Regulatory Reform in the Czech Republic

Government Capacity to Assure High Quality Regulation

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FOREWORD

Regulatory reform has emerged as an important policy area in OECD and non-OECD countries. For regulatory reforms to be beneficial, the regulatory regimes need to be transparent, coherent, and comprehensive, spanning from establishing the appropriate institutional framework to liberalising network industries, advocating and enforcing competition policy and law and opening external and internal markets to trade and investment.

This report on *Government capacity to assure high quality regulation* analyses the institutional set-up and use of policy instruments in the Czech Republic. It also includes the country-specific policy recommendations developed by the OECD during the review process.

The report was prepared for *The OECD Review of Regulatory Reform in the Czech Republic* published in 2001. The Review is one of a series of country reports carried out under the OECD's Regulatory Reform Programme, in response to the 1997 mandate by OECD Ministers.

Since then, the OECD has assessed regulatory policies in 16 member countries as part of its Regulatory Reform programme. The Programme aims at assisting governments to improve regulatory quality — that is, to reform regulations to foster competition, innovation, economic growth and important social objectives. It assesses country's progresses relative to the principles endorsed by member countries in the 1997 *OECD Report on Regulatory Reform*.

The country reviews follow a multi-disciplinary approach and focus on the government's capacity to manage regulatory reform, on competition policy and enforcement, on market openness, on specific sectors such as telecommunications, and on the domestic macro-economic context.

This report was prepared by Cesar Córdova-Novion, Sue Holmes and Scott Jacobs in the Public Management Service of the OECD. It benefited from extensive comments provided by colleagues throughout the OECD Secretariat, as well as close consultations with a wide range of government officials, parliamentarians, business and trade union representatives, consumer groups, and academic experts in the Czech Republic. The report was peer-reviewed by the 30 member countries of the OECD. It is published under the authority of the OECD Secretary-General.

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Executive Summary

Background Report on Government Capacity to Assure High Quality Regulation

Can the national administration ensure that social and economic regulations are based on core principles of good regulation? Regulatory reform requires clear policies and the administrative machinery to carry them out, backed by concrete political support. Good regulatory practices should be built into the administration itself if the public sector is to use regulation to carry out public policies efficiently and effectively. Such practices include administrative capacities to judge when and how to regulate in a highly complex world: transparency, flexibility, policy co-ordination, and understanding of markets and responsiveness to changing conditions.

In only ten years, the Czech Republic has largely completed the move from a planned socialist economy to an open market democracy. Today, about 77% of GDP is produced by the private sector, compared to less than 5% in 1989. Following fundamental changes to its role, and the construction of new capacities and institutions, the Czech state is now an accountable implementor of public policy, and an increasingly capable regulator and overseer of competitive markets. Substantial powers are being devolved to local and new regional governments, which should open new opportunities for responsive governance, as well as create new challenges for regulatory reform. Fast track harmonisation with EU legislation has supported the legal and regulatory transformation.

Substantial steps have been taken to enhance capacities to produce high quality regulations, and some useful institutions were revived from the pre-communist area. The current process for developing laws and regulations, embedded in the *Governmental Legislative Rules*, establishes a well-structured mechanism for intergovernmental consultation on policies and legal drafts. Publication of an annual legal agenda has enhanced public consultation mechanisms that are increasingly used across the administration. Located at the centre of government and supported by two specialised departments, the well-respected Legislative Council improves the legal quality of texts. A modernisation programme launched in 1997 — which includes a resolution of September 2000 to adopt the OECD's 1995 Recommendation on Improving the Quality of Government Regulation — should help further promote good regulatory management practices in the Czech Republic.

Such institutional drivers, tools for quality regulation, and new commitments for further action are essential as the Czech Republic continues to strengthen market functioning, enhance the effectiveness of the state, and accelerate economic convergence within Europe. Further efforts are needed. The 1997 currency crisis and popular backlash against abuses during the rapid privatisation processes exposed weaknesses and gaps in the regulatory framework. In the first half of the 1990s, economic reforms leaped ahead of institution-building. The Czech transition illustrates the need to complement deregulation and market liberalisation with well-designed and market-oriented re-regulation and capacity-building. This dual approach is necessary to protect market competition in the interests of consumers and to safeguard other public policy interests.

The efficiency, accountability and transparency of the public administration merit further attention to accompany and increase the benefits of economic reforms. Ongoing devolution and decentralisation are reshaping the state to strengthen accountability and responsiveness to citizens, though new uncertainties are arising for the functioning of an open, competitive and market-oriented regulatory environment at local levels. As the Czech political system has recognised, overhaul of the judiciary is needed to assure a fair and efficient functioning of transactions between citizens, businesses and the public administration.

Based on experiences in other OECD countries, a number of steps would improve regulation in the Czech Republic, permit the Czech Republic to reap greater benefits from economic reforms and integration into Europe, and establish a stronger institutional basis for more rapid economic and social convergence with other European countries. The government of the Czech Republic should:

- *Increase the capacity and accountability of the public administration by a more flexible and performance-based system of human resource management, and by ensuring the accountability and transparency of administrative decisions and making appeal against decisions easier.*

The quality of the civil service is one of the most important elements of a quality regulatory system. A revised and fully implemented framework for the public administration should clearly separate political and administrative levels in the public service and avoid conflicts of interest for public servants. Introducing greater flexibility into hiring, firing, pay and promotion, (including offering market-competitive remuneration for some skills) will help develop a more professional and capable efficient public administration particularly in the new market based institutions. Other reforms to consider include: clear mission statements for ministries and their units, combined with performance-based systems to assess results; more mobility of high officials between ministries to enhance co-operation among ministries; enhanced training and skills, especially managerial and economic skills; and enhanced accountability of public servants for their decisions. A more skilled and market-knowledgeable staff is a particularly high priority for the new market-oriented institutions that are regulating increasingly competitive markets.

- *To clarify that all ministries are responsible for acting in accordance with open and competitive markets as they carry out their missions, and to guide the use of regulatory powers, the role of competition and market openness principles should be strengthened government-wide, perhaps through revised mission statements. More use could be made of the Office for the Protection of Economic Competition's annual report to address these issues.*

Reforms to framework laws for the civil servants, and better co-ordination across the government will greatly boost regulatory reform capacities in the government and reduce the risks of regulatory failures. However, these crucial elements should be structured and driven by a government-wide policy and appropriate institutions that support competitive and open markets. The government could explicitly include in the mandates of ministries, agencies and regulators the responsibility to support competition principles and market openness. All ministries, as they carry out their policy missions, should be responsible for eliminating as far as possible constraints on competition within their jurisdictions, to respect competition and market openness principles, and reduce the risk of anti-competitive state actions. Ministries should be responsible for co-ordinating with the Office for the Protection of Economic Competition so that conflicts are dealt with quickly. The Office's annual public report should assess the consistency of ministerial actions with competition and market openness principles, and could be discussed in the Regulatory Reform Committee (see next recommendation).

- *Improve the speed and effectiveness of regulatory reform through (i) the establishment of a ministerial-level Regulatory Reform Committee to enforce the regulatory reform policy, and (ii) an expert unit ('the oversight unit') in the Government Office to certify the quality of regulatory impact analyses, to prepare public reports on progress by ministries in improving regulatory quality, and, over time, to develop a permanent regulatory management system.*

In September 2000, the Czech Republic joined the growing list of OECD countries that have integrated the 1995 OECD Council Recommendation on Improving the Quality of Government Regulation into their regulatory frameworks. Sustained effort by the ministries will be necessary to implement the regulatory quality policy. This will be assisted by continual oversight and enforcement at ministerial level by a Regulatory Reform Committee. The government stated in the September 2000 Resolution that it intends to create an oversight unit in the Government Office, a positive and necessary step. In particular, the unit should have enough independence from the ministries, capacities and resources to manage and enforce a system of regulatory impact analysis. The credibility of the unit would be enhanced, and Parliamentary support strengthened, if its role and the responsibilities of the ministries were incorporated into the Legislative Rules.

- *Require that ministries carry out regulatory impact assessment (RIA), based on OECD best practices, for all proposed regulations, tailor the level of analysis to match the significance of the regulation, and integrate RIA with the "two stage process."*

The government stated, in September 2000, its intention to introduce RIA, in parallel with the new oversight unit. The RIA initiative should be implemented as a high priority. Details of implementation by the ministries are crucial to the effectiveness of the RIA policy. A key element to consider is the adaptation of RIA to the Czech Republic's existing "two stage approach" for decision making in order to target scarce RIA resources to the most costly regulations, and to identify alternative regulatory and non-regulatory solutions as soon as possible. In the short run, the OECD checklist could function as a preliminary RIA. In the medium term, the government should implement a targeted RIA system anchored on an explicit benefit/cost test. Other important elements of RIA include integration of the analysis into public consultation to gather information and opinions and to improve the quality of RIA.

- *Further strengthen anti-corruption efforts by improving transparency in applying regulations. Positive steps would include reviews of formalities (licences, permits and authorisations) and establishment of a central registry of formalities with positive security.*

Although it is difficult to ascertain the actual level of corruption in the Czech Republic, anecdotes and information reported by the government as part of its anti-corruption fight suggest that it is perceived to be a continuing problem for businesses. The Czech Republic may find it useful to increase transparency and accountability by a thorough review of administrative formalities underpinning contacts between the public and private sphere, including both the need for the formality and its means of application. Establishment of a centralised registry of all administrative formalities with positive security (meaning that only the procedures contained in the registry have legal effect and all the requirements that need to be fulfilled by any given individual or business are listed) will improve transparency and compliance, and further safeguard against potential abuses.

- *Further improve transparency by extending legal requirements for notice and comment procedures, already required for technical standards, to all ministries and agencies during the development and revision of regulation. Procedures for openness should be standardised for all advisory bodies.*

Adoption of a public consultation requirement covering all substantive new laws and lower-level rules would promote both the technical values of policy effectiveness and the democratic values of openness and accountability of government. Notice-and-comment processes, as one approach to public consultation, are based on clear rights to access and response, are systematic and non-discretionary and are open to the general public as well as organised interest groups. Requiring that all regulatory projects be published together with the regulatory impact analysis could also strengthen consultation.

- *Promote the adoption of market-oriented policy instruments through guidance and training.*

Stronger encouragement from the centre of the government to move away from rigid 'control and command' requirements to more efficient and flexible kinds of incentives is needed. These efforts should be supported through training, networking, guidelines and cross-fertilisation between sectors and expert assistance where necessary. Public reports by the proposed oversight unit (see recommendation above) on alternatives adopted during the past year could help monitor progress.

- *Improve the policy foundation for the efficiency, independence and accountability of new independent regulatory agencies by developing guidelines for their systems of governance, policy coherence, working methods, and relations with the competition authority.*

To ensure that the new sectoral regulators are accountable and independent from private and politically narrow interests, a clearer framework for their establishment is needed. Greater transparency in their regulatory activity and governance, as well as a demonstrable true independence, is required to establish a level playing field for market actors and to inspire the confidence needed to simulate investment. Links with sectoral ministries and the competition office should be clearly worked out. A high level of technical capacities in the staffing should be ensured, partly through higher pay for valued skills.

Strengthen regulatory quality disciplines within sub-national authorities, focussing in particular on accountability, transparency, and market-orientation.

Decentralisation of regulatory competencies to regional and local governments carries both opportunities and risks. Regulatory quality could decline if these levels of government are not prepared to act in accord with regulatory quality principles. To reduce the risks of capture by interest groups, adverse impacts on competition and market access, and corruption, the government should accompany existing *ex post* controls, such as the intervention of the courts, with accountability and transparency measures to be applied *before* local government bylaws are passed. Regional and local governments should, at minimum, be expected to apply the OECD Recommendation for Improving the Quality of Government Regulation and its accompanying checklist. Benchmarking of regulatory regimes, such as the number and quality of business licences, in municipalities could also provide incentives to detect best practices or speed up progress.

1. REGULATORY REFORM IN A NATIONAL CONTEXT

1.1. The administrative and legal environment in the Czech Republic

Regulatory reform is central to the economic and social transitions underway in central and Eastern Europe.[1] Regulatory reform in a transition setting is not essentially a deregulatory task, but a regulatory quality task, which lies at the heart of governance reforms aimed at developing new relationships linking citizens, the state and the market. Regulatory reform requires both the dismantling of central-planning institutions and the building of new regulatory regimes, including instruments, policies, and institutions, indeed, new forms of co-operation, power-sharing and decentralisation in a democratic society.

The Czech Republic's ten-year transition to a market democracy that began in 1989 has required fundamental changes to the role and culture of the public sector and the horizontal and vertical organisation of the state. Dramatic reforms over the decade have moved the state from a centralised and authoritarian controller of economic and social life toward a new role as an accountable implementor of public policy, and an increasingly capable regulator and overseer of competitive markets. The legal system has been reconstituted[2] so that it is based on a new framework for a democratic rule of law.[3] Reform of the state encountered great difficulties (including the 1993 break-up of the Czech and Slovak Federal Republic into two countries, and the 1997 currency crisis), but many substantial steps have been taken.

Relative to other aspects of the transition, however, state reform to rebuild its regulatory capacities has lagged. The first priorities of the Czech transition were to establish democracy through transfer of state powers to democratic institutions; and to create a free market through implementation of an economic reform programme, liberalising foreign trade and domestic prices (though price controls remained in some important markets), establishing currency convertibility, deregulation and rapid privatisation. Some market-economy institutions were established. Basic institutional underpinnings of the market economy — in areas such as property rights, the financial sector, corporate governance, and bankruptcy — were put in place. Both priorities required that the centralised administrative state be rolled back, and it was, very rapidly, through a reinvigorated parliament and the rapid introduction of free market institutions a in the early 1990s. Democratisation and consolidation of the state received high priority. Constitutional safeguards, electoral institutions and mechanisms, and clear separation of state powers (parliament, government and judiciary) were developed first. In parallel with the restoration of democracy, the Czechs and Slovaks embarked on a unique "velvet divorce" that split the federation into two new states as of the 1st January 1993.

The Czech Republic also moved fast on reform of its subnational and international relations. In 1990, the country began to reverse its extremely centralised organisation through a first territorial reform.[4] After the consolidation of the Czech Republic, an ambitious fast track course was launched to join the European Union (the accession process began in 1993) and international organisations such as OECD (the Czech Republic joined in 1995) and NATO (1999) (see Section 2.3).

However, political awareness of the need for an effective public administration and a robust and modern regulatory framework to support democratic and market institutions came much later. This lag in rebuilding the state through public sector and regulatory reform imposed a heavy price on the transition of the Czech Republic. Lack of a good regulatory framework for market functioning was inculpated in the economic recession of the mid-1990s. The privatisation programme did not always produce the competitive and efficient firms that were expected, partly due to lack of proper regulatory and legal frameworks (see Box 2).[5] The late start in reform of the public sector, gaps in the regulatory framework, as well as delayed policy corrections to mistakes in market liberalisation amplified the mistrust and scepticism of Czech citizens toward the state.[6] Reforming the regulatory instruments of the state could help restore trust between citizens and government institutions.

Box 1. **Good practices for improving the capacities of national administration to assure high quality regulation**

The OECD Report on Regulatory Reform, welcomed by Ministers in May 1997, includes a co-ordinated set of strategies for improving regulatory quality, many of which were based on the 1995 Recommendation of the OECD Council on Improving the Quality of Government Regulation. These form the basis of the analysis undertaken in this report, and are reproduced below:

A. BUILDING A REGULATORY MANAGEMENT SYSTEM

1. Adopt regulatory reform policy at the highest political levels
2. Establish explicit standards for regulatory quality and principles of regulatory decision-making
3. Build regulatory management capacities

B. IMPROVING THE QUALITY OF NEW REGULATIONS

1. Regulatory Impact Analysis
2. Systematic public consultation procedures with affected interests
3. Using alternatives to regulation
4. Improving regulatory co-ordination

C. UPGRADING THE QUALITY OF EXISTING REGULATIONS

(*In addition to the strategies listed above*)

1. Reviewing and updating existing regulations
2. Reducing red tape and government formalities

Source: OECD (1997), "Regulatory Quality and Public Sector Reform," in *The OECD Report on Regulatory Reform: Thematic Studies*, Paris.

To some extent, the Czech Republic faced a greater task of public sector reform in 1989 than did its neighbours. On one hand, the Czech pre-war administrative and legal system was based on the Austrian civil law system of the Austro-Hungarian Dual Monarchy.[7] Some traditions and systems relating to public administration and law-making survived the communist period, such as the Government Legislative Rules on developing legislation that had been in place since the foundation of the Czechoslovak Republic in 1918, with a number of partial amendments. This legal legacy was of value at the end of the four decades of the communist period, as it provided a core of legitimate national institutions around which the Czech Republic could strengthen and rebuild its institutions and administrative procedures. On the other hand, the Czech State was more thoroughly "socialised" in the communist period compared to other Central European countries.[8] In 1989, compared to other countries in transition, the country had fewer people (in or out of government) and institutions who could understand and implement market-oriented principles and practices.[9] Hence, the top-down reform agenda was slowed as it filtered through the public administration. Reform capacities lagged reform policies.

Today, many of the highest priority challenges facing the Czech Republic lie in improving the capacities of the public administration — its skills, its structures, its accountability for performance, its relation with and understanding of markets and consumer interests, its culture, and its style of operation.[10] With the commitment to make a series of reforms to the transparency, institutions, and skills of the public sector, the government has demonstrated its renewed attention to these issues. In completing a comprehensive regulatory framework, needed actions fall into two categories:

- Specific regulatory reforms are needed to underpin market functioning, including refinement and creation of new institutions such as independent regulators, relations of the public administration with the competition authority, and issues of market entry and exit. Many regulations and institutions needed for the smooth operation of markets — such as government procurement laws, technical standards and business start-up rules, and the establishment of a competition policy, law and authority — have been in place in the Czech Republic for a number of years.[11] However, other basic laws were developed late or are inadequate. More progress is needed on framework issues such as corporate governance the rules applying to civil servants, and the law relating to the judiciary, while state entanglement with the private sector through continued public ownership of some enterprises and involvement in restructuring decisions creates moral hazards and weakens market performance (see Chapters 1 and 3).

- Following the positive steps taken in 2000, broader government-wide reforms are needed to establish the efficiency, accountability, capacity, and transparency of the central administration and its regulatory quality management. Many of the reforms to improve the efficiency of the judiciary system are not completed and decentralisation of the state to new regional governments should be carefully structured to preserve regulatory quality. Recent reforms such as the creation of an ombudsman and the *Freedom of Information Act* are positive steps to improve transparency and citizen focus.

Five challenges seem particularly important to regulatory quality. The first, is to ensure any remaining inconsistencies between the roles of the state as owner, the state as regulator, and the state as policy maker are resolved. The policy missions of the public administration have not been clearly defined to incorporate citizens' needs and rights, and competition and market openness principles. The roles of new market institutions such as the sectoral regulators are not yet defined sufficiently to permit them to play their necessary roles. The first government-wide definition of regulatory quality — essentially a statement of how the state will use its regulatory powers — was adopted late in 2000.

Second, the efficiency and transparency of the Czech public administration should be improved. Politicisation of civil servants is still a problem, partly due to the absence of clear-cut rules to avoid conflicts of interest of public administrators' actions — during their tenure as well as after leaving the public sector.[12] Mobility between ministries or from outside the public service is rare and this reduces cross-fertilisation of ideas and reduces co-operation between ministries and agencies. Pay of public servants (especially for highly skilled personnel) has lagged relative to rapid increases in the private sector, while the existing performance pay mechanism does not operate effectively (see Box 3). As a result, attracting and retaining expert personnel are difficult. These problems are greater for new institutions, including the new market-oriented bodies, such as sectoral regulators and the competition authority, which compete for experts in competitive labour markets dominated by private companies.[13]

Box 2. **Privatisation in the Czech Republic**[14]

Three techniques were used to transfer the ownership of state assets as rapidly as possible.

- Restitution involved, where possible, the return of property confiscated by the communist regime to the original owners or their offspring.
- Small scale privatisation sold shops and restaurants through auctions, generating revenues worth about 3.5% of 1993 GDP.
- Large-scale privatisation involved privatisation of unincorporated companies through public tender, auction and direct sales to domestic or foreign buyers and for incorporated companies, employee buyouts, restitution, free transfer of shares to municipalities or health and retirements funds and the exchange of shares for vouchers were also used.

Transferred property was worth over 50% of 1993 GDP. About half of the incorporated companies were privatised through two waves of voucher privatisation (in 1992 and 1994). About 6 million out of 7.6 million eligible citizens bought voucher booklets and most exchanged them for shares in the Investment privatisation funds (IPF). By 1995, those enterprises that could not find a buyer and 56 "strategic" enterprises (mostly utilities, the four big banks, steelmakers etc) continued to be owned by the National Property Fund (NPF).

However, key regulatory gaps and weaknesses marred the large-scale privatisation process. First, corporate governance rules were too frail to provide transparency to investors in a market with complicated and dispersed ownership patterns. A further problem arose from the fact that most of the largest IPFs were operated by management companies owned by major domestic banks in which the state has or had a controlling stake through the NPF. This created 'moral hazard' incentives for IPFs, compounded by poor prudential regulations on banks. Finally, a faulty bankruptcy law and slow and ineffective judiciary allowed firms to survive without taking fundamental steps to improve profitability.

A third impediment to an efficient and transparent administration is weaknesses in co-ordination, control and accountability mechanisms:

- The procedures to support co-ordination are in place at the ministerial level when developing policy (including a new regulation), through bodies, such as the Government Office, government advisory bodies and inter-ministerial commissions.[15] Even so, it has been observed that Cabinet must resolve many differences between ministries that might have been settled earlier in policy development. Furthermore, due to the strong departmentalisation of the administration, ministerial-level policy co-operation does not apply well to working-level co-ordination mechanisms to implement policies.[16] This hinders the resolution of crosscutting issues and implementation of complex and government-wide policies. For instance, government-wide regulatory quality policies might be difficult to implement effectively across the public administration.

- Though the Czech administration has strong hierarchical traditions, accountability mechanisms for the performance of the bureaucracy are weak below the level of political policy. With respect to legal mechanisms for accountability of the administration, the Constitution requires that actions and decisions of public servants be based in law.[17] The current *Administrative Procedures Act* (1967) and the *Civil Procedure Code* do not apply to all administrative decisions which have impacts on individuals, as many of the conditions attaching to appeal are contained in the relevant act, and it provides limited and costly appeals mechanisms.[18] The Czech government has begun reforms to strengthen individual guarantees and rights with respect to appeals, decisions, and delays.

- While accountability and transparency mechanisms have been improving, concerns remain about the extent to which public servants and private entities abuse the discretion that exists in applying and enforcing some laws and regulations (for instance, in the case of registering companies).[19]

Fourth, decentralisation and redefinition of the role of various layers of government are proceeding. These reforms could either improve or degrade regulatory quality. Powers have been reallocated across municipalities, regions, and the central administration. New regions were established in January 2000 and elections took place on 12 November 2000. This is an enormous reform with long-term consequences for public service provision and regulatory functions. An adequate national policy framework to ensure the transparency, market openness, and competition-orientation of these new governments will be necessary.

Fifth, as the government has recognised in recent reform bills, the judiciary needs major reform to improve conditions for accountable rule of law and to provide an efficient legal regime for market functions.[20] The reform agenda is extensive, including the lengthy time to resolve matters in court,[21] changes to the statute and appointment of judges to improve their skills, court organisation[22] and court proceedings as well as changes to the state administration of courts and training of judges. In terms of administrative review of government actions, the competencies of the court may be too limited. They can, for instance, review administrative decisions but not the lack of decisions. For the latter case, a complainant needs to refer to a superior authority.[23]

Box 3. **Selected findings from the World Bank: public administration in the Czech Republic**

A recent World Bank report reached several conclusions about public sector reform in the Czech Republic:

- Absence of legal distinction between political appointments and civil servants undermines professionalism, and encourages civil servants to be politically focussed and discourages them from being responsive to cross-cutting and medium term policy objectives.
- Absence of systematic mechanisms to hold budget units and their employees accountable for achieving objectives, makes it difficult to monitor and achieve targets.
- Provision of wage ceilings on line ministries, by the Ministry of Finance, provides the managerial discretion needed to effectively manage human resources while still maintaining effective fiscal discipline, however, the absence of a mechanism for holding budgetary units accountable for outcomes undermines the incentives to use this autonomy well.
- Absence of systematic mechanisms to ensure clear and shared organisational objectives and to focus attention on meeting those objectives undermines effective meeting of policy objectives.
- Lack of mechanisms to make the public sector an attractive career (such as career streams and performance-linked rewards) undermines the capacity of the administration to attract, retain and develop skilled people.
- While the *Administrative Procedures Act* establishes basic standards for responding to citizen inquiries, lack of systematic mechanisms (such as service standards and publication of actual performance) make it difficult to determine how effective and responsive administrators are in service delivery.
- Policy processes and procedures are well designed and function smoothly.
- Actions are need to build HRM units that are facilitators of good management.
- Actions are needed to foster career development within the public sector.
- Actions are needed to improve capacities for policy formulation and co-ordination at the centre, by creating a single, professional policy analysis unit within the Office of the Prime Minister, focussing particularly on inter-sectoral tradeoffs and co-ordination issues.
- *Source*: World Bank (1999), "Chapter 11: Public Administration", in Czech Republic, Towards EU Accession, Volume 2: Main Report, Washington, D.C.

1.2. Recent regulatory reform initiatives

The rapid pace of legislative and regulatory action in the Czech Republic increases the need for processes to ensure the quality of regulation (see Annex 1). Transformation of the legal system due to the transition process and EU accession process has resulted in adoption of huge swathes of laws in the last few years.[24] From January 1990, 1 150 new acts and amendments of acts, 41 constitutional amendments, 8 400 government resolutions and various measures by central state administration have been adopted (see Section 4). While these new laws improved what existed before, such reforms were piecemeal and had few substantive quality standards. Today's regulatory environment combines the new and the old, and the market-friendly with command and control regulation.

Since 1997, after difficult negotiations with parliament, the government launched a series of reforms to improve the institutional basis of the new market economy. These reforms have improved its institutional capacity for quality regulation through the creation and strengthening of bodies such as the Czech Statistical Office, the Commission for Securities, the Office for Industrial Ownership, and the Czech Telecommunication Office (see Section 3.4). Transparency and the fight against corruption and administrative abuse have also been reinforced with the establishment of an independent Ombudsman. Reforms have also included the revision in 1998 of the *Legislative Rules* and a recent commitment to adopt government-wide regulatory quality principles, and adoption in principle of regulatory impact analysis (see Section 2.2).

In 1999, the Parliament approved, nearly unanimously, a reform of the administration aimed at improving the efficiency and transparency of the public administration:[25]

- The first priority is the continuation of the ambitious reform of the territorial public administration. Its main component is the establishment of 14 new regions with regional self-administration. They will fulfil many of the functions previously proved by either central government or districts (see Section 2.3). The reform included the creation of regional councils, the members of which were elected on 12 November 2000.

- The second reform centres on "re-engineering" the ministries and central institution of the state administration, such as the Government Office, to improve horizontal co-ordination and mechanisms to monitor performance. On 4 December 2000, the Government approved Resolution No. 1217[26] This resolution commits the Minister of Interior, in co-operation with other ministries and heads of other central state administration bodies, to start working on central administration reform and will be directed at acknowledged problems of co-ordination, differences in administrative approaches across ministries and of the political conception of administration. It also proposes to enhance the Government Office in line with the UK cabinet office structure. An important feature of which is that the new organisational structure and competencies of the Government Office should change significantly. New departments[27] should be created which would help to strengthen the horizontal co-ordination of the cross-sectional activities in individual ministries, including the assessment of preliminary proposals in terms of priorities and substance, before the ministries start developing texts and additional material. (As well, a pilot project funded by the EU was launched in early 2000 in the Ministries of Trade and Industry, of Justice, and of Labour and Social Affairs. The results are expected later in 2001. Based on the methodology and main findings, the re-engineering process will be extended to the rest of the public administration.)

- The third leg of the reform involves implementing new public management techniques to improve the effectiveness of the administration, focusing on functions and tools rather than structures. A concept paper has been prepared covering different modules, such as availability of public services, increasing effectiveness of public finance, use of information technology (IT), civic control on the administration, and training and education of public servants. The paper was presented to the Government for discussion in November 2000 and in the same resolution (No 1217) mentioned above, approved a set of concepts regarding particular areas of public administration[28] although no implementation schedule has yet been decided. To complement this reform, an e-government initiative (government resolution no. 527/2000) is underway comprising three main projects — information literacy in the citizenry; encouraging electronic business and establishing e-government.[29]

In each case, it is difficult to assess the likely contribution that these reforms will make to efficiency and effectiveness because the policies are short on detail. For example, it is unclear how the various roles of government will be allocated across the new tiers at the end of the transition period.

In parallel with these reforms, the government has pushed for an overhaul of the judiciary and the public service. In the latter case, an important objective is to build up a neutral and efficient civil service. The government proposals to implement these reforms have encountered opposition. Reforms to the judiciary were narrowly rejected by parliament and the government is currently seeking to make amendments and resubmit the draft laws. After intense discussions lasting since the mid-90s, the government approved the fifth draft of a Civil Service Law on 1 November 2000.

In 1999, the *Ombudsman Act* was passed to protect public rights. Now that the position has been filled, the Office will become fully operational, and be able to process appeals (See Section 3.1.)

2. DRIVERS OF REGULATORY REFORM: NATIONAL POLICIES AND INSTITUTIONS

2.1. Regulatory reform policies and core principles

The *OECD* 1997 *Report on Regulatory Reform* recommends that countries adopt at the political level broad programmes of regulatory reform that establish clear objectives and frameworks for implementation.[30] The *OECD* 1995 *Council Recommendation on Improving the Quality of Government Regulation* contains a set of best practice principles against which reform polices can be assessed. The Czech public administration enjoys strong procedural disciplines in the formulation of new regulations, and these procedures for ensuring the legality of regulations can provide a strong foundation to move towards broader OECD regulatory quality standards. The government *Resolution of September 2000* to implement the OECD 1995 Recommendation is a positive step, though implementation and enforcement across the government will require sustained efforts and capacity building.

Until this recent endorsement, the Czech Republic did not have an explicit policy on regulatory quality, which reduced accountability for performance and increased the risks of capture and abuses in the public administration. On the other hand, its regulatory policies and core principles based on strict procedures implicitly assured some aspects of quality. As is often the case in civil law countries, the policy and principles were established through an array of government rules and resolutions, laws and parliamentary procedures, as well as long-standing tradition. The Czech *Rules of Procedures* and *Legislative Rules* are the two cornerstone instruments framing rulemaking powers of the government (see Box 4).[31]

Box 4. **The Czech legislative process**

Pursuant to the Constitution and Legislative Rules, the legislative process is organised around the following steps:

1. Based on the Concept Paper approved by the government, the proponent ministry prepares the *substantive intent of the law* and a first justification report. The first justification report analyses: existing laws: regulatory options: compatibility of the proposed law with the Constitution, international agreements, and other laws; and an assessment of some economic and financial impacts, in part informed by consultation with some groups.

2. After approval by the government (based on an opinion of the Legislative Council), of the *substantive intent of the law*, a full text of the bill is elaborated. The proponent ministry also prepares a second, extended version of the justification report. The second justification report contains two parts: a general part which includes more detail than the first justification report and a second part which explains and justifies individual articles of text.

3. After analysis of the specialised departments of the Government Office (and based on an opinion of the Legislative Council) the government adopts (or not) the Bill. Government Resolutions and Ministerial Orders are usually submitted to a Working Party of the Legislative Council.

For each of the steps, the draft text and accompanying reports are circulated and subjected to an interministerial consultation. At the discretion of ministries, a public consultation can be organised with representatives of the entities affected by the regulation and the professional public.

In the case of bills, the government submits them to the Parliament and are discussed thoroughly according to precise procedures.[32] After approval by the Parliament, the President, the Prime Minister and the Chairman of the Deputies sign them before enactment. Finally, the Act is promulgated in the Collection of Laws.

The *Government Rules of Procedures* establish in a detailed form the steps to present policy proposals (including draft bills and government resolutions) for Cabinet approval. They set out a clear and coherent two-step mechanism by which ministries prepare material for the government. The basic instrument is the elaboration of 'Concept papers' prepared by proponent ministries and other bodies (see Box 5).

Box 5. **The Czech 'Concept Papers'**

The basic aim of concept papers (or "Concepts") is to help the government's discussions and agreements by before it approves the commencement of the drafting process. While the concept paper is not required by the *Legislative Rules*, it nevertheless can inform the legislative process. Primarily it analyses the present situation, sets the objectives to be achieved and methods or approaches to be used to achieve the objectives.[33] The need for a new regulation, deregulation or re-regulation ensues from the comparison of the present situation with the desired objectives. Sometimes the alternative approaches and methods are listed including their advantages and disadvantages. In effect, the concept papers, are strategy documents, that are widely discussed by experts and by the general public, and often published by the responsible ministry on its website. When the Concept concerns some important, complex or controversial issues, the solution of which needs a wide political consensus, the Government usually submits the concept to the Chamber of Deputies for discussion. In certain ways, the concept papers, which precede the legislation-making process, while not strictly part of regulation-making, inform the policy-making process and meet some of the RIA requirements: statement of problem, setting of objectives, looking at alternatives and being publicly debated (see Section 3.3).

Once a decision to legislate has been made, the *Legislative Rules of the Government* prescribe the content of reports accompanying the legal text, the procedures and the legal format of all bills, government resolutions (or ordinance) and Ministerial orders (regulations).[34] The Department of Government Legislation in the Government Office, which polices the *Legislative Rules*, is efficient and provides stable and capable support for the policymaking process (See Box 5).[35] The *Legislative Rules* ensure that Czech regulation is accompanied by an analysis of:

- The regulatory impacts of related existing laws;
- Some assessment of legal options;
- The compatibility of the contemplated regulation with the Constitution, with international agreements to which the Czech Republic is bound and other pieces of legislation, in particular those of European communities,
- An assessment of financial impact and impact on the economy; and
- Attention to the quality of the legal text (organisation, clarity, comprehensibility, linguistic and stylistic elements).

This analysis is contained in a "justification report", which accompanies both stages of regulation development. In the second stage, the justification report has two parts: a general part, including further analysis of economic and financial impacts and a special part which provides the rationale for individual clauses and articles of the draft bill (see Section 3.3).

In terms of subordinate regulations, the Government Decrees are sent to the Legislative Council for discussion, and Ministerial Orders are sent to the Working Parties (Permanent Working Committees) of the Legislative Council for discussion.[36] An act adopted by the Parliament usually contains also the authorisation for government and ministries to issue a subordinate regulation (government decree/ordinance, ministerial order) that details the key provisions of the act. As the initial act was approved by the Parliament including the authorisation for the government and the ministries, the government decrees/ordinances and ministerial orders are not sent to the Parliament for its approval, and they are directly published in the Collection of Laws.

The *Legislative Rules* also provide accountability mechanisms enforced by the Government Office. While individual ministries are responsible for developing draft legislation, the Legislative Council is ultimately responsible for checking compliance with procedures and legality. This advisory body is assisted by the Legal Department and the Department of Compatibility with the Law of the European Communities, both of the Government Office. Each department prepares an opinion for the deliberations of the Legislative Council and its Working Parties (see below). Not infrequently, the Legislative Council has required that the proponent ministry improve the draft.

The procedure is thorough and structured, and facilitates co-ordination across the government. It provides a sound framework in which to develop regulations. A noteworthy element of the procedures concerns the meticulous rules for circulating drafts inside the government. According to Section 5 of the *Legislative Rules*, all drafts must be sent to other ministries, the Central Bank and the bodies stipulated by the *Labour Code* (*i.e.* social partners) and to other affected parties (which in practice means, that the Business Chamber, Association of Entrepreneurs and other associations and major business are also consulted) as well as to organisations specified in international agreements. A series of detailed requirements need to be met. They refer, for example, to the form of the covering letter addressed to other ministries, the distinction between fundamental and non-fundamental comments (the former must be addressed and incorporated in reports accompanying the instrument), the number of days of interministerial consultation (usually 15 working days), the number of copies to be sent to the major co-ordinating centres, and dispute resolution mechanisms for inter-ministerial disagreements of a text.

The Czech regulatory procedures contained in the *Legislative Rules* seem to be effective in providing the opportunity to weed out low-quality regulations. They will be even more effective when integrated with better public consultation procedures (see below). However, the substantive quality standards in the *Legislation Rules* are too general to provide the basis for good regulation. For example, they do not include criteria of market competition and efficiency, consumer welfare, regulatory benefit-cost or cost-efficiency tests. They fall well short of best practices in place across the OECD area.

One weakness is that the *Legislative Rules*' standards for justifying new regulations do not include a regulatory benefit-cost test. The OECD recommends as a key principle that regulations should "produce benefits that justify costs, considering the distribution of effects across society." This principle is referred to in various countries as the "proportionality" principle or, in a more rigorous and quantitative form, as the benefit-cost test. This test is the preferred method for considering regulatory impacts because it aims to produce public policy that meets the criterion of being "socially optimal" (*i.e.*, maximising welfare).[37] The procedure has also been criticised for not allowing sufficient time for in-depth comments with citizens and businesses and for getting the opinion of other legislative departments.[38]

A planning mechanism supplements these regulatory processes. Every year, the government approves the Plan of Legislative Activities of the Government for the next year, and the Outlook of Legislative Activities for the following year. The program statement of the Government is worked out in detail and incorporated at the end of every year into the resolution of the government, which specifies the plan of legislative work for the next year and is issued every 6 months. Based on this schedule, a time is set for each department to present the Government with either the substantive intent or a draft of the law for evaluation.

In late September 2000, the government adopted the OECD 1995 *Recommendation on Improving the Quality of Government Regulation* and made a commitment "to provide administrative capacity for impact analysis and regulation quality control" and to create a unit "to offer expert assistance to the ministries and other central state administration authorities when preparing legal regulations and amending them".[39] The September Resolution also charged the Minister of Interior with the task of proposing by the end of 2000 concrete organisation and institutional mechanisms. Based on the proposals, the Deputy Prime Minister for Legislation will consider amendments to the Legislative Rules.

The adoption of the 1995 OECD Recommendation and the plan to introduce RIA in the Legislative Rules, are positive steps that will bring Czech formal capacities closer to international best practice. In the implementation of these reforms, the Czech government should resolve significant weaknesses and gaps in the current system. First, full allowance should be made to analyse the impact of a proposal, including using cost-benefit analysis where warranted. It may be appropriate to have an "in principle" analysis of all impacts on all groups in society during the first stage of development (the substantive intent of the law). A full cost-benefit analysis would only be prepared for those proposals that proceed on to the second stage to draft a law. It will be important to establish the clear principle that regulations will only be adopted if the benefits justify the costs, so that there is an explicit standard by which ministries justify the need for regulations. Important elements of the analysis of the draft regulation should be the cost of impacts on business and consumers, and whether it is consistent with principles such as competition and market openness. A second important change will be the clear commitment to consult with all affected groups and to publicly test conclusions. A third improvement would be to improve the assessment of alternatives, particularly in the first stage of evaluation of a proposal, including the assessment of non-regulatory options. Finally, the elements of the RIA analysis should be extended not only to cover new regulation, but also to be used in the review of existing regulations.

2.2. Mechanisms to promote regulatory reform within the public administration

Mechanisms for managing and tracking reform inside the administration are needed to keep reform on schedule and to avoid over-regulation. It is often difficult for ministries to reform themselves, given countervailing pressures, and maintaining consistency and systematic approaches across the entire administration is necessary if reform is to be broad-based. This requires the allocation of specific responsibilities and powers to agencies at the centre of government to monitor and promote progress across the whole of the public administration.

The Czech government has established important central regulatory co-ordination and management capacities, supported by ministries with horizontal responsibilities. These various units form the core of a potentially effective regulatory quality control system, if they were to work more closely together, develop analytical expertise, and implement a broader array of regulatory quality standards, as suggested above.

The Government by its *Resolution of September 2000* imposed on each minister the duty to follow the OECD 1995 *Recommendation on Improving the Quality of Government Regulation* when preparing regulation.[40] Furthermore, the commitment was further supported a few months later by the 'concept' of the central state administration reform "Programme of Changes to Public Administration Management at the Central State Administration Level" prepared and presented to the cabinet by the Minister of Interior. The 'concept prepared in co-operation with other ministries and heads of other central state administration bodies, officially launches a new stage of the central administration reform.[41] The Government Resolution No. 764 approved on 26th July 2000 established an inter-ministerial working group headed by the Ministry of the Interior and composed of representatives from the Ministry of Finance, the Ministry of Industry and Trade, the Ministry of Foreign Affairs, the Ministry of Transport and Communications, the Government Office, the Office for the Protection of Economic Competition and the Czech Telecommunication Office. This interdepartmental working group is an essential step toward creating a permanent expert policy body to promote regulatory reform across the public administration.

The Government Office (GO) also plays a prime role in advising the government on policy and regulation development. Under the Deputy Prime Minister for Legislation, the GO contains the Department of Government Legislation and the Department of Compatibility with the Law of the European Communities. The Deputy Prime Minister for Legislation acts also as the chairman of the Legislative Council of the Government, an advisory body to the government.

These two key departments advise the government on the law-making process. Each employs around 17 professionals. The objective of the former is to assure compliance with the Constitution, the legal framework and the *Legislative Rules*. It assigns the identification number of each regulatory instrument. The Department of Compatibility oversees the compatibility of the law with the 'acquis communautaire'. This is done through the up-dating of a database (see Section 2.3.). Both departments prepare an assessment note submitted to the Legislative Council of the Government.[42]

The Legislative Council of the Government oversees the quality of legislation, including ensuring that the Legislative Rules of the Government have been followed.[43] The Council is the main institution in charge of quality, although it only has advisory power. Its opinion centres on legality aspects and compliance with the constitutional and legal framework. The government appoints the Council's members often at the start of its mandate and through a Government Resolution. In the recent past the Council has had between 25 and 30 members, most of whom come from the judiciary and the legal profession and most have other occupations in addition and concurrently to their counselling duties. In the current administration, the Council is headed by the Deputy Prime Minister for legislation.

In general, the Council meets twice a month depending on the legislative agenda, while Working Groups meet more frequently. The government may decide not to consult the Council, but this happens only on urgent legislation. The Council can set up ad hoc working committees. Today the existing working committees concentrate on reviewing labour, administrative civil and penal law. These working committees can invite additional experts.

The Council provides a report to the government for each bill or draft resolution examined. Minority views of Council members can be attached to the report. The Council is required to supply its opinion to the government 60 days after receiving the draft bill and accompanying reports and memoranda. Its report is based on a preliminary reports presented by the Department of Legislation of the Government Office. During its deliberations, including those of its working committees, it usually establishes direct consultation channels with the proponent ministry and invites the respective Minister to its discussion. In certain cases, such as the preparation of the *Administrative Judiciary Code*, the Council can be the promoter and main drafter of new legislation. In general though, it only oversees the ministerial legislative work.

Recently, the Council has developed informal relationships with Parliament. The presidents of the constitutional committees of the Chamber of Deputies and of the Senate have been invited to the Council deliberations. This has improved discussions of the bills when turned to parliament.

The Office for the Protection of Economic Competition also has a role in assessing the impact of proposed regulation on competition as well as running an effective competition advocacy policy. The Office participates actively in the inter-ministerial review process of draft laws and resolutions. In terms of competition advocacy, recent examples concern its work on improving the re-structuring of regulated sectors, such as bus transportation, and direct interventions in the areas of power supply, water supply and wastewater management, telecommunication and transport. It is also worth noting that in the application of its regular competition powers the Office applies a cost benefit or public interest test to applications for exemptions (see background report to Chapter 3).

2.3. Co-ordination between levels of government

The 1997 OECD Report advises governments to "encourage reform at all levels of government." This difficult task is increasingly important as regulatory responsibilities are shared among many levels of government, including supranational, international, national, and subnational levels. High quality regulation at one level can be undermined or reversed by poor regulatory policies and practices at other levels, while, conversely, co-ordination can vastly expand the benefits of reform. Although the Czech Republic is a unitary state with a strong centralist tradition, in the past decade two waves of devolution from the centre to sub-national governments have occurred. At the same time, harmonisation with European levels is taking place. The policies and mechanisms for co-ordination between levels of administration are increasingly important for the development and maintenance of an effective regulatory framework.

National — local co-ordination

An ambitious reform in the Czech Republic is the vertical decentralisation of state powers. Decentralisation has involved establishing the democratic representation of municipal and regional governments on the principle of 'self-government' and devolving responsibilities for management of public services to sub-national governments, including ownership of some public assets and important regulatory powers. However, the Ministry of the Interior will continue to play a pivotal role in monitoring and co-ordinating central government policy and programs. Questions or concerns remain: (1) about the size of municipalities but, perhaps reflecting a desire to abandon the central control and forced mergers

from before 1989, decisions about merging are left entirely to the municipalities themselves;[44] (2) about whether devolution has occurred too quickly for capacities to match the new roles and responsibilities of the new sub-national governments; and (3) about the lack of clarity over the powers, responsibilities and control mechanisms for regional and municipal levels of government.[45]

Although municipalities (or communes) existed during the Communist regime, their primary purpose was to implement policy from the central government and to pass information to the central government. In 1990, devolution and decentralisation of power took place as an expression of commitment to democracy and to tear down the soviet-style territorial organisation.[46] This first stage focused on establishing self-government at the municipal level.

In May 1998, the government launched a major reform, which is being implemented in stages.[47] The fundamental thrust of the reform has been to create 14 regional governments, with regional councils elected on 12th November 2000.[48] The Ministry of Regional Development, the Ministry of Agriculture and the Ministry of Environment have closed their regional offices, and the Ministry of Labour and Social Affairs is due to in 2001. The Ministry of Interior will retain its central function and the Financial Offices of the Ministry of Finance are still functioning — their territorial competencies have been changed to be in line with the newly created regions. In terms of staffing, this year, the regions will be able to start recruiting one half of their new public servants (around 1 400 employees), the other half will be transferred from deconcentrated central administration offices. No lay-offs from the Central Administration ministries are planned. According to the *Act on Regions*, after the transition period of 2001, the regions will be given their own budgetary revenues.[49]

As an intermediary tier between the municipalities and the central administration, district offices have exercised central State administration in their territories.[50] The second stage of the territorial public administration reform presumes their abolition and transfer of their competencies to the municipalities and partially to the regions (and to other institutions of public administration).[51] The districts will be phased out and their responsibilities transferred selectively to the new regions.[52]

The competencies of the municipalities and the regions can be divided into two categories — self-governing competencies and delegated competencies. According to the Article 10 and Articles 35 to 60 of the *Act on Municipalities* (Act No. 128/2000 Coll.), the self-governing competencies cover deciding on matters of the interest of the municipality and its citizens (provided that the law doesn't put them in charge of the regions), protection of public order, arranging publicly accessible sporting and cultural enterprises, protection and use of the municipal property, the maintenance of cleanliness on the streets, protection of the environment, etc. According to the Article 11 and Articles 61 to 66 of the *Act on Municipalities*, the delegated competencies cover the exercise of the state administration in cases stipulated by special law.[53]

According to Articles 14 to 28 of the *Act on Regions*, the self-governing competencies of the regions cover the overall territorial development, creating the conditions for development of the social services, satisfying needs of citizens in the areas of environment, transportation and communications, information, training and education, cultural development, public order, etc. In accordance with the Article 29 to 30 of the *Act on Regions*, the delegated competencies of the regions cover the exercise of the state administration in cases set by special law.[54]

Control and oversight of the exercise of the self-governing competencies of the regions is set by Articles 81 to 83 of the *Act on Regions*. The Ministry of Interior exercises the supervision in co-operation with the particular ministry responsible for the given issue (*e.g.* with the Ministry of Transport and Communications in cases of transport issue, etc). This supervision is ex post and is aimed primarily to ensure legality.[55]

Control and oversight of the exercise of the delegated competencies of the regions is regulated by the Articles 92 and 93 of the *Act on Regions*. They stipulate that when exercising the delegated competencies, the regions are subordinate to the respective ministry which has jurisdiction over the particular issue of the state administration. In such cases, the Ministry of Interior plays the role of co-ordinator and organiser. The common rules of supervision — the rules for exercising oversight — are set by Articles 87 to 91 of the *Act on Regions*. These stipulate the rights and obligations of the supervisor and supervised body.

Similar to municipalities, the regions are authorised by the Constitution to issue by-laws and orders of two sorts: based on the self-regulatory powers (as well as own assets) and based on the delegated powers from the Central Administration. In the case of the latter, the draft regulations will be overseen by the Ministry of Interior and redress on individual decision through a regular administrative procedure. The Ministry of the Interior will also undertake co-ordination tasks between the Central ministries and the regions and will carry out inspections of selected activities carried out by regional authorities. A specific information exchange system will be set up between national, regional and municipal authorities.[56]

Precautionary steps should be taken to increase and/or to further clarify co-ordination and monitoring mechanisms between the three tiers of government.[57] There is concern over the exercise of non-delegated regulatory powers: the central ministries are responsible for controlling the enforcement of municipalities and regions for these competencies, through ex ante control procedures.[58] In cases where by-laws issued by municipalities or regions are at variance with the law, the Constitutional Court may annul them. If the other non-legislative measures issued by municipalities/regions within their self-governing powers do not comply with the law, the Regional Court/High Court may annul them. In case of the other non-legislative measures issued by municipalities/regions within their delegated competencies, the district office/the respective ministry may annul them.

Another issue, is the risk of "tax competition", where some localities charge low fees for services to companies to encourage them to place their head office in the city, thereby receiving tax disbursements based on where the payroll is calculated rather than where the work is done.[59]

Lastly, there are important issues concerning competition oversight, exercised presently by the Office for the Protection of Economic Competition, on municipalities and the new regions (see background report to Chapter 3). Municipalities and regions have extensive competencies in areas with significant competition impacts. They issue by-laws and administrative orders and licences for zoning or local transport operators. They may also own, operate or outsource through a long-term concession local infrastructure networks, raising crucial conflicts of interests.[60] In cases where the by-law or other measure is at variance with the law, the Chamber of Deputies or the Constitutional Court may annul it. The district office may annul irregular or improper measures of municipalities.

The regionalisation of the Czech Republic into 14 regions was adopted by the Constitutional law. The *Act on Support to the Regional Development* establishes the mechanism for management of the EU assistance funds. In terms of exercise of the delegated competencies, the staffing of the regional authorities is achieved by the transfer of employees who have been exercising those competencies in the state de-concentrated offices. The system of funding applied in the transition period will be largely substituted by the system of the regions' "own tax revenues from the year 2002." There has been criticism that some of the new regions may be too small to reap economies of scale and manage EU assistance funds effectively. While the broad parameters have been indicated, uncertainties still pertain to their staffing and funding, and raise the risk of mismanagement and inefficiencies at the different levels of government.[61]

An Association of Towns and Villages is active in providing information to municipalities, and negotiating on their behalf with the central ministries. Fostering this and other formal consultation and collaboration institutions or mechanisms between levels of government and between governments at the same level could nevertheless go a long way towards addressing co-operation problems which have hindered, for instance, direct foreign investment in the past.[62]

European level

Accession to the European Union is today a major goal of the Czech Republic. The process is co-ordinated by the Ministry of Foreign Affairs. Negotiations with the European Commission have been a major force in shaping regulatory reform in most economic, social and administrative sectors, and in the administration's capacities to produce high quality regulations. Accordingly, the strategy of institution and process building to incorporate the European *Acquis communautaire* (see Box 6) into the Czech legal and regulatory system, called the A*pproximation process*, has been a fundamental element of regulatory reform. This process has consisted of transposing more than 14 000 EC regulations, with more than 80 000 pages of legislative text, into the existing legislation of the Czech Republic.

Box 6. **The European *Acquis communautaire***

The Acquis communautaire comprises the entire body of legislation of the European Communities that has accumulated, and been revised, over the last 40 years. It includes:

The founding Treaty of Rome as revised by the Maastricht and Amsterdam Treaties.

The Regulations and Directives passed by the Council of Ministers, most of which concern the single market.

The judgements of the European Court of Justice.

The Acquis has expanded considerably in recent years, and now includes the Common Foreign and Security Policy (CFSP) and justice and home affairs (JHA), as well as the objectives and realisation of political, economic and monetary union.

Countries wishing to join the European Union must adopt and implement the entire *Acquis* upon accession, though there is some flexibility as to timing. The European Council has ruled out any partial adoption of the *Acquis*, as it is felt that this would raise more problems than it would solve, and would result in a watering down of the *Acquis* itself.

The system is a decentralised one where the initiative on how best to transpose EC regulations into Czech law is left to ministries but a co-ordination and control mechanism operates at the centre of the government. Government Resolution No. 396/1999 requires that all draft laws and regulation be accompanied by a note overseen by a central department (the Compatibility Department at the Government Office) confirming the approximation, or reason for its divergence. The mandatory opinion of the Department is reviewed by the Legislative Council and must accompany the bill to government and parliament.

The Department also provides advice, solves disputes and controversies and comments on the compatibility status of submitted draft regulations.[63] It also operates an electronic monitoring system, which enables two-way communication — providing ministries with information about EC legislation and through which ministries can accept data regarding harmonisation procedures for individual regulations. Lastly the Department is in charge of the translation and verification of EU laws, as well their publication on the Internet.[64]

In 1998, at the start of the accession negotiation, an interministerial mechanism was established, on the basis of a mechanism existing since 1996. The Government Committee for European Integration, an advisory body to the Government, is chaired by the Vice Prime Minister and Minister of Foreign Affairs and supported by the staff of the Government Office. This ministerial committee has a Working Committee for European Integration for senior government administrators, headed by the First Deputy Minister of Foreign Affairs and State Secretary for European Integration. The Working Committee oversees more 35 working groups, divided according to specialisation and the area in negotiation with the EU Commission.

Parliament has, as part of the Parliamentary Institute, its own institution for evaluating the compatibility of legislation. Co-operation between the Government and Parliament over a matter of perceived national interest, has resulted in the amendment of the Rules of Procedures of the Chamber of Deputies, to allow for the possibility of approving proposals, which are seen as being important for entry into the EU, in the first meeting.[65]

Since March 1998, the Czech Republic has participated in four rounds of Ministerial negotiations, resulting in 13 out of the 29 chapters being provisionally closed (science and research, education and training, small and medium-sized enterprises, statistics, industrial policy, telecommunications, fisheries, consumer protection, free movement of goods, customs union, external relations, common foreign and security policy and EMU) while negotiations continue for the remaining chapters.[66]

Since the Copenhagen Summit, and in addition to transposing the body of EU legislation into their own national law, candidate countries must ensure that it is properly implemented and enforced. This may mean that administrative structures need to be set up or modernised, legal systems need to be reformed, and civil servants and members of the judiciary need to be trained. The European Commission is in charge of this annual assessment made public each November.

3. ADMINISTRATIVE CAPACITIES FOR MAKING NEW REGULATION OF HIGH QUALITY

3.1. Administrative transparency and predictability

Transparency of the regulatory system is essential to establishing a stable and accessible regulatory environment that promotes competition, trade, and investment, and helps ensure against undue influence by special interests. Transparency also reinforces legitimacy and fairness of regulatory processes. Transparency is not easy to implement in practice. It involves a wide range of practices, including standardised processes for making and changing regulations; consultation with interested parties; plain language in drafting; publication, codification, and other ways of making rules easy to find and understand; controls on administrative discretion; and implementation and appeals processes that are predictable and consistent.

Transparency of procedures to create new laws and regulations

Transparent and consistent processes for making and implementing legislation are fundamental to ensuring confidence in the legislative process and to safeguarding opportunities to participate in the formulation of laws. In the Czech Republic, Articles 78 and 79 of the Constitution establish the limits to legislative action. The *Legislative Rules of Government*[67] further define the different types of regulatory instruments, and regulates the process of preparing them, distributes the responsibilities of the different bodies involved in the process, and sets out other important aspects such as the use of public and expert consultation.[68]

A series of additional instruments enhances the transparency and accountability of the administration when preparing or enforcing regulations. The *Labour Code* (No. 65/1965) imposes extra responsibilities on certain categories of government employees with respect to impartiality, confidentiality and conflict of interest.[69]

Transparency in intra-governmental co-ordination

Consultation within Government is an important tool. In the Czech Republic, it is based on the government *Rules of Procedures* and *Legislative Rules*, which prescribe the steps to be taken in drafting regulation. It ensures that inter-ministerial consultation takes place in prescribed stages in the development of a law. All affected ministries and other state administration authorities express their views on all draft regulations in the scope of the "interdepartmental amendment procedure". Both *Rules* differentiate between fundamental "suggested amendments", which must be responded or reported in the accompanying reports to the government, and other remarks and recommendations that do have to be addressed. In case of disagreement, the Rules also establish mechanisms to resolve them.[70]

As well as this general requirement, there are specific requirements to determine the impact on the national budget (by consulting with the Ministry of Finance); and to consult with Czech National Bank and the Supreme Audit Office. Throughout the process, the Departments of Legislation and Compatibility of the Government Office are kept informed on the evolution of the draft.

The inter-ministerial consultation has worked positively, although it appears that too many issues remain unresolved at the ministerial level and must go to Cabinet. A Cabinet meeting agenda often has up to 50 items, related to some than 4 000 pages of documentation. It is not rare that the meeting starts at 10 am and finishes late at night, partly because of inter-ministerial disagreements that have not been resolved earlier. Furthermore, an over-institutionalisation of the administration through committees and working parties is not reducing the fragmentation of government and compartmentalisation of bureaucracy. Weaknesses in the co-ordination during the implementation of rules has been raised in particular.[71]

Transparency as dialogue with affected groups: use of public consultation

While the Constitution gives the public the right to provide comments on regulatory proposals, no explicit obligation exists to consult with society on draft regulations, except for labour issues and as otherwise stipulated in a law. The *Legislative Rules* nevertheless provide discretion to ministries to consult "if deemed necessary" with interest groups and society at large during the different stages of rule making.[72] In practice, Czech ministries and offices have been consulting increasingly during the preparatory stages of legislation. For example, in the case of legislation concerning local self-government, the association of municipalities was consulted and asked to comment on proposals.

Each ministry sets up the procedures which vary according to the instrument (*i.e.* law, government ordinance, etc.) or subject. Often the consultation process makes extensive use of working groups and advisory and consultative bodies already established, with members appointed by the minister. The groups are formed of professors and leading experts, social organisations and bodies representing special interests, and representatives of the affected scientific discipline. Although they are only advisory, they have tended to play a growing role and impact on the outcome.

In recent years, the procedures and obligations have been formalised by individual laws, which stipulates that a body or interested party has the right to present its comments. For example, the recent *Export and Import of Products Act* (No. 62/2000), and *Antidumping Act* (No. 152/1997) provide foreign firms with the right to be consulted. The Ministry of Environment has a decade long experience with working groups that have been reviewing draft laws and regulations.[73]

As well as these specific requirements, the preparation of regulations is based on the "Concept" or Policy Statement approved by the government (See Box 4). For example, the current Government presented to Parliament its policy program at the beginning of its term in August 1998. Every December the program statement of the Government is worked out in detail and the government approves through a Government Resolution a *Plan of Legislative Activities* the next year and the *Outlook of Legislative Activities* for the following year. This document contains the schedule of legislative (*i.e.* Bills) activity — effectively a "regulatory plan" which is available to the public (and non-legislative activity). The Resolution indicates the individual ministries appointed to the drafting as well as a time frame for completion. These initiatives provide forward notice to any interested parties of forthcoming regulatory changes

Except for technical standards and the publication of its Plan of Legislative Activities and Outlook of Legislative Activities, the Czech government makes little use of 'notice and comment' mechanisms.[74] As recent practices in some ministries show, publication on their respective Websites of session schedules for the Cabinet, and the text of the bills being discussed by the Chamber of Deputies (http://www.psp.cz.) and the Senate (http://www.senat.cz) suggest that broader application of notice and comment might be possible, if this key requirement became mandatory.

An important consultative body is the Council for Economic and Social Agreement (often referred to as the Tripartite Commission). It was established in 1990 as a platform for social dialogue involving the government, trade unions and employers. Each one of these sectors appoints seven representatives. Originally, the Council focused on *Labour Code* issues. More recently, it has covered health and safety, taxes and social security issues as well as education and training. The Council has established working parties on these subjects. Its value as a forum for social dialogue has varied with some years being dominated by disagreement and the inability to achieve consensus. In recent years, through new rules and procedures, its effectiveness in achieving consensus on important issues has improved.[75]

Overall, the new openness and use of public consultation are steps in the right direction. Today, a significant number of officials are aware that public consultation is a valuable mechanism to obtain information on possible impacts of decisions (including parliament's reaction to a bill). However, there are still gaps and divergences from international best practices. A key concern is that no formal requirement exists to consult with all affected interest groups. Also, there are no set criteria as to who is consulted, with officials and ministers having, large discretion over the selection of parties to be consulted, the material to be taken account of and the period of consultation. Some groups, notably consumers and the interests of citizens in sub-national government issues, traditionally have not been well represented in these consultations. One recent development has improved the situation for consumers. The Government resolution No. 813 of 9 December 1998 established the Consumer Advisory Committee which is frequently consulted. Nevertheless, producers and employees tend to be consulted more systematically. This imbalance reflects a broader need to establish dialogue with civil society including further strengthening the representational capacities of these groups. Because consultation is mostly optional, important segments of society only have recourse to the parliament or the judiciary, as ways of registering complaints about regulations. This is both a costly and inefficient way to participate in the rule-making process. Little time (frequently less than a week) is provided to the consulted parties to comment.[76] The main material consulted is the draft text, rather than the justification reports which can be crucial, reflecting a focus on the legal aspect of a proposal rather than its impacts and objectives. Lastly, the administration has not developed important safeguards, such as 'notice and comments' rules (except for technical standards) or new active mechanisms such as panel tests.

Transparency in implementation of regulation: communication

Transparency requires that the administration effectively communicates the existence and content of all regulations to the public, and that enforcement policies be clear and equitable. In the Czech Republic, after promulgation, all treaties, acts and government resolutions are published in the official bulletins, the *Collection of Laws* and *the Collection of International Treaties*. The *Collection of Laws* and the *Collection of International Treaties* are currently available throughout the country. District authorities and magistrates of large cities are obliged to allow other parties to examine the Collection. The *Collections of Laws* and *the Collection of International Treaties* are available to the public in various electronic forms (for instance, ASPI, LEXIS, JURIS). The bulletins are also published electronically on the Internet (www.mvcr.cz/sbirka).[77] Under Section 5 of the *Freedom of Information Act* No. 106/1999 Coll., every state administration authority must publish relevant information on adopted regulations at a place that is openly accessible. Provisions that are not legal regulations and that are in the competence of departmental regulatory authorities are contained in the departmental bulletins of these authorities. Bulletins are available to all interested parties on request. From November 2000, all regional legal instruments will be published in the *Bulletins of Legal Regulations* of the regions.

While there appears to be no requirements to consult during the development of a regulation at sub-national levels, generally binding regulations of the municipality and municipal decrees must be made public, once they have been passed, by being displayed on the official notice board at the Municipal Authority (§ 112) for 15 days, otherwise they are invalid. Legal regulations of the municipality must be available to all at the Municipal Authority in the municipality by which they are issued. The Municipal Authority also submits its legal regulations to the relevant District Authority promptly.

The *Freedom of Information Act* has recently complemented the transparency framework. The Act provides the right to all citizens to have access to documents not exempted. (Exemptions include the preservation of personal data, preservation of business secrets, and preservation of secret data concerning the property.) Under this act all parties (corporations and individuals), including foreign entities, can also acquire information on how their comments have been handled. For instance, the draft text, intention and justification reports and the opinions of the Legislative Council or the Government Office Departments are not considered confidential, and thus are accessible to the public.

Some ministries have gone further in the communication policies. In 1998, at the instigation of the Ministry of Environment, the *Right to Know in Environmental Aspects Act* (123/1998) was passed. The environment act was a key precedent of the *Freedom of Information Act* approved a year later, and in some respects goes further in transparency rights.

Compliance, application and enforcement of regulations

Adoption and communication of a law or regulation sets the framework. But the framework can achieve its intended objective only if the regulations are implemented, applied, enforced and complied with. A mechanism to redress regulatory abuse should also be in place, not only as a democratic safeguard of a rule-based society, but as a feedback mechanism to improve regulations.

The *Administrative Procedures Act* (Act No.71/1967 CoL) is very broad,[78] providing uniform rights of appeal and duties to citizens with respect to decision-making by the public administration.[79] It is primarily concerned with stipulating the manner in and the period of time within which administrative authorities must provide answers or resolutions to an applicant. In particular, the administration has to decide in 30 days (within 60 days for more complex inquiries) when a citizen asks for a administrative decision. However, the act does not contain much detail, as many of the conditions attaching to appeal are

contained in the specific act relating to the particular area. Also, the right of appeal can be withdrawn by the particular act which sets up the regulation of an area, such as health and safety, environment, or commercial inspection, etc. The individual acts provide the legal power to enforce and the basis for the organisation and strength of enforcement and there is considerable variation across these acts on appeal and reporting requirements.

Consequently, enforcement and inspection mechanisms have often been developed within individual ministries, without an overall architecture. Institutionally, monitoring and enforcement are largely conducted by the ministries, either directly or through enforcement offices that report directly to the ministries. Enforcement offices, and inspectorates, operate autonomously from their responsible ministries, though reporting to them at least once a year. A law provides their power and organisation, while the *Administrative Procedure Act* supplements their actions.[80] They tend to focus on specific areas such as Trade, Health and Safety, Energy, Nuclear Safety, Environmental, Commercial Inspection, and Agricultural and Alimentary Inspection. Their operation, methods and effectiveness vary significantly. Little co-ordination is carried out between them, which results in a fragmented institutional environment.

At the local level, duplication and competition have been detected, with disproportionate costs for SMEs. Some have been criticised for ineffective controls, for instance, for failing to control illegal imports and for not providing sufficient consumer information. It is as yet unclear, what the co-ordination mechanisms with the new regions will be or how they will operate. Weaknesses in the co-ordination during the implementation of rules has been raised in particular.[81]

Enforcement structures are lagging behind new regulations, and lack of procedures could foster abuses. Aggravating factors include the low pay of enforcement staff and lack of staff.[82] The government acknowledges that corruption is a problem[83] and instituted in 1999 a Programme to Combat Corruption (see Box 7).[84] Its commitment to bringing about change is evidenced by the number of cases involving bribery and "abuse of the position of public official" that have been taken to court.[85]

Public Redress and the Judicial System

According to the Constitution, judicial authority is exercised by independent courts. The court system consists of the Supreme Court; a Supreme Administrative Court (provided for in the Constitution, but not yet established), two High courts, five Regional courts, and 87 District courts.[86] The decisions of the public service are reviewed by special panels of general courts.[87] These reviews are concentrated in the regional courts. Superior courts review the decisions of ministries and other central state administration authorities. District courts review the decisions only for those cases where the fine exceeds 2 000 Czech crowns.[88]

Decisions of municipal authorities issued under the *Administrative Procedure Act* may be subject to revision on the basis of appeal, by superior authorities. An administrative decision may also be examined by court on the basis of a civil action. Decisions, measures and other administrative acts of municipalities may be contested by constitutional complaint before the Constitutional Court.

All individual administrative decisions of the central administration and local self-government can be reviewed by a court unless the law specifically excludes them from re-examination (for example, privatisation decisions are not appealable). In cases specified by law, the courts may decide on remedies concerning the administrative decisions, which have not yet become legally effective. A court review can be carried out only once.

Courts do not review legislative acts or other generally binding normative instruments. For these cases, a request for judicial review by the Constitutional Court, which is completely separated from the courts, is available. The Constitutional Court has the right to annul judicial decisions, decisions of the public administration and acts of the parliament if they do not comply with the Constitution. The Czech Constitutional Court is very active. Recently, certain provisions of the *Restitution Act*, the *Act on Citizenship* and the *Criminal Proceedings Code* have been annulled by the Court.[89]

Box 7. **Fighting corruption in the Czech Republic**[90]

Previous governments have been committed to detecting and deterring corruption in the civil service and the current government has intensified efforts in this area. Transparency is considered the most effective way to combat corruption. Different legal instruments, institutions and mechanisms have been set up or proposed in the past few months. They include the *Freedom of Information Act*, legislation on public tenders, transparency rule on property structures in the media, establishing an Ombudsman, a new law on disposition with State property, a law on civil service (including stricter conflict of interest controls), a regulation to protect witnesses who notify cases of corruption, amendments to the Penal Procedure Code, a State auditing mechanism, signing and implementing the OECD Agreement on Combating Corruption of Foreign Officials in Economic Relations.

Two proposals merit mention:

- The commitment to publish an annual report on bribery and criminal offences committed by public officials.
- Reform of the Business Registration Office system based on a random designation of the administrator in charge of specific cases and to ensure that an applicant is never alone with the administrator after the selection. This should reduce the scope for personal influence by the applicant.

The judiciary still faces considerable problems: lack of specialisation of judges, alleged misuse of discretion by judges, alleged "over-management" of bankruptcy cases, too many administrative tasks, use and abuse of appeals and counter-appeals.[91] This leads to slow procedures (it takes an average of 2 to 3 years to complete court action, although most administrative cases are solved in within one year) and case backlogs.[92] While the number of judges has increased from 1400 in 1989 to 2300 today, the matters to be covered by the courts has grown (such as commercial/bankruptcy issues) and there is a lack of expertise.

In February 2000, the Czech Government adopted an ambitious reform programme — "Concept of the Reform of the Judiciary" — containing a comprehensive reform agenda. Some amendments have been passed, including those that should simplify and accelerate some civil and commercial proceedings (for interim measures, taking evidence, rules governing appeals,[93] enforcement of judgements and the commercial Registry).[94] However, other changes providing judicial self-administration to increase independence, the establishment of the Supreme Administrative Court, addressing corruption concerns, changing the court structure and procedures, and establishing an autonomous agency to administer the courts were rejected by the parliament in July 2000.

Two other institutions assist the enforcement of the Law. The system of the Attorney's Offices established in 1994, which is composed of the Office of the Attorney-General, the Highest Attorney's Office, Regional and District Attorney's Offices, acts in the name of the State in criminal procedures. The system replaced the former Prosecutor's Office.

In 1999, the *Ombudsman Act* was passed to protect public rights. It became effective on 28 February 2000. In contrast to many countries, the ombudsman is not appointed by the government but selected by the Senate and elected by the Chamber of Deputies. In theory this method of appointment will create more credibility and independence. After delays, in December 2000 the Chamber of Deputies elected the Ombudsman, the former Minister of Justice, who enjoys great authority. He will head an office of 50 staff in the city of Brno.

Once fully operational, appeals can be made to the Ombudsman's Office, they will be assessed, and bodies must submit evidence requested by the Ombudsman.[95] If the Ombudsman finds that a complaint is justified, he may ask for a remedy but has no right to order a correction. He does, however, have means to seek a resolution. These include asking parliament for a remedy or approaching the media. The Ombudsman is independent but is reliant on funding from the state administration, which may be the object of review by the Ombudsman's Office.[96]

3.2. Choice of policy instruments: regulation and alternatives

In many OECD countries, much reform is based on the use of a wider range of policy instruments that work more efficiently and effectively than traditional regulatory controls. The range of policy tools and their use is expanding as experimentation occurs, learning is diffused, and understanding of the markets increases. At the same time, administrators often face risks in using relatively untried tools, bureaucracies are highly conservative, and there are typically strong disincentives for public servants to be innovative. Reform authorities should take a clear leading and supportive role, if alternatives to traditional regulations are to make serious headway into the policy system.

In the early 1990s, the Czech government did show a willingness to experiment with an innovative privatisation mechanism based on vouchers, which unfortunately was marred by unforeseen consequences and an inappropriate regulatory framework. Despite this, or because of this, the opposition within society to regulatory innovation continues and this might reflect on the rule-making practices As in other countries, however, progress on the use of alternative instruments can be seen in the area of environmental protection and in self-regulation of professional bodies.

In the environmental area, there has been extensive use of economic instruments, notably the use of taxes to address the negative effects of pollution or the use of environmentally valuable resources, for example there are charges on water consumption and pollution, waste disposal and air pollution. In addition, excise taxes are levied on gasoline and diesel fuels and road use; and there are tax exemptions for environmentally friendly vehicles. Without being able to conclusively attribute cause and effect, air pollution (as measured by SO_2 and NO_2 emissions) has dropped by more than 50%. Other instruments used include eco-labelling and extensive education programmes. While it would be possible to take these innovations further, the Czech Republic has made great progress in the adoption of market-based and other innovative instruments to achieve environmental objectives.[97]

Some functions of the state have been delegated to professional organisations (for instance the Chambers of Auditors, Tax Advisors, Lawyers, doctors and others). Respective laws define the basic rules for each profession, while the law gives them authority to decide about entry to the profession under the conditions set by the law; assess the professional competence of members of the professional organisation, and control the performance of its members, including the possibility to sanction if misdemeanours are detected. No direct surveillance is performed by any ministry or office. Self-regulation is not without risks, of course, and the competition authority has opened cases against some chambers for anti-competitive behaviours.

3.3. Understanding regulatory effects: the use of Regulatory Impact Analysis (RIA)

The 1995 *Recommendation of the Council of the OECD on Improving the Quality of Government Regulation* emphasised the role of RIA in systematically ensuring that the most efficient and effective policy options were chosen. The 1997 *OECD Report on Regulatory Reform* recommended that governments "integrate regulatory impact analysis into the development, review, and reform of regulations." A list of RIA best practices is discussed in detail in *Regulatory Impact Analysis: Best Practices in OECD Countries.*[98]

As part of the elaborated process to prepare a new law or subordinated regulation set out in the *Government Legislative Rules*, the Czech Republic has benefited from capacities to evaluate their effects. As noted in Section 2.1, the principal mechanisms consist of preparation by the proponent ministry of two successive reports.[99] Although they differ by the extent of the detail of the answers, both need to address the six criteria reported in Section 2.1.

Various elements are closely related to the principles and elements of the OECD 1995 Recommendation. However, they have some steps to go to become a formal requirement to undertake regulatory impact assessment. The lack of such a requirement has been a major gap in Czech's quality

control procedures. Policy officials do not base decisions on a clear assessment of the costs and benefits of proposed government actions, such as impacts on economic activity. The September 2000 Government Resolution aims to introduce a RIA mechanism. This would be a significant step and would provide the country with a key instrument needed for a market-led growth strategy. The following analysis of RIA will be based largely on the formal features of the current system. This is because of the lack of evaluation of the effectiveness of the justification reports. Moreover, attention should be given to the fact that only an implicit commitment to implement RIA within the Legislative Rules exists, opening the possibility of the current and the new system to overlap.

Assessment against best practice

Maximise political commitment to RIA. Use of RIA should be endorsed at the highest levels of government. The Czech system rates high on this criterion. The *Legislative Rules* clearly stipulate that all ministries preparing a Bill, government resolution or ministerial order need to complete the two-step justification reports. Only in cases of emergencies such reports can be waived. But even in these cases, the Chair of the Legislative Council assumes responsibility for its quality (Section 17).

Allocate responsibilities for RIA programme elements carefully. To ensure "ownership" by regulators, while at the same time establishing quality control and consistency, responsibilities for RIA should be shared between ministries and a central quality control unit. As in virtually all countries, the responsible ministers are the primary drafters of the justification reports.[100] Quality control is exercised by the Legislative Council, with the help of two reports prepared by the Departments of Legislation and Compatibility of the Government Office. While the role of the Council is only advisory, its reputation and credibility brings political weight to its opinions, even more today when a Deputy Prime Minister is the chair of the Council. However, the Council and both departments focus mainly on legal aspects, and lack sufficient economic or public policy capacities. The September 2000 *Government Resolution* sets the task for the Minister of the Interior to propose to the government how to assure the administrative capacity for regulatory impact analysis and regulatory quality control as a part of the policy material concerning the central state administration reform. Care should be taken to implement such aims in particular through the creation of an oversight unit located at the centre of the government with sufficient resources (human and financial) to fulfil efficiently its obligations, and at the same time to co-ordinate harmoniously with the other Government Office departments and the Legislative Council to avoid duplication or even contradictions.

Quantification of impacts. Except when evaluating budgetary impacts, the justification reports prepared in the Czech Republic are limited to qualitative impacts. However, an effective RIA should be based from the beginning on quantitative assessment and methodologies, which assure consistency and objectivity. A practical strategy with which to start can be to concentrate, like the UK, on compliance costs of businesses. As capacities to prepare and evaluate the RIA increase, the longer term goal could shift to establish a full benefit-cost analysis. However a medium term strategy should be to develop methodologies to evaluate impacts beyond those falling on employers, employees and government. Attention should be given from the outset on impacts on consumers and citizens.

Develop and implement data collection strategies. The usefulness of quantitative impact analysis depends on the quality of the data used. An impact assessment using quantitative analysis can provide greater incentives for regulators to be accountable for their proposals. Since data issues are among the most consistently problematic aspects in conducting quantitative assessments, the development of strategies and guidance for ministries is essential if a successful programme of quantitative RIA is to be developed.[101] An interesting practice, that the Czech government could launch, would be to adapt the Danish system of panel tests where randomly selected firms evaluate the potential costs of a proposed regulation.[102]

Train the regulators. Regulators should have the skills to do high quality RIA, including an understanding of the role of RIA in assuring regulatory quality, and an understanding of methodological requirements and data collection strategies. Although the Legislation Rules are extremely detailed, a series of guidelines and courses should enhance the capacities of Czech regulators to prepare a high quality RIA. Moreover, a significant investment in developing training strategies will be required, as most of the professionals involved in the regulatory process are lawyers. The use of external economists to gather as well as analyse the data could be a solution in the short term.

Target RIA efforts. RIA is a difficult process that is often opposed vehemently by ministries not used to external review or time and resource constraints. The preparation of an adequate RIA is a resource-intensive task for drafters of regulations. Experience shows that central oversight units can be swamped by large numbers of RIAs concerning trivial or low impact regulations. On the other hand, ministries will have the tendency to prepare a RIA at the end of the process, completing it as a justification of the measure instead of using it as a powerful decision-making tool, from the beginning. Because of the danger of trivialising the exercise, it is vital from the outset for the Czech administration to target RIAs for those proposals that are expected to have the largest impact on society. As, the *Legislative Rules* process consists of a two-step mechanism to prepare regulation, the Czech RIA could require that all measures incorporate in the first justification report a simple, qualitative RIA. Upon the approval of this report by the government, and based on the expert opinion of a central unit, the ministries would need to prepare a complete RIA with a full quantification of compliance costs, only for specific proposals, which would be deemed to create potential compliance costs above a certain range.

Integrate RIA with the policy making process. The Czech Republic has a strong starting point concerning this criterion. The preparation of 'concept papers' plus the "two stage process" for the development of regulatory proposals, including the extensive inter-ministerial consultation process, are strong foundations on which to build RIA (see Box 4 and 5). Integrating RIA with the policy making process is meant to ensure that the disciplines of weighing costs and benefits, identifying and considering alternatives and choosing policy that meets objectives are a routine part of policy development. The two-stage process should be strengthened by integrating precise RIA requirements, obliging proponent ministries to concentrate on considering more innovative, market-based alternatives to "control and command" mechanisms, as well as "do-nothing options". A second element that would improve the policy making process is the development of procedures, together with an awareness-raising campaign, to foster the use of RIAs by parliamentarians discussing bills. The Italian Chamber of Deputies procedures on this aspect could be a model to be adapted to Czech circumstances.

Involve the public extensively. Public involvement in RIA has several significant benefits. The public, and especially those affected by regulations, can provide the data necessary to complete RIA. Consultation can also provide important checks on the feasibility of proposals, on the range of alternatives considered, and on the degree of acceptance of the proposed regulation by affected parties. For the moment, the two justification reports are seldom shared during public consultation, although they are not considered confidential and, if the proposed Bill is accepted by parliament, they can be downloaded from parliament's websites. Steps should be taken to formalise public discussion of these reports, together with the legal text. A powerful way to improve the quality of information on new regulations, and therefore the quality of the regulations themselves, would be to publish RIAs along with the draft texts.

In sum, the preparation of 'concept papers' and the two-step legislative process with two reports, where the second one is more detailed and involves extended interministerial consultation, provide strong foundations onto which a powerful RIA can be adapted and integrated. Special care should be given to developing quantification requirements, in the medium term, through a rigorous cost-benefit analysis, and public consultation mechanisms. A strategic approach to the implementation of RIA should be developed, using both strong enforcement by a central authority and adequate training and guidance for the drafter. Other OECD countries have indeed learned that a periodic revision and improvement of the requirements and incentives, positive and negative, are more effective than instituting a too strict standard at the start.

3.4. Institutional design

Independent regulatory bodies, distinct from line ministries, have been created in the Czech Republic, which could greatly improve market functioning. These bodies include the Office for the Protection of Economic Competition (1991), the Czech Telecommunication Office (2000) and the Energy Regulatory Office (2001). The telecom authority now reports to the Government. The degree of independence of the Czech Securities Commission[103] (1998) could be improved —the OECD stated that the SEC has still not been given greater independence from the Ministry of Finance as recommended in 1998 and that "its ability to enforce many [regulations] is legally unclear."[104] Banking supervision is the responsibility of the Czech National Bank. The supervisory body for the insurance sector is the Ministry of Finance. The Ministry of Transport and Communication oversees land, water and air transport.

The Czech Republic has limited experience with the kinds of regulatory bodies needed for market-based institutions. Based on current practice, precautionary steps may be needed as concerns about the independence of the bodies have been raised. While they have budgetary autonomy and may issue regulations (orders) if authorised by an Act of Parliament The Czech Securities Commission has no rule making authority but operates as an enforcer and monitor of the market.[105] The heads of these bodies are appointed by the Government except for the Statistical Office and the Office for the Protection of Economic Competition, who are appointed and dismissed by the President. Their human resource management policies (hiring and firing, pay and promotion, etc) are aligned to those of ministries.

The Office for the Protection of Economic Competition appears to have an effective and vigorous working relationship with all regulators, whatever their nature, and as it has sole responsibility for competition issues it can cut across some areas of responsibility to regulate effects on competition.

4. DYNAMIC CHANGE: KEEPING REGULATIONS UP-TO-DATE

The Parliament of the Czech and Slovak Federal Republic and later the Czech government accepted the continuity of the legal order from 1989. Thus no government-wide systematic review of the laws in place was undertaken, as in the case of Hungary, though individual ministries reviewed their own legal framework. Even so, over the last 10 years there was an enormous effort to transform the economy into one of the most open economies in the region.[106]

As in all countries, responsible ministries monitor the effectiveness of the laws falling within their competence, supervise the impacts of their initiatives, and evaluate the opinions of interest and professional groups. This monitoring is a regular source of the motivation to amend laws or bring in new ones. However, it is not systematic. Moreover, typical mechanisms such as sunsetting laws or automatic reviews after a few years are not used. Once every year, the government evaluates the legislative program and plans for the forthcoming years of its term.

Currently, EU accession is the prime driver for review of existing regulation. The Czech nation has a strong will to join the EU and Parliament supports it through a "fast track mechanism" (see Section 2.3.).

Unlike Hungary, Poland or East Germany, where the SME sector survived under the communist regime, the Czech SME sector was almost completely annihilated. Since 1989, the growth and development of SMEs has been remarkable: from several thousands in 1989 to one million in 1992 and more than 1.7 million firms in 1999. The SME sector grew through new start-ups, restitutions, small-scale privatisations and the division of big state enterprises into smaller units. Restructuring and liberalisation of monopolised sectors also created the potential for SME expansion.

According to the Czech Association of Entrepreneurs there are no major regulatory obstacles to start up businesses. A new business (or any changes thereafter) must register at the Business Register administered by the business courts. Satisfying basic requirements and a clean criminal record for registering a business requires only one form.[107] However, in some registry offices, six months were needed to change registration and gain approval for a new line of business. The *Civil Procedure Code* was amended in 2000, which set the deadline for the registrations and changes. The general deadline for business registration is now 15 days from the day the request is submitted.

Little information is available about regulatory and administrative burdens facing SMEs after their creation. According to the Economic Chamber of the Czech Republic, the major problems for SMEs are the lack of capital (to start up and grow) and lack of information to take advantage of available support programmes.[108] Though compared to other countries in the region, SMEs in the recent past had freer access to credit. At a second level, SMEs complained about "the bureaucracy and lack of clarity in the role of civil servants", and finally about the "insufficient trust between contractors", an issue related to inadequate creditor rights.[109]

Administrative complexities are starting to accumulate as other licences and information requirements are needed to start up or operate a business in specific activities. These new administrative compliance costs are related to environmental and health and safety protection, as well as taxation and statistical formalities and mostly derive from the additional administrative requirements coming from approximating the Czech law with the *acquis*. A particular concern is the amount of discretion left to lower level bureaucrats: businesspersons are not treated the same way in different offices.

Another concern is the inability of firms to obtain binding tax interpretations of tax law. Although they can ask for interpretations, actions taken on the basis of the interpretation can still be judged illegal by a local tax inspector, subjecting the business to fines even if it has shown good faith in getting and then following a ruling.[110]

To reduce some of these problems, the government has launched legal and administrative reforms. To reduce the delays in the Business Register, for instance, the *Commercial Code* and the *Civil Procedure Code* were amended in 2000. The government is also preparing an entirely new *Trades Licensing Act* of which the substantive intent is to be presented to Parliament at the end of 2000 (with the legal text to be submitted in 2001). The Act should come into force on 1 January 2003. One aim of the draft act is to further clarify and simplify the process of issuing trade licences and harmonise the *Trade Licensing Act* with the EC legislation. The reform will equalise the electronic and paper form of documents; create a single "general trades" licence for all areas of business to which the entrepreneur is licensed; and transform information requirements needing an ex ante authorisation into general obligations to be inspected and verified.

To support SMEs and improve the business environment, the government has from the beginning developed specific schemes and institutions. Apart from the Ministry of Trade and Industry in charge of SME policy since 1996, the institutional framework is based on a Business Development Agency and a network of specialised centres operating at local level. The former focuses on three areas: services for entrepreneurs (*i.e.* consulting and training); provision and information on financial schemes, and other support to SMEs. Progressively set up since the early 1990s, a network of 27 centres at regional and district level operate as information "one-stop-shops". These bodies, which are in effect private consulting firms partially funded by PHARE, provide support and information to SMEs, in some cases redirecting them to ministries where they can get additional guidance. The centres also provide consultancy (the first consultancy is free of charge) and a small subsidised loan. In the near future the system will be complemented with a internet site. New business centres will be developed jointly with he Economic Chamber of the Czech Republic.[111]

5. CONCLUSIONS AND RECOMMENDATIONS FOR ACTION

5.1. General assessment of current strengths and weaknesses

In ten years, the Czech Republic has moved from a planned economy to a market-led economy in which about 77%[112] of the GDP is produced by the private sector, compared to between 1 and 4% in 1989.[113] A centralised and closed society has become a strong and open democracy. An authoritarian government was replaced by a government based on democratic principles which is more transparent and accountable. These achievements are even more remarkable as they were attained with relatively low economic costs in terms of early transition costs, and in the midst of a peaceful "divorce" from Slovakia.

But the transformation of the state administrative structure continues to lag other reforms. Implementation of a modern regulatory management system is necessary to complete the institutional support for a market economy. This delay has made the transition process more risky, contributed to significant failures in privatisation and market functioning, and has become a bottleneck to further economic and social progress. Action is needed to complete the institutional framework for sustainable growth in a well functioning market democracy. Despite recent steps, it will take some time before its effectiveness can be assessed, for instance in the case of the just appointed ombudsman. New institutions such as a central committee for promoting regulatory reform are not yet in place and others are not operating as effectively as needed. The regulatory management system is predominantly centred on legal quality, rather than economic impact. While procedures of policy and regulation-making are well established, consultation with the public is at the minister's discretion, the use of compliance-friendly regulations and economic assessment of laws and regulation is limited or without quality parameters to properly enforce the related tools, although at an early stage there is a requirement to identify alternative ways to approach a policy problem. Public governance, starting with establishing a politically neutral, professional and merit-based civil service, is still part of the reform agenda. The judiciary needs to be overhauled to operate faster and with more sensitivity to the problems of a market economy.

Economic transformation can only be sustained by a new culture in the administration and society at large. While most Czechs fully support the move to a market democracy, old habits of protection and state control die hard. The belief that government and administration should solve all problems (including loss of jobs and closing of businesses during periods of change) is slowing change.

As well, the Czech Republic should address the new challenges confronted by all OECD countries. The Czech Republic can use regulatory reform to reduce its vulnerabilities in a global market by increasing its economic flexibility. Accession and convergence to Europe requires extra effort in improving policy coherence and administrative efficiency. Demands for subsidiarity and devolution need to be met with further co-ordination across a multi-layered governance system. While the Czech Republic has done well in implementing competition and market openness, these reforms will only deliver their full promise with better business environments and smarter institutions. The regulatory management system needs stronger impact analysis assessment to complement strong legality checks. And just as the Czech Republic has a government wide approach to the development of regulation, so they should apply a government-wide and horizontal policies and approach to compliance and to co-ordination of enforcement,

While not being a panacea, deeper and systematic regulatory reform can help to address many of these challenges. The Czech experience entails an essential lesson for other countries. Essentially, it is a lesson about sequencing reform, and, the importance of establishing a sound regulatory and institutional framework to allow the market to operate. While the Czechs led the way in the region in opening markets and privatising their state-owned economy, they failed to realise that the transfer of ownership rights can only have maximum impact on efficiency and consumer welfare if contractual arrangements can be adequately enforced and corporate governance mechanisms work well. With hindsight, this is explainable. The market was not able to solve everything. Prudential regulations for the financial sector, corporate governance, bankruptcy and exit laws, as well as a reconstruction of the judiciary were enhanced belatedly. Institutional and governance issues were disregarded until late in the 1990s. Rigidities in government capacity appeared. Qualified staff left public administration, attracted by higher salaries in the private sector. The Czech government has taken steps to address the need for more systematic training of public servants.[114]

The Czech experience offers positive practices and institutions that should be considered by other Member countries. While not strictly speaking a part of the rule-making process, the development of important laws is usually preceded by Concept papers which provide a public forum for broad policy strategies including options for resolving problems. The "two stage process" to regulatory decision-making — established by the *Government Rules of Procedure*s and the *Legislative Rules* — ensures that policies are debated conceptually before a decision to use legislation is made. This contributes to policy quality and coherence. The process for developing laws and regulations, embedded in the *Legislative Rules*, are thorough and well-structured. The well functioning intra-governmental consultation of policy and of legal drafts is also noteworthy. Publication of an annual legal agenda enhances public consultation. Located at the centre of the government and supported by two specialised departments, the well-respected *Legislative Council* improves the legal quality of texts. Lastly, the modernisation programme launched in 1997, including the aim (in September 2000) to implement the OECD 1995 Recommendation shows political will and determination to move quickly ahead.

5.2. Policy options for consideration

This Section identifies actions that, based on international consensus on good regulatory practices and on concrete experience in OECD countries, are likely to be beneficial to improving regulation in the Czech Republic. They are based on the recommendations and policy framework of the 1997 OECD *Report to Ministers on Regulatory Reform.* It should be noted that the first two recommendations focus primarily on capacities needed to improve efficiency, accountability and transparency of governmental approaches rather than purely regulatory management systems. The inter-linkage and combination of the policy options should not be forgotten, though.

Included only marginally in these recommendations is the crucial dimension of the capacity of the judiciary. This is the missing link in the overall structure of interlocking institutions that together establish the incentives and pressures for high-quality regulation. In most OECD countries, the ultimate check on administrative abuses is the potential for review and reversal by the courts under principles of administrative law. Such deterrence should be credible to be effective. It is particularly important in the Czech Republic for the government and courts to provide an effective and practical judicial infrastructure for dispute settlement, since the role of arbiter of the rules of the game should be enhanced as direct economic intervention by the government is reduced.

- ***Increase the capacity and accountability of the public administration with a more flexible and performance-based system of human resource management, and by ensuring the accountability and transparency of administrative decisions and making appeal against decisions easier.***

Reform of the public administration is incomplete though recent results show that it is moving on the right direction. Improving the public administration is a high priority. Although changes have been announced, it is not expected that the *Civil Service Law* will come into force before 2002.[115] The complexity and political sensitivity of the issues involved explain why consensus was not reached in the past. An ill-conceived civil service law instead of fostering modernisation may indeed hamper it, freezing the situation and protecting the bureaucracy in place. A flexible and modern administration (including at local level) has become an urgent task needed to build the institutional bedrock for future reforms.

The public service still operates within an outdated framework. Lack of clear separation between the political and administrative levels fosters politicisation in the administration. Inadequate and rigid systems for hiring and firing, pay and promotion, as well as a lack of mission statements and performance-based systems are preventing the development of a professional and flexible public administration. Clear legal rules are required for the management of human resources, including legal certainty and merit in hiring and firing, in order to reduce politicisation in public administration. Crucially all these factors are having significant and long-term consequences on the development of market-oriented institutions needed to regulate properly the new economic structures. A key reform would be to identify the areas of the administration, such as sectoral regulators, which require more skilled people to carry out their functions, and devise ways to attract them. This may involve greater flexibility in their hiring and pay policies, in particular being able to offer relatively higher remuneration to the more skilled.

Reform should target a series of capacities and outcomes, most of them identified previously by the OECD's SIGMA and the World Bank. Actions previously identified include recommendations to:

- Reduce system rigidities and misunderstanding among ministries by fostering mobility of high officials between ministries;
- Enhance training and skills, especially non-legal managerial and economic capacities; and
- Urgently, provide greater flexibility to the human resource management policies of new independent sectoral regulators as these bodies tend to operate (*i.e.* recruit and retain) in a thin labour market of competent technicians who are also being recruited by well-funded private enterprises.

Responsibility and accountability of public servants should be better regulated. It should be easier for the interested party to appeal a decision. The Ministry of Interior is in charge of this critical reform. While cultural changes are involved, the aim over time should be to instil principles of good faith, reasonability and proportionality in the exercise of administrative power. Moreover, the reform should not only target errors and unpredictability of the bureaucracy, but also be part of the anti-corruption policy. Major areas of reform could include:

- The identification and control of conflict of interest of administrators;
- Clear and speedy recourse or appeals against administrative decisions that do not, in the first instance, require resort to the courts;
- Enforcement and encouragement for public servants to comply with the requirements of the forthcoming revised *Administrative Procedure Act* — widespread knowledge of the requirements, consistent application across all of the public administration, and visible commitment by senior bureaucrats are required to ensure their full implementation. (The example of the implementation of the *Freedom of Information Act* by Ireland with the institutional, training and reporting mechanisms, could be followed by the Czech Republic.)

- ***To clarify that all ministries are responsible for acting in accordance with open and competitive markets as they carry out their missions, and to guide the use of regulatory powers, the role of competition and market openness principles should be strengthened government-wide, perhaps through revised mission statements. More use could be made of the Office for the Protection of Economic Competition's annual report to address these issues.***

A sustained effort is needed to embed good regulatory practices into the "culture" of the public administration Reforms to framework laws for the civil servants, and better co-ordination across the government will greatly boost regulatory reform capacities in the government and reduce the risks of regulatory failures. The *Government Resolution* of December 2000 is to improve horizontal co-ordination and strengthen the role of the centre of government is a good step forward. However, these crucial elements should be structured and driven by a government-wide policy and appropriate institutions that support competitive and open markets. The government could explicitly include in the mandates of ministries, agencies and regulators the responsibility to support competition principles and market openness. All ministries, as they carry out their policy missions, should be responsible for eliminating as far as possible constraints on competition within their jurisdictions, to respect competition and market openness principles, and reduce the risk of anti-competitive state actions. Ministries should be responsible for co-ordinating with the Office for the Protection of Economic Competition so that conflicts are dealt with quickly. The Office's annual public report should assess the consistency of ministerial actions with competition and market openness principles, and could be discussed in the proposed Regulatory Reform Committee (see next recommendation).

Improve the speed and effectiveness of regulatory reform through (i) the establishment of a ministerial-level Regulatory Reform Committee to enforce the regulatory reform policy, and (ii) an expert unit ('the oversight unit') in the Government Office to certify the quality of regulatory impact analyses, to prepare public reports on progress by ministries in improving regulatory quality, and, over time, to develop a permanent regulatory management system.

With the September 2000 *Government Resolution*, the Czech Republic joined the list of OECD countries that have integrated the 1995 OECD *Council Recommendation on High Quality Regulation* into their regulatory framework. Experience from other countries shows that adoption of the policy should be followed by sustained efforts at implementation, financing, and establishment of effective compliance incentives in the public administration. Regulatory quality management is a permanent governance task aimed at ensuring that governmental regulatory functions contribute over time to the highest level of economic and social development. Individual ministries should be responsible for ensuring their adherence to regulatory quality principles in their day-to-day activities, while, to ensure consistency across the government, regulatory oversight should remain at the centre of government as a core management function. Institutional roles will need to be carefully designed to make effective use of the full range of organisations which can contribute to regulatory quality, in particular the Legislative Council. The functions of these existing central institutions would be enhanced with the creation of two new bodies:

- A ministerial-level **Regulatory Reform Committee** to promote and implement the policy, as well as serve as the main forum for regulatory reform decision-making and co-ordination. Its main task would be to enforce a good quality regulatory policy. The committee would also resolve controversies between policies, filtering the agenda issues discussed in Cabinet where appropriate and prepare an annual report to the Parliament. Participants on the committee could include the Head of the Government Office and the Ministries of Finance, Trade and Industry, Interior, Labour and Social Affairs, Justice, the Ministry of Transport and Communications, and the Office for the Protection of Economic Competition. For day-to-day operation, the inter-ministerial taskforce for the preparation of the OECD review should become a permanent working party reporting to the committee.

– As stated in the September 2000 Resolution, the government intends to create **an Oversight Unit** in the Government Office. This is a positive and needed step in implementing the regulatory quality policy. While the new unit will be designed to function within the context of Czech institutions, it should have (i) authority to make recommendations for further reforms to the Regulatory Reform Committee, (ii) capacities to collect information and co-ordinate the reform programme government-wide, and (iii) resources and analytical expertise to provide an independent opinion on regulatory matters. In the short run, the unit could assess the quality of RIAs submitted by ministries and prepare periodic public reports on progress by ministries in improving regulatory quality. As experience expands, the Unit could develop capacities to advocate and design thematic and sectoral programmes of reforms, co-ordinated across relevant policy areas. The unit should, in two years, be able to develop performance targets, timelines, and evaluation requirements, review regulatory proposals from ministries against quality principles, and advise the centre of government on the quality of regulatory and reform proposals from regulatory ministries. The credibility of the unit would be enhanced, and Parliamentary support strengthened, if its role and the responsibilities of the ministries were incorporated into the *Legislative Rules*.

– Require that ministries carry out regulatory impact assessments (RIA), based on OECD best practices, for all proposed regulations, tailor the level of analysis to match the significance of the regulation, and integrate RIA with the "two stage process".

The September 2000 resolution commits all members of the government to follow the principles included in the 1995 OECD Recommendation on Improvement of Government Regulation when amending or preparing new regulation. This is an important initiative. Currently, the government is designing the implementation process. As the OECD concluded in its 1997 assessment of regulatory impact analysis in OECD countries, details of implementation are as important as the formal adoption of the tool, as well as strategic sequencing to enforce it.

- In the short term, the OECD checklist for regulatory quality, that was annexed to the September 2000 Recommendation, should also be annexed to the Legislative Rules and be completed by all ministries and agencies for all regulatory proposals (laws, government decrees, ministerial orders, etc.). While some kind of assessment should be done for all regulatory proposals, it is vital to target scarce RIA resources to those proposals that are expected to have the largest impacts. A simple RIA could be required for all measures during the first stage of decision making. At the second stage, and based on the expert opinion of the oversight unit, a thorough RIA could then be required for the most important proposals, perhaps those that could impose costs above a certain threshold. A simple RIA, with attention to identifying regulatory and non-regulatory alternatives to achieve policy goals, could be incorporated into the *Legislative Rules*.
- In the medium term, the government should adopt an explicit benefit/cost test together with more technical implementation strategies (training, data collection techniques, etc.). The analytical rigor of RIAs would improve over time as capacities were built inside the ministries, with a corresponding increase in the level of scrutiny of RIA quality.

In both the short and medium term, the RIA process should be fully integrated into the public consultation process, with RIA outcomes made available as key inputs to the consulted parties, and the results of consultation fed into refining the RIA and the regulation. As stated in the previous recommendation, the establishment of a permanent body to manage RIA would improve its implementation. Without dedicated enforcement, RIA is not likely to deliver real improvements in the quality of regulations.

- ***Further strengthen anti-corruption efforts by improving transparency in applying regulations. Positive steps would include reviews of administrative formalities and establishment of a central registry of formalities with positive security.***

The Czech Republic has been better at producing laws than at enforcing and applying them. The Czech Republic has relied too much on directives, guidance, and good intentions, and not enough on enforcement and institutionalised pressures for good results. It is difficult to determine the actual level of corruption between public officials and regulated entities. However, anecdotes and information reported by the government as part of its anti-corruption fight suggest that corruption in the Czech Republic, particularly related to enforcement and compliance inspection, and transparency problems, may be harming market functioning and impeding the process of rebuilding public trust in government. Other OECD countries, including Italy, Korea, and Mexico, have experimented with techniques to reduce incentives and opportunity for corruption in the application of regulations and administrative formalities. Such techniques might be of interest to the Czech Republic and further strengthen the fight against corruption that it has already been started.

In Mexico, a thorough review of administrative formalities and procedures (and in particular, licences, permits, concessions and other authorisations), followed by elimination, simplification, or re-engineering to reduce the potential for abuses, has contributed significantly to a more transparent and efficient environment for businesses. Italy, too, has significantly reduced the burdens and uncertainties of administrative requirements for both businesses and citizens. A centralised registry of all administrative procedures with positive security would increase confidence and transparency. The Czech Republic could adapt the Mexican experience in creating a single authoritative source for administrative procedures, which often are the most irritating ones for SMEs.[116] Alternatively, the government could harmonise official formats to be used in administrative procedures. Such a process could be inspired by the French CERFA (Centre d'Enregistrement et de Révision des Formulaires Administratifs) model. An official registry of formalities and/or formats will significantly enhance transparency for users in terms of the content and form of permissible regulatory actions, and force a rationalisation of ministry rules. The registry should be made available through the Internet.

- ***Further improve transparency by extending legal requirements for notice and comment procedures, already required for technical standards, to all ministries and agencies during the development and revision of regulation. Procedures for openness should be standardised for all advisory bodies.***

Adoption of a general consultation requirement covering all substantive new laws and lower-level rules would promote both the technical values of policy effectiveness and the democratic values of openness and accountability of government. Notice and comment processes are based on clear rights to access and response, are systematic and non-discretionary and are open to the general public as well as organised interest groups. Advisory groups may continue to be needed to establish dialogue with experts and interest groups, and standard procedures for their use are necessary to ensure that they do not undermine the transparency of the regulatory system. Requiring that all regulatory projects be published together with the regulatory impact analysis (see previous recommendation) could also strengthen the system.

- ***Promote the adoption of market-oriented policy instruments through guidance and training.***

The Czech Republic has been aware of the need to move away from rigid 'control and command' requirements to more efficient and flexible kinds of incentives, and this has been achieved to some extent in some areas, notably environment. However, stronger encouragement from the centre of the government is needed, as well as support through training, networking, guidelines, cross-fertilisation between sectors and expert assistance where necessary. A promotion and monitoring programme would help regulatory

bodies reduce the informational barriers to using innovative policy instruments. An annual public report by the Oversight unit (see recommendation above) to parliament on the alternatives adopted during the past year could help monitor progress. Such a report could assess use of categories of alternatives such as performance-based regulations; process regulations; co-regulation; self-regulation; contractual arrangements; voluntary commitments; tradable permits; taxes and subsidies; insurance schemes and information campaigns, etc.

- ***Improve the policy foundation for the efficiency, independence and accountability of new independent regulatory agencies by developing guidelines for their systems of governance, policy coherence, working methods, and relations with the competition authority.***

The Czech Republic is putting in place new regulatory institutions, as a key part of its framework for the privatised utility and network industries and for developing the regulatory frameworks where state monopolies will continue to operate. Building these institutions has become an essential step for attracting FDI in these sectors as they are perceived as more accountable and transparent. However, the existing efficiency, accountability, and transparency in their regulatory activity and governance are not clear. Links with the ministries remain on issues such as licensing powers, and constitutional precepts may even constrain true independence. Relationships between sectoral regulatory agencies and linkages with the competition office have never been fully worked out. Management issues ensuring high technical capacities are not yet resolved (for instance, concerning the hiring and firing of professional staff). A policy and legal framework should address these issues. The recent policy proposal on *Governance and Accountability in the Regulatory Process* prepared by Ireland could be used as a starting point.[117]

- ***Strengthen regulatory quality disciplines within sub-national authorities, focussing in particular on accountability, transparency, and market-orientation.***

To shift power away from the central government, the Czech Republic has pursued decentralisation in favour of local governments. Such policies can bring benefits in terms of democratic responsiveness and local accountability, but the experiences of other countries show that adequate safeguards should accompany devolution. Although regionalisation should reduce the distance between administration and citizens, fast devolution can reduce the quality of governance, as local governments may not possess capacities to administer well and make good quality rules. In the Czech Republic, controlling mechanisms to accompany decentralisation are not yet fully developed. While there are some functioning accountability controls, extensive reliance is placed on the judiciary to check regulatory abuses at the local level. More transparency could be introduced into the making and application of regulations. Unless regulatory disciplines and capacities are improved at regional and local levels, decentralisation could undermine the progress in regulatory quality achieved at the national level.

For example, local entities may use their new powers to limit competition, which would increase consumer prices. They are closer to, and sometimes vulnerable to, well-organised lobbies and rent seekers. They might also have resource limitations that make it difficult to ensure that the bylaws they produce are of good quality.

Until recently, the main control mechanisms on abusive regulatory practices were in the hands of the central administration's ministries and the competition authority. Functioning as *ex post* controls, the judiciary system, the courts as well as the constitutional court, were the major redress mechanisms. However, recourse to the judiciary, even as it becomes more efficient and responsive, will always be costly for individuals and small enterprises. The government should thus accompany *ex post* controls with accountability and transparency measures to be applied before local government bylaws are adopted to reduce the risk of harmful regulatory competition, capture by interest groups, harmful impacts on competition, and corruption problems in subnational governments. Regional and local governments

should, at minimum, be expected to apply the 1995 OECD Recommendation for Improving the Quality of Government Regulation and its accompany checklist. Benchmarking regulatory performance, such as the number and quality of business licences, could also provide strong incentives to detect best practices or shame laggards.

5.3. Managing regulatory reform

The Czech Republic has experienced a profound reform in many dimensions, including its regulatory framework. Considering the extreme repression of the communist period, the Czech performance is remarkable. A democratic polity and market-based economy have taken root. However, to consolidate its efforts, attain its potential growth and reap the benefits of its exceptional advantages, the country will still need to pursue more reforms (some painful), with dividends estimated to arrive in years rather than months.

The current government has learned from past mistakes wisely directing attention to governance and institutional issues, which had previously been treated as secondary relative to purely economic aspects. Following through with reform will require strong political will and exceptional communication skills to convince parliament and society in general. The challenges should not be underestimated. Regulatory reform has become a euphemism for state disengagement and toleration of abuse by private interests. Continuous changes have created strains in an egalitarian society. Some elements of the economy and society have not yet received their full share of benefits, while others have been protected from sharing the costs.

Managing regulatory reform will mean setting a regulatory quality agenda that will anchor polices that clearly serve the general public interest. Regulatory reform should enhance the government's ability to deliver higher standards of environmental protection, health and safety, consumer protection and other social goods, at lower costs. Better regulatory capacities will enable the Czech Republic to complete the state's transformation from owner and commander to regulator and arbiter of the rules of the game.

ANNEX 1. CHRONOLOGY OF PUBLIC MANAGEMENT DEVELOPMENTS[118]

1990	• The government decided on the abolition of the whole system of national committees and on the drafting of a new law on municipalities, a law on the capital City of Prague, a law on municipal elections and a law on District Offices as State administration bodies, and the Parliament enacted all Governmental Draft laws. A governmental advisory Commission for regions establishment was created. The Commission ended its work by proposing four possible alternatives of which none was realised. • On 29 November the first free, democratic communal elections to newly established municipal local councils were held. • A new system of State administration and self-government in education started in December.
1991	• In July, the government entrusted the Minister of the Interior with preparing a structure of local government and administration. The concept of decentralisation was approved. • In July, a new Office on Economic Competition as a central State agency was established (later, in October 1992, changed into a Ministry). • In connection with the restoration of private ownership and property rights a new law on real estate regulation and establishment of Regional Registry Offices came into force in July.
1992	• After the June election the new government's Declaration made public administration reform a priority, with the stress on further decentralisation. • In Autumn, it became probable that the split of the Federation would occur. All efforts were concentrated on the preparation of the new independent State, the Czech Republic. • In September, the government nominated a Governmental Committee for the preparation of a new Constitution of the Czech Republic, which ended its work in November. The Parliament enacted the Constitution on 16 December. • In October, the Office for Legislation and Public Administration of the Czech Republic (OLPA) started its activities under the chairmanship of the Vice Prime Minister.
1993	• In February, the Vice Prime Minister entrusted with chairing the OLPA established a working group for preparing the concept of local government reform. The resulting report was submitted to the government in June. • In August, the government approved basic principles of the Civil Service Law
1994	• In June, the government decided on the Draft Law on the establishment of the Higher Territorial Self-Governing Units (HTSGU) and passed it to Parliament. • In July, the Government decided which legislative regulation in connection with the establishment of the HTSGU should be drafted and entrusted the Ministers of the Interior and of Finance with this task. • In August, the government decided on the Draft Law on the competencies of the HTSGU. • In September, the government approved a document prepared by OLPA called The Intentions of the Government in the Field of Public Administration Reform and passed it to Parliament.
1995	• In March, the OLPA submitted to the government a document on the institutionalisation of State administration on the intermediate tier (HTSGU). • In September, in connection with negotiation of the 1996 State budget, the government decided on a staff reduction in Ministries and other central State agencies and District offices by 5% of the number approved for 1995 and in their subordinate fully or partly budget-financed organisations by 2%. • In October, the government decided on an Index of measures for simplification and improvement of State administration in relation to clients.
1996	• OLPA submitted to the government a report on the preparation of the reform of central State administration and its further progress. • In November, the government reviewed and approved the updated concept of the Ministry of the Interior in the field of internal order and security and the doctrine of the police of the Czech Republic comprising in particular the following tasks:

	• drafting the concept of the reform of penal law, administrative penalties, administrative procedure and administrative judiciary, – drafting the concept of more effective instruments of the struggle with corruption and serious economic criminality concerning particularly the misuse of State funds, – drafting the measures for effective abatement of legalisation of criminal gains, – drafting of a system of protection of official secrets, comparable with security standards of EU countries, • Completion of the integrated rescue system. • In November, the government abolished the OLPA, and its powers were transferred mainly to the Ministry of Justice, Ministry of Interior, Ministry of Labour and Social Affairs and the Government Office
1997	• In March, the Minister of Justice and the Minister of the Interior submitted to the government a joint concept of public administration reform. • In December, the Parliament adopted the Constitutional Act on the establishment of Higher Territorial Self-Governing Units (intermediate tier of self-government).
1998	• In March, the government reviewed and approved the document submitted by the Minister of the Interior on the further progress of public administration reform and decided that the Ministry of the Interior should fulfil temporarily (*i.e.* until the adoption of the necessary legislation) the role of the central authority for public administration reform and co-ordinate the activities of other state administration authorities in this field. The Public Administration Section of the Ministry of the Interior was established.
1999	• In March, the Concept on public administration reform was adopted by the Government. • In May, the Chamber of Deputies of the Parliament discussed the concept of Public Administration Reform and recommended its further steps. • In June, the Concept on preparation of the public service was adopted by the Government. • In October, the Concept on building of information systems in public administration was adopted by the government.
2000	• The new territorial arrangement of the state came into force on 1 January. • Higher Territorial Self-Governing Units (intermediate tier of self-government), the regions were created by 1st January. • In March, important Laws necessary for functioning of the regions were approved by the Chamber of Deputies. • In September, a Government Resolution adopted the 1995 OECD Recommendation on High Quality Regulation. • On 1 November, the government approved a draft of the Civil Service Act. • On 12 November, the first election to the regional bodies was held.
2001	• On the 1 January the regional authorities became fully functioning.

NOTES

1. See, for example, OECD (2000*c*).

2. Parliament adopted the principle of continuity of the legal regulations and changes to them were made through amendments, sometimes quite fundamental. Even the constitution was changed through amendment. The Constitutional Law No. 135/1989 Coll. amended the Constitution of the Czechoslovak Socialist Republic (Constitutional Law No. 100/1960 Coll.) and was adopted on 29 November 1989. Changes included: removing the leading role of the Communist Party and the National Front; and acceptance of every political culture in the spirit of patriotism, humanity and democracy and the demotion of Marxist-Leninist ideology to just one of these.

3. Elster, Jon; Claus Offe and Ulrich K. Preuss (1999).

4. A new municipal regime was introduced inspired by West European local government systems and the pre-war system of local authorities in the Czechoslovak Republic. The main aim was to move to democratic self-government, instituting a proportional electoral system. There are 77 districts and 6 259 rural and urban municipalities. District officials have been responsible for state administration and their heads are appointed by the central government. They have not been bodies of self-government, but rather provisional institutions, to function until genuine regional self-government is in effect. Centre for Economic Research and Graduate Education of Charles University, 1999, Czech Republic - Back to the Drawing Board, p. 26 & 28.

5. Rauf Gonenc, Maria Maher and Guiseppe Nicoletti; *The Implementation and the Effects of Regulatory Reform: Past Experience and Current Issues*, Economics Working Papers No. 251, OECD, state that as suggested by privatisations in new member countries, the change in incentives spurred by the transfer of ownership rights can have maximum impact on efficiency and consumer welfare only if contractual arrangements can be designed and adequately enforced, corporate governance mechanisms work efficiently and the private sector environment is relatively free from political influence". p. 94. Johnson and Shliefer (1999); in *Coase v. the Coasians*, NBER Working Paper 7447 compared the privatisation experiences of the Czech Republic and Poland and found that the stricter controls on securities markets, including the protection of minority shareholders, in Poland explains Poland's superior economic performance, in the 1990s.

6. Agh, Attila (1998), p. 128.

7. Agh, Attila (1998), p. 113.

8. "In the postwar period, democratisation efforts reached their peak in 1968 but were suppressed by a Soviet intervention, producing one of the most conservative Stalinist regimes in Central and Eastern Europe which lasted until the 1980s." Agh, Attila (1998), p. 113.

9. Gray, Cheryl W. (1992), p. 2.

10. These are not easy to change. "Cultural patterns, identities and legacies, associative practices that help or hinder the solution of collective goods problems, and the vigour with which entrepreneurial and other economic interests are pursued are among those determinants of change that cannot easily be legislated into — or out of — being." Elster, Jon; Offe, *et al*. *op. cit*., pp 17-18.

11. The Act on the Protection of Economic Competition was passed in 1991 and amended twice in 1992 and 1993. The Office for the Protection of Economic Competition was established in 1991.

12. There are no special laws for the public service. The Labour Code covers employment conditions for public employees as well as all other employees. Only Article 73 of the Code applies specifically to employees in state administration, the Czech National Bank, courts, the police and public prosecutors. It establishes additional duties for public employees, such as impartiality and preventing conflicts of interest. Also, the firing mechanisms are, strongly skewed against employers including the State. In terms of remuneration, a rigid and uniform pay-scheme regulates the system through Law 143/1992 and is applied to all public servants and is enforced by the Ministry of Finance.

13. Even the Office for the Protection of Economic Competition, which is one of the most dynamic and innovative state administrative bodies, has recruitment and personnel problems caused by the fact that many experts in law or economy are leaving for the private or justice sector

14. OECD (1998), pp. 49-54.

15. The recent inter-ministerial task force established for the OECD review, shows for instance, how a focussed group with strict deadlines can deliver policy outcomes effectively.

16. European Commission (2000*a*), p. 12.

17. Sources of law: The Czech Constitutions recognises the following main instruments: Constitutional Acts, Acts, Legal Measures of the Senate, Government Resolutions, Ministerial orders, and by-laws. A ministry may also issue other instruments, for instance a methodical instruction, which however not binding for society but have a normative character for state offices. Administrative authorities and bodies of the territorial local administration may also issue by laws. Representative bodies such as the Chambers of Auditors, of Tax Advisors, Lawyers, Doctors, etc., can also issue generally binding regulations within the limits of their competence.

18. Johnson and Shleifer (1999) considered that one of the most significant gaps in securities regulation in the 1990's was the lack of administrative procedures whereby the securities market regulator could discipline the intermediaries without recourse to the judicial system. p. 21.

19. Phare (1998), p. 34, found that "The credibility of the public administration is being damaged by unbelievably protracted treatment of proposals and other submissions to administrative authorities or inconsistent prosecution of public law offences, resulting in the citizen's feeling of helplessness in dealing with authorities." The report also noted that amendments to the Public Procurement Act in April 1998 had still not provided "improvements of transparency and protection of state and communal interests against undue enrichment of contractors or corruption of public servants."

    However, the amendment subsequently adopted in 2000 appears to have gone some way to improve transparency. The law was extended to apply to utilities (water, energy, transport, telecommunications) and set the duty to the contracting party to publish all public tenders and awards on the Internet. Hence, government procurement can thus be easily tracked on a website [www.centralni-adresa.cz], which has been under full operation since August 2000. The amendment also gave more precise definition to the content of public procurement: the quantity and sort of required works, supplies and services must be defined unequivocally within the terms of reference. The implementation of the Public Procurement Act was also improved with the launching of a programme to train officials in districts and municipalities about the public procurement procedure.

    Other indicators of abuse of discretion include:

- According to the EU 2000 Czech Republic Report there were 203 prosecutions and 110 sentences in 1999 and 84 prosecutions and 50 sentences in the first half of 2000 for bribery related offences; and for "abuse of the position of public official" there were 253 prosecutions and 85 sentences in 1999 and 141 prosecutions and 47 sentences in the first half of 2000;

- According to the annual survey by the Berlin-based organisation, Transparency International, which ranks countries based on the degree to which corruption is perceived to exist among public officials and politicians, the Czech Republic was ranked in about the middle of 90 countries in the year 2000; and

- In a study by the World Bank the Czech Republic was found to be above the average for CEE countries for administrative corruption (*i.e.* the extent to which firms make payments to public officials in order to influence the implementation of administrative regulations) although below the average when CEE and CIS

countries were combined. On the other hand, the Republic was ranked low in terms of the extent to which firms make payments to public officials in order to influence the formation of laws, rules and regulations or decrees: Hellman, Jones and Kaufman, *Seize the State, Seize the Day, State Capture, Corruption and Influence in Transition*, Policy Research Working Paper, No. 2444, The World Bank.

20. An intense debate led to rejection by the Parliament of the most recent judiciary reform project in the summer of 2000.

21. For instance, court cases take an average of 800 days to settle and bankruptcy laws (reformed 13 times since 1990) were considered unenforceable and thus penalise creditors are examples of poor enforceability.

22. For instance, appeal provisions allows a party to withhold evidence to be used as a basis of appeal to the next higher court and this results in delays.

23. Government of the Czech Republic, communication to the OECD, September 2000.

24. Some key legal laws were reconstructed upon earlier instruments. For instance, the existing *Civil Code* dates from 1964, although major amendments were made in 1992 to abolish the communist hierarchy of property and equalised the legal status of state and private property. The *Administrative Procedures Act* dates from 1967. The *Bankruptcy and Settlement Act* of 1992 is based on pre-war German and Austrian law and focuses on liquidation.

25. Government Resolution No. 258/1999 of 30th March 1999, Parliament Resolution No.268/1999 of 19 May 1999. The resolutions were supported by a large majority in Parliament.

26. The concept of central state administration reform approved by government resolution is entitled "Programme of Changes to Public Administration Management at the Central State Administration Level".

27. The following departments should be created:

- Dpt. of Analyses and Concepts (partially created);
- Dpt. of HR Management and Training;
- Dpt. of Organisation and Public Management;
- Dpt. of Internal Audit;
- Dpt. of Legislative Activity of the Government (already exists) and
- Dpt. for PR (exists but should be strengthened).

The Government Office would be headed by the State Secretary of the Government, which is a position in the state administration which is intended to be created under the proposed central state administration reform, should in co-operation with the State Secretaries of the Ministries consult and co-ordinate the activities of the central state administration.

28. The set of concepts includes:

- Concept of Enhancing Public Administration Management Effectiveness;
- Programme of Changes to Public Administration Management at the Central State Administration Level;
- Concept of Enhancing Public Sector Effectiveness;
- Concept of Enhancing Public Finance Effectiveness;
- Concept of Enhancing Public Control Effectiveness.

These concepts are being elaborated into details at present.

29. There are eight priority areas: obtaining the mastery of information and communication technologies; ensuring citizens have direct access to information through electronic links between all public administration agencies and citizens; to increase access to government data; build up the communication infrastructure; securing the security personal data protection, including via legislation (Bill No. 101/2000); aid the development of electronic commerce in the global economy by removing barriers (Bill No. 227/2000); establish a transparent economic environment to support business activity; and set up the preconditions for the information society.

30. OECD (1997*a*).

31. The Governmental *Rules of Procedures* are the appendix of the Governmental Resolution No. 15/1998, and the Governmental Legislative Rules were approved by Governmental Resolution No. 188/1998, subsequently amended by Government Resolutions 534/1998, 660/1999 and 596/2000.

32. Negotiation Rules Procedure of the House of Parliament (Act No. 90/1995) and the Negotiation Rules Procedure of the Senate (Act No. 107/1999).

33. Since, there is no obligation to prepare such reports set by the Legislative Rules or any other legislation, there are no requirements stipulated for their content or time of presentation.

34. The Rules have been in place since the foundation of Czechoslovakia in 1918, and even before. In 1811, a reform of the Austrian Code of Maria Theresa permitted the emergence of a Czech code on rule making. This first code was in many ways a World precursor in the European context, requiring for instance that the text be clear and that the law should be simplified as appropriate.

35. World Bank (1999), *op. cit.*, p. 197.

36. See Section 15, Articles 1 – 3 and Section 16, Articles 5 and 6 of the Government Legislative Rules.

37. Deighton-Smith, Rex (1997), p. 221.

38. Phare 1998, *ibid*, p. 30.

39. Government Resolution 950/2000, 27 September 2000.

40. Government Resolution No. 950 of 27th September 2000.

41. Government Resolution No. 1217 of 4th December 2000. The Government Resolution No. 63 of 17th January 2001 further requires the Ministry of Interior to take into account the OECD recommendation of the present report in its modernisation programme.

42. Legislative Rules article 13.1.b.

43. A small unit of the Government office provides the basic secretariat of the Legislative Council.

44. Although the municipality is now the basic territorial jurisdiction, 80% of the municipalities (often referred to "Local self-administrative bodies") have less than 1 000 habitants. As of 1st January 2001 there were 6 259 municipalities in the Czech Republic

45. Although the Ministry of Interior has been preparing a proposal dealing with a future monitoring and control mechanism. The key issue to resolve is the transfer of the current role of the District Offices in the process of monitoring and control over the legality of the regulation issued and decision taken within the delegated as well as the self-governing competencies of the municipalities to another administrative body,

once the District Offices are phased out. The Administrative Courts are contemplated to take over this role. At present the proposal is under consideration by the advisory body to the Minister of Interior, who is committed to present it to the Government by the end of September 2001.

46. Constitutional Amendment No. 294/1990.

47. Act on regions, Act revoking previous Acts to transfer the jurisdiction, Act on transferring property rights to regions, etc.

48. The 14 regions will replace 8 'virtual' regions established for administrative purposes between 1990 and 2000.

49. Act No. 129/2000 Coll.

50. District Offices Act 147/2000, Section 1 and 8.

51. The abolition of the 77 district offices and the transfer of the majority of their competencies to the selected municipalities is expected to be the next step in territorial public administration reform. The selected municipalities (the expected number of such municipalities ranges between 180 and 200) will be also authorised to exercise the state administration in another municipalities in the defined administrative territory. A part of the competencies of the district offices will be transferred to the regional authorities."

52. As part of the reform, support is being given to improving the quality of public administration in small municipalities, including incentives for the merging of municipalities where they voluntarily choose to do so.

53. The Articles 61 to 66 of the Act on Municipalities set out the delegated competencies of municipalities in general. The concrete extent of competencies delegated to the municipalities is stipulated by special law applied in particular area (*e.g.*, the Act on Territorial Planning delegates some competencies concerning territorial development to the municipalities; environmental legislation delegates some competencies concerning environment protection to the municipalities; etc.). Since there is a lot of laws delegating competencies in this manner, it is not possible to list all delegated competencies of municipalities.

54. Articles 29 and 30 of the Act on Regions set out the delegated competencies in general, and a number of special laws regulating various areas of public administration (territorial development and planning, transport, taxation, environment protection, etc.) delegate concrete competencies to the regions. Moreover, some competencies were transferred from the individual ministries to the regions by the Act No.132/2000 Coll., on Amendment and Revocation of Acts Related to the Act on Regions, the Act on Municipalities, the Act on District Offices and the Act on the Capital City of Prague, which was adopted by the Parliament in April 2000.

55. The reference to the Article 8 of the Constitution of the Czech Republic can be found in the Article 81 Section 2 of the Act on Regions.

56. Government of the Czech Republic, communication to the OECD, September 2000.

57. SIGMA (1999), *op. cit.*

58. The Ministry of Interior has indicated that they will staff small units of 1 to 3 persons in each region to perform this legal overview. The government has also expressed its intention to increase the role of the Supreme Audit Office at regional level, contemplating the possibility of creating regional offices, and reporting annually to the parliament on its findings.

59. See OECD (2000*a*), *op. cit.*

60. During the rapid privatisation, the devolution of public assets to local government created many conflicts. Many municipalities were so poor after 1990, that they took badly advised decisions in their relationships with the private sector, for instance in the case of heating or waste disposal companies. The selling off of municipal assets also included abuses (*e.g.* "tunnelling").

61. Economist's Intelligence Unit (2000), p. 15.

62. OECD (1999*a*), p. 79.

63. Government of the Czech Republic, communication to the OECD, September 2000.

64. As at June 2000, all documents of the primary legislation and about 28 000 pages of the secondary legislation had been translated. European Commission (2000*b*), p. 100.

65. Government of the Czech Republic, Responses to Section 1 Questionnaire, September 2000.

66. European Commission (2000*b*), p. 15.

67. The history of the Czech law making procedures can be traced back to the XVIIth Century and are linked to the developments of the Austrian administrative law. For instance in 1811, a reform of the Austrian Code of Maria Theresa permitted the emergence of a Czech code on rule making. This first code was in many ways exemplary in the European context, requiring for instance that the text be clear and that the law should be simplified as appropriate. In modern times, the first *Legislative Rules* were adopted in 1928. The rules were effective until the Second World War. The *Rules* were re-introduced by the government of the Czech Socialist Republic in 1988 and enforced until a revision in 1998. The main changes referred to the drafting of the Substantial Intent of a Bill and the control of the compatibility of the drafted regulation with the EU law (see Section 2.1). The amendments were introduced by the Government Resolution No. 660 of 28 July 1999.

68. Article 104 of the Constitution also establishes the regulatory powers of the representative bodies.

69. Article 73 of the *Labour Code*.

70. *Legislative Rules*, Section 5.7.

71. For instance, concerning the co-ordination and cohesion of policies to implement the Environmental Impact Assessment, (OECD, 2000, p. 129).

72. *Legislative Rules*, Section 5.3 and the *Act Regulating Certain Relations among Trade Unions and Employers*, the *Law on Collective Bargaining* (1991), and the *Labour Code* of 1965, which was later twice substantially amended (1991, 1994).

73. Although the members of these working groups are appointed, the Ministry has indicated that their selection is based on balanced representation of the different interest groups (*i.e.* NGOs, businesses, academics). The current working groups focus on topics such as eco-labelling, IPPC, Climate Change, Orus Convention and sustainable development.

74. As pioneered by the United States in 1946, the Administrative Procedure Act (APA) established a legal right for citizens to participate in rulemaking activities of the federal government on the principle of open access to all. It requires that each agency (1) publish a notice of proposed rulemaking in the Federal Register (official bulletin), (2) provide all interested persons — nationals and non-nationals alike — an opportunity to provide written data, views, or arguments on a proposed rule, and (3) publish a notice of final rulemaking at least thirty days before the effective date of the rule. See OECD (1999*b*).

75. Website of the Office of the Czech Republic. Also note, the conditions for social dialogue were defined by adoption of new Statues and Standing Orders of the Council of Economic and Social Agreement in 1997 to again include economic issues into the sphere of common interest in negotiations. Further amendments were made in September 2000 to include other influential groups of employees and employers into social dialogue at the top level.

76. A situation in part due to the "legal storm" created by the fast track harmonisation with EU legislation.

77. Other important Websites with legal information are the President (http://www.hrad.cz), the Senate (http://www.senat.cz), the Constitutional Court (http://www.concourt.cz), the Chamber of Deputies (http:/www.psp.cz)and the State information system (http://www.siscr.cz).

78. This law replaced a 1958 governmental order. The Act has been amended once.

79. The public is also protected by the Act No. 82/1998 CoL on the liability for damages caused during the exercise of public power by a decision or by incorrect official procedure.

80. According to the Article 47 of the Administrative Procedure Act every administrative decision must be provided to the involved parties *in written form* and must include the statement, the justification of the decision and the information on appeal possibilities.

81. For instance, concerning the co-ordination and cohesion of policies to implement the Environmental Impact Assessment. OECD (2000*a*), p. 129.

82. For instance, in the case of enforcement of environmental regulations. OECD (2000*a*), p. 129.

83. Ministry of the Interior of the Czech Republic (1999), p. 2.

84. Government Decision No. 125/99. adopted on 17 February 1999.

85. Figures published in the EU 2000 Czech Republic Report indicate that there were 203 prosecutions and 110 sentences in 1999 and 84 prosecutions and 50 sentences in the first half of 2000 for bribery related offences. As regards “abuse of the position of public official” there were 253 prosecutions and 85 sentences in 1999 and 141 prosecutions and 47 sentences in the first half of 2000.

86. Three commercial regional courts were abolished on 1 January 2001.

87. The appeal mechanisms against administrative decisions that are available to a citizen, before it becomes an issue that must be taken to court, include an appeal to the superior administrative authority and extraordinary remedies, which include:

- A proposition for renewal of the procedure to the superior administrative authority (in cases of a lapse of the first instance administrative authority stipulated by the Administrative Procedure Act).

- A request for review of the first or second instance decision to the superior administrative authority (in the case of lawlessness - according to the Administrative Procedure Act).

88. Vidlakova, Olga (1999).

89. Since 1991 approximately 50 petitions to begin proceedings on a proposal to abolish a legal regulation or its part were submitted. The average period of time for Constitutional Court proceedings are 9 months, in matters of proposals to abolish a legal regulation or of its part, and 7.5 months for other matters matters. Government of the Czech Republic, Answers to additional questions for Chapter 2.

90. Ministry of the Interior of the Czech Republic (1999), p. 19.

91. OECD (2000*a*), p. 88.

92. OECD (2000*a*), p. 91.

93. These amendments should address the abuse of appeal provisions so that a party can no longer hide evidence to be used subsequently as the basis of an appeal.

94. EU Commission 2000 Regular Report on the Czech Republic's progress towards accession, p. 19.

95. Should the civil service law be passed, staff working in the Ombudsman office will be covered. It is intended that the role of the Ombudsman will be promoted in the media and there will be an "info-line" to advise potential applicants on how to prepare an appeal. He is prohibited from joining a political party or receiving any additional compensation above his salary. The Ombudsman may only deal with decisions made by the state administration. The following are explicitly exempted: Parliament, the President, the Government as a whole but not as individual members, the Supreme Audit Office, Intelligence Services, the Investigator of the Czech Republic Police, the General Prosecutions Office and the courts, in terms of decisions but not if is an administrative matter. Complaints against independent regulators can be accepted if it is understood to be the "administrative" authority. Finally, the Ombudsman can initiate his own complaint but it is yet to be seen whether he will make use of this provision.

96. Interviews during OECD mission, October 2000.

97. OECD (2000*a*), pp. 128-129.

98. OECD (1997*a*), Paris.

99. *Legislative Rules*, Section 14.

100. The legal basis is the Law on the establishment of ministries and other central state administration bodies in the Czech Republic (No.2/1969, as amended), and as indicated by the biannual Legislative Plan which establishes the responsibility for drafting a new bill or resolution.

101. For further guidance see Broder, I and Morral, J. (1997) in OECD (1997*b*).

102. OECD (2000*b*), *OECD Reviews of Regulatory Reform — Regulatory Reform in Denmark*, *Background Chapter 2*, Paris.

103. Initially, the Czech Republic did not establish such a commission. Markets were supervised by the Capital Markets Supervisors Office of the Ministry of Finance.

104. OECD (2000*a*), p. 67.

105. OECD (1999*a*), p. 71; OECD (2000*a*), p. 104.

106. World Bank (1999), p. 23.

107. The *Trades Licensing Act* No. 455/1991 stipulates the basic conditions of enterprise for most entrepreneurial activities (individual and corporate, domestic and foreign, small to very large). It regulates the conditions for carrying an activity according to the level of State control (*i.e.* some activities need more burdensome ex ante controls).

108. Phare (1999), pp. 4 and 49 http://europa.eu.int/comm/scr/evaluation/reports/phare/951508_cze.pdf.

109. Phare (1999), *op. cit.*, p. 5.

110. See OECD (2000*a*).

111. The network of supporting centres also include specialised Business and Innovation Centres and Euro Info Centres.

112. According to the Czech statistical office, it was an average of 77.2% for 1999. See http://www.czso.cz/eng/figures/5/50/5001002q/data/tab5.xls.

113. Cerge — E1 (1999), p. 15.

114 The Czech government established the System of Preparation of Public Administration Employees, approved by Government Resolution No. 349 of 18th April 2001.

115 The Chamber of Deputies of the Parliament started to discuss the Draft Law on Employees of State Administration in March 2001. A commission was created to adjust the draft law and to achieve the consensus to enable adopting of the draft law in the Parliament and to let it come into force on 1 January 2002. Ministry of Interior is also developing the Draft Law on Employees of Territorial Self-government. Both draft laws should help to ensure the clear separation between the political and administrative levels and greater stability of public service, and to improve skills of public servants and strengthen the anti-corruption fights in public administration.

116. See OECD (1999*c*), *OECD Reviews of Regulatory Reform, Regulatory Reform in Mexico*, Paris.

117. http://www.irlgov.ie/tec/publications/regulatory.htm.

118. SIGMA (1999), Public Management Profiles of Central and Eastern European Countries — Czech Republic, http://www.oecd.org//puma/sigmaweb/.

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