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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Select Committee of Experts on the Evaluation
of Anti-Money Laundering Measures
(PC-R-EV)

FIRST MUTUAL EVALUATION REPORT ON
CZECH REPUBLIC

SUMMARY

Views expressed do not represent official views of the Commission of the European Communities.

1. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited the Czech Republic between 18-21 May 1998.
2. As a crossroads for commerce, and the flow of people, the Czech Republic attracts organised crime groups from Eastern Europe, for the transit of prohibited goods, substances and criminally derived proceeds. Domestic organised crime groups are also developing. While measures to reduce cash payments are being continually adopted, the Czech economy is still heavily cash oriented. This, coupled with the country's numerous banking and non-banking financial institutions, make it vulnerable at the placement, layering and integration stages. Possibilities for laundering at these stages also arise through the numerous bureaux de change and through insurance companies. Anonymous (bearer) passbooks may be held by residents and denominated in local currency only. Approximately 9 million have been issued by the Czech banks.
3. The anti-money laundering priorities of the Czech authorities are prevention; detection and prosecution of cases; and meeting obligations from international instruments. As a result Act N° 61/1996 (Measures against legalisation of proceeds from crime) came into force on 1 July 1996. This provides *inter alia* for disclosure reports by banks and other financial institutions of «unusual transactions» to the appropriate department in the Ministry of Finance, which was designated by decree as the FAU. It defines «legalisation of proceeds» in substantially similar terms to those used to define laundering offences in the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 1990 Council of Europe Convention on laundering search, seizure and confiscation of the proceeds of crime (the Strasbourg Convention) – although Law 61/1996 does not create money laundering offences. The Law *inter alia* imposes customer identification obligations on all financial institutions when entering into transactions exceeding CZK 500,000 (approximately \$ US 156 25), although the Banking Act has a stricter requirement of customer identification when conducting a transaction in excess of CZK 100,000 (approximately \$ US 3125). The law also provides for maintenance of customer identification data for a period of 10 years; a requirement to delay execution of a customer's payment for 24 hours from the receipt by the FAU of an unusual transaction report if there is a danger that such an action will impede the process of securing proceeds (which can be extended by a further 48 hours). The law, in line with international standards, also provides that any liability arising from possible claims for damages shall be borne by the state. The law also requires all financial institutions to draft and apply a system of internal rules, procedures and controls to prevent money laundering. A part of this system is the appointment of an individual for securing a regular contact with the Ministry of Finance, although this contact person does not have all the characteristics of a Money Laundering Compliance officer, as envisaged by the FATF recommendations.
4. The Czech Republic has shown its commitment to the anti-money laundering effort by signing and ratifying both the Vienna and Strasbourg conventions. Additionally it has also ratified the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters. Bilateral Mutual Legal Assistance Treaties are being negotiated with other countries.
5. The Czech authorities identified S. 251, 251a and 252 Penal Code as money-laundering offences. Their generic heading is «participation». All these offences have a predicate simply based on criminal activity in wide terms. The first offence, which may be apt for the prosecution of some money laundering cases, none-the-less appeared to the examiners more like «handling and receiving» stolen goods. The examiners were advised that in 1997 1967 defendants were charged under Section 251 and 1129 were convicted, though how many cases involved money

laundering is unclear. S. 251a was introduced in 1995 and appears money laundering specific though it is less clear in its language so far as money laundering is concerned than Act 61/1996. In 1995, 1996 and 1997 18,7 and 14 defendants were convicted under S. 251a. The criminal intent can be inferred from surrounding circumstances, and though the Czech authorities are satisfied that a person who is willfully blind to the origin of proceeds could be successfully prosecuted under both S. 251 or 251a the examiners remain uncertain. S. 252 was described as capable of punishing money laundering through negligence. 44 defendants were convicted under this provision in 1997. These three offences require close examination to establish how far they provide a complete prosecutorial regime. While much may depend on the interpretation put on them by the courts the examiners consider that their unease could be eliminated if the money laundering offence (or offences) was more closely based on the definition of « legalisation of proceeds » as used in Act 61/1996. One comprehensive piece of legislation, specifically tailored to deal with all aspects of the criminal offence of money laundering (including definition, punishment and intent and which puts beyond doubt that it does not matter where the predicate offence is committed and possibly capturing self laundering) would give greater consistency, certainty and cohesion to the criminal framework.

6. The legal provisions identified dealing with confiscation and provisional measures appear to have limitations. Their use is uncommon domestically. In particular, rather than forfeiture of property being viewed, as it appears to be, as an alternative form of punishment, it should be more specifically directed as a measure additional to punishment, aimed at confiscating the proceeds of crime. Clearer provision could also be made for value confiscation.
7. While there is much in Law 61/1996 to be commended it does not provide a completely comprehensive preventive regime against the use of the financial sector for money laundering. Further work supplementing existing provisions (such as dealing with money laundering contact persons) are necessary to bring practice fully into line with FATF recommendations. Further preventive legal measures are also required particularly covering: record keeping requirements; education and training; provision to establish the identity of the beneficial owner; provision to ensure that professional secrecy does not create obstacles in disclosing the beneficiary of an account or a transaction; and provision to enable reporting of rejected transactions. Inconsistencies in threshold limits for customer identification ought to be regularised. The Czech Republic should also stop issuing bearer passbooks and gradually convert existing ones into normal accounts, to bring it fully into line with relevant FATF recommendations and the EC Directive.
8. Additionally, a particular need, which the present law generally lacks, is provision for competent supervisory bodies explicitly to deal with money laundering. Competent Supervisory Authorities such as the Czech National Bank (CNB) or the Securities Commission should be assigned responsibility for checking and assessing the level of compliance with the provisions of Act 61/96 by persons falling under their responsibility. Where such authorisation is lacking provision should be made. Thereafter those Supervisory Authorities should introduce audit and inspection programmes of systems and procedures to combat money laundering. They should issue guidance notes, in consultation with the FAU, as to warning signs and indicators of unusual transactions. These will act as educational tools to assist early recognition and reporting of unusual transactions.
9. The number of international instruments signed and ratified within a short period of time is admirable, but the domestic legal provisions enabling the Czech Republic to implement its international commitments leave room for some uncertainty.

10. The examiners consider it would be helpful for the Czech authorities to take stock of the current legal framework in order to identify all the potential difficulties and consider making adjustments.
11. In the anti-money laundering effort the establishment of the FAU is a positive strength. It is part of the Egmont Group and has access to information on its secure web. Since the FAU's creation to the time of the completion of the mutual evaluation questionnaire it had received 1139 unusual transaction reports (1062 from banks, 33 from non bank financial institutions and 44 from non-financial institutions). In the previous 1½ years, of the reports received, only 300 had been finalised, and, of these, only 15 had been sent to the police for investigation. At the time of the on-site visit the backlog was down to 350 cases. The FAU has a firm grasp on its problems but requires more resources, particularly as it needs also to engage in training, address the issue of feedback to the financial institutions, and address the low level of unusual transaction reports from financial institutions and the uneven spread of reporting from banks. Its difficulties in analysing unusual transaction reports are considered systemic. Its analysis is limited because some relevant information is presently unavailable. The FAU needs access to tax and customs information. Its effectiveness could be improved if it combined financial expertise with law enforcement expertise (to help manage intelligence information and prioritise cases).
12. The various bodies currently involved in the anti-money laundering effort are fragmented. Greater co-ordination and awareness raising of the shared money laundering threat across all sectors would improve the system-perhaps through the development of a meaningful anti-money laundering co-ordination body, with a strategic overview of anti-money laundering policy and issues.
13. By addressing these issues now the Czech Republic can further demonstrate its commitment to the fight against money laundering and the creation of an effective regime to combat it.

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