



Council of the
European Union

Brussels, 24 April 2018
(OR. en)

8070/01
DCL 1

EVAL 12
ELARG 75

DECLASSIFICATION

of document:	ST 8070/01 RESTREINT
dated:	24 April 2001
new status:	Public
Subject:	Draft revised country report on the Czech Republic

Delegations will find attached the declassified version of the above document.

The text of this document is identical to the previous version.



**COUNCIL OF
THE EUROPEAN UNION**

Brussels, 24 April 2001

8070/01

RESTREINT

**EVAL 12
ELARG 75**

REPORT

From : the General Secretariat
To : the Collective Evaluation Working Party

No. prev. doc. : 9765/6/99 EVAL 41 ELARG 82 REV 6 RESTREINT

Subject : Draft revised country report on the Czech Republic

I. INTRODUCTION

In its analyses the Working Party has dealt with the progress made by each acceding country and has examined shortcomings which still have to be eliminated in order to catch up with the EU Acquis in the field of Justice and Home Affairs.

The first series of country reports pointed out the precise areas where the most serious shortcomings existed and where substantial efforts by the candidate country were still needed, while at the same time acknowledging progress already made and refraining from a final judgement, thus helping Member States in selecting programmes to finance (e.g. bilateral programmes, PHARE), as well as the Commission in adjusting the priorities and objectives of the accession partnerships and feeding the discussions on enlargement.

The point of departure for the present second series of country reports, whose structure has been refined, is to identify exactly where in the process of alignment the candidate country finds itself and what remains to be done, focussing on operational conclusions. The key elements of this new structure, reflected in each chapter, are :

- adoption of the “acquis”, including shortcomings,
- administrative capacity, including an assessment of structure, staff, resources etc. and
- implementing performance, covering issues such as quality, efficiency and independence.

The conclusions drawn at the end of the report are the result of extensive discussions within the Collective Evaluation Working Group on the basis of the information presented.

In line with this approach, all other relevant background information can be found in the thematic analyses-documents constituting the basis of these reports¹.

As the process of alignment and the collection of relevant data is a continuously evolving and ongoing process, the findings and conclusions in the present report cannot be considered final or exhaustive. Updates will therefore continue to be presented on a regular basis.

II. OVERVIEW OF DEVELOPMENT

A. Border Security

Due to its geographical position the Czech Republic will in the future be bordered only by the EU-countries. This means that at the final stage, the international airports will be the only external (Schengen) borders of the Czech Republic. This is clearly the main reason why the Czech Republic seems to be very slow in improving its border security system. This attitude has contributed to a situation where the Czech Republic's poorly controlled borders have been used as one of the main transit routes for illegal immigration towards the EU. Especially the Czech-Slovak border has been a very attractive one for illegal immigration and other forms of transnational crime.

¹ I.e. docs 6079/01 EVAL 4 ELARG 16 ; 6843/01 EVAL 7 ELARG 33 ; 7026/01 EVAL 8 ELARG 39 ; 7065/01 EVAL 9 ELARG 40

1. Formal acquis

Since the last country report, there has been some improvement in the field of border security in the Czech Republic. All major border crossings are e.g. equipped with on-line connections to relevant databases. It must however be said that the development process has been relatively slow despite some steps forward. Since summer 2000 there has been a state border concept which however still awaits implementation.

There is no independent and specialised border police organisation responsible for border security in the Czech Republic. The Aliens and Border Police (ABP) is part of the general police force and it is neither centralised nor nation-wide operating police force.

There is no special legislation covering border security issues in the Czech Republic. There are still many legal shortcomings causing several problems for the border authorities. The powers of the ABP are operationally¹ and territorially limited and it is not possible to carry out Schengen-like border checks. One of the most blatant legal loopholes is the fact that the smuggling of persons by organised criminal groups is not qualified as a crime under Czech criminal law. As a rule, gang members face the same (symbolic) punishment for illegal border crossing as the migrants themselves. Only exceptionally other penal regulations (e.g. abduction, bodily harm etc.) can apply.

When it comes to border crossing procedures the Czech-Slovak border may cause problems. According to the bilateral Treaty on Visa-Free Entry of March 30, 1993, citizens of both sides are allowed to cross the frontier not only through official crossing points but also through the more than 100 uncontrolled practicable cross-border roads and the green border in general. Illegal migrants currently also use the latter.

¹ The ABP is not allowed to search passenger's belongings without suspicion of criminal activity or an offence connected with a border crossing.

2. *Administrative capacity*

Administrative capacity suffers from fragmented organisational structures and the lack of central border police command. Since May 2000, special mobile search units have been created in order to increase control in the hinterland. However, they do not report to the same authority as Alien and Border Police officers serving at official crossing points. Unlike the ABP, mobile units¹ can still be used for police duties not directly related to border control, such as – inter alia - traffic checks. The lack of a central border police command makes it impossible to engage in a co-ordinated action exceeding the regional range.

Generally, co-operation within the Alien and Border Police has considerably improved thanks to the recently introduced common command at the regional level. However, there is still an evident lack of co-operation between all other involved law enforcement agencies, in particular with other special police services. Co-operation with customs authorities at official border crossing points could be further improved. Communication between the Alien and Border Police and the Department of Asylum and Migration of the Ministry of the Interior for has to pass through the headquarters of the police presidium. There is no legal basis or formal co-operation agreement between Ministries and authorities, nor between the authorities themselves.

The transfer of the investigation task regarding combating illegal migration from the Alien and Border Police to UOOZ² is generally criticised. The Alien and Border Police's investigation unit was particularly valuable because of its network and its close co-operation with the authorities dealing with internal security. There was also close co-operation with foreign countries, e.g. Poland and Germany. Unfortunately this well working structure has suffered, notably in terms of efficiency, as a result of by the described changes. There is a general demand for the reactivation of these investigation units as an operational element.

¹ Since 1 May 2000 the Czech Government has started to establish mobile search units in the North and South Moravian border regions (There are 14 administrative regions in the Czech Republic. However, the police and the judiciary are operating from 8 regional headquarters covering the whole country). Since 1 October 2000 the same was established at the North Bohemian border region. The Czech side is planning to finalise the establishment of such units in all other border regions by 31 December 2001.

² A special police unit responsible for combating organised crime.

The basic problem is insufficient funding, but also rivalry between different authorities and individuals. Budgetary shortcomings are aggravated by the fact that there is no independent overall budget for the Alien and Border Police. Funding is provided by the regional administration which often tends to give priority to other services.

3. *Implementing performance*

Poor communication as well as a poor training system have caused practical problems since the members of the Alien and Border Police are not always sufficiently informed of valid regulations, government initiatives on border control and even less of particular facts (e.g. lists of stolen documents etc.).

The Czech-Slovak border remains particularly problematic. Controls take place almost exclusively at official crossing points and in express trains. Local trains and the numerous field paths crossing the border are practically uncontrolled. Patrols at the green border are at random. This situation is very well known among illegal immigrants. Due to lack of manpower and equipment, the Alien and Border Police and the mobile units are not in a position to effectively control the green border with Slovakia. In addition to these tasks, the mobile units have to perform other duties, too. The green border with Slovakia is in fact by far the weakest point of all Czech borders, and the main entry for illegal immigrants. The situation is further complicated by the fact that responsibility for combating illegal migration lies with the special police unit responsible for combating organised crime (UOOZ). Co-operation between the UOOZ and the Alien and Border Police is generally poor.

The leading officers of the border police, especially the director of the Alien and Border police, do not have any influence on where the mobile units are used. This is the reason why there are no combined actions of green border and border crossing units on the one hand and mobile units on the other. The policemen at the border crossing stations and the green border must improve their co-operation in order to operate more efficiently. Their radios have different frequencies and there are too few patrols at the green border. There is a clear lack of a coherent and consistent approach to border security.

Due to a lack of funds, it is not possible to carry out enough expensive night and Sunday patrols and to provide enough staff at border crossing points. This has negative effects not only on the checking speed of passengers crossing the border, but also on the quality of the checks. Practical international co-operation is often hampered by technical and/or financial problems, such as incompatibility of communication systems and lack of funds for international phone calls.

4. Summary

Shortcomings generally occur in all fields: legal bases, manpower, adequate training, equipment, organisation and communication.

There is a need to develop a more coherent and concise border security system and to have one nationally operating border police organisation. The Czech Republic must still prepare and implement the exact organisation, structure, division of tasks and staff between the Alien and Border Police Units and the other regional directorates or units. The strict division of tasks and jurisdiction between the units responsible for border checks at border crossing points (Aliens police) and those responsible for areas between border crossing points (Border Police) jeopardises the efficiency of the organisation. Implementation of the border security system is still far from satisfactory in terms of EU-requirements.

There is a need to create a reasonable border security system along the Czech-Slovak border. This uncontrolled border is one of the main problems for the present EU-states, as it is one of the main routes of illegal immigration into the EU.

B. Migration

1. Formal acquis

Visa policy is almost fully aligned since the Czech Republic decided, in 2000, to require visas from citizens of Cuba, Russia, Belarus, the Ukraine, Kirghizstan, Moldavia, Kazakhstan and Turkmenistan. The only remaining difference with the EU negative visa list concerns Romania. In addition, several states, mostly South American, are still visa required in the Czech Republic whilst not in the EU.

Concerning admission rules, the Act of 30 November 1999 on Residence of Aliens¹, which entered into force on 1 January 2000, has noticeably contributed toward aligning Czech legislation, notably on border-issued visas which have now been restricted, and on the changing of status.² This new legislation does however need adjustments on family reunification and is still flawed on expulsion.

- For foreigners, family reunification is provided only for holders of a permanent residence permit, i.e. in general after a minimum 10 year stay, which is far more than in EU practice. The cancellation of the residence permit in case the marriage terminates within 5 years without a child, is relatively severe. Provisions on Czech nationals also require adjustments.³

- The following aspects of the expulsion mechanisms do not fully respect human rights. It is the police alone who ban entry, up to 10 years, without judicial appeal if the alien stayed illegally in the territory.⁴ As far as detention before expulsion is concerned (up to 180 days), justice does not intervene automatically: police alone take the decision and it is up to the alien to initiate court proceedings, if possible⁵ (and to bear the burden of the proof). Furthermore the 180 day detention deadline does not apply to illegal entrants who are to be readmitted. In addition police may finance the costs of the expulsion with "cash funds which the alien has at hand" (a practice which leads directly to corruption.) It is the police who "collect" the fines for carriers and may fix their amount: this kind of provision is very weak and directly incites corruption.

¹ As this recent Act has been analysed only by the experts of the General Secretariat, and as the available translation is far from perfect, the comments are made under reservation.

² The changing of status for holders of temporary permits is now entirely forbidden, which may however lead to practical difficulties.

³ The right to family reunification is recognised for the spouse, a single parent over 70 years of a Czech national over 18 years, a minor, a major child of a single Czech national over 70 years, whereas the Council Directive of 28 June 1990 on the right of residence speaks about dependency of parents (and not their age or singleness.) As a result, provisions on family reunification for Czech nationals are more restrictive than provisions to be applied to beneficiaries of free movement of persons-rules, whereas the draft directive on family unification states that provisions on nationals should be compliant with provisions applying to EU citizens exercising their right to free movement. In addition, sufficient resources are required from Czech nationals wanting their foreign spouse or child to come, which is debatable. Finally, as regards family reunification, asylum seekers and beneficiaries of temporary protection are better treated than Czech nationals or well-settled foreigners, which is also debatable.

⁴ The most common sanction against foreigners is an order to leave, issued by the police, establishing the period of time (3, 5 or 10 years) during which entry is banned. The sole appeal body is the Head Office of Foreign and Border Police and the Police Presidium, which scarcely constitute an "effective remedy" in the sense of EHCR or "an appropriate means to challenge expulsion decisions" as provided for in the Recommendation of 30 November 1992 regarding practices followed by Member States on expulsion.

⁵ Of course the Police have to "inform the detained alien, in a language in which the alien is able to communicate, of the possibility of having a court review..." But the Act adds that "if a language may not be determined or if such information may not be communicated in any other way, the Police shall not communicate the information and shall record it."

The Czech Republic has concluded agreements with third countries that on accession will be contrary to the principle of "Community employment preference". It stated that it would terminate the agreements with Poland, Vietnam, the Ukraine, Switzerland and Russia, according to which a yearly quota of workers is admitted without previously checking the situation with regard to the existing workforce. As far as Slovak workers (still exempted from a work authorisation) are concerned, the Czech position does not specify how it intends to "re-consider" this agreement in case of accession before Slovakia.¹

Readmission agreements have been concluded with neighbouring countries but not yet with all Member States with the Ukraine (the most important country concerned), Russia, and remote countries of origin of illegals.

As for document security, machine-readable modern passports are now being issued, but non machine-readable old passports will circulate until May 2010. The features of the visa sticker have improved, but identity cards and residency permits do not meet EU standards.

2. *Administrative capacity*

As for the issuing of visas, the on-line connection of Czech consulates is well on its way, and the staff has reportedly been increased in countries with which the visa regime was introduced recently. All consular visas are however decided on by the police at central level, which is not in line with the Acquis, and the decision on visa applications focus on security risks only and not on migratory risks.

As for the issuing of residence permits, practical implementation of the new legislation which entered into force in 2000 has proved to be difficult due to the low level of preparation of all involved authorities.

¹ In its Additional position paper, the Czech Republic "once again declares its readiness to re-consider the Agreement with Slovakia on Reciprocal Employment of Citizens in light of the Council of Europe Resolution of 20 June 1994.... After the accession to the EU, such agreement must nevertheless be revised. The agreement with Slovakia on reciprocal employment of citizens fails to meet the criterion of limited validity and that of job localisation as provided for by the Resolution." In fact the agreement mainly fails to meet the condition of "Community preference".

Co-operation within the Alien and Border Police has improved thanks to the recently introduced common command on regional level. However, there is still a lack of co-operation between all other involved law enforcement agencies, in particular with other special police services. As for the fight against illegal immigration, the new competence (or monopoly) of the special police unit (within the National Criminal Agency) still has to prove its efficiency. Detention facilities are still insufficient. There is a lack of adequate legal powers for tackling illegal employment.

As for preparation for the SIS, legislation provides for several databases on aliens, which do not all seem to exist yet (except on visas and wanted persons). Alien police offices are connected, as all police stations, to the Intranet of the Ministry of Interior, but online access to police databases seems to be in an initial phase only. Fingerprints of crime violators only are stored. The available Czech positions papers ask more questions (irrelevant for the time being)¹ than they provide answers on how and when all police and border stations will have online connections to the required databases. In addition, the Government relies far too heavily on EU funding.

3. *Implementing performance*

As regards the issuing of visas and residence permits, the only available information is on the practical difficulties of implementing the new Act and of issuing the new temporary permits. As issuance of visas to Ukrainians or Russians is rather recent, the situation will have to be monitored.

As regards expulsion and the fight against illegal immigration, the situation is better known. Czech authorities recognise the well-known importance of illegal immigration in their country, "one of the main transit points for organised illegal immigration to Western Europe" due in part to "friendly immigration laws".² But the fact is that the number of aliens readmitted to the Czech Republic is far bigger than the number of aliens readmitted from the territory; the clear majority of arrested aliens are caught (often by foreign authorities) when leaving the country, instead of being caught upon entry or inside the country. In addition, when caught they are merely given an order to leave and an entry ban, if any, with obsolete methods. (See above, formal acquis.)

¹ The questions the Czech Republic asks are related to the technical requirement for connecting the N-SIS to the SIS and for the SIRENE bureau. These data are not essential for building the national information system.

² Czech statement made in 1999 before the adoption of the Act on Residence of Aliens.

Smugglers are treated similarly. Sanctions are taken against those who commit a connected crime (e.g. abduction, bodily harm etc.¹) The others are fined, and the police collect the fine in an undefined way. Organised rings promoting illegal employment abroad operate with impunity, freely advertising their services.

As regards illegal work, there are some data on workers checked (4000) and found illegal (1600, whereas reportedly from the Ukraine alone there are already 150.000 - 200.000 illegal workers) but no data on sanctioned employers.

4. Summary

The visa policy is almost fully aligned since 2000.

The same goes for provisions on admission, except for family reunification, for provisions on expulsion which do not fully respect human rights, and for the agreements on admission of workers concluded with various countries.

A number of necessary readmission agreements are still lacking.

Not all documents meet EU standards of security. Consulates seem equipped and staffed, but all consular visas are decided by police, which focuses on the security risk only. Inside the territory, the establishment of the necessary databases and of the online access by police and border stations is only ongoing, and therein the Government relies too much on EU funding.

Co-operation within the Alien and Border Police has improved, but not with other special police services, notably the new unit in charge of the fight against organised illegal immigration.

The immense majority of arrested aliens are caught, often by foreign police, when leaving the country, instead of being caught at the entry or inside the country. In addition, when caught they are merely given an order to leave and an entry ban. Police collects fines, which may incite to corruption. Even smugglers are weakly prosecuted. There is no data on sanctioned employers, whereas reportedly there are 150.000 - 200.000 illegal workers from the Ukraine only.

¹ 700 yearly judicial expulsions.

C. Asylum

1. *Formal acquis*

Since the Act on Asylum of November 1999, which entered into force on 1st January 2000, Czech legislation on asylum may be considered as fully compliant with the *acquis*, with the following exceptions:

- The appeal procedure is still unsatisfactory. The administrative appeal body is not independent while the judicial appeal does not deal with the substance. The Czech authorities have committed themselves to solve this question, but still debate on how to do it.

- Family reunification for spouses may be deemed too restrictive insofar as there is a condition of continuous marriage in the country which the refugee has left.

In addition, the obligation to file the application within 24 hours of entry is provided for without consequence in case of failure, which is contradictory and leads to uncertainty. Finally, although not obligatory according to the *acquis*, accelerated procedures should be introduced, in light of the Czech context (See below, implementing performance.)¹

¹ The only "acceleration" occurs in respect of the time limit for submitting an appeal: 7 days in case of a manifestly unfounded application instead of 15 as in normal cases. This isolated provision cannot be seriously seen as an accelerated procedure.

2. *Administrative capacity*

The accommodation system has proved flexible enough to receive varying numbers of applicants, bearing in mind the outburst of asylum seekers since 1997 and the trend to "escape" before the end of the procedure.

Staff resources at the Ministry level raise less concern than the situation at the judicial level, where appeal procedures are very long. This may explain why the applicant, once the judicial appeal procedure, is granted a one-year leave to remain, furthermore extendable.¹ This period is much too long and it will have to be taken into account when setting up the new appeal procedure.

As regards the future implementation of the Dublin Convention, the Czech authorities have given little information on the degree of technical preparation (fingerprinting, computerised files on applicants and on foreigners in general. See above, Migration.)

3. *Implementing performance*

All potential applications seem duly processed. The low recognition ratio is due to applicants' disappearance before the end of the procedure, rather than anything else. Reception and accommodation of asylum seekers, legal assistance, interpretation and accompanying measures in general are on the whole satisfactory. The same goes for integration programs for refugees, considered generous. Finally, the principle of non-refoulement is implemented in practice.

The previously outlined satisfactory implementation of the Geneva Convention, in stark contrast with the lack of proper measures to deter the abuse of asylum procedures, as cases of abuse are particularly frequent and blatant in the Czech Republic.² This passiveness runs parallel to the insufficient fight against illegal migration (See Migration.) Czech authorities are reportedly trying to find solutions.

¹ Of course the Act provides that " The visa shall expire when a court decision on the complaint becomes valid", but whether or not courts speedily inform the police of their decisions is another matter.

² Many applicants request asylum only when caught trying to cross the border to Austria or Germany or when detained after readmission. 80% of the 9000 applicants of 1999 disappeared during the procedure, most probably in an attempt to go westward. The centres are sometimes described as places of rest for illegal immigrants before continuation of their travels westward. The readmitted persons who ask for asylum are not taken into custody but are invited to go to a reception centre by their own means, as all other applicants.

Legal tools should be created (notably, accelerated procedures during detention in case the application is "submitted in order to forestall an impending expulsion measure"¹), the concepts of safe third country and safe country of origin, already legally created, should be implemented in practice and preparations for the Dublin Convention should be stepped-up. (contrary to Schengen, the Dublin Convention will a priori have to be fully applied upon accession).

4. Summary

Since 2000 Czech legislation on asylum may be considered fully aligned on the acquis, except for the appeal procedure, essentially.

The administrative capacity seems well adapted, except for the worrying length of judicial appeals, and for the step of technical preparation for implementing the Dublin Convention.

The Geneva Convention is properly implemented in practice. However, no measures are taken to deter the abuse of asylum procedures by applicants using it only for easing their travel westwards. It is the reason why legal tools should be introduced (accelerated procedures) or effectively implemented (safe third country).

D. Police and Customs

a) Police

1. Formal acquis

The main legislation is sufficient for the combat of all crimes, except money laundering where gaps exist. The existing legislative framework regarding the fight against corruption can be considered as adequate, not only in comparison to other candidate countries but also with respect to the EU Member States.

Police co-operation has its legal basis in the Act on Police and the Code of Criminal Procedure, both amended in 1998. The current legislation in this area still does not assure effective action. A new Police Service Act was planned to enter into force in 2001, providing for alignment with the Acquis.

¹ Resolution on manifestly unfounded applications, 9 e.

None of the foreseen acts on Police, State Prosecutors or the amendment to the Criminal Proceedings Code entered into force due to the setback of the Reform of the Judiciary. The amendment to the Criminal Proceedings Code and the Act on State Prosecutors were rejected by the Parliament in May and September 2000. The draft Police Act was based on these two drafts. Consequently the Government withdrew its draft Police Act from the Parliament's agenda.

Following the cancellation of the draft Police Act, the Ministry of Interior decided to cover some aspects of the old draft in a special amendment to the Police Act. The Parliament has passed the amendment on 19 February, which now needs to be discussed in the Senate. This amendment should enter into force by 1 January 2002. The Government has still to prepare all necessary acts, which would enable the Czech Republic to participate fully in the Schengen system, e.g. hot pursuit and other areas of police co-operation.

The current draft proposal for amending the Criminal Proceedings Code will not affect the dominant position of the Office of Investigation and will not result in any acceleration of the lengthy and complicated criminal procedure. Therefore, this draft cannot be considered as a real improvement in making the combat of economic and organised crime more efficient.

The Czech Republic continues to enhance the organisational framework for efficient policing. Specialised units and agencies are established corresponding to the national organisational needs in the fight against organised crime, corruption, economic crime and money laundering.

2. *Administrative capacity*

The Czech National Police have currently 44.343 police officers, which means approximately 431 police officers per 100.000 inhabitants. The police also have 12.633 civil servants.

There has been no improvement in the co-operation between different law enforcement agencies since the last country report. There is still no comprehensive strategy for co-operation between the different institutions involved in combating economic crime and corruption.

Improving the National Drug Information System is needed. The Czech Republic intends to create a National Focal Point on Drugs in order to be able to participate in the European information network on drugs and drug addiction (Reitox) of the EMCDDA. Its establishment is currently under preparation by the Inter-ministerial Drugs Commission in context of the new concept of the anti-drugs policy for the years 2001 – 2004. It still has to decide regarding the main responsible organisation.

The Office of Investigation is independent and hierarchically administered by the Ministry of Interior. The Director of the Office of Investigation reports directly to the Minister. The members of the Office of Investigation are formally police officers, but they are not part of the Police Presidium. The Office of the Investigation is structured like the Police and has staff of 3000 Investigators.

According to the Criminal Proceedings Code, the Office of Investigation takes the final decision on the start of the investigation process concerning the cases on which the police informed it. Only the Investigators can decide to transfer a file to the State Prosecutors and hence start criminal proceedings.

The existing complicated multi-stage criminal procedure (police, investigator, prosecutor and court) contributes significantly to the problem of lack of co-operation between all involved law enforcement agencies and other institutions and is one of the major problems concerning combating serious crime. The slowness of the investigative system puts the entire justice system in serious danger. The evident risks are represented by useless and expensive overlaps among the authorities involved, by a confusion of roles, and above all by an extreme slowness of the entire judicial system.

Due to the low wages within the police it is extremely difficult to hold qualified and experienced staff. The specialised police services and the Office of Investigation are hampered by the lack of adequate trained personnel. The current budget deficit limits the financial possibilities and the Government still relies on EU and Member States assistance to meet its accession-related needs. Moreover, even when foreign funding is available, the administration often lacks the capability of absorbing it within a reasonable time.

All services are affected by the lack of a training and human resources policy. The recruitment and training of qualified staff is still hampered by budgetary constraints and working conditions. The Czech Republic has to develop a comprehensive strategy for addressing all qualification and human resource problems.

In areas like organised and economic crime and management support, there is still a lack of the necessary professional experience and adequate training. There are not enough programmes for specialised training in the area of international co-operation and the fight against organised crime. There is a need for training of all institutions involved in the fight against drug-related crime.

There is still a lack of an integrated computer-based investigation system, which can be used by all law enforcement agencies. A central information system, which will allow the sharing of data between the Organised Crime Department, the National Anti-Drug Headquarters and the regional offices has already been developed, but is still not approved by the National Security Authority.

The lack of technical equipment is manifold throughout all services, starting from ordinary computer equipment up to specialised information technology. The specialised services lack the necessary specialised equipment. The situation here is the same as mentioned under training. The Government relies too much on EU funding. The envisaged allocation of the State budget for combating economic crime, organised crime and introduction the Schengen system are not sufficient.

3. Implementing performance

In the past years there has been a dramatic increase of the impact of economic and organised crime, corruption and money laundering on the Czech Republic. In particular corruption and economic crime are damaging the Czech administration, society and economy.

Organised crime in the Czech Republic concentrates on trafficking in human beings (prostitution, illegal immigration), drugs, stolen cars and money laundering. There is evidence of increasing specialisation regarding the activities of criminal groups. Particularly those coming from the former Soviet Union or from Kosovo give reason to concern. The Government agreed on a new programme for combating organised crime on 23 October 2000. So far no decisive results can be reported.

Drug-related crime remains a significant problem and combating narcotic crimes and tackling the drug problem have a high priority in the Czech Republic who continues to be a transit country for heroin, cannabis and increasingly cocaine. The number of drug users has increased consistently over the last five years. However, the problem of drug abuse is in comparison with western European countries still rather low in general. The National Drug Strategy for the years 2001 to 2004 does not mention any timetable and deadline concerning the fulfilment of envisaged measures. Therefore, it is difficult to describe further progress.

Only a few cases of money laundering have been prosecuted to date. The Criminal Code does not recognise money laundering as a specific type of crime. The Sections 251 and 251a, which tackle general participation in committing a crime or in the preparation of a crime, are generally used for prosecuting money laundering. However, these provisions are considered too narrow. This has led to virtually non-existing legal proceedings for this type of crime.

b) **Customs**

1. ***Formal acquis***

With regard to Customs, a high level of compatibility has been achieved between the customs legislation of the Czech Republic and the Community acquis. In order to complete full alignment with EC legislation, a further set of amendments to the Czech Customs Code is required.

As regards administrative and operational capacity to implement the acquis, the Czech Republic has made good progress and has managed to develop its services in areas that are important for efficient customs co-operation.

2. *Administrative capacity*

The Czech Customs Administration filled most of the posts according to the limits it was given by the Government. In 1998, it had 9267 employees out of 9442 planned posts. Since 1999, the Customs Administration was given 9440 posts of which it filled 9316. In 2000, the staff number decreased to 9288.

The Czech Customs Administration comprises a General Directorate, 8 Customs Directorates which co-ordinate the 74 Customs Offices and 17 Inspectorates operating as Surveillance and Investigation Services. The Inspectorate of Customs and Financial Guard inquires concretely into fraud with the same jurisdiction and powers of those of the Criminal Police, and is authorised to use such legal institutions as surveillance of persons and things, use of informants, wiretapping etc.

Co-operation with the Police is based on legal provisions elaborated in detail in the Agreement between the Ministry of the Interior and the Ministry of Finance and in the Implementation Protocol signed by the Presidium of the Police and the General Directorate of Customs.

An information system, which ensures computer processing of all procedures, and an Intelligence Information System have been completed. Provisions for risk analysis, targeting on suspicious subjects and profiling and a pilot computer system have been developed. The number of the customs offices where this system is used increases constantly and this year it may be decided to implement it at all customs offices in the Czech Republic.

The contact for mutual administrative co-operation or for co-operation in criminal matters, playing the role of a central place for these purposes in accordance with the Convention of 18 December 1997 on mutual assistance and co-operation between customs administrations has been established and the Czech Customs Administration has prepared the Programme for Conclusion of Memoranda of Understanding that covers co-operation between the customs authorities and business organisations in combating drugs trafficking.

However, in priority areas like the Czech-Slovak border, there is still a lack of qualified staff, in particular there is a lack of needed technological equipment.

3. *Implementing performance*

In 1999, the detected violations in the customs area reached the total number of 30.458 of which 14.239 (46.7%) were customs delicts and 14.361 (47.2%) were customs offences. Fines of 125 million crowns were inflicted. In the same year, 2.851 post clearance audits were undertaken, resulting in 2.298 customs breaches (with a rate of 80,6%), manifesting a high grade of efficiency in control procedures.

Detected criminal offences that are submitted to the Office of Investigation increased.

4. *Summary (Police and customs)*

One of the main problems, which must be addressed by the Czech Republic with regard to police, is the implementation of existing legislation. The lack of co-operation and co-ordination of law enforcement agencies and other institutions hamper efficient fight against economic crime and corruption. There are still some gaps in the legislation especially concerning money laundering. Moreover, there is a lack of adequate trained staff and material resources.

The existing complicated multi-stage criminal procedure (police, investigator, prosecutor and court) contributes significantly to the problem of lack of co-operation between all involved law enforcement agencies and other institutions and is one of the major problems concerning combating serious crime. The extreme slowness of the investigative system puts the entire justice system in serious danger. The evident risks are represented by useless and expensive overlaps among the authorities involved and by a confusion of roles.

The Customs Administration and the Ministry of Finance should continue to implement the Action Integrity Plan, which aims to reinforce customs ethics, to develop the training system for personnel, to improve co-operation between the units and to implement the computerised information technology, necessary for the adoption of the relevant acquis. With respect to border control and enforcement, particular attention should be paid to the implementation of measures to reduce waiting times at the border.

E. Justice

1. Formal acquis

In the civil field, the Czech Republic has almost entirely aligned itself with the relevant acquis. However, in the criminal field, a number of issues (above all Joint Actions) still need to be dealt with. The re-codification of the Criminal Code and Criminal Code of Proceedings has been put back to 1 January 2005. However, the Czech authorities have announced that Czech legislation will be aligned with the entire Chapter 24 acquis -through amendments to the afore-mentioned Codes- by the end of 2001 with an anticipated entry into force by January 2002. These amendments should implement the *acquis*. However, it should be monitored that the Czech legislation continues to be aligned with new instruments that may have been adopted by the date of accession.

The Czech Republic has signed and ratified most of the relevant criminal law Conventions. It has not yet signed the European Convention on the International Validity of Criminal Judgements (The Hague 1970) but intends to do so in the near future.

The Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data has been signed, but not yet ratified.

2. Administrative capacity

The administrative capacity of the judiciary is severely hampered by the absence of general court management, the lack of adequate administrative support (e.g. court officers), delays, unpredictability of the outcome of proceedings and difficulties in enforcing judgements. The length of judicial proceedings and backlogs are considerable.

One considerable source of delay and inefficiency relates to the particular power which the appeal courts used to have of setting aside decisions of the courts of first instance without settling the dispute but referring it in respect of formal questions to the court of first degree. In both commercial and criminal matters, the commercial disputes -taking the greatest amount of time- of a market-economy country are relatively new, especially in terms of their size and complexity.

Training of prosecutors and judges is needed in this area. Although diminishing, the backlog in civil and commercial cases still seriously hampers the effectiveness of the judiciary.

With regard to criminal procedures, the judicial authorities have insufficient control over police investigations. Also, there is a lack of drive and involvement on the part of prosecutors when it comes to the everyday life of the courts. Their contacts with the public are limited to non-existent and they are not well-integrated into the judicial process. There is a clear need to provide them training and to extend and clarify their tasks so that they can play a part in ensuring citizens' access to justice. The latter, although constitutionally guaranteed, poses difficulties in practice due to lack of qualifications of the judiciary, slow proceedings, restricted legal aid etc.. The current system of legal aid needs to be improved which in turn requires the necessary funding.

The low level of competence, poor knowledge of languages¹ and (therefore) insufficient specialisation (in EC Law) of mostly young judges is worrying. Training is not yet well organised. The Institute for Further Education has not been reformed after 1989, its training is insufficient, does not cover all judges, is not systematic and lacks long term concepts and planning. Training of judges in international/EU law (in principle mandatory) is still insufficient and only provided for through bi- or multilateral projects. Beneficiaries of special training, supposed to pass on their acquired knowledge to colleagues, often leave the judiciary for more profitable employment elsewhere. There are vacancies for the posts of judges and prosecutors and too few bailiffs. The performance of the judiciary in the fight against organised and economic crime is not yet satisfactory.

Many courts continue to still suffer from a lack of modern equipment and information technology. While considerable efforts are being made, there is still a lot to be done in this area. There is still no regular publication of case-law except the jurisprudence of the Constitutional Court, nor is there easy (computer-) access thereto.

Judges' salaries are among the highest in the public sector. Public prosecutors receive similar salaries, albeit around 10% less than judges. Although this gap used to be much wider a few years ago, it is reported that the prosecutors' inferior employment conditions may have a negative impact on their motivation and performance and that these should be redressed.

¹ However, intensive language training focused on the legal terminology for respectively judges and prosecutors started in 1999 and 2000.

A first document on the *Reform of the Judiciary* was adopted by the Government in July 1999. The main aims are alignment with the *acquis*, increase of the number of judges, prosecutors and court officials, set up life-long training for the judiciary and their trainees, specialisation in administrative and commercial matters, the introduction of court clerks and a computer-network linking the courts, the abolishment of the four-tier system, the creation of a Supreme Council of Magistrates, the acceleration of proceedings, better access to justice and to court rulings and the suppression of investigators in preliminary criminal proceedings. So far, the progress of the reform has been limited.

The amendments to the Commercial and Civil Proceedings Code entered into force on 1 January 2001. In addition, several acts and pieces of secondary legislation necessary for the implementation of the reform have been adopted. The amendments should simplify and accelerate the civil procedure (with regard to interim measures, taking of evidence, appeals and a simplification and greater efficiency of the enforcement of judgements) and the proceedings of the Commercial Register. The ineffective Regional Commercial Courts have been abolished from January 2001 as part of a move from the four- to a three-tier system.

However, the Parliament rejected in May 2000 the draft amendment to the Criminal Proceedings Code and Criminal Code, which should reform the criminal justice system in a substantial way by *inter alia* attributing a greater role for the prosecutor and by strengthening the rights of the defence in all stages of the criminal proceedings. The important and specified role of the investigator in preliminary criminal proceedings is still a weakness (*viz.* Police) as far as implementation of the principle of judicial autonomy is concerned. The Parliament also rejected the proposed amendment to the Constitution that should strengthen the independence and autonomy of the Judiciary by creating a self-governing organ (the Supreme Council) that limits the current power of intervention and interference of the Ministry of Justice. Despite the relevant constitutional principles and the Court and Judges Act of 1991, the Government and the Minister for Justice can still direct the management of the courts.

The new draft amendment to the Criminal Proceedings Code and to the Act on State Prosecutors is a compromise. It should strengthen the role of the State Prosecutor and the accelerated procedure would be applied only in the area of prosecution of minor offences¹. Moreover, the possibility of the judge to reject the start of the court procedure in case he felt the material was not enough to establish a case will be cancelled under the new procedure.

Although this would shift the burden of proof to the court and increase the prosecutor's role, it might also result in capacity difficulties at the District Court and State Prosecutor levels as there is a current lack of adequate training and equipment.

Confidence -although still not very high- of the citizens in the courts² seems to have increased during the period of debating the reform plans in Parliament.

The date of completion of the reform has been postponed to 1 January 2005.

3. Implementing performance

One problem with the progress of the reform is that most of the members of the judiciary -which is currently undergoing substantial changes- have been appointed since 1989, and that hence not all of them are highly experienced.

The fulfillment of the required conditions of the judiciary which are a *sine qua non* for the effective implementation and enforcement of the acquis have been postponed to 2005. For the time being the judiciary is not yet sufficiently informed about (application of) the new legislation, and the performance of the judiciary in the fight against organised and economic crime is not yet satisfactory. The current inefficiency of the judiciary and the judicial system as regards the lengthy procedures, especially in criminal cases, the poor enforcement of judgements and the considerable case backlogs in both civil and criminal fields needs to be improved. The same goes for the effective implementing capacity in the field of fraud, corruption and money laundering.

¹ i.e. cases with sentences less than 5 years

² 35% favourable opinions, 25,7% negative, 32% neutral and 6,4% no opinion

However, practical judicial co-operation -both in civil and criminal matters- reportedly works well. Remaining issues related to necessary language training, shortage of personnel and possible slowness with the handling of requests will be dealt with in the near future by the Ministry of Justice.

4. Summary

With regard to the acquis, the re-codification of the Criminal Code and Criminal Code of Proceedings has been put back to 2005. However, alignment of Czech legislation with the Chapter 24 acquis through amendments to the Codes is foreseen to enter into force by January 2002. Some criminal law Conventions still need ratification.

The administrative capacity as well as the training (in EC Law, languages) of the entire judiciary is weak. There is a current lack of administrative support staff, equipment and access to case-law. Judicial procedures are extremely slow (especially in criminal matters) and the considerable case backlogs hamper the efficiency of the system. The role of the prosecutor in criminal proceedings is still too weak, as is its relation to the public. Access to justice is not satisfactory. The strengthening of the judiciary's independence and autonomy by the creation of a self-governing organ has not yet taken place.

The fulfillment of the required conditions of the judiciary are a *sine qua non* for the effective implementation and enforcement of the acquis. Its current implementing performance -in various fields- needs to be improved. Judicial co-operation works well in practice.

F. Human Rights

G. Corruption

III. CONCLUSIONS