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**DETAILED ASSESSMENT REPORT ON ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM**

# Czech Republic

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INTERNATIONAL MONETARY FUND
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THE WORLD BANK
FINANCIAL SECTOR VICE PRESIDENCY

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## ACRONYMS

| | |
|---|---|
| AML | Anti-Money Laundering |
| AML Act | Act No. 61 of February 15, 1996 on Selected Measures against Legitimization of Proceeds from Criminal Activities |
| CBA | Czech Banking Association |
| CDD | Customer Due Diligence |
| CFT | Combating the Financing of Terrorism |
| CNB | Czech National Bank |
| CSC | Czech Securities Commission |
| CUSA | Credit Union Supervisory Authority |
| CZK | Czech Koruna |
| FATF | Financial Action Task Force on Money Laundering |
| FAU | Financial Analytical Unit |
| FIU | Financial Intelligence Unit |
| FT | Financing of Terrorism |
| IAE | Independent AML/CFT Expert |
| KYC | Know-Your-Customer |
| ML | Money Laundering |
| MOU | Memorandum of Understanding |
| OPDT | Office for Personal Data Protection |
| STR | Suspicious Transactions Report |
| UCCFC | Unit for Combating Corruption and Financial Crime of the Criminal Police and Investigation Service |
| UNSCR | UN Security Council Resolution |

# I. OVERVIEW

## A. General

### Information and methodology used for the assessment

1. At the request of the Czech authorities, a joint IMF/World Bank team conducted a detailed assessment of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of the Czech Republic. The field work for the assessment took place May 26 to June 6, 2003. The assessors included staff of the IMF, the WB and an Independent AML/CFT Expert (IAE) not under the supervision of IMF and WB staff who was selected from a roster of experts for the assessment of implementation of criminal law enforcement measures.[1] The team consisted of Ms. Maud Bökkerink (IMF), Mr. Alain Damais, Mmes. Bess Michael and Tracy Tucker (all World Bank), and an independent expert Mr. Boudewijn Verhelst (Deputy Director of the Belgium financial intelligence unit, Cellule de Traitement des Informations Financières—Cel voor Financiële Informatieverwerking, CTIF-CFI).

2. The team reviewed the relevant AML/CFT laws and regulations, and supervisory and regulatory systems in place to deter money laundering (ML) and financing of terrorism (FT) among prudentially regulated financial institutions, which included banks, insurance companies, securities companies, credit unions and investment companies.[2]

3. Information used for the assessment was obtained from the authorities. The responses by the authorities to the criterion-by-criterion worksheet, and copies of the relevant laws and regulations in place constituted the basis of this report. In addition, prior to the IMF/WB AML/CFT Assessment, the Czech Republic had participated in two mutual evaluations by the P-CR-EV (currently MONEYVAL) in 1998 and 2001.

4. The team met with representatives from the Czech National Bank (CNB), the Financial Analytical Unit (FAU), the Czech Securities Commission (CSC), the Office of

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[1] Throughout this report, portions of the assessment attributable to the IAE are shown in italicized text.

[2] Financial institutions as defined in the AML Act are banks and branches of foreign banks, cooperative savings and credit unions, investment companies and investment funds, pension funds, securities traders, entities responsible for managing the securities' market, insurance companies, The Securities Center, and other legal persons certified to keep parts of The Securities Center database and perform its other activities, legal or physical persons operating gambling houses, casinos, betting shops, or auction halls (except for enforcement of court rulings), real estate agencies, entities offering financial leasing or other types of financing, foreign exchange bureaus, facilitators of cash or wire transactions of money, savings-plan agents or insurance or re-insurance agents.

State Supervision in Insurance and Pension Funds and the Lottery Supervision within the Ministry of Finance, the Credit Union Supervisory Authority (CUSA), the Czech Banking Association (CBA), the Czech Insurance Association, the Association of Securities Traders, the Union of Investment Companies, the Ministry of the Interior, the Ministry of Foreign Affairs, the Ministry of Justice, the Office of the Public Prosecutor, Police authorities, and the General Directorate of Customs. The assessment team also met with representatives from individual banks and auditing firms.

5. The assessment team highly appreciates the time and very high degree of cooperation received from all participants, and would like to thank in particular the Ministry of Finance and the Czech National Bank for the commitment of their substantial time to the assessment team and for facilitating the necessary meetings.

**General situation of money laundering and financing of terrorism**

6. *Criminal activity in the Czech Republic that generates major sources of illegal proceeds is comparable to criminal activity in other countries in transition. Economic crime (e.g., fraud and asset stripping) that is linked to the privatization process is still a major concern. The authorities also mentioned tax offences as significant crime areas. Organized crime involving drug trafficking and counterfeiting of goods is also active in the Czech Republic with links to the region and Asia*.

7. *The Czech Republic is not yet considered to be a prime target for terrorist-related activity and terrorist financing. Nonetheless, government authorities are aware of the potential threat of terrorist-related funds infiltrating the financial system and are ready to act upon it*.

## B. Overview of Measures to Prevent Money Laundering and Terrorism Financing

8. **The authorities have made very impressive progress in the past few years in bringing the AML regime into compliance with both European and international standards.** Anti-money laundering provisions can be traced back to 1996, with the enactment of Act No. 61 of February 15, 1996, on Selected Measures Against Legitimization of Proceeds from Criminal Activities (hereafter, AML Act).

9. **Since that time, the authorities have undertaken further important steps towards completing the legal and institutional framework to fight money laundering, and have begun concrete implementation of the AML regime in the various relevant financial sectors.** Further efforts by the Czech Authorities to improve the country's AML legal and institutional framework and effective supervision have resulted in the enactment of major legislation, including amendments to the AML Act in 2000, the Code of Criminal Procedures of 2001 regarding investigative techniques and the Criminal Code with regard to the criminalization of money laundering (No.134/2002), the Decree of the Czech Securities Commission of October 24, 2002, regarding internal organization, the Decree of the Czech National Bank (No.166/2002) regarding licensing, and the CNB Provision (No.1/September

2003) on internal management and control systems with regard to the prevention of money laundering. These new legislative and regulatory initiatives represent major progress towards meeting AML/CFT international standards. In addition, the authorities are undertaking further amendments to their AML/CFT legislation, including (i) an amendment to the AML Act of 1996 to incorporate the second European Union Directive on Money Laundering, and the reporting of financing of terrorism transactions; and (ii) the draft revision of the Czech Criminal Procedure and Criminal Code to introduce the criminal liability of legal persons, the criminal offence of terrorism financing and the enhancement of penalties for money laundering in certain circumstances.

10. **As a result of these important efforts, the government has created and designated various competent authorities to ensure the effective implementation of these laws and compliance with the FATF 40+8 recommendations.** The main institutions in the Czech Republic responsible for AML/CFT are the Financial Analytical Unit, the police, and the Office of the Public Prosecutors, which prosecutes money laundering and financing of terrorism. The Czech National Bank, the Ministry of Finance, and the Czech Securities Commission are the primary financial regulators and are responsible for or play a role in the monitoring of compliance by banks, insurance and securities dealers and intermediaries whom they regulate. Each of these bodies plays a leading role in the implementation of these laws.

11. Considering the progress made since 1996, particularly concerning introducing the offence of self-laundering, adopting the concept of suspicious transactions, requiring financial institutions to appoint AML compliance officers, enhancing customer identification and record keeping requirements, and creating special bodies or enlarging the responsibilities and powers of the existing ones to regulate, supervise and implement laws in the relevant financial sectors, **the government has demonstrated a very strong political will and commitment to meet the international standards for combating money laundering**. **The Czech Republic is playing a lead role in its region in the fight against money laundering.**

12. **There are, however, some legal issues to be resolved**. The mission noted the important draft legislative reforms that the authorities are working on at this time. Most of the issues identified by the mission in this report are being addressed by these drafts, and the mission encourages the authorities to pursue the process for the adoption of these drafts. Among the main legal issues, the scope of the money laundering offence (section 252a of the Criminal Code) appears narrower than the concept of money laundering as established by the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (the Vienna convention), the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg convention), and the UN Convention against Transnational Organized Crime (the Palermo convention). Therefore, the mission recommends that the criminal definition of money laundering be aligned with the definition contained in the aforementioned conventions. Similarly, if the measures available for securing assets in the context of a money laundering investigation or prosecution are largely consistent with

international standards, there is no provision which establishes the mandatory and systematic confiscation or forfeiture of the laundered property. This may lead to a situation where the object of the crime would not be confiscated/forfeited. Therefore, the mission would recommend that a mandatory nature to this forfeiture/confiscation regime be established.

13. *Furthermore, a major reason for concern is the total absence of any law enforcement results in terms of specific ML prosecutions, convictions and confiscations. This deficiency basically does not appear to be the result of failing legal or material resources, but the consequence of a rather persistently overcautious judicial approach and a certain hesitance to test the solidity of the AML system before the courts*.

14. The Czech Republic is currently seeking to amend its Criminal Code to allow for the imposition of criminal liability on legal persons. The Ministry of Justice is reviewing draft language that will be submitted to the Council of Ministers for their review as they consider re-codification of the Criminal Code. Adoption of this amendment would represent fundamental progress.

15. The Czech Republic has signed and ratified the Vienna Convention. The Czech Republic also signed the Palermo Convention and the UN International Convention for the Suppression of the Financing of Terrorism, however these conventions have not yet been ratified and fully implemented. The mission recommends their rapid ratification and implementation.

16. **With respect to the fight against the financing of terrorism**, **the mission recommends that the authorities introduce promptly a specific criminalization of the financing of terrorism,** as prescribed by the UN International Convention for the Suppression of the Financing of Terrorism. Further, with respect to the freezing of assets suspected of being linked to terrorism, the mission notes that the supervisors and the FAU have distributed the UN and European Union lists of terrorist individuals and organizations to financial institutions. However, it appears that the financial institutions are not yet able to freeze funds or property of terrorists and of those who finance terrorism and terrorist organizations in accordance with the relevant UN Security Council Resolutions (UNSCRs). Therefore, the mission recommends that the authorities expeditiously amend their legislation to allow for unconditional freezing of funds and property in accordance with the UNSCRs.

17. The financial sector offers a wide range of financial services that include banking, insurance, securities, investment management, and credit services. There are 26 banks and 9 branches of foreign banks, 224 bureaux de change licensed by CNB for selling of foreign currency and 35 money transmission service providers, 39 insurance companies engaged in either life or non-life insurance business, 13 active pension funds, and 47 credit unions. The securities sector of the Czech Republic has approximately 81 securities dealers (with around 1620 licensed individual brokers) and 57 investment companies. As required by the AML Act, all financial institutions have appointed a contact person who is in charge of coordination and information exchange with the FAU and the compliance with the reporting

duty. In most financial institutions this compliance officer can decide if a transaction will be filed with the FAU.

18. **The FAU was established in 1996 as part of the Ministry of Finance. The scope of the FAU's responsibilities goes beyond the core duties of receiving, analyzing, and disseminating suspicious transaction reports.** The FAU is also responsible for the supervision and enforcement of compliance by financial institutions with AML/CFT requirements, including suspicious reporting obligations and financial institutions' internal procedures and control measures against ML and FT. The FAU has been designated as the main authority responsible for auditing compliance by financial institutions with the AML Act. In addition, since 2000 the CNB, the CSC and the CUSA also have a function under the AML Act to audit compliance for banks, investment companies, investment funds, pension funds, securities traders, and credit unions, respectively. However, the Office of the State Supervision in Insurance and Pension Funds (the Office), which is the insurance supervisor and is part of the Ministry of Finance, has not been given such function. The FAU is the sole supervisor for AML issues for legal or natural persons operating gambling houses, casinos, betting shops, auction halls, real estate agencies, entities offering financial leasing or other types of financing, foreign exchange bureaus, facilitators of cash or wire money transfers, insurance companies, insurance and re-insurance agents. The Ministry of Finance/FAU, the CSC and the CNB entered into an agreement on cooperation in February 2003.

19. The team noted that improvements have already been undertaken to strengthen AML/CFT supervision of the financial institutions, especially in the banking sector through an increase in targeted on-site inspections by the CNB since end 2002. The mission encourages CNB to continue these AML/CFT targeted inspections and recommends the other supervisory authorities to undertake similar proactive and in-depth on-site and off-site inspections of financial institutions in order to ensure a better implementation of the preventive measures against ML and FT.

20. **The CNB has issued a provision on internal management and control system of banks in the area of money laundering prevention**, which extends and complements the existing provisions in the Law. The provision, which came into effect October 1, 2003, contains requirements for banks to have in place procedures for accepting and knowing their customers and reporting suspicious transactions, drawing up a training program and establishing an internal management and control system. Discussion with a number of banks has shown that they would prefer to get substantial guidance by means of this regulation in order to be able to implement the AML/CFT legal framework in an effective manner rather than a purely formalistic one. The CNB is of the opinion that banks are responsible for establishing their internal procedures, and that giving them guidance in the form of regulation would be too prescriptive. In addition, the CNB is concerned that providing specific guidance in the form of regulation would not reflect the differences amongst the Czech banking sector. The mission recognizes the difficulties of drafting precise guidance for banks. However, it is of the opinion that the CNB should consider elaborating the new provision by giving additional guidance to banks on how to implement the legal framework. This would help

effective implementation of the AML/CFT legal framework by the banks, as well as ensure a level playing field in the way they are implementing the requirements.

21. **The CSC has incorporated AML within their on-site and off-site inspections of securities dealers since 2002.** Since its creation in 1998, the CSC has adopted a risk-based supervisory approach and concentrated its limited resources on improving the supervision of securities dealers. However, supervision of the securities sector overall in the AML/CFT area should be further enhanced in 2003 and 2004, so that the professionals concerned have a better understanding of the sector's vulnerability.

22. **With respect to the insurance sector, AML/CFT regulation and supervision have not yet been given a high priority.** The insurance supervisor, the Office of the State Supervision in Insurance and Pension Funds (the Office), has not issued any guidelines or regulations to complement the AML/CFT provisions. The recent issuance by the CNB of the earlier mentioned provision on internal management and control system of banks with respect to AML may be a useful example to follow in this regard. In addition, the Office has not focused its inspections on AML issues because it does not have any legal obligation to do so. The mission was told that the Office will be tasked with supervising and enforcing compliance with AML/CFT requirements by the institutions under its supervision once the amendment to the AML Act is adopted. Although this is a very positive development, it also calls for the Office to substantially invest in building up its knowledge and expertise in AML/CFT. Moreover, as there are several authorities involved in supervising and enforcing compliance of the AML Act, the Czech authorities must ensure that there are no legal impediments for cooperating by allowing the FAU to exchange information on financial institutions' reporting duty with the other relevant supervisors. Additional efforts by the authorities are crucial in order to implement effectively the AML/CFT regime in the insurance sector.

23. **With respect to the credit unions sector, which is now comprised of a limited number of small credit unions, the Credit Union Supervisory Authority (CUSA) has not given high priority to AML issues.** So far, the CUSA has limited its role to inspect whether the credit unions have sent internal AML procedures to the FAU and have complied with customer identification and record keeping requirements; it has, however, not determined whether suspicious transaction reports are filed with the FAU or the quality of those reports. The mission recommends that the CUSA include AML issues in the scope of its controls.

24. **Now that the legal and institutional framework is mostly in place, efforts should be dedicated to increase the supervision of the financial institutions, especially in the insurance sector, in order to strengthen the implementation of the preventive measures by financial institutions, and to increase the effectiveness of the suspicious transactions reporting system**.

## II. DETAILED ASSESSMENT

25. The detailed assessment was conducted using the October 11, 2002 version of the Assessment Methodology endorsed by the Financial Action Task Force (FATF) and the Executive Boards of the Fund and the Bank.

### A. Assessing Criminal Justice Measures and International Cooperation

Table 1. Detailed Assessment of Criminal Justice Measures and International Cooperation

| **I—Criminalization of ML and FT**<br>**(compliance with criteria 1-6)** |
|---|
| Description |
| **The United Nations Conventions**<br><br>The Czech Republic signed the UN Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 (Vienna Convention) on December 7, 1989 and this Convention came into force on September 2, 1991. The Czech Republic ratified the Council of Europe Convention on Laundering, Search, Seizure and the Confiscation of the Proceeds from Crime on November 19, 1996.<br><br>Further, the Czech Republic signed the UN International Convention for the Suppression of the Financing of Terrorism on the September 6, 2000 and the UN Convention Against Transnational Organized Crime on December 12, 2000 (Palermo Convention). The Czech Republic is implementing the UN Security Council Resolutions 1373 (2001) and 1456(2003). The ratification of the UN Convention on the Suppression of the Financing of Terrorism and the Palermo Convention is currently being prepared.<br><br>**The offence of ML**<br><br>On July 1, 2002 an amended version of the Criminal Code (designated "Euro amendment") No. 134/2002 Coll. came into effect, which laid down new criteria for the offence of "legalizing proceeds of criminal activity" under section 252a of the Criminal Code. This amendment brings the Czech Republic largely in line with the European Convention on laundering, searching out, seizure and confiscation of proceeds from crime.<br><br>The offence of "legalizing proceeds of criminal activity" is an offence committed by a person who conceals the origin, or strives otherwise to make it fundamentally difficult or impossible to ascertain the origin of a thing or another "asset benefit" acquired by means of criminal activity, with the aim of creating the illusion that this thing or benefit was acquired in conformity with the law, or who enables another person to commit such an act. The action of a person who commits this offence as a member of an organized group or obtains a significant benefit from such action, commits this action in relation to things acquired from narcotics or psychotropic substances trafficking or from another very serious offence, obtains a large benefit by means of this offence or abuses his/her position in his/her employment or job for commission of such an act, renders him/her liable to a more severe sentence. An "asset benefit" means "things" or any other asset benefit. It concerns things, which have been acquired as a result of a criminal act or acquired as a result of these things. A concept of a thing is further defined as a controllable tangible object that serves for people's needs, including financial funds (it covers also securities). A thing has to be specific and intended for a specific basis.<br><br>The provision cited applies to cases where the offender acted intentionally in the manner outlined above. If the action was committed by negligence, the provision in section 252 of the Criminal Code applies. |

The Czech law now enables sanctioning for the "legalization of the proceeds of crime" against the perpetrator of the predicate offence (previously it was possible to prosecute only perpetrators of a subsequent act in participation in the primary offence).

To convict a person for the offence of money laundering (i.e., legalization of proceeds from criminal activity) it is necessary to prove that respective assets are proceeds from criminal activity but it is not necessary that any person is convicted for this predicate offence.

The predicate offences for money laundering are all crimes. The predicate offence can be any crime resulting in acquiring things or other assets benefit, and it can also be conducted abroad with only money laundering conducted in the territory of the Czech Republic.

This definition of the money laundering offence is largely compliant with the international standard. However, section 252a of the Criminal Code seems narrower than the concept of money laundering as established by the Vienna, Strasbourg and Palermo conventions. In particular, the money laundering offence requires proof of the intent "to hide the origin or otherwise seek to essentially aggravate or disallow identification of the origin of a thing […] with the aim to pretend that such asset or financial benefits have been obtained in compliance with law". Such a requirement is not consistent with the provisions of the aforementioned conventions. In particular, the situation of "acquisition, possession, use of assets with the knowledge that such assets originate from a criminal activity" is not covered by section 252a. In addition, the requirement to prove "the aim to pretend that such asset or financial benefits have been obtained in compliance with law" sets a higher burden of proof on the prosecution than required by these conventions.

Moreover, the criminal definition of money laundering is not consistent with the definition of money laundering, as defined by section 1 of the AML Act. As a consequence, the FAU could report to the judicial authorities suspicious facts which could not lead to any prosecution under the current money laundering offence.

Therefore, the mission recommends that the criminal definition of money laundering be aligned with the aforementioned conventions, as already contained in section 1 of the AML Act.[3]

**The criminalisation of FT**

The Czech Republic has no specific and explicit offence criminalizing the financing of terrorism. Nevertheless, it is possible to prosecute and convict an offender for the crime of the financing of terrorism based upon existing offences, through participation or complicity according to the circumstances of the crime. Such crime would be considered as part of the broader offense of terrorism under existing legislation. The specific fine or the type of punishment depends on the punitive sanction for the crime that was financed. Therefore the authorities are confident that they can prosecute and convict all cases of financing of terrorism by means based on the existing legislation, in particular the provisions which are criminalizing aiding and abetting to commit a terrorist act.

However, in order to ensure that the Czech law is covering all the cases related to the financing of terrorism, as defined in the UN International Convention for the Suppression of the Financing of Terrorism, the mission recommends the rapid adoption of the draft amendment to the Penal code to create a specific offence of terrorism financing. The mission understands that the amendment is being prepared at

[3] With the exception of subsection (d), which does not appear to be in line with the conventions.

this time and would recommend to expedite the process of its adoption. This would bring the Czech Republic into full compliance with the FATF Special Recommendation 2.

**Crime committed abroad and/or non Czech citizens**

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

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

Lastly, a crime is punishable pursuant to the law of the Czech Republic, provided that it is so stipulated by any international treaty that is binding on the Czech Republic.

**The intentional element of the offence**

The offence of legalization of proceeds from criminal activity applies to cases where the offender acted intentionally in the manner outlined above. If the action was committed by negligence, the provisions in section 252 of the Criminal Code apply. The intentional element may be inferred from objective factual circumstances of ML crime.

**The criminal liability of legal persons**

There is no criminal liability for legal persons in the Czech Republic at this stage. The Czech Republic is seeking to amend its Criminal Code to allow for the imposition of criminal liability for legal persons, and in the context of the re-codification of the Criminal Code, the introduction of criminal liability for legal persons is underway. To date, Czech law authorizes administrative, not criminal, sanctions on legal persons. The Ministry of Justice is reviewing draft language to create criminal liability for legal persons that will be submitted to the Council of Ministers for their review as they consider re-codification of the Criminal Code. The mission would recommend the rapid adoption of this reform, which should take place before the currently planned schedule (i.e. January 2005). This would represent a fundamental change and progress for the overall AML/CFT regime.

**The sanctions for ML and FT**

The sanction for legalizing the proceeds of criminal activities is stipulated in section 252a of the Criminal Code: up to two years in jail or a pecuniary punishment; one to five years in jail if the offender concerned committed the crime as a member of an organized group or if he/she has acquired considerable profit

through the crime; two to eight years in jail or forfeiture of property if the offender committed the crime in relation to things proceeding from trade in narcotic and psychotropic substances or from another - particularly grave - criminal act, if the offender has acquired large-scale profit through the crime or if he/she has abused his/her position or function when committing such a criminal act.

According to the section 89 of the Criminal Code, considerable profit means profit in the amount of at least CZK 500,000 and large-scale profit means profit in the amount of at least CZK 5 million.

Penal sanctions in cases of financing of terrorism are graded according to the individual body of the crime to which they are related.

A fine (legal administrative penalty) of up to CZK 5 million may be imposed on a physical person or a legal entity for the violation of the duties laid down in the country's sanctioning legislation and a fine of up to CZK 30 million may be inflicted if the state's particularly important foreign-policy or security interests have been jeopardized.

Sanctions for a violation or a failure to comply with the requirements set forth by the AML Act are a fine not exceeding CZK 2 million and in case of a repeated violation or failure to comply with a requirement for a period of 12 successive months, there may be a fine imposed of maximum CZK 10 million. It is also possible to Repeal a Business or a Self-employment License.

The Czech National Bank is authorized, under section 26a of the Act on Banks, to impose remedial measures and a fine of up to CZK 50 million on banks and branches of foreign banks and, under section 34 of the Act on Banks, to revoke the licenses of banks and branches of foreign banks both for violation of the AML Act and for failure to comply with the sanctioning legislation.

In the context of the revision of the Penal Code, the sanctions for money laundering could be revised. The current draft revision provides for increasing the sanctions for most serious forms of conduct. The mission recommends to go forward with this revision, in order to increase the overall effectiveness and deterrence effect of the Czech AML/CFT regime.

***Legal means and resources dedicated to the implementation of AML/CFT laws***

*The implementation of the ML legislation (and FT insofar as covered by the AML laws) is primarily based on the reporting system installed by the AML Act No 61/1996 Coll., together with the relevant sections of the Criminal Code and Criminal Procedure Code penalizing ML and ensuring forfeiture. These legal instruments and resources broadly cover the AML domain and may be considered— even taking into account the imperfections— sufficient to allow for a certain performance in terms of law enforcement results.*

Analysis of Effectiveness

*Besides the highlighted weakness of some aspects of the ML offence and the seizure and confiscation regime, the level of sanctions for ML are below the internationally applied standard. FT prosecution is still jeopardized by the absence of a formal and comprehensive legal basis. Although the present legal framework already seems comprehensive and sound enough to ensure some degree of efficiency, the law enforcement results are poor. Apparently, this is not so much a problem of deficient legal means, but one of changing mentality and opening up to new concepts and approaches. The potential has not been adequately exploited and no jurisprudence has been created to support an effective AML effort.*

*Some complacency was also noted during the assessment from the Ministry of Justice, apparently translating itself in an attitude of reluctance to adopt some appropriate legal remedies, as recommended already by previous MONEYVAL evaluations*.

Recommendations and Comments

1. The authorities should enlarge the scope of section 252a of the Criminal Code, in order to bring it into line with the concept of money laundering established by the Vienna, Strasbourg and Palermo conventions and with a view to cover the situation of "acquisition, possession, use or disposition of assets with the knowledge that such assets originate from a criminal activity". In addition, the mission would recommend amending the requirement to prove "the aim to pretend that such asset or financial benefits have been obtained in compliance with law", which sets a higher burden of proof on the prosecution than required by these conventions.
2. The authorities should introduce in legislation a criminal offence of the financing of terrorism, consistent with the definition given by the UN convention on the suppression of the financing of terrorist, in order to ensure that the law covers all cases related to the financing of terrorism, as defined in the UN International Convention for the Suppression of the Financing of Terrorism.
3. The mission encourages the authorities to amend as rapidly as possible the Criminal Code to introduce the criminal liability of legal persons in the Czech law.
4. The authorities should ratify and implement fully the UN International Convention for the Suppression of the Financing of Terrorism.
*5. In addition to the need to adjust the penalties for ML to the average international standard and creating a formal legal basis for CFT to enhance the law enforcement, the legal means and resources to counter ML and FT seem already adequate enough to ensure some positive results, even if the AML and CFT effort would certainly benefit from legislative reinforcement of the ML offence and the confiscation provisions. Now it is more a matter of crossing the bridge between theory and practice by bringing the cases to court and establishing case law that might guide both law enforcement and legislator.*
*6. All legal remedies recommended by the previous MONEYVAL evaluations should be adopted.*

Implications for compliance with FATF Recommendations 1, 4, 5, SR I, SR II

The Czech Republic fully complies with FATF Recommendation 1 and 5. However, the remaining shortcomings of the definition of money laundering provided by the Criminal Code (as described above) hamper the Czech Republic from fully complying with FATF Recommendation 4. In the absence of the ratification of the UN International Convention for the Suppression of the Financing of Terrorism, at this time, the Czech Republic cannot comply with FATF SR I. Due to the current lack of a specific and explicit provision in the Criminal Code to criminalize the financing of terrorism as such, the Czech Republic is not formally in compliance with FATF SR II, despite the present ability to use other offences, through participation and complicity, to punish the financing of terrorism.

## II—Confiscation of proceeds of crime or property used to finance terrorism (compliance with criteria 7-16)

Description

The legislation provides for a number of provisions for assets attachment, freezing, seizure, forfeiture and confiscation. It also provides the necessary legal basis and adequate powers for the law enforcement authorities to identify and trace property that may become subject to confiscation or is suspected of being the proceeds of crime or used for ML/FT.

**Temporary measures**

The measures available for securing assets in the context of a money laundering investigation or prosecution seem consistent with international standards.

At present, there are several criminal laws providing for the seizure of property or its part, which include the securing of financial resources in an account at a bank or in other financial institutions, safeguarding listed securities (section 79a, section 79b, section 79c of the Criminal Procedure Code).

Attachment of a bank account is regulated by section 79a of the Criminal Procedure Code. This decision relates to the money obtained from crime or used for the commission of a crime. Decided by the chairing judge, in pre-trial proceedings by the state prosecutor or by the police body (with consent of the state prosecutor). In exceptional cases it is possible to apply attachment even without consent of the state

prosecutor (danger in delay), his subsequent consent is then necessary within 48 hours, otherwise it loses its effect (attachment will be cancelled by the state prosecutor). Complaints against decision on attachment are decided by the court or, as appropriate, the court of higher instance if the chairing judge decided on attachment. According to section 79b of the Criminal Procedure Code, it is possible to attach a bank account with savings and credit cooperatives, other subjects keeping an account for another subject in a similar way, or it is possible to block funds of a private pension scheme with state contribution, to draw a financial credit and financial lease. According to section 79c, Criminal Procedure Code, the state prosecutor (chairing judge) can decide on attachment of booked securities, attachment will be made by the Securities Centre, another entitled legal entity, or the CNB on the basis of this resolution. In exceptional cases, the police can decide on attachment (within 48 hours the state prosecutor must decide on further duration of attachment).

**Confiscation/deprivation**

The confiscation or deprivation is the definite deprival of the property from the offender's ownership after the termination of criminal proceedings pursuant to a court's final and conclusive decision, which ascertains the offender's guilt. The instruments that may be used to seize such proceeds and which figure in the Czech criminal law include the punishment of the confiscation of all property pursuant to section 51 of the Criminal Code (imposed only in a limited number of cases - if an offender is sentenced to an exceptional sentence or to an unconditional prison term for a serious deliberate offence through which he/she has acquired or tried to acquire financial benefit), a pecuniary punishment pursuant to section 53 of the Criminal Code ranging from CZK 2,000 to CZK 5 million (or an alternative prison sentence of up to 2 years) and the punishment of the confiscation of property pursuant to section 55 of the Criminal Code.

However, the mission has not identified a provision which establishes a mandatory and systematic confiscation or forfeiture of the object of the crime/offence (*corpus delicti*), i.e. the money or property laundered in the context of the money laundering offence. This may lead to situations where the object of the crime/offence would not be confiscated/forfeited. Whereas the confiscation of the proceeds may be left to the discretion of the judges, the mandatory nature of the confiscation of the object of the crime/offence (*corpus delicti*) is a universally accepted legal principle. In this regard, section 55 of the Criminal Code, as translated in the text forwarded to the assessment team, only provides for an optional forfeiture of things ("the court may impose forfeiture of a thing"). The mission would recommend that the confiscation regime of the object of the crime be given a mandatory nature as rapidly as possible. In addition, section 55 of the Criminal Code does not seem to cover the circumstances in which the laundered asset does not belong to the perpetrator of the offence of money laundering, such as in the case of the use of "couriers".

The law also does not provide for the forfeiture/confiscation of the equivalent value, where the proceeds of the crime have disappeared. The confiscation of corresponding value, if such property no longer exists, may only be imposed indirectly, which commonly happens in practice: according to the authorities, a monetary punishment would often be imposed on the involved person in such cases. However, the authorities have indicated that a draft amendment was being prepared to authorize the confiscation of the equivalent value. The new legislation (of which the draft was only available in Czech and as such not reviewed by the mission) is expected to be adopted in early 2004.

**Legal persons**

The criminal law does not provide for criminal liability of legal persons yet, it is therefore not possible to impose seizure/forfeiture/confiscation of a legal entity's property in criminal proceedings.

**Civil forfeiture**

Confiscation is limited to criminal proceeding only (in a very limited scope it may be used in the administrative proceedings concerning an administrative offence). Civil confiscation was abolished in

1990.

**Power to identify and trace property**

The responsibility for searching for, safeguarding and confiscating proceeds from criminal activities belongs to the law enforcement agencies. The Police of the Czech Republic, especially the Unit for Combating Corruption and Financial Crime of the Criminal Police and Investigation Service (UCCFC), is responsible for the implementation of such measures.

**Rights of bona fide third parties**

The rights of bona fide third parties are protected under civil law provisions. Regarding criminal proceedings, the competent authority that confiscates a thing or property, that is the object of criminal activity, was gained as a result of this thing or property, or was used for the purpose of committing a criminal act, seizes all such property, regardless of the property rights of third parties. On these property rights will be adjudicated according to civil law provisions. As far as a third person will ask for exclusion of certain things from seizure in the framework of a criminal proceeding, state prosecutor or a judge will refer him/her to civil proceeding.

**Authority to void contracts**

The sole and independent bodies competent to make decisions on the validity of contracts are the courts, which can do so on the basis of a proposal by a legitimate party. The existing legal order provides the possibility to sue for non-validity of contracts in the frame of a private-law hearing.

**Identification and freezing of funds and other property of terrorists**

The existing legal framework for the prosecution of natural and legal persons in connection with the support of terrorism is made up of what is collectively known as the sanctioning legislation - Act No. 48/2000 Coll., Act No. 98/2000 Coll., and statutory instruments to Act No. 48/2000 Coll. - Government Decree No. 327/2001 Coll., and No. 164/2000 Coll.

Sanctioning legislation comprises instructions, prohibitions and limitations based on UN Security Council Resolutions (UNSCRs) or from common positions of Council of European Union in the area of trade and services (concerning e.g. disposition of sanctioned goods, transfers of financial funds on behalf of sanctioning entities), in the area of transportation and communications, in the area of technical infrastructure (referring to delivery of energy, raw materials, machines and devices) and in the area of scientific, cultural and sport contacts (referring to scientific and technical researches, providing of scientific information, patents, cultural items, participation on sport matches, and so on).

A fine (or a legal administrative penalty) of up to CZK 5 million may be imposed on a physical person or a legal entity for the violation of the duties laid down in the country's sanctioning legislation, a fine of up to CZK 30 million may be imposed if the State's particularly important foreign-policy or security interests have been jeopardized.

However, it appears from the meetings with representatives of the authorities, as well as from the answers of the authorities to the worksheet, that the Czech authorities are not yet able to freeze without delay funds or property of terrorists and of those who finance terrorism and terrorist organizations in accordance with UNSCRs. According to interlocutors, the sanctioning legislation provides only for the freezing of funds and property of foreign States and/or representatives of foreign States. It would therefore not be legally possible to freeze assets of natural persons who are not representatives of a State or assets of organizations which are not related to a State. However, other interlocutors were stating that the current sanctioning

legislation obliges financial institutions to freeze funds and property of anybody who would be included on any list issued by the UN Security Council. In view of these differences of interpretations, the mission recommends that the authorities expeditiously amend their legislation to allow for the unconditional freezing, without delay, of terrorist-related funds, or other assets or property, in accordance with the UNSCRs and FATF Special Recommendation III. By providing a secured legal basis for the freezing of funds, the risks of liability of financial institutions for erroneously freezing of assets can also be addressed.

So far however, the supervisors and the (FAU) have distributed the UN and European Union lists of terrorist individuals and organizations to financial institutions, which are encouraged to report the related transactions to the FAU. Upon receipt, the FAU can suspend the execution of the transaction for 24 to 72 hours. This reporting of terrorist-related suspicious transactions, however, has not produced significant results as only two such cases involved information considered to be sufficiently relevant to be forwarded to law enforcement authorities.

***Statistics***

*The available statistics do not specifically register the seizures and confiscations related to ML and FT. Figures on the administrative freezing orders from the FAU should be available, but were not submitted. As no freezing of terrorist related assets has occurred as yet in the Czech Republic, there are no statistics available.*

***Training to Law enforcement officials***

*A whole range of training facilities are at the disposal of the police and judiciary that cover e.g. seizure and confiscation. Besides specialized training provided by the Secondary Police School and the Academy of Justice, seminars are conducted in the framework on international projects such as PHARE.*

Analysis of Effectiveness

*The lack of specified and itemized statistics is to be deplored. The precise registration of comprehensive statistics per specific criminality is a necessary tool, not only for outside evaluations, but also and most importantly for the internal critical review of the performance of the system.*

*Training opportunities for the law enforcement authorities seem sufficiently available, but apparently this has not yet made a difference. The confiscation regime, as it is conviction based, suffers from the same legal challenges that affect the money laundering prosecutions. The deficient law enforcement and judicial follow-up of the ML reports are indicative of a need for a reinforced training and awareness raising program, particularly for prosecutors and judges.*

| Recommendations and Comments |
| --- |
| 1. The authorities should consider giving a mandatory nature to the forfeiture/confiscation regime (Section 55 of the Criminal Code), as explained above.<br>2. The authorities should amend their legislation to allow for the unconditional freezing, without delay, of funds, or other assets or property, in accordance with the UNSCRs and FATF Special Recommendation III.<br>*3. The precise registration of comprehensive statistics per specific criminality is a necessary tool, not only for outside evaluation but also and more importantly for the internal critical review of the performance of the system. With the establishment of the UCCFC specialization in detection and seizure of criminal proceeds, this lack of relevant statistics should be remedied.*<br>*4. It should be no problem for the FAU to keep reliable statistics on this specific aspect. It is however, important to stress that statistics should also include the automatic freezing of terrorism assets by the banks and the disclosures to the central authority as a result of the relevant UN resolutions and EU regulations, so the necessary arrangements are made to ensure compliance.*<br>*5. Focused training and awareness raising programs should be organized with particular attention to the experience and practices in other countries where ML related seizure and confiscation is successful.* |
| Implications for compliance with FATF Recommendations 7, 38, SR III |
| The Czech Republic fully complies with FATF Recommendation 38. However, the absence of a provision which establishes a mandatory and systematic confiscation or forfeiture of the laundered property, leads to a largely compliant rating with FATF Recommendation 7. In addition, the sanctioning legislation, as it stands, does not appear in compliance with FATF SR III. |
| **III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels (compliance with criteria 17-24)** |
| Description |
| **The financial intelligence unit (FIU)**<br><br>The Czech Republic created the Financial Analytical Unit (FAU) as the FIU in 1996. The FAU is part of the Ministry of Finance. It meets the Egmont Group's FIU definition. Its main tasks are to receive, analyze and disseminate reports on suspicious transactions from financial institutions. It has been a member of the Egmont Group since 1997.<br><br>**Reporting to the FAU**<br><br>Section 4 of the "Act No. 61. Coll. of 15 February 1996 on Selected Measures against Legitimization of Proceeds from Criminal Activities" (hereafter the AML Act) provides that a financial institution which uncovers, in the course of its activities, a suspicious transaction, is required to submit to the FAU a suspicious transaction report (STR) on the transaction including all relevant identification data. All STRs are directed to the FAU. The reporting procedure is prescribed by the AML Act and some other specifications are prescribed by the implementing Regulations no. 183 of 1996 and 223 of 2000.<br><br>Guidelines and internal procedures<br><br>The financial institutions themselves are obliged to create their internal procedures for the detection and the reporting of suspicious transactions, which have to include a detailed list of features of a suspicious transaction in each particular type of institution. These internal procedures have to be approved by the FAU (section 9 of the AML Act).<br><br>The FAU is not issuing guidelines for the identification of complex and unusual transactions or patterns of suspicious transactions. However, general guidelines on AML are issued by professional associations, such as the CBA for all banks. The financial institutions would benefit a lot from the issuance of guidelines by the authorities on how to implement the AML/CFT requirements and on how to detect and report |

suspicious transactions. The mission recommends that the authorities consider the issuance of such guidelines.

Additional information

Section 8 of the AML Act obliges financial institutions to submit to the FAU, upon request and in the period determined by the FAU:

- information on transactions affected by the identification requirement and investigated by the FAU;
- documentation pertaining to such transactions or provide access to them, in the course of the investigation of a report or when performing an audit, by the authorized personnel of the FAU;
- information on persons involved, in any possible way, in such transactions.

The FAU may have access to financial administrative and law enforcement information to enable it to undertake its duties. In particular, the FAU may, in the course of an investigation, request any tax related information from the tax authority, provided the case cannot be sufficiently investigated otherwise (section 8 of the AML Act). Furthermore the AML Act stipulates that the Police of the Czech Republic, intelligence services, and other Governmental bodies shall provide the FAU, in the process of its exercising of powers under this Act, with all data necessary, unless prohibited by a special Act (section 10).

**Sanctions**

Section 12 of the AML Act provides for sanctions on persons who violate or fail to comply with the requirements set forth by this Act: such persons shall be subject to a fine decided by the FAU or another supervisory body specified in this Act (the Czech National Bank, the Securities Commission and the Credit Union Supervisory Authority). Long-term or repeated violations of the provisions of the AML Act or imposed by a decision issued on its basis constitutes a reason for repealing a business or self-employment license. This also covers failure to comply with the reporting obligation.

**Dissemination to domestic authorities**

Should the FAU uncover facts which lead it to believe that a criminal offence was committed, it shall file a complaint pursuant to the Code of Criminal Procedure and, at the same time, shall provide to the law enforcement body any data and supporting evidence it has at its disposal relevant to the complaint (section 10(2) of the AML Act).

**Cooperation with foreign FIUs and safeguards on privacy and data protection**

The FAU is authorized to co-operate with its foreign counterparts to share intelligence information and data necessary to reach the objectives determined by the AML Act within the scope determined by an international treaty (section 10(5) of the AML Act). As a member of the Egmont Group, the FAU should be able to cooperate and exchange information with the other Egmont FIUs. In addition, the FAU has concluded, at present, Memoranda of Understanding (MOUs) with 14 foreign FIUs, which specify the modalities for the exchange of information.

The FAU shall maintain secrecy about measures taken under the AML Act and information obtained in the course of its implementation. The FAU is technically separated from other divisions of the Ministry of Finance and subject to organizational, personnel and other measures necessary to guarantee confidentiality of the information and data obtained in the course of implementation of its duties (section 7(2) of the AML act).

***Statistics and implementation***

*Statistics kept by FAU and the police related to STRs and the follow-up given were submitted. They give a useful, if general, overview of the situation in this respect. Following statistics were provided by the FAU on the performance of the STR system and the reporting by the FAU to the police.*

| | ***2000*** | ***2001*** | ***2002*** | ***2003*** |
|---|---|---|---|---|
| ***STRs received*** | *1917* | *1750* | *1264* | *614 (by 30 April)* |
| ***Cases forwarded to police*** | *104* | *101* | *115* | *34 (by 31 May)* |

*In light of the number of disclosures, the FAU seems reasonably resourced to perform its analytical task. The number of staff allocated for the supervisory function is, however, insufficient to expect acceptable results. The status of the FAU ensures adequate operational independence and confidentiality is appropriately guaranteed. There is no legal obligation to produce annual reports.*

Analysis of Effectiveness

*The FAU has reached maturity and has acquired experience in processing financial intelligence to support law enforcement. The FAU provides support to the reporting entities, by providing informal guidance through close contacts with them. The FAU has satisfactory legal resources to collect additional information to enable it to carry out appropriate analysis of financial intelligence. As far as cross-border cooperation with counterpart FIUs is concerned, the Czech FIU is able to and indeed does give the broadest possible assistance. At present the cooperative possibilities are unfortunately still formally restricted to jurisdictions that are party to bilateral treaties or to the Strasbourg Convention.*

*One of the greatest challenges facing the FAU is to make more effective use of the available resources to come to more productive and expeditious results. Some cases take a long time to process and reach final decision. Of course the FAU's productivity is largely dependent upon factors beyond its control and the complexity of cases, but the FAU should examine means to expedite their analytical process. In this context, one can question the FAU's reliance upon updated tax information, which may have unnecessary delaying effect.*

*It is unfortunate to see law enforcement and the judiciary not making full use of the work product of the FAU, as no money laundering prosecutions have been initiated as yet as a result of the reporting system. This has a distinct discouraging effect on the reporting entities and the FAU, and risks depriving the AML regime of its effectiveness.*

Recommendations and Comments

1. The authorities should issue guidelines to help financial institutions in implementing the AML/CFT requirements and in detecting and report suspicious patterns of transactions.
*2 .The FAU should assess its management of the STRs and examine ways to speed up the analytical process whenever it is not dependent from outside factors beyond its control.*
*3. The self-evaluation of the reporting system would distinctly benefit from more detailed statistics that would give a better insight on the performance and characteristics of all the components of the anti-money laundering effort. The authorities have stated their intention to improve their statistical approach. Besides the items they suggest, it would certainly help to also keep figures on the probable predicate criminality, the money laundering stage of the transactions, the nature of the transactions, and the geographical spread of the cases.*
*4. The supervisory function of the FAU calls for an extension of its staff to be really effective and comprehensive. Even if not provided by law, it is most advisable for the FAU to produce an annual report on its activity and findings, which not only serves as useful analysis and enhances the profile of the FAU, but also is an ideal way to provide the necessary feedback to which the reporting entities and other involved agencies are entitled.*
*5. With respect to international cooperation at FIU level, the formal treaty or Strasbourg Convention*

*adherence condition should be lifted. Cooperation should be permitted at least whenever the counterpart meets the Egmont Group standards. The draft amendment to the AML Act, if passed, would allow cooperation where the counterpart meets Egmont standards.*

Implications for compliance with FATF Recommendations 14, 28, 32

The Czech Republic is largely compliant with FATF Recommendation 32: lifting of the formal treaty or Strasbourg Convention adherence condition would lead to full compliance. However, the lack of a specific requirement to detect and analyze unusual large transactions (separate from the suspicious transaction reporting requirement) leads to a failure to comply with FATF Recommendation 14 (see more details in this respect under Part II, section III of the report, below). In the absence of guidelines issued by the authorities to help financial institutions implement the AML/CFT requirements and to detect and report suspicious patterns of transactions, the Czech Republic fails to comply with FATF Recommendation 28. The mission recommends that the Czech authorities consider the issuance of such guidelines.

## IV—Law enforcement and prosecution authorities, powers and duties (compliance with criteria 25-33)

Description

**Ability to use wide range of investigative techniques**

In addition to other matters, the Czech Criminal Procedure Code also regulates the detention (interception) and opening of mail, its exchange and surveillance, bugging and recording of telecommunications. Under the terms given in the Criminal Procedure Code, intelligence means and devices (searching and tracking-down) may also be employed in proceedings on deliberate offences. This includes "intelligence means and devices": sham transfer of a thing, surveillance of persons and things, and the deployment of police agents.

The Czech police law also regulates the authorization to use auxiliary searching and tracking-down means (such as cover documents, undercover means, security technology, special funds, and the use of police informers).

**Ability to compel production of banks account and financial transactions records**

Provisions of section 8(2) Criminal Procedure Code, enable the state prosecutor (and in proceedings before court, the chairing judge) to require the bank information, which is subject to banking secrecy (see also section 38(3)(b) of the Act on Banks, section 80(2) of the Securities Act). Similar is the situation in obtaining information from the securities register and in obtaining the information from tax proceedings, as well as individual data for statistical purposes. Attachment of a bank account is regulated by section 79a, section 79b and section 79c of the Criminal Procedure Code.

In the course of fulfilling its tasks, the Police of the Czech Republic is entitled - under the provisions of the Police Act - to request from the state authorities, communal authorities, physical persons and legal entities, vitally needed background materials and information, while the requested subjects are obliged to comply with its requirements. The Police are also authorized to request information from special registers. Release from the obligation to maintain confidentiality is governed by special legislation.

Another public body, which is authorized to decide on attachment of a bank account (in the period before criminal proceedings) is the FAU, on the basis of the AML Act. Under this act (section 6), financial institutions are allowed to comply with a client's order concerning a suspicious transaction within 24 hours of the receipt of notification from the Ministry (of Finance) at the earliest, if there is a danger that instant compliance (with client's order) could obstruct or substantially impede the process of seizing the proceeds involved. The Ministry of Finance is then in a position to extend the pertinent deadline up to 72 hours to facilitate the completion of investigation of the case, and to submit a report on the commission of a crime.

If the FAU submits a report on the commission of a crime within a statutory period, the financial institution

concerned shall suspend the relevant transaction: the competent investigative, prosecuting and adjudicating authority then has three days to decide - in a manner pursuant to sections 79a or 79b of the Criminal Procedure Code, section 347 and ff. of the Criminal Procedure Code, eventually in a manner pursuant to section 47 and ff. of the Criminal Procedure Code (securing an injured person's claim). If no report on the commission of a crime has been filed, the relevant financial institution shall comply with a client's order. The proceedings mentioned above are carried out by the financial institution concerned pursuant to the AML Act, without an order of a judge or another state authority.

***Law enforcement implementation***

*The awareness of the importance to combat economic crime and money laundering efficiently has led to the recent creation of a police unit specialized in dealing with those issues, namely the Unit for Combating Corruption and Financial Crime of the Criminal Police and Investigation Service (UCCFC), comprising a Department of Proceeds and Money Laundering. The division of this department in one section dealing specifically with money laundering, and another in charge of detection and seizure of criminal proceeds, is a very positive step in achieving enhanced performance in this domain.*

*The UCCFC handles all cases reported by the FAU and as such it is the privileged police interlocutor for the FAU. The relatively low number of continued investigations initiated by such reports raises some concern, however. The possible cause was said to be due to the fact that the great majority of the reported cases are only indicative of fiscal offences and not of money laundering as such.*

*The police have a whole range of special investigative techniques, regulated by law, at its disposal, but as yet these procedures have not been used in money laundering cases. Tracing back the assets to a specific predicate offence (especially when committed in a foreign country) was identified as the main challenge encountered in money laundering cases. There is also a demand for experts on international banking operations to assist the UCCFC.*

*Customs also play an active, if more supportive, role in the anti-money laundering effort. They monitor the cross-border movement of cash and bearer instruments over CZK 350,000 that are subject to mandatory declaration. All non-declared money over that threshold can be seized. They cannot, however, seize funds under the established threshold, even if circumstances raise suspicion of illegal proceeds. Their investigative powers in suspected money laundering cases are limited, but they coordinate closely with the police and report information to the FAU.*

*The public prosecutors' office has also adopted a specialist approach to organized crime and economic/financial criminality. As yet, this has not led to any marked increase of money laundering prosecutions and convictions.*

*A welcome initiative is the establishment of the 'Clearing House', an interdepartmental task force comprising i.e., the FAU, law enforcement bodies, and other government and supervisory bodies that serves as a coordinating and consultative body addressing the problems such as money laundering related issues encountered in tracing and recovery of criminal assets, and examining measures to remedy them.*

Analysis of Effectiveness

*The creation of a special police unit that is specifically charged with the investigation of the reports from the FAU, the UCCFC, should ensure proper follow-up at police level. The prosecutorial authorities apparently also organized a degree of specialization in ML cases. The overall results however, are frankly disappointing, as no ML prosecutions have been initiated as yet. As financing of terrorism is not yet established as an autonomous offence, this may prove to be an obstacle for effective prosecution.*
*The special investigative techniques, regulated by law, that are at the disposal of the police are up to standard and comprehensive. However, there has not been any need for them to be used in ML investigations as yet.*

*The creation of the interdepartmental working group, the "Clearing House", should provide for an appropriate law enforcement coordinating mechanism. With all parties contributing serious effort, this body should become instrumental in streamlining and maximizing use of the AML system, thus ultimately ensuring efficiency.*

*The resources for police and prosecution authorities and the statistics provided to the mission seem adequate in this area. As the Czech authorities acknowledge themselves, there is indeed "a low number of cases" related to ML and FT. Actually, the statistics submitted show no prosecutions, - and of course no convictions and confiscations - at all in this domain. As discussed above, efforts have been made to remedy the situation (such as the UCCFC and the "Clearing House"), but as yet, the results are poor. In light of the poor results in terms of law enforcement, it is obvious that there is a great need for specialized training, particularly for the judiciary.*

*One explanation for the deficiency in initiating prosecutions was said to be the inadequacy of the old legal provisions of the money laundering offence and the circumstance that the present Section 252a of the Criminal Code was too recent to yet have been tested before the courts. Especially problematic for securing convictions seems to be the particularly high "mens rea" requirement (which is already commented upon in the legal part of this paper) and, to a lesser extent, the proof of the specific predicate offence. This reluctance may be understandable, but it is important to set legal precedent and jurisprudence to test the adequacy of the money laundering offence and identify in a certain manner the position of the courts with respect to the evidentiary requirements.*

Recommendations and Comments

*1. The creation and specialization of the UCCFC is a commendable step towards more efficient law enforcement in the area of ML. Particularly welcome is the establishment of a section within the UCCFC focused on detection and seizure of criminal proceeds. It is very unfortunate, however, that this measure has not translated itself into successful ML prosecutions yet. Hopefully, this will change with the introduction of legislative amendments to the Criminal Code, but even the best laws are futile if not effectively implemented. The specialization within both the police and prosecution authorities should lead to a better understanding of the phenomenon and an enhanced awareness of the legal issues, but the whole system must still pass the test of the courts. As far as FT is concerned, the introduction of FT as an autonomous offence will sufficiently cover that legal deficiency.*

*2. The "Clearing House" is an excellent concept and it should receive full support and active input from all authorities concerned. It is the ideal forum to come to terms with all the difficulties encountered in the AML effort. Where it is difficult to find the necessary expertise domestically, the authorities should endeavor to learn from experiences and "best practices" in other countries that have been successful in their AML effort. Full advantage should be taken of international training initiatives, such as those organized by the EU PHARE project, the UNGPML and the Egmont Group.*

*3. The review of typologies and trends is a matter to be addressed jointly by the FIU, the police and prosecution. As said, the "Clearing House" is an ideal forum for this activity. The agencies concerned participate in national and international initiatives in this respect. Typologies and trends should also be part of the annual reports of the authorities involved.*

*4. With regards to ensuring an efficient detection and prosecution of criminal assets, there is something fundamentally wrong with a system that has all the components in place, but ultimately does not produce any results in terms of convictions and asset recovery. It would require a thorough audit of the system to identify the precise causes for this deficiency, which was not within the remit of this assessment and indeed would have required much more time and resources, but it is clear that the problem seems to be located primarily within the judicial follow-up. Serious attention should be directed to this area, and awareness and expertise of the judiciary should be raised. The "mens rea" standard was said to be one of the*

*problems. That said, there are still no prosecutions for negligent money laundering, which only requires minimal criminal intent. The proof of the predicate offence appears to be a much more serious challenge, particularly when committed in a foreign country. If, however, one expects the reporting system to produce results, then one should be ready to abandon the classical approach of starting with the predicate offence and ending up with the proceeds. Money laundering should then be considered an autonomous offence and treated this way, which requires a change of mentality and an openness for new approaches.*

*5. In order to ensure that sanctions are proportionate and dissuasive, it is also recommended that the adequacy of sanctioning be reviewed to bring them into compliance with the applicable standards established by the European Union Council Decision of June, 2001 which established a four-year minimum for money laundering offences.*

Implications for compliance with the FATF Recommendation 37

The Czech Republic fully complies with FATF Recommendation 37.

## V—International Cooperation
**(compliance with criteria 34-42)**

Description

**Mutual legal assistance in AML/CFT**

The Czech Republic can provide a very wide range of international and mutual legal assistance, as provided by section 384 of the Criminal Code.

Answers to rogatory letters from foreign courts and authorities and the provision of legal assistance to foreign courts and authorities are performed on non-contractual basis (on the basis of reciprocity), or on the basis of international treaties.

Dual criminality is the precondition for the authorities to provide mutual legal assistance. When providing mutual legal assistance, the authorities follow their national procedural rules. However, based on a specific request, it is possible to follow foreign procedural rules, providing that they are not contradictory to Czech public order.

The Czech Republic takes part in the international cooperation regarding the issue of combating money laundering, terrorism financing and other economic crimes, such as bribery. The Czech Republic ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and takes part in the monitoring process of this Convention.

The Czech Republic joined the unilateral measures/positions of the EU in AML/CFT matters, such as the Common Position on combating terrorism No.2001/930/CFSP, the Common Position on the application of specific measures to combating terrorism No.2001/931/CFSP, and the Common Positions which updated the list of persons and groups sanctioned for terrorism. The Czech Republic is involved in the mechanism of policy dialogue within the area of combating terrorism and attends regular meetings of the Working Group on combating terrorism (COTER).

The Czech Republic is a party to the European Convention on Mutual Legal Assistance in Criminal Matters (Strasbourg, 20.4.1959) and to the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strasbourg, 8.11.1990).

Regarding countries that are not party to any multilateral treaty, the Czech Republic can cooperate internationally on the basis of a relevant bilateral treaty; currently the Czech Republic has concluded bilateral treaties on mutual legal assistance or extradition with 49 countries.

In addition, the Czech Ministry of Interior has concluded agreements on police cooperation with 24

countries. Even though, in most cases, these agreements do not directly address the fight against the financing of terrorism, they may apply to this area as well, as they govern the obligations of the contracting parties to cooperate in preventing, combating and detecting criminal acts, and in the execution of individual investigative operations, including those involving terrorism. Preparations for new agreements on police cooperation with 11 other countries are at different stages, and cooperation in the fight against terrorism financing is expressly addressed in the newly concluded and prepared agreements.

The Czech law enforcement authorities can exchange information on the basis of multilateral or bilateral treaties, as well as on the basis of police cooperation agreements. The police exchanges information through Interpol and Europol (since autumn 2002, the Czech Republic has been represented in Europol by its own liaison officer).

**Cooperative investigations**

Cooperation among investigators from different countries is mainly established through the Ministry of Justice pursuant to existing agreements on mutual legal assistance. There is no specific obstacle for the participation of Czech law enforcement authorities in cooperative investigations with other countries.

The Criminal Procedure Code (CPC) and the Act on Police (see sections 48b and 48c) contain explicit provisions regarding international cooperation in controlled delivery operations (section 87b(4) of the CPC) and the use of undercover agents (section 158e(8) of the CPC).

**Extradition**

Extradition can be performed on the basis of international treaties. The Czech Republic can also extradite persons in cases when no international treaty applies, on the basis of the Czech legislation (the Criminal Procedure Code, Second Section, Chapter 25 (section 379 and ff. of the Criminal Procedure Code), subject to a number of conditions described in section 21 of the Criminal Code (the case involves a criminal act qualified as such by criminal law in both countries for which extradition is permissible, the punishment for that offence can still be imposed, and a citizen of the Czech Republic is not involved).

The Czech Republic does not extradite its nationals for criminal prosecution to foreign countries for any kind of criminal offence. However, the Czech Republic is competent to bring a criminal prosecution for any criminal offence committed by its own citizens, regardless of where this occurred. An amendment to the Constitution of the Czech Republic and an associated amendment to the Criminal Code are being discussed and prepared to allow the extradition of a citizen of the Czech Republic in cases stipulated by law or by the declared international treaty to which the Czech Republic is a signatory.

Under the law of the Czech Republic, a criminal act committed abroad by an alien or a person without nationality, who has no permanent residence in the territory of the Czech Republic, can also be punished in the Czech Republic, if such an act proves to be a criminal act also under the provisions of the legislation valid in the territory where it has been committed.

A Prosecuting Attorney is legally obliged to prosecute all criminal acts that come to his/her knowledge, unless stipulated otherwise by law or by the declared international treaty to which the Czech Republic is a signatory.

***Implementation of mutual legal assistance***

*Other than the figures submitted by the FAU on international cooperation, showing an intense and active exchange of information at FIU level, no specific statistics were submitted on mutual legal assistance. Indeed, no such statistics related to ML and FT are being kept, according to the authorities. Otherwise, no*

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| *serious problems were reported concerning the provision of mutual legal assistance. The Czech Republic complies with the Strasbourg Convention and indeed shows a distinct cooperative attitude. Dual criminality is a prerequisite, but differing standards in the requesting jurisdiction are not prohibitive, as long as it relates to facts that are considered an offence in the Czech Republic. Implementation of foreign confiscation orders, even if based on a common law "in rem" procedure, was not considered to be a problem. Execution of foreign rogatory commissions was said to be done in a timely way.*<br><br>*No statistics on international law enforcement exchange were submitted to the assessors, and no mention was made of any asset sharing arrangements. As said, the Czech Republic is party to and fully implementing the Strasbourg Convention.*<br><br>*The Czech Republic is fully committed to the fight against terrorism. Extradition is the rule, with the – classical in civil law countries - exclusion of own nationals. There is, however, the possibility to take over the foreign prosecution if a Czech national is the suspect. From a purely legalistic point of view, the absence of an autonomous offence of FT might be seen as a potential obstacle, but as stated earlier, this should be remedied in the near future. The resources allocated seem adequate, and no special difficulties were reported.* |
| Analysis of Effectiveness |
| *The cooperative attitude and practice of the Czech authorities are beyond reproach. Apart from the absence of specific ML and FT statistics, and awaiting the introduction of an autonomous FT offence, the international standards are fully met. The allocated resources seem adequate in this respect, as no special difficulties were reported.* |
| Recommendations and Comments |
| *In order to create a clear and unequivocal situation in relation to FT extradition, the timely introduction of the FT offence is of utmost importance. Attention should also be given to the statistical aspect.* |
| Implications for compliance with FATF Recommendations 3, 32, 33, 34, 37, 38, 40, SR I, SR V |
| The Czech Republic fully complies with FATF Recommendations 3, 33, 34, 37, 38, 40 and SR V, and largely complies with FATF Recommendation 32. However, the UN International Convention for the Suppression of the Financing of Terrorism still needs to be ratified in order to fully comply with FATF SR I. |

## B. Assessing Preventive Measures for Financial Institutions

26. In order to assess compliance with the following criteria, assessors must verify that (a) the legal and institutional framework are in place; and (b) there are effective supervisory/regulatory measures in force that ensure that those criteria are being properly and effectively implemented by all financial institutions. Both aspects are of equal importance.

Table 2. Detailed Assessment of the Legal and Institutional Framework for Financial Institutions and its Effective Implementation

| **I—General Framework**<br>**(compliance with criteria 43 and 44)** |
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| Description |
| The Financial Analytical Unit (FAU) audits compliance of the financial institutions with requirements stipulated in the AML Act and determines whether the financial institutions themselves do not engage in legitimization of proceeds from criminal activities. Next to the FAU, the audit of the compliance with the requirements of the AML Act, has since 2000 also been performed by: |

a) the Czech National Bank (CNB), in relation to banks;
b) the Czech Securities Commission (CSC), in relation to investment companies and investment funds, pension funds, securities traders, entities responsible for managing the securities' market, the Securities Center, and other legal persons certified to keep parts of the Securities Center database and perform its other activities;
c) the Credit Unions Supervisory Authority (CUSA, part of the Ministry of Finance), in relation to credit unions.

The FAU inspects banks, securities companies and credit unions on an ad hoc basis for compliance with AML/CFT requirements but leaves the majority of the supervision regarding AML/CFT to the CNB, CSC and CUSA.

As such, the FAU is the sole supervisor for AML issues for legal or natural persons operating gambling houses, casinos, betting shops, auction halls, real estate agencies, entities offering financial leasing or other types of financing, foreign exchange bureaus, facilitators of cash or wire money transfers, insurance companies, insurance and re-insurance agents. The absence, as of today, of a specific supervisory authority responsible and resourced for checking the compliance of insurance companies and agents with the AML requirements is one important weakness of the Czech AML/CFT system. The Office of the State Supervision in Insurance and Pension Funds should be given the authority to undertake such supervision in the insurance sector, should issue regulations to detail the AML/CFT regime applicable to the sector, and should perform effective on-site and off-site controls of insurance companies' compliance with AML/CFT requirements. The mission welcomes the plans in this regard mentioned by the representatives of the Ministry of Finance, and already included in the draft amendment to the AML Act which would come into effect in 2004.

Section 4(6) of the AML Act states that complying with the requirement to report suspicious transactions shall not constitute a violation of the statutory confidentiality requirement stipulated by other acts. Furthermore, section 7 of the AML Act stipulates that the reporting entities as well as the FAU have the obligation to maintain secrecy. This secrecy requirement is not to be imposed on:

- a law enforcement body, when investigating a crime involving legitimization of proceeds or non-compliance with the reporting requirement related to such a criminal offence;
- a court, when ruling on civil proceedings involving a transaction or a claim ensuing from the AML Act;
- persons performing bank supervision;
- an authority empowered to decide on termination of a business or self-employment license provided the FAU has submitted a proposal to terminate such license;
- a person who may claim damages under the AML Act should the information be provided in a form of a subsequent notification of facts decisive for the assertion of such a claim. The financial institution has to notify the client of the measures taken in keeping with the AML Act only pursuant to a previous written consent of the FAU;
- a foreign body when exchanging information necessary to reach the objectives stipulated by the AML Act, unless prohibited by a special legal instrument.

In addition, the supervisory laws (section 25a(4) Act on Banks no. 21/1992, section 80 Act on Securities no. 591/1992, section 16 Act on the Securities Commission no. 15/1998, section 28 Act on Investment Companies and Investment Funds no. 248/1992, section 39 Act on Insurance no. 363/1999) stipulate that there is no breach of the confidentiality obligation for the supervisors provided that information is disclosed for the performance of their duties under the AML Act, in combating money laundering or to law enforcement agencies. As such, the financial supervisors can give information to the FAU. The FAU is not bound by secrecy towards the CNB (section 7(4)(c) AML Act), but can provide information only to the CNB for the purpose of bank supervision.

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| The Ministry of Finance FAU, the CSC and the CNB entered into an agreement on cooperation in February 2003. In this context, they have regular contact on coordinating inspections and interpretation of the AML Act. |
| Analysis of Effectiveness |
| The supervisors have no restrictions in providing the FAU or law enforcement agencies with information on the entities under their supervision. However, the supervisors other than the CNB that have a role under the AML Act, (i.e. CSC and CUSA), cannot receive specific information on the reporting entities from the FAU, although to perform their supervisory task under the AML Act, section 8(3), the supervisors need information (i.e., statistics on the quality and quantity of the suspicious transaction reports) on financial institutions' compliance with the reporting obligations.<br><br>The CNB has increased its AML/CFT targeted on-site inspections since end 2002 and has performed AML inspections in 7 of the 8 largest banks and 1 inspection that included AML topics for a medium-sized bank. The CSC has incorporated AML within their on-site and off-site inspections of securities dealers since 2002. In 2002 the CSC conducted 35 on-site inspections and in 2003 up to the time of the mission, 15 on-site inspections of securities dealers.<br><br>With respect to the insurance sector, overall AML/CFT supervision has not yet been implemented. Indeed, the insurance supervisor, the Office of the State Supervision in Insurance and Pension Funds, which is part of the Ministry of Finance, has no responsibilities in AML and has therefore not conducted inspections on AML issues.<br><br>Also the CUSA has not given high priority to AML issues. So far, the CUSA has limited its role to inspect whether the credit unions have sent their internal AML procedures to the FAU and have complied with identification and record keeping requirements; CUSA has however not determined whether suspicious transaction reports are filed with the FAU or the quality of those reports.<br><br>The audit and legal department of the FAU comprises four staff members, two of whom of are dedicated to performing on-site inspections. In 1999 the FAU performed 11 on-site inspections; in 2000, 14; in 2001, 5; and in 2002, 6. With respect to the high number of entities that the FAU has to supervise this number of on-site inspection is very low and should be increased. The mission understands however that this cannot be achieved with only two staff members and advises therefore the authorities to increase the FAU's audit staff. |
| Recommendations and Comments |
| 1. Since there are several authorities involved in supervising and enforcing compliance of the AML Act, the authorities must ensure that there are no legal impediments for cooperation by allowing the FAU to provide information on financial institutions' compliance with the reporting duty to other relevant supervisors. The financial supervisors need this information not only for auditing compliance, but also to enable them to guide and educate the financial institutions. The draft amendment to the AML Act, if passed, would remedy this situation.<br>2. Priority should be given to the plans to establish the Office of the State Supervision in Insurance and Pension Funds as the overall AML/CFT supervisor for the insurance sector.<br>3. Especially since the Czech Republic is currently working on an amendment to the AML Act by which the Office of the State Supervision in Insurance and Pension Funds will be tasked with supervising and enforcing compliance with AML/CFT requirements by the institutions under its supervision, the cooperation between the Ministry of Finance/FAU, the CSC and the CNB which is based on an agreement should be strengthened (with legal basis if necessary) in the coming years and should include the other supervisors that will be tasked with AML/CFT supervision. |
| Implications for compliance with FATF Recommendation 2 |

As the AML Act stipulates that complying with the reporting duty of suspicious transactions by financial institutions does not constitute a violation of the statutory confidentiality requirement stipulated by other acts and in addition, the financial supervisors have no impediments on sharing information for AML purposes, the Czech Republic is fully compliant with FATF Recommendation 2.

## II—Customer identification

**(compliance with criteria 45-48 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 68-83 for the banking sector, criteria 101-104 for the insurance sector and criterion 111 for the securities sector)**

Description

**For financial institutions in general**

Upon performing a transaction over CZK 500,000, a financial institution has to identify the parties to the transaction. When the exact value of the total transaction is unknown at the time of the transaction or anytime thereafter, the identification obligation arises at the time when it is evident that the threshold will be attained. When the transaction is implemented in the form of installments, the decisive amount shall be the total of the installments to be paid in twelve successive months (section 2(1) AML Act).

Furthermore, a financial institution always has the obligation to identify parties to the following transactions:

a) Suspicious transaction;
b) Opening of a current or a deposit account, or depositing of money to a passbook, or purchasing of a deposit certificate, or negotiating of any other savings instrument;
c) Entering into agreement to open a safety box or to store valuables in the bank's own safety box;
d) A transaction otherwise subjected to the identification requirement under section 2(1) or abovementioned subparagraphs a), b), and c), when the client is represented by a proxy holding a power of attorney (section 2(3) AML Act).

When the financial institution has a substantiated suspicion that a party to the transaction acts on his behalf or attempts at concealing the fact of acting on behalf of a third person, the financial institution shall use the information at its disposal to disclose the identity of the third person or shall take all possible measures in order to disclose its identity (section 2(5) AML Act). It was explained to the mission that 'substantiated suspicion' is to be explained as 'reasonable doubt'. The authorities should however ensure that this 'substantiated suspicion' is not stronger than doubt.

There is no legal requirement, yet, to renew the identification when doubts appear as to the identity of the customer in the course of the business relationship. However, authorities have mentioned that the draft amendment to the AML Act, if passed, would remedy this situation.

The amendment to the Civil Code that took effect on January 1, 2001 laid down a requirement that passbooks, deposit certificates and other forms of deposit must be in the depositor's name (sections 782, 786(2) and 787(3) of the Civil Code). Previously issued anonymous passbooks were cancelled by the Act on Banks on December 31, 2002. The right of depositors to repayment of balances on cancelled deposits will be forfeited on the lapse of ten years from 31 December 2002 (section III of Act No. 126/2002 Coll., amending the Act on Banks). Since the amendment of the Act on Banks took effect on May 1, 2002, all handling of funds on such passbooks has entailed identifying the client. As such the Czech Republic is able to establish an audit trail for passbooks.

The mission was informed that numbered accounts are not used in practice in the Czech Republic.

As all Czech citizens have to carry an identification card, it is fairly easy for financial institutions to identify their customers; non-Czechs are identified by travel documents. In case of a Czech national, name, surname, birth identification number or date of birth, and place of permanent residence are identified; in case of a foreigner, additional verification is done, from the travel document, of name, surname, date of

birth, number and expiry date of the travel document and the issuing country, gender, and other identification data listed in the travel document. In case a natural person is engaged in a business activity, additional verification is needed of his or her business name and the business identification number.

In case of a legal person, the commercial name, domicile, business identification number are identified as well as the natural person acting on its behalf for a given transaction (section 1(3) AML Act). A registry of Czech companies is held by the Ministry of Justice. This registry is accessible through the internet and gives details on directors and shareholders. Financial institutions use this registry to verify domestic legal entities. There is however a time lapse for changes of shareholders and directors to be registered by the Ministry of Justice. Foreign legal entities are identified by a notarized deed of incorporation.

Financial institutions only have to identify the natural person acting on behalf of a legal person for a given transaction. There is no legal obligation to identify the beneficial owners of the legal person. However, the draft amendment to the AML Act contains this obligation: the mission welcomes this draft and expects rapid enactment of this draft legislation.

In addition, attorneys-at-law, lawyers and notaries are obliged to maintain secrecy under section 21 of the Attorneys Act and section 56 of the Notaries Act; only their clients have the right to exempt them from this obligation. This confidentiality requirement relates among others to the disclosure of information to banks, which is preventing effective application of the Know Your Customer (KYC) principle by banks (e.g., determination of beneficial owners) when a lawyer or a notary opens an account for a client. The authorities should take appropriate action to ensure that lawyers and notaries are not prohibited from providing information to financial institutions when acting on behalf of a client.

Czech legislation does not explicitly require financial institutions to keep originator information on fund transfers through the payment chain. In the case of domestic fund transfers, the account number is always transferred and the name of the originator is usually also included. For cross-border transfers by SWIFT, the transaction information contains the account number and name of both the originator and the beneficiary. When a fund transfer does not contain complete originator information, the mission was informed that financial institutions contact the ordering financial institution to obtain the information.

**Banking sector**

Sections 41c(3) and (4) of the Act on Banks require banks to ensure identification of depositors when maintaining their accounts or accepting deposits in any other form. A bank has to obtain proof of a client's identity for each transaction exceeding CZK 100,000 and when renting out safe deposit boxes (section 37(1) of the Act on Banks).

Foreign exchange agencies, licensed by the CNB under the Foreign Exchange Act, have to identify their customers for cash transactions exceeding CZK 100,000 and they have to keep the information identifying each party to cash and non-cash transactions (sections 7 and 20 CNB Decree No. 434/2002).

The CNB has posted the Basel Customer Due Diligence paper (CDD paper) on its website and has informed banks that it expects banks to follow the principles described in the CDD paper; compliance is however not enforceable. One of the points CNB has detected, and criticizes, in its inspections is the absence of a customer acceptance policy. As a result CNB has found that customer acceptance policies are being developed more and more by banks.

In addition, on the basis of its powers under Act on Banks and the Act on the Czech National Bank to issue regulations on prudential rules, the CNB has recently issued a regulation on internal management and control system of banks in the area of money laundering prevention. This regulation contains requirements for banks to have in place procedures for accepting and knowing their customers, including high-risk customers and beneficial owners. The mission is of the opinion that CNB should consider elaborating this regulation with additional practical guidance for the banks.

**Insurance sector**

Identification requirements for insurance companies are solely based on the AML Act, no other provisions are stipulated in the Act on Insurance. In the meeting with representatives of the insurance companies and pension funds the mission was informed that the insurance companies have fulfilled their statutory obligations. As such they have developed internal procedures, including a client identification procedure, as required under section 9 of the AML Act. A specific regulation for the insurance sector designed to detail the requirements in this regard should be considered by the authorities, on the model of the recently issued CNB provision. In addition, there is not sufficient supervision of the compliance with the customer identification requirement.

**Securities sector**

Sections 47a and 47b of the Securities Act regulate which rules for internal operations and rules of conduct in relation to customers a securities trader must implement. Section 47b(1)d sets out that a securities trader is obligated, according to the kind and scope of services a customer requires, to require information from such customer concerning his financial situation, experience in investing in investment instruments and goals that such a customer pursues through a required service; section 47b(1)a sets out that a securities trader, while providing a service, is obligated to act with proper qualifications, honestly, fairly and in the best interest of its customers.

The CSC issued in October 2002 Decree No. 466/2002 on Detailed Organization Rules for Internal Operations of Securities Traders and for Conduct in relation to Customers that further regulates the manner a securities trader shall obtain information from customers. Section 15 of the Decree sets out, inter alia, that a securities trader shall provide for the manner and conditions of obtaining information about customers by its own internal rule.

The CSC has developed a questionnaire that it considers a standard for application of a KYC rule. This questionnaire specifies the manner a securities trader should proceed and the scope of information it should obtain from its customers. In its inspections the CSC checks if this questionnaire is used by the securities traders.

Analysis of Effectiveness

In addition to identifying their customers as required by law, the financial institutions that the mission visited were aware of high risk customers and countries. As such, in the context of their customer acceptance policy, some financial institutions check the customer against the UNSCR lists and a (self-developed) list of countries that might pose a higher risk. When doubts arise as to the identity of a customer during a business relationship, financial institutions may ask additional information based on their internal policies, but there is no legal basis for this.

The mission was informed that financial institutions seem to encounter some difficulties in gathering information on their customers because of a strict interpretation by the Inspectors of the Office for Personal Data Protection (OPDT) of Act 101 of April 4, 2000 on the Protection of Personal Data. Under section 5(1)(d) of this Act, a financial institution can collect personal data only insofar as necessary for the fulfillment of a specified purpose. The mission shares the view that, as drafted, this particular requirement should not limit financial institutions from gathering and recording information on their customers and to ensure their proper identification, as required by the AML Act.

However, the Protection of Personal Data Act also requires financial institutions to get explicit consent of the person identified when processing sensitive data such as nationality, racial and/or ethnic origin, criminal activity, and sexual life. Many financial institutions fear that this requirement could mean that customers could refuse financial institutions obtaining a copy of their identification card or passport on

which nationality, marital status and a photo are registered. In this case, the financial institution would have to write down the legally required identification details, but would not be authorized to copy the identification document, which would harm the quality of the identification records maintained by the financial institutions.

For banks however it is possible to collect all the necessary data since the Act on Banks section 37(2) states that "for the purposes of banking transactions, banks and foreign bank branches shall collect and process the personal data (including sensitive data on natural persons) necessary to allow the banking transaction to be executed without the bank incurring undue legal and material risks."

Recommendations and Comments

1. The Czech AML/CFT system would benefit from the introduction of new requirements in the AML Act regarding, in particular, (i) updating of the identification information of customers when doubts appear as to their identity in the course of a business relationship, (ii) the identification of the beneficial owner, when the customer is a legal person, (iii) including accurate and meaningful originator information on funds transfers and related messages. The authorities have indicated that they are aware of the significance of this issue. They have also stated that the draft amendment to the AML Act, which should come into force January 2004, proposes that if a financial institution finds out or has a suspicion that a customer is not acting on his own behalf or attempts to conceal that he is acting on behalf of a third person, the institution will require the customer to confirm in writing the name of the person on whose behalf he is acting and provide identification information about that third person.
2. In addition, the authorities informed the mission that the amendment to the AML Act should resolve the problem of exemption from the confidentiality requirement for lawyers and notaries with respect to the FAU, but it does however not address their confidentiality requirement vis-à-vis financial institutions. The authorities should ensure that lawyers and notaries cannot invoke their confidentiality requirement in relation to financial institutions when acting on behalf of a client.
3. Since the OPDT started its inspections only this year, there is not sufficient experience yet on how the Protection of Personal Data Act will be interpreted. The mission recommends the authorities address this problem in case the interpretation of the Protection of Personal Data Act referred to above, and the fears expressed by the representatives of financial institutions, are confirmed by the outcomes of on-going inspections made by the OPDT.
4. Although originator information is included in domestic and SWIFT transactions and banks follow up on transactions that do not contain this information, the authorities should take measures to ensure that this is done by all financial institutions, including money remitters, which in accordance with FATF Interpretative Note to Special Recommendation VII should be completed by end 2004.

Implications for compliance with FATF Recommendations 10, 11, SR VII

As the Czech legislation does not yet provide for requirements to identify the beneficial owners of a company or the renew identification when there are doubts, the Czech Republic is largely compliant with FATF Rec. 10 and 11. The authorities have not taken additional measures to ensure that originator information remains with a transfer. In accordance with FATF Interpretative Note to Special Recommendation VII this should be completed by end 2004. Therefore, no rating against FATF SR VII is provided at this time.

## III—Ongoing monitoring of accounts and transactions

**(compliance with Criteria 49-51 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 84-87 for the banking sector, and criterion 104 for the insurance sector)**

Description

**For financial institutions in general**

There is no specific provision in Czech legislation that requires financial institutions in general (with the exception of banks as referred to below) to pay special attention to all complex, unusual large transactions, or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, to set forth their findings in

writing, and to keep such findings available for competent authorities. Neither is there a requirement for financial institutions to give special attention to business relationships and transactions with persons in jurisdictions that do not have adequate systems in place to prevent and deter ML or FT.

The AML Act states that should a financial institution uncover, in the course of its activities, a suspicious transaction, it is required to submit to the FAU a report on such a transaction (section 4(1)).

Section 1(5) of the AML Act defines a suspicious transaction as a transaction effected under conditions generating suspicion of attempted legitimization of proceeds, including but not limited to:

- Cash deposits and their immediate withdrawal or transfer to another account;
- Opening by one client of numerous accounts, the number of which is in obvious imbalance with the client's business activities or wealth, and transfers among these accounts;
- Client transactions which, do not correspond to the scope or nature of client's business activities or wealth;
- Number of transactions effected in a single day or over several days is inconsistent with the usual flow of transactions of the given client.

Although the reporting of suspicious transactions requires financial institutions to check accounts and transactions, this is not precise enough. Financial institutions should be required by means of law, regulation or enforceable guidance to routinely monitor accounts and transactions for the reasons indicated above.

**Banking sector**

The CNB has issued a regulation on internal management and control system of banks in the area of money laundering prevention, which came into effect October 1, 2003. The regulation requires banks to have in place a system of internal principles, procedures and control measures to prevent money laundering. The regulation requires banks to have internal principles and procedures for customer acceptance with regard to risk factors. Banks are required among others to:

- establish and keep such customer information that allows it to evaluate whether or not it is a risky customer;
- when opening a customer account, to establish the purpose of the account, assumed movements of financial funds in the account, the fact whether or not a customer is an employee, and whether or not the account is opened for business purposes, and which is the object of customer's business activities;
- establish the origin of customer financial funds in cases set by the bank;
- if possible, establish the reason for a customer's termination of the contractual relationship with another bank prior to executing the relevant agreement, if it suspects that the customer could launder money during the contractual relationship;
- during the contractual relationship, the bank checks the validity and completeness of the information recorded about the customer under this Provision, and updates such information;
- pay increased attention to all sophisticated, unusually extensive transactions of the customer, both in terms of their amount and number of parties involved, and to transactions of unusual character that have no apparent economic of legal reason;
- pay increased attention to private banking transactions; in this area, the bank shall make an agreement with a customer merely on the basis of a previous consent granted by at least one employee of the bank whose title is higher than the title of the employee(s) proposing to enter into an agreement with a customer;
- pay increased attention to transactions made to accounts of persons engaged in significant public posts; the bank shall define in an internal regulation which public posts are regarded as significant;

- for technology-based transactions when a customer is not directly contacted, the bank shall develop and apply such procedures proving that the deal is performed with an already identified customer.

The issuance of this regulation by the CNB represents important progress to complete the AML/CFT legal framework applicable to banks.

The Czech Banking Association (CBA) has issued Banking Activities Standards No. 4 for banks. These identify cross-border transfers—especially those to and from "risk territories" and to tax havens—as one of the signs of suspicious transactions. The CBA's standards are not binding. In its on-site inspections, the CNB has found that banks apply this standard in practice and pay particularly close attention to such transactions.

**Other financial sectors**

The supervisors of the securities and insurance sectors should take it upon themselves to develop similar AML/CFT targeted regulations to provide more detailed provisions to the entities they regulate. In addition more substantive and practical guidance to the financial institutions under their supervision for compliance with AML/CFT regulations would be welcome as well.

Analysis of Effectiveness

Although the monitoring of accounts and transactions is applied to some extent in practice, financial institutions check their transactions only with a view to the reporting of suspicious transactions. To this end, they have developed 'red flags' to enable staff to recognize suspicious transactions. As there is no legal obligation, financial institutions in general do not routinely pay special attention to complex, unusually large transactions and unusual patterns of transactions, which have no apparent economic or visible lawful purpose, to examine the background and purpose of such transactions and to keep their findings available for the competent authorities. Since the CNB regulation came into force recently, all banks will have to implement by December 31, 2003 monitoring systems to comply with this requirement.

The financial institutions that the mission visited are aware of customers and countries that pose a higher risk. Therefore, they check the customer and accounts against the UNSCR lists and a (self-developed) list of countries that might pose a higher risk.

Recommendations and Comments

1. Similar to the CNB regulation, the Czech AML/CFT system would benefit from the introduction of new requirements in the AML Act regarding the ongoing monitoring of accounts and transactions, and more specifically for financial institutions to pay special attention to all complex, unusual large transactions, and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, to set forth their findings in writing, and to keep such findings available for competent authorities.
2. In addition, the authorities should introduce in the AML/CFT legal framework, the necessary provisions that would ensure that financial institutions pay special attention to business relations and transactions with persons (including legal entities) in jurisdictions that do not have adequate systems in place to prevent and deter ML or FT.
3. The securities and insurance supervisors should develop AML/CFT regulations similar to the one issued by the CNB.
4. The financial supervisors should give more practical guidance to the entities they regulate and supervise on monitoring client accounts and transactions.

Implications for compliance with FATF Recommendations 14, 21, 28

As the financial institutions perform these recommendations in practice and the new CNB regulation for banks already addresses these issues, the Czech Republic is largely compliant with Rec. 14 and 21, however since no additional guidance has been provided, the Czech Republic is materially non-compliant with Rec. 28.

## IV—Record keeping

**(compliance with Criteria 52-54 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion 88 for the banking sector, criteria 106 and 107 for the insurance sector, and criterion 112 for the securities sector)**

Description

**For financial institutions in general**

Section 3 of the AML Act states that financial institutions "shall record and keep identification data as well as all data and documentation concerning transactions subjected to the identification requirement for a period of no less than ten years after implementation of the transaction in question. The hereinbefore period shall commence on the first day of the calendar year following the year in which the last act of the transaction, the financial institution is aware of, was implemented."

In addition, according to section 8(1) of the AML Act, financial institutions have to, upon request and in the period determined by the FAU, submit to the FAU information on transactions affected by the identification requirement and investigated by the FAU; submit documentation pertaining to such transactions or provide access to them, in the course of investigation of a report or when performing an inspection, by the authorized personnel of the FAU; and submit information on persons involved, in any possible way, in such transactions.

The records on customer identification are available to the supervisory authorities because of their supervisory authority (section 25 and 38 (2) Act on Banks, sections 6 and 26 Act on Insurance, section 3 Act on the Securities Commission).

**Banking sector**

The Act on Banks, section 11(4), requires all banks to keep records of all agreements entered into with clients in such a way that the banks can, at the request of the CNB, submit the relevant documents at the earliest opportunity in a verified translation into the Czech language. In addition, for accounting purposes, banks are required to keep books and accounts in accordance with the Act on Accounting and records of transactions for a period of at least ten years (section 21 Act on Banks).
Banking secrecy does not apply to reports on matters concerning a client upon written request by, inter alia, law enforcement authorities, the Ministry of Finance and the CSC when exercising supervision (section 38(3) Act on Banks). In those cases banks can provide information regarding a client without the client's consent.

**Insurance sector**

Under section 24 Insurance Act, insurance or reinsurance companies are obliged to keep accounts on the state and movements of its assets and liabilities, expenses and revenues, and profit or loss in accordance to Act on Accounting.
Insurance companies can provide information regarding a client upon written request of, inter alia, the police, an authority acting in criminal proceedings, the Ministry of Finance when exercising supervision, and the CSC (section 39 Act on Insurance). There is not sufficient supervision of compliance with the record keeping requirement in relation to AML/CFT.

**Securities sector**

The record keeping duty for securities traders is regulated in the Securities Act, in particular section 47c(2), that sets out that a securities trader is obliged to keep all documents concerning the provided services for at least 10 years. Section 47a(1)a of the Securities Act sets out, inter alia, that a securities trader is obliged to implement administrative procedures, control and security measures for processing and

keeping data.

Section 47(1) of the Securities Act stipulates that a securities trader is obliged to keep a daybook of received instructions to arrange for the purchase, sale or transfer of investment securities, and of transactions concluded on the basis of such instructions. The said requirements also apply to investment agents or tied agents pursuant to section 45a of the Securities Act.

The securities traders can provide information to other authorities for the purpose of criminal proceedings, duties under the AML Act and supervisory purposes.

Analysis of Effectiveness

Under the AML Act, financial institutions are only required to keep identification data and documentation "concerning transactions subjected to the identification requirement" (see for a description of these transactions above in II-Customer identification on section 2 AML Act). However under the supervisory acts, financial institutions are required to keep more information. The legal requirement of the AML Act is limited to transactions that are subject to identification, therefore financial institutions are not required to keep all necessary records concerning customer transactions and accounts for the obliged period following the completion of the transaction, nor is there any requirement to maintain records on account files and business correspondence for the given period following the termination of an account or business relationship.

In addition, the data that are kept, have to be kept "for a period of no less than ten years after the implementation of the transaction in question", there is no requirement to keep records on customer identity, account files and business correspondence for the given period following the termination of the account or business relationship.

Recommendations and Comments

1. The authorities have indicated that to comply with relevant international standards, particularly the second EU Directive on Money Laundering, they are amending the AML Act to regulate record keeping requirements in more detail. The mission was informed that the amendment once enacted will require financial institutions to also keep records on identification data, copies of identification documents and in case of representation the original of the proxy for 10 years following the termination of a business relationship.
2. In addition to this amendment, the authorities are advised to add to the AML Act that financial institutions are required to keep all necessary records concerning customer transactions and accounts and also to maintain records on account files and business correspondence.

Implications for compliance with FATF Recommendation 12

The Czech Republic is largely compliant with Recommendation 12, since only minor shortcomings in these requirements have been identified.

## V—Suspicious transactions reporting

**(compliance with Criteria 55-57 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 101-104 for the insurance sector)**

Description

Sections 4(1) to 4(3) of the AML Act stipulate that should a financial institution uncover, in the course of its activities, a suspicious transaction, it is required to submit to the FAU a report on such transaction including all relevant identification data. Financial institutions are required to draft the report with no delay, but no later than five days after the implementation of the transaction. If there should be a danger of default, the reporting institution has to notify the FAU immediately after having uncovered the suspicious transaction. The report may be submitted orally in the form of a deposition or in writing, while ensuring that the transaction information remains confidential and is not disclosed to unauthorized persons.

Section 1(5) AML Act defines a suspicious transaction as "a transaction effected under conditions

generating suspicion of attempted legitimization of proceeds, including but not limited to:

a) Cash deposits and their immediate withdrawal or transfer to another account;
b) Opening by one client of numerous accounts, the number of which is, in keeping with section 1(6) in obvious imbalance with the client's business activities or wealth, and transfers among these accounts;
c) Client transactions which, in keeping with section 1(6), do not correspond to the scope or nature of client's business activities or wealth;
d) Number of transactions effected in a single day or over several days is in imbalance with the usual flow of transactions of the given client."

Transaction is defined in section 1(4) of the AML Act as "any action aimed at movement of money or transfer of assets, or directly triggering them, except for activities involving implementation of a requirement stipulated hereby or by a decision of a relevant government body."

There is currently no requirement for financial institutions to report suspicions of terrorist financing. However, such a provision is included in the draft amendment to the AML Act. The mission welcomes this draft and expects its rapid adoption. The financial supervisors and the FAU have distributed the UN and European lists of terrorist individuals and organizations to the financial institutions, and these are encouraged to report the related transactions to the FAU.

Financial institutions are required to draft in writing and enforce internal procedures and control measures to prevent legitimization of proceeds. The internal procedures have to contain steps to be taken by the financial institution from the moment of the detection of a suspicious transaction to the submission of the report on the suspicious transaction to the FAU as well as rules of processing a suspicious transaction and appointment of personnel to analyze it (sections 9(1)&(2) AML Act). These internal procedures have to contain also a detailed list of features of a suspicious transaction with regard to specific activity of its institution. To aid banks and insurance companies with these procedures, the CBA and the Czech Insurance Association have issued general guidelines on AML.

The AML Act determines that complying with the reporting requirement does not constitute a violation of the statutory confidentiality requirement of other acts (section 4(6)). In addition, in section 14 it is mentioned a person who complies with the instruction of the FAU to suspend a transaction in accordance with section 6 AML Act, cannot be held liable for damages. Moreover, no damages may be claimed if the transaction is executed with the intention to legitimize proceeds or if the suspended transaction is not executed.

Furthermore, in accordance with section 7(1) AML Act a reporting entity is not to disclose to third persons, including persons reported on, any information related to the suspicious transition report and/or measures taken by the FAU in keeping with the AML Act. This secrecy requirement, which commences upon detection of the suspicious transaction, applies to every employee and contractor of the reporting institution.

Analysis of Effectiveness

The system for reporting suspicious transactions is comprehensive and compliant with international standards. For the reporting duty financial institutions have different approaches. Some financial institutions prefer to monitor an account and consult with FAU on whether to report or not, whereas other financial institutions do not consult with the FAU but report all suspicious transactions within 5 days after the transaction, as legally required. These two approaches obviously result in significant differences in the quality and quantity of reported transactions.

Financial institutions have filed only a few reports on terrorist financing. These alleged 'hits' based on the UNSCR list, turned out to be either a different person or an unused account.

Although financial institutions are required to draft and enforce internal procedures comprising, *inter alia*, a detailed list of features of suspicious transactions, neither the FAU nor the supervisors have issued any

guidelines to assist financial institutions in detecting pattern of suspicious financial activity. The FAU does however provide informal guidance to the financial institutions in their day-to-day contact with them.

Recommendations and Comments

1. The FAU in cooperation with the supervisors should take it upon themselves to provide the financial institutions with more guidance on recognizing suspicious transactions. They could for instance make references to typologies reports of the FATF, other FATF-style regional bodies, and the Egmont Group to receive updates on the latest money laundering and financing of terrorism cases trends and methods. In addition, organizations of supervisors, such as IAIS and IOSCO, have also issued papers on and examples of money laundering, which can be useful for the specific financial sectors.
2. At the time of the mission, financial institutions were not required by law to report transactions suspected of being related to terrorism. The authorities have however indicated that an amendment to the AML Act is being prepared, by which financial institutions will also be obliged to report these particular suspicious transactions to the FAU. The proposed amendment to the AML Act will extend the definition of suspicious transactions to include the suspicion that funds used in a transaction are intended for the financing of terrorism, terrorist acts or terrorist organizations.
3. There should be a requirement for financial institutions to report suspicions of terrorist financing.

Implications for compliance with FATF Recommendations 15, 16, 17, 18, 28, SR IV

The Czech Republic is fully compliant with recommendation 15, 16, 17 and 18, and materially non-compliant with SR IV. Since the authorities have not given any guidance to the financial institutions, they are materially non-compliant with recommendation 28.

## VI—Internal controls, Compliance and Audit

**(compliance with Criteria 58-61 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 89-92 for the banking sector, criteria 109 and 110 for the insurance sector, and criterion 113 for the securities sector)**

Description

**Internal Procedures**

Financial institutions are required in accordance with sections 9(1) and 9(2) of the AML Act to draft in writing and enforce internal procedures and control measures to prevent legitimization of proceeds. The AML Act prescribes the internal procedures to comprise the following:

a) A detailed list of features of suspicious transactions;
b) A client identification procedure;
c) A mechanism to allow access by the FAU to the data kept in keeping with section 3 of the AML Act;
d) Steps to be taken by the financial institution from the moment of the detection of a suspicious transaction to the submission of the report on the suspicious transaction to the FAU so that stipulated schedules are met, as well as rules of processing a suspicious transaction and appointment of personnel to analyze it;
e) Measures to prevent an imminent danger that by executing the transaction, securing of the proceeds would be frustrated or substantially impeded;
f) Technical and personnel measures to enable the FIU to implement in the financial institution activities as stipulated in sections 6 and 8 of the AML Act.

The AML Act further stipulates in section 9(5) the obligation for financial institutions to provide annual training of the staff that is likely to come to contact with suspicious transactions in the course of their work. The training has to focus on methods of detection of suspicious transactions and on implementing measures of the AML Act.

**Banks**

Section 9(1)d of the Act on Banks states that a bank has to specify in its articles of association the organizational arrangement of the bank's internal control system. The internal audit department has to

analyze and evaluate in particular the functionality and effectiveness of the management and control system including its risk management system (section 8(6) Act on Banks). KYC principles are part of the banks' internal management and control systems and are also covered by the CNB regulation on the Internal Management and Control System (Provision No. 12 of 11 December 2002) which came into effect July 1, 2003. Section 3(2)c of this CNB regulation states that the internal management and control system shall ensure that the aim of compliance of the bank's activities with the relevant laws and regulations are met. The efficiency and effectiveness of the internal management and control system is to be monitored and evaluated by the bank's internal audit department.

The new regulation of the CNB on internal management and control system of banks in the area of money laundering prevention also states that banks should have in place a system of internal principles, procedures and control measures to prevent money laundering, a customer acceptance policy and a training program.

**Insurance**

The Czech Insurance Association has developed a guideline which functions as an example for insurance companies for developing internal procedures. The mission was informed by the Czech Insurance Association and the representatives of the insurance companies that the insurance companies have fulfilled their statutory obligations; as such have developed internal procedures as required under section 9 of the AML Act. Overall, AML/CFT supervision has not yet been implemented in this regard, as the insurance supervisor, the Office of the State Supervision in Insurance and Pension Funds, has no responsibilities in AML.

**Securities**

Requirements for an internal organisation of a securities trader and its conduct in relation to customers are regulated by sections 47a and 47b of the Securities Act. Section 47a(1)a sets out, inter alia, that a securities trader is obligated to introduce an adequate system of internal control, including rules for transactions concluded by its employees on their own account or on the account of persons closely related to them.

The requirements for the internal organisation of a securities trader in relation to an internal control system, compliance rules and internal audit are further elaborated in the Decree on Organisation Rules for Internal Operations of Securities traders and on Rules for Conduct in relation to Customers. Section 3(1) of this Decree states that a securities trader is obligated to introduce an internal control system adequately to its size, scope and character of provided services, and it shall ensure creation of such an organisational structure that will enable an effective performance of an internal control system; section 4(3) specifies duties of a staff member in charge of compliance activities; section 5(2) specifies duties of an internal auditor; and section 19 regulates duties of a securities trader while managing financial risk and liquidity.

**Compliance officer**

The AML Act, section 9, requires financial institutions employing three and more persons to appoint a contact person to be in charge of coordination and information exchange with the FAU and monitor compliance with reporting requirements, unless these functions are performed by the statutory body of a financial institution. The financial institution has to inform the FAU about the appointment of the compliance officer.

In line with the internal procedures, the contact person has to be an employee in such a position that will enable him to perform all tasks required by the AML Act.

**Screening procedures**

There is no legal requirement to have adequate screening procedures when hiring employees, with the exception of requirements regarding senior staff in regulated entities. However, the authorities informed the mission that, when hiring employees, banks routinely require a statement of criminal records.

**Foreign Branches**

Although the requirement that foreign branches of Czech financial institutions observe the AML/CFT measures of the Czech Republic is not explicitly provided for in the law, the branches of Czech banks operating in other countries must comply with both the Czech and foreign regulations. Branches and subsidiaries are subject to supervision on a consolidated basis (section 26c of the Act on Banks). Sanctions can be imposed pursuant to section 26h of the Act on Banks. In practice the banks operating in the Czech market only have branches and subsidiaries in countries whose minimum KYC standards are comparable with the legislation in the Czech Republic.

Analysis of Effectiveness

All financial institutions have to submit their internal procedures under the AML Act to the FAU. Those financial institutions that have not submitted their internal procedures (on time) have been fined by the FAU. The financial supervisors check if the internal procedures are in place and have been submitted to the FAU. The CNB started in 2002 a more risk-based approach by indicating to banks which areas the external auditors specifically should examine as prescribed in section 22 of the Act on Banks. As such, for several banks specific AML audits have been executed.

The financial institutions have all appointed a compliance officer as required by the law. Although this is usually not a person at management level, the compliance officer in general can decide if a transaction has to be filed with the FAU.

The banks that the mission met have developed training programs for their staff, e.g. by way of e-learning. In addition they have introductory courses for new staff and provide materials on AML to their staff. The mission found that other financial sectors have not focused their training programs on AML/CFT issues. As such, these efforts need to be enhanced further.

Recommendations and Comments

1. Although all financial institutions have internal procedures and a compliance officer, the mission is of the view that financial institutions approach AML/CFT from a legalistic point of view, especially in the insurance sector. The authorities should therefore enhance their efforts to raise awareness on ML and FT in the financial institutions and monitor the skills of the compliance officers.
2. In addition, the authorities must ensure that financial institutions put in place adequate screening procedures when hiring employees.

Implications for compliance with the FATF Recommendations 19, 20

Full compliance with recommendations 19 and 20.

## VII—Integrity standards

**(compliance with Criteria 62 and 63 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criterion114 for the securities sector)**

Description

**Banking sector**

During the licensing process, the CNB assesses if a person with a qualified interest in a bank is competent to exercise shareholder rights in the bank's business activities (section 4(3)c of the Act on Banks). In addition, the consent of the CNB is required prior to any acquisition of a qualifying holding in a bank or prior to any increase of a qualifying holding in a bank above 20, 33 or 50 percent (section 20(3) of the Act

on Banks). The CNB also assesses the competence, trustworthiness and experience of founders of banks and of persons nominated for executive managerial positions (section 4(3)d of the Act on Banks). A person convicted lawfully in the past of a willful criminal offence is not allowed to act in such a position (section 4(5) of the Act on Banks).

In CNB Decree No. 166/2002 the essential elements for a banking license application are stipulated, such as a recent extract from the criminal register and a list of all previous employment and business activities. In addition, on 13 December 2002, the CNB has issued official information regarding the assessment of the competence, trustworthiness and experience of persons nominated for executive managerial positions in a bank or a branch of a foreign bank. The CNB also requires documents on the origin of any contributions to the capital of a bank by persons having qualifying holdings or of any funds from which a qualifying holding was acquired in the bank.

Under section 3(3) of the Foreign Exchange Act, the CNB assesses competence and integrity as part of the licensing process of bureaux de change and money service providers. The CNB takes into consideration the competence and integrity of the persons performing managerial functions and the persons who will undertake transactions for the applicant, and the integrity of the persons who are founders or partners of the applicant and members of its statutory body and supervisory board. For the purposes of the Foreign Exchange Act, any person who has been lawfully convicted of a willful criminal offence or a negligent criminal offence of a property nature is not deemed a person of integrity. Where a person with a previous conviction for property crime gets a proprietary influence over an already licensed foreign exchange entity, this can be viewed as a breach of a *sine qua non* condition of the foreign exchange license, and the remedial procedures of section 22 of the Foreign Exchange Act can be applied.

**Insurance sector**

According to section 8 of the Act on Insurance, the application for an authorization to carry on insurance activity shall contain the name and surname, date of birth, place of permanent residence and proof of good repute for each natural person who is a founder of an insurance company, a member of statutory or supervisory body of a legal person as a founder of an insurance company, or a natural person authorized to act on behalf of this legal person. In addition to proof of good repute, particulars on the education and professional experience are requested of each natural person, who is a member of board of directors, supervisory board or control board or who is to act as a proxy holder of an insurance company.

Section 11 of the Act on Insurance stipulates that a natural or legal person intending to acquire or increase his share in an insurance or reinsurance company in a way that his share in voting rights will reach or exceed 20, 33 or 50 percent is under obligation toward the Ministry of Finance/Insurance supervisor in writing: a) to request for consent prior to the acquisition or increase of this share, b) to notify this fact, if acquisition is effected through the transfer of rights, within 30 days since the date it learned of this fact. The application has to contain the amount of the intended share and proof of good repute of a natural person who intends to acquire or increase his share in an insurance or reinsurance company or who is a proxy holder or member of the statutory or supervisory body of the legal person that intends to acquire or increase his share in an insurance or reinsurance company.

The Ministry of Finance/Insurance supervisor shall not approve the application if a) a natural person has not proved his good repute, b) such person was in the past three years a member of the statutory or supervisory body or proxy holder of a legal person that went bankrupt during this period, c) the authorization to engage in insurance activities has been withdrawn from a natural person for infringement of conditions stipulated by a special legal provision (e.g. Act on Securities). Proof of good repute may be demonstrated by checking the criminal records.

**Securities sector**

The CSC grants a license to perform the activities of a securities trader under section 45 of the Securities Act. The procedure and requirements for granting a license are set out in sections 45 to 46d of the Securities Act; these include providing an extract from the criminal registers. The whole procedure and requirements related to grant a license to perform activities of a securities trader are elaborated in the CSC's Methodology available at CSC website.

If a certain entity is not authorised to provide other investment services than receiving and transmitting instructions related to investment instruments, and it has fulfilled its legal requirements, the CSC registers such an entity on the basis of its application, or it rejects its application pursuant to provision of section 45a of the Securities Act.

The CSC screens whether all requirements imposed on licensed entities are met not only during licensing proceedings, but also when performing on-site examinations and state inspections. If the CSC finds out that a certain licensed entity is inconsistent with the said requirements, the CSC will withdraw the license to perform activities of a securities trader.

**Legal entities**

In addition to the licensing requirement for financial institutions, conditions for incorporation of legal entities and their further action are regulated by civil code and commercial code. Both these codes determine conditions for the formation of legal entities in a way which would reduce the risk of abusive business practices mediated by these legal entities or, as the case maybe, to prevent abuse of these legal entities for money laundering.

Analysis of Effectiveness

The financial supervisors have adequate powers to check the integrity and as such can prohibit criminals from taking control of financial institutions.

Recommendations and Comments

Implications for compliance with FATF Recommendation 29

Compliant

## VIII—Enforcement powers and sanctions

**(compliance with Criteria 64 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 93-96 for the banking sector and criteria 115-117 for the securities sector)**

Description

Section 12(1) of the AML Act stipulates that a person who violates or fails to comply with the requirements set forth by the AML Act, unless such violation constitutes a breach of the secrecy requirement or unless such action constitutes an act the penalty for which is much stricter, shall be subject to sanctions (i.e., a fine not exceeding CZK 2 million) by the Ministry of Finance (FAU) or another supervisory body that audits compliance of the AML Act (i.e., CNB, CSC and CUSA). In case of a repeated violation or failure to comply with a requirement for a period of 12 successive months, there may be a fine imposed of maximum CZK 10 million.

When the FAU determines that a legal or a natural person enjoying income from business or self-employment, has committed long-tem or repeated violations of any of the requirements of the AML Act or of a decision issued in keeping with the AML Act, the FAU shall submit a motion to repeal such person's license to a body empowered to make a decision to repeal a license. That body has to inform the FAU about measures taken and the settlement of the motion within thirty days of the delivery of the motion. Reasons for repealing a business or self-employment license may include long-term or repeated violations

of the requirements of the AML Act (section 13(2) AML Act).

**Banking sector**

Under section 44 of the Act on the Czech National Bank, the CNB is in charge of supervision of banks and foreign exchange dealers and as such has the powers to impose remedial measures and penalties when shortcomings are detected.
In the case of banks, the CNB may impose remedial measures in which it may, in particular, demand that the bank restrict some of its permitted activities or cease non-permitted activities; replace persons in the management of the bank or replace members of the supervisory board; change the license by excluding or restricting some activities; order an extraordinary audit; impose conservatorship; impose a fine up to CZK 50 million (section 26(1) of the Act on Banks). If serious shortcomings persist, the CNB can, in consultation with the Ministry of Finance, revoke a license (section 34 Act on Banks).

In accordance with sections 22 and 23 of the Foreign Exchange Act the CNB can, depending on the gravity and nature of the breach, restrict, suspend or revoke the foreign exchange license; impose a fine, even if the shortcomings are remedied within the set time limit.

**Insurance sector**

The supervisor for the insurance sector, the Office of the State Supervision in Insurance and Pension Funds of the Ministry of Finance, can decide on measures for removal of irregularities. If the insurance supervisor detects irregularities in the economic performance of an insurance or reinsurance company which could jeopardize or jeopardizes its ability to meet its commitments, it can order the insurance or reinsurance company to submit a restoration plan to the Ministry for approval; impose a forced administration in the insurance or reinsurance company; suspend authorization to an (re)insurance company to conclude (re)insurance contracts; order the insurance company to transfer its portfolio of insurance contracts to another insurance company; withdraw the authorization of the (re)insurance company to carry on (re)insurance activity (sections 27-33 Act on Insurance). Section 35 of the Act on Insurance gives the insurance supervisor the power to impose fines up to CZK 100 million. However, overall AML/CFT supervision has not yet been implemented as the insurance supervisor has no responsibilities in AML.

**Securities sector**

Under section 9 of the Act on the Securities Commission, the CSC is authorised to impose corrective measures or sanctions when the CSC discovers breaches of legal obligations by entities or persons subject to its supervision. The corrective measures consist of requiring the controlled person to undertake a prescribed remedy and to report the measures undertaken within the required time, and stipulating the manner in which the person is obliged to remedy the shortcoming. In addition the CSC is authorized to impose penalties in the form of a fine up to but not exceeding CZK 100 million for discovered illegal conduct.

Under section 86 of the Act on Securities the CSC has the power to order remedial measures and impose fines. The CSC can order a measure to rectify the detected defects, particularly an order to restrict or stop certain activities; prohibit a public offer of a security or suspend it for not more that one year; change an authorization or consent granted or deprive it forever or for not more than one year; impose a fine of up to CZK 20 million; or publicize a report about the ascertained defect.

Moreover, under sections 37 to 37m of the Act on Investment Companies and Investment Funds, the CSC has several possibilities for remedial measures and penalties, such as ordering an investment company, investment fund or depository to redress the matter by a specific deadline; ordering the replacement of the investment company; ruling on a forced transfer of the asset-management of a unit trust; imposing receivership; ruling on the reduction of an investment fund's registered capital; revoking the permit on the

basis of which the investment company was incorporated or the investment fund was incorporated or the unit trust was created. Alongside with, or instead of, these remedial measures the CSC can impose a fine up to CZK 100 million on the investment company, the investment fund or the depository.

Analysis of Effectiveness

In general, the supervisory authorities have sufficient enforcement powers and sanctions to enforce compliance with the AML Act, with the exception of the Insurance Supervisor.
At the time of the mission, no significant sanctions had been imposed by the CNB or the CSC against financial institutions for failure to comply with AML/CFT preventive measures. In every inspection by the CNB up to the time of the mission, deficiencies had been detected in the implementation of the AML system by banks for which the CNB had given the bank time for remedial actions.

The FAU however imposed 14 fines in 2001 for a total of CZK 12 million and 33 fines in 2002 for a total of CZK 30 million. The institutions fined by the FAU were mainly bureaux de change and money remitters, real estate agents, pension funds, credit unions and casinos for not filing the internal procedures on time.

Recommendations and Comments

1. The mission recommends the financial supervisors follow up their inspections with appropriate measures, and/or sanctions where needed, to ensure effective implementation of the AML/CFT regulatory framework.

## IX—Cooperation between supervisors and other competent authorities

**(compliance with Criteria 65-67 for the (i) banking sector; (ii) insurance sector; (iii) securities sector; and (iv) other financial institutions sector, plus sector specific criteria 97-100 for the banking sector and criteria 118-120 for the securities sector)**

Description

**The FAU**

The current number of staff of the FAU is 28, divided into four departments, the collecting and processing of data department; the analytical department; the audit and legal department; and the international cooperation department. The supervisory function of the FIU is performed by Legal and Supervisory Department, which comprises four staff.

The FAU is authorized within the scope determined by an international treaty to co-operate with its foreign counterparts especially in the field of transmitting and acquiring data necessary to reach the objectives determined by the AML Act (section 10(5) AML Act). For the meantime the FAU is not authorized to cooperate with FIUs from countries with which the Czech Republic has not entered into a relevant bilateral or multilateral international treaty or agreement. However, since many countries are parties to the Strasbourg or Vienna Conventions, this has not caused any problems. The amendment to the AML Act that is supposed to come into effect in January 2004 will enable the FAU to co-operate with foreign FIUs either on basis of an agreement or reciprocity. The FAU has concluded Memoranda of Understanding (MOU) with 14 FIUs from other countries.

The FAU cooperates with all relevant national authorities dealing with combating money laundering, concretely with the Police, State Prosecution Offices, CSC, CNB, Customs, tax revenue offices and others. In 1996 the Ministry of Finance and the Ministry of Interior have entered into an agreement on the cooperation regarding the AML Act. This agreement has been followed up by an Executive Protocol between the FAU and the Police Unit for Combating Corruption and Major Economic Crimes; this protocol contains concrete conditions for mutual cooperation.

Cooperation between the financial supervisors is supported by an agreement of February 2003 between the Ministry of Finance, the CSC and the CNB to improve the exchange of information between the parties. Cooperation takes place on supervision issues, in particular in the field of licensing, inspections, imposing corrective measures and sanctions, exchange of information, regulation of the financial market and

procedures towards foreign supervisory authorities over the financial market and international institutions.

**The CNB**

Of the seven staff in the Internal control unit of the On-site Banking Supervision Division three staff are fully dedicated to AML inspections. The CNB executes complex on-site inspections which include AML issues and specific AML inspections. In addition, the four staff members of the Licensing and Enforcement Division are also involved in AML issues.

Section 2(3) of the Act on Central National Bank authorizes the CNB to co-operate with foreign central banks, authorities supervising banks and financial markets of other countries and with international financial organizations and international organizations engaged in the supervision of banks and financial markets.

Section 25(2) of the Act on Banks states that the CNB may ask the supervisory authority of another country for an on-site examination of the entities it supervises outside the territory of the Czech Republic. The CNB may meet the request of the home country supervisory authority of a bank or financial institution for carrying out on-site examination of a bank or branch of a foreign bank it supervises. The CNB shall allow the home country supervisory authority of a foreign bank or financial institution to carry out on-site examinations on the basis of reciprocity. The exchange of information is based on MOUs, which among other things cover the AML/CFT area. MOUs have been signed with the banking supervisory authorities in France, Germany, the USA, Austria and Slovakia. Others are currently being negotiated with regulators in Belgium, Italy, the Netherlands and Poland.

**The Office (insurance supervisor)**

The supervision department of the Office of State Supervision in Insurance and Pension Funds comprises 19 staff that are in charge on-site and off-site inspections.

Section 39(5) of the Act on Insurance states that the exchange of information between the Ministry of Finance and the supervisory authorities and similar institutions of other countries shall not be considered an infringement of secrecy if the subject of the exchange shall be information related to the activity of foreign insurance and reinsurance companies in the territory of the Czech Republic or of insurance or reinsurance companies which have their seat in the territory of these countries, the activity of persons involved in activities connected with insurance or reinsurance activity, or the exchange of information between the Ministry, the CSC and the CNB accordingly.

**The CSC**

The CSC has eight staff for onsite inspections for securities dealers and four staff in the monitoring department who are in charge of off-site inspections.

Under section 16 of the Act on the Securities Commission the CSC, the CNB and the Ministry of Finance mutually provide each other with all information and findings that may be significant for execution of their respective powers, unless certain information cannot be divulged under another act, e.g. the AML Act.
The exchange of information with other authorities and international cooperation are regulated by section 26 of the Act on the Securities Commission. Information can be exchanged with member states of the EU, countries of the European Economic Area or with other countries on the basis of an MOU.
Within the framework of the international cooperation with foreign regulators the CSC has concluded a large number MOUs on the Mutual Cooperation and Exchange of Information in the matters relating to securities activities regulation. Up to now the CSC has concluded the agreements with the following partner regulators from Germany, Austria, Hungary, Poland, France, Portugal, Slovenia, Italy, Slovakia, Greece, Luxembourg, Cyprus, Belgium, the Netherlands and Spain.

| Analysis of Effectiveness |
|---|
| Regarding AML issues, the FAU, CNB, and CSC cooperate especially on planning on-site inspections of financial institutions, sharing information on money laundering activities and experiences and interpretation of the AML Act.<br><br>The FAU provides the other supervisors with the internal procedures of the financial institutions but cannot give any specific information and statistics on reporting behavior of the financial institutions.<br>The Czech FIU is actively participating in the international exchange of information with other FIUs since its creation (it became the member of the Egmont Group shortly after it was established). The FAU has sent 493 requests for information to FIUs of 42 countries since 1998 and has received requests for information on 188 occasions from 40 countries.<br>The CNB and CSC have used their possibilities to exchange information with foreign supervisors on few occasions, mainly when a foreign manager is nominated. |
| Recommendations and Comments |
| 1. Since there are several authorities involved in supervising and enforcing compliance of the AML Act, the authorities must ensure that there are no legal impediments for cooperating by allowing the FAU to exchange information and statistics on financial institutions' reporting behavior with the other relevant supervisors.<br>2. In light of the high number of entities under the supervision of the FAU, especially the bureaux de change and money transmission services that pose a risk to be used for money laundering and the financing of terrorism, the FAU should benefit from additional staffing, in particular, for its supervisory function, as the mission does not consider two staff for on-site inspections sufficient to perform effectively this task.<br>3. Especially with regard to enhancing the efforts in the field of AML/CFT supervision by the insurance supervisor, more resources and training for inspectors are necessary to strengthen investigative capabilities and enhance skills and expertise in dealing with money laundering and financing of terrorism inspections. |
| Implications for compliance with FATF Recommendation 26 |
| Compliant |

## C. Description of the Controls and Monitoring of Cash and Cross Border Transactions

Table 3. Description of the Controls and Monitoring of Cash and Cross Border Transactions

| **FATF Recommendation 22:** |
|---|
| **Description** |
| Under section 5 of the AML Act the following is required:<br><br>• A natural person entering or exiting the Czech Republic shall in writing report to the customs authorities importation or exportation of valid Czech or other currency, banknotes and coins, or travelers checks or money orders exchangeable for cash exceeding CZK 350,000 in total value.<br>• This reporting duty also applies to a legal person importing or exporting instruments listed above with help of a natural person importing or exporting such valuables.<br>• A natural or legal person sending from the Czech Republic abroad or receiving in the Czech Republic from abroad a letter or a package containing valid Czech or other currency banknotes and coins, or travelers checks or money orders exchangeable for cash total value of which exceeds CZK 20,000, shall be required to report the letter or the package to the customs authorities and shall submit the letter or the package to the customs authorities for a check.<br><br>The customs authorities shall oversee the compliance with this reporting duty. The reports are to be submitted on forms issued by the Ministry of Finance and available from the customs authority. The customs authorities |

| |
|---|
| submit to the Ministry of Finance (FAU) the reports on compliance with the reporting duty at the points of entry as well as reports containing all available data on senders, addressees, and parcels subjected to the reporting duty, including reports on breaches of the reporting duty.<br><br>When the customs authority determines that a legal or natural person failed to fulfill the reporting requirement, it shall impose a fine up to the value of the unreported banknotes, coins, or cashable traveler's checks or money orders. |
| **FATF Recommendation 23:** |
| **Description** |
| The authorities do not have a threshold reporting duty |
| **Interpretative Note to FATF Recommendation 22:** |
| **Description** |
| See description of Rec 22 |

## D. Ratings of Compliance

### FATF Recommendations, Summary of Effectiveness of AML/CFT Efforts, Recommended Action Plan and Authorities' Response to the Assessment

Table 4. Ratings of Compliance with FATF Recommendations Requiring Specific Action

| FATF Recommendation | Based on Criteria Rating | Rating |
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| 1 – Ratification and implementation of the Vienna Convention | 1 | Compliant |
| 2 – Secrecy laws consistent with the 40 Recommendations | 43 | Compliant |
| 3 – Multilateral cooperation and mutual legal assistance in combating ML | 34, 36, 38, 40 | Compliant |
| 4 – ML a criminal offense (Vienna Convention) based on drug ML and other serious offenses. | 2 | Largely compliant |
| 5 – Knowing ML activity a criminal offense (Vienna Convention) | 4 | Compliant |
| 7 – Legal and administrative conditions for provisional measures, such as freezing, seizing, and confiscation (Vienna Convention) | 7, 7.3, 8, 9, 10, 11 | Largely compliant |
| 8 – FATF Recommendations 10 to 29 applied to non-bank financial institutions; (e.g., foreign exchange houses) | | See answers to 10 to 29 |
| 10 – Prohibition of anonymous accounts and implementation of customer identification policies | 45, 46, 46.1 | Largely compliant |
| 11 – Obligation to take reasonable measures to obtain information about customer identity | 46.1, 47 | Largely compliant |
| 12 – Comprehensive record keeping for five years of transactions, accounts, correspondence, and customer identification documents | 52, 53, 54 | Largely compliant |
| 14 – Detection and analysis of unusual large or otherwise suspicious transactions | 17.2, 49 | Largely compliant |
| 15 –If financial institutions suspect that funds stem | 55 | Compliant |

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| from a criminal activity, they should be required to report promptly their suspicions to the FIU | | |
| 16 – Legal protection for financial institutions, their directors and staff if they report their suspicions in good faith to the FIU | 56 | Compliant |
| 17 – Directors, officers and employees, should not warn customers when information relating to them is reported to the FIU | 57 | Compliant |
| 18 – Compliance with instructions for suspicious transactions reporting | 57 | Compliant |
| 19 – Internal policies, procedures, controls, audit, and training programs | 58, 58.1, 59, 60 | Compliant |
| 20 – AML rules and procedures applied to branches and subsidiaries located abroad | 61 | Compliant |
| 21 – Special attention given to transactions with higher risk countries | 50, 50.1 | Largely compliant |
| 26 – Adequate AML programs in supervised banks, financial institutions or intermediaries; authority to cooperate with judicial and law enforcement | 66 | Compliant |
| 28 – Guidelines for suspicious transactions' detection | 17.2, 50.1, 55.2 | Materially non-compliant |
| 29 – Preventing control of, or significant participation in financial institutions by criminals | 62 | Compliant |
| 32 – International exchange of information relating to suspicious transactions, and to persons or corporations involved | 22, 22.1, 34 | Largely compliant |
| 33 – Bilateral or multilateral agreement on information exchange when legal standards are different should not affect willingness to provide mutual assistance | 34.2, 35.1 | Compliant |
| 34 – Bilateral and multilateral agreements and arrangements for widest possible range of mutual assistance | 34, 34.1, 36, 37 | Compliant |
| 37 – Existence of procedures for mutual assistance in criminal matters for production of records, search of persons and premises, seizure and obtaining of evidence for ML investigations and prosecution | 27, 34, 34.1, 35.2 | Compliant |
| 38 – Authority to take expeditious actions in response to foreign countries' requests to identify, freeze, seize and confiscate proceeds or other property | 11, 15, 16, 34, 34.1, 35.2, 39 | Compliant |
| 40 – ML an extraditable offense | 34, 40 | Compliant |
| SR I – Take steps to ratify and implement relevant United Nations instruments | 1, 34 | Materially non-compliant |
| SR II – Criminalize the FT and terrorist organizations | 2.3, 3, 3.1 | Materially non-compliant |
| SR III – Freeze and confiscate terrorist assets | 7, 7.3, 8, 13 | Materially non-compliant |
| SR IV – Report suspicious transactions linked to terrorism | 55 | Materially non-compliant |
| SR V – provide assistance to other countries' FT investigations | 34, 34.1, 37, 40, 41 | Compliant |
| SR VI – impose AML requirements on alternative remittance systems | 45, 46, 46.1, 47, 49, 50, 50.1, 52, 53, 54, 55, 56, 57, 58, 58.1, 59, 60, 61, 62 | Not applicable – No informal remittance activities identified (see ratings in other applicable |

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| | | FATF Recommendations) |
| SR VII – Strengthen customer identification measures for wire transfers | 48, 51 | Not rated |

Table 5. Summary of Effectiveness of AML/CFT Efforts

| **Heading** | **Assessment of Effectiveness** |
|---|---|
| **Criminal Justice Measures and International Cooperation** | |
| I—Criminalization of ML and FT | *Besides the highlighted weakness of some aspects of the ML offence and the seizure and confiscation regime, the level of sanctions for ML are below the internationally applied standard. FT prosecution is still jeopardized by the absence of a formal and comprehensive legal basis. Although the present legal framework already seems comprehensive and sound enough to ensure some degree of efficiency, the law enforcement results are poor.* |
| II—Confiscation of proceeds of crime or property used to finance terrorism | *The lack of specified and itemized statistics is to be deplored. The precise registration of comprehensive statistics per specific criminality is a necessary tool, not only for outside evaluations, but also and most importantly for the internal critical review of the performance of the system.*<br><br>*Training opportunities for the law enforcement authorities seem sufficiently available, but apparently this has not yet made a difference. The deficient law enforcement and judicial follow-up of the ML reports are indicative of a need for a reinforced training and awareness raising program, particularly for prosecutors and judges.* |
| III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels | *The FAU has reached maturity and has acquired experience in processing financial intelligence to support law enforcement. The FAU provides support to the reporting entities, by providing informal guidance through close contacts with them. The FAU has satisfactory legal resources to collect additional information to enable it to carry out appropriate analysis of financial intelligence. As far as cross-border cooperation with counterpart FIUs is concerned, the Czech FAU is able to and indeed does give the broadest possible assistance. At present the cooperative possibilities are unfortunately still formally restricted to jurisdictions that are party to bilateral treaties or to the Strasbourg Convention.* |
| IV—Law enforcement and prosecution authorities, powers and duties | *The creation of a special police unit that is specifically charged with the investigation of the* |

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| | *reports from the FAU, the UCCFC, should ensure proper follow-up at police level. The prosecutorial authorities apparently also organized a degree of specialization in ML cases. The overall results however, are frankly disappointing, as no ML prosecutions have been initiated as yet. As financing of terrorism is not yet established as an autonomous offence, this may prove to be an obstacle for effective prosecution.*<br><br>*The special investigative techniques, regulated by law, that are at the disposal of the police are up to standard and comprehensive. However, there has not been any need for them to be used in ML investigations as yet. The resources for police and prosecution authorities and the statistics provided to the mission seem adequate in this area.*<br><br>*The creation of the interdepartmental working group, the "Clearing House", should provide for an appropriate law enforcement coordinating mechanism.*<br><br>*As the authorities acknowledge themselves, there is indeed "a low number of cases" related to ML and FT. In the light of the poor results in terms of law enforcement, it is obvious that there is a great need for specialized training, particularly for the judiciary.* |
| V—International cooperation | *The cooperative attitude and practice of the authorities are beyond reproach. Apart from the absence of specific ML and FT statistics, and awaiting the introduction of an autonomous FT offence, the international standards are fully met. The allocated resources seem adequate in this respect, as no special difficulties were reported.* |
| **Legal and Institutional Framework for All Financial Institutions** | |
| I—General framework | Supervisors have no restrictions in providing the FAU or law enforcement agencies with information on the entities under their supervision, however, supervisors other than the CNB cannot receive specific information on the reporting entities from the FAU.<br><br>The CNB has increased its AML/CFT targeted on-site inspections since end of 2002, and the CSC has incorporated AML within their on-site and off-site inspections of securities dealers since 2002.<br><br>AML/CFT supervision has not yet been implemented in the insurance sector and therefore, no inspections |

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| | have focused on AML issues.<br><br>The CUSA has taken a very limited role in dealing with AML issues. It simply inspects credit unions to ensure that their internal AML procedures have been forwarded to the FAU and that identification and record keeping requirements have been met, but does not monitor suspicious transaction reporting.<br><br>Given the large number of entities that the FAU supervises, the number of on-site inspections is considerably low and should be increased. In order to accomplish this, the mission recognizes the need for additional audit staff. |
| II—Customer identification | The financial institutions visited by the mission seemed aware of high risk customers and countries, and some check new customers against UN lists and other self-created lists of high risk individuals and countries. When suspicions arise, the financial institution may seek more information if provided for in their internal policies, however, there is no legal backing for this practice.<br><br>Financial institutions seem to encounter difficulty in obtaining all information on customers because of a strict interpretation of the Protection of Personal Data Act. Despite the requirement in the Act that financial institutions get explicit consent of the customer when processing sensitive data, the mission believes that the Act on Banks, Sec. 37 (2) grants banks the right to obtain any information "necessary to allow the banking transaction to be executed without the bank incurring undue legal and material risks". |
| III—Ongoing monitoring of accounts and transactions | Financial institutions check their transactions only with a view to the reporting of suspicious transactions and have developed "red flags" to enable staff to recognize such transactions. As there is no legal obligation, financial institutions in general do not routinely pay attention to complex or unusually large transactions or patterns to examine the background and keep findings for competent authorities. |
| IV—Record keeping | The legal requirement of the AML Act is limited to transactions that are subject to identification, therefore, financial institutions are not required under the AML Act to keep all necessary records concerning customer transactions and accounts for the obliged period following the completion of the transaction, nor is there any requirement to maintain records on account files and business correspondence for the given period following the termination of an account or business relationship. |

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| V—Suspicious transactions reporting | The system for reporting suspicious transactions is comprehensive and compliant with international standards. Financial institutions are required to draft and enforce internal procedures that include a detailed list of features of suspicious transactions, however, neither the FAU nor supervisors have issued any guidelines to assist financial institutions in detecting patterns of suspicious activity. |
| VI—Internal controls, compliance and audit | All financial institutions are required by the AML Act to submit their internal procedures to the FAU, and those that have not, have been fined by the FAU. The CNB has recently taken a more risk-based approach by indicating to banks which areas the external auditors should examine.<br><br>As required by law, the financial institutions have all appointed compliance officers who are responsible for determining which transactions to report to the FAU.<br><br>While the banks visited by the mission have developed AML training programs for staff, the other financial sectors have not focused training programs on AML/CFT issues. |
| VII—Integrity standards | The financial supervisors have adequate powers to check the integrity, and as such can prohibit criminals from taking control of financial institutions. |
| VIII—Enforcement powers and sanctions | In general, the supervisory authorities have sufficient enforcement powers and sanctions to enforce compliance with the AML Act, with the exception of the Insurance Supervisor. |
| IX—Cooperation between supervisors and other competent authorities | The FAU, CNB and CSC cooperate in planning on-site inspections of financial institutions, sharing information on money laundering activities and interpretation of the AML Act.<br><br>The FAU has actively participated in the international exchange of information with other FIUs since its creation. The CNB and CSC have used their possibilities to exchange information with foreign supervisors on a few occasions. |

Table 6. Recommended Action Plan to Improve the Legal and Institutional Framework and to Strengthen the Implementation of AML/CFT Measures in Banking, Insurance and Securities Sectors.

| **Criminal Justice Measures and International Cooperation** | **Recommended Action** |
|---|---|
| I—Criminalization of ML and FT | 1. The authorities should enlarge the scope of section 252a of the Criminal Code, in order to bring it into line with the concept of money laundering established by the Vienna, Strasbourg and Palermo conventions and with a view to cover the situation of "acquisition, possession, use or disposition of assets with the knowledge that such assets originate from a criminal activity". In addition, the mission would recommend amending the requirement to prove "the aim to pretend that such asset or financial benefits have been obtained in compliance with law", which sets a higher burden of proof on the prosecution than required by these conventions.<br>2. The authorities should introduce in legislation a criminal offence of financing of terrorism, consistent with the definition given by the UN International Convention for the Suppression of the Financing of Terrorism, in order to ensure that the law covers all cases related to the financing of terrorism, as defined in the UN International Convention for the Suppression of the Financing of Terrorism.<br>3. The mission encourages the authorities to amend as rapidly as possible the Criminal Code to introduce the criminal liability for legal persons in the Czech law.<br>4. The authorities should ratify and implement fully the UN International Convention for the Suppression of the Financing of Terrorism.<br>*5. In addition to the need to adjust the penalties for ML to the average international standard and creating a formal legal basis for CFT to enhance the law enforcement, the legal means and resources to counter ML and FT seem already adequate enough to ensure some positive results, even if the AML and CFT effort would certainly benefit from legislative reinforcement of the ML offence and the confiscation provisions. Now it is more a matter of crossing the bridge between theory and practice by bringing the cases to court and establishing case law that might guide both law enforcement and legislator.*<br>*6. All legal remedies recommended by the previous MONEYVAL evaluations should be adopted.* |
| II—Confiscation of proceeds of crime or property used to finance terrorism | 1. The authorities should consider giving a mandatory nature to the forfeiture/confiscation regime (Section 55 of the Criminal Code), as explained above. |

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| | 2. The authorities should amend their legislation to allow for the unconditional freezing, without delay, of funds, or other assets or property, in accordance with the UNSCRs and FATF Special Recommendation III.<br>*3. The precise registration of comprehensive statistics per specific criminality is a necessary tool, not only for outside evaluation but also and more importantly for the internal critical review of the performance of the system. With the establishment of the UCCFC specialization in detection and seizure of criminal proceeds, this lack of relevant statistics should be remedied.*<br>*4. It should be no problem for the FAU to keep reliable statistics on this specific aspect. It is however, important to stress that statistics should also include the automatic freezing of terrorism assets by the banks and the disclosures to the central authority as a result of the relevant UN resolutions and EU regulations, so the necessary arrangements are made to ensure compliance.*<br>*5. Focused training and awareness raising programs should be organized with particular attention to the experience and practices in other countries where ML related seizure and confiscation is successful.* |
| III—The FIU and processes for receiving, analyzing, and disseminating financial information and other intelligence at the domestic and international levels | 1. The authorities should issue guidelines to help financial institutions in implementing the AML/CFT requirements and in detecting and report suspicious patterns of transactions.<br>*2 .The FAU should assess its management of the STRs and examine ways to speed up the analytical process whenever it is not dependent from outside factors beyond its control.*<br>*3. The self-evaluation of the reporting system would distinctly benefit from more detailed statistics that would give a better insight into the performance and characteristics of all the components of the anti-money laundering effort. The authorities have stated their intention to improve their statistical approach. Besides the items they suggest, it would certainly help to also keep figures on the probable predicate criminality, the money laundering stage of the transactions, the nature of the transactions, and the geographical spread of the cases.*<br>*4. The supervisory function of the FAU calls for an extension of its staff to be really effective and comprehensive. Even if not provided by law, it is most advisable for the FAU to produce an annual report on its activity and findings, which not only serves as useful analysis and enhances the profile of the FAU, but also is an ideal way to provide the necessary feedback to which the reporting entities and other involved agencies are entitled.* |

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| | *5. With respect to international cooperation at FIU level the formal treaty or Strasbourg Convention adherence condition should be lifted. Cooperation should be permitted at least whenever the counterpart meets the Egmont Group standards. The draft amendment to the AML Act, if passed, would allow cooperation where the counterpart meets Egmont standards.* |
| IV—Law enforcement and prosecution authorities, powers and duties | *1. The creation and specialization of the UCCFC is a commendable step towards more efficient law enforcement in the area of ML. Particularly welcome is the establishment of a section within the UCCFC focused on detection and seizure of criminal proceeds. It is very unfortunate, however, that this measure has not translated itself into successful ML prosecutions yet. Hopefully, this will change with the introduction of legislative amendments to the Criminal Code, but even the best laws are futile if not effectively implemented. The specialization within both the police and prosecution authorities should lead to a better understanding of the phenomenon and an enhanced awareness of the legal issues, but the whole system must still pass the test of the courts. As far as FT is concerned, the introduction of FT as an autonomous offence will sufficiently cover that legal deficiency.*<br>*2. The 'Clearing House' is an excellent concept and it should receive full support and active input from all authorities concerned. It is the ideal forum to come to terms with all the difficulties encountered in the AML effort. Where it is difficult to find the necessary expertise domestically, the authorities should endeavor to learn from experiences and "best practices" in other countries that have been successful in their AML effort. Full advantage should be taken of international training initiatives, such as those organized by the EU PHARE project, the GPML and the Egmont Group.*<br>*3. The review of typologies and trends is a matter to be addressed jointly by the FIU, the police and prosecution. As said, the 'Clearing House' is an ideal forum for this activity. The agencies concerned participate in national and international initiatives in this respect. Typologies and trends should also be part of the annual reports of the authorities involved.*<br>*4. With regards to ensuring an efficient detection and prosecution of criminal assets, there is something fundamentally wrong with a system that has all the components in place, but ultimately does not produce any results in terms of convictions and asset recovery. It would require a thorough audit of the system to identify the precise causes for this deficiency, which was not within the remit of this* |

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| | *assessment and indeed would have required much more time and resources, but it is clear that the problem seems to be located primarily within the judicial follow-up. Serious attention should be directed to this area, and awareness and expertise of the judiciary should be raised. The "mens rea" standard was said to be one of the problems. That said, there are still no prosecutions for negligent money laundering, which only requires minimal criminal intent. The proof of the predicate offence appears to be a much more serious challenge, particularly when committed in a foreign country. If, however, one expects the reporting system to produce results, then one should be ready to abandon the classical approach of starting with the predicate offence and ending up with the proceeds. Money laundering should then be considered an autonomous offence and treated this way, which requires a change of mentality and an openness for new approaches.*<br>*5. In order to ensure that sanctions are proportionate and dissuasive, it is also recommended that the adequacy of sanctioning be reviewed to bring them into compliance with the applicable standards established by the European Union Council Decision of June, 2001 which established a four-year minimum for money laundering offences.* |
| V—International cooperation | *In order to create a clear and unequivocal situation in relation to FT extradition, the timely introduction of the FT offence is of utmost importance. Attention should also be given to the statistical aspect.* |
| **Legal and Institutional Framework for Financial Institutions** | |
| I—General framework | 1. Since there are several authorities involved in supervising and enforcing compliance of the AML Act, the authorities must ensure that there are no legal impediments for cooperation by allowing the FAU to provide information on financial institutions' compliance with the reporting duty to other relevant supervisors. The financial supervisors need this information not only for auditing compliance, but also to enable them to guide and educate the financial institutions. The draft amendment to the AML Act, if passed, would remedy this situation.<br>2. Priority should be given to the plans to establish the Office of the State Supervision in Insurance and Pension Funds as the overall AML/CFT supervisor for the insurance sector.<br>3. Especially since the Czech Republic is currently working on an amendment to the AML Act by which the Office of the State Supervision in Insurance and Pension Funds will be tasked with supervising and enforcing compliance with AML/CFT requirements |

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| | by the institutions under its supervision, the cooperation between the Ministry of Finance/FAU, the CSC and the CNB which is based on an agreement should be strengthened (with legal basis if necessary) in the coming years and should include the other supervisors, who will be tasked with AML/CFT supervision. |
| II—Customer identification | 1. The AML/CFT system would benefit from the introduction of new requirements in the AML Act regarding, in particular, (i) updating the identification information of customers when doubts appear as to their identity in the course of a business relationship, (ii) identification of the beneficial owner, when the customer is a legal person, (iii) including accurate and meaningful originator information on funds transfers and related messages.<br>2. In addition, the authorities informed the mission that the amendment to the AML Act should resolve the problem of exemption from the confidentiality requirement for lawyers and notaries with respect to the FAU, but it does however not address their confidentiality requirement vis-à-vis financial institutions. The authorities should ensure that lawyers and notaries cannot invoke their confidentiality requirement in relation to financial institutions when acting on behalf of a client.<br>3. Since the OPDT started its inspections only this year, there is not sufficient experience yet on how the Protection of Personal Data Act will be interpreted. The mission recommends the authorities address this problem in case the interpretation of the Protection of Personal Data Act referred to above, and the fears expressed by the representatives of financial institutions, are confirmed by the outcomes of on-going inspections made by the OPDT.<br>4. Although originator information is included in domestic and SWIFT transactions and banks follow up on transactions that do not contain this information, the authorities should take measures to ensure that this is done by all financial institutions, including money remitters. |
| III—Ongoing monitoring of accounts and transactions | 1. Similar to the CNB regulation, the Czech AML/CFT system would benefit from the introduction of new requirements in the AML Act regarding the ongoing monitoring of accounts and transactions, and more specifically for financial institutions to pay special attention to all complex, unusual large transactions, and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, to examine as far as possible the background and purpose of such transactions, to set forth their findings in writing, and to keep such findings available for competent |

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| | authorities.<br>2. In addition, the authorities should introduce in the AML/CFT legal framework, the necessary provisions that would ensure that all financial institutions pay special attention to business relations and transactions with persons (including legal entities) in jurisdictions that do not have adequate systems in place to prevent and deter ML or FT.<br>3. The securities and insurance supervisors should develop AML/CFT regulations similar to the ones issued by CNB.<br>4. The financial supervisors should give more practical guidance to the entities they regulate and supervise on monitoring client accounts and transactions. |
| IV—Record keeping | 1. The authorities have indicated that to comply with relevant international standards, particularly the second EU Directive on Money Laundering, they are amending the AML Act to regulate record keeping requirements in more detail. The mission was informed that the amendment once enacted will require financial institutions also to keep customer identification records, copies of identification documents and in case of representation the original of the proxy for 10 years following the termination of a business relationship.<br>2. In addition to this amendment, the authorities are advised to add to the AML Act that financial institutions are required to keep all necessary records concerning customer transactions and accounts and also to maintain records on account files and business correspondence. |
| V—Suspicious transactions reporting | 1. The FAU in cooperation with the supervisors should take it upon themselves to provide the financial institutions with more guidance on recognizing suspicious transactions. They could for instance make references to typologies reports of the FATF, other FATF-style regional bodies, and the Egmont Group to receive updates on the latest money laundering and financing of terrorism cases trends and methods. In addition, organizations of supervisors, such as IAIS and IOSCO, have also issued papers on and examples of money laundering, which can be useful for the specific financial sectors.<br>2. At the time of the mission, financial institutions were not required by law to report transactions suspected of being related to terrorism. The authorities have however indicated that an amendment to the AML Act is being prepared, by which financial institutions will also be obliged to report these particular suspicious transactions to the FAU. The proposed amendment to the AML Act will extend the definition of suspicious transactions to include the suspicion that funds used in a transaction |

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| | are intended for the financing of terrorism, terrorist acts or terrorist organizations.<br>3. There should be a requirement for financial institutions to report suspicions of terrorist financing. |
| VI—Internal controls, compliance and audit | 1. Although all financial institutions have internal procedures and a compliance officer, the mission is of the view that financial institutions approach AML/CFT from a legalistic point of view, especially in the insurance sector. The authorities should therefore enhance their efforts to raise awareness on ML and FT in the financial institutions and monitor the skills of the compliance officers.<br>2. In addition, the authorities must ensure that financial institutions put in place adequate screening procedures when hiring employees. |
| VII—Integrity standards | |
| VIII—Enforcement powers and sanctions | The mission recommends the financial supervisors follow up their inspections with appropriate measures, and/or sanctions where needed, to ensure effective implementation of the AML/CFT regulatory framework. |
| IX—Cooperation between supervisors and other competent authorities | 1. Since there are several authorities involved in supervising and enforcing compliance with the AML Act, the Czech authorities must ensure that there are no legal impediments for cooperating by allowing the FAU to exchange information and statistics on financial institutions' reporting behavior with the other relevant supervisors.<br>2. In light of the high number of entities under the supervision of the FAU, especially the bureaux de change and money transmission services that pose a risk to be used for money laundering and the financing of terrorism, the FAU should benefit from additional staffing, in particular, for its supervisory function. The mission does not consider two staff for on-site inspections sufficient to perform this task effectively.<br>3. Especially with regard to enhancing the efforts in the field of AML/CFT supervision by the insurance supervisor, more resources and training for inspectors are necessary to strengthen investigative capabilities and enhance skills and expertise in dealing with money laundering and financing of terrorism inspections. |