COMMITTEE OF EXPERTS ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES AND THE FINANCING OF TERRORISM (MONEYVAL)

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Report on Fourth Assessment Visit

Anti-Money Laundering and Combating the Financing of Terrorism

CZECH REPUBLIC

12 April 2011

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LIST OF ACRONYMS USED

AA	Association of Accountants
ABS	Banks Association
AML/CFT	Anti-Money Laundering and Combating the Financing of Terrorism
AML/CFT Law	Anti-Money Laundering Law "on some measures against the legalisation of the proceeds of crime and on the amendment and supplementation of connected Acts" (Act N° 253/2008 Coll – as amended by Act N° 285/2009 Coll)
C	Compliant
CBA	Czech Bar Association
CC	Criminal Code
CPC	Code of Criminal Procedure
CDA	Central Depositary Agency
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFSSS	Credit & Financial Statistic Supervision Service of the CB
CFT	Combating the financing of terrorism
CNB	Czech National Bank
CR	Czech Republic
CSC	Czech Securities Commission
CTR	Cash transaction report
DNFBP	Designated Non-Financial Businesses and Professions
DRCOR	Department of the Registrar of Companies and Official Receiver
EAW	European Arrest Warrant
EC	European Commission
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FAQ	Frequent Asked Questions
FATF	Financial Action Task Force
FAU	Financial Analytical Unit [name of the Czech FIU]
FCA	Financial Companies Association
FI	Financial Institution
FIU	Financial Intelligence Unit
FSAP	Financial Sector Assessment Program
FT	Financing of Terrorism
G-Accountants	AML Guidance Note for accountants and auditors

G-Banks	AML Guidance Note to Banks
G-Insurers	AML Guidance Notes to life and non-life insurers
G-International / Financial / Trustee Businesses	AML Guidance Notes to International Financial Services Companies, International Trustee Services Companies, International Collective Investment schemes and their managers or trustees as appropriate,
G-Investment Brokers	AML Guidance Note to brokers
G-Lawyers/notaries	AML Guidance Notes for lawyers and notaries
G-MTB	AML Guidance Note to Money Transfer Businesses
GRECO	Group of States against Corruption
IBEs	International Business Enterprises
IBUs	International Banking Units
ICCS	Insurance Companies Control Service
IFAC	Chambers of Auditors of the Czech Republic
IMF	International Monetary Fund
IN	Interpretative note
IIS	Act N°. 69/2006 Coll. on Carrying Out of International Sanctions
IT	Information technologies
KYC	Know your customer
LC	Largely compliant
LEA	Law Enforcement Agency
MBFISS	Market and Banking and Financial intermediaries Supervision Service of the CB
MER	Mutual Evaluation Report
ML	Money Laundering
MLA	Mutual legal assistance
MLCO	Money Laundering Compliance Officer
MoE	Ministry of Economy
MoF	Ministry of Finance
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoU	Memorandum of Understanding
MVT	Money Value Transfer
NA	Not applicable
NAP	National Action Plan to Combat Terrorism
NARA	National Asset Recovery Agency
NBFI	Non Bank Financial Institutions

NC	Not compliant
NCCT	Non-cooperative countries and territories
NPO	Non-Profit Organisation
OBS	Office of Banking Supervision
OECD	Organisation for Economic Co-operation and Development
OFAC	Office of Foreign Assets Control (US Department of the Treasury)
OGBS	Offshore Group of Banking Supervisors
OSCE	Organisation for Security and Co-operation in Europe
PC	Partially compliant
PEP	Politically Exposed Persons
POG's office	Office of the Prosecutor General
SAR	Suspicious Activity Report
SIS	Special Investigation Service
SR	Special recommendation
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication
TRO	Trust Register Office
TCSP	Trust and company service providers
UCITS	Undertakings for Collective Investment in Transferable Securities
UN	United Nations
UNSCR	United Nations Security Council resolution
UTR	Unusual Transaction Report

I. PREFACE

1. This is the third report in MONEYVAL's 4th round of mutual evaluations, following up the recommendations made in the 3rd round. This evaluation follows the current version of the 2004 AML/CFT Methodology, but does not necessarily cover all the 40+9 FATF Recommendations and Special Recommendations. MONEYVAL concluded that the 4th round should be shorter and more focused and primarily follow up the major recommendations made in the 3rd round. The evaluation team, in line with procedural decisions taken by MONEYVAL, have examined the current effectiveness of implementation of all key and core and some other important FATF recommendations (i.e. Recommendations 1, 3, 4, 5, 10, 13, 17, 23, 26, 29, 30, 31, 35, 36 and 40, and SRI, SRII, SRIII, SRIV and SRV), whatever the rating achieved in the 3rd round.

2. Additionally, the MONEYVAL Plenary agreed that there should be some flexibility on re-assessing other Recommendations in the circumstances of the particular country. As the competencies of Law Enforcement in respect of AML investigations have changed since the 3rd evaluation, the evaluators concluded that it would be appropriate to re-assesses Recommendations 27.

3. Additionally, the examiners have reassessed the compliance with and effectiveness of implementation of all those other FATF recommendations where the rating was NC or PC in the 3rd round. Furthermore, the report also covers in a separate annex issues related to the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (hereinafter the "The 3rd EU Directive") and Directive 2006/70/EC (the "implementing Directive"). **No ratings have been assigned to the assessment of these issues.**

4. 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 24 to 29 May 2010, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant government agencies and the private sector in the Czech Republic. A list of the bodies met is set out in Annex I to the mutual evaluation report.

5. The evaluation was conducted by an assessment team, which consisted of members of the MONEYVAL Secretariat and MONEYVAL and FATF experts in criminal law, law enforcement and regulatory issues and comprised: Ms Pilar Cruz-Guzman (Senior Expert – Legal area, SEPBLAC Financial Intelligent Unit, Spain) as FATF evaluator and Mr Lajos Korona (Public Prosecutor, Metropolitan Prosecutor's Office, Hungary) who participated as legal evaluators, Mr Anthony Cortis (Head of Financial Stability Department, Central Bank of Malta) and Mr Tal Lister (Head of AML/CFT and Consumer Protection Examination Unit, Banking Supervision Division, Bank of Israel) who participated as financial evaluators, Mr Nicola Muccioli (Deputy Head of the FIU, "Agenzia d'Informazione Finanziaria", San Marino) who participated as a law enforcement evaluator, Mr John Ringguth, MONEYVAL's Executive Secretary, Ms Natalia Voutova and Mr Fabio Baiardi, members of the MONEYVAL Secretariat. 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.

6. The structure of this report broadly follows the structure of MONEYVAL and FATF reports in the 3rd round, and is split into the following sections:

   a. General information
   b. Legal system and related institutional measures
   c. Preventive measures - financial institutions
   d. Preventive measures – designated non financial businesses and professions
   e. Legal persons and arrangements and non-profit organisations
   f. National and international co-operation
   g. Statistics and resources

   Annex (implementation of EU standards).
   Appendices (relevant new laws and regulations)

7. This 4th round report should be read in conjunction with the 3rd round adopted mutual evaluation report (as adopted at MONEYVAL's 24th Plenary meeting – 10 to 14 September 2007), which is published on MONEYVAL's website[1]. FATF Recommendations that have been considered in this report have been assigned a rating. For those ratings that have not been considered the rating from the 3rd round MER continues to apply.

8. Where there have been no material changes from the position as described in the 3rd round MER, the text of the 3rd round MER remains appropriate and information provided in that assessment has not been repeated in this report. This applies firstly to general and background information. It also applies in respect of the 'description and analysis' section discussing individual FATF Recommendations that are being reassessed in this report and the effectiveness of implementation. Again, only new developments and significant changes are covered by this report. The 'recommendations and comments' in respect of individual Recommendations that have been re-assessed in this report are entirely new and reflect the position of the evaluators on the effectiveness of implementation of the particular Recommendation currently, taking into account all relevant information in respect of the essential and additional criteria which was available to this team of examiners.

9. The ratings that have been reassessed in this report reflect the position as at the on-site visit in 2010 or shortly thereafter.

[1] http://www.coe.int/moneyval

II. EXECUTIVE SUMMARY

Background Information

1. This report summarises the major anti-money laundering and counter-terrorist financing measures (AML/CFT) that were in place in the Czech Republic at the time of the 4th on-site visit (22 to 29 May 2010) and immediately thereafter. It describes and analyses these measures and offers recommendations on how to strengthen certain aspects of the system. The MONEYVAL 4th cycle of assessments is a follow-up round, in which Core and Key (and some other important) FATF Recommendations have been re-assessed, as well as all those for which the Czech Republic received non-compliant (NC) or partially compliant (PC) ratings in its 3rd round MER. This report is not, therefore, a full assessment against the FATF 40 Recommendations and 9 Special Recommendations but is intended to update readers on major issues in the AML/CFT system of the Czech Republic.

Key findings

2. The evaluators were informed by the authorities that a specific AML/CFT risk assessment had not been undertaken since the last evaluation. From the authorities with whom the issue was discussed, it was clear that, like other countries, organised crime groups remain a continuing and serious risk and that they are operating significantly in white-collar crime and internet fraud and that the proceeds of their crimes are laundered in the Czech Republic. A comprehensive national risk assessment is essential to identify vulnerable sectors within the Czech financial system in terms of ML/FT.

3. The total damage from economic crime in 2009 was 1,068,230,000 Euros. None-the-less there is little evidence of significant money laundering cases being taken forward by the police and the prosecution, with a tendency noted in the previous evaluation to treat money laundering as subsidiary to the other offences. The Czech authorities need to analyse why there is such a major discrepancy between the types of money laundering cases being prosecuted and the incidence of money laundering in the country.

4. The Czech authorities consider the FT risk to be low.

5. The FIU is working effectively, and more reports are now being sent to law enforcement than in the earlier part of the period under review. The overall impact of FIU reports on law enforcement results is difficult to quantify in the absence of relevant statistics.

6. The lack of reliable and comprehensive ML/FT supervisory statistics hinders the full analysis and comprehension of the ML/FT risks within the Czech financial sector as well as the implementation of an effective risk based approach. The supervisory cycle for the financial sector is very extended and some of the riskier areas may not be covered for several years. In particular, exchange bureaux should be subject to more targeted ML/FT on-site inspection.

7. The lack of reliable statistics and information on the performance of the law enforcement and the judicial side in money laundering investigation, prosecutions and convictions, as well as in respect of confiscation orders also makes it very difficult for the evaluators to asses the overall impact of the law enforcement response to ML and for domestic authorities to analyse their own performance in these areas.

8. Progress has been made since the third evaluation with the adoption of the new AML/CFT Law implementing the 3rd EU Money Laundering Directive and many of the preventative recommendations in the 3rd round MER.

Legal Systems and Related Institutional Measures

9. The Czech criminal substantive law, so far as criminalisation of ML and FT is concerned, is largely the same as it was at the time of the 3rd round evaluation. While a new Criminal Code has recently been adopted, the relevant offences remained largely the same. There are some notable improvements, such as a clear provision ensuring that ML can be prosecuted also where the predicate offence was committed abroad. However, the general structure of ML criminalisation still does not provide a proper and effective legal basis in line with R.1.

10. Equally, the Czech law still does not provide for the criminal liability of legal entities, though draft legislation, which is urgently needed, is under preparation. The Palermo Convention (signed 12 December 2000) has not been brought into force, largely because of this deficiency.

11. The evaluators noted that in spite of the structure of the criminal legislation a number of convictions for ML (i.e. the legalisation offence) had been achieved, though rarely in serious cases. The lack of adequate information and statistics has prevented the evaluators from drawing overall conclusions as to the quality of the ML cases being brought to the courts. The law enforcement authorities indicated that they had had no success with ML convictions so far in cases involving organised crime and that ML was usually treated as subsidiary to other offences and subsumed with the predicate offence, rather than being prosecuted separately. The evaluators were not provided with statistics showing the proportion of cases which relate to self laundering or the number of autonomous ML cases, including those involving the proceeds of organised crime. In practice it appears that most of the money laundering cases being taken forward, as at the time of the 3rd round MER, are basic cases involving stolen goods. The Czech authorities explained that they had experienced difficulties in prosecuting more serious ML cases and that this could result in very protracted proceedings. A number of indictments for ML, for example, had been referred back to the prosecution to provide further evidence, which implies that the standard of proof required by the courts may be overly high.

12. It is welcome that the TF offence in the Criminal Code has been enlarged so as to encompass those who support an individual terrorist or a member of a terrorist organisation. Without any actual case practice, however, it is hard to tell whether and to what extent this and other amendments remedy all deficiencies noted in the previous report.

13. On provisional measures and confiscation, the evaluators noted some promising signs of a growing awareness of the importance of financial investigation by the law enforcement authorities and the prosecution. Provisional measures are said to be taken quite regularly, and in urgent cases related to laundering offences. Without statistics on confiscation performance, however, the actual effectiveness of the regime could not be fully assessed. The evaluators are concerned about the imbalance between seized assets and those finally confiscated. The lack of statistics on confiscation negatively affects the performance of the system overall.

14. The implementation of SR.III relies upon importing EU procedures into national law and national primary and secondary legislation (an International Sanctions Act and a governmental decree) are in place, including coverage of EU internals (which is positive). The regime has been applied for the execution of international sanctions but these were not based upon the UNSCRs referred to in SR.III. No freezing has occurred under SR.III. It appears nonetheless that the financial institutions are aware of the need to check the terrorist lists. The procedure for referral to the FIU of a match is covered by the suspicious transactions reporting obligation, of which the obliged entities were

also aware. Though the confusion by some reporting authorities of the obligation in SR.III with SR. IV may mean that less emphasis is placed by some reporting entities on the disclosure of other suspicions related to TF.

Law Enforcement Issues

15. Department 24 of the Ministry of Finance (that is the Financial Analytical Unit) is vested with the FIU core functions. There is no separate legislation as such for the FIU. The organisational rules of the Ministry of Finance govern the FIU's operational procedures. While other prudential regulators have AML/CFT supervisory functions, the FIU is also required to perform supervisory functions on all obliged parties. The FIU is also in charge of implementing the International Sanctions Act.

16. The staff is well trained and committed. The maximum time for the FIU analyses is two months (which is the target set by the Director). In 2009 the FIU suspended transactions in 47 cases though the impact of this on effective criminal asset recovery is unclear. The functions assigned to the FIU are quite wide compared with the FIU complement.

17. STRs are mainly from the banks. Other financial institutions and the DNFBP show a significantly lower level of reporting.

18. Within Law enforcement more seminars on AML/CFT investigations, prosecutions and judgements would be welcome to ensure that all key players are fully aware of the importance of financial investigation, confiscation and autonomous ML.

19. The number of STRs sent as criminal complaints to law enforcement (including non ML criminal infringements) rose from approximately 4% of STRs in 2005/6/7 to 8.6% of STRs in 2009. The examiners noted a more proactive approach to the follow up by the FIU of the notifications in 2009, including the copying of the referrals to the prosecution authority. It is commendable that the FIU is seeking to ensure that its referrals result in action. This is necessary as the effective impact of the FAU reports on overall law enforcement results appears not to have been substantial. Very few STR generated cases had become effective money laundering investigations during the earlier years covered by this evaluation. However, the present proactive approach of the FIU in following up cases with domestic authorities should assist the overall results in this sector.

Preventive Measures – financial institutions

20. During the 3rd round evaluation a number of shortcomings were identified in relation to CDD measures, identification of the originator and the beneficiary of wire transfers and identification of the beneficial owner. Many of the recommendations were taken into account in the new 2008 AML/CFT Law. But at the time of the 4th round on site visit, the identification and verification of the beneficial owner still needed to be embedded, in practice within the CDD process.

21. In practice, the CDD process appears largely focused, in some of the obliged entities at least, on identification, rather than verification and in depth analysis of beneficial owners. The existence of bearer shares is an additional problem for full identification of the beneficial owners. Understanding of the concept of enhanced customer due diligence is still limited for a number of obliged entities, even in respect of politically exposed persons. Some obliged entities indicated that they would appreciate more guidance from the authorities on AML/CFT concepts although satisfaction was expressed by the private sector on the technical assistance provided by the FIU on the completion of STRs.

22. Legislative improvements have been made by the Czech authorities in relation to politically exposed persons (rated NC in the 3rd round MER), which are now defined in the AML/CFT Law. Senior politicians (who may not be members of parliament), senior government officials and other important political officials, however, appear still not to be included within the national definition.

23. There is an evident increase in electronic record keeping within financial institutions, and the "Moneyweb" system (widely used by the larger banking institutions) enables electronic transfer of records. The Czech authorities indicated the ease with which they can obtain electronic records (photocopies of IDs, of contracts and account statements) from the domestic banks in response to foreign international cooperation requests. Nonetheless, in some smaller banks there was some evidence of paper based systems of record keeping, which could contribute to slight delays in reconstructing transactions. In addition, there are limitations in the scrutiny, and retention of information in respect of complex, unusual and large transactions which should be specifically addressed by the authorities.

24. Improvements have been made in respect of the attention given to business relationships and transactions with counterparties from countries which do not or insufficiently apply FATF Recommendations. However, only some of the basic requirements in this respect are implemented in the AML/CFT Law and to some extent in the banking regulations, and there is an over reliance on official lists of risky countries. A number of institutions, usually the smaller ones, do not carry out their own risk assessments in this regard.

25. The requirement to report suspicious transactions is prescribed in Section 18 of the AML/CFT Law, which provides a list of activities that shall be perceived as suspicious. The Czech authorities and the representatives of the financial industries indicated that the list is not to be considered as exhaustive and the circumstances in which a suspicious transaction is to be reported were not limited to those indicated. However, the fact that the AML/CFT Law contains a list of suspicious transactions could have a negative impact on the reporting system as the reporting entities may rely, exclusively or partially, on the listed transactions. It was also noted that the transactions listed are typical operations which correspond to the activities of the banking sector but not to the other obliged sectors (i.e. securities and insurance sectors, as well as professionals, casinos and other DNFBP).

26. Some representatives of the financial institutions and professional organisations advised that they received little general or case specific feedback from the FIU on STRs.

27. According to the AML/CFT Law, the FIU has overall responsibility to ensure that all obliged financial and non financial institutions comply with the obligations contained in the AML/CFT Law. In addition, various authorities and SROs have supervisory responsibilities in their specific industries. The Czech National Bank (CNB) is responsible for general supervision of the entire financial market in the Czech Republic. The Czech National Bank includes in on-site general inspections AML/CFT compliance checks. However, the resources allocated for this purpose by both the FIU (which began targeted on-site inspections for the first time in the second half of 2010) and the CNB seem to be insufficient for effective supervision and monitoring. The CNB does not have power to sanction for infringements of the AML/CFT law. This lies exclusively with the FIU.

28. From discussions with various interlocutors, the low number of findings of sanctionable infringements in respect of AML/CFT, the lack of any financial sanctions since 2008 and the call by a number of obliged entities for the issue of guidance in respect of AML/CFT responsibilities, it appeared to the evaluators that a very light touch risk based supervisory approach is taken overall in respect of AML/CFT.

Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBP)

29. The AML/CFT law explicitly applies to all of the designated non-financial businesses and professions, which are defined in the FATF Glossary, with the exception of dealers in precious metals and dealers in precious stones, when they engage in any cash transaction with a customer equal to or above the applicable designated threshold. The Czech AML/CFT Law also explicitly mentions as reporting entities the persons licensed to trade in items of cultural heritage, items of cultural value, or to act as intermediaries in such services.

30. The professional chambers of the lawyers etc. are primarily responsible for AML/CFT supervision and any sanctioning, though the evaluators were concerned that the professional chambers did not routinely share the results with the FIU. No ML sanctions had been taken. The FIU has the possibility to require the professional chambers to conduct inspections and share the results with the FIU, but this seems to be an exceptional procedure.

31. The supervisory weaknesses identified for the financial sector are also relevant for the DNFPB. In addition, no Czech authority performs inspections on some DNFBP. Others do not inspect exclusively AML/CFT and there is a lack of guidance and practical knowledge across the sector.

32. The number of reports from this sector is very low (0.22 % and 0.13 % of STRs in 2008 and 2009). There are also concerns that the DNFBP are not always in a position to identify persons listed on terrorist lists.

33. The evaluators consider that more formal cooperation agreements need to be instituted by the FIU and the professional chambers in order to ensure a more coordinated and consistent level of AML/CFT supervision of these professionals. The AML/CFT risks in the casinos and the real estate sectors require continuing active AML/CFT supervision and sanctioning.

Legal Persons and Arrangements & Non-Profit Organisations

34. Though there have been improvements in the transparency and ownership structures through computerisation and acceleration of the company registration procedure, this still does not ensure an adequate level of reliability of information registered, and on beneficial ownership.

35. While a research project in respect of the NPO sector has been undertaken, there is still not a clear picture of all the legal entities that perform as NPOs, especially ones of high risk. Equally there remains insufficient targeted supervision or monitoring of NPOs that control significant portions of the financial resources of the sector and substantial shares of the sector's international activities.

National and International Co-operation

36. Mutual assistance can be provided upon a treaty basis, such as the 1959 European Convention on Mutual Assistance in Criminal Matters or the 1990 Strasbourg Convention or, in EU relations, the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the EU and also on a reciprocity basis.

37. The Czech Republic has ratified the UN Convention for the Suppression of Financing of terrorism but has still not ratified the Palermo Convention. Some legislation has been amended in order to implement the Conventions, but existing legislation does not cover the full scope of these Conventions. Furthermore, measures still need to be taken in order to properly implement UNSCRs 1267 and 1373. The full implementation of these Conventions in the Czech Republic

legal framework is only possible when criminal liability of legal persons is enforced and when a definition of "funds" is included in the relevant legislation.

38. The statistics show a good level of cooperation of the Czech FIU with foreign FIUs. However more detailed data relating, for instance, to the average time and quality of responses would be a useful instrument to assess effectiveness. Also, efficiency and effectiveness on international cooperation for Supervisory authorities and the Police is difficult to assess due to the lack of statistics.

39. Despite the important role played by the FAU to coordinate national competent authorities and to conduct consultations with the private sector, there are not regular institutionalised mechanisms of operational coordination, and such mechanisms should be established. Equally it is important, at the policy level, to create a national mechanism which collectively reviews the effectiveness of national AML/CFT policies and begins to prepare some agreed performance indicators for the system as a whole.

Resources and statistics

40. Overall, all supervisors and law enforcement agencies appeared to be adequately structured, and resourced. However, more resources should be applied for on-site inspections targeted on AML/CFT issues, both by the Czech National Bank and the FIU.

41. The Police units, responsible for investigating FIU disclosures, are not equipped with sufficient staff qualified in financial investigation. The lack of education and training in tracing the funds in major proceeds generating cases limits law enforcement capability.

42. The absence of authoritative statistics to demonstrate effectiveness of implementation of many of the FATF Recommendations remains a major deficiency.

III. MUTUAL EVALUATION REPORT

1.1 GENERAL

1.2 General Information on the Czech Republic

1. As noted in the 3rd round MER, the Czech Republic is a medium size country, with 78,866 sq km and a total population of slightly more than 10 million inhabitants, located in the centre of Europe. The Czech Republic is bordered by Slovak Republic, Poland, Austria and Germany within the EU and has no external EU borders. The Czech Republic joined NATO in 1999 and the European Union in May 2004.

2. The Czech Republic is usually perceived as one of the most stable and prosperous of the post-Communist states of Central and Eastern Europe. The national currency is the Czech crown (for the purposes of this report, € 1 = approx CZK24).

3. There are no significant changes from the situation described in the 3rd round mutual evaluation report. One important development reported by the Czech authorities is that the economy is no longer so heavily cash based, and that modern payment techniques have become a regular part of everyday life of most of the Czech population (usage of credit cards, banking transfers, telephone banking, internet banking, internet shopping, etc).

4. Although Czech economy was also affected by the global economic crisis of 2008-2009, and a budget deficit of 5.3% of GDP was estimated for 2010, it continued to show a moderate growth in the period from 2006-2009, as reflected in the table beneath. However, a significant downturn in the economy was recorded in 2009.

5. The Czech Republic achieved the status of a developed country, as mentioned by the World Bank in 2006.

Table 1: Economic indicators

	2006	2007	2008	2009
GDP €bn.	106 529	130 137	161 413	142 133
GDP year growth in %	6,8	6,1	2,5	-4,2
GDP per capita €	10 373	12 593	15 484	13 550
Inflation rate %	2,5	2,8	6,3	1,0

Source: Czech National Bank

Table 2: Overview of the Czech Republic financial sector in terms of total assets

	Assets (€ m)		Structure (%)		% of GDP		N° of Institutions		
	2008	2009	2008	2009	2008	2009	2007	2008	2009
Monetary financial institutions									
Banks	166 439	168 503	CC: 19 FC: 81	CC: 18 FC: 82	0,1031	0,1185	37	37	39
Credit cooperatives	487	686			0, 0003	0,0004	19	17	17
Non-monetary financial institutions									
Insurers	15 123	16 255	CC: 21 FC: 45 FB: 34	CC: 21 FC: 46 FB: 33	0,0093	0,0114	52	53	52
Pension companies/funds	7 860	8 851	-		0,0048	0,0062	10	10	10
Investment funds	4 754	4 858	IF: 10 MF: 90	IF: 16 M F:84	0,0029	0,0034	121	145	156
Leasing Companies	-	-	-		-	-	-	-	-
Brokerage companies, management companies	126	86	-		0,00007	0,00006	19	20	22
Others: investments firms	139 723	139 312	IB: 41 IF: 49 MC: 10	IB: 40 IF: 51 MC: 9	0,0865	0,0980	64	61	63
Total	**334 512**	**338 551**			**0,2072**	**0,2381**	**322**	**343**	**359**

Source**:** Czech National Bank CC: Czech controlled; FC: Foreign controlled; FB: Foreign branches IF: Investment funds; MF: Mutual funds; IB: Investment banks; IF: Investment firms; MC: Management companies with asset management; Leasing companies: not subject to the supervision of Czech National Bank.

1.3 General Situation of Money Laundering and Financing of Terrorism

6. The situation of money laundering in the Czech Republic is very similar to the situation at the time of the third evaluation.

7. In the Czech Republic any crime generating profits is a predicate offence for money laundering. The most frequent proceeds-generating offences are said to be: economic crimes (particularly fraud, tax evasion, misuse of information in business relations) and all types of criminal activities carried out in an organised manner (drug trafficking, human trafficking and smuggling). 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.

8. The statistical information provided by the Czech authorities in the MEQ indicated that 5 to 11 cases per year of money laundering ended with a final conviction (involving 7 to 16 persons respectively) in this period. The evaluators tried to establish the types of ML cases being prosecuted and the overall levels of economic crime and incidence of serious proceeds generating cases in the Czech Republic during the evaluation and gross economic loss from major proceeds-generating cases. Some basic figures appear in the report under the discussion of statistics with regard to Recommendation 3 (para 258 at page 55/56) indicating the following:

Table 3: Total damage caused by crimes in the Czech Republic

Year	Total damage caused by crimes in the Czech Republic – in €
2005	1,765,220,000
2006	996,366,000
2007	935,587,000
2008	1,298,740,000
2009	1,068,230,000

9. Nonetheless, as the report notes beneath, there is little evidence of significant money laundering cases being taken forward by the police and prosecution, with a tendency noted in the previous evaluation to treat money laundering as subsidiary to the other offences rather than being prosecuted separately.

10. Most STRs forwarded to FAU (Czech Financial Intelligence Unit) seem to refer to tax offences, which are said to be a particular issue in this jurisdiction.

11. Most frequently STRs are related to banking operations: cash deposits followed by subsequent withdrawals or transfers to other accounts; transfers from business accounts to private accounts; transactions without pragmatic or factual economic reason; amounts of transfers do not correspond to the volume of business activity; sudden large activity on long term passive accounts (sleeping accounts); transfers of funds abroad in high amounts – mainly to tax havens.

12. Since the 3rd round of mutual evaluation the number of STRs submitted to the FAU decreased by 41% between 2006 and 2007, but then remained stable in the last three years.

Table 4: Overview of STRs:

2005	2006	2007	2008	2009	I. Q 2010
3404	3480	2048	2320	2224	391

13. The number of cases disseminated to competent authorities increased from 208 in 2005 to 373 in 2009. The increasing trend was almost constant with the exception of year 2007 when the number of notifications decreased from 216 (in 2006) to 152 (in 2007).

Table 5: Overview of notifications to law enforcement and other governmental authorities:

	2005	2006	2007	2008	2009	1.Q 2010
Police	208	137	102	78	191	73
Tax adm.	NA	75	46	128	180	60
Customs	NA	4	4	7	2	5
TOTAL	208	216	152	213	373	138

Criminal proceeds origins

14. As outlined in the conclusions of the 3rd round MER criminal proceeds originate from all types of criminal activities carried out in an organised manner (drug trafficking, human trafficking; smuggling) and economic crime, particularly fraud, tax evasion, misuse of information in business relations).

15. Connections between organised crime and ML have appeared mainly in relation to activities of foreign groups, in particular from the former Soviet Union republics, the Balkan region and Asia.

16. Moreover, the authorities advised that a new phenomenon appeared the last two years in the Czech Republic, namely phishing, which generates criminal proceeds.

17. As regards terrorism, the authorities state that no such activity has been detected. A few STRs with suspicion of terrorist financing have been reported though none of them were confirmed.

1.4 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

18. As at 31 December 2009, the Czech financial system comprised 39 banks, 17 credit cooperatives, 674 insurance companies and intermediaries of which 52 are insurances companies/branches, 166 pension companies and investment funds and 85 brokerage, management and investment firms.

19. The banks remained the most important financial player holding 49.77% of the total financial assets.

20. The number of financial institutions remained largely stable since the 3rd round MER.

21. The main change since the 3rd round MER is that the Czech National Bank (CNB) is responsible for general supervision of the entire financial market in the Czech Republic, as the Czech Securities Commission ceased to exist. Supervision on capital market, insurance companies, pension funds, investment funds and cooperative savings was delegated to the Supervision Department of the Czech National Bank (CNB) at the beginning of 2006.

22. The Financial Analytical Unit has a new organisational structure since 1 January 2010: a Supervision Division was created (in compliance with the recommendation of the 3rd round mutual evaluation report). This division exercises supervision over all obliged persons (reporting entities) that are defined explicitly by AML/CFT Law. For this reason, in AML/CFT compliance issues, CNB is empowered to cooperate with the Czech FIU.

23. In the third round report, the authorities mentioned that the types of financial institutions used for money laundering were 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 was considered also to be a common way to launder money. The gaming sector and the Casino industry was also vulnerable to money laundering. This is still considered to be the case.

Designated Non-Financial Businesses and Professions (DNFBP)

24. There are no major changes to the information provided in the 3rd round evaluation report.

25. Section 2 of the AML/CFT Law details the DNFBP that are considered as “obliged entities”. However, the traders in precious metals and stones are not directly mentioned, falling under the paragraph 2 (d): “entrepreneurs not listed in para 1, should they receive payments in cash in an amount of or exceeding EURO 15.000”

26. Throughout its provisions the AML/CFT Law refers to "obliged entities" and hence the obligations imposed by the Act, including requirements under FATF Recommendations 5 – 11 and Recommendation 17, are applicable to both the financial sector entities and the persons/professions as listed.

27. The key principles of identification of customers and customer due diligence and for record keeping apply also for all DNFBP.

28. Some DNFBP (auditors, chartered accountants, licensed executors, tax advisors, lawyers and public notaries) have a special position in that they have their own professional chambers or associations.

29. Supervision of casinos, betting games and lotteries is still a part of the Ministry of Finance (Department of State Supervision on Betting Games and Lotteries).

1.5 Overview of Commercial Laws and Mechanisms Governing Legal Persons and Arrangements

30. There have been no major changes to the commercial laws and mechanisms, governing legal persons and arrangements as well as non-profit organisations, since the 3rd round MER.

1.6 Overview of Strategy to Prevent Money Laundering and Terrorist Financing

a. AML/CFT Strategies and Priorities

31. While, as noted beneath, there has been no formal AML/CFT risk assessment, the Czech authorities have indicated that their current strategic approach to AML/CFT issues is:

- Analysing the strategic framework to ensure compliance with FATF and EU standards: in this regard, legislating for corporate criminal liability and the consequential accession to Conventions in which this is included (the Palermo Convention and Warsaw Convention) is expressed as an objective;

- Analysing the national cooperation mechanism to increase the capacity of all domestic players: in this regard greater encrypted connection links with key players through "Moneyweb" has been achieved (in respect of major banks for the receipt of STRs between the FAU and the Unit for Combating Corruption and Financial Crime) and interagency memoranda on cooperation signed and brought into effect. It is planned to enlarge the number of banks connected electronically with the FAU and to enlarge the number of governmental authorities so connected, and to improve cooperation and information exchange with the Tax Administration and Customs.

- Improving cooperation with the private sector, increasing public awareness of AML/CFT and providing appropriate feedback: in this context the FAU, in cooperation with the CNB, the Banking Association, other governmental authorities and associations and Chambers of reporting entities organise regular training for compliance officers and others. The FAU provides more information on the website of the Ministry of Finance (including annual reports, description of trends and typologies, as well as information about FATF and

MONEYVAL public statements). Plans for the future include more intensive training and improving the quality of feedback to reporting entities.

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

32. For a description of the competencies of the major institutions please see the third round report. The major changes since the adoption of the 3rd round MER are as follows:

- Improvement and intensification of cooperation with foreign counterparts and to increase spontaneous information exchange;

- Improvement of the skills of the FAU staff through internal training and awareness-raising by other collaborators in the AML/CFT field (e.g. supervisors, law enforcement, customs, tax and other governmental authorities).

33. The Financial Police, which was set up in 2004, by separating the Division of Proceeds of the Unit for Combating Corruption and Financial Crimes from the Czech Police, was abolished at the end of 2006. The staff of that Unit again became a part of the Unit for Combating Corruption and Financial Crime of the Czech Police.

34. As noted above, the Czech National Bank (CNB) became responsible for the supervision of the Capital Market, insurance companies, pension funds, investment funds and cooperative savings, when the Czech Security Commission ceased to operate.

c. The approach concerning risk

35. Discussions with the authorities indicated that, like other countries, organised crime groups remain a continuing and serious risk. The system is therefore operating significantly in white-collar crime and internet fraud and the proceeds of their crimes are still laundered. However, the authorities informed the evaluators that there has been no national assessment undertaken of the overall and specific ML/FT risks in the Czech Republic although they were aware of the main ML/FT threats arising from organised crime in their country. According to the Czech Republic 3rd MER, "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 these kinds of activities)". It is therefore unfortunate that a national assessment was not carried out to determine the extent of enhanced due diligence that may be required for identified higher ML/FT risks, such as those relating to precious stones and metals and other potential risks.

36. The evaluators requested information on the overall economic loss or damage from all proceeds generating offences. Such information as has been provided has been referred to earlier at 1.2 of this report. The Czech authorities consider the TF risk to be low.

37. The Czech authorities stated that they introduced a Risk-Based Approach (RBA) when the EU 3rd AML/CFT Directive was being implemented. The authorities state that, in line with the 3rd Directive, they focus their monitoring activities in particular on those natural and legal persons trading in goods that are exposed to a relatively high risk of money laundering or terrorist financing, in accordance with the principle of risk-based supervision. In general, the risk based approach appears to have remained more or less the same as described in the 3rd MER for the Czech Republic, although it was refined to take into account concepts included within the Capital Requirements Directive in terms of the requirement for a Risk Assessment System and Internal Capital Adequacy Assessment Process.

38. In the absence of a national risk assessment through the involvement of all relevant stakeholders to determine the overall and specific ML/FT risks in the Czech Republic, it is unclear how, and the

degree to which ML/FT risks are integrated in the overall risk-based assessment by the CNB. In this respect, although ML/FT issues are included within the risk profile to determine the focus of on-site reviews for operational issues, it still remained unclear whether the most risky sectors/institutions are being specifically targeted. It appeared that the determination of a risk based approach to identify the risk of money laundering or terrorist financing (alongside the other risk assessments) is generally integrated within the CNB's wider supervisory duties, although specific AML/CFT in-depth assessments are carried out (for credit and insurance institutions) within the normal supervisory/prudential assessment.

39. The CNB explained that the RBA is implemented to determine their focus of targeted inspections through the use of specific software based on a number of risk indicators that is supplemented by expert judgment. Each of a number of individual activities and areas are assigned one of four grades (From A = "Fully met" to D). The CNB focuses most of its supervisory resources on those institutions it considers to have the highest levels of risk, which are then rated in terms of overall risks. The input, by stakeholders other than the FIU (such as law enforcement agencies and prosecutors) appeared to be absent. During on-site inspections the CNB reviews the implementation of policies, a sample of transactions, training and control to determine that obliged entities are adhering to the AML/CFT Law.

40. From discussions with various interlocutors, the absence of findings for sanctionable breaches in respect of AML/CFT, and the call by a number of obliged entities for the issue of guidance by the authorities in respect of AML/CFT responsibilities, it appeared to the evaluators that a very light touch, risk-based supervisory approach is taken overall in respect of AML/CFT. The number of on-site inspections appeared to be low to the evaluators and there does not appear to be a cyclical on-site inspection of risks – this, according to the Czech authorities, is however in line with their view that a RBA does not necessarily require that all institutions have to be reviewed within a pre-determined cycle. Moreover, as at the time of the on-site visit, there appeared to be very limited risk-based off-site monitoring and analysis of ML/FT risks within obliged entities which would support on-site work in higher-risk entities.

d. Progress since the last mutual evaluation

41. The major structural and institutional changes have been outlined above. To implement their supervisory responsibilities, a Supervisory Division of the FAU was set-up and is operational since 2010.

42. The major progress is on the legislative preventive side with the entry into force of the new AML/CFT Law in 2008, which was subsequently amended on three further occasions, the last of which was in 2009 in relation to the adoption of the Rules of the Tax Procedure. Many of the higher level CDD requirements are now in the AML/CFT legislation.

43. A new Penal Code came into affect in January 2010. While penalties were increased, the issues raised by the 3rd round evaluation in connection with the criminalisation of money laundering were not addressed directly in the amendments that have been made to money laundering criminalisation since the 3rd evaluation.

44. On the legal side, the 3rd round MER had as a recommended action "to continue the efforts aimed at introducing the liability of legal persons, including for money laundering". This was also recommended in respect of criminalisation of terrorist financing. Progress has been slow, though it is understood that legislation is being brought forward. The recommendation of the 3rd round MER to ratify the Palermo Convention has still not been fulfilled, because of the lack of corporate criminal liability. By contrast, the UN Convention for the Suppression of Financing of Terrorism was ratified and came into force in 2006.

45. The number of STRs sent as criminal complaints to law enforcement (including non-ML criminal infringements) has risen from approximately 4% of STRs in 2005/6/7 to 8.6% of STRs in 2009, including the copying of its referrals to the Prosecution authorities. It was noted by the evaluators that the FAU management at the time of the 4th on-site visit was proactively seeking to ensure that its referrals resulted in action.

46. The evaluation team found a greater engagement by the DNFBP with AML/CFT issues, although still few reports are made.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of Money Laundering (R.1 and R.2)

2.1.1 Description and analysis

47. The criminal anti-money laundering approach in the Czech Republic has traditionally diverged from the criminalisation standards provided by the Vienna and Palermo Conventions.

48. In the Czech criminal substantive law, it is the criminal offence of "legalisation of proceeds of crime" (formerly: "legalisation of proceeds of criminal activity" hereinafter: "legalisation offence") that was always intended to cover the notion of money laundering as defined by the above mentioned Conventions. At the time of the 3rd round visit, it was provided by Art. 252a of the Criminal Code then in force (Law No. 140/1961 Coll.) while the current, (basically and structurally unchanged) offence can now be found in Art. 216 of the new Criminal Code (Law No. 40/2009 Coll.)

49. Apart from the legalisation offence, the Czech authorities also make reference to some other provisions of the Criminal Code that are, and have traditionally been, considered to criminalise some specific aspects of the general concept of money laundering as defined by the Vienna and Palermo Conventions. In other words, the criminal anti money laundering approach followed in the Czech Republic still appears to rely on several criminal offences instead of a single, and comprehensive, money laundering offence. In this respect, as at the time of the 2nd and 3rd rounds of evaluation, reference was made to the offence of "participation" (*podílnictví*) in Art. 214 and 215 CC (formerly Art. 251 and 252 CC) as well as "patronisation" in Art. 366 CC (formerly Art. 166 CC), both mentioned as complementing the coverage of the legalisation offence by addressing some specific aspects of the concept of money laundering.

50. The present evaluators see some contradictions and inconsistency in the concept of "compound" criminalisation of money laundering. On the one hand, there is the traditional approach of criminalisation as described by Czech authorities in each previous round of MONEYVAL (or PC-R-EV) evaluations, stating that for criminalisation of money laundering, examiners should take not only the legalisation offence but also the participation and patronisation offences into consideration and assess them as a whole. The Czech authorities thus consider there is more than one money laundering offence in the Czech criminal substantive law and whenever the notion of "money laundering" is mentioned it necessarily comprises, at least, both the legalisation and the participation offences. On the other hand, the evaluators have found some indications that in the Czech Republic, it is the legalisation offence (Art. 216 CC) which is considered, in common legal understanding, as the one and only money laundering offence.

51. As to the latter, the evaluators noted that in the Czech legal terminology, the term "*legalisace výnosů z trestné činnosti*" which is actually the title of the legalisation offence in Art. 216 CC (literally "legalisation of proceeds of crime") is the term that is generally and almost exclusively used in Czech legal language to denote the notion of money laundering, to the extent that the term "legalisation of proceeds of crime" can be considered as the Czech equivalent to the term "money laundering" (while the expression "*praní [špinavých] peněz*" literally "laundering of [dirty] money" is not considered an established criminal legal term as it usually occurs only in literature). The evaluators also found that in many cases, where there is a reference in a legal text to "money laundering" i.e. to the legalisation of proceeds of crime, it explicitly and exclusively refers to the offence in Art. 216 CC. For example, the Czech CPC only refers to the legalisation offence (Art. 412(2) lit i CPC) when implementing the Council Framework Decision 2002/584/JHA on the

European Arrest Warrant (where money laundering is one of the offences in relation to which an EAW must be executed even in the absence of dual criminality). Another example is found in the statistics on money laundering cases provided by the Czech authorities where the column of money laundering cases was footnoted in Czech language to specify, with reference to the respective CC article, that this term only refers to the legalisation offence. As a result, the statistics appear to be restricted to the legalisation offence and therefore they remain silent on other aspects of money laundering said to be criminalised by the participation or the patronisation offences. As for the AML/CFT Law, the situation is even more difficult as it also makes reference to the legalisation[2] of proceeds of crime (the title of the offence in Art. 216 CC) but gives a definition of this term that is entirely different from either of the respective criminal offences in the Czech CC and it is more in compliance with the general concept of money laundering as defined by the Conventions.

52. The evaluators thus conclude that out of the three criminal offences mentioned by the Czech authorities, it is the legalisation offence that is actually acknowledged and treated, overall within the Czech jurisdiction, as "the" unique money laundering offence. As a consequence, the evaluation report will focus first and foremost on this offence when assessing compliance with R.1 and R.2 and the other offences (participation and patronisation) will only be taken into account to the extent necessary.

53. At the time of the 3rd round evaluation, there had already been a large variety of criminal substantive legislation that the evaluators needed to take into account when determining and analysing the legal base upon which money laundering was criminalised in the Czech Republic. The 3rd round MER thus examined not only the relevant parts of the Criminal Code in force at that time, but also the respective articles of the draft Code that had been in Parliament awaiting adoption. The evaluators learnt that the latter had subsequently been withdrawn and redrafted before the current Criminal Code was adopted. Examination of the new Code revealed that neither the legalisation offence nor the other related criminal offences (participation etc.) have substantially changed, either in terms of their position within the structure of the Special Part or their general scope of coverage, since the 3rd round evaluation.

Recommendation 1 (rated PC in the 3rd round MER)

54. As far as the material elements covered by the money laundering (legalisation) offence is concerned, the scope of Art. 216 CC is identical to that of the former Art. 252a CC. According to this unchanged definition, money laundering can be committed by anyone who "conceals the origin or otherwise endeavors (or: strives) to substantially aggravate or preclude the ascertainment of origin" of the thing or other property value being subject of the laundering activity.

55. Since the physical elements of the offence (*actus reus*) have not changed since the 3rd round, they remain narrower than the requirements of the Vienna and Palermo Conventions. Article 216 CC provides as follows:

> (*1) Who conceals the origin or otherwise endeavours to substantially aggravate or preclude the ascertainment of origin*
>
> *a) of a thing or another property value acquired through crime committed in the Czech Republic or abroad or as a reward for it or*

[2] The official English version of the AML/CFT Act refers to "legitimisation" and not "legalisation" but the term used in the Czech original is definitely "*legalisace*" i.e. legalisation.

b) of a thing or another property value provided in exchange of a thing or another property value as in letter (a)

c) or who enables to another person to commit such an act

shall be punished by imprisonment for up to four years or by a pecuniary penalty or by prohibition of business or by forfeiture of the thing or another property value;

however, should he/she commit such act in relation to a thing or another property value originating from a crime, which is subject by law to a moderate sentence, he/she shall be sentenced by such moderate sentence.

56. As was noted already in the previous report, the legalisation offence had not adopted a systematic approach and wording similar to that of these international instruments and this is why the Czech authorities had taken the view that the participation and patronisation offences could be used where it was impossible to apply the legalisation offence, in a given money laundering case. This general approach has not changed either, which can also be shown by the fact that the conduct that establishes the participation and patronisation offences also remains practically the same.

57. As a consequence, the present evaluators associate themselves with the findings and conclusions drawn by the 3rd round team. Above all, they share the doubts about the actual coverage of the provision quoted above and particularly in respect of the requirements of the relevant Conventions.

58. The Czech authorities advised, both in the 3rd and 4th round and also in the Progress Report that, according to the relevant jurisprudence, the first part of the first phrase in the definition of the legalisation offence ("conceal the origin") is to be interpreted very broadly so that practically any illegal activity referring to the offence of money laundering can be subsumed under this general definition. Specifically in the Progress Report, The Czech authorities made reference to sources of interpretation according to which "means for concealing the origin of a thing may be a variety of transfers, perhaps even bogus and repeated, failure to disclose the actual nature of the thing or other property value, its concealment, failure to disclose disposition and being in possession of a thing or other property value, failure to disclose or distorting information on ownership or other rights to a thing or other property value, investing it in a business and so on" which they consider sufficiently implements all requirements of the Conventions. A similar argumentation was described more in detail in the 3rd round MER too.

59. The same goes for the presumed applicability of the patronisation offence (a crime that would be labelled in other jurisdictions as an ordinary "accessory after the fact" type of offence). This would, in the view of The Czech authorities, also cover the first group of material elements in the internationally acknowledged definition of money laundering (Criterion 1.1) in as much as the latter requires that the **conversion or transfer** of property be punishable if committed, inter alia, for the purpose of helping any person who is involved in the commission of the predicate crime to evade the legal consequences thereof. The evaluators were not made aware of any instance where this provision had been applied in a money laundering case. Indeed, it is considered that this applicability of this is more theoretical than practical.

60. Patronisation consists of an act that is any act, committed in order to assist the perpetrator of a criminal offence in order to enable him to escape prosecution or criminal sanctions. This is in fact a purposive component of the comprehensive definitions of money laundering under the Conventions. The recurrent argument of The Czech authorities that various domestic offences would effectively implement and criminalise parts of generic money laundering does not explain whether and which offences should be applied in concrete cases.

61. In any case, there are serious doubts about the completeness of the coverage provided by the legalisation offence, even together with the patronisation offence.

62. Acquisition, possession or use of laundered proceeds remains missing from Art. 216 CC. The Czech authorities have always taken the view that these aspects are covered by the closely related participation offence (Art. 214 CC former Art. 251 CC) which provides as follows:

> *(1) A person who conceals or transfers to him/herself or to another person or uses*
>
> *a) a thing or another property value acquired by a criminal offence committed in the Czech Republic or abroad by another person or as a reward for it or*
>
> *b) a thing or another property value provided in exchange of a thing or another property value as in letter (a)*
>
> *shall be punished by imprisonment for up to four years or by a pecuniary penalty or by prohibition of business or by forfeiture of the thing or another property value; however, should he/she commit such act in relation to a thing originating from a crime, which is subject by law to a moderate sentence, he/she shall be sentenced by such moderate sentence.*

63. Both in the previous and the current participation offences, the concept of use is expressly addressed while acquisition also appears to be adequately covered by the wording "transfers to himself". As for possession it was noted in the previous report and also asserted in the Progress Report that it would also be covered, implicitly, by the wording "transfers to himself". On the basis of an interpretation in the Commentary to the CC The Czech authorities expressed that the term "possession" is implicitly covered through terms "conceals or transfers to him-/herself or another or uses". However, the evaluators are not convinced with this as they have doubts, especially in the absence of jurisprudence, as to whether passive possession can be fully covered.

64. The 3rd round MER analysed the applicability of the participation offence for the criminalisation of (these aspects of) money laundering by comparing it to the legalisation offence. They detected discrepancies between the two and therefore doubted that the Czech Republic could rely on a combination of these provisions to cover adequately and consistently all the various elements required by the international standards.

65. The Czech lawmakers have overcome some of these technical discrepancies. Now both the legalisation and the participation offences both refer to "things and other property value" that are proceeds of a criminal offence. As a result the two offences are more harmonised.

66. The concerns of the 3rd round examiners about the high level of proof for the mental element of the legalisation offence have been resolved by legislation. At the time of the previous visit, the prosecution needed 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 (or: "to give the impression") that such asset or financial benefits have been obtained in compliance with law". This was likely to lead to a higher burden of proof on the prosecution side than that required by the international conventions. Now the new Criminal Code simplified this definition by decreasing the evidential requirements, as recommended by the previous evaluation team. In the current definition, the previously required purpose ("with the aim to pretend…" etc.) is removed and hence it is no longer necessary to prove this specific intention of the perpetrator.

67. The 3rd round examiners had noted that the definition of money laundering contained in Art. 1 of the AML Law then in force was different from that of Art. 252a CC since the former was almost identical to that provided by the international instruments while the latter was not. The respective definition can now be found in Art. 3(1) of the AML/CFT Law as follows:

(1) For the purposes of this Act, legitimisation of proceeds of crime shall mean an activity performed to conceal the illicit origin of proceeds of crime with the intention to present the illicit proceeds as legal income. The above activity may particularly be in the form of:

a) conversion or transfer of assets, knowing that such assets come from criminal proceeds, for the purpose of concealing or disguising the illicit origin of the assets or to assist a person involved in the commission of a predicate offence to avoid the legal consequences of such conduct,

b) concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of assets, knowing that such assets derive from crime,

c) acquisition, possession, and use or handling of assets knowing that they originate from crime,

d) criminal association or any other type of association serving the purpose of conduct stipulated in letters a), b) or c) above.

68. Bearing in mind that practically nothing has since changed in this respect, the evaluators reiterate the conclusion drawn by the previous evaluation team. Usage of double definitions can lead to confusion as to what kinds of activities are subject to the reporting obligation and, subject to criminal prosecution, leaving aside the fact that there are at least two (possibly three) different criminal offences to correspond with the single ML definition provided by the AML/CFT Law. The evaluators urge consistency and harmony between the administrative and the criminal substantive law in this respect.

69. Although the scope of the offence in the former Art. 252a CC had already been extended to cover "thing or other property benefit" (and not only "thing") the evaluators in the 3rd round suggested using an even broader wording so as to clearly include all types of benefits (e.g. "assets" "proceeds" or "property".) In accordance with this recommendation, the Czech legislators further amended the legalisation offence and, at the same time, they provided for more comprehensive definitions of the respective terms. Thus the legalisation offence (and also the participation offence) does actually extend to "any type of property" as required by Criterion 1.2. The evaluators note, however, that completion and enlargement of these terms cannot provide the same result as could have been achieved by harmonising the administrative and criminal legal definitions of money laundering also in this respect, primarily by adopting the broad approach of the AML/CFT Law definition that uses the concept of "proceeds" instead of "thing and other property value". The evaluators still find it unclear why the same concepts are not used in both the penal legislation and the AML/CFT Law.

70. As for the term "thing" in the criminal legal definition, the previous evaluators noted that it was a narrow concept even in Czech language, normally understood to be a controllable tangible object. The Criminal Code in force at the time of the 3rd round evaluation only enlarged this concept. There is still no comprehensive definition of this term in the current Criminal Code. Nevertheless the evaluators appreciate that Art. 134(1) CC further enlarges its coverage, which now

encompasses, among others, money (literally: "pecuniary means") kept either on a (banking) account or in securities.

71. While the previous wording of the legalisation offence made reference to "other property benefit" (*jiný majetkový prospěch*) the current offence clearly refers to "other property value" (*jiná majetková hodnota*) which, as defined by Art. 134 para 2 CC covers property rights as well as any other value expressible in money terms, provided it is not a "thing" as defined above. As The Czech authorities explained in the MEQ the term "property rights" is to be understood broadly including, among others, participation in a limited liability company or cooperative, intellectual property rights, rights to registered domains, debts, right to a dividend, business secrets, etc. This interpretation is based on the above mentioned Commentary to the CC which, however, is not considered a binding source of law but it represents guidance for practitioners.

72. Furthermore, there is still no explicit reference to direct and indirect proceeds from crime and, considering the continuous lack of relevant court practice that would demonstrate the opinion of The Czech authorities that indirect proceeds of crime are covered by Art. 216 CC, the uncertainties noted by evaluators of the previous round remain valid.

73. Criterion 1.2.1 had already been met at the time of the previous evaluation. The previous examiners had found that no conviction for the underlying predicate offence was required in order to prove that the assets subject to laundering had been derived from a crime. Additionally, there was no need to prove what particular crime the proceeds resulted from and who committed the predicate offence. In addition to that, reference was also made to an annotation in the CPC explicitly stating that evidence for the commission of a predicate offence did not need to be based on a preliminary conviction. The situation appears unchanged and therefore the examiners confirm this criterion as being fully met.

74. The Czech Republic maintained the "all crimes" approach in the criminalisation of money laundering. The new Art. 216 CC, as with the former Art. 252a, refers to proceeds acquired through "criminal act" (formerly: "criminal activity" see below) without any further specification. Furthermore, the Czech criminal legislation provides for criminalisation mechanisms in relation to each of the 20 "designated categories of offences" in the Glossary annexed to the Methodology, in line with Criterion 1.3.

75. The previous evaluators noted that the reference in Art. 252a CC to proceeds of "criminal activity" (as opposed to a "criminal offence" or "crime") could theoretically exclude proceeds generated by one or more isolated crimes, instead of a continuous criminal activity. Whether or not because of this, the Czech lawmakers made a slight change in this part of the offence. The new Art. 216(1) CC no longer refers to proceeds (things or other property value) acquired by "criminal activity" (*trestní činnost*) but "crime" or literally "criminal act" (*trestný čin*) even though the title of the legalisation offence retained the reference to the former[3]. As it was pointed out in the MEQ, "for the purposes of prosecuting and punishing money laundering, any offence that leads to acquiring things or other property value (creates proceeds of crime) is regarded as a predicate offence".

76. As for Criterion 1.5, the last MONEYVAL report reiterated concerns raised in preceding rounds that the wording of the money laundering (legalisation) offence did not explicitly allow for the prosecution of money laundering domestically where the predicate offence had been committed abroad. The general jurisdiction rules did not provide answers to this question. It was therefore recommended to provide clearly for the possibility to prosecute money laundering under such

[3] "*Legalisace výnosů z trestné činnosti*" literally translates to "legalisation of proceeds of criminal activity".

circumstances. Czech legislators followed this recommendation and filled this gap not only in the new offence (Art. 216 CC) but also in the participation offence (Art. 214 CC) and now both expressly refer to predicate crimes "committed in the Czech Republic or abroad". (This modification had in fact taken place already in the old Criminal Code by virtue of the Law No. 122/2008 Coll.) This criterion can therefore be considered as met.

77. Furthermore, as was pointed out by Czech authorities in the MEQ, no double criminality principle applies when assessing the punishability of these foreign predicate offences in the Czech Republic in line with foreign law. If so, then Criterion 1.5 and the additional element in 1.8 are met. Nevertheless the evaluators were not made aware of any actual practice supporting this interpretation.

78. No legislative changes took place as regards the laundering of own proceeds. Both the second and 3rd round evaluation teams had recommended that self-laundering should preferably be explicitly addressed by criminal substantive law. However, the current evaluators accept the view of The Czech authorities.

79. As it was explained in the 3rd round MER, self-laundering had in principle been criminalised since 2002. This criminalisation was carried out by Law No. 134/2002 Coll. not by introducing any explicit provision for this purpose but by deleting the clear reference to "another person" from the money laundering (legalisation) offence of that time, then provided in Art. 251a CC. As a result, no money laundering offence has since contained any reference to the perpetrator of the predicate offence, including the current Art. 216 CC too. Therefore, in the absence of any specific restriction prescribed by law, the perpetrators of the underlying crime could not be excluded from the personal scope of the legalisation offence.

80. As a contrast, the participation offence (Art. 214 CC) retained the reference to "another person" by which it excludes that the perpetrator of the predicate crime be criminally liable also for the subsequent laundering (participating) activity ("a person who conceals or transfers to him/herself or to another person or uses a thing or other property value acquired by a criminal offence committed by another person...") and the same goes for the patronisation offence, too. Self-laundering is thus provided only to the extent it refers to the physical (material) elements covered by the legalisation offence in Art. 216 CC and definitely not to those that are supposedly covered by the participation and patronisation offences.

81. As for Criterion 1.7, the evaluators could not find any notable difference between the Criminal Code provisions in force at the time of the 3rd round and the respective provisions in the current Code. Attempt can now be found under Art. 21 CC while various forms of complicity (accessory ship) including organisation of, instigation to and assistance in committing a crime, in Art. 24. All these provisions are applicable to the legalisation offence and the other related offences, too.

82. The provision that renders the preparation for a certain crime *a sui generis* criminal offence can now be found under Art. 20 CC. At first sight, the wording of this provision appears different from that in Art. 7 of the former CC, but it is clear that the content remained practically the same. Equally, nothing has changed about the scope of this provision as Art. 20 CC, similarly to the former Art. 7 CC is only applicable to "especially serious crimes" (*zvlášť závažný zločin*) which term, as defined by Art. 14(3) CC, encompasses all intentional criminal offences punishable by a maximum term of imprisonment of at least ten years. This limitation obviously excludes any forms of the money laundering (legalisation) offence as well as the other related offences which are all punishable, even in their most serious aggravated forms, with imprisonment up to eight years. The evaluators note that in the former Criminal Code, the same category was defined, first, by a range of various criminal offences enumerated in Art. 62 CC and, second, to comprise any other

intentional criminal offences punishable by a maximum term of imprisonment of at least eight years which actually encompassed at least the most serious forms of money laundering (then in Art. 252a para 3 CC).

83. While most of the ancillary offences listed in Criterion 1.7 such as attempt, association, aiding and abetting and, to the extent the laundering offence is at least attempted, the facilitating and counselling appear to be covered by Art. 21 and 24 CC the conspiracy to commit such a criminal offence definitely falls out of the scope of these provisions as it is only covered by Art. 20 CC on preparation. For the same reason the previous evaluation team recommended that The Czech authorities make sure the ancillary offence of conspiracy "covered under Section 7 on preparation" (now Art. 20 CC) applies in relation to the various elements of money laundering.

84. The evaluators conclude that this deficiency remains unchanged. Even if The Czech authorities claimed in the last Progress Report that "neither the Strasbourg nor the Vienna Convention requires criminality of preparation of money laundering" they do require the criminality of conspiracy thereto and, in the Czech law, it could only have been achieved by punishing the preparation for such an offence. On the contrary, the Czech lawmakers have raised the threshold in Art. 20 CC to a level that is too high to include any of the money laundering offences. This is a step backwards, bearing in mind that the draft Criminal Code the 3rd round evaluators had been provided with explicitly stated in its Art. 192(5) that preparation for a money laundering (legalisation) offence shall generally be punishable, i.e., such a preparation would have established a criminal offence regardless of the maximum punishment applicable for the laundering offence. This paragraph was subsequently abandoned and now there is no possibility to prosecute for conspiring/ preparing for a money laundering offence and therefore the Czech Republic can only be partially compliant with Criterion 1.7.

Recommendation 2 (rated PC in the 3rd round MER)

85. Criterion 2.1 had already been met at the time of the 3rd round evaluation and no changes have since taken place in this respect. In addition, the 4th round evaluators noted with appreciation that the Czech criminal law had since gone beyond the minimum knowledge standard of Recommendation 2 by rendering also the negligent form of money laundering (legalisation) a criminal offence in Art. 217 CC.

86. At the time of the 3rd round visit, the money laundering committed by negligence had not yet been covered by Art. 252a CC then in force. If the laundering action had, however, been committed by negligence, it was only the provision in Art. 252 CC on the negligent form of the participation offence that could have been used instead, to the extent applicable (considering that the latter did not cover assets other than a "thing of significant value" and it also explicitly excluded self laundering). Now the coverage of negligent money laundering (legalisation) is expressly provided by Art. 217 CC. This offence is only punishable if committed in relation to a thing or other property value of larger value (at least 50 000 CZK) while the negligent form of participation, now available in Art. 215 CC, is already applicable to proceeds of significant value (at least 25 000 CZK). Certainly, these limits are unquestionable value thresholds that are not allowed under Criterion 1.2 nevertheless the evaluators are aware that the criminalisation of negligent money laundering is beyond the FATF standards and thus its limitations, which may otherwise be considered reasonable, are irrelevant when assessing compliance.

87. The negligent form of money laundering (legalisation) is clearly different from the intentional offence (Art. 216 CC) inasmuch as the former does not cover self-laundering, however this limitation appears quite self-evident. In a situation where laundering takes place by negligence, the exclusion of own proceeds is fully understandable considering that "should have known" or other

similar standards of mental element are necessarily inapplicable for a perpetrator who must know that the proceeds are derived from his/her own criminal offence.

88. The Czech Criminal Code still does not explicitly provide that the mental element of a criminal offence (knowledge, intention or purpose) can be inferred from objective factual circumstances. Nonetheless, the examiners agree with the 3rd round evaluation team in that the possibility of drawing such inference is acknowledged by the general rules of criminal procedure on the producing of evidence. Indeed, it was confirmed by domestic interlocutors, and particularly by the prosecutors the team met on-site, that circumstantial evidence is not only admissible in Czech criminal procedural law but it is also regularly applied in legal practice. Indeed, it is one of the basic principles in the CPC (Art. 2 para 6) that "*The authorities active in criminal proceedings evaluate evidence according to their own conviction based on diligent consideration, taking into account all the circumstances individually and in total.*" It can therefore be concluded that the requirements of Criterion 2.2 are met in the Czech Republic.

89. As regards the criminal liability of legal persons in the Czech Republic, the situation has hardly changed, if at all, since the previous round of evaluation. The introduction of corporate criminal liability with adequate and effective sanctioning has been the subject of lengthy debate among law makers without any tangible result achieved by the time of the 4th round visit.

90. Evaluators of the 3rd round reported on a draft law on the criminal liability of legal persons that had already been approved by the Government yet turned down by the Parliament in November 2004 because it had caused, as it was noted in the last Progress Report, fear of misuse of the legislation for criminal wrong doings and for criminal penalty of business enterprising. It was also indicated that the responsible Ministries had then agreed on a solution which would introduce administrative liability of legal entities for proceedings sanctioned on the basis of International Treaties or the legislation of European Community, including for money laundering, terrorist financing and other offences to the extent these are provided for in such international instruments. Government Resolution No. 64, dated 23rd January 2008, prescribed that a draft law be prepared by the responsible Ministries by the end of the year 2008.

91. While in 2008 there appeared to be an overall agreement that an effective form of administrative liability of legal persons for money laundering would be introduced, the evaluators of the 4th round learnt that no legislation upon the basis of the above-mentioned governmental resolution has since been adopted in the Czech Republic. Furthermore, the legislative trends had apparently changed again as the team was informed of a completely different draft law to address this issue. A Draft Law on Criminal Liability of Legal Persons and Procedure against Them had been elaborated, which was undergoing a commentary procedure at the time of the 4th onsite visit. According to The Czech authorities, this law, once adopted, will make it possible to punish legal entities for money laundering offences and thus it will provide for compliance with international instruments that require corporate criminal liability. The draft legislation would clearly be based on criminal liability and procedure while the concept of administrative liability of legal entities for criminal offences appeared to be entirely rejected. Representatives of the Ministry of Justice made it clear onsite that the draft was complete enough to be submitted to the Parliament in one month. However, for political reasons, the Ministry had decided not to bring the final draft to the current Government and hence the draft was likely to be postponed until after upcoming elections.

92. The evaluators learnt from the MEQ that the latest draft would provide for an independent procedure for legal entities and administrative responsibility of legal entities would not be precluded while introducing their criminal liability. Sanctions applicable to legal persons would include a range of punishments from "publication of the final judgment" to prohibition of activity, pecuniary sanctions or the dissolution of the legal entity.

93. All in all, the Czech Republic still fails to regulate any form of corporate liability for the commission of criminal offences and now there is an urgent need to pass the necessary legal framework to enable the effective sanctioning of legal persons. Though the current draft was not made available to the evaluation team in English, and therefore no relevant examination of the preconditions for either the establishment of corporate liability or the application of various punishments could be carried out, the evaluators support all governmental efforts in this direction and encourage acceleration of the adoption of the new legislation.

94. The essential criminal sanctions for money laundering (legalisation of proceeds of crime) as provided in Art. 216 CC compared with those in the respective offences in force at the time of the 3rd round visit, are set out beneath.

95. The core offence of money laundering (para 1) carries imprisonment up to 4 years, a pecuniary penalty, prohibition of business or forfeiture of the thing or another asset value. At the time of the previous evaluation, the same offence was punishable with imprisonment up to 2 years or a pecuniary punishment, which was found by the 3rd round examiners to be "quite low" and they recalled that under the 2001/500/JHA EU Council Framework Decision of 26 June 2001 all European Union member States shall take the necessary steps to ensure that the offence of money laundering is punishable by deprivation of liberty for a maximum of not less than 4 years. Since the maximum term of imprisonment was increased up to this level in the new Art. 216(1) CC, together with the introduction of additional means of punishment, this recommendation appears fulfilled. On the other hand, the current law contains an additional provision in para 1, according to which the money laundering (legalisation) is committed in relation to a thing or other property value originating from a crime for which the law provides a "moderate sentence" that is a less severe punishment, the money launderer shall also be subject to the latter, more lenient punishment. In this respect, it is only the range of punishment and not any other characteristic of the underlying criminal offence which counts. As a consequence, the minimum level of punishment applicable to money laundering will necessarily be equal to the absolute minimum punishment applicable to any of the potential predicate crimes in the Criminal Code. This is contrary to the above mentioned Council Framework Decision but it also lessens the available money laundering sanctions and hence the dissuasiveness and effectiveness of the sanctions.

96. As for the aggravated cases of money laundering, the punishment can be 6 months to 5 years of imprisonment or pecuniary penalty if the offender has acquired considerable profit through the crime either for him/herself or for another person, as well as when the laundering offence is related to proceeds (a thing or another asset value) of major value (para 2 lit a-b). In this context, both "considerable" and "major" correspond to the same Czech term namely "*větší*" (i.e. "greater, larger") and hence both terms are defined by a minimum amount of CZK 50,000 in Art. 138 CC. At the time of the previous evaluation, the first conduct was punishable in almost the same way but with a slightly higher minimum level of imprisonment (minimum 1 year) and there was no pecuniary penalty as an alternative.

97. The range of punishment is raised to 2 to 6 years imprisonment or forfeiture of property in case of further aggravating circumstances under para 3 lit a)-e) as follows:

a) when the offender committed the act as a member of an organised group;
b) in relation to proceeds originating from an especially serious crime;
c) in relation to proceeds of a significant value (at least 500,000 CZK);
d) the offender has acquired a significant benefit (minimum level as above) for him/herself or for another person; or
e) the offender misuses his/her professional position or function in order to commit the offence.

98. At the time of the 3rd round visit, the aggravated cases in lit d)-e) above were formulated similarly (then in Art. 252a para 3 lit b-c) but carried a more severe punishment (the range was two to eight years). On the other hand, the case in lit a) above was considered less serious at that time, being part of the preceding paragraph and thus punishable only within the one to five years' range. The case in lit b) was somewhat different in the previous offence, as it not only related to proceeds of especially serious crimes but those originating from trade in narcotic and psychotropic substances or from another particularly serious criminal act. On the face of it, this modification appears to broaden the scope to all serious predicate offences without any further specification. On the other hand, however, those forms of trade in narcotic and psychotropic substances that are not considered as "especially serious crime" are, for the sake of inner balance of the CC, left out of the scope of this provision and thus the new law is more lenient towards these less serious forms of drugs money laundering**.**

99. An increased level of severity is provided for in para 4 with its three aggravated cases punishable with imprisonment from three to eight years. These cases refer back to those in para 3 lit a) and c)-d) respectively, with some additional factors that make them more serious (proceeds or benefit of "great" value, that is, minimum 5,000,000 CZK or the involvement of an organised group that is active in several countries).

100. The previous report underlined that as the Czech authorities also consider the offences of participation and patronisation to be money laundering offences, a consistent approach would normally require that the level of punishment would also be harmonised. This appears to be done in the current Criminal Code as regards the participation offence. In fact, it was already the amending Law No. 122/2008 Coll. that increased the upper limit for imprisonment applicable for the basic form of both offences. Furthermore, both the aggravated categories (see Art. 214 para 2 to 4) and the respective levels of punishment appear to be formulated identically to that of the legalisation offence, including the problematic clause on allowing for a more lenient punishment in case of a less serious predicate offence. The patronisation offence in Art. 166 of the old CC is more differently structured and it carries a less severe punishment (maximum 3 years of imprisonment) also with the possibility for further mitigation in case of a less serious predicate offence.

101. The 3rd round MER found the system of criminal sanctions for money laundering (legalisation) offence to be not dissuasive enough. Nonetheless, at the time of the 3rd round visit, The Czech authorities had indicated that the draft new Penal Code would criminalise money laundering with an increased level of sanctions. The money laundering offence provided in Art. 192 of the draft law, as quoted in the 3rd round MER, appeared very similar to the one finally adopted in Art. 216 of the new Criminal Code, though the level of punishment for aggravated cases is one of the few differences. That is, wherever the draft would have provided for a conduct with imprisonment ranging from two to eight or three to ten years, the maximum levels in the adopted version were lowered to six and eight years, respectively.

102. As it was explained by the Czech authorities, the increased sanctions were still present in the latest version of the old CC (as amended by the Law No. 122/2008.) but abandoned in the new Code as result of conceptual changes in priorities of criminal policy. As a result, the evaluation team considers that even if the current criminal sanctions in Art. 216 CC appear more proportionate than those in the former Code (particularly as the range of criminal sanctions has also been extended with specific reference to forfeiture of a thing or other property value or to ban on activity) they still lack the necessary dissuasiveness and that will have a negative impact on their effectiveness too, even if the Czech authorities consider the current ranges of punishment dissuasive enough. Criterion 2.5 thus cannot be considered as fully met.

Statistics and effectiveness issues

103. The first set of statistical information provided by the Czech authorities in the MEQ contained data on ML/FT investigations, prosecutions and final convictions. The tables did not appear complete yet they indicated that money laundering was represented in the annual criminal statistics by 5 to 11 cases ended with a final conviction (involving 7 to 16 convicted persons respectively) out of 13 to 16 prosecutions (indictments).

Table 6: Investigations, prosecutions and convictions

		Investigations		**Prosecutions**		**Convictions (final)**	
		cases	**persons**	**cases**	**persons**	**cases**	**persons**
2005	**ML**	44	NA[4]	13	22	6	7
	FT	1	2	0	0	0	0
2006	**ML**	32	NA	16	35	10	10
	FT	1	1	0	0	0	0
2007	**ML**	32	NA	10	12	6	7
	FT	1	1	0	0	0	0
2008	**ML**	NP	NP	16	25	5	7
	FT	NP	NP	NP	NP	NP	NP
2009	**ML**	NP	NP	15	24	11	16
	FT	NP	NP	NP	NP	NP	NP

NA: Not Available; NP: Not Provided.

104. On the face of it, the general number of convictions is not insignificant. From the aspect of the number of cases, the prosecution/conviction ratio also appears impressive but it looks quite different when comparison is made between the number of persons indicted with the number of those convicted. This shows that, in certain years, less than one third of the perpetrators indicted for money laundering (7 of 25 in 2008) were finally convicted by the court. It needs to be noted at this point that these statistics only contained information on legalisation (Art. 216 CC) cases when referring to "money laundering". No information on other potential ML-related offences was provided.

105. Other data was available based on FAU statistics on money laundering cases (Art. 216 CC only) for the entire country and for the period 2005 – 2009 plus the first quarter of 2010. Like the statistics discussed above, the separate, annual tables were merged for the purposes of this report but the figures remained the same (as for the judicial proceedings here below, any figures above zero are **bold**).

[4] Remark of The Czech authorities: "number of persons is not available (NA) because the total may vary as the investigation progresses".

Table 7: Statistical information on reports received by the FAU and Judicial proceedings

Statistical Information on reports received by the FAU			Judicial proceedings			
year	cases opened by FAU	notifications to law enforcement/ prosecutors	indictments		Convictions	
	ML	ML	ML		ML	
			cases	persons	cases	persons
2005	3404	208	**2**	**2**	0	0
2006	3480	137	**2**	**2**	**1**	**1**
2007	2048	102	0	0	0	0
2008	2320	78	0	0	0	0
2009	2224	191	**4**	**4**	0	0
2010 1Q	391	73	0	0	0	0

106. The statistics above cover STR-based criminal cases only. The number of STR-related indictments and convictions are definitely low, in which respect The Czech authorities underlined that it does not indicate low effectiveness of the FAU full reports, because many of the cases the FAU handed over to Police were subsequently investigated and prosecuted as frauds, credit frauds, investment frauds, tax evasion, misuse of information in business relation or other economic and financial crimes and not money laundering. The evaluators accept this but they note, first, that the figures above appear too low to be fully explicable in this way (particularly as regards the notifications/indictments ratio) and second, that it may question the effectiveness and reliability of the reporting regime if "many cases" that is, supposedly a considerable proportion of reported cases prove not to be related to money laundering.

107. The Unit for Combating Corruption and Financial Crime provided separate statistical information on the outcome of criminal complaints they received from the FAU in 2009. According to that, the Police opened 175 criminal complaints from the FAU in 2009, of which 52 turned out to be not related to money laundering but to other crimes and therefore they were forwarded to regional police bodies. The proportion of such non-ML related complaints (52/175 = 29%) appears to contradict the above statement, according to which "many" cases were found unrelated to money laundering and forwarded to other law enforcement bodies.

108. As for the remaining 123 cases, 55 were still being checked at the time of the onsite visit, 37 were merged with or connected to ongoing criminal investigations, while reports on commencement of steps in criminal proceedings were submitted to the public prosecutor in 31 cases. Interestingly, as far as the 52 non-ML related cases are concerned, this phase of the procedure was reached in not less than 33 cases which represents a significantly larger proportion (33/52 = 63% versus 31/123 = 25%) and may indicate that more attention needs to be given to money laundering cases.

109. Out of the 31 ML-related reports, the initiation of a formal investigation and declaration of suspicion to the defendant took place in 5 cases (against 6 persons). The evaluators were also informed that in 20 of the above mentioned 31 cases, not only was a report submitted to the prosecutor but also financial assets on bank accounts were frozen under Art. 79a CPC in the total amount of 278.407.394 CZK (approximately 11.136.295 €) which is a positive indicator of effectiveness.

110. Unfortunately, no such statistical figures were provided for the preceding years and therefore this data cannot be considered as being derived from statistics kept and maintained by an authority. The evaluators, however, received a third table which was said to be an excerpt from the nationwide police statistics, including data from all levels of police authorities in the Czech Republic. These statistics are unique insofar as they actually contain separate information on legalisation and participation offences. Also they are more helpful than the previous ones, as these are not restricted to STR-based money laundering cases but, presumably, to any police investigations conducted for such offences, even though they only provide data regarding the investigative phase of the criminal proceedings.

111. As to the latter, the evaluators first noted a significant difference between the total numbers of money laundering investigations and the numbers of persons involved therein, as compared to the statistics originally provided in the MEQ (the respective figures only rarely matched, for example - the number of persons under investigation for ML in 2009) for which the evaluators were given no explanation. In addition, while these statistics show a trend of increase regarding the number of persons involved in money laundering investigations (as from the year 2006 to 2009) the original MEQ statistics contain steady figures in this respect.

112. Another feature of these statistics is that they contain data regarding what proportion of the respective money laundering and participation cases was under the process of "verification" by the end of each year, that is, where no formal investigation had yet been initiated. This ratio was very low in cases of participation offence as 80 to 97 percent of them had already been "clarified" by the end of the respective time period. As for money laundering (legalisation) cases this ratio was 31 to 53 percent which clearly shows the difference in time consumption required to provide the necessary evidence and to properly analyse and investigate a money laundering case.

113. The fact that more authorities maintain, to any extent, statistics relevant to the performance of the criminal anti money laundering regime (numbers of investigations, prosecutions etc.) appears to be a positive sign and indicator of awareness of this issue but, on the other hand, the occurrence of notably different figures relating to such basic questions raises serious doubts about the general reliability of these statistics, about which some representatives of the Police also complained on-site (mentioning that their statistics cannot reflect the situation if there is more than one charge in the same case as only one of them will be registered). Furthermore, all statistical tables or figures the evaluators were given focus primarily on the legalisation offence while hardly any attention was paid, as discussed above, to other "ML-related" offences (and even in that case, the respective figures were either incomplete or uninformative).

114. It was a particular deficiency of these statistics that neither of them gave more profound information on the characteristics of the underlying criminal cases. More specifically, the following features could not be assessed due to a lack of relevant statistical information:

- the number of police-generated money laundering cases as opposed to those based on STRs
- the underlying predicate offences (at least those occurring more frequently)
- proportion of self-laundering cases and those related to classic third-person money laundering activity within the whole, etc.

115. Beyond the statistics, the examiners could not form a clear picture of the money laundering cases having been subject, at least, to convictions in the Czech Republic. The information gathered during the onsite visit implies that most of the cases successfully prosecuted as money laundering i.e. legalisation of proceeds of crime have been, as at the time of the 3rd round visit, **basic cases involving stolen goods**. Specifically, the cases described more in detail in the last report were related to stolen cars (that is, tangible proceeds being the direct result of a predicate crime) and the laundering activity subject to prosecution consisted of concealing their origin by changing identification features (colour, number plates) and/or dismantling them to be sold as spare parts. Now in this round, The Czech authorities made reference to some successful money laundering cases of an identical character (stolen cars, modified number plates etc.) or a very similar case the object of which was a precious painting stolen some 17 years ago and the perpetrator attempted to legalise it by providing false documents to prove its legitimate origin and ownership. Certainly, these acts can obviously be subsumed under Art. 216 CC nevertheless, at this point, the evaluators need to reiterate the conclusion drawn by the previous team: "*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*" and these cases definitely do not belong to this category.

116. In this context, while The Czech authorities have apparently achieved more final convictions for money laundering, the evaluators have considered the disconnect between the actual, criminological phenomenon of money laundering in the Czech Republic and the outcome of the anti-ML criminalisation in terms of numbers and, particularly, the characteristics of convictions. The information they obtained supported the view that, as in the 3rd round visit, sophisticated *modus operandi* are used in the country, 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. Organised crime groups remain a continuing and serious risk and it is noted that they are operating significantly in white-collar crime and internet fraud and that the proceeds of their crimes are successfully laundered in the Czech Republic. The evaluators were also made aware of large scale drug crimes involving both trafficking and cultivating of drugs by mainly foreign (Vietnamese) criminals among whom even the occurrence of a Hawala-like alternative remittance system was identified.

117. As noted above, the evaluators have requested information on the overall economic loss or damage from all proceeds generating offences as well as adequate information and statistics upon which overall conclusions can be drawn as to the quality of the money laundering cases being brought to the courts. According to the representatives of law enforcement, they had had no success with ML convictions so far and money laundering had usually been treated as subsidiary to other offences and subsumed with the predicate offence, rather than being prosecuted separately. The evaluators were not provided with further statistics showing the proportion of cases which relate to self laundering and the number of autonomous money laundering cases, particularly involving the proceeds of organised crime.

118. The Czech authorities explained that they had experienced difficulties in prosecuting more serious money laundering cases and that this could result in very protracted proceedings. A number of indictments, for example, had been referred back to the prosecution to provide further evidence, which implies that the standard of proof required by the courts may be overly high.

119. There was only one criminal case described in detail to the evaluators (a large scale fraud case committed to detriment of the financial and economic interests of the European Union) which, as illustrated by excerpts from the original bill of indictment, could definitely be considered to contain "complex and significant" laundering operations. In this case no one was prosecuted for autonomous third-person laundering activity (all perpetrators were indicted both for the predicate

crime and the related legalisation offence). When asked on-site, neither of The Czech authorities could recall successfully prosecuting any autonomous money laundering case or those based on STRs received from financial investigations (the stolen painting case was said to be based on an STR).

120. In the absence of further information from the country the effectiveness of ML criminalisation has not been demonstrated. The evaluators associate themselves with the analysis of the previous team on the possible reasons for the discrepancy between the perceived ML crime situation and the apparently modest judicial response thereto and reiterate that there is still need to further analyse the reasons for that.

2.1.2 Recommendations and comments

121. The evaluators remain concerned with the structural basis upon which the current criminalisation of money laundering has been established within the Czech criminal substantive law. The "compound criminalisation" as discussed above does not provide for a sound basis that corresponds to all aspects required by the relevant Conventions.

122. It had already been found by the previous evaluation team that 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 (see this argumentation more in detail in the 3rd round MER) and, indeed, the evaluators of the 4th round also found the same approach.

123. However, the coexistence of legalisation and participation offences is not the only concern about the criminal anti money laundering regime. As described above, these offences have already been harmonised to a significant extent and the third group of physical elements in the conventional money laundering definition is more or less adequately covered by the latter (except for "possession" which should be provided for clearly) and thus the criminal justice system is, at least in principle, prepared for prosecuting either of these offences. The main problem is, however, that the participation offence is not considered, in all aspects, equal to the legalisation offence when it comes to which offence(s) correspond(s) to the general concept of money laundering, which may cause ambiguity in international relations as well as inaccuracy in statistics, as mentioned above. Furthermore, the use of a single ML definition would not appear to be contrary to the Czech legal tradition as it has already been successfully achieved in the preventive legislation (AML/CFT Law). This approach, in the view of the evaluators, should be followed in all branches of the Czech law to avoid inconsistency between the reporting regime and the criminal sanctioning regime.

124. What is more problematic is the legalisation offence itself. Its structure and wording are very different from the internationally acknowledged concept of money laundering and particularly from the definition provided by the relevant Conventions. Despite some significant improvements mentioned above, the basic part of the offence has not changed and thus all doubts about its overall applicability remained. The general applicability of the respective CC articles could only be really confirmed by more convincing court practice. All the sources quoted by The Czech authorities to support their opinion were legal literature (a Commentary to the CC and an article in a scientific periodical). Thus it remained doubtful whether and to what extent these commentaries are binding for the courts in a criminal procedure.

125. As a consequence, the evaluators cannot find the coverage of money laundering in the Czech CC to be sound and consistent. Even if the recent amendments brought some significant improvements to the legalisation offence in many details, the general situation has not changed fundamentally since there will still be reliance on the further ML-related criminal offences. The evaluators share

the opinion expressed in the previous report, according to which the Czech legislators should depart from developing and harmonizing the legalisation and, at least, consider the participation offences simultaneously and adopt the idea of a single money laundering offence, preferably in line with the definition already existing in the preventive legislation (AML/CFT Law), for example, by extending the current content of Art. 216 CC to the extent required by the Conventions.

126. The main negative consequences of the current approach were adequately summarised by the 3rd round evaluation report with which the evaluators associate themselves:

- the inconsistencies regarding the definition of the offence (between first of all Art. 216 and 214 CC) go against a coherent treatment of the criminal phenomenon of money laundering,
- the fragmented approach may lead to the dilution of the money laundering concept and, hence, the respective offences, including Art. 216 CC are individually closer to the classical offence of receiving of stolen property
- the court practice, as described to the evaluators during the on-site visit, illustrates that the legalisation offence has still mostly been applied to criminal offences which had more to do stolen goods (receiving, trafficking, selling) than with the classical laundering of profits obtained through criminal activity.

127. It is therefore recommended:

- to amend Art. 216 CC so as to cover explicitly the various elements of the international requirements on the concept of money laundering now apparently missing from the definition (first and foremost: the conversion and transfer of property, the possession of property, the various specific aspects of concealment and disguise and the explicit coverage of the two main purposive elements required by the conventional definitions) preferably by harmonising the money laundering definitions of the administrative (preventive) and criminal substantive law;
- to make sure, either by legislation or by achieving relevant judicial practice, that the money laundering offence(s) cover both direct and indirect proceeds from crime;
- to provide for the criminalisation of conspiracy to commit all types of money laundering, preferably by prescribing explicitly in the CC that preparation for the legalisation offence (which by virtue of Art. 20 CC also comprises conspiracy) is also punishable, as had already been formulated in the previous draft of the Criminal Code;
- to consider increasing the criminal sanctions applicable to the legalisation offence and other ML-related offences;
- to provide for the criminal liability of legal persons, including for ML;
- and, finally, to further analyse the reasons for the apparent discrepancy between the money laundering phenomenon in the Czech Republic and the type of legalisation or participation cases so far concluded successfully, both in terms of differences in the underlying predicate criminality and the typologies of the related laundering activities, and take further appropriate initiatives to counter this phenomenon.

2.1.3 Compliance with Recommendations 1 & 2

	Rating	Summary of factors underlying rating
R.1	**PC**	• The criminalisation mechanism still needs to be brought in line with the international requirements prescribed by the relevant Conventions particularly with regards to: ▪ the conversion and transfer of property

	Rating	Summary of factors underlying rating
		▪ the possession of property ▪ and all aspects of concealment and disguise need to be explicitly provided • The conspiracy to commit all types of money laundering is not covered by criminalisation; • There is insufficient evidence of effective implementation.
R.2	**PC**	• No corporate criminal liability has been established; • The sanctioning regime is not sufficiently dissuasive and effective and therefore the level of punishment needs to be increased.

2.2 Criminalisation of Terrorist Financing (SR.II)

2.2.1 Description and analysis

Special Recommendation II (rated PC in the 3rd round MER)

128. The evaluators of the previous round were firm in their recommendation that financing of terrorism should be introduced in Czech criminal substantive law as a stand-alone offence, that is, to abandon its subordinated position to the offence of "terrorist attack" and to provide for a separate offence broad and detailed enough to better cover, besides the financing of terrorist acts, also the financing of terrorist organisations and individual terrorists. It was however indicated already in the same report that The Czech authorities had not considered that the creation of a specific offence would lead to improvements in practice or to an increase in the number of cases prosecuted. Consequently, no changes were foreseen in the then drafted new Criminal Code either. Indeed, it was evident in the 4th round that the Czech lawmakers failed to follow the recommendation. In the new Criminal Code, the offence of terrorist attack, as provided in Art. 311, is practically identical, both in its structure and, to a large extent, also in its wording to the respective offence in Art. 95 of the previous Code. This also refers to the location and function of the terrorist financing offence which remained to be discussed in one of the subparagraphs within the same article (para 2 lit b of Art. 311).

129. With no changes in the general approach, The Czech authorities now referred to Art. 311(2)b of the new CC as the main provision covering terrorist financing. According to that, a person is punishable "*who supports such conduct* (that is, the conduct of terrorist attack mentioned in para 1) *a terrorist or any member of a terrorist organisation financially, materially or in another way*".

130. Before entering into discussion on the act of terrorist financing, one must have a closer look at paragraph 1 to determine what is considered to constitute a "terrorist attack" that is, a terrorist act pursuant to the Czech criminal legislation. As far as the general definition of terrorist act in Art. 2(1) b of the International Convention for the Suppression of the Financing of Terrorism is concerned, this appears adequately covered by Art. 311(1)a CC, together with the preamble of the same article. As to the compliance with Art. 2(1)a of the said Convention, the examiners of the 3rd round had noted in their report that the lengthy list of offences contained in paragraph 1 of Art. 95 CC then in force did broadly cover the various situations addressed in the specific UN terrorist conventions and it is also clear that Art. 311(1) of the current CC literally reiterates Art. 95(1) of the former Code. Nonetheless the current evaluators found a number of conducts that appeared not to be covered as terrorist attack and, hence, their support could not be qualified as terrorist financing.

131. Specifically, no parts of the offence of terrorist attack (Art. 311 CC) provide for the criminalisation of acts described in Art. 7 of the Convention on the Physical Protection of Nuclear Material (1980) in relation to the general notion of "nuclear material" and not only "nuclear weapon" to which reference is made in Art. 311(1)f CC and, particularly, whether the theft or robbery of nuclear material or an embezzlement or fraudulent obtaining thereof is covered. Equally, Art. 2(a) and (b) of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988) ("seizes or exercises control over a fixed platform by force or threat thereof or any other form of intimidation… performs an act of violence against a person on board a fixed platform if that act is likely to endanger its safety…") is not covered by Art. 311(1)c which only refers to destroying and damaging of such objects.

132. Turning now to the financing offence in Art. 311(2)b CC it first needs to be noted that this was indeed one of those parts of the criminal legislation that had actually undergone some significant development since the previous round of evaluation, in apparent accordance with the recommendations made in the 3rd round MER.

133. At the time of the 3rd round evaluation, only the financing of a terrorist act had clearly been covered by Section 95(2)b of the Criminal Code then in force *("…who provides financial, material or other support to such conduct")* with no explicit coverage of financing of terrorist organisations and individual terrorists. In this respect, the 3rd round MER quoted The Czech authorities of that time, who considered that the combination of the financing offence with general or other provisions and, above all, the former Art. 163a CC on "participation in a criminal conspiracy" would allow extending the scope of the criminalisation mechanism towards the financing of a terrorist organisation, particularly as Art. 163a(3) CC explicitly provided for a linkage with Section 95.

134. This approach was not compromised by the recent development of the Czech criminal legislation, which, (as quoted above), made the new Art. 311(2) lit b) CC encompass the supporting of a terrorist or any member of a terrorist organisation but not the support provided to the terrorist organisation itself. Instead of that, the new CC retained a criminal offence similar, or almost identical, to the former Art. 163a, which is now the offence of "participation in an organised crime group" in Art. 361 CC (in the original, the name is slightly different). In line with this section, anyone *"who founds an organised crime group, who participates in activities of an organised crime group or who supports an organised crime group shall be punished by imprisonment of 2 to 10 years or forfeiture of property"* (para 1). Committing such offence in connection of an organised crime group aimed to commit, among others, the offence of terrorist attack (Art. 311) shall be punished by imprisonment of 3 to 12 years or forfeiture of property (para 2) while the leaders or representatives of such a group are threatened with imprisonment for a term of five to fifteen years. The evaluators note that the definition of "organised crime group" (Art. 129 CC) is literally the same as that of "criminal conspiracy" in Art. 89(17) of the former CC as quoted in footnote 47 of the 3rd round MER.

135. As a result, the Czech criminal substantive law continued to target the financing of a terrorist act as well as a terrorist organisation in the same way as it did at the time of the 3rd round visit. As far as the third option, that is, the financing of an individual terrorist, is concerned, the situation has, however, substantially changed by the amendment of Art. 311(2)b CC which now covers the financial, material or other support provided to "*a terrorist or any member of a terrorist organisation*".

136. At this point, it needs to be noted that Criterion II.1 lit a(iii) uses the term "individual terrorist" as opposed to a terrorist organisation in lit a(ii) and thus the former comprises any terrorist being a natural person regardless of whether or not he/she belongs to any organised group and therefore the terminology used in Art. 311(2)b CC, which draws a distinction being members of terrorist

organisations and "independent" terrorists, appears rather redundant. This notwithstanding, the development achieved by this provision is welcome but, on the other hand, concerns may arise about the actual applicability of the new rules, considering that neither the Criminal Code nor any other piece of legislation the evaluators are aware of appear to provide any definition of the terms "terrorist" and "terrorist organisation" (as opposed to the definition of "organised crime group" above).

137. It perhaps needs no explanation that these terms are unavoidably indefinite and, for this reason, practitioners will necessarily require appropriate guidance as to what makes someone a "terrorist" in the context of Art. 311 CC i.e. what needs to be proved to establish such a qualification. Czech authorities stated in the MEQ that *"terms as 'terrorist', 'terrorist group', 'terrorist organisation' and 'terrorist financing' are interpreted by legal professionals and practice of the courts while respecting international obligations"* As for the the term "terrorist group" reference was made to the above cited Commentary to the Criminal Code which defines this term as a "*structured association of more than two people that exist for a longer time and which acts in accord to commit acts of terrorism*". However, no such reference was made as regards the definition of an individual terrorist. Certainly, the Glossary to the FATF Methodology does provide a definition for this term but without any, even implicit, references in this respect, the evaluators consider it very unlikely that the new legislation or legal practice is, to any extent, based on that. In the absence of proper guidance, the latest extension of Art. 311(2)b CC appears to serve the purpose of formal compliance with SR.II rather than providing a more powerful weapon for the fight against the financing of terrorism.

138. As a final remark related to the topic of individual terrorists and terrorist organisations, the evaluators should note that they are unclear why the offences in Art. 311(2), that is, not only the support provided to, but also the threat of, a terrorist act were excluded from the scope of the aggravated cases under para 3. More specifically, terrorist acts as defined by para 1 are threatened with a more severe punishment if committed, among others, as a member of an organised group (para 3a) but this does not apply to the acts specified by para 2. As a result, the financing of terrorism would not be punished more severely if committed by a member of an organised group, which appears to be a loophole in the criminal legislation. This deficiency can only indirectly and partially be remedied by Art. 42(o) CC that declares it an aggravating circumstance if the offender *"committed the crime as its organiser, a member of an organised group or a member of a conspiracy"*.

139. In the 3rd round MER, the examiners considered that Art. 95(2)b and Art. 163a then in force (the present-day Art. 311(2)b and Art. 361 CC respectively) were not "very eloquent" and therefore it was hard to say to what extent the <u>collection</u> of funds (by any means, directly or indirectly) was included in Czech legislation. Evaluators of the 4th round, having thoroughly examined the legislative background available, have come to the same opinion concerning the *actus reus* of these offences.

140. Criterion II.1 lit a) requires that both core activities of terrorist financing, that is, "provision" and "collection" of funds be covered by criminal legislation. These are two distinct activities, in which context "collection" means the raising of funds including legitimate assets with a view to forwarding them to the recipients. Strictly speaking, neither the term "*supports* (…) *financially, materially or any other way*" (as in Art. 311(2)b) nor the simple "*supports*" (as in Art. 361) appears to cover the mere <u>collection</u> of means.

141. The 3rd round MER cited the opposite opinion of the authoritative Czech legal literature (the 2004 Commentary to the CC) according to which the term "supports by any other means" simply means any support that is relevant and, hence, includes without doubt support in the form of organizing the collection of funds, in which case the supporter himself does not provide his financial support.

At this point, explicit reference was made to Art. 10(1)c CC then in force (now it is Art. 24(1)c CC) claiming that the concept of assistance (including "procuring of means") applies to support under Art. 95(2)b CC (now Art. 311(2)b CC) as well.

142. Evaluators of the 4th round examined the respective article of the current CC (an English translation was provided onsite) and were not convinced by the above interpretation. Art. 24 deals with the issue of participation in a criminal offence and it defines various forms of this participation in para 1 as follows: the organiser (lit a) the instigator (lit b) and the assistant (lit c). As for the latter, it is "*a person who intentionally granted another person assistance in committing a criminal offence, particularly by providing the means for committing such criminal offence, removing obstacles, enticing a victim to the scene of the crime, guarding during the offence is committed, giving advice, strengthening the person's intent or promising assistance after the commission of a criminal offence*". This definition contains no reference to "procuring of means" but to "providing of means" which is something completely different and, indeed, it corroborates the findings of the 4th round evaluation team. The accuracy of the latter translation could also be verified; the key expression in the original is "*opatřením prostředků*" which corresponds to "(by) provision of means" where "*opatření'* means "provision" considering that the same term is used in the very same sense in the money laundering offence in Art. 216(1)b too[5].

143. Bearing all this in mind, the evaluators are not convinced that the Criminal Code provides for an offence of terrorist financing in the form of collection of funds with the unlawful intention that they should be used, or in the knowledge that they are to be used, according to Criterion II.1 lit a(i) to a(iii) particularly as the team do not find the above mentioned Commentary authoritative enough for such a broad or almost *praeter legem* interpretation that has never been tested in practice.

144. Subsequent to the on-site visit, The Czech authorities expressed their view that a person who collects financial means for the purpose of supporting terrorism would be punishable for preparation of terrorist attack pursuant to Art. 20 CC. According to the latter, conduct which consists in intentionally creating conditions for committing an especially serious offence especially by, among others, the acquisition or adaptation of means or tools for the purpose of committing such a crime shall be considered as preparation thereof, if the Criminal Code stipulates so in the relevant provision and if such a criminal offence is not attempted or committed. In line with this, Art. 311(4) CC explicitly provides that the preparation for the offence of terrorist attack (including the offence of supporting in para 2b) is punishable.

145. In the absence of any case law or other sources of guidance it cannot be anticipated whether the Czech judicial practice would actually accept that the simple gathering of financial means with a view to support a terrorist or a terrorist act would, in itself, establish the *sui generis* preparation for the respective criminal offence, but even if it did so, it is likely to be sanctioned less severely than a completed criminal offence despite the same range of punishment. What is more, this potential solution cannot be applied when it comes to the financing of a terrorist organisation under Art. 361 CC which, due to the level of maximum punishment, is to be considered an "especially serious offence" pursuant to Art. 14(3) CC but the Criminal Code does not stipulate specifically that preparation of this offence be punishable.

146. As far as provision of funds is concerned, the broad definition of "support" remains to cover financial, material or any other kind of support also in Art. 311(2)b of the new CC similar to the respective provision in the former Code. As was already noted in the previous report, this broad approach is in line with Criterion II.1b. The offence in Art. 361 CC, however, only refers to the

[5] In which case "provided in exchange of a thing or another asset value" stands for "*opatřena za věc nebo jinou majetkovou hodnotu*".

general notion of "support". The reasons for and the effects of this difference remained unclear. It is very likely that the Czech lawmakers had simply failed to harmonise the two offences in this regard but now one cannot tell with certainty the coverage of "support" in these offences. One could argue that the simple and general notion of "support" in Art. 361 CC may be even broader than that in Art. 311(2)b because of the specification attached to the latter. On the other hand, the concept of "support" in Art. 311(2)b is explicitly enlarged so as to encompass any kind of supporting activity, as it was discussed more in details in the previous report. As it was confirmed by The Czech authorities, both "support financially, materially or in any other way" in Art. 311(2)b CC and "support" in Art. 361 CC practically have the same coverage.

147. As with the legislation in force at the time of the 3rd round, the Czech Criminal Code does not specify that terrorist financing offences should extend to both direct and indirect forms of support and neither is it provided explicitly whether the source of the financial means comprise both legitimate and illegitimate origin. In this respect, The Czech authorities had previously argued that there was no need to make such a differentiation because what is decisive is the existence of support and not its form or source. They had also added that it was not customary in Czech legislation to use the wording "directly or indirectly" or "in full or in part", the absence of which in the entire Criminal Code had not yet caused any problem and, if the legislator had wanted to limit the scope of the provision, it would have been said explicitly.

148. The reasons why the 3rd round evaluation team could not agree with the above argumentation remain applicable. Evaluators of the 4th round thus associate themselves with the statements and conclusions made in the previous report and add further arguments thereto. That is, the thorough examination of the current Criminal Code does not support the argument that expressions such as "directly or indirectly" etc. are unknown in the Czech criminal law. Instead, such specification does indeed exist in the CC, even if it not formulated identically to the terminology of the FATF Methodology. Picking up just one example from the body of legislation being subject to the present evaluation, one can find both "even if not directly" (i.e. directly or indirectly) and "at least partially" (i.e. fully or partially) in one single article of the Criminal Code (Art. 101(2) CC), either of which could have been applied in the terrorist financing offence too.

149. The Criminal Code does not provide a definition for "funds" and thus it cannot be known whether this term would be interpreted according to the UN Terrorist Financing Convention. It appears that such a definition is left to the courts to interpret, once they come across any case related to the financing of terrorism.

150. Equally, there is still no explicit reference, even in the new CC offence, to the requirement under Criterion II.1c, that it should not be necessary that funds were actually used to carry out terrorist acts or be linked to a specific terrorist act. Firstly, this is of particular importance as regards the financing of a terrorist act. The evaluators of the previous round questioned the wording used in Art. 95(2)b of the former CC for suggesting that there must be a close link between the financing act and the committing of a concrete terrorist act. (The wording of the respective provision remains the same in the new Art. 311(2)b.) Such a clear provision would put beyond doubt that financing of terrorist organisations or individual terrorists does actually extend to the funding of their day-to-day activities or, as far as organisations are concerned, their recruitment or training activities.

151. As for the coverage of attempted terrorist financing as well as the range of ancillary offences, the respective provisions do not appear to have changed during the drafting of the new Criminal Code and hence all conclusions drawn by the previous team of evaluators in this respect remain valid. An attempt to commit a criminal offence is now covered under Art. 21 CC and it is applicable for any intentional criminal offence including those by which terrorist financing is criminalised. Preparation for a criminal offence, as discussed more in detail above, is covered by Art. 20 and includes a broad range of ancillary offences including, among many others, conspiracy to commit a

crime as well. Art. 24 CC covers participation in committing a crime (where para 1 deals with the organisers, para 2 with instigators and para 3 with assistants thereof). All in all, the requirements prescribed by Criterion II.1d and II.1e are met.

152. As a result of the "all crimes approach" the Czech Republic adopted, both the financing of a terrorist act, a terrorist or member of a terrorist organisation (Art. 311(2)b CC) and supporting (financing) of a terrorist organisation (Art. 361 CC) are in principle predicate offences for money laundering. To date, no occurrence of laundering activities involving assets either resulting from or intended for terrorist financing have ever been reported.

153. Turning to Criterion II.3, the evaluators note that Art. 7 to 9 CC almost literally reiterate the respective provisions contained by the former CC in Art. 19 to 20a. These articles cover the scope of applicability of the Czech criminal substantive law with respect to the principle of universality, in the same way as the respective provisions were discussed in detail in the 3rd round MER. Evaluators of the present round associate themselves with the analysis carried out and the conclusions drawn by the 3rd round evaluation team in this respect, adding that the rules governing criminal jurisdiction based on the international treaty obligation in Art. 9 (then Art. 20a) CC must also be taken into account with regard to the ratification of the UN Terrorist Financing Convention.

154. In addition to that, the evaluators found that Art. 313 CC, as with Art. 95(4) of the previous Code, extends the protection provided in Art. 311 CC to foreign states as well. The evaluators, sharing the opinion of the 3rd round evaluation team, appreciate that this provision usefully complements the primary goal of Art. 311 which is to protect the interests of the Czech Republic and international organisations, as well as specified interests of the international community. The scope of all these provisions is broad enough to cover, at least in principle, the requirements of Criterion II.3.

155. As for Criterion II.4 on the applicability of Criteria 2.2 to 2.5 the findings and conclusions of the 3rd round MER remain valid since there have been no changes as to the underlying facts and data either. Because of this, there is no need for any detailed re-assessment in the 4th round.

156. The only relevant difference in this respect is that the range of punishments that can be imposed for terrorist financing was somewhat increased in case of supporting a terrorist organisation (a criminal organisation aimed to commit the offence of terrorist attack) which is now sanctioned with imprisonment of 3 to 12 years (as opposed to 3 to 10 years) or forfeiture of property. As a consequence, the examiners, like those carrying out the previous evaluation, found the level of sanctions generally adequate.

157. Since there has not yet been a criminal case brought to court in the Czech Republic for any offence related to terrorist financing, and apparently no formal criminal proceedings have been initiated either on this basis, there is no concrete practice, as was the situation at the time of the previous evaluation.

158. Notwithstanding the general lack of positive information so far that could be kept in form of statistical figures, the evaluators note that the in the criminal statistics made available to them, whenever reference was made to terrorist financing it necessarily meant the offence in Art. 311(2)b and never the other offence in Art. 361. It is therefore very likely that any occurrence of the financing of terrorist organisations in the Czech criminal practice will not be reflected in the statistics as it would only make up the figure related to the generic notion of "participation in an organised crime group".

Effectiveness and efficiency

159. Since there have been no formal criminal investigations or convictions, for any forms of terrorist financing, it is difficult to assess the effectiveness and efficiency of the implementation of SR.II in the Czech Republic.

160. The offences by which the financing of terrorism is criminalised in the Criminal Code do not fully reflect the SR.II requirements, since the mere collection of funds with a view to providing them appears not to be covered (in case of financing of terrorist organisations, not even by the application of the general rules of preparation). Corporate criminal liability is not yet provided for and, furthermore, the definition of "funds" is lacking and is open to court interpretation. The lack of full compliance of the CC to international standards might have an impact on the effectiveness.

161. The abovementioned deficiencies may limit or adversely affect the capacity to investigate, prosecute and convict terrorist financing offenders and they might also prevent the Czech Republic from providing certain forms of international co-operation where dual criminality is required as well as possibly having a consequential impact on the reporting of suspicious transactions related to terrorism, for the reason discussed above in relation to R.32.

2.2.2 Recommendation and Comments

162. The evaluators welcome the progress the Czech Republic has achieved since the previous round of evaluations in building up a more complete legal framework for the criminalisation of terrorist financing. Apart from the clear provision dealing with the financing of terrorist acts and the separate (though adequate) criminalised financing of terrorist organisations, the criminal legislation succeeded in introducing the offence of financing an individual terrorist. The latter development in positive law eliminates the situation described in the last report as leaving "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".

163. Nonetheless, the evaluators share the opinion expressed in the previous report that a stand-alone provision on financing of terrorism would be preferable to cover explicitly the various elements of the international requirements in a more consistent way. This particularly refers to the disharmony between the offences in Art. 311(2)b and Art. 361 CC. Specifically, there is discrepancy between the wording and, probably, the contents of "support" as defined by the respective articles. Furthermore, the *sui generis* criminalisation of perpetration only applies to the offence in Art. 311(2)b CC.

164. The evaluators thus reiterate the recommendation to introduce the financing of terrorism as a stand-alone offence that would be broad and detailed enough to encompass all aspects of terrorist financing, particularly:

- to clearly cover the various elements required by SR.II, and above all, the collection of funds by any means, directly or indirectly, and their use in full or in part for FT purposes;
- to provide explicitly 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;
- and, subject to the introduction of corporate liability, to provide for the liability of legal persons for terrorist financing.

165. In this respect it needs to be noted that the AML/CFT Law contains a separate definition for terrorist financing in Art. 3(2) as follows:

(2) Financing of terrorism shall mean:

a) gathering or providing financial or other assets knowing that such assets will be, in full or in part, used to commit a crime of terror, terrorist attack, or a criminal activity intending to facilitate or support such crime, or to support an individual or a group of individuals planning such crime, or

b) acting with the intention to pay benefits or compensation to a person who had committed an act of terror, terrorist attack, or a crime intended to facilitate or support such crime, or to an individual close to such person as stipulated by the Criminal Code; or collecting assets to pay such benefits or compensation.

166. Similarly to the money laundering definition in Art. 3(1) of the AML/CFT Law, this definition is significantly more in line with the relevant international standards. At this point, the evaluators reiterate their opinion expressed above in relation to R.1 on the ultimate importance of having consistent treatment of a given case throughout the processing chain, from the reporting to, and analysis by the FAU to the possible prosecution and final conviction and they urge for establishing consistency and harmony between the administrative and the criminal substantive law in this respect. This particularly refers to the involvement of the criminal offence of terror (Art. 312 CC) in the range of the offences, the financing of which constitutes terrorist financing because this act is definitely out of the scope of the offence in Art. 311(2)b. The evaluators learnt that the offence in Art. 312 CC criminalises "assassination" i.e. murder with the intent to undermine the constitutional order of the Czech Republic which appears not relevant in the context of SR.II. Nevertheless, the team was not given any convincing explanation for the discrepancy between the coverage of the preventive and criminal legislation in this respect.

167. In addition to that, there is a need for a clear definition of "funds" being subject of terrorist financing, in line with the definition provided by the UN Terrorist Financing Convention.

2.2.3 Compliance with Special Recommendation II and Recommendation 32

	Rating	Summary of factors underlying rating
SR.II	**PC**	• The offence of terrorist attack does not adequately cover the acts described in Art. 7 of the Convention on the Physical Protection of Nuclear Material (1980) and Art. 2(a-b) of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988); • The collection of funds, as one of the core activities within the concept of terrorist financing under SR.II is not adequately, if at all, criminalised; • Apart from that, different provisions that criminalise FT are not adequately harmonised ; • There is still no explicit coverage of direct or indirect collection of funds/usage in full or in part; • There is no explicit indication that offence is prosecutable without the funds being used or linked to a specific terrorist act; • There is no corporate criminal liability.

2.3 Confiscation, Freezing and Seizing of Proceeds of Crime (R.3)

2.3.1 Description and analysis

Recommendation 3 (rated PC in the 3rd round MER)

168. The general regime on confiscation and provisional measures, and particularly the basic mechanisms of confiscation, has not changed structurally since the previous round of evaluation. Certain important amendments have nevertheless been carried out, mostly in line with recommendations made in the 3rd round MONEYVAL report.

169. In the Czech criminal substantive law, all forms of confiscation[6] are to be considered as punishments as it is so prescribed by Art. 52(1) lit d) and f) of the new Criminal Code. Within Chapter V part 2 of the CC ("Punishments") the forfeiture of property is regulated in detail under Art. 66 CC, while Articles 70 to 72 CC refer to the confiscation of a thing or other property value as well as substitute value. All these various measures remain conviction-based and besides these, Art. 101-102 CC provide for a system of non-conviction based confiscation of a thing, other property value or substitute value. As opposed to the other measures mentioned above, the non-conviction based confiscation is not considered a punishment but a final protective measure (Chapter V part 3 CC).

170. Finally, the evaluators simply note that when assessing compliance with Recommendation 3 the main issue, according to Criterion 3.1, is that laws should provide for the confiscation of property (i) that has been laundered, and (ii) of property which constitutes proceeds from, (iii) instrumentalities used in and (iv) instrumentalities intended for use in the commission of any ML, TF or other predicate offences. Forfeiture of property under Art. 66 CC has as the main purpose of "punishing the offender" as it is specified in para 2 of the same article. In other words, this kind of confiscation is rather of a punitive than a reparative character where the property subject to deprivation is not, or needs not to be, in any concrete relationship with the criminal offence the defendant has committed. This contrasts with the forfeiture of property on a non conviction based basis.

Forfeiture of Property
Section 66

> *(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.*

[6] In various legal texts provided in English translation to the evaluators, both "confiscation" and "forfeiture" are alternatively used yet both are equivalents of the same Czech original "*propadnutí*". Wherever "confiscation" or "forfeiture" is used in this report, these terms are thus to be considered as synonyms, both denoting an authoritative action that consists of permanent and definite deprivation of property.

However, non-conviction based confiscation under Art. 101-102 CC is designated in the Czech original by the term "*zabrání*" that is, "taking away" or "seizure" and so it was translated in the third report as well (in relation to Art. 73 CC then in force). Maintaining this terminology in the 4th round report would have caused confusion as the term "seizure" is frequently used in the English version of CPC to denote the temporary taking away of property items with a view on their confiscation. The Czech word the CPC uses for this provisional measure is "*zajištění*" that can be (and is actually) translated as either "seizure" or "securing" in English. For the sake of consistency, wherever the term "seizure" is used in this report it will necessarily refer to the provisional measures set out in CPC (*zajištění*) while the non-conviction based confiscation (*zabrání*) will be referred to as "confiscation".

(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.

(3) 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 the wants of the offender or persons whose maintenance or upbringing is the offender's duty under statutory provisions. (…)

171. Certainly, one of the preconditions is that the offender be convicted for a premeditated criminal offence by which he/she has acquired or attempted to acquire a property benefit. Nonetheless, the property subject to forfeiture does not need to originate from or, more precisely, constitute proceeds (property benefit) of this criminal offence, bearing in mind that even an attempted acquirement of property benefit can be sufficient for the application of this punishment. This measure thus serves the most effective sanctioning of the defendant, taking into consideration both his/her personal situation and the circumstances of the committed criminal offence (the same aspects that need to be considered when meting out, for example, a pecuniary punishment pursuant to Art. 67-68 CC) but without even an implicit reference to the confiscation of any of the various elements contained under Criterion 3.1 as listed above. As a consequence, this report will focus on other parts of the confiscation and provisional measures regime when assessing compliance with R3.

172. The key provision in this respect is Art. 70 CC on the forfeiture of a thing or other property value, according to which:

(1) The court may impose forfeiture of a thing or other property value 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 or other property value stipulated under c), unless the value of the thing or other property value under c) is negligible in relation to the thing or other property value acquired.

173. At the time of the 3rd round evaluation, the respective provision then in force (Art. 55 CC) only dealt with the limited scope of forfeiture of a "thing" but the concept was extended in 2006 to also cover "other property value". Now, in addition to that, Art. 134 CC helpfully provides a broad definition for both terms according to which the concept of "thing" (para 1) encompasses not only controllable forces of nature, live animals or processed separate parts of the human body but also money (literally "pecuniary means") kept in a bank account and in securities. The definition of "other property value" (para 2) covers property rights as well as any other value expressible in money, provided it is not a "thing" in the sense of para 1. The notion of "property rights" as it is defined by the above mentioned Commentary to the CC was explained in the Czech replies to the MEQ to extend to comprise, among others, participation in a limited liability company or cooperative, intellectual property rights, rights to registered domains, debts, right to a dividend,

business secrets, etc. which makes the scope of Art. 70 CC fully in line with the definition of "property" in the Glossary attached to the FATF Methodology.

174. Art. 70(1) lit a)-b) CC clearly covers property which constitutes instrumentalities used, or intended for use, in the commission of any criminal offence, including all offences by which money laundering and terrorist financing is criminalised by Czech law. The confiscation of proceeds of crime is likewise covered by para 1 lit c)-d) of the same article. On the face of it, the latter provisions are apparently restricted to property deriving, either directly or indirectly, from the criminal offence the offender he/she has committed ("his criminal offence"). This however proved to be a mistranslation as the examination of para 1 lit c) in the Czech original showed that this provision only refers to property the offender acquired by criminal offence ("*kterou pachatel získal trestným činem*") without any possessive pronoun attached. Having said that, the broad wording of all these provisions gives the appearance that they are actually in line with Criterion 3.1 lit a) to c) but they do not show compliance with the same Criterion as regards the confiscation of property that has been laundered.

175. The wording of Criterion 3.1 leaves no doubt that confiscation of property "that has been laundered" is a separate issue in the context of R.3 clearly distinguished from the proceeds and instrumentalities. According to the Methodology, the term "proceeds" denotes property that is derived from or obtained through the commission of an offence, where the latter necessarily means a predicate offence and not the actual money laundering offence. The property that has been laundered would normally be derived from a respective predicate crime and hence it would only constitute the object (but not proceeds) of the laundering activity, which particularly refers to "classic" third-person money laundering cases. The Czech confiscation regime is obviously capable of targeting criminal proceeds the offender gained by a criminal offence (Art. 70(1)c) but the applicability of this provision is rather doubtful in an autonomous money laundering case where proceeds of the predicate offence are not "gained" but simply received and, once "cleaned" or legalised, returned by the launderer (and the payment or percentage the latter is given for his/her action could only be considered as proceeds "gained by" money laundering).

176. The Czech authorities advised that property that has been laundered could either be confiscated as instrumentalities to the laundering offence (as thing or other property value intended or used to commit a criminal act) or, alternatively, as proceeds of the underlying predicate offence, even if the latter is not prosecuted together with the money laundering offence. Neither of these options is however clearly set out in positive law and they have not yet been confirmed by the court either.

177. Confiscation from third parties was deficient at the time of the 3rd round evaluation and, on the face of it, the key provision in Art. 70 CC also did not assist with the requirement for third party confiscation under Criterion 3.1.1 lit b. That is because confiscation of a thing or other property value is restricted to the property that belongs to the perpetrator of the criminal offence. As it is specified by Art. 70(2) CC similar to the former Art. 55(2) "*The court may order forfeiture of a thing or other property value only if such thing or other property value belongs to the offender*". In this context, the 2006 amendments of the CC introduced the concept of possession or control instead of the strict ownership standard and in line with this, Art. 135 CC gives a broad definition for the expression "thing or other property value belonging to the perpetrator" referring not only to property items or rights being in his/her ownership but also to those he/she actually has and disposes of as if he/she was the factual owner:

> *"Thing or other property value belongs to offender if, at the time of the decision about it, he/she owns it, it is the part of his/her property or he/she actually disposes of it as its proprietor or owner, without the rightful proprietor, owner or holder of such thing or other property value being known."*

178. On the basis of this definition, the Court may confiscate a thing or other property value that is only possessed, or disposed of, by the perpetrator, regardless of the respective ownership rights thereon (that is, whether or not the perpetrator is the legitimate owner of the property item or right). Confiscation of instrumentalities or proceeds of crime however remained excluded under Art. 70 CC once these are transferred to another person (e.g. to hide or protect them). Certainly, one could also interpret such a transfer as a "disposal" in the sense of Art. 135 CC (the perpetrator proceeds as if he had the right of disposal over the thing or other property value and this proves that the thing etc. belongs to him) which appears to give some possibility for confiscating property from third persons who acquired the disposed property. It is however unclear to the evaluators whether this interpretation has ever been argued in practice or applied in any concrete case. Furthermore, the need to prove not only that the property kept by a third person is proceeds of crime but also that he/she acquired it as a result of the perpetrator's purposeful action of "disposal" would definitely put an additional burden on prosecutorial and police bodies.

179. Instead of pursuing this approach, the Czech legislators succeeded in establishing the potential for third party confiscation in a different part of the Criminal Code, separately from the structure of Art. 70 CC. It was one of the helpful novelties introduced by the latest amendment to the Criminal Code that the scope of non-conviction based confiscation in Art. 101-102 CC became enlarged so as to cover confiscation of proceeds beyond the personal scope of Art. 70 CC.

180. The first part of Art. 101(1) CC remained unchanged as it provides, similar to the corresponding Art. 73(1) in the previous Code, for the confiscation (literally "taking away") of a thing or other property value that could otherwise have been subject to confiscation under Art. 70 CC as proceeds or instrument of a criminal offence but the offender, to whom it belongs, cannot be prosecuted or sentenced (e.g. because of insanity or statutory bar) or he/she was discharged by the court. Non-conviction based confiscation may also take place if it is necessary due to safety of people or property, or due to another similar common interest.

181. The new aspect of this non-conviction based confiscation can be found in Art. 101(2), which introduced a new dimension of third party confiscation into the Czech criminal law. According to this, the court may also confiscate a thing or other property value that constitutes, even if not directly, proceeds of a criminal offence and particularly:

a) if it was gained by a criminal offence or as a reward thereof and it does not belong to the perpetrator;
b) if it was acquired by another person than the perpetrator, at least partially, for a thing or property value that was gained by a criminal offence or as a reward thereof; or

c) if it was acquired by another person, at least partially, for a thing or property value the perpetrator had acquired, at least partially, for a thing or other property value that had been gained by a criminal offence or as a reward thereof unless the value of the thing or other property value under b) and c) is negligible in relation to the thing or other property value acquired These rules above are undoubtedly sufficient to provide for the confiscation of criminal proceeds from third persons pursuant to Criterion 3.1.1 lit b. (Although Art. 101(2) lit a] does not contain a direct reference to the property item or right being "acquired by another person" it is understood to cover any situations where the thing or property value is not in the possession of the perpetrator, including the case it is actually possessed or owned by a third person.) It is also welcomed that both Art. 70(1) lit d) and Art. 101(2) lit b)-c) clearly encompass proceeds commingled with legitimate assets by providing guidance as to how to understand the partially illicit character of such property.

182. In relation to Criterion 3.1.1 lit a) the Czech Criminal Code still makes no further distinction between direct and indirect proceeds in which context, similar to the situation at the time of the 3rd round evaluation, it particularly does not contain any clear reference to assets deriving from

criminal proceeds such as income, profits or other benefits (interests, deposits made after the freezing of an account, increase of value of shares etc.) This apparent deficiency is surprising as the concept has already been covered, as it will be discussed below, by criminal procedural law– (see Art. 79a para 1-2 as amended and also Art. 347-348 CPC) which clearly encompass indirect benefits from assets and assets acquired after the application of temporary measures. This logic was not apparent in criminal substantive law and thus it remains unclear to them whether, if at all, indirect proceeds of crime are fully covered by the confiscation regime. The basically punitive character of the measure in Art. 70 CC may give an explanation why it is targeted to such an extent at the perpetrator and not at the criminal assets themselves. There may be the same reason behind the fact that confiscation of a thing or other property value remained entirely discretionary. Even if the conditions in Art. 70(1) CC are met, it is left to the broad discretion of the Court whether or not this measure is applied, especially since it can constitute an alternative measure to imprisonment, which gives less strength to the confiscation regime. Czech authorities explained that the recent court practice considers forfeiture of a thing or other property compulsory in cases where the perpetrator possesses the thing *prima facie* unlawfully or in contradiction to any legal act (an unauthorised firearm, counterfeit money, etc.) but this principle cannot be applied to proceeds of crime in general and particularly not for legitimate assets intended to finance terrorism.

183. Confiscation of a thing or other property value can only be applied as a sole punishment in case of less serious offences where the CC 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 (Art. 72 CC). In any other cases the Court may, according to Art. 53(1) CC, impose it as an additional sanction, together with any other kinds of punishment provided by the Criminal Code. For the basic money laundering offence in Art. 216(1) CC confiscation of a thing or other property value can be applied as a sole punishment (as an alternative to imprisonment, pecuniary penalty or prohibition of business) while it can only be applied as an additional punishment, by virtue of the general provisions mentioned above, in any aggravated cases of ML and all offences that criminalise terrorist financing. As mentioned above, confiscation is purely discretionary in all these cases which, as it was already pointed out by the 3rd round evaluators, is not in direct contradiction with R.3 but from a criminal policy standpoint and with a view to target the proceeds of crime and terrorist financing, it could have been preferable to put certain limits to the courts' discretion.

184. At the time of the 3rd round evaluation, the property of corresponding value could not be confiscated under Czech legislation and national authorities indicated that in case the original property had been destroyed, damaged etc. the usual court practice would be to impose a pecuniary punishment instead of confiscation. Examiners of that time did not fully disagree with this argument yet pointed out that the maximum level of pecuniary punishment (5,000,000 CZK then 167,000 €) sets a rather moderate limit to the potential impact on a criminal patrimony in the context of major cases.

185. The subsequent amendment of the Czech criminal legislation adequately filled this gap by explicitly providing for the confiscation of substitute value in Art. 71 of the new Criminal Code. This measure is applicable if the perpetrator destroys or damages, alienates, renders worthless or unusable, consumes or disposes of a thing or other property value that could have been subject to confiscation under Art. 70 CC or otherwise frustrates their confiscation. In such cases the Court may order the confiscation of the substitute value up to the amount that corresponds to the value of such things or other assets, as it is determined by the Court upon the base of professional observations and expert opinion. Furthermore, in case the property item in question had even partially been destroyed, damaged or depreciated the Court pursuant to Art. 71(2) CC may also order the confiscation of substitute value in addition to the confiscation of the property item itself. While the substitute value itself must obviously be expressed in a sum of money, The Czech

authorities emphasised in the MEQ that the confiscation of substitute value may in practice comprise any property owned by the perpetrator and hence it is possible to confiscate any of his/her property items (up to the equivalent value) instead of money.

186. Art. 102 CC provides for a similar regime in relation to non-conviction based confiscation in case the person, to whom the thing or other property value subject to deprivation belongs, destroys, damages etc. the same or otherwise frustrates its confiscation (Art. 70) or non-conviction based confiscation (Art. 101). No actual court practice in either respect was made known to the evaluators.

187. Provisional measures are still regulated basically by the same two sets of provisions of the Code of Criminal Procedure as at the time of the 3rd round evaluation, that is, Art. 347-348 CPC that deals with securing the assets of an accused with a view to the confiscation of his/her property and the securing measures in Sections 78-79 CC and the subsequent articles. While the former remained practically unchanged, the latter set of procedural rules has been significantly amended and completed since the previous round.

188. Starting with Articles 347 and 348 CPC these are meant to secure the execution of a final decision on forfeiture of property pursuant to Art. 66 CC. As it was discussed above, the latter punishment cannot be considered as being within the scope of Recommendation 3 and, consequently, the same must be said about the provisional measures that are explicitly formulated to secure property assets solely for the purpose of a subsequent forfeiture of property ("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" in Art. 347[1] CPC). Because of that, Art. 347-348 CPC will not be examined and analysed in detail in of this report. Nonetheless anything that was said about these in the 3rd round MONEYVAL report remains valid as neither of these provisions have changed since the time of the previous evaluation.

189. Similar to the situation at the time of the 3rd round evaluation, the provisional measures in Art. 78-79 CPC and the subsequent articles are meant to secure things or other property items or rights, which have been used to, or intended to use for, the commission of a criminal offence (instrumentalities) or which constitute proceeds of crime. As such, these are to serve and secure the execution of a final decision imposing confiscation of a thing or other property value (Art. 70 CC) non-conviction based confiscation of the same (Art. 101 CC) and confiscation of substitute value (Art. 71 and 102 CC respectively). Currently there exist the following measures which enable to seize property in these respects:

- delivering and seizure of a thing – Art. 78-79 CPC (actually related to "things" i.e. movable property items)
- judicial seizure of funds in an account at a bank or in other financial institutions as well as the safeguarding of immaterialised securities (Art. 79a to 79c CPC)
- seizure of immovable assets (Art. 79d CPC);
- seizure of other property value (Art. 79e CPC);
- and seizure of substitute value (Art. 79f CPC).

190. The purpose of securing the instrumentalities and proceeds of criminal activity and, hence, the scope of applicability of the respective measure is covered in the provisions in Art. 79a to 79e CPC. As far as instrumentalities are concerned, the terminology of CPC adequately follows that of the CC (Art. 70(1) lit a-b CC) but, on the other hand, it makes reference to "proceeds of crime" as such, without defining the content of this term. The Czech authorities nonetheless advised that, according to the established interpretation of the law, the notion of "proceeds of crime" is to be deduced from Art. 70(1) lit c)-d) CC that includes not only things or other property values gained

by a criminal offence, but also those that have been obtained, even partially, for things or property values gained by a criminal offence or as a reward thereof. It is a further issue, however, that Art. 78 and 79 CC (seizure of a thing) only extend to things "important for the criminal proceedings" but the evaluators accept the explanation given by host authorities that this general term is necessary to encompass not only the (intended) instruments and proceeds of a criminal offence but also other items that constitute evidence in the criminal proceedings.

191. The provisions regulating the seizure of a thing (Art. 78-79 CPC) or other types of account kept by different financial institutions (Art. 79b) and the seizure of booked securities (Art. 79c) have not changed since the previous round of evaluation, apart from the extension of Art. 79a to cover indirect assets (as discussed below). Notwithstanding this, the evaluators were not informed on any further changes relevant to the interpretation of these provisional measures nor judicial practice that would have an impact on their applicability. That said, the evaluators of the 4th round associate themselves with the findings and statements made by the previous team in this respect.

192. At the time of the 3rd round evaluation, temporary measures could not apply to immovable property and to rights and financial participations/shares in a legal entity. These issues are now addressed in the current CPC in which specific provisions governing the seizure of immovable assets (Art. 79d) and that of other property value (Art. 79e) were introduced to helpfully complement the existing system in areas that had not (adequately) been addressed before.

193. It should be noted that both these measures and those regulated by Art. 79d to 79f CPC are to be applied by the public prosecutor. The fact that the Czech law does not require a court order or any judicial approval for such measures to be taken in the investigative phase is a factor that may effectively support their immediate applicability. Equally, in the pre-trial phase of the procedure, the same law authorises the Police to decide on the application of such measures in urgent cases that cannot be delayed (provided there is a subsequent approval from the public prosecutor) which also assists in ensuring swift the effectiveness of the action. This also refers to measures related to the securing of financial means on bank and other accounts in which respect, interestingly, the domestic authorities did not appear satisfied with the opportunities provided by the CPC based regime, instead of which both the law enforcement and prosecutorial authorities supported the involvement of the FAU and the freezing mechanism provided by the AML Law as discussed below.

194. Until 1 July 2006 it was not possible to seize interests from pecuniary values on bank accounts pursuant to Art. 79a as these were not considered as proceeds of crime. This restriction has been elevated by the latest amendment of CPC (Art. 253/2006.) as a result of which Art. 79a also explicitly deals with indirect benefits from assets and assets acquired after the application of temporary measures as follows (the amended part is underlined)

> *"If the circumstances found indicate that the financial means on the bank account are intended for committing a criminal activity, or have been used to commit a criminal activity, or result as an income from a criminal activity, the presiding judge, and/or the public prosecutor or police authority in the preliminary proceedings, may decide on securing the financial means on a bank account* ***and eventually also financial means additionally credited to the bank account, in case this is covered by the purpose of securing. Such securing includes also additions*** *(…)"*

Equally, Art. 79a(2) was amended accordingly (underlining as above)

> *"The decision (…) must be delivered to the bank which conducts the account and after the moment the bank has secured the account, to the account holder, too. The decision shall mention the bankers, including the account number and bank code, as well as the*

amount in the respective currency, to which the restriction applies. ***The decision on securing applies to financial means, that were on the bank account at the time the bank received the decision, up to the value as stated in the decision on securing including additions. If the value stated in the decision is higher than the bank balance, the securing applies also to financial means additional deposited to the bank account up to the value of the decision, included additions.*** *(…)"*

195. By virtue of the connecting clauses in Art. 79b and 79c(4) CPC the above mentioned extension automatically refers to the provisions dealing with seizure of financial means kept on other types of accounts as well as seizure of booked securities.

196. As for Criterion 3.3 according to which the initial application of temporary measures should be made without prior notice to the person subject to those measures, the 3rd round examiners had been concerned by the logic of provisional measures under Art. 78 and 79 CPC and concluded that these may need to be amended so as to enable the application of temporary measures without prior notification of the suspect. In respect of these Articles, the evaluation team found that the statements made in the previous report remained valid to date because the responsibility for the application of measures still appears to lie primarily with the person (even a suspect) possessing an object that is necessary for the purposes of criminal proceedings, mainly because of references to the "call" of the competent authorities upon which the person is obliged to present the respective item. Czech authorities stated in both rounds of MONEYVAL evaluations that the procedure under Art. 78-79 involves in reality measures applied on-site and hence without delay and possibility for the offender to evade the consequences of the procedure. In this context the "call" is but a chance given to the person to co-operate voluntarily but measures can be applied mandatorily and immediately in case of refusal.

197. Certainly, this is a possible and indeed very positive way for the application of these provisions but the law itself allows for a different interpretation too. The main question is whether there can be a time gap between communicating the call to the person and applying coercive measures in case of non-co-operation. Quick action is particularly important in the preliminary stage of criminal proceedings when the person concerned is still likely not to be either aware of, or prepared for provisional measures. Art. 79(1) CPC does not allow the Police to order the seizure of a thing unless they obtain a prior consent of the public prosecutor, which requirement can only be disregarded, pursuant to para 3 of the same article, if such a prior consent "cannot be achieved and the act must be performed immediately". Since the latter situation is clearly formulated as an exceptional case as compared to para 1, one can conclude that in normal cases, where the Police needs to obtain a prior prosecutorial consent, the law does not require the act of seizure to be performed "immediately" and thus there might be a time gap between the "call" and the execution of that measure.

198. Subsequent to the on-site visit, the evaluators were however advised by The Czech authorities that the respective CPC articles are generally interpreted so as to exclude such potential problems. In cases the non-cooperation of the affected person can be foreseen, the Police usually obtain the prosecutor's consent before, or even during the time when the "call" is communicated to the person so that the provisional measure can be taken immediately. Representatives of the law enforcement added that application for such a prosecutorial consent may even be made by phone (provided that it will subsequently be documented in a written report) and confirmed that application of these measures has never posed such problems in practice.

199. Provisional measures other than seizure of a thing are beyond doubt applicable ex parte that is, without any prior notification to the party involved. Article 79a CPC on the judicial seizure of a bank account provides in its para 2 that such a decision must first be delivered to the bank keeping the account and only after the bank has secured the account can the decision be delivered to the

holder of the account. As a result of cross-references to Art. 79a a similar procedure applies for the securing of other financial means under Art. 78b and also for the seizure of booked securities under Art. 79c. Turning to Art. 79d on securing of immovable assets and Art. 79e on other property value, these do not specify such an order of delivery as above, nevertheless they both imply that no prior notification takes place when applying these measures: first, as they do not require any sort of a previous "call" towards the affected person (like Art. 78-79 CPC) and second, because both Art. 79d(2) and Art. 79e(2) the law refers to informative obligations the affected person has to meet subsequent to the notification of the authoritative decision.

200. The ability and powers of law enforcement and prosecutorial authorities to identify and trace property subject to possible confiscation (Criterion 3.4) has not changed much since the previous round of evaluation. The mainly "open" sources to which police forces have access, on their own initiative and at an early stage of the proceedings, remained the same. Czech authorities however added that the range of these sources will be restricted as from 2011 because the police will no longer be entitled to ask information from tax proceedings for the purposes of detecting and explaining money laundering (only the public prosecutor or the court will have the possibility to demand such information). Further sources of information remained accessible, in the pre-trial proceedings, to the prosecutor only (including banking information, even without a court order). In addition, the prosecutor or, in the trial phase, the chairing judge upon request of the prosecutor may order bank account surveillance or surveillance of an account of a person authorised to register investment tools for up to a prolongable period of 6 months. Equally, law enforcement authorities while discovering and explaining money laundering offences may apply a range of special investigative measures such as interception and recording of telecommunication operations, use of intelligence means and technology, monitoring of persons and things etc. all specified by CPC.

201. The criminal procedural rules are helpfully complemented by those of the preventive legislation. Art. 20(1) of the AML/CFT Law (No. 253/2008 Coll.) obliges service providers, as a general rule, to suspend the execution of a transaction order if there is "a danger that an immediate execution of a transaction would hamper or substantially impede securing of proceeds of crime or money intended to finance terrorism". In such cases the obliged entity may only execute the transaction not earlier than 24 hours after the FAU had received the STR thereof (which shall also indicate that the transaction had been suspended). Suspended transactions are then examined by the FAU and if it requires a longer period of time, the FAU shall, pursuant to Art. 20(3) decide either to prolong the period of suspension of the transaction for a maximum of 72 hours after having received the STR (para 3a) or to suspend the transaction or to freeze the assets in such transaction for 72 hours in the obliged entity where the assets are located (para 3b). The decision is binding upon its declaration and it is not subject to appeal as the only party to the proceedings is the obliged entity that disclosed the suspicious transaction or holds the assets believed to be involved in such transaction. If the FAU finds facts suggesting that a crime had been committed, it lodges a criminal complaint to the Police or other competent law enforcement authority in the 24h or 72h period stipulated in Article 1 or 3 respectively. From the time the criminal complaint is filed, the law enforcement authority has 3 calendar days to decide, pursuant to the Criminal Procedure Code, on the seizure of the financial means subject to the transaction or else the obliged entity shall perform the transaction.

202. Turning back to the criminal procedural law, the provisional measures are not limited to the assets of the offender and thus it is possible to secure things and property value owned or held both by charged person and other persons, regardless of the real ownership. Concerning the protection of rights of *bona fide* third parties (Criterion 3.5) the CPC articles that deal with temporary measures, as was the situation at the time of the previous visit, do not contain any restriction in this regard and the measures mentioned above are always subject to appeal whereby a *bona fide* third

party can challenge the imposition of measures. In the case of the seizure of a bank account, for example, the account holder whose financial means have been secured has the right to ask, at any time, for cancellation or reduction of the securing and the presiding judge or the public prosecutor must decide immediately about this application (Art. 79a(4) CPC) and similar provisions apply to the seizure of immovable assets and the securing of other property value.

203. As far as the implementation of Criterion 3.6 is concerned, the Criminal Procedure Code sets safeguards to prevent transfers of seized/secured property. Any disposal of the financial means secured pursuant to Art. 79a and 79b is therefore restricted unless the responsible authority (court/prosecutor) specifies otherwise or gives prior consent to any subsequent claim that affects the assets. Similar provision can be found in Art. 79c(3). In the case of real estate secured pursuant to Art. 79d all legal acts of the owner relating to the secured asset is ineffective except those aimed at averting immediate threat of damage, and a similar provision can be found in Art. 79e(5) too.

204. There are also further rules for the securing of assets subject to the forfeiture of property, according to which the person who has been charged cannot perform any legal acts that would affect the seized property because such acts would be considered void. Forfeiture of property, as a punishment is, however, out of the scope of R.3 and therefore these measures cannot be taken into consideration either. When it comes to the confiscation of a thing or other property value, Art. 70(4) CC provides that before the decision on their confiscation is final and valid, the alienation of confiscated things or other property value is prohibited, including the prohibition to disposal thereof with the intention of frustrating their confiscation. A similar provision can be found in Art. 104 CC in relation to non-conviction based confiscation of things and other property value. This means that any legal act that would violate this prohibition is considered to be void from the beginning.

205. As for the additional elements in Criterion 3.7, all of them remained uncovered by the Czech legislation. First, there are still no special rules to provide for the confiscation of property belonging to an organisation that was found to be primarily criminal in nature. In their replies to the latest MEQ the Czech stated that the Czech criminal law did not regulate the criminal liability of legal entities and therefore it was not possible to impose forfeiture of a legal entity's property in criminal proceedings. This concerns both the inapplicability of the forfeiture of property and, on the other hand, the confiscation of a thing or other property value pursuant to Art. 70, the application of which also involves an "offender" (who cannot be a legal person) even though confiscation of things or other property value is possible under the regime of non-conviction based confiscation (Art. 101-102 CC) however, only in the framework of a criminal proceedings concerning a natural person. No information was provided as regards the criminal organisations without a legal personality but the evaluators doubt that there is any specific mechanism in this respect.

206. As described in the previous report, the civil forfeiture i.e. confiscation based on civil standards of evidence is still not recognised in Czech criminal law. Equally, nothing has changed as regards the Czech position towards the reversal of the burden of proof post-conviction for confiscation purposes. There is still no legal provision that would allow for such a possibility in Czech criminal procedural law and, likewise, there seem to be no concrete plans to introduce such a mechanism in the future. On the contrary, The Czech authorities defended their position in the MEQ according to which "reversal of the burden of proof is not allowed because this would be deemed to be against the presumption of innocence." Beside this theoretical argument, they also noted from a practical aspect that introduction of such a reversal had actually been considered during the drafting phase of the new CC "however it has been assessed as ineffective since under Czech circumstances and practical experience the perpetrators are *nulla bona* and if they have any property, they transfer it to third parties and do show no possession. The new Criminal Code therefore addresses the effectiveness of siphoning off proceeds of crimes from third parties and increasing the pecuniary

punishment." This explanation shows an apparent misunderstanding of the concept of reversing the burden of proof.

207. Statistical information was to a very limited extent provided to the evaluators and particularly as regards the performance of the confiscation and provisional measures regime. According to the table template that was included in the MEQ the following figures were provided before the onsite visit (in the format below, the originally separate tables are amalgamated but the contents remained the same).

Table 8: Performance of the confiscation and provisional measures regime

		Investigations		Prosecutions		Convictions (final)		Proceeds seized or frozen		Proceeds confiscated	
		cases	persons	cases	persons	cases	persons	cases	amount (EUR)	cases	amount (EUR)
2005	**ML**	44	NA	13	22	6	7	NA	NA	NA	NA
	FT	1	2	0	0	0	0	0	0	0	0
2006	**ML**	32	NA	16	35	10	10	3	2,148,120	NA	NA
	FT	1	1	0	0	0	0	0	0	0	0
2007	**ML**	32	NA	10	12	6	7	5	30,600	NA	NA
	FT	1	1	0	0	0	0	0	0	0	0
2008	**ML**	NP	NP	16	25	5	7	3	340,015	NA	NA
	FT	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP
2009	**ML**	NP	NP	15	24	11	16	5	460,361	NA	NA
	FT	NP	NP	NP	NP	NP	NP	NP	NP	NP	NP

NA: Not Available; NP: Not Provided

208. The table is incomplete, especially when it comes to the number of investigations in the last two years before the onsite visit. The table contains no figures related to terrorist financing but it may still be informative regarding money laundering cases where "money laundering" exclusively refers to the legalisation offence in Art. 216 CC. Unfortunately, there are no figures available (NA) as regards the number of cases in which proceeds were confiscated and neither on the aggregated amount of such proceeds. That is, the only statistical information that can be gained from this source is that some notable amounts of criminal proceeds were seized or frozen in money laundering cases in the last five years (with apparently 2,148,120 € in 2006) and that prosecutions were quite often accompanied with the application of such provisional measures (e.g. in 5 cases out of 10 in 2007 or 5 out of 15 in 2009).

209. No statistical information was provided to the evaluators regarding, for example, whether the above figures refer to the amount of proceeds seized during the investigation or those remaining seized even after the motion of the prosecutor ("after cancellation" as mentioned in another statistic to be discussed below). However, there is a total lack of statistical data regarding the amount of proceeds confiscated. Domestic authorities admitted that no such statistical information was kept as yet and they were going to collect and maintain such statistics as from the year 2010. Without this source of information, the evaluators were unavoidably prevented from drawing any well-grounded conclusion as to the effective functioning of the confiscation regime. Notwithstanding that, some representatives of the Police disclosed that, according to the data available to them, the ratio between seized and confiscated assets in the Czech Republic is definitely "very low".

210. The other statistics the evaluators were provided with onsite contains figures as regards the overall volume of asset seizure in the Czech Republic. In this context "asset" means criminal proceeds ("*výnos z trestné činnosti*") so one can also make a comparison between this table and the one above. In any case, it can be seen that the prosecution actually functions as a filter within the

confiscation regime, which can be measured by the proportion of assets released upon the act of the prosecutor (this difference was strikingly high in 2004-2005).

Table 9: Overall volume of asset seizure

In Euro-€	Assets seized	Amount of assets "after cancellation" (remained seized after the indictment)	Total damage caused by crimes in the Czech Republic
2004-2005	116,450,000	28,000000	(2005) 1,765,220,000
2006	59,500,000	43,000,000	996,366,000
2007	30,225,000	29,000,000	935,587,000
2008	55,440,000	55,000,000	1,298,740,000
2009	53,900,000	41,700,000	1,068,230,000

211. Another set of statistical figures was also provided to illustrate the amounts seized by the Unit Combating Corruption and Financial Crimes. These figures are relatively high as compared to the overall data above, which particularly refers to the year 2007 when the majority of all criminal proceeds seized or frozen in the Czech Republic were secured in cases investigated by the said law enforcement authority (€ 15,441,200 as opposed to €30,225,000).

Table 10: Amounts seized by the Unit Combating Corruption and Financial Crimes

In Euro - €	assets seized	amount of assets "after cancellation"
2007	15,441,200	14,250,200
2008	26,036,000	25,502,600
2009	21,313,700	11,950,500

Effectiveness and efficiency

212. Provisional measures are said to be taken quite regularly. Nevertheless, without any statistics on confiscation performance, the actual effectiveness of the regime could not be assessed and the evaluators are concerned about the imbalance between seized assets and those finally confiscated.

213. Both public prosecutors and the representatives of the FAU expressed some dissatisfaction with the speed and efficiency by which the seizure of financial means on a bank account (or accounts kept by other financial institutions) can be carried out by virtue of Art. 79a and 79b CPC. The main shortcoming they mentioned was that these measures cannot be applied by the law enforcement authorities unless they obtain prior approval from the public prosecutor. As a result, the police cannot act immediately in urgent cases and particularly before the initiation of any formal investigation when there is only intelligence information available upon which immediate action should be taken.

214. To overcome this deficiency, the same domestic authorities supported the involvement of the FAU with a potential for the immediate application of the freezing mechanism provided by the AML/CFT Law in Art. 20. As it was explained, the Police can, particularly in urgent cases, avoid waiting for the prosecutor's approval by turning directly to the FAU. Certainly, neither the Police nor any other law enforcement or prosecutorial authority could order, or at least ask, the FAU to freeze a bank account but nothing prevents them from triggering the suspension of a suspicious transaction by providing the FAU, usually after prior negotiations, with the respective intelligence information thereof. The FAU would automatically treat such information as an STR upon the

receiving of which they consequently and immediately suspend the transaction for a period of maximum 72h (Art. 20 para 3b) then file a criminal complaint to the law enforcement authority which may prolong the suspension with an additional 3 calendar days (Art. 20 para 7) and this time frame will necessarily be enough for the police or other investigating authority to prepare for any further action to be taken under the CPC.

215. In fact, the evaluators did not really understand why a law enforcement authority would, in order to perform its own functions within its own competence, make use of the powers of another administrative authority instead of making full use of its own power and the tools vested to it by the provisions of the CPC. Specifically, it remained entirely unclear why the Police or other investigating body would complain over the delay caused by obtaining a prior approval from the public prosecutor while each and every article of the CPC that provide for the various sorts of provisional measures, and specifically Art. 79a-79b on the seizure of banking and other accounts, specify that "the previous consent of the public prosecutor is not necessary in urgent cases which cannot be postponed. The police authority is obliged to inform the public prosecutor about such decision within 48 hours, and the public prosecutor shall either approve, or cancel, the same" as provided by, for example, Art. 79a(1) CPC. Indeed, the prosecutors added that in criminal proceedings, in principle, the FAU should not be needed for freezing a bank account and that the 48 hours deadline must be sufficient for obtaining a subsequent prosecutorial consent as there are always prosecutors on duty, at every level of the system (district-regional-high) beyond office hours and on holidays, who can give the necessary approval immediately.

216. Certainly, it cannot be considered a shortcoming if the law enforcement authorities get some helpful assistance from the FAU in freezing assets in cases of extreme urgency. Notwithstanding that, the purposes of a criminal procedure, such as the securing of assets with a view to their confiscation, should primarily be achieved by bodies so authorised by the CPC particularly if they do have the powers to immediately act on their own (48h must be enough to obtain the prosecutor's subsequent approval). Czech authorities should therefore reconsider the staff and budgetary resources the provision of this, otherwise very helpful, assistance requires so that the primary tasks of the FAU will not be jeopardised.

217. As for provisional measures and confiscation in general, the evaluators noted some promising signs of a growing importance of financial investigation that is, paying attention to the identification of criminal proceeds, from the law enforcement and prosecutorial side. Financial investigations are conducted parallel to the normal investigation and involve mainly the gathering of banking information, often in the framework of international co-operation. In this respect, the Police tend to apply their "best practice" routinely though it always depends on the nature of the case and, particularly, the public prosecutor's approach whether and how intensively and efficiently such a financial investigation is carried out. Some representatives of the police mentioned with satisfaction their co-operation with the agents of the Office for Representation of State in Property Matters in tracking and tracing property as well as securing property subject to temporary measures pursuant to Act No. 279/2003 Coll. on execution of securing the property and things in criminal proceedings, as it was described more in detail in the 3rd round MER.

2.3.2 Recommendations and comments

218. The Czech criminal legislation made some significant steps forward by enlarging the scope of the confiscation regime to encompass not only "things" but also the so-called "other property value" the definition of which is broad enough to meet the definition of "property" in the FATF Methodology. Art. 70 CC is therefore more in line with Criterion 3.1 nevertheless it remained unclear whether and to what extent the property that has been laundered, and cannot be considered as proceeds under the said Article, is covered by the confiscation regime.

219. Equally, the introduction of third party confiscation and, in general, the scope of the provisions governing non-conviction based confiscation is welcomed by the evaluators and so is the introduction of the confiscation of substitute value in both the conviction-based and the non-conviction based regimes. The same goes for the broadening of the range of temporary measures, which are now applicable to such assets as immovable property, assets held as financial participations etc. As a result of this, the Czech legislation adequately re-established the harmony between the confiscation and the provisional measures regime that had still been found problematic at the time of the previous evaluation.

220. On the other hand, the Czech criminal substantive law still does not clearly distinguish between direct and indirect proceeds and particularly as regards assets deriving from criminal proceeds such as income, profits or other benefits when it comes to the confiscation of proceeds of crime under Art. 70 CC. The evaluators found it a definite shortcoming taking into account that indirect benefits are clearly covered by the current regime of provisional measures in the CPC.

221. The evaluators note it as a further deficiency that confiscation of a thing or other property value remained entirely discretionary, especially since it can constitute an alternative measure to imprisonment.

222. As a consequence, it is recommended that the Czech authorities

- ensure consistency with all aspects of Criterion 3.1 by providing that confiscation applies in respect of all kinds of property that has been laundered;
- clearly provide for the confiscation of property that is derived directly or indirectly from the proceeds of crime; including income, profits or other benefits from the proceeds of crime;
- the substantially discretionary character of the confiscation of proceeds and instrumentalities should be limited; ideally, confiscation in such cases should be mandatory.

223. From a practical point of view, Czech law enforcement authorities should more efficiently exploit the possibilities that the CPC provides for the immediate securing of financial means of bank accounts and the involvement of the FAU and the administrative freezing mechanism should be reduced to extraordinary cases of ultimate urgency.

224. As far as the low seizure/confiscation ratio is concerned, the Czech authorities should first of all establish and maintain reliable and detailed statistics on the performance of the entire confiscation regime and then analyse the reasons why seizures, once they are taken more regularly and successfully, fail to result in more confiscations.

225. And finally, although it is but an additional element in the Methodology, the evaluators suggest that Czech authorities should reconsider introducing the reversal of the burden of proof post-conviction for confiscation purposes.

2.3.3 Compliance with Recommendations 3

	Rating	Summary of factors underlying rating
R.3	**PC**	• The confiscation of property that has been laundered is not expressly addressed by law and in lack of autonomous ML cases the practical applicability of the existing provisions is unclear; • There is an effectiveness issue with regard to confiscation; • The lack of statistics on confiscation negatively affects the system.

2.4 Freezing of Funds Used for Terrorist Financing (SR.III)

2.4.1 Description and analysis

Special Recommendation III (rated PC in the 3rd round MER)

226. SR.III in the Czech Republic is addressed in both domestic and EU-level legislation. Funds and assets of terrorists are thus to be frozen on the basis of EC Regulations and complementary domestic legislation.

227. As to the former, UNSCRs 1267(1999), 1390(2002) and 1455(2003) are implemented by Council Regulation No. 881/2002, while UNSCR 1373(2001) is implemented by Council Regulation No. 2580/2001. These EU Regulations are directly applicable in the Czech Republic without the need for domestic implementing legislation. In this respect, no substantial changes have taken place since the 3rd round MER and therefore all findings and conclusions of the previous evaluation team are valid without the need of reiteration.

228. The situation on domestic legislation changed since the 3rd round evaluation. The Czech lawmakers adopted the Act on Implementation of International Sanctions (Act no. 69/2006 Coll. hereinafter: IIS Act). The evaluators welcome this legislative step, as a result of which the reliance on the mechanisms of the EU to comply with SR.III is helpfully complemented by the establishment of an EU compatible legal framework (by revoking, among others, Act no. 48/2000 Coll. on measures concerning the Afghan Taliban movement and Act no. 98/2000 Coll. on the implementation of international sanctions for the purposes of preserving international peace and security) and the new law now addresses a number of the issues raised by the 3rd round MER.

229. As noted in the previous report there are separate regimes in the European Union applicable, on the one hand, for non-EU-based entities or non-EU residents or citizens listed as terrorists (EU externals) and those having their roots, main activities and objectives within the European Union (EU internals). The latter are not covered by Council Regulation No. 2580/2001 due to the scope of the EU Common Foreign and Security Policy. Therefore the EU adopted two Council Common Positions (2001/930/CFSP and 2001/931/CFSP) on the fight against terrorism, which are also applicable to persons, groups and entities based or resident within the EU but their implementation requires subsequent enactment of national legislation. In the Czech Republic, the latter was specifically carried out by the Regulation of the Government No. 210/2008 Coll. which prohibits providing goods, services or activities specified, among others, in Art. 5 para 2 of the IIS Act (sanctions in the area of financial transfers, use of other payment means, purchase and sale of securities and investment tools) to natural persons and members or representatives of organised groups so listed by the above mentioned EU instruments (the lists are annexed to the regulation).

230. The Czech authorities emphasised that SR.III was implemented both by the AML/CFT Law on the one hand and by the general IIS Act together with all the relevant and directly applicable EU legislation as extended by the above mentioned Regulation No. 210/2008 Coll. Although the EU regulations had already been considered as self-executed in the Czech Republic at the time of the 3rd round evaluation, the previous team found limited awareness and commitment among entities in the financial industry to apply such freezing measures directly and, indeed, the authorities disclosed that the freezing of funds was basically applied either in the course of a criminal procedure pursuant to the CPC provisions on temporary measures or, in situations not related to criminal proceedings, under the AML Act then in force (No. 61/1996. Coll.) by virtue of Art. 6 on the suspension of the execution of an order from a client. Such a measure was also applicable to transactions that had the objective of financing terrorism since the definition of “suspicious transaction” under Art. 1a(6) included transactions the funds used in which were “intended for the

financing of terrorism, terrorist activities or terrorist organisations" and, particularly, in cases where a participant to the transaction was a legal or natural person against whom the Czech Republic was applying international sanctions pursuant to a special Act, or, where the subject of the transaction involved sanctioned goods or services provided to a sanctioned subject or individual (para 6 lit f and g) in which respects the law made explicit reference, in a footnote, to the above mentioned Acts no. 48/2000 Coll. and no. 98/2000 Coll.

231. The current AML/CFT Law (no. 253/2008 Coll.) is broadly similar with only minor amendments. The definition of "suspicious transaction" in Art. 6 now simply refers to circumstances that lead to, among others, the suspicion of terrorist financing as defined by the law, without further specification. According to Art. 6 para 2 a transaction shall always be perceived as suspicious, should:

a) the customer or the beneficial owner be a person against whom the Czech Republic had imposed international sanctions under the Act on Implementation of International Sanctions,
b) the goods or services involved in the transaction fall in the category against which the Czech Republic had imposed international sanctions under the Act on Implementation of International Sanctions(...)

232. Thus, the general scope and structure of this categorisation remained practically the same with the only difference that now it is the IIS Act to which reference is made in this respect.

233. As was discussed in relation to Recommendation 3 above, the suspension of a client order, both under the former AML Act and the current AML/CFT Law, is only possible for a total period of 72 hours and if the suspicion is confirmed, the FAU submits a criminal notification to police bodies and the transaction can be suspended for a further period of three days to enable the police bodies to decide on further steps in the procedure. As a consequence, this administrative freezing mechanism would in itself finally lead to the application of criminal procedural standards (whether or not to apply the provisional measures under Art. 79a to 79c CPC) with the aim of initiating a formal criminal procedure.

234. In addition to that, the current definition of a "transaction" in Art. 4(1) still covers "any interaction of the obliged entity with another person should such interaction lead to the handling of the other person's property or providing services to such other person" which could in itself be considered limiting, as it was in the former AML Act. More specifically, the new law makes no general reference to assets held by designated persons and entities. Instead it refers to (goods or services involved in) a transaction thus excluding, at least in principle, the reporting of dormant funds where there has been no "interaction" - though The Czech authorities are of the legal opinion that the holistic interpretation of the AML/CFT Law (particularly that of Art. 18 on the reporting obligation) may extend the scope of applicability of this term.

235. Concerns about the overall applicability of the freezing regime built upon the preventive AML/CFT legislation appeared to be over by the changes in the legal background caused by the adoption of the IIS Act which provides for an administrative freezing mechanism applicable to funds and assets subject to international sanctions imposed for the purpose of maintaining or restoring international peace and security, protecting fundamental human rights and fighting terrorism.

236. While the AML/CFT Law only requires the reporting of "transactions" as discussed above, the reporting duty in the IIS Act appears, on the face of it, is significantly broader as it makes reference to "assets" instead. Pursuant to Art. 10(1) "who establishes in a credible manner that he or she has in possession assets which are subject to international sanctions, shall report the same to the

Ministry without undue delay" (the evaluators learnt that "Ministry" i.e. the Ministry of Finance equals FAU in this context).

237. However, the definition of "assets" is, according to Art. 3(f) of the same Act, limited to movable and immovable items as follows:

*"…any movable or immovable item owned, held or **otherwise controlled** by the entity which is subject to international sanctions, by a person who is subject to international sanctions, imported to the territory which is subject to international sanctions or earmarked for export to the territory which is subject to international sanctions*".

238. "Funds or assets" in the sense of the FATF Methodology should cover financial assets, property of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such funds or other assets, including, but not limited to, bank credits, travelers cheques, bank cheques, money orders, shares, securities, bonds, drafts, or letters of credit, and any interest, dividends or other income on or value accruing from or generated by such funds or other assets.

239. The IIS Act contains "goods" as a different legal term the definition of which (Art. 3 para g) appears broader than that of "assets" above: *"goods shall mean material things, rights and other values, such as money in any form including deposits and receivables from deposits, other means of payment, securities and investment tools, and further any material designated for production of products, products, services, software and technologies and any other movable and immovable items which are subject to trade regardless of the manner and circumstances under which they are obtained",* but Art. 10(1) as quoted above, only refers to "assets" and not to "goods" (a positive feature is, however, that assets under the control of the designated entity or person are also included.)

240. Since the reporting obligation under Art. 10 IIS Act does not appear applicable to funds other than tangible objects (movable and immovable items) the natural and legal persons, who possess assets/property subject to international sanctions in the form of bank account money, dematerialised securities, property rights etc. may only be obliged to report them to the FAU pursuant to the AML/CFT Law, provided that they are obliged to do so. Reference is made at this point to Art. 6(2) lit a)-b) as quoted above. Notwithstanding all these apparent discrepancies in the domestic legislation, The Czech authorities made it clear that neither the AML/CFT Law nor the IIS Act could to any extent restrict the applicability of the relevant EU legislation in this field. On the contrary, these pieces of legislation are to complement the EU regulations when it comes to freezing funds or assets according to the respective UNSCRs. In other words, reporting of funds and other assets belonging to designated persons and entities may take place according to (i) the IIS Act if the respective assets consist of tangible items and (ii) the AML/CFT Law in case of any other property or property rights involved in a transaction carried out by a reporting entity and first and foremost (iii) according to the directly applicable EU restrictive measures undoubtedly covering any tangible or intangible items.

241. In any ways, it is the FIU that receives the information and carries out any further measures for the freezing of the assets, in which respect all this relevant legislation appear to complement each other. Certainly, the apparent harmony and co-applicability of European and domestic legislation should ideally be tested by concrete cases of freezing assets but no case practice within the sphere of SR.III has so far been achieved by the Czech Republic.

242. Regarding criterion III.4, the 3rd round MER specified a number of elements which made part of the definitions of terrorist funds and other assets subject to freezing and confiscation pursuant to the respective UNSCRs and hence the FATF requirements but which were not covered by the two

EU Regulations. As a result, the definitions contained in the regulations did not cover the full extent of the definitions given by the Security Council (or FATF).

243. This difference however poses no problem in the application of the IIS Act, as its scope extends to international sanctions (orders, prohibitions or restrictions imposed for the purpose of maintaining or restoring international peace and security, protecting fundamental human rights and fighting terrorism) provided they stem, pursuant to Art. 2(1):

a) from UNSC Resolutions adopted under Art. 41 of the Charter of the United Nations,
b) from common positions and joint actions or other measures adopted under the EU Treaty common foreign and security policy (CFSP) provisions; or
c) from directly applicable legislation of the European Communities which implements a common position or action adopted under the EU Treaty CFSP provisions.

244. Considering that para 1(a) explicitly provides for the direct implementation of the respective UNSCRs this solution should, at least in principle, exclude any uncertainty caused by the above mentioned difference in definitions.

245. 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. The Council and the European Commission make Regulations and Decisions public through the Official Journal of the European Union, which can be accessed by anyone on the website of the European Union. Furthermore, all EU legal acts are being published in the Czech official gazette Collection of Laws (Coll.). Information for financial institutions on restrictive measures is also available on the websites of the FIU at www.mfcr.cz/mezinarodnisankce.

246. The authorities consider that publications on the EU's official journal and on the websites of the EU and the Czech FAU are sufficient notifications to all for whom the legislation creates obligations and rights. The Czech authorities advised that the financial sector is in close connection with the FAU and it is regularly informed about international sanctions by direct communication or by information published by the FAU on the Internet. Moreover, the FAU places importance on awareness-raising and hence it continuously provides general explanations and specific advices via mail, e-mails and phone both on demand and also spontaneously like providing answers to frequently asked questions on its website. In addition to that, its representatives participate at stakeholders' meetings (e.g. the FAU director visits each Security Commission meeting of the Czech Banking Association) and the FAU offers also training for associations of stakeholders. As a result, the financial sector is supposed to be regularly informed by the FAU about international sanctions by either direct communication or by information published on the Internet.

247. From another aspect, however, it also means that the situation remains broadly unchanged from the third round evaluation. As for Criterion III.5, there remains heavy reliance on the expectations that obliged entities access EU and FAU web sites for checking purposes while there continue to be no specific guidelines to ensure an effective system regarding action under freezing mechanisms. Equally, in case of Criterion III.6 The Czech authorities advised that the "EU Best Practices for the effective implementation of restrictive measures" is used to give practical guidance and recommendations on issues arising in the implementation of financial sanctions. However, there are no guidelines which flesh out these best practices for the benefit of obliged entities.

248. Criterion III.7 requires countries to have in place effective and publicly known procedures for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons or entities in a timely manner consistent with international obligations. In this respect, the findings

and conclusions of the third round report remain valid. The Czech Republic has no listing/delisting mechanism of its own and it relies upon the formal de-listing procedures established under the European Union mechanisms. These had already been discussed in the previous report and the evaluators were not made aware of any substantial changes in this field. While there are no procedural rules or legislation which sets out the way in which a person who is de-listed from the UNSC 1267 list, the FIU as part of its overall competence in implementing the IIS Act would assist and advice individuals in this circumstances.

249. The situation is different when it comes to the unfreezing of funds and assets of persons or entities inadvertently affected by freezing (as a result of mistakes or namesakes) upon verification that the person is not a designated person (Criterion III.8). In addition to the European Union mechanisms, the IIS Act introduced a domestic procedure too. As it is provided by Art. 11(5) the FAU shall release assets subject to international sanctions provided that (a) the affected person proves that he/she is not a person subject to international sanctions and that he/she is the owner or holder of those assets in due course (b) the document imposing the international sanction stipulates a specific person to whom the assets are to be released or (c) there is a final judgment of a domestic government body of appropriate jurisdiction, a foreign government body or an international organisation the decision of which is enforceable in the Czech Republic. Out of these, it is lit (a) which provides for a procedure meeting, in any extent, the requirements of Criterion III.8. Nevertheless these procedural rules do not appear to guarantee that unfreezing takes place "in a timely manner" as required by this Criterion.

250. At the time of the on-site visit, there had not been any cases in the Czech Republic requesting delisting or unfreezing in the context of SR.III.

251. Appropriate procedures by which the freezing measure can be challenged with a view to having it reviewed by a court, as required by Criterion III.10 are provided, first and foremost, at the European level. Freezing mechanisms envisaged by the relevant EC regulations can be challenged at the Courts of the European Community whereby any natural or legal person directly and individually affected by a restrictive regulation or decision can challenge it under the general principle established by Art. 263 of the Treaty on the functioning of the European Union. The legality of freezing measure can also be challenged by *bona fide* third parties before the Courts of the European Community.

252. In addition to that, the freezing decisions taken under the IIS Act can be challenged under the general rules of administrative procedure (Law No. 500/2004 Coll.) The freezing of funds pursuant to the IIS Act is considered an administrative act, in which respect Art. 12(5) specifies that "proceedings in matters covered by this Act are governed by the Rules of Administrative Proceedings, unless provided otherwise herein". Against the decisions the FAU may make pursuant to Art. 12(1) of the IIS Act, including the application of restriction or prohibition of disposing of assets (lit a) or forfeiture of assets not released upon request (lit b), a remonstrance may therefore be filed with the FAU according to Art. 12(3). The FAU as an administrative authority decides upon such a remonstrance and its decision is subject to further court review: it is possible to appeal against such measures with a view to bringing the case before the administrative court.

253. Notwithstanding that, the evaluators note that such a procedure does not defer a range of decisions under Art. 12(1) including those referred to above. In this context, from the the point of timeless, the ordinary administrative appeal procedure is not an appropriate mechanism to remedy, in a timely manner, the situation of such persons or entities affected by a freezing mechanism upon verification that the person or entity is not a designated person.

254. At the time of the 3rd round, the Czech Republic had no specific national legislation to meet the requirements in Criterion III.9, as a result of which an application for authorising access to frozen funds, supposed to be dealt with under the Criminal Procedure Code will be dealt with instead by decisions taken by the judicial bodies on an ad hoc basis (although no such cases were reported to have even occurred). Legal uncertainty was finally resolved by the adoption of the IIS Act which brought a significant development in this field.

255. According to Art. 9(1) of IIS Act, the Ministry of Finance (i.e. the FAU) may, provided the document imposing the respective international sanction so permits, grant, in compliance with the same document and to the extent necessary, an exclusion from a prohibition or restriction for a number of specific purposes listed therein. Considering that UNSCR 1267, as amended by UNSCR 1452(2002) is implemented in the European Union through Art. 2a of the EC Regulation 881/2002 which authorises the use of frozen funds for basic expenses, certain fees or for extraordinary expenses, the evaluators are of the opinion that the preconditions set out in Art. 9 of IIS Act are in line with the requirement in Criterion III.9.

256. According to the said Article, access to frozen funds may be granted, among others for:

- medical services and health care;
- provision of social allowance and government social benefits, retirement, healthcare benefits, unemployment benefits etc.;
- payment of wages, refund of wages, redundancy pay and other payments due under the employment or similar contract;
- alimony and child support;
- damages due to activities unrelated to international sanctions hereunder and for insurance payments thereto related;
- payment of outstanding debt by an entity or person subject to international sanctions provided the debt was not incurred by violation of the international sanctions etc;
- payments to the same entity/person due and payable on the basis of contracts, agreements or liabilities entered into prior to international sanctions against the entity/person, provided these payments are made to an account held in the Czech Republic or another country of the European Union, to which account all deposits made are considered to be assets subject to international sanctions.

257. Pursuant to para 2 the exemption may equally be granted upon request or *ex officio*. In its decision, the FAU sets forth the terms of the exclusion in a manner which would allow for the checking of the proper application of its terms and which would not mar the international sanctions. Only in case of a “grave” violation of such terms shall the Ministry revoke the exclusion.

258. No further procedural rules can be found in the IIS Act or elsewhere that would define e.g. deadlines for such a decision (if the exclusion is granted upon request) or legal remedy against it (though the general provisions of the Rules of Administrative Proceedings, as discussed above, may be applied). While the conditions for exemption are in accordance with Criterion III.9 only case practice will prove whether the existing rules actually provide for “appropriate procedures” in this respect.

259. The general criminal law framework and mechanisms on seizure and confiscation have been discussed in relation to Recommendation 3 earlier. All this legislation is of general application and hence it could apply to assets involved in the commission of terrorist financing offences through ordinary judicial means, beyond those targeted by UNSCRs 1267 and 1373. Similarly to the time of the third round report, the rights of *bona fide* third parties (Criterion III.12) are protected according to civil law rules where ownership right may be claimed by civil law action.

260. As regards the general requirements on monitoring in Criterion III.13 the evaluators were not provided with any information substantially different from what had been disclosed in the previous round of evaluation in this respect. It is now Art. 15 of IIS Act that regulates this area, providing that:

- Government bodies responsible for the oversight shall oversee also fulfilment of obligations hereunder; if there is no such government body, the oversight shall be carried out by the Ministry. If problems are uncovered in connection with obligations hereunder, then the respective government body shall provide available documentation for punitive proceedings to the Ministry of Industry and Trade in matters that fall under its jurisdiction and to the Ministry in all other matters. The responsible government body shall continue to co-operate with the said ministries in the punitive proceedings.
- The Czech National Bank shall oversee the performance hereunder in case of banks, branches of foreign banks and persons who have been issued a foreign-currency licence by it; in cases where problems are uncovered the Czech National Banks shall proceed in keeping with para 1, second sentence.

261. Nonetheless, the IIS Act introduced a comprehensive and dissuasive sanctioning regime in its Part Five, providing for a range of administrative sanctions applicable in case of non-compliance with the obligations prescribed by the law, including, according to Art. 17(1)

- violating a restriction or prohibition set forth in the IIS Act (also those related to financial services and financial markets - Art. 5 para 2);
- violating a restriction or prohibition set forth in directly applicable legislation of the EU Communities whereby international sanctions have been imposed ;
- failing to meet the reporting duty pursuant to the IIS Act;
- disposing of assets subject to international sanctions in conflict with the law;
- violating the confidentiality obligations.

262. The first three infractions can be sanctioned by a fine up to CZK 4.000.000 (approx. € 165,000.-) while the others carry fines of a lower maximum amount. The same acts committed by a legal person or a self-employed individual are considered as an administrative offence and sanctioned accordingly or, in addition, by confiscation of assets. Furthermore, if the act was committed either for a material benefit or causing a damage in excess of 5.000.000 CZK (approx. € 205,000.-) then the maximum fine may reach the amount of 50.000.000 CZK (approx. € 2,050,000.-).

263. While these sanctions are applicable against those who have in possession assets that are subject to international sanctions, the sanctioning regime of the AML/CFT Law can also be applied against reporting entities for breaches of reporting and other obligations in the context of SR.III.

264. At the time of the 3rd round evaluation, the Czech Republic had no specific criminal sanctions for non-reporting of STRs (apart from some views that the legalisation offence could apply in some cases) but the legal framework currently in force provides for a range of sanctions applicable in the context of SR.III. Specifically, Art. 410 CC establishes the violation of international sanctions as a criminal offence providing that

Whoever violates to a significant extent an order, prohibition or restriction provided in order to maintain or restore international peace and security, the protection of human rights and the fight against terrorism, to the observance of which the Czech Republic is bound by its membership in the United Nations or the European Union, shall be punished by imprisonment up to three years or a pecuniary punishment.

265. Aggravated cases apply if the damage caused by or the benefit derived from the act is substantial (para 2) or a large-scale one (para 3) or if the act is committed in connection with an organised group operating in several states or it causes a serious threat to the international position of the Czech Republic or significantly contributes to the disturbance of international peace and security, measures aimed at protection of human rights or fight against terrorism. These cases carry imprisonment from 6 months to 5 years and 3 to 8 years, respectively.

266. The evaluators were not given any detailed, statistical information 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. Without of such information it could not properly be assessed whether and what positive effects the introduction of the IIS Act has brought.

267. At the time of the visit there were no funds frozen in the Czech Republic pursuant to UNSCRs 1267 and 1373. However, the evaluators learnt that the regime had already been applied for the execution of an international sanction, that is, in relation to a transaction prohibited by the IIS Act but not upon any of the UNSCRs referred to under SR.III. The Czech Republic has solved a case concerning the payment of advance invoice for goods to Myanmar (Burma) paid by a sanctioned entity. The funds were seized in July 2008 in the amount of 10.069 USD and have since been in deposit account with the Czech National Bank.

268. It appears that the financial sector is aware of the need to check the terrorist list. It is not clear whether this is happening in DNFBP.

2.4.2 Recommendations and comments

269. It is beyond doubt that the situation has improved significantly since the adoption of the IIS Act as a comprehensive domestic law by which the legislators addressed a number of issues raised by the previous evaluation team.

270. As a result, certain gaps in the EU legislation such as the coverage of "EU internals" has successfully been remedied. Instead of, or rather alongside, the freezing (suspending) mechanism in the AML/CFT Law, the IIS Act introduced an administrative freezing mechanism with all roles and responsibilities thereto, including procedural rules for appealing against the freezing measure and other rules for allowing access to the frozen assets in line with UNSCR 1452. In addition, the current legislation provides for a dissuasive sanctioning regime as well.

271. Notwithstanding that, the evaluators still feel that the reporting duty that would trigger the freezing measures is not designed in a way that would, a practical point of view, allow the detection of all assets held in the Czech Republic by listed persons, and particularly assets not manifested in "movable and immovable items" but in non-material property or property rights (which are only covered by the directly applicable EU regulations) and/or that are not involved in a "transaction" as defined by the AML/CFT Law. While the evaluators understand the holistic approach of the Czech authorities by which all the three sources of legislation (AML/CFT Law, IIS Act and the EU regulations as extended by the Government Regulation No. 210/2008. Coll.) are to be taken into account at the same time whereby the domestic law complements the self-executed EU legislation, they cannot see why the domestic law needs to be more restrictive in its scope (e.g. when it comes to the question of intangible objects).

272. There are concerns that the DNFBP are not always in a position to identify persons listed on TF lists.

273. It is therefore recommended to:

- seek for more harmony between the domestic legislation and the EU regulations in this field and, particularly;
- provide that all domestic law(s) applicable in the context of SR.III clearly encompass the whole concept of “funds and other assets” as defined by the FATF Methodology;
- enhance and guarantee timeless in the national procedure for the purpose of delisting and unfreezing requests upon verification that the person or entity is not a designated person;
- more guidance is required on SR.III obligations to distinguish them from SR.IV reporting duties;
- more specific guidance to DNFPB on availability of and use of TF lists.

2.4.3 Compliance with Special Recommendation III & 32

	Rating	Summary of factors underlying rating
SR.III	**LC**	• It is unclear whether all pieces of the freezing mechanism clearly encompass the whole concept of “funds and other assets” as defined by the FATF Methodology; • The national procedure provided by the IIS Act for the purpose of unfreezing requests upon verification that the person or entity is not a designated person does not guarantee the timeliness of the process; • There is no clear guidance to distinguish SR.III obligations from SR.IV obligations; • Concern that DNFBP are not always in the position to identify persons on TF lists (effectiveness issue).

2.5 The Financial Intelligence Unit and its functions (R.26)

2.5.1 Description and analysis

Recommendation 26 (rated LC in the 3rd round MER)

274. Department 24 of the Ministry of Finance is the Financial Analytical Unit (FAU) vested with the FIU core functions. There was a separate specific provision on the FAU in the preventive Law which was in force at the time of the 3rd mutual evaluation (Section 10). The new AML/CFT Law, enacted on the 1st September, 2008, refers to the FAU as the “Ministry”. Indeed, the new AML/CFT Law lacks a “stand-alone” article establishing the core FAU functions (receiving, analysing, disseminating STRs) as was the case with the previous act. The functions of the FAU are now distributed throughout the text of the new AML/CFT Law.

275. Section 18 paragraph 1 of the new AML/CFT Law refers to the obligation to disclose STRs to the Ministry (FAU).

276. According to Section 24 of the new AML/CFT Law, the FAU has the power to request and obtain from obliged entities all the information and documents on transactions under analysis. The obliged entities have to provide access to the documentation on site if the Ministry requests them to do so. Special procedures are in place for lawyers and notaries as, under section 27 paragraph 4, the FAU can request and obtain such information and documents via the respective Chambers. This issue is analysed under R.16.

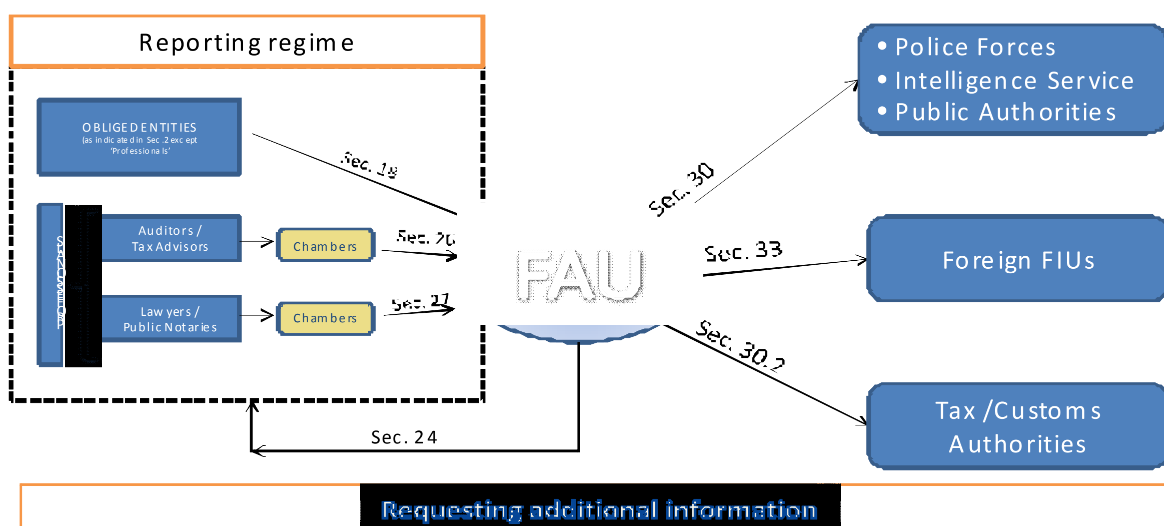
277. According to Section 31 paragraph 1 of the new AML/CFT Law, the FAU “collects and analyses information obtained in the course of performing its tasks ...” and “The Ministry may request information necessary for the compliance with obligations under the Act from the Police of the

Czech Republic, intelligence services and other public authorities (Section 30 paragraph 1 of the new AML/CFT Law).

278. Internal rules on the procedure for analysis of STRs were issued by the Director of the FAU in 17.08.2009, and entered into force since 01.09.2009. The STR is sent by the Director to the Head of the Analytical Department who, according to the workload of the analysts, assigns the STR to a specific analyst. The analyst has at maximum two months to complete the analysis of the case and to report back with a proposal to the Head of the Department, who then submits a proposal for action to the Director of the FAU. The analyst may request an extension of the deadline if the case is of particular complexity.

279. The FAU analysts use 12 licences of the analytical software "I2", the Document Management system (ELO), and "Moneyweb" (whose function is described below) and other systems to assess the information requested for the analysis, to trace the movement of funds and to determine the profile of the persons (both natural and legal) involved in the STR under analysis.

Diagram 1 : Disclosing and analysing phases



280. The scheme above (Diagram 1 – Disclosing and analysing phases) describes the disclosing regime for "obliged entities" and the main domestic authorities and counterparts through which the FAU requests information in order to perform the analysis of the STRs. The scheme also indicates the relevant sections (sec.) of the new AML/CFT Law under which the FAU is empowered to receive STRs and to request information from domestic and foreign authorities.

281. When the FAU discovers facts indicating that an offence was committed, it submits a criminal complaint to the law enforcement authority, copying it to the prosecutor's office not just for ML. Any crime in the CC resulting in proceeds in the Czech Republic is a predicate offence for ML and the FAU is not restricted in the types of case it may refer to law enforcement if they have sufficient facts. The Ministry similarly informs the Customs or Tax authorities if the facts are not related to a

crime but are within their competence. (Section 32 of the new AML/CFT Law). (see also Diagram 2-Dissemination phase)

282. According to the practices established by the Czech authorities, the law enforcement authority designated to receive the criminal complaint from the FAU is the Anti Money Laundering Division (the "AML Division") of the "Unit for Combating Corruption and Financial Crime" (UCCFC).

Diagram 2: Dissemination process

283. Under Section 20 of the AML/CFT Law, obliged entities may suspend a transaction that is considered suspicious in terms of money laundering or terrorism financing. The FAU has the power to extend that period for not more than 72 hours after receiving the STR, to suspend the customer's transaction or to freeze the assets for the time indicated above. After the analysis, in case the FAU decides to notify a criminal complaint to the AML Division on the suspended transaction, the latter has 3 calendar days to decide to freeze the transaction otherwise the obliged entities shall perform the operation. The extent to which the freezing/suspension actions of the FIU have resulted in effective criminal asset recovery is unclear.

Table 11: Suspension of transactions under Section 20 of the AML/CFT Law

Suspension of transactions Section 20 AML/CFT Law	2009		I Q 2010	
	Number	Amount involved (equivalent value in EURO)	Number	Amount involved (equivalent value in EURO)
Transactions suspended by the obliged entities (Section 20.1)	93	N/A	39	N/A
Action by FAU to prolong the suspension of transactions (Section 20.3.a)	45	≈ 83.000 €	28	≈ 500.000 €
Action by FAU to suspend the transaction of to freeze the assets (Section 20.3.b)	2	N/A	1	N/A

N/A: not available; 1 euro ≈ 24,3 CZK

284. Moreover the new AML/CFT Law assigns additional functions and powers to the FAU described hereafter.

285. The Ministry (FAU) is also vested with the following additional functions and powers:

a. Reviewing the internal procedures of the financial institutions: Section 21 AML/CFT Law;
b. Receiving information from the tax administration in case of suspicions of money laundering and terrorism financing: Section 30, paragraph 2, AML/CFT Law;
c. Granting of exceptions according to the provisions indicated in Section 34 of the AML/CFT Law;
d. Acting as supervisory authority for verifying the compliance with the AML/CFT Law: Section 35 of the AML/CFT Law;
e. Authorizing persons acting on remittance of money on a postal contract: Section 29 of the AML/CFT Law;
f. Proposing to the competent authorities the revocation of a business licence of the persons that repeatedly violate the AML/CFT Law: Section 36 of the AML/CFT Law;
g. Obliging Professional Chambers to carry out inspections to verify the compliance with AML/CFT requirements: Section 37 of the AML/CFT Law;
h. Submitting proposals for the revision of legislation as indicated in the "Competency of the department" (i.e. FAU) in the Rules of Organisation by the Ministry of Finance;
i. Providing training as indicated in the "Competency of the department" (i.e. FAU) in the Rules of Organisation by the Ministry of Finance.

286. The new AML/CFT Law does not require the Ministry (FAU) to provide the obliged entities with specific guidance on the reporting obligation but the FAU has prepared and posted such guidance on the website of the Ministry of Finance (www.mfcr.cz/fau), including the reporting form.

287. This guidance is however not mandatory. The evaluators noted that not all representatives of the obliged entities were aware of the guidance on the website.

288. Under FATF c.26.3, the FAU should have access, directly or indirectly, on a timely basis to the financial, administrative and law enforcement information that it requires to properly undertake its functions, including the analysis of STRs.

289. According to Section 30 of the new AML/CFT Law, the FAU may request information from the Police, Intelligence Services and other public authorities, including Tax authorities and Customs (see also, Diagram 1 - Disclosing and analysing phases).

290. According to Section 30, paragraphs 3 and 4, of the new AML/CFT Law, the FAU is provided with specific and detailed information from the Central Register of inhabitants and foreigners, in electronic format provided the technical means are in place (the FAU uses "Moneyweb" for its contacts with the Police and the other public authorities to obtain such information).

291. The evaluators verified on-site that the analysts have direct access to "Moneyweb "in the process of STR analysis. Moneyweb is an encrypted system of connection between the FAU and the Police on the one side and between FAU and the major banks operating in the Czech Republic (9 banks out of 39 that send approximately 80% of the STRs, as indicated by Czech authorities).

292. Section 30, paragraph 5 limits the use of information provided to what is necessary for the analysis.

293. The FAU requests information from the police relating to criminal records, convictions, current investigations, individuals under supervision and judicial control and/or under investigation but not convicted, as well as making foreign police requests for assistance where necessary. In urgent cases, the Ministry (FAU) analysts may request and obtain information from the domestic Police within 24 hours.

294. As regards administrative information, the FAU has access to the information held in the business registers, the tax registers, population register, cross-border transportation register, NPO/NGO registers, vehicles register.

295. The FAU is currently developing a Central Register of Accounts, which will contain information on all accounts held in banks operating in the Czech Republic.

296. The FAU has access, on-site or upon request and within a given period of time, to the information and documents on transactions and persons involved. The obliged entity shall provide access to documentation onsite if requested to do so (Section 24 of the new AML/CFT Law).

297. There is a specific limitation under Section 27, paragraph 4, for lawyers and public notaries, according to which additional information and documents are to be requested by the FAU via the professional bodies (Chambers). This provision does not limit the possibility of the FAU to obtain information but it could breach the confidentiality of the cases under investigation. The new AML/CFT Law is silent on this issue for other professionals (i.e. Auditors, Tax Advisors, etc.).

298. As indicated above, FAU analysts request information via the "Moneyweb" system from the major banks and from the other obliged entities via the so called "Moneyweb Lite Klient", which is accessible on websites of the Ministry of Finance. Extending the "Moneyweb" system would influence positively the analytical workflow of the FAU.

299. According to Section 32 paragraph 1 of the new AML/CFT Law if the "Ministry find facts suggesting that a crime had been committed, it shall lodge a criminal complaint under the Code of Criminal Procedure and provide the law enforcement authority with all the information that the Ministry had found in the course of its investigation." This provision is wider than the FATF standards as the FAU has to disclose "facts suggesting that a crime" (money laundering and TF offences are only part of the remit). The AML/CFT Methodology interpreting the FATF standard requires disclosure to the domestic (investigating) authority when there are grounds to suspect money laundering or terrorism financing. Furthermore, the FAU is an administrative type of FIU with no law enforcement powers to investigate facts that could be related to crimes.

300. During the on site visit the representatives of the FAU indicated that they interpret this provision as a general requirement which permits the FAU to reveal cases and facts which are not only related to money laundering or terrorism financing. According to them this provision is a useful means to provide the law enforcement authorities with cases in the public interest. According to the FAU, analysts met during the onsite visit were aware that suspicions should be reported without necessarily looking for evidence.

301. According to the national AML/CFT system, the "*criminal complaints*" are referred by the FAU to the Anti Money Laundering Division of the "Unit for Combating Corruption and Financial Crime" (UCCFC) of the Police which investigates the cases.

302. The table below shows the number of STRs received and analysed by the FAU (i.e. "cases opened" according to the FAU procedures) and the number of cases referred to the Police Forces. The third row displays the percentage of criminal complaints notified out of the total number of STRs received and analysed.

Table 12: STRs received and analysed by the FAU

	2008	2009	1Q2010
STRs received and analysed by FAU	**2320**	**2224**	**391**
Criminal complaints referred by FAU to Police Forces /AML Div.)	**78**	**191**	**73**
Criminal complaints/STRs (%)	**3.4**	**8.6**	**18.7**

303. As indicated above, the percentage of criminal complaints notified to the AML Division of UCCFC has increased since 2008 and they are all related to money laundering offences, according to the Ministry (FAU). None of them refer to the financing of terrorism. The absence of statistical data on how many money laundering cases have in practice resulted from the FAU reports sent to the Police makes any assessment of the impact of the FAU reports on overall law enforcement results very difficult. From the information provided, the impact of the FAU reports on overall law enforcement results for most of the years under review appears to be small, as very few of the reports become effective law enforcement investigations.

304. Since 2008 the Ministry (FAU) has sent almost the same number of reports to the Tax Administration as it has to its main police counterpart (the AML division). This raised issues as to how the analyses are performed. It was unclear whether the priority is looking for tax infringements rather than AML/CFT and the extent to which this statutory responsibility to look for facts suggesting other crimes (as reflected in disclosures to Tax and Customs) diverts valuable FAU analytical resources from the traditional AML/CFT mission of the FAU. The evaluators were advised that analysts often find accounts that were not declared as business accounts. FAU analysts have access to tax databases and routinely interrogate those databases in their analyses.

Table13: Disclosures sent to Tax administration or Customs

	2008	2009	1Q2010
Disclosures sen to to Tax Administration	**128**	**180**	**60**
Disclosures	**7**	**2**	**5**

305. As noted, there is no specific provision in the new AML/CFT Law on the independence and autonomy of the FAU. According to the law, the FAU (Department 24 of the Ministry of Finance) is vested with the functions of a FIU. There are no further by-laws governing the organisation of the Ministry.

306. At the time of the 3rd round evaluation a decree governed the organisation of the FAU. It appears that since the new AML/CFT Law the organisation and procedures of the FAU are only defined by the "Rules of Organisation" (annexed) that indicate the competences of the Ministry (FAU) and of its three Divisions. The Director of the FAU is appointed by the Minister of Finance and is responsible to the Deputy Minister of Finance. The Minister of Finance establishes the Divisions within the FAU and appoints the Heads of Divisions on the proposal of the Director of the FAU. There are three Divisions: the International Co-operation and Legal Division (international information exchange, international sanctions, AML/CFT legislation), the Analytical Division (analysis of STRs) and the Supervisory Division (supervision of obliged persons).

307. The budget of the FAU is established by the Minister of Finance and is not separated from the general budget of the Ministry except for the IT equipment and the physical protection of the personnel of the Unit.

308. There are two provisions in the new AML/CFT Law which are said to enhance the independence of the Unit (sections 18.4 and 31.5). The latter primarily establishes the technical independence of the FAU from the other Departments of the Ministry of Finance and the restricted access of personnel to the office of the FAU.

309. Section 31(5) on Processing of Information provides:

> *"The Financial Analysis Unit is technically separate from the other departments of the Ministry: it has implemented measures in the area of organisation and personnel to ensure that unauthorised persons do not come into contact with information obtained under this Act.*

310. While section.18(4) on suspicious transactions states:

> *"The Ministry shall receive the suspicious transaction report via the Financial Analysis Unit, which is a part of the organisational structure of the Ministry [...]."*

311. The Rules that describe the competencies and organisation of the FAU (and are not by-laws), they are prepared and approved by the Deputy Minister of Finance, who has power to modify the organisational structure.. This document does not refer to the Director of FAU at all, or indeed clearly empower the Director to decide which reports should be disseminated to law enforcement, though in practice the evaluators were told that these decisions are taken entirely by the Director of FAU and there is no reason to doubt that this is not the case in practice at present. Indeed the Director, as well as other representatives, indicated that they had never been influenced or impeached in their duties.

312. There is no by-law or legislative provision which sets out the position of the Director of FAU, his term of office, to whom he reports and the reasons for which he might be dismissed. The FAU argues that their independence is embedded in the Law, but the evaluators could not find this to be the case. It appeared to the evaluation team that the independence of the FIU in its decision-making process and generally was understood more as a convention than as a matter of law or regulation.

313. While, as noted, there is no reason to doubt that currently the Director acts in an independent capacity, there appeared to be little in practice which safeguards this situation for the long term. The evaluators advise that the efficient working of the FIU as an independent unit, at present would be assisted if the powers and duties of the FAU and its Director (and his role and responsibilities under the Ministry) are formalised within the AML/CFT Law or a by-law.

314. According to The Czech authorities, there have been several instances when the Minister has modified the structure of the FAU on the basis of the FAU Director's proposal, the lack of a clear statement of the role and independence of the FAU remains a concern.

315. With regard to the FAU's Human Resources, The Czech authorities state that the Director of the FAU applied for additional staff (nine analysts and one inspector). According to the procedure in place, the Ministry authorises the recruitment but the Director of the FAU selects and appoints the new staff.

316. The FAU's total financial budget is decided at ministerial level. Cost of the personal are paid by the Ministry of Finance, from the overall budget of the Ministry, while dedicated budget items,

mainly for IT purpose, are decided by the FIU. The following table indicates the main costs related to IT:

Table 14: FIU's IT costs

	2008	2009	2010
Hardware	18.357	36.126	33.657
Software	27.133	115.227	52.595
Operation costs	33.067	36.387	30.580
ESW/FIUNet	7.626	3.897	8.982
Total EUR	**86.183**	**191.637**	**125.814**

317. The Czech authorities indicated that the database of the Ministry (FAU) is not connected to the intranet of the Ministry (FAU) nor to the Internet as provided for by Section 31 paragraph 5 of the new AML/CFT Law. Access to the premises of the Ministry (FAU) is restricted to staff holding a badge.

318. The obligation of confidentiality and its exceptions are defined in the Sections 38 and 39 of the new AML/CFT Law. Ministry (FAU) personnel shall keep confidential all facts related to STRs and the subsequent investigations, as well as any other action undertaken by the Ministrry (FAU). The obligation of confidentiality remains even if the staff member is transferred to another assignment, terminates his/her employment or other contractual relationships (Section 38). There are some exceptions to the principle of confidentiality listed in Section 39 of the new AML/CFT Law.

319. The evaluators were informed that the Minister of Finance and his/her Deputies do not have access to the elements of the files of the Ministry (FAU) but there is neither a provision in law in this respect, nor any sanction (penal, civil or administrative) applicable.

320. Section 31 paragraph 4 of the new AML/CFT Law indicates that "The Ministry shall maintain, and publish at least once a year on its website, statistical reports on effectiveness and results of measures against the legitimisation of proceeds of crime and financing of terrorism." The evaluators were informed that the Ministry (FAU) regularly publishes annual reports on the website of the Ministry of Finance (statistical data, typologies, trends and information about its activities are provided).

321. The Ministry (FAU) has been a member of the Egmont Group since 1997. It currently has two representatives in Egmont Working Groups (Operational Working Group and IT Working Group).

322. Section 33 of the new AML/CFT Law reads as follows:

(1) In the scope set out by an international treaty by which the Czech Republic is bound, or on the principle of reciprocity, the Ministry shall co-operate with third country authorities and international organisations of the same jurisdiction, in particular in the provision and obtaining information to deliver on the purpose of this Act.

(2) Provided that the information is used exclusively for the purpose of this Act and is protected at least in the scope laid down in this Act, the Ministry may co-operate also with other international organisations.

323. The policies and procedures adopted by the FAU are in line with the international standards and the co-operation in terms of disclosures received and provided is satisfactory.

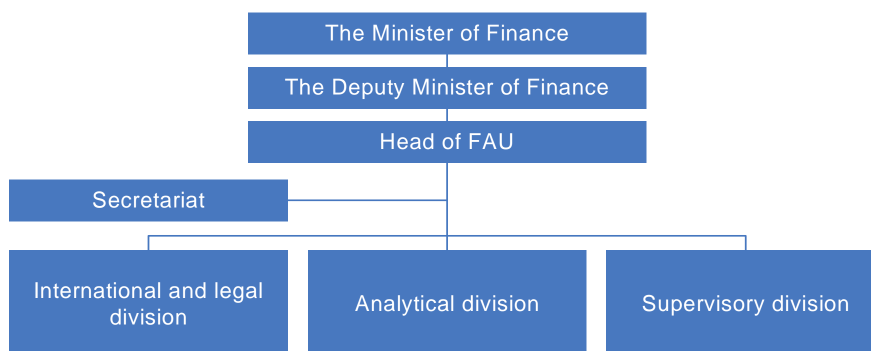
324. The Ministry (FAU) co-operates with its foreign counterparts on the basis of international treaties or on the principle of reciprocity. International information exchange is carried out according to the Statement of Purpose and Principles for Information Exchange Between Financial Intelligence Units.

Table 15: Overview on the international information exchange:

	2005	2006	2007	2008	2009	1Q2010
Requests sent	**69**	**77**	**66**	**59**	**72**	**14**
Requests received	**130**	**128**	**133**	**165**	**142**	**22**

325. The statistical data on spontaneous exchange of information have been monitored since 1 January 2010. During the first quarter of the year 2010, the Ministry (FAU) received 7 spontaneous information from abroad and sent 5 spontaneous information abroad**.** The Czech authority, while not providing specific data, declared that the average time of response is in line with the Egmont Group standards (one month).

Diagram 3: FAU structure, funding staffed technical resources



326. The Ministry (FAU) has three divisions: the International Co-operation and Legal Division (international information exchange, international sanctions, AML/CFT legislation), the Analytical Division (analysis of STRs) with an IT Subdivision and the Supervisory Division (supervision on obliged persons).

327. The FAU staff members are 28, employed of the Ministry of Finance. The Czech authorities have also indicated that the FAU staff (except support staff) hold university degrees in law or economics as follows:

- International Co-operation and Legal Division: 3 staff members hold a law degree, 1 has an economics degree, 1 has a political science degree;
- Analytical Division: 11 staff members hold an economics degree, 1 a law degree and 3 are IT specialists;
- Supervisory Division: all 4 staff members hold an economics degree.

328. The FAU staff is trained twice a year (3 days trainings) on issues relating to STR analysis, new ML and TF trends and typologies, co-operation with other supervisory bodies, co-operation with the police, criminal investigation, new legislative initiatives (both national and international). The trainers are from the law enforcement authorities (police, prosecutor's offices), the Czech National Bank, and other supervisory agencies involved in AML/CFT surveillance.

329. The staff of the law enforcement authorities and FAU has appropriate systems of regular training. The information on ML and TF methods, techniques and trends is disseminated.

330. The authorities have indicated that the main Ministry (FAU) counterpart within the law enforcement authorities is the Unit for Combating Corruption and Financial Crime: criminal complaints are sent to the AML Division of the UCCFC, but the FAU also co-operates with the Organised Crime Unit of the Czech Police, in particular for terrorist financing cases, where "Terrorism and Extremism Division" is located. The latter is in charge of receiving cases related to TF.

331. A protocol between the Ministry of Finance and the Ministry of Interior is the framework of the co-operation between the Ministry (FAU) and the police, which consists of exchange of intelligence, regular consultations on individual cases, as well as an annual assessment of the efficiency of the co-operation. FAU can obtain information, about penal records, indictments, persons that have been under investigation, or even those who are currently being investigated at that moment. Requests to police are sent through Moneyweb. Police will take an average period of 2 or 3 days to send their response, in urgent cases (e.g. in which the transaction has been suspended by the bank) in hours. Furthermore, according to the authorities, since 2009 the FAU has sent a copy of the cases referred by the police to the High Office of Prosecutors for information.

332. The current Director of the Ministry (FAU) is from law enforcement and he is seeking to enhance co-operation between the FAU and law enforcement to impose the overall results of law enforcement in the AML/CFT sphere. Nonetheless, the FAU at the time of the onsite visit, did not appear to be receiving regular systemised feedback on all the disseminations they made to law enforcement and information was lacking on which (if any) STRs had resulted in major ML prosecutions. As noted elsewhere in this report, the major impression was of the ML cases being merged with other cases rather then being pursued in their own right (which may itself be de-motivating for the Ministry (FAU)).

333. Since 2009 the criminal complaints are sent once a month to the office of the Prosecutor in order to increase the co-operation between the competent authorities and in particular to follow-up the police forces' activity.

334. The Ministry (FAU) should consider to adopt some of the following instruments: special confidential reports on ML/FT patterns, dedicated seminars and "case by case" feedback.

Effectiveness and efficiency

Table 16: STRs received, their analysis and dissemination

		Receipt of STRs		**Analysis: Collection of Data by FAU**			**Dissemination: Outcome of the Analysis**		
		Disclosures received	Cases opened	Requests to reporting entities	Request to police	Requests to foreign FIUs	Cases closed after the analysis	Criminal Complaints Referrals to AML Div.	Disclosures to Tax Authority or to Custom Administration
2008	Financial entities	2.090	**1.722**	1.236	1.244	59	1.513	**78**	135
	Professionals	-							
	Other DNFBP	230							
Total STRs		**2.320**	*74,22%*					*3,4%*	
2009	Financial entities	1.932	**1.644**	1.674	1.419	72	1.242	**191**	182
	Professionals	3							
	Other DNFBP	289							
Total STRs		**2.224**	*73,92%*					*8,6%*	
I	Financial entities	317	**368**	1.127	260	14	188	**73**	65

		Receipt of STRs		**Analysis: Collection of Data by FAU**			**Dissemination: Outcome of the Analysis**		
		Disclosures received	Cases opened	Requests to reporting entities	Request to police	Requests to foreign FIUs	Cases closed after the analysis	Criminal Complaints Referrals to AML Div.	Disclosures to Tax Authority or to Custom Administration
Q 2010	Professionals	1							
	Other DNFBP	73							
Total STRs		**391**	*94,12%*					18,7%	

335. The evaluators found that all STRs received are analysed. It will be noted that there is a difference between "disclosures received" and "cases opened". The evaluators were advised that the difference relates to disclosures received which are merged with other cases and new cases opened. The figures also indicate that the percentage of criminal complaints referred to the AML Division of the UCCFC compared with the cases opened. These numbers clearly indicate an increase of the referrals to the Police (3.4 % in 2008; 8.6% in 2009 and 18.7 % at 31st March 2010).

336. While these figures, related to the analysis of the cases by the Ministry (FAU), show that the latter often requests assistance from the Police and additional information from the obliged entities, the assistance from foreign FIUs is requested only in a few cases. This may be due to the fact that most of the analysed STRs mainly involve proceeds domestic cases perpetrated (and thus, laundered) in the Czech Republic.

337. This data also indicates that the Ministry (FAU) requests information from Police Forces going behind the mere financial analysis of the movement of funds, which is a typical function performed by an administrative FIU. This is appreciated as the Unit is doing its best to obtain all the information necessary to perform its functions and give an "added value" to the criminal complaints.

338. The Ministry (FAU) is vested with several functions prescribed both by the new AML/CFT Law and the International Sanctions Act and acts in a proactive way by assisting counterparts and domestic authorities (in particular, police forces and prosecutors). Nevertheless the issues of independence and operational autonomy and of human resources are crucial to proper performance of the functions assigned.

339. The effectiveness of the Ministry (FAU) could also be affected negatively by decisions at ministerial level which may adversely impact on the organisation: budget and other relevant issues (appointment of the director and staff etc.) for the Ministry (FAU).

340. The confidentiality of the cases investigated by FAU could be infringed by the mandatory requirements for Ministry (FAU) to use Chambers in order to obtain additional information on STRs.

341. The procedure of the FAU to copy the referrals to the prosecutorial authority could increase the effectiveness of the reporting system and the analysis performed by FAU.

2.5.2 Recommendations and comments

342. The fact that the status and function of the Ministry (FAU) is not defined in a separate legislative act or provision is of concern to the evaluators. This is an issue already raised by the evaluators in

the 3rd round. However, in the meantime, The Czech authorities, despite having amended the AML/CFT Law, did not take into consideration that recommendation.

343. The Ministry (FAU) is not only vested with functions assigned by the new AML/CFT Law, but also co-operates on a "case by case" basis with several domestic authorities (Police and Judicial Authority).This cooperation is producing positive results and should be continued.

344. The Ministry (FAU) staff is well trained and committed but considering the scope of functions of the Ministry (FAU) the authorities could consider increasing the staff to ensure that the Ministry (FAU) properly performs its functions, especially the function of supervision.

345. Over the last two years the number of cases notified by the Ministry (FAU) to the Police has increased as shown in the chart above and it appears that the FAU and the police co-operate on individual cases. Because of the legal provisions requiring reports also to be sent to the tax authorities, a significant number of reports are sent there once the FAU establishes that another crime has not been revealed. The FIU should nonetheless ensure that ML/FT remains its major mission and keeps records of the predicate offences (where known) in FAU reports sent to the Police, as it was unclear to the examiners what was the most important (non tax related) predicate offence disclosed by the FAU to the authorities. It is also commendable that the Ministry (FAU) is aiming to ensure that the cases referred to the police result in actions. The evaluators welcome Ministry (FAU) efforts to maintain a continuous dialogue with the private sector and the co-operation provided to foreign counterparts.

346. It is therefore recommended:

- to consider introducing an explicit reference to the FAU in the AML/CFT legislation as recommended in the 3rd MER;
- to strengthen the independence and autonomy of the Ministry (FAU) by amending the AML/CFT Law or issuing a decree to govern the main aspects of the activities of the Ministry (FAU) (the appointment and term of the Director and basis on which he can be removed, recruitment and management of staff, budget, organisation and security);
- to ensure that there is no over-emphasis in FIU analyses on tax related offences at the expense of other predicate offences;
- the FAU should consider keeping records of the predicate offences, if sufficiently identified at that stage, in the reports disseminated to law enforcement;
- to consider extending the use of "Moneyweb";

2.5.3 Compliance with Recommendation 26

	Rating	Summary of the factors underlying rating
R 26	**LC**	• The independence and autonomy of the Ministry (FAU) is potentially limited by the powers and functions of the Ministry (and Ministers) ; • The width of the reporting obligation potentially leads to an over concentration on tax issues in FAU work;

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)

2.6.1 Description and analysis

Recommendation 27 (rated C in the 3rd round MER)

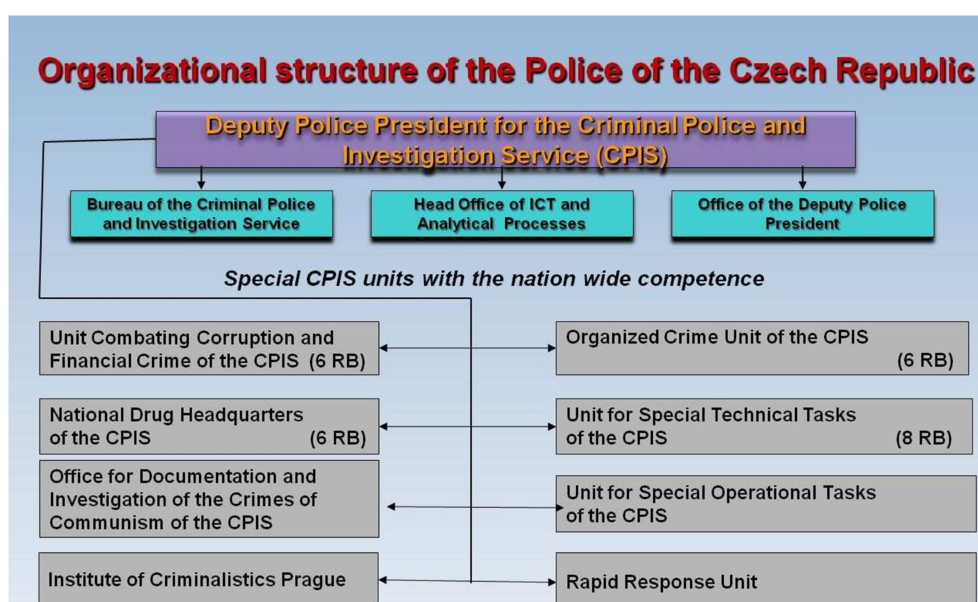
347. Until 2006 the Illegal Proceeds and Tax Crime Unit (the so-called "Financial Police") was responsible for investigating ML/FT offences then that Unit was abolished and the personnel were transferred to the Unit for Combating Corruption and Financial Crime (UCCFC). The evaluators requested information about this decision and, according to the authorities, this was simply part of a general reorganisation of the law enforcement bodies.

348. As a result, the Anti Money Laundering Division of the UCCFC (AML Division) of the Police Forces has become the counterpart of the FAU. The latter refers criminal complaints or information involving possible elements of money laundering to this AML Division.

349. Currently the binding instructions of Police President N° 30/2009 specifies the Unit for Combating Corruption and Financial Crime as responsible for inquires, verifications and investigations of criminal offences committed in relation to the legalisation of the proceeds of criminal offences where supervision is performed by the High Public Prosecutor's office (with the exception of counterfeiting of money or other means of payment), intentional criminal offences related to corrupt conduct if a judge or a public prosecutor is suspected and criminal offences of bribery or misuse of public official committed in relation to the performance of duties relating to the position. According to an agreement (which has not been seen by the evaluators) between the Ministry of Finance and Ministry of Interior, the FAU is responsible for submitting to this Unit all criminal complaints. Cases or information involving possible elements of terrorist financing are referred by the FAU to the "Terrorism and Extremism Division" of the "Organised Crime Unit".

350. The following chart illustrates the organisational structure of the Czech Police Force and where the main AML/CFT law enforcement competent authorities are allocated.

Diagram 4: Organisational structure of the Czech Police



351. According to the internal procedures of the Police Force, the "Unit Combating Corruption and Financial Crimes", the "Anti-Drug Unit" and the "Organised Crime Unit" are entrusted with the investigations of the most complex money-laundering cases, while money laundering cases with a lower level of complexity are investigated by the specialists in the regions.

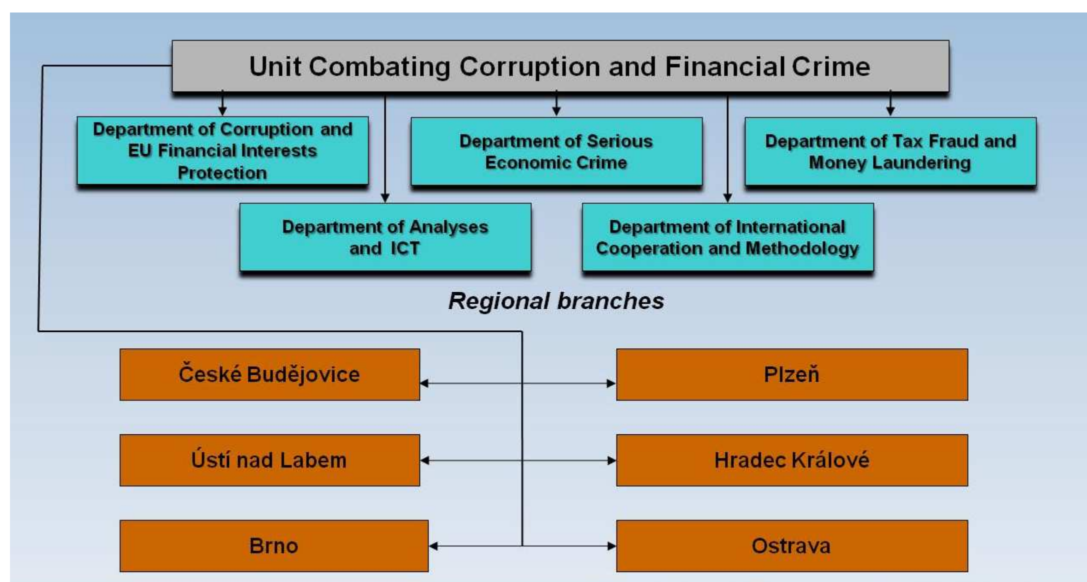
352. The Czech authorities informed the evaluators that these law enforcement units include around 210 specialists designated for "financial inquiries" and investigations of money laundering cases.

353. These financial specialists carry out their activities in working teams according to the provisions set out in the Decree of the Deputy Police President for Criminal Police and Investigation Service No. 14/2009 "On Financial Inquiries".

354. From the time of the commencement of actions in criminal proceedings (section 158(3) of CPC, the so called "detection phases" of investigations, as described below) financial specialists are required to seize proceeds generated by illegal activities according to the provisions set out in section 2 of that Decree. In order to properly perform the function assigned, financial analysts use the ALPHONSE IT system, which keeps track of the actions taken and the results obtained.

355. The UCCFC is organised in Departments and Regional Branches. The whole UCCFC is staffed with almost 400 police officers and 65 civil employees. The Anti Money Laundering Division of the UCCFC is incorporated in the Department of Tax Fraud and Money Laundering and is staffed with 12 police officers.

Diagram 5: Organisational structure of the Unit Combating Corruption and Financial Crime



356. The Czech authorities have indicated that, as consequence of the new organisational structure of the Police Forces indicated above, 22 specialists for "financial inquires" are deployed in all departments and regional branches of UCCFC.

357. The Czech authorities have also indicated that, for specialists in "financial inquiries" at UCCFC, the minimum length of service is 7 years, and a university degree in a relevant field is an essential requirement. There are also prescribed follow-up courses, which every specialist is required to attend including on AML techniques.

358. The Unit for Combating Corruption and Financial Crimes has also explained that it acts as the designated Asset Recovery Office (pursuant to FD 2007/845) and participates in Europol´s Analytical Work Files (AWFs) dedicated to cross EU suspicious transactions.

359. According to the Act on Police (AoP) N.273/2008 as amended and Criminal Procedure Code (CPC) Act N.141/1961 as amended, the activities of the Police Force may be distinguished in the following phases:

a. "Collection of evidence phase" on criminal activities under Section 69 of the AoP and Section 158 (1) of the CPC, where operative measures are applicable under several sections of the AoP by Police Force;
b. "Detection phase", when the Police Force initiates a criminal proceeding for clarifying and verifying the circumstances reasonably indicating that a criminal offence has been committed as prescribed by section 158 (3) of the CPC;
c. "Investigation phase", when the Police Force collects evidences and sends documents to the Prosecutor for indictment, as prescribed by section 160(1) and 176 of the CPC.

360. In order to perform properly the phases indicated in letters b) and c), the Police Force uses the powers assigned by AoP (sections 61, 66, 68, 73, 74, 75, 76 and 89), as well as provisional measures indicated in sections, for example, 8, 78, 79, 83, 86, 87, 88 and 158d of the CPC.

361. The following table illustrates the number of cases and persons investigated by the Czech Police Force on "legalisation" offences (Sections 216 and 217of the Criminal Code, both intentional (216) negligent (217)). These statistics cover investigations disaggregated according to the phases described above, carried out by UCCFC, Organised Crime Unit and Anti Drug Unit both at national and regional level. These figures also include cases originated by criminal complaints sent by FAU to AML Division of the UCCFC.

Table 17: Cases and persons investigated by the Czech Police Force on "legalisation" offences

	2008		2009		I Q 2010	
Investigative phases	**Cases**	**Persons**	**Cases**	**Persons**	**Cases**	**Persons**
Detection phase (Section 158.3 of the CPC)	37	N/A	59	N/A	26	N/A
Investigation phase (Section 160.1 of the CPC)	17	19	26	24	9	8
Sent to the Prosecutors for Indictment (Section 176 CPC)	21	N/A	19	N/A	3	N/A
Indictments for legalisation offence (Section 216 CC)	N/A	25	N/A	24	N/A	N/A
Indictments for other offences	N/A	N/A	N/A	N/A	N/A	N/A

N/A: Not available

362. The table above is not fully complete due to the fact that the Police do not keep detailed statistics for each of the investigative phases. In particular, while figures on number of "cases" are available, the related information on numbers of persons involved in those cases are not available (N/A). This could be, to some extent, acceptable in the "Detection phase", but not when the cases are sent to the prosecutors for indictments. Moreover, Police seem not to receive any complete feed-back information on indictments.

363. As regards the follow-up investigative activities originated by criminal complaints sent by the FAU to the Anti-Money Laundering Division (hereafter "AML Division") of the Unit for Combating Corruption and Financial Crime, the table below illustrates the main results.

Table 18: Criminal complaints sent by the FAU to the AML Division

	2008	2009	IQ2010
Criminal Complaints sent by FAU to the AML Division of which:	78	191	73
Cases opened by AML Division of which:	71	175	63
- Cases under investigation at national level	30	123	40
- Cases sent to the regional polices	41	52	23

364. The authorities have indicated that for 2009, out of the 191 referrals from the FAU to the AML Division, 175 cases were initiated as "stand alone cases" (the difference between 191 and 175 is due to the fact that some referrals were incorporated into other ongoing investigations or merged together). Out of 175 cases, 123 were investigated at central level and the remaining 52 cases were sent to the local police departments. The cases investigated at the central level are those which appear to contain elements of the money laundering offence according to the findings of the analysis carried out by the AML Division, whereas those referred to the regional police departments are largely related to other sorts of offences.

365. Hence for 2009, according to the information provided by the AML Division, of the 123 investigated cases, 37 were closed or merged, 55 cases were still under investigation by the AML Division or not yet opened. In 31 cases criminal proceedings were instituted (i.e. "detection phase", under 158 (3) of the CPC) and 6 of them were at the stage of the investigation (i.e. "investigation phase", under 160 (1) of the CPC, which is when steps are taken for a specific offence in respect of a particular person) where 6 persons are involved in money laundering). The table below illustrates the results described.

Table 19: Follow up of the criminal Complaints sent by FAU to the AML Division

Criminal Complaints sent by FAU to AML Division and follow-up initiatives		
	2008	**2009**
Total number of criminal complaints	71	175
- Cases under investigation at national level	30	123
- Cases sent to the regional police	41	52
Cases remained in AML Division		
Cases at "Collection of evidence phase" - Art. 158 (1) CPC	34	92
Cases at "Detection phase" – Art.158 (3) CPC	7	31
Cases at "Investigation phase" - Art. 160 (1) CPC	0	6
Cases where investigations have been suspended - Art 159a CPC	3	3
Cases sent to other police units	2	3
Cases sent to Prosecutor for indictment - Art. 176 CPC	0	2

366. In terms of the results obtained by the Police Forces, it is worth highlighting that in the years 2008 and 2009, out of 246 criminal complaints sent to the AML Division of the UCCFC by the FAU only four (4) cases have been sent to the Prosecutors for indictments in respect of money

laundering. No information is available on the number of the persons involved in these two cases. The evaluators have pointed out that the data given in this table is not consistent with data in the MEQ as described under R.2.

367. In response to this, the Czech Police Forces authorities indicated that, on the basis of a survey carried out on a random sample of cases, at least half of investigations for money laundering have been indicted by the prosecutors for other offences (mainly for the predicate offences or participation in the predicate offences) where the penal sanctions were higher.

368. The Czech authorities also emphasised the great efforts undertaken to seize property related to illegal activities. However, the evaluators were not provided with data on ML seizure, as the authorities do not keep such figures.

369. Police Forces have indicated that they do not collect any statistics on persons under investigation, thus it is not possible to determine whether the investigations refers to organised group activities, where, usually, several persons are involved. Additional information and data on these investigations have not been provided by The Czech authorities.

370. According to the representatives of the Police Forces, the criminally generated proceeds are mainly associated with drug trafficking, fraud, internet fraud and smuggling. Illegal profits are usually layered in real estate investment, cars, boats, investments in securities and sometimes also through the use of off-shore companies. During the on site visit representatives of the Police Forces indicated to examiners some examples of connections between investigations conducted on proceeds-generating offences and possible misuse of financial services to conceal the illegal profit such as “exchange offices”, “money remittances” and “safety boxes services”.

371. Czech authorities indicated that their main goal on money laundering cases relates to offences committed in relation to internet fraud that resulted in the seizure of real estate and vehicles or high priced paintings. However, these results do not appear to be really oriented to the investigation of complex money laundering cases.

372. As for special investigative techniques and postponement or waiving arrest, the provisions that are now in place are the same that were in force at the time of the 3rd Round, as described in paragraphs 418 to 426 of the 3rd MER. In that report it was noted that there was a willingness at that time to limit the use of such operative police techniques (see footnote 64 of the 3rd MER), but no amendments to these provisions have been adopted and the Police have indicated that they still widely use these instruments. However, statistics are not kept on the use of these techniques.

373. The FATF standards request the existence of permanent or temporary groups specialised in investigating the proceeds of crime (financial investigators). An important component of the work of such groups or bodies is focused on the investigation, seizure, freezing and confiscation of the proceeds of crime, and deciding whether to begin co-operative investigations with appropriate competent authorities in other countries, including, where appropriate, the use of special investigative techniques, provided that adequate safeguards are in place.

374. The Czech authorities indicated that in the framework of the Czech Police there exists the special division for searching for criminal activities; there are also special squads and teams at district level. On the basis of the support of EUROJUST and EUROPOL it is possible to organise co-operative investigation teams. The application of investigative techniques is conducted on the basis of the national legislation of the jurisdiction in which they are used.

375. The evaluators were informed that financial investigations are carried out by the Police Forces as "ancillary inquiries" related to the crimes under investigation and that there are no specialised groups investigating the proceeds of crimes.

376. The evaluators were informed about a Joint Investigation with Slovakia under section 442-444 CPC between domestic and foreign Police Forces, and that a combined investigation with national police forces of different units had also been carried out on tax evasion cases.

377. The evaluators were informed that FAU and Police Forces meet regularly to discuss cases under investigation and to provide support to each other. Nevertheless there are no regular and interagency committees between competent authorities dealing with methods, techniques and trends.

Effectiveness and efficiency

378. While the Police assert that there have been non STR related ML Police enquiries, no statistics or concrete information about such investigations have been provided to the evaluators. The evaluators were left with the impression that hardly, if any, ML/FT cases have been investigated on the initiative of the Police Forces alone. A very limited number of cases were in the pre-trial investigation phase for ML. The AML Division, which is the responsible unit for investigating FAU disclosures, is not equipped with sufficient staff qualified in financial investigation. The lack of education and training in tracing the funds in major proceeds-generating cases leading to financial investigations for ML cases limits law enforcement capability.

379. Comprehensive feedback on investigations by the Police to the FAU, which previously was available in approximately 30% of the cases, is now increasing. The information is useful for the FAU and for the whole AML/CFT system.

2.6.2 Recommendations and comments

380. Given the fact that there appear to be few law enforcement investigations that have resulted in police-generated ML prosecutions, efforts are required to strengthen the pro-activity and investigative capacity of the Law enforcement agencies to become more specialised in investigating the proceeds of significant crime. As noted elsewhere in this report, there is little evidence of 3rd party/autonomous ML cases generated by police initiatives. Indeed the information provided on predicate offences, and the incidence of self-laundering cases is very sparse. The overwhelming impression is that ML is used for comparatively minor cases like car theft.

381. More investigators are required who are fully trained in modern financial investigative techniques.

382. It is helpful that the FAU is trying to ensure that its cases notified to the Police Forces result in action. To this end the Ministry of Finance and the Ministry of Interior have signed, on behalf of FAU and Police Forces, a specific memorandum to increase "case by case" the effectiveness of their respective actions.

383. The evaluators have been informed that in the past the FAU had only been receiving appropriate and comprehensive feedback from Police Force in approximately 30% of the cases (where the replies were limited to file "closed" "open" or "still to be checked") while Police Forces are now encouraged to provide feedback with added value in order to assist the FAU in its functions.

384. Compared to the 3rd round of evaluations, the Police Force have been recognised for increased professionalism in their investigations by the Prosecutors, but little success has been achieved in serious ML cases.

385. Police Forces reported to the evaluators anecdotally about some financial investigations on illicit profits but no comprehensive figures have been provided to the examiners.

386. The Czech authorities should enhance the investigative role of the Police in generating ML enquiries on their own initiative, strengthen the AML Division in order to increase the effectiveness of the notifications received by the FAU and develop an inter-agency operational committee that will develop trends and methods useful for the investigative bodies. This point is taken up in R.31. As noted in R.1 earlier in this report The Czech authorities need to analyse why there appears to be such a major discrepancy between the types of ML cases being prosecuted and the incidence of ML in the country.

387. The lack of data on Police activities in this area does not help the evaluators to make a full assessment of what law enforcement may be doing in AML/CFT at present. It is appreciated that some ML investigations can take years to produce results. In order to ensure that such investigations are followed through (and properly resourced), it is necessary to maintain accurate data on the status of all such investigations. While The Czech authorities maintain that their impression is that cases are being taken forward, the lack of hard data means that their effectiveness in this area is not demonstrated.

388. The Czech authorities should strengthen the AML Division of the Police Forces in order to increase the effectiveness of the notifications received by FAU and develop an inter-agency committee that will develop trends and methods useful for the investigative bodies.

389. More seminars on AML/CFT investigations, prosecutions and judgments would be welcome to ensure that all key players are fully aware of the importance of financial investigation, confiscation and autonomous ML.

2.6.3 Compliance with Recommendation 27

	Rating	**Summary of the factors underlying rating**
R.27	**PC**	• Few successful police-generated ML investigations; • Lack of coordinated actions among authorities (Police Forces and Prosecutors); • Qualified staff in financial investigation have not yet obtained satisfactory results; • Little evidence that ML is being tackled effectively in respect of major proceeds-generating offences; • Lack of robust and accurate data, figures and any other relevant information useful to assess the activity of the Police Forces (both in term of quantity and quality of the workload).

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

3.1 Risk of money laundering / financing of terrorism

390. The evaluators were informed that there was no specific collective AML/CFT risk assessment undertaken since the last evaluation. The general approach concerning risk has been described at 1.5c above, to which reference should be made.

391. During the 3rd round evaluation, the evaluators noted that although in general the customer identification procedures (but not the full CDD measures) were mostly in place, there were also a number of shortcomings. They therefore recommended:

- the introduction of full CDD requirements in the AML/CFT Law (including on-going due diligence and know-your-customer, risk-based approach, consequences of incomplete CDD measures and application of CCD requirements to existing customers etc.), with appropriate guidance, beyond those measures applicable to identification only;
- to solve the inconsistencies between the banking regulations and the AML/CFT Law on the issue of CDD measures on the occasion of operations with bearer passbooks and the identification/CDD process guaranteed no matter what the threshold is;
- to require by law the identification of beneficial owners and to obtain information about the owners of all types of legal entities;
- to amend the legislation in order to require financial institutions to identify the originator and the beneficiary of funds transfers with at least the following three data: name, address, account number and to 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.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5 (rated PC in the 3rd round MER)

392. Customer due diligence does not only incorporate the establishment of the identity of the customer, but also includes the monitoring of the account activity to determine those transactions that do not conform with the normal or expected transactions for that customer or type of account, and complemented by regular compliance reviews and internal audit.

393. CDD requirements are generally included within the requirements of Section 8 and 9 of the AML/CFT Law or covered by CNB Decree 281/2008 on internal principles and procedures.[7]

394. In respect of enhanced customer due diligence, there is a requirement for additional processes to mitigate risks, including certification of documents presented, requiring additional documents to complement those required under CDD, approval for opening a business relationship or significant transactions by senior management and regular reviews.

395. Section 9 of the AML/CFT Law does not in fact refer to high risk customers, except for politically exposed persons while the requirements under Section 9 do not incorporate many of the

[7] CNB Decree 281/2008 is implemented as per Section 56 of the AMLCFT Act 2008.

additional enhanced customer due diligence requirements (e.g. certification of documents presented and additional documentation, approval process etc).

396. As noted in the 3rd Round Evaluation Report, 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). Existing bearer passbooks were abolished by an amendment to the Act on Banks of 31 December, 2002 with the right of the depositor to the repayment of the balance of discharged deposit claim to become statute-barred by the end of 2012. According to The Czech authorities, about €80 million were still outstanding as at the end of 2009.

397. Section 7 (2) (g) of the AML/CFT Law requires obliged entities to always identify the customer on withdrawal of the final balance of cancelled bearer passbooks.

398. According to the authorities, accounts in fictitious names are prohibited by Article 782 and 783 of the Civil Code which provide that passbooks may only be issued in the form of name-passbooks which has to include details regarding name, surname, address, birth date or legal entity identification. However, in the opinion of the evaluators this does not explicitly address the issue of prohibiting accounts in fictitious names, particularly as a number of interviewed institutions showed some concern regarding false identity cards.

399. The Czech authorities stated that numbered accounts do not exist in the Czech Republic. But there is no legal requirement that, in such an event, obliged institutions should obtain the required information in full compliance with the FATF recommendations although this may be implied under Section 7 (2) (b).

400. Companies with bearer shares and silent partners exist within the Czech Republic. There is no reference in the legislation nor is there guidance in such cases on how to obtain satisfactory evidence of their identity.

Customer due diligence

401. Section 7 of the AML/CFT Law requires identification when:

- entering into a business relationship (Section 7 (2) (b). Section 4 (2) defines a business relationship as a relationship established to handle assets of clients or to provide repetitive transactions or service;
- carrying out a transaction exceeding €1,000 unless stipulated otherwise by the AML/CFT Law (Section 7 (1)). Section 4 (1) defines a transaction as an interaction that leads to the handling of property or the provision of services. Section 34 refers to the granting of exemptions, upon request to the Ministry in the event that an obliged entity transacts only occasionally or in a very limited scope, and in a way that precludes or significantly reduces ML/FT risk, from being considered as an obliged entity. This is conditional in that the activity is a non-core activity, the total annual revenue from this activity does not exceed 5% from the total annual revenue of the obliged entity and it is ensured that the value of an individual transaction or of multiple transactions with one customer shall not exceed €1,000 in the period of 30 consecutive days. For such exempted obliged entities, there is no obligation to carry out any identification;
- as per Article 5(2) of the EU Regulation 1781/2006, directly applicable within the Czech Republic, the Payment Service Provider has to verify the complete information on the payer, before transferring the funds from reliable and independent source in respect of wire transfers of €1,000 or more;

- there is a suspicion that a transaction is suspicious (Section 7 (2) (a) regardless of the €1,000 threshold (Section 7 (2).

402. The obligation to renew the CDD measures, when doubts arise as to the veracity or adequacy of the previously obtained customer identification data, is said to derive from Section 6 (1) (i) which includes this issue as an example of a suspicious transaction as well as Section 15 (1) of the AMLCFT Act 2008. However, in the evaluators, opinion, the inability to complete CDD and the requirement for financial institution to undertake CDD when there are doubts about the veracity or adequacy of previously obtained are different. Although it may have been the intention of the authorities to cover the aspects under R5.2 (e) through Section 6 and Section 15 of the AMLCFT Act 2008, this is not clearly obvious and subject to interpretation. Furthermore, it was unclear to the evaluators how widely this CDD obligation on its own was understood by the reporting entities.

403. CDD is required for transactions above €15,000 by the AML/CFT Law. In respect of linked transactions, Section 54 (3) of the AML/CFT Law requires that a payment which is divided into several installments, the value of the transaction shall be calculated as the sum of these installments, provided they are related.

404. The 3rd round evaluation report commented that there was a difference between the stipulated amount of minimum of €1,000 for identification purposes specified in the AML/CFT Law and Article 37 (1) of the Act on Banks which stipulates that:

A bank shall demand proof of a client's identity for each transaction exceeding CZK 100,000 and when renting safe deposit boxes.[8]

405. This was addressed by amendment to the Act on Banks (section 37) through law number 254/2008 Coll. effective since 1 September 2008 which reads as follows:

Banks shall provide services to their clients on a contractual basis. A bank may refuse to provide services should the client remain anonymous.

406. However banks have also to comply with the AML/CFT Law and therefore are obliged not to transact with anonymous clients.

407. Furthermore, as also identified in the 3rd round evaluation report, there remain different identification requirements for opening deposit accounts with banks between the AML/CFT Law and Article 41c of the Act on Banks. The latter is in respect of deposit compensation scheme requirements.

408. As per Act no. 57/2006 Coll., on amendment of the laws related to the integration of financial market supervision, the CNB is responsible for the supervision of securities trades.[9] The evaluators were informed that securities traders are regulated by the AML/CFT Law in terms of customer identification and due diligence.

409. The CNB informed that it carries out on-going on-site inspections specifically for AML/CFT purposes at credit institutions and insurance companies (though generally within full on-site inspections) but incorporates AML/CFT related inspections for other financial institutions within the general supervisory inspections. During these inspections, the CNB verifies the fulfillment of identification and CDD responsibilities as well as other AML/CFT responsibilities.

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[8] Circa *CZK/€ 25* = € 4,000.

[9] The Securities Centre ceased operations in July 2010.

410. Section 13 of the AML/CFT Law provides for exceptions from the identification and due diligence requirements in the event of specified cases. At the same time, Section 7 (1) of the AML/CFT Law requires the identification of customers prior to transactions above €1,000 (unless stipulated otherwise in the Act).

411. Section 5 of the AML/CFT Law requires identification both for natural persons as well as legal persons. The specified requirements are:

- in the case of a natural person, all names and surnames, a birth identification number or date of birth), a place of birth, sex, permanent or other residence and citisenship;
- for a natural person who is an entrepreneur, the business name, an appendix to the business name or any other identification features, place of business, and business identification number; and
- in respect of a legal person, the company name, including its appendices or other identification features, company's official address, business identification number or a business identification number given under foreign law. The business identification can be obtained from the Company Register of Entrepreneurs Register (Commercial Register), the Foundation Register or the Register of Beneficial Societies. During on-site interviews, some financial institutions informed that they also obtain identification requirements in respect of legal persons from the Electronic Signatures Act 227/2000 Coll. of 29 June 2000. However, the evaluators were not in a position to verify the requirement under the Electronic Signatures Act 227/2000 Coll. Moreover, reliability of data entered can be suspect as it can be entered without verification. This can be subsequently rectified through a court decision. Furthermore, many interviewed institutions considered that the public service provided to identify and retrieve information in respect of legal persons was quite poor and they would welcome more support.

412. There is no specific requirement in the AML/CFT Law for obliged entities to verify the customer identification using reliable independent source documents.

413. The Czech Republic appears to have both the concept of "sleeping partner" and "limited partnership". In the concept of a "limited partnership" the partnership usually operates under a partnership name and has its obligations guaranteed by the unlimited and joint and several liability of one or more partners - known as the general partners - and by the liability, limited to the amount, if any, unpaid on the contribution (such contribution could be in the form of shares) of one or more partners - known as the limited partners. Moreover, a limited partner is usually prohibited by law from performing any act of administration or from transacting business on behalf of the partnership - unless acting under a power of attorney given by the other partners for specified acts or transaction - and hence the reference to the limited partner as the "sleeping partner". However, limited partners are normally registered. "Silent partners" in the Czech Republic are not registered and thus the identification of such owners is an issue.

414. There is no reference in the AML/CFT Law that identification is required also for legal arrangements. There is no explicit requirement that financial institutions are required to verify the authority of persons purporting to act on behalf of other customers, names of trustees (for trusts) and power to bind a legal person. However, the 3rd round evaluation report noted that the AML Act requires identification of authorised persons in the case of a transaction in the event that:

- the customer is represented by a power of attorney;
- and when a person is not acting on his own account.

415. This was considered as equivalent to requiring the verification of authority of persons purporting to act on behalf of other customers. There are no reasons to dispute this conclusion.

416. Section 8 of the AML/CFT Law stipulates the required identification measures. Section 8 also stipulates that obliged entities should verify the details with the identity card, (in the case of a natural person) or business registration documents (in the case of a legal person).

417. The CNB has issued an Official Information of the Czech National Bank of 26 May 2009 on certain requirements for the system of internal principles, procedures and control measures against the legitimisation of the proceeds of crime and financing of terrorism. This information refers financial institutions to recognised AML standards and is intended to facilitate searches of the relevant websites and their content. But, effectively, there are no supporting guidelines issued by the authorities to provide further assistance to obliged entities on customer identification beyond that stipulated in the AML/CFT Law and the reference included within the Official Information issued by the CNB.

418. Moreover, the required identification information appears to be somewhat basic and fall short of those recommended in the General Guide to Account Opening and Customer Identification issued by the Basel Committee on Banking Supervision (BCBS). This is particularly relevant since during on-site interviews, some institutions expressed some concern that identification documents may be false.

419. Moreover, within the Czech Republic there are still a number of companies with shareholders and silent partners who are not registered anywhere. Some prosecutors also intimated that the latter structures are easy avenues for processing illegal monies (white horses). Hence, additional verifications, as suggested in the BCBS guidelines, could address some of these concerns and enhance the identification measures. In particular, telephone numbers, e-mail address, occupation, public position held and/or name of employer while additionally for legal persons, tax identification numbers and an original or certified copy of the Certificate of Incorporation and Memorandum and Articles of Association, documents confirming continued existence of the legal person etc would provide additional safeguards. Moreover, the AML/CFT process would be benefit by taking into account (amplified through specific guidelines) paragraph 11, 14 and 20 of the BCBS guidelines.

420. Section 4 (4) of the AML/CFT Law defines a beneficial owner as:

a) for an entrepreneur:

1. *a natural person, having real or legal direct or indirect control over the management or operations of such entrepreneur, indirect control shall mean control via other person or persons,*
2. *a natural person, holding in person or in contract with a business partner or partners more than 25 per cent of the voting rights of such entrepreneur; disposing of voting rights shall mean having an opportunity to vote based on one's own will regardless of the legal background of such right or an opportunity to influence voting by other person,*
3. *natural persons acting in concert and holding over 25 per cent of the voting rights of such entrepreneur, or*
4. *a natural person, who is, for other reasons, a real recipient of such entrepreneu's revenue,*

b) for a foundation or a foundation fund:

1. *a natural person, who is to receive at least 25 per cent of the distributed funds, or*

2. *a natural person or a group of persons in whose interest a foundation or a foundation fund had been established or whose interests they promote in case the beneficiary of such foundation or a foundation fund is yet to be determined,*

c) *a natural person, in case of an association under lex specialis[10], public service organisation, or any other person and a trusteeship or any other similar legal arrangement under a foreign law, who:*

1. *holds over 25 per cent of its voting rights or assets,*
2. *is a recipient of at least 25 per cent of the distributed assets, or*
3. *in whose interest they had been established or whose interests they promote, should it yet to be determined who is their future beneficiary.*

421. The above therefore excludes natural persons acting on behalf of beneficial owners who themselves are natural persons and therefore the definition of Beneficial Ownership is not broad enough as required by the FATF Glossary

422. For AML/CFT purposes, it is obviously necessary to establish whether a customer is acting on behalf of another person, using the name of another customer or acting as a front. It is therefore important not only to have satisfactory evidence of the identity of the intermediaries but also of the beneficiary. The obligations within the AML/CFT Law are specified in:

- Section 8 (1) requiring obliged entities to perform the first identification of a customer who is a natural person as well as any natural person acting on behalf of a customer in personal presence of the identified; and
- Section 9 (2) (b) in respect of Customer Due Diligence, which, as noted previously, for The Czech authorities this is equivalent to Enhanced Customer Due Diligence. Moreover, it is only required in the event that the customer is a legal person (above 25% of voting rights or distributable assets).

423. Section 9 (2) (a) (c) and (d) of the AML/CFT Law specify that customer due diligence entails collection of information on the purpose and intended nature of the business relationship, collection of information necessary for ongoing monitoring of the business relationship, including scrutiny of transactions undertaken throughout the course of the relationship to ensure that the transactions being conducted are consistent with the institution's knowledge of the customer, their business and risk profile, and monitoring of sources of funds. This is below the FATF requirements as there is no explicit requirements that customer due diligence includes the verification of the identity of the beneficial owner, using relevant information obtained from reliable sources, such that the financial institution is satisfied that it knows who the beneficial owner is. Moreover, there are also not sufficient guidance for obliged entities either to understand the ownership and control structure of a customer or to determine the natural person that ultimately own or control the customer and exercise ultimate effective control over a legal person or arrangement – as this is limited by a 25% threshold of voting rights (Section 4 of the AML/CFT Law).

424. As noted above, the ultimate owner in respect of legal persons is limited to above 25% of shares or distribution (generally in line with EU legislation). Furthermore, by virtue of Section 34 of the AML/CFT Law, low-risk transactions can be exempted from any identification requirements, which can result, in effect, in beneficial owners not being identified.

425. On the other hand, CNB Decree 281/2008 stipulates that financial institution compile and assess a customer's risk profile in the event that the customer's ownership structure is non-transparent or

[10] Section 20f and on, Civil Code Act No. 83/1990 Coll. on Public association, as amended.

there are circumstances arousing suspicion that the customer is not acting on own behalf or is seeking to conceal the fact that the instructions are on behalf of a third party. The evaluators were informed that Decree 281/2008 was not applicable to all financial institutions under the supervision of the CNB for the purpose of AML/CFT purposes[11]. In this respect, a non-transparent ownership structure means a state whereby it cannot be ascertained who a customer's actual owner is from an extract of the commercial register or other equivalent record ; from another document by which the foreign person was established and which contains all changes thereto; or from a credible source on which an institution relies for good reason. In such cases, institutions are required to define procedures to identify the risk factors.

426. Although the CNB Decree and the AML/CFT Law do not explicitly delineate any additional procedures or identification requirement to determine the beneficiary owners, financial institutions interviewed on-site all showed awareness of their responsibility to identify beneficial owners. However, all expressed significant difficulties in carrying out this responsibility due to a number of factors including:

- insufficient understanding of what is required for identification of beneficiary owners. A non bank financial institution stated that it was indeed very difficult to establish a beneficiary owner. Some also stated that according to (verbal) instructions by the FIU their responsibility stops at requiring clients to declare whether the direct customers are acting on behalf of beneficiary owners or otherwise;
- a perception that there is no need to carry out a search for the ultimate underlying natural person behind the customer, and which can stop even at the level of a legal entity. Indeed another non-bank financial institution's representatives were somewhat uncertain whether they had the right to ask questions to establish whether the monies belonged to the customer or not, though they did ask for the origin of money and the purpose of the transaction if the amount was €15,000 ;
- the identification of beneficiaries requires identification and not enhanced due diligence except in cases of high risk. There was little perception that the reliability of the information/documents obtained should be verified against a secondary source;
- as per Section 4 (3) (c) and (4) (c), the ultimate natural persons should be verified only if the holding breached the 25% threshold; and
- uncertainty to what is required in the case of bearer shareholders and silent partners.

427. Most considered that they need more explicit guidelines on beneficiary owners.

428. In the 3rd round MER, the evaluators noted that although this obligation was implied from the CNB Provision N°1 and the Securities Act (but not in relation to insurance companies) there were no requirements in the AML Act for financial institutions to obtain information on the purpose and intended nature of the business relationship[12]. This has been rectified through Section 9(2) (a) of the AML/CFT Law, which requires that the customer due diligence process entails the collection of information on the purpose and intended nature of the business relationship.

429. In fact, interviewed institutions indicated that part of their information gathering process is to obtain information on the purpose and intended nature of the business relationship. Indeed, the FIU confirmed that, the majority of STRs are related to the collection of such information and comprise mainly:

[11] The evaluators were informed that Decree 281/2008 was not applicable to the issuers of electronic money (of small extent); central depository; payment institutions; a provider of small extent payment services.

[12] CNB Provision No 1 of 2003 was replaced by decree 247/2007 which in turn was replaced by the provisions within the AMLCFT Act 2008 and Decree 281/2008.

- business accounts transfers into personal accounts;
- internet banking transactions including credit cards fraud;
- transactions without economic rationale;
- account movements which did not match the financial position of the owner;
- transfers to tax havens; and
- tax evasion.

430. The 3rd evaluation had concluded that there were deficiencies in respect of this criterion. Now Section 9(2) (c) of the AML/CFT Law stipulates that client due diligence entails the "collection of information necessary for ongoing monitoring of the business relationship including 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, the business and risk profile." Section 9 (2) (d) covers the requirement regarding monitoring of sources of funds.

431. The requirement of financial institutions to keep up-to-date documentation in respect of the CDD process and review existing records may be implied from Section 8 (6) which requires obliged entities to check the validity and completeness of the customer's identification data and information gathered in the course of the due diligence process. Furthermore, the CNB Decree 281/2008 has specific requirements that during the course of contractual relations, information is checked for validity and completeness and kept up-to-date. This is required for all business relationships in order to determine whether the customer is a risk customer.

432. The Czech authorities also highlight that in respect of Section 9 (1) of the AML/CFT Law financial institutions bind their customers to inform them about any changes concerning identification data and documents necessary for due diligence. However, in practice, it is impossible for financial institutions to ascertain that customers do in fact inform them of such changes.

433. According to Section 9 (3) obliged entities are required to perform customer due diligence to the extent necessary to determine the potential risk of legitimisation of ML/FT depending on the type of customer, business relationship, product, or transaction. This is required in respect of a single transaction amounting to €15,000 or more, a suspicious transaction, an agreement to enter into a business relationship, an agreement to establish an account, an agreement to make a deposit into a deposit passbook or a deposit certificate or any other type of deposit, agreement to use a safety deposit box or an agreement on custody, a transaction with a politically exposed person and as part of the business relationship. According to Section 9 (2) a customer due diligence process entails the following:

a) *collection of information on the purpose and intended nature of the business relationship;,*
b) *identification of the beneficial owner, should the customer be a legal person;*
c) *collection of information necessary for ongoing monitoring of the business relationship, including 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;*
d) *monitoring of sources of funds*

434. There are no specific requirements to perform enhanced on-going monitoring in situations with higher than normal risk. There are no references to other higher risk customers such as non-resident customers, companies with nominee shareholding or bearer form etc. In respect of safety boxes, there seemed to be awareness that in a number of instances the actual customer may be merely a front for an illegal activity – but no institution indicated that they carry out anything but

an identification process of the customer. Indeed, representatives of the National Anti Drug Unit stated that users of safety boxes are not checked following initial identification.

435. The FATF recommendation requires enhanced customer due diligence for higher risk categories and requires a higher level of measures in these higher risk categories. Apart from the AML/CFT Law, there are no additional guidelines to provide further assistance to obliged institutions to help them identify and address high-risk situations.

436. Section 13 of the AML/CFT Law specifies low risk circumstances, including those within Article 11 of the Directive 205/60 EC of 2005. However, Section 13 allows obliged entities not to perform any identification or due diligence in respect of the specified low risk circumstances rather than requiring simplified or reduced CDD measures as per FATF standards. This implies that counterparties and beneficial owner may not be sufficiently identified; that this may not enable continuous monitoring; and that unusual or suspicious transactions may not be sufficiently identified.

437. Furthermore, there is no evidence that either the FIU or some of the obliged entities carry out a risk analysis to decide the criteria for determining whether and when to exempt the specified low risk customers/circumstances and to determine whether the circumstances are appropriate to the Czech environment. According to the FIU, Section 13 (3) and (4) of the AML/CFT Law requires obliged entities to verify that all conditions required have been met (this does not amount to risk analysis) and that none of the customers, products, or transactions represents a risk of ML/FT legitimisation. In respect of the latter, it is not evident how this can be carried out without any risk analysis and without collection of some information. The result is that without risk analysis such obliged entities do not have accurate information on their customers.

438. The situation described in the 3rd round evaluation report with respect to recommendation 5.10 still largely prevails. Indeed, while in the previous report, the AML Act allowed 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, now the AML/CFT Law (Section 13) specifies that no CDD measures may be taken in respect of non residents if they are:

- (a) foreign credit or financial institutions operating in the territory of a country imposing and enforcing anti-money laundering and financing of terrorism measures equivalent to those imposed by the European Communities acquis and supervised to that respect;
- (b) a company whose securities are traded at a regulated market and which is subject to reporting requirements equivalent to those enforced by the European Communities acquis;
- (c) a customer holding important public positions under the European Communities acquis (subject to some conditions).

439. Obliged entities are required to verify that all conditions required had been met and that none of the customers, products, or transactions represents a risk of legitimisation of ML/FT. PEPs are excluded.

440. Similar to the situation during the 3rd round, interviewed institutions continue to interpret these provisions as referring to institutions from the EU. The FATF recommendation in this respect is not interpreted to mean that all EU countries are exempted. Most institutions rely on the list of non-cooperative countries placed on the FIU website.

441. With reference to c.5.11, the AML/CFT Law requires that in case of doubt any exception to the identification and due diligence requirements do not apply (Section 13 (3) and (4)).

442. The FIU does not issue any guidelines to flesh out the various responsibilities or obligations stemming from the AML/CFT Law. It does however give generalised replies to FAQ arising from consultation, questions, training etc.

443. During on-site interviews, all obliged entities confirmed that they communicate extensively with the FIU and they always received assistance. At the same time, a number of them indicated that they would appreciate further guidelines (not solely related to this criterion). Indeed, verbal or case-by-case communication can give rise to inconsistent application over time and does not provide forward looking assistance on how institutions are expected to apply a risk-based approach. Furthermore, obliged entities which do not approach the FIU may implement measures inappropriately or in an inconsistent way from the expected norm.

444. Section 7(1) of the AML/CFT Law stipulates that identification of the customer should always be carried out prior to transactions exceeding €1,000unless stipulated otherwise in the Act. The limit is not applicable in the event that the obliged entity has some suspicion about a transaction or when starting a business relationship (Section 7 (2) (a) and (b)).

445. This implies that while prior identification for normal transactions is wide-spread, beneficial owners and transactions with occasional customers for amounts below €1,000 are not captured. Occasional customers are in some cases only identified in the event that the transaction is above €15,000 (Section 2 (2) (d) and (e).

446. Furthermore, the exemptions specified under Sections 13 and 34 of the AML/CFT Law have implications for the effective implementation of this criterion. In addition, Section 9 requires the identification of the beneficial owner should the customer be a legal person but this is only if the shares or distribution is above 25%, as noted previously.

447. Section 7 (1) of the AML/CFT Law requires identification of the customer for transactions exceeding €1,000 prior to the transaction, unless stipulated otherwise by the Act. In terms of Section 7 (2) (b) obliged entities are always required to identify the customer, without regard to the limit of €1,000 on entering into an agreement to have a business relationship. Internal procedures (as described in CNB Decree 281/2008 Article (5) (3)) require that financial institutions shall ascertain information on the client upon the establishment of a business relationship. From the on-site interviews with financial institutions, it was understood that identification is always carried out prior to the business relationship. But there are no guidelines on this issue.

448. Section 7(1) of the AMLCFT Act 2008 specifically requires identification prior to transactions. There is, thus, no provision within the Czech AML/CFT Law that caters for identification after the start of a business relationship with the exception of a life assurance contract. In the latter instance, Section 7 (3) states that the insurance company is required to identify the individual entitled to receive the life insurance settlement at the latest on the day of the payment.

449. As noted previously, there are instances when identification is not required – as per exceptions from the identification and due diligence requirement allowed under Section 13; and the exemption for obliged entities carrying out occasional or very limited transactions; and as per Section 9 (2) (b) the identification of beneficiary owners in respect of legal persons above a 25% threshold.

450. According to Section 15 (1) of the AML/CFT Law, obliged entities are required to reject a transaction or to enter into a business relationship should there be an identification requirement, should the customer refuse the identification process or fail to submit the power of attorney under Section 8(3), should he fail to assist the due diligence process, should the customer identification or due diligence be impossible for other reasons, or should the person performing the customer

identification or due diligence have a reason to doubt the correctness or authenticity of documents submitted.

451. As noted previously, identification is required prior to commencing a business relationship. In the event that a customer refuses to provide adequate information on the person he is representing or undergo the "due diligence process", the obliged entity has to submit a STR to the FIU (Section 6 (2) (c)).

452. The only requirement to terminate a business relationship is envisaged under Section 25 (1) in respect of the special provisions relating to credit institutions in the event that they enter into a corresponding bank relationship with a foreign correspondent institution, which is a shell institution or is known for allowing its account to be used by a shell institution or which does not apply measures against legitimisation of proceeds of ML/FT to the standard of the European Union. In such cases, and in the event that it had already established such a relationship, it must terminate the relationship in the shortest practicable period.

453. Obliged entities are required to check the identity of customers for transactions above €1,000 and at the start of a business relationship (Section 7 of the AML/CFT Law). In accordance with Section 8 (6) they are also required to check the validity and completeness of the customer's identification data and information gathered in the course of the due diligence process. This can be interpreted as requiring CDD measures to be applied at the appropriate time, but strictly speaking, this is a prescriptive requirement and does not take into account issues relating to materiality and risk.

Effectiveness and efficiency

454. There is an embedded system of prior identification of the customer in respect of most transactions. All institutions appeared to be well aware of this obligation. They also appeared well aware of their obligation to retain the relevant documentation and the importance of a quick response to the authorities in case of a request for documentation.

455. But, there are some concerns regarding effective implementation particularly in respect of the identification and verification of beneficial ownership. A number of interviewed institutions expressed difficulty in identifying such owners and the extent to which they are required to delve to establish who the beneficial owners are. This was particularly evident in the case of bearer shareholders and the ultimate natural person behind an enterprise or a legal person. Indeed, there was concern (particularly by the Prosecutors) that bearer shareholdings can be used as white horses to hide cash movements. Some also highlighted a concern regarding the issue of false identification documents – which highlights an essential requirement for a verification process.

456. Others also had difficulties regarding the procedures they are expected to undertake regarding this responsibility with a number of the institutions stating that reliance on a prima facie statement by the customers is what is expected of them; with the verification depending on customer cooperation – implying no independent check. However, all looked forward to more explicit guidance on this aspect in light of the risk-based approach to this criterion. The application of a risk-based approach is considered to be a difficult area in which to create an appropriate and effective system of control measures by many interviewed institutions following the relatively recent introduction of the AML/CFT Law.

457. Another concern related to the perception, in some cases, that mere identification satisfies the customer due diligence process. There was limited awareness of the process of verification, particularly in respect of beneficiary owners and customers opening safety boxes. In respect of the latter, the Police expressed concern about the minimal controls on usage. Moreover, it appeared

that a number of institutions took a rule-based approach to their responsibilities rather than trying to identify the extent of risk, if any, the institution faced.

458. There appeared to be a lack of clarity between CDD and ECDD while there was little recognition of reduced or simplified due diligence. The latter related to the exemption granted by the AML/CFT Law in respect of low-risk customers. There seemed to be little awareness that in case of risky customers, there should be a reference to senior management - normally reference was made to one level higher.

Recommendation 6 (rated NC in the 3rd round MER)

459. The findings established following the 3rd Round Mutual Evaluation were that:

- there was a basic requirement in place only as regards the banking sector and limited to "significant public offices";
- effectiveness was low due to insufficient familiarity of the industry with the concept and as a result of an absence of guidance.

460. The AML/CFT Law (Section 4(5)) defines a politically exposed person as:

a) a natural person in a prominent public position and with nation-wide responsibilities, such as a head of state, a head of government, a minister and deputy or assistant minister, a member of the parliament, a member of a supreme court, a constitutional court or another high-level judicial body, decisions of which are not subject to further appeal, except in exceptional circumstances, a member of a court of auditors or a central bank board, a high-ranking military officer, a member of an administrative, supervisory, or management board of a state-owned business, an ambassador or chargé d'affaires, or a natural person, having similar responsibilities on a Community or international level; all the above for the entire period of the position and for one year after the termination of such position, and provided the person:

1. has a residence outside the territory of the Czech Republic, or

2. holds such important public position outside the Czech Republic,

b) a natural person, who:

1. is the spouse, partner equivalent to the spouse or a parent of the person under a),
2. is a son or a daughter of the person under letter a) or a spouse or a partner of such son or daughter (a son or daughter in law),
3. is a business partner or a beneficial owner of the same legal person, a trust, or any other business entity under a foreign law, as the person under letter a) or is known to the obliged entity as a person in a close business relationship with a person under letter a), or
4. is a business partner or a beneficial owner of the same legal person, a trust, or any other business entity under a foreign law known to have been established in benefit of a person under letter a).

461. The definition is generally in line with the 3rd EU Directive and broadly with the general part of the definition in the Glossary of definitions in the FATF Methodology (individuals entrusted with prominent public functions). It is, however, a precise definition and does not seem to allow for additional interpretation. There are no further guidelines available to provide assistance for obliged entities to determine whether a client is a PEP or otherwise. Thus, senior politicians (who may not be members of parliament), senior government officials and important political officials as suggested in the Glossary of definitions in the FATF Methodology are not included within the

definition. The FIU stated that the inclusion of assistant deputy minister (instead of the terminology deputy minister) is meant to capture these additional positions.

462. The on-site interviews indicated that, in general, credit and financial institutions are generally aware of the concept of PEPs but, in some cases, were less aware that it can also include the customers, business partners and that they may need to establish whether a beneficial owner may also be a PEP. Credit and financial institutions rely on the declaration included in the document signed by a prospective client to establish whether he/she is a PEP or otherwise while some institutions also access relevant web pages (such as www.world-check.com). Only a few institutions, subsidiaries of foreign banks, stated that they carry out additional checks and require additional information if the client is suspected/determined to be a PEP – this in line with the banks, group policy. Many other institutions interviewed on-site institutions intimated that they do not seek additional information while others held that a PEPs verification system is too costly and they rely exclusively on customer information.

463. Section 15(3) of the AML/CFT Law specifically states that:

No employee of the obliged entity shall make a transaction for a politically exposed person without consent of their direct supervisor or the statutory body of such obliged entity.

464. There is thus no legal requirement, as required by the FATF standard that:

(i) there is a procedure for approving the establishment of a business relationship with a PEP; and
(ii) that the approval should be obtained from senior management.

465. The Czech authorities contend that the approval from senior management is captured by Section 15(3) of the AMLCFT which requires that the approval of the direct supervisor or the statutory body of the institution has to be obtained. In terms of large institutions, it is difficult to interpret the reference to the statutory body of the institution to refer to senior management – although this may be applied for the smaller institutions with few employees.

466. There is no obligation in the AML/CFT Law to require senior management approval when an existing client is subsequently found to be, or has become a PEP.

467. Section 9 (2) (d) requires obliged entities to monitor source of funds of PEPs while Section 15 (2) of the AML/CFT Law states that:

The obliged entity shall refuse a transaction for a politically exposed person should the origin of assets used in the transaction be unknown.

468. This implies that credit and financial institutions are required to consider and establish the source of wealth and funds.

469. Section 9 (2), applicable to all transactions with PEPs, requires obliged entities to collect the necessary information for ongoing monitoring of the business relationship, including 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. Moreover, CNB Decree 281/2008, applicable to credit and financial institutions also in respect of AML/FT risk management), requires risk classification of clients both upon the establishment of a business relation with a client and during the course of such relationship.

470. However, on-site interviews with credit and financial institutions indicated that a number of institutions considered it very difficult to establish conclusively whether a client is a PEP or

otherwise and largely relied on the declaration included in the document signed by a prospective customer. There was little indication of any subsequent follow-up.

Domestic PEP-s – Requirements

471. In terms of Section 4 (5) (a) (1) and (2) of the AML/CFT Law the provisions are applicable only to foreign PEPs and Czech nationals in public functions abroad.

Ratification of the Merida Convention

472. The Czech authorities stated that the Czech Republic signed the 2003 United Nations Convention against Corruption in 2005, but it has not ratified it pending a review of criminal liability of legal persons, expected in 2011.

Effectiveness and efficiency

473. The on-site interviews indicated a number of difficulties in the implementation of effective measures when dealing with PEPs. There was some difficulty in practical identification of PEPs, particularly in respect of connected persons as well as how to establish whether a PEP may be a beneficial owner.

474. A number of institutions called for further guidelines from the authorities to implement an effective risk-based approach to their responsibilities. Institutions generally carry out identification procedures in respect of an actual politically exposed person (in spite of the difficulty noted by some institutions) but with little follow through in respect of connected persons as well as in respect of verification. Some of the foreign-owned institutions had a good understanding of their responsibility as a result of group-wide procedures. On the other hand, the FIU/CNB did not indicate that they had encountered any significant problems with regard to adherence to Recommendation 6 highlighting that foreign PEPs dealing with Czech institutions may be indeed few.

475. The AML/CFT Law came into force only in 2008 while the previous law dealt very sparsely with this issue. The comments from on-site interviews indicate that there are still some overall problems with dealing with the concept of PEPs and that they encounter several difficulties in effectively implementing the specific requirements.

Recommendation 8 (rated PC in the 3rd round MER)

476. The 3rd Round Mutual Evaluation established that:

- the requirements in respect of recommendation 8 are only addressed – to some extent – for banks; and
- the broader implementation of the recommendation needs to be reconsidered.

477. The FIU considers that criterion 8.1 is addressed through the requirement in the AML/CFT Law (Section 21) that credit and financial institutions should have internal procedures which should provide for a description of CDD and adequate procedures commensurate with the nature of the product or service and inherent AML/CFT risk. Section 21 (5) (d) of the AML/CFT Law requires institutions to have:

> *Adequate and relevant methods and procedures to assess and manage risks and perform internal controls and supervision of compliance with this Act*

478. But, there continued to be no specific reference in the AML/CFT Law requiring financial institutions to have policies in place or to take measures as may be needed to prevent the misuse of technological developments in ML/FT. Similarly, CNB Decree 281/2008 on certain requirements for the system of internal principles, procedures and control measures against the legitimisation of the proceeds of crime and financing of terrorism, deals principally with client acceptability rules rather than threats from new or developing technology. Although the Decree states that its second scope is to require the introduction and application of methods and procedures for risk assessment, risk management, internal control and the ensuring of control over compliance with the legally defined obligations (of regulated institutions), there are no specific guidelines indicated that the risks created by the use of new technologies are expected to feed into the institutions, risk analysis. However, CNB decree 123/2007 Coll. – articles 30/1 and 30/4/d - requires credit institutions to identify risks associated with products activities and systems.

479. During on-site interviews, one foreign-owned institution stated that when considering the approval of new products by an internal committee, it does give consideration to ML/FT risks. But, this was not generally stated or shared by the majority of the interviewed institutions, who mainly consider this responsibility as the same as that for non face-to-face contact. The CNB however stated that it does request available supplementary information of risk analyses of products reflecting AML/CFT risks.

480. Section 8 (1) of the AML/CFT Law specifies that an obliged entity is required to perform the first identification of a customer who is a natural person as well as any natural person acting on behalf of a customer in personal presence of the identified, unless stipulated otherwise by the Act. Thus, first identification generally has to be carried face-to-face.

481. The exceptions to this requirement, as stipulated in the AML/CFT Law, are listed in Sections 11 and 13.

482. Section 13 provides the exceptions from the identification and due diligence requirements. However, section 13 (2) (d) (2) also specifies that an obliged entity may decide not to perform any identification or due diligence, under certain conditions, should it involve:

> *Other products, should they pose low risk of their use for the purposes of legitimisation of proceeds or financing of terrorism*

483. For subsequent non face-to-face transactions but with persons representing the customer, financial institutions are required to verify the identity of the acting natural person. However, there is no legal requirement in the AML/CFT Law for institutions to have policies and procedures in place to address any specific risks associated with non face-to- face business relationships or transactions when conducting ongoing due diligence.

484. On the other hand, CNB Decree 281/2008 clearly requires that when executing a transaction using remote communication devices, institutions shall create and apply procedures to verify whether the transaction is being executed with an already identified customer. No further guidance is provided by the authorities.

485. Section 11 includes a list of third-party reliance when identification may not be requested. It requires that in the event of third-party reliance the obliged entity:

i. receives from the third party all relevant documents, including copies of all documents used in the customer identification, all data indicating the purpose and nature of the business transaction, and information on the identity of the beneficial owner. In the event

it doubts the correctness or completeness of such information, the obliged entity shall refuse the customer information.

ii. in case of remote agreement on financial services under the Civil Code the obliged entity shall receive the first payment from this agreement via an account kept on the customer's name in a credit institution or a foreign credit institution operating in the European Union or the European Economic Area, and the customer is required to submit to the obliged entity a copy of a document verifying the existence of the said account together with copies of the relevant parts of their identity card and at least one more identification document from which the obliged entity may determine the customer's identification data, type and serial number of such identity cards, issuing country or institution, and validity.[13]

Effectiveness and efficiency

486. The authorities have provided no additional guidance to institutions on the risks generated by new technologies. Indeed, during on-site interviews there was little perception of such risks and interviewed institutions generally equated this responsibility as part of their responsibility in non face-to-face identification of clients.

487. Regarding identification, the AML/CFT Law, in respect of most transactions, requires specific identification, generally based on the provision of identity cards. This is also the case with regards to most of the initial relationship when subsequently the relationship is non face-to-face business. Some institutions were however wary that they could not readily verify the authenticity of identity cards (not only in respect of non face-to-face transactions but also generally). Interviews with some prosecutors seemed to confirm that the problem with falsified identity cards was not small. In this regard, it is important that additional documentation is required to complement the normal identity requirement.

3.2.2 Recommendations and comments

Recommendation 5

- Issue guidance to institutions to flesh out the way obliged entities are expected to implement their responsibilities stemming from the legislation on a risk-based approach.
- Issue guidance to the financial institutions to ensure that the obligation to undertake CDD measures when financial institution have doubts about veracity or adequacy of previously obtained customer identification data is fully understood. In this respect, there is also legal uncertainty in meeting the requirement under Recommendation 5.2(e).
- To introduce preventive measures to deter the potential opening of accounts/safe boxes, etc. with fictitious names.
- To implement more effectively the requirements for obliged entities always to determine the natural person behind a beneficial owner.
- Require reasonable measures be taken to verify beneficial ownership including those that may be low risk to align with FATF standards.
- Specifically include within the AML/CFT Law natural persons acting on behalf of beneficial owners.

[13] The evaluators were not in a position to verify the specific cases of remote agreement on financial services under the Civil Code.

- Clarify to obliged entities (through guidance) how to obtain satisfactory evidence of the identity of beneficial owners, bearer shares holders and silent partners and other similar cases. Ideally, the latter two should be prohibited or verified through controlled registration.
- Review the requirements for customer due diligence and enhanced due diligence to include other measures as referred to in international standards.
- Emphasise the verification process is not only for financial transactions but also for other services such as the opening and usage of safety boxes.
- Review the identification process in respect of low risk customers to one of reduced or simplified customer due diligence instead of no identification requirement.
- Carry out a risk analysis to decide the criteria for determining whether and when to exempt the specified low risk customers/circumstances within the appropriate circumstances of the Czech Republic.
- Consider the issue of a list of non-cooperative countries as identified by The Czech authorities.

Recommendation 6

- Issue detailed guidelines to obliged entities to flesh out the responsibilities and obligations of obliged entities in respect of PEPs.
- Review the definition of PEPs to make the list of PEPs (ie replace “shall mean” to “shall include”) and include senior politicians, senior government officials and important political officials as suggested in the FATF Recommendations.
- Require that the approval for establishing and continuing a business relationship with a PEP is given by senior management rather than the direct superior.

Recommendation 8

- Introduce in the AML/CFT Law a specific obligation requiring measures to prevent the misuse of technological developments.
- Issue a legal requirement in the AML/CFT Law for institutions to have policies and procedures in place to address any specific risks associated with non face-to-face business relationships or transactions when conducting ongoing due diligence.
- Issue guidance to flesh out the above two responsibilities.
- Specifically require additional identification documents to verify the authenticity of the primary identification in all non face-to-face business.

3.2.3 Compliance with Recommendations 5, 6 and 8

	Rating	Summary of factors underlying rating
R.5	**PC**	• Czech measures in relation to identification and verification of the beneficial ownership are below FATF standards; • The identification and verification of beneficial owners is not always determined; • Silent partners are not registered and therefore cannot be identified during the CDD/ECDD process; • Certain categories of low risk business can be exempted from CDD and/or ECDD instead of requiring simplified or reduced measures;

	Rating	Summary of factors underlying rating
		• Low risk customers/circumstances not subject to a risk analysis to decide the criteria for determining whether and when to grant exemption; • Legal uncertainty in relation to the implementation of Recommendation 5.2 (e); • The overall level of effectiveness appears limited in the identification/customer due diligence process in respect of beneficial ownership as well as with regard to the verification process including that related to safety deposit boxes. The required risk-based approach is not supplemented by adequate guidance to enhance effectiveness.
R.6	**PC**	• Does not include certain types of PEPs included in the glossary of definitions in the Methodology; • No requirement to consider whether a beneficial owner may also be a PEP; • Lack of comprehension in some cases of what constitutes a politically exposed person; • Approval is not specified to be at the level of senior management; • Limited effectiveness and implementation.
R.8	**PC**	• No specific requirement in the AML/CFT Law requiring financial institutions to have policies in place or to take measures as may be needed to prevent the misuse of technological developments in MLFT; • Consequently, there was no requirement for policies and procedures in place; • No general requirement for additional documentation to verify the authenticity of the primary identification; • There was low perception of the ML/FT threats that may arise from the misuse of technological developments.

3.3 Financial institution secrecy or confidentiality (R.4)

3.3.1 Description and analysis

Recommendation 4 (rated LC in the 3rd round MER)

488. According to Section 38 of the AML/CFT Law, obliged institutions operating in the Czech Republic are under the obligation to maintain the confidentiality of the information they acquire in the course of their business relations. All the banking transactions and financial services of banks, including account balances and deposits, are subject to banking secrecy. Furthermore, Section 38 of the AML/CFT Law establishes a detailed list of exemptions from professional secrecy stated in Section 38, Act No. 21/1992 Coll. of 20 December 1991, on Banks, which sets out bank secrecy and the circumstances in which a disclosure of information cannot be considered a breach of this secrecy. There are similar provisions in legislation on Insurance and Securities legislation. Indeed, according to Article 125 of the Law on Insurance, the inspectors of the CNB are bound by confidentiality with exceptions set out in Article 128. Furthermore, Article 117.2 (f) of the Law on Capital Market provides that persons operating on capital markets shall be exempted from the duty of confidentiality for the purpose of providing the Ministry of Finance (FAU) with information when fulfilling, according to special legal rule on fight against money laundering or a special legal

rule on the implementation of international sanctions in order to maintain international peace and security, protect fundamental rights and combat terrorism.

489. Finally, according to Article 26 (f) of the Law on Supervision of the Capital Market Area, the provision of information to the authorities responsible for the fight against money laundering or imposing international sanctions to maintain international peace and security, protecting fundamental human rights and combating terrorism shall not be deemed as a breach of the duty of confidentiality.

490. The AML/CFT Law sets forth exemptions of confidentiality in Section 39 for all obliged entities as well as supervisory authorities.

491. According to the findings of the 3rd MER, there were "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…) […] It is therefore recommended to review the consistency of the 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" (paragraphs 596 and 597 of the 3rd MER). With the adoption of the new AML/CFT Law, and thus the transposition of 3rd EU Directive, these shortcomings were addressed.

492. Suspension of financial confidentiality and secrecy is clearly provided in Section 24 relating to the obliged entities' obligation to report to the FAU all information on transactions requiring identification or transactions analysed by the FAU as well as documentation and information on persons taking part in such transactions. The obliged entity shall provide access to documentation onsite if the FAU so requests.

493. The implementation of new pieces of legislation in Securities and Insurance sectors, have allowed to repeal the compulsory requirement of the chairman of the stock exchange chamber to release the confidentiality provisions set forth in Section 20 of the Stock Exchange Act – Act No. 214/1992 Coll.

494. Section 20 of the Law on the Stock Exchange Act provided that participants in a stock exchange area (members of its committees, brokers, employees of the stock exchange etc.) were obliged to keep confidential any information acquired; these persons might be released from these confidentiality provisions by the chairman of the stock exchange chamber.

495. In the Insurance sector, the client's consent is no longer required for information related to money laundering to be shared with the FAU and other authorities, as was the situation under the former and now repealed Art 39 of Act No.363/1999 Col. The new Insurance Law provides explicitly that information sharing between the Ministry of Finance and the CNB is not considered as an infringement of confidentiality provided it is in keeping with the provisions of the AML/CFT Law (Section 14) or the Law on the Implementation of International Sanctions (Section 30. paragraph 3).

496. The referred Insurance act, no. 277/2009 Coll., states in its article no. 125, that inspectors of the Czech National Bank are bound by confidentiality. Exemptions from this duty are stated in the Article no. 128. Article 128 paragraph 7 reads:

Observation of duties to the Ministry of Finance stemming from the act on selected measures against legitimisation of proceeds of crime and financing of terrorism or from the act on

implementation of international sanctions[14] *and for the purpose of financial markets analyses and preparation of legislative acts regulating the financial market,* ***is not an infringement of the obligation of confidentiality*** *according to this Act.*

497. In addition, the obligation of confidentiality stated in AML Section 38 for obliged entities, is exempted to a large extent and cannot be invoked, according Section 39, in cases such as:

- a law enforcement authority when conducting criminal proceedings related to the legitimisation of proceeds of crime and financing of terrorism, or if the matter concerns the compliance with the obligation to report a suspicious transaction in connection with any such crime;
- specialised Police units involved in the identification of the proceeds of crime and financing of terrorism;
- an authority of a third country referred to in Section 33 (related to international co-operation) in the process of provision of information intended for the purpose of delivering on the intention of this Act, unless prohibited by another legal instrument;
- the competent financial directorate or the General Directorate of Customs in relation to facts which are a part of information referred to in Section 32(2) (information transmitted by FAU related to investigations carried out in Customs jurisdiction);
- authorities referred to in Section 35(1) (these are, FAU, the Czech National Bank, administrative authorities with powers to supervise the compliance with the legislation regulating lotteries and other similar games, the Czech Trade Inspection, and the competent bodies of professional chambers of lawyers, public notaries, auditors, licensed executors or tax advisors);
- the administrative authority competent to perform state control or conduct an administrative procedure in the area of implementation of international sanctions;
- an authority mandated by another law to decide on the revocation of a licence for business or other independent gainful activity upon the lodging of a motion filed by the Ministry;
- a financial arbitrator deciding, according to another law, in a dispute of the claimant against an institution;
- a person who could raise a claim for damages incurred as a result of the implementation of this Act, provided facts conclusive for the making of the claim are communicated ex post; the obliged entity may, in this instance, inform the customer that steps had been taken under this Act, but only after the decision of the competent law enforcement authority to secure or seize the subject of the suspicious transaction, or for which the period as per Section 20(7) had expired, was enforced; in all other instances only after the Ministry has granted its written consent;
- a court adjudicating civil law disputes concerning a suspicious transaction or a claim for compensation for damages incurred as a result of complying with obligations under this Act;
- the National Security Office, Ministry of Interior or an intelligence service in the process of a clearance procedure in accordance with to another legal instrument.

498. The evaluators found neither legal nor practical obstacles that could hinder the sharing of information related to Recommendation 7, 9 or SR VII.

- as far as correspondent banking is related, there is no restriction in the AML/CFT Law that prevents the financial entity acting as correspondent bank from transferring information regarding AML to the entity on behalf which it is operating and vice versa;

[14] Act No. 69/2006 Coll., on implementation of international sanctions.

- regarding third party and introducers, this possibility is set out in Section 11, according to the requirements provided in the 2005/60/CE AML Directive, the circumstances under which the transfer of the information related to the CDD procedure can be carried out by the third party, are set out in detail in the referred act;

- in the case of the information related to the wire transfer payer that has to accompany through the payment chain, it is completely provided in the AML law, Section 35, regarding supervision, even though this obligation is set forth in Regulation (EC) No 1781/2006 of the European Parliament and the Council, which is directly applicable for the country members. The sanction regime for failure to comply is stated in Section 49 of the AML/CFT Law.

499. There are no obstacles for the information gathered to be shared with foreign bodies for AML/CFT purposes, in line with the provisions of the AML/CFT Law.

3.3.2 Recommendations and comments

500. From the interviews conducted on-site it appears that there are no legal obstacles regarding financial secrecy which could hamper the application of the FATF Recommendations, neither domestically nor with foreign counterparts.

501. The authorities advised that the FAU has been tasked with the preparation of a study on the most effective ways for the authorities to obtain information from financial institutions.

502. The authorities are also in the process of establishing a Central Register of Bank Accounts which may be considered as an optimal practical solution to information gathering. This register will be a database managed by a state authority containing basic data on clients and financial products and the information will be available through on-line requests. For further information it will be possible to contact the specific financial institution. At present the discussions with the competent authorities and financial institutions are in the early stages. The evaluators welcome this development.

503. From the interviews conducted on site there appear to be no obstructions to the sharing of information either domestically in respect of financial institutions, or cross-border. The FAU and CNB seemed to be in a position to access and share the information they require to properly perform their functions in combating ML or TF.

3.3.3 Compliance with Recommendation 4

	Rating	**Summary of factors underlying rating**
R.4	**C**	• This Recommendation is fully implemented.

3.4 Record Keeping and Wire Transfer Rules (R.10 and SR.VII)

3.4.1 Description and analysis

Recommendation 10 (rated LC in the 3rd round MER)

504. The 3rd Round MER had highlighted the following issues:

- The retention period of 10 years for obliged entities did not apply to traders in second hand goods and cultural items, who were required to retain the information for 3 years in all cases, and 10 years when the value of the transaction is above €10,000;
- CNB regulations for banks, branches of foreign banks as well as foreign exchange institutions were required to keep records of transactions for a period of ten years, without further precision/distinction. Since the AML Act was more specific (record keeping after completion of the transaction and after termination of the relationship), the evaluation noted that this could create confusions, although the Czech authorities indicated there were no particular problems experienced;
- Record keeping requirements should more explicitly cover account files and business correspondence; and
- In practice, files and documents are too often kept in paper form (banking sector) which creates difficulties to retrieve information in a timely manner.

505. There is an evident increase in electronic record keeping within financial institutions. Moneyweb also enables electronic transfer of records. The Czech FIU indicated the ease which they can obtain electronic records (photocopy of IDs, of contracts and account statements) from the domestic banks in response to foreign international cooperation requests. Nonetheless, the examiners were informed by the banking association that in some smaller banks there was some evidence of paper based systems or record keeping which could contribute to slight delays in reconstructing transactions. The Czech authorities, nonetheless, remain convinced that electronic record keeping is universally in practice.

506. Section 16 of the AML/CFT Law requires obliged entities to retain records of all identification data and of all data and documents on transfers requiring identification for a period of 10 years after terminating the business relationship with the customer. Section 16 (2) of the AML/CFT – Act 2008 requires the retention of "all data and documents" on transfers requiring identification. This is interpreted to mean by the authorities also business correspondence though this is not explicitly provided for. The authorities considered that the time limit of ten years is long enough and do not envisage requiring information after this period.

507. Article 21 (2) of the Act on Banks (Act 21/1992 Coll. as amended) specifies that in respect of accounting and business documentation:

508. Thus, the issue raised in the 3rd Round Mutual Evaluation Report remains, though there was again no concern expressed either by the authorities or the banks in this respect.

509. It is noted that the retention period for maintaining records is 10 years without any reference to the FATF recommendation that financial institutions would need to maintain records for a longer period if requested to do so by a competent authority in specific cases and upon proper authority. Although this does not appear to create any problems in practice, this requirement should be included in a law, regulation or other enforceable means. Furthermore, as identification is only required for transactions above €1,000, records fortransaction of less than €1,000 are not required to be kept.

510. It is also noted that Section 8 (2) (b) reads:

The obliged entity shall take a record of and verify such customer's identification data from their business registration documents, and, in the extent stipulated in letter a), identify the natural person acting in the transaction on behalf of such legal person; should the statutory body, its member, or the person in control of such legal person be another legal person, the obliged entity shall also record such person's data.

511. Furthermore, in respect of beneficial ownership, Section 9 (2) (b) requires CDD only in the event that the customer is a legal person. This is further restricted by Section 4 to holdings or rights above 25% of assets or distributable assets.

512. The above implies that obliged entities are required to identify the ultimate natural person behind a legal person up to a certain specified extent but are not obliged to identify a beneficiary of a natural person (although banks indicated that they request customers to indicate such a case). It follows naturally that such records under the specified limits cannot be retained.

513. In accordance with Articles 5 (5) and 11 of 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, the payment service provider of the payer and the payee shall keep records of any information received on the payer for five years. This Regulation is directly applicable in the Czech Republic.

514. As noted under Recommendation 5, there are no identification or CDD requirements in respect of certain low risk customers (Section 34 of the AML/CFT Law) – hence records cannot be kept in such circumstances.

515. Section 25 (6) of the AML/CFT Law inter alia specifies that credit or financial institutions shall implement an effective system in respect of record keeping. The scope of the system has to be commensurate with the size of the institution and the nature of its business operations. It is thus required to be in a position, by an established deadline, on a request from the FIU to disclose information whether it maintains, or has in the previous 10 years maintained, commercial relations with a specific natural or legal person, whom it was obliged to identify, and any details of the nature of the relations.

516. The Czech authorities also pointed to § 7 of the CNB Decree 281/2008 Coll. and § 10 of the CNB Decree 123/2007 Coll. which require financial institutions to record the approval and decision making processes in order that they are traceable within the financial institutions. Though this is evidence of the requirement to ensure the traceability of records generally it seems to the evaluators not exactly on point with the requirement to ensure that transaction records are sufficient in all cases to provide evidence for prosecution of criminal activity as required by the standard.

517. As noted above, a few institutions had some doubt regarding their ability to build a chain of transactions spanning a number of years within a reasonable time as these are retained in paper form.

518. Section 17 of the AML/CFT Law, on cooperation in record keeping, allows that the data under Section 16 may be kept by one of the obliged entities provided the other involved obliged entities have access to all necessary information including copies of all documents. However, there is no further guidance on this issue and therefore can possibly lead to a gap in the retention of information.

Effectiveness and efficiency

519. There is no suggestion that obliged entities have any particular problems in retaining documentation though it is uncertain the extent to which smaller institutions are in a position to retrieve the paper-based documentation to build a chain of transactions within reasonable time. On the other hand, although it is unclear whether the AML/CFT Law specifically requires that information could be requested on transactions (but rather on identification and business relationship), no institution indicated that this information would not be provided.

520. As noted under Recommendation 5, some institutions can be effectively exempted from carrying out any CDD in the event of a determination that it is a low-risk transaction. In these cases, information would not be available.

Special Recommendation VII (rated LC in the 3rd round MER)

521. The 3rd round MER had concluded that the requirements relating to SR VII on wire-transfers were not been directly addressed, but dealt with by different pieces of legislation. The report had recommended that financial institutions performing wire transfers are required to keep originator information through the payment chain; and that effective risk-based regulations and procedures are introduced for identifying and handling wire transfers that are not accompanied by complete originator information. Moreover, 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.

522. As in other EU countries, Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006 on information accompanying transfers of funds, is directly applicable in the Czech Republic without any additional implementation requirements.

523. The EU Regulation lays down rules on information on the payer to accompany transfers of funds for the purposes of the prevention, investigation and detection of money laundering and terrorist financing. It applies to transfers of funds, in any currency, which are sent or received by a payment service provider established in the EU, subject to certain specified exemptions which are considered as low risk. The obligation on the payment service provider (PSP) of the payer is to have complete information on the payer consisting of his name, address and account number (or other specified alternate information) to allow the transaction to be traced back to the payer. Furthermore, PSPs are required to ensure that transfers of funds are accompanied by complete information on the payer, which must be verified before the transfer of funds from a reliable and independent source. This information is to be retained for five years.

524. Articles 4 and 5 of the EU Regulation provide for the implementation of SRVII.1. According to Article 5 of the Regulation, the payer's PSP has to ensure that transfers of funds are accompanied by complete information on the payer while Article 4 defines what is meant by complete information.

525. This generally consists of the name, address, and account number but the address may be substituted with the date and place of birth of the payer, a customer identification number or national identity number. In the case that the payer does not have an account number, the PSP has to substitute it with a unique identifier which allows the transaction to be traced back to the payer. Article 5 of the Regulation also specifies that the PSP has to verify the complete information on the payer, before transferring the funds from reliable and independent source in respect of wire transfers of €1,000 or more.

526. Due to the concept of the single market, the EU Regulation stipulates that it is only in the case where the payer's PSP is outside the European Union, full originator information should be included in the message or payment form accompanying the wire transfer. For the purposes of the EU Regulation, transfers within the EU are considered as domestic transactions by the FATF.

527. In the case of batch transfers, Article 7(2) states that full originator information is not required provided that the batch file contains that information and that the individual transfers carry the account number of the payer or a unique identifier.

528. In accordance with Article 6(1) of the EU Regulation, in respect of wire transfers within the EU, the account number is always transferred. The name of the originator is usually also included.

529. Article 8 of the Regulation specifies that the PSP of the payee shall detect whether, in the messaging or payment and settlement system used to effect a transfer of funds, the fields relating to the information on the payer have been completed using the characters or inputs admissible within the conventions of that messaging or payment and settlement system. Such PSPS are required to have effective procedures in place in order to detect any missing required information.

530. Article 13 of the EU Regulation regulates the issue regarding the retention period of five years in the event that technical limitations prevent the full originator information accompanying a cross-border wire transfer from being transmitted with a related domestic wire-transfer.

531. Article 10 of the EU Regulation requires that the PSP of the payee shall consider missing or incomplete information on the payer as a factor in assessing whether the transfer of funds, or any related transaction, is suspicious, and whether it must be reported to the authorities responsible for combating money laundering or terrorist financing.

532. Also in accordance with Article 9 of the EU Regulation, if the PSP of the payee becomes aware when receiving funds that information on the payer is missing or incomplete, it shall either reject the transfer or ask for complete information on the payer. The evaluators were informed that the FIU received 2 STRs since 2006 from PSPs in respect of other PSPs which did not complete the required information – subsequently the contract with these other PSPs were cancelled.

533. Article 15(3) of the EU Regulation requires that EU Member States appoint competent authorities to effectively monitor, and take necessary measures with a view to ensuring, compliance with the requirements of the Regulation. However, there is no reference within either internal regulations or guidance on how this has been applied within the Czech Republic. The evaluators were not in a position to evaluate the effectives of the monitoring system, to assess how correspondent account files were reviewed to ensure an ECDD process nor are they aware of any findings. But the CNB confirmed that it does review the files and also AML/CFT Questionnaires connecting the level of AML/CFT provision of the correspondent banks, particularly in the case of non EU banks. It stated that the responsibility for approving and establishing a new correspondent relationship often belongs to the parent bank. Furthermore it stated that it reviews the sources of information used by institutions for determining whether respondent banks are regulated, they are not a shell bank and do not deal indirectly with shell banks. The usual sources for such verifications are:

- The Bankers Almanac;
- Information from the public sources (internet, annual report, etc.);
- Information from the relevant banking group;
- Questionnaire prepared by the bank for this specific purpose.

534. Article 15(1) of the EU Regulation requires that Member States lay down the rules on penalties applicable to infringements of the provisions of this Regulation and shall take all measures necessary to ensure that they are implemented. Such penalties shall be effective, proportionate and dissuasive.

535. The Czech Republic imposes a fine up to CZK 10,000,000 (circa €389,000) for administrative offences (Section 49 of the AML/CFT Law). These administrative fees are sanctioned if there are contraventions relating to the content of information accompanying a transfer of funds. These are applicable when:

i. the person fails to ensure that the information on the payer accompany the transfer;
ii. the person has not implemented effective procedures for identification of missing or incomplete information on the payer;
iii. the person fails to take action against the provider of payment services of the payer who had failed to ensure that a transfer of funds is accompanied with information on the payer; or
iv. it fails to present upon request of the provider of payment services of the recipient information on the payer in cases when the transfer of funds does not include full information of the payer.

536. If these contraventions had prevented or made more difficult the identification or seizure of the proceeds of crime, or made the financing of terrorism possible, a fine up to CZK 50,000,000 shall be imposed. As per comments in relation to Recommendation 17, the administrative sanctioning regime seemingly in the Czech Republic is not considered as proportionate in terms of range of sanctions that can be applied. No financial sanctions have been imposed, placing some doubt on the effectiveness of the sanctioning regime. Furthermore, direct sanctions are not applicable to directors, managers and employees. Moreover, failings in respect of the proper carrying out of the identification process are not sanctionable.

Effectiveness and efficiency

537. Regulation (EC) No 1781/2006 is directly applicable within the Czech Republic. Many of the requirements can be captured within the normal application of the AML/CFT regime as encapsulated within the AML/CFT Law. The evaluators were advised that no sanctions had been taken in respect of any identified breaches of the EC Regulation.

3.4.2 Recommendation and comments

Recommendation 10

- Although the problem has not arisen in practice so far the evaluators are aware, clarify in law or regulation that the retention period for maintaining records could be for a longer period if requested to do so by a domestic competent authority in specific cases and upon proper authority.
- Include specifically in the law a requirement to retain business correspondence for at least five years following the termination of an account or business relationship.
- Require that information retained includes also that of the ultimate natural person behind a legal person.
- Clarify that transaction records are maintained in such a way as to permit the reconstruction of individual transactions so as to provide evidence for prosecution of criminal activity.
- Consider the issue of guidelines specifying retrieval methodologies applicable to paper-based maintenance of records in order to facilitate early and orderly retrieval.
- Consider issuing guidance in respect of cooperation between obliged entities in record keeping so as ensuring that there are no gaps in such cases.

Special Recommendation VII

- Consider, in the light of future findings of onsite inspections (and any sanction issued in this respect) by The Czech authorities, issuing guidelines to obliged entities on the practical implementation of the EU Regulation.

3.4.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• There is no requirement that the retention period for maintaining records could be extended for a longer period if requested to do so by the FIU in specific cases and upon proper authority; • There are no clear requirements obliging institutions to maintain records in such a way as to permit the reconstruction of individual transactions so as to provide evidence for prosecution of criminal activity; • There are no explicit requirements in the AML/CFT Law to retain information concerning business correspondence for at least five years following the termination of an account or business relationship.
SR.VII	**LC**	• A reserve on effectiveness of implementation.

Unusual and Suspicious transactions

3.5 Monitoring of Transactions and Relationship Reporting (R.11 and R.21)

3.5.1 Description and analysis 15

538. The 3rd Mutual Evaluation Report concluded that there was no requirement in the AML/CFT Law to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions. The obligation in the Act did not go beyond identification/reporting purposes in respect of transactions without apparent economic purpose or which do not match the client's profile etc.

539. Only the CNB Provision 1 of 2003 required banks to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions etc. It therefore recommended that the obligation of R.11 is expanded beyond the banking sector to all financial institutions and other obliged entities.

Recommendation 11 (rated PC in the 3rd round MER)

540. Section 6 of the AML/CFT Law defines a suspicious transaction as a transaction the circumstances of which lead to a suspicion of legitimisations of proceeds of crime or financing of terrorism or any other unlawful activity. Inter alia, this includes:

- numerous transactions performed in one day or in a short period of time and not typical of the given customer;
- number of various accounts opened by the given customer which are in obvious discrepancy with their business activities and financial situation;
- transactions that make no obvious economic sense;

15 The description of the system for reporting suspicious transactions in s.3.7 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

- assets handled by the customer which are in obvious discrepancy with the business activities and financial situation.

541. Section 9 (2) (c) of the AML/CFT Law requires the collection of information necessary for ongoing monitoring of the business relationship. This includes the 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, the business and risk profile.

542. Articles 5 (2) (g) of the CNB Decree (281/2008 Coll), which is however not applicable to all financial institutions, requires institutions to compile and assess a customer's risk profile in the event of unusual manner of execution of a transaction, particularly in respect of the type of customer, size of transaction and business[16]. This is not however tantamount to paying special attention to complex, unusual large transactions as per FATF recommendation but is only required for the purpose of compiling a risk profile in the event of an unusual manner of execution. During the on-site interview with the CNB, there was some concern expressed that the monitoring of unusual transactions by institutions required extensive resources and institutions might be tempted to adjust thresholds to enable them to cope with the work load.

543. It is difficult to interpret the provisions of Section 6 in the AML/CFT Law as covering the requirement to pay special attention to complex, unusual large transactions and all patterns of transactions as maintained by The Czech authorities. In the evaluators, view, these do not cover those transactions that are complex, unusual and large. Furthermore, Section 6 would not be applicable to customers considered as low risk. On the other hand, Section 9 (2) (c) to a certain extent can be partly interpreted to cover, although not directly, transactions that are unusually large transactions but not necessarily to complex or occasional transactions.

544. The identification process (Section 7 of the AML/CFT Law) requires identification of customers for a transaction exceeding €1,000 and in other specified circumstances. On the other hand Section 9 (1) requires that obliged entity may take copies or make excerpts of identification documents for amounts in excess of €15,000. Section 7 and 9 do not go beyond identification of the client (as was also the case in the 3rd evaluation). There is no requirement in the AML/CFT Law that the background, purpose and findings of complex, unusual and large transactions are set forth in writing. Moreover, the requirement for taking exerts of such information as per Section 9 (1) is not mandatory.

545. In accordance with Section 16 (1) and (2) of the AML/CFT Law, specified obliged entities are required to retain identification documents and records of all data and documents on transfers requiring identification to be kept for a period of 10 years. However, there is no requirement to set forth in writing the background, purpose and findings of complex, unusual and large transactions and thus consequently there is no specific obligation to retain such findings.

Effectiveness and efficiency

546. On site interviews indicated that some of the banks and insurance companies (subsidiaries of cross border institutions) had internal procedures to examine complex, unusual large transactions, on a case-by-case basis as referred by the front office desk to the analysts within the compliance units of these institutions. These references appeared to usually arise as a result of suspicion by the front office and are not necessarily a general rule of procedure. One bank mentioned that it did have internal rules on complex, unusual large transactions as a result of group compliance

[16] Refer to footnote under R.5.

procedures. Another bank official stated that he interpreted Articles 5 (2) (g) of the CNB Decree (281/2008 Coll) to refer to such types of transactions. No institution however stated that the analyses are retained for a period, although it can be concluded that this would be the case.

547. The insurance sector representatives interviewed indicated that they do give special attention to certain specific complex unusual large transactions. These include instances when customers pay additional large premium and subsequently request repayment after a period of time; and the buying and selling of investment linked insurance after a short period of time.

548. It cannot however be concluded that in the absence of specific legislative requirements or comprehensive guidelines whether other, perhaps smaller or non-subsidiaries of foreign institutions, pay special attention and carry out such analysis on complex, unusual large transactions and retain such findings.

Recommendation 21 (rated NC in the 3rd round MER)

549. The AML/CFT Law contains a list of activities by a customer that shall be perceived as suspicious. Section 6 (1) (h) refers to "customer or the beneficial owner who are nationals of a country which does not enforce, or fails to fully enforce, measures to combat legitimisation of proceeds of crime and financing of terrorism". There are no other specific measures or strong guidance, other than what is described beneath, requiring special attention to be paid in respect of business relationships and transactions with persons from or in countries which do not or insufficiently apply the FATF Recommendations in the AML/CFT law, such as the carrying out of enhanced CDD.

550. According to the CNB Decree N° 281/2008 (Article 5(2)), institutions shall compile and assess a client's risk profile with regard to a list of risk factors, some of which refer to a list of clients or transactions from states that apply insufficiently or not at all measures against the legitimisation of the proceeds of crime and financing of terrorism or states that the institution, by its own assessment, regards as risky.

551. The Czech authorities informed the evaluators that the FIU is providing information to the industry on non-cooperative jurisdictions based on the statements of MONEYVAL and/or FATF together with their explanatory comment, via their website.

552. The CNB stated that during the on-site inspections they examine and ensure that risk profiles are compiled by financial institutions. CNB confirmed that financial institutions adhere to this requirement. Furthermore, the banking sector uses the FIU list and other lists provided by their parent company and/or the OECD list. However, according to the CNB, financial institutions do not transact or carry out business with non-cooperative jurisdictions.

553. A number of banks informed that they communicate with the FIU to assess which countries are considered as risky. Such identified jurisdictions are subsequently entered into their information system. Some of the subsidiaries of international cross border banks also informed that, in line with group policies, they maintain lists of countries considered as high risk jurisdictions as well as those which have particular risks requiring special attention. Furthermore, they also maintain a list of risky countries (identified through OECD) of tax havens and/or known for drug trafficking. These institutions compile a country risk profile but in effect they do not monitor closely such countries.

554. The representatives of the post office informed the evaluators that they can transfer money to only 13 countries within the EU while the representatives of the foreign exchange office (Western Union agent) told the evaluators that their IT systems limit the transfer of funds to a list of predetermined countries provided by the parent company.

555. Similar to the findings of the 3rd round evaluation report, the regulations remain silent regarding the requirements of c.21.2 and c.21.3. In practice there is over reliance on the FATF and OECD list and on the EU list of sanctions with little initiative from the authorities as well as part of industry.

556. Interviewed institutions informed that they check counterparts client/country and consult with their parent institution when they identify transactions with risky countries, to which they apply a higher level of monitoring. Another (state-owned) institution emphasised that in the event of concern with countries not applying FATF recommendations it will stop business with counterparties. At the same time, this institution also remarked that there may be a requirement to support (export) finance in which case, under certain conditions (e.g. not in contravention of sanction) the supervisory board may decide to continue transacting.

557. The FIU did not intimate that they apply any specific measures against countries that do not apply, or insufficiently, the FATF recommendations, except for the issuance or reference to international list of countries as specified previously. The FIU referred that Act No. 69/2006 Coll. on Carrying Out of International Sanctions stipulates that "in the area of financial transfers, use of other payment means, purchase and sale of securities and investment tools, sanctions may consist of restrictions and prohibitions on

(a) any type of transaction by a Czech person to benefit an entity subject to international sanctions or a person subject to international sanctions, as well as deals with such persons, including trading in foreign currency,

(b) renting out of safety deposit boxes to an entity subject to international sanctions or a person subject to international sanctions, or receiving of goods subject to international sanctions for safe deposit, provided it is reasonably practicable to seek evidence of the fact that the goods is subject to international sanctions,

c) provision of money, investment tools or other securities or financial and economic sources to an entity subject to international sanctions or a person subject to international sanctions,

(d) transfers of money, investment tools or other securities to or from an account controlled by an entity subject to international sanctions or a person subject to international sanctions, including payments from cashier's checks, provided it is reasonably practicable to seek evidence thereof,

(e) disbursement of interest from deposits in the accounts controlled by an entity subject to international sanctions or a person subject to international sanctions, including disbursement of interest from securities and investment tools,

(f) entering into an insurance contract with an entity subject to international sanctions or a (person subject to international sanctions, or disbursement of insurance money to such persons, or

(g) any and all activities which would or may facilitate transactions described under letters a) through f). However, in the evaluators, opinion this does not sufficiently address the requirements as specified in the FATF recommendations. Moreover, there are apparently no further guidelines on the application of counter-measures in such cases.

Effectiveness and efficiency

558. Only some of the basic requirements of R.21 are implemented in the AML/CFT law and to some extent in the banking regulations. Similar to the analysis of the 3rd MER, there is an over reliance on official lists of risky countries. Indeed, a number of institutions do not carry out their on own risk assessments.

559. The Czech Republic has been able to, and has issued advisories to the financial sector concerning identified AML/CFT deficiencies. In respect of more severe countermeasures The Czech

authorities indicated that they could act under the domestic law on international sanctions (but which only covers specific UN resolutions) and also under common positions agreed within the EU. However, there is no other internal mechanism for more severe countermeasures.

3.5.2 Recommendations and comments

Recommendation 11

- Specify directly in the AML/CFT Law that obliged entities are required to pay special attention to transactions that are complex, unusual and large.
- Specifically require that these provisions are also applicable to low risk clients.
- Introduce in the AML/CFT Law that the findings of the examination of the background and purpose of complex, unusual and large transactions that have no apparent economic or lawful purpose are set forth such findings in writing and retained for a period of at least ten years.
- Issue guidance to give examples of complex and unusual large transactions as well as those which have an unusual pattern without a seemingly apparent economic or lawful purpose.

Recommendation 21

- Specific guidance should be issued by the authorities to provide institutions with a list of measures that they can apply in the event of identified risky country
- Institutions should carry out their own countries risk assessment without over reliance on official list.

3.5.3 Compliance with Recommendation 11 and Special Recommendation 21

	Rating	Summary of factors underlying rating
R.11	**PC**	• There is no clear requirement for all financial institutions to pay special attention to all complex, unusual large transactions, or unusual pattern of transactions, that have apparent or visible economic or lawful purpose; • The requirement to retain information documents for amounts in excess of €15,000 (Section 9 (1)) is not mandatory; • There is no enforceable requirement that the background, purpose and findings of complex, unusual and large transactions are set forth in writing; • There is no specific requirement to keep the background and findings of complex, unusual and large transactions available for competent authorities and auditors for at least five years; • Limited appreciation of such risk by a number of interviewed institutions. There is some lack of clarity within institutions on the terminology and requirement in respect of complex, unusual large transactions as no guidance has been issued.
R.21	**PC**	• Indirect requirements in existing decrees need augmenting to fully ensure that all financial institutions examine and keep written findings in respect of transaction, with no apparent economic or visible purpose, in the respective countries which insufficiently applies the FATF Recommendations; • The Czech system needs augmenting to ensure that all appropriate countermeasures envisaged in the FATF recommendations can be instituted.

3.6 Suspicious Transaction Reports and Other Reporting (R.13 and SR.IV)

3.6.1 Description and analysis[17]

Recommendation 13 (rated LC in the 3rd round MER)

560. A new AML/CFT Law was adopted in June 2008 (Act No.253/2008 hereafter "AML/CFT Law") replacing Act No 61/1996. As a result the provision on the reporting requirement (section 18 paragraph 1) and other issues such as the notion of "suspicious transactions" (section 6) and the definition of "money laundering and terrorist financing" (section 3) were amended.

561. The reporting requirement is prescribed in section 18 of the AML/CFT Law, according to which if an obliged entity (i.e. reporting entity) detects a suspicious transaction, it has to report it to the FAU without undue delay and no later than 5 days after the disclosure. If there is "*a danger of delay the obliged entity shall immediately report the suspicious transaction to the Ministry after having discovered it*".

562. The scope of the current reporting regime requires the obliged entities (both natural and legal persons) to report "suspicious transactions" as well as "*any other circumstances supporting a suspicion*" under Section 6, paragraph 1 of the AML/CFT Law.

563. According to The Czech authorities the definition of a "*transaction*" set out in Section 4 paragraph 1 of the AML/CFT Law goes beyond the mere execution of operations. The private sector representatives met on site expressed the same interpretation: the obligation to report and the notion of transactions are wide enough to cover other circumstances, including funds deposited in accounts, securities, safety boxes services and also proposed/attempted transactions or operations. Furthermore, the descriptions of the cases reported to FAU corroborate such an interpretation.

564. The requirement to report suspicious transactions prescribed in Section 18 of the AML/CFT Law is derogated by special provisions set out in Sections 26 and 27 of the same act according to which professionals (i.e. auditors, chartered accountants, licensed executors, tax advisors, lawyers and public notaries) shall report suspicious transactions to the respective Chamber. The Chamber is then required to "*examine the STR*" and if the conditions set forth in the above mentioned Sections are met, the Chambers shall send the STR further to the FAU (Sections 26 and 27 will be analysed under Recommendation 16).

565. According to Section 6 paragraph 1 of the AML/CFT Law a "*suspicious transaction shall mean a transaction the circumstances of which leads to a suspicion of legitimisation of proceeds of crime or financing of terrorism or any other circumstance supporting such a suspicion*". The definition of "*legitimisation of proceeds of crime*" and "*financing of terrorism*" are also prescribed in Section 3 of the AML/CFT Law.

566. In addition to the definition mentioned above, the same section lists examples of the activities that shall be perceived as suspicious:

" a*) cash deposits immediately followed by withdrawals or transfers to other accounts,*

b) numerous transactions performed in one day or in a short period of time and not typical of the given customer,

c) a number of various accounts opened by the given customer which are in obvious discrepancy with their business activities and financial situation,

d) transactions that obviously make no economic sense,

[17] The description of the system for reporting suspicious transactions in s.3.6 is integrally linked with the description of the FIU in s.2.5, and the two texts need to be complementary and not duplicative.

e) assets handled by the customer which are in obvious discrepancy with their business activities and financial situation,

f) an account which is not used for the purposes for which it had been opened,

g) customer performance which seems to aim at concealing their or the beneficial owner's real identity,

h) the customer or the beneficial owner who are nationals of a country which does not enforce, or fails to fully enforce, measures to combat legitimisation of proceeds of crime and financing of terrorism, or

i) a customer's identification data the correctness of which the obliged entity has reasons to doubt."

567. Section 6, paragraph 2 of AML/CFT Law indicates the circumstances in which a transaction shall always be treated as suspicious when:

"*a) the customer or the beneficial owner be a person against whom the Czech Republic had imposed international sanctions under the Act on Implementation of International Sanctions,*

b) the goods or services involved in the transaction fall in the category against which the Czech Republic had imposed international sanctions under the Act on Implementation of International Sanctions, or

c) the customer refuses to reveal identification data of the person they are representing or to undergo the due diligence process."

568. The first two circumstances refer to cases involving persons against whom international sanctions have been imposed under the International Sanctions Act.

569. The Czech authorities and the representatives of the industries met on site indicated that the list set out in Section 6 is not to be considered as exhaustive and the circumstances in which a suspicious transaction is to be reported were not limited to those indicated in the Section 6 of the AML/CFT Law as mentioned above. However, the fact that the AML/CFT Law contains a list of suspicious transactions could have a negative impact on the reporting system as the reporting entities may rely, exclusively or partially, on the listed transactions. Indeed, the data available indicates that the wording of the provision might cause difficulties in this respect as the percentage of STRs reported by banks is much higher than those reported by other obliged entities (in 2009 1,932 out of 2,224 STRs - around 87% - originated from banks). It is to be underlined that the transactions listed are typical banking operations, which correspond to the activities of the banking sector but not to the other obliged sectors (i.e. securities and insurance sector, professionals, casinos and other DNFBP).

570. It is noted that under Section 21, paragraph 5, letter a) of the AML/CFT Law obliged entities shall issue internal procedures with a "*detailed checklist of suspicious transactions indicators relevant for the given obliged entity*". This list is reviewed by the FAU that may request the obliged entity to amend it in order to develop a proper "tailor-made" checklist for each sector. Evaluators have also been informed that representatives and associations of several obliged entities (including professionals and casinos) have requested the assistance of the FAU in order to draft their respective checklists.

571. According to Section 20 paragraph 1 of the AML/CFT Law, the obliged entities may suspend the transaction (i.e. "the obliged entity may execute the customer's transaction recognised as suspicious no earlier than 24 hours after the Ministry had received the suspicious transaction report") when the operations required by customers may facilitate ML/TF. Further action may be taken by the FAU in order to prolong the period of suspension.

572. The evaluators were informed that the FAU maintains daily contact with the industries, organises seminars for the private sector and that a commentary interpreting the AML/CFT Law was

published in collaboration with the FAU. This commentary contains an additional list of indicators of suspiciousness listed below.

Commentary on the Czech AML/CFT Act (Tvrdý/Bártová, 2009)

Section 6 (1), p. 111-112

Other situations, that can happen in the activity of the obliged entity regarding its line of business and that have to be considered as suspicious transactions, should be stated by each obliged entity according its business activity in its "Internal Procedure" (Section 21). There could be a wide range of characteristics of suspicious transaction and it is upon the obliged entity to determine which of them itself will be the reason for the suspicion of the transaction or whether several partial characteristics together will be required.

Following situations could by considered as examples of common characteristics of suspicious transaction:

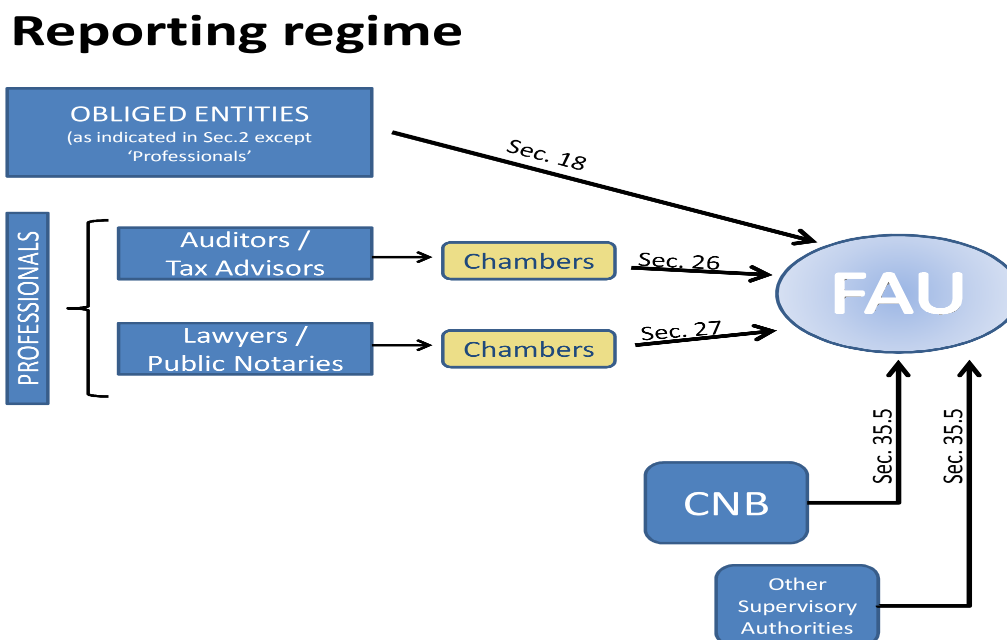
- Client is nervous, refuses identification, states untrue identification or client due diligence data (e.g. concerning origin of money or line of business).
- Criminal history or his connection to criminal organized groups are known.
- Client has connection to AML risk areas (non-cooperative countries, tax heavens) or areas risk for carrying out international sanctions.
- Identification documents are strange (possible fake).
- Client acts as if he represents another person, is accompanied or tracked by persons that want to be anonymous.
- Client asks for unusual transaction, is in a hurry, exacts cash payment etc.
- Client operates several enterprises with similar line of business and transfers money among them.
- Client operates enterprises that are presumably connected with criminal organized groups (e.g. erotic services, disco or other night clubs, trade with military material, especially weapons etc.).
- Client makes non-profit transactions intentionally.
- Client requires unusual settlements of transactions, unusual or suspicious purposes of payments.
- Unusual operations wits securities.
- Transactions with inadequate contractual fine.
- Concluding agreements with high advance payment followed by their cancellation.
- Deposits of several persons to the same account.
- Repeated openings and closings of bank accounts in a short time period.
- As it concerns obliged entities according to the Section 2 (1j,k) for example:
  - Frequency of transactions (pawns, auctions) and the types of things sold (pawn, in auction) regarding the possibility of their legitimate acquisition.
  - Regular forfeiture of pawns.
  - Sale of valuable things by persons without property or regular salary (homeless people) etc.

Other characteristics could be for example transactions:

- exceeding (for one client or for a group of clients of the same type) usual value;
- made in unusual currency or in several currencies at the same time;
- made with high amount of low-value means of payment or with unusual carrying of money (plastic bags, pockets etc.);
- aiming to the areas without clients business interest;
- in the height right bellow the threshold of identification or client due diligence;
- gathering low payments from different areas on one account or on the other hand their unusual subdivision;
- among different accounts of one client etc.

573. The following scheme illustrates the entities involved in reporting regime and the main related provisions (sections) of the AML/CFT Law.

Diagram 6: Reporting regime



574. Section 6 paragraph 1 of the AML/CFT Law provides for a general requirement to report transactions where there are circumstances which lead to a suspicion of financing of terrorism. The definition of financing of terrorism is prescribed in Section 3, paragraph 2 of the AML/CFT Law as follow:

> "*a)gathering or providing financial or other assets knowing that such assets will be, in full or in part, used to commit a crime of terror, terrorist attack, or a criminal activity intending to facilitate or support such crime, or to support an individual or a group of individuals planning such crime, or*
>
> *b)acting with the intention to remunerate or compensate a person who had committed an act of terror, terrorist attack, or a crime intended to facilitate or support such crime, or to an individual close to such person as defined by the Criminal Code; or collecting assets to pay such remuneration or compensation*".

575. The same article specifies that the activities described in the paragraph above *"may, fully or partially, take place in the territory of the Czech Republic or, fully or partially, outside the territory of the Czech Republic"*.

576. The definition of "financing of terrorism" set forth in the AML/CFT Law seems to cover broadly the circumstances indicated in Recommendation 13.2.

577. Furthermore, Section 6 paragraph 2 letters a) and b) of the AML/CFT Law define a transaction as suspicious where: a) the customer and/or the beneficial owner are persons against whom The Czech authorities have posed international sanctions under Act 69/2009 on International Sanctions or b) the goods and service involved in the transaction fall in the category against which The Czech authorities have imposed international sanctions under the same Act.

578. The representatives of the private sector met on site were well aware of the reporting requirements on "financing of terrorism". However, the FAU might wish to consider issuing guidance in this regard to reinforce the approach.

579. Finally, in 2009 and in the first quarter 2010, the FAU received two STRs related to financing of terrorism.

580. The 3rd MER recommended that "an explicit requirement to report attempted and completed (executed) transactions" should be introduced in the legislation (paragraph 656 of the 3rd MER). The new definition of "transaction", prescribed in Section 4, paragraph 1 of the AML/CFT Law seems to be broader than the former provision (now including use of the words "any interaction of the obliged entity with another person should such interaction lead to attempted handling of the other person's property or providing services to such other person"), but arguably not so explicit or clear as required by FATF Methodology.

581. The Czech authorities have indicated that according to Sections 4, 6 and 18 of the AML/CFT Law all suspicious transactions, including attempted transactions, are to be reported.

582. As regard statistics, out of the 391 STRs received in the first quarter of 2010, 53 were attempted transactions (around 14%), of which 46 from banks, 5 from Centre of Securities, 1 from an insurance company and 1 case has been developed at FAU level.

583. In addition the FAU has provided the evaluators with a sample of STRs related to attempted transactions:

i) a person requested to deposit cash without providing information on the source of these funds, the bank refused the operation and sent a STR to the FAU;

ii) a person requested to cash several checks, the banks refused to perform the transaction due to the amount involved and reported the case;

iii) a professional received the order to cash securities, he/she refused and reported the case in the light of the fact that there were not sufficient information;

iv) an insurance company received a proposal from a person to conclude an insurance plan with the clause to close after few days. This person was reported to FAU.

584. Furthermore, the representatives of the industries met during the on site visit confirmed that they were indeed reporting attempted transactions.

585. The AML/CFT Law does not contain any specific limitation on the reporting requirement. The notion of "legitimisation of proceeds of crime" set out in the AML/CFT Law does not imply that there is such a limitation on the reporting requirement.

586. A compliance officer of a financial institution informed the evaluators that there were no limitations relating to tax matters when reporting STRs.

587. The provision set out in Section 32, paragraph 2 of the AML/CFT Law requires the FAU to disseminate cases which are of interest to the tax authorities, unless it has referred a criminal complaint. Thus the requirements of criterion 13.4 are covered.

588. According to Section 6 of the AML/CFT Law a suspicious transaction is "*a transaction the circumstances of which lead to a suspicion*". These circumstances refer to money laundering, financing of terrorism and other situations supporting such suspicion. This definition is broad enough to cover all domestic criminal acts other than money laundering and financing of terrorism.

589. However, the FAU might wish to consider issuing specific clarifications on this matter.

Special Recommendation IV (rated LC in the 3rd round MER)

590. As discussed under Recommendation 13 the “reporting requirement” is set forth in Section 18 of the AML/CFT Law, while the notion of “suspicious transaction” is defined in Section 6 paragraphs 1 and 2.

591. The definition of “financial of terrorism” is set out in Section 3, paragraph 2 of the same act.

> *“The financing of terrorism shall mean:*
> *a) gathering or providing financing or other assets knowing that such assets will be, in full or in part, used to commit a crime of terror, terrorist attack, or a criminal activity intending to facilitate or support such crime, or to support an individual or a group of individuals planning such crime, or*
> *b) acting with the intention to remunerate or compensate a person who had committed an act of terror, terrorist attack, or a crime intended to facilitate or support such crime, or to an individual close to such person as defined by the Criminal Code.”*

592. As indicated above The Czech authorities have informed the evaluators that in 2009 and in the first quarter of 2010 the FAU received 2 STRs related to financing of terrorism. After analysis, the FAU decided to close the cases, as there were no grounds.

593. One of the cases related to funds (2.000 EUR) transferred from a third non European country account for the benefit of the account of a European living in the Czech Republic. The ordering client was identified as a former presumed terrorist. Czech Authorities indicated that the counterpart FIU was not in a position to provide them with more detailed information concerning this case on the basis of their request. Czech Authorities explained to evaluators that the FAU cooperated with the Organised Crime Unit (however, details were not provided). The investigation was quite extensive though finally the case was not taken forward at that time.

594. Furthermore the Czech FIU received several STRs in relation to FT concerning bank transfers sent by entities listed on the OFAC list or other lists that are not binding in the Czech Republic. In most cases there were mistakes in identification due to the lack of information.

595. The countries have to ensure that Criteria 13.3 (attempted transactions) and 13.4 (requirement to include tax based suspicions) (in R.13) also apply to the obligations under SR.IV. It appears that tbese criteria under R.13.3 and R.13.4 are also covered.

Effectiveness and efficiency (R.13 and SR.IV)

596. The number of STRs received by the FAU has remained stable in the last 3 years (more than 2,000 disclosures per year). The main reporting entities are banks as illustrated in the table below.

597. The existence of a list of suspicious transactions in the AML/CFT Law could have negatively influenced the reporting by financial institutions, as approximately 90% of the STRs were reported by some of the banks (as indicated by the authorities 80% of the STRs originate from 9 banks out of the 37 operating), while the remaining financial intermediaries have reported approximately 10% of the total amount.

598. The table below is a breakdown of the main categories of reporting entities (Banks, Other Non-bank Financial Institutions, Professionals and Other DNFBP) in terms of number of STRs sent to the FAU and the related percentage.

Table 20: Main categories of reporting entities

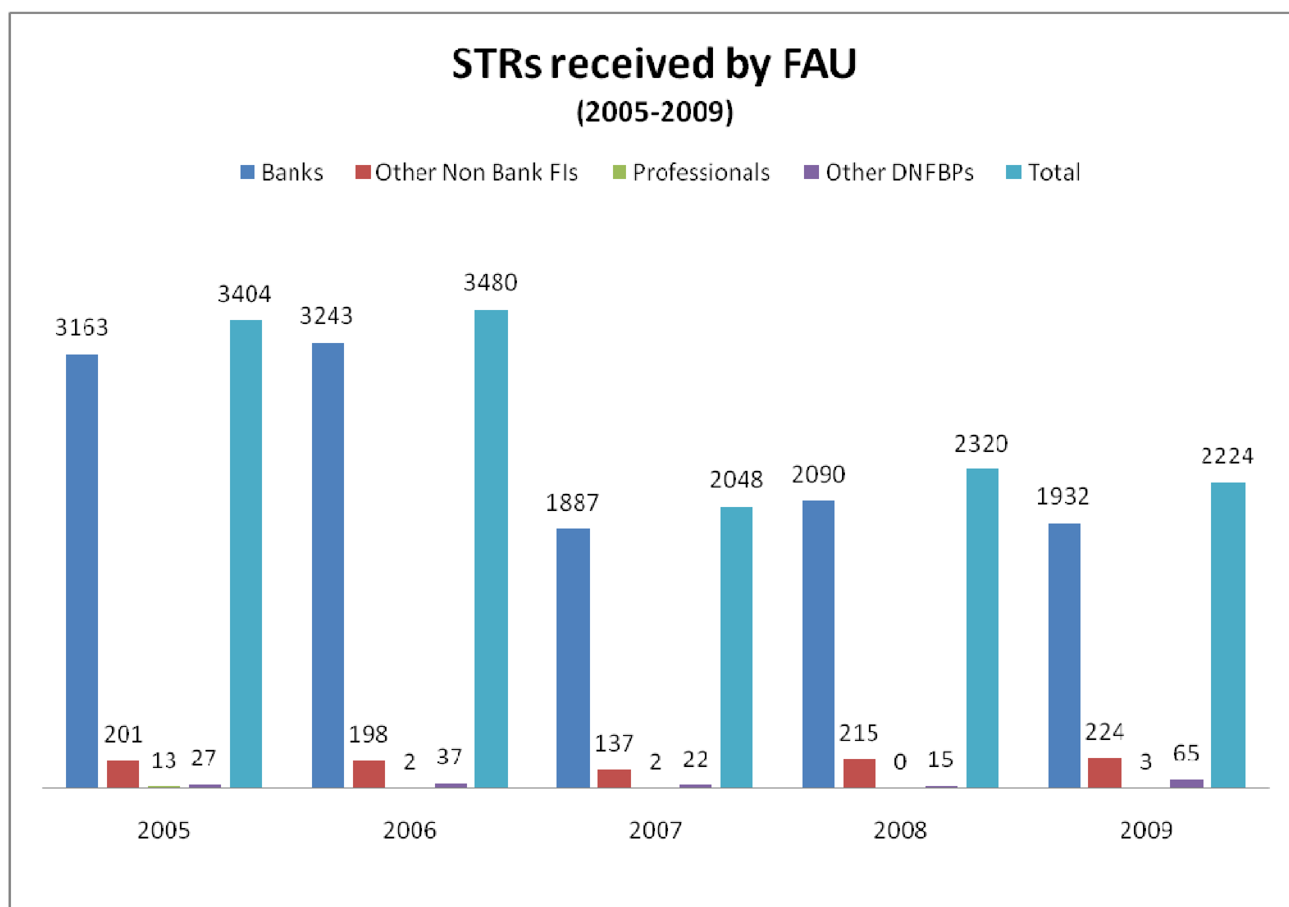
	2005		2006		2007		2008		2009		I Q 2010	
	STR	%	STR	%	STR	%	STR	%	STR	%	STR	%
Banks	3.163	92,9	3.243	93,2	1.887	92,1	2.090	90,1	1.932	86,9	317	81,1
Other Non Bank FIs	201	5,9	198	5,7	137	6,7	215	9,3	224	10,1	61	15,6
Professionals	13	0,4	2	0,1	2	0,1	0	0,0	3	0,1	1	0,3
[Other DNFBP (*)	27	0,8	37	1,0	22	1,1	15	0,6	65	2,9	12	3,0
Total	3.404	100	3.480	100	2.048	100	2.320	100	2.224	100	391	100

(*) Relevant to R.16.

599. The table above clearly indicates that over the last 3 years, both in absolute terms and in percentage terms, the number of STRs sent by "Other Non-Bank Financial Institutions" (financial companies, insurance, money transfers and exchange offices) is increasing.

600. The following graph illustrates the total amount of STRs received from the main categories of the obliged entities. Over the last three years (2007-2009) the number of cases has decreased in comparison to 2005 and 2006 data, nevertheless, during the last two years, the percentage of the criminal complaints disclosed of the total amount of STRs received has increased, as indicated in the table below.

Diagram 7: STRs received by FAU



601. The table below indicates the numbers of Criminal complaints originated, per year, from the STRs received by FAU. The figures show an increase on the ratio of the Criminal complaints disseminated in terms of STRs received over the last three years (3.36% in 2008, 8.59% in 2009 and 18.67% in the first quarter of 2010).

Table 21: Numbers of Criminal complaints originated

	2005	**2006**	**2007**	**2008**	**2009**	**IQ2010**
Criminal Complaints	208	137	102	78	191	73
Total STRs received per year	**3.404**	**3.480**	**2.048**	**2.320**	**2.224**	**391**
Percentage of Crim. Comp. on Total STRs	6.11%	3.94%	4.98%	3.36%	8.59%	18.67%

602. According to the information provided by the FAU, around 90% of the criminal complaints notified to the AML Division of the UCCFC have originated from STRs reported by banks.

603. Considering all the information and data provided, the evaluators consider that the effectiveness of the reporting regime may be negatively influenced by the fact that the listed (suspicious) transactions established in the AML/CFT Law are mainly banking operations.

604. Nevertheless, the FAU was also able to provide a detailed picture of the most reported type of cases described below:

- cash deposited and then transferred abroad;
- use of private accounts for business transactions;
- internet banking transactions;
- transactions without logical sense (without economic or legal justification);
- account does not reflect economic profile of the client;
- large transactions;
- financial transactions between companies in oil and metal sectors for fraud purpose;
- transfers to tax havens.

605. The FAU has also identified the main trends as being:

- the activities of criminal groups which launder financial means related to smuggled goods from Europe to Asia through the territory of the Czech Republic;
- financial transactions related to Asia Pacific states namely cash deposits and wire transfers of funds from and to these countries, the funds supposedly being related to drug trafficking;
- cybercrime and internet banking activities.

606. As regards financing of terrorism, the requirements set out in the AML/CFT Law are broadly in line with the FATF Recommendations (Criteria 13.2 and SR.IV.1). Nevertheless the Czech reporting regime establishes two obligations: i) to report STRs in case of suspicious of "financing of terrorism" and ii) to report transactions related to International Sanctions Act for "designated persons". These requirements, if not properly understood, could impact on the effectiveness of the reporting regime. For this reason, appropriate guidelines should be disseminated among obliged entities.

Recommendation 13

607. The reporting requirement related to the financing of terrorism is broadly adequate even if the definition of the "financing of terrorism" in the AML/CFT Law is not fully consistent with the wording of the criteria 13.2 and SR.IV.1. In fact, representatives met onsite were well informed about the reporting requirements which go beyond the "designated persons" (under the UNSCRs). The STRs received demonstrate awareness among the obliged entities of the reporting obligations. In order to avoid any misunderstanding between the two different reporting obligations (STRs related to financing of terrorism, and reporting obligations in case of so-called "designated persons" by international organisations), The Czech authorities should consider introducing appropriate guidance on the reporting requirements.

608. Although the reporting requirement set out in the AML/CFT Law appears to be sufficiently sound, The Czech authorities should also consider:

- amending the law in order to avoid the listing of (suspicious reporting) transactions or, at least, issue specific guidelines to all obliged entities (including financial institutions) on the reporting requirements in the light of FATF and MONEYVAL Typologies;
- issuing guidance on the identification of suspicious transactions for all obliged entities.

Special Recommendation IV

609. To cover fully the requirements set out in SR.IV The Czech authorities should consider issuing detailed and updated regulations or guidelines on how to discover and/or determine the circumstances which lead to a suspicion of financing of terrorism and/or that funds are linked or related, or to be used for terrorism, terrorist act, or by terrorist organisations or by those who finance terrorism. The Czech authorities could consider using the FATF and other FSRB (including MONEYVAL) documents containing cases studies, typologies and indicators of TF.

	Rating	Summary of the factors underlying rating
R.13	**LC**	• The efficiency of the reporting requirement is negatively affected by the listing of (suspicious reporting) transactions prescribed by AML/CFT Law (which are mainly banking operations).
SR.IV	**LC**	• The lack of guidance on TF indicators to assist the financial institutions negatively affects the SR.IV. obligations.

Recommendation 25 (rated NC in the 3rd round MER)

610. Since the 3rd MER some progress has been achieved although some representatives of the financial institutions and professional organisations still advised that they received little general or specific feedback from the FIU on STRs. Some institutions/organisations stated that in certain cases they obtain information on the results of the reports unofficially.

611. On the other hand, "Moneyweb", established in 2005, provides a two way communication system with some of the (major) banks. The reporting system operates via an encrypted net between the FIU and these entities that enables information on the receipt of the report to be sent. The FIU also requests additional information from the sender as and when necessary. It is noted that "Moneyweb lite", used by the other institutions is a one-way communication tool and does not provide a mechanism for feedback to the reporting institutions.

612. The evaluators formed the impression that little had changed with regard to the prohibition in the Law on transmitting information relating to STRs as stated in section 648 of the third round report.

3.6.2 Recommendations and comments

613. The FIU and/or CNB should issue specific guidelines to flesh out the requirements of the AML/CFT Law to assist the obliged entities in carrying out their responsibilities.

614. All professional bodies should issue guidelines to their members. Guidelines issued by professional bodies should be comprehensive, and in particular they should include issues related to the area of the financing of terrorism (CFT).

615. The FIU should provide feedback to the financial entities and other obliged entities over and beyond the general and statistical information.

3.6.3 Compliance with Recommendation criterion 25.2

	Rating	Summary of factors underlying rating
R.25 c.25.2	**PC**	• The FIU provides general feedback, but the requests for feedback as required by the FATF methodology are not met in light of the strict implementation of the Law.

Internal controls and other measures

3.7 Internal Controls, Compliance, Audit and Foreign Branches (R.15 and R.22)

3.7.1. Description and analysis

Recommendation 15 (rated PC in the 3rd round MER)

616. The 3rd round Mutual Evaluation Report recommended that:

- the AML Act includes 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);
- the AML Act includes an audit requirement for AML/CFT arrangements and the screening of employees; and
- the AML and CFT need to be addressed more specifically in the various requirements of internal AML/CFT arrangements.

617. The AML/CFT Law requires obliged entities to establish internal procedures and control to carry out their AML/CFT responsibilities and obligations. Section 21 (5) of the AML/CFT Law specifies the contents of the internal procedures required under Section 21 (1) of the same law. This includes, inter alia, a detailed checklist of suspicious transaction indicators relevant for the given obliged entity, CDD and identification processes, adequate and relevant methods and procedures to assess and manage risks and perform internal controls and supervision in respect of AML/CFT and record retention. There is however no reference that the internal procedures should be communicated to the employees. Although it can be presumed that such internal procedures are included within the training programme of staff (Section 23 of the AML/CFT Law) there is no

specific reference to the availability of internal procedures to employees. However, The Czech authorities maintain that this requirement could be applied through the general requirement that employees have to comply with internal rules.

618. Section 22 of the AML/CFT Law provides for the appointment of a contact person (interpreted to equate compliance officer by The Czech authorities) to transmit suspicious transaction reports and to maintain regular contacts with the FIU, unless such responsibilities is entrusted to the statutory body of an obliged entity (this is conditional on the size, management structure, or number of employees). Similar to the findings during the 3rd round evaluation, there is no requirement that the contact person should be at the management level. Moreover, there is no reference in the AML/CFT Law or other guidance on other responsibilities of the contact person such as the determination or filtering of relevant information for the purpose of determining whether or not the information or other matter contained in the report gives rise to a knowledge or suspicion that a person may be involved in money laundering or funding of terrorism. Although Section 21 (5) (f) of the AML/CFT Law requires that internal procedures should include a description of steps taken by the obliged entity in respect the appointment of persons to evaluate a STR, there is no link or reference that this should be the contact person, whose responsibilities arising from the law can be perceived only as a point of contact point with the FIU.

619. CNB Decree 281/2008 Coll., applicable to most but not all financial institutions, specifies in Article 6 (2) that institutions should ensure that persons assessing a suspicious transaction has access to the relevant information. All the contact persons met on-site, showed broad knowledge of the AML/CFT framework, their responsibility and appeared to have access to the necessary information although it was not apparent whether all, or most of them, were in a position to filter relevant information for STR reporting.

620. Section 21 (5) (d) requires that obliged institutions have adequate and relevant methods and procedures to assess and manage risks and perform internal controls and supervision of compliance with the AML/CFT Law.

621. Article 8b on management and control system at banks of Act No. 21/1992 Coll. of 20 December 1991, on Banks stipulates that in respect of the internal control system, banks shall always have an internal audit function, based on proportionality, which carries out ongoing control of compliance with the bank's legal obligations, including those arising from the bank's internal rules. In this respect the CNB highlighted that they have some overall concerns on the quality of internal coverage of AML/CFT procedures which are generally covered in a periodical (e.g. 3 years) cycle and do not necessarily evaluate the whole process. CNB Decree 123/2007 Coll. section 33 (2) provides for the independence of the internal audit function.

622. CNB Decree No. 281/2008 Coll. stipulates that, as part of their internal control activities, institutions shall, at least once a year, draw up a report assessing the institution's activity in the field of preventing the legitimisation of the proceeds of crime and financing of terrorism. The Decree also stipulates that, as part of the internal control activities, institutions shall, at least once a year, draw up a report assessing the institution's activity in the field of AML/CFT regarding:

- whether the procedure and measures applied by the institution in respect of prevention of the AML/CFT are sufficiently effective; and that
- the institution's system of internal principles, procedures and control measures had shortcomings, and what risks this might create for the institution.

623. Although the above suggests that this is an internal audit function, it is unclear whether it is the auditors or contact persons who are obliged to carry out this obligation as the evaluators were informed that in practice the report is usually made by the MLRO. The insurance, investment

companies, investment firms and investment funds are covered by specific sectoral legislation to ensure an independent audit function. The CNB assured the evaluators that an independent audit function covers AML/CFT issues and is generally adequately resourced.

624. Indeed, one institution confirmed that as part of its internal audit procedures, it carries out on-site visits of branches to interview staff and review pattern of transactions.

625. While during the 3rd round evaluation, the CNB had stated that in practice an assessment report is drawn up by an external auditor, the situation has changed. According to the CNB, the assessment report is usually drawn up by MLRO or CPLO supplemented occasionally by the Legal Department.

626. The notations included in the 3rd Mutual Evaluation Report remain relevant. Section 23 of the AML/CFT Law specifies that obliged entities shall organise, at least once every 12 calendar months, training to all staff members who may in the course of their professional obligations, come in contact with suspicious transactions, and that all appointees to such positions shall be trained prior to taking their appointment. The training shall concentrate on types and features of suspicious transactions and steps due to be taken in detecting such transactions. Records of participants and training agenda have to be retained for at least 5 years. Although the evaluators were not in a position to verify such records, on-site interviews indicated that annual programmes (different programmes differentiated according to grade) are held.

627. There is no explicit reference in the AML/CFT Law or CNB decrees regarding the procedures for screening employees. However, as a normal practice, confirmed by financial institutions during on site interviews, institutions confirm the integrity of new employees through requiring a clean police conduct of the prospective employee. Some even require new entrants to pass a test on AML/CFT procedures. One institution stated that in addition it requires screening by a third party and monitor the new employees during the testing period.

628. The Czech authorities pointed to Section 22 (4) of the AML/CFT Law as authority for the AML/CFT compliance officer (being below level of senior management) having direct contact with senior management. The Czech authorities indicated that this would allow the compliance officer to have access to senior management without the intermediary of his/her direct line manager. The provision refers to contact between the compliance officer and the "statutory and the supervisory bodies". The evaluators were told that this formulation was intended to cover senior management of the financial institutions (supervisory board). Although there may be other interpretations of this term, the evaluators accepted the Czech position on this. However, they are not in a position to comment on how effectively this provision works in the practice.

Effectiveness and efficiency

629. Interviews with contact officers of the financial institutions met on-site indicated a significant understanding of responsibilities. All implied that they have access to the required information with some indicating an organisation structure enabling further analysis of STRs submitted by front office personnel.

630. The CNB confirmed that they ascertain that inspected institutions do have an internal policy. In turn, all obliged institutions interviewed on-site stated that they submit their internal procedures and controls to the FIU in line with the AML/CFT Law requirement (Section 21 (6)). Some contact persons indicated that were more comfortable with a rule-based approach rather than a risk-based one with many indicating that they receive little or no feed back from the FIU on risk-based consideration which they considered would be useful.

631. All institutions interviewed stated that they carry out regular training programs to employees (some also require new entrants to pass an AML/CFT procedure test). The FIU provides regular trainings to obliged persons. It stated that the trainings provided, complemented by on-going discussions resulted in a higher quality of STRs and consequently higher quality of notification sent to the law enforcement authorities. This is borne out by the statistics. Moreover, all interviewed financial institutions confirmed that they are satisfied with the cooperation and contribution provided by the FIU in respect of training provided to staff, providing typologies for discussion.

Recommendation 22 (rated NC in the 3rd round MER)

632. At the time of the on-site visit, there was only a limited number of branches of Czech financial institutions operating abroad (concerning the banking sector for instance, only one subsidiary and one branch of a Czech commercial bank is located abroad - both in Slovakia- and thus subject to the Slovak AML/CFT requirements).

633. Though in comparison with the situation at the time of the third round evaluation there is some progress made in regard to foreign branches and subsidiaries of financial institutions there are still deficiencies in place that have not been addressed.

634. Financial institutions in the Czech Republic are required to ensure that their foreign branches and subsidiaries located in countries that are not members of the EU or the European Economic Area apply the practice of customer due diligence and record keeping in the scope that is at the least required by the law of the European Communities (Section 25(4)). This requirement applies to part of the FATF recommendation (5 and 10) and does not extend the requirement to all of the FATF Recommendations.

635. There is no such requirement in respect of branches and subsidiaries of the institution located in EU Member States. The Czech authorities explained that it is presumed that AML/CFT obligations in EU Member States are equivalent to those existing in Czech Republic due to the fact that all EU Member States are obliged to implement the third AML/CFT Directive, hence branches and subsidiaries of Czech Republic are considered to be also obliged entities under the relevant AML/CFT legislation of other EU Member States. Nevertheless, such obligation should be applied also to branches and subsidiaries in other EU Member States.

636. Financial institutions in Czech Republic are required to inform the Ministry when a foreign branch or subsidiary in countries that are not members of EU or the European Economic is unable to observe appropriately the practice of customer due diligence and record keeping because this is prohibited by local (i.e. host country) laws, (Section 25(4)).

637. In such a case of discrepancy between Czech and host country regulations, the obliged entity shall adopt appropriate supplementary measures to effectively mitigate the risk of exploitation for the legitimisation of proceeds of crime or financing of terrorism, and to prevent the transfer of these risks to the territory of the Czech Republic and other member states of the European Union or the European. There is, however, no requirement to apply the “higher standard” as required in essential criteria 22.1.2. Once again this requirement is limited to “third countries”.

638. As mentioned above, the Czech institutions have very limited presence outside the Czech Republic. As for subsidiaries or branches (that are providing banking services) of Czech banks outside the Czech Republic, there is only one subsidiary (located in Slovakia) and one branch (also in Slovakia). It was not sufficiently clear whether such subsidiaries/branches are required to apply consistent CDD measures at the Group level.

Effectiveness and efficiency

639. The limitation of this requirement to subsidiaries and branches in third countries (e.g. non-EU) significantly limits its scope. Overall this has a material impact on the effectiveness of Recommendation 22 on branches and subsidiaries operating outside of Czech Republic.

3.7.2. Recommendation and comments

Recommendation 15

- The FIU should consider making an explicit reference requiring obliged entities to make available the internal procedures to its employees.
- The AML/CFT Law or CNB Decree should be amended to require that the contact officer should be appointed at managerial level with the relevant responsibilities, which is currently limited in scope to be the contact person with the FIU.
- The FIU should consider issuing guidelines to specify what is required and the necessary procedures for the contact person to carry out his responsibilities effectively. Furthermore, these guidelines should describe the necessary control measures, including required monitoring systems and provide greater guidance on what is actually expected from a risk-based approach.
- A legal requirement should be introduced ensuring that obliged entities screen prospective employees to ensure high standards.
- To amend the law that requires different obligations in respect of "compliance officers" (Contact person) to small and larger obliged entities and standardise requirements.

Recommendation 22

- It is recommended to extend the requirement in Section 25(4) to the FATF Recommendations in general, and not only to recommendations 5 and 10.
- A requirement should be introduced to ensure observing AML/CFT measures in respect of branches and subsidiaries of the institution located in EU Member or the European Economic Area.
- A requirement should be introduced to the effect that where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit.

3.7.3. Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• There is no enforceable requirement that the compliance officer should be appointment at a managerial level with extended scope of responsibilities; • Within the limited scope of responsibilities of the contact person it is not evident that these should have timely access to information; • There is no requirement that the contact person is required to filter STRs ; • There is no requirement that obliged entities should make available the internal procedures to the employees; • There is no legal obligation on obliged entities requiring them to put in place screening procedures to ensure high standards when hiring employees; • In respect of smaller obliged entities, compliance (contact) persons are delegated to a statutory body of the obliged entities.

	Rating	Summary of factors underlying rating
R.22	**LC**	• There is no requirement to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with the FATF Recommendations in general; • No requirement to apply the higher standard where requirements differ; • Requirement to ensure observing AML/CFT measures in respect of branches and subsidiaries is limited to institutions located in “third countries”.

3.8 The Supervisory and Oversight System - Competent Authorities and SROs / Role, Functions, Duties and Powers (Including Sanctions) (R.23, 29, 17 and 25)

3.8.1 Description and analysis

640. According to Section 35 of the AML/CFT Law, the Ministry (FIU) has overall responsibility to ensure that all obliged financial and non financial institutions comply with the obligations contained in the AML/CFT Law. In addition, various authorities and SROs have responsibility in their specific industries, as described below.

641. The Czech National Bank (CNB) is responsible for general supervision of the entire financial market in the Czech Republic (Article 44 of the Act No. 6/1993 Coll., on the Czech National Bank). The entities which are supervised by the CNB (the responsibility for some of these entities was transferred to the CNB in April 2006) are:

- Banks, foreign bank branches, credit unions, electronic money institutions, branches of foreign electronic money institutions, small-scale electronic money issuers, payment institutions and small-scale payment service providers, and of the sound operation of the banking system;
- Investment firms, securities issuers, the central depository, other entities keeping a register of investment instruments, investment companies, investment funds, settlement system operators, organisers of investment instrument markets and other persons specified in special legal rules governing capital market undertakings (Act No. 15/1998 Coll., on the securities market supervision);
- Insurance corporations, reinsurance corporations, pension funds and other entities active in insurance and private pension schemes pursuant to special legal rules (Act No. 277/2009 Coll., on insurance, Act No. 42/1994 Coll., on private pension insurance, and Act No. 38/2004 Coll., on insurance intermediaries and independent loss adjusters);
- The safe, sound and efficient operation of payment systems pursuant to a special legal rule (Act No. 284/2009 Coll., the Payments Act);
- The activities of other entities that have a licence or registration pursuant to special legal rules (i.e. mainly exchange bureaus, Act No. 219/1995 Coll., Foreign Exchange Act).

Recommendation 23 (23.1, 23.2) (rated PC in the 3rd round MER)

642. In the CNB, there are two specific departments of the supervisor which do assessment: the On–Site Supervision Division and the Off-site Supervision Division. These two divisions work closely with one another on a daily basis (according to the circumstances).

643. Section 35 (1) of the AML/CFT Law specifies that the FIU is the supervisory authority responsible for administrative supervision in respect of AML/CFT. Moreover, the CNB also carries out supervision for institutions subject to Act N° 6/1993 Coll.

644. Section 37 (2) of the AML/CFT Law empowers relevant professional chambers (relating to lawyers, public notaries, auditors, licensed executors and tax advisors) to check compliance with the AML/CFT Law upon a written motion by the FIU. So far, no inspection was carried out under Section 37. The evaluators were informed that the intention of this section is to clarify facts regarding STRs and not to require an inspection to be carried out.

645. Most of the supervisors had no particular difficulty to have the entities under their supervision to comply with the AML/CFT regime. However in practice there are differences in the tools and motivation of the various supervisors. In general, the examiners felt that some chambers should increase their oversight of the DNFBP under their supervision.

Recommendation 29 (rated C in the 3rd round MER)

646. There was almost no change in this area from that which was described in the 3rd round evaluation report. The FIU remains the universal supervisor. The CNB has assumed a wider remit since the last evaluation for inspection of the financial sector generally. Their powers in relation to R.29 remain as previously described and are limited to compelling documents from the entities concerned in the particular inspections.

647. FIU powers to perform administrative supervision are set out in Section 35 of the AML/CFT Law. Under the Law, the Ministry (FAU) is the responsible authority for administrative supervision of compliance with the AML/CFT Law. Section 35 does not set out the powers of the FIU in respect of administrative supervision. These are to be found in the Act on State Inspection N° 552/1991 Coll. The FIU advised that they have broader access to information from all obliged entities (except where professional secrecy applies, such as lawyers) and can carry out on-site inspections.

648. As mentioned in Section 35 (1), the compliance with obligations set out in the AML Act may be by another supervisory institution, such as the CNB. From the information provided on site, the examiners understood that the CNB has 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. The CNB can compel the production of documents (without a court order) in respect of all documents relating to accounts, business relationships and transactions, though it is unclear whether there is a power to sanction for refusal to disclose information t a supervisor.

649. The FIU, the CNB and the other financial supervisors have generally the means and authority to obtain from the financial institutions and/or their manager's or comply with requirements (they can draw their attention to the insufficiency, issue warnings or reprimands etc.).

650. Under Section 36 of the AML Act the FIU has the power to point out insufficiencies of obliged entities, discuss them, and propose necessary changes. When the obliged entity does not conform to minimum standards, the FIU has the power to penalise them and (in extreme cases) revoke a business licence.

651. By virtue of the AML Act (section 45-51), the FIU can impose and levy fines in case of non compliance with the Act. These sanctions only may apply to the entity, not their managers, directors or employees. The issue of sanctions is examined in detail under Recommendation 17 underneath.

Recommendation 23 (rated PC in the 3rd round MER)

652. From 2007 to (May) 2010, the CNB carried out a total of 65 on-site targeted inspections relating to AML/CFT in the financial sector (not including non-bank foreign exchange). This is an average of 18 on-site inspections per year. Considering that the CNB supervised on average 345 financial institutions during the period 2007-2009, this implies that the CNB carries out an on-site inspection on AMLCFT issues on average once every 20 years per institution. In this respect, it is noted that on-site inspections within banks, which account for about 50% of all the assets in the financial sector, the CNB has carried out an on-site inspection in 3 banks per year (compared with the average of 38 banks in the system during 2007-2009). This implies that only about 8% of the banks are covered each year, i.e. one bank inspection every 12 years (see table 2 in para 41 and para 706). The inspections carried out at other financial institutions are even lower than that carried out in respect of banks.

653. The Czech authorities consider that the number of inspections are commensurate with the risk-based approach since they focus on those institutions which are determined to have the highest risk, including that related to ML/FT. In this respect, the CNB informed the evaluators that it takes into account a number of risk factors supplemented by expert knowledge to determine the focus of risk-based inspections. However, it was not clear to the evaluators how, in the absence of a (national) analysis to determine the most risky sectors within the Czech Republic, the authorities are in a position to ensure that the most risky sectors are targeted. It was also unclear how the risk is applied to determine the supervisory focus and the allocation of resources. In this respect, it was difficult for the evaluators to reconcile how the (lengthy) inspection cycle can catch all financial obliged entities at some point. Overall the absence of a (national) risk assessment strategy to determine the most risky areas in terms of ML/FT, the current approach to determine the supervisory focus together with the very long inspection cycle can result in some sectors of the financial institutions effectively being outside the supervisory scope. The Czech authorities contend that the supervisory concept is principle-based rather than rules based. However, the absence of a strategy to identify the most risky areas for MLFT, the long cycle and the low number of inspections, together with the low level of identified infringements, gives rise to a perception that the risk-based approach undertaken in the Czech Republic is very light touch and may potentially result in risky areas not being targeted.

654. The representatives of the CNB mention that each audit report is transmitted also to the FIU to obtain their feedback.

Recommendation 29 (rated C in the 3rd round MER)

655. It seems that the supervisors have broadly adequate powers to monitor, conduct inspections and enforcement of sanctions, to ensure compliance by financial institution. In practice, no administrative fines have been imposed by the FIU on the request of the CNB or on FIU’s own initiative. As noted, its unclear whether there is a power to sanction for refusal to disclose information to a supervisor and sanctions do not apply for managers and directors.

Recommendation 30 (all supervisory authorities) (rated LC in the 3rd round MER)

Recommendation 30

656. There are 30 staff who carry out on-site inspections in the banking sector, 3 of whom are AML/CFT experts, and there are 50 staff that carry out on-site inspections in the non banking sector (insurance, securities market etc.), 5 of whom are AML/CFT experts.

657. The Supervisory Division of the FIU at the time of the onsite visit comprised a Head plus 3 staff members.

Recommendation 17 (rated PC in the 3rd round MER)

658. The 3rd round mutual evaluation established that criminal sanctions are not available in respect of non-compliance with the AML/CFT requirements of the AML/CFT law. Administrative sanctions were provided for in respect of both natural and legal persons. Sanctions could only be imposed on the business entity itself (whether it is carried out by a legal person or a self-employed natural person) which meant that managers and employees were not directly sanctionable. The overall situation remains very similar to the situation established during the 3rd round evaluation.

659. These criteria require countries to ensure that effective, proportionate and dissuasive criminal, civil or administrative sanctions are available to deal with natural or legal persons covered by the FATF Recommendations that fail to comply with national AML/CFT requirements.

660. The AML/CFT Law provides for administrative sanctions in the event of:

i. Violation of the obligation of confidentiality (Section 43);
ii. Failure to comply with the requirement to perform identification and customer due diligence (Section 44);
iii. Failure to comply with the obligation to inform to the FAU all information on transactions requiring identification or transactions investigated by the Ministry, together with documentation and information on persons taking part in such transactions (Section 45);
iv. Failure to comply with the obligation to suspend a transaction (Section 47);
v. Failure to comply with the obligation of prevention in respect of *inter alia* internal rules, ensuring regular training to employees, entering into a corresponding bank relationship against the provisions of the AML/CFT Law (Section 48);
vi. Failure to comply with obligations relating to a transfer of funds (Section 49); and
vii. Failure to comply with the obligation to declare during a cross-border transport of cash (Section 50).

661. Administrative fines may be imposed on natural persons. All the other administrative penalties can only be imposed on obliged entities. The FIU confirmed that the situation remained similar to that of the 3rd round evaluations in that breaches by natural persons are sanctionable through the internal disciplinary arrangements of the entity. The FIU contends that its counterparty for AML/CFT purposes is the obliged legal entity and not the natural person. Thus, as also established in the 3rd round evaluation, managers and employees remain not directly sanctionable.

662. The range of fines that are stipulated by the law are set out in the following table:

Table 22: administrative fines for Breach of AML/CFT Law

AML/CFT Law	Administrative fines (up to)		If breach makes it more difficult to identify or seize the proceeds of crime, or make the financing of terrorism possible (up to)	
	CZK	€ *	CZK	€*
Sect. 43 Violation of the confidentiality	200,000	7,800	1,000,000	38,900
Sect. 44 CDD	1,000,000 to 10,000,000	38,900 to 389,000	50,000,000	1,946,000
Sect. 45 Failure to respond to FIU request	10,000,000	389,000	50,000,000	1,946,000
Sect. 46 Failure to report STR	5,000,000	194,600	50,000,000	1,946,000
Sect. 47 Failure to suspend the transaction	1,000,000	38,900	50,000,000	1,946,000
Sect. 48 Failure to comply with other preventive obligations (e.g. internal rules, training, etc.)	1,000,000 to 5,000,000	38,900 to 194,600	50,000,000	1,946,000
Sect. 49 Failure to comply with wire transfer regulation	10,000,000	389,000	50,000,000	1,946,000
Sect. 50 Cross border disclosure	10,000,000	389,000	50,000,000	1,946,000

* rate of exchange €/CZK 25.695 (11 June 2010)

663. The evaluators consider that the administrative fines may not be persuasive enough; particularly since a fine less than the maximum may be imposed and only upon legal entities (except for Sections 43 and 50 of the AML/CFT Law).

664. Moreover, the evaluators were informed that no administrative fine has been imposed since 2008. The evaluators noted that for the equivalent period in the 3rd Round MER 54 administrative fines amounting to € 1,522,000 had been imposed. The CNB indicated that the general policy is preventive. After onsite inspections, the CNB provides letters to the inspected financial institutions requiring remedies for identified shortcomings as a first step, which include a deadline for their fulfilment. The evaluators were told that the CNB can check whether the necessary rectifications had been made through various offsite procedures and, as necessary, follow-ups. The CNB advised the evaluators that in the relevant period of this evaluation no proposals had been made by the inspecting teams to the CNB management for administrative fines and therefore that no such proposals were made to the FIU.

665. In this context, it is also noted that Section 52 (1) AML/CFT Law states that:

a legal person shall not be liable for an administrative offence if it proves that it had expended all reasonable effort to prevent the violation of the legal obligation.

666. According to information provided by the authorities, infringements were identified in 12 credit institutions and life insurance companies and 3 within investment firms, investment companies, investment funds and pension funds category from 1 January 2008 to 31 May 2010. The 12 and 3 institutions respectively may not necessarily be different institutions in which infringements were identified. The table below shows the categorisation of the infringements.

Table 23: Categorisation of the infringements

	In banks, credit unions and life insurance companies	In investment firms, investment companies, investment funds and pension funds	In non-bank foreign exchange entities[18]
Client Identification -compliance of everyday practice with its description in internal rules - carrying out customer identification	1 -	- 1	74
Client Acceptability Rules/Policy (CAP) -definition of conditions for not entering into a business relation or terminating such relation -compliance with CAP in practice	1 1	- -	- -
CDD + Know Your Customer Rules -identifying of risk factors in the case of (i) new clients and (ii) during a business relation with a client ➢risky country of origin of (i) the client, (ii) the beneficial owner, (iii) the person with which the client executes a transaction ➢client´s non-transparent ownership structure ➢ origin of the client´s funds -assessment of a client´s risk profile	4 2 1 2	- - - -	11
Client´s Risk Categorisation -discharging clients, risk categorisation in practice -updating clients, risk categorisation	5 3	- -	- -
Availability and sharing of information about risk clients among relevant employees	2	-	-
Definition of procedures to be applied in respect of risk clients -definition of more strict procedures -compliance with these rules in practice	4 4	- -	- -
Checking against Sanction Lists -all (i) clients, (ii) beneficial owners,(iii) persons with which the client executes a transaction are subject of checking -up-dating Sanction Lists	4 5	- -	- -
Suspicious Transactions Record Keeping -completeness of record keeping -re-traceability (audit trail) - compliance of everyday practice with its description in internal rules	1 1 -	1	- - -
Software support of monitoring and suspicious transaction detection -all transactions of all clients are subject of this SW tool -efficiency of scenarios & criteria of SW tool, appropriateness of limits -investigation of alerts -re-traceability of investigations of alerts	1 2 2 2	- - - -	- - - -

[18] Period covered is 1 July 2009 to 31 May 2010.

	In banks, credit unions and life insurance companies	In investment firms, investment companies, investment funds and pension funds	In non-bank foreign exchange entities[18]
Procedures from suspicious transaction detection till suspicious transaction report			
-re-traceability of procedures	3	-	-
-staff awareness of their duties in the STR reporting process	1	-	-
Internal AML Rules			
-compliance with AML legislation	4	-	344
-mutual compliance within internal rules	3	-	
AML Training			
-organisation of training			
➢ definition of job position of obliged persons for AML training	1		
➢ fulfillment of all training requirements in practice			
➢ frequency of training	2	-	
➢ keeping records of training	-	2	189
-content of training	-	2	
➢ encompassment of concrete procedures according to the AML internal rules		1 -	
➢ encompassment of concrete types of suspicious transactions	2 1	-	
AML Assessment Report (AS)			
-elaboration of the AS	1	-	-
- submission of AS to the statutory body	1	-	-
-compliance of AS content with the AML Decree	4	-	-
MLRO			
-Control activities of MLRO (as a part of the ordinary activity) within the institution	4	-	-
-Appointment of MLRO	-	-	124
Internal audit activity in AML area			
-all AML sub-areas are subject of internal audit	3	-	-

667. The relatively high administrative fines can be applied in the case of violations which result in more serious cases which deter the identification or seizure of the proceeds of crime, or make the financing of terrorism possible. There is no situation involving gross negligence or intent, which remains non-sanctionable. In the event of a material, gross or repeated violation of the obligations under the AML/CFT Law, under Section 36 the FIU can lodge a motion to terminate or revoke a licence of an obliged entity.

668. The FIU like the CNB has, since the implementation of the 2008 Act, taken a preventive stance so far as AML-CFT infringements are concerned and sought the rectification of mistakes rather than imposing fines. As such they would consider fines and financial sanctions only in the event that the obliged person does not correct the mistakes or deficiencies defined in letters of warnings that result from the corresponding inspections. Because all obliged persons corrected mistakes and deficiencies described in those warnings, no fines or sanctions have been imposed. In fact, the FIU emphasises that the AML/CFT law is targeted more at prevention than sanctioning, and warnings are framed more in the form of methodological advice. During the on-site interviews, the FIU stated that the Supervisory Division, responsible for sanctioning, became fully operational only in

April 2010. Prior to that, there was only one person available to check internal rules and he was not able to deal with the issue of sanctions following recommendations by the CNB. As noted above, the CNB confirmed it had not made any recommendations for sanctions to the FIU.

669. The FIU is nonetheless able to impose financial sanctions. Under Section 36 of the AML/CFT Law the Ministry (FIU) has the possibility of lodging a motion to terminate or revoke a licence for business or other gainful activities to the authority which has the power to decide on revocation. The evaluators understood this power did not apply to financial institutions such as banks, brokerage companies, etc. but could be used for repeated violations of the AML/CFT Law by individuals or legal persons not exempted by Section 37 (lawyers, notaries, etc.). The FIU has no formal powers to issue instructions or warnings, though in practice the evaluators were advised that they had done so. The range of sanctions does not appear to be extensive or proportionate enough, as financial sanctions may not be the most appropriate sanction in all cases. Similarly there is no possibility of criminal sanctions as yet.

670. The FIU informed at the time of the onsite visit that it had carried out off-site reviews only on Systems of Internal Rules and issued a number of warnings for rectification as indicated in the Table below. The FIU was not in a position to indicate the number of off-site reviews by sectors but informed the evaluators that it carried out 206, 376, 316 and 81 reviews during 2007, 2008, 2009 and in the 1st quarter of 2010 respectively.

Table 24: Number of off-site inspections, identified violations and warnings by the FIU

		2007	**2008**	**2009**	**2010 (05.10)**
Banks	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	19	23	82	4
	Number of written warnings	19	23	82	4
Cooperative saving or credit unions	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	13	3	28	0
	Number of written warnings	13	3	28	0
Electronic Money Banks	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A
Insurance companies	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	6	2	1	0
	Number of sanctions (written warnings)	6	2	1	0
Investment firms	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A
Securities issuers	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A

		2007	2008	2009	2010 (05.10)
Central depositories	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A
Other entities keeping a register of investment instruments	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A
Investment companies	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A
Investment funds	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A
Settlement system operators	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A
Organisers of investment instrument markets and other persons specified in special legal rules governing capital market undertakings	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
	Number of written warnings	N/A	N/A	N/A	N/A
Others of which -Providers or mediators of payment services -Leasing providers -Non – banking subjects	Number of inspected Internal Rules	N/A	N/A	N/A	N/A
	Number of AML/CFT violations identified	41	16	125	48
	Number of written warnings	41	16	125	48
	- Providers or mediators of payment services	6	3	7	4
	- Leasing providers	5	1	38	1
	- Non – banking subjects	28	11	72	42

N/A: Not available

671. Section 44 of Act No. 6/1993 Coll. grants the CNB power to exercise supervision over financial institutions and to impose remedial measures and penalties pursuant to this Act or a special legal rule. The remedial actions included in Section 46 of the same Act specify that:

(1) Should the Czech National Bank detect any violation of ***this Act****, another legal rule or a provision issued by the Czech National Bank by an entity specified in Article 24(b), it shall order the entity to abandon the incorrect procedure or terminate its operations.*

(2) The entity referred to in paragraph 1 shall inform the Czech National Bank that the shortcomings have been eliminated without undue delay after the elimination of the shortcomings or immediately after the termination of its operations.

(3) The regulations on administrative proceedings shall not apply to the procedure referred to in paragraph 1.

672. Act No. 21/1992 Coll. of 20 December 1991, on Banks empowers the CNB to take remedial measures and impose penalties on banks in respect of prudential measures according to the nature of the shortcoming. The CNB has a range of sanctions, which it can apply only for normal supervisory/regulatory breaches, including to:

- demand that the relevant bank remedies the situation within a specified period, or rectify the shortcoming in its activities, by restricting some of its permitted activities, ceasing non-permitted activities or other operations, replacing management or members of the bank's supervisory board, bringing the arrangements, strategies, processes and mechanisms into compliance with the Act;
- order an extraordinary audit at the expense of the bank or foreign bank branch concerned;
- impose a fine of up to CZK 50,000,000.

673. In the case of serious shortcomings under Article 34 (1) of the Act on Banks, the CNB can also revoke the bank's licence "in the event of shortcomings in the activities which include failure to comply with, or circumvention of, the Act on banks, special legislative acts and legal rules. The shortcomings include failure to comply with, or circumvention of, this Act, special legislative acts, legal rules and the provisions issued by the Czech National Bank. These sanctions can only be made against the institutions concerned.

Table 25: AML/CFT Inspections by Czech National Bank

		2007	**2008**	**2009**	**2010 (05.10)**
Banks	Number of AML/FT inspections	1	5	3	2
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
Cooperative saving or credit unions	Number of AML/FT inspections	4	Nil	2	1
	Number of AML/CFT violations identified	N/A	Nil	N/A	N/A
Electronic Money Banks	Number of AML/FT inspections	Nil	Nil	Nil	Nil
	Number of AML/CFT violations identified	Nil	Nil	Nil	Nil
Insurance Companies	Number of AML/FT inspections	Nil	Nil	Nil	3
	Number of AML/CFT violations identified	Nil	Nil	Nil	N/A
Investment firms	Number of AML/FT inspections	9	5	4	4
	Number of AML/CFT violations identified	N/A	N/A	N/A	N/A
Securities issuers	Number of AML/FT inspections	N/A	N/A	N/A	Nil
	Number of AML/CFT violations identified	N/A	N/A	N/A	Nil
Central depositories	Number of AML/FT inspections	N/A	N/A	N/A	Nil
	Number of AML/CFT violations identified	N/A	N/A	N/A	Nil
Other entities keeping a register of investment instruments	Number of AML/FT inspections	N/A	N/A	N/A	Nil
	Number of AML/CFT violations identified	N/A	N/A	N/A	Nil
Investment companies	Number of AML/FT inspections	3	1	1	1
	Number of AML/CFT violations identified	Nil	Nil	Nil	Nil
Investment funds	Number of AML/FT inspections	4	2	3	Nil
	Number of AML/CFT violations identified	Nil	Nil	Nil	Nil
Pension funds	Number of AML/FT inspections	4	2	1	Nil
	Number of AML/CFT violations identified	Nil	Nil	Nil	Nil
Settlement	Number of AML/FT inspections	N/A	N/A	N/A	Nil

		2007	2008	2009	2010 (05.10)
system operators	Number of AML/CFT violations identified	N/A	N/A	N/A	Nil
Organisers of investment instrument markets and other persons specified in special legal rules governing capital market undertakings	Number of AML/FT inspections	N/A	N/A	N/A	Nil
	Number of AML/CFT violations identified	N/A	N/A	N/A	Nil

N/A: Not available

674. The CNB became responsible for on-site inspections relating to AML/CFT issues for a wider spectrum of obliged entities since the integration of the then independent supervisory authority in 2006 and further since the adoption of the AML/CFT Law. It is noted, however, that AML/CFT specific inspections were low. However, the CNB informed the evaluators that it includes AML/CFT inspections within the full on-site inspections. A number of the banks and insurance companies verified that such inspections included within the full on-site inspections are thorough and incorporate a wide spectrum of AML/CFT issues, as set out in the tables above.

675. It is only the FIU that can apply penalties/sanctions on obliged entities in respect of AML/CFT failures. The CNB can impose sanctions in respect of normal prudential and supervisory failures, including failure of internal control regulations. It, in fact, proposes corrective measures to the FIU and verifies compliance with the corrective measures during a subsequent on-site inspection. The CNB informed the evaluators that in 2009 it had issued one demand for such rectification to a bank to remedy a situation within a specified period.

676. The interviewed institutions stated that AML/CFT inspections are carried out in conjunction with full on-site inspections but consider that the relevant AML/CFT inspections are quite thorough. The inspections in respect of interviewed banks were carried out between 2006 and 2008.

677. This is covered by Section 35 of AML/CFT Law.

Effectiveness and efficiency (R.17)

678. The sanctioning regime is only an administrative one – no criminal sanctioning is possible. The administrative sanctioning regime is however not proportionate in terms of range of sanctions that can be applied. The financial sanctions that can be applied can be quite low since a minimum is not specified and the maximum, in turn, is low in some cases. In any event, the evaluators were informed that no financial sanctions have been imposed. This raises serious questions about the real effectiveness of the sanctioning regime. Moreover, there are no direct sanctions applicable to directors, managers and employees which would encourage natural persons to be more thorough in the conduct of their AML/CFT duties. This too limits the effectiveness of the sanctioning regime.

679. The FIU argued that the threat of sanctions is in itself a persuasive tool for obliged entities to carry out their duties properly. However, as noted, no fines have been issued.

Recommendation 23 (rated PC in the 3rd round MER)

680. Regarding Recommendation 23.3.1, prior to issuing a licence, the CNB examines whether persons having a “qualifying holding” (i.e. 10% or more, or which makes it possible to exercise a

significant influence over its management) in the bank are trustworthy and competent to exercise shareholder rights in the bank's business activities (see Article 4(5)(c) of the Act on Banks 6/1992). After the licence is granted, any (potential) shareholder needs the consent of the CNB to obtain a ‚qualifying holding, or to increase its holding over the thresholds of 20%, 30%, 50% or obtain control (see Article 17a(3) of the Act on Banks 6/1992). Furthermore, prior to issuing a licence the CNB examines whether the proposed managers are trustworthy, competent and sufficiently experienced (see Article 4(5)(d) of the Act on Banks 6/1992). After the licence is granted, the bank must inform the CNB in advance of any changes and provide the CNB with the necessary documents to assess their trustworthiness, competence and experience (see Article 16(2)(b) of the Act on Banks 6/1992 Coll.). More details are given in paragraphs 693-695 of the 3rd round MER.

681. Similar provisions, regarding Recommendation 23.3.1, are in place for: branches of foreign banks (see Article 5(4) and Article 16(2)(b) of the Act on Banks 6/1992 Coll.); saving and credit unions (see Article 2(a)(4) and 2(b) and Article 7(7) of the Act on Credit Unions 87/1995 Coll., insurance or reinsurance company (see Article 13(6),19(2), 24(1),36(6),41(1) and 42(1) of the Act on insurance 277/2009 Coll.); branches of foreign insurance or reinsurance companies (Act on insurance 277/2009 Coll.; exchange bureaux (Foreign exchange Act 219/1995 Coll.); investment companies or investment funds (Act on Collective Investments 189/2004 Coll.); investment firms or foreign investment firms or investment intermediaries or tied agents (Act on Capital Market Undertakings 256/2004 Coll.); payment institutions or electronic money institutions (Act on The Payment 284/2009 Coll.) and others. The CNB emphasised that the "fit and proper" criteria for the managers of insurance companies and brokers are rather new and did not exist at the time of the 3rd round visit. These provisions apply to all new insurance undertakings that are created. The existing insurance undertakings are under a primary duty to advise the regulator if there are significant changes in respect of the "fitness and properness".

682. Directors and senior management of financial institutions subject to Core Principles appear to be evaluated on the basis of "fit and proper" criteria including those in the executive or supervisory boards, councils, etc. of financial institutions. Though the previous MONEYVAL report recommended more consistency in the application of the "fit and proper" criteria to this aspect of market entry the inquires that are made still differ among the financial institutions subject to Core Principles.

683. Undertakings of all of the regulated activities (banking, insurance, credit unions, etc.) are regulated by special acts (Act no. 21/1992 Coll., the Banking Act; Act No. 277/2009 Coll., on insurance; Act no. 87/1995 Coll., the Act on Credit Unions; etc.) In these acts, the supervisory powers are specified in detail for each specific business activity.

684. Concerning criteria 23.5, 23.6 and 23.7, the CNB is the authority responsible for licensing and supervision of all foreign exchange businesses and on money or value transfer services (the FIU has supervisory responsibilities for AML/CFT purposes).

685. According to the legislation in effect until 31 August 2008 (Act No. 61/1996 Coll.), the CNB supervised non-bank foreign exchange entities with FX licences (FX licence for selling of foreign currency in cash, FX licence for providing of money services, FX licence for performing of non-cash transactions) and also non-bank foreign exchange entities with a licence deed purchasing of foreign currency in cash. This remains unchanged, except that the non-bank foreign exchange entities with FX licence for selling of foreign currency in cash and the non-bank foreign exchange entities with the licence deed for purchasing of foreign currency in cash have been transformed into non-bank foreign exchange entities with the registration for foreign exchange business in cash (purchasing and selling foreign currency in cash). The above-mentioned registration is also granted

by the CNB. Since 1 September 2008 (according to the Act No. 253/2008 Coll.) all kinds of non-bank foreign exchange entities have been supervised by the CNB.

686. From 2009 untill May 2010 the CNB carried out a total of 510 onsite examinations of non banking foreign exchange bureaus. These examinations did not specifically target AML/CFT. The evaluators were not given additional information on how many, if any, of these examinations targeted AML/CFT issues.

687. As described in the 3rd round MER, all financial institutions, once licensed and authorised to operate, are subject to the AML/CFT Law and to the relevant sector-specific regulations, as well as to general supervision (criterion 23.1). The fact that the FIU has a parallel supervisory power requires additional efforts in terms of coordination but it also prevents any loophole in the supervision/control system. As noted in the comment on criterion 23.7 in particular, and as mentioned also in the 3rd round MER, **there is no lower risk-based approach** applicable to the financial sector on the basis of AML/CFT considerations.

688. The largest share of the banking sector in the Czech Republic is owned by foreign banks (France, Germany, United States, etc.). Only one small bank is owned by Czech entities.

On-going supervision and monitoring

689. As mentioned in the 3rd round MER, banks, insurance businesses and collective investment schemes and market intermediaries are normally subject to the Core Principles (criterion 23.4). According to the Czech authorities their financial sector is increasingly familiar with issues such as risk management processes. From the information gathered on site by the CNB, the evaluators were advised that regulatory and supervisory measures applied for prudential purposes are also used for AML/CFT purposes.

690. The CNB is the authority responsible for licensing and supervision of all foreign exchange businesses and Money or value transfer services (the FIU have supervisory responsibilities for AML/CFT purposes).

691. Regarding criterion 23.7 in particular, as mentioned in the 3rd round MER, there is no lower risk-based approach applicable to the financial sector on the basis of AML/CFT considerations.

692. The time CNB devoted to AML within on-site inspection ranges from days to 5 weeks (especially for larger banks) according to the entity's type, size, complexity, business etc. and the CNB focuses on all areas of AML/CFT and includes interviews with responsible persons from management and staff in headquarters and branches, and undertakes sampling etc.

693. The evaluators note that, in addition, the CNB carried out 15 on-site inspections in Banks, Saving Building Societies, and Credit Unions during 2006. The reason for the decrease in the number of inspections after 2006 (with approximately5 on-site inspections carried out in 2007, 2008 and 2009), was not clear to the evaluators.

Table 26: Banks, Saving Building Societies, Insurance Companies and Credit Unions

Year	Number of on-site inspections
2006	15
2007	5
2008	5
2009	5
05.2010	6

Non-bank foreign exchange entities

694. This category includes:

- entrepreneurs offering cash purchases or sales of foreign currency
- entities engaged in non-cash foreign exchange transactions or money services.

Table 27: On-site examinations

Year	Number of on-site examinations
2006	125
2007	118
2008	131
2009	362
05.2010	148

695. Besides on-site AML supervision, off-site AML supervision focuses on compliance of internal procedures with current legislation. 33 internal procedures were evaluated within off-site supervision in 2009.

728. The overall supervision has mostly focused so far on largely formal requirements and to a limited extent on the verification of the implementation of particular AML issues in practice, such as analysing sample files and sample transactions. As shown in the Table on the type of infringements identified during on-site inspections, 79 infringements were identified in credit institutions and other banks and 7 in insurance companies etc between 2008 and May 2010. These appear to be largely formal compliance infringements and none were deemed serious enough by the authorities to warrant a financial sanction. Though there was some limited evidence of in depth supervision in entities of the financial market, the general lack of more in depth supervision may itself impact adversely on the quantity and quality of STRs. There was limited, if any evidence of, attempts to identify STRs which had not been reported by the obliged entities and CFT issues do not appear to have been identified in supervision.

696. During the period from 2008 to May/2010, it appeared that a low number of infringements were identified in banks, credit unions and life insurance companies in the course of AMLCFT on-site inspections. The number and types of infringement identified in investment firms, investment companies, investment funds and pension funds, also appears to be very low (in only 1-2 institutions were infringements identified regarding client identification and suspicious transaction report, and in only 2-5 institutions was lack of or inadequate AML training identified as an infringement). Considering that, on average, there were about 350 financial institutions in the Czech Republic, the infringements found are indeed very low.

697. In the securities market, AML/CFT inspections have been carried out in the last three years as part of the overall inspections.

698. It appears that the financial sector's awareness on CFT issues and the depth to which they check TF lists is insufficiently addressed, particularly in supervision.

699. According to the FIU representatives, this is because the Czech Republic has no experience of terrorist threats. In this context it is important to note that combating the financing of terrorism, like combating ML, is an international requirement because terrorists may seek the weakest links in the chain to finance their acts. The examiners noted that such acts can occur in any EU country.

Guidelines

700. All financial Institutions and the DNFBP informed the evaluators that the FAU "works closely" with the obligated entities. They confirmed that the FIU provides clarifications, opinions etc. on issues related to the prohibition on money laundering through various means including verbal advice, letters, E-mail, etc. In fact, the FIU noted that a large part of their time is devoted to answering queries from various obligated entities. As part of the cooperation with financial institutions and professional associations, the FIU personnel provide training to professional bodies as well as delivering presentations during conferences/seminars organised by the professional bodies.

701. The FAU also provides on its website, information/explanations relating to identification issues, credit cards, PEPs, CDD, reporting obligations, suspension of a transaction, confidentiality, third country equivalence, exemptions, etc. The website also contains forms, templates, relevant legislation (both Czech and European), and some MONEYVAL/FATF documents. However, this information does not appear to be considered as guidance by almost of the financial institutions and DNFBP to assist them in the practical implementation of and compliance with AML/CFT requirements. Indeed, a number of institutions stated that they would appreciate specific guidance on a number of issues, as described throughout this report.

702. Some supervisory bodies of DNFBP (lawyers, tax advisers, auditors and real estate agents) have also issued guidelines. The evaluators were also informed that some of the professional entities consulted the FIU personnel and involved them in the formulation of the guidelines. Representatives of the professional bodies noted that they have not issued any specific guidelines relating to the financing of terrorism.

Effectiveness and efficiency (R.25)

703. The FIU works closely with the obligated entities especially with their associations and chambers in performing training activities and publication of guidelines on various subjects, also on its website. The CNB has issued one general guidance on AML/CFT which largely relates to the implementation of the AML/CFT law. The professional associations and chambers of DNFBP have issued similar guidelines. Neither the CNB, nor the FIU have regularly published guidelines which go beyond the implementation of the AML/CFT Law to cover more general descriptions of ML and FT methods, or provided any guidance on additional measures to ensure that the AML/CFT measures are effective. In this context, the private sector indicated to the evaluators that they had little specific guidance relating to the financing of terrorism. It was noted by the evaluators that Czech authorities considered that the experience of FT was extremely limited.

704. Though the institutions with which the evaluators met indicated that they would welcome more feedback, the FIU pointed out that since September 2008 all reporting entities have been receiving case specific feedback in relation to each STR. They receive the feedback when the case is finalised by them (either passed to the law enforcement authorities or no further action is taken but the STR remains in the FIU database). Once the case has been passed to law enforcement there appears to be no system in place for routinely advising entities which made STRs of significant developments in the handling of cases passed to law enforcement and prosecutors.

3.8.2 Recommendations and comments

Recommendation 23

705. It appeared to the evaluators that a very light touch risk based supervision approach is taken overall to AML/CFT. The CNB should carry out more AML/CFT targeted on-site inspections.The

CNB need to establish a clearly articulated and realistic risk based approach to the frequency of the inspections, which the examiners judged to be quite insufficient. It is critical for the CNB to determine a cycle of on site inspections which catch all financial obliged entities at some point (with especial attention to the banks which hold most of the financial sector assets).

706. The CNB should carry out more targeted AML/CFT inspections in the non-banking financial sector, particular foreign exchange bureaus.

707. The evaluators recommend the Czech authorities to strengthen the FIU resources, particularly manpower, to enable it to strengthen its oversight and supervisory work, with power to step in and conduct on-site inspections if another supervisor fails to perform, or inadequately performs its supervisory functions in respect of AML/CFT provisions.

708. It is necessary to ensure targeted CFT controls take place in future in all the financial sectors. This includes raising awareness of CFT issues and ensuring more training in the financial sector CFT issues, including detection of FT related assets and awareness of international lists.

709. It is necessary to issue further guidance documents on both AML and CFT issues, including to financial supervisory staff.

Recommandation 17

710. It is necessary to introduce direct sanctions for directors, managers and employees.

711. It is necessary to provide for a wider range of sanctions (such as warnings, orders to comply with instructions, special reporting, removal or restriction of powers of directors, managers and officers or restrictions of business activities).

712. It is necessary to introduce sanctions in respect of breaches for failure in carrying out properly the identification process.

713. It is necessary to review the administrative fines to introduce a minimum amount which is in itself dissuasive.

714. The guides of the professional bodies, the FIU and of the CNB include explanations of the requirements of the Prohibition on Money Laundering Law (Act No. 253/2008), but in most cases they do not include a description of ML and FT techniques and methods or any additional steps that the obligated entities could take to ensure that their AML/CFT measures are effective, as required pursuant to the criterion under Recommendation 25.1.

715. While appreciating the feedback given now by the FIU in relation to each STR, consideration should still be given to the feasibility of more routine case specific feedback (particularly in relation to significant developments in the case) to reporting entities once the FIU has passed a case to law enforcement.

Recommendation 29

716. The new AML/CFT law, like the previous ones, as mentioned in the 3rd round evaluation report, sets clear authority for supervising the financial and other entities, which was very much welcomed by the examiners.

717. The supervisors authority bodies seem to take their AML duties seriously and they have broadly adequate powers to do so in respect of legal entities although, as clearly noted above, more efforts need to be made in intensifying supervision and speeding up the supervisory cycle. The evaluators remain concerned that few targeted inspections were carried out.

718. The evaluators concluded that enforcement and sanctioning powers need to be granted in respect of directors and senior managers. It should be clarified that there is a power to sanction for refusal to disclose information to a supervisor.

719. More resources dedicated to AML/CFT compliance issues should be allocated by the Czech National Bank.

Recommendation 32

720. The CNB and the FAU should maintain updated, timely and comprehensive statistics, including those relating to AML/CFT on-site and off-site examinations as well as more detail in relation to violations and shortcomings identified during these inspections. This will assist the authorities, amongst others, to be in a position to implement an effective risk-based approach in respect of the AMLCFT regime.

3.8.3 Compliance with Recommendations 23, 29, 17, 30, 32 & 25(25.1)

	Rating	**Summary of factors relevant to s.3.10. underlying overall rating**
R.17	**PC**	• Administrative sanctions included within the AML/CFT Law are not proportionate and not necessarily dissuasive as the maximum financial sanctions that can be applied are quite low; • Except for violation of the obligation of confidentiality, on which administrative fines may be imposed on natural persons, all the other administrative penalties can only be imposed on legal obliged entities. Directors, managers and employees are not directly sanctionable; • No financial sanctions have been applied (effectiveness issue).
R.23	**PC**	• Low number of annual inspections in relation to AML/CFT especially in the banking sector; • No clarity as to whether there is a cycle of inspections which catches all financial obliged entities at some point; • A very light touch risk-based supervisory approach is taken overall in respect of AML/CFT; • The numbers of obliged entities where infringements identified as a result of on site inspection appears to be low; • CFT issues insufficiently addressed in supervision.

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.25 (25.1)	**PC**	• Insufficient guidelines on AML and CFT techniques and methods; • Not enough case specific feedback; • Insufficient sector specific guidelines
R.29	**LC**	• No adequate powers of enforcement and sanctions against directors or senior managers of financial institutions for failure to comply to or implement AML/CFT requirements; • Unclear whether there is a power to sanction for refusal to disclose information to a supervisor.
R.30	**PC**	• Inadequate resources for FIU supervision and monitoring. • CNB AML/CFT resources are low for supervision.
R.32	**PC**	• Difficulties in providing updated statistics suggest they are not available in a timely manner.

3.9 Money or value transfer services (SR.VI)

3.9.1 Description and analysis

Special Recommendation VI (rated PC in the 3rd round MER)

721. Money or value transfer services are obliged entities under the AML/CFT law (Section 2 (1) b) 11). Thus, it can be concluded that all the provisions in the AML/CFT law apply to them.

722. Money or value transfer (MVT) services providers have to be licensed. The Czech National Bank is the body that is responsible for deciding on requests for licences (fit and proper checks are applicable to them), under Section 44 of Act No. 6/1993 Coll. Any other alternative money services are considered as unauthorised businesses according to Section 251 of the Criminal Code (one of the crimes against binding rules of the market economy), and this is an administrative offence according to the Payment Services Act. The CNB representatives told the evaluators that the police need to know about cases in order that legal action is taken against non-licensed operators. The CNB were not aware of any such cases.

723. Both the CNB and the FIU have supervisory responsibilities for the money or value transfer services providers. The reply to the questionnaire indicated that the CNB carries out on-site inspections and has to pay attention also to compliance with AML/CFT obligations and to monitor internal procedures. An integral part of this supervision also involves checking the integrity of the money remitter himself (whether he is taking part in ML/TF activity). Therefore, it supplements its work by co-operating with the FIU.

724. The CNB representatives told the evaluators that they have a list of the licensed MVT services operators and their agents which provides an overview of the types and number of operators involved. The reply to the questionnaire includes a link to the CNB list of entities (as set out by the Payment Services Act Section 136). Since the MVT services operators are obliged entities under the AML/CFT law, they are subject to the sanctions under Sections 43 - 48 of the AML/CFT Law

for violations of AML/CFT obligations, e.g. CDD, information or reporting obligations, and suspension of transaction or keeping of systems of internal procedures. Whenever any of these obligations are not complied with, sanctions can be imposed on the MVT services operators. Czech authorities indicated that in addition to administrative sanctions, there are also criminal sanctions (as in Section 216 and 217 of Criminal Code (Act. 40/2009 Coll.)). The FIU can also forward a motion to withdraw a licence whenever the obliged entities violate seriously or repeatedly the AML/CFT obligations. This has never happened.

725. In the 3rd round report, it was advised that the Czech authorities may also wish to consider placing the licensing and supervision of the financial services offered by the Czech Post under the competence of the Czech National Bank for the sake of consistency" and that "the alleged informal remittance activities need to be looked at." The situation has nonetheless remained unchanged.

726. The Czech National Bank is the body that is responsible for deciding on requests for licences.

727. Both the CNB and the FAU have supervisory responsibilities on the money or value transfer services providers.

728. The Czech Authorities indicated that the measures set out in the Best Practices Paper for SR.VI had broadly been implemented.

Effectiveness and efficiency

729. The system for regulating money or value service transactions appears on paper to be operating satisfactorily. But it is unclear how many controls have been performed in respect of these bodies and whether any AML/CFT breaches have been detected. It is also unclear whether the country is fully aware of remitters acting outside the financial system.

730. The bank representatives told the team that they do not give transfer money services to occasional clients.

3.9.2 Recommendations and comments

731. All of the operators of the MVT sector are licensed and supervised (directly or indirectly) by the CNB, which monitors the implementation of the national requirements to combat money laundering and terrorist financing and the FATF Recommendations. Nonetheless it was not clear to the evaluators whether the potential risks in this sector had been thoroughly analysed and/or the degree of oversight that is given to this area by the authorities. Information provided on alleged informal remittance services was insufficient for the evaluators to form a view of the situation.

3.9.3 Compliance with Special Recommendations VI

	Rating	Summary of factors relevant
SR.VI	**PC**	• Effective implementation of SR.VI not demonstrated; • Alleged informal remittance activities not fully assessed.

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.11)

4.1.1 Description and analysis

Recommendation 12 (rated NC in the 3rd round MER)

732. DNFBP categories under the AML/CFT Law include holders of a licence to operate betting games in casinos, legal or natural persons authorised to act as real estate traders or brokers, auditors, tax advisors, chartered accountants, licensed executors, lawyers or public notaries, entrepreneurs or legal persons which are not a business, who receive payments in cash in an amount of €15,000 or more, persons not included in the list above who provide most of the services associated with trust and company service providers under Article (e) of the FATF Methodology 12.1 to another person, persons licensed to trade in items of cultural heritage, items of cultural value, or to act as intermediaries in such services; persons licensed to trade in used goods, act as intermediaries in such trading, or receive used goods in pawn and other activities and persons as defined in Section 2 of the AML/CFT Law.

733. As noted above, the AML/CFT law explicitly applies to all of the designated non-financial businesses and professions, which are defined by the FATF Glossary, with the exception of dealers in precious metals and dealers in precious stones when they engage in any cash transaction with a customer equal to or above the applicable designated threshold. The formulation under Section 2 (obliged entities) covers in paragraph (2)(d) entrepreneurs not listed in paragraph (1), should they receive payments in cash in an amount of or exceeding € 15,000. Given that the FATF Recommendations focus on those DNFBP which are considered particularly vulnerable, and the observations at paragraph 13 of the 3rd MER, it is regrettable that they are not specifically covered under Section 2 of the Act (with the consequential effect that this has for monitoring of this important sector – see R.24).

734. It is concluded that the provisions that apply to DNFBP basically mirror those that apply for financial institutions, and the law prohibiting cash transactions above € 15,000 is said to provide an additional safeguard. Special provisions are also stipulated in Section 26-27 of the AML/CFT law, relating to professionals and exempting them from obligations where legal professional privilege applies.

735. Though the legislative base seems to be sufficient in terms of preventing money laundering and terrorist financing through DNFBP, the interviews with the representatives of DNFBP disclosed a lack of practical knowledge across the sector of some CDD procedures (as well as the procedures in place for PEPs and CFT listed persons) and online monitoring of customer activities.

736. General CDD obligations for the categories of DNFBP covered by the AML/CFT Law have the same strengths and weaknesses as described in section 3.2. In this respect, as per financial institutions, customer due diligence does not include the monitoring of the account activity to determine those transactions that do not conform with the normal or expected transactions for that customer or type of account. Furthermore, in respect of enhanced customer due diligence, there are no requirements for additional processes to mitigate risks, including certification of documents presented and no additional enhanced customer due diligence requirements (e.g. certification of documents presented and additional documentation, approval process etc). It appears also that not

all DNFPB have generally being monitoring to ensure their customers are not included in the international lists of terrorists.

737. The representatives of casinos explained that in practice all the clients are identified at the entrance to the casino by identity card or passport. A special computer programme for record keeping is used, which records information such as: name, date of birth, gender, place and country of residence, address or the type and number of identity document and photograph of the player. Whenever clients change money they must identify themselves again, and their identity is verified by means of the picture.

738. From explanations received from casino representatives it could be understood that other CDD procedures, such as on-going due diligence, "know-your-customer" principles, verifying the identification via external sources, a requiring beneficial owner statement and establishing the beneficial owner's identity, are not carried out at the casinos, except in cases where the transaction/client is suspected of being involved in ML (in such cases the casinos also sends an STR to the FIU).

739. In the course of the meeting with representatives of the real estate agencies the evaluators were advised that they identified their clients, individuals as well as companies, and that they keep copies of ID cards or passports. Furthermore, in addition to the AML/CFT Law requirements they also comply with the directives of their professional Chamber, which provides them with a list of terrorist organisations, and they check whether their clients appear on that list.

740. As aforesaid, an entrepreneur or a legal person who is not a business, who receives payments in cash in an amount of €15,000 or more is one of the obliged entities and this applies to relevant dealers in precious metals and precious stones. According to section 54(4) a payment in commodities of high value, especially precious metals or precious stones, shall be regarded as a payment in cash.

741. Lawyers and notaries are obliged entities of the AML/CFT Law when they offer the service of safekeeping money, securities, or customers' other valuables, or when required by customers to represent them or to act on their behalf in the following situations: buying or selling real estate or a business entity or part thereof; managing customers' assets, such as money, securities, business shares, or any other assets, including representing customers or acting on their behalf in relation to opening accounts in banks or other financial institutions or establishing and managing securities accounts; or establishing, managing, or controlling a company, business group, or any other similar entrepreneurial entity regardless of its status as a natural/legal person, as well as receiving money or other valuables for the purpose of establishing, managing, or controlling such entity; or providing services of encashment, payments, transfers, deposits, or withdrawals in wire or cash transactions, or any other conduct aimed at or directly triggering movement of money. In addition, a public notary is an obliged entity when he provides notarised safekeeping services (Section 2 Article 1(g)).

742. Section 27(1) of the AML/CFT Law limits the requirements of lawyers to perform CDD if the information pertaining to the customer is obtained from the customer or in any other way during or in connection with: a) providing legal advice or the later determination of the customer's legal standing, b) defending the customer in criminal law proceedings, c) representing the customer in court proceedings, or d) providing any legal advice concerning the proceedings referred to in points b) and c), regardless of whether the proceedings had commenced or not, or were concluded or not.

743. Section 27(2) of the AML/CFT Law limits the requirements of a lawyer and a notary to perform CDD if the information pertaining to the customer is obtained from the customer or in any other

way during or in connection with: a) providing legal advice or the later determination of the customer's legal standing, b) representing the customer in court proceedings subject to the mandate conferred on the public notary by law or any other legal norm, or c) providing any legal advice relating to the proceedings referred to in point b), regardless of whether the proceedings had commenced or not, or concluded or not.

744. The representatives of the lawyers explained that in practice:

- They operate in accordance with the AML/CFT Law — they request identification documents and keep basic information on customers. When they manage funds/money they do so via a bank account and they are required to provide additional information.
- The essence of agreements with clients and the service they provide obliges them, with regard to the issue of ML as well as for internal requirements, to clarify whether the service is being provided for the client or for someone else (beneficial owners). They also advised that when money is transferred from abroad they sometimes request a beneficial owner declaration, which they consider to be sufficiently reliable, without further enquiry.
- When a client brings money they clarify its source, and note those details in their agreement with the client. In some cases they refuse to accept the money. There are also instances when they refuse to deal with a client because of lack of information.
- From the discussions it appears that they consider that there is no effective way of discovering who are the private shareholders who control corporations.

745. The representatives of the notaries explained that in practice:

- The risk of ML is very limited with regard to the services they provide and the internal procedures they operate. Most cases consist of depositing money which serves as collateral in a purchase transaction.
- They ascertain the source of the money and whether it has been transferred from the client's account. If it has not come from the client's account, they ask for further clarification.

746. Regarding trust and company service providers the AML/CFT Law applies when they provide the following professional services to another person (Article 1(h) and 1(i), Section 2):

- establishing legal persons;
- acting as a statutory body or its member, or acting as person appointed to act in the name of or on behalf of a legal person, or another person in a similar position, should such service be only temporary and should it be related to establishing and administration of a legal person;
- providing a business location, address, and possibly other related services to another legal person;
- acting as an appointed shareholder on behalf of another person in case this person is not acting as a company whose securities have been accepted for trading at a regulated market and which is subject to information disclosure requirements equivalent to those laid down by the European Communities law; or
- acting in their name of or on their behalf in activities mention in article 12 here, for lawyers and notaries.

747. According to the information provided by the Czech authorities, it appears that trust and company services are provided by lawyers only.

748. The representatives of the accountants explained that in practice they do not have their own internal rules for identifying a new client, but the Chamber is a member in several international organisations (such as the IFAC), and members of the Chamber, under the oversight of the Chamber, comply with the international rules.

749. The representatives of the tax advisors explained that in practice the Chamber expects them to implement the KYC procedure by means of a structured questionnaire (based on an ID format). In addition to the basic questions there is reference to private shareholders controlling the company. In certain cases they also request a beneficial owner's declaration. They added, however, that there was no obligation to follow this procedure.

750. The AML/CFT law applies to DNFBP in the same way as it does to financial institutions, and the concept of PEPs is applicable across the sector, and the same strengths and weaknesses are present (see section 3.2). In particular, Article 2 in Section 15 states that the obliged entity shall refuse a transaction for a PEP if the origin of assets used in the transaction is unknown and Article 3 in Section 15 states that no employee of the obliged entity shall make a transaction for a PEP without consent of their direct supervisor or the statutory body of such an obliged entity.

751. The discussions with the representatives of different DNFBP categories lead to the conclusion that in practice there is a greater lack of awareness of this issue amongst DNFBP than in the financial sector: several interviewees told the evaluation team that it is not possible for them to identify whether a person is or is not a PEP (notably the casinos and the lawyers and notaries). The tax advisor representatives noted that they have a question regarding PEPs in their client questionnaire (see article 353 above).

752. The situation as described above for financial institutions (see section 3.2 above) applies equally to DNFBP.

753. Concerning non face-to-face business, the casino representative advised that the casinos do not offer gambling via the internet.

754. The AML/CFT law permits reliance on qualified third parties for the performance of CDD, under certain conditions. This is applicable to financial institutions and DNFBP.

755. Article 2 in the Czech Bar Association guideline notes that the lawyer is not obliged to carry out the client's identification if the identification has been carried out by another obliged person and the lawyer has assumed this identification (Section 11(1) to (3) of the AML/CFT Law), or the client's identification has been carried out by a public notary in accordance to Section 10 of the AML/CFT law.

756. In general, the same situation as described above concerning financial institutions applies also for DNFBP with regard to their record keeping obligations (see section 3.4).

757. In casinos documentation of all transactions of more than € 10,000 are kept for ten years.

Effectiveness and efficiency

758. The legal coverage of DNFBP is comprehensive and in line with international standards. It comprises inter alia casinos; auditing firms and independent auditors; accounting and tax advisers, dealers in real estate; notaries, attorneys and other legal services. Additionally the Czech Republic has added other categories (which are not required by international norms) to the obliged entities: e.g. dealers in cultural value.

759. DNFPB appear to be aware of and to apply the customer identity AML/CFT rules in practice. There was, however, a general lack of awareness of other CDD procedures. This was particularly the case with regard to the PEPs.

760. Discussions with the representatives of DNFBP disclosed a lack of guidance and practical knowledge across the sector. This was particularly the case with the TF lists

761. The weaknesses with regard to Recommendations 5, 6, 8, and 10 which were apparent in the financial sector also apply for DNFBP.

4.1.2 Recommendations and comments

762. As the AML/CFT law applies to DNFBP in the same way as to financial institutions the same weaknesses are present with regard to Recommendations 5, 6, 8 and 10 (see section 3.2 and 3.4 above). There remained a general lack of awareness among representatives of DNFBP whom the evaluators met of some important preventative obligations, and it is recommended that specific guidance is produced for each sector as well as undertaking further outreach and training in order to raise awareness.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors relevant to s.4.1 underlying overall rating
R.12	**PC**	• The same concerns about the implementation of Recommendations 5, 6, 8 and 10 apply equally to DNFBP; • Lower level of awareness of requirements relating to PEPs and CFT amongst DNFBP than in the financial sector.

4.2 Suspicious transaction reporting (R.16)

(Applying R.13 to 15 and 21)

4.2.1 Description and analysis

Recommendation 16 (rated PC in the 3rd round MER)

763. The table beneath shows the DNFBP categories covered by the list of obliged entities (i.e. reporting entities) by the AML/CFT Law.

Table 28: DNFBP categories covered by the list of obliged entities

DNFBP categories by FATF Methodology	Obliged entities under AML/CFT Law
a) Casinos (which also includes internet casinos).	Holders of a licence to operate betting games in casinos in compliance with the Act on lotteries and other similar games. (section 2.1.c of Act 253/2008 as amended). Internet Casinos are not covered explicitly by the AML/CFT Law. However the Czech authorities indicated that these activities are prohibited by exclusion by the Lottery Act. In addition unlawful Operation of a Lottery or Similar Betting Game are punished by Section 252 CC.
b) Real estate agents.	Legal or natural person authorised to act as a real estate trader or broker. (section 2.1.d of Act 253/2008 as amended)
c) Dealers in precious metals.	***Not per se covered by the AML/CFT Law***
d) Dealers in precious stones.	***Not per se covered by the AML/CFT Law***

DNFBP categories by FATF Methodology	Obliged entities under AML/CFT Law
e) Lawyers, notaries, other independent legal professionals and accountants	Lawyer, public notary, auditor, tax advisor, chartered accountant, a licensed executor performing other activities of an executor pursuant to the Executor´s rules of procedure (sections 2.1.e, 2.1.f and 2.1.g of Act 253/2008 as amended)
f) Trust and Company Service Providers	Person providing services in a framework of a trust or any other similar contractual relationship under foreign law (sections 2.1.i of Act 253/2008 as amended)

764. The AML/CFT Law extends the list of the obliged entities to persons that:

a) provide professional services in the cases indicated in Section 2.1.h;
b) are licensed to trade items of cultural heritage or of cultural value as set forth in Section 2.1.j; are licensed to trade in used goods, act as intermediary in such trading, or receive used goods in pawn (Section 2.1.k).

765. There are some additional persons considered as obliged entities under Section 2.2 of the Act.

766. As regards dealers in precious metals and stones, there are not explicitly covered *per se* by the AML/CFT obligations but are required to perform specifics AML/CFT requirements set out in Section 28 in the AML/CFT Law when they perform transactions exceeding 15.000 Euros or equivalent in other currencies.

767. Internet casinos activities are not permitted under the Lotteries Act according to the information provided by the Czech authorities, who indicated that in case of unlawful operations criminal sanctions apply (namely Section 252 of the CC).

768. According to Section 18 the obliged entities shall report suspicious transactions to the Ministry (i.e. FAU). However, Section 26 and 27 of the AML/CFT Law establish some exceptions to the general requirement for professionals (lawyers, public notaries, auditors, chartered accountants, licensed executors and tax advisors) which may impact upon the effectiveness of the implementation of this requirement.

769. Section 2 letters c) to k) of the AML/CFT Law fully cover all natural and legal persons defined as DNFBP by the FATF. DNFBP are under the obligation to report suspicious transactions to the Ministry (i.e. FAU) (Section 18 of the AML/CFT Law).

770. The notion of "suspicious transaction" is defined in Section 6 of the AML/CFT Law as "*the circumstances of which lead to a suspicion of legitimisation of proceeds of crime or financing of terrorism or any other unlawful activity*". The definition is broadly adequate but the provision applies to transactions which are not connected with the usual activities of DNFBP (for example "cash deposits immediately followed by withdrawals or transfers to other accounts"). The wording of this provision may affect the level and quality of STRs sent by DNFBP.

771. Furthermore, according to Sections 26 and 27 of the AML/CFT Law, auditors, accountants and other advisors, lawyers and public notaries, report to the Ministry (FAU) through their respective Chambers and the latter "examine" the STRs i.e. verify that all the information required is included and is consistent with the provisions on the "legal privilege" of the given profession and with Section 18 paragraph 1 of the Act.

772. However, according to the representatives of the Chambers met on-site, there were cases when STRs were sent back to the reporting professional as the issue was not considered to be related to

money laundering. Therefore, it appears that, although the Chambers are required by law only to look into the accuracy of the reported cases (i.e. “how the case is reported”), the representatives indicated that they were also looking into the substance of the cases reported (i.e. “what is reported”). Therefore it appears that the Chambers exceed their power to verify the information contained in the STRs.

773. All other DNFBP (casinos, real estate agents, and Trust and Company Service Providers) report directly to the FAU as prescribed by Section 18 of the AML/CFT Law.

774. According to the figures provided by the authorities, in 2008 there were no STRs filed by DNFBP with the FAU. In 2009 3 STRs were reported and 1 STR in the first quarter of 2010 was filed. Casinos and betting games establishments in 2008 reported 5 cases, none in 2009 and made 3 disclosures in the first quarter of 2010. STRs from DNFBP constitute approximately 0.22%, 0.13% and 1.02% of the total number of STRs filed with the FAU. These figures appear to be very low.

Table 29: STRs from DNFBP

DNFBP categories	2008	2009	IQ2010
Professionals	0	3	1
Casinos and betting games	5	0	3
Dealers in precious high-value items	0	0	0
Real estate agents	0	0	0
Total STRs from DNFBP	**5**	**3**	**4**
Total STRs from all obliged entities	2.320	2.224	391
Percentage of STRs from DNFBP	*0.22%*	*0.13%*	*1.02%*

775. The above-mentioned figures seem to indicate that the DNFBP have difficulties to assess properly the reporting requirements and detect suspicious transactions which may be due to:

- the lack of guidance interpreting the notion of “suspicious transaction” as such (e.g. the “listed transactions” could affect the disclosure regime);
- the lack of training for DNFBP in this respect;
- or, the role of the Chambers when assessing whether a STR is to be further reported or not.

776. The FAU has not issued specific guidance on reporting for DNFBP, which influences the effectiveness of the reporting regime. According to the representatives of DNFBP and the authorities there is no formal consultation mechanism (such as written agreement or committee) on this matter.

777. The representatives of the Association of Casinos informed the evaluators that some indicators of “suspicious behaviour” of customers and some operations related to currency exchanges were produced to help the staff of casinos detect suspicious transactions.

778. The representatives of the real estate agents indicated that their associations have drafted guidelines on suspicious transactions, which were still to be approved by the FAU.

779. Lawyers, public notaries, auditors, chartered accountants, licensed executors and tax advisors are subject to special reporting provisions and according to Sections 26 and 27, DNFBP are obliged to send STRs to the following authorities:

a) auditors - to the Chamber of Auditors of the Czech Republic;
b) licensed executors (judicial executors who can under certain circumstances carry out depositing or administrating of the clients, assets) - to the Chamber of Licensed Executors of the Czech Republic;

c) tax advisors - to the Chamber of Tax Advisors of the Czech Republic;
d) lawyers - to the Czech Bar association;
e) public notaries - to the Chamber of Notaries of the Czech Republic.

780. The Chambers check whether the filing of the STR leads to a conflict with the provisions on "legal privilege" and, in respect of Section 18, whether the STR contains all the elements required by the AML/CFT Law. In cases of inconsistency the Chamber may send the STR back to the reporting professional. If the STR is in compliance with the above-mentioned requirements the Chamber has to refer it to the FAU.

781. The STRs shall be sent to the FAU by the Chambers without undue delay but no later than 7 days from their reception (S.27 (3)). This time-limit of 7 days implies the existence of a permanent body to deal with STRs but the representatives of the Chambers did not mention any developments in this respect. It was not possible to establish during the visit how the Chambers examine STRs from their members.

Table 30: STRs received by the Chambers and sent to the FAU

	2008	2009	IQ 2010
STRs received by Chamber of Auditors	0	1	1
STRs received by Chamber of Licensed Executors	0	0	0
STRs received by Chamber of Tax Advisors	0	1	0
STRs received by Czech Bar Association for Lawyers	0	0	0
STRs received by Chamber of Notaries	0	1	0
Total STRs received by the Chambers	**0**	**3**	**1**
STRs sent to the FAU by Chambers	**0**	**3**	**1**

782. Under R 16 criterion 2, professionals are allowed to send STRs to their self-regulatory organisations (SROs) but an appropriate form of co-operation between SROs and FIU should be established. As mentioned above, there is no formal mechanism between FAU and DNFBP (in particular professionals) or their representatives for consultations in this respect.

Professional privilege

783. Articles 26 and 27 of the AML/CFT Law contain provisions on "professional privilege".

784. Auditors, accountants and others professionals indicated in Section 26 shall not report cases where "*the information obtained from or about the customer during the process of establishing of the customer's legal standing, during the representation of the customer in court, or in connection with court proceedings, including the giving of advice to instigate or avoid such proceedings, regardless of whether the information was obtained prior to, during or after the proceedings*". Such provision shall not apply if "*the auditor, chartered accountant, licensed executor or tax advisor suspects that the customer is seeking counsel for the purpose of legitimisation of proceeds of crime or the financing of terrorism*".

785. As regards lawyers the legal privilege is set out in Section 27, paragraph 1 of the AML/CFT Law according to which a lawyer shall not report STRs where the information pertaining to the customer is obtained from the customer or in any other way *"during or in connection with: providing legal advice or the later determination of the customer's legal standing; defending the customer in criminal law proceedings; representing the customer in court proceedings, or providing any legal advice concerning the proceedings referred to in points b) and c), regardless of whether the proceedings had commenced or not, or concluded or not*."

786. Public notaries are not required to report STRs on information pertaining to the customer regardless of whether it was obtained from the customer or in any other way during or in connection with: providing legal advice or in the later determination of the customer's legal standing; representing the customer in court proceedings subject to the mandate conferred on the public notary by law or any other legal norm; or providing any legal advice relating to the proceedings referred to above, regardless of whether the proceedings had commenced or not, or concluded or not (cf. Section 27, paragraph 2).

787. Hence, legal privilege is applicable not only in the case of the reporting obligation, as stipulated above, but also in cases when information is requested by the FAU (Section 24 of the AML/CFT Law). There is no FATF standard in this respect but Recommendation 4 requires a country to refrain from adopting measures that could prevent the authorities accessing the information indispensible to the proper implementation of the AML/CFT Law.

788. As regards lawyers and public notaries, Section 27 paragraph 4 provides that the FAU may request further details, documents or information in accordance with Section 24 from a lawyer or a public notary via the Chamber. The lawyer or the public notary has to provide the required information to the FAU via the Chamber covered by this. The auditors, chartered accountants and tax advisors are not submitted to this obligation and they can submit the information directly to the FAU.

789. It does not appear that there are any agreements or any other forms of co-operation to regulate the procedures mentioned above, which would guarantee proper actions on the part of the FAU and the confidentiality of the information requested.

790. It is noted that the FATF Recommendations allow DNFBP to send their STRs to their respective self-regulatory organisations (SRO) but also require appropriate forms of co-operation between these organisations and the FAU, and this issue should be addressed.

Applying Recommendation 14, 15 and 21

Recommendation 14

791. According to Section 18, paragraph 3 of the AML/CFT Law, the STR shall not reveal any information about the obliged entity's employee (including DNFBP) or "contractor" who had reported the suspicious transaction.

792. Chapter Four of the AML/CFT Law ("Confidentiality") establishes some specific provisions (Sections 38 and 39) requiring the obliged entities and their employees to keep confidential the facts related to STRs and the investigations performed by the FAU. The same provision on confidentiality applies to the FAU, the supervisory authorities and their staff and does not end with the person's departure from his or her position in the obliged entities, the FAU or the supervisory authority.

793. According to Section 40 paragraph 3 lawyers, public notaries, auditors, licensed executors are obliged to keep confidential, in respect of the customer, the facts relating to STRs and investigations. This does not apply to facts which, if disclosed to the customer, could prevent him from being involved in criminal activity.

Recommendation 15

794. According to Section 21 of the AML/CFT Law, all obliged entities, among which all the categories of DNFBP covered by the AML/CFT Law, have to establish and enforce adequate and

appropriate internal procedures of internal control and communication. A number of DNFBP are exempted from the requirement of maintaining written procedures if they do not have other employees or contract to other persons (Section 21 (3)).

795. Casinos, real estate brokers and dealers and persons providing services in the framework of a trust are also required to adopt internal procedures, policies and compliance checks in order to fulfill AML/CFT obligations. The latter two may decide not to issue such internal procedures when they do not employ staff under any form of other contract.

796. Internal procedures should include *inter alia* measures related to CDD, record keeping and reporting requirements as prescribed in section 21 paragraph 5 of the AML/CFT Law.

797. According to Section 22, obliged entities, including the DNFBP covered by the AML/CFT Law, are required to appoint a "contact person" (i.e. compliance officer) to report STRs to the FAU and to maintain regular contacts with the FAU.

798. The AML/CFT Law is silent on the role and powers of the "contact persons", as is the paragraph indicating the content of the internal procedures (paragraph 5 of section 21).

799. According to Section 23 of the AML/CFT Law, DNFBP are also required to organise training on AML/CFT matters on professional obligations, reporting requirements, trends and typologies. Neither the law nor any other regulatory act contain any provisions as to the recruitment and screening of employees.

800. As regards dealers in precious stones and metals there are no specific provisions in Section 28 to adopt internal procedures and to implement the other requirements set out in Recommendation 15.

Recommendation 21

801. The Czech authorities informed the evaluators that the only way the awareness of financial institutions and DNFBP is raised in respect of States which do not or insufficiently apply the FATF Recommendations is through the information published on the website of the FAU.

802. There are no regulations, or any other enforceable means or recommendations issued by the FAU or any respective associations or Chambers indicating the counter-measures that obliged entities shall apply in the circumstances indicated above.

803. Under the AML/CFT Law, auditors are explicitly required to apply AML/CFT obligations.

804. As already indicated in Recommendation 13, according to Section 6 of the AML/CFT Law a suspicious transaction is "*a transaction the circumstances of which lead to a suspicion*". These circumstances refer to money laundering, financing of terrorism and other situations supporting such suspicion. This definition seems to be broad enough to cover other criminal acts which are different from ML or TF.

805. The FAU should consider issuing specific clarifications on this matter.

Effectiveness and efficiency

806. The preventive measures are impacted by the fact that some of the categories of DNFBP are not explicitly covered by the AML/CFT Law. In particular, dealers in precious metals and stones as well as owners of internet casinos do not fall into the categories of obliged entities.

807. With regards to dealers in precious stones and metals, although they are required to perform certain AML/CFT obligations when they carry out transactions exceeding the threshold, these requirements are not however fully in line with Recommendation 16 (internal controls, appointment of compliance officers). It is unclear whether confidentiality and tipping off apply to these entities after the transaction is concluded.

808. The authorities are encouraged to tackle this deficiency all the more since representatives from the General Directorate of Customs_met during the visit indicated that there were instances of precious stones being used for the laundering of illegal proceeds as indicated in paragraph 777 of the 3rd MER.

809. The number of STRs received by DNFBP is extremely low.

810. The rules implemented by the Chambers of professionals as to the analysis of STRs and dissemination to the FAU may be a factor that affects negatively the quality and quantity of the disclosures. Furthermore, the fact that the FAU can obtain information and documents from professionals only via the Chambers influences the effectiveness of the activities of the FAU in this respect.

811. The lack of formal agreements between the FAU and the Chambers of the professions as to the use and protection of sensitive information (STRs filed and requests made by the FAU) could affect negatively the quantity and quality of disclosures.

812. It appears that the representatives of DNFBP are well aware of AML/CFT issues, but the low number of STRs from the sector raises concerns as to the effective implementation by the DNFBP of AML/CFT measures. The effectiveness of the reporting system might also be challenged by the fact that the professionals have to send the STRs via their respective Chambers and that further information can be sought by the FAU only via the Chambers.

4.2.2 Recommendations and comments

813. DNFBP are under the same reporting obligations as financial institutions but some DNFBP (lawyers, public notaries, accountants, etc) have to send their STRs via their respective Chambers. Hence, the channels of co-operation between the FAU and the Chambers need to be formalised.

814. The requirement of Section 6 of the AML/CFT Law for the obliged entities to report as suspicious all the transactions and operations listed in the Act could affect the level and the quality of the reporting where the methods, trends and schemes are increasingly complex and sophisticated.

815. The existence of legal privilege is applicable to all professionals. It applies also in the case of requests for analyses carried out by the FAU. Such provision could limit the effectiveness of the Czech FAU.

816. Protection and tipping-off provisions are in place, as well as requirements on internal procedures, appointment of compliance officer and audit functions. The screening provisions of the FATF Recommendations do not appear to be covered.

817. As regards FATF R.21 for DNFBP, formalised procedures to alert obliged entities are not in place.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of the factors underlying rating
R.16	**PC**	• The categories of dealers in precious metal and dealers in precious stones are not explicitly covered by AML/CFT Law; • There is no specific guidance to assist DNFBP detecting STRs; • Low numbers of STRs received by DNFBP; • The effectiveness of the system is negatively influenced by the listing of suspicious transactions; • Lack of formalised procedures issued by Czech authorities to make the obliged entities aware on circumstances under Recommendation 21.

4.3 Regulation, supervision and monitoring (R.24 and R.25)

4.3.1 Description and analysis

Recommendation 24 (rated NC in the 3rd round MER)

818. The FIU has a general supervisory competence vis-à-vis all DNFPB (Section 35 of the AML/CFT Law). The specific supervisory bodies for each DNFBP are:

- Casinos - the State Supervision on Betting Games and Lotteries (Ministry of Finance).
- Auditors, tax advisors, executors, lawyers and notaries – their SRO (see below).
- Traders in goods with cultural value or used goods - Czech Trade Inspection.

819. Dealers in precious metals and stones would only be monitored in the same way as any other dealer in goods equal to or above euro 15.000 in cash. Given that there is a general prohibition on payments in cash over euro 15.000, it is unclear what, if any monitoring would actually be required in this situation. This only reinforces the evaluators' view that, given the specific requirement in the FATF Standards for dealers in precious metals and stones to be explicitly covered for monitoring purposes, they should be formally required in the law and subject to monitoring. In order to do this, the Czech authorities will need to asses whether such monitoring should be the direct responsibility of the FIU or shared with a professional chamber in the same way as applies in other parts of this sector.

820. The control of compliance of casinos is carried out by the FIU and also by the State Supervision on Betting Games and lotteries. Both are part of the Ministry of Finance. The casinos representatives told the evaluators that they cooperate with the FIU and that the on-site audit cycle is approximately once a year.

821. The representative of the State Supervision on Betting Games and Lotteries considered that they have sufficient technical and other resources to perform their functions. They have adequate staff , and powers and it was advised that their staff are familiar with AML/CFT issues (some of them are AML/CFT experts).

822. While the State Supervision on Betting Games and Lotteries performed approximately 230,000 on-site inspections between 2005-2008, these cover all types of issues and the evaluators were informed that there were no statistics on how many specific AML/CFT inspections, or if any, were carried out.

823. Mandatory licensing is part of the supervision tasks of the State Supervision on Betting Games and Lotteries under Act No. 202/1990 Coll. A fit and proper test is required whenever a person asks for an authorisation (licence).

824. The FIU has the possibility to require the professional chambers to conduct inspections and share the results with the FIU (AML/CFT Law, Section 37 paragraph 2). However, it appears that sharing of the results is carried out on few occasions mainly because there are few inspections carried out or reluctance by some of the professional chambers to share their findings with the FIU.

825. From the discussions held on site, the supervisors are aware of their responsibilities and do ensure in practice that financial institutions under their control implement the requirements of the AML/CFT Law. Some of them use targeted inspections in respect of the requirements of the Act. However little information was available about CFT specific attention paid by the supervisors.

826. In response to clarification after the on-site visit, the professional chambers (SROs) stated that:

- The Czech Bar Association performed 11 AML/CFT inspections in the period between 2007-5/2010. Inspections on compliance with AML/CFT Law can be exercised by members of the inspection council (54 members), especially its economics section (14 members). Inspections are being conducted on the basis of initiations submitted to the inspection council.
- To date, the Chambers of Auditors do not perform inspections exclusively on AML issues. Between 2007-5/2010 they performed 445 general inspections, of which the quality of and compliance with AML rules is a part. Inspections are covered by 11 members of the Supervisory Commission of the Chamber of Auditors and 6 members of the Inspection subdivision. The inspections must be conducted every 6 years at least; in the case of some audits the period is 3 years.
- The Chamber of Tax Advisers does not perform AML/CFT specific inspections. The AML issue is a part of the regular inspection covered by 5 members of the Supervisory Commission of the Chamber of Tax Advisers with the support of two lawyers from the Office of the Chamber. If the Commission receives any requests in respect of the AML/CFT issue, it will immediately act and the inspection would be focused exclusively on AML issues. To date, there was no such a request. There are thus no serious findings regarding AML/CFT issues to-date.

827. In a meeting with the DNFPB representatives the evaluators were informed that none of the Professional Chambers provide the UN Security Council list to their members. They also noted that they have hardly any specific guidelines relating to the financing of terrorism.

828. The professional Chamber of Lawyers (Bar Association), other DNFPB (the real estate agents, accountants and trust and company service providers) remain the responsibility of the FIU under section 35 of the AML/CFT. As indicated by the FIU representative, at the time of the on-site visit the FIU does not have adequate resources to perform sufficient on-site inspections.

829. It appears that more efforts should be made in the field of on-site supervision, by the professional chambers. In fact, the evaluators were concerned that few inspections targeted on AML/CFT issues have been performed until now. Bearing in mind that supervision has mostly focused so far on formal requirements to verify the implementation of particular AML measures in practice). The evaluators believe that the lack of supervision could affect the quantity and the quality of the supervised entities STRs adversely.

Recommendation 25 (rated NC in the 3rd round MER)

830. The guides of the professional bodies, the FIU and of the CNB include explanations of the requirements of the Prohibition on Money Laundering Law (Act No. 253/2008), but in most cases they do not include a description of ML and FT techniques and methods or any additional steps that the obligated entities could take to ensure that their AML/CFT measures are effective, as required pursuant to FATF recommendation 25.1.

831. While appreciating the feedback given now by the FIU in relation to each STR, consideration should still be given to the feasibility of more routine case specific feedback (particularly in relation to significant developments in the case) to reporting entities once the FIU has passed a case to Law enforcement.

832. All financial Institutions and the DNFPB informed the evaluators that the FIU "works closely" with the obligated entities. They confirmed that the FIU provides clarifications, opinions etc. on issues related to the prohibition on money laundering through various means including verbal advice, letters, E-mail, etc. In fact, the FIU noted that a large part of their time is devoted to answering queries from various obligated entities. As part of the cooperation with financial

institutions and professional associations, the FIU personnel provides training to professional bodies as well as delivering presentations during conferences/seminars organised by the professional bodies.

833. The FIU also provides on its website, information/explanations relating to identification issues, credit cards, PEPs, CDD, reporting obligations, suspension of a transaction, confidentiality, third country equivalence, exemptions, etc. The website also contains forms, templates, relevant legislation (both Czech and European), and some MONEYVAL/FATF documents. However, this information does not appear to be considered as a guidance by almost of the financial institutions and DNFBP to assist them in the practical implementation of and compliance with AML/CFT requirements. Indeed, a number of institutions stated that they would appreciate specific guidance on a number of issues, as described throughout this report.

834. Some supervisory bodies of DNFPB (lawyers, tax advisers, auditors and real estate agents) have also issued guidelines. The evaluators were also informed that some of the professional entities consulted the FIU personnel and involved them in the formulation of these guidelines. Representatives of the professional bodies noted that they themselves have not issued any specific guidelines relating to the financing of terrorism.

835. The FIU should provide feedback to the financial entities and other obliged entities over and beyond the general and statistical information, as set out above.

836. Discussions with the representatives of DNFBP disclosed a lack of guidance and practical knowledge across the sector.

837. The figures and statistics provided to the evaluators seem to indicate that the DNFBP have difficulties to assess properly the reporting requirements and to detect suspicious transactions, which may be due in considerable measure to the lack of training for DNFBP in this respect;

838. There was a general lack of awareness among representatives of DNFBP whom the evaluators met. AML/CFT training programs must be put in place in order to raise awareness.

839. There is no regular dialogue (including training) between public authorities and the NPO entities conducted on the subject of financing of terrorism.

840. The Supervisory Division of the FAU could usefully be augmented with staff.

Effectiveness and efficiency (R.24 and R.25)

841. The professional chambers of the Auditors, tax advisors, executors, lawyers and notaries are primarily responsible for AML/CFT supervision and any sanctioning, though the evaluators were concerned that the professional chambers did not routinely share the results with the FIU.

842. The FIU has the possibility to require the professional Chambers to conduct inspections and share the results with the FIU (Section 37(2)), but this seems to be an exceptional procedure. For certain sectors (dealers in precious metals and stones; trust and company service providers) there is no authority to perform inspections. So far, the auditors chamber and the Tax Advisers Chamber have not implemented inspections exclusively focused on AML/CFT rules.

843. The existing legislation seems to grant the supervisory authorities power to impose sanctions.

4.3.2 Recommendations and comments

Recommendation 24

844. Explicit authority to monitor for AML/CFT purposes needs to be put in place in respect of dealers in precious metals and stones so that they are subject to effective risk based monitoring.

845. The FIU should conduct a survey on the size of the sector dealing with precious metals and stones and its vulnerability to ML/FT and develop a risk based assessment for monitoring and ensuring their compliance with requirements to combat ML and FT.

846. The FIU should develop a clear risk based strategy for effective monitoring of those other DNFBP that are not covered by the arrangements with the professional bodies, in particular real estate agents, trust and company service providers (where not otherwise covered).

847. The AML/CFT risks in the casinos require continuing active AML/CFT supervision and sanctioning.

848. More formal cooperation agreements need to be instituted by the FIU and the professional chambers in order to ensure a more coordinated and consistent level of AML/CFT supervision of these professionals.

849. As noted above, the professional chambers of the Lawyers etc. are primarily responsible for AML/CFT supervision and any sanctioning. The evaluators were concerned that the professional chambers did not routinely share the results with the FIU. No ML sanctions had been taken. The FIU has the possibility to require the professional chambers to conduct inspections and share the results with the FIU (Section 37(2)), but, as has been noted above, this seems to be an exceptional procedure. The evaluators consider that more formal cooperation agreements need to be instituted by the FIU and the professional chambers in order to ensure a more coordinated and consistent level of AML/CFT supervision of these professionals. In particular, the FIU and the professional chambers should achieve working arrangements on how to apply Section 37(2) of the AML Act.

850. The AML/CFT supervision by the professional chambers appears to the evaluators to lack focus on AML/CFT issues. It is recommended that the professional chambers review their AML/CFT strategy to ensure that it fulfils its obligations under the AML Act.

851. The Professional Chambers should provide a CFT list to its members and specific guidelines relating to the financing of terrorism.

Recommendation 25 (c.25.1 and 2 [DNFBP])

852. The guides of the professional bodies, the FIU and of the CNB include explanations of the requirements of the Prohibition on Money Laundering Law (Act No. 253/2008), but in most cases they do not include a description of ML and FT techniques and methods or any additional steps that the obligated entities could take to ensure that their AML/CFT measures are effective, as required pursuant to the Methodology criterion 25.1.

853. While appreciating the feedback given now by the FIU in relation to each STR, consideration should still be given to the feasibility of more routine case specific feedback (particularly in relation to significant developments in the case) to reporting entities once the FIU has passed a case to Law enforcement.

4.3.3 Compliance with Recommendations 24 and 25 (Criterion 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.3 underlying overall rating
R.24	**PC**	• Problematic cooperation between the FIU and the professional chambers regarding AML/CFT supervision. • No authority performs inspections on some DNFPB and others do not have exclusive inspection competence on AML/CFT. • No sanctions have been imposed so far. • Poor understanding regarding financing of terrorism.
R.25	**PC**	• Insufficient guidelines on AML and CFT techniques and methods. • Not enough case specific feedback. • Insufficient sector specific guidelines. • The FIU provides general feedback, but the requests for feedback as required by the FATF methodology are not met in light of the strict implementation of the Law.

5. LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

Recommendation 33 (rated NC in the 3rd round MER)

Overview of commercial laws and mechanisms governing legal persons and arrangements

5.1.1 Description and Analysis

854. As it was confirmed by the Czech authorities, no "major changes" had taken place since the 3rd round evaluation in this field and therefore all information provided in Section 1.4 of the 3rd MER remains valid. Although the evaluators were not provided with comparative excerpts of the respective underlying legislation they acknowledge that no "minor" changes that might have been carried out in the Commercial Code or any other related legislation affect the main provisions that are subject to evaluation under R.33.

855. Instead of a detailed description, the evaluators thus only refer to the specific types of commercial companies as listed in the previous report, that is, the unlimited partnership (general business partnership, usually abbreviated as "v.o.s.") limited partnership ("k.s.") limited liability company ("s.r.o.") and joint stock company ("a.s.") for which the general rules of foundation and the constituting documents thereto are precisely described there. The same goes for the cooperatives as well as the European companies and European economic interest groupings. The registration procedure, however, has changed since the last evaluation as the Czech Republic introduced an electronic Company Register as from 1st January 2007 which brought about some significant changes in the registration procedure as will be discussed in more detail below.

856. In the 3rd round of evaluation, the Czech Republic was found to be non compliant with the requirements of Recommendation 33. The system in place at the time of the 3rd round onsite for the registration of legal persons did not ensure a sufficient level of reliability of the information registered nor of transparency of beneficial ownership of legal persons. This was considered a particular issue given the possibility for companies to issue bearer shares which were freely transferable, and which were seen as a problem by law enforcement agencies.

857. It was 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 have included 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. It was also recommended to take appropriate measures to ensure that bearer transferable shares are not misused for AML/CFT purposes.

858. As discussed in the 3rd MER the Czech regional courts are entrusted with, among other duties, the administration of the commercial registry. The general rules of procedure for establishing a company and the type of companies that can be registered with the commercial register were described in the 3rd round MER and by and large the situation remains unchanged, including the range of documents and data required to be provided when forming a company. The following part of the report should therefore be read in conjunction with the respective part of the previous one.

859. The main development in this area was the establishment of the electronic Commercial Register. It was made possible by the amendment of the Commercial Code (No. 216/2005 Coll. and No. 79/2006 Coll. together with the Regulation No. 562/2006 Coll.) which significantly changed the

registration procedure. The main changes these amendments brought about significantly accelerated the registration procedure and provided more transparency of the data entered into the register.

860. As from 1st January 2007, the computerisation of the Commercial Register makes it possible to submit an electronic version of an application to a court with the certified electronic signature. The Commercial register court issues a copy of a form always entered into the register as a printed hard copy or in an electronic version. It is compulsory to use a form for the submission of a request to enter new (or modified) data into the register. There was a 5 working day period introduced, within which a court has to issue a decision about such a request, either by deciding in the merits of the request or, if the request is incomplete, by requiring some supplementary facts within a given period of time. In special cases, e.g. company conversion, a longer period of time (15 working days) is applied. If a court fails to decide within the given period then, as the Czech authorities indicated in the answer to the questionnaire *"the legal fiction comes in force"* which means that all the facts contained in a request will be entered into the register even if they do not meet the respective legal requirements.

861. While the procedure of the Commercial Register was accelerated, the reviewing power of the Court was, to some extent, restricted or, according to the Czech authorities to "preserve it at a necessary level" and legal rules were introduced. The reviewing role of the Court is now limited when the facts in a request are based on a notarial deed or on a declaratory facts record as these data can directly be entered into the register, without a specific court decision. The Czech authorities admitted that this regulation had actually caused some difficulties as there had been some facts entered into the register without having the required legal elements but based on notarial deeds. This potential deficiency was, to some extent, remedied by a subsequent practice of the courts according to which now it is considered to be necessary to review whether the facts in notarial deeds are in accordance with the law (and if not, the court has to dismiss the request).

862. As to the former, the Czech authorities admitted that this regulation had actually caused some difficulties as there had been some facts entered into the register without having the required legal elements but based on notarial deeds. This potential deficiency was, to some extent, remedied by a subsequent practice of the courts according to which now it is considered to be necessary to review whether the facts in notarial deeds are in accordance with the law (and if not, the court has to dismiss the request).

863. The second option is when data are submitted on a so-called declaratory facts record. In case the legal effect of a data does not come with entering it into the Commercial register and hence its registration has a merely declaratory effect (e.g. a change in statutory bodies, a decision on the dissolution of the company, a nomination of a liquidator of the company, an agreement on share transfer etc.) the Court would only check whether all the letters are formally correct and if so, the data must be entered into the register without a specific court decision. If, however, entering of a data has direct constitutive effect (e.g. the creation of a company and its entering into the Register, its removal from there, the change of business name, increase and decrease of the company capital etc.) the Court fully reviews all the data and then brings a specific court decision.

864. These amendments were already foreseen at the time of the 3rd evaluation and the then examiners doubted that accelerating the registration process would improve the situation and feared that it could contribute to the lowering of the level of accuracy and reliability of the information entered into the register. Now that the new procedures are in place, the current evaluators consider these concerns founded.

865. The new rules are designed to support the easing and acceleration of the process and should be considered as an improvement. However, according to the requirements of R.33 the changes relating to the accuracy, veracity and reliability of the registered data either do not have any impact or have a rather negative one as the reliability of the registered information may suffer from the acceleration of the procedure.

866. Apart from the acceleration of the procedure the amendments were also designed to improve the transparency of the registered data. The Commercial Register Court keeps a Collection of documents for every legal person and it is compulsory to submit required documents to this collection. By virtue of the Regulation of Ministry of Justice No. 562/2006 Coll. the collection of documents was kept in electronic form since 1 January 2007 and the documents submitted to this collection can be found at www.justice.cz. Art. 38i of the amended Commercial Code establishes the list of documents to be submitted and can be also found on the Internet. The evaluators appreciate the importance of these amendments for the business sector but they do not meet the requirements under R.33.

867. Criterion 33.2 requires that competent authorities be able to obtain or have access in a timely fashion to adequate, accurate and current information on the beneficial ownership and control of legal persons and this information is not required in the company register. There have not been any improvements since the 3rd MER as to the access to information on the ownership of companies (and particularly joint stock companies) in particular on the ultimate beneficial owners (cf. Criterion 33.3). The prosecutors met onsite informed the evaluators that the limited access to information on the beneficial ownership was an obstacle in cases where the company was represented by a straw man ("white horse") in transactions claiming that he/she was the fully responsible owner of the company.

868. Notwithstanding that, the evaluators also acknowledge that the introduction of the online and free of charge available database of registered data and documents has effectively facilitated more immediate access by law enforcement authorities to company information which is a development compared to the time of the third round visit when excerpts of the registry could only be obtained from the respective court in hard copy.

869. The evaluators note that Section 8(2b) and 9 of the AML/CFT Law requires disclosing the ownership structure of the company, including the beneficial ownership, in the framework of the customer identification procedure and CDD measures. The beneficial ownership definition in Section 4(4) of the above mentioned Act is in line with the FATF standards.

870. Since the 3rd MER some deficiencies in the previous regime have been remedied. It is now explicit in the legislation that the entrepreneurs shall inform the Commercial Registry Court whenever there are any changes in the company status, the structure of ownership, otherwise they can be subjected to sanction, including penal – according to the Penal Code the breach of entrepreneurs, duties with respect to the Commercial registry is considered as criminal offence (distortion of information about property management in Art. 254 CC). As for the companies themselves, they have administrative liability for breaching their duty to inform the Commercial Register about any changes in their ownership structure, registered capital or board membership. In addition, any changes of corporate registered capital must be performed through company bank account (regardless of the sum involved) as no cash payment is allowed any more.

871. The law stipulates which information is to be entered into the commercial register – Section 35 of the Commercial Code and the provisions for the different types of a business company. Each action taken before the Commercial Register Court should bear a certified signature and be supported by a power of attorney. According to the Czech authorities these provisions prevent others other than

the entrepreneur from submitting a request to the Commercial Register and having false facts entered therein.

872. The Court is also authorised to open a procedure *ex officio* (without a petition) and this power has now been strengthened in cases where it is necessary to harmonise the entry in the Commercial Register with the reality. This process can be applied in case of dissolution of companies and according to the 3rd MER have been implemented.

873. At the time of the 3rd round visit, the Commercial Code (Art. 156 etc.) allowed shares to be issued as registered shares or bearer shares, and companies could freely issue bearer shares in certified (paper) or non-certified (non-paper) form. Bearer shares were freely transferable and transferability was unrestricted unless the statutes of the respective entity provided otherwise.

874. As far as bearer shares are concerned, the current evaluators have found an identical situation and changes are still pending in draft legislation. The Ministry of Justice advise in the MEQ that there was a draft law under discussion in the Chamber of Deputies to abandon the paper form of bearer shares. The draft law would require joint stock companies that use paper form bearer shares to change the form of such shares to electronic so as to make the ownership structure more transparent. The examiners were not provided with the draft and it was not adopted in the two-month period subsequent to the visit. According to the authorities the cancelation of bearer shares had been considered but the Legislative Council of the Government rejected the idea, arguing that such a conceptual change would cause more problems.

875. While in some types of companies there is information on ownership and control of legal persons publicly available, there are other company forms where the structure is anonymous (joint stock company) which makes it more difficult to identify the ownership structure of such a company. The ways of knowing who the shareholders of a joint stock company are thus the same as described in the 3rd round MER, including the Czech Securities Commission (CSC) register of shareholders of stock market companies where acquisitions above 5% of the ownership must be authorised by the Commission (but this does not refer to companies not listed on the stock market) or having a look at the list of participants at the annual shareholders, meetings. It should be noted that in the latter case, the conditions for the public announcement of a call for a general meeting have also changed and a joint stock company with bearer shares has to mandatorily publish such a call in the Commercial Journal. This source of information can, however, be meaningless if the meeting report remains silent about the possible representation of shareholders.

876. The Czech authorities admitted that the possibility of issuing bearer shares was an obstacle to the access to ownership structure and that owners of such shares cannot be controlled. As at the time of the previous visit, the representatives of the law enforcement and prosecution disclosed that bearer shares were a source of difficulty for their investigations. In particular, bearer shares were seen as source of corruption in relation to public procurement and therefore draft amendments to the Law on Public Procurement were prepared according to which companies taking part in public procurement would have to disclose their structure of owners. At the time of the on-site visit, the draft was discussed in the Senate and no information about the outcome of this amendment has since been communicated to the evaluation team.

877. Out of the 3rd round recommendations, the higher level of professional integrity of the courts, staff is the one that appears to be fulfilled by the time of the 4th round visit. The examiners learnt that non-judge professionals with specialised judicial education (called judicial officers) were commissioned to deal with the cases at the Commercial register, where judges now decide in complicated cases or in appeals against decisions of judicial officers only. The employment of judicial officers improved the personnel situation. The personnel involved in company registration had been involved in special legal education since 2008 (although mainly as it was required by the

new, computerised registration procedure which, as described above, appears to serve purposes other than meeting the requirements in R.33).

5.1.2 Recommendations and Comments

878. The evaluators acknowledge the efforts the Czech authorities put into the computerisation and acceleration of the company registration procedure which is very favourable and in line with European legal development. In addition, the immediate and free-of-charge availability of registered company data and documents via internet helpfully facilitates the access of law enforcement authorities to such information. On the other hand, the specific deficiencies in achieving compliance with R.33 has not or has not sufficiently been addressed by the lawmakers. Despite the acceleration of the procedure, the registration of business entities still does not ensure an adequate level of reliability of information registered. Transparency of ownership structure does not provide more information on beneficial ownership. No particular counter-measures have been taken against the issuance of freely transferable bearer shares.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Despite the acceleration of the procedure, the registration of business entities still does not ensure an adequate level of reliability of information registered; • Transparency of ownership structure does not provide more information on beneficial ownership; • No particular counter-measures have been taken against the issuance of freely transferable bearer shares.

5.2 Non-profit organisations (SR.VIII)

5.2.1 Description and analysis

Special Recommendation VIII (rated PC in the 3rd round MER)

879. The 3rd evaluation report noted that no particular measures had been taken to limit the use of NPOs for FT purposes.

880. After a first analysis of misuses of NPOs for criminal purposes carried out in 2006 and other efforts to raise awareness of the NPO sector about the necessity of certification and increasing transparency, the Czech authorities decided to commission the Faculty of International Relations, University of Economics in Prague to collaborate in this process, and the resulting project was a research document "transparent functioning of NPOs in the Czech Republic, focused on prevention against misuses of NPOs for financing of terrorism". Nevertheless, NPOs regulation has turned out to be a very sensitive problem. Taking into account the Czech Republic recent history, legislators have to design their counter-terrorism measures carefully in order not to be seen by society as placing unacceptable limitations on the fundamental rights and freedom.

881. There are no figures or statistics on the overall number of NPOs, nor economic figures relating to the largest of them. Nevertheless, there is an important amount of information publicly available in the 4 different Registers in which all of them have to be licensed. The problem is that in spite of the existence of an Advisory Council for NPOs within the Office of Government, that provides one

gateway through which all Web-based versions of these registers are accessible, there is not a really comprehensive risk analysis of this sector, particularly of the amount of funds managed by each type of entity. Therefore, a risk based approach taking into account, for example, the size of the organisation, the amount of funds it handles, and its specific objectives has not been tackled.

882. The only statistics that have been submitted are 4 global figures related to the “States Subventions for NPOs in 2008” detailing the institutions that were providing this help: Ministries, Regional Governments, Municipalities or State funds.

883. Freedom of association is protected by the Constitution as a fundamental right. The law provides that those associations whose aims or activities violate the legal or constitutional order shall be banned.

884. The Government adopted a Decree on a National Action Plan to Combat Terrorism (2005-2007) with a Plan of Measures on the Fight against Terrorism. The documents contained a risk analysis on the NPO sector and indicated that the legislation on the financial operation of foundations and other social organisations will be revisited.

885. The Ministry of Interior prepared a first draft which was used as a basis for a research project on “Increasing transparency of non-profit sector activities in the Czech Republic with particular emphasis on prevention of its misuse for financing of terrorism”. A National Action Plan to Combat Terrorism report was finalised in 2009.

886. The most important shortcomings pointed out in the document were:

- Only approximately 1/3 of NPOs researched provide publicly available information by themselves (e.g. websites); very few have adopted ethical and fundraising codes of conduct, less than 1/10 of them publish annual reports.
- The lack of official and public registers of all NPOs, that include financial reports, by laws, registration notifications is of concern.
- The legal requirements are different for each type of NPO.
- While civil associations enjoy relatively less strict regulation, the strengthening of requirements there would carry a high risk of impeding the emergence of associations (most common type of interest-based community, such as sporting clubs, etc.).
- Foundations and foundation funds appear to be regulated in a transparent way. The need to have financial reports and annual financial statements audited and filed with a court registry limits certain risks posed e.g. by the possibility of accepting small amounts from anonymous donors. However, the compliance rate of the foundations is not high enough. Approximately 4/10 of the foundations researched did not comply with the established legal requirements. This is most probably due to a lack of professionalism, but there is some scope for misuse of this environment.
- No significant concerns are linked to the misuse of schools for terrorist-related activities, including religious schools; however there are gaps in transparency requirements as regards funding of schools accredited in emerging economies, such as Eastern Europe, and active in Czech territory.

887. The report concluded there were no grounds conducive for terrorist activities in the Czech Republic, as the minorities that might in theory be radicalised are very small. Therefore, it indicated no urgent or serious risk of misuse of NPOs in the Czech Republic for the purpose of terrorist financing, but found that deficiencies exist generally with regard to either state powers or enforcement of certain types of NPOs or aspects of their activities.

888. No legal changes have been made relating to the NPO legislation since the 3rd round assessment. As described in the questionnaire there are 4 registered different types of NPOs:

- Civil associations under Act No. 83/1990 Coll.
- Universally beneficial societies under Act No. 248/1995 Coll.
- Ecclesiastical legal persons under Act No. 3/2002 Coll.
- Foundations under Act No. 227/1997 Coll.

889. For all of them it is clearly stipulated that at the moment of the registration these entities have to present:

- documents demonstrating the foundation;
- founders identity (e.g. preparatory committee) and representatives;
- goals/purposes/activity;
- headquarters;
- deciding body and rules;
- organisational units - if applicable;
- principles of housekeeping.

890. For the beneficial societies, ecclesiastical legal person and foundations, annual reports are required. These documents have to contain an overview of activities, final accounts, statement of verification by auditor if applicable (for universally beneficial societies and foundations it is compulsory, for ecclesiastical legal persons it is applicable if they apply for subsidies), overview of incomes (compared with resources) and expenditures, development and final state of funds and properties. From the AML/CFT perspective, it is possible to find references to foundations and associations in AML Act 253/2208.

891. Section 4 related to Other Definitions, describes in article 4) the meaning of the beneficial owner for a foundation or a foundation fund in letter b), and in letter c) for the case of associations. What is more, according to Section 2.article 1 letter e) of the AML/CFT Law, a legal entity which receives payments in cash in an amount of, or exceeding, EUR 15,000, should be considered an obliged entity under the AML act. Nevertheless, this option is suspended to a large extent, since the Act No. 254/2004 Coll. on Limitation of Cash Payments prohibits these large cash payments. According to Act No. 563/1991 Coll. on Bookkeeping, Section 31, all entities are obliged to keep their documents for five years. The Annual Report and Books must be kept for 10 years.

892. The National Action Plan to Combat Terrorism (2007-2009) reiterates (p. 6) that the EU actively deals with many topics, which must be addressed in the Czech Republic including "limiting the opportunities for misusing the non-governmental sector for terrorist financing". The National Action Plan also provides:

- to increase the capacity of police to gather intelligence on "informal" or minority-based cross-border flows of money that may be misused for terrorist activity,
- to propose a mechanism enabling Police to identify in which financial institutions a suspect individual holds accounts.

893. In spite of the outreach activities carried out to raise the awareness in the NPO sector about the risks of terrorist abuse, specific measures of protection against such abuse have not been implemented in a comprehensive way: therefore there is not a clear awareness by sector

supervisors, obliged entities or NPOs themselves, that this sector can fall under the threat of financing of terrorism

894. There is effective co-operation, co-ordination and information sharing among the authorities and organisations that hold relevant information on NPOs. There was found to be operational coordination on this issue in particular between the criminal police, national intelligence, the FAU and Customs. Task forces have been established which regularly exchange information on suspicions of terrorism.

895. Information contained in different Registers, managed by the Ministry of Interior, the Ministry of Culture and "registering" courts, are available to the authorities that fight against the money laundering and financing of terrorism. According to Section 30 and 24 of AML/CFT Law there is a general requirement to submit the information to the FAU that it may request for compliance with obligations under this Act from the Police of the Czech Republic, intelligence services and other public authorities.

896. When investigating a suspicious transaction, the Ministry may, pursuant to the Tax Administration Act, request from the competent authorities information obtained in the course of verification by the tax authorities. The latter shall immediately inform the Ministry of any suspicion that a taxpayer is using the tax administration for the legitimisation of the proceeds of crime or financing of terrorism.

897. According to Section 33 of the AML/CFT Law the FAU can share information on NPOs with its foreign counterparts.

Effectiveness and efficiency

898. Since the 3rd MER some steps have been undertaken to increase the awareness on the FT risks among the NPO sector.

5.2.2 Recommendations and comments

899. The authorities have made efforts in this area - the Ministry of Interior (in co-operation with other authorities) carried out a review of the sector, references to foundations were included in the AML/CFT Law, and guidelines aiming at enhancing the transparency of the sector were prepared. However:

- it appears that there is a lack of comprehensive understanding of the economic power of this sector, since the information on the 4 existing types of NPOs is spread among Registers kept by 3 different authorities;
- the legal framework was not amended since the 3rd MER;
- there are no requirements for NPOs in the registration documents or in the forms for tax benefits to provide the information recommended under the Interpretative Note to SR.VIII;
- apart from the supervision performed by Tax Authorities, or by the public authorities responsible for the registration and licensing of NPOs, there is no specific supervision regarding the prevention of NPOs misuse for financing of terrorism. No statistics about administrative sanctions have been provided to the evaluators.

900. Despite fluent and frequent communication between FAU and obliged entities, it does not seem that there are specific guidelines advising on the threat of misusing the NPOs for terrorism financing.

901. There is no regular dialogue between public authorities and the NPO entities conducted on the subject of financing of terrorism.

902. There are no regular contacts between FAU and NPOs supervisory Boards which can be a source of information for the Ministry as to shortcomings found during inspections. It does not seem that the Board refers information that can involve ML and TF to the FAU, so the latter can act according to Section 30 of the AML/CFT Law. Neither supervision, nor sanctions have been imposed on those NPOs which accept large cash payments (above 15,000€), for failure to comply with AML/CFT Law requirements.

5.2.3 Compliance with Special Recommendation VIII

	Rating	**Summary of factors underlying rating**
SR.VIII	**PC**	• Lack of fully comprehensive review of domestic NPOs in order to obtain a clear picture of all the legal entities that perform as NPOs, especially ones of potential high risk; • Insufficient awareness raising campaigns in the NPO sector, and obliged entities, regarding potentially vulnerable NPOs; • Lack of "know your beneficiary and associate" rules for NPOs, excepting those who become obliged entities under AML, in the hypothetical case of accepting large cash payments; • Insufficient targeted supervision or monitoring of NPOs which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities; • Insufficient training and awareness concerning the CFT risks in the NPO sector by the sector itself and within the relevant public authorities with responsibilities in this area.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation (R.31)

6.1.1. Description and analysis

Recommendation 31 (rated PC in the 3rd round MER)

903. Under FATF R.31, Policy makers and competent authorities should co-operate and co-ordinate domestically on activities (in particular "operational co-ordination" among LEAs and FIU) and on policies.

904. Consultations among competent authorities and private sector (such as financial institutions, their associations, DNFBPs representatives) should also be taken into consideration.

Institutional setting

905. Despite the fact there is no provision in the AML/CFT Law on national policy co-ordination and co-operation among competent authorities (Judicial Authority, Law Enforcement Authorities, FAU, Supervisors and other competent authorities) the Czech authorities have focused their attention on the coordinating function of the FIU.

906. In fact, following the discussion held on site with several domestic authorities and representatives of the industries, the evaluators recognise the key role played by the FIU in coordinating the STR analysis with the activities of the Judicial Authorities, Police, CNB and other supervisors. Also, the FIU is responsible for carrying out consultation with the private sector on AML/CFT issues.

907. By law, the FIU has the power to request information from obliged persons and their associations and chambers, law enforcement (police services and prosecutors' offices), intelligence services and National Security Office, Tax Administration, Customs and other governmental authorities.

908. For efficiency reasons, the FIU is electronically connected - via Moneyweb - with the Service for Combating Corruption and Financial Crime (information exchange) and with major banks (for receiving STRs and requested information).

909. However, the Czech authorities, in the view of the evaluators, still need to give more serious consideration to adopting legislative or other measures targeting domestic cooperation at the policy level and to develop more formal and structured arrangements for cooperation at the operational level, which could also usefully include regular consultation with the private sector and the professional chambers of those DNFBP that route their STRs through their professional bodies.

Cooperation among domestic authorities

910. At the time of the third round evaluation report, an operational working group was in existence which, when it met, was attended by the relevant competent authorities involved in the AML/CFT framework (the Clearing House). This group is no longer in place, a development which is regretted by the evaluators. There is no other formal and institutionalised mechanism for operational cooperation among domestic authorities currently in existence, though it is acknowledged that ad hoc operational cooperation can and does take place, as indicated below (and in the case of coordination between the FIU and law enforcement through a protocol).

Cooperation between LEAs and FIU

911. The Czech authorities have indicated that the FIU cooperates with a large range of subjects, from the governmental authorities to the representatives of the private sector.

912. From Law enforcement authorities side, the FIU cooperates mainly with the "Unit for Combating Corruption and Financial Crime" and with the "Organised Crime Unit" of the Czech Police. Cooperation with the police is based on a protocol signed by representatives of the Ministry of Finance and the Ministry of Interior. The cooperation consists in intelligence exchange, regular consultations on individual cases and annual or ad hoc mutual evaluations to assess the effectiveness of their cooperation at the operational level.

Cooperation between the FIU and Supervisory Authorities

913. According to the Czech authorities supervisory inspections on financial institutions may be carried out jointly between the FIU and the CNB.

914. According to Section 35 of the AML/CFT Law, the FIU shall provide information about its activities to the other supervisory bodies. Also, at the request of the FIU, the other supervisory bodies shall provide their opinions or any other co-operation as requested. In addition, if the supervisory authority finds facts that might be related to money laundering or financing of terrorism, it shall immediately inform the FIU and provide all information in the context of suspicious transaction reporting.

915. At the time of the on-site visit, the FIU and CNB did not refer to any agreement or joint inspection programme. CNB has however informed the evaluators that there is an agreement between the two authorities on legal issues, including AML/CFT matters.

916. CNB has stated that the AML/CFT deficiencies identified during the on site inspections are reported to the FIU for sanctioning. On the occasion of such inspections, 9 banks were found not to have reported any STR to the FIU.

917. Considering the fact the FIU is the authority in charge of analysing STRs, it would be useful to generate more feedback to the supervisory authorities on cases, trends, best practices and circumstances that might be suspicious. More formalised cooperation between the FIU and the other supervisors could be beneficial too.

Consultation between the FIU/Supervisory Authorities and Private sector

918. Regarding the non-financial sector, according to AML/CFT Law, the FIU cooperates with the respective self-regulatory or supervisory authorities: the professional chambers (for lawyers, public notaries auditors, licensed executors and tax advisors); Municipalities/Regional Authority/Financial tax offices (for betting games licence holders); Czech Trade Inspection (for entities licensed to trade in items of cultural heritage or cultural value, or to act as intermediary in such services; and the entities licensed to trade in used goods, which act as intermediaries in such trading, or receive used goods that have been pawned.

919. As part of the above mentioned cooperation, according to AML/CFT Law, Section 37, paragraph 2, the FIU has the possibility to require the professional chambers to conduct inspections and share results with the FIU. However, it appears that in practice such cooperation is only occasional, as there are few inspections carried out. Besides, it appeared that the professional chambers are sometimes reluctant to share their findings with the FIU.

920. There is no information as to the cooperation between FIU and the other two nominated supervisory authorities, namely the Municipalities/Regional Authority Financial tax offices and the Czech Trade Inspection.

921. In order to increase the knowledge on ML/FT issues, the Czech authorities have indicated that the competent authorities organise, periodically, events with the private sector. Nevertheless, some more structured and regular formal meetings should be established with professional associations (particularly to analyse together the reasons for such low reporting by DNFBP) and representatives of the obliged parties.

Effectiveness and efficiency

922. While the FIU is playing a significant role in coordinating and assisting national authorities (Police, Prosecutors, Judicial Authority) on an "ad hoc" or "case by case" basis, there are no agreements, bilateral or multilateral, that establish formal institutional operational cooperation among domestic competent authorities and no regular formal collaboration between these authorities and with the private sector (other than on an ad hoc basis) that facilitates consultation on AML/CFT matters.

6.1.2. Recommendations and comments

923. Despite the important role played by the FAU to coordinate national competent authorities and to conduct consultations with the private sector, there are not regular institutionalised mechanisms of operational coordination and information exchange among competent authorities.

924. It is strongly advised that a mechanism of internal operational cooperation (involving all the main AML/CFT Laws) should be established, to assess periodically AML/CFT vulnerabilities, trends, challenges and any relevant proposals or initiatives. This mechanism could also assist Czech authorities in the drafting of an AML/CFT national strategy and risk assessment.

925. Equally, there is no body or structure for the periodic, collective evaluation at the policy level of the results of the domestic AML/CFT Law and the effectiveness of the AML/CFT system as a whole, with a view to reporting to ministers on the effectiveness of national AML/CFT measures.

926. Bearing in mind the comments at para 869 of the 3rd round MER and the difficulties the present evaluators have had in obtaining authoritative and internally consistent statistics generally on money laundering cases and confiscations and the low level of reporting from DNFBP, it is strongly advised that a national mechanism is also created which reviews the effectiveness of AML/CFT policies and which begins to prepare some agreed performance indicators for the system as a whole, so the main AML/CFT players can assess domestically the level of AML/CFT performance and collectively address areas where improvements are necessary.

927. The Czech authorities should also establish bilateral or multilateral mechanisms of consultation between competent authorities and between these and the private sector.

6.1.3. Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**LC**	• There are no formal mechanisms in place for regular domestic AML/CFT operational coordination; • There is no regular review of the effectiveness of the AML/CFT system at the policy level.

6.2 International co-operation – Conventions (R.35 and SR.I)

6.2.1. Description and analysis

Recommendation 35 (rated PC in the 3rd round MER)

928. Several Conventions (e.g. the Palermo Convention and protocols thereto and the Merida Convention) are not ratified by the Czech Republic as they contain provisions on corporate criminal liability on mutual legal assistance in criminal proceedings against legal entities. There is no corporate criminal liability in the Czech legal system.

929. The evaluators were informed that in 2004 a draft for introducing criminal liability for legal entities was produced. It was finally rejected in Parliament, but the intention of introducing this kind of liability persists in the agenda of the Czech Government and a legal proposal for introducing it is currently being carried out. The external comment procedure has recently finished and next September it is anticipated to go to the Parliament to be discussed.

930. On the other hand the sensible attitude of the Czech authorities that they have opted not to ratify any Convention that cannot be fully implemented has to be commended.

Special Recommendation I (rated PC in the 3rd round MER)

931. The respective UN Special resolutions are implemented in the EU within the Council Regulation (EC) No 881/2002 of 27 May 2002 imposing certain specific restrictive measures directed against certain persons and entities associated with Osama bin Laden, the Al-Qaida network and the Taliban, and repealing Council Regulation (EC) No 467/2001 prohibiting the export of certain goods and services to Afghanistan, strengthening the flight ban and extending the freeze of funds and other financial resources in respect of the Taliban of Afghanistan implementing the commitments under UN Security Council resolution 1267 (1999).

932. Pursuant to S/RES/1373(2001) the European Union adopted Council Common Position No. 2001/930/CFSP of 27 December 2001 on combating terrorism; Council Common Position No. 2001/931/CFSP of 27 December 2001 on the application of specific measures to combat terrorism; Council Regulation (EC) No 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism; and Council Decision No. 2005/671/JHA of 20 September 2005 on the exchange of information and co-operation concerning terrorist offences (as amended).

933. These provisions are stated in the referred European regulation and are directly applicable and binding for all member states of the EU (including the Czech Republic), and no further national implementation is required.

934. Nevertheless, as mentioned in the analysis of SR.II, related to the criminalisation of financing of terrorism, certain insufficiencies still have not been covered. Therefore, at the time of the visit, the TF offence in CC 311(2) was enlarged so as to encompass those who support an individual terrorist or a member of a terrorist organisation. Although the criminalisation of TF is not established in a sole Section of CC, most of the requirements set forth in Article 2 of the terrorist financing Convention, according to the Czech authorities, are met by the general principles of the Penal legislation.

935. CC article 311 (2) referring to the terrorism offence states: "*Equally shall be sentenced who threatens with the conduct mentioned in para (1), or who supports such conduct, a terrorist or any member of a terrorist organisation financially, materially or in another way*." This wording does

not comply with SR.II requirements, in the same sense that it did not at the time of the 3rd round evaluation.

936. Other shortcomings detected in the 3rd round MER have been solved in this period. The legal and practical obstacles encountered in the 3rd round assessment report, to freeze *ex officio* accounts and more generally assets held by persons and organisations appearing on the UN and EU lists have been solved to a great extent with the implementation of act No. 69/2006 Coll., on Carrying Out of International Sanctions and the correspondent regulation of the Government that develops it.

- 281/2006on Details Concerning Fulfilment of Reporting Duty, according to the Act No. 69/2006, on Carrying Out of International Sanctions
- 210/2008 Regulation of the Government of the Czech Republic Implementing Special Measures for Combating Terrorism.

937. According to the law on international sanctions, the FAU is the responsible state authority for the implementation of freezing and seizing. Supervision and oversight of the compliance of the law's requirements will be performed in the same manner as prescribed in the AML/CFT Law. Financial sanctions are specified in Section 5(2) of the referred Act. The crime of breaching of international sanctions is specified in Section 410 of the Czech Penal Code; the crime of terrorism financing is specified in Section 311(2) of the Czech Penal Code.

938. On the preventive side, the new AML/CFT Law, as previously described, provides for the obligation to freeze funds involved in suspicious transactions in money laundering and financing of terrorism and states clearly the procedures that have to be followed by the obliged entities.

939. According to Section 20 paragraph 1 of the Act "*Should there be a danger that an immediate execution of a transaction would hamper or substantially impede securing of proceeds of crime or money intended for financing of terrorism, the obliged entity may execute the customer's transaction no earlier than 24 hours after the Ministry had received the suspicious transaction report*".

940. Furthermore, Section 20 paragraph 3 established that "*Should there be a threat under paragraph 1 and the investigation of such suspicious transaction requires a longer period of time, the Ministry shall decide:*

a) to extend the period of suspension of the customer's transaction for no more than 72 hours after having received the suspicious transaction report, or
b) to suspend the customer's transaction or to freeze the assets in such transaction for 72 hours in the obliged entity where the assets are located".

941. When the Ministry does not inform the obliged entity about having filed a criminal complaint, the obliged entity shall make the transaction within 3 calendar days following the filing of the criminal complaint. The obliged entity shall perform the transaction unless the law enforcement bodies have decided to seize such transaction (paragraph 7).

942. On the issue of the provisional measures and confiscation, the evaluators noted some promising signs of a growing awareness of the representatives of LEA and prosecution of the importance of financial investigations. Provisional measures are said to be taken quite regularly, and, in urgent cases related to laundering offences, with some helpful assistance from the FAU as to asset freezing.

943. The legislation and the guidance provided by the FAU in the framework of the contacts maintained with the obliged entities seems to have resulted in a clear awareness of the

professionals as to the necessity of checking the international sanction lists which are binding on the Czech Republic, as well as familiarity with the procedure that has to be carried out in the case that a transaction with these features appears.

944. The FAU has established an interagency working group "International Sanctions Interagency Group" made up of representatives of the FAU and of all other competent state bodies. The group defines the responsibilities of the different authorities as to the exercise of international sanctions, methodology, measures, decisions and legislation in this field.

945. According to the statistics provided by the authorities in the last three years there have not been any funds related to the financing of terrorism seized or frozen.

946. The Czech Republic has signed and ratified the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 1990) which entered into force for the Czech Republic on 1 March 1997 (it has been ratified); it is fully implemented.

6.2.2. Recommendations and comments

947. The Palermo Convention needs to be ratified and the criminalisation of financing or terrorism has to include the broader language of the FATF Recommendations as well as the FT Convention, criminalising not only any kind of support to terrorist acts, persons or organisations, but the mere collection of funds with the intention or the prevision to be used for supporting these activities or persons, regardless of whether a terrorist offence has been committed.

6.2.3. Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**PC**	• The Palermo Convention is not ratified due the lack of criminal, civil or administrative liability of legal entities; • The criminalisation still need to be brought in line with the international requirements prescribed by the relevant Conventions already ratified by the Czech Republic (the Vienna Convention and the Terrorist Financing Convention) particularly as regards to: - the conversion and transfer as well as the possession of property; - and all aspects of concealment and disguise need to be explicitly provided (R.1); - the collection of funds, as one of the core activities within the concept of TF is not criminalised; - there is still no explicit coverage of direct or indirect collection of funds/usage in full or in part (SR II). • The conspiracy to commit all types of money laundering is not covered by criminalisation (R.1).
SR.I	**LC**	• The Czech Republic has not fully implemented Article 2(1) in connection with Article 2(3) of the TF Convention which criminalises not only of the provision of funds for terrorist acts but also of the mere collection of funds with the intention to.... used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the said Article of the Convention) – regardless of whether an actual terrorist offence is carried out.

6.3 Mutual legal assistance (R.36 and SR.V)

6.3.1. Description and analysis

948. The legal framework for international judicial co-operation in criminal matters has hardly, if at all, changed since the 3rd round MONEYVAL evaluation. Mutual assistance can be provided upon a treaty basis, such as the 1959 European Convention on Mutual Assistance in Criminal Matters or the 1990 Strasbourg Convention (the 2005 Warsaw Convention has not yet been ratified by the Czech Republic) or, in EU relations, the 2000 Convention on Mutual Assistance in Criminal Matters between the Member States of the EU and also on a reciprocity basis (Art. 376 CPC).

949. As to the latter, the mutual legal assistance mechanisms are still regulated within Chapter XXV of the CPC (Art. 375 to 460zp). This Chapter deals with all aspects of international legal co-operation including, among others, extradition from and to another country (Part 2), surrender of persons between EU member states under the European Arrest Warrant (Part 3), transfer of criminal proceedings (Part 6), enforcement of foreign verdicts (Part 7) or recognition and enforcement of orders between EU member states concerning freezing property or evidence (Part 8) financial penalties (Part 9) and confiscation orders (Part 10). The provisions that specifically govern mutual legal assistance can be found in Part 5 of Chapter XXV (Art. 425 to 446) which are to be applied according to the fundamental principles and general rules of international legal co-operation set out in Part 1 (Art. 375 to 382). As discussed in the previous report, Article 10 of the Constitution prescribes that the international treaties ratified by the Czech Republic are part of domestic legislation and since they prevail in case of any divergence, the provisions of Chapter XXV Part 5 of CPC shall only be applied if, in relation to a specific foreign country, the Czech Republic is not bound by such a treaty.

950. The evaluators learnt that a new law on international legal assistance in criminal matters was under preparation at the time of the on-site visit. The law, which is to be adopted in 2011 will not bring any substantial amendment to the legislation that can currently be found in Chapter XXV – furthermore, it will consist of the contents of the current Chapter XXV. As explained onsite, the EU-related amendments and completions (see Parts 3, 8, 9 and 10 above) had made this Chapter so enormously large that it can hardly be contained within the traditional structure of the Criminal Procedure Code (according to the domestic interlocutors, Chapter XXV makes up almost one quarter of the entire Code alone). As a solution, the whole chapter will be removed and re-adopted as a separate new law.

951. The previous evaluation team provided a thorough description and analysis of all the provisions mentioned above and, since the evaluators were not informed of any amendment to these articles, all their findings and conclusions remained valid and need no reiteration. Consequently, the evaluators acknowledge that the Czech Republic is able to co-operate to a large extent with foreign counterparts in those areas which are relevant for AML/CFT purposes. Criterion 36.1 can therefore be generally considered as met, which also refers to sub-criterion 36.1(f) in respect to which the deficiencies of the domestic confiscation and provisional measures regime, as they were mentioned in the 3rd round MER (concerning real estate, other property value or substitute value) have since been largely remedied so as not to limit the availability of the respective measures any longer.

952. Execution of letters rogatory is subject to conditions set by the respective international treaty and/or by the relevant provisions of Chapter XXV CPC. That is, all foreign requests are executed under the same conditions that apply in domestic criminal proceedings and legal assistance can only be refused if the request does not meet the requirements determined by an international treaty or the execution would be contrary to the Constitution of the Czech Republic or a regulation of the Czech legislation which must be maintained without exceptions, or which could cause damage to

another significant protected interest of the Czech Republic (Art. 377 CPC). Neither of these can be considered an unreasonable, disproportionate or unduly restrictive condition that would hinder the mutual legal assistance and therefore Criterion 36.2 is met.

953. The same goes for Criteria 36.4 and 36.5 as no restriction applies, as at the time of the previous evaluation, to letters rogatory concerning fiscal offences as well as secrecy or confidentiality requirements (except for the lawyers, where a duty of confidentiality pursuant to the Law on Advocacy applies as provided by Art. 8 CPC). The powers of competent authorities required under R.28 are undoubtedly available for use in response to a request for mutual legal assistance, provided the request complies with conditions set by a relevant international treaty and/or the CPC.

954. In summing up, the evaluators share the opinion of the previous team that legal conditions and practices seem to be largely in line with the requirements of R.36. Furthermore, the situation has improved in some of the problematic areas mentioned by the 3rd round MER. That is, the evaluators no longer consider the Czech legal framework on seizure and confiscation being a potential obstacle to co-operate in an effective manner with foreign counterparts, as a result of the amendments that enlarged the scope of this regime to encompass real estate or substitute value.

955. As for the other main problematic issue, however, the shortage of staff in both the Ministry of Justice and the Prosecution has not yet adequately been resolved. Swift and smooth processing of international co-operation was, at the time of the 3rd round visit, hindered or at least threatened by the low number of lawyers working in the respective units of the said authorities and the 4th round evaluators came across almost identical figures in this respect.

956. The evaluators understood that in the pre-trial phase of the criminal proceedings, it is the High Public Prosecutor's Office which is competent for mutual legal assistance issues unless the direct contact of lower level prosecutorial bodies with their foreign counterparts is allowed by an international treaty. The Supreme Public Prosecutor's Office is also involved in international co-operation. When the bill of indictment is submitted to the court, mutual legal assistance is in the competence of the Ministry of Justice. The figures related to the staffing situation in these authorities were significantly similar to the previous ones. For example, the Supreme Public Prosecutor's Office had allocated 9 prosecutors to this task at the time of the 3rd round visit, which number had been reduced to 8 by the time of the current visit (out of which 2 are delegated to Eurojust). In the Ministry of Justice, the unit dealing with international legal co-operation had comprised 13 staff at the time of the previous visit and this number has not changed.

957. Execution of letters rogatory is supervised by central authorities, namely the Ministry of Justice and the Supreme Public Prosecutor's Office, except for cases of direct communication between Czech and foreign judicial authorities. Both authorities provide guidance to the bodies directly involved in executing letters rogatory. In the case of the Prosecution Service, it is the Supreme Public Prosecutor's Office that issues internal instructions to subordinated (regional/district) Prosecutors' offices. These instructions are of a binding nature and specify the requirements on how to draft a letter rogatory. In addition, whenever such a request is sent abroad directly, a copy thereof must be sent to the High Public Prosecutor's Office for information, by which the superior body can supervise the conformity of the letters rogatory nationwide. In relation to courts, the Ministry of Justice has no right to issue any binding instruction but provides guidance documents to assist judges in their participation in international legal co-operation. Certainly, courts may also enter into direct communication and co-operation with foreign counterparts if allowed by a treaty. Furthermore, the Supreme Public Prosecutor's Office has the power to appoint simply one prosecutor's office for execution of a MLA request for cases where evidence should be gathered in more districts or regions and a full coordination is necessary (Art. 431 para 3 CPC).

958. Direct co-operation of judicial authorities is possible provided it is based upon an international or bilateral treaty. On the basis of various treaties, direct contact has already been established with all neighbouring countries, then with all other EU Member States (including all the neighbours mentioned above) and negotiations are underway to establish direct co-operation with Ukraine. The domestic interlocutors claimed that a large proportion of international legal co-operation (including MLA) takes place in relation to neighbouring countries (no exact figures were provided though) and both the prosecutors and the representatives of the Ministry of Justice would prefer more room for direct contact in the MLA regime.

959. When asked about clear and efficient processes for the execution of MLA requests in a timely way and without undue delays (Criterion 36.3), the Czech authorities advised that the CPC did not provide any specific time limits for the execution. Instead, the general time limits were said to be dependent on the content of the specific request, with more time needed in case of obtaining banking information (especially if searching for somebody's bank account without knowing its number). Domestic interlocutors disclosed that execution of a letter rogatory may, in exceptional cases, take a year or even more, though in the majority of the cases the MLA can be provided in a couple of months and the prosecutors the team met did emphasise that both the prosecutors and the law enforcement authorities are usually active in pursuing the timely execution of letters rogatory. Reference was made, for example, to the involvement of the FAU and its powers to suspend a transaction in the execution of requests concerning the freezing of bank accounts (as discussed more in details in relation to R.3). In addition, even if the domestic procedural law does not set any deadline in this respect, the authorities executing a letter rogatory should always take into account, to the fullest extent possible, all procedural deadlines specified by the requesting foreign authority.

960. The interpretation of reciprocity and dual criminality was not reported to pose particular problems (as was illustrated with concrete examples in the 3rd round MER). The domestic authorities confirmed that dual criminality is interpreted quite broadly, focusing on the elements of the foreign offence rather than its designation or classification. Less intrusive measures are said not to be subject to the condition of dual criminality.

961. Notwithstanding this, during the on-site visit the evaluators were told that one of the common grounds for refusal of MLA is lack of dual criminality, though refusal on this ground mostly takes place if coercive measures (search, seizure etc.) are requested. As it was explained in the latter respect, all forms of confiscation in the Czech CC are considered as punishment and, therefore, no confiscation could be applicable as a legal consequence for a foreign criminal act that would not be considered a criminal offence in the Czech Republic because it would contravene the *nulla poena sine lege* principle. For the same reason, the Czech Republic does not provide legal assistance to any provisional measures (seizure, freezing) that would lead to a subsequent confiscation in relation to such an offence.

962. The shortcomings and imperfections of the various offences by which money laundering and terrorist financing are criminalised in the Czech CC, as discussed in more detail above in relation to R.1, R.2 and SR.II, may also negatively impact mutual legal assistance based on dual criminality. The same goes, to some extent, to foreign criminal cases in which legal entities are prosecuted. As was explained by the prosecutors the team met, in such cases the foreign request should be executed normally, provided that dual criminality applies in case of coercive measures, with the sole exception that seizure or freezing from the respective legal entity would not be allowed.

963. The provisions described above apply equally to the fight against terrorism and financing of terrorism. It should be noted, however, that the deficiencies described under Special Recommendation II impact on the ability of the Czech Republic to provide mutual legal assistance due to the precondition of dual criminality.

964. Both the Ministry of Justice and the Supreme Public Prosecutor's Office keep statistics on various aspects on international co-operation in criminal matters, broken down into total number of cases per year as follows:

Table 31: Ministry of Justice
(including MLA occurring during court proceedings)

Procedure	2009
MLA requests to abroad	81
MLA requests from abroad	200
extraditions to abroad	32
extraditions from abroad	80
European arrest warrants to abroad	439
European arrest warrants from abroad	310
transfer of criminal proceedings to abroad	24
transfer of sentenced persons to abroad	99
transfer of sentenced persons from abroad	26

Table 32: Supreme Public Prosecutor's Office
(including MLA occurring in the investigative phase up to the court proceedings)

Procedure	2009
MLA requests to abroad	304
MLA requests from abroad	771
transfer of criminal proceedings to abroad	268
transfer of criminal proceedings from abroad	119

965. Unfortunately, the evaluators only received figures for the preceding year. In the case of the Supreme Public Prosecutor's Office this was not surprising as the prosecutors the team met on-site disclosed that the said prosecutorial body had only been gathering and keeping statistics related to letters rogatory for less than two years. As for the Ministry of Justice, however, the lack of earlier data (for the period of 2005 to 2008) was rather disappointing, considering that the 3rd round MER contained a very similar statistical table for four consecutive years (2000 to 2003) which made it quite reasonable to expect that the Ministry have statistical information for the entire period. However, as it was subsequently explained by Czech authorities, such statistics had not since been kept by the Ministry of Justice.

966. There are some further shortcomings in the statistics above. Neither is broken down so as to indicate how many of these cases were related to money laundering and/or terrorist financing, what the average time requirement to handle a foreign request was in these cases, what proportion of the requests were refused and on what grounds etc.; the lack of these indicators was already noted in the previous report. In addition, the MEQ remarks that the table does not include all cases of direct communication among Czech and foreign judicial authorities. This statement contradicts what was told to the evaluation team onsite, namely that the copies of requests the regional and district prosecutors offices had sent out directly, together form an appropriate basis not only for having an overview of the performance of subordinate prosecutorial units but also for statistical purposes. Without this data the above statistics cannot be considered reliable or comprehensive to any extent and therefore yhe effectiveness of the system could not be established.

6.3.2. Recommendations and comments

967. The evaluators reiterate the recommendation made in the previous report according to which the Czech Republic should ensure that the services dealing with legal assistance are adequately staffed to deal with those issues. Otherwise, the staffing problems could be an obstacle to timely and effective co-operation.

968. The Czech authorities (either or both of the central authorities) should maintain comprehensive annual statistics on all mutual legal assistance and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond.

969. The Czech Republic should clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the ML and TF offence as outlined under Recommendation 1 and Special Recommendation II.

970. The evaluators recommend considering the introduction of clear time limits for the competent authorities to evaluate and forward the MLA requests for execution.

6.3.3. Compliance with Recommendations 36 and Special Recommendation V

	Rating	Summary of factors relevant to s.6.3 underlying overall rating
R.36	**LC**	• There are no formal timeframes which would enable to determine whether requests are being dealt within a timely fashion, constructively and effectively; • The application of dual criminality may negatively impact the ability to provide assistance due to shortcomings identified in respect to the scope of the TF and ML offences; • Effectiveness cannot be demonstrated due to the absence of reliable and comprehensive statistics on MLA requests.
SR.V	**LC**	• as above in R.36

6.4 Other forms of International Co-operation (R.40 and SR.V)

6.4.1. Description and analysis

Recommendation 40 (rated LC in the 3rd round MER)

Power to provide widest range of international cooperation

Law enforcement

971. According to Czech Authorities, law enforcement authorities cooperate on a daily basis with foreign counterparts availing themselves of the Interpol channel.

972. The legal capability of the Czech Police Forces to exchange information with foreign counterparts is prescribed in the section 80, para 1 of Act No. 273/2008. Additional provisions on international cooperation are also provided in sections 89 and 90 of the said Act.

The FIU

973. International cooperation by the FIU is defined under section 33 of the AML/CFT Law, which states that the Ministry (FAU) shall cooperate with counterparts as well as international organisations of the same country on the basis of an international treaty or on the principle of reciprocity. FAU representatives have specified that "international treaty" refers to signature of Memorandum of Understanding based on Egmont Group standard format.

974. The same article indicates that the Ministry (FAU) may cooperate with international organisations under the condition that the information provided is used exclusively for the purpose of the AML/CFT Law and is protected at least in the scope laid down in that Act. Concrete cases for the application of such provision have not been reported to the evaluators.

975. The table below illustrates the number of requests sent abroad by FAU to foreign counterparts and the requests received from foreign FIUs.

Table 33: Requests sent abroad by the FAU

	2005	**2006**	**2007**	**2008**	**2009**	**IQ2010**
Requests sent	69	77	66	59	72	14
Request received	130	128	133	165	142	22

976. The Czech FIU has indicated that it is able to provide foreign counterparts with the same information that it uses for its own investigations. This means that, on the basis of the content of a foreign request, the FAU is able to obtain and provide information, not only related to information contained in its own database, but also from the following subjects:

- Law enforcement authorities;
- Obliged entities (including banks);
- Tax authorities;
- Customs.

977. In processing a request for assistance, the FAU also exchanges information contained in the following registers:

- registers of economic subjects (legal persons, individuals);
- register of population;
- land and property register;
- vehicle registers;
- NPOs register.

978. The information exchange with other FIUs appears to be good and completely satisfactory in terms of quality of the answers provided by the Czech FIU. All the requests addressed to the Czech FIU are answered. However, the time frame for responding to information requests range in average from 1 months to 1,5 months, which could be improved in terms of prompt and effective assistance.

979. On the time frame matter, the Czech FIU has indicated that when the request is urgent, the FAU is able to provide information in one working day, except for complex cases or when the request for assistance requires the need to obtain and elaborate information from the obliged entities.

980. As mentioned above, for the Financial Analytical Unit, an MOU is not a precondition of international information exchange with its foreign counterparts. Nevertheless, as some countries require MoUs for information exchange, the FAU has signed 24 protocols with foreign FIUs.

981. The exchange of information with FIUs is carried out in a secure way, mostly via Egmont Secure Web or FIU.NET.

Supervision Authorities

982. When performing its tasks, the Czech National Bank shall co-operate with the central banks of other countries, with the authorities supervising the financial markets of other countries, and with international financial organisations and international organisations engaged in the supervision of banks, electronic money institutions and financial institutions, as stated in Art. 2 (3) Act 6/1993 Coll. on CNB.

983. According to the Act on Banks 21/1992, information acquired in the context of exercising banking supervision may be disclosed to European Union bodies where necessary to meet the obligations of international treaties.

984. Even if the cooperation and information exchange is not directly stipulated in the Act on Banks, indirectly it is understood that disclosure of information acquired in the context of exercising banking supervision to authorities responsible for supervising banks, financial institutions or financial markets in another state, shall not be deemed a breach of the confidentiality obligations.

985. Information acquired in the context of performing banking supervision may also be disclosed to international organisations operating in the area of combating criminal activities and also to law enforcement of foreign countries to allow them to fulfil their functions.

Effectiveness and efficiency (R.40 and SR.V)

986. The great effort that the Czech Government has carried out promoting the international cooperation has to be commended. The investigative powers and techniques of the law enforcement authorities, the legal empowerment, and above all the proactive attitude of the competent authorities in assisting counterparts, have led to important results for the countries involved.

987. The responses received to MONEYVAL's standard enquiry on International Cooperation received extremely positive response with no indications of shortcoming in cooperation on a timely basis.

988. The statistics elaborated by FAU show a good level of cooperation of Czech FIU (FAU), however, it would be appropriate for it to collect more detailed statistics, which consider, for instance, the average time and quality of responses.

989. Efficiency and effectiveness on international cooperation for Supervisory authorities and Police Forces, however some police operations have been describes during the on site visit, is difficult to assess due to the lack of statistics.

6.4.2. Recommendations and comments

990. The administrative cooperation provided by the FAU seems to be exhaustive and accurate. In urgent cases, FAU has declared that it is able to provide assistance in a few days, on average. During the first quarter of 2010 FAU has provided assistance generally in 1 month, in line with the Egmont Group standard.

991. With regard to Police Forces and supervisory authorities (mainly CNB) cooperation with respective counterparts, the evaluators were not provided with statistics, thus it is difficult to evaluate the effectiveness of such exchange of information.

992. For this reason, Police Forces and supervisory authorities should establish a mechanism for collecting data and providing statistics on international cooperation.

993. FAU should develop a much more detailed process and procedures to keep the information collected on requested cases.

994. The information collected by the statistics of all the administrative and Law enforcement authorities would better support the Czech authorities in the development of the AML/CFT national strategy and risk assessment.

6.4.3. Compliance with Recommendations 40 and Special Recommendation V

	Rating	Summary of the factors underlying rating
R.40 - SR.V	**LC**	• There are no mechanisms in place for Police and supervisory authorities for collecting data and providing statistics on international cooperation; • FAU should develop a much more detailed process and procedures to keep the information collected on requested cases.

7. OTHER ISSUES

7.1 Resources (R.30) and Statistics (R.32)

7.1.1. Description and analysis

Recommendation 30 (rated LC in the 3rd round MER)

FIU

995. The Czech FIU has three divisions: the International Co-operation and Legal Division (international information exchange, international sanctions, AML/CFT legislation), the Analytical Division (analysis of STRs) with an IT Subdivision and the Supervisory Division (supervision on obliged persons).

996. The FIU staff members are 28, employed by the Ministry of Finance. The Czech authorities have also indicated that the FAU staff (except support staff) hold university degrees in law or economics as follows:

- International Co-operation and Legal Division: 3 staff members hold a law degree, 1 has an economics degree, 1 has a political science degree;
- Analytical Division: 11 staff members hold economics degrees, 1 a law degree and 3 are IT specialists;
- Supervisory Division: all 4 staff members hold economics degrees.

997. The FIU appears to have adequate resources to fully perform the analysis of STRs functions. Although, the recently created Supervisory Division might be understaffed for effective supervision and monitoring. As indicated by the FIU representative, at the time of the on-site visit, the FIU does not have adequate resources to perform sufficient on-site inspections for the whole of the reporting entities (only 4 staff members were involved in the verification of the internal procedures).

998. Training programs for FIU staff are deployed on a regular basis and seem to cover the relevant area for combating ML and FT. The FIU staff is trained twice a year (3 days trainings) on issues relating to STR analysis, new ML and TF trends and typologies, co-operation with other supervisory bodies, co-operation with the police, criminal investigation, new legislative initiatives (both national and international). The trainers are from the law enforcement authorities (police, prosecutor's offices), the Czech National Bank, and other supervisory agencies involved in AML/CFT surveillance.

999. According to the Czech authorities, there have been several instances when the Minister has modified the structure of the FAU on the basis of the FIU Director's proposal, though the lack of a clear statement in respect of the role and independence of the FIU remains a concern.

1000. With regard to the FIU's Human Resources, the Czech authorities state that the Director of the FAU applied for additional staff (nine analysts and one inspector). According to the procedure in place, the Ministry authorises the recruitment but the Director of the FAU selects and appoints the new staff.

1001. The FIU's total financial budget is decided at ministerial level. Costs of the personnel are paid by the Ministry of Finance, from the overall budget of the Ministry. While dedicated budget items, mainly for IT purposes, are decided by the FIU.

LAW ENFORCEMENT

1002. According to the internal procedures of the Police Forces, "Unit Combating Corruption and Financial Crimes", "Anti - Drug Unit" and "Organised Crime Unit" are entrusted with the investigations of the most complex money-laundering cases, while money-laundering cases with a lower level of complexity are investigated by the specialists in the regions.

1003. Czech Authorities informed the evaluators that these law enforcement units include around 210 specialists designated for "financial inquiries" and investigations of money laundering cases.

1004. These financial specialists carry out their activities in working teams according to the provisions set forth in the Decree of Deputy Police President for Criminal Police and Investigation Service No. 14/2009 "On Financial Inquiries".

1005. From the time of the commencement of actions in criminal proceedings financial specialists are required to seize proceeds generated by illegal activities according to the provisions set forth in section 2 of that Decree. In order to properly perform the function assigned, financial analysts use the ALPHONSE system, keeping traces of the actions taken and the results obtained.

1006. As regards the organisational chart of the Unit Combating Corruption and Financial Crimes, this is organised in Departments and Regional Branches. The whole UCCFC is staffed with almost 400 police officers and 65 civil employees. The Anti Money Laundering Division of the UCCFC is incorporated in the Department of Tax Fraud and Money Laundering and is staffed with 12 police officers.

1007. As a consequence of the new organisational structure of the Police Forces, 22 specialists (minimum length of service, 7 years and an university degree in a relevant field are required) for "financial inquires" are deployed in all departments and regional branches of UCCFC.

1008. There are prescribed follow-up courses, which every specialist is required to attend including on AML techniques. The evaluators were informed that the staff of the law enforcement authorities and FIU have appropriate systems of regular training. The information on ML and FT methods, techniques and trends is disseminated.

1009. However, there are no regular and interagency committees between competent authorities dealing with methods, techniques and trends.

1010. The AML Division of the Police Force, which is the responsible unit for investigating FAU disclosures, is not equipped with sufficient staff qualified in financial investigation. The lack of education and training in tracing the funds in major proceeds-generating cases leading to financial investigations for ML cases limits law enforcement capability.

PROSECUTION AUTHORITY

1011. On the issue of the provisional measures and confiscation, the evaluators noted some promising signs of a growing awareness of the representatives of LEA and prosecution of the importance of financial investigations. Provisional measures are said to be taken quite regularly, and, in urgent cases related to laundering offences, with some helpful assistance from the FAU as to asset freezing.

1012. Another problematic issue seems to be the shortage of staff in both the Ministry of Justice and the Prosecution which has not yet been adequately resolved. Swift and smooth processing of international co-operation was, at the time of the 3rd round visit, hindered or at least threatened by

the low number of lawyers working at the respective units of the said authorities and the 4th round evaluators came across almost identical figures in this respect.

SUPERVISORY AUTHORITIES

1013. Within CNB, there are 30 staff members who carry out on-site inspections in the banking sector, 3 of whom are AML/CFT experts. There are 50 staff members that carry out on-site inspections in the non banking sector (insurance, securities market etc.), 5 of whom are AML/CFT experts.

1014. The Supervisory Division of the FIU at the time of the onsite visit comprised a Head plus 3 staff members, as indicated above, whose main function was to carry out off-site inspection by receiving and checking the internal procedures sent, according to the section 21(6) of the AML/CFT Law by some, but not all, of the reporting entities.

1015. As few resources were involved in the AML/CFT supervisory activity by the CNB and by FAU, the evaluators were not informed of any cooperation between the two authorities to properly perform this function (such as, joint inspections or planned inspections)

DNFBP

1016. Discussions with the representatives of DNFBP disclosed a lack of guidance and practical knowledge across the sector.

1017. The figures and statistics provided to the evaluators seem to indicate that the DNFBP have difficulties to assess properly the reporting requirements and detect suspicious transactions which may be due to the lack of training for DNFBP in this respect.

1018. There was a general lack of awareness among representatives of DNFBP whom the evaluators met. AML/CFT training programs must be put in place in order to raise awareness.

1019. There is no regular dialogue (including training) between public authorities and the NPO entities on the subject of financing of terrorism.

1020. For a range of DNFPB (the real estate agents, accountants and trust and company service providers), the FIU remains the sole monitoring and supervision authority under section 35 of the AML/CFT, and the same comments as have been made above regarding financial institutions apply to FIU supervisory resources.

Recommendation 32 (rated LC in the 3rd round MER)

1021. With regard to the investigation and prosecution of money laundering and financing of terrorism the statistics provided were inadequate. It was a particular deficiency of these statistics that neither of them gave more profound information on the characteristics of the underlying criminal cases. More specifically, the following features could not be assessed due to a lack of relevant statistical information:

- the number of police-generated money laundering cases as opposed to those based on STRs
- the underlying predicate offences (at least those occurring more frequently)
- proportion of self-laundering cases and those related to classic third-person money laundering activity within the overall figures.

1022. Statistics on provisional measures and confiscations in money laundering cases were incomplete, especially regarding the number of investigations in the last two years before the onsite visit. There is a total lack of statistical data regarding the amount of proceeds confiscated.

1023. The Czech National Bank provided comprehensive statistics on off-site supervision and on site visits.

1024. The FIU provided comprehensive statistics including amounts of postponed transactions, number of STRs broken down by categories of reporting entities and beneficiaries of disseminated cases.

1025. Both the Ministry of Justice and the Supreme Public Prosecutor's Office keep statistics on various aspects on international co-operation in criminal matters, broken down into total number of cases. However, the lack of earlier data (for the period of 2005 to 2008) was rather disappointing. In addition, the statistics are not broken down so as to indicate how many of these cases were related to money laundering and/or terrorist financing, what the average time requirement to handle foreign requests were in these cases, and what proportion of the requests were refused and on what grounds.

1026. Overall, the absence of authoritative statistics to demonstrate effectiveness of implementation of several of the important FATF Recommendations is a significant deficiency.

7.1.2. Recommendations and comments

Recommendation 30

1027. The FIU Supervisory Division should be augmented for effective supervision and monitoring both on- and off-site;

1028. Specialised AML/CFT training should be provided for DNFBP;

1029. More resources dedicated to AML/CFT compliance issues should be allocated by the Czech National Bank;

1030. The Czech authorities should strengthen the AML Division of the UCCFC in order to increase the effectiveness of the notifications received by FAU and develop an inter-agency committee that will develop trends and methods useful for the investigative bodies. (Recommendation to be inserted also under 2.6.);

1031. More seminars on AML/CFT investigations, prosecutions and judgments would be welcome to ensure that all key players are fully aware of the importance of financial investigation, confiscation and autonomous ML. (Recommendation to be inserted under 2.6.).

Recommendation 32

1032. The Czech authorities should keep records on ML confiscations.

1033. Statistics on investigation and prosecution of money laundering and financing of terrorism should contain more detailed information.

1034. The Czech authorities (either or both of the central authorities) should maintain comprehensive annual statistics on all mutual legal assistance and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate

offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond.

1035. The Czech authorities should envisage a system for collecting information for providing dedicated statistics to national authorities and international organisations for the implementation of a Czech AML/CFT risk assessment strategy;

7.1.3. Compliance with Recommendations 30 and 32

	Rating	Summary of factors relevant to s.3.10. underlying overall rating
R.30	**LC**	*FIU* • The FIU does not have sufficient resources to perform sufficient on-site inspections, supervision and monitoring. *LAW ENFORCEMENT AND PROSECUTION* • The lack of education and training in tracing the funds limits law enforcement capability; • Shortage of staff in both the Ministry of Justice and the Prosecution, qualified in financial investigations. *SUPERVISORY AUTHORITIES* • Czech National Bank AML/CFT resources are low for supervision; • Due to the lack of training, DNFBP have difficulties to properly assess the reporting requirements and detect suspicious transactions; • Insufficient training and awareness concerning the FT risks in the NPO sector by the sector itself and within the relevant public authorities with responsibilities in this area.
R.32	**PC**	• The lack of statistics on confiscation of ML proceeds negatively affects the system; • Lack of robust and accurate data, figures and any other relevant information useful to assess the activity of the Police Forces (both in term of quantity and quality of the workload); • Effectiveness of mutual legal assistance cannot be demonstrated due to the absence of reliable and comprehensive statistics on MLA requests. • Also there are not mechanisms in place for Police and supervisory authorities to collect data and provide statistics on international cooperation.

7.2 Other Relevant AML/CFT Measures or Issues

N/A

7.3 General Framework for AML/CFT system (see also 1.1)

N/A

IV. TABLES

Table 1. Ratings of compliance with FATF recommendations

The rating of compliance vis-à-vis the FATF 40 + 9 Recommendations is made according to the four levels of compliance mentioned in the AML/CFT assessment Methodology 2004 (Compliant (C), Largely Compliant (LC), Partially Compliant (PC), Non-Compliant (NC)), or could, in exceptional cases, be marked as not applicable (N/A).

The following table sets out the ratings of Compliance with FATF Recommendations which apply to the Czech Republic. *It includes ratings for FATF Recommendations from the 3rd round evaluation report that were not considered during the 4th assessment visit. These ratings are set out in italics and shaded.*

Forty Recommendations	Rating	Summary of factors underlying rating[19]
Legal systems		
1. Money laundering offence	**PC**	• The criminalisation mechanism still needs to be brought in line with the international requirements prescribed by the relevant Conventions particularly as regards to: o the conversion and transfer of property; o the possession of property; o and all aspects of concealment and disguise need to be explicitly provided; • Conspiracy to commit all types of money laundering is not covered by criminalisation; • There is insufficient evidence of effective implementation.
2. Money laundering offence Mental element and corporate liability	**PC**	• No corporate criminal liability has been established; • The sanctioning regime is not sufficiently dissuasive and effective and therefore the level of punishment needs to be increased.
3. Confiscation and provisional measures	**PC**	• The confiscation of property that has been laundered is not expressly addressed by law and in autonomous ML cases the practical applicability of the existing provisions is unclear; • There is an effectiveness issue with regard to confiscation; • The lack of statistics on confiscation negatively affects the system.

[19] These factors are only required to be set out when the rating is less than Compliant.

Preventive measures		
4. Secrecy laws consistent with the Recommendations	**C**	• This Recommendation is fully implemented.
5. Customer Due Diligence	**PC**	• Czech measures in relation to identification and verification of the beneficial ownership are below FATF standards; • The identification and verification of beneficial owners is not always determined; • Silent partners are not registered and therefore cannot be identified during the CDD/ECDD process; • Certain categories of low risk business can be exempted from CDD and/or ECDD instead of requiring simplified or reduced measures; • Low risk customers/circumstances not subject to a risk analysis to decide the criteria for determining whether and when to grant exemption; • Legal uncertainty in relation to the implementation of Criteria 5.2 (e); • The overall level of effectiveness appears limited in the identification/customer due diligence process in respect of beneficial ownership as well as with regard to the verification process including that related to safety deposit boxes. The required risk-based approach is not supplemented by adequate guidance to enhance effectiveness.
6. Politically Exposed Persons	**PC**	• The regime do not cover certain types of PEPs included in the Glossary of definitions in the Methodology; • No requirement to consider whether a beneficial owner may also be a PEP; • Lack of comprehension in some cases of what constitutes a politically exposed person; • Approval is not specified to be at the level of senior management; • Limited effectiveness and implementation.
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 regulation 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 and non face-to-face business	**PC**	• No specific requirement in the AML/CFT Law requiring financial institutions to have policies in place or to take measures as may be needed to prevent the misuse of technological developments in MLFT; • Consequently, there is no requirement for policies

		and procedures in place; • No general requirement for additional documentation to verify the authenticity of the primary identification; • There was low perception of the threats that may arise from the misuse of technological developments in AML/CFT.
9. *Third parties and introducers*	***N/A***	
10. Record Keeping	**LC**	• There is no requirement that the retention period for maintaining records could be extended for a longer period if requested to do so by the FIU in specific cases and upon proper authority; • There are no clear requirements in the Czech primary and secondary legislation obliging institutions to maintain records in such a way as to permit the reconstruction of individual transactions so as to provide evidence for prosecution of criminal activity; • There are no explicit requirements in the AML/CFT Law to retain the identification data concerning business correspondence for at least five years following the termination of an account or business relationship.
11. Unusual transactions	**PC**	• There is no clear requirement for all financial institutions to pay special attention to all complex, unusual large transactions, or unusual pattern of transactions, that have no apparent or visible economic or lawful purpose; • The requirement to retain information documents for amounts in excess of €15,000 (Section 9 (1)) is not mandatory; • There is no enforceable requirement that the background, purpose and findings of complex, unusual and large transactions are set forth in writing; • There is no specific requirement to keep the background and findings of complex, unusual and large transactions available for competent authorities and auditors for at least five years; • Limited appreciation of such risk by a number of interviewed institutions. There is some lack of clarity within institutions on the terminology and requirement in respect of complex, unusual large

		transactions as no guidance has been issued.
12. DNFBP – R.5, R.6, R.8 – R. 11[20]	**PC**	• The same concerns in the implementation of Recommendations 5, 6, 8 and 10 apply equally to DNFBP (see section 3.2 and 3.4 of the report); • Lower level of awareness of requirements relating to PEPs and CFT amongst DNFBP than in the financial sector.
13. Suspicious transaction reporting	**LC**	• The efficiency of the reporting requirement is negatively affected by the listing of (suspicious reporting) transactions prescribed by AML/CFT Law (which are mainly banking operations).
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 and audit	**PC**	• There is no enforceable requirement that the compliance officer should be an appointment at a managerial level with extended scope of responsibilities; • Within the limited scope of responsibilities of the contact person it is not evident that these should have timely access to information; • There is no requirement that the contact person is required to filter STRs; • There is no requirement that obliged entities should make available the internal procedures to the employees; • There is no legal obligation on obliged entities requiring them to put in place screening procedures to ensure high standards when hiring employees; • In respect of smaller obliged entities, compliance (contact) persons are delegated to a statutory body of the obliged entities.
16. DNFBP – R.13-R.15 and R.21[21]	**PC**	• The categories of internet casinos, dealers in precious metal and dealers in precious stones are not explicitly covered by the AML/CFT Law; • There is no specific guidance to assist DNFBP detecting STRs; • Low numbers of STRs received by DNFBP; • The effectiveness of the system is negatively influenced by the listing of suspicious transactions; • Lack of formalised procedures issued by Czech authorities to make the obliged entities aware of circumstances under Recommendation 21.
17. Sanctions	**PC**	• Administrative sanctions included within the

[20] The review of Recommendation 12 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 9.

[21] The review of Recommendation 16 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 14.

		AML/CFT Law are not proportionate and not necessarily dissuasive, as the maximum financial sanctions that can be applied are quite low; • Except for violation of the obligation of confidentiality, on which administrative fines may be imposed on natural persons, all the other administrative penalties can only be imposed on legal obliged entities. Directors, managers and employees are not directly sanctionable; • No financial sanctions have been applied (effectiveness issue).
18. Other forms of reporting	***LC***	• *Relations 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 DNFBP & secure transaction techniques	***C***	
20. Special attention for higher risk countries	***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 high risk countries	**PC**	• Indirect requirements in existing decrees need augmenting to fully ensure that all financial institutions examine and keep written findings in respect of transactions, with no apparent economic or visible purpose, in the respective countries space which insufficiently apply the FATF Recommendations; • The Czech system needs augmenting to ensure that all appropriate countermeasures envisaged in the FATF Recommendations can be instituted.
22. Foreign branches and subsidiaries	**LC**	• There is no requirement to ensure that foreign branches and subsidiaries observe AML/CFT measures consistent with the FATF Recommendations in general; • No requirement to apply the higher standard where requirements differ; • Requirement to ensure observing AML/CFT measures in respect of branches and subsidiaries is limited to institutions located in “third countries”.
23. Regulation, supervision and monitoring	**PC**	• Low number of annual inspection in relation to AML/CFT especially in the banking sector; • No clarity as to whether there is a cycle of inspections which catches all financial obliged entities at some point; • A very light touch risk-based supervisory approach is taken overall in respect of AML/CFT;

		• The number of obliged entities where infringements were identified as a result of on site inspection appears to be low; • CFT issues insufficiently addressed in supervision.
24. DNFBP – regulation, supervision and monitoring	**PC**	• Problematic cooperation between the FIU and the professional chambers regarding AML/CFT supervision; • No authority performs inspections on some DNFPB and others do not have exclusive inspection on AML/CFT; • No sanctions had been imposed so far; • Poor understanding regarding financing of terrorism.
25. Guidelines and feedback	**PC**	• Insufficient guidelines on AML/CFT techniques and methods; • Insufficient sector specific guidelines; • Not enough case specific feedback; • The FIU provides general feedback, but the requests for feedback as required by the FATF methodology are not met in light of the strict implementation of the Law.
Institutional and other measures		
26. The FAU	**LC**	• The independence and autonomy of the Ministry (FAU) is potentially limited by the powers and functions of the Ministry (and Ministers); • The width of the reporting obligation potentially leads to an over concentration on tax issues in FAU work.
27. Law enforcement authorities	**PC**	• Few successful police-generated ML investigations; • Lack of coordinated actions among authorities (Police Forces and Prosecutors); • Qualified staff in financial investigation have not yet obtained satisfactory results; • Little evidence that ML is being tackled effectively in respect of major proceeds-generating offences; • Lack of robust and accurate data, figures and any other relevant information useful to assess the activity of the Police Forces (both in terms of quantity and quality of the workload).
28. Powers of competent authorities	***C***	*a. [insufficiencies related to FT are covered under SR.III]*
29. Supervisors	**LC**	• No adequate powers of enforcement and sanctions against directors or senior managers of financial institutions for failure to comply with or implement AML/CFT requirements; • Unclear whether there is a power to sanction for refusal to disclose information to a supervisor.
30. Resources, integrity and training	**LC**	*FIU* • Inadequate resources for FIU supervision and monitoring;

		LAW ENFORCEMENT AND PROSECUTION • The lack of education and training in tracing the funds limits law enforcement capability; • Shortage of staff in both the Ministry of Justice and the Prosecution, qualified in financial investigation; *SUPERVISORY AUTHORITIES* • Czech National Bank AML/CFT resources are low for supervision; • Due to the lack of training, DNFBP have difficulties to properly assess the reporting requirements and detect suspicious transactions; • Insufficient training and awareness concerning the CFT risks in the NPO sector by the sector itself and within the relevant public authorities with responsibilities in this area.
31. National co-operation	**LC**	• There are no formal mechanisms in place for regular domestic AML/CFT operational coordination; • There is no regular review of the effectiveness of the AML/CFT system at the policy level.
32. Statistics[22]	**PC**	• The lack of statistics on confiscation of ML proceeds negatively affects the system; • Lack of robust and accurate data, figures and any other relevant information useful to assess the activity of the Police Forces (both in term of quantity and quality of the workload); • Effectiveness of mutual legal assistance cannot be demonstrated due to the absence of reliable and comprehensive statistics on MLA requests; • Also there are no mechanisms in place for Police and supervisory authorities to collect data and provide statistics on international cooperation.
33. Legal persons – beneficial owners	**PC**	• Despite the acceleration of the procedure, the registration of business entities still does not ensure an adequate level of reliability of information registered; • Transparency of ownership structure does not provide more information on beneficial ownership; • No particular counter-measures have been taken against the issuance of freely transferable bearer shares.
34. Legal arrangements – beneficial owners	***N/A***	
International Co-operation		
35. Conventions	**PC**	• The Palermo Convention is not ratified due the lack

[22] The review of Recommendation 32 has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 38 and 39.

		of criminal, civil or administrative liability of legal entities; • The criminalisation mechanism still needs to be brought in line with the international requirements prescribed by the relevant Conventions already ratified by the Czech Republic (the Vienna Convention and the Terrorist Financing Convention) particularly as regards to: o the conversion and transfer as well as the possession of property, o and all aspects of concealment and disguise need to be explicitly provided (R.1), o the collection of funds, as one of the core activities within the concept of TF is not criminalised, o there is still no explicit coverage of direct or indirect collection of funds/usage in full or in part (SR II); • Conspiracy to commit all types of money laundering is not covered by criminalisation (R.1).
36. Mutual legal assistance (MLA)	**LC**	• There are no formal procedures which would enable to determine whether requests are being dealt with timeously, constructively and effectively; • The application of dual criminality may negatively impact the ability to provide assistance due to shortcomings identified in respect of the scope of the TF and ML offences; • Effectiveness cannot be demonstrated due to the absence of reliable and comprehensive statistics on MLA requests.
37. Dual criminality	***C***	
38. MLA on confiscation and freezing	***LC***	*see R.36:* *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).*
39. Extradition	***LC***	*Issue of staffing seen earlier.*
40. Other forms of Co-operation	**LC**	• There are no mechanisms in place for Police and supervisory authorities for collecting data and providing statistics on international cooperation; • FAU should develop a much more detailed process and procedures to keep the information collected on requested cases.

Nine Special Recommendations		
SR.I Ratification and implementation of UN instruments	**LC**	• The Czech Republic has not fully implemented Article 2(1) in connection with Article 2(3) of the TF Convention which criminalises not only the provision of funds for terrorist acts but also the mere collection of funds with the intention to be used or in the knowledge that they are to be used, in full or in part, in order to carry out terrorist acts (as that term is defined in the said Article of the Convention) – regardless of whether an actual terrorist offence is carried out.
SR.II Criminalise terrorist financing	**PC**	• The offence of terrorist attack does not adequately cover the acts described in Art. 7 of the Convention on the Physical Protection of Nuclear Material (1980) and Art. 2(a-b) of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf (1988); • The collection of funds, as one of the core activities within the concept of terrorist financing under SR.II is not adequately, if at all, criminalised; • Apart from the above, different provisions that criminalise FT are not adequately harmonised ; • There is still no explicit coverage of direct or indirect collection of funds/usage in full or in part; • There is no explicit indication that the offence is prosecutable without the funds being used or linked to a specific terrorist act; • There is no corporate criminal liability.
SR.III Freeze and confiscate terrorist assets	**LC**	• It is unclear whether the freezing mechanism clearly encompasses the whole concept of "funds and other assets" as defined by the FATF Methodology; • The national procedure provided by the IIS Act for the purpose of unfreezing requests upon verification that the person or entity is not a designated person does not guarantee the timeliness of the process; • There is no clear guidance to distinguish SR.III obligations from SR.IV obligations; • Concern that DNFBP are not always in the position to identify persons on TF lists (effectiveness issue).
SR.IV Suspicious transaction reporting	**LC**	• The lack of guidance on TF indicators to assist the financial institutions negatively affects the SR.IV obligations.
SR.V International co-operation[23]	**LC**	As in R.36: • There are no formal procedures which would enable to determine whether requests are being dealt with timeously, constructively and effectively;

[23] The review of Special Recommendation V has taken into account those Recommendations that are rated in this report. In addition it has also taken into account the findings from the 3rd round report on Recommendations 37, 38 and 39.

		• The application of dual criminality may negatively impact the ability to provide assistance due to shortcomings identified in respect of the scope of the TF and ML offences; • Effectiveness cannot be demonstrated due to the absence of reliable and comprehensive statistics on MLA requests. As in R.40: • There are no mechanisms in place for Police and supervisory authorities for collecting data and providing statistics on international cooperation; • FAU should develop a much more detailed process and procedures to keep the information collected on requested cases.
SR.VI AML requirements for money/value transfer services	**PC**	• Effective implementation of SR.VI not demonstrated; • Alleged informal remittance activities not fully assessed.
SR.VII Wire transfer rules	**LC**	• A reserve on effectiveness of implementation.
SR.VIII Non-profit organisations	**PC**	• Lack of a fully comprehensive review of domestic NPOs in order to obtain a clear picture of all the legal entities that perform as NPOs, especially ones of potential high risk; • Insufficient awareness raising campaigns in the NPO sector, and obliged entities, regarding potentially vulnerable NPOs; • Lack of "know your beneficiary and associate" rules for NPOs, excepting those who become obliged entities under AML, in the hypothetical case of accepting large cash payments; • Insufficient targeted supervision or monitoring of NPOs which control significant portions of the financial resources of the sector and substantial shares of the sector's international activities; • Insufficient training and awareness concerning the CFT risks in the NPO sector by the sector itself and within the relevant public authorities with responsibilities in this area.
SR.IX Cross Border Declaration & Disclosure	***LC***	*a. 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);* *b. 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;* *c. Community market exception needs to be clarified together with EU partners.*

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	
2.1 Criminalisation of Money Laundering (R.1 and r.2)	• The Czech Republic should amend Art. 216 CC so as to cover explicitly the various elements of the international requirements on the concept of money laundering now apparently missing from the definition (first and foremost: the conversion and transfer of property, the possession of property, the various specific aspects of concealment and disguise and the explicit coverage of the two main purposive elements required by the conventional definitions) preferably by harmonising the money laundering definitions of the administrative and criminal substantive law; • The Czech Republic authorities should ensure, either by legislation or by achieving relevant judicial practice, that the money laundering offence(s) cover both direct and indirect proceeds from crime; • The Czech authorities should provide for the criminalisation of conspiracy to commit all types of money laundering, preferably by prescribing explicitly in the CC that preparation for the legalisation offence (which by virtue of Art. 20 CC also comprises conspiracy) is also punishable, as had already been formulated in the previous draft of the Criminal Code; • The Czech authorities should consider increasing the criminal sanctions applicable to the legalisation offence and other ML-related offences; • The Czech authorities should provide for the criminal liability of legal persons, including for ML; • The Czech authorities should further analyse the reasons for the apparent discrepancy between the money laundering phenomenon in the Czech Republic and the type of legalisation or participation cases so far concluded successfully, both in terms of differences in the underlying predicate criminality and the typologies of the related laundering activities, and take further appropriate initiatives to counter this phenomenon. • More success in significant third party laundering cases needs to be achieved.
2.2 Criminalisation of Terrorist Financing (SR.II)	• The Czech Republic should introduce a stand-alone provision on financing of terrorism to cover explicitly the various elements of the international requirements in a more consistent way harmonizing the offences in Art. 311(2)b and Art. 361 CC.

	• Ensure that the offence of terrorist attack adequately covers the acts described in Article 7 of the Convention on the Physical Protection of Nuclear Material (1980) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located in the Continental Shelf (1988). • Specifically, harmonise the wording and the contents of the respective articles. • The Czech authorities should introduce the financing of terrorism as a stand-alone offence that would be broad and detailed enough to encompass all aspects of terrorist financing, particularly - to clearly cover the various elements required by SR.II, and above all, the collection of funds by any means, directly or indirectly, and their use in full or in part for FT purposes; - to provide explicitly 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; - and, subject to the introduction of corporate liability, to provide for the liability of legal persons for terrorist financing. • The Czech authorities should eliminate the discrepancy between the coverage of the preventive and criminal legislation in respect of the criminal offence of terrorism (Art. 312 CC) in the range of the offences, the financing of which constitutes terrorist financing because this act is definitely out of the scope of the offence in Art. 311(2)b. • The Czech authorities should clarify the definition of "funds" being subject of terrorist financing, in line with the definition provided by the UN Terrorist Financing Convention.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• The Czech Republic should provide that: - confiscation applies in respect of all kinds of property that has been laundered; - the confiscation of property that is derived directly or indirectly from the proceeds of crime; including income, profits or other benefits from the proceeds of crime; - the substantially discretionary character of the confiscation of proceeds and instrumentalities should be limited; ideally, confiscation in major proceeds-generating cases should be mandatory; - Art. 78-79 CPC governing seizure of a thing clearly provide for the immediate application of this measure without any potential time gap in the process. • The Czech authorities should more efficiently exploit the possibilities that the CPC provides for the immediate securing of financial means of bank accounts and the involvement of the FAU and the administrative freezing mechanism should be reduced to extraordinary cases of ultimate urgency;

	• The Czech authorities should establish and maintain reliable and detailed statistics on the performance of the entire confiscation regime analysing the reasons why seizures, once they are taken more regularly and successfully, fail to result in more confiscations; • The Czech authorities should reconsider introducing the reversal of the burden of proof post-conviction for confiscation purposes. • The Czech authorities should achieve more success in major confiscation orders in serious proceeds-generating cases.
2.4 Freezing of funds used for terrorist financing (SR.III)	• The Czech Republic should seek greater harmony between the domestic legislation and the EU regulations providing (i) that all domestic law(s) applicable in the context of SR.III clearly encompass the whole concept of "funds and other assets" as defined by the FATF Methodology; (ii) enhancing and guaranteeing timeliness in the national procedure for the purpose of unfreezing upon verification that the person or entity is not a designated person (iii) that more guidance is required on SR.III obligations to distinguish them from SR.IV reporting duties and (iv) that DNFBP be in a better position to identify persons and entities on FT lists.
2.5 The Financial Intelligence Unit and its functions (R.26)	• The Czech Republic should introduce an explicit reference to the FIU in the AML/CFT legislation as already recommended in the 3rd MER; • The Czech authorities should strengthen the independence and autonomy of the Ministry (FAU/FIU) by amending the AML/CFT Law or issuing a decree to govern the main aspects of the activities of the Ministry (FAU/FIU) (the appointment and term of the Director and basis on which he can be removed, recruitment and management of staff, budget, organisation and security); • The FIU should consider extending the use of "Moneyweb"; • The FIU should consider keeping records of the predicate offences in FAU reports disseminated to law enforcement.
3. Preventive Measures – Financial Institutions	
3.1 Risk of money laundering or terrorist financing	• The Czech Republic should undertake a formal risk assessment to identify all the areas of vulnerability to money laundering and terrorist financing in the Czech Republic.
3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)	***Recommendation 5*** • The Czech authorities should carry out a risk analysis to decide the criteria for determining whether and when to exempt the specified low risk customers/circumstances within the appropriate circumstances of the Czech Republic;

	• The Czech authorities should introduce preventive measures to deter the potential opening of accounts/safe boxes, etc. with fictitious names; • The Czech authorities should require reasonable measures be taken to verify beneficial ownership including those that may be low risk to align with FATF standards; • The Czech Republic should issue guidance to institutions to flesh out the way obliged entities are expected to implement their responsibilities stemming from the legislation on a risk-based approach; • The Czech authorities should issue guidance to the financial institutions to ensure that the obligation to undertake CDD measures when financial institution have doubts about veracity or adequacy of previously obtained customer identification data is fully understood. In this respect, there is also legal uncertainty in meeting the requirement under Recommendation 5.2(e); • The Czech authorities should implement more effectively the requirements for obliged entities always to determine the natural person behind a beneficial owner; • The Czech authorities should clarify to obliged entities (through guidance) how to obtain satisfactory evidence of the identity of beneficial owners, bearer shares holders and silent partners and other similar cases. Ideally, the latter two should be prohibited or verified through controlled registration; • The Czech authorities should review the requirements for customer due diligence and enhanced due diligence to include other measures as referred to in international standards; • The Czech authorities should emphasise the verification process is not only for financial transactions but also for other services such as the opening and usage of safety boxes; • The Czech authorities should review the identification process in respect of low risk customers to one of reduced or simplified customer due diligence instead of no identification requirement; • The Czech authorities should consider issuing a list of non-cooperative countries as identified by the Czech authorities. ***Recommendation 6*** • The Czech authorities should review the definition of PEPs (i.e. replace “shall mean” to “shall include”) and include senior politicians, senior government officials and important political officials as set out in the definition in the Glossary to the Methodology; • The definition of PEPs should include beneficial owners; • The Czech authorities should issue detailed guidelines to obliged entities to flesh out the responsibilities and obligations of obliged entities in respect of PEPs;

	• The Czech authorities should require that the approval for establishing and continuing a business relationship with a PEP is given by senior management rather than the direct superior. ***Recommendation 8*** • The Czech Republic should introduce in the AML/CFT Law a specific obligation addressing R.8, and introduce guidance fleshing out the responsibilities to address the specific risks associated with non face-to-face business relationships or transactions when conducting ongoing due diligence; • The Czech authorities should require additional identification documents to verify the authenticity of the primary identification in all non face-to-face business. • More awareness raising on the misuse of technological developments required.
3.3 Financial institution secrecy or confidentiality (R.4)	• The Czech authorities should establish and keep updated the planned Central Register of Bank Accounts containing basic data on clients and financial products available through on-line requests; • The FIU should finalise and keep updated a study on the most effective ways for the authorities to obtain information from financial institutions;
3.4 Record keeping and wire transfer rules (R.10 & SR.VII)	***Recommendation 10*** • The Czech Republic should clarify in law or regulation that the retention period for maintaining records could be for a longer period if requested, to do so by a domestic competent authority in specific cases and upon proper authority, including also information on natural person behind a legal person; • The Czech authorities should include specifically in the law a requirement to retain business correspondence for at least 5 years following the termination of an account on business relationship; • The Czech authorities should clarify that transaction records should be maintained in such a way as to permit the reconstruction of individual transactions so as to provide evidence for prosecution of criminal activity; • The Czech authorities should consider issuing guidelines specifying retrieval methodologies applicable to paper-based maintenance of records in order to facilitate early and orderly retrieval; • The Czech authorities should issue guidance in respect of cooperation between obliged entities in record keeping so as ensuring that there are no gaps in such cases. ***Special Recommendation VII*** • The Czech authorities should issue guidelines to obliged entities on the practical implementation of the EU Regulation.
3.5 Monitoring of Transactions and Relationship Reporting (R.11	***Recommendation 11*** • The Czech Republic should specify directly in the

& R.21)	AML/CFT Law that obliged entities are required to pay special attention to transactions that are complex, unusual and large and also specifically requiring that these provisions are applicable also to low risk clients; • The Czech Republic should introduce enforceable requirements that the findings of the examination of the background and purpose of complex, unusual and large transactions that have no apparent economic or lawful purpose are set forth in writing and retained; • The Czech authorities should issue guidance to give examples of complex and unusual large transactions as well as those which have an unusual pattern without a seemingly apparent economic or lawful purpose. ***Recommendation 21*** • The Czech Institutions should carry out their own country risk assessment without over reliance on official lists; • The Czech authorities should issue specific guidance to provide institutions with a list of measures that they can apply in the event of identification of a risky country; • Further guidance needed to augment existing decrees to ensure all financial institutions examine and keep written findings in respect of transactions with no apparent economic or visible purpose in countries which insufficiently apply the FATF Recommendations.
3.6 Suspicious transaction reports and other reporting (R.13 & SR.IV)	***Recommendation 13*** • The Czech Republic should harmonise along the legal instruments the definition of the "financing of terrorism" with the wordings of the criteria 13.2 and SRIV.1; • The Czech Republic should amend: - the law in order to avoid the listing of (suspicious reporting) transactions or, at least, issue specific guidelines to all obliged entities (including financial institutions) on the reporting requirements in the light of FATF and MONEYVAL Typologies; - amend/issue guidance on the identification of suspicious transactions for all obliged entities. • The Czech authorities should verify the adequacy of, and adapt if necessary, the reporting requirement of suspicions related to the financing of terrorism; • The Czech authorities should introduce appropriate guidance on the reporting requirements that goes beyond the "designated persons" (under UNSCRs) (in order to avoid any misunderstanding between the two different reporting obligations). ***Special Recommendation IV*** • The Czech authorities should issue, or update, regulations and/or guidelines on how to discover and/or determine the circumstances which lead to a suspicion of financing of terrorism and/or that funds are linked or related, or to be used for terrorism, terrorist act, or by terrorist organisations or by those who finance terrorism. The FATF and other FSRB (including MONEYVAL) documents containing

	cases study, typologies and indicators on TF should be used.
3.7 Internal controls, compliance, audit and Foreign Branches(R.15 & R.22)	***Recommendation 15*** • The Czech Republic should amend the AML/CFT Law or CNB Decree in order to require that the contact officer should be appointed at managerial level with the relevant responsibilities, which is currently limited in scope to be the contact person with the FIU; • The Czech authorities should introduce legal requirements ensuring that obliged entities screen prospective employees to ensure high standards introducing different obligations in respect of "compliance officers" (Contact person) in small and larger obliged entities and standardise requirements; • The FIU should make an explicit reference requiring obliged entities to make available the internal procedures to its employees; • The FIU should issue guidelines to specify what is required and the necessary procedures for the contact person to carry out his responsibilities effectively describing the necessary control measures (including required monitoring systems and provide greater guidance on what is actually expected from a risk-based approach). ***Recommendation 22*** • The Czech authorities should extend the requirement in Section 25(4) of the AML/CFT Law to the FATF Recommendations in general (not only to recommendation 5 and 10); • The Czech authorities should ensure the observance of Czech AML/CFT measures in respect of their branches and subsidiaries of institutions located in EU member States or the European Economic Area; • The Czech authorities should introduce a requirement that where the minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit.
3.08 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 and 25)	***Recommendation 23*** • The CNB should establish a clearly articulated and realistic risk based approach to the frequency of inspections; • The inspection cycle should catch all financial entities at some point; • The CNB should carry out more targeted AML/CFT inspections generally; • The CNB should carry out targeted AML/CFT inspections in the non-banking financial sector, particular foreign exchange bureaus; • The Czech authorities should provide more resources to the FIU, particular manpower, to enable it to strengthen its oversight and supervisory work, with power to step in and

	conduct on-site inspections if another supervisor fails to perform, or inadequately performs its supervisory functions in respect of AML/CFT provisions; • The FIU should ensure targeted CFT controls are covered in future in all financial sector inspections (including awareness of and training on CFT issues, efforts to detect FT related assets, awareness of international lists etc.); • The FIU should issue further guidance documents on both AML and CFT, including for financial supervisory staff. ***Recommendation 17*** • The Czech authorities should introduce direct sanctions for directors, managers and employees; • The Czech authorities should provide for a wider range of sanctions (such as warnings, orders to comply with instructions, special reporting, removal or restriction of powers of directors, managers and officers or restrictions of business activities); • The Czech authorities should introduce sanctions in respect of breaches for failure in carrying out properly the identification process; • The Czech authorities should review the administrative fines to introduce a minimum amount (which is in itself dissuasive); • The Czech authorities should consider issuing dissuasive financial sanctions in appropriate cases. ***Recommendation 25(c. 25.1 [Financial institutions])*** • The CNB and the FIU should include, in the guides of the professional bodies, explanations of the requirements of the Prohibition on Money Laundering Law (Act No. 253/2008) including a description of ML and FT techniques and methods or any additional steps that the obligated entities could take to ensure that their AML/CFT measures are effective (as required pursuant to FATF recommendation 25.1); • the FIU Should give more feedback in relation to each STR considering the feasibility of more routine case specific feedback (particularly in relation to significant developments in the case) to reporting entities once the FIU has passed a case to the Law enforcement. ***Recommendation 29*** • The Czech authorities should ensure that there is a power to sanction for refusal to disclose to a supervisor; • The supervisors authority bodies should carry out more targeted inspections. ***Recommendation 30 (all supervisory authorities)*** • The Czech National Bank should allocate more resources dedicated to AML/CFT compliance issues, particularly specialised AML/CFT training should be provided for DNFBP.
3.09 Money or value transfer services (SR.VI)	• The Czech authorities should closely analyse the potential risks in the MTV sector and coordinate with the CNB the

	degree of oversight that is given to the MTV sector. The extent of the informal remittance sector should be assessed and the risks analysed.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• The Czech authorities should raise the general awareness of CDD measures by DNFBP by issuing specific guidance for each sector as well as conducting outreach and training. • The Czech authorities should specifically take steps to raise awareness of and compliance with Recommendations 5, 6, 7, 8 and 10 in the DNFBP sector.
4.2 Suspicious transaction reporting (R.16)	• The Czech authorities should ensure that the channels of co-operation between the FIU and the professional Chambers in the framework of the reporting obligation are more formalised. Dealers in precious metals and stones should be explicitly covered. • More outreach to encourage greater reporting by DNFBP.
4.3 Regulation, supervision and monitoring (R.24-25)	***Recommendation 24*** • The Czech authorities should put in place the authority to monitor for AML/CFT purposes in respect of dealers in precious metals and stones so that they are subject to effective risk based monitoring; • The FIU should conduct a survey on the size of the sector dealing with precious metals and stones and its vulnerability to ML/FT and develop a risk based assessment for monitoring and ensuring their compliance with requirements to combat ML and FT; • The FIU should develop a clear risk based strategy for effective monitoring of those other DNFBP that are not covered by the arrangements with the professional bodies, in particular real estate agents, trust and company service providers (where not otherwise covered); • The Czech authorities should assure continuing active AML/CFT supervision and sanctioning in the casinos in respect of AML/CFT risks; • The FIU should introduce more formal cooperation agreements with the professional chambers in order to ensure a more coordinated and consistent level of AML/CFT supervision of these professionals; • The Czech authorities should introduce formal cooperation agreements with the professional chambers routinely in order to share supervision and sanctioning results with the FIU in order to ensure a more coordinated and consistent level of AML/CFT supervision of these professionals (finding working arrangement on how to apply Section 37(2) of the AML/CFT Law; • The professional chambers should review their AML/CFT strategy to ensure that it fulfils its obligations under the AML/CFT Law; The Professional Chambers should provide a CFT list to its

	members and specific guidelines relating to the financing of terrorism. ***Recommendation 25 (c.25.1 [DNFBP])*** • The guides of the professional bodies, the FIU and of the CNB should include description of ML and FT techniques and methods or any additional steps that the obligated entities could have to take in order to ensure that their AML/CFT measures are effective; • The FIU shall introducient sanctions for the failure of reporting in the form established by the FAU; • The FIU shall implement more case specific systems of feedback (particularly in relation to significant developments in the case) for the reporting entities once the FIU has passed a case to Law enforcement.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal persons – Access to beneficial ownership and control information (R.33)	• Authorities should provide an adequate level of reliability of information registered introducing transparency of ownership structure and more information on the final beneficial ownership. • The Czech authorities should introduce specific counter-measures to avoid the issuance of freely transferable bearer shares.
5.2 Non-profit organisations (SR.VIII)	• The Czech authorities should: - 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. (as already indicated recommended in the 3rd MER; - establish requirements for NPOs in the registration documents or in the forms for tax benefits to provide the information recommended under the Interpretative Note to SR.VIII; - explicit and put in place the public authority responsible for the registration, licensing and monitoring of NPOs; • The FIU should establish regular contacts with the NPOs /NPOs supervisory Boards and establish specific guidelines advising on the threat of misusing the NPOs for terrorism financing as well as a regular dialogue between public authorities and the NPO entities conducted on the subject of financing of terrorism.
6. National and International Co-operation	
6.1 National Co-operation	• Formal mechanisms should be put in place for domestic operational coordination; • There needs to be a regular review of the effectiveness of the AML/CFT system at the policy level which establishes

	some performance indicators for the system as a whole and establishes consistent data on results.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• The Czech Republic should ratify the Palermo Convention needs. The criminalisation of financing or terrorism has to include the wording of the UN Security Council resolutions and Conventions, criminalising not only any kind of support to terrorist acts, persons or organisations, but the mere collection of funds with the intention or the prevision to be used for supporting these activities or persons, regardless of whether a terrorist offence has been committed.
6.3 Mutual Legal Assistance (R.36 & SR.V)	• As recommended in the previous report, the Czech authorities should take care that the services dealing with legal assistance are adequately staffed; • The Czech authorities (either or both of the central authorities) should maintain comprehensive annual statistics on all mutual legal assistance and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond; • The Czech Republic should clarify whether the application of dual criminality may limit its ability to provide assistance in certain situations, particularly in the context of identified deficiencies with respect to the ML and TF offence as outlined under Recommendation 1 and Special Recommendation II; • The Czech authorities should introduce clear time-limits for the competent authorities to evaluate and forward the MLA requests for execution.
6.4 Other Forms of Co-operation (R.40 & SR.V)	• The Czech authorities should introduce adequate statistics in order to evaluate the effectiveness of exchange of information on non judicial international cooperation; • Police Forces and supervisory authorities should establish a mechanism of collecting data a providing statistics on non judicial international cooperation; • FAU should develop a much more detailed process and procedures to keep the information collected on requested cases.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	***Recommendation 30*** • The FIU Supervisory Division should be reinforced for effective supervision and monitoring both on- and off-site; • Specialised AML/CFT training should be provided for DNFBP; • More resources dedicated to AML/CFT compliance issues should be allocated by the Czech National Bank; • The Czech authorities should strengthen the AML Division

	of the UCCFC in order to increase the effectiveness of the notifications received by FAU and develop an inter-agency committee that will develop trends and methods useful for the investigative bodies. (Recommendation to be inserted also under 2.6.); • More seminars on AML/CFT investigations, prosecutions and judgments would be welcome to ensure that all key players are fully aware of the importance of financial investigation, confiscation and autonomous ML. (Recommendation to be inserted under 2.6.). ***Recommendation 32*** • The Czech authorities should keep records on ML confiscations; • Statistics on investigation and prosecution of money laundering and financing of terrorism should contain more detailed information; • The Czech authorities (either or both of the central authorities) should maintain comprehensive annual statistics on all mutual legal assistance and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused and the time required to respond; • The Czech authorities should envisage a system for collecting information for providing dedicated statistics to national authorities and international organisations for the implementation of a Czech AML/CFT risk assessment strategy.
7.2 Other relevant AML/CFT measures or issues	N/A
7.3 General framework – structural issues	N/A

TABLE 3: AUTHORITIES, RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS
-	-

V. COMPLIANCE WITH THE 3RD EU AML/CFT DIRECTIVE

Czech Republic has been a member country of the European Union since 2004. It has implemented **Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing** (hereinafter: "the Directive") and the **Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of ‚politically exposed person, and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis**.

The following sections describe the major differences between the Directive and the relevant FATF 40 Recommendations plus 9 Special Recommendations. Please complete the description and analysis beneath and return to the Secretariat with the fully completed questionnaire. For relevant legal texts from the EU legal standards see Appendix I.

1.	**Corporate Liability**
Art. 39 of the Directive	Member States shall ensure that natural and legal persons covered by the Directive can be held liable for infringements of the national provisions adopted pursuant to this Directive.
FATF R. 2 and 17	Criminal liability for money laundering should extend to legal persons. Where that is not possible (i.e. due to fundamental principles of domestic law), civil or administrative liability should apply.
Key elements	The Directive provides no exception for corporate liability and extends it beyond the ML offence even to infringements which are based on national provisions adopted pursuant to the Directive. What is the position in your jurisdiction?
Description and Analysis	The act on criminal liability of legal persons has been drafted and it will be passed to the Parliament of the Czech Republic soon. The Czech Republic applies administrative liability. The administrative offences concerning money laundering are specified in Sections 43-54 of the AML Act. The penalties for legal persons can reach up to 50 million CZK (€2 million).
Conclusion	Criminal liability does not extend to legal persons.
Recommendations and Comments	The Czech authorities stated that the provisions for extending criminal liability will be discussed in the new Parliament. Concurrently, it needs to be ensured that the AML/CFT Law will be amended to extend criminal liability for money laundering to legal persons. The Czech authorities informed that the AML/CFT Law will be amended in connection with the act on criminal corporate liability: Sections 44 (4), 45 (4), 46 (3), 47 (5), 48 (8), 49 (3) will be abolished as administrative offences and replaced by the criminal offences of legal persons in the new act on criminal corporate liability.

2.	**Anonymous accounts**
Art. 6 of the Directive	Member States shall prohibit their credit and financial institutions from keeping anonymous accounts or anonymous passbooks.
FATF R. 5	Financial institutions should not keep anonymous accounts or accounts in obviously fictitious names.
Key elements	Both prohibit anonymous accounts but allow numbered accounts.

	The Directive allows accounts or passbooks on fictitious names but always subject to full CDD measures. What is the position in your jurisdiction regarding passbooks or accounts on fictitious names?
Description and Analysis	The prohibition of anonymous accounts is specified in Section 709 of the Czech Commercial Code (Act No. 513/1991 Coll.) and prohibition of anonymous passbooks is specified in Sections 782, 786, 787 of the Czech Civil Code (Act. No. 40/1964 Coll.).Furthermore an agreement to establish an account, an agreement to make a deposit into a deposit passbook or a deposit certificate; or an agreement to make any other type of deposit are subject to identification according to the Section 7(2c) of the AML Act.
Conclusion	Existing bearer passbooks were abolished by an amendment to Act No 40/1964. The Act on Banks (126/2002 Coll.) of 31 December 2002 established that the right of repayment of the balance of discharged deposit claims becoming statute-barred by the end of 2012. According to a 2002 amendment to the Act on Banks, only withdrawals are possible.
Recommendations and Comments	Anonymous accounts will become statute-barred as at end 2012.

3.	**Threshold (CDD)**
Art. 7 b) of the Directive	The institutions and persons covered by the Directive shall apply CDD measures when carrying out occasional transactions amounting to €15 000 or more.
FATF R. 5	Financial institutions should undertake CDD measures when carrying out occasional transactions above the applicable designated threshold.
Key elements	Are transactions and linked transactions of €15 000covered?
Description and Analysis	According to the Section 7 paragraph 1 of the AML Act the obliged entity shall, prior to a single transaction amounting to €1,000 or more perform the customer due diligence process (according to the Art. 8 (1a) 3 AMLD). According to the Section 9 of the AML Act the obliged entity shall, prior to a single transaction amounting to €15,000or more perform the customer due diligence process (according to the Art. 8 (1b-d) 3 AMLD). Operations which appear to be linked are defined in Section 54 (3) of the AML Act: If a payment is divided into several installments, the value of the transaction shall be the sum of these installments, provided they are related.
Conclusion	Transactions of €15,000 or more are covered.
Recommendations and Comments	-

4.	**Beneficial Owner**
Art. 3(6) of the Directive (see Annex)	The definition of “Beneficial Owner” establishes minimum criteria (percentage shareholding) where a natural person is to be considered as beneficial owner both in the case of legal persons and in the case of legal arrangements
FATF R. 5 (Glossary)	“Beneficial Owner” refers to the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted. It also incorporates those persons who exercise ultimate effective control over a legal person or legal

	arrangement.
Key elements	Which approach does your country follow in its definition of "beneficial owner"? Please specify whether the criteria in the EU definition of "beneficial owner" are covered in your legislation.
Description and Analysis	The Czech Republic has implemented the definition of "beneficial owner" to the Section 4 (4)of the AML Act by using both approaches provided by 3. AML Directive and FATF. The beneficial owner is a natural person having real or legal direct or indirect control over the management or operations of the entrepreneur; holding in person or in contract with a business partner or partners more than 25 per cent of the voting rights of the entrepreneur or who is, for other reasons, a real recipient of such entrepreneur's revenue.
Conclusion	The legal definition of beneficial owner as included in the AML/CFT Law (Section 4 (4)) are in line with the definition of Art 3(6) of the EU Directive except that with reference to Art 3 (6) (b), the AML/CFT Law is applicable exclusively to a foundation or a foundation trust rather than to all legal entities which administer and distribute funds.
Recommendations and Comments	The Czech authorities stated that concept of trust does not apply in the country. Nonetheless, a specific requirement in the AML/CFT Law specifying that the beneficiary owners cover all legal entities administering and distributing funds should be inserted also to cover non-Czech similar entities.

5.	**Financial activity on occasional or very limited basis**
Art. 2 (2) of the Directive	Member States may decide that legal and natural persons who engage in a financial activity on an occasional or very limited basis and where there is little risk of money laundering or financing of terrorism occurring do not fall within the scope of Art. 3(1) or (2) of the Directive. Art. 4 of Commission Directive 2006/70/EC further define this provision.
FATF R. concerning financial institutions	When a financial activity is carried out by a person or entity on an occasional or very limited basis (having regard to quantitative and absolute criteria) such that there is little risk of money laundering activity occurring, a country may decide that the application of anti-money laundering measures is not necessary, either fully or partially (2004 AML/CFT Methodology para 23; Glossary to the FATF 40 plus 9 Special Recs.).
Key elements	Does your country implement Art. 4 of Commission Directive 2006/70/EC?
Description and Analysis	The Czech Republic has implemented Art. 4 of the Commission Directive 2006/70/EC to the Section 34 of the AML Act. Upon request, the Ministry may decide that an obliged entity performing any of the activities listed in Section 2(1) of the AML Act only occasionally or in a very limited scope, and in a way that precludes or significantly reduces the risk of such person being exploited for the legitimisation of proceeds of crime and financing of terrorism, shall not be considered an obliged entity under the AML Act. The competent Czech authorities are convinced that Art. 2 (2) of the 3 AMLD and Art. 4 of the Commission Directive 2006/70/EC were fully implemented to the Czech AML act (Section 34).

Conclusion	Section 2 of the AML/CFT Law lists the obliged entities for AML/FT purposes. Section 34 of the AML/CFT Law gives the power to the Ministry that, on request by obliged entities and subject to specified conditions, it can exempt such obliged entities from their obligations under AML/CFT Law. The list was not seen by the evaluators, who were informed that since 2008 more than 300 entities were exempted: 99% exchange offices as occasional activity in connection with hotels, spas, travel agencies. The Czech authorities can exempt legal and natural persons who engage in a financial activity on an occasional or very limited basis, they can also provide such exemptions to those falling within the scope of Art. 3(1) or (2) of the EU Directive.
Recommendations and Comments	The Czech legislation prohibits transactions in cash above €15,000 (Act 254/2004 Coll.) but nevertheless requires that those carrying out cash transactions above €15,000 are obliged entities under the law. The Czech authorities explained that according to Act 254/2004 Coll. cash transactions from the same provider to the same recipient made within one day exceeding €15,000 are prohibited. If such cash transactions exceed €15,000 in the time period of more than one day the recipient is obliged entity according to the Section 2 (2d,e). The exemptions under Section 34 may be extended even to obliged entities that are within the scope of Art. 3(1) or (2) of the EU Directive. The AML/CFT Law should specify clearly that such entities are not exempted from their AML/FT obligations. Furthermore, the Czech authorities should draw up a list, based on a risk-based approach of institutions that do not pose risk in respect of ML/FT.

6.	**Simplified Customer Due Diligence (CDD)**
Art. 11 of the Directive	By way of derogation from the relevant Article the Directive establishes instances where institutions and persons may not apply CDD measures. However the obligation to gather sufficient CDD information remains.
FATF R. 5	Although the general rule is that customers should be subject to the full range of CDD measures, there are instances where reduced or simplified measures can be applied.
Key elements	Is there any implementation and application of Art. 3 of Commission Directive 2006/70/EC which goes beyond the AML/CFT Methodology 2004 criterion 5.9?
Description and Analysis	These provisions were implemented into Section 13(1) of the AML Act which stipulates exceptions from the identification and due diligence requirements. According to this provision the obliged entity may decide not to perform any identification or due diligence should the customer be: a) a credit or financial institution, b) a foreign credit or financial institution operating in the territory of a country imposing and enforcing anti-money laundering and financing of terrorism measures equivalent to those imposed by the European Communities acquis and supervised to that respect, c) a company whose securities are traded at a regulated market and which is subject to reporting requirements equivalent to those enforced by the European Communities acquis,

	d) a beneficial owner of assets deposited with a public notary, lawyer, licensed executor, or court, e) a central Czech public authority, the Czech National Bank, or a higher self-governing territorial entity, or f) a customer: 1. holding important public positions under the European Communities acquis, 2. whose identification data are publicly available and there is no reason to doubt their correctness, 3. whose activities are transparent, 4. whose books show a true and real picture of their accounting and financial situation, 5. who is accountable either to a European Union body or bodies of a European Union or European Economic Area member state and who is subject to other relevant control mechanisms. According to the Section 13 (3) of the AML Act the obliged entities shall always verify that all conditions required had been met and that none of the customers, products, or transactions represents a risk of legitimisation of proceeds of crime or financing of terrorism. In case of doubt, no exceptions shall be applied.
Conclusion	Section 13 (1) enables obliged entities to decide not to apply CDD procedures at all rather than simplified or reduced CDD measures. Furthermore, the simplified/reduced CDD is subject to Article 40 (1) (b) which requires the establishment of technical criteria for assessing whether the circumstances represent low risk as well as Article 11 (3) which requires the gathering of sufficient information to establish if the customer qualifies for an exemption. None of these conditions were evident.
Recommendations and Comments	Consider making technical criteria for assessing whether circumstances represent low risk.

7.	**Politically Exposed Persons (PEPs)**
Art. 3 (8), 13 (4) of the Directive (see Annex)	The Directive defines PEPs broadly in line with FATF 40 (Art. 3(8)). It applies enhanced CDD to PEPs residing in another Member State or third country (Art. 13(4)). Directive 2006/70/EC provides a wider definition of PEPs (Art. 2) and removal of PEPs after one year of the PEP ceasing to be entrusted with prominent public functions (Art. 2(4)).
FATF R. 6 and Glossary	Definition similar to Directive but applies to individuals entrusted with prominent public functions in a foreign country.
Key elements	Does your country implement Art. 2 of Commission Directive 2006/70/EC, in particular Art. 2(4), and does it apply Art. 13(4) of the Directive?
Description and Analysis	Art. 13(4) of the 3AMLD was implemented into Section 9(1) of the AML Act. The obliged entity shall, prior to a transaction with a politically exposed person, perform the customer due diligence process. The definition of PEP is provided in Section 4(5) of the AML Act.

	Moreover the measures against PEPs are applied also to our citisens in exposed political functions abroad. Art. 2 was implemented into Section 4(5).
Conclusion	Article 13(4) of the Directive 2005/60/EU and Articles 2(4) of Directive 2006/70/EC have been implemented in the AML/CFT Law. But there are no requirements in terms of article 13(4) (b) (c) and (d). Although it can be inferred that the CNB Decree 281/2008 can be extended to PEPs (Article 5 (3) (c) (3) on the basis of the need to categorise clients under risk profiles if a person has a political risk profile, there is no specific reference that the Decree applies to PEPs as defined in the Directive. Furthermore, there is no requirement for senior management approval. In addition, the Degree applies to obliged entities supervised by the CNB and does not extend to other obliged entities.
Recommendations and Comments	The full requirements of the EU Directive should be enshrined in the AML/CFT Law.

8.	**Correspondent banking**
Art. 13 (3) of the Directive	For correspondent banking, Art. 13(3) limits the application of Enhanced Customer Due Diligence (ECDD) to correspondent banking relationships with institutions from non-EU member countries.
FATF R. 7	Recommendation 7 includes all jurisdictions.
Key elements	Does your country apply Art. 13(3) of the Directive?
Description and Analysis	Art. 13(3) of the 3AMLD was implemented into Section 25(1-3) of the AML Act. According to these provisions a credit institution shall not enter a corresponding bank relationship with a foreign credit or similar institution which is incorporated in the commercial or similar register in a country where it does not have a physical presence and its management is not physically located in that country, and which is not affiliated to any regulated financial group; which is known for allowing the use of its account by an institution referred to above; or which does not apply measures against legitimisation of proceeds of crime and financing of terrorism of the standard that is at the least required by the law of the European Communities; and if it had already entered such a relationship, it must terminate it in the shortest practicable period.
Conclusion	Section 25 (1) (c) of the AML/CFT Law does not allow credit institution to enter a corresponding bank relationship with a foreign credit or similar institution which does not apply AML/CFT measures to the standard that are at least required by the European Communities. In accordance with Section 13 (1) (a) and (b) of the AML/CFT Law, credit and financial institutions in the Czech Republic or in countries with EU equivalent AML/CFT measures are exempted from both CDD and ECDD. Thus, there is no need to carry out either CDD or ECDD even with institutions that are outside the EU but with an equivalent standard. Moreover, for EU institutions, not even CDD is required. There is no requirement for obliged entities to gather the necessary information to assess the reputation of an institution, assess its controls and document the respective responsibilities of each institution and satisfy themselves that the respondent institution has verified identification in respect of payable-through accounts.
Recommendations and	-

Comments	

9.	**Enhanced Customer Due Diligence (ECDD) and anonymity**
Art. 13 (6) of the Directive	The Directive requires ECDD in case of ML or TF threats that may arise from products or transactions that might favor anonymity.
FATF R. 8	Financial institutions should pay special attention to any money laundering threats that may arise from new or developing technologies that might favor anonymity [...].
Key elements	The scope of Art. 13(6) of the Directive is broader than that of FATF R. 8, because the Directive focuses on products or transactions regardless of the use of technology. How are these issues covered in your legislation?
Description and Analysis	These provisions were implemented into Section 15(1) and Section 11(3) of the AML Act. The obliged entity shall reject to make a transaction or to enter in a business relationship should there be an identification requirement and should the customer refuse the identification process or fail to submit the power of attorney, should they fail to assist the due diligence process, should the customer identification or due diligence be impossible for other reasons, or should the person performing the customer identification or due diligence have a reason to doubt the correctness or authenticity of documents submitted. The obliged entity shall refuse the customer identification information, data indicating the purpose and nature of the business transaction, and information on the identity of the beneficial owner, should it have a reason to doubt the correctness or completeness of such information. Moreover these provisions are contained in other Sections of the AML Act (identification, CDD etc.)
Conclusion	Section 11 (4) of the AML/CFT Law requires obliged entities to identify customers, identity in the case of a remote agreement on financial services under the Civil Code by requiring that the first payment be made via an account kept on the customer's name in a credit institution or a foreign credit institution operating in the EU or the EEA and requiring the customer to submit to the obliged entity a copy of a document verifying the existence of an account with the said credit institution together with copies of the relevant parts of their identity card and at least one more identification document from which the obliged entity may determine the customer's identification data, type and serial number of such identity cards, issuing country or institution, and validity. Obliged entities met during the on-site evaluation confirmed that they always require face-to-face customer identification for initial transactions except where allowed by Section 13 of the AML/CFT Law. Article 13(6) of Directive is implemented to the extent of requiring identification. There is no requirement in respect of new or developing technologies that might favour anonymity.
Recommendations and Comments	-

10.	Third Party Reliance
Art. 15 of the Directive	The Directive permits reliance on professional, qualified third parties from EU Member States or third countries for the performance of CDD, under certain conditions.
FATF R. 9	Allows reliance for CDD performance by third parties but does not specify particular obliged entities and professions which can qualify as third parties.
Key elements	What are the rules and procedures for reliance on third parties? Are there special conditions or categories of persons who can qualify as third parties?
Description and Analysis	The Czech Republic implemented Art. 15 of the 3AMLD to the Section 11 of the AML Act and specified particular obliged entities and professions which can be qualified as third parties (Section 11(1) of the AML Act). These third parties can be credit or financial institutions or foreign credit or financial institution (with the exception of a person licensed to perform foreign currency exchange, a holder of a postal licence, a payment institution whose activity consists usually of providing payment services which such transfer of funds where neither the payer, nor the payee use any account with the payment service provider of the payer, and a payment service provider of small extent).
Conclusion	In terms of Section 11 (1) of the AML/CFT Law obliged entities can make third party reliance in respect of institutions located in the territory of a country, which enforces equivalent identification measures. The conditions are specified in Section 11 (2) of the AML/CFT Law.
Recommendations and Comments	-

11.	Auditors, accountants and tax advisors
Art. 2 (1)(3)(a) of the Directive	CDD and record keeping obligations are applicable to auditors, external accountants and tax advisors acting in the exercise of their professional activities.
FATF R. 12	CDD and record keeping obligations 1. do not apply to auditors and tax advisors; 2. apply to accountants when they prepare for or carry out transactions for their client concerning 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 (2004 AML/CFT Methodology criterion 12.1(d)).
Key elements	The scope of the Directive is wider than that of the FATF standards but does not necessarily cover all the activities of accountants as described by criterion 12.1(d). Please explain the extent of the scope of CDD and reporting obligations for auditors, external accountants and tax advisors.
Description and	The Czech Republic implemented the Art. 2 of the 3AMLD.

Analysis	According to the Section 2(1e) auditors, tax advisors and chartered accountants are obliged entities and they have to apply CDD measures according to Section 9 and to keep records according to Section 16 of the AML Act.
Conclusion	Auditors, external accountants and tax advisors acting in the exercise of their professional activities (except as provided in Section 26 of the AML/CFT Law - ie during the representation of the customer in court, or in connection with court proceedings, including the giving of advice to instigate or avoid such proceedings) are required to carry out CDD and keep necessary documentation as per other obliged entities under the AML/CFT Law.
Recommendations and Comments	-

12.	**High Value Dealers**
Art. 2(1)(3)e) of the Directive	The Directive applies to natural and legal persons trading in goods where payments are made in cash in an amount of €15000 or more.
FATF R. 12	The application is limited to those dealing in precious metals and precious stones.
Key elements	The scope of the Directive is broader. Is the broader approach adopted in your jurisdiction?
Description and Analysis	The Czech Republic has adopted the broader approach. According to Section 2 (2d) of the AML Act the obliged entity is also an entrepreneur receiving payments in cash in an amount of or exceeding €15,000. A payment in commodities of high value, especially precious metals or precious stones, shall be regarded as a payment in cash (Section 54(4).
Conclusion	Act 254/2004 prohibits payment in cash above €15,000 except as exempted under the same act (in respect of payment of taxes, charges etc, payments in respect of employment, pension, insurance premium and claims, those designated as notarial deposits as well in times of crisis conditions. Crisis conditions are defined in the act No. 240/2000 Coll., on Crisis Management. as exceptional incident (such as disaster), violation of critical infrastructure or other danger, that lead to declaration of emergency state, emergency conditions. Section 2 (2) (d) requires an entrepreneur to become an obliged entity for AML/FT purposes in respect of receipt of payments in cash in an amount of or exceeding EUR 15,000. Thus, the requirement for reporting payments made in cash in an amount of €15,000 or more is not limited to those dealing in precious metals and precious stones.
Recommendations and Comments	-

13.	**Casinos**
Art. 10 of the Directive	Member States shall require that all casino customers be identified and their identity verified if they purchase or exchange gambling chips with a value of €2 000 or more. This is not required if they are identified at entry.
FATF R. 16	The identity of a customer has to be established and verified when he or she engages in financial transactions equal to or above €3 000.
Key elements	In what situations do customers of casinos have to be identified?

	What is the applicable transaction threshold in your jurisdiction for identification of financial transactions by casino customers?
Description and Analysis	The Czech Republic implemented Art. 10 of the 3AMLD to the Section 36(2) of the act no. 202/1990 Coll., on lotteries and other similar games, as amended by act no. 254/2008 Coll. All casinos are obliged to identify its customers. The scope of identification is based on the AML Act.
Conclusion	The identity of customers is required to be established and verified upon entry to a casino. Whereas, the evaluators were informed by obliged entities that they also require identification when customers purchase or exchange gambling chips, according to the authorities there is no need for such verification. Indeed, such requirement is not envisaged in the provisions under Act 202/1990 Coll., and. 254/2008 Coll.
Recommendations and Comments	-

14. Reporting by accountants, auditors, tax advisors, notaries and other independent legal professionals via a self-regulatory body to the FAU	
Art. 23 (1) of the Directive	This article provides an option for accountants, auditors and tax advisors, and for notaries and other independent legal professionals to report through a self-regulatory body, which shall forward STRs to the FAU promptly and unfiltered.
FATF Recommendations	The FATF Recommendations do not provide for such an option.
Key elements	Does the country make use of the option as provided for by Art. 23 (1) of the Directive?
Description and Analysis	The Czech Republic has used this option. The auditors, licensed executors, tax advisors, lawyers and public notaries report through a self-regulatory bodies which forward STRs to the FAU. (Section 26-27 of the AML Act.)
Conclusion	The Czech authorities have taken up the option to allow accountants, auditors, tax advisors, lawyers and public notaries to report through their self-regulatory body which forward the submitted STRs to the FAU following verification.
Recommendations and Comments	-

15. Reporting obligations	
Arts. 22 and 24 of the Directive	The Directive requires reporting where an institution knows, suspects, or has reasonable grounds to suspect money laundering or terrorist financing (Art. 22). Obliged persons should refrain from carrying out a transaction knowing or suspecting it to be related to money laundering or terrorist financing and to report it to the FAU, which can stop the transaction. If to refrain is impossible or could frustrate an investigation, obliged persons are required to report to the FAU immediately afterwards (Art. 24).
FATF R. 13	Imposes a reporting obligation where there is suspicion that funds are the proceeds of a criminal activity or related to terrorist financing.
Key elements	What triggers a reporting obligation? Does the legal framework address *ex ante* reporting (Art. 24 of the Directive)?
Description and Analysis	These provisions were implemented into Sections 18 and 20 of the AML Act. In Section 18 the STR is specified and Section 20 provides for suspension of a transaction. If there is a danger that an immediate execution of a transaction would hamper or substantially impede securing of proceeds of crime or money intended to finance terrorism, the obliged entity may execute the customer's transaction recognised as suspicious no earlier than 24 hours after the Ministry had received the suspicious transaction report. The obliged entity shall make sure that the respective assets will not be handled in violation of this Act. The obliged entity shall inform the Ministry in the suspicious transaction report that the transaction had been suspended. The Ministry could prolong this period to 72 hours. Should the Ministry file a criminal complaint to the law enforcement body, the obliged entity shall perform the transaction in 3 calendar days after the criminal complaint had been filed unless the law enforcement bodies have decided to seize such transaction. The Ministry shall inform the obliged entity of the criminal complaint prior to the expiration of the period.

	In practice, attempted transactions are reported by obliged entities to the FIU - with 54 STRs attempted transactions reported.
Conclusion	Section 20 of the AML/CFT Law provides that should there be a danger that an immediate execution of a transaction would hamper or substantially impede securing of proceeds of crime or money intended to finance terrorism, obliged entity may suspend the transaction and only execute it after 24 hours after sending an STR to the Ministry.
Recommendations and Comments	-

16.	**Tipping off (1)**
Art. 27 of the Directive	Art. 27 provides for an obligation for Member States to protect employees of reporting institutions from being exposed to threats or hostile actions.
FATF R. 14	No corresponding requirement (directors, officers and employees shall be protected by legal provisions from criminal and civil liability for "tipping off", which is reflected in Art. 26 of the Directive)
Key elements	Is Art. 27 of the Directive implemented in your jurisdiction?
Description and Analysis	This provision is specified in Section 18(3) of the AML Act. The suspicious transaction report shall not reveal any information about the obliged entity's employer or contractor who had disclosed the suspicious transaction. See also Section 38 of the AML Act (Obligation of Confidentiality).
Conclusion	Article 27 of the EU Directive is indirectly implemented through the requirement (in Section 18(3) that information regarding who disclosed the STR is prohibited. However, in the event of criminal proceedings, the evaluators were informed that such persons may be required to provide evidence in court although this exemption is not specified under the AML/CFT Law. Furthermore, Section 34 prohibits the obliged entities and their employees, employees of the Ministry, employees of other supervisory authorities as well as natural persons working for an obliged entity, the Ministry or another supervisory authority on a basis of a contract other than an employment contract from disclosing the facts relating to suspicious transaction reports and investigation, the steps taken by the Ministry or the obligation to report a suspicious transaction.
Recommendations and Comments	-

17.	**Tipping off (2)**
Art. 28 of the Directive	The prohibition on tipping off is extended to where a money laundering or terrorist financing investigation is being or may be carried out. The Directive lays down instances where the prohibition is lifted.
FATF R. 14	The obligation under R. 14 covers the fact that an STR or related information is reported or provided to the FAU.
Key elements	Under what circumstances are the tipping off obligations applied? Are there exceptions?
Description and Analysis	These provisions are implemented in Section 38 of the AML Act. The obliged entities and their employees, employees of the Ministry, employees of other supervisory authorities as well as natural persons working for an obliged entity, the Ministry or another supervisory authority on a basis of a contract other than an employment contract shall

	be obliged to keep confidential the facts relating to suspicious transaction reports and investigation, the steps taken by the Ministry or the obligation to report a suspicious transaction. The exceptions are specified in Section 39 of the AML Act.
Conclusion	The exceptions included under Section 39 are broader than those laid down by the EU Directive. Exemption from confidentiality is thus extended *inter alia* in respect of a. the competent financial directorate or the General Directorate of Customs when there are circumstances that may be material to the jurisdiction of the territorial fiscal authorities or customs authorities; b. administrative authorities performing tasks in the system of certification of raw diamonds subject to another legal instrument; c. an authority mandated by another law to decide on the revocation of a licence for business or other independent gainful activity upon the lodging of a motion filed by the Ministry, d. a financial arbitrator deciding, according to another law, in a dispute of the claimant against an institution, e. a person who could raise a claim for compensation for damages incurred as a result of the implementation of the AML/CFT Law (subject to certain conditions), f. a court adjudicating civil law disputes concerning a suspicious transaction or a claim for compensation for damages incurred as a result of complying with obligations under the Act, g. the National Security Office, Ministry of Interior or an intelligence service in the process of a clearance procedure in accordance with other legal instrument, h. the competent intelligence service, provided the information is material for the meeting of the statutory tasks specified for the intelligence service. Some of these exemptions appear to go beyond what is required for AML/FT requirement for investigation and court procedures as contemplated under Article 28 of the Directive. According to the Czech authorities, the above mentioned exemptions reflect the requirements of the national law. However, some exemptions seem to compromise the AMLCFT regime, e.g. (e) a person who could raise a claim for compensation for damages incurred as a result of the implementation of the AML/CFT Law (subject to certain conditions).
Recommendations and Comments	The Czech authorities should consider reviewing the exemption from confidentiality to clarify when and under what circumstances the exemptions are applicable to ensure that there is no tipping of that can compromise ML/FT investigation. Moreover, it should include a provision implementing Article 28 (6) of the EU Directive 2005/60/EC to allow an obliged entity to dissuade a customer from engaging in ML/FT.

18.	**Branches and subsidiaries (1)**
Art. 34 (2) of the Directive	The Directive requires credit and financial institutions to communicate the relevant internal policies and procedures where applicable on CDD, reporting, record keeping, internal control, risk assessment, risk management, compliance management and communication to branches

	and majority owned subsidiaries in third (non EU) countries.
FATF R. 15 and 22	The obligations under the FATF 40 require a broader and higher standard but do not provide for the obligations contemplated by Art. 34 (2) of the EU Directive.
Key elements	Is there an obligation as provided for by Art. 34 (2) of the Directive?
Description and Analysis	Art. 34(2) of the 3AMLD was implemented into Section 25(4) of the AML Act. A credit and financial institution shall, in its branches and subsidiaries which it has a controlling interest in, located in countries that are not members of the European Union or the European Economic Area, apply the practice of customer due diligence and record keeping in the scope that is at the least required by the law of the European Communities. To this end, it shall provide them with relevant information of the practice and procedures to be applied.
Conclusion	The EU Directive obligation as provided in Article 34 (2) is implemented via Section 25(4) of the AML/CFT Law.
Recommendations and Comments	

19.	**Branches and subsidiaries (2)**
Art. 31(3) of the Directive	The Directive requires that where legislation of a third country does not permit the application of equivalent AML/CFT measures, credit and financial institutions should take additional measures to effectively handle the risk of money laundering and terrorist financing.
FATF R. 22 and 21	Requires financial institutions to inform their competent authorities in such circumstances.
Key elements	What, if any, additional measures are your financial institutions obliged to take in circumstances where the legislation of a third country does not permit the application of equivalent AML/CFT measures by foreign branches of your financial institutions?
Description and Analysis	The Czech Republic implemented Art. 31(3) of the 3AMLD into the Section 25(4) of the AML Act. If the law of the country does not allow for the application of the same practice as in the other countries, the institution informs the Ministry of Finance; in such a case, the obliged entity adopts appropriate supplementary measures to effectively mitigate the risk of exploitation for the legitimisation of proceeds of crime or financing of terrorism, and to prevent the transfer of these risks to the territory of the Czech Republic and other member states of the European Union or the European Economic Area.
Conclusion	Section 25 (4) of the AML/CFT Law requires the taking of supplementary measures in case where legislation of a third country does not permit the application of equivalent AML/CFT measures. The supplementary measures are not specified in the AML/CFT Law and only partially and indirectly captured within Decree 281/2008 Coll. as a result of the risk classification of clients and related procedures. It is only by extension that the Decree can be applied to subsidiaries/branches based in third countries which do not apply EU equivalent legislation.
Recommendations and Comments	Although currently there are no subsidiaries or branches of Czech institutions that are located outside the EU, the Czech authorities should still issue specific guidelines in respect of the supplementary measures to be taken by credit and financial institutions in respect of

	subsidiaries/branches based in third countries which do not apply EU equivalent legislation.

20.	**Supervisory Bodies**
Art. 25 (1) of the Directive	The Directive imposes an obligation on supervisory bodies to inform the FAU where, in the course of their work, they encounter facts that could contribute evidence of money laundering or terrorist financing.
FATF R.	No corresponding obligation.
Key elements	Is Art. 25(1) of the Directive implemented in your jurisdiction?
Description and Analysis	These provisions were implemented into Section 35 (1,5) of the AML Act. The Ministry of Finance acts as the supervisory authority performing the administrative supervision of the compliance with obligations set out in the AML Act on the part of the obliged entities. The compliance with obligations set out in the AML Act may be also supervised by the Czech National Bank in respect of persons subject to its supervision; administrative authorities with powers to supervise the compliance with the legislation regulating lotteries and other similar games, and in respect of holders of licences to operate betting games; the Czech Trade Inspection in respect of persons listed in Section 2(1j, k) of the AML Act. If the supervisory authority finds facts that may be related to the legitimisation of proceeds of crime or financing of terrorism, it has to immediately inform the Ministry of Finance of these findings and provide it with all necessary information.
Conclusion	Section 35 (5) empowers supervisors under Section 35 (1) [the Czech National Bank, the administrative authorities with powers to supervise the compliance with the legislation regulating lotteries and other similar games, and in respect of holders of licences to operate betting games listed) and the Czech Trade Inspection in respect of persons listed in Section 2(1j) and (1k)] of the AML/CFT Law to inform the FAU regarding the identification data of the disclosed person, identification data of all the parties to the transaction, information on all relevant features of the transaction and any other facts which may be important for an analysis of the suspicious transaction and potential application of measures against legitimisation of proceeds from crime and financing of terrorism. Section 26 (3) allows an STR to be made to the Chamber of Auditors, Chamber of Licensed Executors and Chamber of Tax Advisors (as applicable) while Section 27 extends the obligation to be made to Czech Bar Association, Chamber of Notaries (as applicable). The section requires these bodies to transmit properly filled STRs submitted by the relevant obliged professionals to the Ministry. There is no provision for these bodies to carry out inspections on these professional and consequently no obligation to inform the FAU where, in the course of their work, they encounter facts that could contribute to evidence of ML/FT. FAU advised that chartered accountants report independently.
Recommendations and Comments	Section 35 of the AML/CFT Law could be extended to the Chamber of Auditors; to the Chamber of Licensed Executors; to the Chamber of Tax Advisors; to the Czech Bar Association and to the Chamber of Notaries.

21.	Systems to respond to competent authorities
Art. 32 of the Directive	The Directive requires credit and financial institutions to have systems in place that enable them to respond fully and promptly to enquires from the FAU or other authorities as to whether they maintain, or whether during the previous five years they have maintained, a business relationship with a specified natural or legal person.
FATF R.	There is no explicit corresponding requirement but such a requirement can be broadly inferred from Recommendations 23 and 26 to 32.
Key elements	Are credit and financial institutions required to have such systems in place and effectively applied?
Description and Analysis	Art. 32 of the 3 AMLD was implemented into Section 25(6) of the AML Act. The time period is even 10 years. Upon request from the Ministry and by the deadline granted by the Ministry, the credit or financial institution shall disclose the information whether it maintains, or has in the previous 10 years maintained, commercial relations with a specific natural or legal person, whom it was obliged to identify, and any details of the nature of the relations. To this end, the credit or financial institution shall implement an effective system, whose scope is commensurate to the size of the institution and the nature of its business operations.
Conclusion	Section 25 (6) of the AML/CFT Law specifically requires, within the concept of proportionality, credit or financial institution to implement an effective system in order to disclose to the FAU information whether it maintains, or has maintained, in the previous 10 years, commercial relations with a specific natural or legal person, whom it was obliged to identify, and any details of the nature of the relations. This is complemented by a requirement to have internal procedures for reporting of data kept by the obliged entities to the relevant authorities as well a legal obligation to respond within the time stipulated by the authority (Section 24 of the AML/CFT Law). The obligation for maintaining records is ten years.
Recommendations and Comments	-

22.	Extension to other professions and undertakings
Art. 4 of the Directive	The Directive imposes a *mandatory* obligation on Member States to extend its provisions to other professionals and categories of undertakings other than those referred to in A.2(1) of the Directive, which engage in activities which are particularly likely to be used for money laundering or terrorist financing purposes.
FATF R. 20	Requires countries only to consider such extensions.
Key elements	Has your country implemented the mandatory requirement in Art. 4 of the Directive to extend AML/CFT obligations to other professionals and categories of undertaking which are likely to be used for money laundering or terrorist financing purposes? Has a risk assessment been undertaken in this regard?
Description and Analysis	The scope of obliged entities is specified in Section 2 of the AML Act. The Czech Republic has fully implemented the Art. 2(1) of the 3AMLD and furthermore extend the application of the AML Act to several other obliged entities (e.g. persons licensed to trade in items of cultural heritage, items of cultural value, or to act as intermediary in such services; persons licensed to trade in used goods, act as intermediary in

	such trading, or receive used goods in pawn).
Conclusion	The FAU has not carried out a formal risk assessment to determine which profession should be captured under the AML/CFT obligations. The evaluators were informed that internet casinos are not permissible in the Czech Republic. On the other hand, the AML/CFT Law extends AML/CFT obligations to persons licensed to trade in items of cultural heritage, items of cultural value, or to act as intermediary in such services; persons licensed to trade in used goods, act as intermediary in such trading, or receive used goods in pawn as well as entrepreneurs in receipts of payments in cash exceeding €15,000. Thus, the *mandatory* obligations of the EU Directive are captured as the AML/CFT has been extended to all cash transactions above €15,000.
Recommendations and Comments	It is recommended that a formal risk assessment is carried out to determine which professional category, other than those specified in Section 2 of the AML/CFT Law , AML/FT obligations are applicable and apply the obligations to identified professional categories even for transactions under €15,000

23.	**Specific provisions concerning equivalent third countries?**
Art. 11, 16(1)(b), 28(4),(5) of the Directive	The Directive provides specific provisions concerning countries which impose requirements equivalent to those laid down in the Directive (e.g. simplified CDD).
FATF R.	There is no explicit corresponding provision in the FATF 40 plus 9 Recommendations.
Key elements	How, if at all, does your country address the issue of equivalent third countries?
Description and Analysis	These provisions were implemented into Sections 13(1b), 11(1b), 39(2a) of the AML Act and also to the Section 6(1h) of the AML Act. The Czech Republic has chosen the opposite approach: we public the list of risk countries on web sites of the Ministry of Finance.
Conclusion	There is no specific provisions in the AML/CFT Law that requires obliged entities to give special attention to countries that do not sufficiently apply the FATF Recommendations. Instead, reliance is placed on a list published by the FAU on its web site naming non-equivalent countries which are referred to by obliged entities. These lists are widely referred to by obliged entities. Some obliged entities informed that they supplement this list with the names of further countries in line with (foreign) group policy. The CNB Decree 281/2008 Coll however requires credit and financial institutions to take into consideration in its risk profile the fact that a country is non-equivalent in terms of AML/CFT. It also requires that credit and financial institutions shall ascertain and retain risk assessment information, check the validity and completeness of information and update it and pay special attention to transactions. These obligations are however not applicable to other obliged entities other than credit and financial institutions.
Recommendations and Comments	It is recommended that the FAU issues guidelines to obliged entities to elaborate on the specific attention requirements for non-equivalent countries.

APPENDIX I

Relevant EU Texts

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.

Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons.

Excerpt from Commission Directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of "politically exposed person and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

Article 2 of Commission Directive 2006/70/EC (Implementation Directive):

Politically exposed persons

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;
(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

VI. LIST OF ANNEXES*

1. Details of all bodies met during the on-site visit and visit programme.
2. Czech Penal Code, Act N° 40/2009 Coll., English translation of the articles 216, 217, 311, 367, 368 and 410.
3. Czech Penal Code, Act N° 40/2009 Coll., English translation of the articles art. 42 and 135.
4. Czech Civil Code, exergues Proceedings in matters concerning the Companies Register, Section 200; Czech Commercial Code, exergues Companies Register Sections 27-38 and Decree on the Ministry of Justice N. 562/2006 Coll. on Digitalisation of the Companies Register.
5. Czech National Bank, Act N° 6/1993 Coll.
6. Banks, Act N° 21/1992 Coll. (20 December 1991).
7. Selected measures against legitimisation of proceeds of crime and financing of terrorism (AML/CFT Act), Act N° 253/2008 Coll. (5 June 2008).
8. Carrying Out of International Sanctions, Act N° 69/2006 Coll. (3 February 2005).
9. Governing State Inspection, Act N° 552/1991 Coll. (6 December 1991).
10. Reporting by credit unions of the CNB, CNB Provision N° 1/2010 Coll. (19 October 2010).
11. Applications, Approval of Persons and the Manner of Proving Professional Qualifications, Trustworthiness and Experience of Persons, and on the Minimum Amount of Funds to be Provided by a Foreign Bank to its Branch. CNB Decree N° 233/2009 Coll. (21 July 2009).
12. Prudential rules for banks, credit unions and investment firms, CNB Decree N° 123/2007 Coll., as amended by Decree No. 282/2008 Coll. (divided into parts, with links to official information and to questions and answers).
13. Plan of Measures in the Fight against Terrorism, annexed to Cabinet Decree No. 1466 of 16 November 2005 regarding National Action Plan to Combat Terrorism (2005-2007). "Chapter Three: International Commitments of the Czech Republic and Internal Legislative Arrangement Related to the Fight against Terrorism, with Special Regard to the Agenda of the Fight against Financing Terrorism".
14. References to guidance on various issues like: Collective investment; regulated markets, settlement and market abuse; issue and registration of securities, takeover bids and squeeze-outs; investments firms and investment intermediaries.

** The listed Annexes are presented in a separate documents MONEYVAL(2011)1ANN*