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“FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS”

REPORT ON THE CZECH REPUBLIC

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THE EUROPEAN UNION

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**EVALUATION REPORT ON THE**  
**FIFTH ROUND OF MUTUAL EVALUATIONS**  
**“FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS”**

**REPORT ON THE CZECH REPUBLIC**

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DECLASSIFIED

## 1. INTRODUCTION

At the Multidisciplinary Group on Organised Crime (MDG) meeting of 17 June 2008, the Group decided that the subject of the fifth round of mutual evaluations was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal acts relevant in the field of countering financial crimes. However, it was also agreed that the evaluation should go beyond examining how relevant EU legislation had been incorporated into national law and take a wider look at the subject matter<sup>1</sup>, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG.<sup>2</sup>

The importance of the evaluation was emphasised by the Czech Presidency while discussing the judicial reaction to the financial crisis<sup>3</sup>. The significance of the exercise was once again underlined by the Council while establishing the EU's priorities for the fight against organised crime based on the OCTA 2009 and the ROCTA.<sup>4</sup>

Topics related to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen.

Experts with substantial practical knowledge in the field of financial crime and financial investigations were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits.<sup>5</sup> The Czech Republic is the 27th Member State to be evaluated during this round.

According to the procedure, the experts nominated by Member States should be accompanied each time by observers from the Commission (OLAF), Europol, Eurojust and the Council Secretariat.

The experts charged with undertaking this evaluation were Mr Juraj Novocky from the Slovak Republic, Mr Sorin Tanase from Romania and Mr Andreas Schneider from Germany.

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1 10540/08 CRIMORG 89.

2 16710/08 CRIMORG 210.

3 9767/09 JAI 293 ECOFIN 360.

4 8301/2/09 REV 3 CRIMORG 54.

5 5046/1/09 REV 1 CRIMORG 1.

Three observers were also present: Ms Annamaria Majerova (OLAF, European Commission), Ms Teresa Galvez Diez (Eurojust) and Mr Burkhard Mühl (Europol), together with Ms Mari Hämäläinen and Ms Maria Mavridaki of the General Secretariat of the Council.

This report was prepared by the expert team with the assistance of the Council Secretariat, on the basis of their findings during the evaluation visit, which took place between 05 and 09 December 2011, and the Czech Republic's detailed replies to the evaluation questionnaire.

## 2. NATIONAL SYSTEM AND CRIMINAL POLICY

### 2.1. Specialised units

#### 2.1.1. Investigative authorities

##### 2.1.1.1. Police

The police of the Czech Republic is a single police force with several specialised branches and units such as the field police, criminal police, traffic police as well as units dedicated to, inter alia, information technology and forensics. Its objective is to protect the security of people, property and public order, to prevent criminal offences, to meet tasks stipulated by the Act on the Police of the Czech Republic (AoP)<sup>1</sup> and Criminal Procedural Code (CPC)<sup>2</sup> as well as carry out other duties pertaining to internal order and security vested in the police by laws, legal regulations of the EU and international agreements which are part of the legal order of the Czech Republic.

The police is subordinate to the Ministry of the Interior. It consists of:

- the Police Presidium led by the Police President,
- Units having a nation-wide competence,
- Regional police directorates, and
- District police directorates.

The Police President has four Deputy Police Presidents<sup>3</sup>. The Deputy for the Criminal Police and Investigation Services (CPIS) has under his auspices the three **units with nation-wide competence** that play a crucial role in the area of combating financial crime and financial investigations. These are:

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<sup>1</sup> Act no. 273/2008 Coll., as amended

<sup>2</sup> Act no. 141/1961 Coll., as amended

<sup>3</sup> The responsibility areas of the four Deputy Police Presidents are: Criminal Police and Investigation Service (CPIS); External Affairs; Financial Management; and Human Resources and Support Enforcement.

- the Unit Combating Corruption and Financial Crimes (UOKFK) (*Útvar odhalování korupce a finanční criminality*),
- the Unit Combating Organised Crime (*Útvar pro odhalování organizovaného zločinu*), and
- the National Anti-Drug Squad (*Národní protidrogová centrála*).

Besides these units, the **Europol National Unit (ENU)** (*Národní jednotka Europolu*) situated under the Police Presidium within the CPIS has an important role especially as regards the exchange of information among Europol, the Member States, third countries (with an operational or strategic agreement) and the Czech competent police units. Additionally, there are also departments focused on economic crimes at the regional police directorates.

Furthermore, fourteen regional police directorates are established by law. The territories of the regional directorates are identical with the geographical areas of the fourteen administrative regions of the Czech Republic. The tasks of the police are fulfilled by approximately 40 000 police officers and 9 000 civil staff.

### **The Unit Combating Corruption and Financial Crimes (UOKFK)**

The central police unit in this field is the UOKFK, which is responsible to the Deputy Police President for criminal proceedings. The UOKFK is comprised of 385 police officers and 65 civil employees. It is headed by a director and two deputy directors and is organised in departments and regional branches. The UOKFK has its central office in Prague and six branches in České Budějovice, Plzeň, Ústí nad Labem, Hradec Králové, Brno and Ostrava respectively. The branches are internally divided into two divisions; operative activities, and investigation. There are six departments on the central level:

- Department of Corruption and EU Financial Interests Protection,
- Department of Serious Economic Crime,
- Department of Tax Fraud, Proceeds of Crime and Money Laundering,
- Department of Analyses and ICT,
- Department of International Cooperation and Methodology,
- Department of the Director's office.



Main tasks of the UOKFK are:

- To detect and investigate corruption, serious economic and financial crimes including tax crimes and money laundering;
- To trace and seize proceeds of crime where appropriate;
- To detect and investigate serious misconduct that aims to harm financial and economic interests of the European Communities, in cases where the damage exceeds the amount of 150 million CZK (approximately 6 million EUR);
- To meet the objectives of the Czech Asset Recovery Office (ARO);
- To draw up tactical and strategic analyses and evaluations of the security situation as regards the causes and conditions of tax crimes, economic and financial crimes, legalisation of proceeds of crime and money laundering and to present relevant findings to competent state authorities with proposals on measures to prevent such crimes;
- To provide guidance and assistance to other police units in relation to financial investigations; and
- To cooperate internationally in the area of asset recovery.

All UOKFK investigators are required to have a university degree in the relevant field (law, economics, Police Academy, etc.) and a minimum of seven to nine years of police service, based on the performed position. There is also prescribed follow-up training designed for the UOKFK staff members.

At the moment there are 16 specialists working in the field of financial investigations at the central office and 12 at regional branches (two per each regional branch).

The UOKFK has established, runs and uses several **databases and registers**, such as ALPHONSE<sup>1</sup> and MagnusWeb and BizGuard<sup>2</sup>, and UOKFK takes advantage of technical solutions developed by

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<sup>1</sup> An application designed to assist in the creation of property profiles simplifying the administrative demands during the financial investigation.

<sup>2</sup> Applications that enable to interconnect and visualise outputs from different open sources (for example commercial register, media monitor, etc.). The name of the subject is entered into the system and it provides all the matches. MagnusWeb provides the results in a tree-format, where any specific branch can be clicked open. BizGuard uses the same data as MagnusWeb but provides a visual picture. These are both very useful tools in the initial stage of a financial inquiry to establish the subject and its connections.



police IT specialists, such as SuperAccounts which allows the translation of information in difficult formats (such as bank data in a pdf format) into structured and workable Excel data.

Currently the UOKFK is on the process of integrating all functions of ALPHONSE into the ETR information system. The ETR is currently widely used throughout the police and is in the process of being established as the central case management system. Data from all other police information subsystems will also be integrated into the ETR. All police officers use the ETR, and work in the same application. Police officers in the nation-wide units work in this system as well as those in the regional branches. However, the systems are run separately, both at regional and national levels, for example a regional unit cannot access the ETR of a nation-wide unit. Access rights to the overall ETR are based on the hierarchy and post of the specific officer. For example, a police officer can only access those documents that were assigned to him or that he created, but his director can access all documents relevant to him.

Even though the ETR is a case management system, it also features other functions such as a statistical tool. This tool provides extensive possibilities to analytical inquiries regarding seized assets, such as an online overview of seized assets; possibility to compare seized assets with assets returned to the damaged party and the amount finally confiscated; and an overall tool for monitoring and evaluation. This system provides an overview of all on-going criminal proceedings in the Czech Republic where any assets have been seized. It also enables to track:

- which items were seized
- by which police unit/department
- which legal provision was used
- the value of seized assets
- the amount of returned property/value
- the final decision of a court on confiscation

There is also another e-tool that serves the purpose of so-called blocking. That is a system that allows cross-references between cases and suspects: a case officer asks about a suspect to see if he is the subject of another case somewhere else. If the query comes from the regional level, a blocking will result indicating that the person is a subject in a case in another region. The person who made the initial query can get in touch with the relevant office/units. Additionally, also passive searches are possible. In these passive searches the regional level can inquire about a national level case, and the national level will be notified about the inquiry.

The possibilities provided by the ETR to effectively manage cases but also to gather statistics on, for example, the number of financial investigations (started and completed) and the overall assets seized is a good example of a best practice where the overall impact of financial investigations is clearly indicated and which allows for a perfect feedback and evaluation tool on the effectiveness of asset recovery activities.

### **The Unit Combating Organised Crime**

The Unit Combating Organised Crime is not only active in the detection of financial crime or conducting financial investigations. However, the specialised staff of this Unit nevertheless conducts so-called financial investigations in criminal proceedings in certain matters and cases assigned to it in accordance with its competence (based on its internal Act of Conduct). On certain cases the Unit also works together with the UOKFK.

The Unit has altogether 401 employees and consists of seven executive departments divided according to type of crime/subject matter<sup>1</sup>. Its six branch offices are located in České Budějovice, Plzeň, Teplice, Hradec Králové, Brno and Ostrava. These branches conduct financial investigations in criminal cases belonging to the Unit based on its competence.

In Prague, there are six specialists concentrating on finding and securing proceeds of crime in the specific field of crime. Furthermore, each of the six branch offices has one assigned specialist on asset recovery.

The main responsibility of the Unit is to conduct financial investigations in assigned criminal proceedings in order to freeze evidence as well as to confiscate property, both in the pre-investigative phase and the investigative phase. Specialised personnel operate in teams together with “regular” police officers assigned to operative activities, investigations and analysis.

All specialists have university education, and regularly attend various specialised seminars.

### **The National Anti-Drug Squad**

The main aim of the National Anti-Drug Squad is to search for, discover and investigate drug related crime, namely unauthorised production and possession of narcotic and psychotropic substances and poisons, especially as regards the most serious organised and international cases.

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<sup>1</sup> Violent crime; illegal trade; trafficking in human beings and illegal migration; criminal structures; terrorism and extremism; forgery and counterfeit; serious crime against property; and strategic analysis and information.

Since 01 January 2007 the Squad embraces also a group of seven police officers from the previous Unit for Detection of Illegal Proceeds and Tax Fraud, who concentrated on detecting and confiscating illegal revenues of drug related crimes.

Currently the Unit has altogether 165 employees (150 police officers and 15 civil employees) featuring a specialised group of personnel dedicated to, among others, the seizure of crime proceeds and confiscation of property stemming from criminal activities. The group is divided so that four financial specialists are located in Prague, and one specialist is allocated to each of the regional branch offices. There are six regional branch offices, thus there are altogether ten specialists focusing on financial investigations within the National Anti-Drug Squad.

All staff members take part in tracing and investigating crimes in the competence of the National Anti-Drug Squad. They also work on discovering and confiscating property emerging from crimes or being the revenue of criminal acts.

The personnel is educated on a centralised platform within the police through courses of continuous educational programs organised by the Police Academy, courses organised by the UOKFK, and internal education conducted through workshops.

The competences of the personnel of the National Anti-Drug Squad are based on their status as a police authority and derive from the AoP, the CPC, and other laws regarding the seizure and administration of the property seized in criminal proceedings.

#### 2.1.1.2. Customs

The customs administration of the Czech Republic has a three-level structure and is subordinate to the Ministry of Finance. The General Directorate of Customs is the central authority and there are eight customs directorates at the regional level and 54 customs offices at the local level.

The customs authorities have, to an extent, the same powers as police authorities in line with Section 12 (2) of the CPC. The subject-matter jurisdiction of customs authorities acting as police authorities is also governed by the CPC. The authorised customs authorities are the General Directorate of Customs in proceedings of national or international relevance (according to Section 3(3) of the Act No. 185/2004) and the customs directorates in other cases (according to Section 4(3) of the Act No. 185/2004).

Within the General Directorate of Customs, the units active in criminal proceedings (customs and tax fraud unit, and customs drugs unit) are part of the division of investigation under the section of investigation and supervision. Divisions of investigation and supervision with units specialised in detecting organised criminal activity are established within the individual customs directorates.

Approximately 400 officers are employed within such units.

All members who are working in respective units of the customs administration have to have completed at least secondary education (with the final exam). There are also prescribed follow-up courses of special professional preparation designed for them.

### **Financial investigations of the customs authorities**

It should be emphasised, that within the field of financial crime, the customs administration deals with customs duties and excise duties.

Currently, there is no unit in the customs administration dealing exclusively/mainly with financial investigations. These may be conducted by authorised customs officers. In cases of exceptionally serious crime or financial investigations of a larger scale, the authorised customs officers are obliged to request assistance from police units specialised in financial investigations.

The customs has shared competence in criminal proceedings with the police, and customs authorities act in the position of a police authority in cases of:

- proceedings concerning crimes committed by infringement of customs regulations and the regulations on the import, export or transit of goods;
- infringement of legal acts when placing and acquiring goods in the EU Member States, provided such goods are transported through the Czech state borders;
- infringement of tax acts provided that customs authorities are tax administrators according to the special legal acts.

Thus the criminal enquiry part of the criminal proceedings falls under the customs competence, up until the initiation of the criminal prosecution. From this point onwards, the criminal investigation is normally a police competence. In practice the partial investigative competence in criminal proceedings means that once the person who has committed the crime has been identified, the case is most often handed over to the police.

The police may, however, ask the customs to support the investigation, or even conduct it. Unofficial joint teams between the police and the customs can also be formed, by a request of the prosecutor supervising the investigation, or by a mutual agreement of the two parties. In specialised customs cases, such as trade-related fraud, the customs oftentimes has and the expertise as well as best knowledge of the details of the case (declarations of goods, etc.), and the police may ask the customs to take steps in the investigation or at least to explain the details of the case.

If coercive measures such as wiretapping are used during such investigations, this is technically organised by the police.

### *2.1.2. Prosecuting authorities*

In general, the objective of public prosecution in the Czech Republic is to represent the State in the protection of public interests in matters entrusted by law to the public prosecutor's office. The main tasks of the public prosecution are:

- to supervise the legality of criminal proceedings during the pre-trial phase and the legality of the measures taken before the initiation of the criminal proceedings (the instructions of the public prosecutors are binding for investigation authorities),
- to submit proposals for the decision of courts during the criminal proceedings,
- to draw up the indictment and other decisions in the pre-trial phase according to the law,
- to represent the indictment at the competent court, to lodge the appeal against the decisions of the court and to participate in the proceedings concerning the appeal in some cases<sup>1</sup>.

Administratively, the system of public prosecutor's offices belongs under the Ministry of Justice. However, functionally the system is independent of the Ministry of Justice as well as the courts.

The system of the public prosecutor's offices is based on hierarchy, with the Supreme Public Prosecutor's Office being the central authority. The system has four levels: the Supreme Public Prosecutor's Office in Brno, the high prosecutor's offices in Prague and Olomouc, regional prosecutor's offices (8), and district prosecutor's offices (89). Seats and territorial scopes of the regional and district prosecutor's offices are the same as the ones of the respective courts. Altogether there are currently 1241 public prosecutors.

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<sup>1</sup> Only the public prosecutor can submit the indictment to the competent court, and represents the prosecution side during the trial.

The specialisation of individual public prosecutors is determined by the organisational code of each individual public prosecutor's office, and the framework of specialisation is provided in the Instruction of General Nature of the Supreme Public Prosecutor no. 4/2009. The specialisation areas are:

- economic and property crime including financial crime,
- organised crime,
- corruption,
- detection, seizure and confiscation of proceeds of crime,
- cooperation with the EU Member States.

At the level of the district public prosecutor's office, there are at least specialists for economic, property and financial crime as well as for corruption. The regional public prosecutor's offices have all of the above mentioned specialisations.

Additionally, at the high prosecutor's offices and the Supreme Public Prosecutor's Office there are specialised departments which deal with serious economic crimes and financial crime.

The detailed powers of the public prosecutors are to be found in the CPC, and the Act on Public Prosecution, no. 283/1993 Coll, as amended.

Public prosecutor must be a citizen of the Czech Republic, who has legal capacity, is blameless, on the day of the appointment reached the age of at least 25, acquired a college degree by studying a master's study programme in the field of law at a college in the Czech Republic, successfully passed the final exam, and the expert judicial exam, his/her moral qualities give a guarantee that he/she will properly perform the function, and consents to his/her appointment to the function of the public prosecutor and to being assigned to a specific Public Prosecutor's Office.

#### 2.1.2.1. Departments of Serious Economic Crime and Financial Crime at Supreme and High Public Prosecutors Office

Departments of Serious Economic Crime and Financial Crime were established in 2000 both at the Supreme Public Prosecutor's Office and at both high public prosecutor's offices (Prague and Olomouc).



The relevant legal basis is the regulation of the Ministry of Justice no. 23/1994 Coll. on the procedural code of the public prosecutor's offices, by which also similar departments at the high prosecutor's office were established. These departments supervise the maintenance of legality in the pre-trial proceedings in matters of intentional crimes<sup>1</sup>:

- a) committed by an activity of a bank, investment company or investment fund, securities tradesman, insurance company, health insurance company, pension fund, building and loan institution or savings and loan association, if a damage of at least 150 mil. CZK has been caused,
- b) committed by natural or legal persons, in relation to unauthorised activity of entities referred to in point a) above, if a damage of at least 150 mil. CZK has been caused;
- c) by which a damage on property or share of property of the state of at least 150 mil. CZK has been caused;
- d) according to chapter five or six of the Special Part of the CC, if they were committed in favour of an organised criminal group, and criminal offences of the abuse of competence of a public official according to Section 329 of the CC, or criminal offences of accepting a bribe, bribery or indirect corruption according to Sections 331 to 333 of the CC, if they were committed in connection with the detection and investigation of crimes according to chapter five or six of the Special Part of the CC;
- e) by which the financial or economical interests of the European Union were affected, if a damage of at least 150 mil. CZK has been caused;
- f) committed against the single European currency in favour of an organised criminal group, by a member of an organised criminal group, in considerable or large extent, or if a police authority performing tasks of the special centre according to Article 12 of the Convention for the Suppression of Counterfeiting Currency conducts proceedings on crimes aimed against the single European currency.

The high public prosecutor's office may, with a previous consent of the Supreme Public Prosecutor, decide that a lower public prosecutor's office is competent to supervise the legality in the above-mentioned cases.

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<sup>1</sup> See the Criminal Code (CC) no. 40/2009 Coll., as amended, in connection with Section 15 of the regulation no. 23/1994.



If the seriousness, material or legal complexity of the matter so require, the high public prosecutor's office may, with a previous consent of the Supreme Public Prosecutor, also decide on its competence to supervise the legality in pre-trial proceedings in certain cases<sup>1</sup>, even if a damage lower than 150 mil. CZK has been caused, or if a damage of at least 150 mil. CZK has been caused to a property of another entity.

Mandatory supervision of the activities of these specialised departments at the high public prosecutor's offices in Prague and Olomouc is conducted in all abovementioned cases by the Department of Serious Economic and Financial Crime at the Supreme Public Prosecutor's Office in Brno.

The Instruction of General Nature stipulated that the Department of Serious Economic and Financial Crime of the Supreme Public Prosecutor's Office in Brno is responsible for cooperation with OLAF.

#### 2.1.2.2. International Affairs Department of the Supreme Public Prosecutor's Office

The International Affairs Department at the Supreme Public Prosecutor's Office performs the function of the central judicial authority for international cooperation in pre-trial criminal matters, unless an international treaty or an EU legal tool provides for direct contacts among responsible authorities. The members of this department are also the contact points of the European Judicial Network, CARIN and JIT Network.

The prosecutors of the International Affairs Department of the Supreme Prosecutor's Office are entitled to:

- Have a direct contact with all public prosecutors in the Czech Republic, the Ministry of Justice and with the Police Presidium,
- Receive and send MLA requests,
- Co-ordinate the execution of an MLA request in the whole territory of the Czech Republic,
- Access all criminal files and databases concerning the investigation and prosecution as regards the competences of the International Affairs Department of the Supreme Public Prosecutor's Office,

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<sup>1</sup> Cases referred to in Section 15 (1) a) to c) and e) of the regulation no. 23/1994 Coll., Procedure Code of the Public Prosecutor's Office.

- Access criminal records
- Conclude an agreement on setting up a JIT,
- Ask a public prosecutor to remove delays in the execution of MLA requests,
- Ask the Supreme Public Prosecutor's office to supervise an inferior public prosecutor's office in the execution of an MLA request (in the case of substantial problems),
- Appoint just one public prosecutor responsible for the execution of the MLA request in case more than one public prosecutor's office is responsible for executing it,
- Resolve a jurisdictional conflict between inferior public prosecutor's authorities on the whole territory of the Czech Republic concerning the execution of an MLA request,

As regards the transfer of criminal proceedings:

- Decide to take over criminal proceedings from abroad on the basis of a request,
- Hand over criminal proceedings abroad on the basis of a request of the responsible prosecutor

The International Affairs Department of the Supreme Public Prosecutor's Office has provided a non-binding handbook for prosecutors. It concerns all kinds of international cooperation including asset recovery and freezing orders.

### *2.1.3. Judges involved in the pre-trial phase*

In general, the court system in the Czech Republic consists of four levels. At the first level there are the district courts (including the metropolitan court in Brno and 10 district courts in Prague). At the second level there are regional courts (including the metropolitan court in Prague), and the third level is comprised of the high courts. The fourth level is formed by the Supreme Court and the Supreme Administrative Court. The Constitutional Court stands outside of the general court structure due to its exclusive subject matter, constitutional issues. At the moment there are 791 criminal judges (out of the total number of judges which amounts to 3048 judges altogether), 22 of them at the Supreme Court, 56 at the high courts, 239 at regional courts and 474 at district courts.

The courts are involved both in the pre-trial and trial phase. Concerning financial crime, the judges of district courts decide in pre-trial proceedings on measures which concern the possible breach of fundamental human rights, such as taking to custody, authorisation of interception, etc.

They also decide on complaints against decisions of public prosecutors related to the seizure of property in pre-trial proceedings<sup>1</sup>.

During the trial phase, the courts may decide on confiscation of individual things or other asset values, confiscation of equivalent value, confiscation of the whole property, or forfeiture of a thing or other asset value or equivalent value.

Generally speaking, as regards the specialisation of the courts, and specifically within the field of financial or economic crimes, there are such specialised senates within the high and regional courts and generally also in a number of district courts. This specialisation is based both on the internal plan of work at the respective courts as well as generally on the Regulation of the Ministry of Justice no. 37/1992 Coll., on the procedural code for the district and regional courts<sup>2</sup>. There is also a specialised senate focused on financial and economic crimes within the Supreme Court according to its internal plan of work.

The International Criminal Department at the Ministry of Justice performs the function of the central authority for international cooperation in criminal matters in trial, unless an international treaty or an EU legal tool provides otherwise.

#### *2.1.4. Other relevant authorities*

##### *2.1.4.1. Financial Analytic Unit of the Ministry of Finance (Finanční analytický útvar)*

The Financial Analytic Unit of the Ministry of Finance acts as the Czech Financial Intelligence Unit (FIU). The Czech FIU is an administrative type of FIU.

The FIU secures performing the tasks of the Ministry of Finance arising from the Act no. 253/2008 Coll., on selected measures against legitimisation of proceeds of crime and financing of terrorism. It collects and analyses data on suspicious transactions identified and reported by the obliged entities and performs other actions arising from the analysis, specifically if suspicion of criminal activity occurs.

The Financial Analytic Unit is the main state authority for anti-money laundering measures. In addition to acting as the Czech FIU as regards foreign counterparts, it is the central state authority for the collection and analysis of STRs. Based on the data it receives, the Financial Analytic Unit can communicate a complaint to the police concerning a suspicion that a crime has been committed.

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<sup>1</sup> See Section 146a of the CPC

<sup>2</sup> Section 2 (2a), point 4

It also coordinates the observance of international sanctions and controls the application of the reporting obligation by the reporting entities. The Financial Analytic Unit also conducts training courses and lectures in the field of its activity.

A more detailed description of the activities of the Financial Analytic Unit acting as the Czech FIU is featured in part 3.2.6.1.

#### 2.1.4.2. Office of the Government Representation in Property Affairs (*Úřad pro zastupování státu ve věcech majetkových*)

The Office of the Government Representation in Property Affairs (the Office) was established on 01 July 2002 by the Act on the Office of the Government Representation in Property Affairs (Act no. 201/2002 Coll., as amended). The main aim of this Office is to improve legal services and ensure an efficient protection and economical administration of the property owned by the Czech Republic.

As regards financial crime and financial investigations, the most important tasks of the Office include the management of the assets during freezing and also after confiscation. Specifically, based on the Act on the enforcement of the seizure of assets and items in criminal proceedings (Act No. 279/2003 Coll., as amended), the Office is authorised to administer property seized in criminal proceedings. In practice, this means that the Office is involved in taking care of the seized property on the basis of a court decision, public prosecutor's order, or court order. For the Office, it means not only storing the movable property seized, but also taking care of the real estate. The Office currently administers property in the value of tens of millions of CZK.

It should be noted that the Office only manages assets during the freezing and after confiscation. It does not have an enforcement task and thus it does not implement or execute for example final decisions on confiscation.

#### 2.1.5. *Asset Recovery Office (ARO)*

In accordance with the provisions of Art 1 of the Council Decision 2007/845/JHA, the UOKFK was appointed as the Czech ARO by the binding instruction of the Police President no. 30/2009. In specific, the ARO's tasks in the area of international cooperation are performed by the Department of International Cooperation and Methodology at the UOKFK.

The department is a contact point for foreign AROs, and it handles incoming and outgoing international asset tracing requests. Five out of 12 police officers working at this department are in charge of international cooperation<sup>1</sup>. Connection to the SIENA network is about to be established for the purposes of secured exchange of information with foreign AROs.

As a police unit, the UOKFK carries out the relevant part of pre-trial criminal proceedings under the supervision of the public prosecutor. It also fulfils the tasks in accordance with the provisions of AoP and collects intelligence on criminal activities prior to commencing any criminal proceedings.

At the national level, the UOKFK is responsible for the methodology and general approach in the area of asset recovery. The UOKFK organises regular seminars and workshops designed for police officers entrusted with financial investigations in the other units with nation-wide competence (the Anti-Drug Squad and the Organised Crime Unit) as well as in the regions. These events deal with the current legal and tactical challenges in the area of asset tracing and seizure, and examples of best practice are shared among participating officers. Seminars are also attended by prosecutors and representatives from other different agencies that play an important role in the field of asset recovery (the FIU, the Office of the Government Representation in Property Affairs, etc.).

As assistance to the other police units, the UOKFK runs an intranet platform dedicated to the methodology and approach containing updated information in relation to asset recovery.

As the designated ARO, the UOKFK's responsibility is:

- to process and reply incoming requests from AROs in other Member States;
- to support financial investigators in their efforts to trace and seize criminal assets and supply them information obtained from AROs in other Member States; and
- to act as the central office in relation to asset recovery matters and to gather best practices.

The UOKFK runs its own police database named AISU. AISU is an automated information system that comprises of information arising in the course of investigation and analysis proceedings.

The UOKFK staff has access to the registers referred to above. Police officers have also access to the following police information systems and databases:

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<sup>1</sup> However, it is important to note that in the Czech Republic the ARO functions in the broad sense are carried out by the 210 financial investigators deployed throughout the police.

- Central register of citizens
- Central vehicle register
- Register of identification documents (passports, driving licences, national identification cards)
- Criminal records
- Investigated and prosecuted individuals
- TUDU – register of foreigners
- List of wanted persons
- Database of weapons and weapon holders
- AFIS – database of dactyloscopy records
- SIS – Schengen information system
- ICIS – Interpol information system
- ALPHONSE

Access to the police information system and the terms of use of police databases are regulated by the binding instruction of the Police President no. 168/2009, on inquiries from police information systems. Each police officer is given a unique username and password. Checks in police databases are monitored, and all inquiries must be properly justified.

The UOKFK staff can also take advantage of:

- Europol's Financial Crime Information Centre (FCIC)
- MagnusWeb, BizGuard

The Czech ARO is not yet connected to SIENA due to problems with building the necessary classified workplaces.



## 2.2. Training

### 2.2.1. Police authorities

Within the police, various types of training for different levels of police officers and police employees are offered.

At the level of the basic professional preparation for the incoming police officers, the department for education of the Ministry of the Interior is responsible for the education on financial investigations. It is a complex set of training for newcomers and it is a part of certain training programs at the police schools.

The police schools (Ministry of the Interior) are further providing seminars on the seizure of proceeds of crime, fight against corruption, and so on.

The Unit of Methodology of the Department of International Cooperation and Methodology at the UOKFK is organising various seminars on financial crime for regional specialists in the 14 regional directorates in the Czech Republic. The UOKFK is actively participating in all other types of training activities connected to financial crime, such as seminars at the Police Academy, the Judicial Academy, etc.

The Special Purpose Training Facility (SPTF) at the Ministry of Interior in Prague provides further training for the specialised police units. The SPTF is aiming at securing courses of basic specialised training, specialised courses, and courses of further specialised training for members of armed security force, their employees, the Ministry of the the Interior, and also for soldiers in active service.

Individual courses are arranged according to the requirements of the respective police units in order to enable the students, after completing such courses, to be able to perform successfully their functions in specialised workplaces. These courses are realised in the format of daily, combined or distant studies, which do not exceed twelve months. The studies are concluded by a final exam.

As regards the system of training organised by the Police Academy, the offered courses of lifelong studies are aimed at permanent topics of police practise. These courses concern especially issues stretching from the field of social sciences, such as psychology and sociology, to the issues of criminal law, corruption, combating extremism, economic crime, environmental crime, and so on.



The teaching experts in these courses range from the police lecturers teaching at the police schools (for example issues such as seizure and draining of proceeds) to police officers who aim to deepen the knowledge of the participants in such courses in relevant areas (for example in the area of financial investigations and control of criminality, money laundering or terrorism financing).

Selected courses in year 2011/2012 connected to the investigation of financial crime:

|     |  |   |                                       |
|-----|--|---|---------------------------------------|
| 1.  | <u>Seizure and draining of proceeds of crime in practise of police authorities</u>                                   | Five day course                           | Course upon request<br>19.-23.9.2011  |
| 4.  | <u>Corruption activity and possibilities of prevention</u>   | One day course                            | 6.10.2011                             |
| 5.  | <u>Economic crime</u>  | Long term course - 8 weeks 10/2011-5/2012 | Course upon request                   |
| 6.  | <u>Criminal law protection from corruption</u>   | One day course                            | 26.10.2011                            |
| 7.  | <u>Financial investigation and control of criminality, legalization of proceeds of crime and terrorism financing</u> | Five day course                           | Course upon request<br>07.-11.11.2011 |
| 10. | <u>Detection and investigation of insurance frauds</u>   | Two day course                            | 12.-13. 12. 2011                      |
| 16. | <u>English for policing</u>  | One day course                            | 16.01.2012                            |
| 20. | <u>Creation and legalisation of proceeds of crime</u>  | One day course                            | 01.02.2012                            |

### 2.2.2. *Customs authorities*

Every officer of the units has to pass the basic customs training which is focused on:

- initial training (Czech legal order, public governance, public finance, the EU, communication and psychology) (44 hours);
- the basics of the customs (32 hours);
- basic theoretical professional preparation (both Czech and Union customs law, Czech tax law, Czech administrative law, Czech criminal law and customs policy and tariff) (112 hours);
- basic practical professional preparation (customs proceedings, tax proceedings, control activities, mobile supervision and surveillance and TARIC) (176 hours); and
- preparation for the service (132 hours)

Furthermore there are other courses of special professional preparation available to officers who perform the duties of criminal investigation, respectively initial criminal verification of the facts indicating that the criminal offence has been committed:

- Criminal investigation, respectively initial criminal verification of the facts indicating that the criminal offence has been committed (basics of criminal law, substantive criminal law, criminal procedural law, practice of criminal proceedings, criminalistics, intelligence activity). (128 hours).
- Search (tracing) in tax area, focusing on the theory of law and model examples of practical application of the theory of law. (64 hours). In addition to lecturers from the General Directorate of Customs and from the general financial directorate, the public prosecutor's office, the FIU and the Police (UOKFK) participate in giving this training.
- Intelligence criminal analysis with the aim to provide the intelligence analysts, assistant members of the intelligence team and inspectors in the field with skills needed to carry out the analysis of great amount of different information originating from various sources and to be able to produce high-quality, reliable and accurate intelligence material.

Moreover, according to internal customs regulations, all customs officers who work in the departments dealing with criminal investigations are obliged to complete a specialised course on criminal investigations within one year from the date of their establishment in a given duty position.

They are entitled to attend this course repeatedly throughout their career.

### 2.2.3. Judicial authorities (judges and public prosecutors)

Specialised training for the judicial authorities is mainly organised by the Judicial Academy. Judicial Academy provides for professional training of persons acting within the scope of activity of the Ministry of Justice (i.e. public prosecutors, judges, judicial trainees, assistants and other specialised judicial personnel) and administratively belongs under the Ministry of Justice.

In 2010, eight one day seminars on international judicial cooperation for judges and public prosecutors in individual regions were organised. These seminars were among others aimed at the topic of the seizure of property in international cooperation in criminal matters.

Seminars on economic crime took place in April 2010 and November 2010. Part of the seminars was aimed at the topic related to financial crime: general issues of criminal law and other legal regulations in operation of local financial authorities; cooperation of financial authorities with law enforcement authorities, issues of tax proceedings and criminal proceedings.

A one day seminar on trafficking in human beings took place in May 2010. The seminar focused among others on the subject of money laundering; monitoring financial flows in relation to organised crime in the field of trafficking in human beings, tax crime and related issues.

A two day seminar on the legal aspect of combating militant and terrorist manifestations of extremism in the European context took place on 31 May - 1 June 2010. Attention was paid also to the issue of terrorism financing.

The Czech Republic held the presidency of the CARIN network in 2010. The Ministry of the Interior in cooperation with the UOKFK and the Supreme Public Prosecutor's Office organised the CARIN Annual General Meeting focused on the topic of alternative possibilities to trace and freeze assets prior to mutual legal assistance in September 2010.

In 2011, a three-day seminar on selected issues of economic crime took place in June 2011 and was among others aimed at: rules of executionary sale of property and their application in selling of property seized in criminal proceedings; identification of sellable property; evaluation of property and methods of its sale; operations of the FIU; issues of funds before and after entry to the EC and EU; definition and approval procedure of drawing subventions and payments; and seizure of property in criminal proceedings in relation to foreign countries.

Two one day seminars on international judicial cooperation took place in September and October 2011. The seminar was among others aimed at the issue of seizure of property and draining proceeds of crime within international judicial cooperation.

A TAIEX conference was organised together with the Supreme Public Prosecutor's Office in Prague in October 2011. Half a day focused on the tracing and seizing of assets in criminal proceedings. Participants from 30 states from Europe participated in the conference.

The subject of seizure of property in criminal proceedings and the execution of seizure of things and assets in criminal proceedings was topical in a three-day seminar on the subject of property crimes taking place in November 2011.

The Judicial Academy introduced a one-day seminar on the seizure of property and draining proceeds of crime that took place in November 2011.

The following seminars are scheduled for 2012:

- A three-day seminar on economic crime (part 1) aimed among others to carousel fraud from the view of international cooperation of judicial authorities and issues of continuity of tax proceedings and criminal proceedings.
- A three-day seminar on economic crime (part 2) aimed among others to issues of bank and credit crime (application of concurrence of criminal and tax proceedings).
- A three-day seminar on economic crime (part 3) aimed among others to subventions and protection of the financial interests of the EU; the fight against corruption; unauthorised drawing of subventions from the EU and the Czech Republic; issues of funds before and after the entry to the EC and EU; control of property and checking against tax statements at financial bureaux.
- Four two-day seminars on the Act on International Judicial Cooperation<sup>1</sup>.
- A two-day seminar on the seizure of property and draining proceeds of crime aimed at money laundering; and the national legal regulations and practice in the seizure of property.

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<sup>1</sup> A draft Act scheduled to come into legal force in 2012

- A one-day seminar on the seizure of things covering the issues of seizure of things important in criminal proceedings; their due administration and return to the entitled entity; unjust enrichment, and changes brought by the new Civil Code; seizure of illegal software on computers, etc.

### 2.3. Criminal policy

In the Czech Republic, tracing and seizing assets of crime is an integral part of combating crime in general, and its significance has grown rapidly during past years. Nowadays this topic is a clear priority of the criminal policy. Whole network of state authorities such as the police, the customs authorities, the public prosecutors and the judges, the FIU, tax offices and the Office of the Government Representation in Property Affairs cooperate to trace, seize and confiscate assets of crime. However, the responsibility for this during the investigation itself lies solely with the law enforcement authorities: the police, the customs and the public prosecutors are responsible for tracing and most of the seizing of the assets whilst the judges' task is to confiscate the seized property.

The Czech FIU has an important role to play in this field, according to the Czech Anti-Money Laundering Act (the AML Act). The FIU receives reports on STRs from the obliged entities (mostly banks), analyses them, and if suspicion arises regarding criminal activity, the FIU sends a criminal complaint to the police, or, alternatively, sends a report to the tax or customs authorities if a tax evasion has occurred. The FIU has also the power to postpone a transaction (i.e. to block financial funds on a bank account or to freeze other assets).

As mentioned above, the policy of tracing, seizing and confiscating assets of crime is of a high priority. This policy is also part and parcel of the general governmental strategy towards crime. The strategy on this topic was adopted by the Minister of the Interior at the end of 2010. Its adoption has at the same time supported the task of the general governmental strategy as regards the fight against corruption in a broad sense. Three tasks of this strategy deal with the confiscation of assets of crime. Other two tasks are oriented towards education in this area and on the possibility of introducing non-criminal means of confiscation. The strategy stresses the commitment of all police officers conducting criminal proceedings to trace and seize assets from criminal activity in every case where property loss has been caused or property benefit obtained. The strategy also introduces a system of specialisation as regards financial investigations on district level, regional level, as well as at units with nation-wide competence.

It also establishes a wide range of measures including a system of training, a new system of gathering statistical data and a system of the evaluation of the results of each police unit.

On the other hand, it is necessary to admit that investigations oriented specifically on confiscating assets are, according to the Czech authorities, in many respects still under development. Many steps have been already taken, and the statistical results gathered this year show that the steps taken have been effective. From the point of view of the policy-makers, it seems that the most important task is to make the police accept and support the very idea of assets confiscation, but also, according to the evaluation team, encourage the judges to pass final sentences on confiscation, even when assets have not been traced and frozen during the investigations.

The Czech policy oriented on confiscation of assets of crime distinguishes two approaches:

- When investigating serious financial criminality including tax frauds, organised crime, drugs and money laundering, it is important to create preferably an extensive property profile of the subject of interest.
- As regards other criminality, the approach varies. It can be the same as the approach above, or it can be less sophisticated in cases where the main effort in this area is to seize property that will serve to pay damages to the injured person. In these less complicated cases it is not always necessary to perform a full financial investigation.

According to the Czech authorities, the first approach is fully supported and accepted. In this field the tracing and confiscation of assets of crime is considered to be as important as convicting the perpetrator. The second approach is more challenging and requires a change in thinking about the confiscation of assets and its role in criminal investigations.

Due to internal police provisions all police officers conducting criminal proceedings (so-called case officers) are obliged to, where property loss has been caused or property benefit obtained, already from the start of the criminal proceedings thoroughly trace and seize proceeds of criminal activities and to consider possibilities to seize assets for the purposes of confiscation or compensation of the victim. In this context, case officers are obliged to consider the completion of a financial investigation. The same obligation is laid down by an internal customs act as regards authorised customs authorities.



Moreover, the provisions also stipulate that at every police level (district, regional as well as in the units with nation-wide competence), specialised bureaux for financial investigations have to be set up. These bureaux are staffed by specialised police officers (financial investigators) trained in the area of asset recovery. Currently there are 210 financial investigators deployed throughout the police. Case officers located anywhere in the country may request the assistance of financial investigators.

Tracing and seizing proceeds of criminal activity for the purpose of confiscation is an integral part of investigations and as such is not a separate objective in normal police work. The tracing of assets is a primarily the responsibility of every case officer, however, in complicated cases, it is common to consult specialised financial investigators nominated in every police unit, or to create a joint or microteam in more sophisticated criminal cases.

In such a case the financial investigator becomes also the case officer, but his responsibility is restricted only to the tracing and freezing of the assets of the investigated crime. The part that the financial investigator plays must be, however, very active. He/she is present during interrogations and can ask questions aiming to complete the property profile, and he/she participates in house searches etc.

#### 2.4. Conclusions

- The Czech Republic has a very elaborate and well-functioning set-up as regards fighting financial crimes and conducting financial investigations as well as prosecuting the cases, including altogether 210 financial investigators deployed throughout the country and at every level of the police force. Additionally, there are nation-wide special units such as the UOKFK and the Unit Combating Organised Crime that can provide special expertise in their area of competence. It is important to note that the Czech Republic has also already established specialised prosecutors and judges within the system of the prosecutor's service and the courts. The Czech Republic has thus set up specialised services, both investigative and in particularly prosecutorial, to deal with any specific type of crime, including financial crime, and to conduct financial investigations.
- This system can, however, be slightly complicated at places, and it is thus difficult to evaluate whether the well-established parts of the system are sufficiently and transparently coordinated and that the cooperation between the different functions is adequate and efficient.



- The expert team observed that the current provisions laying down the administrative organisation of the prosecution services are somewhat hierarchical. The chief prosecutor can give instructions concerning the procedural aspects of the prosecution process regarding a specific case, and at the highest level the Supreme Prosecutor's Office can move a case to a higher level of the prosecution services, if the seriousness of the case or its factual or legal complexity so requires<sup>1</sup>, and in some cases from one region to another<sup>2</sup>. This might decrease the transparency of the internal allocation of cases and influence the effectiveness of financial investigations.
- The UOKFK is a highly specialised nation-wide unit dealing with financial crime and corruption and also encompassing the Czech ARO. The number of personnel allocated to the UOKFK (337 police officers and 58 civilian staff) and the way it is structured in branches throughout the territory is a clear indication that financial crime is being taken seriously by the Czech authorities.
- Other specialised units like the Unit Combating Organised Crime and the National Anti Drug Squad liaise closely with the UOKFK, and financial investigations are carried out by financial investigators working in these units. However, there are significant differences between the UOKFK and the other specialised police units as regards for example training and also the available tools and information. For example, the UOKFK seems to be the only police body that receives information from the tax authorities. The Unit Combating Organised Crime reported that since 2011 they are no longer allowed to contact the tax authorities in order to obtain information. This can be regarded as a serious obstacle to their (financial) investigations.

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<sup>1</sup> In such a case the prosecutor of the high prosecutor's office may, with a prior approval of the Supreme Prosecutor, decide that the respective high prosecutor's office is competent to supervise the legality of pre-trial proceedings in a specific case, which is within the competence of a lower level of prosecution. Further, a case may be moved to a higher level if the competent prosecutor's office is not dealing with the case, or is dealing with unreasonable delay, or is not respecting the instructions of the prosecutor's office of a higher level.

<sup>2</sup> The Supreme Prosecutor's Office is entitled to decide on the local jurisdiction in case of a conflict of jurisdictions between high prosecutor's offices or between district or regional prosecutor's offices in the region of different high prosecutor's offices, as well as when the case needs to be transferred to another prosecutor's office of the same level in order to ensure impartiality and legality of the proceedings (e.g. when all the prosecutors by the relevant office are biased; or when the chief prosecutor has to be excluded because of the actual bias).

- The UOKFK has established and uses several comprehensive databases and tools like MagnusWeb, BizGuard, Superaccount, etc. as well as the central case management system ETR which enables also the collection of statistical data resulting from criminal investigations. The added value of the ETR providing a useful tool for the monitoring of the progress of seizing and freezing, comprehensive case management for financial investigations, as well as overall asset recovery statistics is clear and the system serves as a best practice example for other Member States.
- It appears that all police forces use the case management part of the ETR, even though with varying levels of access. On the other hand, the statistical tool part of the ETR is not used by all other police units. All police bodies are obliged to enter data into this system except for two specialised units that, in the view of the evaluation team, possess valuable information and could strongly contribute to the system, namely the Unit Combating Organised Crime and the National Anti-Drug Squad. These units are understandably high level specialised bodies, but for the purposes of statistics and efficient coordination of the investigations, it is of utmost importance to have all the relevant information in an integrated system without any exceptions. It should be noted that access to the data is on a strict need-to-know basis. Thus there should be no fears or risk that for example sensitive cases of organised crime could be accessed by unauthorised staff.
- In order to grasp and evaluate all phases of the process of seizure, freezing and confiscation, the data in criminal cases should subsequently be filled into the ETR and complemented by the prosecutors and/or courts.
- The police forces in the Czech Republic have extended investigative powers, since they conduct almost all criminal investigation. The Ministry of the Interior has adopted a strategic approach to tackle corruption and organised crime, as well as to emphasise asset recovery, and the latter has a genuinely important position in the approach of the government and, subsequently, the operational activities of the relevant authorities.
- The UOKFK and the Department of the Serious Economic Crime and Financial Crime at the Supreme Public Prosecutor's Office are competent to deal with serious misconduct that aims to harm the financial and economic interests of the European Union, but only in cases where the damage exceeds the amount of 150 million CZK (approximately 6 million EUR). This is in practice a very limited competence, taking into account the very high threshold. It should be taken into consideration, however, that pursuant to binding instruction of Police President No. 30/2009 on performance of tasks in the criminal proceedings, the UOKFK is also competent to investigate the following criminal offences, regardless the threshold of damage:

- which it detects by own inquiries, unless it decides on transfer to appropriate competent body;
  - which have been notified by FAU of the Ministry of Finance, if falling within competency of the Unit;
  - which have been taken over by the decision of the director of the unit;
  - which have been ordered by decision of superior or by public prosecutor.
- It should be pointed out, that the Czech Republic has no specific authority dedicated to search property after the final decision of the court for its execution and possible confiscation in a situation where the property has not been frozen during the preliminary stage of criminal proceedings. This is a clear drawback that should be addressed rapidly. There should be no substantial legal obstacles to accomplish this. It is paramount that the legal system provides for the execution of the confiscation order, irrespective of the state of the proceedings.
  - It seems that in practice the police manages or does the administrative work on the vast majority of seized property<sup>1</sup>. The mandate of an existing state body, the Office of the Government Representation in Property Affairs, responsible also for managing the frozen property, could be expanded to provide for an enhanced asset management system, which would also alleviate the heavy burden of the current property management tasks of the police.
  - The Czech ARO is well structured, interlinked with the regional/district police forces and clearly performs very well. Due to some technical reasons the Czech ARO has not yet been linked to the Europol SIENA System. During the evaluation visit the team was informed that efforts are on the way to link the ARO to SIENA.
  - According to the Czech authorities, the frequent restructuring of the Czech police is perceived by the practitioners as a serious challenge, as is also the constant brain drain of investigators leading to the loss of many well-trained and experienced financial investigators. As one option to resolve the latter, a bonus system for financial investigators in successful confiscation cases is currently being discussed. This is rightfully regarded as a sensitive topic; an evaluation report on how to structure salary benefits is currently being drafted by the Czech police. The findings might be interesting for other European police forces in the light of the emerging discussions on how to reuse confiscated assets.

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<sup>1</sup> According to the information provided by the Czech authorities, the police administer over 70 per cent of seized assets.

- The Czech FIU has an administrative setup and appears to co-operate relatively well with the police. The FIU provides information to the UOKFK in all crimes areas, but requests for information received by the FIU from the police are only answered when they concern money laundering or terrorism financing. It is questionable why these limitations are in place, and this could prove to be an obstacle in investigating financial crime in general.
- It is apparent that all officers, public prosecutors and judges have a great opportunity to enhance their skills in a very well-organised and coherent training. The police and/or the Judicial Academy provide common and specialised training possibilities at a high level of quality to all relevant authorities. It is important to continue this approach and to keep developing the relevant training modules.
- The legal framework provides a sufficient range of investigation techniques. However, relatively strict conditions apply to the use of some of the special means of investigation (e.g. wire tapping).
- In practice the police and the prosecutor seem to have a preference to indict for the predicate offence (mainly tax fraud and other financial crimes) and not always for the money laundering offence as such; self-laundering cases seem to be relatively rare.
- According to the information provided by the Czech authorities, as regards investigating/fighting financial crime, the Czech government introduced already in 2008-2009 a proceeds-oriented strategy. When the figures of seized and confiscated assets did not increase, the authorities again scrutinised and analysed in detail the impediments and obstacles that the authorities had to face when seizing/confiscating assets. As figures from 2011 show, the persistency of the Czech authorities has paid off.

### **3. INVESTIGATION AND PROSECUTION**

#### **3.1. Available information and databases**

##### *3.1.1. Databases and registers*

###### **3.1.1.1. Bank accounts**

There is currently no central bank account register in the Czech Republic, despite long-lasting efforts of the competent authorities to have such a register established. If particular information regarding a bank account is needed for the purposes of criminal proceedings, a public prosecutor's request has to be submitted to the respective bank institution pursuant to Section 8(2) of the CPC.

There are all-in-all 44 licensed banks and branches of foreign banks in the Czech Republic (as of October 2011). Currently the Czech FIU uses a secure platform called MONEYWEB<sup>1</sup> with the most important Czech banks. Required information can be provided within hours.

The idea of establishing a central register of bank accounts was considered by the Czech government in 2010, and the Minister of Finance was given a task to submit to the government, on the basis of Decision of the Czech Government No. 222 of 22nd March 2010, a technical and economic study of possible solutions concerning a more effective system of obtaining information from financial institutions by the competent authorities.

The Czech FIU was entrusted with the elaboration of this study. The practical aim of the study was to find the optimal solution for the exchange of requests and answers between financial institutions and those authorities competent to lift the bank secrecy.

The complete technical and economic analysis was submitted to the government in August 2011. However, the proposal to establish the central register of bank accounts was not approved, despite the fact that the results of the study confirmed that the central register of bank accounts would bring large economic savings for the state and also for the financial institutions, and would be an effective and fast tool in the fight against financial and organised crime.

Furthermore, bank data can currently only be requested by the authorisation of the prosecutor. In line with a financial sector analysis conducted for the above-mentioned analysis concerning the establishment of a central bank account register, there were 32 million financial data queries made in 2010. Today a large volume of cases goes through summary criminal proceedings where deadlines are very tight. In these summary cases bank data requests have to be outright excluded due to the deadlines. In line with the other relevant authorities, the Supreme Office of Prosecution finds the lack of a central bank account register highly unsatisfactory.

The Czech FIU will continue its efforts to establish a central register of bank accounts.

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<sup>1</sup> MONEYWEB is an electronic secure system which connects the FIU with the most important Czech banks (90 per cent of the banks), the UOKFK, the customs and the tax administration. All these connected entities are able to exchange information very quickly in minutes or hours. MONEYWEB is used for sending STRs, criminal complaints, decisions, requests and responses concerning financial information (account statements, documentation, copies of identity documents etc.), tax and customs information, reports, or any other relevant information.



#### 3.1.1.2. Real estate

Real estate is registered in the cadastre of real estate of the Czech Republic (*Katastr nemovitosti*). The cadaster is managed by the state administrative body, the Czech Office for Surveying, Mapping and Cadastre (*Český úřad zeměměřičský a katastrální*).

Records kept in the cadaster contain property rights to real estate (right of ownership, right of lien, right of easement, pre-emptive right with material effect) and other rights stipulated by the Cadastral Act. The cadaster of real estate is a public register. A simplified access to the cadaster records is accessible via the Internet free of charge. It enables to search a land parcel/building and find information about the owner of this specific parcel/building.

Moreover, any subject that demonstrates a legitimate interest may check the cadaster in order to find real property of a specific natural/legal person. In this case, an administrative fee is charged.

However, law enforcement authorities (including the Czech ARO) have remote direct access to the cadaster records through Internet and Intranet applications for free. Law enforcement authorities can make inquiries about real estate ownership of natural and legal persons. To consult the cadaster it is necessary to insert a name, a surname and the Czech personal identification number/date of birth in case of natural persons, and name and business registration number in case of legal persons.

#### 3.1.1.3. Companies

Company/commercial register (*Obchodní rejstřík*) is a public register administered by the Ministry of Justice. The system contains information on trade names, registered offices, business activities, statutory bodies, associates, membership contributions and authorised stock. Each company is given a unique business registration number.

It is also possible to gain access to the collection of documents, although only a part of the database has been digitised and made accessible to the public so far.

It is an open source register available for free on the Internet. It is possible to search an involvement of a specific person by surname and/or Czech personal identification number, or to search a company by the company's name and/or business registration number.

#### 3.1.1.4. Vehicles

The central vehicle register (*Centrální registr vozidel*) is administered by the Ministry of Transport. It contains the following identification information:

- plate number
- make and colour
- VIN – vehicle identification number
- date of registration and registration number
- year of manufacture
- identification of the owner and ownership history

The system also allows searching information regarding driving licences.

In order to check the register, it is necessary to insert a plate number or VIN number or the identification details of the owner (either natural or legal person). The vehicle register is directly accessible to law enforcement authorities.

#### 3.1.1.5. Vessels

All inland vessels (excluding small ships under 1000 kg) operated by natural persons with permanent residence on the territory of the Czech Republic or companies with seats registered in the Czech Republic must be registered in the navigation register (*Plavební rejstřík*). The navigation register contains details about all registered vessels, their owners and operators. This register is administered by the State Navigation Administration (*Státní plavební správa*). Online Internet search in the navigation register is possible, provided that the 6-digit registration number or the 8-digit ENI (unified European Identification Number) is available. To check the ownership of a specific person/legal entity for the purposes of criminal proceedings, a written request to the State Navigation Administration is required.

Sea vessels and yachts are registered in the maritime register (*Rejstřík námořních plavidel a námořních jachet*) which is administered by the Maritime Office of the Ministry of Transport. The maritime register contains details about yachts, their owners and operators. For law enforcement authorities, access to this register is upon a written request. The respective police and customs authorities can address the register directly, prosecutor's consent is not required.



### 3.1.1.6. Aircraft

The aircraft register (*Letecký rejstřík*) is a public register of aircraft operated by natural persons with permanent residence on the territory of the Czech Republic or companies with seats registered in the Czech Republic. It is administered by the Civil Aviation Authority of the Czech Republic. The Aircraft register contains:

- identification details about the owner/operator
- type and serial number of the aircraft
- technical characteristics
- registration date
- right of lien

The data from the register is usually provided to the police and customs authorities based on a written request. However, an online application that enables to makes searches by different criteria (type of aircraft, name of the operator, etc.) is also available on the Internet.

Owners/operators of light sport aircraft are registered with the Light Aircraft Association. Information from this register is available to law enforcement authorities upon a written request.

### 3.1.2. Cooperation at national level

#### 3.1.2.1. Identification of information related to bank accounts

The identification of an **unknown bank account** belonging to a specified person; the identification of the **unknown owner of a specified bank account**; and the identification of **operations to and from a specified bank account in a specified period in the past** shall<sup>1</sup> apply to bank secrecy. However, the bank may provide this information upon a request to law enforcement authorities under conditions stipulated by a special Act<sup>2</sup>. This special act is the CPC, where Section 8 (2) covers all above-mentioned measures.

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<sup>1</sup> Section 38 (1) of Act no. 21/1992 Coll.

<sup>2</sup> Section 38 (3) j) of Act no. 21/1992 Coll.

Banking information may be requested in relation to any criminal offence. As a pre-requisite for obtaining bank account information, this information or data from the register of securities must be necessary for the purpose of due clarification of circumstances indicating that a crime has been committed, or in trial proceedings also for the assessment of personal circumstances of the accused, or for the execution of a decision.

If it is not known in which bank in the Czech Republic a person has his/her account, a public prosecutor or court must request the information from all banks that have their office or branch registered in the Czech Republic.

The court (presiding judge) and, in pre-trial proceedings, the public prosecutor are the competent authorities to request/take the measure. No prior authorisation is required. The request of the public prosecutor or court is sent to the bank, which is obliged to provide the information.

The bank cannot raise an objection of bank secrecy within criminal proceedings and may not inform the persons concerned.

Information acquired according to Section 8 (2) of the CPC may not be used for any other purpose than for the criminal proceedings within which it was obtained.

The incentive to obtain data in criminal proceedings usually comes from the police authority, which gives the motion to the public prosecutor to request banking information or the monitoring of a bank account.

Even though there is no central register of bank accounts, there are other partial registers to this end. One is the Central Credit Register (CCR), which is an information system containing information on credit obligations of natural persons, entrepreneurs and legal entities and enables the operative exchange of this information among participants of the CCR. With regard to the stated focus, there are no consumer loans, mortgages of natural persons, surety obligations of clients or data on deposit accounts (regular accounts without authorised debit, savings or fixed term accounts) listed in the register. Information listed in the CCR and information on other credit products not listed in the CCR, i.e. consumer loans, mortgages, non-banking loans, etc., are listed in:

- The Banking Register of Client Information (BRCI) operated by the Czech Banking Credit Bureau,
- The Non-banking register of Client Information (NRCI) operated by the Leasing and Loan Credit Bureau,
- SOLUS Register operated by the SOLUS Association.

### 3.1.2.2. Monitoring of operations

The legal basis for the **monitoring of operations to and from a specified bank account in the future** is Section 8 (3) of the CPC. The monitoring can be requested for any criminal offence and it is possible for a period of six months at most. However, if the purpose for which the monitoring was ordered exceeds this time, it may be extended upon an order of a judge of higher instance, and in pre-trial proceedings upon a motion of the public prosecutor or the judge of a regional court for another six months, even repeatedly.

Banking information may be monitored for the purpose of due clarification of circumstances indicating that a crime has been committed, or in trial proceedings also for the personal assessment of the situation of the accused, or for the execution of a decision.

The court (presiding judge) and, in pre-trial proceedings, a judge upon the motion of the public prosecutor are competent to request the monitoring. The order of a court or a judge is sent to the bank, which is obliged to provide the information.

The bank cannot raise an objection of bank secrecy within criminal proceedings and may not inform the persons concerned.

Information gained according to Section 8 (3) of the CPC cannot be used for another purpose than for criminal proceedings, within which it was obtained.

Monitoring of accounts pursuant to Section 8 (3) of the CPC consists of continuously informing law enforcement authorities, whereas the manner of communication must be expressly mentioned in every order to monitor an account.

### 3.1.2.3. Role of the FIU

Apart from the law enforcement, also the judicial authorities and the FIU may play an important role in relation to measures concerning bank account information. All obliged entities (including banks) shall, upon request and within a given period of time, report to the Ministry of Finance/the FIU all information on transactions requiring identification, or on transactions analysed by the FIU, together with documentation and information on persons taking part in such transactions (Section 24 of the AML Act). The FIU is connected to the most important Czech banks (80 per cent of the Czech bank market) with the secure electronic platform MONEYWEB.

### 3.1.3. *Cooperation at the European level*

The Protocol to the Convention on Mutual Legal Assistance (MLA) between Member States of the EU entered into force for the Czech Republic on 12 June 2006.

Requests for bank information (Art 1 of the Protocol) and providing information on banking transactions (Art 2 of the Protocol) are possible under Section 430(1) in connection with Section 8(2) of the CPC.

The monitoring of banking transactions (Art 3 of the Protocol) is possible under Section 430(1) in connection with Section 8(3) of the CPC.

As regards confidentiality (Art 4 of the Protocol), Section 430(1) in connection with Section 8(5) of the CPC is applied.

Only a court or a prosecutor in pre-trial proceedings can order the financial institution to provide banking information. Banking information can only be provided via international cooperation based on an MLA request.

As far as banking information goes, the role of the ARO is to inform a police unit of another Member State that banking information can only be provided via international cooperation based on an MLA request. The ARO can provide assistance based on Section 89 of the Act on Police in relation to operational information that serves not evidential but operational purposes and that can thus be provided without the decision of a judicial authority.

#### 3.1.3.1. Competent authorities for handling information requests

As far as pre-trial proceedings are concerned, the competent authority is usually the police authority that sends its motion to a public prosecutor and suggests asking for assistance from abroad. On the other hand, a public prosecutor is not dependent on this motion from the police and can ask for legal assistance him/herself. As far as courts are concerned, it is up to a judge to decide if it is necessary to ask for legal assistance abroad, naturally the parties of a trial (a public prosecutor and a defendant) can also raise such a requirement during the trial.

The execution of an MLA request concerning banking information depends firstly on the seriousness of a crime that is described in the request. If it concerns a crime that would be punishable by a sentence of at least five years of imprisonment, it would be up to the regional prosecutor's offices (in pre-trial proceedings) or regional courts to execute it.

If the request concerns a less serious crime, it is up to the district prosecutor's offices (in pre-trial proceedings) or district courts to execute it. If the request concerns information about a bank account that is known, the prosecutor's office or the court where the branch of the bank is located is the competent authority. If a bank account is not known, in other words the request consists of finding out whether a natural or a legal person has a bank account in the Czech Republic, the request is executed by the responsible prosecutor's office or the court where the headquarter of the bank is located.

### 3.1.3.2. Legal and practical problems encountered

The Czech authorities have encountered the following problems or challenges as regards the tracing of assets in the EU:

- Certain Member States (for example the UK and Luxembourg) are not able to search for an unidentified bank account (Art 1 of the 2001 Protocol).
- There are only limited possibilities in the EU to search for movable items (the direct and indirect proceeds of crime, including instrumentalities, and assets of equivalent value) (see Art 100(3) SIT).

The latter might not be a particular problem for those Member States that apply a value-based confiscation system in the stage of criminal proceedings, when they calculate the value of the proceeds of crime. However, even these states could have a problem to trace assets when they need to execute their confiscation orders.

## 3.2. Financial investigation and use of financial intelligence

### 3.2.1. Financial investigations

In the Czech Republic, financial investigations are carried out in the context of criminal investigations. However, since 2007, there is an internal binding instruction of the Police President no. 174/2011, on financial investigations in criminal proceedings.

This instruction tasks all police officers conducting criminal proceedings (the so-called case officers), where property loss has been caused or property benefit obtained, already from the start of the criminal proceedings to thoroughly trace and seize proceeds from criminal activity and consider possibilities to seize assets for the purpose of confiscation or compensation of the victim. The investigation may involve only the so-called case officers or also one of the 210 specialised financial investigators allocated throughout the police. Whichever the case, the three-phase structure of the financial investigation applies.

In line with this instruction, financial investigations are comprised of the following stages:

- 1) Preparatory stage
- 2) Seizure stage
- 3) Creation of final report on the financial investigation

After the request to conduct financial investigation, the **preparatory stage** usually includes the gathering of preliminary intelligence and information related to the subjects of concern, checks in police databases, checks in open source databases (for example company/commercial registers), use of information from the case file, submission of police orders to relevant institutions (pension funds, insurance companies, companies with exchange license, storage room companies, navigation register, maritime register, cadastre of real estate, aircraft register, etc.), and submission of prosecutor's requests to relevant institutions (banks and investment companies). If necessary, special investigative techniques (such as surveillance and interception of telecommunications) pursuant to the CPC can be used. All gathered information is subject to continuous analysis. At this stage the UOKFK, for example, obtains preliminary information about the involved subjects by using the police databases, its own applications MagnusWeb, BizGuard and Superaccounts as well as open sources and possible information from the criminal file. In addition to this, it requests information from different institutions such as insurance companies, banks and exchange bureaux in line with Section 8 para 1 and 2 of the CPC.

During the **seizure stage**, if all legal requirements are fulfilled, the assets identified and traced within the previous phase, or substitute values thereof, are seized as proceeds of crime or for the purposes of the compensation of the victim. This stage requires constant communication between the case officer and possible financial investigator in order to evaluate the collected intelligence and information and to prepare and execute the decisions on seizure.



The legal basis for a seizure in the detection phase<sup>1</sup> are Sections 78 and 79 of CPC and during the investigation phase (after a particular individual is charged with a specific crime)<sup>2</sup> Sections 47 and 347 of the CPC. The seizure can be an administrative one involving, as regards real property, adding or amending the property record in the respective registry. As regards factual seizures, such as movable things and vehicles, the seizure is conducted in cooperation with the Office for Government Representation in Property Affairs. The seizure is performed by the police. Subsequently the property or financial means are returned to the damaged party.

The **final report** on financial investigation shall in particular contain the following essentials:

- description of the criminal offence, involvement of offender(s), financial situation before the financial investigation was carried out, and the way financial investigation was performed
- report on property profile
- information on measures taken and overview of seized assets

The final report on the financial investigation becomes a part of the case file and follows the case through the later stages of the criminal proceedings (trial, appeal procedure).

### 3.2.2. *The use and effectiveness of financial investigations*

Financial investigations are considered an effective tool in the investigation of serious fiscal crimes and tax frauds. In addition, financial investigations allow obtaining additional pieces of evidence in relation to the specific crime, as well as enable tracing the perpetrators, accomplices and/or participants in criminal activities generally and money laundering specifically.

The FIU identifies in specific offences such as tax fraud, organised thefts, corruption, and so on, which are identified as predicate offences during the analysis.

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<sup>1</sup> Obligation to render a thing and the forfeiture of a thing - Section 78 and 79 of CPC  
Securing financial means on a bank account - Section 79(a) of CPC  
Securing financial means on an account of a savings and credit co-operative - Section 79(b) of CPC  
Securing of booked securities - Section 79(c) of CPC  
Seizure of real estate - Section 79(d) of CPC  
Seizure of another asset value - Section 79(e) of CPC  
Seizure of equivalent value - Section 79(f) of CPC

<sup>2</sup> Seizure for the purposes of satisfying the claims of the damaged party - Section 47 of CPC  
Securing the execution of the judgement of the confiscation of property - Section 347 of CPC

According to the Unit Combating Organised Crime, as regards criminal investigations to trafficking in human beings, financial investigations are always carried out by specialised financial investigators in this context. For example, thus far the Czech police succeeded in seizing the property of 10 million CZK (nearly 40 000 euro) in cases of trafficking in human beings.

### *3.2.3. Continuation of a financial investigation after the closure of a case*

In the Czech Republic, the investigation into the proceeds of crime can be carried out within criminal proceedings only. After the the original criminal investigation has been closed, it is not possible to continue an investigation into the proceeds of crime, unless a new criminal case/investigation (for example for money laundering) is opened.

### *3.2.4. Special legal powers*

In addition to the legal tools provided in the CPC, the Czech FIU carries out financial analysis according to the AML Act. The analysis is carried out on the basis of STRs reported by obliged entities or based on other reasons. The list of obliged entities is stated in Section 2 of the AML Act. If there is a suspicion of a criminal activity, the FIU sends a criminal complaint to the police based on Sections 31 and 32 of the AML Act.

### *3.2.5. Involvement of private experts*

The possibility of involving an expert is foreseen by the CPC. Section 105(1) of the CPC stipulates, that if the clarification of the facts relevant to the criminal proceedings requires the necessary expertise, the law enforcement authority will request a professional opinion. If such a procedure is not sufficient due to the complexity of the assessed issue, an expert is invited by the law enforcement authority. In the preliminary hearings an expert is invited by the law enforcement authority which considers an expert opinion to be necessary for the decision. If the matter was referred back for further investigation, an expert is invited by the public prosecutor and, in proceedings before the court, by the presiding judge. The accused and, in proceedings before the court, the public prosecutor, are notified of the invitation of an expert.

### *3.2.6. Financial intelligence*

Financial investigation (in terms of the binding instruction of the Police President, as referred to under 3.2.1.) is carried out in criminal proceedings only. However, even in the intelligence phase law enforcement authorities, namely the respective police and customs authorities, may collect available financial information; even though the access to specific information (for example bank accounts) is limited during this phase.

### 3.2.6.1. Financial Intelligence Unit (FIU)

The Czech FIU is an administrative FIU located at the Financial Analytical Unit of the Ministry of Finance. The Financial Analytical Unit is technically separated from the other parts of the Ministry. It has currently 35 staff members allocated into four departments. The International and Legal Department is responsible for communication with foreign FIUs and the Control Department deals with reporting entities and monitoring. The FIU is a central data authority as regards STRs and it is also responsible for analysing the STRs received.

The Czech FIU carries out financial analysis according to the AML Act. The FIU is authorised to ask the reporting entities<sup>1</sup>, state authorities (including tax authorities), intelligence services and the police for information (including information protected under bank secrecy), and these entities are obliged to provide the requested information<sup>2</sup>.

This information is used for the purposes of financial analysis carried out by the FIU. Furthermore, it is connected via MONEYWEB with some of the reporting entities and also with the police, tax administration and the customs.

When the FIU receives an STR, it can request additional data for analysis purposes from various sources including the reporting entities, the police (UOKFK), the online tax database and the customs database, other databases, and make requests to foreign FIUs.

Once the data contained in the STR has been analysed, and the STR relates to a suspected criminal offence, the FIU reports the case to the police, namely to the UOKFK which is the single point of contact of the FIU for criminal complaints. If the information is useful for the tax/revenue authorities and the customs, it will be forwarded also to them. If the case is not relevant for these authorities, it will stay in the FIU database for possible further use. When the case is closed, basic feedback information is provided to the initial reporting entity. According to an agreement between the FIU and the UOKFK, data can also be submitted from the UOKFK to the FIU, when necessary. The FIU can only submit information to the police (based on the latter's request) when the case involves money laundering or financing of terrorism.

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<sup>1</sup> Section 2 of the AML Act

<sup>2</sup> Sections 24, 30 of the AML Act

There are no major changes in the statistics regarding the STRs received. In 2010 the FIU received 1887 reports, and in 2011 (January - October) it had received 1661. The number of cases referred by it to the police was 296 in 2010 and 216 in 2011 (January - October). However, there is an increase in the submission of information to the tax/revenue authorities and the customs: from 639 cases in 2010 to over 1000 in 2011.

The FIU can suspend a transaction requested on a customer's account for a total of 72 hrs, thus effectively blocking the funds. If the case is filed with the police, the bank will automatically prolong the suspension by an additional three days. In 2011 (January - October) the FIU filed a complaint and blocked assets in 157 cases with a total of 650 million CZK blocked.

As regards cooperation with other FIUs, based on Section 33 of the AML Act, requests to foreign countries have increased as well as requests from other FIUs. Especially spontaneous information exchange between the FIUs has grown, even doubled or tripled between 2010 and 2011<sup>1</sup>. In practice agreements or Memoranda of Understanding (MoU) are used to exchange information and to cooperate with the other Member States and third countries.

The FIU has the powers and is in practice able to send a wide range of information including financial information, bank account statements, tax returns etc. following a request from foreign counterparts. According to the representatives of the FIU, it is regrettable that many other EU Member States are not able to send these kinds of information for example via the Egmont Secure Web<sup>2</sup> to their counterparts. This fact limits effective fight against money laundering, terrorism financing and other types of organised crime.

The FIU conducted an analysis regarding the establishment of a central bank account register<sup>3</sup>. A central register was considered to strongly support the FIU but also other relevant authorities in their daily work. According to the Czech authorities, currently the average time to reply to a bank account request is 38 working days. The main objective of the analysis was to present a draft solution to the government that would increase the efficiency of the process of requests without changing the scope of existing powers.

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<sup>1</sup> Spontaneous information **from** foreign FIUs: in 2011 (January - October) 111 cases and in 2010 52 cases. Spontaneous information **to** foreign FIUs: in 2011 (January - October) 99 cases and in 2010 33 cases.

<sup>2</sup> The Egmont Group is the cooperation channel with other FIUs all over the world and the Egmont Secure Web is used for the data exchange. This connection is very prompt and effective and it enables a direct communication between two or more FIUs. The scope of information exchanged depends on the legal framework of the counterparts.

<sup>3</sup> For details, see 3.1.1.1.

The analysis was also followed by a calculation on the savings related to the establishment of the register. According to this evaluation, the funds invested in the register during the first two years would suffice to cover the costs of its establishment. The outcome of the project was not successful and was subsequently rejected by the government.

### *3.2.7. Use of financial intelligence information as an indicator to initiate a criminal investigation and financial investigation*

In the Czech Republic, financial intelligence information is gathered and analysed by the police within the context of performing their regular duties. Furthermore, the Czech FIU is a frequent supplier of analysed financial information. As for the Czech customs administration, the analysed financial intelligence information, as well as *ad hoc* analyses, are one of the indicators of how and where to focus the financial/criminal investigations.

Intelligence provided by the FIU can serve as an indicator to initiate criminal proceedings. When the FIU discovers indications that an offence was committed, it submits a criminal complaint. According to a written agreement between the Ministry of Finance and the Ministry of the Interior, the FIU refers all criminal complaints to the UOKFK. Copies of the criminal complaints are sent to the high prosecutor's office in Prague. Such a criminal complaint is thoroughly analysed and may serve as an indicator to initiate criminal investigations/proceedings within which financial investigations can also be carried out.

As regards money laundering cases in the Czech Republic, approximately 90 per cent of investigations are based on STRs. However, the FIU has the possibility provided by the law to initiate its own inquiries based on other sources, such as reports in the media, open sources, etc.

According to the UOKFK statistics, 208 money laundering-investigations were started in 2011 of which 56 cases led to a criminal prosecution with 23 persons indicted and nine persons sentenced.

Since 2002 self-laundering can also be prosecuted, both as regards money laundering and the predicate offence. However, self-laundering cases have thus far been very rare.

### *3.2.8. Use of financial intelligence in the intelligence phase*

As regards the Anti-Money Laundering Division of the UOKFK, the cases that are investigated as financial investigations are not the only intelligence source for money laundering cases, even though this is often the easiest and often the most straightforward way. The UOKFK can also act more proactively and identify for example large value property that is suspicious. In that process cooperation with the FIU is important. It supplies a lot of information to the UOKFK in order for it to analyse the data and possibly initiate subsequent criminal proceedings.



The UOKFK is the only unit to receive criminal complaints from the FIU. Additionally, according to the Czech authorities, there is also another approach available that can be described as the operational evaluation or elaboration of information. In this context the UOKFK systematically collects information and intelligence from various relevant environments to be potentially used for possible subsequent criminal proceedings.

### 3.2.9. *Cooperation with other authorities*

In addition to the various cooperation forms described above, the police cooperates regularly with various authorities, for example with the customs authorities. The cooperation between the police and the customs is governed by the Agreement between the Ministry of Finance and the Ministry of Interior on mutual assistance and collaboration of the Customs Administration and Police authorities of 24 October 1994 and its implementing protocol signed by the Police President and the Director General of the General Directorate of Customs on 27 June 2008 and 9 July 2008.

Furthermore, the Czech customs administration cooperates with tax administrators, cadastral offices, and so on. It is an established method aiming at a complex property analysis and property screening.

Moreover, cooperation between, among others, the police and tax authorities<sup>1</sup> as well as between the FIU and the customs<sup>2</sup> is important, as is the collaboration between the competent authorities and the intelligence services.

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<sup>1</sup> According to Section 71a of the Act No. 273/2008 Coll., on the Police of the Czech Republic might be of particular relevance: “A specialised police unit designated by the Police President may for the purposes of criminal proceedings or for the purposes of criminal proceedings commencement require the information obtained by the tax authorities during tax administration, if it is necessary to perform a specific task fighting against corruption, terrorism, organized crime, tax crime, financial and serious economic crime and money laundering activities. Disclosure under this provision is not considered a breach of confidentiality in accordance with the tax code.”

<sup>2</sup> For instance the FIU concluded an agreement on cooperation with the Czech Customs Administration, including its implementing protocol. These documents allow, in particular, for exchanging information and enable the authorized officers of the parties concerned to access relevant IT systems (customs IT system “EDOS” and FIU IT system MONEYWEB).



As regards cooperation in the intelligence phase, prior to the criminal proceedings, the police can, according to the provisions of the Act on the Police of the Czech Republic (nr. 273/2008 Coll.)<sup>1</sup>, request from certain authorities and individuals material and personal assistance, in particular necessary documents and information including personal data<sup>2</sup>.

Section 14 of the Act specifies that the police cooperate with the armed forces, intelligence services and other public administration authorities as well as legal entities and natural persons. In some cases this cooperation is formalised by cooperation agreements (for example agreements with different ministries). The cooperation can, however, also occur on a case by case basis.

### **3.3. Cooperation with Europol and Eurojust**

#### *3.3.1. Cooperation with Europol*

Europol is considered a valuable cooperation partner in the field of asset recovery.

The secure information exchange channel SIENA allows sending messages up to the confidentiality level “RESTRICTED”. It is planned that the AROs in each Member State will be connected to SIENA and that they use it for their information exchange with some AROs already connected with it. By that time the SIENA system can be used through the ENU. Some Member States already use this channel for the transmission of information concerning AROs to the Czech Republic.

Europol’s role in the facilitation of information flows among and between the Member States, its analytical possibilities and technical support provided to the Member States is highly appreciated by the Czech authorities.

Additionally, the representatives of the Czech ARO welcome the support Europol provides to the informal ARO platform and the CARIN network, since the national CARIN contact point is located at the Czech ARO.

The UOKFK acting as the Czech ARO was able to host a regional Central European AROs meeting in May 2011, thanks to Europol’s financial support. This event, in which ARO representatives from Austria, Poland, Slovakia, Hungary and Germany participated, contributed to even further improving cooperation and information exchange among these Member States.

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<sup>1</sup> Section 18

<sup>2</sup> However, they are not bound to provide such assistance if they are prevented from doing so by a legal duty of confidentiality or a duty not to disclose information designated by the state or according to any other legal obligations. Furthermore, a natural person shall not be obliged to provide such assistance if by providing it they would put either themselves or their close relatives in serious jeopardy.

On several occasions, Europol has supported the UOKFK staff by hosting operational meetings in the investigative phase prior to the creation of a Joint Investigation Team (JIT). According to the Czech authorities, these meetings have been helpful in coordinating cross-border investigations for example in carousel fraud cases.

Europol's educational role is also appreciated by the Czech financial investigators, who have participated in various seminars devoted to different topics, for example on combating money laundering.

The UOKFK is a member of three Analytical Work Files (AWF) relevant for financial investigations, namely AWFs Sustrans, Smoke and MTIC. For example, as regards AWF Sustrans, in 2009 thanks to this analytical tool as well as the support of Europol's mobile office, the UOKFK successfully carried out an operation against an international gang of hackers committing, among others, money laundering offences.

AWF Sustrans is considered an indivisible part of the AMON network (Operational Network of Experts Combating Money Laundering). The Czech Republic has the presidency of the AMON 2012 Conference.

#### 3.3.1.1. Expectations regarding Europol support

The Czech Republic expects Europol to actively promote the SIENA network as a secure communication channel among AROs in all Member States.

Europol should continue supporting the CARIN network, the ARO platform as well as the AMON network, since these are regarded as valuable tools in tackling cross-border financial crimes.

Furthermore, the role of Europol's support could be of particular importance in respect to the initiation of joint investigation teams, information and analytical support to investigations, and also in respect of ensuring and enhancing cooperation with Eurojust.

#### 3.3.2. *Cooperation with Eurojust*

Support of the Czech desk at Eurojust as regards financial investigations is very similar to support provided in relation to other crime types, i.e. coordination of investigations mainly through coordination meetings, also sometimes attended by Europol officers; assistance provided by the localisation of competent authorities in the relevant Member States as regards requests for legal assistance; and clarification of possible obstacles or misunderstandings due to different legal systems.

The Czech Republic has entered into nine agreements on bilateral JITs with the following Member States:

- Three with the Slovak Republic concerning public danger (production of explosives), financial crime (VAT fraud), and forgery of documents;
- One with Austria concerning financial crime;
- One with the UK concerning trafficking in human beings; and
- One with France concerning financial crime (VAT fraud).

Additionally, since the evaluation mission, there have been three new agreements on JITs with Germany, the UK and Poland.

Eurojust has always been a part of each JIT. The Czech desk at Eurojust also assists the establishment of JITs by providing financial support.

#### 3.3.2.1. Expectations regarding Eurojust support

The Czech desk at Eurojust has been requested by other national desks to liaise with competent Czech authorities to arrange their participation in coordination meetings in order to speed up the execution of letters of rogatory. This is regarded as an important task for the Czech desk also in the future.

On the other hand, the Czech authorities turn to the Czech desk at Eurojust also in the future to receive support in applying for financial support from Eurojust designated for JIT activities; to speed up the execution of letters of rogatory; to coordinate the execution of letters of rogatory; to draft the wording of letters of rogatory; to find out the state of play of the execution of letters of rogatory; and to find out which authority is competent to execute letters of rogatory issued by the Czech authorities.

### 3.4. Conclusions

- The FIU is a relatively independent body within the structures of the Ministry of Finance with all knowledge and necessary tools at its disposal. However, the legal status of the FIU and its possibilities to cooperate with other law enforcement agencies and prosecution services seem somewhat limited. This FIU has no investigative powers, only administrative, and it can collect and analyse data on STRs and then send a criminal complaint to the UOKFK. The FIU can send information contained in the STRs to the police, customs or tax authorities, as necessary, but the FIU can only submit information to the police/other law enforcement authorities based on the latter's request when the case involves money laundering or financing of terrorism.

This seems like a limited role for the FIU that could support the law enforcement and other relevant authorities more proactively, when the authorities need intelligence and analysis also in cases not involving money laundering or terrorism.

- There is no central register on bank accounts in the Czech Republic. As clearly indicated by the relevant Czech authorities, the financial investigations and the tasks of the FIU and the ARO cannot be properly carried out without this register.
- Access to other databases of financial information is in practice very difficult for law enforcement authorities due to high fees (for example securities database). These authorities should be provided with a free and full access to the relevant databases.
- Investigators in the Czech Republic have access to numerous databases for the purposes of criminal and financial investigations, for example the real estate register, the commercial register, and the register of vehicles. Furthermore, the relevant authorities have the necessary legal tools to investigate and prosecute all types of crimes. Financial investigation and recovery of criminal assets seem to play a major role in the Czech system.
- However, there are still some legal and practical gaps and/or obstacles. For example, the possibilities to use special investigative techniques, including wire-tapping and surveillance, are rather limited. The evaluation team was disappointed to find out during the evaluation mission that the legal requirement for the use of such techniques is that the investigated crime has a maximum sentence of at least 10 years. This is a very high threshold and may impose serious problems or obstacles for investigators. For example, the possible maximum sentence for fraud (in accordance with Section 209 of the CC) is 10 years, but only under paragraph 5<sup>1</sup>, whilst the maximum sentence under the other paragraphs is lower. Thus even in serious financial crimes, such as large-scale fraud cases committed by an organised group, the investigators are not in a position to use wire-tapping.
- Nevertheless, since the evaluation mission (as of 01 January 2012), a new legal amendment has entered into force lowering the limit for the use of certain special investigative techniques such as interception. The new legal provision comprises a list of criminal offences for which these techniques may be used irrespective of the maximum sentence imposed for them, such as corruption and fraud in public procurement.

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<sup>1</sup> (5) An offender shall be sentenced to imprisonment for five to ten years, if he/she  
a) causes extensive damage by the act referred to in Sub-section (1), or  
b) commits such an act in order to facilitate or enable commission of a criminal offence of Treason (Section 309), Terrorist attack (Section 311) or Terror (Section 312).

In case of other offences, the new provisions require that the crime is punishable by a maximum sentence of at least eight years. Overall this is a welcome change, even though the eight year maximum sentence requirement for so-called other offences is still relatively high.

- Moreover, with respect to intentional criminal offences, where the prosecution is stipulated in an international treaty which is binding for the Czech Republic, no maximum sentence limitation applies for the use of these special investigative techniques.
- According to the Czech authorities, an MLA request to conduct intercepts can nonetheless be executed, albeit under very strict criteria. According to Section 88(1) of the CPC, if there is a criminal proceeding for a *particularly serious criminal offence or any other intentional criminal offence where the prosecution is stipulated in an international treaty*, an order for interception and recording of telecommunications may be issued<sup>1</sup>.
- There is currently no legal possibility to exchange information between the tax authorities and law enforcement authorities directly, except with the UOKFK. The police bodies can request information from the tax authorities only with the previous consent of the public prosecutor and only for an investigation, not for the intelligence purposes. This legal obligation can be a serious obstacle for an integrated and effective detection and investigation of financial crime.
- The co-operation with Europol is well established and sound and all relevant authorities are well aware of the services and products provided. As regards fighting financial crime, the Czech law enforcement authorities participate in the relevant Europol AWFs MTIC, Smoke and Sustans and is about to join AWF Copy. Furthermore, the law enforcement authorities but also the prosecution services participate actively in the ARO Platform and the CARIN Network.
- The team was informed of a high participation of the Czech authorities in JITs. Also the active participation of the prosecution services under the umbrella of Eurojust was noted with satisfaction
- The concept of involving financial investigators who can focus on the financial aspects of the cases in the “regular” investigation teams is very convincing and the possibility of the financial investigators to concentrate on asset recovery issues is recommendable. However, it is not very clear whether the financial investigators follow a standardised methodology in calculating the proceeds of crime.

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<sup>1</sup> If it may be reasonably expected that it will aid in obtaining all the facts relevant to the criminal proceeding and there is no other way to achieve the purpose, or if it otherwise significantly reduces its achievement.

In particular the calculation method of drug retail prices in the Czech Republic and of the profit of drug traffickers seems somewhat unclear and arbitrary. Targeted training and manuals or guidelines should be offered to the financial investigators on how to calculate the criminal proceeds as regards different crime types since this forms the basis of a successful prosecution and confiscation.

#### 4. FREEZING AND CONFISCATION

##### 4.1. Freezing

###### 4.1.1. At national level

###### 4.1.1.1. Legal basis

The legal basis for the seizure of property in criminal proceedings in the Czech Republic is provided by the CPC. Manners of seizure and disposal with the seized property are regulated by a special Act no. 279/2003 Coll., on the execution of seizure of property and things in criminal proceedings, as amended.

There must be sufficient grounds for issuing a decision on seizure, i.e. suspicion that the property was acquired by criminal activity, or was used or intended to be used to commit a crime.

Seizure of property can be carried out in three basic cases:

1. If there is a suspicion that the property was **acquired by criminal activity or was used or intended to be used to commit a crime**. In such a case it may be decided to:
  - Removing (*odněti*) a specific thing from the offender or person disposing with it, unless it is voluntarily surrendered (Section 78 to 79 of the CPC);
  - Seizure (*zajištění*) of financial means in a bank account (Section 79a of the CPC);
  - Seizure of financial means in savings account and credit account or other entities that keep an account for another, the blocking of funds from state pension contributions, blocking of financial credit utilisation, and blocking of financial leases. (Section 79b of the CPC);
  - Seizure of booked securities (Section 79c of the CPC);
  - Seizure of real estate (Section 79d of the CPC);
  - Seizure of other asset values (for example shares in trade companies etc.) (Section 79e of the CC).



In case of unavailability of a specific piece of property to which the conditions of seizure apply, it is possible to seize other property of the same person, which by its value corresponds, even if only partly, to the property originally concerned by the seizure (seizure of equivalent value) (Section 79f of the CPC).

2. Preliminary seizure of property of the accused person for the purpose of **securing a claim of the injured person** (Section 47 of the CPC ), and
3. Seizure of property of the accused person in cases where a **judgement imposing a sentence of confiscation of property to the offender may be expected** (Section 347 to 349 of the CPC).

As far as seizure under Section 47 and 347 of the CPC are concerned, the subject of seizure is not the proceeds of crime but the property of the accused person.

#### 4.1.1.2. Types of crime for which the measure can be obtained

Measures in the form of orders for seizure of property may be in fact issued in relation to all types of crimes, disregarding the maximum sentence of individual criminal offences.

#### 4.1.1.3. Duration of the measure

The duration of the seizure measures is not limited by a specific time limit. It can generally last for the whole length of the criminal proceedings, i.e. until the law enforcement authorities decide on a further disposal of the specific property. In case a further prolongation of the seizure of property is not necessary, law enforcement authorities are obliged to terminate the seizure.

#### 4.1.1.4. The authority competent to take or request the measure

The decision on the seizure of property in pre-trial proceedings (inspection, investigation) is de facto made by the police authority. However, some decisions on seizure can only be made by the public prosecutor<sup>1</sup>, whilst in the remaining cases the police authority may issue a decision on seizure only with a previous consent of the public prosecutor.

This consent is not required only in urgent cases, where there is a threat that a delay could lead to the transferring of the property by the offender to another person. The police authority is in these urgent cases obliged to submit its decision on seizure within 48 hours to the public prosecutor, who will either approve or cancel it. Seizure during the trial proceedings is decided on by a judge.

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<sup>1</sup> Preliminary seizure of property of the accused for the purpose of securing a claim of the injured person according to Section 47 of the CPC; and seizure of property of the accused in cases where the judgement imposing a sentence of confiscation of property of the accused according to Section 347 to 349 of the CPC may be expected.

The seizure of things, asset values or property is carried out by the police authorities.

#### 4.1.1.5. Informing persons affected by the measure

Property is in all cases seized on the basis of a written decision issued by the police authority (with a previous consent of a public prosecutor), by a public prosecutor, or by a judge. This written decision must be delivered to the person that is affected by the seizure of property.

The person, whose property has been seized in criminal proceedings, is entitled to appeal against such a decision by lodging a complaint. This complaint is always decided on by court.

#### 4.1.1.6. Management of the assets during the freezing

Administration of the seized property is carried out either directly by the police authorities, or the property is entrusted to the custody of the Office of the Government Representation in Property Affairs, that shall further manage the property. If necessary, the property may be entrusted to the care of other subjects, if the (special) nature of the seized property so requires. For example, pieces of art may be managed by the national art museum.

#### 4.1.1.7. Role of the ARO during this procedure

Detection of property for the purpose of seizure in criminal proceedings is performed by the police authorities. Within the frame of common criminal activities, it is performed directly by the police authority conducting the investigation, in more serious criminal cases it may be entrusted to a specialised police department established for the purpose of detection and seizure of such property.

#### 4.1.1.8. Possible withdrawal or cancellation of the freezing order

The extent of the seized property may be limited by a decision of a public prosecutor or judge. The seizure may be even cancelled, if it is found that it is no longer necessary. Such a decision may be made especially in cases, where the offender made an agreement with the injured person on the compensation of damages, or pays the damages, or if it is established based on further evidence, that the proceeds of crime was lower.

The authority that issued the decision may also cancel it. This concerns especially cases, where investigation leads to a conclusion, that no crime has been committed, or that it cannot be proved it was committed by the person owning the seized property.

#### 4.1.1.9. Role of the FIU

Furthermore, apart from the seizure of bank accounts performed according to the CPC, and in fact prior to such a seizure, the Czech FIU can, in line with Section 20 of the AML Act, also postpone financial transactions. Specifically, if there is a danger that an immediate execution of a transaction would hamper or substantially impede the securing of proceeds of crime, or that the funds are intended for the financing of terrorism, the obliged entity can only execute the customer's transaction recognised as suspicious after 24 hours of the reception of the STR by the FIU. After that, under stipulated conditions, the FIU shall decide to extend the period of suspension of the customer's transaction up until 72 hours after having received the STR. Alternatively, the FIU can also suspend the customer's transaction or freeze the assets in such transaction for 72 hours in the reporting entity where the assets are located. Should the FIU file a criminal complaint in the period stipulated above to the relevant law enforcement authority, the reporting entity can perform the transaction in three days after the criminal complaint had been filed, unless the law enforcement authorities have decided to seize such assets.

Furthermore, according to the Act No. 69/2006 Coll., on carrying out of international sanctions, and on the basis of the respective EU Regulation, the Czech FIU may freeze property subject to international sanctions for an unlimited period of time.

#### 4.1.2. *Cooperation at European level - Implementation of Framework Decision 2003/577/JHA*

The Czech Republic implemented the Framework Decision on 01 July 2006.

The Framework Decision did not replace the procedure under international treaties. So, it is up to a public prosecutor or a court whether they ask for evidence or freezing of assets by a freezing order or by an MLA request.

Since 2006, the Czech Republic has issued four freezing orders for the securing of evidence (two to the Slovak Republic, one to Hungary and one to the UK). All these freezing orders were executed, except that the execution of the freezing order to the UK issued in February 2011 is still pending. No freezing orders were issued for the purpose of freezing of property.

Since 2006, the Czech Republic received two freezing orders from other Members States for the purpose of securing of evidence (from Hungary) and one concerning the freezing of property (from Austria). Both of them have been executed. The Czech Republic has also received two freezing orders from Germany concerning the return of an item to a legitimate owner, thus they were executed as letter rogatories according to the relevant international treaties.

As far as cooperation based on international treaties is concerned, there are direct contacts between the judicial authorities of the Czech Republic and other Member States, thus there is currently no central statistics available of mutual legal assistance in criminal matters with Member States. The statistics of the police is foreseen to be used for this purpose in the future. Based on ad hoc information from the high and regional prosecutor's offices, there were a few cases of mutual legal assistance in the last two years. A rough estimate is that there were only six letters rogatory sent abroad and 31 requests received and executed from abroad.

#### 4.1.2.1. Experience when acting as an issuing State

##### **Competent authorities**

A court or, in pre-trial proceedings, a public prosecutor responsible for the respective criminal proceedings are competent to issue a freezing order referred to in Framework Decision 2003/577/JHA.

The judicial authority that has issued the freezing order is the authority to be contacted by the executing authorities.

##### **Guidelines on the content and format of the freezing order**

The Supreme Public Prosecutor's Office has issued the instruction of general nature No. 1/2011 concerning MLA in criminal matters. This instruction sets the details of requesting assistance from other countries and executing requests received from abroad and it is binding for the prosecutors. Sections 63 - 65 as well as Sections 81 - 89 of the instruction concern cooperation in seizing of assets.

The International Affairs Department of the Supreme Public Prosecutor's Office issued a handbook for prosecutors concerning international cooperation in criminal matters (including cooperation between the EU Member States). Included are chapters about cooperation in the area of seizing of assets.

The handbook has 32 Annexes: Annexes 20, 21, and 24-25d concern freezing orders and confiscation orders. A list of offences where there is no obligation to evaluate dual criminality and provisions of the CC that may correspond to these categories is in Annex 24. The Manual for filling out the European Freezing Order (Annex 25) was elaborated within the CARIN network. Annex 32 contains templates for prosecutors in the area of mutual legal assistance. Templates 29-33 concern freezing orders.

As far as the courts are concerned, there is specific information in relation to each Member State regarding freezing orders at the extranet of the Ministry of Justice, to which the courts have direct access. The specific information contains the language in which the freezing order is accepted in the respective Member State, as well as the relevant language versions of the certificate, and the information on the executing or issuing authorities. There is also general information on the state of implementation of the Framework Decision in the Member States and the implementation text thereof.

### **Guidelines on the subsequent treatment of the frozen property**

A number of presentations have been organised for public prosecutors concerning freezing orders, including the subsequent treatment of the frozen property.<sup>1</sup> There are also templates available for this purpose.

The freezing order concerning securing of evidence has to be accompanied by an MLA request<sup>2</sup> in order for evidence to be transferred to the issuing State. It is one of the reasons why the freezing order procedure is more complicated than the MLA procedure.

In the Czech Republic it is very unusual to send a freezing order together with a confiscation order. The usual practice is that the property is searched and seized during the pre-trial procedure, and the court issues a confiscation order only for the very items that have been seized during the pre-trial procedure.

As far as Art 10(1)(c) of the Framework Decision is concerned, it is oftentimes very difficult to estimate the date of submission of a confiscation order.

### **Formalities and procedures to ensure the validity of evidence**

As regards material evidence<sup>3</sup> taken from a person, the actual seizure of a thing from the possession of a person shall be carried out in the presence of a person who is not involved in the case, if possible.

The record on the surrender and seizure of a thing must contain also a sufficiently accurate description of the thing that would enable to determine its identity.

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<sup>1</sup> Art 10 of the Framework Decision 2003/577/JHA There are also templates available for this purpose

<sup>2</sup> See Art 10(2) of the Framework Decision

<sup>3</sup> Section 79(4-6) of the CPC

The authority that carries out the measure shall issue a written confirmation on the takeover of the thing, or copy of the record, for the person who surrendered the thing, or whose thing is seized.

### **Main transmission option used in respect of the circulation of a freezing order**

A public prosecutor or a court shall send the freezing order directly to a competent authority in another Member State. It is, however, not excluded to send it via the central judicial authorities in the Czech Republic, namely the Supreme Public Prosecutor's Office or the Ministry of Justice<sup>1</sup>.

Exceptionally, in one case a freezing order from Hungary was also pre-discussed at a meeting in Eurojust.

The Czech ARO is not involved in transmitting the freezing order since it is a police authority.

However, according to the ENU, the UOKFK has used the Europol channel to submit a request to block accounts as regards carbon credit allowances (EUAs) in Estonia, Germany and the United Kingdom. This was in connection with the case where the register of EUAs in the Czech Republic was hacked by unknown perpetrators. Within this request the above-mentioned countries were notified that the respective international letter of rogatory (concerning the seizure of EUAs on the accounts) will be sent via the judicial channels. The case was pre-discussed also between the Czech Supreme Public Prosecutor's Office and the General Prosecutor's Office in Estonia. In the case of Estonia the EUAs in the amount of 84 000 000 CZK (approximately 3 360 000 EUR) were subsequently seized and returned to the Czech Republic.<sup>2</sup>

### **Identification of an unknown recipient authority**

In order to identify unknown recipients of freezing orders, the Czech judicial authorities use the EJM Atlas database. As regards the courts, the extranet webpage of the Ministry of Justice may also be used, since it contains information on competent authorities for each Member State.

In the case of difficulties, judicial authorities can contact the EJM contact point (for judges the International Department for Criminal Matters at the Ministry of Justice, and for prosecutors the International Affairs Department at the Supreme Public Prosecutor's Office).

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<sup>1</sup> Section 460c of the CPC

<sup>2</sup> The case, however, did not concern a freezing order according to the respective EU legislation and its national implementation, but was based on a request for mutual legal assistance in criminal matters.



### **Possible difficulties with time-limits in relation to language-compliant versions of the certificate**

The Czech authorities have not countered any problems in this respect; however, there have been only four cases in practice. It is clear that a certificate of a freezing order has to be translated into an official language of the executing state. It is recommended that the Czech judicial authorities translate also the freezing order, since one of the grounds for non-recognition is that a certificate manifestly does not correspond to the freezing order.

### **Requests for additional information**

In practice there have been just few cases involving freezing orders in the Czech Republic. In one case the Slovak Republic asked for the translation of the certificate, since the bilateral treaty with the Slovak Republic on MLA only refers to “requests for cooperation” that do not need to be translated. Finally, in this case reciprocity was used. The additional protocol to this bilateral treaty, that is being finalised, will contain a clear provision concerning in which cases translation is not required, both in cooperation between the Czech Republic and the Slovak Republic as well as regarding the EU legal instruments.

### **Mechanisms to discuss the nature of the requests with the executing States**

First of all, the Czech authorities use direct contacts between responsible judicial authorities for the purpose of discussing the requests with the executing State. Sometimes the responsible judicial authorities ask the central authorities, namely the International Criminal Department of the Ministry of Justice and the International Affairs Department of the Supreme Public Prosecutor’s Office, for intervention. Complex cases are also discussed at Eurojust or via the CARIN network.

### **Information about the execution of a freezing order**

The Czech authorities are kept abreast of the progress of the execution of the freezing order in each case. This is natural since the judicial authorities are responsible for the criminal proceedings. The central judicial authorities are responsible for international cooperation and its methodology. No particular problems have been perceived in the communication.

### **Possible difficulties regarding the subsequent treatment of the evidence or property which has been frozen in the executing State**

There have been no particular problems reported concerning the execution of freezing orders. All four freezing orders have been executed.

Since there is no provision in the Framework Decision 2006/783/JHA concerning costs, the Czech authorities do not expect any improvements as regards the problems of sharing of costs involved in the continued freezing of property that have risen with certain Member States.

#### 4.1.2.2. Experience when acting as an executing State

##### **The mechanics of receipt**

The receiving authority of a freezing order in the Czech Republic is a public prosecutor of a regional public prosecutor's office in which jurisdiction the property or evidence is located<sup>1</sup>.

The authorities of the Czech Republic may initiate proceedings according to Chapter 25 of the CPC (includes also European freezing orders) on the basis of a request from a foreign authority delivered to them also by telephone, fax or electronically, provided there is no doubt of its authenticity, and if it concerns an urgent case that cannot be delayed. The original of the request shall be submitted subsequently within a time limit stipulated by the requested authority<sup>2</sup>. In case of doubts concerning the authenticity, a judicial authority can directly contact the authority of the other Member State that issued the freezing order.

The Czech Republic accepts forms of freezing order only in the Czech language, with the exception of Austria and the Slovak Republic where the language regime is based on reciprocity.

##### **Questions that require additional information/documentation**

There are occasionally cases where the authority of another Member State has issued a freezing order for the purpose of returning the item to the legitimate owner. Additional questions concerning the purpose of a seizure need to be thus made. Once the issuing authority confirms, that it wants to return the item to the legitimate owner, the executing authority in the Czech Republic should accept a freezing order form in line with its content as an MLA request instead.

##### **Competent authorities to decide on execution and to enforce a freezing order**

A public prosecutor of a regional public prosecutor's office is both the receiving and executing authority of a freezing order in the Czech Republic. If the issuing authority of another Member State sends a freezing order to a central authority in the Czech Republic, it further transmits it to the competent public prosecutor of a regional public prosecutor's office. Central authorities have thus a supporting and methodological role in this area.

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<sup>1</sup> Section 460e of the CPC

<sup>2</sup> Section 379(1) of the CPC

The role of the ARO is more central in the process of the identification of the assets. Its role is relevant in the police cooperation part that usually precedes the cooperation of the judicial authorities involved in the freezing order procedure.

One of the obligations of the issuing authority is to provide a precise description of the property or evidence in the freezing order form.

### **Liaison with issuing States to keep them informed of the progress in proceedings**

The public prosecutor has the obligation to notify immediately the judicial authority of the issuing State about the recognition or partial recognition of the order for freezing property and about securing the execution of the decision on the recognition of the order. When necessary, he/she has to also immediately notify this authority about not recognising the issued order for freezing property, as well as about the fact that the freezing cannot be executed because the property to be frozen has been lost, destroyed or cannot be located in the area referred to in the certificate according to Section 460b(2) of the CPC<sup>1</sup>.

### **Legal remedies available to interested parties regarding the frozen property**

A complaint is admissible against the resolution on the recognition of the order for freezing property issued by a judicial authority of the issuing State according to Section 460f (1) of the CPC.

The complaint may not challenge the grounds for which the order for freezing property was issued. The public prosecutor notifies the judicial authority of the issuing State about the lodging of the complaint and about the result of processing it<sup>2</sup>.

#### 4.1.2.3. Evaluation of the added value of Framework Decision 2003/577/JHA

As regards **evidence**, the Framework Decision has, according to the relevant Czech authorities, in practice worsened the cooperation.

Firstly, it has established 32 categories of criminality<sup>3</sup> where dual criminality is not required. However, there is no assessment of dual criminality at all in the 1959 Convention<sup>4</sup>, if there is no need to execute it by using a search<sup>5</sup>.

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<sup>1</sup> Section 460f (4) of the CPC

<sup>2</sup> Section 460f (5) of the CPC

<sup>3</sup> Art 3(2) of the Framework Decision 2003/577/JHA

<sup>4</sup> See Art 1

<sup>5</sup> See Art 5 of the 1959 Convention

Secondly, the freezing order needs to be both recognised and executed whilst an MLA request of a foreign authority needs only be executed in the Czech Republic and no recognition is required.

Thirdly, it is necessary to send to the executing state not only the freezing order, but also an MLA request which indicates that the seized evidence should be transferred to the issuing state<sup>1</sup>.

Fourthly, a court or a public prosecutor usually needs not only the material evidence, but also other kinds of evidence, for example a witness hearing. It is thus much easier to ask for all necessary assistance via one and the same MLA request. If judicial authorities should issue a freezing order for the material evidence and a separate MLA request for other kinds of evidence, costs for the translation are doubled.

As regards **property**, the Framework Decision provides an added value, since it in practice transfers the responsibility for a case to the State that conducts the criminal proceedings<sup>2</sup>. There are limited possibilities to refuse a freezing order, and the substantive reasons for issuing the freezing order can be challenged only in an action brought before a court in the issuing State. Such a situation is problematic only for persons who need to protect their rights, since they have to find a lawyer and very often also an interpreter in another Member State.

As mentioned previously, there is unfortunately no provision in the Framework Decision concerning costs of maintaining the seized property. It is thus not clear what should be done in situations where the executing state does not have sufficient resources to maintain the seized property and the issuing state refuses to bear such costs.

As regards both **evidence and property**, the Framework Decision stipulates that only the translation of the certificate is necessary, but in practice all of the above-mentioned documents have to be translated. If, for example, a freezing order needs to be delivered to a person who does not speak the Czech language, the freezing order has to be translated. If, on the other hand, a request for the transfer of the document is not translated, many Member States will return it for translation.

One of the grounds for refusal is that the certificate does not manifestly correspond to the freezing order. If the executing authority does not understand the language of the issuing state at all, it cannot assess whether the certificate and the freezing order correspond correspondence with each other. To avoid possible delays, in practice the Czech judicial authorities are recommended to translate both the certificate and the freezing order.

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<sup>1</sup> Art 10(1)(a) of the Framework Decision 2003/577/JHA: “Shall be accompanied by a request for the evidence to be transferred to the issuing State”.

<sup>2</sup> See Art 7 and Art 11(2) of the Framework Decision 2003/577/JHA

As far as the freezing order concerning the freezing of **property** is concerned, the provision on costs is a clear shortfall of the Framework Decision.

As regards the freezing order concerning the freezing of **evidence**, there is no clear relationship between the Framework Decision on the freezing order and Art 29 of the Framework Decision on European Arrest Warrant (EAW)<sup>1</sup>. The freezing order concerning the part on the freezing of evidence should be replaced in the future by the Directive on the European Investigation Order (EIO)<sup>2</sup>. However, until now there are no plans to solve the relationship between, on the one hand, Art 29 of the Framework Decision on the EAW and, on the other hand, the Directive on the EIO. Unfortunately, even the latter will not replace all types of mutual legal assistance.

If there was no universal EU tools that would cover all types of mutual legal assistance, including service of documents, return of items<sup>3</sup>, and freezing of assets, the situation would be even worse, as regards the workload of the judicial authorities.

According to the opinion of the Czech judicial authorities, the workload will increase in the future, since it will be necessary to issue several orders: an investigation order in the future for hearing of witnesses, a freezing order for the freezing of assets, and an MLA request for service of documents. As a result the costs for international cooperation will be manifold in comparison with the current situation.

It is also difficult to find up-to-date and precise information about the implementation of the Framework Decision in the various Member States and its executing authorities. Other Member States are oftentimes queried via the EJN.

Sometimes it is difficult to estimate the date of issue of the confiscation order in a certificate. Furthermore, there is also no specific space in the certificate to write the name and address of the executing authority that should execute the freezing order. Thus it is necessary in all cases to issue also a cover letter to an executing authority and attach it to the freezing order.

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<sup>1</sup> Council Framework Decision on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA)

<sup>2</sup> Proposal for a Directive of the European Parliament and the Council regarding the European Investigation Order in criminal matters (2010/0817 (COD))

<sup>3</sup> See Art 8 of the 2000 MLA Convention



A drawback from the perspective of the Czech practitioners is that it is not possible to use a freezing order for freezing items that shall be returned to victims.

Moreover, there is no comprehensive system of removing the proceeds of crime concerning non-conviction or civil procedure based confiscation. Five Member States seem to have introduced in their systems some form of civil confiscation, however, these legislations are based on different conditions for confiscation. These systems do not seem compatible, and the relevant legislations may, for example, lack the necessary provisions concerning judicial cooperation.

According to the Czech authorities, it would be thus reasonable if the European Commission would issue non-binding guidelines that would sum up the best practices in this area for those Member States that are considering creating a form of non-conviction based system for removing proceeds of crime. The creation in each Member State of a unique system of civil confiscation of proceeds of crime, that would not be compatible with other systems, would be highly regrettable.

### **Challenges regarding the use of freezing orders**

As an example, the relevant Czech authorities have received several freezing orders from Austria concerning the return of a specific item to the legitimate owner. Since a freezing order cannot be applied for the purpose of returning the item to its legitimate owner, these freezing orders are regarded as MLA requests. The situation has been discussed via the EJM.

Since there is only little practice with freezing orders as such, addressing problems regarding MLAs in this area is more useful for the discussion:

- Sometimes there is no clear information in the MLA request concerning the purpose of the seizure, or this information is lacking/only partial.
- There are problems concerning so-called extended powers of confiscation, since Member States apply different conditions in this area. For example, the scope of Section 66 of the CC is much broader than the scope of the Framework Decision 2005/212/JHA. Thus Czech requests can be easily refused.
- On the other hand, the UK has established the confiscation of the offender's assets as a criminal sanction under the condition of proving a so-called criminal life style of the offender. The UK requests the Czech Republic for the tracing and seizing of assets after the final sentence, thus the requests should be executed in the Czech Republic by the courts. Even though the courts have a possibility to ask the police to collect evidence, based on Section 183 of the CPC, it is questionable if this provision of the CPC can be used also for the purpose of tracing of assets.



- Another problem is the confiscation of assets in civil proceedings. The Czech Republic has no legal base to provide assistance in this area.
- As regards seizure for the purpose of returning an item to the legitimate owner, the Czech authorities are sometimes faced with a lack of knowledge of Art 8 of the MLA Convention. Some Member States refuse to cooperate in this area, when the victim does not lodge a civil action. This applies specifically to stolen cars. There are cases where a car was found in the Czech Republic at the moment when the criminal proceedings in another Member State were terminated, and the prosecutor was reluctant to issue an MLA request under Art 8 of the MLA Convention, but instead referred the Czech authorities to the relevant insurance company. However, an insurance company is not a cooperation partner for the Czech authorities in criminal matters in such cases, since the criminal proceedings were carried out in another Member State.
- Different regulations as regards obtaining property rights in good faith are also problematic. It is possible to become a legitimate owner in the Czech Republic if one buys an item in good faith according to commercial laws (attaining ownership from a non-owner). There are no doubts in such cases about who the owner is in the Czech Republic, thus an MLA request is refused. On the other hand, in cases involving stolen cars originating from another Member State, there is still a legitimate owner also in another Member State that submitted information about the stolen car into the SIS. There is no “flagging” system in SIS concerning the search for items under Art 100 SIT, as there is in the EAW procedure. Thus, a legitimate owner in the Czech Republic is in permanent risk that the police of the Czech Republic can stop him and try to seize the car since it is included in the SIS, not to mention that the car can be immediately stopped also in other Member States. The only way is to try to convince the other Member State that submitted the information about the stolen car into the SIS to remove it from the system.
- In relation to seizure for the purpose of compensation of the victim, there are Member States where a victim can ask for damages within criminal proceedings. For example in the Czech Republic, the property of the accused person can be seized to secure a victim’s right for compensation<sup>1</sup>. The provision can also be applied in favour of international cooperation, however, the execution of a possible court resolution about damages can be executed under the EU legal instrument concerning cooperation in civil matters, namely Council Regulation (EC) 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgements in civil and commercial matters for the execution of victim compensation.

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<sup>1</sup> Section 47 of the CPC

The cooperation is thus very complicated even in the case of Member States that apply this system. In fact, there seems to be no such case in practice.

- There is a general obligation to cooperate also in favour of a civil claim (Art 49(d) of the SIT), so there should be no problems to ask for evidence. As far as seizing of assets for this purpose is concerned, the general rule is applied: an MLA request is executed according to the law of the requested state. Thus, it is obvious that it is not possible to ask for an MLA in Member States where a victim cannot ask for compensation within the criminal proceedings. However, there are also states that refuse cooperation in these matters even though they have the same legislation in place stating that cooperation in this area does not belong to cooperation in criminal matters and thus, according to the Czech authorities, ignoring Art 49(d) of the SIT.
- The Czech authorities have also encountered a case where a Member State that applies a value-based confiscation (the UK) asked the Czech Republic to seize assets. The MLA was successfully executed. The seizure lasted more than one and a half years, and there were thus also costs involved in maintaining this seizure. In the end, the UK informed the Czech authorities that a judge had issued a confiscation order and ordered the sentenced person to pay a certain sum. Thus, the UK authorities asked the Czech authorities to terminate the seizure so that the sentenced person could sell the property and pay the sum. There was no recognition and execution of the UK confiscation order in the Czech Republic, meaning that there was no possibility to share the confiscated assets.

### **Good practice - preliminary seizure via using the powers of the FIU**

As described above, the Czech FIU has a possibility to postpone the execution of a client's order to transfer money<sup>1</sup> for up to 72 hours. After this, the time limit can be prolonged up until further three days if the FIU submits a complaint to police.

A police authority in the Czech Republic can start the criminal proceedings and the prosecutor can decide on the seizure of money on an account without a time limit. It is possible to apply this procedure in relation to international cooperation.

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<sup>1</sup> Section 20 (3), (7) of the Act no. 253/2008 Coll.

The Czech authorities have used information received via the CARIN network<sup>1</sup> to learn about the rights of the FIUs in the different EU Member States and European countries when it comes to temporarily blocking funds. According to this information, there are 24 countries where the FIU can block a bank account on its own initiative. There are, however, substantial differences among these FIUs and their powers. One of the differences consists of the length of such a blockage which varies from 12 hours to an indefinite period.

Despite the challenges, the Czech authorities have had successful cases of MLA consisting of seizures of proceeds of crime, i.e. money on a bank account. These cases have been successful solely due to using the powers of the FIU to postpone the client's order to transfer money.

## **4.2. Confiscation (including 2005/212/JHA and 2006/783/JHA)**

### *4.2.1. Legal basis*

Confiscation after the conviction of an offender is possible according to the CC by applying the following punishments:

- confiscation (*propadnutí*) of individual things or other asset values (Section 70 of the CC);
- confiscation of equivalent value (Section 71 of the CC);
- confiscation of property (whole or part) (Section 66 of the CC); and
- pecuniary penalty (Section 68 of the CC).

The sentence of confiscation of individual things or other asset values, confiscation of equivalent value, or confiscation of the whole property may be imposed on an offender of a crime in criminal proceedings, when the confiscated assets or things belong to the offender, i.e. the measure does not relate to a thing that is claimed by its legitimate owner.

The sentence of confiscation of a thing or other asset value according to Section 70 of the CC only applies to individually identified things. The sentence of confiscation of a thing or other asset value may be imposed, if it concerns a thing or other asset value:

- used to commit a crime, or
- intended to be used to commit a crime, or
- acquired by the offender by a crime or as a reward for it, or

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<sup>1</sup> See the conclusions of Annual General Meeting of CARIN network in Prague, 15-17 September 2010

- acquired by the offender, even partially, for a thing or other asset value obtained by a crime or as a reward for it, if the value of such a thing or other asset value is not inconsiderable in comparison to the value of the acquired thing or other asset value.

The sentence of confiscation of a thing or other asset value is regulated by Section 71 of the CC.

The Czech Republic applies an item-based confiscation system that provides only limited possibilities for value-based confiscation. In the first place proceeds of crime (with a clear link to the criminal activity in question) are the object of confiscation. Only if these assets are not available (the offender has destroyed, damaged, disvalued, etc. the assets, or otherwise circumvents the confiscation of such assets), can the court decide on confiscation of equivalent value in line with Section 71 of the CPC.

A pecuniary penalty shall be imposed in daily rates in an amount of at least 20 and at most 730 whole daily rates<sup>1</sup>. The court determines the number of daily rates in line with the nature and gravity of the committed criminal offence and with regard to the personal and property circumstances of the offender. If the offender cannot be expected to pay the pecuniary penalty immediately due to personal and property circumstances, the court may define that the pecuniary penalty is paid in monthly payments.

It is important to note, that a pecuniary penalty is only used as a future financial punishment: seizure of assets cannot be used for securing the payment of a pecuniary penalty such as a fine, unless the person is on bail or seizure is used to secure the expected value of a fine. Additionally, a pecuniary penalty shall not be imposed if it would be evidently uncollectable<sup>2</sup>.

During the evaluation mission visit to the high public prosecutor's office in Prague, the expert team was informed that the prosecutor oftentimes tries to convince the court that if the suspect has gained profits, an appropriate way to punish the perpetrator is by placing a pecuniary penalty such as a fine. However, the court in many cases considers, in line with Section 68(6) of the CC, that the fine will be difficult to collect and does not issue it. In some cases it can therefore happen, that there is no fine to the perpetrator, no claim for damages by the victim, and thus no financial implications for the perpetrator.

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<sup>1</sup> A daily rate shall amount to at least 100 CZK and at most 50 000 CZK

<sup>2</sup> Section 68(6) of the CC

#### 4.2.2. *The types of crime for which confiscation is possible*

The sentence of confiscation of a thing or other asset value and confiscation of equivalent value may be generally imposed for nearly all crimes, disregarding the length of the sentence for individual crimes.

The sentence of confiscation of property is regulated by Section 66 of the CC, and the imposition of this sentence affects the whole property of the offender, or its part as designated by the court. The sentence of confiscation of the whole property or its part may be imposed in case that:

- the offender is convicted for a crime with a maximum sentence of at least 10 years, if he/she gained or tried to gain material profit by the crime;
- an exceptional sentence of imprisonment exceeding 20 years is imposed on the offender; or
- the offender is convicted for a serious crime<sup>1</sup>, for which the CC presumes a possibility to impose a sentence of confiscation of property.

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<sup>1</sup> Unauthorised Extraction of Tissues and Organs (Section 164 (3), (4) of the CC)  
Illicit Disposal with Human Tissues and Organs (Section 165 (3) (4) of the CC)  
Extraction of Tissue, Organ and Performing a Transplant for a Fee (Section 166 (3), (4) of the CC)  
Illicit Disposal with Human Embryo and Human Genome (Section 167 (3), (4) of the CC)  
Trafficking in Human Beings (Section 168 (3), (4), (5) of the CC)  
Entrusting a Child to Another Person (Section 169 (2), (3) of the CC)  
Solicitation (Section 189 (3), (4) of the CC)  
Prostitution Threatening Moral Development of Children (Section 190 (3) of the CC)  
Production and other Disposal with Child Pornography (Section 192 (3), (4) of the CC)  
Participation (Section 214 (3), (4) of the CC)  
Money Laundering (Section 216 (3), (4) of the CC)  
Forgery and Alteration of Money (Section 233 (3), (4) of the CC)  
Unauthorised Obtaining, Forgery and Alteration of Means of Payment (Section 234 (4), (5) of the CC)  
Breach of Regulations on Export Control of Goods and Technologies of Dual Use (Section 262 of the CC)  
Breach of Duty in Export of Goods and Technologies of Dual Use (Section 263 (3) of the CC)  
Conducting Foreign Business with Military Material without Licence or Permit (Section 265 (2) of the CC)  
Violation of Obligations in Connection to Issue of Permits and Licenses for Foreign Trade with Military Material (Section 266 (3) of the CC)  
Development, Manufacture and Possession of Prohibited Means of Combat (Section 280 (1)(2)(3) of the CC)  
Unauthorised Production and Possession of Radioactive Substances and Highly Dangerous Substances (Section 281 (2)(3) of the CC)  
Unauthorised Production and Possession of Nuclear Material and Special Fissionable Material (Section 283 (2)(3)(4) of the CC)  
Gaining Control over an Aircraft, Civilian Vessels and Fixed Platform (Section 290 (1) of the CC)  
Dragging Aircraft to Abroad (Section 292 (1)(2)(3) of the CC)  
High Treason (Section 309 (1) of the CC)  
Subversion of the Republic (Section 310 (1)(2) of the CC)



#### 4.2.3. *The authority competent to decide on and enforce confiscation*

The sentence of confiscation of a thing or other asset value, confiscation of an equivalent value, and confiscation of property may be imposed only by a court in a judgement issued of the guilt of the offender.

The execution of the sentence of confiscation of a thing or other asset value, confiscation of an equivalent value, and confiscation of property is carried out by the Office of the Government Representation in Property Affairs. This, however, applies only to cases where the assets have already been seized at the previous stages of the investigation.

The ARO is not involved in the process of confiscation in the Czech Republic.

#### 4.2.4. *Informing persons affected by the measure and legal remedies*

An offender, on whom the sentence of confiscation of a thing or confiscation of property is imposed, must be personally served the judgement imposing these punishments, unless the offender is prosecuted as fugitive. In this case along with a specific procedure his/her attorney enters a position to exercise all of his/her rights.

The offender may lodge an appeal that will be decided on by a superior court.

#### 4.2.5. *Additional information related to the possibilities for confiscation referred to in Article 3(2) of Framework Decision 2005/212/JHA*

In the Czech Republic the term *extended confiscation* is understood to mean the possibility to confiscate offender's assets that are **not**:

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Terrorist Attack (Section 311 (1)(2)(3) of the CC)  
Terror (Section 312 (1) of the CC)  
Sabotage (Section 314 (1)(2)(3) of the CC)  
Abuse of Competence of Public Official (Section 329 (3) of the CC)  
Accepting Bribes (Section 331 (3) of the CC)  
Bribery (Section 332 (2) of the CC)  
Violent Crossing of State Border (Section 339 (2)(3) of the CC)  
Organising and Facilitation of Unauthorised Crossing of State Border (Section 340 (2)(3)(4) of the CC)  
Assisting in Unauthorised Stay in the Territory of the Czech Republic (Section 341 (3)(4) of the CC)  
Illicit Employment of Foreigners (Section 342 (4) of the CC)  
Participation in Organised Criminal Group (Section 361 (1)(2)(3) of the CC)



- proceeds of the particular crime<sup>1</sup>, or
- connected with such a crime as an item that is gained for the proceeds of crime or a reward for such a crime<sup>2</sup> or as an equivalent value thereof<sup>3</sup>.

Extended confiscation is available under Section 66 of the CC (confiscation of offender's property). It should be emphasised that this provision relates to the offender's property, not proceeds of crime. According to the Czech authorities, this is compatible with the obligation stated in Art 3(1) of the Framework Decision 2005/212/JHA to "confiscate, either wholly or in part, property belonging to a person convicted of an offence".

According to Section 66(1) of the CC, the court may, however, only impose a sentence of confiscation of property if it sentences an offender to an exceptional sentence of imprisonment or for an especially serious felony by which the offender has gained or tried to gain for him/herself a proprietary benefit.

The confiscation of an offender's property under Section 66 of the CC may be imposed as a single penalty if, with regard to the nature and gravity of the committed criminal offence and to the character and circumstances of the offender, the imposition of another penalty is not necessary. The confiscation affects the whole property of an offender or a portion thereof designated by the court. However, confiscation does not apply to means and things necessary for the satisfaction of necessities of life of the convicted person and persons whose support or upbringing the convicted person is legally obliged to provide.

Moreover, according to Art 3 (1) of the Framework Decision, the confiscation of an offender's property is possible if a crime is committed within the framework of a criminal organisation<sup>4</sup> that is carrying out criminal activities listed in the Article.

As a matter of a fact, according to Section 361 of the CC even the participation in an organised criminal group<sup>5</sup> is a crime for which an offender can be sentenced to imprisonment for two to ten years or to confiscation of property.

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<sup>1</sup> Section 70(1)(c) of the CC

<sup>2</sup> Section 70(1)(d) of the CC

<sup>3</sup> Section 71 of the CC

<sup>4</sup> As defined in Joint Action 98/733/JHA of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.

<sup>5</sup> The definition of organised criminal group is in Section 129 of the CC

It is noteworthy that it does not matter what crimes are committed by such an organised group. The confiscation of an offender's property can be imposed also for a terrorist attack<sup>1</sup> and terror<sup>2</sup>.

Furthermore, as far as Section 66 of the CC is concerned, there is no obligation to prove any connection of the specific property with a crime. Thus, the conditions for imposing confiscation of the offender's property under Section 66 of the CC are even broader than those mentioned in Art 3 (1) of the Framework Decision.

There is no possibility in the Czech legal system to confiscate (or forfeit) the offender's legally obtained property that has been transferred to third persons in line with Art 3(3) of the Framework Decision. The only possibility is the forfeiture of proceeds of crime transferred to third natural or legal persons under Section 101 of the CC, or of an equivalent value under Section 102 of the CC. It should be noted, however, that the Framework Decision does not set an obligation to the Member States to introduce third party confiscation.

Art 3(4) of the Framework Decision does not set an obligation to the Member States to introduce a system of so called non-conviction based confiscation. However, there are ongoing efforts in the Czech Republic to examine the possibilities to introduce a variant of such system.

Discussions are mainly focusing on tax solutions, but possible civil-law solutions are also considered. However, the final analysis on this topic has not yet been completed.

#### 4.2.6. Possibility to 'pierce the corporate veil' and confiscate property owned by corporations

Both in cases concerning the transfer of proceeds of crime to a legal entity and situations where the offender, who gained the proceeds, cannot be sentenced, it is possible to impose not a punishment, but a protective measure of forfeiture (*zabrání*) of a thing or other asset value according to Section 101 of the CC. These decisions do not depend on a convicting judgement in a criminal matter.

The court may decide on forfeiture of a thing, of other asset value, or of equivalent value only if a sentence of confiscation of the concerned thing or other asset value referred to in Section 70 (1) has not been imposed and if:

- it belongs to an offender that cannot be prosecuted or sentenced;
- it belongs to an offender, whose punishment the court has waived; or

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<sup>1</sup> Section 311 of the CC

<sup>2</sup> Section 312 of the CC

- it endangers the safety of people, property or society, or if there is a threat that it will be used to commit a criminal offence.

Without these conditions the court may impose forfeiture of a thing or other asset value *only* if it is considered (not necessarily direct) proceeds of crime, especially if:

- the thing or other asset value was obtained by a criminal offence or as a reward for it, and if it does not belong to the offender;
- the thing or other asset value was gained, at least partially, by another person than the offender for a thing or another asset value that was obtained by a criminal offence or as a reward for it, if the value of such a thing or another asset value is not inconsiderable in comparison to the gained thing or another asset value; or
- the thing or other asset value was gained, at least partially, by another person than the offender for a thing or another asset value that the offender, at least in part, obtained for a thing or another asset value, that was acquired by a criminal offence or as a reward for it, if the value of such a thing or another asset value is not inconsiderable in comparison to the gained thing or another asset value.

If the offender or another person possesses, contrary to another legal regulation, a thing or another asset value mentioned above, in relation to which it is possible to impose forfeiture of a thing or another asset value, the court shall always impose this protective measure.

The court may, instead of forfeiture of a thing or another asset value, impose an obligation to:

- change the thing or another asset value in such a way it cannot be used to socially dangerous purposes,
- remove a particular device,
- remove its marking or to change it, or
- limit disposing with the thing or another asset value

and set an appropriate time limit for the measure.

Unless the abovementioned obligation is fulfilled within the stated time, the court shall decide on the forfeiture of the thing or another asset value.

According to Section 102 of the CC, if the owner of the thing or another asset value that could be forfeited according to Section 101(1) or (2) destroys, removes, uses up or consumes it, or otherwise obstructs its forfeiture before the decision on forfeiture is issued, or if he/she obstructs the execution of a sentence of confiscation of a thing or another asset value by a conduct breaching a prohibition according to Section 70(4), or obstructs forfeiture of a thing or another asset value by conduct breaching the prohibition referred to in Section 104(2), the court may impose forfeiture of an equivalent value up to the extent corresponding to the value<sup>1</sup> of such a thing or another asset value, the forfeiture of which the court could impose.

#### 4.3. At European level

##### 4.3.1. *Implementation of Framework Decision 2006/783/JHA*

###### 4.3.1.1. Authorities competent to issue and execute a confiscation order

The issuing authority is the court which issued the decision on confiscation or forfeiture, typically a district or regional court acting in first instance.

As regards the recognition and execution of decisions of another Member State on confiscation or forfeiture, the regional court in whose jurisdiction the property concerned by the decision is located is the competent court.

If the property is located in the jurisdiction of multiple courts, the competence shall belong to the court that first received the decision required for the recognition and execution.

If it is not apparent where in the territory of the Czech Republic the property subject to confiscation or forfeiture belonging to the convict or other person is located, the competence shall belong to the regional court in whose jurisdiction the property supposedly is located according to the certificate on issue of the decision.

In case no such location is sufficiently specified, the competence shall belong to the regional court in whose jurisdiction the person has his/her habitual residence or registered office.

If two or more decisions of other Member States on confiscation or forfeiture of property concerning the same person or the same property are simultaneously sent to the Czech Republic, the competence for conducting proceedings on all such decisions belong to the court that first initiated the proceedings on recognition and execution of either of those decisions.

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<sup>1</sup> The evaluation is based on an expert opinion or expert declaration.

#### 4.3.1.2. Practical guidance on the issuing of a confiscation order and the use of the certificate

There is practical information available to the courts at the extranet of the Ministry of Justice, where it is possible to find information on relevant national legislation concerning the Framework Decision and its implementation in the Member States. This information also includes the implementation status in each Member State, the language(s) in which the certificate is accepted (and the relevant certificate in these languages), authorities which are competent to issue/execute the confiscation order, and notifications of that state and the Framework Decision in its language version.

Anything that may facilitate the issuing or executing of the confiscation order by the courts can be immediately added to the extranet page.

In addition, in the future certain practical guidance will also be found in an instruction of the Ministry of Justice to be addressed to the courts.

#### 4.3.1.3. Experience in the use of the new regime

Although the national implementation of the respective Framework Decision 2006/783/JHA by the Act No. 457/2008 Coll., amending the CPC, was accomplished nearly three years ago, and the amendment of the CPC has been in force since 01 January 2009, there is still very little experience as regards the practical use of the instrument. In fact, according to the Czech authorities, the Czech Republic has thus far not acted as the issuing Member State.

However, there have been two cases from 2010 where the Czech Republic has been in the position of the Member State executing a foreign confiscation order. In one case, the confiscation order from Austria was successfully executed.

However, in the second case of confiscation order from the Netherlands, the recognition and execution of the order had to be refused due to the fact that there was no real property of the person against whom the confiscation order was directed in the Czech Republic. The result in the first case might be regarded as a positive experience, because the Czech authorities succeeded to confiscate nearly 28 500 euro stemming from drug crimes. Half of this was confiscated for the benefit of the Czech Republic as the executing state and half of the confiscated sum was passed on to Austria as the issuing state.

#### 4.4. Conclusions

- Assets seized in the Czech Republic in 2011 amounted to an overall 4,3 billion CZK, which represents an increase of 335 per cent compared to 2010. Even if these numbers were somewhat biased by few big cases, they are still an indication that the asset recovery policy introduced at the political level and enforced by the relevant agencies including at the regional level is starting to have a clear practical impact.
- During the last four years the UOKFK has reported the highest amounts of seized property compared with other police units. In 2011 it seized over 1,5 billion CZK amounting to over one third of all confiscated assets. One of the reasons is that the UOKFK investigates high-value cases. This type of crime is highly sophisticated and is often committed as part of normal legal activities and it is thus more difficult to uncover. There is a lot of pressure not only on the police but also on the prosecutor to investigate and recover assets.
- According to the Czech authorities, and fully endorsed by the evaluation team, the results are mainly due to the fact that the specialised units of the police are allowed to concentrate on asset recovery and are not bound by other tasks and obligations in their work. The police has recently gained new specialists in this area.
- The evaluation team was informed that the new provisions concerning the criminal responsibility of legal persons will enter into force from 01 January 2012. This is an important way forward in the fight against financial and organised crime.
- The Czech authorities seem to have all necessary tools in place to freeze and confiscate criminal assets. However, since statistical data is collected in the Czech Republic only since 01 January 2012, it is difficult to evaluate in how many cases the tools were actually applied, how many motions were made by the prosecutor, etc. It is also not clear, whether the two punished measures provided by criminal law (confiscation and fines) are applied very often.
- Furthermore, it is evident that especially the available European tools related to freezing and confiscation are not frequently used, and the Czech authorities have been able to identify various reasons for this. Knowledge and awareness of the mechanisms could be improved among practitioners, especially judges, even though this would address only some of the recognised problems.



- According to information provided during the final session of the evaluation mission, the Supreme Public Prosecutor Office's has given out an instruction to analyse the overall situation regarding the issuing of confiscation orders and fines in criminal proceedings, including the frequency of motions for such measures made by the prosecutors. This evaluation exercise is strongly commended by the evaluation team, and its results should be seriously considered as well as shared in the EU context.
- The Czech Republic has no system of non-conviction based confiscation of proceeds of crime at the moment. The Czech authorities have prepared new legislation with possible added taxation on such property, but this is still under development. The establishment of a system of non-conviction based confiscation should be re-considered.
- The Czech Republic has currently no legal basis to execute foreign non-conviction or civil based confiscation orders. There are also problems with the execution of orders regarding value-based confiscation in cases where the confiscation order has not been preceded by an MLA request asking the Czech authorities to trace and seize assets, and, to an extent, extended confiscation<sup>1</sup>. Generally, this is a problem for many EU Member States and can cause serious difficulties in practical cooperation between the different Member States.
- It seems that in the Czech Republic confiscation is pronounced by the courts only on the actually identified assets of the perpetrator and not necessarily on the overall crime proceeds that are resulting from the crime. It appears that the measure is only undertaken to repair damages produced by a crime. Although there are no serious legal obstacles, it is questionable whether the courts consider confiscation an important step against organised crime to deprive criminals of their wealth. The courts seem only to announce the confiscation of assets that have been identified in the course of the investigation or the trial and do not include the overall profit. Thus criminals can end up profiting financially from crime even when punished by a prison sentence.
- The team of experts was informed that Sections 47 and 48 of the CPC provide a two-month period of seizure for the victims of crime to successfully claim for damages after the conviction. The team considers this time limit very short.

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<sup>1</sup> A foreign confiscation order regarding extended confiscation can be executed to the extent that it is in line with domestic Czech law, as defined in Section 460z of the CPC.

- In order to increase the overall effectiveness of the confiscation system, the tracing of crime proceeds should also be possible after the conviction of the offender by the court. To further develop on this, the responsibility for tracing assets after the conviction could be allocated to an existing authority, or a new authority should be established for this purpose. The authority could also collect fines and execute confiscation orders after the final decision. This would encourage the judges to issue fines or confiscation orders without the need for them to evaluate the enforceability of the order or the collectability of the fine.

## **5. PROTECTION OF THE FINANCIAL INTERESTS OF THE EU - AVAILABLE MECHANISMS, PARTICULARLY COOPERATION WITH OLAF**

### **5.1. Pro-active transmission of information and transmission of information on request to Olaf by customs authorities, police, prosecutors or other law enforcement authorities**

On 18 May 2008 the government of the Czech Republic adopted a national strategy for the protection of the financial interests of the European Communities by resolution no. 535. In connection with this strategy, the exchange and transfer of information with the European Anti-Fraud Office (OLAF) is ensured by the contact points of the AFCOS network<sup>1</sup>. For the field of criminal law, the Supreme Public Prosecutor's Office is the exclusive contact in relation to OLAF.

According to the instruction of general nature of the Supreme Public Prosecutor no. 4/2011, this competence was entrusted to the Department of Serious Economic and Financial Crime of the Supreme Public Prosecutor's Office, which prepares materials for OLAF and ensures the fulfilling of related coordination, methodological and analytical tasks related to the inferior public prosecutor's offices. This department guarantees the direct and indirect transfer of information to OLAF in specific matters and mediates possible contact between OLAF and the inferior public prosecutor's offices and through them with the police or customs authorities.

In cooperation with the UOKFK<sup>2</sup>, the central police unit for the investigation of criminal offences related to the protection of the economic interests of the EU, it may provide OLAF with direct contacts to the police conducting the investigation in the Czech Republic.

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<sup>1</sup> There are approx. 20 contact points from the central and local authorities in the Czech AFCOS.

<sup>2</sup> Specifically, the Department of Corruption and Protection of EU Financial Interests of the UOKFK is responsible for the detection and investigation of serious misconduct that aims to harm financial and economic interests of the European Union, in cases where the damage exceeds the amount of 150 million CZK (approximately 6 million EUR). This department is also involved as a contact point in the AFCOS system.

Subsequent exchange and transfer of information during the investigation takes place directly with the police authority conducting the investigation or with the supervising public prosecutor, and the information is transferred on the basis of Art 7 of the Council Regulation (ES) no. 1073/1999, concerning investigations conducted by the European Anti-Fraud Office (OLAF). Public prosecutors of the Department of Serious Economic and Financial Crime of the Supreme Public Prosecutor's Office also participate in work meetings and conferences organised by OLAF, during which issues concerning the exchange of information are periodically discussed.

Transmission of information between OLAF and the customs authorities is regulated by the provisions of Regulation No. 515/97 of 13 March 1997 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters. According to the Act No. 185/2004 Coll., on the customs administration, as amended, the General Directorate of Customs acts in the position of a national coordination unit for mutual assistance and cooperation which, among others, ensures the above transmission of information.

## **5.2. Transmission of information to OLAF on the outcome of criminal cases related to fraud against the financial interests of the Communities**

The Department of Serious Economic and Financial Crime of the Supreme Public Prosecutor's Office represents the central point of the protection of the financial interests of the EU in the field of criminal law. This department elaborates quarterly reports on the status of all criminal proceedings involving the financial or economic interests of the EU, including information on the final outcome. The Supreme Public Prosecutor's Office also provides information individually requested by OLAF as regards specific criminal matters.

In order for the Supreme Public Prosecutor's Office to access information on all criminal proceedings conducted in the Czech Republic concerning the financial or economic interests of the EU, the Supreme Public Prosecutor has adopted an instruction of general nature no. 1/2010 on information, which is binding for the whole system of public prosecution.

On the basis of this measure, all public prosecutor's offices are obliged to provide the Supreme Public Prosecutor's Office information on the foreseen development and current status of all criminal matters concerning the financial or economic interests of the EU. This information is then used to submit periodical reports to OLAF and to mediate the exchange of information between OLAF and the Czech law enforcement authorities in these matters.

Within the system of public prosecution, the Department of Serious Economic and Financial Crime of the Supreme Public Prosecutor's Office conducts yearly evaluations in the field of protection of the financial interests of the EU.

### **5.3. The role of the European Commission in a criminal investigation involving fraud against the financial interests of the Communities**

In accordance with the Czech CPC, the European Commission may act as the injured party in criminal proceedings, if it suffered direct material or other harm as a result of a criminal offence investigated in the Czech Republic. As the injured party, it may exercise individual rights in the course of criminal proceedings, especially to ask the court to decide in the judgement on an obligation of the offender to compensate it for the damage caused. It may also present evidence and petition the law enforcement authorities to obtain specific evidence, and it has the right to look into the files on the conducted proceedings and to lodge appeals against decisions of the law enforcement authorities, if it is affected by such decisions as the injured party. Specific employees of the Commission may be heard as witnesses in the criminal proceedings.

Until this day the European Commission has never acted in criminal proceedings as the injured party. This is mainly due to the fact that in cases of crimes committed to the detriment of the EU, often in connection with the distribution of resources from structural funds, the procedural rights of the injured party are exercised by an authority of the Czech Republic, under whose authority the competences related to drawing these resources and their control fall. In the past it has occurred, that the representatives of the Commission acted as witnesses in the Czech criminal proceedings.

### **5.4. Possibility of OLAF agents to take part in criminal investigations**

The Czech CPC enables the participation in investigations of experts, who act as so called "consultants" according to Section 157 (3) of the CPC. The participation of a consultant (expert) in an investigation is decided by the police authority or the public prosecutor. Also an employee of OLAF could participate as a consultant, especially if he/she possesses expert knowledge and experience related to the issue that is the object of the investigation.

The consultant cannot perform actions in criminal proceedings on his/her own; however, he/she has access to the file and may participate in individual acts of the criminal proceedings and consult the technical side of the criminal law issues with the investigator and public prosecutor.

Employees of OLAF can also participate in investigations conducted in the Czech Republic for example by elaborating written opinions on specific issues regarding the ongoing criminal proceedings. Czech authorities have previously taken advantage of this form of cooperation with OLAF. This took place in the context of an inspection of criminal activity related to the uneconomical disposal of financial resources from the EU funds, where findings were made by the investigation conducted by OLAF itself and a legal opinion of OLAF was requested regarding the disposal of these financial resources from the point of view of the relevant EU regulations.

The Czech customs administration also had the opportunity to involve OLAF in one of its investigations into tobacco crime. In this case, OLAF performed the role of intermediary in the process of establishing cooperation between the EU Member States concerned, and provided economic and analytical support to the parties involved.

#### **5.5. Possibility of OLAF agents to take part in a joint investigation team**

The Czech CPC enables in Section 442 the creation of joint investigation teams on the basis of international treaties binding the Czech Republic. An OLAF representative could participate in such a team only as a consultant. Art 13 (2) of the MLA Convention binding the Czech Republic implies that a member of such a team may also be a representative of a body established according to the European Union Treaty, which can be interpreted as OLAF. The nature of eventual participation of an OLAF employee is however limited by the legal regulations of the Czech Republic. In this respect, the participation of an OLAF employee may be considered in the position of a consultant.

So far no joint investigation teams have been established in matters concerning fraud harming the financial interests of the EU.

#### **5.6. Coordinating body for contacts with OLAF in concrete cases**

The basic coordination point for contacts between the Czech authorities and OLAF is the Ministry of Finance, through the AFCOS Network. For the field of criminal law the exclusive coordination authority is the Supreme Public Prosecutor's Office.

The Department of Serious Economic and Financial Crime at the Supreme Public Prosecutor's Office mediates direct contacts between the individual public prosecutors and OLAF and similarly provides OLAF with contacts to public prosecutors involved in the investigation of individual criminal matters.



If necessary, the Supreme Public Prosecutor's Office may provide contacts directly to representatives of the police or the customs, with which it also cooperates within the AFCOS Network. Especially with the UOKFK as the authority conducting investigations in serious matters concerning financial interests of the EU, long term cooperation already exists, including exchange of information for the purpose of its transmission to OLAF.

#### **5.7. Expectations for OLAF support in cases related to fraud against the financial interests of the Communities**

Based on previous cooperation with OLAF, the Czech law enforcement authorities would welcome a possibility to approach OLAF directly with specific requests for statements relating to certain legal questions, for example as regards the regime of providing and drawing subvention resources; securing opinions of European authorities to specific legal issues encountered within investigations; or securing documents related to conducted investigations, eventually also providing analyses or explanations of the regime of drawing subvention resources.

Future cooperation may also consist in providing contacts to the representatives of the Commission and other EU authorities/agencies for the purpose of conducting investigations on fraudulent conduct committed in the territory of the Czech Republic. According to the Czech authorities, positive experiences with this form of cooperation already exist in this area, for example providing contacts to employees of the European Commission and securing their participation in court hearings in the position of witnesses. The role of OLAF as an intermediary between the law enforcement authorities conducting investigations into fraudulent activities committed on the territory of several EU Member States is also important.

#### **5.8. Conclusions**

- As regards the protection of the financial interests of the EU, the main administrative and legal tools are in place in the Czech Republic.
- The cooperation between the Czech Republic and OLAF is well organised and established through the Supreme Public Prosecutor's Office and, subsequently, also through the UOKFK. There are quarterly reports about the state of play of criminal investigations. Furthermore, the AFCOS contact point for OLAF is established at the Supreme Public Prosecutor's Office.
- The high prosecutors' office in Prague and its staff have showcased proactivity and commitment to also combat big complex organised crime cases and, when possible, to seek the assistance of OLAF in this context.



## 6. RECOMMENDATIONS

The overall Czech system in the area of fight against financial crime and conducting financial investigations is characterised by dedicated authorities, expert staff, and a clear commitment to asset recovery and removing proceeds of crime. This is evident both at the strategic policy level and in the everyday work of the relevant staff. What is also noteworthy is the dedication of not only the law enforcement authorities but also the different levels of the prosecution service to recover proceeds of crime and send a clear message that crime should not pay.

The robust system has several key ingredients: integration of financial investigators into investigation teams throughout the country; asset recovery-minded law enforcement authorities (whether specialised or not) and prosecution service; specialised units with a very high expertise level that can conduct and support even very complex financial investigations; effective and ground-breaking development and use of technological tools, databases and applications to support the everyday work; dedicated, enthusiastic and trained staff overall; policy level prioritisation of asset recovery and its efficient implementation; and good cooperation arrangements between relevant authorities such as between the police and the customs, among other things.

In some respects this is counter-balanced by some problems or weaknesses, mainly regarding the legal framework for financial investigation or asset recovery: lack of a central bank register, even though the need for it has been thoroughly assessed, argued and endorsed; limited possibility to use certain special investigative techniques in financial investigations; limited use of fines and confiscation orders by judges when defining penalties concerning benefits derived from crime, but also as a preventive measure; and rather a limited definition of confiscation excluding, to a large extent, value-based, civil- or non-conviction-based and extended confiscation<sup>1</sup>, giving confiscation only a partial role in the criminal proceedings, but also making cooperation with some Member States difficult.

The evaluation team regards the Czech system as very advanced, and thus the ensuing recommendations address only very specific and concrete technical aspects of the system. It has some recommendations to the Czech Republic to further develop the strong points and to address the current drawbacks and weaknesses.

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<sup>1</sup> Extended confiscation as defined in Section 66 of the CC is regarded as an extraordinary punishment for serious criminality only.

It has also several recommendations to make to the Member States, who are invited to study and develop the many good or even best practices implemented in the Czech Republic, and to the EU and its institutions and agencies to ensure their support to this effect.

### **6.1. Recommendations to the Czech Republic**

The Czech Republic is invited to:

1. Consider ensuring that all investigators are able to identify bank accounts and access other necessary financial information which cannot be obtained from other sources in a timely and efficient manner. To this effect, the establishment of a centralised bank account register, or an alternative approach such as centralised access to bank account data, should be re-considered.
2. Make the national technical and economic feasibility study concerning the establishment of a central register of bank accounts available to other EU Member States, relevant EU agencies and platforms.
3. Look into ways of making the confiscation of proceeds or imposition of fines a legally binding obligation for courts. The current provisions foresee that the court may/shall confiscate proceeds of crime in the sentence, after an assessment of the offender's property and personal situation. This leeway may lead to a heterogeneous application of the provisions.
4. Consider enabling the tracing of assets also after the final decision of the court. In line with this, consider designating a competent authority to search for property in these circumstances. This authority could also execute the confiscation order or collect a fine as well as manage relevant property.
5. Study the possibilities to redefine the legal conditions regarding special investigative techniques, in particular for wire-tapping, in order to enhance the possibilities of investigators to collect all necessary evidence and intelligence especially regarding financial investigations.
6. Link the Czech ARO to the Europol SIENA System in order to provide for a secure communication channel to exchange operational information with its counterparts in the EU.
7. Improve access by all relevant agencies and units to the electronic case management system ETR in order to enable an effective monitoring of relevant cases and cross-checking of data.
8. Consider further developing the statistical features of the ETR system, in particular by including data from all relevant authorities and on cross-border freezing/confiscation orders or cross-border requests as such.

9. Continue and further develop training on financial investigations and asset recovery and direct this to all actors: investigators, financial investigators, prosecutors and judges. Further develop the process of training leading to the certification of financial investigators.
10. Consider studying and further developing measures on value-based and extended confiscation.
11. Consider providing all relevant authorities with access to tax information to support the investigation of financial crimes.
12. Give certain Czech police units specialised in fighting serious and organised or financial crime (such as the the UOKFK or the Unit Combating Organised Crime) access to customs databases.
13. Consider empowering the Czech FIU to answer requests from law enforcement agencies when these requests are part of an on-going criminal investigation, irrespective of the underlying criminal offence.
14. Consider prolonging the two-month period of seizure foreseen in Section 48 CPC in order to give victims of financial crime more time to successfully claim for damages.
15. Analyse whether or not the general threshold of 150 million CZK is too high for the UOKFK to be able to detect and investigate and the Supreme Prosecutor's Office to deal with financial crime cases, and whether the binding instruction of the Police President<sup>1</sup> provides sufficient exceptions for the UOKFK to investigate certain cases regardless of the threshold.
16. Inform the Council Secretariat within 18 months of the adoption of this report of the action the Czech Republic has taken on these recommendations. The information will be submitted to, and if necessary discussed by, the relevant working group.

## **6.2. Recommendations to the European Union, its Member States, institutions and agencies**

1. The Member States are invited to study, adopt and implement a proceeds-oriented strategy similar to the one consistently developed and enforced in the Czech Republic.
2. The Member States are invited to study the Czech approach to integrate financial investigators into investigation teams all over the country and throughout the police forces whilst at the same time considering the establishment of specialised units that concentrate for example on asset recovery issues and that have the highest level of expertise in their field.

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<sup>1</sup> Binding instruction of Police President no. 30/2009 on performance of tasks in the criminal proceedings (Article 6, Section b), point 1.5.

3. The Member States are invited to consider establishing a universal electronic case management system with possible statistical functions especially in the field of asset recovery similar to the ETR.
4. The Member States and EU agencies are invited to study and consider the national technical and economic feasibility study concerning the establishment of a central register of bank accounts.
5. The Member states are invited to study the remit of the Czech FIU as regards the exchange of financial information, bank accounts statements, tax information etc. for intelligence purposes in order to facilitate the fight against money laundering, terrorism financing and other types of organised crime.
6. The AROs of the Member States are invited to consider organising regional meetings with neighbouring countries' AROs in order to further facilitate information exchange.
7. Member States are invited to study and establish databases, tools and applications such as ALPHONSE, BiZGuard, Superaccounts and MagnusWeb in order to support financial investigations and asset recovery with efficient technological tools.
8. The European Commission is invited to consider a new legal framework facilitating the execution of confiscation orders despite their nature (criminal or non-conviction based).
9. The European Commission is invited to take note and consider the problems encountered by the Czech Republic in the implementation and use of certain EU legal tools in the area of asset recovery.

DECLASSIFIED

ANNEX A: PROGRAMME FOR THE ON-SITE VISIT

Tuesday 6 December 2011

**8.30** Pick – up from the hotel and transfer to the Ministry of the Interior of the Czech Republic

**9.00 – 12.15** Ministry of the Interior of the Czech Republic

Address: Nad Štolou 3, Praha 7

**Chair: Ms Iva Katzerová, Security Policy Department, Ministry of the Interior**

Welcoming speech by **Ms Kateřina Flaigová**, the Chief Directrice for the International Relation Division of the Ministry of the Interior and **Mr Martin Červíček**, the Deputy Minister of the Police Presidium

Presentations:

- **Ms Eva Romancovová, Ms Julie Buzalková (Security Policy Department, Ministry of the Interior): *Proceeds oriented policy in the Czech Republic***
- **Mr Stanislav Motyčka (International Relation Division, Police Presidium, Police of the Czech Republic): *Police of the Czech Republic – general competences and tasks***
- **Mr Luděk Petřek (Europol National Unit, Bureau of Criminal Police and Investigation Service, Police Presidium, Police of the Czech Republic): *Europol National Unit of the Czech Republic – competences and tasks***
- **Ms Kamila Brabcová (Unit Combating Corruption and Financial Crimes, Police of the Czech Republic): *Unit Combating Corruption and Financial Crimes – general competences and tasks***
- **Mr Karel Kopačka (Asset Recovery Office, Unit Combating Corruption and Financial Crimes, Police of the Czech Republic): *ARO Czech Republic with the focus on international cooperation***

|               |   |
|---------------|---|
| 12.15 – 13.45 | <b>Lunch</b><br>(Ministry of the Interior)  |
| 14.00 – 16.00 | <b>Unit Combating Corruption and Financial Crime</b><br>Address: Celetná, Praha 1<br><b>Chair: Ms Kamila Brabcová, Mr Karel Kopačka, Unit Combating Corruption and Financial Crimes, Police of the Czech Republic</b>   |
|               | Welcoming speech by the Director of the Unit Combating Corruption and Financial Crime<br><br>Presentations:<br><br><ul style="list-style-type: none"> <li>- <b>Mr Marián Dvorščík (International Cooperation and Methodology Department, Unit Combating Corruption and Financial Crime, Police of the Czech Republic): <i>Seizure of criminal proceeds and financial investigation</i></b></li> </ul><br>Panel Discussion |

**Wednesday 7 December 2011**

|              |   |
|--------------|---|
| 8.30         | <b>Pick – up from the hotel and transfer to the Regional Police Directorate in Prague</b>   |
| 9.00 – 12.30 | <b>Regional Police Directorate in Prague</b><br>Address: Kongresová 2, Praha 4<br><br><b>Chair: Mr Jan Bartošek, Security Policy Department, Ministry of the Interior</b>   |
|              | Welcoming speech by the Director of the Regional Police Directorate in Prague<br><br>Presentations:<br><br><ul style="list-style-type: none"> <li>- <b>Mr Petr Burian (Regional Police Directorate in Prague): <i>Financial investigation – oldtimers</i></b></li> <li>- <b>Mr Jan Chramosta (Unit Combating Organized Crime, Criminal Police and Investigation Service, Police of the Czech Republic): <i>Police of the Czech Republic – Unit Combating Organized Crime, competences and tasks</i></b></li> <li>- <b>Mr Pavel Sluka (National Anti-Drug Squad, Criminal Police and Investigation Service, Police of the Czech Republic): <i>National Anti-Drug Squad, competences and tasks</i></b></li> </ul> |



|                      |  |
|----------------------|--|
|                      | <ul style="list-style-type: none"> <li>- <b>Mr Petr Horáček (Office of the Government Representation in Property Affairs): <i>Office of the Government Representation in Property Affairs, competences and tasks</i></b></li> </ul>  |
| <b>12.30 – 13.30</b> | <b>Lunch</b><br>(Regional Police Directorate in Prague)  |
| <b>14.00 – 16.30</b> | <b>Ministry of Finance of the Czech Republic</b><br>Address: Washingtonova 11, Praha 1<br><br><b>Chair: Ms Michaela Hladká, Financial Analytical Unit, Ministry of Finance</b>   |
|                      | Presentations: <ul style="list-style-type: none"> <li>- <b>Mr Jiří Trousil (Deputy Director of Investigation Division, General Directorate of Customs, Customs Administration of the Czech Republic, Ministry of Finance): <i>Customs</i></b></li> <li>- <b>Mr Milan Cícer (Director, Financial Analytical Unit (FIU), Ministry of Finance): <i>FIU – Financial Analytical Unit</i></b></li> <li>- <b>Ms Barbora Boschat (AFCOS, Control Department, Ministry of Finance): <i>Role of AFCOS Services in the Czech Republic</i></b></li> <li>- <b>Mr Zdeněk Kasal (Director of Department of Serious and Economic Crime, Supreme Public Prosecutor's Office of the Czech Republic): <i>Supreme Public Prosecutor's Office as an Exclusive Contact Point of the AFCOS Network for Criminal Irregularities</i></b></li> </ul> |

Thursday 8 December 2011

|                     |  |
|---------------------|--|
| <b>8.30</b>         | <b>Pick – up from the hotel and transfer to the Ministry of Justice of the Czech Republic</b>  |
| <b>9.00 – 12.00</b> | <b>Ministry of Justice of the Czech Republic</b><br>Address: Vyšehradská 16, Praha 2<br><br><b>Chair: Jakub Pastuszek, Director of International Department for Criminal Matters, Ministry of Justice</b>  |
|                     | Welcoming speech by the Deputy Minister of Justice<br>Presentations: <ul style="list-style-type: none"> <li>- <b>Mr Petr Forejt (Legislative Department, Ministry of Justice): <i>Criminal Law Institutes for Draining of Illegal Property</i></b></li> <li>- <b>Mr Tomáš Hudeček (Department for International</b></li> </ul> |

|               |  |
|---------------|--|
|               | <p>Cooperation, Ministry of Justice): <i>Implementation of Recommendations from International Organizations</i></p> <ul style="list-style-type: none"> <li>- Ms Světlana Kloučková (Director of International Department, Supreme Public Prosecutor's Office of the Czech Republic): <i>International co-operation in criminal matters concerning freezing of assets – MLA and freezing order</i></li> <li>- Ms Renata Vystrčilová (Judicial Academy): <i>Judicial Academy – Introduction and Training in Financial Crime and Investigation</i></li> </ul> |
| 12.00 – 13.00 | <p><b>Lunch</b><br/>(Ministry of Justice)</p>  |
| 13.30 – 17.00 | <p><b>High Court in Prague</b><br/>Address: Náměstí Hrdinů 1300, Praha 4</p> <p><b>Chair: Mr Jakub Pastuszek, Director of International Department for Criminal Matters, Ministry of Justice</b></p>   |
|               | <p>Presentations:</p> <ul style="list-style-type: none"> <li>- Mr Petr Šereda (High Public Prosecutor's Office in Olomouc)</li> <li>- Mr Boris Havel (High Public Prosecutor's Office in Prague): <i>Missing EU Funds</i></li> <li>- Mr Michael Švarc (International Department for Criminal Matter, Ministry of Justice): <i>International co-operation in criminal matters concerning confiscation of assets – confiscation order and MLA</i></li> </ul> <p>Panel Discussion</p> <p>Historical excursion in the premises of the High Court in Prague</p> |
| 19.30         | <p><b>Dinner</b><br/>Venue to be announced</p>   |

### Friday 9 December 2011

|              |  |
|--------------|--|
| 9.30 – 12.00 | <p><b>Ministry of Justice of the Czech Republic</b><br/>Address: Vyšehradská 16, Praha 2</p> <p><b>Chair: Mr Jakub Pastuszek, Director of International Department for Criminal Matters, Ministry of Justice</b></p> |
|              | <p>Debriefing – participation of the representatives of Ministry of the Interior, Police of the Czech Republic, Ministry of Justice, Ministry of Finance</p>   |
| 12.00        | <p><b>Final conclusions and remarks</b></p>  |

## ANNEX B: LIST OF PERSONS INTERVIEWED/MET

Tuesday 6 December morning

### *Ministry of the Interior*

**Mr Ondřej Bos** - Security Policy Department, Ministry of the Interior

**Ms Julie Buzalková** - Security Policy Department, Ministry of the Interior

**Ms Kateřina Flaigová** - Chief Directrice for the International Relation Division of the Ministry of the Interior

**Ms Iva Katzerová** - Security Policy Department, Ministry of the Interior

**Ms Eva Romancová** - Security Policy Department, Ministry of the Interior

### *Ministry of Justice*

**Mr Michael Švarc** – International Department for Criminal Matters, Ministry of Justice

### *Police of the Czech Republic*

**Ms Kamila Brabcová** - Unit Combating Corruption and Financial Crimes, Police of the Czech Republic

**Mr Martin Červíček** - Deputy Minister of the Police Presidium

**Mr Karel Kopačka** - Asset Recovery Office, Unit Combating Corruption and Financial Crimes, Police of the Czech Republic

**Mr Stanislav Motyčka** - International Relation Division, Police Presidium, Police of the Czech Republic

**Mr Luděk Petřek** - Europol National Unit, Bureau of Criminal Police and Investigation Service, Police Presidium, Police of the Czech Republic

Tuesday 6 December afternoon

### *Customs Administration of the Czech Republic, Ministry of Finance*

**Mr Michal Šimůnek** - General Directorate of Customs, Customs Administration of the Czech Republic, Ministry of Finance

**Mr Jiří Trousil** - Deputy Director of Investigation Division, General Directorate of Customs, Customs Administration of the Czech Republic, Ministry of Finance

### *Ministry of Justice*

**Mr Michael Švarc** – International Department for Criminal Matters, Ministry of Justice

### *Police of the Czech Republic*

**Ms Kamila Brabcová** - Unit Combating Corruption and Financial Crimes, Police of the Czech Republic

**Mr Tomáš Dokulil** - Unit Combating Corruption and Financial Crime, Police of the Czech Republic

**Mr Marián Dvorčík** - International Cooperation and Methodology Department, Unit Combating Corruption and Financial Crime, Police of the Czech Republic

**Mr Karel Kopačka** - Asset Recovery Office, Unit Combating Corruption and Financial Crimes, Police of the Czech Republic

**Mr Zdeněk Novák** - Unit Combating Corruption and Financial Crime, Police of the Czech Republic

***Supreme Public Prosecutor's Office of the Czech Republic***

**Ms Světlana Kloučková** - Director of International Department, Supreme Public Prosecutor's Office of the Czech Republic

Wednesday 7 December morning

***Ministry of the Interior***

**Mr Jan Bartošek** - Security Policy Department, Ministry of the Interior

**Ms Eva Romancová** - Security Policy Department, Ministry of the Interior

***Ministry of Justice***

**Mr Michael Švarc** – International Department for Criminal Matters, Ministry of Justice

***Office of the Government Representation in Property Affairs***

**Mr Petr Horáček** - Office of the Government Representation in Property Affairs

**Ms Jitka Píповá** - Office of the Government Representation in Property Affairs

***Police of the Czech Republic***

**Ms Kamila Brabcová** - Unit Combating Corruption and Financial Crimes, Police of the Czech Republic

**Mr Petr Burian** – Regional Police Directorate in Prague

**Mr Marián Dvorčík** - International Cooperation and Methodology Department, Unit Combating Corruption and Financial Crime, Police of the Czech Republic

**Mr Jan Chramosta** - Unit Combating Organized Crime, Criminal Police and Investigation Service, Police of the Czech Republic

**Mr Milan Jindrák** – Chief Officer, Regional Police Directorate in Prague

**Mr Karel Kopačka** - Asset Recovery Office, Unit Combating Corruption and Financial Crimes, Police of the Czech Republic

**Mr Pavel Sluka** - National Anti-Drug Squad, Criminal Police and Investigation Service, Police of the Czech Republic

***Supreme Public Prosecutor's Office of the Czech Republic***

**Ms Světlana Kloučková** - Director of International Department, Supreme Public Prosecutor's Office of the Czech Republic

Wednesday 7 December afternoon

***Customs Administration of the Czech Republic, Ministry of Finance***

**Mr Michal Šimůnek** - General Directorate of Customs, Customs Administration of the Czech Republic, Ministry of Finance

**Mr Jiří Trousil** - Deputy Director of Investigation Division, General Directorate of Customs, Customs Administration of the Czech Republic, Ministry of Finance

***Ministry of Justice***

**Mr Michael Švarc** – International Department for Criminal Matters, Ministry of Justice

***Ministry of Finance***

**Ms Barbora Boschat** - AFCOS, Control Department, Ministry of Finance

**Ms Milan Cícer** - Director, Financial Analytical Unit (FIU), Ministry of Finance

**Ms Michaela Hladká** - Financial Analytical Unit, Ministry of Finance

**Mr J. Hylman** - Financial Analytical Unit (FIU), Ministry of Finance

**Mr J. Tvrđý** - Financial Analytical Unit (FIU), Ministry of Finance

***Police of the Czech Republic***

**Mr Marián Dvorčík** - International Cooperation and Methodology Department, Unit Combating Corruption and Financial Crime, Police of the Czech Republic

***Supreme Public Prosecutor's Office of the Czech Republic***

**Mr Zdeněk Kasal** - Director of Department of Serious and Economic Crime, Supreme Public Prosecutor's Office of the Czech Republic

**Ms Světlana Kloučková** - Director of International Department, Supreme Public Prosecutor's Office of the Czech Republic

Thursday 8 December morning

***Judicial Academy***

**Ms Renata Vystrčilová** - Judicial Academy

***Ministry of Justice***

**Mr Petr Forejt** - Legislative Department, Ministry of Justice

**Mr Tomáš Hudeček** - Department for International Cooperation, Ministry of Justice

**Ms Michaela Hronová** - International Department for Criminal Matters, Ministry of Justice

**Mr Jakub Pastuszek** - Director of International Department for Criminal Matters, Ministry of Justice

**Mr Michael Švarc** – International Department for Criminal Matters, Ministry of Justice

***Police of the Czech Republic***

**Mr Marián Dvorčík** - International Cooperation and Methodology Department, Unit Combating Corruption and Financial Crime, Police of the Czech Republic

***Supreme Public Prosecutor's Office of the Czech Republic***

**Ms Světlana Kloučková** - Director of International Department, Supreme Public Prosecutor's Office of the Czech Republic

Thursday 8 December afternoon

***Assistants to the judge***

**Ms Simona Heranová** – assistant to the president of the High Court in Prague

**Mr Jiří Krupička** – assistant to the president of the High Court in Prague



***Ministry of the Interior***

**Ms Iva Katzerová** - Security Policy Department, Ministry of the Interior

**Ms Eva Romancová** - Security Policy Department, Ministry of the Interior

***Ministry of Justice***

**Mr Petr Forejt** - Legislative Department, Ministry of Justice

**Ms Michaela Hronová** - International Department for Criminal Matters, Ministry of Justice

**Mr Tomáš Hudeček** - Department for International Cooperation, Ministry of Justice

**Mr Jakub Pastuszek** - Director of International Department for Criminal Matters, Ministry of Justice

**Mr Michael Švarc** – International Department for Criminal Matters, Ministry of Justice

***Judges***

**Ms Blanka Kozelková** – judge, High Court in Prague

**Jiří Mádr** – judge, Regional Court in Hradec Králové

**Mr Mr Alexandr Sotolář** – judge, Metropolitan Court in Prague

**Mr Vladimír Stibořík** – judge, president of the High Court in Prague

**Mr Pavel Vaněček** – judge, Regional Court in Hradec Králové

***Police of the Czech Republic***

**Mr Marián Dvorščík** - International Cooperation and Methodology Department, Unit Combating Corruption and Financial Crime, Police of the Czech Republic

***Public prosecutors***

**Mr Boris Havel** – public prosecutor, High Public Prosecutor’s Office in Prague

**Mr Pavel Norek** – public prosecutor, District Public Prosecutor’s Office in Teplice

**Ms Anna Puchtová** – public prosecutor, Regional Public Prosecutor’s Office in Ústí nad Labem

**Mr Petr Šereda** – public prosecutor, High Public Prosecutor’s Office in Olomouc

***Supreme Public Prosecutor’s Office of the Czech Republic***

**Mr Zdeněk Kasal** - Director of Department of Serious and Economic Crime, Supreme Public Prosecutor’s Office of the Czech Republic

**Ms Světlana Kloučková** - Director of International Department, Supreme Public Prosecutor’s Office of the Czech Republic

Friday 9 December

**Ms Světlana Kloučková** - Director of International Department, Supreme Public Prosecutor’s Office of the Czech Republic

**Mr Jakub Pastuszek** - Director of International Department for Criminal Matters, Ministry of Justice

**Mr Michael Švarc** – International Department for Criminal Matters, Ministry of Justice

+ other representatives of the Ministry of Justice, Ministry of the Interior, Police of the Czech Republic, Ministry of Finance



**ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS**

| <b>ACRONYM<br/>ABBREVIATION<br/>TERM</b> | <b>ACRONYM IN THE<br/>ORIGINAL<br/>LANGUAGE</b> | <b>ENGLISH<br/>TRANSLATION/EXPLANATION</b>                           |
|--|---|--|
| AFIS                                     | -/-   | Dtabse of dactyloscopy records                                       |
| AML                                      | -/-   | Czec Anti-Money Laundering Act                                       |
| AoP                                      | -/-   | Act on the Police of the Czech Republic                              |
| ARO                                      | -/-   | Asset Recovery Office  |
| AWF                                      | -/-   | Analytical Work Files  |
| AWF MTIC                                 | -/-   | Europol Analysis Work File - Missing<br>Trader intra Community Fraud |
| AWF SMOKE                                | -/-   | Europol Analysis Work File - Illicit<br>Tobacco Trade                |
| AWF SUSTRANS                             | -/-   | Europol Analysis Work File - Suspicious<br>Financial Transactions    |
| BRCI                                     | -/-   | Banking Register of Client Information                               |
| CARIN                                    | -/-   | Camden Assets Recovery Inter-Agency<br>Network                       |
| CCR                                      | -/-   | Central Credit Register  |
| CPC                                      | -/-   | Criminal Procedure Code  |
| CPIS                                     | -/-   | Criminal Police and Investigation<br>Services                        |
| ETR                                      | -/-   | Electronic Case Management System                                    |
| EU                                       | -/-   | European Union   |
| FCIC                                     | -/-   | Europol's Financial Crime Centre                                     |
| FIU                                      | -/-   | Financial Intelligence Unit  |
| ICIS                                     | -/-   | Interpol information system  |
| MDG                                      | -/-   | Multidisciplinary Group on Organised<br>Crime                        |

| <b>ACRONYM<br/>ABBREVIATION<br/>TERM</b> | <b>ACRONYM IN THE<br/>ORIGINAL<br/>LANGUAGE</b> | <b>ENGLISH<br/>TRANSLATION/EXPLANATION</b>                 |
|--|---|--|
| MLA                                      | -/-   | Mutual Legal Assistance                                    |
| MoU                                      | -/-   | Memoranda of Understanding                                 |
| NRCI                                     | -/-   | Non-banking register of Client Information                 |
| OCTA                                     | -/-   | Organised Crime Threat Assessment                          |
| OLAF                                     | Office européen de lutte<br>anti-fraude         | European Anti-Fraud Office                                 |
| ROCTA                                    | -/-   | Russian Organised Crime Threat<br>Assessment               |
| SIENA                                    | -/-   | Europol Secure Information Exchange<br>Network Application |
| SIS                                      | -/-   | Shengen Information System                                 |
| SIT                                      |   | Schengen Implementing Treaty                               |
| SPTF                                     | -/-   | Special Purpose Training Facility                          |
| STR                                      | -/-   | Suspicious Transaction Report                              |
| TUDU                                     | -/-   | Register of foreigners                                     |
| UOKFK                                    | -/-   | The Unit Combating Corruption and<br>Financial Crimes      |
| VAT                                      | -/-   | Value Added Tax  |