



SIGMA

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CZECH REPUBLIC REPORT ON ANTI-FRAUD SYSTEM 2001

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1 GENERAL OVERVIEW

1.1 Introduction

In the Czech Republic the following organisations are specialised in investigating or prosecuting fraud that could be detrimental to the financial interests of the European Communities:

In the Ministry of Finance:

- General Directorate of Customs (GDC) (Enforcement Division, Internal Control Division);
- Central Financial & Tax Directorate (CFTD) (Department of Methodology & Tax Administration);
- Financial Analysis Unit (FAU).

In the Police:

- Service for Combating Corruption and Major Economic Crimes (commonly used Czech abbreviation — SPOK);
- Organised Crime Department (commonly used Czech abbreviation — UOOZ).

In the Ministry of Interior:

- Bureau of Investigation (BOI).

In the Ministry of Justice:

- Supreme Prosecutor's Office (SPO);
- High, Regional and District Prosecutors' Offices.

In terms of policy making and overall political responsibility, the Ministry of Justice (responsible for the administration of the Courts and the public prosecutor functions) and the Ministry of Interior (responsible for the administration of the police) both play a key role when it comes to fighting fraud. Although there is no government anti-fraud strategy as such, there is a National Program of Combating Corruption. This program was started in 1999 and a report from the Ministry of Interior on the progress of the program was made public in February 2001.

1.2 Institutional Arrangements

1.2.1 *Statutory base for anti-fraud systems, institutions, and functions*

The establishment, status and position of the Czech anti-fraud bodies mentioned above are clearly defined in the Penal (Criminal) Code, the Code on Criminal Proceedings, the Anti-Money-laundering Act, the Act on the Public Prosecutor, the Police Act, the Customs Code, and the Act on the Administration of Taxes and Fees. The legal base appears to provide the fraud investigating bodies with the appropriate powers to obtain and exchange information, and - where appropriate - enforce, question, arrest, seize and search as part of an investigation and bring cases to prosecution. The conditions for co-operation and co-ordination between the anti-fraud bodies are described in the laws regulating their activities and are in many cases laid down in greater detail via bilateral co-operation agreements. Such agreements exist for instance between the GDC, the Police and the CFTD. The Police are not allowed to bring cases directly before the Prosecutor, nor can the evidence gathered by the Police be used as evidence in court. Opening of criminal cases and gathering of evidence to Courts can only result from the involvement of the Bureau of Investigation (BOI).

The investigators and prosecutors met were well aware of both the existence of the EU Anti-Fraud Convention and its general purpose. It was also evident that these authorities would be prepared to take the necessary steps to enable the Czech Republic to meet the obligations laid down in the Convention. One example is the current legal overhaul of the criminal investigation and

prosecution system, under the initiative of the Ministry of Justice, which could streamline the present system.

The Czech Republic has ratified nearly all international conventions referred to in the *acquis communautaire*. In addition to the institutions of the European Union, the Czech Government co-operates internationally with Interpol, the EGMONT Group (on the fight against money laundering), Council of Europe (via GRECO), OECD, IMF, World Bank, UN and Transparency International.

1.2.2 *Prevention and deterrence*

The Czech civil service employment system is poorly regulated, and staff in the public sector do not generally have a high degree of job-security. Furthermore, as salary levels are low in the public sector, keeping qualified staff is a general problem. This situation creates a professional environment within the civil service, which does not encourage honest and impartial behaviour.

In addition to the organisations specialised in fighting fraud, the internal control units of the major public sector spending centres, specialised EU fund managing organisations (CFCU, implementing agencies and SAPARD Agency), and public procurement bodies fulfil important functions, both in terms of actually stopping unjustified or illegal payments and commitments (ex-ante) and in deterring fraud by raising the perceived risk of fraudulent behaviour being detected ex-post as well as ex-ante. The internal control system includes control or inspection units in all Ministries. For example, these bodies follow up and investigate complaints from citizens about the Ministries' handling of particular cases. They are also obliged by law to report any suspicions of criminal activities to the appropriate authorities, police or prosecution. No internal audit units as such exist, except for the SAPARD agency, where an internal audit is required for Commission approval of accreditation of a paying agency, no internal audit units as such exist.

A number of relatively recent reports from NGO's and international organisations concerning anti-corruption do exist (e.g. from Transparency International, GRECO (Council of Europe), and OECD). A general and overall assessment based on these reports is that corruption is a widespread phenomenon in the public sector, and this concern is shared by national institutions, as shown in a report produced in February 2001 by the Ministry of Interior. In the TI Corruption Perception Index for 2001 the Czech Republic came out (together with Bulgaria) with the third worst score among the 10 Central and Eastern European Candidate Countries.

1.2.3 *Detection and investigation*

Fraud investigating bodies include the Police (including specialised units such as SPOK and OUUZ), the Bureau of Investigation (BOI), the FAU, the GDC (Customs) and the CFTD (Taxes). Levels for investigating staff within the Police and the BOI are low when compared to the tasks assigned to these bodies. There are, however, variations between different regional units in terms of available resources, outputs and productivity. As in the rest of the public sector, salaries are modest, even though the level is somewhat higher for investigating staff and even more so for investigators from the BOI. However, specialists and investigating staff seem highly motivated by the nature of their assignments.

Specialised police units, such as SPOK and the BOI, have a high proportion of university educated staff. Training — especially specialist training (e.g. for investigators of economic crime) — is often lacking or only provided on an ad hoc basis. There are no indications that the present budgets/funding levels for the investigating bodies cannot be maintained in the short or medium term. However, the present level is modest and both this and the budgeting mechanisms (e.g. on the basis of numbers of staff) make it difficult to currently update e.g. computer hard— and software.

Equipment, including IT systems, is not evenly disseminated. In a number of cases because the IT equipment had originally been provided via one-off foreign assistance projects. Although the level of equipment both quantitatively and qualitatively seems to be up to European standards in the Customs and the FAU, the Police forces appear to be in a far less advanced situation.

Arrangements to ensure internal control and monitoring of ethical standards among investigators are diverse. There is an Inspection Service within the Ministry of Interior consisting of some 200 staff. This organisation is responsible for investigating corruption, for example complaints regarding police officers that have been received from the control units of Ministries and other state services. As in other major government bodies, there is also a Control and Complaints Department within the Police Presidium, the CFTD and the GDC, which also deals with complaints from citizens. The GDC have adopted a Code of Ethics for Customs officers.

Co-operation between public prosecutors, police and FAU appears to function without any major obstacles, although there are indications that co-operation between the BOI on the one side and the Police on the other is at times problematic.

1.2.4 Prosecution

The public prosecution authority in the Czech republic consists of the Supreme Prosecutor's Office (SPO), the two High Prosecutors Offices in Prague and Olomuc, 8 Regional prosecutors and 89 District Prosecutors' offices. There are special Units for Serious Economic and Financial Crime in the SPO and the High Prosecution Offices in Prague and Olomuc. The supervision of investigations is in the hand of the departments of the high prosecutor's offices departments, whereas the SPO is mainly the contact point for OLAF and supervisory authority for both special departments of the high prosecutor's offices. All cases related to EU funds and OLAF are handled by the SPO. The number, qualifications and financial and technical support of the public prosecutors appear to be appropriate when compared to the nature and the scope of the work involved.

In the course of the penal proceedings the Investigators of the BOI are subordinated the public prosecutors who also has the right to request additional investigation and to undertake its own investigations. In practice however, prosecutors do not conduct investigations and they normally only get involved at the stage where cases have been processed by investigators. The Investigators can initiate the penal proceedings and accelerate the proceedings. The Investigators also have the right to close files directly. This appears to be a major weakness in the smooth and efficient proceeding of criminal cases, in particular regarding complex cases of economic and financial fraud, including damage to the financial interests of the European Communities. A first attempt to establish a clear leading role for the Prosecution in the investigation failed in Parliament in 2000. However, recently a major amendment of the Code of Criminal Proceedings has been passed by Parliament and approved by the President, which aims at integrating the Bureau of Investigators within the investigation branch of the Criminal Police.

1.2.5 Redress and punishment¹

Cases concerning economic crime are often pending before the courts for long periods, in some cases up to four years. According to both the Police and prosecution authorities, at least part of the problem is not only the general lack of judges but in particular the lack of specialisation of the court system in the Czech Republic.

As far as fraud and corruption cases are concerned, the offence/conviction ratio has improved over the last couple of years. In 1997 the ratio between offences registered by the Police and the number of persons convicted for fraud or corruption was 0.67, in 1998 0.69 and in 1999 it was 0.74.

1.3 Co-operation with OLAF

OLAF is fairly well known to most fraud investigating bodies. At the operational level, there is a general awareness of the kind of cases that OLAF is investigating and the issues that would interest OLAF. It would seem that if co-ordination is carried out via the SPO then the necessary co-operation between the national authorities would be achieved. This will also depend on the

1. Although the Justice system is a vital part of the Anti-Fraud system in a country, it was beyond us to undertake a systematic review in the context of this exercise. We record any useful information which we have gathered, but note that it has not been subject to contradiction.

future co-operation agreement between OLAF and the Czech Republic, which is currently being prepared by the SPO. On the negative side, it should be pointed out that some authorities appear to have somewhat overlapping competencies. Not only between Criminal Police's special units — such a SPOK and OOUZ — and the BOI, but also between the special units of the Police. Even though legal reform appears to be underway, the draft amendments to the Penal (Criminal) Code and the Code of Criminal Proceeding have not yet been passed by Parliament. There might be a long and hard political battle ahead for the Ministry of Justice.

It would seem likely that in practical terms OLAF would have no problem in investigating cases in co-operation with the Czech authorities. On the other hand, it is obvious that these same authorities are likely to prefer a solution whereby the actual legal powers remain with them. However, problems may occur in cases where there is uncertainty on the side of OLAF as to the identity of the perpetrator, and the specific nature of the crime (that fits the national “catalogue” of crimes). There could also be limitations if the persons under investigation are in political “immune” positions, such as Ministers and Parliamentarians.

1.4 Capacities to Develop an Anti-fraud System

Most investigating bodies and prosecutors appear to be dedicated to achieving results. There is a general recognition of the need for change (e.g. in the legal set-up, improvement of both capacities and competencies) in the Police (SPOK), GDC and the SPO. In terms of resources for development work, the SPO and the Ministry of Justice appear to be resourceful and in a position to lead the ongoing reform-process. However, it is unclear if these authorities have the necessary political clout or support to succeed.

As there is no overall reform-strategy as such, it is important that reform efforts are co-ordinated with other nation-wide programs, for example, the National anti-corruption program lead by the Ministry of Interior.

1.5 Summary

Overall, current arrangements to prevent and fight against fraud present a certain risk for the the protection of the financial interests of the European Communities. There is scope for strengthening the legislative framework, especially regarding the distribution of responsibilities and co-ordination between different investigation bodies. The Czech Republic has complied with most international obligations concerning economic crime and corruption. The basic integrity framework is too weak at both the legal and implementation level. The institutions directly involved in anti fraud activities appear to have adequate powers but lack capacity. Inter-institutional co-ordination on operations is also inadequate. The anti-corruption strategy of the government is adequately resourced in powers and capacities. Still, fraud as such is not specifically addressed.

2 MAIN INSTITUTIONS

2.1 The Supreme Prosecutor's Office (SPO)

2.1.1 *Legal Framework*

The legal foundation for the Supreme Prosecutor's Office (SPO) and the present structure for the public prosecutor's offices in the Czech Republic is sections 7 and 40 of Act No. 283/1993 Coll. on public prosecutor's offices. In addition, Public notice No. 311/2000 amends public notice No. 23/1994 and provides for the establishing new branches of prosecutors and regulating the tasks on these branches.

Since October 2000 the public prosecution offices have had special units for combating financial and economic crime. Since 5 June 2001 these units have by the notice No. 183/2001 Coll. the sole competence to supervise investigations of all crimes against the EC financial interest.

2.1.2 *Relations with other Institutions*

The Public prosecutor system in the Czech Republic consists of four levels. At the local level there are 89 District Prosecutor's Offices, at the regional level 8 Regional Prosecutor's Offices. Over these units there are two Higher Prosecutor's Offices located in Prague and Olomuc and finally the Supreme Prosecutor's Office which for historical reasons is located in the Czech Republic second largest city — Brno.

The Supreme Prosecutor reports directly to the Minister of Justice and submits regularly a report on the activities of the Prosecution Service from the activities of the preceding year to the Minister.

In accordance with Act No. 552/1991 Coll. on State Control (as amended by Act No. 166/1993 Coll., Act No.148/1998 Coll. and act No.132/2000 Coll.) State Bodies must report all suspicions of crime to the police or the public prosecutor. There has been some discussion with National Bank concerning whether the Bank is covered by the definition of a "state body" and there has been a concrete problem with getting information from the Banking Control Department under the authority of the National Bank.

The SPO is in the process of concluding an agreement with OLAF following the framework of Regulations (EC) No. 1073/1999 and No. 1074/1999 concerning the European Anti-Fraud Office (OLAF). When the agreement is concluded the SPO will be authorised to act as contact point to OLAF and co-ordinate with national authorities including Customs, the Security Commission, the Ministry of Finance, Police and the Supreme Audit Office (NKÚ). It is not sure when the agreement will be concluded, but it could be soon.

SPO seem capable of ensuring the flow of information from relevant national authorities. Though not competent in all areas relevant in the fight against fraud the SPO has the authority to order police, including specialised units, and customs to investigate all suspicions of crime.

SPO emphasised the reports from e.g. the independent external audit authority, the NKÚ as an important source of information. Reports from internal control bodies who do not enjoy a similar degree of independence from the auditee are not similarly highly regarded. Internal control has been identified by the European Commission as a priority for further development and a new statutory framework for public internal control is presently being prepared by the Ministry of Finance.

The SPO is responsible for the information concerning the "Protection of the financial interest of the European Community" in relation to the Czech negotiations on Chapter 28 "Financial control" and co-ordinates these matters with the Ministry of Finance who is the central co-ordinator for the negotiations with the European Commission on this chapter.

2.1.3 *Relations with OLAF*

When agreement with OLAF will be concluded the SPO will be authorised to act as national co-ordinator and contact-point to OLAF concerning prosecution and investigation in the Czech Republic related to EU fund related criminal activities.

One of the outstanding issues to settle before an agreement can be concluded seems to be the scope of the co-operation. The SPO appear to want to focus the co-operation on the flow and exchange of information, whereas it is less evident if SPO is prepared and capable of acting as leading partner in connection with actual investigations of EU fraud.

The respective roles of police, including that of the Bureau of Investigation (BOI), need however to be clarified. In the existing set-up (and in accordance with the Penal code) of the BOI, which is placed directly under the Ministry of Interior, acts as a procedural and technical filter between the investigation period by the police and the legal action (e.g. by prosecutors). At present, approximately 50 % of all cases are suspended because of an investigator's decision. For this and other reasons the present set-up and the particular position is not appropriate for the fight against EU related fraud. In the proposed new set-up the Office of Investigation will be placed under the Police presidium and thus become part of the police organisation.

2.1.4 *Staff, Facilities, Equipment, Budget*

The SPO has 28 prosecutors. There are special Units for Serious Economic and Financial Crime in the SPO and the High Prosecution Offices in Prague and Olomuc. This unit in the SPO has currently 4 prosecutors (planned number 5), the unit in Prague has 9 (planned 17) and in Olomuc there are 5 (planned 8). The supervision of investigations is in the hand of the departments of the high prosecutor's offices departments. The Supreme Prosecutor Office is mainly the contact point for OLAF and supervisory authority for both of the high prosecutor's offices special departments. All cases related to EU funds are handled by the SPO. All prosecutors in the special departments are lawyers by education with at least 15 years of experience.

The SPO seem well equipped with electronic equipment such as television, video surveillance, computers, various security devices (e.g. electronic locks on individual office spaces) and cars.

Training of prosecutors is provided via the Banking Institute in Prague. Much of the training appear to be language training. The Phare 1999 - 2002 program is targeted to the education of these prosecutors in Italy, Germany and England. These courses have been started in autumn 2000.

2.1.5 *Working Methods*

The SPO's prosecutors are lawyers and depend on specialised police units for expertise in connection with specific investigations. The SPO does however have powers to undertake its own investigations. New provisions are being prepared to ensure mandate for the SPO also to employ its own expert staff with other background than law-school.

The practices employed by the SPO in connection with its role in the investigation phase as well as in trial proceedings seem to be in line with European legal practice.

2.2 The Service for Combating Corruption and Major Economic Crimes (Služba P ČR Pro Odhalování Korupce - SPOK)

2.2.1 Legal Framework

The Law on the Czech Republic Police of 1991, as amended, constitutes the legal basis of SPOK. Its mandate is to carry out police tasks in order to reveal crimes and their perpetrators in the fields of corruption and major economic crimes as defined by Constitution, laws and other legal measures.

More specifically SPOK operates by conducting preliminary investigations in case of suspected offences defined by the provisions of the Czech Penal Code pertaining to corruption (§§ 127-breaches of mandatory rules in economic relations, 158-abuse of power by public official, 9k§158-same with conspiracy, 160-passive bribery, 161-active bribery) and to major economic crime (§§ 128-information abuse in business relations, 248-embezzlement, 255-breaches of the duty to administer another's property, 9k§255-same with conspiracy, 256). Major economic crime corresponds to damages over 50 mill. CSK (1.48 mill. Euro). SPOK is the only police service dealing specifically with corruption.

The SPOK comprises the Prague headquarters and 8 regional units.

2.2.2 Relations with other Institutions

Like other parts of the Czech Police, SPOK is subject to the authority of the Police Presidium, which itself reports to the Minister of Interior.

SPOK conducts preliminary investigations in its field of competence, collects the evidence and communicates it to the Bureau of Investigators (separate investigation body which is appointed by and reports directly to the Minister), once the case is considered completed according to legal criteria. Under certain circumstances the case is immediately handed over to the Investigators who either takes over or supervise the investigations conducted by SPOK (i.e. when the punishment is more than 3 years imprisonment, in case of "sensitive cases of corruption", when the perpetrator is already identified or if the damages are estimated to be more than 100 mill. CSK (=2.95 mill. EUR). In order to handle better the cases submitted in particular by SPOK; a unit specialised in economic crime has recently been established under the authority of the Investigators. In accordance with the Penal Procedure Code, the Investigators monopolise the possibility to transmit cases to the Public Prosecution and only the evidence gathered by them can be used in Court. SPOK can be requested by the Investigators to continue to assist an investigation. Furthermore, public prosecutors have the possibility to step in and take part in or supervise the investigation at any time. "Spontaneous" action from the side of public prosecutors is however rare.

The co-operation between SPOK and the Investigators, as well as with other police bodies under the Police Presidium, is governed by Act No. 283/1991 Coll. on the Czech Republic Police, as later amended.

The SPOK maintains relations with specialised bodies operating in the same field of activities, either for receiving information from them or for transmitting information to them. The natural partners are:

- The Ministry of Finance, in particular the Financial Analytical Unit (responsible for fight against money-laundering) and the Customs Administration;
- The Czech Securities and Exchange Commission;
- The Czech National Bank, in particular the banks regulatory body;
- The Army intelligence service.

Cases can also be submitted by such institutions as the Supreme Audit Office.

Co-operation arrangements are based on Memoranda of Understanding signed between the respective authorities. In practical terms, SPOK has no access to database maintained by the partner organisations, because of data protection legislation, and can only ask specific and strictly documented questions on specific cases. SPOK has direct access to all police databases and information.

2.2.3 *Relations with OLAF*

There has been so far no operational co-operation with OLAF. In general the service has had very few connection to OLAF. Only two staff took part in OLAF training events, one of them having left SPOK.

2.2.4 *Staff, Facilities, Equipment, Budget*

SPOK has some 200 job-positions, out of which 150 are field investigators and 50 support staff. 50 more additional positions are planned this year, all for field duties. Recruitment is made primarily within the police forces. SPOK has the highest proportion of university graduates amongst the police bodies. The low level of allowance seems to cause difficulties of recruitment.

There is no specific training programme but a branch of the police academy is specialised in economic crime and has an agreement with SPOK to organise training activities relevant to the needs of this service. Some training is financed via the common budget, but SPOK's special training needs, e.g. in accounting can often not be met internally in the police organisation.

A new training unit has been established with foreign assistance.

SPOK is subject to the same control and staff inspections as for other police bodies (control and complaints department of the Police Presidium, control of respect of data protection, Inspection of the Ministry of Interior). No serious cases of abuse, misbehaviour or corruption have been reported so far.

The service is computerised at a better level than other police services, but still lagging behind the actual needs. As an example the central offices still depend on a number of "386" computers unable to operate common Windows-based software products. SPOK however does have available modern software, e.g. dedicated to the tracing of financial transactions suspected of money laundering.

2.2.5 *Working Methods*

In addition to the general police powers and like the criminal police service and the department of investigation, SPOK is legally entitled to make use of operative searching means and operational techniques. These means and their conditions of use are strictly defined by the police act. This covers e.g. following of persons, use of cover documents, use of agent, use of technical search devices etc. These latter ("operational techniques" are only used by judge's permission with limited time-validity).

2.3 The Financial Analytical Unit of the Ministry of Finance (Finanční analytický útvar — FAU)

2.3.1 Legal Framework

The FAU was established simultaneously with the adoption of the Czech Anti-Money Laundering Act of 1996². It is an independent department of the Ministry of Finance reporting directly to the Minister and responsible for the implementing the tasks conferred to the Ministry by the 1996 Act. This means that the FAU is responsible for receiving, collecting and analysing suspicious transaction reports (STR) from financial institutions. A transaction is considered suspicious when effected under conditions generating suspicion of attempted legitimisation of proceeds. The financial institutions under the Act are the banks, co-operative savings and credit unions, investment companies and investment funds, pension funds, securities traders, entities responsible for managing the securities' market, insurance companies, The Securities Centre, and other legal persons certified to keep parts of The Securities Centre database and perform its other activities, legal or physical persons operating gambling houses, casinos, betting shops, or auction halls, real estate agencies, entities offering financial leasing or other types of financing, foreign exchange bureaux, facilitators of cash or wire transactions of money, savings-plan agents or insurance or re-insurance agents.

In addition, the FAU is responsible for carrying out inspection of these financial institutions in order to check the adequacy of the internal control and other procedures in order to comply with the requirements of the Anti-Money Laundering Act.

2.3.2 Relations with other Institutions

The key partner of FAU is SPOK, the police service responsible for corruption and major economic crime, which is the legal and natural addressee of the analyses performed and relating to cases of suspicion of any crime. The relations are laid down in a MoU agreed between the Ministries of Finance and of the Interior. Copies of the reports sent to SPOK are transmitted to the Prosecutor, but this latter is not supposed to take actions as long as the routine criminal investigation procedures are not finalised (including investigation carried out by the Police Investigation Office whose results only can be used as evidence to the Courts).

In addition to the data collected by virtue of the obligation of reporting under the 1996 Act, the FAU uses information from directly accessible public sources and from non-public sources. It has access on request to the data bases maintained by the Customs and Tax authorities, the intelligence services, the police, the financial institutions and the foreign similar organisations. This access is in most cases granted by 1996 Act, but specific implementing agreements exist in certain cases to detail the practical arrangements (e.g. with the Securities Centre).

In the current legal framework, the FAU cannot inform the competent authorities of cases of suspicion of e.g. tax or customs offences that might appear in course of the data processing work. This would conflict with the strong secrecy requirement pending on FAU's handling on data (1996 Act §7[2]). The Act should however be amended in order to loosen this restriction for tax control purposes.

Once a suspicious case has been transmitted to the law enforcement organisations, the FAU can only involve upon request of the investigating body. Money laundering as such is not criminalised in the Czech Republic and the FAU receives no reports on the judicial follow up of identified suspicious transactions. This could be improved by an amendment to the Penal Code, currently discussed in Parliament, which would result in criminalising money laundering and broaden its scope by including negligence and renounce the exigency of criminal intention.

2. ACT No. 61 Coll.Of February 15, 1996 On Selected Measures against Legitimization of Proceeds from Criminal Activities and on the Amendment of Related Legislation

2.3.3 *Relations with OLAF*

The FAU has only recently been in contact with OLAF (January 2001) in the framework of a meeting with other interested Czech bodies under the umbrella of the Ministry of Finance. No FAU staff has participated in any OLAF-organised training, nor was offered such participation.

The State Prosecutor in the course of the drafting of a Memorandum of Understanding between this authority and OLAF has consulted the FAU. The possibilities of direct co-operation with OLAF seem however limited due to the very strict protection affecting the information gathered and processed by the FAU. It should however be possible to exchange information on the basis of the agreement to be finalised.

The FAU is in close contact with foreign homologues (MoUs are signed with 7 countries, and 5 are in preparation) and represents the Czech authorities in the relevant international fora dealing with fight against money laundering (Egmont Group, FATF, PC-R-EV).

2.3.4 *Staff, Facilities, Equipment, Budget*

The FAU comprises 4 departments (data collection and processing, analytical department, legal and inspection department, international co-operation). It has 28 staff and plans 2 additional positions in the next future. The staff is partly recruited from the various partner institutions of FAU (police, tax, customs etc.) and partly outside. Recruitment is not easy since the type of qualifications looked after (e.g. bank and stock markets specialists) are in high demand in the private sector and the salaries offered are not competitive. A strong training strategy and related programmes are still missing. For the moment, FAU uses on an occasional basis the training opportunities offered by the Ministry of Finance or the partner organisations (e.g. banks). Significant amount of training or information exchange is done in the framework of international co-operation. A Phare-supported twinning project with the UK will start in September 2001.

The service is fully computerised with recent hardware and software. It benefits of updated material and software specifically dedicated to money-laundering analysis. The IT systems and procedures are subject to high security measures.

2.3.5 *Working Methods*

The FAU is not a police body, but an administrative unit and is therefore not empowered entitled to conduct investigations as such and use police methods.

It primarily performs analyses of the data collected using specific sophisticated instruments and occasionally investigative techniques.

It is entitled in certain cases to propose enforcement measures such as cancellation of business licenses in case of non-compliance with the obligations under the 1996 Act, or to require from the financial institution the suspension of suspicious transaction.

The development of FAU and of its working methods seem to have made rapid progress since the creation of the service as the following table shows a significant increase of STR and cases accordingly submitted to the law enforcement authorities:

Year	Suspicious/Unusual transactions reports	Cases submitted
1996	95	0
1997	1 186	12
1998	956	37
1999	1 699	47
2000	1 920	103

Source: FAU

2.4 Central Financial and Tax Directorate (CFTD), regional directorates and revenue offices

2.4.1 Legal Framework

The Central Financial and Tax Directorate (CFTD) was established on basis of the order of the Minister of Finance and is an entity of the Ministry of Finance. The legal basis of the local revenue offices, the regional directorates and Ministry of Finance for the tax procedure is the Act No. 531/1990 Coll. on local revenue offices, as later amended, and Act No. 337/1992 Coll. on Administration of Taxes and Fees, as later amended of regulations. Local revenue offices, of which there are 222, can in accordance with Act No. 431/1990 Coll. undertake investigations (or “tax inspection”). The same goes for the 8 regional tax directorates. Act No. 337/1992 Coll. lays down the primary process standard for the tax procedure. The legal base for the Tax System in the Czech republic is Act No. 212/1992 Coll. on system of taxes, as referred to in Act No. 302/1993 Coll. on the regulation of specific taxes.

As an organisational entity of the Ministry of Finance, the CFTD regulates and directs the methodology and rules applied by the revenue offices but it does not have the authority itself to carry out “tax inspection”. The CFTD has authority to propose amendments to the Act No. 61/1996 Coll. on some regulations against the legalisation of proceeds from crimes and interrelated acts and Act No. 183/1996 Coll. on obligations of reporting fulfilment of the revenue institutions as referred to in Act No. 223/2000 Coll.

2.4.2 Relations with other Institutions

The CFTD can obtain information from and shares information with other Czech authorities. This works both ways but only to a limited extent. In general, the CFTD’s possibilities to get information about suspected tax evaders from other authorities are limited by legal provisions protecting secrecy and confidentiality. This goes also for information requested from the CFTD which can be protected by tax secrecy. This however depends on the specific offences, which are listed in Act No. 337/1992 Coll., section 24. Current legislation is ambiguous though and the CFTD is presently co-operating with the Ministry of Interior on developing shared methodology.

Information can generally be made available from the police and customs. However, the Ministry of Finance’s Financial Analysis Unit (FAU) have no duty to report suspicious transactions to the CFTD. There is a list of institutions that are obliged to report to the CFTD, which includes banks. The CFTD can also enquire via regional investigation units. Enquiries have to be linked to specific cases. The CFTD co-operates with the police and have a duty to report suspicions of criminal offences to this body.. Furthermore, the ordinance (government regulation) on the Office of Investigators contains provisions, which ask investigators to report information relevant for tax purposes.

2.4.3 Relations with OLAF

The CFTD have had little or no contact to OLAF. Enquiries directed to the CFTD concerning OLAF would normally be redirected to the FAU.

2.4.4 Staff, Facilities, Equipment, Budget

The CFTD plus the regional directorates and local revenue offices, comprises some 14 000 staff. Of these 2 000 staff is working with tax inspection and investigation and 750 with funds recovery.

Since 1990 the CFTD has undergone major changes, including training of all 14 000 staff.

A major ongoing twinning project focuses on the following areas:

- 1) Strategy and Collection of Taxes System and Risk management;
- 2) Administrative co-operation and establishment of the Central Liaison Office (C.L.O);

3) Excise duty (it is solved Customs General Directorate).

Of these the first area: Strategy and Collection of Taxes System and Risk management is underlined as the most important. It is broken down to the following tasks:

- Collection of Taxes Strategy;
- Risk management strategy;
- Voluntary Tax compliance —ommunication;
- Human resources management;
- Collection of Taxes System;
- Risk management System;
- Methodology of tax control proceeding.

In the established working groups staff from both the CFTD, regional directorates and local revenue offices are involved. There have been organised 40 so-called "joint events" with the foreign experts since the beginning of project in September 2000. The results are being elaborated in connection with the other areas of the project. The plan is to compile the results of each area in a document, which should then serve as a starting point for implementing new and improved proceedings for the staff of the tax administration.

2.4.5 Working Methods

The controls of the revenue offices include the verification that a legal person is question is taxable. The revenue offices perform their control at the end of the “ assessment period” and after the tax returns (including accounts made for “incoming” and “outgoing” VAT) have been received. Regional revenue offices are also involved in the tax inspection/investigation. The “computed” facts are verified. Investigations only take place after normal tax proceedings have been concluded and are carried out by the regional directorates, who have their own investigation units (there are 8 regional directorates and all except one has investigation or inspection units). The CFTD focuses on prevention and detection of VAT evasion.

The local revenue offices collect information from taxable person, including tax-return documents. This is then followed up with further enquiries; e.g. information from existing files (the so-called personal tax-account). This information is however not centralised. The The tax administration can draw on other, “external”, resources such as the Register of Companies, real estate databases, various public databases with information about the population, e.g. social security databases, information from schools, telephone directories etc. Furthermore, under certain circumstances the tax administration can draw on information, which is normally bound by rules of confidentiality.

When identifying cases of unpaid or incorrectly paid taxes the CFTD uses the following procedure:

1. Re-computes/re-calculates the tax
2. Provided that there is sufficient evidence (referred to as qualified suspicion) this is communicated as an offence to the relevant competent authority, which can be e.g. the police, the public prosecutor, the FAU or one of the regional tax-directorates.
3. Tax is then paid voluntarily, seized or confiscated. If a taxpayer has not paid fully there is a possibility to seize security as a preventive measure.

In terms of collecting money the local revenue offices are not only in charge of taxes but also fees and advance payments. They also handle repayments of unjustified, returned taxes. When tax cases go to court the CFTD can take part in civil suits and can itself sue for payment.

To avoid conflicts of interest there are in place internal rules, which prohibit staff members from handling cases to, which they can be considered a party or in other ways can be subject to suspicion of making biased judgement (e.g. if the staff member have handled the same case in a different function in the organisation, the CTFD, regional or local offices). There are rules in place to ensure appropriate separation of authorisation, payment and accounting functions. The investigative department also has an internal inspection function. This arrangement is however not formalised (e.g. described in regulations or guidelines). Similar units and functions exist in the regional directorates.

2.5 General Directorate of Customs (GDC) (Enforcement Division and Internal Control Division)

2.5.1 Legal Framework

The Customs act of 15 December 1992, as amended³ constitutes the legal basis of the activities of the Customs administration in general.

The Act provides the statutory base for wide-ranging powers of enforcement and investigation, including (§§ 30-43 of Customs Code):

- the right to demand explanation;
- the right to demand proof of identity;
- detention of a person;
- the right to restrain the movement of aggressive persons;
- the right to use technical means to Immobilise a vehicle;
- the right to take away a weapon;
- the right to use means of surveillance and operative surveillance equipment;
- the right to carry and use weapons.

The internal control division works on the basis of the Customs act but also of the Budget law and the Accounting law. It is responsible for carrying out financial audit/control of the Customs administration (control of Customs budget but also of Customs revenues) and Inspectorate functions to detect cases of corruption and other misbehaviour within the Customs administration.

2.5.2 Relations with other Institutions

The enforcement division has ongoing relations with the criminal police and the judiciary. There is a general obligation of co-operation under the Customs law, Police law and Criminal Procedure law but sometimes specified by particular administrative agreements such as those existing between the Ministries of Finance and of the Interior, the General Director of Customs and the Police Presidium as well as agreements at the local level. The co-operation is intensive with the police bodies in the field of drugs, alcohol and electronics. It is less developed in the field of anti-money laundering (with the Financial Analytical Unit of the Ministry of Finance).

Approximately 200 customs officers have the same rights as criminal police officers (in the Inspectorates of Customs and Financial Guard).

Customs officers can initiate criminal procedure. The case must be handed out to the police investigator (member of Investigation Service - Investigation Service is independent on the rest of the police) under two conditions: 1. The perpetrator is known, 2. The crime is punishable with more than 3 years of prison under the Penal Code. There is a possibility to hand over the case to the Public prosecutor. In this case public prosecutor orders the case to the police investigator.

The first Chamber of the Parliament approved the significant amendment of the Code of Criminal Proceedings. This law will come into the force on 1 January 2002. This new law simplifies criminal procedure. The Investigation Service will be abolished and the Investigators will be incorporated into the criminal police. On this new law customs officers will initiate criminal procedure under the same conditions (see above) and will hand the cases over to the public prosecutor.

3. Act nr 13/1993 amended by Acts No. 35/1993 and 113/1997

2.5.3 *Relations with OLAF*

The protocol No. 6 of the Europe Agreement constitutes the main base for the co-operation with OLAF so far. The Czech Customs have participated to series of meetings organised by OLAF. The Czech customs conducted 10 big investigations on behalf of OLAF application over the past five years. OLAF can investigate for the Czech customs authorities and visa-versa.

2.5.4 *Staff, Facilities, Equipment, Budget*

Approximately 1 200 staff out of a total of 9 500 customs officers are engaged in “enforcement” activities at the central headquarter, the 8 customs regional directorates, and the 91 customs houses, and the 17 Inspectorates of Customs and Financial Guard .

The internal control division has 36 staff at the headquarters and ca. 8 staff in each of the Customs directorates, a little more than 50 per cent involved in financial audit, the rest in inspection functions.

The head of Inspection selects the enforcement staff. They should have received basic customs training and receive an additional specialised training (accounting, investigation skills, intelligence matters, risk analysis etc.).

The Customs enforcement division has benefited from Phare-supported programmes on customs intelligence and information technology (Customs Intelligence and Information Project).

The 18 customs mobile groups are provided with specialised and very modern equipment such as endoscopes, mobile X-ray sets etc. Special surveillance unit is extra ordinary equipt.

Besides the classical Customs laboratory, there is a special forensic laboratory.

2.5.5 *Working Methods*

Following the powers defined in the Customs act the working methods employed by customs officials includes on-the-spot checks of goods, seizure of goods, questioning and detention of persons, checking accounting information from various sources, conducting post-clearance audits and inflicting fines. In addition the Enforcement Division of the GDC and Inspectorates of Customs and Financial Guard have “extraordinary powers” such as control delivery of drugs, use of informants, the use of cover identities, the use of decoys and security equipment and investigation operative techniques (search for, open and examine consignments and to analyse them using criminological methods, listen to and record telecommunication traffic, make video, audio or other recordings in a clandestine manner).

The enforcement division has a methodology department which as in particular produced general guidelines as well as guidelines addressing special type of crime. The GDC also has 18 mobile groups with special vehicles and special equipment such as endoscopes, mobile x-ray, surveillance units, various mobile computer facilities, GSM, forensic facilities and major laboratory for criminal forensics.

Typical EU related frauds involving OLAF have been frauds concerning the origin of goods and export subsidies (to and from NIS-countries), e.g. involving butter, meat, silicon carpets.

In 2000 there where 20 000 Customs delicts (legal persons), 11 000 Customs offences (natural persons) and 1 170 criminal cases.

3 LIST OF ANTI-FRAUD DOCUMENTATION COLLECTED JUNE 2001

1.	“Analyza porusovani celnich predpisu v roce 2000”, Activity and outcome report Czech Directorate General of Customs 2000 (in Czech)
2.	“Corpus Juris 2000”, Publication Edited and Co-authored by JUDr. J. Fenyk, Deputy Supreme Prosecutor.
3.	“Report on Corruption in the Czech Republic and Meeting the Schedule of Measures Adopted under the National Programme of Combatting Corruption”, Ministry of the Interior, Prague, February 2001
4.	“Sluzba p CR pro odhalovani korpce a zavazne hospodarske trestne cinnosti”, Presentation (slides) of SPOK (in Czech - 2 copies, 1 with hand-written translation)
5.	“Towards Greater International Co-operation in Law Enforcement within the Region”, paper by SPOK
6.	“Synopsis”, DG Budget synopsis on Financial Control in the Czech Republic, 15 January 2001
7.	“Review of Implementation of the Convention and 1997 Recommendation”, review by OECD on the Czech government’s progress in implementing the Convention on anti-corruption.
8.	“ Subject: Chapter 28 “Financial Control” (CZ Republic), Letter from J. Andermann concerning the Czech Republic’s progress in negotiating chapter 28, financial control, 23 May 2001
9.	“Police of the Czech Republic, Service for Combating Corruption and Major Economic Crimes” (title of letterhead), 2 page description of SPOK.
10.	“Chapter 8 Recovery”, presumably Czech prosecutors’ reply to Chapter 24 questionnaire from Commission services or expert team.
11.	“Full text of Czech National Council Law on the Czech Republic Police, June 21, 1991, No. 283 Dig. In the sense and amendments made by the CNC Law No. 26/1993 Dig., by Law No. 67/1993 Dig., by the Law No. 163/1993 etc.”
12.	“Administration Douaniere Tcheque”, Presentation (slides) of Czech Customs (in French)
13.	“Organisation of Public Prosecution of the Czech republic”, one page organisation chart of prosecution (black and blue print)
14.	“Public Notice [more correctly Act] No 311/2000”, amendment to Act on public prosecution establishing new structure with High Prosecution Office in Olomouc and branches in Brno and Ostrava
15.	“Organisation of Supreme Prosecutor’s Office”, chart showing SPO’s internal organisation.
16.	“Organisation of the Superior Public Prosecutor’s Office”, chart showing High prosecutor in Prague’s internal organisation.
17.	“Organisation of the Superior Public Prosecutor’s Office”, chart showing High prosecutor in Olomouc’s internal organisation.
18.	“Multilateral Conventions ratified by the Czech Republic”, list from SPO 04/06/01.
19.	Letter from the Council of Europe Parliamentary Assembly enclosing “Recommendation 1507/2001 on Europe’s fight against economic and transnational organised crime: progress or retreat”
20.	“Evaluation of Offices of Investigatin in CR in 1999”, table with statistics
21.	“Fraud and Corruption Information”, cut and paste document from progress reports concerning chpt. 24 and fraud and corruption
22.	“1.6 The Judiciary”, NB! On POLAND, information on Customs relevant for Czech Republic (French)
23.	“CR twinning — Project management”, a complex project organisation for twinning in CFTD
24.	“(1.) General Presentation of the Evolution of the Judiciary System”
25.	“Czech Republic: 1. Outline of the Criminal Justice System and the Prosecution System”

26.	Quick-view screen printout of executive summary of NPAA 2001
27.	“Preliminary draft: MISSION REPORT: Second assessment mission in the fields of Justice and Home Affairs in the Czech Republic”
28.	“IX. Reform of the Judiciary”, extract from Chapter 24 information (presumably as submitted to the Commission)
29.	“Financial Analysis Unit of the Ministry of Finance of the Czech Republic”, presentation slides
30.	Handwritten notes on Anti-Fraud, institution specific questionnaire: MoJustice, 070601
31.	Handwritten notes on Anti-Fraud, institution specific questionnaire: MoInterior, 070601
32.	“The Criminal Code”, extract concerning economic crime
33.	The EU Anti-Fraud Convention
34.	Financial Control questionnaire of 1999 filled in for Czech Republic
35.	“Government of the Czech Republic: Resolution of the Czech Republic No 125, 17 February 1999 on the Government Programme to Combat Corruption in the Czech Republic
36.	Amendment to the Police Act “Unofficial Translation, Government Draft of ACT of 2000”
37.	Customs Code of the Czech Republic
38.	"cinnosti územních finančních orgánu za rok 1999"(report from MoF of 2000 on State Revenue Bodies) Cj: 481/1 583/2000
39.	Strategic Development Plan of the Supreme Audit Office of 2001
40.	“Analysis of Cigarette Smuggling in 2000” MoF General Directorate of Customs
41.	The Economist Report on Czech Rep.
42.	Public Management Profiles of Central and Eastern European Countries Czech Rep. of Sept 1999
43.	Act no. 61 Coll. Of Feb 15 1996 “On selected Measures against Legitimization of Proceeds from Criminal Activities and on the Amendment of Related Legislation”
44.	Draft Act of 2001 on Financial Control in Public Administration and Amendments to Some Acts (the Act on Financial Control)
45.	Draft of Czech Rep. Anti-Fraud Assessment 2001 18/07/2001
46.	Baseline spreadsheet: Anti Fraud 2001
47.	Accession Partnership 1999
48.	ISPA Financial Flows Manual April 2001 - MoF National Fund Dept.
49.	Organisation chart for Central Financial & Tax Directorate of June 2001 Czech version
50.	Organisation chart for MoF June 2001 Czech version
51.	Information from FAU about output 1996-2000
52.	MoInterior Organisation chart of 12/03/2001 Czech version
53.	Interview meeting schedule Prague 4-8 June 2001
54.	Report — on the result of an audit selected areas of state budget fund management of Ref.: 172/53 549/1998 (copy No. 3)
55.	Report — Result of audit of the Czech Rep. Ref.: 172/15 847/1/1999 (Copy No. 3)
56.	MoInformation to EU Commission on Chapter 28 for 2001
57.	Note to Ms. Hardeman from R. de Koning
58.	Selected financial control activities of the Government of the Czech Rep. From 1 May 1999 to 30 May 2000 from MoF
59.	SIGMA letter to MoF — date 25/05/2001
60.	SIGMA letter to Czech MoAgriculture Date:28/11/2000