is not high, but there are some countries, where FIUs have relatively low powers to obtain information, and as a consequence their possibilities to forward it abroad are limited. The FAU itself has the right to hand over all kind of information obtained domestically (including tax information) to its foreign counterparts.

931. Cooperation with foreign FIUs was impossible on a few occasions due to the foreign counterpart's requirements for an MoU to be in place (and there was none).

Law enforcement

932. Police cooperation is supported by the International Police Co-operation Department within the Police Presidium. This department is responsible for fulfilling tasks in the area of international relations and executing of international co-operation. It consists of the following divisions: National central bureau of Interpol, Europol national unit,

Sirene office[93] and Division of international relations. As seen earlier in this report, though, there are some limitations in the AML Act to the access of law enforcement to commercial information in the context of CFT, which limits theoretically their ability to share information with foreign counterparts.

933. In 2004, work was initiated on the interconnection of the Czech Republic to the BdL (Bureau de Liaison, i.e. "Liaison Office") network – the EU official communication system interconnecting officials of the member states in the Working Group on Terrorism (E 12) of the European Council[94]. Police liaison magistrate have been detached to the Russian Federation, Ukraine, Slovakia and Europol; intelligence liaison officers are present in Brussels (also for the Netherlands and Luxemburg), Poland and Austria. The Czech Republic has not delegated any liaison magister abroad in the sense of the Joint Action of 22nd April 1996 (96/277/JHA). A national correspondent for terrorism has been recently appointed in the framework of co-operation with Eurojust. None of the liaison officer does handle only the agenda of the terrorism, but all of them handle a wider scale of the security issues, including terrorism. As for the foreign liaison officers in the Czech Republic:

- Germany, Switzerland, Nordic Union (Denmark + Sweden + Norway + Finland + Iceland), USA, Romania, Italy, Slovakia and Austria does place their liaison officers in the Czech Republic;
- There are also civil officials, working within many other embassies, that are deeply involved in the security topics (The Netherlands security attaché, etc.);
- Some foreign officers are not resident of the Czech Republic, but arrive to the Czech Republic on the regular basis or according to the need (United Kingdom).

934. The Czech Intelligence Service, who can be asked by licensing bodies for background information on applicants for a license for instance, maintain contacts with the intelligence services of foreign countries with the consent of the Government pursuant to Section 10 of Act No. 153/1994 Coll. The intelligence services of the Czech Republic co-operate on the basis of the bilateral agreements that were signed with the approval of the government.

935. The examiners were advised by representatives of the police that they can provide information to foreign counterparts even without an agreement or memorandum of understanding, but in such a case, the information provided can only be used for intelligence purposes, not as evidence in court.

Financial supervisors

936. Among the financial supervisors, the CNB indicated that they can in principle also cooperate with its foreign counterparts and banks, and as seen earlier (see section 3.4) banking information can be shared by commercial banks themselves for "know-your-customer" purposes. The CNB Banking Supervision is authorised to exchange information with foreign regulators in accordance with Article 25a (3) of the Act on Banks. Such exchanges are based on MoUs, which cover notably the AML/CFT area.

[93] The Sirene office's main task is implementing the Schengen acquis with the aim of building up full-operating national Sirene office. The office is the central authority for building the national Schengen information system which should enable the connection of the CR to SIS II.
[94] The Accreditation of the *Bureau de Liaison* in the Czech Republic was successfully completed in June 2006.

Memoranda have been signed with the banking supervisory authorities of France, Germany, the USA, Austria, Slovakia, Belgium, Italy and the Netherlands.

937. The exchange of information from the insurance sector relating to customers requires in principle the latter's approval.

938. As seen earlier in this report, the provisions applicable to the access to, and use of information in the Securities sector are inconsistent on this issue. The examiners further noted that Act 15/1998 Coll. On the Securities Commission (Section 26) covers to a large extent international cooperation with members of the EU or the European economic area, and to a lesser extent or under more restrictive conditions with other countries. The Czech authorities stressed, however, that the CSC's priority, in the context of capital market globalisation, has become the development of international co-operation, specifically in the framework of the IOSCO (International Organisation of Securities Commissions) and CESR (Committee of European Securities Regulators). The key prerequisite of successful integration into the European financial environment is close co-operation with the regulators of the EU member countries within the CESR.

SR.V and Recommendation 32

939. As indicated earlier, according to SR. V,

Each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquiries and proceedings relating to the financing of terrorism, terrorist acts and terrorist organisations.

Countries should also take all possible measures to ensure that they do not provide safe havens for individuals charged with the financing of terrorism, terrorist acts or terrorist organisations, and should have procedures in place to extradite, where possible, such individuals.

940. As indicated earlier in this report, at the time of the on site visit, the Czech Republic had not yet ratified all the relevant international instruments addressed in the FATF Recommendations.

941. The Czech Republic is a Party to a variety of EU mechanisms and European instruments which enable it to cooperate broadly with the European countries. For non-European countries, however, international instruments and mechanisms remain an essential tool. It is therefore important that the Czech Republic becomes a Party to the international instruments and mechanisms which are relevant in the context of the fight against ML and FT.

942. As indicated in other parts of this report, and as acknowledged notably by the Czech law enforcement agencies in assessments on those issues, access to information for investigation purposes, but also for prudential and intelligence purposes is crucial. Under the relevant Sections of this report, the evaluation team has made recommendations in favour of relaxing the conditions for the release, and therefore for the exchange of information in the context of AML/CFT preventive and investigative purposes.

943. The need to take measuers to apply international CFT sanctions was discussed under SRIII. In particular, an adequate legal framework is needed to freeze more rapidly assets (and not just transactions) of internationally listed subjects. The issue of practical obstacles (lack of adequate storage systems, narrow information recording requirements) to accessing on a timely basis a wider range of information kept by obliged entitities was discussed. The lack of staff in charge of international cooperation (at the prosecutorial services and the Ministry of Justice) was also underlined. These internal factors affect the ability of the Czech republic to cooperate in a timely manner in the field of CFT.

944. On the other side, the FAU, which has a broader access to information, is able to cooperate internationally also in the area of CFT, and the examiners were assured that the information can also be exchanged without a formal agreement.

945. The Czech republic has criminalised FT, which is to be welcome. However, the scope of criminalisation appears narrower, when compared to those required in international standards and all elements are not explicitly covered. Combined with the dual criminality requirement, this could create some difficulties in practice, when it comes to extradition, including for FT; however, the principle is interpreted broadly. The dual criminality principle does not apply on thebasis of the European Arrest Warrant (EAW).

946. There is an assumption that the Czech Republic is little used by terrorists. This could explain why there are little or no statistics available to testify about the use of international cooperation mechanisms in respect of terrorism and CFT purposes. But as the examiners found out during the discussions, there have been about 8 reports made, by virtue of the AML Act, some which have been communicated to the EU. Law enforcement agencies have also had occasional contacts or requests for information with foreign counterparts.

6.5.2 Recommendations and Comments

947. The Czech authorities are confident that they can provide extensive cooperation in the area of AML/CFT or on related issues, especially on the European continent. However, various domestic limitations can affect this ability to cooperate in a timely manner. These underpinning issues have already been dealt with in other parts of the report.

948. Some figures are available on CFT cooperation, but they are not kept systematically. The ability of the Czech Republic to cooperate internationally on CFT was reviewed in studies produced by the police. This being said, there has been no general review of the presence of terrorist-related funds on Czech soil; this is partly hindered by the difficulty to access information held by the obliged entities

949. The Czech authorities should therefore carry out an assessment to make sure it does not offer a safe heaven for terrorism, and keep better statistics showing this and their level of cooperation on CFT issues.

6.5.3 Compliance with Recommendation 40, Special Recommendation V, and R.32

	Rating	Summary of factors relevant to s.6.5 underlying overall rating
R.40	**LC**	There are limitations as regards access to information at internal level (the police for intelligence purposes, information from the insurance and securities sector in general) which could affect to some extent the ability of the Czech Republic to share information internationally in practice
SR.V	**LC**	**The Czech Republic is able to cooperate broadly with European countries (including to extradite for FT on the basis of the European Arrest Warrant without dual criminality principle) but for others, the requirement remains and the definition of FT is not fully in line with international standards; but the principle is applied broadly.** **There is a need for legal bases, in particular to ratify the UN terrorist financing Convention; cooperation at international level is hindered by the internal difficulties**
R.32	**LC**	**Some figures are available on CFT cooperation, but they are not kept systematically; the ability of the Czech Republic to cooperate internationally on CFT was reviewed in studies produced by the police; no general review of the presence of terrorist-related funds on Czech soil; this is partly hindered by the difficulty to access information held by the obliged entities**

7 OTHER ISSUES

7.1 Other relevant AML/CFT measures or issues

950. Countries are allowed, under the Methodology, to have a risk based approach when determining priorities and imposing obligations on obliged entities.

951. The examiners noted in this context, that part of the Czech authorities referred to the existence of such a risk based approach – including the FAU. However, there was a tendency to rely on assumptions rather than on assements. One of the results of this is the lack of unanimity on sectors really exposed to, and used for ML purposes.

952. Furthermore, the Methodology requires that reduced standards may only be applied in case of proven lower risks. The examiners could not conclude that certain options followed by the Czech Republic (e.g. excluding gambling halls from the AML requirements due to alleged lower risks, considering that EU countries as a whole may be subject to a reduced degree of vigilance) have been subject to such reliable assesments.

953. On occasions, the examiners were told (CNB) that there was no real risk-based approach and that this was a matter for the obliged entities' internal procedures rather than an issue for the supervisor.

954. Therefore, it is recommended that the Czech Republic should have a consistent risk-based approach, based on proper assesments and an empirical approach.

7.2 General framework for AML/CFT system

955. During the discussions held on site, the issue of access to information was often mentioned as an issue. This was the case for the police (in the context of investigations but also inquiries and intelligencegathering) but also supervisors (in the context of background checks of applicants for a licence and managers of obliged entities) and obliged entities (as part as their "know your customer", identification and more generally CDD obligations).

956. Bearing in mind the seriousness of allegations of (risks of) ML and infiltration of criminals in a variety of businesses (including the gaming sector, real estate, money transfer services etc.) and the need to enhance supervision in those sectors, it is recommended to carry out a general review of the information accessible (to law enforcement, supervisors, obliged entities and other relevant bodies) for AML/CFT prevention and investigation purposes, beginning with the issue of secrecy of tax information, and to relax where appropriate the conditions of access.

IV. ANNEXES

8 ANNEX 1 – ABBREVIATIONS

AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AML Law/ Act	Law "on some measures against the legalisation of the proceeds of crime and on the amendment and supplementation of connected Acts" (Act no. 61/1996Coll)
C	Compliant
CBA	Czech Bar Association
CC	Criminal Code
CDD	Customer Due Diligence
CNB	Czech National Bank
CPC/CCP	Criminal Procedure Code or Code of Criminal Procedure
CPIS	Criminal Police and Investigation Service
CR	Czech Republic
CSC	Czech Securities Commission
CTR	Currency (or cash) Transaction Report
EU	European Union
DNFBP	Designated non Financial Businesses and Professions
FATF	Financial Action Task Force on Money Laundering
FAU	Financial Analytical Unit [name of the Czech FIU]
FI	Financial Institutions
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FT	Financing of Terrorism
IMF	International Monetary Fund
KYC	"Know your customer"
LC	Largely Compliant
ML	Money Laundering
MLA	Mutual legal assistance
MLCO	Money laundering compliance officer
MLRO	Money laundering reporting officer
MoE	Ministry of Economy
MoF	Ministry of Finance
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MVT	Money or value transfer (service)
NA	Not Applicable
NAP	National Action Plan to Combat Terrorism
NBFI	Non Bank Financial Institutions
NC	Non Compliant
NPO	Non Profit Organisation(s)
OSCE	Organisation for Security and Cooperation in Europe
PC	Partially Compliant
PG's office	Office of the Prosecutor General
SAR	Suspicious Activity Report
SC	Securities Commission

SIS	Special Investigation Service
SR	Special Recommendation
STR	Suspicious transaction report

9 ANNEX 2 – LIST OF INSTITUTIONS AND OTHER ENTITIES MET ON SITE

- Financial Analytical Unit
- Ministry of Justice (including the Department of Supervision and Compliance, Department of Personnel Affairs, Department of Mutual Legal Assistance, Department of Legislation, Department of European Affairs, Department of International Affairs, Commercial Register - **apologized)**)
- Supreme Court Judges (Sections for criminal and civil law)
- Prosecution services (Prosecutor's Office to the Supreme Court including its International Department and Department of Criminal Proceedings)
- Ministry of the Interior (Security Police Department, Intelligence Service, Unit for Organised Crime and Terrorism, Illegal Proceeds and Tax Crime Unit – including its Department for seizure of assets and money laundering, Unit for Corruption and Financial Crime)
- Ministry of Foreign Affairs (including Department for United Nations)
- Ministry of Finance (Tax Revenue Service, Department of Customs)
- Czech National Bank (Licensing and Enforcement Division, Banking Regulation and Supervision Department, Risk Management Department, Compliance Officer of the CNB)
- Credit Union Supervisory Authority
- Securities Commission (including the departments responsible for communication, pension funds, investment services, collective investment, legal affairs, and sanctions and monitoring)
- Office of the State Supervision over Insurance and Supplementary Pension Insurance (departments responsible for supervision, legal affaires, international affairs)
- State Supervision over Betting Games and Lotteries
- Chamber of Auditors
- Chamber of Notaries
- Bar Association
- Chamber of Tax Advisors and Association of Accountants' Unions
- Banking Association
- Czech Insurance Brokers Association and Czech Insurance Association
- Association of Real Estate Offices
- Casino Association
- Representative of a foreign exchange office and a MVT Service company (Travelex)
- Representative of an audit company (PWC)
- Representatives of two casinos
- Czech Gemological Association

10 ANNEX 3 – TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system
Table 3: Authorities' Response to the Evaluation (if necessary)

10.1 Table 1. Ratings of Compliance with FATF Recommendations

The rating of compliance vis-à-vis the FATF Recommendations should be made according to the four levels of compliance mentioned in the 2004 Methodology (Compliant ©, Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (na).

Forty Recommendations	Rating	Summary of factors underlying rating[95]
Legal systems		
1. ML offence	**PC**	Need to amend the criminalisation mechanism to bring it in line with international requirements (the conversion, transfer, acquisition, possession of property need to be explicitly provided for) and to use a simpler, less proof-demanding definition of ML; effectiveness issue
2. ML offence – mental element and corporate liability	**PC**	Level of punishment needs to be increased; no corporate liability at present
3. Confiscation and provisional measures	**PC**	Inconsistent and complex framework for seizure and confiscation which generates mis-matches between temporary and final measures, creates legal loopholes and misses various elements (including direct and indirect proceeds, equivalent confiscation, confiscation of assets held by third persons); applicability to ML and FT only in a limited number of situations and spirit of provisons on confiscation of property is focused on profit-seeking; effectiveness issue for confiscation; temporary measures need to apply without prior notification of the suspect; measures not applicable to legal persons etc
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	The AML act suspends to a large extent financial confidentiality and secrecy but there are on paper inconsistencies in regulations. Provisions in the AML Act might need to be clarified in relation with FT (as far

[95] These factors are only required to be set out when the rating is less than Compliant.

		as law enforcement/criminal police are concerned).
5. Customer due diligence	**PC**	Full CDD requirements should be introduced in the AML Act (including on-going due diligence and know-your customer, risk-based approach, consequences of incomplete CDD measures and application of CCD requirements to existing customer etc.), with appropriate guidance; inconsistencies between the banking regulations and the AML Act on the issue of CDD measures on the occasion of operations with bearer passbooks; financial institutions are not required to identify the originator and the beneficiary of funds transfers with the full data, and to renew customer identification and verification (if doubts etc.); no general legal requirement on the identification of beneficial owners and obtaining information about ownership of all types of legal entities.
6. Politically exposed persons	**NC**	A basic requirement is in place only as regards the banking sector, but it is quite narrow and limited to "significant public offices"; the requirement has a limited effect in practice, due to insufficient familiarity of the industry with the concept and the absence of guidance (effectiveness issue)
7. Correspondent banking	**LC**	Some basic requirements are provided for in the banking regulations, complemented by individual initiatives guided by the banking association. The banking regulations needs to better reflect the various requirements of R.7 and the scope of requirements need to be broadened beyond banks (although the latter, which are most importantly concerned are covered).
8. New technologies & non face-to-face business	**PC**	The requirements are only addressed – to some extent – for the banks. The broader implementation of R.8 needs to be reconsidered.
9. Third parties and introducers	**NA**	
10. Record keeping	**LC**	Requirements are in place but they should more explicitly cover account files and business correspondence; in practice, files and documents are too often kept in paper form (banking sector) which creates difficulties to retrieve information in a timely manner
11. Unusual transactions	**PC**	This is covered for the banking sector only, under the CNB Provision N°1.
12. DNFBP – R.5, 6, 8-11	**NC**	Full CDD measures are not required; politically exposed persons, threats from new technologies, third parties/introduced business not yet addressed; record keeping requirements are basically in place but do not cover all the relevant information; no requirement to pay special attantion to unusual, complex and large transactions; sanctions can only be imposed on the entity as such, not its managers or employees
13. Suspicious transaction	**LC**	Reporting attempted and completed transactions is not

reporting		clearly spelled out
14. Protection & no tipping-off	**LC**	The protection does not extend explicitly to the disclosure of information (although it covers the suspension of transactions), beyond the obliged entity, to its management and staff
15. Internal controls, compliance & audit	**PC**	Rec 15 needs re-addressing in the AML Act due to several shortcomings which are only compensated to some extent for the banking sector (internal procedures are needed beyond the mere appointment of a responsible officer, the reporting officer needs to become a compliance officer appointed at managerial level and explicitly entrusted with broader responsibilities, an audit function and screening procedures for employees are needed, AML and CFT should be addressed explicitly and inconsistencies between the AML Act and the banking regulations needed to be reviewed; effectiveness issue
16. DNFBP – R.13-15 & 21	**PC**	The reporting duty applies to both ML and FT, but is limited to STRs (or facts which could indicate an STR), it also applies to suspicions of ML as opposed to suspicions of proceeds of crime (which would lower the burden of suspicion for reporting), it does not specify explicitly the reporting of both attempted and completed transactions). Protection measures and measures against tipping of are in place but protection does not explicitly apply to the disclosure of information and to the protection of the entities' staff and management. Internal AML/CFT procedures are required by the AML Act, but they do not mention compliance management arrangements (the Act refers to "reporting officer" and not to a "compliance officer"), there is no AML/CFT audit nor employee screening requirement etc. In addition: strong lack of awareness of AML, and above all CFT, issues.
17. Sanctions	**PC**	**Sanctions are in place and used in practice but no sanctions are imposable on entities' managers and employees; no individual sanctions for non reporting in legislation**
18. Shell banks	**LC**	Relationships with shell banks need to address all relevant financial institutions beyond the banks (e.g. credit unions). No provisions covering criterion 18.3
19. Other forms of reporting	**C**	
20. Other DNFBP & secure transaction techniques	**LC**	**Possible need to put certain DNFBP under the control of financial supervisors, due to the type of their activities; Reliance on cash is still high despite existing initiatives; there is room for further initiatives**

21. Special attention for higher risk countries	**PC**	Only part of the criteria are implemented in the AML Act (the coverage is broader only for the banking sector); the impact is very modest in practice due to over-reliance on the FATF NCCT list and EU list of sanctions and no other initiatives taken either by the authorities/supervisors, or the industry.
22. Foreign branches & subsidiaries	**NC**	No explicit general AML/CFT requirements implementing R.22
23. Regulation, supervision and monitoring	**PC**	Results seem quite positive but supervisors – with the exception of CNB – have so far focused on the formal (off-site) control of the existence of internal procedures; CSC is not fully committed to AML/CFT; no MLCO provided for as such (only MLRO); market entry and ownership/management control are not consistent enough; illegal foreign exchange business taking place openly and allegations of underground banking; insufficient focus on money transfer business; CFT not enough taken into account; excessive reliance on the licence holder and little or no controls over the agents despite allegations of misuse for ML purposes (life insurance, money transfer etc.)
24. DNFBP – regulation, supervision and monitoring	**NC**	Certain sectors of activities of DNFBPs are allegedly particularly exposed to ML and there are no increased efforts from the authorities to address this
25. Guidelines & Feedback	**NC** (consolidated rating)	- The demand for guidance is high and the authorities/supervisors have not yet met the expectations of the industry; little has been done in the field of CFT so far - No feedback provided due to strict application of legal confidentiality requirements by the FAU - With a few exceptions, there is a lack of guidance for DNFBP
Institutional and other measures		
26. The FIU	**LC**	Insufficient guidance to the non banking sector on AML, and on CFT for all sectors; no annual report published regularly; improvements possibly needed as regards the drafting/accuracy of Article 7 of the AML Act; possible need to better guarantee statutory autonomy of the FIU
27. Law enforcement authorities	**C**	
28. Powers of competent authorities	**C**	[insufficiencies related to FT are covered under SR.III]
29. Supervisors	**C**	**[insufficiencies on the issue of sanctioning managers and employees are addressed under R.17]**
30. Resources, integrity and training	**LC** (consolidated rating)	- The FAU appears to be under-staffed given the wide range of duties; need to review the possible reasons for the perceived insufficient quality of analytical work done by the FAU - All positions of prosecutors are not filled (and insufficient staff in the international cooperation

		department of the Supreme prosecution); insufficient staff also in the legal cooperation department of the Ministry of Justice; training on terrorism and TF issues needs to be included in the relevant programmes - staffing and expertise of supervisors seems to be an issue; they have mostly focused on formal AML aspects (except the CNB) for which large staff is not needed; but the issue will need to be re-examined after the merger of all financial supervisors and in the context of controls beyond the intial licence holder
31. National co-operation	**PC**	Although there seems to be a good level of cooperation in the country, there is no real coordinated/concerted policy and measures that would produce better results; no apparent responses from the authorities to certain alleged situations of ML
32. Statistics	**LC** (consoli-dated rating)]	- Figures are available, but those concerning convictions are inconsistent when different sources are compared, which raises some interrogations as to their usefulness for the authorities to review the effectiveness of the system, and as to the level of overall AML coordination - No consolidated overall statistics kept on final and temporary measures - A report is drafted annually that addresses the insufficiencies in a frank and open manner; But no figures available on assets frozen spontaneously by the industry as a whole; some information is available for proceeds reported to the FAU but it is not kept in a systematic way; no detailed information available showing the effectiveness of the freezing measures (e.g. level of compliance of the industry, number of unreported assets) - Well documented analysis of needed measures in the area of CFT but comparatively, no similar review of the effectiveness of AML measures despite the national situation (sectors exposed, complexity of legal framework, limited apparent results in ML cases) - Statistics are kept and available but they could be more detailed - Some figures are available on CFT cooperation, but they are not kept systematically; the ability of the Czech Republic to cooperate internationally on CFT was reviewed in studies produced by the police; no general review of the presence of terrorist-related funds on Czech soil; this is partly hindered by the difficulty to access information held by the obliged

		entities
33. Legal persons – beneficial owners	**NC**[96]	The registration of business entities does not ensure an adequate level of reliability of information registered and of transparency of ownership; companies can issue freely transferable bearer shares; risks of corruption in the area of registration of companies and effectiveness issue.
34. Legal arrangements – beneficial owners	**NA**	
International Co-operation		
35. Conventions	**PC**	the Palermo Convention and the terrorist financing[97] Convention have not been ratified; insufficiencies as regards requirements under the Vienna Convention have been addressed in other parts of the report
36. Mutual legal assistance (MLA)	**LC**	**Legal conditions and practices seem to be largely in line with the requirements of R.36; this being said, the ability to cooperate in a timely and effective manner could be hindered occasionally by the Czech legal framework on seizure and confiscation (which excludes for instance indirect proceeds, value confiscation), and shortage of staff (MoJ, prosecutors)**
37. Dual criminality	**C**	
38. MLA on confiscation and freezing	**LC**	(see R.36)
39. Extradition	**LC**	Issue of staffing seen earlier
40. Other forms of co-operation	**LC**	There are limitations as regards access to information at internal level (the police for intelligence purposes, information from the insurance and securities sector in general) which could affect to some extent the ability of the Czech Republic to share information internationally in practice
Eight Special Recommendations	**Rating**	**Summary of factors underlying rating**
SR.I Implement UN instruments	**PC**	As seen earlier: lack of guidance to, and familiarity of obliged institutions to identify, report and freeze accounts on the basis of the AML Act (that is after a reporting to the FAU), the absence of a clear and publicly known procedure (apart from the EU-level measures) for de-listing and unfreezing appropriate cases in a timely manner, the question whether an adequate monitoring is in place in practice to ensure compliance with the UNSC Resolutions. No formal statistics are kept on listed persons and entities detected in the Czech

[96]The Czech authorities stress that, thanks to the amendments passed after the on site visit, the situation has changed dramatically.

[97] The Czech Republic ratified the Convention on 27 December 2005; it entered into force on 26 January 2006

		Republic but some measures have been taken in respect of a handful of persons. The proceedings were under way at the time of the on site visit. The question of the extent of control of compliance with the international freezing requirements also remains largely open.
SR.II Criminalise terrorist financing	**PC**	No explicit coverage of financing of terrorist organisations and individual terrorists, no explicit coverage of direct or indirect collection of funds/usage in full or in part, no explicit indication that offence is prosecutable without the funds being used or linked to a specific terrorist act; inconsistencies due to a combination of various provisions which should better be addressed by a stand-alone offence
SR.III Freeze and confiscate terrorist assets	**PC**	Loopholes in the EU and Czech regulations and need for a general domestic law to fill the gaps due to over-reliance on EU regulations; lack of guidance and information to the industry and the public in general; interrogations as to the effectiveness of detection; insufficient coverage of FT in the AML Act (including lack of sanctions in case of non reporting); in any event, the system is confronted with practical difficulties that hinder the retrieving of information on existing or older customers, earlier transactions etc.
SR.IV Suspicious transaction reporting	**LC**	In addition to the general findings concerning the reporting obligations: no reference to "those who finance terrorism"
SR.V International co-operation	**LC** (consoli-dated rating)	Except in cases where there is a European Arrest Warrant (EAW) dual criminality is always required for the purposes of extradition. Similar remarks as for R. 36-38 **The Czech Republic is able to cooperate broadly with European countries (including to extradite for FT on the basis of the European Arrest Warrant without dual criminality principle) but for others, the requirement remains and the definition of FT is not fully in line with international standards; but the principle is applied broadly.** There is a need for legal bases, in particular to ratify the UN terrorist financing Convention; cooperation at international level is hindered by the internal difficulties
SR VI AML requirements for money/value transfer services	**PC**	Money transfer service provided by the Czech Post and the control of the agents of a license holder need to be better addressed; alleged informal remittance activity needs to be assessed.
SR VII Wire transfer rules	**LC**	Not directly addressed in relation to various essential criteria (no regulation or policies applicable to the handling of transfers in case of incomplete identification data, no requirement to keep the originator information

		throughout the transfer chain etc.). To be re-addressed upon adoption of relevant EU-Regulation.
SR.VIII Non-profit organisations	**PC**	A developed legal framework with controls at the most sensitive levels seems to be in place but no particular measures taken to protect NPOs from their misuse for FT purposes. The legal framework has not been reviewed in that context.
SR.IX Cross Border Declaration & Disclosure	**LC**	There are some minor shortcomings (reporting duty for suspicions of ML and FT needs to be clearly spelled out); the major insufficiency is the effectiveness issue (low number of ML cases generated by the Customs compared to the criminal activity context of the Czech Republic); Customs need to be made more aware of AML/CFT issues as they rely a lot on the police as regards information in this field. Community market exception needs to be clarified together with EU partners

10.2 Table 2: Recommended Action Plan to Improve the AML/CFT System

AML/CFT System	Recommended Action (listed in order of priority)
1. General	
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1, 2 & 32)	- to amend Section 252a (Section 160 in the new Criminal Code) so as to cover explicitly the various elements of the international requirements (notably the conversion and transfer of property, and the acquisition and possession of property) and to use a simpler, less proof-demanding definition of ML; - to provide clearly for the possibility to prosecute ML where the predicate offence was committed abroad (as planned in the new Section 192), and for self-laundering - to make sure the ancillary offence of conspiracy covered under Section 7 on preparation apply in relation with the various elements of ML - to increase the level of punishment for ML offences; - to continue the efforts aimed at introducing the liability of legal persons, including for ML - to provide in the relevant provisions for the mandatory confiscation of the proceeds of crime involved in ML in addition to the other sanctions - to analyse the reasons for the apparent discrepancy between the ML phenomenon in the Czech Republic, and the type of cases concluded successfully in court for ML until now, and take further appropriate initiatives to counter this phenomenon.
Criminalisation of Terrorist Financing (SR.II, R.32)	- to introduce FT as a stand-alone offence that would be broad and detailed enough to better cover, besides the financing of terrorist acts, also the financing of terrorist organisations and individual terrorists. These provisions should: a) clearly cover the various elements required by SR.II, in particular the collection of funds by any means, directly or indirectly, and their use in full or in part for FT purposes; b) spell out clearly that in order to be criminally liable it is not necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act c) subject to the final introduction of corporate liability, provide for the liability of legal persons for FT
Confiscation, freezing and seizing	

of proceeds of crime (R.3, R.32)	- the legal framework on confiscation needs to be reviewed to ensure consistency and fill the gaps, so that confiscation applies in respect of all kind of property that has been laundered, and: a) of property of all kind which constitutes proceeds from, instrumentalities used in; and instrumentalities intended for use in the commission of any ML, FT or other predicate offences b) all kind of Property of corresponding value c) all kind of Property that is derived directly or indirectly from proceeds of crime; including income, profits or other benefits from the proceeds of crime, and all property referred to above, regardless of whether it is held or owned by a criminal defendant or by a third part; - confiscation should be provided for as an additional measure to the main punishment in all ML, FT and major proceeds generating crimes and the discretionary power of the courts should be limited; ideally, confiscation in such cases should be mandatory; - the provisions on confiscation of property should not be based solely on the logic of the profit-seeking offender - amendments are needed to ensure consistency between confiscation and temporary measures along the lines mentioned above, and to make sure the latter apply to all possible forms of assets including direct or indirect proceeds, real estate, financial participations and interests whatever their form etc.; (at the time of the evaluation, , there was a succession of specific Sections dealing with specific types of assests - things, bank accounts, other financial accounts, securities etc.). - Sections 347 and 348 on temporary measures may need to be amended so as to enable the application of temporary measures without prior notification of the suspect; - the broad applicability of temporary and final measures should be introduced also in respect of assets held by legal persons; - the Czech authorities should consider enhancing the protection of rights of bona fide third parties, and introducing the reversal of the burden of proof post-conviction for confiscation purposes.
Freezing of funds used for terrorist financing (SR.III, R.32)	- to proceed with the improvements needed and already identified in the NAP and the *Analysis of the Legal Powers of the Intelligence Services and the Police of the Czech Republic, that are Needful to Complete Their Tasks in the Fight against International Terrorism* - to address together with the European partners the gaps in the EU regulations

	- to complete the work for the adoption of a general domestic law on the implementation of international sanctions that would address all those gaps, or at least those that cannot be filled at EU level - to adopt guidance and information initiatives for the industry and the public on CFT issues and the reporting/freezing duty - to carry out an analysis of the effectiveness of the reporting/freezing duty - to amend the AML Law to broaden the reporting duty to all assets held by persons listed, and not just funds involved in transactions, and to ensure the applicability of dissuasive sanctions also in case of non-reporting of such assets.
The Financial Intelligence Unit and its functions (R.26, 30 & 32)	- to refer explicitly to the FAU in the AML Act[98] - to consider the need for better guaranteeing, in statutory rules, the autonomy and independence of the FIU (including its Head) - to provide more guidance on AML/CFT issues, with particular focus on the non-banking sector - to publish a periodic report on the FAU's activities and AML/CFT issues, including statistics, typologies and trends; this report would explain the importance, difficulties, and the commitment entrusted to the FAU. This would help the Government and the public understand and appreciate the importance of such a unit and thus there would be a justification to allocate further funds for equipment and staffing to the Unit. - to increase the staffing of the FAU to enable it to cope effectively with the multiplicity of tasks - to analyse the possible reasons for the perceived insufficient quality of the analytical work done on cases forwarded for further investigation and to take remedial measures as appropriate - to consider amending Article 7 of the AML Act, which covers various issues including the sharing of information held by the FAU domestically and internationally, to make it more accurate and enable the FAU to exert some discretionary power when sharing information.
Law enforcement, prosecution	- to review on a regular basis ML trends and techniques

[98]The FAU is explicitly mentioned in the revised AML Act of 2007; the Czech authorities expect it to enter into force on 15 December 2007

and other competent authorities (R.27, 28, 30 & 32)	- to initiate consultations on the opportunity of simplifying the competence of the various levels of courts/prosecutorial services, and by the same way to ensure that specialist judges and prosecutors handle complex criminal cases and can focus on those cases - to consider reviewing the legal framework for the use of special investigative techniques – whilst providing for an adequate checks and balance system – so as to ensure the effective investigation of offences related to ML and FT - to increase the staffing of the prosecution services, and those institutions which are involved in legal cooperation, in particular the Legal Assistance Department of the Ministry of Justice and the Foreign Relations department of the Supreme Prosecution Office) - to include the topic of terrorism and FT in the relevant training programmes, in particular those of law enforcement and prosecution services.
3. Preventive Measures – Financial Institutions	
Risk of money laundering or terrorist financing	
Customer due diligence, including enhanced or reduced measures (R.5 to 8)	- full CDD requirements should be introduced in the AML Act (including on-going due diligence and know-your customer, risk-based approach, consequences of incomplete CDD measures and application of CCD requirements to existing customer etc.), with appropriate guidance, beyond the measures currently applicable to identification only. The Czech authorities should also consider redrafting Art. 2 para. 10 and the exceptions contained therein as they leave room for misunderstanding and misuse for ML and FT purposes. Reference should be made to reduced CDD measures in case the country of origin applies and implements the FATF Recommendations. - inconsistencies between the banking regulations and the AML Act on the issue of CDD measures on the occasion of operations with bearer passbooks need to be solved and the identification/CDD process guaranteed no matter what the threshold is; - the legislation should be amended in order to require from financial institutions to identify the originator and the beneficiary

	of funds transfers with at least the following three data: name, address, account number [99] and require also the renewal of customer identification and verification when doubts arise about the identity of the customer or about veracity or adequacy of previously obtained customer identification data; - to require by law the identification of beneficial owners and to obtain information about the owners of all types of legal entities. - to recognise PEPs under the AML Act with specific enhanced customer due diligence requirements; obliged entities also need guidance – and possibly sector specific criteria – in this field. - the issue of correspondent banking relationships, threats from developing technologies and non-face-to-face business relationships is addressed to some extent in the banking sector only. Therefore, the implementation of the requirements of FATF Recommendation 7 and 8 needs to be reconsidered so as to apply to a larger number of obliged entities. - texts similar to the CNB Provision N°1 be adopted also for the insurance, securities, foreign exchange and other relevant sectors.
Third parties and introduced business (R.9)	With the entering into force of the proprosed amendments allowing for the system of introduced business, increased attention will be needed to ensuring the applicability of Recommendation 9 in the context of the new provisions.
Financial institution secrecy or confidentiality (R.4)	- to review the consistency of provisions on financial confidentiality to avoid contradictions between sector-specific regulations and the AML Act, and to remove in particular unnecessary preliminary authorisations in sector-specific regulations; - to consider clarifying in the AML Act the exceptions to confidentiality in the context of CFT enquiries and investigation so as to clearly enable law enforcement authorities to accede to information in that context.
Record keeping and wire transfer rules (R.10 & SR.VII)	- CNB regulations are less specific – which could create confusions in the sector under the responsibility of the CNB, and therefore, these regulations should be made consistent with the AML Act.

[99] The Czech authorities indicated after the visit that this recommendation is in principle fulfilled as in accordance with Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information on the payer accompanying transfers of funds (valid since 1 January 2007), complete information on the payer is necessary only in cases of transfers of funds from the Community to outside the Community (Article 7). However, in case of transfers of funds within the Community such transfers shall be required to be accompanied only by the account number of the payer or a unique identifier allowing the transaction to be traced back to the payer (Article 6).

	- besides identification data, the regulations should also cover explicitly account files, and business correspondence, and any other relevant information (written findings on complex and unusual large transactions etc.) - to maintain the pressure on financial and other institutions to store data and documents in a computerised way that would allow to retrieve information in a timely manner. - to require financial institutions peforming wire transfers to keep originator information through the payment chain, - to introduce effective risk-based regulations and procedures for identifying and handling wire transfers that are not accompanied by complete originator information, including on the possible refusal of executing transactions if the payment instructions are not complete and comprehensive. - competencies and supervisory power of the competent authorities should be strengthened, especially in the case of the holder of postal licence as a provider of wire-transfer services.
Monitoring of transactions and relationships (R.11 & 21)	- to expand the obligation of R.11, beyond the banking sector, to all financial institutions and other obliged entities. - the implementation of R.21 should be re-examined
Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	- to widen the scope of the CFT reporting obligation to include "those who finance terrorism" - to introduce an explicit requirement to report attempted and completed transactions. - to extend explicitly the benefit of protection measures to the disclosure of information and the obliged entities' management and staff - to provide appropriate feedback to financial institutions and other obliged entities besides general information and statistics on cases to be published in future in the FAU's annual report - to re-consider the merits and opportunity of introducing a system for the reporting of cash transactions.
Cross Border declaration or disclosure (SR.IX)	- to clarify in the AML Law the legal basis for the Customs to report suspicions of ML and TF and - to review the adequacy of the number of STRs reported by the customs in the context of the Czech Republic and in this connection, take measures to make sure the Customs are

	adequately informed and involved in the AML/CFT efforts, - to review, ideally in consultation with other EU countries, the EU exception to SR. IX
Internal controls, compliance, audit and foreign branches (R.15 & 22)	- to include in the AML Act a requirement to develop appropriate compliance management arrangements; the reporting officer should become a compliance officer with broader responsibilities, appointed at managerial level (the CNB Provision N°1 will need to be amended accordingly). - to include in the AML Act an audit requirement for AML/CFT arrangements and the screening of employees - AML and CFT need to be addressed more specifically in the various requirements of internal AML/CFT arrangements. - to consider implementing the requirements of Rec. 22 to make sure all branches of Czech financial institutions operating abroad are subject to AML/CFT requirements.
Shell banks (R.18)	- to address the issue of correspondent banking relationship in the AML Act and to cover the requirements of criterion 18.3 (on the use of respondent financial institutions' accounts by shell banks).
The supervisory and oversight system - competent authorities and SROs Role, functions, duties and powers (including sanctions) (R.23, 30, 29, 17, 32 & 25)	- to enlarge the scope of supervision for the entire financial sector beyond the mere existence of internal rules and their content, and to check whether the rules are applied in practice and how reporting officers – who need to become compliance officers – comply with their own duties. Supervisors should be stricter as regards information/file storage systems. - to ensure targeted AML and also CFT controls take place in future for all financial sectors (including awareness of and training on CFT issues, efforts to detect FT-related assets, awareness of international lists etc.), and also apply to the agents (not just the licence holder) where the business is exposed to higher risks - to ensure the staff responsible for the supervision of the securities markets are more involved and trained in AML/CFT issues and aware of their responsibilities and duties - to include for the financial supervisor(s) a duty to report suspicions of ML/FT activities - to ensure a consistent approach in the field of market entry conditions (checking the origin of funds including in case of increase in capital, checking the background of licence applicants and holders on the basis of fit and proper criteria) and ensure a

	clear policy that licences cannot be/are not delivered until the supervisor has satisfield himself that all conditions are met - to review urgently the legal and supervisory framework applicable to foreign exchange activities and to take remedial actions to stop the illegal foreign exchange business. Licensing and supervision should be under the responsibility of a single authority - to examine the allegations of the existence of a developed under-ground banking activity (possibly "loan-sharks") and informal money transfer business and to take the necessary remedial measures - to issue further guidance documents on both AML and CFT, including for financial supervisory staff - to provide for sanctions imposable on obliged entitities' managers and employees - to consider again introducing a criminal offence for non reporting
Money value transfer services (SR.VI)	- to review the situation of MVT agents and the Czech post to make sure there is no over-reliance on the supervision over and information provided by the licence holder. - the Czech Authorities may wish to consider placing the licensing and supervison of the financial services offered by the Czech Post under the competence of the Czech National Bank for the sake of consistency. - the alleged presence of informal remittance activities in the Czech Republic needs to be better assessed.
4. Preventive Measures –Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	- to ensure the application of R. 5 to R.11 and R17 also in respect of DNFBP.
Suspicious transaction reporting (R.16)	- to develop awareness raising measures and guidance for DNFBP and their supervisors on both their AML and CFT obligations under the AML Act and other relevant pieces of legislation.
Regulation, supervision and monitoring (R.24-25)	- to strengthen the regulatory framework and supervision over DNFBPs exposed to risks of being used for ML/FT purposes (e.g. casinos, gambling in general, accountants) - to review the legal framework applicable to the gambling sector to avoid loopholes that could be used by criminals, and to

	consider extending the scope of the AML Act – beyond casinos – to a broader range of gambling entities to ensure consistent coverage of the sector of games
Other designated non-financial businesses and professions (R.20)	- to examine whether it would not be better to put "legal persons or natural persons authorised to broker savings, monetary credits or loans or brokering activities that lead to the signing of insurance or reinsurance contract" under the control of the financial supervisors. - continue taking measures to encourage the development and use of modern and secure techniques for conducting transactions, that are less vulnerable to money laundering.
5.Legal Persons and Arrangements & Non-Profit Organisations	
Legal Persons – Access to beneficial ownership and control information (R.33)	- to review the procedures applicable to the registry of commercial entities and the registration procedure, to increase the reliability and updating of information entered. This should include incentives to keep the registry up-to-date and measures to ensure a higher level of professional integrity of the courts' staff in charge of the registers. - to take appropriate measures to ensure that bearer transferrable shares are not misused for AML/CFT purposes.
Legal Arrangements – Access to beneficial ownership and control information (R.34)	- to take measures to ensure a level of identification of silent partners which would be compatible with the requirements of the fight against ML and TF.
Non-profit organisations (SR.VIII)	- to carry out a review of the possible misuses of NPOs for criminal/ML/FT purposes, and as a result to examine the needs for a more consistent legal framework and centralised information, currently available through 3 or 4 different databases.
6. National and International Co-operation	
National co-operation and coordination (R.31 & 32)	- to introduce a regular coordination body involving all the relevant parties, that would be able to set common objectives, to address the various critical AML/CFT situations and to trigger both policy-level and operational initiatives. One of the first taks should be to elaborate a picture of the ML phenomena and sectors affected and to propose rapid measures to address the causes. - it is recommended to carry out periodic assessments of AML measures similar to those used on terrorism and terrorist financing purposes.

The Conventions and UN Special Resolutions (R.35 & SR.I)	- to ratify and implement the Palermo Convention and the UN terrorist financing[100] Convention as soon as possible (in addition to the recommendations made in relation to SRIII).
Mutual Legal Assistance (R.36-38, SR.V, and R.32)	- to take care that the services dealing with legal assistance are adequately staffed. - more detailed statistics should be kept.
Extradition (R.39, 37, SR.V & R.32)	- to consider relaxing further (outside the context of the European Arrest Warrant) the dual criminality requirement
Other Forms of Co-operation (R.40, SR.V & R.32)	- to carry out an assessment to make sure the country does not offer a safe heaven for terrorism, and keep better statistics showing this and their level of cooperation on CFT issues.
7. Other Issues	
Other relevant AML/CFT measures or issues	- to have a consistent risk-based approach, based on proper assesments and an empirical approach.
General framework – structural issues	- to carry out a general review of the information accessible (to law enforcement, supervisors, obliged entities and other relevant bodies) for AML/CFT prevention and investigation purposes, beginning with the issue of secrecy of tax information, and to relax where appropriate the conditions of access.

[100] The Czech Republic ratified the Convention on 27 December 2005; it entered into force on 26 January 2006

11 ANNEX 4 -LEGISLATION

Act no. 61/1996 Coll.,
on some measures against the legalisation of the proceeds of crime and on the amendment and supplementation of connected Acts$

as amended by Act no. 15/1998 Coll., Act no. 159/2000 Coll., Act no. 239/2001 Coll., Act no. 440/2003 Coll., Act no. 257/2004 Coll. and Act no. 284/2004 Coll.

Parliament has adopted this Act of the Czech Republic:

PART ONE
MEASURES AGAINST THE LEGALISATION OF THE PROCEEDS OF CRIME

CHAPTER ONE
GENERAL PROVISIONS

Article 1

Subject of regulation

The purpose of this Act is, in compliance with the laws of the European Community[1)] to stipulate some measures against the legalisation of the proceeds of crime.

Article 1a

Definition of the concepts

(1) For the purposes of this Act, the legalisation of the proceeds of criminal activity (hereinafter „legalisation of the proceeds“) is understood to be an action intended to conceal the illicit origin of the proceeds of this activity with the aim of creating the impression that it is income acquired in accordance with the law. At the same time it is not decisive if this action, in part or whole took place on the territory the Czech Republic. The stated conduct consists in particular in

a) The conversion or transfer of property, knowing that such property is proceeds, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions;

b) The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of, property, knowing that such property originates from a crime;

c) The acquisition, possession or use of property or treatment of it knowing that it originates from a crime;

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1) The Council Directive no. 91/308/EHS dated 10. 6. 1991 on the prevention of abuse of the financial system for money laundering, as amended by the Directive of the European Parliament and Council no. 2001/97/ES dated 4. 12. 2001.

d) Criminal association or any other type of association for the purpose of action stated in letters a), b) or c).

(2) Proceeds, pursuant to this Act, is understood to be whatsoever economic benefit from an action that shows features of a criminal offence.

(3) For the purposes of this Act, Identification is understood to be

a) for a natural person; ascertaining of his/her name and surname, possibly all his/her names and surnames, birth number or date of birth, sex, permanent or other address, verifying them from an identity card, if they are stated on it and further verifying the correspondence of an image with the photograph on the identity card and verifying the number and period of validity of the identity card and the authority or country which issued it; if it concerns a natural person who is carrying out a business activity, also ascertaining his/her business name, other distinguishing information or any further marking or identification number,

b) for a legal person; ascertaining its business name or title including any distinguishing information or any other marking, its registered address, identification number or similar number assigned to it abroad, the name, possibly all the names and surnames, birth number or date of birth and the permanent or other address of persons who are it's statutory authority or it's member, further ascertaining the majority associate or the controlling body[2)] and the identification of the natural person acting on its behalf in the given transaction; if the statutory authority or it's member is a legal person, then ascertaining its business name or title including any distinguishing information or any other marking, its registered address and identification number or similar number assigned to it abroad, and ascertaining the identification details of individuals who are its statutory authority or its members.

(4) The verification or the ascertainment of information stated in paragraph 3 may be carried out by means of electronic data transfer if the identification of such information is guaranteed by pursuant to a special Act[3)].

(5) For the purposes of this Act, transaction is understood to be any action that leads to the movement of money or the transfer of assets or directly triggers it, with the exception of action consists in the observance of obligations stipulated by law, imposed by a decision of a court or a decision of any other State authority. Transaction is also understood to be the purchase, sale or exchange of an investment instrument.

(6) For the purposes of this Act, suspicious transaction is understood to be, transaction carried out under circumstances that arouse a suspicion of an effort to legalise proceeds or that the funds used in a transaction are intended for the financing of terrorism, terrorist activities or terrorist organisations; suspicious transactions are particularly

a) Deposits in cash and then their immediate withdrawals or transfers to another accounts,
b) Establishment of several accounts by one client, if their number is obviously disproportionate to the subject of his/her business activities or his/her relative wealth, and transfers between these accounts,

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2) Section 66a of the Commercial Code.

3) Act no. 227/2000 Coll., on electronic signatures and on the amendment of some further Acts (Act on electronic signatures), as further amended.

c) Movements on a clients account that obviously do not agree with the character or range of his/her business activities or his/her relative wealth,
d) Those cases when the number of transactions on the account in a single day or in consecutive days does not agree with the usual monetary operations of the client,
e) Transactions that obviously do not have an economic reason,
f) Those cases when a participant to the transaction is directly or indirectly legal person or natural person against whom the Czech Republic is applying international sanctions pursuant to a special Act[4)],
g) Those cases where the subject of the transaction is, even if only partially, sanctioned goods or services provided to a sanctioned subject or a sanctioned individual[4)],
h) Those transactions directed to countries that inadequately or not at all, apply measures against the legalisation of proceeds.

(7) Obliged persons pursuant to this Act are;

a) A bank, savings or credit co-operative, insurance company, the Czech Consolidation Agency, the holder of a postal licence and a legal entity or an individual authorised to trade with foreign currency on his own account or on a client's account, to conduct or intermediate a cash or non cash transfer of financial capital, to financially lease, to provide credit or monetary loans or to the trading with them or to issuing non cash payment means,

b) The Czech National Bank in the keeping of accounts and providing other banking services,

c) The Securities Centre or other legal entity authorised to maintain parts of registers of the Securities Centre as well as to perform its other activities[5)], the organiser of a securities market, a securities dealer[6)], that is not a bank, investment company, investment fund, pension fund and commodities stock exchange,

d) The holder of a (gaming) licence to operate betting games in a casino, odds-on betting or numerical lotteries,

e) A legal person or a natural person authorised to trade in real estates or to broker a trade in them,

f) A legal person or a natural person authorised to buy up debts and receivables and to trade in them,

g) A legal person or a natural person authorised to broker savings, monetary credits or loans or brokering activities that lead to the signing of insurance or reinsurance cotract[7)],

h) An auditor, tax advisor or accountant if he is carrying out the relevant activity as his business,
i) A court executor when carrying out other activities of an executor pursuant to a special legal regulation[8)],

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4) for example the Act no. 48/2000 Coll., on measures in relation to the Afghanistani movement the Taliban, the Act no. 98/2000 Coll., on the application of international sanctions to maintain international peace and security.
5) Article 55 to 70a of the Act no. 591/1992 Coll., on securities, as further amended.
6) Article 45 to 48i of the Act no. 591/1992 Coll., as further amended.
7) Article 2 letter f) of the Act no. 363/1999 Coll., on insurance matters and on the amendment of some connected Acts (Act on insurance matters).

j) A lawyer, notary or other legal person or a natural person in a business capacity, if he executes or assist in the planning or execution of transactions for his client concerning the

1. Buying or selling of real property or business undertaking,

2.Managing or custody of money, securities, business shares or other assets of a client, including representing the client or acting on his behalf in connection with the establishment of a bank account at a bank or other financial institution or a securities account and the managing of such an account, or

3. Acquiring and collecting finance or other values rateable by money for the purpose of establishing, managing or controlling a company, business group or any other similar department regardless of the fact that it is a legal person or not ,

or he represents or acts on behalf of his client in any financial transaction or trading with real estate,

k) a legal person or natural person authorised to trade in second-hand goods, with cultural items or with articles of a cultural value or to the brokering of such trading or to accept such things into pawn,

l) a legal person or natural person not mentioned in letters a) to k), if he is a businessman, as long as he, in the framework of an individual business or auction, accepts a payment in cash in an amount in excess of 15,000 EUR.

(8) A obliged person obliged person is also a branch, subsidiary or business premises of a foreign legal person or natural person mentioned in paragraph 7 that functions on the territory of the Czech Republic.

(9) For the purposes of this Act, an identification card is understood to be a valid official document issued by a State authority, from which it is possible to verify the likeness of the person who is meant to be identified, his name and surname, possibly all his names and surnames, birth number or date of birth, his nationality and possibly other identification data. In the case of a legal entity this official document means a valid extract from the register, in which it is obligatory registered or another valid document that proves its existence.

(10) The value of the transaction or suspicious transaction in the Euro currency is understood to be the equivalent value of whatever currency stipulated on the basis of the exchange rate announced by the Czech National Bank for the day on which the obligation pursuant to this Act is fulfilled. Payment in cash also means payment in high -value commodities such as precious metals or precious stones.

[8)] Article 74 to 86 of the Act no. 120/2001 Coll., on court executors and execution activities (executors code) and on the amendment to further Acts, as amended by Act no. 279/2003 Coll.

CHAPTER TWO
OBLIGATIONS OF NATURAL PERSON AND LEGAL PERSONS

Article 2

The identification obligation

(1) If a obliged person is a participant of a transaction that has a value exceeding 15,000 EUR it always identify the participants of the transaction, as long as this Act does not state otherwise later on. If, at the time of the finalisation of the transaction or at any other later time, the exact amount of the whole fulfilment is not known, then the mentioned obligation arises at the time when it becomes obvious that the stipulated amount will be reached. If the transaction is implemented in the form of repeated fulfilments then the sum of the fulfilments for twelve consecutive months is decisive, if it does not concern a repeated participation in a lottery or other similar game pursuant to a special legal regulation[9)].

(2) The obliged person, when entering into business relations, always identifies its participants, particularly if it concerns

a) Suspicious transaction,

b) Conclusion of an agreement about an opening of account or deposit into a deposit passbook or into a deposit certificate or the arrangement of another kind of deposit,[10)]

c) Conclusion of an agreement on the renting of a safety deposit box or an agreement for custody,

d) Payment of the balance from cancelled deposit on bearer passbook, if the amount exceeds 15,000 EUR,

e) Conclusion of an agreement for life insurance, if the sum of the premium payments in a single calendar year exceeds an amount in the value of 1,000 EUR or if the amount of a single premium payment exceeds 2,500 EUR,

f) Acceptance of payments for a previously signed life insurance policy if they exceed the amounts mentioned in letter e),

g) The purchase of second-hand goods or goods that have no documentation of origin, cultural items or articles of a cultural value, or accepting such things in pawn.

(3) If a participant to the transaction is represented on the basis of a power of attorney, then that empowered individual is identified pursuant to Article 1a paragraph 3 and further by the submission of the power of attorney with an officially authenticated signature. This power of attorney is not required, if the account holder has empowered a third person at the obliged person with a right of disposal on this account, and that person was identified pursuant to Article 1a paragraph 3 letter a) and signed the right of disposal in accordance with a specimen signature before an employee of the obliged person. In the case when an individual who does not otherwise have the right of disposal to this account, deposits cash into the account and at the same time sends to the obliged person the documents that have already been filled out and signed by the authorised person the power of attorney is also not required.

(4) If, making the transaction, the obliged person discovers or has a suspicion that a participant to the transaction is not acting on his own behalf or that he is concealing the fact that he is acting for a third party, it will order him to declare, in writing, on whose behalf he is acting and to present the identification details about this third party pursuant to Article 1a paragraph 3. Everyone is bound to oblige this summons unless stipulated otherwise by this Act

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9) Act no. 202/1990 Coll., on lotteries and other similar games, as further amended.

10) Article 778 to 787 of the Civil Code.

(5) The obliged person will not perform the transaction in the event that an identification obligation pursuant to paragraph 1 or 2 is given and the participant refuses to undergo the identification process or if he refuses the identification of a the third person pursuant to paragraph 4. At the same time the obliged person will inform the relevant department of the Ministry of Finance (hereinafter, "Ministry") of this fact.

(6) Identification for the obliged person on its request, in which the purpose of the identification must be stated, may also be carried out by a person authorised to carry out the certification of signatures and documents pursuant to a special legal regulation[11)]. In such a case he/she will draw up a public document on the identification, which must contain;

a) who carried out the identification and upon whose request,

b) identification details mentioned in Article 1a paragraph 3,

c) information about which type of identity card and of what supplementary documentation the identification of the individual was based upon, or possibly on the basis of what type of identity card, the identity of the person acting on behalf of the identified legal person or the identity of the representative of the identified person, was verified,

d) a certificate of a statement of the identified natural person or a person acting on behalf of an identified legal person or a representative of the identified person, about the purpose of performed identification and on confirmation of the accuracy of the identification, or possibly about any reservations to the identification being carried out,

e) the date and place of the drawing up of the document on the identification, or possibly the date and place of the identification if they are different from the date and place of the drawing up of the document on identification,

f) the signature of the person who carried out the identification and the imprint of his/her official stamp.

(7) The person, who carries out the identification pursuant to paragraph 6, will attach copies of the relevant documents or their parts, from which the identification was made, to the public document on identification.

(8) If the identification and other tasks have been carried out pursuant to paragraphs 6 and 7, the documents therein stated must be deposited with the obliged person. Until then the obliged person will not undertake any transaction pursuant to this Act, with such an identified individual.

(9) If a lawyer, in the discharge of the duties of advocacy, accepts money or securities from his client, he shall deposit them in a separate account with a obliged person that is authorised to keep such accounts. At the same time he shall substantiate his client's identification details within the meaning of Article 1a paragraph 3 with copies of the relevant parts of the documents from which he ascertained the identification details and a written declaration of the truth of the

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11) The Notaries' Code.
The Act no. 41/1993 Coll., on the certification of matching duplicates or copies with the original document and on the certification of the authenticity of signatures of District and Municipal offices and on the issue of certifications of the District and Municipal offices, as amended by the Act no. 152/1997 Coll., the Act no. 132/2000 Coll. and the Act no. 320/2002 Coll.
Decree no. 272/2000 Coll., on the certification of the authenticity of signatures or the matching of duplicates or copies of documents with the ship's captain.

stated information. A lawyer shall also proceed similarly when renting a safe deposit box for the safekeeping of his client's things.

(10) Identification is not necessary if the participant to the transaction is a obliged person pursuant to Article 1a paragraph 7 letter a) to c) or a credit or financial institution operating in a country that imposes an identification duty upon this institution in a comparable manner or when the identity of a participant to a transaction or the identity of a person acting in his favour is not in doubt.

Article 3

The obligation to keep the stipulated information

In the course of duration of contractual relationship or in further transactions, the obliged person controls the validity and complete character of the identification data mentioned in Article 1a paragraph 3 and keeps a note of their changes.

Any identification data acquired pursuant to Article 1a paragraph 3 and Article 2, copies of documents or an extract of the relevant identification details contained in them, that are submitted for identification and in the event of representation, the original Power of Attorney, is kept by the obliged person for a period of 10 years after the relationship with the client ended. Information and documents of any transaction connected with the identification obligation is kept for a minimum of 10 years from the date of completion of the transaction.

The obliged person mentioned in Article 1a paragraph 7 letter k) keeps any information and documents for a period of a minimum of 10 years, if the value of the transaction was in excess of 10,000 EUR, in other cases for 3 years after completing the transaction. This period begins to run on the first day of the calendar year following the year in which the last operation of the transaction, known to the obliged person, was carried out.

Article 4

Reporting Obligation

(1) If the obliged person, in connection with its activities, discovers a suspicious transaction or a fact of any other kind that might indicate a suspicious transaction, it shall immediately report it the Ministry, stating all the discovered identification details about the participants of the transaction.

(2) It is necessary to carry out the report without undue delay, at the latest by five calendar days from discovering the transaction. If the circumstances of the case require it, particularly if the danger of default threatens, the reporter is obliged to notify the Ministry instantly upon discovering the suspicious transaction.

(3) The report may be made orally onto the record or in writing is such a way that it guarantees that the information contained in it remains secret from any unauthorised person.

(4) When fulfilling a reporting obligation pursuant to paragraphs 1 to 3 it is necessary to pass on the identification details of the obliged person that is carrying out the role of the reporter, including the name and surname of the individual who is making the report, the subject and important circumstances of the transaction, as well as the identification details of the party that the report concerns and attach any further information especially the numbers of the accounts in which the monetary funds concerned in the submitted report are accumulated.

(5) A tax administrator[12)], which has accepted a payment into its account or in cash or if the tax subject requests the release of a tax refund in excess of 15,000 EUR to a foreign country, also has a reporting obligation stated in paragraph 1.

(6) The performance of reporting obligation pursuant to the previous provisions is not a breach of the legal duty of confidentiality imposed pursuant to a special Act.

(7) The provisions of paragraph 1 and Article 8 paragraph 1 do not apply to a notary, lawyer, auditor or accountant who carries out the relevant activity as a business or a tax advisor when it is information that he receives from or obtains on his client in the course of ascertaining his legal position, during his defence or representation in a judicial proceeding or in connection with such a proceeding, including advice on instituting or avoiding such proceedings without regard to whether such information is acquired before these proceedings, in the course of them or after them.

(8) The provisions of paragraph 7 are not used, if the obliged persons mentioned therein are aware that the client is requesting a legal advice for the purpose of legalisation of proceeds or for the purpose of financing terrorism, terrorist acts or terrorist organisations or if the obliged person itself partakes in such activities.

(9) A lawyer makes the report within the meaning of paragraphs 1, 3 and 4 through the appropriate professional association. The association shall ensure that the report has all the requirements within the meaning of this Act. The association can have an opinion on the content and together with this opinion, it hands the report on to the Ministry. The lawyer and appropriate professional association proceed so as to ensure that the report is delivered to the Ministry no later than by 5 calendar days from the detection of the transaction. If the danger of default threatens and it is not possible to achieve the delivery of the report to the Ministry by way of the relevant professional association, the lawyer may notify the Ministry directly.

(10) The reporting of a suspicious transaction does not affect the duty stipulated in a special Act to report facts that indicate the committing of a crime.

Article 5

Reporting obligation in special circumstances

(1) A natural person entering the Czech Republic from an area outside the Community customs territory[13)] or entering into such an area from the Czech Republic, is obliged to declare to the customs office, in writing, the import or export of any valid means of payment in Czech or foreign currency, traveller's cheques or money orders exchangeable for cash, bearer securities or securities transferable to order or any highly valuable commodities such as, precious metals and precious stones, that has a sum total value in excess of 15,000 EUR.

(2) The duty mentioned in paragraph 1 must also be fulfilled by a legal person that imports or exports those items mentioned in paragraph 1 through an individual who carries these items on his/her person when crossing the border of the Community customs territory.

(3) An natural or legal person who sends anything, from the Czech Republic to an area outside the Community customs territory or who receives anything from that area by mail or other postal consignment that contains any items mentioned in paragraph 1 that have a sum total value of more than 15,000 EUR, is obliged to declare this consignment to the customs office and ensure that it is submitted for inspection.

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12) Article 1 para. 3 of the Act no. 337/1992 Coll., on the administration of taxes and fees, as further amended.

13) Council Regulation (EEC) no. 2913/92, Article. 3 para. 1.

(4) An natural person or legal person also has a reporting obligation pursuant to paragraphs 1 to 3 when imports or exports into/out of the Community customs territory or if accepts or sends a postal consignment of items mentioned in paragraph 1, that in the course of twelve consecutive months, have a sum total value that exceeds 15,000 EUR. The reporting obligation arises at the moment that the party becomes aware that the stipulated threshold will be reached.

(5) A report pursuant to paragraphs 1 and 2 is made on a form issued by the Ministry of Finance and is available at the customs office. The natural person, who is making the report, is responsible for the accuracy and completeness of the information contained thereon.

(6) An natural person or legal person discharge the reporting obligation pursuant to paragraph 3 at a customs office by the written record by the sender of the contents of the postal consignment in a customs declaration or in an international consignment note. The sender is responsible for the accuracy and completeness of the record, which must contain all the information required by the import/export declaration.

(7) Customs offices shall immediately pass on to the Ministry information about the observance of reporting obligation in travelling connections and declaration stating all the available information about the sender, recipient and the subject of reporting obligation connected with postal consignment, including those cases when this obligation was infringed.

(8) When converting money from a different currency to the Euro, the exchange rate announced for the relevant currency by the Czech National Bank and valid on the Friday of the previous calendar week, is used for a period of one calendar week. The Ministry of Finance advises the conversion rate of other currencies that are not mentioned on the exchange rate list, to the customs authorities. On the basis of a verbal request the customs office advises people of the exchange rate and the conversion rates for the purposes of observing their reporting duty pursuant to paragraphs 1 to 4. The value of securities and highly valuable commodities is understood to be their current market value or possibly the price set out in accordance with the exchange rate on official markets.

(9) Customs offices control the observance of reporting obligation pursuant to paragraphs 1 to 4.

Article 6

Suspension of executing of an instruction

(1) If there is a danger that the securing of the proceeds may be spoiled or made significantly more difficult by the immediate following of instructions, an obliged person may only carry out the client's instructions concerning a suspicious transaction, at the earliest after 24 hours has elapsed from the Ministry's receipt of the report. The obliged person notifies the Ministry, in a report of a suspicious transaction of the suspension of executing the client's instructions.

(2) Procedure pursuant to paragraph 1 is not followed in the event that the suspension of the client's instructions is not possible, for instance in operations carried out by use of credit cards or when such a suspension, pursuant to the previous notification of the Ministry or own information of the obliged person could jeopardise the investigation of a suspicious transaction. An obliged person shall inform the Ministry forthwith after carrying out such a transaction.

(3) The obliged person may also suspend executing the client's instructions for 24 hours in the event that the Ministry requests it; the obliged person informs the Ministry of this procedure.

(4) If the scrutiny of a suspicious transaction pursuant to paragraph 1 or 3 requires a longer period of time, the Ministry may, by the due date mentioned in paragraph 1, order the obliged person to extend the time it is suspending executing the client's instructions but no longer than

72 hours from the time of receiving the report. If the Ministry does not inform the obliged person, within that time, that it has lodged a complaint, the obliged person shall execute the client's instructions after the expiration of the time. If a complaint has been lodged in that time, the obliged person shall execute the client's instructions after the expiration of 3 calendar days from the day of the lodgement of the complaint if law enforcement authorities authority acting in the criminal proceedings has not made a decision on the impounding or seizure of the subject of the suspicious transaction.

(5) The obliged person is not responsible for any damages that arise from the observance of the duties stated in paragraphs 1, 3 or 4; responsibility for such damages is carried by the State if the client's instructions were not aimed at executing a suspicious transaction. Any claim for the reimbursement of damages must be made at the Ministry of Finance.

Article 7

The Obligation of Confidentiality

(1) If this Act does not state otherwise, the reporter has a obligation of confidentiality in concerning the report of a suspicious transaction or of the actions taken by the Ministry pursuant to this Act, in relation to third parties, including those persons that the notified information concerns. The obligation of confidentiality applies to every employee of the reporter and also to any person active on his behalf on the basis of a contract and arises from the moment of the detection of the suspicious transaction. This obligation of confidentiality also applies to the fulfilment of further duties by the obliged person pursuant to Article 8 paragraph 1.

(2) The employees of the Ministry and authorities mentioned in Article 8 paragraph 3 are also obliged to keep confidentiality about any actions taken pursuant to this Act and about the information acquired during its carriage. The organisational branch that carries out the tasks and exercises the powers that, pursuant to this Act, appertain to it must be technically separated from other workplaces of the Ministry of Finance. Internally, it must apply the organisational, personnel and other measures so as to guarantee that the information acquired in the observance of this Act does not come into contact with any unauthorised individual. Anyone, who in conjunction with the investigation carried out by the Ministry of Finance, learns any information acquired on the basis of this Act, also has a obligation of confidentiality pursuant to this Act.

(3) The obligation of confidentiality of persons mentioned in paragraphs 1 and 2 does not expire with the termination of employment or another relationship with the obliged person or the Ministry or that the individual ceases to carry out an activity mentioned in Article 1a paragraph 7.

(4) It is not possible to invoke the obligation of confidentiality pursuant to paragraphs 1 and 2 against

a)a law enforcement authority, if it carries out proceedings on crimes connected with the legalisation of the proceeds or if it concerns the observance of a reporting duty in connection with such a crime,

b) a court that makes decisions in civil court litigation connected with transaction or claims arising from this Act,

c) individuals performing controls pursuant to Article 8 paragraph 3,

d) a body, authorised pursuant to a special regulation, to make a decision on the withdrawal of a licence to conduct a business or another independently gainful activity in the event that the Ministry submits a motion for the withdrawal of such a licence,

e) an individual who might claim the right to compensation of damages caused by the procedure pursuant to this Act, if it concerns subsequent notification of facts that are decisive in making such a claim. In this case, the obliged person may inform the client that acts pursuant to this Act were taken only after the previous written consent of the Ministry,

f) the relevant foreign authority in the handing over of information that serves to achieve the purpose stipulated by this Act, as long as a special legal regulation does not forbid it,

g) an administrative authority that observes the tasks in the system of the certification of raw diamonds pursuant to a special legal regulation, when informing the matters of fact pursuant to Article 10 paragraph 3,

h) an administrative authority authorised to impose fines pursuant to special legal regulations, which allow the Czech Republic to apply international sanctions[4)], in proceedings on the violation of those legal regulations,

i) the National Security Office, the Ministry of Defence, intelligence services or the Police of the Czech Republic, as long as, within their authority they are carrying out a security check of the proposed individual or if the National Security Office is carrying out a security check of the organisation or checking the security qualifications of individuals pursuant to a special legal regulation[14)],

j) the Security Information Services and Military Defence Intelligence,

k) financial arbiter who makes the decisions pursuant to a special legal regulation in a litigation between a plaintiff and a transferring institution.

(5) Violating the confidentiality obligation imposed pursuant to paragraphs 1 to 3 is an offence for which it is possible in a proceeding pursuant to a special Act[15)] to impose a fine of up to 200,000 CZK. This does not affect the responsibility for damages that arises for the individual that the discovered information concerns, or the possible criminal liability of the person who violated the obligation of confidentiality.[16)]

(6) Information collected by the Ministry pursuant to this Act may only be used otherwise in proceedings before the authorities mentioned in paragraph 4.

(7) The provisions of paragraph 1 first sentence do not apply to obliged persons mentioned in Article 4 paragraph 7.

Article 8

Further obligations

(1) Upon request, the obliged person shall inform the Ministry, by the due date that it determinates, of any information about the transactions to which the identification obligation

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14) Act no. 148/1998 Coll., on the protection of confidential facts and on the amendment of some Acts, as amended.

15) Czech National Council Act no. 200/1990 Coll., on infringements, as amended.

16) Article 178 of the Crimes Act.

refers or about which the Ministry is carrying out an investigation. It shall submit documentation on these transactions or will allow authorised employees of the Ministry verifying the notification or carrying out control activity access to them and it shall provide information about the individuals, who in any way whatsoever took part in such transactions.

(2) During an investigation the Ministry may request information from the whole tax proceedings from the tax administrator if the matter cannot be sufficiently clarified in any other manner.

(3) The Ministry controls whether the obliged persons comply with the obligations stipulated by this Act and whether the obliged persons do not engage in legalisation of the proceeds. When carrying out the controls the Ministry proceeds according to a special legal regulation[17)]. As well as the Ministry, the following authorities also carry out controls of the compliance with obligations pursuant to this Act:

a) the Czech National Bank for banks and other obliged persons to which it grants a foreign exchange licences,
b) the Securities Commission for obliged persons mentioned in Article 1a paragraph 7 letter c),
c) the Office for the Supervision of Co-operative Savings Unions in savings banks and credit unions,
d) the Office of State Supervision for Insurance and Pension Additional Insurance in insurance companies and pension funds,
e) State Supervision over the observance of the Act on Lotteries and other similar games carried out by entities under their control[18)],
f) the Czech Commercial Inspection for obliged persons mentioned in Article 1a paragraph 7 letter k).

Control also refers to obliged persons within the meaning of Article 1a paragraph 8. During the performance of a control activity, the relations between the control authorities and the controlled parties are governed by the Act on State Control. Those authorities mentioned in letters a) to e) are obliged to provide the Ministry, upon request, a opinion within the determined time or any other requested collaboration.

(4) In controls carried out at the offices of lawyers or notaries, the Ministry always requests the collaboration of the relevant professional association. An employee of the Ministry only has the right to peruse written material and other documents of the lawyer or notary that are directly connected with the activities of a lawyer or notary covered by this Act. A representative of the Association shall decide what written material or document has this characteristic.

Article 9

The System of internal principles and training programs

(1) The obliged person shall introduce and apply the adequate procedures of internal control and communication for the purpose of being able to comply with the obligations stipulated by this Act. The obliged person mentioned in Article 1a paragraph 7 letters a) to g) shall draw up in written, in the full range of the valid licences and permits for the activities that are subject to the competence of this Act, a system of internal principles, procedures and control measures

17) the Act no. 552/1991 Coll., on State Controls, as amended.
18) Article 46 paragraph 1 letters c) and d) of the Act no. 202/1990 Coll., as amended by the Act no. 149/1998 Coll.

for the compliance with the obligations stipulated by this Act (hereinafter only, "system of internal principles"). A party, which under contract, carries out an activity that is subject to the authority of this Act for other obliged person, does not have to draw up its own system of internal principles, if its activity is sufficiently covered by the system of internal principles of the other obliged person and if it does not employ anyone or people are not working for it in any other way.

(2) The obliged person shall designate a specific employee to fulfil the reporting obligation pursuant to Article 4 and to ensure an on-going contact with the Ministry, if the statutory authority does not ensure these activities directly. The obliged person mentioned in Article 1a paragraph 7 letters a) to d), shall inform the Ministry forthwith on the designation of this person.

(3) The system of internal principles pursuant to paragraph 1 must contain

g) the detailed demonstrative enumeration of the indications of a suspicious transaction,
h) for the way of the identification of the client,
i) a mechanism that allows for the information stored pursuant to Article 3 to be made available to the Ministry,
j) the procedure of the obliged person from the detection of the suspicious transaction to the moment of delivery of the report to the Ministry so that the deadlines stipulated in Article 4 paragraph 2 are observed as well as the rules for processing the suspicious transaction and designating the people who will analyze the suspicious transaction,
k) the measures that will prevent the threatened danger that due to the immediate execution of the client's instructions, the securing of the proceeds could be spoiled or significantly hampered,
l) the technical and staffing measures to ensure that the Ministry is able to carry out in the obliged person the tasks pursuant to Articles 6 and 8 by the legal deadline.

(4) The obliged person shall provide the Ministry, upon request, with information and documents on the compliance with the obligations imposed pursuant to paragraphs 1 to 3.

(5) A obliged person mentioned in Article 1a paragraph 7 letters a) and b) is obliged to deliver a system of internal principles or its amendments to the Ministry within 30 days of its creation or of the effectiveness of the amendments to the system of internal principles. A obliged person mentioned in Article 1a paragraph 7 letter c) has these obligations in relation to the Securities Commission. If the submitted version is not in harmony with this Act or it does not fulfil its purpose sufficiently, the Ministry or the Securities Commission shall notify the obliged person of it in writing. In such an event the obliged person is obliged, within 30 days from the receipt of the notification, to eliminate the shortcomings and inform the Ministry or the Securities Commission, in the case of a obliged person mentioned in Article 1a paragraph 7 letter c).. The deadline for eliminating the shortcomings and for the notification is also binding in the event that the Ministry or authority mentioned in Article 8 paragraph 3 letters a) to e) has requested the system of internal principles for control.

(6) The obliged person shall ensure the training of employees, who may come in contact with suspicious transactions during the discharge of their work duties, at least once in the course of every twelve calendar months. Training programs will be aimed at the ways of detecting suspicious transactions and at the application of procedures pursuant to this Act.

TITLE THREE
THE POWERS OF THE MINISTRY

Article 10

(1) Pursuant to this Act, the Ministry discharges the function of the collection and analysis of information. As well as authorities mentioned in Article 6 paragraphs 3 and 4, Article 8 and Article 9 paragraph 4 it may

a) carry out its own investigation concerning transaction to which identification obligation pursuant to this Act, relates,
b) impose penalties for the non fulfilment of the duties stipulated by this Act,
c) give the motion for the withdrawal of a licence to conduct a business or other independently gainful activities.

The Ministry also acts in the full range stipulated by this Act in proceedings on the compensation of damages.

(2) If the Ministry discovers any facts that may justify the suspicion that a crime has been committed, it shall lay a complaint pursuant to the Criminal Code. At the same time it shall provide the law enforcement authority with any information and proof of the facts that it has at its disposal, if they are connected to the complaint.

(3) If the Ministry discovers any facts that are significant for the performance of the tasks in the certification system of raw diamonds but there is no reason to proceed pursuant to paragraph 2, it shall inform the administrative authority that undertakes the tasks of the certification system of raw diamonds pursuant to a special legal regulation of them.

(4) If an authority mentioned in Article 8 paragraph 3 letters a) to f) discovers facts that indicate a suspicious transaction within the meaning of the Article 1a paragraph 6, it shall immediately inform the Ministry of it by means of procedure pursuant to Article 4.

(5) The Police of the Czech Republic, intelligence services, state administration authorities including those authorities carrying out state administration in a transferred competence and other state authorities are obliged to provide the Ministry with the necessary information for the enforcement of its powers pursuant to this Act, if a special Act does not forbid them to do so.

(6) The Ministry is authorised to keep the information acquired within the implementation of this Act in its information system under conditions stipulated by a special Act.[19)] For this purpose, it is authorised to combine information and information systems that serve various purposes. Pursuant to a special Act,[19)] the Ministry does not provide the person concerned, upon request, with a report of the information that is kept on it, in the information system maintained pursuant to this Act.

(7) Within the scope determined by an international treaty binding for the Czech Republic, or on the basis of a reciprocity, the Ministry shall cooperate with foreign authorities that have the same real competence, particularly in the handing over and receiving of information that serves to achieve the purposes stipulated by this Act. On conditions that the information will only be used to achieve the purposes of this Act and that it will enjoy protection at least in the scope stipulated by this Act, the Ministry may also cooperate with other international organisations.

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19) The Act no. 101/2000 Coll., on the protection of personal information and on the amendment to some Acts, as amended.

TITLE FOUR
MINISTRY PROCEEDINGS

Article 11

General principles

(1) If not stated otherwise, the provisions of the Czech National Council Act no. 337/1992 Coll., on the administration of taxes and fees, as amended, is used in the same way for proceedings before the Ministry pursuant to this Act, if it concerns

a) an official language,
b) participants of proceedings and their rights,
c) representation,
d) on-site investigation,
e) delivering,
f) exclusion,
g) summons and order of attendance,
h) proceedings expenses,
i) decisions,
j) fines and penalty tickets.

(2) Where, in the Czech National Council Act no. 337/1992 Coll., on the administration of taxes and fees, as amended, it is mentioned tax administrators, tax proceedings and tax subjects, for the purposes of this Act, it is understood to be the Ministry, Ministry proceedings carried out pursuant to this Act and the subject that has a stipulated obligation pursuant to this Act.

(3) Proceedings before the Ministry pursuant to this Act are always closed.

Article 12

Fines

(1) The Ministry or an authority mentioned in Article 8 paragraph 3 may impose a fine of an amount of up to 2,000,000 CZK on an individual that violates or fails to comply with an obligation stipulated by this Act, if it does not concern a breach of the obligation of confidentiality or if such conduct is not an act more seriously punishable. In case of a repeated violation or a failure to comply with obligations in a consecutive 12-month period it may be up to 10,000,000 CZK if it concerns an individual. In case of a legal person the imposed fine may be up to 10,000,000 CZK and in case of a repeated violation or a failure to comply with of obligations in a consecutive 12-month period it may be up to 50,000,000 CZK. The authority that first discovers the violation shall levy the fine.

(2) When determining the amount of the fine, it is necessary to take into consideration the personal and property conditions of the individual upon whom the fine is being imposed and also the character and seriousness of the of the obligation that was violated or not complied with, its duration and the consequences of the illegal conduct.

(3) It is not possible to impose a fine if two years from the end of the year in which the conduct that gave rise to the right of imposing a fine has elapsed. The right to enforce the levied fine lapses after five years from the making of the decision. The yield from the fines is the revenue of the State Budget of the Czech Republic.

(4) The individual, upon whom the fine has been imposed, may make an appeal against the decision that must contain grounds, of the Ministry, to impose a Fine. The appeal must reach

the Ministry within 30 days of the delivery of the Decision of the fine. An appeal that is lodged in time has a delaying effect. The Minister of Finance decides on the appeal.

(5) If it is a lawyer or notary who violates or fails to comply with the obligations stipulated by this Act and if such conduct is not an act that is more seriously punishable, then it is considered to be a disciplinary offence within the meaning of a special legal regulation[20)] and shall be discussed by the relevant professional association pursuant to this special legal regulation. A hearing of a disciplinary offence proceeds pursuant to a special legal regulation[20)] and the provisions of paragraphs 1 to 4 and Article 11 are not applied to such a hearing. If a professional association or its employee violates an obligation stipulated by this Act, the Ministry shall warn of it.

Article 12a

(1) If the customs office discovers that a physical or a legal person failed to comply with a reporting obligation pursuant to Article 5 paragraphs 1 to 4, it shall impose a fine of up to the value of the undeclared goods on it. The Customs office shall proceed in the same way in the case of incorrect or incomplete information in report pursuant to Article 5 paragraph 5 or in a record pursuant to Article 5 paragraph 6.

(2) The customs office in whose territorial district this obligation was violated shall conduct the hearing of the violation of a obligation pursuant to Article 5 paragraphs 1 to 4.

(3) The customs office to which the hearing of the violation of the obligation pursuant to paragraph 2 appertains, may hand over the matter to a customs office in whose territorial district lies

a) The headquarters of the legal person that failed to comply with an obligation mentioned in Article 5 paragraphs 2 to 4,
b) The permanent residential address of the individual that failed to comply with an obligation mentioned in Article 5 paragraphs 1, 3 and 4.

(4) When determining the amount of the fine, the customs office particularly takes into account the seriousness, manner, duration and consequences of the violation of the obligation.

(5) A fine levied pursuant to paragraph 1 is due and payable within 30 days from the day when the decision of its imposition comes into force. The fine is the revenue of the State Budget of the Czech Republic.

(6) A fine may be imposed up to 2 years from the day when the violation of the obligation pursuant to Article 5 paragraphs 1 to 4 was discovered, at the latest, however, up to 5 years from the day the violation took place.

(7) The customs office when discovering a violation of a obligation pursuant to Article 5 paragraphs 1 to 4 may seize goods, which relate to the violation of duty. An appeal against this decision does not have a delaying effect.

(8) An individual, to whom a decision on the securing of goods was delivered or announced, is obliged to surrender them to the customs office. If the secured goods are not surrendered at the summons of the customs office they may deprive the person who has them in his possession of that goods. The customs office shall issue a receipt for the giving up or deprivation of goods to an individual who gave up the goods or who was deprived of the goods.

[20)] The Act no. 85/1996 Coll., on advocacy, as amended.
Act no. 358/1992 Coll., on notaries and their activities (Notaries Code), as amended.

(9) If the imposed fine is not paid voluntarily by the due date for payment, the customs office may use the seized items in lieu.

(10) If the seized items are no longer necessary for a further proceedings and if their use in payment of the fine cannot be considered, the customs office shall return them to the person, who delivered them or from whom they were taken.

(11) The customs office may also impose a fine, which does not exceed the amount of 5,000 CZK, by means of a penalty ticket procedure. If the violation of the duty has been reliably proved, the individual who violated the duty pursuant to Article 5 paragraphs 1 to 4 shall pay the fine on the spot. It is not possible to appeal against the imposition of a fine in a penalty ticket procedure.

(12) The penalty ticket by which the imposition of a fine is decided has written on it, who, when and for the violation of what legal obligation the fine was imposed. The penalty ticket also serves as a receipt for the payment of an on the spot fine in cash.

(13) If this Act does not state otherwise, proceedings regarding the imposition of fines for the violation of obligations pursuant to Article 5 paragraph 1 to 4 are governed by the Administrative Procedure Code. When collecting and recovering fines, the customs office shall proceed according to a special legal regulation.[21)]

Article 13

Motion for the withdrawal of a licence to conduct a business or some other independently gainful activity

(1) If the Ministry discovers that a legal person or an natural person who has earned incomes from a business or some other independently gainful activity, has in the long term and repeatedly violated some of the duties stipulated by the Act or imposed by a decision issued pursuant to this Act, it shall submit the motion for the withdrawal of a licence to conduct a business or some other independently gainful activity to the authority which is authorised to make a decision on its withdrawal pursuant to a special regulation. This authority is obliged to notify the Ministry of the measures it has taken and of the manner in which it has dealt with the motion within 30 days of the motive being delivered.

(2) Long-term or repeated violations of the obligations stipulated by this Act or imposed by a decision issued on its basis, is a reason for the withdrawal of a licence to conduct a business or other independently gainful activity pursuant to a special regulation.

21) The Act no. 337/1992 Coll., as amended.

TITLE FIVE

Cancelled

Article 14

Cancelled

Article 21

Effectiveness of the Act

This Act comes into effect on the 1st July 1996.

* * *

Act no. 15/1998 Coll., on the Securities Commission and on the amendment and supplementation of some other Acts came into effect on the 1st April 1998, with the exception of Articles 2, 21 to 28 and Article 30 points 1 and 2, which came into effect on the 6th February 1998.

Act no. 159/2000 Coll., which amends Act no. 61/1996 Coll., on some measures against the legalisation of the proceeds of crime and on the amendment and supplementation of connected Acts, as amended by Act no. 15/1998 Coll., and some other Acts, came into effect on the 1st August 2000.

Act no. 239/2001 Coll., on the Czech Consolidation Agency and on the amendment to some Acts (Act on the Czech Consolidation Agency) came into effect on the 1st September 2001 and ceases to be effective on the 31st December 2011.

Act no. 440/2003 Coll., on the treatment of raw diamonds, on the conditions for their import, export and transit and on the amendment to some Acts, came into effect on the 3rd January 2004.

Act no. 257/2004 Coll., that amends some Acts in conjunction with the adoption of the Act on Capital Market Undertakings, the Act on Collective Investment and the Act on Bonds, came into effect on the 1st May 2004.

Act no. 284/2004, that amends Act no. 61/1996 Coll., on some measures against the legalisation of the proceeds of crime and on the amendment and supplementation of connected Acts, as further amended and some other Acts will come into effect on the 1st

September 2004 with the exception of the provisions of Article VIII points 3, 5 and 8, which will come into effect on the 1st January 2005.

TEMPORARY AND FINAL PROVISIONS
Act no. 284/2004 Coll. dated 8 April 2004

1. The obliged person shall supplement the system of internal principles pursuant to Article 9 of Act no. 61/1996 Coll., as amended by this Act, at the latest by 60 days from the date of this Act's coming into effect. The obliged person mentioned in Article 1a paragraph 7 letter a) shall send the supplemented system of internal principles to the Ministry by the due date and a obliged person mentioned in Article 1a paragraph 7 letter c) shall send it to the Securities Commission by the due date.
2. A legal person or an individual, who has been newly categorised as a obliged person by this Act, is obliged to draw up and apply a system of internal principles and enjoin its employees to observe the reporting duty pursuant to Article 9 paragraph 1 of Act no. 61/1996 Coll., as amended by this Act, at the latest, by 60 days from the day of this Acts coming into effect. If this newly categorised obliged person is mentioned in Article 1a paragraph 7 letters a) and b) of Act no. 61/1996 Coll., as amended by this Act, it shall send the system of internal principles to the Ministry by the due date. If it is mentioned in Article 1a paragraph 7 letter c) of Act no. 61/1996 Coll., as amended by this Act, it shall send it to the Securities Commission by the due date.
3. Where this Act refers to a lawyer it is also understood to be a European lawyer.[22)]

[22)] Act no. 85/1996 Coll., as amended.