Standard Summary Project Fiche

1. Basic Information

1.1. Désirée Number

   CZ00-04-05

1.2. Twinning Number

   CZ2000/IB/OT/04

1.3. Title

   Strengthening Regulation and Enforcement of the Public Procurement Acquis

1.4. Sector

   Internal Market

1.5. Location

   Ministry for Regional Development (MRD), Ministry of Finance (MF), Office for Protection of Economic Competition (UOHS)

2. Objectives

2.1. Wider Objective

   • Ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union.

2.2. Immediate Objectives

   The Immediate Objectives of this Project are to:

   • Develop the Public Procurement System in the Czech Republic to ensure full legal, procedural, monitoring and staff capacities and sanctions, in order to guarantee effective, non-discriminatory and transparent enforcement of public procurement in compliance with the acquis and EU Member States’ best-practice.

2.3. Accession Partnership / NPAA Priority

   The Accession Partnership (December 1999) highlights the following priorities:

   • **Short-term:** introduction of environmental impact assessments and EU compatible public procurement rules for projects co-financed by Community Funds;

   • **Medium-term:** completely aligned legislation by end 2002 including abolishment of national preference clause for public procurement by introducing access to award procedures in Czech Republic for all Community companies in certain sectors.

   The National Programme (May 1999) highlights (sec. 3.2.1.21) the:

   • Necessity to draft an entirely new Act on Public Procurement, based on EC directives, including abolishing of a national preference clause, establishing advertising in the OJ of the EC, and full alignment of the Czech law and practice with EC regulations on accession.

3. Description

3.1. Background / Justification

   Public procurement (PP) in the Czech Republic is governed by Act No. 199/1994 Coll., which has since been amended several times. Recently, Parliament approved a further amendment to the Act on Public Procurement, bringing the Czech Republic in compliance with Directive 93/38/EEC.

   At present, competence for PP is split between state administration bodies as follows:

   • Ministry for Regional Development (MRD) administers the public procurement process as a central body of state administration;
Office for Protection of Economic Competition (UOHS) executes surveillance of compliance with the Act on Public Procurement (Act No. 199/1994 Coll. as amended);

Ministry of Finance (MF) is responsible as the central state administration of state financial resources and public expenditure.

MRD is primarily responsible for drafting policy strategies and concepts, legislation (in cooperation with UOHS), methodology and training across the public administration sector. In autumn 1998 the Department of Public Investment of MRD drafted the ‘Concept of Public Procurement’, approved by Government in November 1999 (see Annex 4 for a summary of the ‘Concept’).

The ‘Concept’ lists priorities for action in the field of public procurement, for example:

- Harmonisation with relevant EC legislation,
- Introduction of basic technical specifications covering invitation for tenders,
- Introduction of criteria for tender evaluations,
- Introduction of project management for certain public contract awards,
- Improving information management and utilisation in public procurement,
- Training programmes in public procurement,
- Support for SMEs to comprehend the system,
- Certification of persons active in public procurement etc.

Most of the topics from the ‘Concept’ are to be incorporated into a draft Act on Public Procurement.

UOHS is currently drafting a new Act on the Execution of the Surveillance of Procedures for the Award of Contracts. Surveillance should consist mainly of handling complaints from public tender participants relating to particular actions taken by contracting authorities. Based on the results of its proceedings, (whether a breach of the law is acknowledged), UOHS is entitled to impose fines and/or to exclude participants from participation in public tenders.

Both drafts will be submitted to the Government in the 3rd quarter of 2000 and are expected to come into force by July 2001.

MF has drafted new budgetary rules, reflecting EC requirements and standard budgeting practices, in order to apply the same procedures to public financing activities in the Czech Republic. The draft Act on Budgetary Rules is assumed to be in force from 1st January 2001.

Beside the above PP legislation there are several related Acts under preparation, such as Act on Regional Development Support, Act on Control in the Public Administration, and Act on Budgetary Rules of Regional Budgets. These Acts should be in force by 2001/2002.

The current situation in the sphere of PP in the CR is not satisfactory. Many elements of PP throughout the entire life of projects (preparation, tendering and implementation) commonly used in EU countries are missing in the CR, resulting in a non-optimal allocation of public funds in awards of publicly procured contracts at all levels of administration.

Beside drafting harmonised legislation (in accordance with NPAA, AP and a recent SIGMA Assessment Report – September 1999, see Annex 5 for a summary) and facilitating its utilisation at national/regional/local levels, the most urgent need is felt to improve the knowledge of relevant staff, primarily in contracting entities, by means of training.

The training should incorporate inter alia such elements of project management (preparation, implementation and supervision) that are missing in the CR and generally are considered
decisive for the successful and cost effective implementation of project developer intentions. The improved quality of the PP system should contribute to increase the absorption capacity of the country for EU funds on accession and to decrease the level of fraud and corruption.

3.2. **Linked Activities**

- CZ 9604-07-02-24 *Improvement of the Public Procurement System*, recently completed, provides information on public procurement practice in the Member States and selected CCs, plus the State Budget financed study *Materials for Preparing and Carrying-out Works Projects in the area of Public Investments Financed Partially by the EU Pre-Accession Funds*, also recently completed, shall serve as inputs for preparation of the new PP Acts;
- CZ 9705.01.01.02 *Training Programme for the Future Use of Structural and Cohesion Funds* and CZ 9807.02 *Training Programmes – Implementation* should contribute to speeding-up of drafting relevant PP training modules;
- Phare projects (CZ 9807, 9808, 9809, and 9811) should contribute to the proposed project by means of creating necessary institutional structures and/or disseminating basic principles of the new PP legislation to the respective activities/areas;

3.3. **Results / Outputs**

The following Outputs will be delivered and Guaranteed Results achieved via this Project:

- Comprehensive system of public procurement, in compliance with the acquis, will be implemented in CR supported by suitable institutional structures, procedures, techniques, standardised documentation/manuals and guidelines and skilled staff;
- Operational structures and systems at all state administration levels to manage effectively PP process and surveillance in the CR in place;
- PP guides and manuals (standard documentation, Bills amendments, implementing regulations) will be prepared for different types of procurement (documents will be available for implementing the general systematic measures, with the possibility that these may be adjusted to individual sectors, e.g. industry, defence, public health, etc.);
- Implementation of basic principles concerning state budget and public budgets financial management for government purchases;
- Increased knowledge of contracting authorities’ staff of PP procedures at national, regional and municipal levels, allowing for improvements in preparation, tendering, implementation and control of publicly procured projects;
- Training materials preparation/translation (100 Czech trainers trained, cascading down to approximately 10,000 practitioners in public procurement at all levels of Government)
- Increased transparency of advertising and tender procedures, plus acceleration of the process of PP, leading to a more effective utilisation of public funds at all levels of Government;
- Improved statistical data and information/monitoring system on publicly awarded contracts;
- Czech market fully opens to EU MS companies by the beginning of 2003.

3.4. **Activities / Inputs**
The Project consists of one contract: Twinning and Training Package – CZ 2000/IB/0T/04, for which the following key Inputs are foreseen:

- A 1.5 year Pre-Accession Adviser (PAA) located at MRD, with practical experience and management skills from working in a central procurement institution, relating to the application of public procurement regulation in compliance with the acquis and EU Member State’ best-practice. The PAA, who will co-ordinate the inputs of a team of short-/medium-term experts, should be fluent in the English language (written and oral);

- A Short-Term Expert (medium-term) located at UOHS (approximately 7.5 person-months), with practical experience from working in a Member State authority responsible for surveillance and complaints-review procedures in PP;

- A Short-Term Expert (medium-term) located at MF (approximately 7.5 person-months), with practical experience from working in a Member State authority responsible for budget planning/economic evaluations;

- A pool of Short-Term Experts (approximately 20 person-months) of specialist inputs covering all three beneficiary institutions: legislation expert, technical specifications expert, government accounting expert, financial audit expert, information/monitoring systems expert, project financing/financial engineering expert, contract management expert, tendering procedures expert;

- Other services and intangible supplies including development of information management systems, IT requirements, study fellowships (conferences, seminars, fellowships in the Member States, etc.).

The Twinning and Training Package will carry out the following indicative key Activities:

- Analysis of Czech PP system, bench-marked with comparative review of EU Member States’ models (end of month 2);

- Elaboration of a detailed medium-term Action Plan, with clear institutional recommendations for each of the 3 beneficiary institutions, to allow for full acquis enforcement by the start of 2003 (end of month 3);

- Finalisation of draft secondary regulation in the sector, compatible with the acquis (end of month 6);

- Preparation of standardised documentation and implementing guidelines for key types of procurement (end of month 9, with possible sectoral specialised materials to be prepared over the remaining project period);

- Development of internal procedures within each of the beneficiary institutions, in accordance with the Action Plan, and of co-ordination structures as necessary (remaining project period), in particular the need to strengthen the transparency of operations and ensure effective surveillance and complaints-procedures is stressed;

- Development of information management and exchange and market monitoring systems (analysis and recommendations end of month 6, systems strengthened and software developed, as necessary, over the remaining project period);

- Provide training needs analysis (by the end of month 6) covering the staff of (a) the three beneficiary institutions, (b) the wider public administration services and contracting entities;

- Taking the on-going (CZ 9705 and 9807) preparations of PP training programmes, develop and deliver corresponding training to the different target groups (remaining project period) via workshops, seminars, study visits/fellowships. Training will involve two clear phases:
→ Training-of-trainers (approximately 100 people), including the final preparations of training materials and documentation (teacher and trainee materials) in the Czech language;

→ Via State Budget financing (approximately 0.5 MEUR is foreseen), the trainers will train up to 10,000 practitioners in public procurement at all levels of Government, starting mid-2002.

4. **Institutional Framework**

The basic structure of the assistance will be established through the interaction of the three beneficiaries i.e. MRD, UOHS and MF and their respective PAA/medium-term experts.

A Steering Committee will be established to ensure overall coherency of the Project inputs, including the three beneficiary institutions (Contact Person and technical experts), plus the PAA and the two Medium-Term Experts. The Committee will be chaired by MRD and will minimally meet once per quarter.

5. **Detailed Budget (in MEUR)**

<table>
<thead>
<tr>
<th>Project Components</th>
<th>Investment Support</th>
<th>Institution Building</th>
<th>Total Phare (= I + IB)</th>
<th>National Co-financing</th>
<th>IFI</th>
<th>TOTAL</th>
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<td>Training Roll-Out</td>
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<tr>
<td>TOTAL</td>
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<td>0.9</td>
<td>0.5</td>
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<td>1.4</td>
</tr>
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</table>

6. **Implementation Arrangements**

6.1. **Implementing Agency**

The CFCU will be the Implementing Agency. Project implementation will be under direct responsibility and co-ordination of Ministry of Regional Development, in consultation and with the agreement of UOHS and MF.

6.2. **Twinning – CZ 2000/IB/0T/04**

The Contact Person and overall Project implementation is **Mr Vaclav Vaindl**, Ministry for Regional Development, tel. +420 2 24861158, fax +420 2 24861110, e-mail vaivac@mmr.cz.

6.3. **Contracts**

It is foreseen that there will be one contract for a Twinning and Training Package = 0.9 MEUR.

7. **Implementation Schedule**

Start of Twinning/Tendering: 3Q/00
Start of Project Activity: 2Q/01
Project Completion: 3Q/02

8. **Equal Opportunity**

Equal opportunity principles and practices in ensuring equitable gender participation in the Project will be guaranteed.

9. **Conditionality and Sequencing**

The key conditionality of the project is that key public procurement acts currently under preparation (Act on Public Procurement, Act on the Execution of the Surveillance of Procedures for the Award of Contracts) will be in force by July 2001 at the latest.
All beneficiary institutions will ensure that all components of the project are carried out satisfactorily. To this effect the beneficiary institutions will provide adequate resources for implementation of the project and will co-ordinate project inputs/activities via a Steering Committee chaired by MRD and meeting minimally every quarter.

**Annexes to Project Fiche**

1. Logframe Matrix
2. Detailed Implementation Chart
3. Cumulative Contracting and Disbursement Schedules for the Project (in MEUR)
4. ‘Concept of Public Procurement’ – November 1999 (Summary)
5. SIGMA Assessment Report – September 1999 (Summary)
## Logframe Matrix

### Strengthening Regulation/Enforcement of Public Procurement Acquis

<table>
<thead>
<tr>
<th>Project Number: <strong>CZ 00-04-05</strong></th>
<th>Date of Drafting: <strong>04/2000</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Contracting Period Expires: <strong>31/10/2002</strong></td>
<td>Disbursement Period Expires: <strong>31/10/2003</strong></td>
</tr>
<tr>
<td><strong>Total Budget:</strong> <strong>1.4 MEUR</strong></td>
<td><strong>Phare Contribution:</strong> <strong>0.9 MEUR</strong></td>
</tr>
</tbody>
</table>

#### Wider Objective

**Ability to take on the obligations of membership, including adherence to the aims of political, economic and monetary union**

- Acknowledgement by European Commission

#### Indicators of Achievement

- Legislation, implementation procedures, by-laws and guidelines on PP system elaborated/disseminated;
- Internal administrative and information management procedures for surveillance of PP strengthened;
- Complaint-handling procedures allow for greater transparency in PP operations;
- Increased transparency of tendering in CR, reducing the risk of fraud and corruption in PP
- MRD, UOHS, MF staff trained on PP, the detailed enforcement requirements of the acquis and management of PP legislation in the Member States;
- Contracting authorities’ staff trained on national/regional/municipal levels

#### Sources of Information

- MRD, UOHS, MF
- Approved legislation in the Sbirka zakonu;
- Project reports
- EC Regular Report on Progress towards Accession

#### Assumptions and Risks

- Other Copenhagen criteria also fulfilled.
- All other parts of the key efficiently implemented

### Immediate Objectives

**Develop the Public Procurement System in the Czech Republic to ensure full legal, procedural, monitoring and staff capacities and sanctions, in order to guarantee effective, non-discriminatory and transparent enforcement of public procurement in compliance with the acquis and EU Member States’ best-practice**

#### Indicators of Achievement

- Standardised documentation/manuals and guidelines elaborated
- Complaints dealt with by UOHS and courts;
- Number of complaints leading to prosecution and/or punitive action

#### Sources of Information

- MRD, UOHS, MF – guidelines, manuals, by-laws etc.
- Project reports
- EC Regular Report on Progress towards Accession;
- SIGMA

### Results

**- Comprehensive system of public procurement, in compliance with the acquis, will be implemented in CR supported by suitable institutional structures, procedures, techniques, standardised documentation/manuals and guidelines and skilled staff;**

- Operational structures and systems at all state administration

#### Indicators of Achievement

- Standardised documentation/manuals and guidelines elaborated
- Complaints dealt with by UOHS and courts;
- Number of complaints leading to prosecution and/or punitive action

#### Sources of Information

- MRD, UOHS, MF – guidelines, manuals, by-laws etc.
- Project reports
- EC Regular Report on Progress towards Accession;
- SIGMA

#### Assumptions & Risks

- -
levels to manage effectively PP process and surveillance in the CR in place;
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- Improved statistical data and information/monitoring system on publicly awarded contracts;
- Czech market fully opens to EU MS companies by the beginning of 2003

<table>
<thead>
<tr>
<th>Inputs</th>
<th>Assumptions &amp; Risks</th>
</tr>
</thead>
<tbody>
<tr>
<td>- 100 trainers trained &amp; 90% of them still in public sector employment at end of project</td>
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<tr>
<td>- 10,000 practitioners trained</td>
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<td>- Training manuals produced</td>
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<tr>
<td>- Regular official publication of tenders &amp; results by the end of the project, covering 100% of the known public tenders covered by the PP directive</td>
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<td>- No proven cases of discrimination against EU MS companies in PP during or after 2003</td>
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<tr>
<td>- court records</td>
<td></td>
</tr>
<tr>
<td>- Czech Official Journal (Obchodni Vestnik)</td>
<td></td>
</tr>
<tr>
<td>EU member state twinning expertise: 1.5 years PAA located at MRD, Medium-Term Expert (approximately 7.5 person-months over 18 calendar-months) for UOHS and one for MF; a pool of Short-Term Experts (approximately 20 person-months), plus intangible supplies and services. State Budget will pay, inter alia, for the roll-out of training on PP across the public administration services.</td>
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</table>
| - New law on public procurement in force by July 2001  
- Consensus on division of competencies and co-operation between MF, MRD and UOHS  
- CZ 9604-07-02-24 Improvement of the Public Procurement System, provides useful input;  
- the State Budget financed study Materials for Preparing and Carrying-out Works Projects in the area of Public Investments Financed Partially by the EU Pre-Accession Funds, provides useful inputs for preparation of the new PP Acts;  
- CZ 9705.01.01.02 Training Programme for the Future Use of Structural and Cohesion Funds and CZ 9807.02 Training Programmes – Implementation contributes to speeding-up of drafting relevant PP training modules;  
- Phare projects (CZ 9807, 9808, 9809, and 9811) should contribute by creating necessary institutional structures and disseminating basic principles of the new PP legislation;  
### Detailed Implementation Chart for the Project

**Annex 2**

<table>
<thead>
<tr>
<th>Detailed Project Implementation</th>
<th>2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
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<tbody>
<tr>
<td><strong>Twinning and Training Package</strong></td>
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<tr>
<td>- Launch Twinning request to Member States (June 2000)</td>
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<tr>
<td>- Selection of MS(s) for twinning</td>
<td>X</td>
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<tr>
<td>- Elaboration of twinning covenant</td>
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<td></td>
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<tr>
<td>- Submit Twinning covenant to Commission &amp; Steering Committee for approval</td>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>- Twinning Package commences</td>
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<tr>
<td>Analysis of Czech PP system</td>
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<tr>
<td>Elaboration of a detailed medium-term Action Plan to ensure compliance</td>
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<tr>
<td>Finalisation of draft secondary regulation in the sector</td>
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<tr>
<td>Preparation of standardised documentation, implement, guidelines</td>
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<td>Institution building activities, based on the Action Plan</td>
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<td>X X X X X X X X X</td>
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<tr>
<td>Analysis of information management and monitoring systems, software development</td>
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<td>Training needs analysis</td>
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<td>Corresponding training</td>
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<td>X X X</td>
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Cumulative Contracting and Disbursement Schedule for the Project (in M €)  

Cumulative Quarterly Contracting Schedule (M €)

<table>
<thead>
<tr>
<th>Project</th>
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<th>1Q/01</th>
<th>2Q/01</th>
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<th>1Q/03</th>
<th>2Q/03</th>
<th>3Q/03</th>
<th>Total</th>
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Cumulative Quarterly Disbursement Schedule (M€)

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<th>Project</th>
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<tr>
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‘Concept of Public Procurement’ – November 1999 (Summary)  

Annex 4

1. To incorporate in the new act on public tenders the fundamental legislation setting out the prerequisites, terms and conditions of undertaking public works thus providing a legislative framework for detailed provisions to be set out in executive instructions, and especially to stipulate that the contracting authority shall be obliged to provide for the following:
   (a) preparation of over-the-threshold public works using the principles of project management,
   (b) preparation of tender documentation for public works tenders,
   (c) inspection of the execution/implementation of public works in the construction industry (technical supervision) by persons possessing relevant professional competency (authorisation or qualifications),
   (d) execution of the contracting authority's activities by means of persons possessing relevant professional competencies, in line with the National Education Program,
   (e) execution of the contracting authority's activities by authorised persons able to produce a business licence, in compliance with the amended Small Businesses Act, in cases where the contracting authority will deem it advisable to delegate the performance of the contracting authority's activities in this manner,
   (f) specification of those contracting authority's activities which can be delegated to authorised persons by the contracting authority.

2. In the executive instructions pertaining to the new Act on public tenders, to more clearly define:
   (a) the requirements for ensuring competent preparation of selected public works using the principles of project management,
   (b) the contents and scope of tender documentation for public works tenders,
   (c) the basic tender evaluation criteria, their minimum weights, the criterion of "capability" of the tenderer, and the procedure of establishing such "capability"
   (d) the indispensable contents of the performance of technical supervision,
   (e) the requirements to be imposed on the content of professional qualification (capability) needed for awarding public tenders and on its verification.

3. By issuing a new act on public tenders to amend the Small businesses act wherein selected activities to be performed by the contracting authorities would be included among those activities for which a license is required.

4. In the new draft act on public tenders and in the executive instructions subsequent to this act, to work out a Public tenders information system compatible with the information system on the reproduction of investment assets used by the Ministry of Finance.

5. To provide for the preparation, publishing, and updating of technical specifications for the construction trade.

6. To take into account and to incorporate in the Public announcement governing the implementation of the Act on budgetary rules, the procedures and measures adopted for the preparation and implementation of programs and projects co-financed from EU funds, even in the case of projects financed solely with the assistance of the national budget.

7. To prepare a National program of education in public tendering procedures, in line with EU rules and usage.

8. To draft a Program of support to consulting activities to promote the participation of small and medium sized enterprises in public tenders.
Czech Republic Public Procurement System

1. Public Procurement Legislation – Baseline partially achieved
   The Government wishes to adopt a new PP law that will implement the EC Directives by 1 January 2003. Certain elements in the existing law need to be removed or clarified – e.g. the inclusion of domestic preferences will have to be phased out when the Czech Republic becomes a member of the EU; the absence of precise definitions on the use of procurement methods other than open tendering; and the absence of rules for "below the threshold" transactions. Consideration should be given to accelerating the preparation and implementation of a new PP law.

2. Central Public Procurement Organisation (PPO) – Baseline not achieved
   Current institutional capacity in the Ministry for Regional Development is not sufficient, taking into account the number of contracting entities and the large volume of procurement contracts. Implementation of a new PP law will require further enhancement of this capacity.

3. Procurement Implementation and Training – Baseline not achieved
   There is a strong need to strengthen the public procurement system at the operational level. Substantially enhanced central support for contracting entities and private sector operators is urgently required. These changes should be linked to the development of procedures, information systems and staff development/training that will be required in order to implement the provisions of a new PP law.

4. Control and Complaints Review Procedures – Baseline partially achieved
   Procedures and institutional arrangements for control of procurement operations need to be improved. Current complaints review procedures are not fully in compliance with the EC Directives and need to be revised in the future PP law.

5. Capacity for Upgrading the Public Procurement System
   There currently appears to be a lack of political consensus for reforming the procurement system in the Czech Republic. There are some officials with vision, skills and experience to support this work, but the numbers are inadequate and additional recruitment and staff development programmes are required. This will need a long-term perspective, a co-ordinated approach and a firm political commitment by the Government.

6. Summary
   The public procurement system in few respects meet EU requirements and other aspects of the baseline. Current law and procedures are inadequate in a number of respects – e.g. the use of domestic preference, absence of rules for below the threshold transactions, complaints procedures that allow for no appeal to a court. Capacities in procuring entities need upgrading. The system would present risks to the sound and effective procurement of goods, services and works contracts in the context of the use of EU funds.

7. Next Steps
   A) Short term:
      ° Establishment of a National Strategy and Action Plan for Public Procurement Reform
      ° Support to the Legal Reform Work
      ° Institutional and Capacity Development
   B) Medium-term:
      ° Development of Information Systems and Electronic Procurement.