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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

SELECT COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(PC-R-EV)

SECOND ROUND EVALUATION REPORT ON
THE CZECH REPUBLIC

SUMMARY

1. A PC-R-EV team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF) visited the Czech Republic between 8-11 October 2001. This visit took place in the framework of the second round evaluation. Its aim was to take stock of developments since the first round evaluation (i.e. May 1998 in the case of the Czech Republic), and to assess the effectiveness of the anti-money laundering system in practice.
2. There have been no significant changes in the types of criminal activities considered to be the major sources of illegal proceeds. However, the criminal activity in the economic field has become increasingly sophisticated and specialised, some banks being at the same time infiltrated by criminals. The latter take advantage of the developed financial infrastructure including the securities market and the unlimited use of cash payments. Limits on cash transactions are not envisaged by the Czech authorities for the time being. On the other hand, new bearer passbooks cannot be issued and the examiners were advised that from 1st January 2003, only total withdrawal will be allowed and this will be subject to identification requirement.
3. The government strategy on combating organised crime of 1997 was assessed and updated accordingly in October 2000. Targeting the revenues of crime are an element of this renewed strategy. Recognising the importance of having an effective anti-money laundering regime, the Czech government also approved in April 2000 a written document analysing the effectiveness of the domestic anti-money laundering regime. This document requires the adoption / implementation of a number of measures considered crucial to better address money laundering issues (reversal of the burden of proof, confiscation, limitation of cash transactions, central files of account holders, specialisation of the police etc.). The government accordingly introduced legal amendments, on the basis of recommendations from the EU (the Czech Republic applied for EU membership) and from the PC-R-EV first evaluation round, but also based on the national experience deriving from the implementation of existing legislation. One important element of the recent changes was the amendment of Act No. 61/1996 (the Anti-Money Laundering Act), effective on 1st August 2000. Furthermore, the government enacted a so-called "Euroamendment" to the Criminal Code which comprises a new body of crime of the criminal offence of legalisation of proceeds from criminal activity (Section 252 a). This new amendment will enter into force on 1st July 2002. Other recently decided amendments include those to the Criminal Procedure Code and to regulations related to the economic environment of the Czech Republic.
4. The capacity of the Czech Republic to cooperate internationally was further enhanced with additional bilateral agreements between the FAU and foreign counterparts, and with assets-sharing agreements with the US and Canada. All international conventions ratified by the Czech Republic are directly applicable in the country.
5. The basic provisions criminalizing money laundering at the time of the visit are the same as those in force during the first round evaluation (Sections 251, 251a and 252). Their weaknesses therefore remain (e.g. inconsistency with the definition of laundering provided by Act 61/1996; self laundering is not covered; the concept of

“thing” is too narrow and too far from the Strasbourg Convention definition of proceeds and property). The new provisions of Sections 252 and 252a expected in July 2002 would bring some improvements on the previous position: laundering of “own proceeds” would appear now to be covered with the deletion of the words “enables another person” from Section 251a; the concept of “thing” in Section 252a would be supplemented with less tangible products of crime; the penalty for negligent money laundering would be increased. 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. The physical elements of the offence remain based on the concealment. It remains debatable whether the “acquisition, possession or use” of laundered proceeds really are covered in the new money laundering legislation. Likewise, the mental element in Sections 252 and 252a has not been revisited. Presumably the full rigours of knowledge standard remain. The two offences seem to be either intentional or negligent.

6. Finally, the statistics available show few prosecutions under the Section 251a - which, in any event, appears not just to cover money laundering. 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. Additional practical measures, such as guidelines, would help the police, prosecution and judges to make a better use of the existing provisions.
7. This second round evaluation confirmed both in theory and practice that confiscation is still an alternative to punishment rather than a systematic measure targeting the proceeds of crime. As a matter of fact, the application of confiscating measures is left to the court’s discretion and figures concerning the frequency of confiscation and the amounts concerned are not available. On the other hand, the recent creation of a Proceeds from Crime Department within the police, and the first positive results obtained by this Department in terms of seizures are encouraging. The prosecutors and the judges need to be as committed to this agenda as the new department. There needs to be a concerted and agreed approach to the importance of 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.
8. The Law 61/1996 was amended and the preventive regime against the use of the financial sector for money laundering was improved to a large extent (e.g. the concept of “suspicious transactions” was introduced; move from “contact persons” to “money laundering compliance officers, extension of the record keeping requirement to documentation on transactions, requirement to identify “third persons”, rules on professional secrecy etc.). Clear anti-money laundering responsibilities and supervisory powers were granted to the Czech National Bank, the Securities Commission, and the Cooperative Savings Unions regulatory bodies. The means of the FAU were enhanced, and training was developed. The current system could be further improved with the introduction of a clear requirement to identify beneficial owners and with a better and more systematic feedback from the FAU to reporting entities. The supervision over the financial sector could also be strengthened in various ways : rigorous on- and off-site controls, sanctions in case of non-observance of the requirements etc. Some sectors considered as vulnerable should be subject to closer attention.

9. As regards the FAU, the recent recruitment of additional analysts has increased its working capacity in this field. The computerisation of work was improved too with adequate software made available and the FAU has now access to the main relevant databases (including those of the police, tax administration and Customs). All this was needed if one considers the rather modest performance of the FAU in recent years. Out of 956, 1699 and 1920 STRs received in 1998, 1999 and 2000 respectively, only a – comparatively - limited number of complaints were lodged (37 in 1998, 47 in 1999 and 103 in 2000). International cooperation and collaboration with the financial sector is considered satisfactory. The FAU is also actively involved in provide training and raising awareness of the private sector and other authorities' staff. The evaluation team was concerned about the staffing of the FAU's Legal and Inspection Department: its four staff are insufficient to carry out all on- and off-site controls falling within its jurisdiction in the Czech Republic. Consequently, the staffing of the Department needs to be reconsidered. For the time being, the FAU does still not consider using liaison law enforcement personnel to assist it in the operational field.
10. Despite the recent creation of specialised prosecution sections and greater specialisation of the police to deal with economic crime cases including money laundering (see also above, the Proceeds from Crime Department), the work of the prosecution and police remains difficult in these fields. Various secrecy provisions and limits on the use of special investigative techniques undermine the overall investigative capacities. At the same time, there is a need for more targeted training in economic crimes and money laundering. All these factors are likely to make the repressive authorities prefer to initiate fraud-related cases, instead of money laundering cases, and to prefer focusing on the predicate offence. As a consequence, there has been no money laundering case since the first round evaluation. These problems need to be addressed.
11. The Czech Republic has adopted a number of measures since the first round evaluation. By addressing the issues above, the Czech Republic can improve the fight against money laundering and make the regime to combat it more effective.