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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

COMMITTEE OF EXPERTS
ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT ON S L O V A K I A[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Legal Affairs DG I

[1] Adopted by the Committee MONEYVAL at its 20th plenary session (Strasbourg, 12 – 15 September 2006).

TABLE OF CONTENTS

LIST OF ACRONYMS USED

AML Law	Anti-Money Laundering Law
ATM	Automatic Telling Machine
CARIN	Camden Asset Recovery Interagency Network
CIS	Collective Investments Act
DNFBP	Designated Non-Financial Businesses and Professions
EAW	European Arrest Warrant
FIU	Financial Intelligence Unit named “Spravodajská Jednotka Finančnej Polície” in Slovakia
FMA	Financial Market Authority
HARM	Video “Hit and Run Money Laundering” case studies
IT	Information Technology
MLA	Mutual legal assistance
MOU	Memorandum of Understanding
NBS	National Bank of Slovakia
NGOs	Non Governmental Organisations
PEPs	Politically Exposed Persons
SIPS	Slovak Interbank Payment System
SITs	Special Investigative Techniques
SKK	Slovak Crowns
SRO	Self Regulatory Authorities

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Slovakia was based on the forty Recommendations of the FATF (2003) and the 9 Special Recommendations on financing of terrorism of the FATF, together with the two Directives of the European Commission (91/308/EEC and 2001/97/EC), in accordance with MONEYVAL's terms of reference and Procedural Rules. The evaluation was based on the laws, regulations and other materials supplied by Slovakia during the on-site visit from 8 to 14 May 2005 and subsequently. During the on-site visit, the evaluation team met with officials and representatives of relevant Slovakian Government agencies and the private sector. A list of the persons and bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation team comprised Ms Yulia TORMAGOVA, Deputy Head of Legal Department, Federal Financial Monitoring Service, Russian Federation (Legal Evaluator); Mr Andres PALUMAA, Financial Auditor, General Department, Financial Supervision Authority, Estonia (Financial Evaluator); Mr René BRUELHART, Director Financial Intelligence Unit, Liechtenstein (Law Enforcement Evaluator); Ms Concha CORNEJO, Senior Advisor, Directorate General of the Treasury and Financial Policy, Spain (Financial Evaluator). The examiners reviewed the institutional framework, the relevant AML/CFT Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all the systems.

3. This report provides a summary of the AML/CFT measures in place in Slovakia as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also sets out Slovakia's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

II. EXECUTIVE SUMMARY

1. The third evaluation of Slovakia by Moneyval took place from 8th -14th May 2005. The evaluation was based on the Forty Recommendations of the FATF and the 9 Special Recommendations of the FATF, together with the 2 Directives of the European Commission (91/308 EEC and 2001/97/EC).

2. The evaluation team comprised: Ms Yulia Tormagova, Deputy Head of the Legal Department, Federal Financial Monitoring Service, Russian Federation (Legal Evaluator); Mr Andres Palumaa, Financial Auditor, General Department Financial Supervision Authority, Estonia (Financial Evaluator); Mr René Bruelhart, Director Financial Intelligence Unit, Liechtenstein (Law Enforcement Evaluator); and Ms Concha Cornejo, Senior Adviser, Directorate General of the Treasury and Financial Policy, Spain (Financial Evaluator).The examiners reviewed the institutional framework, the relevant AML/CFT laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. The examiners found that real progress on several of the recommendations made by the previous examination team had still to be achieved. While some cooperation and coordination was taking place at the working level, the present examiners found that this was an area of significant weakness. There was an absence of leadership in the overall national fight against money laundering and terrorist financing. A co-ordinated national strategy on these issues was not apparent.

4. Act No. 367 (on protection against legalization of incomes from illegal activities) was last amended by Act 445/2002. The amended preventive law came into force on 1 September 2002. Reporting entities under the preventive law include banks and foreign branches of banks, insurance and the securities market, though there is no generic reference to financial institutions. Designated non-financial businesses and professionals (DNFBP) are also properly covered in line with the second EU Directive. In all, the FIU estimates that there could be 100,000 reporting entities. Of these, only the banks and insurance have regularly provided reports. A tiny number of reports have come from the securities market, and none from exchange offices, casinos and the various obliged professionals. It was unclear if all obliged persons were fully aware of their obligations.

5. The reporting obligation is based on 'unusual business activity'. In the banking sector, it was explained that the relevant banking legislation allowed for a wide interpretation of 'unusual business activity', but it was unclear whether the same necessarily applies in the rest of the financial sector and in respect of DNFBP. Even if personal (as well as business) transactions are covered by this obligation in respect of all reporting entities, there is an urgent need to explain in guidelines what an 'unusual business activity' might mean for each of the entities which are not reporting or are under-reporting (and generally for the financial sector and DNFBP). It was apparent to the examiners that, for example, the casinos were unclear as to what is 'unusual' in the context of their business. Attempted unusual business activity is not covered in the legal reporting obligation and this should be clarified.

The situation of money laundering and financing of terrorism

6. The money laundering situation has not changed appreciably in the years since the second evaluation. Banks remain the most frequently used financial institutions for money

laundering. The Slovak authorities also consider the transfer of non-declared cash through the borders to be a prime money laundering vulnerability. The basic sources of illegal proceeds include illegal trafficking in mineral oils, frauds involving excessive deduction of VAT, illegal smuggling of immigrants to Western Europe, illegal cigarette smuggling, car theft (and subsequent legalisation of the stolen cars and equipment) and trafficking in drugs. Criminal activity is still characterised by a high level of organised crime and crime of an international character. A number of such groups are considered to be involved in laundering operations. However the very limited statistical information available to the evaluators does not show how many money laundering cases investigated or prosecuted in Slovakia represent laundering on behalf of organised crime (or how many predicate offences committed abroad resulted in money laundering prosecutions in Slovakia).

7. Slovakia recognises its general vulnerability to international terrorism as similar to that of other EU countries. Law enforcement and the intelligence service (SIS) monitor potential terrorist threats within Slovakia. However there have been no financing of terrorism enquiries, prosecutions or convictions. The reporting obligation in respect of financing of terrorism was described as stemming from Sec. 4 of the AML law, which now defines an unusual business activity as a legal action that may enable a legalisation or financing of terrorism. It is considered that the reporting duty in respect of financing of terrorism is not sufficiently clear in the law. Assuming all the reporting entities now understand there is such a duty, the breadth of the obligation has not been defined for them in any guidance and no reports concerning financing of terrorism have been made. The examiners consider that it should be clarified that the reporting obligation should apply where reporting entities suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or by terrorist organisations.

8. Slovakia has ratified the International Convention for the Suppression of the Financing of Terrorism, and generally follows the European Union implementation of the UN Security Council regulations. However a separate Slovakian regulation provides for international sanctions to be imposed on the so-called EU internals.

Overview of the financial sector and DNFBP

9. As at the time of the last report, the banking sector remains the most important component of the financial sector. As at the end of 2004, it amounted to 88.64% of financial market assets.

10. Banks are licensed and supervised by the National Bank of Slovakia (NBS). A bank accepts deposits and provides loans and may conduct other activities including cross-border fund transfers, financial leasing, issuing of securities and financial brokerage. The market share of the five largest banks amounted to 65% approx of customer deposits.

11. The NBS also licenses and supervises (under the Foreign Exchange Act but not under the AML Act) foreign exchange business providers, which include simple bureaux de change and 2 foreign exchange business providers licensed to carry out cross-border and domestic transfer services, but only through licensed banks. The FIU supervises these outlets under the AML Act along with their other AML supervisory responsibilities in respect of DNFBP and financial institutions.

12. At the time of the third on-site visit the financial market authority (FMA) was responsible for licensing and supervision of the capital market, and insurance companies. As at 28th February 2005, there were 25 registered insurance companies and one branch of an insurance company from another member state on the Slovak insurance market. There were 268 legal persons and 110 natural persons registered as insurance brokers and 59 legal persons and 63 natural persons registered as insurance agents.

13. In March 2005 there were 38 investment firms (of which 14 were banks). There were also 160 natural persons and 51 legal persons acting as investment service providers. There were 10 local and 3 foreign management companies. There were also 8 pension fund management companies.

14. Turning to DNFBP, there are 4 operating casinos in Slovakia (2 companies authorised for the operation of casinos). At the time of the evaluation visit there were 625 real estate agencies which were members of the National Association of Real Estate Agencies and there were 29105 real estate agencies registered according to the Trade Licensing Act (and which are not obliged to register with the National Association). There were 617 legal and natural persons trading in gold and jewellery. There were 318 Notaries Public. There were 452 advocates authorised to practice law. 101 audit companies and 813 natural persons perform audit services. At the time of the evaluation visit there were 560 certified accountants and 125 non-certified accountants. There were 311 natural persons with licenses to provide tax advisory services. Domestic trust cannot be established in Slovakia, so no trust and company service providers were reported by the Slovakian authorities.

Commercial laws and mechanisms covering legal persons

15. Legal persons established for the purpose of undertaking business are either companies or partnerships. Legal persons officially come into existence on the date on which they are incorporated into the Commercial Register (or other register prescribed by law). There are limited liability companies and joint stock companies (which can be private or public). There is no requirement under the Commercial Code for details of shareholders to be publicly disclosed and recorded in the Commercial Register in the case of joint stock companies. Data on shareholders is disclosed in the Commercial Register only in the case of a private joint stock company which has only one shareholder.

Progress since the Second Round

16. The AML Law was further amended as outlined above. The number of reported unusual business operations has shown an overall gradual increase, though there was a slight dip in 2003.

17. In the years following the second on-site visit the staff in the FIU had increased to 38. But by May 2005 the position of the FIU within the Police structure had weakened. Under organizational changes within the Police, the FIU, which had been a department in the Financial Police, had become a division within the Bureau of Organized Crime, and was no longer headed at Director level. Staff numbers were reducing. There were 31 in post at the time of this on-site visit.

18. Convictions for money laundering have gradually increased. Between 2002 and 2005 (to the date of the on site visit) the examiners were advised there were 33 convictions under the money laundering offence in Article 252 of the Criminal Code. Complete information about the nature of these money laundering convictions was not available. It was understood that there were still no prosecutions or convictions for money laundering as an autonomous offence.

19. At the time of the previous (second) on site visit there were still many uncertainties and ambiguities about the forfeiture/confiscation legislation. Some of the legal difficulties identified at that time (such as forfeiture of substitute assets and legal authority for value confiscation) had been rectified by recent legislative amendments. But the examiners were not provided with information on concrete cases where confiscation had been applied in order to

assess whether the legal changes had yet affected operational practice. Overall it was a particular concern that no property had been seized or frozen or forfeiture orders made in any money laundering case in the period under evaluation, and that statistics were not available.

20. The previous team considered that all entities needed the role and responsibilities of the compliance officer clarifying. The Recommendation of the National Bank of Slovakia (NBS 3/2003) contains some guidance regarding the position and role of the compliance officer, though this is not a binding, enforceable document. This evaluation team found that the general requirement of a compliance officer at management level still needs to be covered generally by enforceable means.

Legal systems and related institutional measures

21. Money laundering is criminalised by A. 252 of the Criminal Code. It is an "all crimes" offence, covering all the categories of offences in the Glossary to the FATF Recommendations with the exception of financing of terrorism in all its forms, as defined in SR 11 and its interpretative note. Though different English translations were provided of A 252, they each appear to show some inconsistencies with the language of the international instruments, which raise some uncertainties which may impede practical implementation. The Slovak authorities should satisfy themselves that all the language of Article 6(1) (a) and (b) of the Palermo Convention and Article 3 (1) (b) and (c) of the Vienna Convention are properly reflected in A. 252 Criminal Code. Knowledge that property is proceeds should be set out in the law. Given that there was uncertainty on this issue, it is strongly advised that it should be made clear in legislation or guidance that knowledge can be inferred from objective factual circumstances. Corporate liability for money laundering is still inapplicable in Slovakia. The Slovak authorities should further consider criminal, civil or administrative sanctions in relation to legal persons for money laundering.

22. It appears that money laundering is usually prosecuted with the predicate offence and the majority of cases are thought to be self laundering. Car theft was said to be one of the major proceeds-generating predicate offences which was the subject of money laundering charges, though it was conceded that if the A 252 offence was not available these cases could have been prosecuted as receiving/handling. A high level of proof was thought to be required regarding the underlying predicate offence. The Slovak authorities should address the issue of evidence required to establish predicate crime in money laundering cases. It would be helpful to clarify in legislation or guidance that a conviction for money laundering is possible in the absence of a judicial finding of guilt and that this element of the money laundering offence can be proved by inferences drawn from objective facts and circumstances. Efficiency of money laundering criminalisation could be enhanced by placing more emphasis on third party laundering (particularly in respect of major proceeds-generating criminal offences other than car theft in Slovakia). It is advised that detailed statistics on money laundering investigations, prosecutions, convictions and sentences (and whether confiscation is ordered in these cases) should be maintained, which also show underlying predicates and whether the offence was prosecuted autonomously.

23. The Law on Confiscation and provisional measures, despite improvements, still does not clearly provide for forfeiture from third parties and for the protection of *bona fide* third parties. The examiners were concerned that forfeiture could be defeated by transfers to third parties as gifts or for undervalue. This aspect of the law needs further consideration. Although prosecutors indicated that more attention is now being given to confiscation, in the absence of any statistics, it appears that a judicial culture which routinely applies confiscation in major proceeds-generating cases still needs to be established. The Slovakian authorities should also address the legal seizure regime to ensure that it covers all indirect proceeds, substitutes etc which may be liable to confiscation in due course.

24. On 2 July 2002, Slovakia ratified the 1999 International Convention for the Suppression of the Financing of Terrorism. It is binding on Slovakia since 13 October 2002. The Slovak authorities pointed to the binding nature of this Convention, together with provisions of the Criminal Code, namely Articles 7, and 10 (which cover preparation of a crime and aiding and abetting), 94 (the offence of terrorism), and 185a (establishing or supporting a terrorist group) as the criminalisation of all relevant acts associated with terrorist financing. Criminalising terrorist financing on the basis of aiding and abetting principles is not in line with the Methodology. In any event, the examiners consider that the present incrimination is not wide enough to cover all the ways in which financing of terrorism is described in SRII and its Interpretative Note and recommend the introduction of an autonomous offence which explicitly addresses all the essential criteria.

25. There is an administrative procedure for freezing accounts under the United Nations Resolutions 1373 and 1267 under European Union legislation, though the definition of terrorist funds and other assets in the European Union Regulations do not fully cover the full extent of the UN Resolutions especially regarding the notion of control of funds. Slovakia does have the legal capacity to act in relation to European Union internals and on behalf of other jurisdictions. It appeared that the banks were aware of their obligations to check the lists but at the time of the on-site visit no freezing orders had been made under the Resolutions. It was unclear how far checks were made in the financial sector beyond banks. Slovakia needs to develop guidance and communications mechanisms with all financial intermediaries and DNFBP and a clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner. Currently, notwithstanding adequate administrative penalties, compliance with SR III is not adequately monitored.

26. The FIU's powers and duties are not clearly or separately defined in legislation distinctly from other police powers and duties. In terms of screening unusual business activity reports, it has access to all necessary databases, and, as a law enforcement FIU, has access to additional information to support its analyses under broad police powers. Its resources are basically adequate for its screening responsibilities, though not for other roles that an FIU normally undertakes – particularly outreach to and training of reporting entities, provision of guidance to reporting entities, publication of reports on AML/CFT typologies and trends. These activities are not seriously addressed by the Slovakian FIU and need to be. The FIU does not seem to be the driving force in the AML/CFT system or occupy a main leadership role, even though the FIU is notionally in charge of the system. It is isolated in that it rarely receives feedback on the reports it sends for further investigation to other police bodies. The resourcing of the FIU should be reassessed in order that it can take a much more proactive role on these issues. The outcomes of reports transmitted by the FIU to law enforcement need providing to the FIU to ensure that appropriate feedback procedures can be put in place to reporting entities. The FIU is also statutorily bound to report to the Tax authorities. 105 such notifications were made in 2004. It is important that a wide range of unusual business transactions beyond the tax predicate is passed to law enforcement for further investigation.

27. The FIU also has a significant role in supervision. Under S. 10 of the AML Law the Financial Police (the FIU) is tasked with the primary duty of oversight of financial institutions, and supervision of the implementation of AML measures under the AML Law. All supervisory authorities are required under S. 11 of the AML Law to inform the Financial Police of any violation of the AML Law immediately after its discovery. They, along with the prudential supervisors, perform inspections in financial institutions and the FIU has sole responsibility for supervision of DNFBP. 7 staff are engaged in supervisory duties and more human resources are also needed for that part of the FIU's remit.

28. Law enforcement has adequate powers but still needs more relevant training and guidance in money laundering cases (and financing of terrorism). They also need more policy and practical guidance to ensure proactive financial investigation in major proceeds-generating crimes - to produce more money laundering cases and confiscation orders. A clear policy stipulation to investigators and prosecutors is advised to ensure that the financial aspects of major proceeds-generating cases are pursued routinely in investigations. Since the second evaluation steps had been taken to set up a Special Prosecutor's Office (staff of which indicated to the examiners an intention to pursue an active strategy of asset recovery) and to introduce (shortly after the third on site visit) a Special Court, serviced by the Special Prosecutors (to deal *inter alia* with serious cases of money laundering). This was welcomed by the examiners. Though at the time of the on site visit more coordination was still needed to join up the whole law enforcement effort.

Preventive Measures – Financial Institutions

29. The basic obligations in Act No 367 are broadly: customer identification in the case of transactions or linked transactions of 15,000 Euro and above and in the case of unusual business activity; record keeping; identifying unusual business activity and reporting unusual business activity; keeping information about reported unusual business activity confidential; delaying unusual business activity; and establishment of internal procedures and units/programmes of control. As noted, Act No 367 had been amended in 2002 largely to incorporate the requirements of the 2nd EU Directive and to cover the reporting of unusual business activity related to financing of terrorism. The latter provision needs greater clarification. The 'safe harbour' provisions in relation to those reporting unusual business activity should also be clarified to clearly cover all types of liability (civil and criminal).

30. At the time of the on site visit the Slovak authorities were awaiting the finalisation of the 3rd European Union Directive before amending the AML Law once more. Accordingly it was accepted that some (but not all) of the basic preventive obligations covered in the 2003 FATF Recommendations, and explained in the 2004 Methodology as needing to be required by Law or Regulation, were not then to be found in the AML Law or other primary or secondary legislation. With regard to Recommendation 5, there is, for example, no reference in the Insurance or Securities Laws or Regulations to the requirement to undertake Customer Due Diligence (CDD) when establishing business relations. There is similarly no reference in any Laws or Regulations to CDD measures when carrying out occasional wire transfers (which fully include the verification process) and in cases of doubts regarding the veracity or adequacy of previously obtained customer identification data. The notion of ongoing due diligence is also insufficiently embedded in the law. Likewise the definition of beneficial owner as set out in the FATF Recommendations in terms of establishing who ultimately controls the customer or exercises ultimate effective control over legal persons or arrangements is missing in primary or secondary legislation.

31. Equally, some of the other obligations on financial institutions which can be required by Law, Regulation or by other enforceable means have not yet been addressed by enforceable means by the Slovak authorities. Some of these preventive requirements are covered (in varying levels of detail) in the Recommendation of the NBS, This is non-binding and, as it is only addressed to banks, does not cover the whole financial sector. There is, for example, no enforceable guidance on how the verification process should apply to legal persons (especially non-resident legal persons). The timing of verification should be clarified across the whole financial sector. The need for enhanced due diligence in respect of higher risk customers needs to be incorporated into enforceable guidance across the whole financial sector. There is also no enforceable guidance on the requirements which should be in place additional to normal due diligence measures for politically exposed persons (Recommendation 6), and in

relation to cross-border correspondent banking and other similar relationships (Recommendation 7).

32. With regard to Recommendation 9, the Act on Banks does not allow for the opening of bank accounts through intermediaries. The NBS indicated that it was not possible for intermediaries to conduct elements of the CDD process in respect of banks Outside of the banking sector there is some use of intermediaries. Agents and brokers in the insurance sector are obliged to refuse a contract which preserves anonymity and can perform elements of the CDD process. Similarly investment service providers are allowed to rely on intermediaries for elements of the CDD process. In both cases the ultimate responsibility for complying with the requirements of Recommendation 9 falls on the financial institutions, which could at the time of the on-site visit be sanctioned by the Financial Market Authority for breaches of the relevant requirements.

33. The majority of FATF record-keeping requirements are provided for by Slovakia. The Slovakian authorities consider that the dangers posed by wire transfers are mitigated by the existing control mechanisms under the Payment Act, by which the only payment system provider is the NBS. None-the-less the Slovakian authorities need to review the Payment Act in the light of SR VII and its Interpretative Note as not all requirements appeared to be clearly covered.

34. Currently Slovakia relies on general 'know your customer principles' in respect of the requirements of Recommendation 11. An enforceable requirement needs to be introduced in respect of all financial institutions to pay special attention to all complex, unusual, large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

35. The Act on Banks imposes licensing conditions which require banks with a physical presence in Slovakia. The general provisions of the Act, together with the relevant NBS Decree 9/2004, serve as a barrier against shell banks operating in Slovakia.

36. Specific provisions should, however, be created prohibiting financial institutions entering into or continuing correspondent banking relationships with shell banks and obliging financial institutions to satisfy themselves that respondent financial institutions do not permit their accounts to be used by shell banks.

37. Supervision of the financial sector was shared at the time of the on-site visit by the FIU, the NBS and the Financial Market Authority (for the capital market and insurance). There needs to be a general provision to ensure that CFT issues are addressed by the FIU and all prudential supervisory authorities. At present this is not covered. Since the last evaluation the NBS has made the AML issue a part of general on-site examinations in banks and there have also been thematic AML visits to banks. The Foreign Exchange Division of the NBS supervise exchange houses under the Foreign Exchange Act. They need to be empowered to conduct AML supervision in exchange houses. The NBS Banking Supervision Division supervises money laundering from the point of view of how banks prudentially manage the risks of money laundering. NBS Banking Supervision has an *aide-mémoire* for banking supervision, from which it was clear to the examiners that many of the issues in the Methodology which are insufficiently proscribed in the Slovak system as yet are examined, at least in banking supervision. A key finding of banking supervision has been improper identification of customers. The NBS has also noted that the quality of due diligence is not even across credit institutions. The NBS can impose sanctions both under the Act on Banks and under the AML Act. They indicated that they could take action on the basis of breaches of licence requirements and in respect of activities covered by the Act on Banks dealing with prudential requirements, including requiring control and risk management systems. They have

sanctioned money laundering infringements on this basis but had reported no AML breaches to the FIU. The AML issue was said to be included in the FMA's on-site inspections. The FIU had also performed some visits to a small range of financial institutions and fined banks for AML breaches. Given that all three authorities are able to sanction for some AML breaches, there is the possibility of some overlap and double sanctioning in the system. Clearer and more formal working arrangements on this issue could be developed to ensure that breaches found in inspection are always followed by relevant sanctions. A more coordinated approach to AML supervision and more AML supervision generally is required across the financial sector. All supervisory authorities need more resources and training on AML/CFT issues.

38. The fitness and propriety of future owners and significant shareholders in foreign exchange houses needs more enquiry.

Preventive measures – Designated non-financial businesses and professions (DNFBP)

39. The AML Law covers most categories of DNFBP. It covers all those in the FATF Recommendations and extends them in line with the 2nd EU Directive to traders in works of art (though not all high value goods dealers carrying out cash operations over 15000 Euro, as required by the Directive). Additionally postal enterprises have been designated on a risk based assessment, but not trust and company service providers. Trusts cannot be created in Slovakia. It was unclear whether any other persons act as company formation agents, other than lawyers (who are covered in the AML law).

40. As noted, reports from DNFBP were very rare (1 from a postal enterprise in 2002, and 5 from bookmakers between 2002 and 2004). There were none from casinos, lawyers or other professionals. More needs to be done to raise awareness and understanding of the width of the reporting obligations in DNFBP by outreach to the sector and through the issuing of guidance. Similarly more active promotion of Customer Due Diligence standards in DNFBP is required.

41. The same preventive obligations described above for financial institutions apply to DNFBP. What is not provided for in the AML Law is not provided for elsewhere. Some of the same issues in respect of the core preventive obligations which need to be in Law or Regulation discussed in the context of financial institutions arise also in the context of DNFBP and will not be repeated. Equally, the other relevant obligations in the Methodology that can be provided in Law, Regulation or by other enforceable means which are missing in relation to financial institutions are missing in relation to DNFBP (eg obligations on establishing customer relationships with politically exposed persons, and guidance regarding emerging technological developments). In the context of Recommendation 15, greater clarification of the role of compliance officers and the width of any exceptions from organising internal control is necessary in the context of DNFBP.

42. The AML Act provides (in line with the possibility provided for in the 2nd EU Directive) for identification of all clients on entry to a casino. The examiners understand that for the purposes of the FATF standard the casinos are able to link their CDD information through video recording when customers engage in transactions above 3000 Euro. The examiners consider in the circumstances that the FATF standard is broadly met. With regard to real estate agents involved in buying and selling property, identification of the customer in the limited sense it is provided for in the AML Law is covered in respect of transactions over 15000 Euro. The obligation is narrower than the FATF requirement, as real estate dealers should carry out CDD whenever they carry out transactions concerning the buying and selling of real estate whatever the size. Similarly, Customer due diligence should also be carried out by lawyers, notaries and other independent legal professionals and accountants in all the

circumstances set out in Recommendation 12 and not simply in respect of transactions at or above the 15000 Euro threshold in the AML Law.

43. Supervisory and enforcement structures in relation to DNFBP are basically missing. It was unclear what the strategic plan was for monitoring DNFBP by the FIU. Casinos had not been controlled for AML purposes. Some sanctions had been imposed in other parts of the sector but the level of monitoring, given the size of the sector, is tiny. Given the limited resources of the FIU the further development of a more risk based approach may be helpful. More resources are, in any event, needed for monitoring and ensuring compliance by all DNFBP.

Legal persons and arrangements and non-profit organisations

44. Slovakian Law does not clearly provide for information about the beneficial ownership of companies in the way that 'beneficial owner' is defined in the Glossary to the FATF Recommendations (ie who ultimately owns or has effective control). This is particularly the case where one company buys shares in another company. There is no requirement to identify to the Commercial Register the beneficial owners of a company which holds shares in another registered company. Similarly foreign companies are registered in Slovakia. In relation to such foreign companies beneficial ownership information is not available. Some ownership information may be available in the company's books at the registered office. Information was sought but not provided on whether there is an up to date register of all shareholders at a company's offices, and whether it includes the beneficial owners of companies owning shares in that company. It seems therefore that Slovakian law does not require adequate transparency concerning beneficial ownership and control of legal persons. It is bound to be difficult and sometimes lengthy and cumbersome to seek to obtain such information through investigative measures (and possibly mutual legal assistance). It is recommended that Slovakia review its commercial, corporate and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership.

45. No real analysis of the threats posed by the non profit sector in Slovakia in respect of terrorist financing had taken place. It is advised that this is undertaken. Moreover there was no evidence of a formal review of the adequacy of laws and regulations in the non-profit sector having been undertaken since SR VIII was introduced. Such a formal review should be undertaken and general guidance to financial institutions with regard to the specific risks of this sector should be considered. Consideration should also be given to effective and proportionate oversight of this sector and to whether and how further measures need taking in the light of the Best Practices Paper for SR VIII.

National and international co-operation

46. The Slovak authorities advised that cooperation and coordination is an important part of the tasks of the FIU. There is a multi disciplinary group of experts on combating money laundering, chaired by the FIU, which has a predominantly law enforcement focus. Its main objective is to improve exchange of information on a national level including coordination in concrete cases. Notwithstanding this, coordination at the working level between the FIU and law enforcement seemed to be problematic, given the lack of feedback the FIU receives from police or prosecutors (or courts) in relation to the reports the FIU provide. There are also bilateral co-operation agreements between the FIU and the NBS and between the FIU and the Financial Market Authority. Notwithstanding these agreements, the examiners did not find that there was always sufficient co-ordination in practice on supervision and sanctioning or the co-ordination of inspection plans. While the existing mechanisms for co-operation point in the right direction, they appear not to be effective at present in ensuring all necessary co-ordination. As noted, the arrangements for supervision and sanctioning need greater co-

ordination and the FIU needs feedback and statistical information on the cases it sends to law enforcement. Strategic co-ordination and collective review of the performance of the system as a whole needs developing in more detail. More detailed statistics are required across the board to assist proper strategic analysis.

47. The Vienna Convention, the Palermo Convention, and the 1999 United Nations Convention for the Suppression of the Financing of Terrorism and the Strasbourg Convention have all been ratified and brought into force, though there are still reservations about the effectiveness of implementation in some instances - particularly terrorist financing criminalisation and some of the preventive standards in Palermo.

48. Slovakia has general mutual legal assistance provisions covering judicial assistance, which are not applied in an overly strict way or made subject to unreasonable conditions. The width of the domestic financing of terrorism offence could severely limit mutual legal assistance based on dual criminality. Equally the lack of a comprehensive incrimination of financing of terrorism would render extradition difficult outside the EU context, where the European Arrest Warrant would apply. Of the statistics provided average response times were acceptable on mutual legal assistance requests but comprehensive statistics on legal assistance requests relating to money laundering and terrorist financing mutual legal assistance were not forthcoming. There were no statistics available to determine whether extradition was being handled without undue delay.

49. The FIU and supervisory authorities have broad capacities to exchange information with foreign counterparts. The keeping of statistical data on their information exchange is also advised.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Slovakia and its economy

1. The Republic of Slovakia (hereafter "Slovakia") is located in Central Europe and is bordered by the Czech Republic, Austria, Hungary, Ukraine and Poland. It has a population of 5.4 million people.

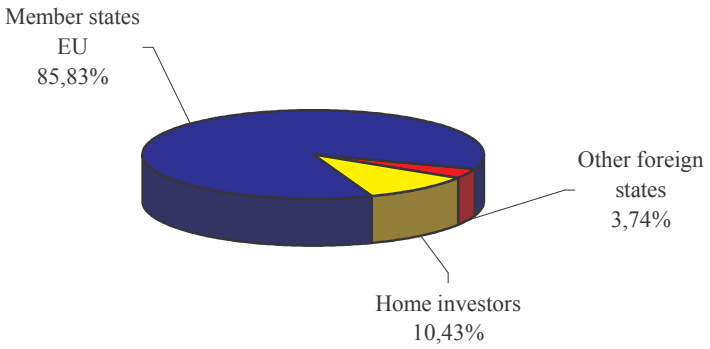
2. After the collapse of communism, Slovakia became in 1993 a separate State, independent of Czechoslovakia. It joined the Council of Europe in the same year, as a separate State. It is a Parliamentary Democracy, with an elected President, and a Prime Minister, who is Head of Government. Slovakia joined the Organisation for Economic Co-operation and Development (OECD), a group of 30 of the most developed countries in the world, in 2000. It acceded to the European Union in May 2004. Slovakia has a written Constitution and a Civil Law based legal system. The currency is the Slovak Crown (hereafter SKK). At the time of the on-site visit, 1 Euro represented 39 SKK.

3. In Slovakia, there has been, in the years since the last evaluation visit (in 2001) increasing openness to, and engagement with Euro area countries. This potentially rendered the Slovak economy sensitive to economic developments in Euro area countries. However, the combined effects of new inward investment in Slovakia, in particular direct foreign investment (which grew from 2003), and the slowdown in the rate of growth in the Euro area generally, offset potentially negative effects of the new European engagement. Economic growth and the stability of the Slovak financial system were not adversely affected. Structural reforms took place at that time: carving out bad debts or non-performing loans in the three largest banks; and preparing these banks for privatisation (particularly sale to foreign investors). This process also helped the financial system to withstand externally driven economic trends, and to strengthen overall economic and financial stability. The three banks concerned are now all owned by foreign investors. The development of the Slovak economy in 2003 to 2005 shows a relatively high rate of economic growth. According to data from the Statistical Office of the Slovak Republic, gross domestic product increased progressively between 2003 and 2005. In 2005, GDP increased by 6%, representing the fastest rate of growth since 1996. The inflation rate has fluctuated. In 2003, it reached 8.5% (largely as a result of domestic price adjustments). However, by the end of 2005, it had reduced to 3.9% (while the average rate of inflation for 2005 was only 2.8%).As at the end of 2003, the balance of payments current account deficit was 0.9% of GDP, representing the best result since 1995. At the time of the on-site visit, it was expected that the development of the current account would remain favourable.

4. A particularly dynamic part of the financial market is collective investment, in particular mutual funds, where the amount of deposits was 3% of GDP, as at the end of 2003. In 2003, investment in life assurance and supplementary pension insurance also increased.

5. Foreign capital represents a significant factor stabilising the banking sector, the insurance sector and the financial market generally in Slovakia. The share of foreign investment by countries, as at 31 March 2005, is illustrated beneath.

Share of investment by countries to 31 March 2005



EU Member States include:
Austria (35.38%),
Luxembourg (28.26%),
the Czech Republic (7.86%),
Hungary (4.53%),
Italy (4.27%),
Germany (1.94%),
the Netherlands (1.39%),
the United Kingdom (1.14%).
France (1.13%),
85,83%

Non-EU countries include the United States, Canada and Switzerland
3,74%

Slovakia
10,43%

6. As a European Union member, any of the structural elements set out in paragraph 7 of the AML/CFT Methodology 2004, which might significantly impair implementation of an effective AML/CFT framework are being addressed. For example, transparency and good governance principles are in place (eg Corporate Governance Principles issued by the Stock Exchange in September 2002). Slovakia has a legal and administrative framework in place against corruption. Slovakia signed the United Nations Convention against corruption on 9 December 2003, though it had not been ratified or had become effective in the Slovakia at the time of the on-site visit[2]. Provisions covering direct and indirect bribery and corruption were provided for in the Criminal Code at the time of the on-site visit. Slovakia is a member of the Group of States against Corruption (GRECO).

7. Although there is no special Code of Conduct for prosecutors, all important ethical and professional standards are incorporated in Act No. 154/2001 Coll. on prosecutors. Article 26 of this act sets out prosecutors' duties relating to impartiality and conflict of interest. Breach of these

[2] The Convention was subsequently ratified on the 1st of June 2006.

duties can lead to disciplinary sanctions. Police officers must also be of high integrity and are obliged to follow a Code of Ethics. Similar high ethical standards are also required of judges. Furthermore professionals, such as auditors and lawyers, have to be persons of integrity and registered with their professional bodies. Auditors have codes of ethics which can be enforced. Lawyers submit to the rules of the Bar on professional misconduct. By contrast, there is no code of conduct for accountants. Certified accountants follow the International Federation of Accountants (IFAC) Code of Conduct. Membership of the Chamber of Accountants in Slovakia is not obligatory.

1.2 General situation of money laundering and financing of terrorism

8. The Slovak authorities advised in their replies to the questionnaire that methods, techniques and types of financial crime, which is committed in Slovakia, are mostly imported from economically developed European countries. Criminal activity is reported by the Slovakian authorities as characterised by a high level of organised crime and crime of an international character. Organised crime clearly continues to be a major threat. Though, as will be seen beneath, the very limited statistical information available to the evaluators does not show how many cases of money laundering investigated or prosecuted in Slovakia represented laundering on behalf of organised crime groups in respect of their major proceeds-generating criminal activities, or how many predicate offences committed abroad resulted in money laundering prosecutions in Slovakia. Domestically economic crime and fraud offences, whether committed by organised crime groups or others continue to occupy much police and prosecutorial resources.

9. The general crime statistics for 2002-2005 have been provided by the Slovak authorities and are set out beneath.

	2002			**2003**			**2004**			**2005**		
Type of crime	Prose-cuted persons	Charged persons	Sen-tenced persons	Prose-cuted persons	Charged persons	Sen-tenced persons	Prose-cuted persons	Charged persons	Sen-tenced persons	Prose-cuted persons	Charged persons	Sen-tenced persons
Economic	913	553	291	1595	578	313	1710	719	395	2168	1079	572
Property	22 704	17 385	12 898	28 062	18 935	14 146	24 845	15 540	12 605	28 530	18 109	11 477
Corruption	120	92	57	172	97	49	160	80	66	110	76	31
Organized crime	1 804	1269	1953	2474	1622	1067	2172	1236	1016	2131	1446	874
Total	**25541**	**19299**	**14199**	**32300**	**21232**	**15575**	**28887**	**17575**	**14082**	**32939**	**20701**	**12954**

10. From general information collected by the Special Prosecutor's Office (of the General Prosecutor's Office of Slovakia) the following basic sources of illegal assets have been identified:

- Illegal trafficking in mineral oils, where the criminal groups gain the profit selling the petroleum as mineral oils, with significantly lower excise duty;
- Frauds committed by excessive deduction of VAT in relation to other goods;
- Illegal smuggling of immigrants across the territory of Slovakia, particularly from Ukraine to destinations in Western European countries;

- Illegal smuggling of cigarettes and alcoholic drinks, as well as trafficking in them;
- Fraudulent establishment and running of limited liability companies seeking investments from the public (so-called pyramid schemes)
- Car theft and the subsequent legalisation of the stolen cars and equipment;
- Trafficking in narcotic drugs and precursors;
- Bankruptcy-related and public offer- related fraud.

11. The Slovakian authorities indicated that they consider that the pattern of money laundering has not changed appreciably since the introduction of anti money laundering measures. A variety of groups are considered to be involved in laundering operations: organised crime dealing with drug trafficking, trafficking in human beings, and illegal migration; and persons, often with university degrees and good positions in private companies and also in State organs and institutions. Banks are the most frequently used financial institutions for money laundering. The most common ways in which money is laundered are using the accounts of "straw men", use of "straw men" for transactions, and investment of dirty money into business. The Slovak authorities also consider the transfer of non-declared cash through the borders to be a prime money laundering vulnerability.

12. Slovakia recognises its general vulnerability to international terrorism as similar to that of other European Union countries. Within the Bureau of Organised Crime there is a Division of Combating Terrorism which is mainly focused on detection of crimes associated with terrorism, racism and extremism. Law enforcement and the Intelligence Service (SIS) monitor potential terrorist threats within Slovakia. However there have been no financing of terrorism enquiries, prosecutions or convictions.

13. Slovakia has ratified the International Convention for the Suppression of the Financing of Terrorism and, as will be seen below, generally follows the European Union implementation of the United Nations Security Council regulations. Though the evaluators were advised that the competent authorities were aware of potentially vulnerable fund raising activities in parts of the Slovakian communities, no real risk assessment of the potential for abuse of the non-profit sector from the point of view of financing of terrorism has been made. Neither had there been any review of the adequacy of laws and regulations that relate to non-profit organisations in this regard.

1.3 Overview of the financial sector and Designated Non-Financial Businesses and Professions (DNFBP)

Financial Sector

Banking sector

14. As of May 2005, the Slovakian financial system was composed of 18 banks, including three foreign bank branches from European Union member States: the Netherlands, the Czech Republic and Germany. There are also eight representative offices of foreign banks. Since European Union membership, there are 68 cross-border banking service providers and one cross-border E-money institution from the United Kingdom (registered at the beginning of 2005). There are no Slovak E-money institutions (beyond banks) active as yet.

15. "Banking activities" are described in Article 2, paragraphs 1 and 2 of the Act No. 483/2001 Coll. on banks and on changes and amendments to certain other laws, as amended (hereinafter "Act on Banks" – Annex 3) as follows:

(1) A bank is a legal entity with its registered office in the territory of Slovakia, founded as a joint stock company, which accepts deposits and provides loans and which holds a banking licence.

Any other legal form of a bank is prohibited. Under Article 2, paragraph 6, a bank may only issue registered shares in book entry form; a change of their form is prohibited.

(2) In addition to the activities set out in paragraph 1, a bank may carry out the following other activities, if these are specified in its licence:

- domestic fund transfers and cross-border fund transfers (”payments and clearing”);
- providing investment services for clients and investments in securities for the bank's own account;
- trading for the bank's own account;
- management of receivables for a client's account, including advisory services;
- financial leasing;
- provision of guarantees, and opening and endorsing of letters of credit;
- issuing and administration of payment instruments;
- business advisory services;
- issuing of securities, participation in securities issues, and provision of related services;
- financial brokerage;
- safe custody of assets, renting of safe deposit boxes;
- provision of banking information;
- mortgage transactions pursuant to Article 67, paragraph 1;
- performing the function of a depository pursuant to separate regulations;
- processing of banknotes, coins, commemorative banknotes and coins.

16. As at time of the last report, the banking sector remains the most important component of the financial sector. It now amounts to 88.64% of financial market assets (as at the end of 2004).

17. The assets of the three largest banks in the sector in 2004 ranged between 51.9% and 54.5% of total assets. The market share of the five largest banks was between 65.6 % and 66.6 %.Customer deposits form the largest part of banks’ funds. Deposits of resident customers in SKK represent 87% of the total of customer deposits.

18. The process of granting licences to perform activities of E-money institutions is regulated by the Act No. 510/2002 Coll. on the Payment System (as amended) - hereinafter referred to as “Payment Act”- (which is harmonised with the respective European Union Directives - 97/5, 98/26 and 2000/46 - in particular Article 21a, paragraph 1. Such institutions can be established only in the legal form of a joint stock company with registered shares (Article 21b, paragraph 1 of the Payment Act).

Foreign Exchange business providers

19. According to the Act No. 202/1995 Coll. on Foreign Exchange – hereinafter “Foreign Exchange Act” (Annex 2) and the Decree of the National Bank of Slovakia No. 614/2003 on the licensing criteria for simple foreign exchange offices (or bureaux de change), the regime for issuing licences is divided between the National Bank of Slovakia (NBS) and the Ministry of the Interior. The licensing procedure since 2004 with the amended Foreign Exchange Act is stricter than at the time of the second evaluation, but the origin of capital is still not verified.

20. Firstly, for simple bureaux de change, a foreign exchange licence from the Foreign Exchange Department of the National Bank of Slovakia is required and then, before the commencement of activities, business permission is required under Act No. 455/1991 Coll. on Small Businesses as amended (hereinafter the Act on Small Businesses). Local authorities grant this permission. The amended Foreign Exchange Act obliges everyone who acquires such a permission to submit to the National Bank of Slovakia within 10 days a copy of this permission.

21. The National Bank of Slovakia publishes and keeps updated the full list of Foreign Exchange offices on its web site. The numbers are as follows (as at the end of March 2005): 1 297 Foreign Exchange offices, three non-cash Foreign Exchange currencies exchange providers and two Foreign Exchange cash cross-border transfers providers.

22. The National Bank of Slovakia (through its Foreign Exchange Department) is the licensing authority according to the Foreign Exchange Act (Annex 2). In line with the provisions of the Foreign Exchange Act (mainly Article 6), a foreign exchange licence is required for specific activities such as:
    - Foreign currency exchange activity, which means the conduct of transactions in foreign exchange assets, consisting of the purchase of funds in foreign currency for Slovak currency in cash, or the sale of funds in foreign currency for Slovak currency in cash (available for legal and natural persons);
    - Foreign exchange services, which means the provision of services to third persons as part of a business activity, the subject of which is the execution or facilitation of cross-border transfers in Slovak or foreign currency, or the operation of commercial agencies for the execution or facilitation of such cross-border transfers (available only for legal persons with equity capital of 1 million SKK (ca. 25 000 Euros);
    - Non-cash transactions in funds, which means the conduct of transactions in foreign exchange assets, consisting of the purchase or sale of funds in one currency for funds in another currency for one's own account or another person's account, through money transfer (but not cross-border transfers) in non-cash form, or the facilitation or arrangement of such sale or purchase, including the receipt and delivery of instructions for its realisation or arrangement (available only for legal persons with equity capital of 10 million SKK (250 000 Euros).

Thus, Foreign Exchange licences can be granted either to a legal or to a natural person. In the case of a natural person a clean criminal record is required as one of the licensing conditions for all persons employed in exchange houses and in the case of a legal person a clean criminal record is required for all those natural persons who are authorised to represent the legal person as well as for the employees. A foreign exchange licence may not be transferred to another person or to a legal successor.

23. The National Bank of Slovakia issued 79 licences for currency exchange activities in 2004. In the same year, 3 licences for non-cash foreign exchange currency exchange service providers and 2 licences for providing foreign exchange services (cross-border transfers) were issued. All these institutions are established as limited liability companies.

24. Consideration was being given at the time of the on-site visit by the Foreign Exchange Department of the National Bank of Slovakia, to undertake, together with the relevant local authorities, a review of issued foreign exchange licences with a view to establishing to what extent they were used in 2005.

Financial Market Authority (FMA)

25. The Financial Market Authority was established by Act No 96/2002 "on Supervision over the Financial Market and on the Change and the Amendment of Certain Acts" on 1 April 2002, as a legal subject which was authorised to conduct supervision in the area of public administration in accordance with the above-mentioned Act and special laws.

26. According to the Act No 96/2002, the Financial Market Authority conducts supervision over the activities of traders in securities, branch offices of foreign traders in securities, investment service providers, Security Stock Exchange, Securities Central Depository, shareholders funds, insurance companies, branch offices of foreign insurance companies, insurance brokers and, also over other

persons and subjects and over groups of persons and subjects which are obliged by special laws in the field of the capital market or insurance[3].

Securities Market

27. Securities Market participants are licensed and supervised by the Financial Market Authority. They comprise public companies, investment firms (i.e. stock broking companies), management companies, investment funds, mutual funds, mutual pension funds, the Stock Exchange and the Central Depository.

28. In March 2005, there were 38 investment firms, of which 14 were banks, with capital from 6 million to 35 million SKK, depending on the character and volume of the services involved (in the case of investment firms which are not banks).

29. There were also 160 natural persons and 51 legal persons acting as investment service providers. There were 10 local and 3 foreign management companies.

30. No direct cash payments from clients to licensed companies are allowed. All the payments must be made via non-cash means or through banks.

31. There is one Stock Exchange and one Central Depository operating on the market.

32. There were also at the time of the on-site visit 8 Pension Fund Management Companies supervised by the FMA. Apart from Investment Service Providers, all the above-mentioned financial institutions are joint stock companies.

33. The volume of securities in banks' portfolios has risen. This trend was primarily due to the growth in government bonds by SKK 20 billion in the third quarter of 2004. These government bonds supplemented the portfolio of higher-yield bonds issued prior to 2003, which are gradually reaching maturity. Government bonds formed 76% of the total volume of securities.

34. Securities issued by banks were restricted at the time of the on-site visit to mortgage bonds and bills. The growth in the volume of issued mortgage bonds is connected with the overall dynamic rate of growth in mortgage lending. By the end of 2006, the amount of issued mortgage bonds will cover 90% of mortgage loans provided. At the end of 2004, total coverage in the sector stood at 74%. Over the course of 2004, the total amount of mortgage bonds grew from SKK 14.7 billion to SKK 30.1 billion. Investors are often banks themselves, which own approximately half the total amount of mortgage bonds issued. Some banks offered bills as an alternative to their deposit products. The volume of bills issued over the year 2004 grew from SKK 3.9 billion to SKK 9.9 billion.

Insurance Sector

35. According to Article 3 b) of the Insurance Act No. 95/2002 Coll., "financial institution" means a bank and branch of a foreign bank, supplementary pension insurance company, stockbroker and branch of a foreign stockbroker, asset management company and subjects with registered offices outside the territory of Slovakia with a similar field of activities. Also, the Insurance Act in Article 4 defines the terms "insurance company", "insurance company from another member State", "foreign insurance company", "branch of an insurance company from another member State", which are also financial institutions.

[3] The FMA was at the time of the adoption of the draft report no longer in existence, and insurance and securities supervision have been brought under the supervision of the NBS since January 2006.

36. As at 28 February 2005, there were 25 registered insurance companies and one branch of an insurance company from another member State on the Slovak insurance market. These comprised:
    - 16 composite insurance companies (offering both life and non-life insurance);
    - 5 life insurance companies; and
    - 4 non-life insurance companies.

37. As at 28 February 2005, there were also registered on the insurance market :
    - 268 insurance brokers – legal persons;
    - 110 insurance brokers – natural persons;
    - 59 insurance agents – legal persons;
    - 63 insurance agents – natural persons.

38. As at 28 February 2005, the Financial Market Authority (FMA) obtained 146 formal notifications of intentions to carry on insurance business under the freedom to provide services (122 non-life, 8 life and 16 composite businesses). Four insurers of Slovak residence submitted notification of their intentions to provide insurance business in other member States under the freedom to provide services. Two Slovak insurers submitted notifications that they would provide insurance business in other member States through their branch.

39. 60 % of the market share was controlled by the two largest insurers (from which Allianz - Slovenská poisťovňa, a. s. had 40,5 %). Only four insurance companies had more than 5 % market share, covering together 72 % of the total market share.

40. As of March 2005, there was no reinsurance company operating in Slovakia.

41. Substantial amendments to the Insurance Act and related Decrees were approved on 1st January 2005. The main changes include amendments in respect of group supervision (adopting European Union Conglomerate Directive), solvency calculation, amounts of a guarantee fund and the requirements for prior approval.

42. On 1st January 2005, new individual health insurance policies were introduced within the Social health insurance scheme. This individual, private health insurance, provides supplementary coverage above the basic provision of the public health insurance.

DNFBP

43. The major DNFBP are as follows:
    - 4 operating casinos in Slovakia. There are 2 companies (Regency Casinos International and Casinos Slovakia) which are authorised for the operation of casinos. There is 1 State lottery with gambling games operating by means of the internet.
    - Real estate agencies: At the time of the evaluation visit there were 625 real estate agencies, which were members of the National Association of Real Estate Agencies, and there were 29105 real estate agencies registered according to the Trade Licensing Act (and which are not obliged to register with the National Association of Real Estate Agencies);
    - Traders in precious metals and precious stones and products: At the time of the evaluation visit, there were 617 legal and natural persons performing trading operations in gold and jewellery ;
    - Organisers of auctions;
    - Traders in works of art;
    - Notaries public**:** namely public officers appointed in accordance with the Law on Notaries with the power to administer oaths, certify affidavits, take acknowledgments,

take depositions or testimony, etc. At the time of the evaluation visit, there were 318 notaries public;

- Lawyers: i.e. independent legal professionals authorised under the Attorneys Law to practice law. At the time of the evaluation visit, there were 4152 advocates;
- Audit companies and certified auditors providing auditing services: at the time of the evaluation visit, there were 101 audit companies and 813 natural persons performing audit services;
- Legal and natural persons performing accountancy services: at the time of the evaluation visit, there were 560 certified accountants and 125 non-certified accountants as members of the Chamber of accountants. The number of accountants could be higher as membership of the Chamber is, as noted earlier, not an obligation;
- Tax advisory services and certified tax advisors**:** at the time of the evaluation visit, there were 711 natural persons with licences for providing tax advisory services.

44. The regulation of casinos was covered by the Act No. 194/1990 Coll. on Lotteries and other similar games at the time of the on-site visit. The new Act on Gambling was approved by the National Council of Slovakia on 16th of March 2005 and came into force on 1st of May 2005. Compliance with the rules in this Act is under the supervision of the Ministry of Finance of Slovakia. According to the individual licence granted by the Ministry of Finance, casinos are empowered to (only) pursue activities in line with the conditions of the Gambling Act. The initial capital for casinos is 50 million SKK (approximately 1.3 million Euros). The individual licence is limited. For casinos, this is 10 years.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

45. The Slovakian Civil Code (Act No. 40/1964 Coll.) describes the types of legal persons and legal arrangements that can be established or created, or which can own property. They are associations natural persons or legal persons, purpose associations of property, units of local self-government and other subjects stipulated by specific laws. For the purposes of this report, the relevant entities are companies, partnerships, cooperatives, civil associations, and special purpose associations ,mainly foundations and associations.

46. For the establishment of a legal person, a written contract or a founding act is needed unless a special act provides otherwise. Legal persons established for the purpose of undertaking business are either companies or partnerships. Under Section 57 of the Commercial Code, a partnership or a company shall be established on the basis of a Memorandum of Association executed by every founder, unless other provisions of the Commercial Code stipulate differently. The founder's signature must be officially authenticated. The Memorandum of Association may also be executed by a person authorised to do so by the founder. The power of attorney – with an officially authenticated signature of the founder – is required to be attached to the Memorandum of Association. Where the Commercial Code permits the establishment of a partnership or a company by one founder only, the Memorandum of Association is substituted by a Deed on Establishment, in the form of a Deed executed by a Notary Public (it includes the same essentials as the Memorandum of Association). Under Section 56 of the Commercial Code partnerships and companies may have the following forms: a general commercial business partnership; a limited partnership; a limited liability company; a joint stock company; and a co-operative. Information on the number of each type of business enterprises registered at the time of the on-site visit was not available.

47. Legal persons officially come into existence on the date on which they are incorporated into the Commercial Register or another Register prescribed by law. They are deemed to be established

for an indefinite period of time unless there is explicit reference to the contrary in the Memorandum of Association or Deed of Establishment. The Commercial Register is a public register within the structure of the court. Company information from the Register is available on a dedicated website on the internet. There are eight regional (district) courts which are involved in the approval and registration of companies. Constitutive documents are normally submitted by a lawyer, and, in the case of joint stock companies, documentation is usually prepared and signed by a notary prior to the submission to the court for approval. The operation of registration is governed by Act No. 530/2003 Coll. on the Commercial Register as amended. All data concerning entrepreneurs stipulated by Section 2 of the Act (including financial reports, annual statements and auditors' reports), together with the "Collection of Deeds/Formal Documents" are required to be deposited under Section 3 of the Act prior to registration. These issues are taken up in Section 5 beneath.

48. Briefly, the general characteristics of each legal entity are as follows. A general commercial partnership is an entity in which two or more persons carry on business under a common business name and bear joint and several liability for the obligations of the partnership with all their property. The partnership agreement includes the business name and registered office, details of the partners, and the scope of the business. All the partners sign the application for incorporation into the Commercial Register. A limited partnership is an entity in which one or more partners bear limited liability for the partnership's obligations and one or more partners bear unlimited liability with their entire property.

49. Limited liability companies are companies whose stock capital is made up of predetermined contributions pledged by its members (the maximum number of members being 50). The minimum stock capital is 200,000 Slovak Crowns. The minimum contribution is 30,000 Slovak Crowns. The Memorandum of Association must contain *inter alia*: the business name and registered office of the company, identification of the company's members, ie the business name plus the registered office of the legal entity and the name and the residence of individuals; the scope of its business activities; the amount of stock capital and the amount of each member's contribution upon establishment; the names and addresses of the company's first executives and details of the manner in which they will represent the company; the names and addresses of the supervisory board, if established. Members exercise their rights with respect to the management of the companies in General Meetings. The details of shareholders in limited liability companies are available for public inspection on the public register. Limited liability companies are obliged under section 3 of Act No. 530/2003 to announce all changes in the partnership agreement or Memorandum of Association of the company to the Register. This includes changes to shareholders.

50. Joint stock companies may be private joint stock companies or public joint stock companies. Their stock capital is composed of a certain number of shares of nominal value. The capital of a public joint stock company can be represented by registered shares Bearer shares in joint stock companies are available only in the form of book-entry securities. Issues of bearer shares are registered in the Central Securities Depository of the Slovak Republic in the Issuers' Register and on registered accounts of their owners or members of the Central Securities Depository of the Slovak Republic. Data on owners is available on the request of entitled persons according to article 110 of the Act on Securities (No. 566/2001 Coll.). The issuer is authorised to obtain the list of shareholders from the Central Securities Depository for the purpose of "corporate actions". There is no requirement under the Commercial Code for details of shareholders to be publicly disclosed and recorded in the Commercial Register in the case of joint stock companies. Data on shareholders is disclosed in the Commercial Register only in the case of a private joint-stock company, which has only 1 shareholder. The shareholder does not bear any liability for the obligations of the company. A joint stock company can be established by one founder, provided that the founder is a legal entity, or otherwise by two or more founders. The value of the company's stock capital must not be less than 1,000,000 Slovak Crowns. The Memorandum of

Association/Deed of Establishment must include *inter alia*: the business name; the registered office of the company and its scope of business activities, the amount of stock capital; the number of shares, and nominal value; the subscribed contributions of the single founders.

51. Legal persons are also Co-operatives, i.e. a community of members established either to undertake business or to satisfy economic, social or other needs of its members. The members do not bear liability for Co-operatives' obligations. Registered stock capital should not be less than 50,000 Slovak Crowns. All members of the Board sign the application for incorporation.

52. The NPO sector comprises foundations and associations. Shortly before the on-site visit there were 307 foundations and 24,058 registered associations (mostly sport, cultural, art, educational, humanitarian and charitable associations). Foundations are regulated by the Act No. 34/2002 Coll. on Foundations and on amendments to the Civil Code. A foundation is a legal form established on the property principle (i.e. an association of the financial means and property assigned to support generally beneficial purposes – e.g. assistance to handicapped people, orphans, sports, protection of human rights, etc). On their establishment, the founder has to deposit in a bank account a minimum of 200.000 SKK. Foundations are established by registration in the Registry of Foundations conducted by the Ministry of the Interior, Public Administration Section, Department of Internal Affairs. Religious associations are registered by the Ministry of Culture. Associations, unlike foundations, have a legal form, and are subject to Act No. 83/1990 Coll on Association of citizens as amended. The registration body is also the Ministry of Interior.

53. Slovakia has not signed the Convention on the Law applicable to Trusts and on their Recognition (1 July 1995, the Hague).

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

54. The Government issued a high level Crime Prevention Strategy for the period of 2003 – 2006 in June 2003. The main responsibility of prevention bodies at all levels consists of performing tasks in the field of prevention set out on the basis of the Prevention Strategy, coordinating preparation, implementation and evaluation of preventive activities within their scope of authority, and involving the relevant entities in this process on the principle of partnership.

55. According to this document, law enforcement agencies and other competent bodies shall, in compliance with the Vienna Declaration on Crime and Justice and Plans of Action for its implementation, also focus on crime prevention in the areas of organised (including transnational) crime, economic crime, corruption, trafficking in human beings, smuggling of migrants, illicit production of and trafficking in firearms, money laundering, high-tech crime and cyber crime, etc.

56. As noted, on 1 May 2004, Slovakia became a member of the European Union. Since then representatives of Slovakia were involved in the preparation of the Council directive on the Prevention of the use of the financial system for the purpose of money laundering, including terrorist financing (Third European Union Directive). Representatives of Slovakia also took an active part in the preparation of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds from Crime and on the Financing of Terrorism.

57. The main changes to the Slovak anti-money laundering legislation were planned to take place after the adoption of the Third European Union Directive and the new Council of Europe Convention. It will be noted that many issues which needed addressing in Slovakia were, at the time of the on-site visit, awaiting finalisation of the Third Directive.

58. As for the countering of the financing of terrorism, the "National Action Plan to combat terrorism in the context of Slovakia" was elaborated in 2004 on the basis of the Resolution by the Government of Slovakia No. 188 of 12 March 2003. That Action Plan reflects the tasks and measures resulting from the European Action Plan to Combat Terrorism. The National Action Plan includes a section focusing on the creation of conditions preventing terrorism financing. There is a requirement included in the National Action Plan that it should be ensured that there is an operational system of mutual exchange of information on taxable entities at the international level, as well as noting the importance of combating financing of terrorism through tax evasion. In response to this requirement, the Ministry of Finance reorganised the Office of Tax Checking into a new "Section of Tax Checking" as a part of the Tax Directorate of Slovakia (according to the amendment of the Act No.182/2002 Coll., amending and supplementing the Act No. 150/2001 Coll. on Tax Authorities). Its information system was in the development stage at the time of the on-site visit. Currently, international exchange of information is being carried out on the taxable entities via the VIES information system which carries out all the functions specified in Council Regulation No. 1798/2003 of 7.10.2003 on administrative co-operation in the field of value added tax, as well as CLO system[4].

59. As noted above, on 2nd July 2002, Slovakia ratified the 1999 United Nations Convention on Suppression of the Financing of Terrorism. The Convention was binding on Slovakia from 13 October 2002.

60. The Slovak FIU advised that it measures the effectiveness of its work regularly. There are some performance indicators, such as the quality of the received unusual business transactions, duration of the analysis, destinations to which the information from unusual business transactions are disseminated, international exchange of information (especially the quality and utilisation of received information). However, the FIU, as noted below, does not receive feedback from the prosecutors or the outcomes of cases in the courts.

b. The institutional framework for combating money laundering and terrorist financing

61. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism on the financial side:

Central Bank – The National Bank of Slovakia

62. Under Act No. 566/1992 Coll. on the National Bank of Slovakia, as amended (hereinafter referred to as "the NBS Act"), Article 1, para. 1 and Articles 36 and 37, the Slovak Central Bank is an independent institution (this requirement is also supported by the Slovak Constitution, Article 56*)* with powers to supervise the safe functioning of the banking system and the conduct of banking activities pursuant to the NBS Act and to the Act on Banks. Article 1, para. 3 of the NBS Act determines that the NBS has the authority to issue generally binding regulations (called "decrees") within the limits prescribed by the NBS Act or separate regulations (listed in the footnotes to this provision). The generally binding regulations are promulgated in the Collection of Laws of Slovakia. According to Article 36, para. 2, the NBS (Banking Supervision):

- sets rules for prudential business practices and safe operation of supervised entities and other requirements with regard to business conducted by supervised entities pursuant to separate regulations,
- monitors compliance with the provisions of the NBS Act and separate regulations,
- conducts proceedings and issues permits, licences and makes other decisions, formulates positions, methodical instructions and recommendations pursuant to this Act and separate regulations, and

[4] The Office of Tax Checking was abolished in December 2005. The exchange of information regarding taxable entities is currently conducted via VIES and CLO systems as well as by international conventions.

- supervises the implementation of decisions issued thereby, including compliance with the conditions stipulated in these decisions,
- performs off-site supervision and on-site supervision of the supervised entities, thus ascertaining the objective situation and other important facts about supervised entities, mainly shortcomings in their activities, the causes of such shortcomings, their adverse effects, and the persons responsible for the shortcomings revealed.

The NBS is empowered to impose sanctions both for the Act on Banks and under the AML Act. The NBS indicated that they could take action against banks on the basis of their licence requirements and activities of the Act on Banks dealing with prudential requirements, including requiring control and risk management systems.

63. Para. 7 of the same article determines that, as a part of supervision carried out by the National Bank of Slovakia over supervised entities, the banking supervision unit of the National Bank of Slovakia shall conduct proceedings and decisions in the first instance. In performing these duties, the banking supervision unit shall proceed in accordance with the NBS Act and other generally binding regulations, whilst proceeding and deciding independently and impartially; it shall cooperate, exchange information and supporting documents with, and provide assistance to, other organisational units of the National Bank of Slovakia to the extent necessary for due and efficient performance of supervision over supervised entities. In conducting proceedings and making decisions in the first instance, the banking supervision unit shall be bound by the decisions of the Bank Board in the second instance and decisions of courts issued in connection with reviewing the legality of final decisions of the National Bank of Slovakia in administrative court procedure. The banking supervision unit may not be charged with tasks that could affect independent and impartial performance of duties imposed upon it by law when performing supervision of supervised entities.

64. NBS enforcement powers are found in Article 50 of the Act on Banks (Annex 3). This provision determines the range of remedial measures available (including financial fines) in case of shortcomings under the Act on Banks, under separate laws (a cross reference in a footnote to the provision includes the AML Law) and under generally binding regulations governing the conduct of banking activities. Some of them are applicable also to the members of management and/or supervisory body of a bank and to the management of a foreign bank's branch. Corrective measures and fines are dependent on the seriousness, scope, duration, consequences and nature of detected shortcomings. Fines can be SKK 100,000 to SKK 10,000,000 and in case of recurrent or grave defaults up to SKK 20,000,000 for failure to comply with the terms of a bank licence or "the requirements and obligations specified in other decisions of the NBS" or "generally binding regulations governing the conduct of banking operations". Currently there is no NBS Decree (secondary, binding and enforceable legislation) on AML issues. However the examiners were advised that the NBS had issued 1 financial fine in 2004 for an AML breach. This was appealed and endorsed by the Bank Board and the fine paid to the State budget.

65. As noted above, the NBS has competence under the Foreign Exchange Act for licensing foreign exchange business, supervising the compliance of licensed entities with the conditions set out in their licences and imposing enforcement actions in case of violations (see Foreign Exchange Act, Articles 6, 13 and 24, 24a). All foreign exchange licences and also remedial measures (including financial fines) are issued in the form of a legal decision made by the Chief Director of Transactions and Foreign Exchange Department at the first level and the second level is the Bank Board of the National Bank of Slovakia (Article 40 of the Foreign Exchange Act and by the organisational rules of the NBS).

66. One of the most important roles of the NBS is to manage, coordinate and secure the payments and settlements system in the country, under Article 2, para 1, letter c) of the NBS Act.

67. The supervisory authority over the payments and settlements system is, according to Article 59 of the Payment Act, vested in the NBS. In line with para. 8 of the same provision, if the NBS discovers facts during the oversight of payment systems indicating that criminal acts have been committed, it shall notify the relevant body with competence to act without unreasonable delay. In this regard, also Article 11a of the AML Law is noted, which introduced (in September 2002) a duty for supervisory authorities to report immediately to the FIU a violation of the AML Law and/or the case of unusual business operation.

68. Article 61 of the Payment Act sets out licensing requirements for payments system operators. The applicable provision for remedial measures and financial fines in case of non-compliance is Article 62. Within the National Bank of Slovakia, it is the Financial Management and Payments System Division, which is in charge of these duties.

E-money institutions

69. Licensing and on-going monitoring of E-money institutions falls under the Banking Supervision Division of the NBS by Articles 21a, 21b, 21c of the Payment Act.

Ministry of the Interior

70. The Ministry of the Interior is a central body of State administration for:
    - protecting the constitutional system;
    - public order;
    - security of persons and property;
    - protection and administration of the State's borders, for issues related to weapons and ammunition;
    - private security services;
    - the entry to the territory of Slovakia and the stay of foreigners in its territory, identity cards, travel documents and driving licences, refugees and migrants;
    - registration of population, and
    - the Police Force.

71. It is also the authority in charge of internal administration, including the territorial and administrative structuring of Slovakia, citizenship, archives and registries, birth, marriage and death registries. Its other responsibilities include *inter alia* the registration of non-governmental organisations.

Ministry of Justice

72. The Ministry of Justice is responsible for proposing criminal legislation in the area of money laundering and the fight against terrorism. It is also a judicial authority for the execution of international legal assistance. It was finalising, at the time of the on-site visit, personnel issues in relation to a Special Court with jurisdiction for criminal offences related to terrorism. The Ministry also is responsible for re-codification of the Criminal Code and the Code of Criminal Procedure.

73. The general courts have jurisdiction in criminal cases related to money laundering and the Special Court has jurisdiction in money laundering and terrorist cases if those cases are of a serious nature. The Supreme Court of Slovakia is the highest judicial body in both categories of cases.

Ministry of Finance

74. The Ministry of Finance is the main responsible body for preparation of legislation in the field of money laundering and terrorist financing at the European Union level. At the national level, the

Ministry of Finance is responsible for the preparation of relevant legislation in the field of financial markets: the Act on Banks, Act on Securities, Act on Insurance, Act on Collective Investments. All these acts were described as having implemented relevant provisions of the Second Directive on prevention of the use of the financial system for the purpose of money laundering regarding Customer Due diligence, beneficial ownership, record keeping and reporting suspicious transactions to the Financial Intelligence Unit. The remaining provisions are implemented by the Act No. 367/2000 Coll. on Protection against Legalisation of Incomes from illegal activities and on changes and amendment of certain other laws (the AML law).

75. The Ministry of Finance monitored at the time of the on-site visit compliance with the rules according to the Act No. 194/1990 on Lotteries and other similar games and licensed casinos[5].

76. Money laundering and terrorist financing in Slovakia is covered by the following acts:
    - Act No. 483/2001 Coll. on Banks and on changes and amendment of certain other laws. According to Article 91, paragraph 8, a bank and branch office of a foreign bank shall be obliged to provide the Ministry of Finance, within the deadlines set thereby, with a written list of clients subject to international sanctions imposed according to separate regulations. The provided list must also contain account numbers and account balances of these clients;
    - Act No. 460/2002 Coll. on performance of international sanctions providing the international freedom and security;
    - Regulation of the Slovak Government No. 397/2005 Coll. which provides for international sanctions in respect of those persons who are listed under the United Nations resolutions , being citizens of the European Union or having their main activities and objectives within the European Union (so-called European internals);
    - Act No. 367/2000 Coll. on protection against legalisation of incomes from illegal and on changes and amendment of certain other laws.

<u>The Public Prosecution Service, the Special Prosecutor's Office and the Special Court</u>

77. The Public Prosecution Service has the status of a separate state body independent from the executive power. Within the scope of AML/CFT policy, it supervises the criminal prosecution performed by investigators or police officers responsible for criminal prosecution in the above fields. There is also an important power of the prosecutor: to make orders for seizure of accounts within pre-trial proceedings (Article 79c, Code of Criminal Procedure) as well as to order use of information technology means (Articles 88, 88e, Code of Criminal Procedure). Bank secrecy may only be breached with the prosecutor's consent in criminal proceedings (Article 8, Code of Criminal Procedure).

78. Within the proceedings before the Court, the prosecutor presents the indictments (including Article 252, Criminal Code) and he exercises his functions as permitted by the Code of Criminal Procedure.

79. A Special Court, as well as a Special Prosecutor's Office (of the General Prosecutor's Office of Slovakia), have been established by the Act No. 458/2003, Coll., amending and supplementing the Code of Criminal Procedure. The following persons fall under the jurisdiction of both Special Court and Special Prosecutor's Office:
    - deputies of the National Council (Parliament) of Slovakia
    - members of Government
    - state secretaries
    - heads of central administrative authorities

[5] Currently the Ministry of Finance monitors compliance with Act No. 171/2005 Coll. On Gambling Games and on Amendments and Supplements to Some Acts and Licensed Casinos.

- both President and Vice-President of the Supreme Audit Office
- judges of the Supreme Court
- judges
- prosecutors
- ombudsman
- head of the Government Office
- director of the National Security Office
- director of the Slovak Intelligence Service
- members of the Banking Board of the National Bank of Slovakia,

if they are suspected of having committed a criminal offence in connection with their powers and responsibilities.

80. The Special Court has also jurisdiction over other persons for the following criminal offences:
    - Corruption under the Article 160, paragraph 3, Article 160 a-c, Article 161, paragraph 3, Article 161 a/c, of the Criminal Code;
    - Establishing, plotting and supporting criminal group and terrorist group (Article 185a, Criminal Code);
    - Extremely serious criminal offences (Article 41, para. 2, Criminal Code) committed in connection with organised group (Article 89, para. 26, Criminal Code) operating within several countries, or with criminal group (Article 89, para. 27, Criminal Code) or terrorist group (Article 89, para. 28, Criminal Code);
    - Economic criminal offences (Title Two, Special Part of the Criminal Code), or crimes against property (Title Nine, Special part of the Criminal Code), if the damage caused or the benefit obtained reaches at least ten thousands multiple of the minimum wage of employee on monthly salary 8a, b), or if the extent of the crime reaches at least ten thousand multiple of salary of employee on monthly salary, 8 a, b);
    - Offences affecting the financial interests of European Communities (Articles 126 – 126 b), Criminal Code);
    - Offences linked to the offences under paras. a), b), c), d), or e) if the conditions for joint proceeding are fulfilled.

81. The Special Court has jurisdiction over offences committed during the term of office of the above persons and when the criminal offence committed by one of the above persons is revealed after the termination of the term of office, the Special Court also has jurisdiction .

82. The Special Prosecutor's Office began operating on 1st September 2004. Currently, 25 posts have been created for prosecutors, but there still remain more than 50% vacancies in office. The Office is divided into two sections and three departments. However, the Special Prosecutor's Office does not deal with the criminal prosecution of every money laundering case, but only with those falling within the terms stated above.

Financial Intelligence Unit (FIU)

83. The "Spravodajská Jednotka Finančnej Polície" (hereinafter as "FIU") has a status of the Financial Intelligence Unit in Slovakia as an institutional instrument in the fight against money laundering.

84. The FIU is divided into four sub-divisions as follows:
    - Unusual Business Transactions sub-division;
    - Obliged Entities Supervision sub-division;
    - International Co-operation sub-division, and
    - Property Checks sub-division.

85. Powers of the FIU´s officers in performance of their duties against legalisation of proceeds from crime can be divided into two groups:
    - powers according to the Act No. 171/1993 Coll. on Police Corps;
    - powers according to the Act No. 367/2000 Coll. on protection against legalisation of incomes from illegal activities (see beneath).

c. The approach concerning risk

86. As described in the FATF Recommendations, a country may decide not to apply certain AML/CFT requirements, or to reduce or simplify the measures being taken, on the basis that there is low or little risk of money laundering or financing of terrorism. Slovakia has exempted credit and financial institutions covered by the obligations under the AML Law where the customer is also a credit or financial institution covered by the AML Law and relaxed the threshold for insurance companies identifying persons paying life insurance premiums below 2.500.- Euros (both in line with derogations in the Second European Union Directive). Other than that, the AML/CFT system is not based on risk assessments. The implementation of the Third European Union Directive will allow consideration of a more risk based approach. It was accepted by the Slovakian authorities that there is no overall body assessing ML/TF risks across all sectors.

87. The Act on Banks makes some other limited references to the risk based approach (see Article 27, para.1 a) and Article 23, para. 3). The Slovak authorities indicated that on-site inspections in the banking sector are more oriented towards checking the effectiveness of risk-based management procedures in banks and foreign banks branches.

d. Progress since the last mutual evaluation

88. The last on site visit took place in October 2001. The reporting obligation (unusual business operations) remains the same as at the time of the last on site visit. A number of the recommendations made in the second MONEYVAL evaluation report were unfulfilled at the time of this on-site visit and several of the same issues raised previously are returned to in this report.

89. On the positive side, the number of reported unusual business operations has, overall, shown a gradual increase, though there was a slight dip in 2003. Of the obliged entities, the banks remain the main reporting institutions. The number of reports received from insurance have risen (7 only at the time of the on site visit in 2001, which was only 9 months after they became obliged entities). 67 reports were received from insurance in 2004. By contrast, the numbers received from the Securities Exchange declined (only 9 reports received in the years 2002-2004). There is little reporting outside of these areas, and notably exchange houses and casinos have still not made reports to the FIU. Thus awareness-raising outside the sectors currently providing the most reports was still an issue for this evaluation team.

90. At the time of the second on-site visit, the FIU (then the Department of Financial Intelligence) was a department within the Financial Police, headed at director level and supported by 11 analysts, 8 inspectors, and 3 officers responsible for IT. In the years following that on-site visit, the numbers in the FIU steadily increased to 38. Under organisational changes within the Police, which came into effect on 1 January 2004, the FIU was, in effect, downgraded within the Police structure and became a division within the Bureau of Organised Crime, no longer headed at director level. Though its staff numbers, at the time of the third on site visit, had still considerably advanced from the position in 2001, the numbers were reducing, and there were 31 staff in post in May 2005. It was understood that this was a reduction in posts and not a result of staff vacancies. As will be noted beneath, the assessment team considered that, at the time of this on-site visit, the position of the FIU within the Police structure had somewhat weakened.

91. Convictions for money laundering also have gradually increased, though the figures provided were sometimes conflicting. The main predicate offence remained car theft. No money laundering prosecutions had been brought for other major proceeds-generating offences, like drug trafficking. There were still no prosecutions or convictions for money laundering as an autonomous offence. At the time of the second on site visit the uncertainties and ambiguities in the law in respect of confiscation and provisional measures found in the first round remained unresolved. Many of these issues were revisited by the third evaluation team. Some of the legal difficulties, such as forfeiture of substitute assets and the ability to apply value confiscation had been rectified by legislation, but the examiners were not provided with information on concrete cases where confiscation had been applied in order to assess whether the legal changes had yet affected operational practice. The previous recommendation to consider the reversing of the burden of proof post conviction to assist the court in identifying criminal proceeds liable to confiscation in appropriate cases had not been acted upon by the time of the on-site visit, though it was understood changes to this effect were planned. Overall, it was a particular concern in this evaluation that no property had been seized or frozen or forfeiture orders made in any money laundering case in the period under evaluation and that statistical information regarding the extent of confiscation/forfeiture generally in proceeds-generating crime was unforthcoming. The conclusion in the second report that confiscation was seldom used appeared to remain valid, in the absence of statistical data.

92. The previous examiners had recommended that meaningful guidance needed to be prepared on what may amount to "unusual business activity" and advised the creation of co-ordinated guidance on indicators. There was still a real lack of guidance to the financial sector (and DNFBP) on these issues.

93. On supervision, the division of responsibilities between the FIU and the prudential supervisors was commented upon in the second report, with further clarification of roles being recommended. Overlapping responsibilities in this area remained a concern in the third evaluation. A thorough inspection regime in Foreign Exchange houses was recommended. More checks are now taking place as the FIU is authorised to conduct inspections in the foreign exchange business service providers. However, there is still no authorisation for the NBS foreign exchange department to conduct specific AML inspections in foreign exchange business service providers.

94. The previous team considered that all entities needed the role and responsibilities of compliance officers clarifying.. The recommendation of the NBS 3/2003 for the banks contains some guidance regarding the position and role of the AML compliance officer, though this is not a binding and enforceable document. The examiners have been advised that during the conduct of on-site inspections in banks and foreign banks branches, the supervisory staff of the NBS use this guidance as a benchmark in evaluating the prevention of anti-money laundering risk. Nonetheless the general requirement of a designation of a compliance officer at management level still needs to be covered by enforceable means.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of money laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1

95. Slovakia has signed and ratified both the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the United Nations Transnational Organised Crime Convention (the Palermo Convention).

96. Money laundering is criminalised by Article 252 of the Criminal Code of Slovakia, which provides as follows:

(1) Any person, who makes the following uses of proceeds or other assets from crime:
   a) transfers to himself or to other, lends, borrows, overdraws in the bank, imports, transits, exports, moves, rents, or otherwise procures for himself or other person, or
   b) has in his possession, maintains, conceals, uses, consumes, destroys, alters, or damages them with the intention to conceal the existence of such proceeds or a thing, or to cover up their criminal origin, their designation or use for the commission of a crime, to prevent their seizure for the purposes of criminal proceedings, or their forfeiture or confiscation,

shall be liable to a term of imprisonment of one to five years, or to a sentence of the ban on professional activity, or forfeiture of property, or to a pecuniary penalty.

(2) The offender shall be liable to a term of imprisonment of two to eight years if through the offence referred to in paragraph 1 he obtains larger profit for himself or other.

(3) The offender shall be liable to a term of imprisonment of three to ten years if he commits the offence referred to in paragraph 1 in the capacity of a member of an organised group, or if through such offence he obtains substantial profit for himself or other.

(4) The offender shall be liable to a term of imprisonment of five to twelve years if he commits the offence referred to in paragraph 1
   a) in the capacity of a public official, or
   b) in the capacity of a member of an organised group operating in several countries, or in connection with such group.

(5) The same sentence as set out in paragraph 4 shall be imposed on the offender if he obtains extensive profit for himself or other through the commission of the offence referred to in paragraph 1.

97. In considering Essential Criteria 1.1 (and other criteria), it should first be noted that there may be problems with the English translations provided to the examiners in respect of the criminal offence. The Slovak authorities have recently advised that the translation with which the examiners were provided on-site was not accurate, and that the English version set out above more correctly reflects the provisions in Slovakia. Either way, the physical (or material) elements of the offence, while broadly in line with Article 3 of the Vienna Convention and Article 6 of the

Palermo Convention, appear not, in English at least, entirely consistent with the language of the international treaties, on these aspects.

98. The Article 252 offence reproduces the main physical elements set out in the treaties, in that the language covers transfer of property, concealment and arguably disguise, though whether "conversion" is fully covered, is unclear. Possession and use of property is helpfully covered. While the notion of conversion or transfer, concealment or disguise of property for the purpose of concealing or disguising its illicit origin is covered, the notion of conversion / transfer / concealing or disguising *for the purpose of assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his actions* appears not to be entirely covered.

99. The examiners were advised that the offence extends to any type of *property* on the basis of Slovak civil law. The criminal law does not define the terms "property" or "proceeds". By contrast, there is a definition of "legalisation" of incomes from "illegal", as opposed to criminal, activities in the AML law. In Section 2 (2) use of income or other property refers to possession or use of real estate, movables, securities, monies or other financially valuable subjects. The examiners were advised that in Slovak jurisprudence "proceeds" means anything that has been obtained by a criminal offence or is otherwise closely connected with it. In any event, in the criminal offence, there is not a clear statement that it extends to any property that directly or indirectly represents the proceeds of crime, as required by Criteria 1.2.

100. Turning to Criteria 1.3, the money laundering offence is based on an "all crimes" model ("any property gained through the commission of a crime"). Under the Methodology, predicate offences have to cover at a minimum the range of offences in each of the designated categories of offence annexed to the FATF Recommendations.

101. The Slovak authorities provided a full list of the offences in the Slovakian Criminal Code which correspond to the designated categories of offences referred to in the Glossary to the FATF Recommendations. It appears that all the minimum categories of offences are covered, with the exception of financing of terrorism in all its forms, as defined in the IN to SR II (see below).

102. Criteria 1.5, requiring predicate offences to extend to conduct that occurred in another country (subject to dual criminality) is not explicitly covered in the criminal legislation. The examiners were advised that this is implicit, and, given the ratification in May 2001 of the 1990 Council of Europe Convention by Slovakia, this should not be a problem (see Article 6 (2)a of the Council of Europe Convention).

103. Criteria 1.6 is covered explicitly in the criminal legislation (self laundering).

104. Criteria 1.7 requires that there should be appropriate ancillary offences, unless this is not permitted by fundamental principles of domestic law. Article 10 of the Criminal Code sets out that an accomplice to a completed or attempted criminal offence is any person who wilfully contrives or manages the commission of a crime (the organiser) or instigates another person to command a crime (the instigator) or provides aid to another person, in particular by removing the obstacles, by advice, by strengthening the determination or by promise of acting as an accomplice after the fact (the aider). Thus aiding and abetting, facilitating and counselling the commission of a money laundering offence are covered.

105. For the issue of conspiracy, the examiners were referred to Article 7 of the Criminal Code which states that preparation for a crime means any action taken before an attempted or completed crime takes place, which is dangerous for society and which consists of organising an extremely grave crime, of procuring or adopting means or instruments for its commission, associating, grouping, abetting or aiding in such crime, or other deliberate creation of conditions for its

commission. This article, in particular, applies only to aggravated money laundering crimes, provided for in paragraphs 3 to 5 of Article 252 of the Criminal Code, i.e. when an offender acts in his capacity as a member of an organised group, including an international group, or in connection with such group or obtains substantial profit for him or another person.

106. Consequently, conspiracy to commit money laundering *per se* appears not to be a criminal offence; it may be an offence if the conspiracy is a part of the formation of a criminal group (which requires a minimum 3 persons)(Article 89(26-27-28) of the Criminal Code, Annex 4). It is not clear to the evaluators whether such a conspiracy involving only 2 persons is a crime though the Slovakian authorities consider that this would be possible under their legislation.

Additional elements

107. It is understood that money laundering on the basis of the wider notion of predicate offence, envisaged by Criteria 1.8, is not available in Slovakia – only dual criminality suffices.

Recommendation 2

108. There is no express reference in Article 252 to the concept of knowledge, as it is used in the international instruments, i.e. the conversion or transfer of property / concealment or disguise *knowing* that such property is derived from any offence or offences.

109. The judges with whom the team met indicated that Article 252 requires a deliberate act and cannot be committed negligently. Conversely, the General Prosecutor's Office indicated that it was their view that money laundering by negligence could be punishable within Article 251a (Annex 4). The Article 251a offence is in the section of the Criminal Code dealing with accessories and essentially relates to handling / receiving stolen goods, carrying a six month imprisonment sentence, or a financial penalty. The examiners do not consider it is apt to cover all cases of money laundering by negligence.

110. The judges also indicated that a lot of cases are pending (so presumably *mens rea* issues have still to be authoritatively determined).

111. The judges assured the assessors that they could draw inferences from the evidence, though confirmed that the law does not expressly permit the mental element to be inferred from objective factual circumstances.

112. The Criminal Law of Slovakia is based on the principle of individual criminal liability. The offender is liable for concrete offences listed in a special part of the Criminal Code. The concept of corporate criminal liability is still inapplicable in Slovakia. The Slovak authorities indicated that criminal liability of legal entities had been introduced in a proposal that had been submitted by the Government to the National Council of Slovakia[6]. At the time of the on-site visit it was unclear if any civil or administrative liability applied in the absence of corporate criminal liability. Currently, there is no possibility to bring administrative proceedings relating to money-laundering matters in respect of non-obliged legal persons. Presently, there are no plans to extend administrative liability beyond what currently exists.

113. The penalties in relation to natural persons in respect of money laundering are set out above. With regard to money laundering in its unaggravated forms, the penalty is put in the alternative: 1 to 5 years; or prohibition of – professional activity or forfeiture of property, or a pecuniary

[6] The examiners were advised that a bill to incriminate legal persons has been rejected in Parliament in its first reading.

punishment. It is possible to impose a term of imprisonment and to order forfeiture of property. Forfeiture of a thing and financial punishment is also possible. A combination of all three is also possible.

114. As to financial sanctions which can be applied in cases of money laundering, Article 53 of the Slovak Criminal Code states that it is possible to impose financial punishment of 5 thousand to 5 million Slovak Crowns on a person that obtained or attempted to obtain proceeds from crime.

115. Subject to the replies to the above questions, the penalty for simple money laundering for natural persons appears insufficiently dissuasive if financial penalties alone can be imposed.

116. The penalties for the aggravated offences in Article 252 (2) (3) and (4) appear generally more proportionate and dissuasive. It is noted that there is a difference in the approach between "larger" profit in Article 252 (2) and "substantial" profit in Article 252 (3).

117. The Slovak authorities explained that the term "profit" used in Article 252, and its scale, are defined according to Article 89, paragraph 13 of the Criminal Code (related firstly to the damage from the crime) and is governed by the minimum monthly earning stipulated by the Slovak Government. During the on-site visit the minimum monthly wage was 6,500 SKK (ca. 167 Euros). So "larger profit" means 20-multiples of the minimum monthly wage. "Substantial profit" means 100-multiples of the minimum monthly ware and "extensive profit, as used in sub-section (5) means 500-multiples of the minimum monthly wage (though it appears not relevant for these purposes).

Statistics

118. The examiners received conflicting statistical information. That said, it appears that the money laundering cases being prosecuted have been increasing.

119. On one set of statistics given there were 47 convictions since 2001 for offences under Article 252.

120. The Slovak authorities were invited to provide a breakdown of the cases that have resulted in convictions from 2001 to the on-site visit in 2005 indicating, if possible, the predicate offence; the precise offence for which they were convicted, i.e. Article 252 (1) (2) (3) (4) or (5); the sentence; together with whether it was prosecuted autonomously or with the predicate offence, and whether confiscation was imposed. The Slovak authorities have in response provided the chart beneath; information on the particular predicate offences is not available and neither are the precise sentences.

YEAR	Article 252(1)	Article 252(2)	Article 252(3)	Article 252(4)	Article 252(5)	CONFISCATION
2001	**0**	**6** I, C	**2** I	**1** C	**0**	**0**
2002	**2** C	**5** C, P, O	**0**	**0**	**0**	**0**
2003	**2** C	**3** P, O	**3** I	**0**	**0**	**0**
2004	**8** I, C, P, O	**1** C	**1** C	**0**	**0**	**0**
2005	**3** C	**1** P, O	**4** I, C	**0**	**0**	**0**

Explanatory Note:
Type of penalties imposed in the total number of particular cases:
I – sentence of imprisonment
C – conditional sentence of imprisonment
P – pecuniary penalty
O – other penalty
CONFISCATION: confiscations imposed in the particular year

121. As noted in the paragraph above, statistical information on the types of predicate offences that these money laundering cases involved was not available. Impressionistic information was provided that money laundering cases frequently involved VAT and other tax frauds. In such cases, the Article 252 offence is usually prosecuted in the same proceedings as the predicate offence.

122. Car theft was also cited as a major proceeds–generating offence, where Article 252 is frequently prosecuted in the same proceedings as the predicate. Organised crime groups abroad are often behind these offences. Several people being prosecuted for money laundering in respect of such offences were said to be higher level participants, though the majority that are prosecuted tend to be lower level persons, moving cars through Slovakia (which in this context is frequently a transit country). It was also conceded that if the Article 252 offence was not available, many of these cases could have been prosecuted also as receiving / handling under Article 251 (Annex 4).

123. The examiners were not told of any autonomous money laundering prosecutions. The team were advised that proving the predicate offence to the standard required for criminal proceedings in autonomous money laundering cases was a major problem. A high level of proof was thought to be required in respect of the underlying predicate offence(s). The judges confirmed, without reference to any legal provision, that it was desirable that a person had been convicted of the predicate offence, but they did not exclude the possibility that a money laundering case could be brought autonomously without a conviction for the predicate offence. No case has been to the Supreme Court on this point. The Prosecutor's Office understood that a conviction for the predicate was not essential, but, in the absence of information about autonomous cases, it appears that money laundering is usually prosecuted together with the predicate offence, in which situation proof of the underlying offence would not be a problematical issue. The majority of these cases are thus thought to be self laundering.

2.1.2 Recommendations and comments

124. Though some of the essential criteria in Recommendations 1 and 2 appear to be formally met, the legal provisions in Article 252 have some inconsistencies with the international instruments and raise some uncertainties which may impede the practical implementation of the provisions.

125. The Slovak authorities should satisfy themselves that all the language of Article 6 (1) (a) and (b) of the Palermo Convention and Article 3 (1) (b) and (c) of the Vienna Convention on the physical aspects of the money laundering offence are properly reflected in Article 252 of the Criminal Code.

126. The examiners advise that the definitions of money laundering in the AML law should be harmonised with the offence in Article 252. Property capable of being proceeds needs to be clarified in the criminal law, which should expressly cover both direct and indirect property which is the proceeds of crime.

127. The examiners recommend that financing of terrorism in all its forms, as explained in the Interpretative Note to SR II, should be clearly defined as predicate offences to money laundering.

128. Conspiracy to commit money laundering involving two persons should be recognised as a criminal offence not only in cases involving organised criminal groups.

129. It would be helpful to extend the predicate base of money laundering to conduct which occurs in another country but which is not an offence in that country, but would be an offence if it occurs in Slovakia.

130. Knowledge that such property is proceeds (as widely defined in the Council of Europe Convention) should be set out in the law. Given the uncertainty on this issue, it is strongly advised that in legislation or guidance it is set out that knowledge – the intentional element – can be inferred from objective factual circumstances. Consideration should be given also to a clearer offence of negligent money laundering than Section 251 a.

131. The Slovak authorities should further consider either criminal, civil or administrative sanctions in relation to legal persons for money laundering.

132. Prosecutions for money laundering are being brought, though the absence of detailed information about the cases, because relevant statistical data is lacking, makes a judgment on the effectiveness of implementation problematic. The concerns expressed beneath about the real effectiveness of the money laundering criminalisation are essentially the same as those expressed in the previous evaluation report.

133. From what the examiners were told, they formed the view that, for a variety of reasons, money laundering was being proceeded where the predicate offence could be tried in the same indictment. Most of these cases appeared to be self laundering and autonomous money laundering by third parties was rarely, if ever, prosecuted. Moreover, the types of case that were proceeded with did not always cover all major proceeds-generating offences, like human trafficking. The examiners consider that more emphasis should be placed on autonomous prosecution of money laundering by third parties in major proceeds-generating cases.

134. To achieve this, it is necessary for the Slovak authorities to address the issue of the evidence required to establish the predicate criminality in money laundering cases. The examiners advise that, as in some other jurisdictions, it would be helpful to put beyond doubt in legislation that a conviction for money laundering can be achieved in the absence of a judicial finding of guilt for the underlying predicate criminality. Additionally it may be useful to make it clear in legislation (or guidance) that the underlying predicate criminality can also be proved by inferences drawn from objective facts and circumstances. For criminalisation to be fully effective, it may also be helpful if prosecutors and law enforcement have a common understanding that a court may be satisfied that the laundered proceeds come from a general type of predicate offence (like drug trafficking – and not necessarily from a particularised drug trafficking offence on a specific date). Further guidance and perhaps consideration of further legislative provision to clarify some of these issues is strongly advised.

135. It is also strongly advised that more detailed statistics on money laundering investigations, prosecutions, convictions and sentences (and whether confiscation is ordered) should be maintained which *inter alia* should show the underlying predicate offence, whether the offence was prosecuted autonomously or together with the predicate offence.

2.1.3 Compliance with Recommendations 1 and 2, and 32

	Rating	Summary of factors underlying rating
R.1	**Largely compliant**	Some of the legislative provisions need further clarification. Not all of the essential criteria are provided for in Slovak Law (e.g. financing of terrorism as a predicate offence; conspiracy as an ancillary offence). While the number of prosecutions is increasing, the effectiveness of money laundering criminalisation could be enhanced by placing more emphasis on third party laundering and clarifying the evidence required to establish the underlying predicate criminality in autonomous prosecutions.
R.2	**Partially compliant**	The intentional element of the money laundering offence is not comprehensively provided for in Article 252 and it is unclear whether the intentional element can be inferred from objective facts and circumstances. Neither criminal liability, nor civil or administrative sanctions are currently available for money laundering in respect of legal persons.
R.32	**Partially compliant**	More detailed statistics should be kept concerning the nature of money laundering investigations, prosecutions and convictions and sentences.

2.2 Criminalisation of terrorist financing

2.2.1 Description and analysis

136. On 2 July 2002, Slovakia ratified the 1999 International Convention for the Suppression of the Financing of Terrorism. It is binding on Slovakia since 13 October 2002. The Slovak authorities pointed to the binding nature of this Convention together with the provisions of Articles 7, 10, 94 and 185a of the Criminal Code as the criminalisation of all relevant acts associated with terrorist financing. Articles 7 and 10 provide for criminalisation of preparation for a crime and aiding and abetting it, and which are applied to extremely grave offences. Article 94 covers the grave crime of terrorism. Article 94 provides as follows:

Section 94
Terrorism

(1) Any person who, with the intention to seriously intimidate the population, to seriously destabilize or destroy the constitutional, political, economic or social order of the country or of an international organization, or to force the government of a country or an international organization to take action or to refrain from acting, threatens to commit or has intentionally committed an extremely serious crime (Section 41 paragraph 2) endangering the life, health of people, their personal freedom or property, or illegally manufactures, obtains, owns, holds, transport, supplies or otherwise uses explosive, nuclear, biological or chemical weapons, or conducts unauthorized research and development of such weapons or weapons prohibited by law or by an international treaty, shall be liable to a term of imprisonment of twelve to fifteen years or to an exceptional sentence and forfeiture of property.

(2) The offender shall be liable to an exceptional sentence and forfeiture of property if he

a) commits the offence referred to in paragraph 1 in the capacity of a member of a terrorist group,
b) commits such an offence in a particularly brutal manner,
c) causes through the commission of such an offence serious bodily harm or death of several persons,
d) commits such an offence against constitutional officials, persons protected by international law, armed forces, armed security corps or armed corps.

137. Another grave offence is Article 185 a (paragraph 2) – establishing, plotting and supporting a criminal group and a terrorist group:

Article 185 a provides as follows:

" *(2) Every one who establishes or plots a terrorist group, is its member, is active for it or supports it, shall be sentenced to a term of imprisonment of five to fifteen years and to forfeiture of property*."

138. SR.II requires the criminalising of the financing of terrorism, terrorist acts, and terrorist organisations and ensuring that such offences are money laundering predicate offences. The Methodology notes that financing of terrorism should extend to any person who wilfully provides or collects funds by any means, directly or indirectly with the unlawful intention that they should be used in or in the knowledge that they are to be used, in full or in part:

1. to carry out a terrorist act(s);
2. by a terrorist organisation; or
3. by an individual terrorist.

139. The footnote to the Methodology and the FATF Interpretative Note to SR.II make it clear that criminalisation of financing of terrorism solely on the basis of aiding and abetting, attempt or conspiracy does not comply with SR.II. Thus it appears aiding and abetting a terrorist offence under article 94 and/or the establishment of a terrorist group (under article 185a(2)) would not fully cover IN 2d and paragraph 4.

140. As is apparent, there is no autonomous offence of financing of terrorism. There have not been any investigations of financing of terrorism or cases brought before the Court. Thus there is no case-law or practice on the exact scope of the current provisions. In the examiners' view, there is no certainty that "supports" in Article 185 would or could be interpreted to cover all relevant acts embraced by the concept of "financing of terrorism".

141. The United Nations Convention deals with terrorist acts and the Article 185a (2) offence in relation to "supports" deals with terrorist groups. While it may be possible to argue that the active provision of funds to terrorist groups/organisations presupposes that the provider is supporting a terrorist act, it is less easy to argue that the notion of "supports" would be interpreted by the courts as wide enough to cover:

- the collection of funds with the intention that they should be used in full or in part to carry out the acts referred to in Article 2(a) or (b) of the Convention
- the collection of funds irrespective of whether the funds are actually used to carry out or attempt a terrorist act
- the provision or collection of funds for a terrorist organisation for any purpose, including legitimate activities run by a terrorist organisation.

142. The examiners consider it is not possible to read into the notion of "supports" the provision or collection of funds with the unlawful intention that they should be used in full or in part by an individual terrorist. Thus Criterion 11.1a (iii) is clearly not covered (see also IN paragraphs 2d and 3c).

143. In the absence of jurisprudence, it is unclear whether, to the limited extent that it may meet some aspects of SR11, the Article 185a offence would cover the full definition of funds (Criterion 11.1b). Equally, to the limited extent that Article 185(a) may apply, it is unclear whether the offence would cover the situations where there were no links to a particular terrorist act or whether the funds were actually used to carry out a specific terrorist act(s) (Criterion 11.1c).

144. Criterion 11.2 , as noted above, is not fully satisfied, as the Article 185a offence, together with the aiding and abetting principles in relation to any offence of belonging to a terrorist group (or committing an act of terrorism) would not provide for the complete range of predicate offences to money laundering embraced in the definition of a terrorist financing offence.

145. Given that it is unclear that inferences can be drawn from objective factual circumstances and that criminal liability of legal persons is not provided for in Slovak Law, Criterion 11.4 is not fully satisfied (particularly in respect of Essential Criteria 2.2, 2.3 and 2.4 in Recommendation 2).

2.2.2 Recommendations and Comments

146. The Slovak authorities should therefore introduce as a matter of urgency an independent, autonomous offence of financing of terrorism which explicitly addresses all the essential criteria in SR. II and the requirements of the Interpretative Note to SR.II.

	Rating	Summary of factors underlying rating
SR.II	**Non compliant**	The Criminal Code provides for an offence covering a person who "supports" a terrorist group. The Slovakian authorities also relied on the possibility of proceeding for aiding and abetting an offence of terrorism or the establishment of a terrorist group. There are no cases and therefore there is no jurisprudence. Criminalising terrorist financing solely on the basis of aiding and abetting principles is not in line with the Methodology. The present incrimination of terrorist financing appears not wide enough to clearly sanction criminally (in respect of both individuals and legal persons [the latter are, in any event, not covered by Slovak law]): • The collection of funds with the intention that they should be used or in the knowledge that they should be used in full or in part to carry out the acts referred to in A.2a and b of the TF Convention (including whether or not the funds are actually used to carry out or attempt to carry out a terrorist act) • The provision or collection of funds for a terrorist organisation for any purpose including legitimate activities • The collection and provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist (for any purpose) • All types of activity which amount to terrorist financing so as to render all of them predicate offences to money laundering.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and analysis

147. At the time of the third on-site visit changes were being planned to the confiscation and provisional measures regime. However, broadly, the regime in force and effect, at the time of the third on-site visit, was much the same as in the last two rounds, and retained many of the ambiguities and uncertainties referred to in previous reports. Confiscation was said, in the second report, to be seldom used. That report also considered that a judicial culture needed to be developed in which confiscation orders are made routinely in relation to significant criminal proceeds post conviction.

148. Forfeiture of property at the time of this visit remained primarily governed by Article 51 of the Criminal Code (Annex 4), by which it may be imposed if the law allows such a penalty to be imposed in its separate part, and imposed if the court sentences the accused to an "exceptional punishment". Either way, it remained discretionary. It applies to the whole of the property of the convicted person or that part of it designated by the court (subject to the needs of necessities of life) under Article 52 (Annex 4).

149. In the most recent translation with which the evaluators have been provided, Article 55 "forfeiture of a thing" provides:

(1) The court shall impose a sentence of forfeiture of a thing, which was
a) used for the commission of a criminal offence,
b) intended to be used for the commission of a criminal offence,
c) obtained through a criminal offence or as a reward for its commission, or
d) acquired by the offender in exchange for a thing referred to under subparagraph c).
(2) If the thing referred to in paragraph 1 is unavailable or unidentifiable, or merged with the offender's property or with other person's property acquired in compliance with law, the court may impose the sentence of forfeiture of the value equal to the value of such thing.
(3) An unavailable thing means a thing destroyed, damaged, lost, stolen, made unusable, consumed, hidden, transferred to another person or otherwise removed, or costs saved.
(4) A thing under paragraphs 1 to 3 means proceeds from crime, including profit, interest and other benefits arising from such proceeds or things.
(5) The court may impose the sentence of forfeiture of a thing only if the thing belongs to the offender.
(6) Unless otherwise decided by the court, the forfeited thing shall become State property, pursuant to a proclaimed international treaty, by which the Slovak Republic is bound.
(7) The offender imposed the sentence of forfeiture of a thing as a single sentence shall be regarded as never having been convicted if the sentence is duly served.
(8) The provision of paragraph one shall not apply if
a) the injured party is entitled to claim compensation for damages inflicted by the offence the satisfaction of which would be made impossible by forfeiture of a thing,
b) the value of the thing is apparently inadequate to the degree of seriousness of the offence, or
c) the court discharged the offender without punishment.

In previous versions the translation of the obligation was "may" and the prosecutors advised that in their experience forfeiture is not always mandatorily imposed.

150. Thus, turning to the essential criteria in 3.1, it seems clear that direct "proceeds" are covered. Subsequently, amendments were made to cover substitute assets and Article 55 (1) (d) now is

intended to cover this. Article 55 (4) now covers income and profits. Value confiscation is covered by Article 55 (2).

151. Instrumentalities that are used in or intended to be used in the commission of crime are clearly covered by Article 55, as also required by Criterion 3.1. Given the comments at section 2.2 above in relation to the criminalisation of financing of terrorism, it appears that forfeiture orders could not be made in respect of all types of financing of terrorism offences (as also required by Criterion 3.1). Another difficulty is found in Article 55 (5) which indicates that the sentence of forfeiture can only be applied in respect of property that belongs to the offender (and not therefore in relation to third parties). The Slovak authorities considered that in relation to the property of third parties, Article 73 of the Criminal Code would be applied (Annex 4). This appears to relate to forfeiture when the criminal procedure has been concluded without a conviction or where there is a public interest reason to forfeit. The examiners were not provided with practical examples of third party forfeiture under Article 73 and therefore cannot judge whether it can effectively be used for this purpose. Moreover, the examiners also cannot judge the effectiveness of the new provisions covering substitute assets and value confiscation in the absence of practical examples of the use and/or statistical data.

152. Turning to provisional measures and the requirements of Criteria 3.2, a range of provisions in the Criminal Procedure Code were drawn to the examiners' attention. The provisions speak of "a thing relevant to criminal proceedings". The relevant provisions appear in Articles 78, 79, 79a, 79b, 79d [added in 2002, and dealing with attachment of registered securities], 80, 81, and Articles 230 and 239 of the Criminal Procedure Code reproduced at Annex 5.

153. Whoever has a "thing relevant for criminal proceedings" shall have the duty to hand it over when requested to the court, prosecutor, investigator, or police authority (Article 78 of the Criminal Procedure Code). The order can be made by presiding judge or in pre-trial proceedings by a prosecutor or investigator. It was explained that the language of Article 79 (1) of the Criminal Procedure Code contemplates a call for immediate surrender of the thing to be seized, and if the person refuses the surrender, the thing can be seized immediately without a further order. It appears also that placing an account on hold can be done by the prosecutor, who may issue his own order in pre-trial proceedings. This can be achieved *ex parte* and take place before the commencement of enquiries. The order for the provisional measure of freezing a bank account can specify the amount placed on hold and the currency, or also it can provide for freezing of the whole of the bank account.

154. Though the replies to the questionnaire provide no statistical information at all on the number of provisional measures taken to preserve proceeds for subsequent forfeiture [or statistics in relation to forfeiture of proceeds], the prosecutors indicated that Article 79 and 79a (seizure / placing an account on hold) are now regularly being used. In most instances though, the provisions in Article 79 onwards appear more apt to secure evidence that is required, and to secure the rights of injured persons for compensation, and to secure direct proceeds which have been identified at the time of the initial investigations (like the payment for a drug deal). Given the need for full justification of freezing orders (and the requirement to specify an amount), it seems less likely that the provisional measures regime presently in place would be fully effective in securing indirect proceeds, assuming applications to freeze such sums are made.

155. Law enforcement agencies have powers to trace and identify property as required by Criterion 3.4. However this can only be undertaken in so far as it is possible within the current legal framework. The FIU does not investigate except in the context of the analyses of the reports it receives. If full investigations are required, that is for the Financial Police or other arms of law enforcement.

156. Returning to confiscation/forfeiture from third parties (as covered by Criterion 3.5), there was a similar lack of clarity. As already noted, the terms of Article 55(5) require the "thing" to belong to the offender. There was a lack of information on whether third party forfeiture was happening in practice (even though Slovakia is a full Party to the Palermo Convention). Thus the examiners were concerned that forfeiture could be defeated by transfers of property to third parties and family members as gifts or for under-value (to defeat confiscation orders). Whatever the position on this, the laws in force at the time of the on-site visit which the evaluators have seen do not cover the rights of bona fide third parties (Criterion 3.5).

157. Neither does the law in force at the time of the on-site visit clearly provide for steps to void actions in the circumstances envisaged in criterion 3.6.

Additional elements

158. Forfeiture of property cannot be applied to organisations that are found to be primarily criminal in nature. There are no procedures for civil forfeiture and in the case of property subject to confiscation, there is no requirement currently on the defendant to demonstrate the lawful origin of his property, though legislative changes in this regard were planned, as recommended by the previous evaluation team.

2.3.2 Recommendations and comments

159. It was noted in previous reports that the confiscation regime needed modernising and an appropriate culture needed establishing within the Prosecution and Judiciary, which seeks routinely to apply provisional measures and deterrent confiscation orders, and which catches the indirect proceeds, incomes, profits and other benefits in major proceeds-generating cases.

160. The law had been improved at the time of this third on-site visit to provide *inter alia* for substitute assets and for value confiscation. However, the law still limits the ability to confiscate all criminal proceeds in circumstances where they have been transferred as gifts or for under-value to third parties. The examiners considered that this aspect of confiscation law needs further consideration. It was a matter of significant concern that the Slovak authorities reported that no property had been seized or frozen or forfeiture orders made in any money laundering case during the period under evaluation and, as has been noted, no statistics were provided at all to indicate the incidence of provisional measures and forfeiture orders in relation to proceeds generally. The prosecutors advised that more attention is now given to this, but, as has been indicated above, there remain concerns about the compatibility of the existing regime with all relevant international standards in this area and its effectiveness in practice.

161. The Slovak authorities still need a comprehensive and effective legal and operational confiscation and provisional measures regime which:

- is applied comprehensively to direct and indirect proceeds of defendants and third parties, subject to the rights of *bona fide* third parties, consistent with the standards in the Palermo Convention and the Council of Europe Convention;

- in the case of some proceeds-generating offences, could provide for mandatory confiscation in respect of property which amounts to proceeds (possibly drug trafficking and human trafficking);

- provides authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to compensation.

162. Statistical information should be kept on provisional measures and confiscation.

	Rating	Summary of factors underlying rating
R.3	**Partially compliant**	There remain some doubts about the legal regime's effectiveness in confiscating "proceeds" (in the widest sense of the term). Also there are concerns about the legal structure of the seizure and freezing regime to ensure that all indirect proceeds, substitutes etc may be liable to confiscation in due course. The laws do not clearly provide for forfeiture from third parties and for the protection of bona fide third parties. No clear authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. The lack of any statistics on forfeiture/freezing and seizing makes a judgement on the effectiveness of the system impossible. No property forfeited in money laundering cases during the period under evaluation.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

S / RES / 1267

163. Slovakia basically relies on the mechanisms of the European Union to comply with Criteria III.1 and III.2, though as noted beneath they have an additional Regulation-making power in this area which is enshrined in Statute.

164. It has implemented United Nations Security Council Resolution 1267 (1999) and its successor resolutions under European Union Council Regulation (EC) No. 881/2002, which provides for measures against Al-Qaeda and the Taliban. This European Union Regulation has direct force of law in Slovakia and requires the freezing of funds and economic resources belonging to persons designated by the United Nations Sanctions Committee and listed in the Regulation, and prohibits making funds or economic resources available to such listed persons. These lists are updated regularly by the European Union, and at this point assets are required to be frozen. Enforcement in Slovakia (by means of penalties for non-compliance) is provided for by Act No. 460 of 2 July 2002. This came into force in September 2002 before European Union accession, though has been supplemented and amended by Act No. 127 of 16 March 2005, and which became effective on 1 May 2005 (the two Acts are annexed at 6). Originally under Act No. 460, the listings were domestically declared by governmental decree. Now that Act No. 460 has been amended, the vast majority of sanctions are not declared by Governmental decree as they are directly enforceable. However according to recording to Act No. 460, as it is amended, the Slovak authorities stated they have the power to penalise breaches of the European Union Regulation. This sanction is found in Article 10 (3), as amended. For violations of an international sanction (which includes decisions taken by European Union common positions or single action) a penalty of between SKK 100,000 and SKK 10,000,000 and confiscation can be imposed.

165. The European Union list of designated persons is the same as the United Nations list of persons and is drawn up upon designations made by the United Nations Sanctions Committee. There is no time delay in Slovakia, once the European Union list is created as no further regulation is issued. Thus theoretically, sanctions could be applied from the point of European Union listing.

166. The Foreign Ministry and the Ministry of Finance are the competent authorities in this area, though at the time of the on-site visit an action plan was being created which was intended to include a coordination commission of all ministries to monitor implementation and practical steps to be taken. At the time of the on-site visit, it was conceded that there was no real coordination. The lists are not sent by the Slovak authorities to financial institutions or DNFBP. The Slovak authorities took the view that the information was available and the financial institutions have a general duty to check the websites and that lack of awareness would be no answer to a sanctioning under Act No. 460. The Act No. 460, as amended, divides the various duties of monitoring over several Ministries (Act No. 460 is wider than the United Nations Resolutions on this issue). Where the matter is not subject to the jurisdiction of other Ministries, the Ministry of Finance has a general competence. Only the banks and foreign branches are required to report about listed clients every three months to the Ministry of Finance which would report onwards to the European Commission. The examiners were advised that identified persons on lists should also be the subjects of reports to the FIU. As no listed person (Slovakian or otherwise) has been identified as having economic resources in Slovakia, no reports have been made to the FIU.

S / RES / 1373 (2001)

167. This is implemented in a similar way in Slovakia as S/RES/1267 (1999) and enforcement of the European Union Council Regulations is also given effect by Act No. 460 as amended. With regard to S/RES/1373 (2001), the obligation to freeze the assets of terrorists and terrorist entities in the European Union through Council Common Positions 2001/930/CFSP (Common Foreign and Security Policy) and 2001/931/CFSP. The resulting European Union Regulation is Council Regulation 2580/2001. It requires the freezing of all funds and economic resources belonging to persons listed in the Regulations and the prohibiting or making available of funds and economic resources for the benefit of those persons or entities. In the same way as RES 1267, the Slovak authorities consider the list is self executing and can sanction under it for non-compliance.

168. The authority for designating persons or entities lies with the Council of the European Union. Any member State as well as any third party State can propose names for the list. The Council, on a proposal from the Clearing House, establishes, amends and reviews the list. This list, as it applies to the freezing of funds or other assets, does not include persons, groups and entities having their roots, main activities and objectives within the European Union (European Union internals). European Union internals are still listed in an Annex to the Common Position 2001/931/CFSP, where they are marked with an asterisk, showing that they are not covered by the freezing measures but only by an increased police and judicial co-operation by the member States. National legislation is required to deal with European Union internals.

169. Under Act No. 460, as amended, Slovakia retains its capacity to announce such decisions under its own Government regulations in cases in which the (European) Council has not acted and made subject to a common position or single action, or where international sanctions are directed against European Union internals [see amended Article 3 (1) (a) – (c)]. No such Government Regulations have been made by Slovakia in respect of the United Nations Resolutions or in relation to requests from third States. Thus, the Clearing House problem in relation to European internals is not an issue in Slovakia and Slovakia could respond to other requests by third States for freezing terrorist funds in relation to individuals or organisations not covered by the European Union, sufficient to cover Criteria III.3.

Generally

170. Regarding Criteria III.4, measures to freeze assets under the United Nations Resolutions must apply to funds or other assets owned or controlled wholly or jointly, directly or indirectly by the persons concerned etc., and to funds or other assets derived or generated from funds or other assets owned or controlled by such persons. The two European Regulations make no mention of the elements underlined. Therefore the definitions of terrorist funds and other assets subject to freezing and confiscation contained in the regulations do not cover the full extent of the definitions given by the Security Council (or FATF) – in particular the notion of control of the funds does not feature in Regulation 881 / 2002, in particular, the European Union Regulations implementing S /RES/1267(1999) simply direct the freezing of all funds and economic resources belonging to, or owned or held by, a natural or legal person, group or entity designated on the list [Article 2 (1)]. However, it is prohibited to make funds available directly or indirectly to or for the benefit of a natural or legal person, or group, or entity designated on the list [Article 2 (2)].

171. Turning to Criteria III.5 and III.6 requiring countries to have effective systems for communicating actions taken under the freezing mechanisms to the financial sector and / or the general public immediately, the system was, as noted above, rudimentary, albeit that the amended Act No. 460 had only recently been implemented. There were no Guidance Notes issued to the financial institutions or to DNFBP or to other persons and the public at large, on their obligations

in this area, and it did not appear that there were advisory contacts taking place with the financial institutions. Systems of communications do not extend to the DNFBP nor to the public.

172. Criteria III.7 requires countries to have in place effective and publicly known procedures for unfreezing (in the case of mistakes and namesakes). Formal de-listing procedures exist under the European Union mechanisms, both in relation to funds frozen under S/RES/1267 (1999) and S/RES/1373 (2001). For 1267 (European Commission) No. 881/002 provides that the Commission may amend the list of persons on the basis of a determination by the United Nations Security Council or the Sanctions Committee (Article 7). For 1373 (EC) N 2580 / 2001 provides that the competent authorities of each member State may grant specific authorisations to unfreeze funds after consultations with other member States and the Commission (Article 6). In practice, therefore a person wishing to have funds unfrozen in Slovakia would have to take the matter up with the competent authorities who, if satisfied, would take the case up with the Commission and / or the United Nations. No such cases have occurred as there have been no freezing orders. The same procedure would apply to persons or entities inadvertently affected by freezing upon verification that the person is not a designated person. These procedures are not publicly known. Indeed it is important that the authorities establish the procedures which need to be followed in these situations. Reference was made to the Civil Code as a possible avenue of redress, but in these cases, decisions need to invoke others beyond the national borders.

173. Turning to Criteria III.9, there are no specific provisions in EC No. 881/2002 for authorising access to funds frozen in accordance with S/RES1267 (1999). As no funds under 1267 have been frozen as being related to Usama Bin Laden or members of Al-Qaeda or the Taliban or associated individuals or entities, there has been no need to consider how release could be effected in line with S / RES / 1452 (2002). It is none-the-less important that the Slovak authorities advise the financial sector and DNFBP and other members of the public of the necessary procedures in this type of case.

174. There is a specific procedure in EC No. 2580/2001 (implementing S/RES 1373) for release of basic expenses and related costs and application must be made to the competent authority of the member State in whose territory the funds have been frozen (Article 5). For the reasons already explained, no application for access to funds have been made. Again the procedures for such cases should be given wider currency so they are publicly known. Persons dissatisfied with actions taken to freeze their assets or funds can also apply to the European Court of Human Rights for a remedy.

Freezing, seizing and confiscating in other circumstances

175. Comment has been made earlier about the breadth of the current basis of the criminalisation of the financing of terrorism and about Article 55 forfeiture and related procedural provisions. In the event that someone is convicted of a terrorist financing offence, either under Article 185 a (2) [supporting a terrorist group] or aiding and abetting such an offence, the sentence carries mandatory forfeiture as part of the penalty. Funds used for terrorist financing arguably could also be subject to forfeiture under Article 55 of the Criminal Code as "things" used for the commission of the criminal offence or intended to be used for the commission of the criminal offence. Freezing and seizing such funds are also available in the general provisions on freezing and seizing as "things relevant in criminal proceedings"(within the limitations of the existing general provisions, as they have been outlined above). The same comments as to the relevant provisions and their effectiveness made in relation to Criteria 3.1 – 3.4 and Criterion 3.6 also apply in this context. The same comments apply in relation to the protection of the rights of *bona fide* third parties as are made above for the purposes of Criterion III.12.

Monitoring

176. As noted above, the legal mechanism for sanctioning breaches of the relevant legislation exists in Slovakian legislation. It has never been used. The examiners were advised by the FIU that compliance with the international sanctions regimes has to be within the internal controls of the financial institutions, but the FIU does not supervise this. The Financial Markets Authority indicated that their supervision focuses on general issues and not on the specific issues of the implementation of the United Nations Special Resolutions. It did not appear this was part of the Central Bank's checks either. It appeared that the banks were aware of their obligations. They indicated that if they found a match, they will freeze the account and report it to the FIU within 48 hours. Thus, appropriate measures to monitor effective compliance under SR.III were not in place at the time of the on-site visit, as required by Criterion III.13.

Additional elements

177. Turning to the issues covered in the Best Practices Paper, it was too early for these issues to have been seriously addressed at the time of the on-site visit. There were, as noted earlier, plans for a coordinating Committee to look at issues of implementation and monitoring. Consolidated lists in user friendly form are not provided and contact points and support mechanisms are not in place. There has been no real outreach beyond the banks on this issue, and implementation by other parts of the financial sector and DNFBP is uncertain. Pre-notifications etc. have not been considered.

2.4.2 Recommendations and comments

178. Implementation of SR.III is formally in place, and Slovakia has basic legal provision for implementing action against European Union internals under domestic procedures. There is a sanctioning mechanism. However, at the time of the on-site visit, there was no real understanding of how the relevant bodies and persons were implementing the Special Recommendation. The two European Union Regulations (881 / 2002 and 2580 / 2001) however have definitions of terrorist funds and other assets subject to freezing and confiscation which do not fully cover the full extent of those given by the United Nations Security Council and the FATF, especially regarding the notion of control of funds in 881 / 2002.

179. Specifically the authorities need to give the financial and non-financial institutions, DNFBP and the general public guidance as to the obligations under these provisions. The mechanisms for unfreezing and for dealing with basic living expenses, which exist within the European Union framework need explanation. One body, perhaps the Ministry of Finance, should have overall responsibility for providing support and guidance to those that have to implement the obligations. It would also assist if there was a reporting obligation to the Ministry of Finance in respect of listed clients of financial institutions other than banks.

2.4.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
SR.III	**Partially compliant**	Slovakia has the ability to freeze funds in accordance with S / RES / 1373 and under 1267 under European Union legislation though the definition of funds in the European Commission Regulations does not fully cover the terms in SR.III. They have the legal capacity to act in relation to European Union internals and on behalf of other jurisdictions. However they need to develop guidance and communication mechanisms with all financial intermediaries and DNFBP and a clear and publicly known procedure for

		de-listing and unfreezing in appropriate cases in a timely manner. Currently, notwithstanding adequate administrative penalties, compliance is not adequately monitored.
R.32	**Partially compliant**	Statistics are kept only on banks.

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and analysis

Recommendation 26

180. The Slovakian Financial Intelligence Unit "Spravodajská Jedrotka Finančrej Policie" (the Financial Intelligence Unit) was established on 1st November 1996 within the Slovakian Police as a law enforcement style FIU. It was set up as an independent department (the Department of Financial Intelligence) within the Police. It brought experience in investigation and documentation of financial fraud and had access to databases of financial intelligence and financial criminals.

181. As of 1st January 2004, the structure of Slovakian Police changed and the FIU became one of 8 divisions in the Bureau of Organised Crime, under the First Vice-President of Slovakian Police.

182. There is no separate legal act specifically defining the roles and responsibilities of the FIU. However, all the officers in the FIU exercise all relevant police powers under Act No. 171 / 1993 Coll. on Police Corps (including checking identities, apprehension of persons, seizure of a thing, use of coercive measures, etc.). The FIU's main role is to perform the initial screening of transactions and, based on the outcome of the screening, report the findings to other departments of the Financial Police or other relevant services which investigate potential suspicions of criminal offences.

183. Under Section 7 of the AML Law, the "Financial Police" are designated as the competent institution to receive reports on unusual business activities. The Slovak authorities indicated that the FIU, as a part of the Financial Police, is the only unit responsible for the receipt of reports on unusual business activities. However, there is no formal legal basis for the FIU, as presently constituted, to do this. The structure within the FIU works can be changed by the President of the Police Force, who works under the superintendence of the Ministry of Interior. The Slovakian authorities explained that the expression "unusual business activity" means any legal or other kind of action and that the term covers money laundering and financing of terrorism. They advised that they had been assigned the duty of following up reports of financing of terrorism since 2002 though the examiners were not advised of any clear legal authority requiring financial institutions to report transactions suspected to be related to financing of terrorism.

184. The AML Law sets out a number of powers and duties of the FIU, specifically in Sections 9, 10 and 11:

- Delaying of unusual business activities – the FIU may request in writing such a delay for 48 hours. In 2004, 10 requests had been issued by the FIU. However, the decision to delay transactions is in the discretion of the financial institutions, and the FIU indicated that transactions are rarely delayed;
- Controlling and proposing sanctions for breaches of the AML Law (pecuniary penalties and motions to suspend authorisations of entrepreneurial activity);
- Provision of information to the tax administrator if information in their possession can be used to commence tax proceedings, or if it is important to tax proceedings.

Provision of guidance on reporting

185. Turning to Criterion 26.2, there is a prescribed reporting form. However, generally the AML Law does not provide for a duty on the FIU to give guidance and training to reporting entities. None-the-less the FIU advised that they do sometimes carry out such tasks though they underlined

that it is not their obligation to do so. They indicated that the law needs changing to allow for this. They also indicated that they had published one article in a specialist journal. This article broadly covered the general obligations of the FIU, but did not cover statistics, typologies and trends. So far as the evaluators are aware, in the years since the 2nd evaluation there have not been any publications to the financial sector or otherwise covering statistics, typologies and trends in the AML/CFT field (criterion 26.8). Overall the evaluators considered that there is no systematic training or support from the FIU to the financial institutions.

186. Under Criterion 26.3 an FIU should have access on a timely basis to information it requires to properly undertake its functions. The Slovakian FIU has access to:

- all police databases;
- the Companies Register (which is publicly available on line);
- the central population register on line;
- the central vehicle register on line;
- the central register of travel documents (passport register);
- the central register of documents issued to foreigners staying in Slovakia;
- the central register of telephone numbers and owners and also to the networks of mobile phone providers.

187. As well as having access to these databases, the FIU maintains its own database. Within its own database it is possible to search all reports received since its creation and the related information collected in the FIU's preliminary screenings, as well as information obtained by the FIU on a particular subject since its creation.

188. Turning to Criterion 26.4 (obtaining additional information), as noted above, FIU officers have police powers. Additionally, the Police Act contains a special regulation (para. 29a) for financial police officers dealing with the detection of tax evasion, unlawful financial operations and money laundering. Under this regulation, a police officer has the power to request from banks reports on clients or other matters which are subject to bank secrecy without prior authorisation by a prosecutor or a judge. Financial police officers may also inspect all relevant records kept by financial institutions, enter any business facility (including cars), access any relevant databases and collect written documents and other proper evidence during an investigation.

Disseminating financial information

189. The FIU receives unusual business reports. If they, upon analysis, decide that it is suspicious, they send the analysed information on for further investigation. This information covers not only money laundering and terrorist financing but all potential criminal acts.

190. The FIU does not transmit its analysed information on possible offences directly to the prosecutors, but to a range of police units, which ultimately pass cases to investigators to pursue. Such information may thus be transmitted to other units of the Financial Police, or other police units. The FIU also transmits information to the Tax authorities. They used to transmit information with a proposal as to the offences to be investigated (it was understood that this is no longer the case).

191. During 2004, they received and processed 818 unusual business operations. Of these, 76 were classified as suspicious business operations and passed on for further investigation. The FIU indicated that the majority of transmitted reports involved tax evasion. More than 80 % of reports reclassified as suspicious business operations are said to go to the Tax authorities.

192. It appeared that the FIU gets very little feedback from other units when it submits reports for further enquiry or from prosecutors or the courts.

193. The table beneath sets out the unusual business transaction reports they have received between 2002-2004, showing the financial institutions from which they came, the numbers reclassified into suspicious business operations and the bodies to which information was transmitted.

	2002	2003	2004
Received Unusual Business Operations	570	489	818
Reporting entities			
- Banks	517	441	724
- Insurance companies	44	45	67
- Post offices	1	0	0
- Bookmakers	3	1	1
- Securities Centre (Securities exchange)	5	1	3
- Customs Office	0	1	20
- Administration companies	0	0	1
- Financial leasing or other financial activities	0	0	2
Number of unusual business operations reclassified into category of suspicious business operations	200	120	76
Provided with information to:			
- Executive branches of Financial Police Force	233	140	85
-other authorities of Police Force	86	37	40
- Tax authority	64	98	105
- foreign Financial Intelligence Units	7	13	21
- cross-border cash transfers	0	1	20
Bankbooks in bearer form (marketable instrument in bearer form) cancelled as of 1.1.2003	2	22	65
Unusual business operations according to type of currency:			
- SKK	440	360	554
- foreign currency	130	129	264

194. No information was provided to the examiners in respect of cases opened by the investigators or prosecutors based on a report received concerning unusual business activities.

Operational independence

195. As noted, a new police structure had been introduced at the time of the on-site visit. Central to this was the creation of the Bureau for Fighting Organised Crime. The FIU had previously had a leading role as a separate Department in the Financial Police. It now does not exist as a separate Department but as part of the Organised Crime Bureau. The FIU may receive orders from the Minister of the Interior, the President of Slovakian Police and the Director of the Organised Crime Bureau. The Directorship of the FIU has changed three times within the last four years. At the time of the on-site visit, the new Director had only been in post for a few days. While the FIU has autonomy to pursue its functions, it appeared to the examiners to be now in a rather weak position in the new police structure.

196. Section 10 of the AML law requires the FIU to keep information acquired from reporting entities confidential. Information is securely protected within the FIU.The Slovakian authorities indicated that the database containing information from received reports is situated on a separate server, which is isolated from the other computers and networks. The workplace itself is protected by electronic safety devices.

197. As noted above, the FIU does publish articles from time to time in specialist journals but there was no general annual report or other reports produced regularly which include typologies and trends. That said, the FIU advised that it measures the effectiveness of its work regularly. In some areas, such as the quality and utility of information received and the speed of their analyses and information on international exchange of information, the FIU advised that it had disseminated information externally.

198. The Slovakian FIU has been a member of the Egmont Group since 1997, and is exchanging information with all other types of FIU without legal restriction. In 2003, the FIU processed 156 letters in connection with requests made to and coming from other financial intelligence units. In 2004, the FIU received 58 requests from and sent 126 requests to other financial intelligence units. The FIU has been connected to FIU.NET since April 2004. Since the last evaluation, the FIU has signed 8 Memoranda of Understanding (MOU) with FIUs in other jurisdictions relating to the exchange of information involving money laundering and financing of terrorism (Belgium, Czech Republic, Slovenia, Poland, Ukraine, Monaco, Australia and Albania). Negotiations had been entered into, at the time of the on-site visit, with Romania, Taiwan and Canada.

199. Besides receiving reports on unusual business activities, the FIU plays a strong supervisory role since it has the main responsibility for compliance with the AML Law. Under Section 10 (a) of the AML Law, the Financial Police shall "require and control duties of reporting entities defined by this law". The basic duties of the reporting entities are set out in Section 6 of the AML Law.

200. The FIU is also involved in legislative activities. It participated in the process of creating the AML Law and the preparation of specific competencies of Financial Police officers under the Police Act.

Recommendation 30

Structure finding, staff, technical and other resources for the FIU

201. As noted, the FIU, since 1st January 2004, is a division within the Bureau of Organised Crime. Since the 1st of April 2005 the FIU is divided into 4 sub-divisions:

- Unusual Business Transaction Sub-Division;
- Obligatory entities Supervision Sub-Division;
- International Co-operation Sub-Division;
- Property Checks Sub-Division.

Previously there had been an analytical subdivision within the FIU, but after the 1st April 2005, this subdivision was subsumed into another part of the Organized Crime Bureau. The work analyzing unusual business transactions is conducted by the unusual business transaction subdivision.

202. Since the organisational changes in 2004 the staff of the FIU has been reduced from 38 to 31, at the time of the on-site visit:

Director - 1
Deputy Director - 1
Police officer - 1
Civil worker - 1

1. Unusual Business Transactions Sub- division– 8 senior police officers
2. Obliged Entities Supervision Sub- division – 7 senior police officers
3. International Co-operation Sub- division – 6 senior police officers
4. Property Checks Sub- division – 6 senior police officers

203. The FIU staff is required to maintain high professional standards, including standards of confidentiality and should be of high integrity. The police officers working in the FIU are required to have university degrees; they are mainly economists and lawyers. They are required to possess a certificate from the National Security Bureau entitling them to handle classified materials (up to secret). They are also required to satisfy psychological, health and physical tests and are required to present an extract from the criminal record demonstrating their lack of criminal convictions. Each police officer working in the FIU also undertakes and is required to pass a special police course.

204. In the European Union pre-accession period, the Slovakian FIU participated in a PHARE twinning project to enhance the operational capacity of the FIU. Its biggest deficiency at the beginning of the project in March 2004 was a lack of modern technology and of sufficient experience in a large scale of financial investigation. Attention was paid in the project to the modernisation of the FIU's hardware and software (including analytical software). This project produced an IT investment of about one million Euros. In 2004, the technical equipment of the FIU became fully compatible with the general equipment of FIUs in other member countries of the European Union. This has speeded up analysis of the unusual business activity reports received and also the exchange of information with other FIUs. Moreover about 20 FIU experts were trained in financial intelligence analysis focusing on large scale financial investigation. Training guides on money laundering and seizure of illegal assets were translated into the Slovak language and published. The video "Hit and Run money laundering" (HARM case studies) has been made available in the Slovak language at seminars. They were familiarised with the Camden Asset Recovery Interagency Network (CARIN). Overall the staff of the FIU appears to have a

good educational background, mainly related to the police, economic and legal professional fields, and have received some relevant internal training, mainly from abroad (the Dutch partners in the twinning project and the FBI). At the time of the on-site visit, FIU staff had not received specific training on financing of terrorism issues.

2.5.2 Recommendations and comments

205. The FIU had had previously a leading role in the Financial Police. The Financial Police no longer exists as a separate body (though they are referred to throughout the AML Law). The police structural changes are discussed beneath. Basically the Financial Police is now structured within four districts. One consequence of this is that the FIU has been downgraded in the police structure. While it has basic operational independence in the handling of unusual business activity reports, overall the FIU has a rather weak position in the new police structure. The Head of the FIU cannot take personal decisions on policy issues and currently the FIU does not seem to be a driving force in the AML / CFT system or occupy a main leadership role, even though the FIU is notionally in charge of the system. It is isolated in that it rarely receives feedback on the reports it sends for further investigation to other police bodies. It has a very restrictive attitude to the role of the FIU in training reporting entities and the issuing of guidelines. If the FIU needs to be given authority in legislation for it to carry out such tasks on a more systematic basis this should be provided. The FIU needs to undertake more systematic training, and provide guidelines and indicators on "unusual business activities". Additionally, more feedback needs to be provided. It was unclear if any case specific feedback was given. If not, consideration should be given to this. Additionally in support of reporting entities, more reports should be issued by the FIU, including statistics, typologies, trends, and information about its activities. The FIU advised that they were not obliged to provide an Annual Report. They indicated that one was produced in 2003, but that this was not an annual output from the FIU. The examiners advise that it would be helpful to the reporting entities if this becomes a regular feature of the FIU's work.

206. Moreover the FIU's powers and duties are not clearly or separately defined in legislation distinctly from other police powers and duties. The examiners were referred to Articles 171 and 367 of the Act on Police. The examiners none-the-less advise that the powers of the FIU should be more clearly defined.

207. It resources remain basically adequate for its screening responsibilities – though not for the other roles that an FIU normally undertakes – particularly outreach to and training of reporting entities. These activities are not seriously addressed by the Slovakian FIU, and need to be.

208. They have seven officers in the Obliged Entities Supervision Sub-division, in theory to cover 100,000 reporting entities.

209. The resourcing of the FIU should be reassessed in order that it can undertake a much more proactive role in issuing guidelines to all relevant parts of the financial sector, and conduct training.

210. Equally the resourcing of the FIU, in terms of its supervisory role, should be reassessed. With regard to supervision, while the FIU plays an active role, there is no transparent system in place in respect of who does what. It appeared to the examiners that there is scope for the FIU to overlap with the roles of regulatory bodies, and the possibility of double sanctioning was a concern. A clear delineation of responsibilities in this area between the relevant authorities is recommended.

211. In terms of its core function of screening unusual business activity reports, it has access to all necessary databases and, as a law enforcement FIU, has access to additional information to support its analyses under broad powers attributable to its role in the former Financial Police, though it is difficult to read into Section 6 (3) of the AML Law, the requirement for the Financial Police to view all material held by reporting entities on financing of terrorism as Section 6 (3) (c) only relates to legalisation.

212. The evaluators were told that the FIU's competence was extended to financing of terrorism and that the term unusual business activity could cover this. The examiners were not advised of any information being disseminated by the FIU covering this issue or indeed how the financial institutions were made aware of the need to report such transactions as unusual business activities. There is no clear legal obligation which requires the financial institutions to report suspicions of financing of terrorism, and this should be urgently clarified in the law, and guidance and indicators provided to the financial institutions. The FIU first needs specific training on these issues themselves before they can guide the financial sector on these issues.

213. The FIU is statutorily bound to report to the Tax authorities. 105 notifications to the Tax authorities were made in 2004. Notwithstanding their statutory duty to report to the Tax authorities, the Slovak authorities may wish to consider whether, in practice, there is perhaps over-concentration on this issue within the FIU at the expense of other cases and their core functions. It is important that a wide range of unusual business transactions, beyond the tax predicate, are transmitted to law enforcement for further investigation.

214. It is also important for the efficiency of the FIU that it receives feedback from the investigators and / or prosecutors and the courts on progress on investigations cases which have arisen from FIU reports and outcomes from the courts. An uncoordinated approach generally on the FIU / law enforcement side was observed by the examiners, which needs addressing.

215. The system of requesting delays in transactions under Section 9 of the AML Law does not appear to be very effective in practice, as compliance with the requests is at the discretion of the reporting entity. The examiners advise that this mechanism is re-visited to provide for a more mandatory system in cases of particular importance.

2.5.3 Compliance with Recommendations 26, 30 and 32

	Rating	Summary of factors underlying rating
R.26	**Partially compliant**	No explicit reporting obligation on suspicions of financing of terrorism. No guidelines or indicators to the financial sector on "unusual business activity" has been issued. Unclear reporting system. Since the 2nd evaluation there have not been any publications to the financial sector or otherwise covering statistics, typologies and trends in the AML/CFT field. The overall weak position in the current police structure raises concerns about the operational independence and autonomy of the FIU.
R.30	**Partially compliant**	The FIU is in a rather weak position in the overall police structure and needs to provide a greater leadership role on AML / CFT issues. More human resources required for training of financial sector, issuing of guidance and supervision. Specific training on financing of terrorism for the FIU was lacking.
R.32	**Partially compliant**	Only general statistics are kept by the FIU on the reports it receives and transmits to other bodies and numbers of requests it receives for and responses it makes to international co-operation requests. No statistics on outcomes of information transmitted to other bodies. No reviews by a formal coordination body of overall statistical data is generated by the FIU.

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27, 28, 30, and 32)

2.6.1 Description and analysis

Recommendation 27

216. The Ministry of the Interior has the lead departmental responsibility for anti-money laundering. The Police are an independent body, located within the Ministry of the Interior. The Ministry of the Interior defines the scope of the police services and their internal organisation.

217. Before the latest Police re-organisation, the FIU and the Financial Police were mainly responsible for investigating AML / CFT cases. Two charts showing the structure of the Presidium of the Police, as of 1st January 2004 (after the restructuring) are set out in Annex 7. According to the replies to the questionnaire, the possibility for investigating money laundering is formally imposed on all bodies active in criminal proceedings.

218. While all police bodies can investigate money laundering, the Judicial and Criminal Police Bureau, the Bureau of Organised Crime, the Special Investigative Bureau (all under the First Vice-President) as well as the Anti-Corruption Bureau were all reported as key units in the fight against money laundering and financing of terrorism. The Terrorism and Extremism Division, within the Bureau of Organised Crime, in conjunction with investigators are responsible specifically for financing of terrorism investigations.

219. By way of clarification, the Financial Police, which formerly was one Bureau, is now structured as the Financial Investigation Sub-Division of the Organised Crime Field Offices in each of four districts in Slovakia under the Bureau of Organised Crime. The officers in this Sub-Division concentrate on economic crime and financial investigation, and can specialise in money laundering and financing of terrorism investigation (money laundering specifically, in respect of economic crime predicates).

220. It was explained to the team that the main reason for the organisational changes was for specialist teams to co-operate more closely with operative police officers. In particular this structure was said to encourage greater flexibility and the creation of mixed teams for particular investigations.

221. The Judicial and Police Bureau has an Economic Crime Division which can investigate money laundering.

222. The Anti-Corruption Bureau is a special unit and has responsibility for investigating all allegations of corruption (and related money laundering) primarily in respect of high-level senior officials in Slovakia (State Secretaries / Government, etc.). When they were formed, they took a number of on-going cases but, at the time of the on-site visit, were investigating 95 cases involving senior officials. It was understood that related money laundering would be followed up in these investigations.

223. In respect of Criterion 27.2, the examiners were advised that under the Code of Criminal Procedure, the Police are authorised to postpone the arrest of a suspect and the execution of other measures provided by the Code of Criminal Procedure when investigating a criminal offence. It was unclear whether these powers had been used in money laundering investigations.

224. The Public Prosecution Office has an autonomous status and is independent from other law enforcement agencies. It is headed by the General Prosecutor. This Office supervises criminal prosecutions, the investigation of which is performed by investigators or police officers. The Public Prosecution Office is a judicial body for the purposes of the execution of international legal assistance.

Additional elements

225. Where the use of Special Investigative Techniques is required, the Special Investigative Techniques Bureau becomes involved in the investigation to provide technical assistance. Section 88 of the Code of Criminal Procedure enables the use of special investigative techniques in defined circumstances. Special investigative techniques embrace wire tapping, use of information systems, audio and video surveillance, and the use of *agents provocateurs*. It was understood they were used frequently in money laundering and financing of terrorism investigations and when investigating underlying predicate offences. The use of special investigative techniques involving information technology requires the prosecutor's consent.

226. As has been noted above, one of the reasons for the organisational changes was to facilitate mixed teams or temporary groups which could be used for investigating proceeds in large cases. The evaluation team was advised that every investigator should focus on the proceeds of crime, though there was no written policy to that effect. There appeared to be an unwritten policy of focusing on the financial aspects of predicate criminal offences where proceeds in excess of 100,000 Slovak Crowns were involved.

227. Overall the examiners did not find that money laundering and financing of terrorism techniques were reviewed by law enforcement, together with the FIU and other competent authorities on a regular interagency basis. This is discussed further beneath.

Recommendation 28

228. The competent authorities investigating money laundering and financing of terrorism have wide power to compel production of, search persons and premises for and seize and obtain transaction records, identification data obtained through the CDD process, account files and business correspondence and other records, documents or information held or maintained by financial institutions and other businesses or persons for use in money laundering / financing of terrorism investigations and in related actions to freeze and confiscate the proceeds of crime. Bank secrecy may only be breached upon the Prosecutor's consent (Article 8 of the Code of Criminal Procedure).

229. The competent authorities have the power to take witness statements.

Recommendation 30

230. The structure of law enforcement within the Presidium of the Police Force is outlined above.

231. Of the key units investigating money laundering and financing of terrorism, the Bureau of Organised Crime has up to 70 investigators. Every investigator can specialise in money laundering or following the proceeds of crime. Investigators must have a University degree in criminal law and one year's practice as a police officer. This requirement is of general application for all police organisational structures. It was unclear what training is given to the investigators in the Bureau of Organised Crime specifically on money laundering and financing of terrorism on an on-going basis.

232. The Anti-Corruption Bureau has 51 investigators. All the authorised investigators deal with criminal investigation of corruption and related money laundering.

233. Police officers must be of high integrity and are obliged to follow a Code of Ethics.

234. Prosecutors are governed by the Act No.154/2001 on Prosecutors and Trainee Prosecutors of the Public Prosecution Service [Annex 8]. They are required to be free of criminal convictions, politically impartial and conduct themselves in accordance with the provisions of the Section 26 of Act No. 154/2001 Coll. on Prosecutors, which covers ethical issues. Prosecutors are obliged to submit annual information to the Attorney General on their financial circumstances in the "Property Report". They receive general training on money laundering issues through participation in seminars, courses and conferences. There is a Judicial Academy at which, from 1st September 2004, further training for judges and prosecutors takes place. Money laundering and financing of terrorism was planned to be covered in the Academy's future training programmes.

235. The general courts have jurisdiction for most money laundering cases. However, a new development since the second evaluation is planned: the establishment of the Special Court (which was due to be set up shortly after the on-site visit) and the establishment of the Special Prosecutor's Office (of the General Prosecutor's Office of Slovakia) under Article No. 458 / 2003 Coll., amending and supplementing the Code of Criminal Procedure. The Act entered into force in July 2004. The Special Prosecutor's Office became operational on 1st September 2004.

236. The Special Prosecutor has jurisdiction over members of Parliament, members of Government, judges, prosecutors and other enumerated public officials if they are suspected of committing any offence which relates to the exercise of their powers and responsibilities. The jurisdiction of the Special Court will cover the same high officials and extend also to other persons involved in cases of corruption, forming and supporting of a criminal or terrorist group, certain offences against property (including serious forms of money laundering) , and other offences described in Section 15a of the Criminal Code.

237. The full list of persons who will fall under the jurisdiction of the Special Court and can now be subject to prosecution by the Special Prosecutor's Office is annexed at Annex 9. The extended jurisdiction of the Special Court to cover serious money laundering offences is found in Title Two of the Special Part of the Criminal Code on crimes against property (Title Nine, Special Part of the Criminal Code) if the damage caused or the benefit obtained reaches at least 10,000 multiples of the minimum wage of an employee on a monthly salary [8 a, b)] or if the extent of the crime reaches at least ten thousand multiples of the salary of an employee on monthly salary [8 a, b].

238. The Chief Special Prosecutor's independence is guaranteed by his election by Parliament for a five years term. He reports to Parliament. 25 posts have been created for special prosecutors, but at the time of the on-site visit, only 11 posts had been filled. These Prosecutors must have ten years experience and, like all prosecutors, be of high integrity, as defined in Act No. 154 / 2001 on prosecutors. There has been some special training at the national and international levels on money laundering investigation and prosecution as well as investigation and prosecution of corruption. They now work closely together with investigators of the Bureau of Organised Crime. There were plans also for them to work closely with the Customs and Border Police on people smuggling cases. At the time of the on-site visit, the Special Prosecutor had filed 30 charges (largely in corruption cases though some money laundering offences were incorporated with other cases within their caseload). Within this context, they advised that they have taken provisional measures. They indicated that they intended to pursue an active strategy of asset recovery in their work.

239. The Special Court will have jurisdiction also in terrorist cases, including terrorist financing, which will fall to the Special Prosecutor's Office under the new arrangements (within the limits of the existing offence of financing of terrorism).

Additional elements

240. The Judicial Academy were planning special training on money laundering and financing of terrorism for judges and courts – particularly the Special Court - though the examiners undertook such courses were yet to take place.

Recommendation 32 - *Statistics – investigations, prosecutions and convictions*

241. As noted, the FIU had no information as to how many of their reports submitted for investigation become prosecutions and result in convictions. Law enforcement produced statistical information for the assessment team on the numbers prosecuted, charged and sentenced for money laundering under Article 252. These figures do not indicate the underlying predicate offences, or separate art cases that are generated by the unusual transaction reporting system from those which are police generated, or record the financial losses involved in the cases. Equally it is unclear from the statistics which cases are own proceeds laundering, which are prosecuted together with the predicate offence and which ones are prosecuted autonomously. In the light of this and the lack of statistical data on the sentences imposed, it is difficult to obtain a clear picture of the types and seriousness of the money laundering cases being prosecuted and their outcomes in terms of sentence. The Slovak authorities had none-the-less noted that the number of money laundering cases in the courts was increasing. The table of cases involving Article 252 is set out at paragraph 123 above.

242. There have been no financing of terrorism enquiries, or prosecutions, or convictions.

2.6.2 Recommendations and comments

243. Overall the evaluators were concerned that there was little joining up of law enforcement action. The examiners noted a tendency for each element involved in the law enforcement response to be operating in its own sphere with little or no overall awareness of whether money laundering was being effectively addressed on the repressive side. The absence of statistical feedback to the FIU on progress and outcomes in the cases they transmitted and the lack of hard information about the types of money laundering cases ultimately brought to court made it difficult for the evaluators to assess the effectiveness of the system in this area, and, in the examiners' view, difficult for the Slovak authorities to assess the effectiveness of their system. The setting up of the Special Prosecutor's Office and the forthcoming introduction of the Special Court to deal *inter alia* with serious cases of money laundering are steps in the right direction[7].

244. The Special Prosecutors appear to have a heavy case-load and their resources should be reconsidered if they are to meet expectations, particularly in asset recovery. The examiners recommend that in the cases with which the Special Prosecutors (and in the money laundering cases dealt with by the General Prosecutor's Office) comprehensive statistical data is kept showing:

- the underlying predicate offences;
- whether the cases are prosecuted together with the predicate offence or autonomously;
- whether the case is generated by the reporting system or is police generated;

[7] The examiners were advised prior to the Plenary discussions that proposals were being considered to dismantle the Special Prosecutor's Office and the Special Court.

- the outcomes in terms of penalty including confiscation orders made.

245. As noted in the legal section, the examiners were concerned about the types of money laundering cases being investigated and prosecuted and whether they represent the major proceeds-generating offences in Slovakia. From information collected by the Special Prosecutor's Office, the basic sources of illegal assets are:

- illegal trafficking in mineral oils by criminal groups;
- VAT frauds;
- illegal smuggling of immigrants;
- illegal smuggling of alcohol and cigarettes and trading in them;
- fraudulent companies;
- trafficking in drugs;
- bankruptcy related offences.

246. The examiners were advised that no money laundering cases had been brought in relation to drug trafficking, human trafficking and other major proceeds-generating cases committed by organised criminal groups.

247. One explanation for this may be that financial investigation in major proceeds-generating cases is still not being systematically pursued. In the last MONEYVAL report, there were recommendations that "following the money" i.e. investigating the proceeds of crime in major proceeds-generating offences should be a priority for law enforcement. The lack of a clear policy on when financial investigation should take place was noted by this examination team. The informal threshold suggested to the team for such financial investigations as currently take place seemed rather high. The examiners strongly advise that the practice on financial investigation be underpinned with a clear policy stipulation to investigators and both Special and General Prosecutors that, in major proceeds-generating cases which they handle, the financial aspects of these cases should be routinely pursued in investigations to "follow the money" in all major proceeds-generating offences. The resources for financial investigation may, as a result, need reconsidering particularly for the Prosecutors (Special and General) who have a role in supervising major cases to proactively advise the investigators to pursue the financial aspects of cases.

248. So far as police and prosecutors are concerned, it was unclear beyond information on general money laundering training provided what real guidance they had on the types of evidence that may be sufficient for courts to proceed with money laundering cases. Such guidance should be considered as suggested earlier in this report in the legal evaluation.

249. More special and interagency training concerning money laundering and financing of terrorism was being planned. This is actively encouraged.

250. Once more focused statistical data is kept on money laundering and financing of terrorism, prosecutions and convictions and on related confiscation orders. These statistics should be regularly reviewed as one of the key indicators of the effectiveness of the AML / CFT system as a whole by a central coordinating body.

2.6.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.27	**Largely Compliant**	While there are designated law enforcement authorities with responsibility for money laundering and terrorist financing investigations, with adequate powers, there is a reserve on the effectiveness of money laundering and

		terrorist financing investigations.
R.28	**Compliant**	
R.30	**Partially Compliant**	Still more relevant law enforcement training and guidance required in money laundering cases (and financing of terrorism) and more policy and practical guidance needed to ensure proactive financial investigation in major proceeds-generating crimes which should generate more money laundering cases and confiscation orders. More coordination needed to join up the law enforcement effort.
R.32	**Partially compliant**	Inadequate statistical information on money laundering and financing of terrorism criminal cases and confiscation orders.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

251. In Slovakia, the preventive side of the AML/CFT system is primarily rooted legislatively in Act No. 367 of 5 October 2000 on protection against legalisation of incomes from illegal activities and on amendment of some acts (the Anti-Money Laundering Law – Annex 10), as amended in 2002 and the Act No. 483/2001 on Banks (Annex 3). At the next level, below legislation, there are Decrees. There is consultation with the legislative Council of the Government about them and they are legally binding. They are considered as secondary legislation. Examples of Decrees are Decree No. 16 of the National Bank of Slovakia, governing the acquisition of share capital in banks, and Decree of the National Bank of Slovakia No. 614 governing the licensing of foreign exchange houses. For the avoidance of doubt, and as noted earlier, there is currently no NBS decree (secondary, binding and enforceable legislation) on AML issues. At the third level, there are Recommendations, which are not legally binding. The most important of these in the AML/CFT context, at the time of the on-site visit, was the Recommendation of the Banking Supervision Division of the NBS No. 3 / 2003 (hereafter Recommendation 3 / 2003 to banks and branch offices of foreign banks for the implementation of the anti-money laundering procedures (Annex 12). Recommendation 3 / 2003 covers some of the issues in the Basel Committee's paper on Customer Due Diligence by way of best practice / guidelines but this is not binding and sanctionable by the supervisory authorities. At the time of the on-site visit, amendments to Laws and Decrees were necessary to implement the Third European Union Money Laundering Directive. There was also a fourth document referred to by the National Bank of Slovakia, which is the "Procedure for the anti-money laundering area in banks and branches of foreign banks" which was purely an internal *aide-mémoire* providing a benchmark for supervisors (Annex 13).

252. The Anti-Money Laundering Law, in Section 3, covers the following types of financial institutions:

- Export-Import Bank of Slovakia;
- Banks and subsidiaries of foreign banks;
- Administration companies, organiser of the securities market, traders in securities, securities exchange, securities centre, commodity exchange investment firms;
- Insurance and reinsurance intermediaries;
- Subsidiaries of foreign reinsurance companies, subsidiaries of foreign insurance companies;
- Management companies or depositories of collective investment undertakings;
- Central depository;
- Legal entities or natural persons entitled to carry out auctions, financial leasing or other financial activities defined by special law;
- Post enterprise offices;

- Foreign Exchange houses of which there are three types of entities (business providers dealing with cash, business providers dealing with assets in foreign currency (non-cash) and bureaux de change.

This list does not cover the NBS in its commercial activities (including keeping and administering accounts of its own employees) and should do so.

253. The basic obligations under the AML Law are:

- Customer: identification [Section 5 and Section 6 (2)];
- Record keeping (Section 6);
- Identifying unusual business activity;
- Reporting "unusual" activity (Section 7) – which covers both "legalisation" (money laundering) and the financing of terrorism;
- Keeping information confidential (Section 8);
- Delaying unusual business activity (Section 9);
- Establishment of Internal Procedures and Units for AML/CFT Control (Section 6).

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism:

254. This issue has broadly been covered in 1.5c.

255. As noted, the Slovak authorities indicated that on-site inspections in the banking sector are more orientated towards checking the effectiveness or risk based management procedures in banks and foreign bank branches. With regard to the exposure of banks and foreign branches to the money laundering risk, the main shortcomings revealed in supervision were summarised in a document which was due to be considered by the Central Bank Board shortly after the on-site visit, and which would subsequently form the basis of a review of Recommendation 3 / 2003.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5

Anonymous accounts and accounts in fictitious names

256. Criterion 5.1 of the Methodology is marked with an asterisk. This means that it belongs to the basic obligations that should be set out in a law or regulation. In this context, "Law or Regulation" refers to primary and secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. Separate to laws or regulation are "other enforceable means" like Recommendations, guidelines, instructions or other documents or mechanisms that set out enforceable requirements, with sanctions for non-compliance, and which are issued by a competent authority (e.g. a financial supervisory authority) or an SRO. In other words: according to the Methodology, obligations set out in law or regulation as well as in other means have to be enforceable. In addition, the law or regulation has to be issued or authorised by a legislative body. Certain of the provisions in the AML Law are sanctionable by the Financial Police (including the identification provisions) and Banking Supervision in the National Bank of

Slovakia can sanction for breaches of the provisions of the Act on Banks (including the identification provisions in it) but, as noted, not for breaches of Recommendation 3 / 2003.

257. The Act on Banks (Article 89, paragraphs 1 and 4) provides that a bank client or client of a foreign bank branch must be identified in the case of every "transaction" with the exception of

- transactions via an ATM;
- making dispositions to deposits not exceeding 2 500.- Euros (this does not apply in the case of account opening –in such cases identification is obligatory)

258. "Transaction" is widely defined under Article 5 (i) of the Act on Banks to include the "formation, alteration or termination of relations" (opening of accounts). Under Article 89 paragraph 1 banks and foreign bank branches are obliged to refuse to conduct transactions on an anonymous basis.

259. At the time of the second evaluation, bearer passbooks and bearer certificates of deposit existed in the banking sector. Their abolition is being undertaken in a step by step procedure. Bearer deposits existed in the banking sector to the end of 2003. The AML Law, effective from 1 January 2001, required customer identification on bearer deposits accounts on each transaction amounting to 15.000.- Euros or more in the period of one year. An amendment to the Civil Code, effective from 1 September 2001, prohibited the opening of new bearer passbooks. Furthermore, no additional deposits were allowed to existing passbooks, only withdrawals. No interest is paid on outstanding amounts kept in banks. The remaining deposits kept in banks are allowed to be paid out to clients until the end of 2006. A further amendment to the Civil Code in January 2005 (Chapter IV) provided a new regime for pay outs of bearer deposits. The right of a passbook holder to be paid out was prolonged until the end of 2011. However, at the end of 2006, remaining amounts will be transferred from banks to the State Treasury in the Ministry of Finance. Until 2011, the Ministry of Finance will pay out a bearer of a passbook or a bearer of other bearer securities on condition that identification is done. At the end of 2011, the commitment to pay out outstanding amounts will elapse. Bearer deposits amounted to 8 % of all deposits in banks at the time of the on-site visit.

260. The examiners were advised that numbered accounts have not been used in Slovakian banks though there is no explicit prohibition on this point, other than the general requirements set out in Article 89 of the Act on Banks and in the Civil Code.

261. There is no explicit prohibition of anonymous accounts or accounts in fictitious names in the AML Law which covers financial institutions more broadly than the Act on Banks. The provisions of the AML Law on identification do not relate to account opening or establishing business relations. Article 38 para 10 Insurance Act requires insurance companies, branches of foreign insurance companies, insurance agents or brokers to refuse a conclusion of the insurance contract with preservation of the anonymity of the client. A similar obligation is set out in Art 73 para 9 of the Securities Act referring to the obligation on brokerage firms to decline transactions in which the client remains anonymous. Art 21 para 1 of the Collective Investment Act provides a similar obligation upon management companies to refuse transactions if the client retains anonymity. There is no definition in the Insurance Act or Securities or Collective Investment Act of transactions which embraces the concept of the formation of business relations. The only definition of transactions which includes the formation of business relations is in Art 5 (i) of the Act on Banks. The Slovakian authorities advised that the practice in the insurance and the securities sectors is to follow the definition of transactions in the Act on Banks.

Customer due diligence

When CDD is required

262. Criterion 5.2 of the Methodology has an asterisk too. It requires all financial institutions to undertake CDD:

a) When establishing business relations

As noted above, this requirement is covered for banks in Article 89 (1) of the Act on Banks. As also noted in the previous paragraph, the requirement to undertake CDD when establishing business relations is not formally covered in the laws in the insurance and securities sectors, but as indicated, the practice is for these sectors to follow the relevant requirements on this aspect in the Act on Banks. The insurance and securities sectors should ensure that the requirement to undertake CDD when establishing business relations is covered in law or regulation.

b) When carrying out occasional transactions above the applicable designated threshold (€ 15 000.-), including where the transaction is carried out in a single operation or in several operations that appear to be linked.

Section 5 (2) (b) and (c) of the AML Law requires all obliged persons to identify natural and legal persons who/which prepare or carry out transactions at or above € 15,000. However, the Article 89 (1 and 4) Act on Banks provides a stricter requirement of identification at or above € 2,500 (with the exception of account opening where there is no threshold). Additionally, Article 13, paragraph 8c, of the Foreign Exchange Act requires the identification of the customer for each transaction in foreign exchange assets in bureaux de change and for each foreign exchange service in excess of € 1,000.

c) When carrying out occasional transfers that are wire transfers in the circumstances covered by the Interpretative Note to SR.VII

The AML Law does not cover this requirement. Wire transfers are thus only treated as occasional wire transfers for which identification is required if € 15,000 or more. As noted above, this requirement is covered for banks in Article 89 (1 and 4) of the Act on Banks (i.e. the € 2,500 threshold applies and was within the *de minimis* threshold of the SR VII then applicable). In foreign exchange houses with remittance facilities, identification will take place over € 15,000 only and therefore the requirements of SR VII are not met.

d) When there are suspicions of money laundering or financing of terrorism

The AML appears to cover this requirement (Section 5 para 2 letter a).

e) When the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data

The AML Law and no other Law or Regulation in the banks, insurance and securities sector directly cover this. The Slovakian authorities indicated that there are general provisions on verification in each of the relevant sectoral laws which could be used in these circumstances, though there is no clear provision for this. This should be corrected.

Required CDD measures

263. Criteria 5.3 and 5.4 (a) are both marked with an asterisk. Under 5.3 financial institutions are required to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customers' identity using reliable independent source documents, data or information. In the case of customers that are legal persons and arrangements, criterion 5.4

(a) provides that financial institutions should be required to verify that any person purporting to act on behalf of the customer is so authorised and verify the identity of that person.

264. The general rule is that in "business activity" to which the identification obligation applies under Section 6 (2) AML Law, all obliged persons should establish whether a natural person or legal entity acts under his / her own name.

The basic provisions on these issues are in the AML Law / Sections 5 and 6 for all institutions that are reporting entities. The AML Law, however, does not use the term verification at all. The Act on Banks, article 93a 1a (2-4), the Insurance Act, article 38a (2-4d), the Collective Investment Act article 21(6) (2-4b) and the Securities Act article 73a (1) (2-4b) have general provisions covering verification procedures of identification. They do not provide for the types of documents that can be used as reliable, independent source document or indeed provide for how the verification process or verification procedures apply to non-resident customers.

265. For natural persons, the minimum requirements in respect of documents requested for identification in respect of banking transactions are in the AML Law and the Act on Banks. Section 5 of the AML Law requires for all financial institutions the obtaining of the name, surname and number or date of birth, type and number of the identity card (which appears to imply that identity cards are the only reliable source of verification) and the nationality of a foreign citizen. For bank clients, the requirements are differently expressed. Banks and foreign branches are governed by the ID procedures in the Act on Banks, which entered into force on 1 January 2002. Each client (natural or legal person) has to be identified in line with Article 89, paragraphs 1 and 2, in respect of transactions (which include entering into business relations). In relation to natural persons, the Act on Banks states that identity may be verified by a "document of identity" or by his signature if he is known in person and the signature matches the specimen signature kept in the bank. In the non-binding Recommendation 3 / 2003 (para. 4) it is indicated that the most suitable documents are those which can be counterfeited only with great difficulty. It would assist if, in the AML Law or binding Regulation of general application, it was clarified which are the precise types of documents suitable for identification purposes in respect of natural persons as being sufficiently reliable and independent. The Recommendation 3/2003, as it stands, arguably, is in contradiction with the AML Law on this point, and at least opens up a large area of discretion to banks in the types of identification document that they can rely on. In the insurance and the securities sectors there are requirements for verification by documents of identity, but unlike the Act on Banks there is no clear definition of what should amount to reliable documents of identity. The Slovakian authorities indicated that in practice these sectors follow the approach taken in the Act on Banks.

266. Article 89 (3) requires the bank or branch office of a foreign bank to determine the ownership of funds a client uses for any transaction worth more than € 15,000. This is effected by the provision by the client of a binding written statement declaring whether the funds are his property and whether he is conducting the transaction for his own account. If the funds are owned by another person or if the transaction is conducted for the account of another person, the client's statement must specify the name, surname, birth register, number or date of birth and permanent residence of the natural person or the name, registered office and identification number (if assigned) of the legal person who is the owner of the funds and for whose account the transaction is conducted.

267. Criterion 5.4 requires two specific issues to be covered in respect of the verification process with regard to legal persons.

268. The first is verification that any person purporting to act on behalf of the customer is so authorised, and the identification and verification of the identity of that person

(paragraph 5.4a of the Methodology). This is marked with an asterisk and needs to be in Law or Regulation.

269. Article 5 (b) AML Law speaks only of the "data of a natural person who is authorised to act on behalf of his / her name within letter a"(which refers to natural persons). The AML Law should set out in terms for all obliged entities that a verification is required in respect of persons purporting to act on behalf of a customer (that is a legal person or arrangement) that they are so authorised and that the identity of that person should be verified.

270. In the case of banks, more detail is provided generally on the identification and verification process in an amendment to the Act on Banks (Article 93a), which came into force in January 2004 (see Annex 3). In Article 93a (1) 4, 4c there is reference to the requirement to verify the authorization of the representation where the proxy is involved. There are similar obligations in legislation on insurance and securities, which broadly meet the requirements of paragraph 5.4 (a) of the Methodology.

271. Paragraph 5.4 b of the Methodology covers the second issue in relation to the verification process for legal persons. It is not marked with an asterisk but needs to be required by other enforceable means. The verification of the legal status of the legal person or arrangement requires e.g. proof of incorporation or similar evidence of establishment and information on the Customer's name, trustees (for trusts), legal form, address, directors and provisions regulating the power to bind the legal person or arrangement.

272. The detailed requirements for identification of directors etc. set out in paragraph 5.4 (b) of the Methodology are not all covered in the AML Law for all obliged entities (including directors, trustees, etc.). More detail is set out which broadly meets this Criterion in Article 93a (2) of the Act on Banks (Annex 3) in respect of banks.

273. The verification of the legal status of legal persons is amplified to some extent in the non-binding Recommendation 3/2003 to the banks in paragraph 4, where it is noted that "it is useful to require documents allowing an understanding of the nature of the organisational structure, a verification of the management's identity, the persons authorised to act and the owners. Special attention should be paid to companies, the shares of which are in bearer form". . The examiners were pointed to provisions in other legislation (article 38a1 of the Insurance Act, article 21 of the Collective Investment Act and article 73a (1) of the Securities Act which broadly meet the criteria set out in paragraph 5.4 b of the Methodology in respect of other financial institutions. Again, there is no enforceable guidance on how the verification process should apply to legal persons. This is particularly relevant in the context of non-resident legal persons. Enforceable guidance should be generally provided on the verification issue in respect of legal persons.

274. Criteria 5.5, 5.5.1 and 5.5.2 (b) are also asterisked. Regarding the identification of the beneficial owner, Section 5 of the AML Law, dealing with identification issues, does not provide any such direct obligations.

275. Article 89, para. 3, as noted earlier, of the Act on Banks, addresses the issue partly (but only for credit institutions) in this way:
"*A bank or branch office of a foreign bank shall be obligated in every transaction exceeding € 15 000 to determine the ownership of funds a client used for the transaction. For the purposes of this provision, ownership of funds shall be determined by a binding written statement of the client, in which the client is obligated to declare whether these funds are his property and whether he is conducting the transaction for his own account. If the funds are owned by another person or if the transaction is conducted for the account of another person, the client's statement must specify the name, surname, birth register number or date of birth and permanent residence of the natural*

person or the name, registered office, and identification number, if assigned, of the legal person, who is the owner of the funds and for whose account the transaction is conducted".
There is a similar obligation in place in the legislation relating to the insurance and securities sectors.

276. Article 89 (3) Act on Banks partly covers Criterion 5.5.1 (which is marked with an asterisk and which requires a determination of whether the customer acts on his own behalf and the taking of reasonable steps to verify the identity of that other person) for banks.

277. There is a similar obligation in the AML Law in Section 6 (2) in respect of all obliged entities. They should find out in "business activity" if a natural or legal person acts in his own name. It is unclear whether this is intended to cover both the CDD process at account opening or the establishment of business relations, as well in the handling of transactions. While Criterion 5.5.1 may thus be partly satisfied, Criteria 5.5 and 5.5.2 (b) in relation to legal persons [which is asterisked] are not fulfilled. The solutions in the AML Law in Section 6 (2) and in the Law on Banks Section 89 (3) may cover the proxy relationship and the identification of a beneficiary but the difficult notion of "beneficial owner" as it is defined in the FATF Recommendations, is not fully addressed. The Glossary Definition defines the notion of "beneficial owner" as "the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted and also incorporates those persons who exercise ultimate effective control over a legal person or arrangement". <u>It is recommended that the elements of this definition are incorporated into the AML Law. It is also strongly advised that enforceable guidance is given as to the measures that need to be in place for identification and verification purposes of beneficial owners of legal persons where company shares can be held in bearer form</u>.

278. Criterion 5.6 covers the requirement to obtain information on the purpose and intended nature of the business relationship (the business profile). This should be required by other enforceable means and be sanctionable. The need to understand the type of business operations is briefly covered in Recommendation 3 / 2003 to the banks, which is non-binding. This needs to be in enforceable guidance.

279. According to Criterion 5.7 of the Methodology, again asterisked, financial institutions should be required to conduct ongoing due diligence (which should include e.g. scrutiny of transactions to ensure that they are consistent with knowledge of the customer and the customer's business and risk profile) on the business relationship. This is referred to (again briefly) in Recommendation 3/2003 in that identification and verification of submitted documents should be carried out on an ongoing basis, in particular in the case of significant changes in behaviour or changes in the circumstances connected with the business of a client. The examiners could not find reference in Recommendation 3/2003 or in any other document to Criterion 5.7.2. Even if this is being implemented in practice, the Methodology requires that this concept should now be embedded in Law or secondary legislation. Thus, Criterion 5.7 is not satisfied.

<u>Risk</u>

280. Criterion 5.8 requires financial institutions to perform enhanced due diligence for higher risk customers.

281. The exemptions for identification purposes, which are in line with the Methodology (and the Second European Union Directive) are outlined above. The AML Law and the Law on Banks are silent on the issue of risk. Sections 4 and 5 of Recommendation 3/2003 briefly cover the risks involved for certain groups of clients in the banking sector: decisions on acceptance of customers interested in private banking are advised to be made by the AML Compliance Officer; there is some reference to country of origin as a risk indicator but no reference to legal persons or arrangements that are trusts. There is no guidance (enforceable or otherwise) on higher risk

customers in the insurance and securities sectors. Indeed in the insurance sector, it appeared that the concept of "higher risk customers" was completely unclear. Criterion 5.8 (enhanced due diligence) or higher risk customers should be incorporated in generally enforceable guidance across the whole financial sector. Other than this, the application of CDD measures are not applied on a risk sensitive basis.

Timing of verification

282. The replies to the Questionnaire indicate that non face to face transactions are not allowed. In the case of banks this is said to flow from the provisions of Article 27 (1) Law on Banks, which requires banks and branch offices to conduct transactions on a contractual basis – by which it is understood to mean that the customer has had to come into the bank and enter into contractual arrangements with the bank before the customer can utilise the business relationship. The position so far as other financial institutions are concerned is the same as in the banking sector, namely that a contractual relationship is required. The AML Law is silent on this point. It seems to the examiners that clear enforceable guidance is required across the whole financial sector on the timing of the verification process in line with paragraphs 5.13 and 5.14 of the Methodology.

Failure to satisfactorily complete CDD

283. There is in the AML Law which the evaluators considered on-site and subsequently a provision which generally permits reporting entities to refuse transactions where a natural or legal entity refuses identification under paragraph 5 or refuses to provide documentation regarding the identity of the person in whose name he is acting (Section 6 [3] b, paragraphs 2 and 3). This provision seems to cover both a refusal of identification data generally and identification data in relation to a refusal of documentation when required to verify that the natural / legal person acts in his / her own name. By contrast, the Act on Banks, Article 89 (1 and 3) requires credit institutions to decline to execute a transaction if the client fails to identify himself or fails to meet the requirements which deal with the binding written statement required to determine the ownership of funds. Thus, while some aspects of the relevant Methodology criteria are covered in Law, Criteria 5.15 and 5.16 appear not to be fully satisfied. Subsequently the evaluators have been provided with a revised translation of these relevant provisions which show that there is such an obligation in the AML Law. Notwithstanding this, the evaluators still had concerns as to whether in practice this obligation was understood by all financial institutions. The evaluators consider that this issue should be clarified by the FIU and the relevant prudential supervisors with the financial institutions.

Existing customers

284. Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk. Some examples are given in the box in the Methodology of the times when this might be appropriate – e.g. when a transaction of significance takes place, when the institution becomes aware it lacks sufficient information about an existing customer. There are references in Recommendation 3 / 2003 to the permanent monitoring of accounts but no specific references to the situation envisaged in 5.17. The *aide-mémoire* of the National Bank of Slovakia for AML inspection makes reference to the need to check whether old customers have been identified and verified according to the AML Law, which indicates that this is undertaken by Banking Supervision on a selective basis. The practice in the banking sector is now based on a new provision introduced in January 2004 (Art 93a Act on Banks), which generally requires banks to review the identification of clients when a transaction occurs. The Slovakian authorities consider that this provision of itself satisfies the relevant criterion. However, the examiners take the view that the criteria for reviewing existing customers, in line with 5.17, could be more clearly elaborated.

European Union Directive

285. According to Article 7 of the European Union Directive, member States shall ensure that financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. In addition, these authorities should have the power to stop the execution of a transaction that has been brought to their attention by an obliged person who has reason to suspect that such transaction could be related to money laundering. The Slovak authorities indicated that Sections 9 and 7 of the AML Law cover this issue. While Section 9 appears to recognise the principle of *ex ante* reporting the language of section 9 in the translation of the AML law with which the examiners were provided on-site is discretionary ("can") rather than mandatory (shall). The examiners could not find a clear provision in the AML Law or Recommendation 3/2003 which places the onus on reporting entities to refrain from executing unusual transactions until they have appraised the authorities. The Slovakian authorities shortly before the evaluation discussions provided a translation of the AML Law which they consider to be more accurate. They indicated that section 9 should be read as " shall" rather than "can". Even if this translation is accurate, the examiners were satisfied that the FIU understood the obligation in a discretionary way (i.e. "can"). The examiners consider that clearer guidance on this point should be given to the reporting entities.

Recommendation 6

286. Slovakia has not implemented adequate AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEP). Slovakia intends to adopt new provisions in the context of the Third European Union Directive. The AML Law and the Act on Banks are silent on this issue.

287. In the Recommendation of the Banking Supervision Division of the National Bank of Slovakia No. 3 / 2003, the credit institutions are advised that if the persons are publicly exposed in Slovakia or abroad, it is useful to concentrate also on the identification of their closely connected persons (natural and also legal) and to acquire a sufficient overview of the sources of their financial incomes. The other sectors are not subject to guidance on mitigating their vulnerability to PEPs.

288. Thus at present, in the banking sector, while there is some guidance, it does not have the force of law. Formally no financial institutions are required to put in place appropriate risk management systems to determine whether a potential customer, or beneficial owner, is a politically exposed person.

289. As regards Criterion 6.2, Recommendation 3/2003 to the credit institutions advises that before the opening of an account for such a person that the approval of a person on a higher decision making level, or the approval of the AML compliance officer should be required. There is no guidance as to what should be done if subsequently a financial institution finds a client to be (or he / she becomes) a PEP with regard to approval for the continuation of the business relationship. Requirements to take reasonable measures to establish the sources of wealth and funds or the requirement to conduct enhanced ongoing monitoring on the relationship (Criteria 6.3 and 6.4) are not covered by enforceable means in Slovakia in respect of financial institutions generally.

290. There is no guidance on PEPs in the insurance and securities sectors on this issue either.

Additional elements

291. The brief guidance that there is in the Banking sector covers prominent domestic officials. Slovakia had signed but not ratified and implemented the 2003 United Nations Convention against Corruption at the time of the on-site visit.

Recommendation 7

292. Criteria 7.1 to 7.4 of the Methodology cover cross-border banking and other similar relationships (gather sufficient information about a respondent institution, assess the respondent institution's AML/CFT controls, obtain approval from senior management, document the responsibilities).

293. Correspondent banks are only identified in the same way as banks identify any other legal entity. The banks call for the licence of the respondent bank to satisfy themselves that the bank is able to operate lawfully as a bank. Beyond that, no enquiry is made into the reputation of the institution or the quality of the supervision of it. Though the recommendation of the NBS 3 / 2003 stresses that it is important to verify also the level of enforcement of the preventive AML/CFT procedures in the country of the origin of the bank, this is only provided for in non-enforceable guidance. Accordingly criteria 7.1 and 7.2 are largely not covered. The obtaining of approval from the senior management for the opening of a correspondent relationship, as required under criterion 7.3 is not provided for.

294. Criteria 7.4 and 7.5 are similarly not addressed by law, regulation or other enforceable means. In practice therefore it is difficult to assess how the Slovakian banks are handling their correspondent banking relationships.

295. Criteria 7.1 to 7.5 potentially apply to financial institutions other than banks. The Methodology contains one example of similar relationships being established for securities transactions and fund transfers. There is no guidance on this issue by the FMA or other authority.

296. Overall, the Slovak authorities need at least to prepare enforceable guidance covering Criteria 7.1 to 7.5 in respect of all participants in the financial sector that may be involved in correspondent or similar relationships.

Recommendation 8

297. Criteria 8.1 to 8.2.1 of the Methodology cover: policies to prevent the misuse of technological developments; policies regarding non-face to face customers including specific and effective CDD procedures to address the specific risks associated with such customers.

298. The National Bank advised that there were no real guidelines on new technological developments and that these issues should be solved within the banks. The "Risk Management Principles for Electronic Banking of the Basel Committee on Banking Supervision" of May 2001 had not been circulated to the credit institutions. The Slovak authorities indicated that they do not disseminate documents issued by the Basel Committee as their documents are available on the relevant website.

299. The issuing of E-money is already one of the functions of banks. This can be authorised under a special procedure to issue E-money. No institutions other than banks have been authorised to issue E-money so far. The National Bank emphasised that they have been very strict on this. Though theoretically other E-money institutions could be authorised in future.

300. E-money institutions are regulated in their operations by the Payment Act, namely Article 21, para. 10, which covers the identification of clients as follows: "An authorised holder shall prove his identity by the use of:

- a bank payment card with a personal identification number or the signature of the authorised holder identical with the signature on the bank payment card, unless a different proof of

identity has been agreed by the issuer and the authorised holder pursuant to a separate act (a cross-reference to the AML Law); a personal identification number shall be assigned by the issuer;

- an electronic banking payment application by personal identification number or similar code for an electronic banking application assigned by the issuer, and at the same time by an authentication code agreed by the issuer with the authorised holder or by electronic signature pursuant to a separate Act (Act No. 215/2002 on Electronic Signature);

301. As noted (and in line with Article 21c, para. 4, of the Payment Act) E-money institutions are subjected to the AML Law, and in the area of client identification, beneficial owner identification, record keeping and reporting to the FIU, they have to adhere to the requirements and rules prescribed in Articles 5, 6 and 7 of the AML Law. Also other duties of the AML Law (prohibition of tipping-off and the postponement of a transaction; Articles 8 and 9) are applicable to E-money institutions.

302. Thus, other than the relevant provisions in the Payment Act, there is no specific enforceable regulation or guidance regarding the need for internal policies within financial institutions to prevent the misuse of technological developments in money laundering or financing of terrorism schemes.

303. There is no explicit provision covering non-face to face transactions in the AML legislation. As noted earlier, Article 27 paragraph 1 letter (a) of the Act on Banks determines that credit institutions shall conduct transactions with clients on a contractual basis, which presumes account opening and verification is done before business is commenced. A client has to come to the bank to commence business relations – the owner or an authorised person who has to have a written proxy, authorised by a public notary and complete the process in accordance with Article 89 Act on Banks and the Civil Code (which covers the authorisation of proxies).Thus accounts cannot be opened through the Internet. The examiners were told that the Internet is not widely used for banking transactions, though it would be helpful if the National Bank developed guidance on how the CDD process should operate in Internet transactions.

3.2.2 Recommendations and comments

304. As has been noted in the text above, some of the criteria under Recommendation 5 (all of which should at least be required through enforceable means and many of which require embedding in law or secondary legislation) are not so provided in Slovakia. Some of the issues in respect of banks (which conducts most of the activity in the financial sector) are covered in the non binding Recommendation 3/2003 and it is clear from the National Bank of Slovakia Banking Supervision informal *aide-mémoire* that many of the issues in the Methodology which are insufficiently proscribed in the Slovak system as yet are examined, at least in banking supervision. A key finding of banking supervision has been improper identification of customers, which underlines the necessity for the proper framework to be created for the major criteria under Recommendation 5.

305. The comments set out in the section above will not be fully repeated here. All the missing requirements are fully detailed in the summary of findings underlying the rating on Recommendation 5 beneath. That said, some issues are highlighted specifically here to which particular attention should be given.

306. The definition of the beneficial owner is not comprehensively covered in the current AML Law or in the Act on Banks or any other relevant Act, or secondary legislation, in respect of insurance and securities. It is important that the supervisory authorities have a consistent approach

to this important issue. The incorporation of the definition of beneficial owner (as defined in the Glossary to the FATF Recommendations) in the AML Law (to ensure that it applies consistently across all the financial sector) is strongly recommended, as a matter of urgency.

307. On verification of identification data generally, as noted, the Act on Banks, the Insurance Act and the legislation in the securities sector contain some provisions. The AML Law is generally silent on this issue. There should be enforceable guidance on how the verification process should apply to non-resident legal persons and the timing of verification should be clarified across the whole of the financial sector.

308. The Slovak authorities have not yet implemented measures on enhanced due diligence in relation to politically exposed persons, but intend to do so following the enactment of the Third European Union Directive. Indeed, guidance on PEPs and correspondent banking relationships, and some of the other essential elements of Recommendations 5 to 8, which should be provided for in law, regulation or by other enforceable means, is only covered in general terms in the National Bank Recommendation 3/2003, but this is not legally binding. The other sectors also appear not to be covered in respect of these issues by enforceable guidance. It seems to the examiners that a uniform and co-ordinated approach to this issue would help. Therefore, the authorities are strongly advised to provide more clarification and enforceable guidance in order that the same standard is applied in the whole financial market. This is an area where a formal coordination body could perhaps assist in the development of consistent enforceable guidance across the financial market.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**Partially compliant**	The Act on Banks Article 89 provides for identification requirements in the banking sector and determination of ownership of funds and determination of whether the customer acts on his own behalf. However: • The provisions of the AML Law on identification do not relate to account opening or establishing business relations; while some other legislation covers this in part, it would be preferable for this issue to be covered across all reporting entities in the AML Law. • No reference in insurance and securities laws or regulations to the requirement to undertake CDD measures when establishing business relations. • No reference in Law or Regulation to CDD measures when carrying out occasional wire transfers (which fully include the verification process) and in cases of doubts regarding the veracity or adequacy of previously obtained customer identification data; • No reference in Law or Regulation to the need to carry out CDD measures in occasional transfers covered by the Interpretative Note to SR.VII; • No specification in the insurance and the securities laws as to which documents are reliable independent documents for verification of identification for natural persons; • No enforceable guidance on how the verification process should apply to legal persons (especially non-resident legal persons). • The timing of verification should be clarified across the whole of the financial sector; • The definition of beneficial owner as set out in the FATF

		Recommendations in respect of ultimate control of the customer and the natural persons who exercise ultimate effective control over legal persons or arrangements is missing; • The notion of ongoing due diligence is insufficiently embedded in Law or Regulation; • The need for enhanced due diligence, in respect of a higher risk customers, needs to be incorporated in enforceable guidance across the whole financial sector; • The practice of making an STR where CDD cannot be completed satisfactorily was uncertain; • Enforceable guidance to all financial institutions covering the policy on application of CDD measures to existing customers could be refined.
R.6	**Non compliant**	Slovakia has not implemented adequate measures concerning PEPs, which are enforceable.
R.7	**Non compliant**	No law, regulation or enforceable guidance on cross-border correspondent relationships.
R.8	**Non compliant**	No specific enforceable guidance on measures to be put in place to avoid the risks associated with technological developments and non face to face relationships.

3.3 Third Parties and introduced business (Recommendation 9)

3.3.1 Description and analysis

309. Intermediaries are said to be rarely used in the Slovak Republic.

310. There are no provisions in the AML Law which cover the introduction of clients by third parties to the organisations obliged to identify them or the delegation of CDD obligations to any third party, such as a business introducer. The National Bank of Slovakia indicated that Article 89, paragraph 1, of the Act on Banks means account opening through intermediaries is not possible. They indicated also that it was similarly not possible for intermediaries to perform some of the elements of the CDD process. It appears that (subject to the exemptions in Section 5 (5) of the AML Law), banks and foreign banks branches do have to follow identification procedures set out in 3.2 above. Thus, it appears that Criteria 9.1 to 9.5 are fully met for the banks.

311. For information, in cases where a life insurance contract is concluded by the means of an insurance agent or broker, the insurance agent or broker can also verify the identification. The agent or broker is obliged to refuse a conclusion of an insurance contract which preserves anonymity. Rules and duties regarding third parties and introduced business are covered in Article 38, part 10 and Article 38a of the Insurance Act. The obligations set out under the criteria from 9.1 to 9.5 fall upon the responsibilities of the insurance companies and it is for them to arrange compliance with these obligations through their contractual arrangements with their brokers or agents. The broker can operate outside of Slovakia within the European Economic Area. The FMA was able at the time of the on-site visit to sanction an insurance company in respect of the obligations set out in the criteria 9.1 to 9.5. It will be appreciated that the relationship between the broker and the life insurance company is an outsourcing/ agency relationship and R.9 does not apply here because the agent is to be regarded as synonymous with the financial institution.

312. Investment service providers (which are a very small part of the financial sector) are allowed to rely on intermediaries or other third parties to perform CDD or to introduce business provided

that the intermediaries or third parties are subject to the supervision of the FMA. It was unclear how widely used this facility is. It is the responsibility of the investment provider to ensure that the obligations in 9.1 to 9.5 are complied with and the FMA is in the position to sanction in the event of non-compliance.

3.3.2 Recommendation and comments

313. Though the legal structure is in place to cover the requirements of Recommendation 9, the examiners are not in a position to comment on effectiveness of implementation of this Recommendation.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**Largely compliant**	Though intermediaries are rarely used, there is the possibility for investment service providers (which are a small part of the financial sector), to act in this way and the examiners had insufficient information on their compliance.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

314. Criterion 4.1 states that countries should ensure that no financial secrecy law will inhibit the implementation of the FATF Recommendations. Areas where this may be of particular concern are the ability of competent authorities to access information they require to properly perform their functions in combating money laundering or financing of terrorism; the sharing of information between competent authorities, either domestically or internationally; and the sharing of information between financial institutions where this is required by Recommendations 7 and 9 or SR.VII.

315. This area is regulated by Article 91 of the Act on Banks. All information and documents on matters concerning the clients of a bank or branch office of a foreign bank, which are not publicly available, especially information on transactions, account and deposit balances are subject to bank secrecy. A bank or branch office of a foreign bank shall be obliged to keep such information confidential and protect it against disclosure, misuse, damage, destruction, loss or theft.

316. Information and documents on matters covered by bank secrecy may be disclosed by a bank or branch office of a foreign bank to a third person only subject to prior written consent of the client concerned or upon his written instruction, unless stipulated otherwise by this Act. In return for payment, a client shall have the right to obtain information kept on him in the database of a bank or branch office of a foreign bank, and to receive a transcript of such information. Disclosure of information in summary form where the name of a bank or branch office of a foreign bank, the name and surname of a client is not evident is not considered a violation of bank secrecy.

317. For the purposes of bank secrecy (and the joint register of banking information) according to Article 91 paragraph 2 , a person is deemed a client of a bank or branch office of a foreign bank: if the bank or branch office of a foreign bank has negotiated a transaction with him, even if the transaction eventually did not take place; even if a person has ceased to be a client of a bank or branch office of a foreign bank; even if he is a person about whom a bank or branch office of a foreign bank received data from another bank or branch office of a foreign bank.

318. A report on matters concerning a client that is *prima facie* subject to bank secrecy shall be submitted by a bank or branch office of a foreign bank without the prior approval of the client concerned solely upon request made in writing by:

- a court of justice, including a notary public in the capacity of a court commissioner, for the purposes of civil proceedings to which the client of the bank or branch of a foreign bank is a party, or the subject of which is the property of the client of the bank or branch office of a foreign bank;
- a law enforcement authority for the purposes of criminal prosecution;
- tax and Customs authorities, for the purposes of Tax or Customs proceedings to which the client of the bank or branch of foreign bank is a party pursuant to a separate regulation, including the execution of a decision and enforcement proceedings;
- a financial control authority performing financial control pursuant to a separate regulation of the client of the bank or branch office of a foreign bank;
- a court executor assigned to perform execution pursuant to a separate regulation;
- a state administration authority for the purpose of executing a decision imposing an obligation on the client of the bank or branch office of a foreign bank, or on a creditor of the client of the bank or branch office of a foreign bank, to make a certain payment;
- the criminal police and financial police services of the Police Corps for the purposes of detecting criminal acts, tax evasion, illegal financial operations, and money laundering;
- the Ministry of Finance in the course of controls;
- receiver and preliminary receiver in bankruptcy and composition proceedings, if the client of the bank or branch office of a foreign bank is involved in proceedings pursuant to a separate regulation;
- the Financial Market Authority for the purposes of supervising the financial market pursuant to a separate law;
- a competent state authority for the purposes of discharging obligations arising from an international treaty binding upon Slovakia, where the discharge of obligations according to this treaty may not be declined on account of bank secrecy,
- the National Security Office, the Slovak Intelligence Service, the Military Intelligence and the Police Corps for the purposes of performing security checks in accordance with a separate regulation;
- the Office for Personal Data Protection for the purposes of supervising pursuant to a separate law the processing and protection of personal data of a client of a bank or a branch office of a foreign bank;
- the Supreme Control Office of Slovakia for the purposes of an inspection pursuant to a separate law of a client of a bank or a branch office of a foreign bank;
- the Judicial Treasury for the purposes of collecting a judicial claim under a separate law from a client of a bank or the branch office of a foreign bank.

319. Compliance with the obligation of banks and branch offices of foreign banks to report unusual business transactions pursuant to a separate law (a cross-reference to the AML Law), shall not be deemed a violation of bank secrecy. The same applies to the obligation of banks and branch offices of foreign banks to notify, pursuant to a separate law (a cross-reference to the Criminal Procedure Code) the law enforcement authorities of any suspicion of a criminal act committed or contemplated in connection with matters which are otherwise subject to bank secrecy.

a) Obliged entities

320. This issue is also covered in the AML Law in Article 7, para. 6, which states that obliged entities, in fulfilling the obligations under the AML Law do not violate provisions of professional secrecy. By virtue of Article 6 (3) (c) of the AML Law, a reporting entity is obliged to enable the Financial Police to view all documents or IT means etc. that deal with legalisation and take copies etc.

321. Part 4 and 5 of Article 38(a) of the Insurance Act covers financial institution secrecy or confidentiality.

- Part 4: The insurance company and branch of a foreign insurance company are even without the approval and information of the affected persons, entitled to make data to which clauses 1 to 3 and article 41 clause 1 apply available from their information systems and provide them only to persons and bodies to which they have a legal obligation to submit or a legal authorisation to submit information which are subject to the duty of confidentiality under article 41, only during the provision and only in the scope of providing information protected by the duty of confidentiality under article 41.

- Part 5: The data to which clauses 1 to 3 and article 41 clause 1 apply can be made available or submitted abroad by the insurance company and branch of a foreign insurance company only under the conditions stated in a special act, or if it is so determined in an international treaty by which Slovakia is bound and which has preference over the law of Slovakia.

322. Subject to disclosure to the FIU under the AML Law, and to law enforcement for the detection of criminal acts, members of the statutory and supervisory bodies, employees, liquidators, receivers, and other persons involved in the activities of an investment firm, foreign investment firm, central depository, management companies or a stock exchange, are obliged to keep confidential any facts they learn due to their position or in the discharge of their duties, which is material for the development of the financial market or concerns the interests of its individual participants.

323. At the time of the on-site visit, all supervisors had access to material which otherwise might be subject to financial secrecy in order to perform their supervisory functions.

b) Sharing of information between competent authorities

324. Information regarding AML issues is shared between the FIU and the NBS on the basis of a Memorandum of Understanding (the co-operation agreement between the NBS and the Ministry of Interior, Presidium of Police Corps dated December 2002, as amended in November 2004). Internationally the NBS in its supervisory capacity has signed ten MoUs with foreign counterparts. Not all of the existing agreements cover the exchange of information on AML/CFT issues, though agreements with 4 of the countries (Austria, Hungary, Malta and Germany) contain such provisions.

c) Exchange of information with financial institutions

325. The reporting entities complained of the absence of feedback on STRs.

3.4.2 Recommendations and comments

326. There are no reported practical restrictions in the Slovak legislative framework limiting competent authorities from implementing the FATF Recommendations and performing their anti-money laundering functions. The FIU is able, in analysing reports, to access further information from the reporting entity and other reporting entities.

327. In practical terms, the examiners had some concerns that financial secrecy provisions can limit the exchange of information between domestic prudential supervisory authorities, i.e. the FMA and the NBS, as the power to exchange information with domestic competent authorities under the NBS Act does not specifically extend to AML/CFT issues and the evaluators advise that special provision in law is made for this .[8]

328. The obligations on lawyers and other professionals to report unusual transactions and to submit information needed for anti-money laundering purposes is stipulated in the AML Law, subject to the usual restrictions on client confidentiality when representing the client in proceedings or advising them on how to avoid or initiate proceedings. However, the present non-reporting by the professions, particularly lawyers, might indicate that their understanding of the reporting obligation is in practice rather unclear. Further guidance by relevant supervisory body to the professional sector may be advisable.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**Largely compliant**	Most of the basic provisions are in place to mitigate the rules of financial secrecy but clearer provision should be made for supervisory authorities to exchange information with other competent authorities enquiring into activities which might be in breach of AML / CFT requirements.

[8] At the time of the adoption of the report, the supervisory role of the NBS had been extended to cover the work of the FMA.

3.5 Record keeping and wire transfer rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10

329. Recommendation 10 has numerous criteria under the Methodology which are asterisked, and thus need to be required in law or regulation. Financial institutions should be required by law or regulation:

- to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if properly required to do so) regardless of whether the business relationship is ongoing or has been terminated;
- to maintain all records of the identification data, account files and business correspondence for at least five years following the termination of the account or business relationship (or longer if necessary) and the customer and transaction records and information;
- to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

330. Transaction records are also required under Criteria 10.1.1 (which is not asterisked) to be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution. This needs to be required by other enforceable means (and be sanctionable).

331. Transaction records are covered in Article 42 (1) Act on Banks as "documents on conducted operations" which credit institutions are obligated to store for at least five years after the transaction has been concluded. Article 6 (b) 2 of the AML Law broadly follows this, requiring all documents and data about business activity to be kept for five years. It does not say "at least" five years. In neither law is there a reference to keeping the documents longer than five years if requested by a competent authority in specific cases and upon proper authority.

332. In no guidance which is enforceable have the examiners seen any reference to the need to keep sufficient records sufficient to remit reconstruction of individual transactions to provide, if necessary, evidence for the prosecution of criminal activity. The examiners were not provided with information as to whether records kept met the requirements of 10.1.1 effectively.

333. Turning to identification data, the Act on Banks requires credit institutions to store copies of documents and data on verification of client identity and documents determining ownership of money used by clients for at least five years "after a transaction is concluded" (Article 42 [1]). The AML Law is clearer on the period of retention, and unlike the Act on Banks is more in line with the standard by requiring [in the English translation the examiners have seen] the storage of identification document during five years since the termination of the contractual relation. Identification documentation is not spelled out so as to include account files and business correspondence. There is no reference to the keeping of the data longer than five years if required properly to do so.

334. Criterion 10.3 (ensuring customer and transaction records are available on a timely basis to competent authorities) was explained as being covered by Article 7 (4) of the AML Law and Article 6 (3) (d) of the AML Law. The latter seemed the more relevant, but only covers the provision of information on business activities (it was advised that the definition in article 5(2) AML Law include customer records as well as transaction records). .

335. Part 13 of Article 38 of the Insurance Act provides for the retention of data and copies of documents proving the client's identity and the documents ascertaining ownership of funds used by a client to conclude a contract for at least ten years after the termination of the contractual relationship.

336. The examiners were advised that investment firms are also obliged to store records relating to their activities and other documentation relating to their services for ten years.

SR.VII

337. The Act on the Payment System (Act No. 510 / 2002 Coll. as amended by Act No. 589/2003 Coll. and Act No. 604/2003 Coll. regulates *inter alia* the performance of both domestic and cross-border transfers of funds by "performing institutions" (that is to say the National Bank of Slovakia and banks or branches of a foreign bank or other person(s) authorised to carry out cross-border transfers. Under Article 11 of the Foreign Exchange Act, cross-border transfers of funds may be performed through places of foreign exchange (other than banks) where licensed to do so. Currently, there are two foreign exchange outlets, which are licensed to perform cross-border and domestic transfer services but always through licensed banks. They are all supervised by the National Bank.

338. Under Criterion SR.VII.1, the Methodology requires for all wire transfers that financial institutions obtain and maintain the following full originator information (name of the originator; originator's account number (or unique reference number if no account number exists) and the originator's address (though countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth) and to verify that such information is meaningful and accurate. Under VII.2 full originator information should accompany cross-border wire transfers though under VII.3 it is permissible for only the account number to accompany the message (subject to conditions discussed below).

339. Article 4, para. 4, of the Payment Act provides:

"A transfer order for domestic transfer shall contain:

- a banking contact, which shall mean:
  - the account number of the originator and the identification code of the performing institution of the originator; for a transfer order for collection shall be stated the account number of the owner and the identification code of the performing institution of the account owner; the account number of the originator shall not be required for a domestic transfer carried out by cash deposit, and
  - the account number of the beneficiary and the identification code of the performing institution of the beneficiary; for a transfer carried out by cash disbursement the account number of the performing institution of the beneficiary shall be stated instead of the account number of the beneficiary.
- the sum to be transferred,
- the currency identification; if a currency identification is not stated, the transfer shall be considered to be a transfer in Slovak crowns,
- the constant symbol used in the payments system,
- the place and date of the drawing up of the transfer order, and
- the signature of the originator identical with the specimen signature stored at the performing institution of the originator, with the exception of transfers carried out by an electronic means of payment.

The Slovak authorities advised that all this information accompanies domestic wire transfers.

340. As is permissible under SR.VII (in respect of domestic wire transfers), the account number of the originator only is required to accompany the wire transfer. However, this option is permitted only where full originator information, including name and address, can be made available to the beneficiary financial institution and to competent authorities within three business days of receiving a request, and domestic law enforcement authorities can compel immediate production of it. The Slovakian authorities indicated that it was not a problem to pass such information upon request to the beneficiary financial institutions and/or to domestic law enforcement.

341. Article 4, paragraph 6, of the Act on the Payment System provides that performing institutions shall not be obligated to accept transfer orders without the data required in paragraph 4. The Slovakian authorities advised that it is impossible to pass incomplete transfer orders because of the existing control mechanism, which is a component part of the only payment system provider in Slovakia (the NBS).

342. Article 12, paragraph 6, covers orders for cross-border transfers. It provides that the transfer order shall contain:

- the name and account number of the originator; the account number of the originator shall not be required for a cross-border transfer carried out by cash deposit,
- the amount of the cross-border transfer and the denomination of the currency,
- the name of the account to which the cross-border transfer is to be carried out and the number of the account if known; for a cross-border transfer carried out by cash disbursement, if the beneficiary is a natural person the given name, surname and home address of the beneficiary shall be stated; if the beneficiary is a legal person the name and address of the registered office shall be stated,
- data enabling the identification of the performing institution of the beneficiary,
- the symbols of the foreign currency statistics, by which shall be understood the payment title and other symbols pursuant to a separate act or on the basis of a separate act,
- the place and date of the drawing up of the transfer order,
- the signature of the originator identical with the specimen signature maintained at the performing institution of the originator, with the exception of transfers carried out electronically, and
- other information required for the carrying out of the cross-border transfer on the basis of a decision of the performing institution of the originator.

The Slovak authorities advised that all this information accompanies cross-border wire transfers.

343. There are also other obligations set out in Article 12 of the Foreign Exchange Act in relation to wire transfer business (which are not relevant for SR.VII purposes).

344. It appears that the originator's address (or other alternative data provided for by the Methodology which may be substituted for an address) does not accompany all cross-border wire transfers. Therefore not all of the "full" originator information required to accompany cross-border wire transfers is provided, as required by Recommendation VII.2.

345. So far as the examiners are aware, no specific guidance has been given on batching. The full obligations under SR. VII are not monitored and/or sanctioned – only the relevant provisions of the Payment Act. Criteria VII.5 is implemented by article 12 (6) a) of the Payment Act.

3.5.2 Recommendation and comments

346. The broad requirements of Recommendation 10 are embedded in the law but there are some areas where the legal basis needs tightening up:

- It would be helpful to provide a legal basis for keeping transaction records and identification data for longer than five years if necessary when properly required to do so in specific cases by a competent authority;
- The period of retention of identification data should be the same in the Act on Banks and the AML Law (i.e. at least five years following the termination of the account or business relationship);
- Identification data to be retained should be clarified in the AML Law or in Decree to include account files and business correspondence;
- The AML Law should be clear that customer identification data (as well as transaction records) should be available on a timely basis to a competent authority in specific cases upon proper authority (which should include the Police generally and not just the Financial Police).

347. Enforceable guidance could usefully cover the need to keep sufficient transaction records to permit reconstruction of individual transactions to ensure that retention policies effectively match prosecutorial and law enforcement requirements.

348. So far as SR.VII is concerned, the Payment Act (article 4(4) for domestic wire transfers and article 12(6) for cross-border payments) generally covers orders for wire transfers and therefore the general information which should be required to be obtained in line with Criterion VII.1, but is not complete on the information that should accompany domestic and foreign wire transfers. The overall view of the assessors is that the Payment Act and any other relevant instructions should be reviewed in the light of the criteria on SR.VII in the 2004 Methodology and the latest Interpretative Note to ensure that all the requirements of these standards are clearly provided for in Slovakia.

349. Having said this, the examiners have considered what is provided in the current Law and have the following comments.

350. It was unclear, in domestic wire transfers, if full originator information could be provided if requested. Full originator information, including name, address (or other permitted data in lieu of address) should be available, if requested, in respect of domestic wire transfers.

351. The originator's address (or other permitted data in lieu of an address) should accompany all cross-border wire transfers to ensure that full originator information accompanies cross-border transfers. The full scope of SR VII has not yet been covered by the Slovakian authorities. In addition to the foregoing, there are no provisions which would cover SR VII.4 and SR.VII 5. The full scope of SR VII is not monitored.

352. The Payment Act appears silent on the issue of verification of the accuracy of the data provided in ordering wire transfers, as required under the Methodology. In the absence of a clear legal obligation to verify the accuracy of the data, it was difficult to assess whether this was carried out to ensure that the information provided is accurate and meaningful.

353. Insufficient information was provided by the Slovak authorities on the second part of SR.VII, requiring countries to take measures to ensure that financial institutions conduct enhanced scrutiny of (and monitor for) suspicious activity funds transfers which do not contain complete originator information (name, address and account number).

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**Largely compliant**	Article 42 of the Law on Banks covers transaction records and Article 6 of the AML Law broadly covers the obligations. However: • it would be helpful to provide a legal basis for keeping transaction records and identification data for longer than five years if necessary when properly required to do so in specific cases by a competent authority; • the period of retention of identification data should be the same in the Act on Banks and the AML Law (i.e. at least five years following the termination of the account or business relationship); • identification data to be retained should be clarified in the AML Law or in Decree to include account files and business correspondence; •
SR.VII	**Partially Compliant**	• No complete statements in the Act on the Payment System as to what information should accompany wire transfers; • Not all full originator information provided with cross-border transfers; • The full scope of SR VII has not yet been covered by the Slovakian authorities. In addition to the foregoing, there are no provisions which would cover SR VII.4 and SR.VII.5. The full scope of SR VII is not monitored. • No clear obligation to verify the accuracy of data provided, and examiners had a reserve on the effectiveness of verification procedures; • No clear procedures for enhanced scrutiny of funds transfers without complete originator information; • Not all of the obligations of SR.VII were sanctionable.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 and 21)

3.6.1 Description and analysis

Recommendation 11

354. Recommendation 11, which requires financial institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, needs to be provided for by law, regulation or other enforceable means. While there is some overlap with Criterion 5.7, the examiners do not consider that it is sufficient to meet Criterion 11.1 to indicate only that there is an STR or an unusual transaction reporting system in place, which there is in Slovakia.

355. The Slovak authorities advised that each entity should know, according to "know your customer" principles, what an unusual operation is. However, there are no examples or lists of complex or unusual transactions provided to institutions to help them to identify such transactions. Neither is there a provision (in law, regulation or guidelines which can be enforced) that requires reporting entities to specify which operations within their spheres should be considered complex, unusual or lacking an economic or licit purpose or which specifies that internal control procedures should set out the way in which the obligation to conduct a special examination is to be fulfilled. It follows from this that there is no requirement to examine such transactions and set forth any findings in writing or any requirement as to the period of time any such findings should remain available for competent authorities.

Recommendation 21

356. Recommendation 21 requires financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not, or insufficiently apply, the FATF Recommendations. This should be required by law, regulation or by other enforceable means. It places an obligation on financial institutions to pay close attention to any country that fails or insufficiently applies FATF Recommendations and not just countries designated by FATF as non-co-operative (NCCT countries).

357. There is no specific requirement in the AML Law which covers Recommendation 21.

358. The non-binding Recommendation 3/2003 refers to the FATF NCCT list in the context of banks reaching conclusions on the level of AML / CFT enforcement in countries with which their banks have correspondent relationships, but other than that there is no direct reference to NCCT countries. Beyond the banking sector, no competent authority has provided any special guidance as to countries which may fall within this category because of secrecy rules or for other reasons. Thus, there are no effective measures in place to ensure that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries (Criterion 21.1.1). It follows from the comments in respect of Recommendation 11 that there is no requirement to examine and keep written findings in respect of transactions from such jurisdictions which have no economic or visible, lawful purpose.

3.6.2 Recommendations and comments

359. An enforceable requirement should be introduced in respect of all financial institutions to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and examine their background and purpose and set out their findings in writing and keep the findings available for competent authorities for at least five years.

360. A requirement to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations should be introduced. To supplement this, country specific guidance should be considered for all financial institutions about those countries (other than NCCT jurisdictions) which might, in Slovakia's opinion, have weaknesses requiring such special attention. The background of transactions from such jurisdictions which appear to have no apparent economic or visible lawful purpose should be examined and written findings kept to assist competent authorities. Slovakia should satisfy itself that it has the capacity to apply appropriate counter-measures to countries which continue not to apply or insufficiently apply FATF Recommendations. Examples of possible counter-measures are set out in the Methodology.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**Non compliant**	The Recommendation as such is not required by law, regulation or by other enforceable means. It should be transposed and financial institutions should be required to examine the background and purpose of such transactions, set their findings out in writing and keep the findings available for at least five years.
R.21	**Non compliant**	• No broad requirement to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations; • Factors underlying the rating on Recommendation 11 (Essential Criterion 21.2) are also relevant here.

3.7 Suspicious transaction reports and other reporting (Recommendations 13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13 and SR.IV

361. The obligations in the AML Law are said to stem from Section 4, which defines an "unusual business activity" as a "legal action or other action that may enable a legalisation or financing of terrorism".

362. Article 2 (1) of the AML Law defines legalisation (cf. the criminal offence) as the use or other disposal with income or other property acquired or reasonably suspected of being acquired from illegal activity or participation in an illegal activity carried out on the territory of Slovakia or outside the territory of Slovakia.

363. Article 6 (3) AML Law (duties of a reporting entity) provides (according to the translation received) that a reporting entity shall:

- consider whether the prepared or realised business activity is unusual;
- refuse to execute an unusual business activity if such activity is within the competency of the obliged person or is subject of his/her activity (if)
  - it is unusual business activity and its execution means legalisation or financing of terrorism;
  - natural person or legal entity refuses identification;
  - natural person or legal entity refuses documentation (in respect of) the name he or she is acting for;
- enable the Financial Police to view all documents or information technology means and data on technical media that deal with legalisation;
- after a written enquiry provide the Financial Police in a defined period (with other data).

364. The reporting obligation does not, as noted earlier, cover the NBS in its commercial activities and should do so.

365. Article 7, paragraphs 1, 2 and 3 covers the reporting duty

- A reporting entity shall inform the Financial Police about an unusual business activity without unnecessary delay;
- The "Information duty" means that a reporting entity shall submit a confidential report on an unusual business transaction:
  - orally;
  - in a written form;
  - by phone if the case is urgent, with a written confirmation of such information submitted within three days after the telephone notification;
  - in electronic form;
- A report about an unusual business activity shall contain (mainly):
  - trade name, address and identification number of the obliged person;
  - data found by identification of legal entities and natural persons who deal with the unusual business activity;
  - data on an unusual business activity, mainly the reason of unusuality, time course of action, account numbers, dates when the accounts were opened, owners of the accounts, persons disposing with such accounts, copies of documents according to which the accounts were opened, identification of persons authorised to dispose with the accounts, copies of account contracts and other documents and information:
  - data on any third person who possesses any information on an unusual business activity.

366. Article 12 provides that neither the obliged person nor his/her employee are liable for "casual loss" which arises by reporting an unusual business activity or by its delay, provided the both parties proceeded *bona fide*. In case of doubt, it means that obliged person or his/her employee should proceed *bona fide* in reporting an unusual business activity or in its delay.

367. The State is liable for any loss caused by a delay of business activity. Loss compensation on behalf of a State will be provided by the Ministry of Interior of Slovakia.

368. Customs administration is by Law No. 367/2000 Coll. as amended a compulsory reporting body, which by paragraph 7 of this law has a reporting duty regarding unusual business operations towards Financial Police of Police Force.

369. Essential Criteria 13.1, 13.2 and 13.3 are to be required by law or regulation.

370. There is a direct mandatory reporting requirement in the law requiring reporting entities to report unusual transactions. It covers all funds that were acquired or were reasonably suspected to be acquired by illegal (as opposed to criminal activity), and which is arguably wider than criminal activity, so Criterion 13.1 is satisfied.

371. Criterion 13.2 requires that the obligation to make an STR should apply also where there are reasonable grounds to suspect that or they are suspected to be linked to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. Assuming that the reporting duty under Article 7 is read as including financing of terrorism, 13.2 is still not completely satisfied. "That may enable financing terrorism" appears in English at least to be an objective test whereas the criterion requires reports to be made where there is subjective suspicion (or reasonable suspicion) that funds are linked to terrorism, terrorist acts, or to be used for terrorism or by terrorist organisations. It is unclear whether a report in relation to funds generally to support a terrorist organisation would be covered. As the scope of the terrorist financing

offence is currently very limited, it is considered that this would impact negatively on the reporting duty.

372. Criterion 13.3 is not satisfied as attempted transactions are not covered in the law. There is, however, no threshold on the amount of the transaction to be reported. Criterion 13.4 is satisfied given the broad definition of legalisation in respect of "illegal activities".

373. It was unclear whether the additional element in 13.5 was covered. Though the Law is silent the Slovak authorities considered the definition of legalisation sufficiently broad to cover this.

European Union Directive

374. Paragraph 1 of Article 6 of the Directive 2001/308/EEC provides the reporting obligation to cover facts which might be an indication of money laundering, whereas FATF Recommendation 13 places the reporting obligations on suspicion or reasonable suspicion that funds are the proceeds of criminal activity. It appears that the reporting requirement restricted to unusual business activity is insufficiently wide to cover all facts which might be an indication of money laundering.

375. Article 7 of the Second Directive requires States to ensure that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities (unless to do so is impossible or likely to frustrate efforts to pursue the beneficiaries). It is considered that Article 3 (b) (1) of the AML Law covers this.

Safe Harbour Provisions (Recommendation 14)

376. As noted Article 12 of the AML Law is said to cover Criterion 14.1. While it may meet the spirit of the criterion there are some concerns as to whether the use of the words "casual loss" restricts the protection unnecessarily. It would be helpful if it was clarified that it covers all civil liability for losses incurred as well as all criminal liability so long as conducted in good faith.

Tipping off (Recommendation 14)

377. Section 8 (1) and (2) of the AML Law requires reporting entities and their employees or agents to keep information about reported unusual business activity and measures taken by the Financial Police confidential. This is backed up by Section 13 which provides for administrative penalties of up to SKK 2 millions. It was unclear if the obligation of confidentiality in respect of FIU activity extends to the keeping of the names and personal details of staff of financial institutions that make an STR confidential (as is contemplated in the additional criteria).

Recommendation 19 and SR 1X

378. There is no legal obligation to report all transactions above a fixed threshold to a national central agency. The examiners have been advised that Slovakia has not considered the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency with a computerised database.

379. At the time of the on-site visit, SR IX had only been adopted 6 months before the on-site visit. Though it was agreed with Slovakia that the evaluators would address this Special Recommendation, the representatives of Customs with which the team met were unaware of its terms. The examiners have subsequently been advised that at a policy level, in the Ministry of Finance, decisions have been taken to defer consideration of SR IX until completion of relevant European Union legislation.

380. The import, export and transit of pecuniary means in cash or other equivalent means of payment across the Customs area of the European Union is subject to Customs supervision in Slovakia under Act on Customs (No. 199/2004 Coll. as amended). The reporting obligation in relation to the physical cross border transport of cash, which only applies in Slovakia at the external borders of the European Union, is covered by Section 4(2) of the Act. This provides that a person who imports, exports, or transits pecuniary means in cash or other equivalent means of payment in the total amount equivalent to an amount of at least 15,000 Euros is obliged to report this fact to the relevant Customs Office in writing. A sample of the Form which is required to be completed is annexed to the legislation. Other equivalent means of payment are understood to be securities, cheques, and bills of exchange and precious metals and stones. Thus it appears that for the purposes of Criterion IX.1 Slovakia has legally implemented option (a) a declaration system which requires all persons to submit truthful declarations when making physical cross border transportations of currency and the use of the terms pecuniary means and other equivalent means appears wide enough to cover bearer negotiable instruments. The Customs have the power to stop and detain persons generally subject to Customs control. The examiners were advised by the Slovakian authorities that the Customs authorities, as well as the FIU, have the authority to request further information on the origin of the currency and its intended use. No information on statistics available to the Customs authorities has been provided to the examiners. False declarations are backed up by sanctions and forfeiture in cases of breach, so Criterion 1X.8 and IX.10 appear satisfied in the law but examples were not given of sanctions taken in practice. It is unclear whether the Customs have the power to stop and restrain currency or bearer negotiable instruments where there is a suspicion of money laundering or terrorist financing below the 15,000 Euros threshold (see Criterion IX.3(a) and IX.9, with respect to sanctioning on this). Criterion 1X.5 requires information collected under IX.1 to be available to the FIU either through a system whereby the FIU is notified about suspicious cross border transportations or by making the declarations directly available. The Customs is not a reporting entity but the statistics provided by the FIU show that in 2003 the Customs made 1 unusual business report, and 20 in 2004. There was a lack of clarity as to whether the actual disclosures under the Customs Act were made directly available to the FIU. The Law provides in Section 4 for both the completed forms and infringements to be notified to the Financial Police by the 5th day of the calendar month following the month in which the facts occurred. The Customs thought they were not, though the FIU indicated that they did receive some. It was unclear exactly how information on reports and infringements were stored, in any event, in Customs databases, so further co-ordination on this is required for Criterion IX.5 to be satisfied effectively. The same is true of Criterion IX.6. Information was not provided as to how Slovakia complies with Criteria- IX.7, IX.12 and 13.

Recommendation 25

381. No guidance has been established and provided to the financial institutions and DNFBP to assist them in implementation and compliance with their respective AML/CFT obligations and adequate and appropriate feedback should be provided to financial institutions and DNFBP having regard to the FATF Best Practice Guidelines on providing feedback to Reporting Financial Institutions and other persons.

3.7.2 Recommendations and comments

382. Firstly, the examiners had reservations about the nature of the reporting obligation itself. It is based on "unusual business activity". The examiners were concerned, at one extreme, that if it is linked entirely to business activity, it might, arguably, exclude personal transactions.

383. In the banking sector, it was explained that the relevant banking legislation allowed for a wide interpretation of "unusual business activity", but it was unclear whether the same necessarily

applies in the rest of the financial sector and in respect of designated non-financial businesses and professions (see below). Even if personal financial (as well as business) transactions are generally covered by this obligation in respect of all reporting entities, there is an urgent need to explain in guidelines what an "unusual business activity" might mean for each of the entities which are not reporting or underreporting and, indeed, how wide the obligation is (i.e. that it includes personal transactions). In the absence of guidance the banks reported that they had developed analytical tools of their own to identify "unusual" activity. Examples given were (changes in) annual turnover, country of origin of the client and the funds involved in transactions. The examiners considered that, in the absence of specific guidance on unusual business activity, the differences between ongoing due diligence in respect of clients and identification of particular transactions might be blurred.

384. Attempted unusual business is not covered in the AML Law. The examiners are unaware of coverage of this issue in any guidance documents. However, the Slovak authorities indicated that attempted transactions were reported. None-the-less, the examiners recommend that the AML Law should clearly provide for attempted transactions to be covered, in line with Essential Criteria 13.3 (marked with an asterisk).

385. The present reporting duty in respect of financing of terrorism is insufficiently clear in the law and, assuming all the reporting entities understand there is such a duty, the breadth of the obligation has not been fully defined for them. Currently the terms of the obligation in the AML Law are insufficiently broad.

386. The reporting duty needs to be explicitly clarified in the law to include all funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. There have been no reports relating to the financing of terrorism, and no guidance issued.

387. From the table provided at paragraph 178, it is clear that banks provide the most reports of unusual business activity, with insurance as the next largest reporting entity. There had only been a tiny number of reports from the securities sector (3) at the time of the on-site visit. It was unclear in the banking sector whether the reports were evenly spread across the sector or tended to come from the major banks . It is noticeable that a much smaller number are converted by the FIU into suspicious business operations which leads then to reports by the FIU to law enforcement. Given the lack of feedback to the FIU on cases which were taken forward and the lack of statistics on the number of criminal cases of money laundering which emanate from the reporting regime, the examiners have a serious reservation about the effectiveness of the current system. The guidelines referred to above, which are urgently required, may mitigate that, though the Slovak authorities might also wish to consider whether the reporting regime may be better served by reference to suspicious transactions.

388. The examiners advise that Article 12 of the AML Law be clarified so that it clearly covers all civil liability and criminal liability for *bona fide* reports by reporting entities and their staff.

389. Though not part of the 2004 Methodology, the examiners are of the view that the Slovak authorities should consider making the requirements of Article 6 of the Second European Union Directive explicit in legislation or guidance.

390. Consideration should be given in line with Recommendation 19 to the feasibility of reporting all transactions above a fixed threshold to a national central agency.

391. SR IX had only recently been promulgated by the FATF at the time of the on-site visit. Its terms (as explained in the 2004 Methodology and in the Best Practices Paper) had not been fully considered by the Slovakian authorities at the time of the on-site visit, pending completion of

relevant European legislation. The examiners noted that there is a declaration system in place when making cross-border transportations of cash. The examiners consider that the Slovak authorities should now evaluate their system against the terms of SR IX and introduce necessary changes to ensure its effective implementation. In this regard, it appears that further co-ordination is required between Customs and the FIU to ensure that the FIU has access to all data held by Customs which is relevant to the FIU's mission.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**Partially compliant**	There is a direct mandatory reporting requirement in the AML Law, though: • the reporting system on unusual business activity is unclear and the examiners have reservations as to its effectiveness; • attempted transactions not covered; • no guidance on the reporting system; • financing of terrorism is only partially covered. • the NBS is not covered in respect of its commercial activities
R.14	**Largely compliant**	It should be clarified that all civil and criminal liability is covered.
R.19	**Non - compliant**	No consideration of the feasibility of reporting all transactions above a fixed threshold to national central agency.
SR IX	**Partially compliant**	While there is a declaration system in place when making cross-border transportations of cash, the requirements of SR IX had not been fully considered at the time of the on-site visit.
R.25	**Non-compliant**	No guidance to the financial institutions (and DNFBP) to assist their implementation of the reporting duties on AML/CFT.
SR.IV	**Non-compliant**	Reporting of financing of terrorism is not explicitly covered. The present Slovak provisions said to cover this are, in any event, insufficiently broad. No reports received so effectiveness of the current formula for reporting is an issue of concern.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15

392. Recommendation 15, requiring financial institutions to develop programmes against money laundering and financing of terrorism, can be provided for by law, regulation or other enforceable means.

393. The general duty to establish and maintain internal procedures, policies and controls to prevent money laundering is set out in general terms for all reporting entities in Section 6 of the AML Law. The reporting entity is required:

- to prepare and actualise the programme of activities to combat money laundering "that should contain mainly the review of forms of unusual business operations according to the subject of his activities;
- the content and time schedule of professional education of employees held at least once a year;
- the identification of a person or unit responsible for protection against legalisation and the methods (methodology) to prevent and detect legalisation.

394. The AML Law does not distinguish as to the types and extent of measures that are appropriate to be taken by financial institutions in respect of each of the criteria under Recommendation 15, having regard to the risk of money laundering and financing of terrorism and the size of the business involved.

395. The AML Law in particular does not assist financial institutions in defining what are "appropriate" compliance arrangements or e.g. prescribe that as a minimum for financial institutions the designation of a compliance officer should be at the management level.

396. The AML Law is silent on timely access by the Compliance officer to relevant data (Criterion 15.1.2).

397. The AML Law does not cover the requirements of Criterion 15.2 to maintain an adequately resourced and independent audit function to test compliance or the requirement to put in screening procedures to ensure high standards when hiring employees.

Banks

398. The provisions in the AML Law were supplemented to some extent by the non-binding Recommendation 3/2003. This provides:

- that banks should appoint a person or organisational unit and that the person responsible should be one of the bank's top management. It is understood that, as such, compliance officers at this level report independently direct to the Board. The compliance officers of banks, with which the team met, reported to their Board members directly and considered themselves to be fully independent in their decision-making roles in respect of reports to the FIU;

- that the special anti-money laundering team should not operate with the internal control and audit unit;
- that prospective new staff should, as well as demonstrating professional competence, submit an extract from their criminal records. It does not indicate how a criminal record should be taken into account in screening and hiring policies. It was unclear though whether the submission of an extract from criminal records applies only to persons in the AML/CFT organisational units or generally in banks.

399. The Recommendation does not cover the need for timely access to relevant data. The compliance officers with whom the team met did not indicate that this was a problem.

400. The need for an independent audit unit is not covered in the Recommendation.

401. The Central Bank indicated to the examiners that they were not yet satisfied with the internal systems in banks and that new (and stronger) guidelines were required. They had found *inter alia* examples of improper identification of customers, incomplete records of operations and other deficiencies in record keeping in respect of operations. These issues are drawn to the attention of the FIU in annual reports by the National Bank to the FIU. The Central Bank conceded they were unable to sanction effectively. It was unclear to the examiners whether the regulators clearly knew whether each bank had appointed a Compliance Officer at management level.

Insurance

402. Article 38 of the Law on Insurance (Act No. 95/2002 Coll. on Insurance) covers internal controls and compliance. Several Articles were drawn to the examiners' attention, as relevant in this context.

403. There is a specific reference in the Act on Insurance to the need for each insurance company to protect itself from money laundering. Under Article 38 (3) "the insurance company, reinsurance company, branch of a foreign insurance company and branch of a foreign reinsurance company are obliged to compile and observe rules of activity which must regulate an effective system of internal control and protection against the legalisation of income from criminal activity corresponding to the character and nature of the insurance activity and reinsurance activity". This provision does not make it entirely clear that the extent of AML control measures can be based on an assessment of risks of money laundering and financing of terrorism and size of the business involved. The insurance sector did not generally consider they were vulnerable to money laundering. The FMA had issued no specific guidance on what might constitute effective internal money laundering controls at the time of the on-site visit. It was understood from the FMA that there were compliance officers in insurance companies, who had a special forum where they met occasionally to exchange experience.

404. The other relevant Articles of the Insurance Act appear to cover the internal audit function.

405. Article 38 (4) provides that "the organisational structure of the insurance company, reinsurance company, branch of a foreign insurance company and branch of a foreign reinsurance company must contain a department of internal control".

406. Article 38 (7) provides that "the department of internal control is obliged to inform the board of supervisors of the insurance company or reinsurance company as well as the Authority without undue delay of any fact of which it learns performing its activity which suggests a breach of the obligations of the insurance company or reinsurance company stated in general legislation and which could influence the proper performing of the insurance activity or reinsurance activity of the insurance company or reinsurance company".

407. Article 38 (8) provides that "the insurance company, reinsurance company, branch of a foreign insurance company and branch of a foreign reinsurance company submits no later than on 31 March of the calendar year a report on the results of the activity of the department of internal control for the preceding calendar year, on adopted measures for the correction of the found deficiencies in the activity of the insurance company, reinsurance company, branch of a foreign insurance company and branch of a foreign reinsurance company and a plan of control activity for the following calendar year".

408. Article No 38 (9) provides that "the employee responsible for performing internal control must not be a member of the board of directors, a member of the board of supervisors or the proctor of the insurance company or reinsurance company of which he/she is an employee".

Securities and Investment

409. An investment firm is obliged to define in its articles of association the relations and interaction between the board of directors, the supervisory board, officers of the investment firm, and employees responsible for internal audit. The investment firm should define in its articles of association the allocation of responsibilities and powers within the investment firm for prevention of money laundering (see article 12 paragraph 1 of the Act on Collective Investments No. 594/2003 Coll.).

410. The employee responsible for internal control shall notify the supervisory board and the FMA, without undue delay, of any detected breach of the investment firm's obligations laid down by generally applicable legislation, which may adversely affect the proper operation of the stock brokerage firm (Article 71 of Act No. 566/2001 and Article 13 of Act No. 594/2003 on CIS).

Recommendation 22

411. At the time of the on-site visit, only one Slovakian Bank had a branch operating in a foreign country (the Czech Republic, which also is a European Union country since 01.05.2004). The supervisory regime in such cases is set out mainly in the Act on Banks in Article 6, paras. 10 and 12, which allow for the National Bank of Slovakia to conduct supervision of such branches if so permitted by the legal regulations of that country and by an agreement concluded with that country. There has been a Memorandum of Agreement since 1999 on this issue. The Slovak Branch follows the Czech AML Law and falls under the supervision of the Czech National Bank. Co-operation and the exchange of banking supervisory information are well established. While it appears criterion 22.1 is covered for banks by these arrangements (and 21.1.1 and 1.2 are not relevant in this context), it was unclear whether there are provisions which would cover Criterion 22.2 if the situation were to arise in respect of other jurisdictions.

412. Beyond this, the Slovak financial industry, so far, has not been represented in foreign markets. Some foreign financial institutions have branches or subsidiaries operating in Slovakia.

413. Save for the above, there is no general provision in either law, regulation or other enforceable means which would cover criteria 22.1, 2 (and 3) for financial institutions generally.

3.8.2 Recommendation and comments

Recommendation 15

414. As noted, the AML Law makes basic provision for internal control systems for reviewing unusual business operations, the identification of a person or unit responsible for protection against legalisation and rudimentary requirements for ongoing training of staff which partially covers

Criterion 15.3. This was supplemented in 2003 with some non-enforceable guidance by the FIU (Annex 14).

415. Criterion 15.1.1 is not fulfilled as nowhere is there any enforceable guidance that requires the designation of compliance officers at management level, even if that is the practice followed by the banks as a result of Recommendation 3/2003. It is recommended that Criterion 15.1.1 be required, at least, by enforceable means. It would assist if there were some general guidance from the FMA to the sectors that they supervise as to what constitutes "appropriate" compliance management arrangements for different sizes of business.

416. Outside of the banking sector, it was unclear how separate the compliance arrangements were from internal audit, and it is recommended that the duties of each should be more clearly delineated. It is also advised that additional Criteria 15.5 is addressed across the whole financial sector to ensure that AML/CFT compliance officers are all able to act independently and report direct to senior management.

417. There needs to be an enforceable obligation across the whole financial sector to put in place screening procedures to ensure high standards when hiring employees.

Recommendation 22

418. Though at present the risks in this area appear low, as the Slovak financial market expands, it is likely that the requirements of FATF Recommendation 22 will need more attention in the financial sector generally. Accordingly, in the absence of generally enforceable obligations for financial institutions to ensure that foreign branches and subsidiaries observe AML / CFT requirements consistent with home country requirements, this should be covered at least by enforceable means, taking into account essential Criteria 22.1 and 22.2. The financial regulators will need to ensure that guidance is given which assists financial institutions in making decisions on countries which (may) insufficiently apply FATF Recommendations (beyond those listed by the FATF as non-co-operative).

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**Partially compliant**	General duty to establish and maintain internal procedures, policies and controls to prevent money laundering is set out in broad terms in Article 6 of the AML Law, but: • fuller treatment needed by enforceable means in respect of the content of ongoing employee training programmes (Criterion 15.3); • screening procedures to ensure high standards when hiring employees need requiring by enforceable means (Criterion 15.4); • the requirement of a designation of a compliance officer at management level needs to be covered by enforceable means (15.1.1) and it would assist to delineate his / her functions from internal audit and ensure he/she can act independently, and greater clarification of the compliance officer's powers and role is needed.
R.22	**Partially compliant**	• No general obligation for financial institutions which ensures their branches and subsidiaries observe AML/CFT measures consistent with Slovakian requirements and the FATF Recommendations to the extent that host country laws and regulations permits; • There is no requirement to pay particular attention to situations where branches and subsidiaries are based in countries that do not or

		insufficiently apply FATF Recommendations; • Provision should be made that where minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.

3.9 Shell banks (Recommendation 18)

3.9.1 Description and analysis

Criterion 18.1

419. The Act on Banks imposes licensing conditions which require conditions for establishment of banks with a physical presence in Slovakia. Under the licensing conditions in Article 7, para. 2 (to establish a domestic bank), or Article 8, para. 2 (to establish a foreign bank's branch) of the Act on Banks, the decision to grant a licence is required to be made by the NBS. The Decree No. 9/2004 (which is enforceable secondary binding legislation) of the National Bank establishes the particulars to be required of an applicant for a banking licence. Both sets of provisions could act as a barrier against shell banks operating in Slovakia.

Criteria 18.2 and 18.3

420. There appear to be no specific legally enforceable provisions prohibiting the financial institutions (including banks) from entering into, or continuing correspondent banking relationships with shell banks. Nor are there obligations requiring financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

3.9.2 Recommendations and comments

421. There is no legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks. Neither is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

422. Slovakia should review their laws and regulations and procedures and implement any necessary provisions to cover these obligations in all financial institutions through enforceable means.

423. In the absence of explicit enforceable prohibitions on these issues, it was unclear to the examiners, whether, in practice, any reviews had taken place by financial institutions of their existing correspondent relationships to determine if financial institutions have any correspondent relations with shell banks. However, it was noted that the National Bank's (non-binding) internal inspection procedure, which was provided to the examiners, does set out procedures for enquiring about a bank's correspondent relationships, during inspections.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**Largely compliant**	The Act on Banks imposes licensing conditions which require conditions for establishment of banks with a physical presence in Slovakia. Decree No. 9/2004 of the NBS establishes the particulars to be required of an applicant for a banking license. Both sets of provisions could act as a barrier against shell banks operating in Slovakia. However, there is no legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks. Neither is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.

Regulation, supervision, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R.17, 23, 29 and 30)

3.10.1 Description and analysis

Authorities' roles and duties, structure and resources – Recommendations 23 / 30

424. Criterion 23.1 requires that countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF standards. Criterion 23.2 requires countries to ensure that a designated competent authority (or authorities) has responsibility for ensuring AML/CFT compliance. Under Section 10 of the AML Law the Financial Police (the FIU) has, as its first duty, "to require and control the duties of reporting entities defined by this Law". This means that they are tasked with the primary duty of oversight of financial institutions, and supervision of the implementation of AML measures under the AML Law.

425. There is a Memorandum of Understanding between the NBS and the Ministry of Interior which has been in force since the end of 2002. This agreement includes *inter alia* a pledge to cooperate in the fulfilment of control. Based on this, operational meetings are organised with the aim of exchanging information on controls in banks and on-site visits to avoid duplication. The outcome of these controls and visits are said to be discussed collectively. So far as the examiners are aware, there are no similar collaboration agreements with other prudential supervisors on the supervision of AML/CFT issues.

426. All supervisory authorities (and other authorities carrying out surveillance) are required under Section 11 (a) of the AML Law to inform the Financial Police of any violation of the AML Law or of unusual business activity immediately after its discovery.

427. It was unclear whether any reports from the other prudential authorities under Section 11 (a) had triggered an AML/CFT inspection by the Financial Police. The FIU advised that, according to the agreement signed between the NBS and the Ministry of Interior (Presidium of the Police

Force), the FIU has obtained information about shortcomings under the AML Law. The examiners were advised that this information is used by the FIU in planning its own controlling activities.

428. The chart beneath shows the supervisory and licensing authorities for all financial institutions in addition to the FIU.

Financial institutions	**Supervisory authority (in addition to the Financial Police)**	**Licensing authority**
Credit institutions	National Bank of Slovakia (NBS)	NBS
Insurance companies (including life)	Financial Market Authority (FMA)	FMA
Pension Funds	" " "	FMA
Stock brokers	" " "	FMA
Collective Investment Managers	" " "	FMA
Portfolio Manager Companies	" " "	FMA
Companies issuing credit cards	National Bank of Slovakia (NBS)	NBS
Foreign Exchange Offices	National Bank of Slovakia (NBS) in relation primarily to Foreign Exchange Act.	NBS and Ministry of the Interior
Money remitters / funds Transfer firms	National Bank of Slovakia (NBS)	NBS

429. There are some overall concerns about how effectively the financial sector is being supervised for AML/CFT purposes. The FIU obviously has to prioritise its supervisory work given the size of its supervision department (6 officers to cover 100,000 reporting entities). The FIU has carried out some inspections in credit institutions in the years since the second evaluation.

430. Supervisory visits were inadequate at the time of the last evaluation in foreign exchange offices. In 2003, 60 controls were made in foreign exchange offices and 1 foreign exchange business service provider by the foreign exchange division of the NBS. In 2004, 13 controls were made in foreign exchange offices and 1 foreign exchange business provider. In 2005, 26 controls were made in foreign exchange offices and 1 foreign exchange business provider. The examiners have not been provided with any overview of the sanctions imposed. It was, however, clear that no financial penalties have been imposed through recommendations were made for remedying deficiencies in customer identification procedures. These controls, by the National Bank of Slovakia Foreign Exchange Department, still do not cover AML issues, only the obligations under the Foreign Exchange Act. As previously noted, these examinations do cover some issues regarding customer identification. There is still no legal obligation to assess foreign exchange offices for AML issues.

431. The powers of the prudential supervisors generally to supervise AML/CFT measures specifically as part of their general controls was not always clear and real coordination and co-operation between the supervisors and the FIU on supervision issues appeared lacking (see below).

432. In the National Bank of Slovakia, at the time of the on-site visit, 24 persons were involved in on-site banking supervision, 5 of whom focused on operational risk. There is an internal Methodology for supervisors which also addresses AML issues. The NBS does not train market participants on AML/CFT issues. They see that as the role of the FIU. Only 5 of the 24 NBS supervisors have been provided with specific training to conduct AML on-site visits. Figures were

not provided in respect of the numbers of examiners in the insurance and securities sector within the FMA at the time of the on-site visit[9].

433. Since the last evaluation, the NBS has made the AML issue a part of general on-site examinations in banks and there have also been several specialised thematic AML visits since 2002. The NBS looks at the money-laundering issue from the point of view of how the banks in the round prudentially manage the risks involved in money laundering. In case a violation is revealed, the report which the NBS is obliged to make to the FIU under the AML Law is not the only way for them to proceed. The NBS can use any of its enforcement powers specified according to article 50 of the Act on Banks. The NBS is empowered to impose sanctions both for infringements under the Act on Banks and under the AML Law. In 2004, in one case, a financial fine was imposed by the NBS for an AML infringement. The NBS advised that as a general rule, the final conclusions of their AML inspections contain a set of recommendations for improvement with clear time frames for implementation and that this is thereafter monitored by staff of the NBS supervisory division. In 2004, the NBS conducted general on-site visits which included an AML element. In none of these, were found any violations which required a reporting to the FIU.

434. The AML issue was said to be included in all on-site inspections by the FMA. However these inspections are only carried out on a three yearly cycle and there were no specific guidelines to supervisors on how to check the AML issue at the time of the on-site visit. It was unclear if the FMA staff were trained in AML/CFT supervision.

435. According to the Article 14 (3) of the Act No. 96/2002 Coll. on the Supervision over the Financial Market, in the event that the Financial Market Authority, during conducting supervision, discloses facts indicating commitment of a criminal act, he will notify this fact to the respective criminal proceedings authority without undue delay.

436. All persons involved in the examination of the financial institutions' compliance with their anti-money laundering obligations, receive in-house training and some attend other relevant seminars and conferences on this topic. There needs to be more trained AML/CFT supervisors.

Recommendation 29

437. Criterion 29.1 requires that supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and financing of terrorism.

438. As noted, the FIU in Slovakia (like many other FIUs) is the primary designated authority responsible for ensuring that financial institutions adequately comply with AML/CFT requirements. Its ability to sanction, as seen, is limited to financial penalties provided by the AML Law. It does not have the power to make recommendations or proposals for change in systems itself, only to impose fines. The FIU can propose to the NBS that a license be revoked. Both the prudential supervisors and the FIU advised that they had all the powers set out in Criterion 29.2 in the exercise of their supervisory functions.

439. The FIU, in conducting AML on-site visits, is bound to follow the AML Law and rules provided in an internal decree of the Director of the Bureau of Organised Crime which focus on particular provisions of the AML Law. This decree forms the methodology for the work of the FIU in supervision. There is a schedule of on-site controls which have been conducted by the FIU and consequent sanctions since the last on-site visit. This covers both financial institutions and DNFBPs.

[9] See footnote 2.

440. On the basis of their general powers as the Financial Police (under the Police Act), and their powers under the AML Law (section 6 paragraph 1 letter c), it is understood that they have the power to compel production of, or to obtain access to, all records, documents or other information related to accounts or other business relationships (as required by Criteria 29.3 and 29.3.1 without a Court order (in supervisory on-site inspections).

441. The Banking Supervision Division of the NBS is the prudential supervisor for banks and can impose remedial measures or banks (which can be appealed to the Bank Board). In discharging its duties, it empowered to have access to all documents in a supervised entity. Article 91, para. 3, of the Act on Banks provides: "A bank or branch office of a foreign bank shall be obligated to submit a report on all facts that are subject to bank secrecy, also without the client's consent, to persons commissioned to exercise banking supervision". Article 37, paragraph 2, of the NBS Act also applies:

"In performing on-site supervision, the persons authorised to perform supervision are entitled to carry out any activity connected with the subject of supervision, and in so doing they shall be authorised:

- to enter sites, buildings, rooms, facilities, and other premises of the supervised entity including its means of transport, without infringing the inviolability of dwellings;
- to request that the supervised entity and its employees provide them, in set time limit, with:
  - documents, including their originals, statements, documentation and other written
  - materials and information, including data on technical data media, and access to other items of
  - the supervised entities;
  - explanations, opinions, and other oral or written information about the subject of
  - supervision and shortcomings detected,
- to receive, and in justified cases to move outside the premises of the supervised entity originals of documents and other written materials and items;
- to exercise other rights pursuant to this Act and separate regulations and to demand from the supervised entity and its employees co-operation in the discharge of their obligations prescribed by the Act and separate regulations to the supervised entity and its employees in connection with the performance of on-site supervision".

442. On-going monitoring of the E-money institutions by the NBS is regulated in the Payment Act (see 3.2). The Banking Supervision Division of the NBS again has the right to ask for documentation (Article 21c para. 3), and has at its disposal a range of enforcement actions (the same provision para. 5), and also it is possible to contact the management in order to agree on the corrective measures in case some non-adherence is found out (para. 6 of the same provision).

Recommendation 17

443. Section 13 of the AML Law provides for sanctions (for Administrative Torts) to be issued by the FIU in the case of any obliged person who violates the duties defined in paragraph 5 (2) (3) (4), paragraph 6, paragraph 7 (1) (4) (5), paragraph 8 (1) (2), and paragraphs 9 and 9a. These cover obligations in the AML Law, *inter alia*:

- customer identification in respect of transactions and insurance premiums;
- the obligation to prepare internal programmes;
- record keeping;
- provision of further information to the FIU;
- failing to report unusual business activity.

444. The penalty which may be imposed is up to 2 million SKK. If a reporting entity has received a penalty within the previous three years under the AML Law and the entity separately infringed the

same obligation, the Financial Police can impose a penalty which is twice as high as the penalties defined above. A penalty can be imposed within one year after the day from when the Financial Police discovered the infringement and within three years (at the latest) when the infringement of the obligation occurred.

445. The FIU has conducted within its limited supervisory resources some checks between 2002 and the date of the on-site visit. In 2002, 25 visits (referred to by the FIU as check ups) were undertaken by the FIU on a small range of financial institutions (and DNFBP). 23 check ups were made by the FIU in 2003. In 2004, the number of check ups increased to 70 on a range of financial institutions (and other DNFBP reporting entities). The FIU had fined several banks for AML breaches in the two years before the on-site visit. In 2003, 2 banks and 2 savings banks were sanctioned, both in total amounts of 500,000 SKK. In 2004, 2 banks were sanctioned in a total amount of 900,000 SKK. Exchange houses had also been sanctioned (in 2002, 2 sanctions in a total amount of 120,000 SKK; in 2003 3 sanctions in a total amount of 380,000 SKK; and in 2004, 4 sanctions in a total amount of 190,000 SKK).

446. As noted earlier, breach of the NBS Recommendation 3/2003 is not sanctionable in the sense of issuing financial penalties, though the NBS indicated that they could apply softer measures like recommendations if parts of this guidance were not followed. However, there was no information as to whether this had been done.

447. The NBS has enforcement powers. They basically cover breaches of the terms of licences issued to Banks and breaches of the provisions in the Act on Banks (including the identification provisions). The NBS indicated that they could take action against banks on the basis of their licence requirements (Article 7 (4) of the Act on Banks) and articles of the Act on banks dealing with prudential requirements, including requiring control and risk management systems. The examiners were advised, as noted earlier, that the NBS had issued one financial fine in 2004, for an AML breach. This was appealed and endorsed by the Bank Board and the fine paid to the State budget. The fact of the fine was also published. The FIU were subsequently informed.

448. The hierarchy of sanctions which the NBS can impose generally is set out below. The range of sanctions is mainly embedded in Article 50 of the Act on Banks. It includes:

- order the adoption of recovery measures;
- order the submission of special returns, reports and statements;
- order that unauthorised activity be terminated;
- imposition of a penalty of 100,000 – 10 million SKK, and in case of recurrent or grave defaults up to SKK 20 millions;
- limit or suspend the conduct of certain banking activities or the conduct of certain types of transactions;
- revoke the banking licence for some banking activities;
- order a reconciliation of accounting books etc. on the basis of findings;
- order the publication of a correction of incomplete, incorrect, or untrue information according to a disclosure obligation stipulated by law;
- introduce forced administration over a bank for reasons stipulated in Article 53;
- revoke the banking licence.

449. The NBS, as noted, also supervises foreign exchange offices in respect of compliance with the conditions in their licences, and in respect of obligations under the Foreign Exchange Act, and can take enforcement actions. They have no authority to perform AML supervision in foreign exchange houses and thus to impose sanctions. The only obligation that they could sanction for is customer identification in line with Article 13, paragraph 8c of the Foreign Exchange Act (which directly refers to customer identification as set out in the AML Law). The range of sanctions available to the NBS in this situation is those that relate to their general enforcement powers prescribed by the Foreign Exchange Act:

- Imposition of a corrective measure, namely the obligation to eliminate shortcomings within a prescribed time limit;
- Restriction or suspension of the person's activities or some of his activities according to the licence;
- Revocation of foreign exchange licence;
- Fine up to 10,000 SKK (about 250,000 Euros).

450. Corrective measures, fines, and other sanctions may be imposed concurrently (even in a single decision). The limitation period for the issuing of sanctions is the same as for banks. Generally the violations found during the controls of foreign exchange offices related to improper identification procedures and corrective measures were applied. However, due to reorganisation within the NBS the examiners were advised that the exact numbers are not available.

451. If any breach of the AML Law is discovered by supervisory authorities other than the FIU, they are obliged to report it to the FIU (AML Law, paragraph 11a). The evaluators have not been provided with information in respect of any sanctions for AML breaches issued by the FMA.

452. The examiners were advised that sanctions were imposed (where there is the power to do so) in accordance with the severity of a situation. The FIU can only impose sanctions on legal entities. Natural persons such as management and supervisory board representatives can be sanctioned only for breach of secrecy (tipping off) under Section 8 paragraph 2 of the AML Law. The sanctions imposed by the NBS can be imposed on members of management or supervisory boards as well as on the institution.

3.10.2 Recommendations and comments

453. There needs to be a general provision to ensure that CFT issues are addressed by the FIU and the prudential supervisors in supervision. There are currently no clear sanctioning powers for CFT breaches by the prudential supervisors (i.e. failing to report financing of terrorism transactions).

454. There is no formal AML supervision in exchange houses by the NBS and the examiners consider that this should be put in place.

455. There are some proportionate and dissuasive sanctions in place under Section 13 of the AML Law in respect of some of the key obligations in the Act. The authorities to impose these sanctions are the FIU and the prudential supervisors. In the absence of fuller information on the nature of the infringements to which the sanctions relate, it is difficult to comment on how effective, proportionate and dissuasive they were. But given the shortage of staff in the FIU to conduct on-site inspection which may trigger sanctions, the effectiveness of the sanctioning regime in respect of the obligations under the AML Law is questioned.

456. Some of the major obligations (like identification of beneficial ownership, as defined by FATF) are not subject to sanctioning. It is advised that all AML/CFT obligations, which under the Methodology should be required by law, regulation or by other enforceable means, should be capable of being sanctioned.

457. As noted, some sanctioning has happened. The legal power of the NBS to sanction for relevant AML breaches was explained to the evaluators. As noted, one sanction by the NBS had been issued. Given that the NBS (and the other supervisory authorities) does have general or residual powers to sanction for some AML breaches, there is the possibility of some overlap and double sanctioning in the system. The Slovak authorities confirmed that it is possible to punish twice, and

that the same controls could be undertaken on the same banks by the two different authorities (the FIU and the NBS). The role of the National Bank (and other supervisory authorities) in sanctioning for AML/CFT breaches discovered in supervision could also be clarified, and clearer and more formal working arrangements on this issue developed between the FIU and the supervisory authorities. At present, the examiners were left with the impression that breaches found in inspection were not always followed by relevant sanctions.

458. The examiners consider that more supervision is required across the entire financial sector targeted towards the money laundering risks. The National Bank recognised that there was a lack of training still on these issues in credit institutions and that the quality of due diligence performed was not even.

459. The numbers of properly trained supervisors on AML/CFT issues need revisiting to ensure that both the prudential supervisors and the FIU have sufficient resources to ensure a more comprehensive and coordinated approach to AML supervision (and CFT issues).

3.10.3 Compliance with Recommendations 17, 23, 29 and 30

	Rating	Summary of factors underlying rating
R.17	**Partially compliant**	Some sanctions which may be proportionate and dissuasive are available for AML breaches by the FIU and some supervisory authorities, and some sanctions have been imposed, but the effectiveness of the overall sanctioning regime, at present, is questioned. In any event, not all obligations under the Methodology, which should be required by law, regulation, or other enforceable means, are sanctionable at present. The obligation of sanctioning in respect of failure to report unusual business operations involving funds which may be linked or related to terrorism and financing of terrorism should be clarified. The role(s) of the supervisory authorities in sanctioning for AML/CFT breaches should be clarified to avoid double sanctioning in some cases, and working arrangements between the FIU and the supervisory authorities on sanctioning should be more clearly set out, and greater practical co-operation.
R.23	**Partially compliant**	The FIU exercises some supervision over AML issues. At the time of the on-site visit, the NBS had begun covering AML in on-site visits in credit institutions but had reported no breaches of the AML Law to the FIU. Information on the amount of supervision by the FMA was insufficient to judge the quality of AML supervision in the insurance and securities sectors. No formal AML supervision in exchange houses.
R.29	**Partially compliant**	No power to perform AML supervision in foreign exchange offices by prudential supervisors. No general power in the whole financial sector to supervise CFT issues.
R.30	**Partially compliant**	All supervisory authorities need more staff and training to adequately perform AML/CFT supervision. The FIU needs a significant increase in staff for its supervisory role.

3.11 Financial institutions - market entry and ownership/control (R.23)

3.11.1 Description and analysis

Recommendation 23 (criteria 23.3, 23.5, 23.7)

460. Credit institutions. Article 3 of the Act on Banks prohibits to enter into banking business without a banking licence:

- No person without a banking licence may accept deposits unless stipulated otherwise by a separate regulation. No person without a banking licence may offer interest or other compensation on deposits, which constitutes a tax expense according to a separate regulation.
- Unless stipulated otherwise by a separate regulation, no person may provide, without a banking licence, loans or credits as part of its business or other activity by using repayable funds obtained from other persons on the basis of a public offer.
- No person may perform payments and clearing for another person as part of its business or other activity without a banking licence, unless stipulated otherwise by a separate regulation.
- No person may issue bank payment cards without a banking licence.

461. As noted in the first section, banks can be formed only as joint-stock companies with registered shares (in dematerialised form). Strong licensing and ownership changes control regimes are foreseen by the Act on Banks (Art. 7, 8 and 28); moreover the law is supported by secondary binding and enforceable legislation (Decrees No 9/2004 and No 16/2001). Fit and proper tests for future managers are applied and in subsequent changes as well. Other corporate governance principles are implemented in the Act on Banks relevant provisions – Art. 25, 27 (prevention of conflict of interest in the management, supervisory board, their responsibility in case of misusing their competency, etc.)

462. When considering the measures in place to guard the banks against being owned by criminals (directly or indirectly), within the licensing procedure there is enough broad authority to check the future owners and beneficial owners. To change the ownership structure and/or share on the voting rights in a bank, a prior approval procedure is set out by Art. 28 of the Act on Banks (a separate Decree No. 16/2001 is also in place), which determines several thresholds (even stricter than the relevant EU Directive, as the first threshold starts at 5%) in monitoring shareholders changes. If a change of ownership above the legally stipulated thresholds is conducted, without the prior approval, such a deed is not valid.

463. In practice, an applicant is obliged by the Act on Banks and related secondary binding and enforceable legislation to present an extract from the criminal register..

464. Foreign Exchange businesses. It is prohibited to operate Foreign exchange business without a licence. Art. 6, para. 13, of the Foreign Exchange Act provides: "No person will be allowed to trade in foreign exchange assets or to provide foreign exchange services without appropriate authorisation granted through a banking licence or a foreign exchange licence or a permit to conduct such activity under a separate law (Securities Act), unless this Act stipulates otherwise. Such permit or foreign exchange licence is not required for foreign exchange services rendered or transactions in foreign exchange assets conducted by the National Bank of Slovakia."

465. According to the Foreign Exchange Act (and Decree No. 614/2003) it is possible to issue a licence to a natural and also to a legal person. Legal persons must have a certain amount of capital

and the existing ones are limited liabilities companies. Art. 6 para. 10 of the Foreign Exchange Act obliges all foreign exchange places holding foreign exchange licence to inform the NBS about intended changes in licensing conditions: "The conditions set out in paragraphs 3, 4, and 6 to 8, must be met throughout the period of validity of the foreign exchange licence. During this period, the holder of the licence is obligated to notify in writing the National Bank of Slovakia of any change or prepared change in the conditions or data given in the foreign exchange licence application, as soon as the change has come to his knowledge".

466. Fit and proper tests are applied to the managers-to-be; but the control of future owners is limited to the availability of capital in the legally stipulated amount.

467. Art. 21a of the Payment Act prescribes E-money institutions licensing procedures. (the amount of initial capital is 1,000,000 Euros, the background of future owners is checked, fit and proper tests are applied, etc.). All changes are subject to approval of the NBS (Banking Supervision Division).

468. Insurance service providers. Rules, obligations, proceedings and procedures about market entry are described in Articles 5, 6 and 12 of the Insurance Act and Decree No 155/2002 Coll. stipulating the manner of proving fulfilment of conditions for granting authorization to carry out insurance business and for granting authorization to carry out reinsurance business.

469. Ownership and control issues are covered in the articles mentioned in the previous paragraph. According to Article 36, part 1 (a) of the Insurance Act, prior approval by the Financial Market Authority is a condition for the obtaining or exceeding the share in the registered capital of an insurance company or reinsurance company or the voting rights in an insurance company or reinsurance company at 10%, 20%, 33%, 50% or 66% of the share in the registered capital of the insurance company or reinsurance company or in the voting rights in the insurance company or reinsurance company (directly or by acting in accord).

470. With regard to licensing and ownership and control changes in insurance, the European Union regulations are implemented. According to the Article 36, part 1 (c) of the Insurance Act, prior approval by the Financial Market Authority is a condition for the election of the person proposed for a member of the board of directors and proctor of the insurance company or reinsurance company, the proctor and head of the branch of a foreign insurance company, or the proctor and head of the branch of a foreign reinsurance company. Prior approval by the Financial Market Authority is not a condition for the election of the same persons into the same functions for further periods.

471. Fit and proper tests for future managers are applied within the licensing procedures. The FMA has the right to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in investment firms and the 10 management companies.(Articles 54,55 Act No. 566/2001 and Articles 6,7,8 Act No. 594/2003 on Collective Investments) . The new criteria set out in these provisions are much stricter and include checks on the origin of capital, and beneficial ownership. Some companies that re-applies for licences were unsuccessful. The acquisition of shares in an insurance undertaking or pension company, whereby a person directly or indirectly achieves or exceeds the qualifying holding, is subject to the prior authorisation of the Financial Market Authority.

3.11.2 Recommendations and comments

472. The supervisory authorities have generally adequate legal structures to prevent criminals from controlling financial institutions. As far as the licensing procedures in the financial market are

concerned, these are broadly in line with the relevant European Union legislation and FATF Recommendation. There is evidence of these procedures being applied by the relevant authorities.

473. However, the examiners consider that more should be done to enquire about the fitness and propriety of future owners and significant shareholders in foreign exchange houses.

3.11.3 Compliance with Recommendation 23 (Criteria 23.1, 23.3, 23.5, 23.7)

	Rating	Summary of factors underlying rating
R.23	**Largely compliant**	Financial institutions are subject to adequate AML/CFT regulation to prevent criminal or their associates from holding or being the beneficial owner of a significant or controlling interest or holding the management functions. The fitness and propriety of the owners and significant shareholders of foreign exchange houses should be examined and, as necessary, legal provision should be made for this.

3.12 AML / CFT Guidelines (R.25)

3.12.1 Description and analysis

474. The AML Law obliges the reporting entities to follow the general requirements of the law. The examiners were advised that it was understood that specific and more detailed guidelines would be given or elaborated by relevant supervisory authorities, to provide assistance for their application by the obliged entities. As described above, neither NBS nor the FMA had issued Guidance notes for their sectors (or the FIU for the DNFBP), as required in criterion 25.1 on money laundering indicators in the different sectors, or in relation to techniques of terrorist financing. The lack of any guidelines from the supervisors or FIU had not been supplemented by domestic Professional Associations or SROs, though some auditors and accountants indicated that they followed indicators provided by their international professional associations. These are all prepared in general terms and do not relate to the domestic situation in Slovakia.

475. There is a continuing need to create guidelines addressing the risks in each specific sector and particularly indicators to assist in the identification of reports related to financing of terrorism. It is considered by the evaluators that the low number of unusual business activity reports coming from DNFBP and legal professionals is partly the result of the lack of guidance given.

476. With regard to feedback (Criterion 25.2), as was noted earlier, the FIU advised that it does publish articles from time to time, but there were no general, annual reports on typologies and trends regularly made available (with, for example, sanitised examples of actual money laundering cases). What has been done is, in the examiners' view, insufficient to satisfy Criterion 25.2 on general feedback. As also noted above, the FIU itself receives no feedback from law enforcement, and therefore appropriate case-specific feedback is impossible to provide and has not been addressed. Many of the representatives of obliged institutions that the team met expressed major concerns about this issue. The issue does need an urgent and adequate co-ordinated response by the competent authorities and is taken up again beneath under Recommendation 31.

3.12.2 Recommendations and comments

477. There is an absence of sector specific guidance for financial institutions and DNFBP on both AML and CFT issues. The examiners strongly recommend to the competent authorities that they urgently establish Guidelines that will assist financial institutions and DNFBP to implement and comply with their respective AML/CFT requirements. As noted earlier, these should be co-ordinated and consistent across the various sectors. At a minimum, guidelines should include a description of ML and FT techniques and methods and any additional measures that financial institutions and DNFBP should take to ensure that their AML/CFT measures are effective.

478. It is also recommended that the issue of adequate and appropriate feedback be addressed urgently by the competent authorities in line with the FATF Best Practice Guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons and that this issue should be addressed by the competent authorities collectively (see Recommendation 31).

	Rating	Summary of factors underlying rating
R.25	**Non-compliant**	AML/CFT issues are not addressed in sector specific guidelines, and the issue of feedback has not been adequately addressed by the competent authorities and particularly the FIU.

3.13 Ongoing supervision and monitoring (R.23 [Criteria 23.4, 23.6 and 23.7] and R. 32)

3.13.1 Description and analysis

Banks

479. As noted above, the Banking Supervision Department of the NBS and the FIU have supervisory roles in AML/CFT. As noted, since 2002 the Banking Supervision Department of the NBS has begun to conduct more risk oriented supervision with the entry into force of the new Act on Banks - Act No. 483/2001 Coll. An AML component has been included in each general on-site inspection and in 2004 and 2005 AML thematic on-site inspections were carried out. The Slovak authorities indicated that their powers in AML supervision include sample testing. General on-site inspections take place in each bank or branch of a foreign bank once every 2 years. There are also off-site follow-ups which can take place either on or off-site. Between 2002 to 2004 one supervisory cycle was completed, which gave supervisory division of the NBS quite a solid understanding and knowledge on how AML issues are being handled in the banking sector. Based on this, an analysis of compliance was presented for information to the Bank Board of the NBS in March 2005, and a subsequent meeting with the FIU and the banking sector took place, where the preventive and repressive AML regime were discussed and problems highlighted. CFT issues are not covered in these on-site inspections and thematic reviews so far. Additionally, it should be pointed out that the external auditor's report on a bank includes an evaluation of AML issues and this is regularly submitted to the Supervision Department of the NBS. Similarly, the internal audit and control unit of a bank is obliged to analyse and evaluate the AML preventive regime and submit this report annually to the Supervision Division of NBS.

Exchange Houses

480. The Foreign Exchange Department of the NBS did not cover AML/CFT issues in supervision because they have no legal power to do so. As noted, some issues in relation to customer identification were covered. In 2003 to 2005, the Foreign Exchange Department of the NBS had made the following controls:

- 2003: 60 (+ 1 Foreign Exchange Business Provider)
- 2004: 13 (+ 1 Foreign Exchange Business Provider)
- 2005: 26 (+ 1 Foreign Exchange Business Provider).

Insurance

481. The FMA has the power to conduct on-site inspections. All insurance companies are inspected on a three yearly cycle, and AML issues are said to be included. The Slovak authorities indicated that their powers in AML supervision include sample testing. However, with no specific guidelines to the supervisors on to how to check the AML issue, it is difficult to assess the effectiveness of the AML checks by the FMA.

Securities/Management Companies

482. The FMA undertakes on-site supervision of investment firms and, together with the NBS Banking Supervision Department undertakes on-site inspections of banks' investment activities. These inspections focus on general issues. There were no specific guidelines or instructions as to how the AML issue is to be covered. The Management Companies with which the team met (including representatives of Mutual Funds) stated that their 8 companies had not been the subject of supervision on the AML/CFT issue by either the FMA or the FIU.

483. Criterion 32.2 requires that competent authorities should maintain comprehensive statistics or matters relating to the effectiveness of systems for combating money laundering and financing of terrorism. In the absence of comprehensive statistics on on-site inspections on AML issues (and the absence of mandates to inspect financing of terrorism issues), the examiners consider that Criterion 32.2 is not satisfied with regard to AML/CFT on-site inspections, and sanctions for breaches.

3.13.2 Recommendations and comments

484. As noted earlier, the arrangements for supervision on AML/CFT issues were uncertain and the extent of AML supervision in practice was unclear. The NBS had concerns about compliance issues. The examiners believe that all prudential supervisors need a clear mandate for inclusion of AML/CFT checks in their work and transparent records kept of their reports to the FIU under Article 11 of the AML Law. The FIU needs significant enhancement of staff resources for the fulfilment of its mandate of supervisory oversight of compliance with the AML Law. The evaluators consider that at present Criteria 23.4 and 29.2 are not satisfied.

3.13.3 Compliance with Recommendations 23 (Criteria 23.4, 23.6 and 27.7), 29 and 32

	Rating	Summary of factors underlying rating
R.23	**Partially**	Financial institutions that are subject to the Core Principles are

	compliant	subject to regulatory and supervisory measures, but the extent of supervision on AML/CFT issues is currently inadequate. Foreign exchange offices are licensed and supervised but AML/CFT issues are not within the current supervisory remit.
R.32	**Partially compliant**	Statistical data on regulation, supervision and sanctions in respect of AML/CFT issues needs to be maintained by all involved in AML/CFT supervision and used for assessment of the preventive measures in place.

3.14 Money or value transfer services (SR.VI)

3.14.1 Description and analysis

485. A foreign exchange licence is required for specific activities stipulated by the Foreign Exchange Act, e.g. to provide foreign exchange services. Foreign exchange services includes the provision of services to third persons as part of a business activity, the subject of which is the execution or mediation of cross-border transfers in Slovak or foreign currency, or the operation of commercial agencies for the execution or mediation of such cross-border transfers. These two types of foreign exchange business providers always offer their services through licensed banks. The authority for this is Article 2, let. (l) and (n) and Article 6 of the Foreign Exchange Act and the secondary and binding decrees of the NBS No. 614/2003.

486. Licensing has been significantly tightened. An applicant for a licence has to meet requirements, which to a large extent meet the FATF requirements, and which are set out in Decree of NBS No. 614/2003 on detailed requisites of an application for a foreign exchange licence, on evidencing the fulfilment of conditions for granting a foreign exchange licence, and on requirements pursuant to Article 13, para. 8 of the Foreign Exchange Act.

487. As noted earlier, the National Bank of Slovakia issued 2 licences for the provision of such foreign exchange services in the year 2004. In the course of 2003, 2004 and 2005, three foreign exchange business providers have been controlled on-site by the Foreign Exchange Department supervisory staff.

3.14.2 Recommendations and comments

488. As noted, there is a general prohibition in Slovakia against carrying out money remittance activities outside the regulated and supervised banking sector. Money remittance services can be provided only by banks, which have obtained a specific authorisation from the NBS.

489. During the course of the evaluation the examiners considered whether applicants for foreign exchange licences to undertake money-changing activities had to show criminal records. In the case of a natural person a clean criminal record is required as one of the licensing conditions for all persons employed in exchange houses and in the case of a legal person a clean criminal record is required for all those natural persons who are authorised to represent the legal person as well as for the employees.

3.14.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**Largely compliant**	The NBS is obliged to register and license the persons performing money or value transfer services. However there was no provision determining what kind of information regarding transactions should be recorded as a minimum, no regulation requiring money exchange companies to examine the purpose of complex, unusual large transactions or unusual patterns of transactions.

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS NON-FINANCIAL BUSINESSES

Generally

490. The AML Law covers most categories of DNFBP. It covers all those in the FATF Recommendations and extends them in line with the 2nd EU Directive to traders in works of art (though not all high value goods dealers carrying out cash operations over 15,000 Euro, as required by the Directive). Additionally postal enterprises have been designated on a risk based assessment, but not trust and company service providers. Trusts cannot be created in Slovakia. However it is clear that lawyers can act as company formation agents, but unclear whether any other business is involved in this type of activity, sufficient that it should be covered. Notaries are not specifically named though it is assumed they are covered as required by the FATF Recommendations and the EU Directive, as "persons who provide legal assistance connected with the purchase and selling of real estate" (see below).

491. Broadly, the main deficiencies that apply in the implementation of the AML/CFT preventive measures applicable to financial institutions regarding Recommendations 5 – 10, and other preventive Recommendations (and described in Section 3 above), apply also DNFBP - since the core obligations for both DNFBP and financial institutions are based on the same general AML/CFT regime. To recap, the basic obligations in the AML Law are: customer identification (Section 5 and Section 6(2)); record keeping (Section 6); identifying unusual business activity ; reporting unusual activity – which covers both "legalisation" and financing of terrorism; keeping information confidential (Section 8); delaying unusual business activity (Section 9); establishment of internal procedures and units/programmes of control (Section 6). These all apply to DNFBP, as reporting entities.

492. It should be stated at the outset that reports from the obliged DNFBP (which under the AML Law covers most categories of DNFBP) were very rare (a few from bookmakers and post offices in 2002 – 2004) and much more needs to be done to promote awareness of obligations on AML/CFT issues, particularly in respect of Customer Due Diligence standards.

493. The AML Law defines the reporting entities, including the DNFBP extensively, as follows:

- post enterprise office, executor, auditor, tax advisor,
- legal entity or a natural person who is entitled to carry out auctions except of executions, financial leasing or other financial activities defined by special law,
- casino operator, bookmaker, real estate agent,
- legal entity operating lotteries or other (gambling),
- the person who provides legal assistance under special rule if he/she prepares or carries out for clients activities connected with:
  - purchase and sale of real estate or commercial share in commercial company,
  - administering financial means, securities or other property,
  - opening or administering account in a bank or in a subsidiary of foreign bank or account of securities,

- establishment, activity or management of commercial company, foundation, corporation or similar legal person or
- acting on behalf of a client or for a client in any financial operation or property operation,

- legal entity or natural person carrying out activity of accountant, organisational and economic advisers, services of public carriers and messengers or forwarding business.
- operator of auction room, legal entity or natural person trading in works of art, articles for collections, antiquities, precious metals or precious stones or puts the products made of precious metals or precious stones on market or trades in other articles of high value, if he/she carries out cash operations in value at least of 15 000 EUR,
- other legal entity or a natural person defined by a special law.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

494. Criterion 12.1 requires DNFBP to meet the requirements of Recommendation 5 in the circumstances specified in Criterion 12.1.

495. What is not in the AML Law is not provided for elsewhere, so far as the examiners are aware. Thus general CDD obligations for the categories of DNFBP covered by the AML Law have the same strengths and weaknesses as described in 3.3 above. In terms of when CDD is required, as noted earlier, the requirements for CDD when establishing business relations is not generally covered, though rarely relevant in the context of DNFBP. The requirement to perform CDD when carrying out wire transfers in circumstances covered by the IN to SR VII, or where there are doubts about the veracity or adequacy of previously obtained data are not provided for in law or regulation. As to the required CDD measures in these situations, verification of identity on the basis of reliable identification documents is not generally referred to in the AML Law (or any guidance given generally to DNFBP as to what can amount to reliable identifying documents). Similarly requirements in relation to the full identification of beneficial ownership and additional identification/KYC rules (in particular the need to gather information on the nature of the business activity of the client and collect additional information for higher risk customers) should apply to DNFBP to the full extent. Likewise Criterion 5.7 was not in force for DNFBP at the time of the on-site visit, or Criterion 5.8 (enhanced due diligence for higher risk customers).

496. *Applying Recommendation 5.* In Casinos all natural persons are identified on entry, as provided for in Article 5(4) of the AML Law (and the new Gambling Act, which came into effect on 1 May 2005). For residents an identification document is required and for non-residents a passport is required. Under the FATF standard, CDD in casinos (including Internet casinos) is required when customers engage in financial transactions above 3000 Euro. Under Article 3(5) of the Second EU Directive identification should occur when buying, purchasing or selling chips with a value of 1000 Euro or more, though casinos subject to State Supervision shall be deemed to have complied if they identify customers immediately on entry. In Slovakia they do not re-identify at the point customers buy or cash in chips. The only requirement in the law is that they identify transactions of 15,000 Euro and above, as required by Article 5(2)(b) of the AML Law, which was acknowledged by the casinos as being too high. Nonetheless so long as casinos are able to link their CDD information with a customer's individual gaming and cashier transactions at the relevant thresholds through video recording (which is understood to be the case), then the CDD requirements under the FATF standards are broadly satisfied. With regard to real estate agents involved in buying and selling property identification of the customer in the limited sense it is

provided for in the AML Law is covered in respect of transactions over 15,000 Euro. The obligation is narrower than the FATF requirement, as real estate dealers should carry out CDD whenever they carry out transactions concerning the buying and selling of real estate whatever the size. With respect to natural and legal persons acting professionally, the only identification obligation is the same (15,000 Euros or more). Customer Due Diligence should be carried out when these professionals prepare for or carry out transactions for a client in relation to all the activities set out in Criterion 12.1(d) regardless of the amount involved.

497. *Applying Recommendation 6*. Slovakia has not implemented proper AML/CFT measures concerning the establishment of customer relationships with PEPs that are applicable to DNFBP. As noted, at the time of the on-site visit they were awaiting the 3rd EU directive. As noted earlier there is no requirement which requires this in law, regulation or other enforceable means. It is strongly advised that when this issue is addressed the same standards should apply across the whole financial market. This may be an issue for the Co-ordination body discussed beneath under Recommendation 31.

498. *Applying Recommendation 8.* There were no provisions explicitly in force covering Essential Criteria 8.1 or 8.2 for DNFBP, although the team was told that non face to face relationships are not allowed. There is also no general guidance regarding emerging technological developments.

499. *Applying Recommendation 9.* Though provisions were not in force covering the use of intermediaries or other third parties for elements of the CDD process, essential criteria 9.1 to 9.5 were not covered. It is unlikely that any DNFBP would use third party introducers so this is not considered a major vulnerability, but the issue should be covered for DNFBP.

500. *Applying Recommendation 10.* Article 6 of the AML law requires all reporting entities to store identification documentation for 5 years after the termination of the contact. For the reasons set out above Criterion 10.3 is not fully satisfied.

501. *Applying Recommendation 11*. Recommendation 11 is not provided for. An enforceable requirement should be introduced in respect of all DNFBP to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose and examine their background and purpose and set out their findings in writing and keep the findings available for competent authorities for at least 5 years.

4.1.2 Recommendations and comments

502. Slovakia should implement Recommendations 5, 6 and 8 fully and make these measures applicable to DNFBP. With regard to Recommendation 10, all of which essential criteria are marked with an asterisk; Slovakia should ensure that 10.1 to 10.3 are covered for DNFBP by law or regulation.

503. Generally the examiners believe that once formal provisions are in place, the effectiveness of implementation can only be developed by proper monitoring of implementation. It is also important to work with the different sectors (for instance via the professional associations) to improve awareness, and overcome any unwillingness to apply AML/CFT requirements. Information campaigns to this end are required. As at the time of the on-site visit very little had been done.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**Non Compliant**	The same concerns in the implementation of Rec. 5 apply equally to obliged Financial Institutions and DNFBP (see S. 3.2 of the report). All requirements in relation to full identification of beneficial ownership and additional identification/KYC rules should apply to DNFBP especially regarding higher risk activities. CDD should be required by real estate dealers, lawyers, notaries and other independent legal professionals whenever they carry out specified transactions regardless of size (currently only those over 15,000 Euro are caught). No adequate implementation of Rec. 6. No clear guidance re emerging technological developments (Rec. 8). Not all essential criteria marked with an asterisk in Rec. 10 are covered by law or regulation. Rec. 11 – paying special attention to all complex, unusual large transactions needs applying to DNFBP by law, regulation or other enforceable means. Current level of implementation of FATF requirements by DNFBP raises significant concerns. An awareness raising programme is urgently required to promote effective compliance.

4.2 Monitoring of transactions and other issues (R. 16)
(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

504. *Applying Recommendation 13.* Criterion 16.1 requires Essential Criteria 13.1 – 4 to apply to DNFBP. Criteria 13.1-3 are marked with an asterisk. The first two require reports to the FIU where the obliged entity suspects or has reasonable cause to suspect funds are the proceeds of criminal activity or has reasonable grounds to suspect or suspects funds are linked to terrorism etc or those who finance terrorism. Article 7 of the AML Law covers DNFBP making reports to the FIU in respect of unusual business activity. Concerns expressed in the earlier part of this report about the real breadth of the reporting obligation apply here – particularly in respect of financing of terrorism. In the absence of guidance, it is quite unclear how DNFBP understand or interpret the reporting obligation. The lack of reports from DNFBP only underlines this concern. It was apparent to the examiners that, for instance, the casinos were quite unclear as to what was unusual in the context of their business. Meaningful guidance is urgently required. Attempted unusual business transactions in relation to DNFBP need also to be covered in Law or Regulation. Though, as yet, legal professionals have not provided any reports, when they do so, they will report direct to the FIU and not through an SRO. In the case of legal professionals the Law in Section 7 (7) states that the reporting duty does not apply "provided it concerns information which he/she got on a client in connection with providing legal assistance under a special rule. A strict application of the legal professional privilege rule may be a reason for the lack of reports, and, again, guidance on the interpretation of this Article would be welcome.

505. *Applying Recommendation 14.* As noted earlier, the safe harbour provision in Section 12 of the Law, though applying to DNFBP does not completely cover all civil and criminal liability. Tipping off is, however, basically covered. It is unclear how lawyers handle this issue when taking

instructions from clients or advising clients of their legal position, and this could usefully be included in the guidance advised above.

506. *Applying Recommendation 15*. By virtue of Section 6 (1) of the AML Law DNFBP, like financial institutions, are required to prepare and actualise programmes to include: the review of forms of unusual business activities; content and time schedule of professional education annually; identification of a person or organisational unit who are responsible for protection against legalisation; methods to prevent and detect legalisation. Thus the development of internal policies, and the requirements for ongoing employee training are broadly met. As noted earlier, there is no enforceable requirement for compliance officers to be at management level in so far as that is relevant in some DNFBP. Nor is there a requirement to maintain independent audit functions to test compliance. In the absence of guidance and the limited check ups which the FIU have been able to undertake so far in DNFBP, given their resources, it is unclear as to the extent these issues have been addressed. Equally, greater clarification of the role of compliance officers and clarification of the width of any exceptions from organising internal control is necessary.

507. *Applying Recommendation 21*. Criterion 16.3 applies Recommendation 21 to DNFBP. There is no particular requirement for DNFBP to give special attention to business relationships and transactions with persons from countries insufficiently applying FATF standards. There was no particular mechanism in place for alerting DNFBP to concerns about countries which insufficiently apply the Recommendations, other than the general availability of the FATF NCCT list on websites. As noted earlier, this Recommendation goes further than publication of the NCCT list. As no guidance has been given it is unlikely that a proper implementation of Recommendation 21 takes place. This issue needs addressing for DNFBP as well.

4.2.2 Recommendations and comments

508. The same deficiencies in the implementation of Recommendations 13 – 15 in respect of financial institutions apply equally to DNFBP. Specifically, the reporting obligation is unclear (particularly on terrorist financing issues) and needs explaining in guidance. Attempted transactions are not clearly covered. The lawyers need guidance on Section 7(7) of the AML Law. Given the infrequency of FIU check ups, it was unclear how widely internal policies and systems have been developed and training given to DNFBP. In the absence of communication mechanisms with DNFBP, Recommendation 21 is unlikely to have been implemented.

509. The issue of potential risks that may arise having business relationships and transactions with persons from countries which do not or insufficiently apply the FATF recommendations needs to be addressed in regard of the DNFBP.

4.2.3 Compliance with Recommendation 16

	Rating	**Summary of factors relevant to s.4.2 underlying overall rating**
R.16	**Non compliant**	While the reporting duty is in place, there have been hardly any reports from DNFBP. There are concerns about the effectiveness of implementation in all aspects of Recommendation 16. As noted earlier there are concerns about the breadth of the financing of terrorism reporting obligation, which needs clarification.

4.3 Regulation, supervision and monitoring (R.17, 24-25)

4.3.1 Description and analysis

Recommendation 24

510. Casinos are licensed and supervised now under the Act on Gambling Games of 16 March 2005. An application for a licence may be filed only by a joint stock company or a limited liability company. Information has to be provided on voting rights of shareholders or partners with more than 10% of voting rights. The legal origin of the share capital has to be proved, as does the professional competence of operators. Documents proving the integrity of natural persons responsible for the operations and of the board have to be provided. A responsible person for these purposes is someone who has not been convicted of economic crime, criminal offences against order in public matters, criminal offences against property or other intentional crime. Integrity is proved by an extract from the criminal record. Nationals without permanent resident permits prove their integrity by adequate documentation (foreign extracts from criminal records) issued by the country of which they are citizens, as well as documents issued by countries in which they have stayed for longer than three months in the last three years. Licences are issued by the Ministry of Finance. They cannot be transferred. In this way the Slovakian authorities guard against criminal infiltration in this sector.

511. Operators may be inspected by the Tax Inspectorate and the FIU for AML/CFT controls. At the time of the on-site visit no check ups had been undertaken by the FIU on casino operators. Indeed, the representative from this sector with which the team met only reported 1 control visit since 1994 (from the Tax Authorities).

512. The range of sanctions available to the FIU is set out in Article 13 of the AML Law, which stipulates that obliged persons who violate their duties for identification, record keeping, and reporting of unusual transactions as defined in the Act may have a penalty of up to 2 million Slovak Crowns imposed.

513. The DNFBP sector is inevitably fragmented and it was unclear to the examiners exactly what the strategic plan was for monitoring DNFBP, given the resources of the FIU, and bearing in mind that some areas may be lower risk (Criterion 24.2).

514. The other DNFB are also monitored entirely by the FIU, at least theoretically. In 2002 they had made 2 check ups on real estate agents. In 2003 there were check ups on one further real estate agency, 1 accountant, and 1 tax adviser. In 2004, the FIU indicated that they had made 3 check ups on antique dealers, 3 accountants, 2 auctioneers, 3 bookmakers, 3 tax advisers, 4 auditors, 4 advocates, and 7 real estate agents. Over the period sanctions had been issued; 3 on real estate agencies totalling 90,000 SKK; 1 auditor (20,000 SKK); 1 postal enterprise (100,000 SKK); 1 antique dealer (500,000 SKK) and 2 accountants totalling 60,000 SKK.

515. Criterion 25.1 requires competent authorities to issue guidelines that will assist DNFBP to implement and comply with their respective AML/CFT requirements. The evaluators were told that no guidelines were issued.

4.3.2 Recommendations and comments

516. The supervisory and enforcement structures for DFNBPs, is basically missing The examiners consider that more work is required to create an effective system for monitoring and ensuring compliance with AML/CFT standards throughout this sector. Given the limited resources of the

FIU, the further development of a more risk based approach to monitoring may be helpful, or perhaps seeking the assistance of relevant SROs in this effort.

4.3.3 Compliance with Recommendations 17 (DNFBP), 24 and 25 (Criteria 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.17	**Partially compliant**	Some sanctions have been imposed but the level of monitoring given the size of the sector is tiny.
R.24	**Partially compliant**	More resources needed for monitoring and ensuring compliance by Casinos, and other DNFBP.
R.25	**Non- compliant**	Sector specific guidelines are missing.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.6.1. Description and analysis

517. Criterion 20.1 states that countries should consider applying Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

518. The AML Law includes DNFBP, which go beyond those designated by Recommendations 12 and 16. It extends to post enterprise offices, executors, legal entities operating lotteries and other gambling, auctioneers and certain high value traders in cash of at least 15,000 Euros (traders in works of art, articles for collections and antiquities). The extension of high value traders beyond dealers in precious metals and stones meets the obligations of Slovakia under Article 2(6) of the Second EU Directive (which does not specifically cover terrorist financing). The risk of terrorist financing does not appear to have been taken into account as a separate issue from the risk of money laundering in the context of Criterion 20.1. The absence of separate consideration and evaluation of the risks of terrorist financing is a consequence of the decision taken by the Slovak authorities to postpone the adoption of measures aimed at the implementation of the international standards specifically dealing with the fight against terrorism financing, until the enactment of the third European Union Directive on (the prevention) of money laundering and terrorism financing.

519. Criterion 20.2 specifies that countries should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to ML. Examples of techniques or measures that may be less vulnerable to ML provided in the Methodology are reducing reliance on cash, not issuing very large denomination of banknotes and secured automated transfer systems.

520. The evaluators were told that an important step by the NBS towards limiting systemic risks in the area of the payment system was the take-over by the NBS of the inter-bank payment system activities, formerly conducted by the Slovak National Clearing Centre. Since 1 January 2003 the NBS has been operating a new, fully automated payment system (Slovak Interbank Payment System – SIPS), which now is the only system in Slovakia providing domestic interbank transfers. The new payment system is considered more secure than hitherto. The team was also advised that there has been a rapid development of the payment cards market in Slovakia. In 1999 0.5 million

cards had been issued. By 2004 1.2 million cards had been issued by banks and were used by inhabitants of Slovakia.

4.4.1 Recommendations and comments

521. The examiners noted Slovakia has taken some steps to meet Criterion 20.1 and has considered applying the relevant Recommendations to other DNFBP. Partly this is as a result of the specific obligations of the 2nd EU Directive Article 2a(6) [other high value dealers], and as a result of Article 12 of the Second EU Directive, which required countries to extend coverage to professions and categories of undertakings other than those in Article 2a of the Directive likely to be used for money laundering purposes. Thus decisions have been made in some instances (postal enterprises and lotteries etc) to extend the AML Law because of perceived risk of money laundering but not terrorist financing. The examiners recommend that in the context of FATF Recommendation 20, consideration needs also to be given to extending coverage to those DNFBP that are at risk of being misused for terrorist financing as well as money laundering. Equally the DNFBP coverage should be kept under review to ensure that all non-financial businesses and professions that are at any given time at risk of being used for ML are regularly being considered for coverage in the AML Law.

522. It is noted at this point, in the context of evaluation of compliance with the 2nd EU Directive, that with the exception of clear references to Company Service Providers (other than inferentially in the context of persons who provide legal assistance) the range of coverage is, broadly in line with the 2nd EU Directive.

523. The examiners noted that some action had been taken which arguably meets Criterion 20.2, but no overarching strategy on this was presented to the team. While the examiners were informed of implementation of the fully automated payment system, they cannot comment on the effects (and efficiency) of this development in the context of Recommendation 20 without further information.

4.4.2 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**Partially compliant**	DNFBP coverage has been extended beyond that required by Recs 12 and 16 in the context of money laundering risks but not of terrorist financing risks (Criteria 20.1). Some action has been taken in respect of Criteria 20.2 (more payment cards issued and a fully automated payment system controlled by the NBS) but no overarching strategy on the development and use of modern and secure techniques was provided to the assessment team.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

524. Recommendation 33 requires countries to take legal measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that their commercial, corporate and other laws require adequate transparency concerning the beneficial ownership and control of legal persons. Competent authorities must be able to have access in a timely fashion to beneficial ownership and control information, which is adequate, accurate and timely. Competent authorities must be able to share such information with other competent authorities domestically or internationally. Bearer shares issued by legal persons must be controlled.

525. As noted in Section 1.4 (to which reference should also be made with regard to this Recommendation), there are various forms of enterprise established in Slovakia for the purpose of undertaking business and they have to be registered in the Commercial Registry. The registration process itself is considered as an other activity of the court. In general, decisions on entry or deletion of data from the Commercial Registry are now taken by higher court officers, instead of Judges. Petitions for registration with the Commercial Registry are formalised and provide the exact list of annexes that have to be attached to the petitions for registration. The process is intended to be completed within 5 days in the case of complete and faultless petitions. Controls that are performed are formal on the completeness of the documents. The examiners were told that it was not the function of the Commercial Registry to verify the accuracy of the information provided. However should data provided be found at any time to be untrue or documents are submitted which do not match the real status of a petitioning entity a fine may be imposed of up to 100,000 SKK. The documents which need to be submitted are the constitutive documents (the Collection of Deeds i.e. the Memorandum of Association or Deed of Establishment), a deed proving trading or similar authorisation for performance of activities registered with the Commercial Registry as the company's scope of business, if such authorisation is required, and a statement of the administrator of contributions to the registered capital of business companies and co-operatives. The name and date of birth of persons authorised to act on behalf of registered persons (e.g. directors of limited liability companies), persons that are the members of supervisory boards of registered persons, registered individuals (e.g. partners in the case of partnerships), directors of enterprises of foreign persons or directors of organisational units (branches) of enterprises of foreign persons, promoters, liquidators, bankruptcy administrators and forced administrators and their deputies will all be registered with the Commercial Registry. As noted earlier, details of shareholders in limited liability companies are available on the public Commercial Register but not of public and private joint stock companies. Financial reports, annual statements and auditor's reports should be filed annually. All changes to persons entitled to act, proxies and board members have to be announced to the Registry. Under Section 3 of Act No. 530/2003 Coll., it is required to announce all changes in the partnership agreement, memorandum of association, deed on establishment of the company or the statutes of a cooperative to the Registry, and after the change, the complete version of the new documents have to be filed with the Registry. Under Section 5 of the Act, natural persons authorised to act in the name of the legal person are required to file the application for change of recorded data or to submit the application for clearance of recorded data within 30 days from the date of the relevant decision. Under

Section 11 of the Act, the Court can fine up to a 100.000 SKK if the applications are not made in a timely way or the submitted documents are inaccurate.

526. Full details of what is deposited in the Registry may be inspected by competent authorities or the public. Every person has the right to inspect these documents and make copies of them after paying the court's fees. Additionally, as noted in 1.4, information from the Commercial Registry is available on line. Searches can be made by Registration number and names etc. Information can be found on line in relation *inter alia* to natural persons, statutory representatives, proxies, members of supervisory boards, partners, and founders. Shareholder information is not generally on line. Only where the company has only 1 shareholder and his name and address are recorded in the Registry would that information appears on-line.

527. Slovakian Law does not clearly provide for information about the beneficial ownership of companies in the way that "beneficial owner" is defined in the Glossary to the FATF Recommendations (i.e. who ultimately owns or has effective control). This is particularly the case where one company buys shares in another company and so on. There is no requirement to identify to the Registry the beneficial owners of a company which holds shares in another registered company. Similarly foreign companies are registered in Slovakia. In relation to such foreign companies beneficial ownership information is not available. Some information on beneficial ownership may be available in the company's books at the registered office. The Slovakian authorities were asked whether there is a legal requirement for an up to date register of all shareholders at a company's offices, and, whether it includes the beneficial owners of companies owning shares in that company. The team were advised that this information is not available. It thus appears to the examiners that Slovakian Law does not require adequate transparency concerning beneficial ownership and control of legal persons and it is bound to be difficult and sometimes lengthy and cumbersome for competent authorities to obtain the necessary information. Slovakian authorities can doubtless rely on investigative and other powers of law enforcement to produce from company records the immediate owners of companies. However if these in turn are also legal persons, the competent authorities have to investigate up the chain. Following this path through mutual legal assistance, whenever non-domestic legal persons form part of the chain (and assuming the third country is willing and able to provide such assistance) may possibly result in Slovakian authorities identifying ultimate owners of legal persons. However there may be doubts as to whether information obtained by this route is adequate, accurate and up to date, and, in any event, is likely to be difficult to verify.

5.1.2 Recommendations and comments

528. It is recommended that Slovakia review its commercial, corporate and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**Partially Compliant**	Slovakian Law, although requiring some transparency with respect to immediate ownership, does not require adequate transparency concerning beneficial ownership and control of legal persons. Access to information on beneficial ownership and control of legal persons, when there is such access, is not always timely.

5.2 Legal Arrangements – Access to beneficial ownership and control information

5.2.1 Description and analysis

529. Recommendation 34 requires countries to take measures to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that commercial trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.

530. Domestic trusts cannot be established in Slovakia. The Slovakian authorities were asked whether Slovakia recognises trusts created in other countries and whether a foreign trust can operate in Slovakia and register itself as a branch of a foreign institution even though domestic trusts cannot be created. The examiners have been advised that information to answer this question is unavailable.

5.2.2 Recommendations and comments

531. Domestic trusts cannot be established. Given the lack of information in answers at the question raised at paragraph 531, it seems to the examiners that the Slovakian authorities should consider satisfying themselves that foreign trusts do not operate in Slovakia, having registered themselves as branches of foreign institutions. In the circumstances, rating of not applicable has been given.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**Not applicable**	

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and analysis

532. As noted in 1.4, the NPO sector comprises primarily foundations and associations. Associations are broadly associations of citizens, purpose associations of legal persons and associations of municipalities.

533. The position and legal framework of foundations is regulated by the Act No 34/2002 Coll. on Foundations and on amendments of the Civil Code. A foundation is described as a legal form which is based on the proprietary principle, that is to say an association of financial means and property assigned to support generally beneficial purposes. A foundation is established by its registration in the Registry of Foundations. The Registration body for both foundations and public associations is the Ministry of Interior of Slovakia, Section of Public Administration, Internal Affairs Department. The Directorate General of Internal Affairs (with which the team met)

underlined that they only really act as a registration body and, though they do regularly receive information about foundations from those registered by them, they are not primarily a control body.

534. The register of foundations is publicly available on their website and gives the following information on each registered foundation:
- name, address, identification number,
- generally beneficial purpose,
- name, ID number, address of the founder,
- value and subject of the foundation property,
- name, ID number and address of the statutory representative.

Subsequent changes or information that previously entered information is no longer relevant or data on subsequent bankruptcy is also entered into the Register.

535. The number of foundations registered as at 30 March 2005 is 307. An example of the type of organisation registered as a foundation is the "Foundation to support social changes".

536. The Directorate General of Internal Affairs described the limited level of oversight which they exercise in relation to foundations to ensure they are fulfilling their established purposes. Each foundation is obliged to submit to the Directorate General of Internal Affairs an annual report certified by an auditor. This report covers the activities of the foundation, a summary of the income and its sources and donors, and a summary of the beneficiaries; overall expenditures and administrative costs, together with any amendments to the foundation charter and changes in the bodies of the foundation. Failure to submit a report in due time can result in a fine of up to 100,000 SKK, though they can also take less immediate punitive action and simply impose a further deadline for submission of the report. In the case of non-submission of the report by the extended deadline, the registration authority sends a motion to the court to dissolve the foundation. The annual report is not sent to law enforcement or the intelligence service automatically, though it could be shared if required. In any event, the annual report is published by the foundation in the Commercial Official Journal. This duty to publish is stipulated by the law. As indicated above, the Directorate General of Internal Affairs does not itself perform any direct field audits. This competence (relating to Financial Control) belongs to the Tax authorities and organs of the Financial Police. It was unclear whether these control bodies are sensitised to the issues in SR VIII and take them into account in their controls or whether their controls exclusively relate to tax issues. It was understood that no controls currently examine financial flows of funds and income. Given this, it appeared that the Directorate General of Internal Affairs are not really able to satisfy themselves on an ongoing basis as to whether all economic resources of foundations are applied exclusively to their goals or for their established purposes. Equally it was unclear whether, in the event that the Directorate General becomes aware of a serious irregularity, it has the power to place a foundation under administrative control. The team was told that if the registration body discovers any violation of law from the annual report, it can call the foundation to eliminate the violations and to take measures. In the case of non-compliance and repeated calls to eliminate the violations, the body can send a motion to the court to dissolve the foundation. . So far as the examiners are aware no such action has been taken.

537. As noted earlier, unlike foundations, associations have a legal form, and are subject to the regime of Act No. 83/1990 Coll. on associations of citizens as amended. The number of associations has increased since 1990 and this increase continues. There were 24 058 associations of citizens registered on the 30 March, 2005 (e.g. Association of the Sports Club of Inter Bratislava). Associations of citizens are established by entry into the register administered by the Ministry of the Interior, Public Administration section, Department of Internal Affairs. The name and address of the association of citizens is published on the internet. Associations are not obliged to submit reports on their activities to the Directorate General of Internal Affairs. There are also

883 associations of legal entities registered. They do not submit reports to regulatory bodies. For completeness, it should be noted that there are also associations with an international element.

538. It appears that there has been no review (since the Special Recommendation was introduced) of the adequacy of laws and regulations that relate to non-profit organisations that can be abused for the financing of terrorism, as required by Criterion VIII.1. As will be seen from the previous paragraphs there are very limited measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations or that funds or other assets collected by or transferred through non-profit organisations are not diverted to support the activities of terrorists or terrorist organisations, as required by Criteria VIII.2 and VIII.3. What there is in place does not appear, at present at least, to amount to effective implementation of the Special Recommendation.

539. Additional elements. Most, if not all, of the measures in the Best Practices Paper for SR VIII have not been implemented

5.3.2 Recommendations and comments

540. As indicated, it appears that no formal review of the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism. Though the examiners noted that there is a base to build upon as there is some financial transparency and reporting structures are at least in place in respect of foundations. It is first advised that a formal analysis is undertaken of the threats posed by this sector as a whole and the risks identified. It is then recommended that the Slovak authorities review the existing system of laws and regulations in this field so as to assess themselves the adequacy of the current legal framework (as required by Criterion VIII.1. Consideration should also be given in such a review to effective and proportional oversight of the NPO sector, the issuing of guidance to financial institutions on the specific risks of this sector and consideration of whether and how further measures need taking in the light of the Best Practices Paper for SR VIII. In particular programme verification and direct field audits should be considered in identified vulnerable parts of the NPO sector. Consideration might usefully be given as to whether and how any relevant private sector watchdogs could be utilised. It would be helpful also to raise awareness of SR VIII among existing control bodies engaged with the NPO sector so that they too could fully take account of SR VIII issues in their oversight.

5.3.3 Compliance with SR.VIII

	Rating	Summary of factors underlying rating
SR.VIII	**Non-compliant**	No special review of the risks in the NPO sector undertaken, though there is some financial transparency and reporting structures regarding foundations. However these measures do not amount to effective implementation of Essential Criteria VIII.2 and VIII.3. Consideration needs to be given to ways in which effective and proportionate oversight of this sector can be achieved in the context of SR VIII.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

541. Recommendation 31 (and Criterion 13.1) is concerned with co-operation and coordination between policy makers, the FIU, law enforcement, supervisors and other competent authorities.

542. The Slovak authorities advised in the replies to the questionnaire that co-operation with other institutions on AML/CFT issues was an important part of the tasks undertaken by the FIU. There is no provision in the law for an Advisory Authority or Co-ordinating body of the major players in the AML/CFT field. However, an Inter-Ministerial Steering Group on combating crime has been created, headed by the Minister of the Interior. Within this Group, there are three Multidisciplinary Integrated Groups of Experts. One of them is the Group on Combating Money Laundering, which was established on 24 May 2002. The Chairman of this Group is from the FIU and other members are from the following institutions: Customs Directorate, Central Tax Directorate; Secret Service; General Prosecutor's Office, National Drug Unit, Investigation Section at the Ministry of the Interior. The main objective is to improve exchange of information between institutions involved in anti money laundering activities on a national level including co-ordination of activities in concrete cases. This Group has a predominantly law enforcement focus.

543. The replies to the Questionnaire also indicated that the FIU co-operates in practice with: the Ministry of Finance; the NBS; the Central Tax Directorate, or competent tax offices; the Customs Directorate; the Financial Markets Authority and others. These latter bodies are not involved with the Multidisciplinary Group of Experts mentioned above.

544. To support co-operation with the financial supervisory authorities, bilateral agreements of co-operation had been signed between the FIU and the Financial Market Authority, and the NBS. These bilateral agreements were described as covering co-ordinated procedures and information exchange in the performance of banking and financial market supervision or to the tasks of the FIU in detection of illegal operations, and protection against legalisation of incomes from illegal activities and financing of terrorism.

545. Notwithstanding the existence of bilateral agreements, at the operational level, the examiners did not find that there was sufficient co-ordination in practice on supervision and sanctioning, as noted at 3.10.2, to ensure that breaches discovered in inspection were regularly followed by relevant sanctions. It is important moreover that inspection plans are co-ordinated, given overlapping roles. The examiners were concerned as to whether real co-ordination happened in practice in all cases at the time of the on-site visit on this issue.

546. Co-ordination at the working level between the FIU and law enforcement generally appeared also to be problematic, notwithstanding the Multidisciplinary Group of Experts. It has been noted earlier that the FIU appeared rather isolated, rarely receiving feedback from the reports it sends to law enforcement for further investigation. The FIU was similarly lacking in information from the prosecutors and the courts on statistical data relating to the cases they proceeded with and the results from courts. This lack of co-ordination needs resolving, perhaps by the Multidisciplinary Group, but more likely at a more senior level than the participants in the Multidisciplinary Group.

Additional Elements

547. This covers mechanisms in place for consultation between the competent authorities and the financial and other sectors, including DNFBP that are subject to AML/CFT Laws, Regulations, and Guidelines. The examiners did not receive information about any formal mechanisms in place for consultation with the private sector. There were sporadic meetings, but no systematic mechanisms for consultation, and the provision of feedback. The absence of guidelines generally has been noted earlier.

6.1.2 Recommendations and Comments

548. The examiners consider that, despite the mechanisms that are in place, the response to this Recommendation presents a major weakness in the Slovakian system. Each of the main players seemed to the assessment team to be working on AML/CFT issues largely in isolation from others. More needs to be done in the area of domestic co-ordination between the main players in the AML/CFT structure, at both the operational and strategic levels.

549. At the operational level, despite bilateral agreements, co-ordination on supervision and sanctioning for AML breaches needs more emphasis to ensure it is clearer who is doing what in these areas.

550. The Multidisciplinary Group of Experts, which has been set up, is obviously an important step in co-ordination on the law enforcement side, at least at working level. The examiners were not provided with any of its minutes or agendas, but clearly there is more work to be done in ensuring the FIU receives all the information it needs from other players in law enforcement for the provision by the FIU of feedback to reporting entities. The lack of feedback and statistical information to the FIU from law enforcement about the cases they send for further investigation leaves the FIU incapable of providing any meaningful case-specific feedback to the financial sector. This appears to need addressing collectively by the competent authorities, at a more senior level than the Multidisciplinary Group presently in existence.

551. At the strategic level, the examiners were concerned overall that a clearly co-ordinated national strategy on AML/CFT issues, involving all the senior key players, remained not in place, despite the various co-ordination groups described above. Gaps in legislation, risks and vulnerabilities in particular sectors, measurement of the performance of the system as a whole and strategic analysis of available statistical data in each authority are not reviewed collectively by the main senior players on any regular basis. In the context of strategic analysis, it was unclear, for instance, if there is currently any joint analysis of the nature of AML/CFT mutual legal assistance requests, which might assist in identifying potential areas of vulnerability. The examiners repeat the advice of the previous evaluation team, and endorse their view, that a stronger co-ordinating body of the main senior players (the policy makers; the FIU; law enforcement; prosecutors; and supervisors), perhaps chaired at a suitably senior level, could usefully be set up with the authority to review systematically and collectively money laundering and terrorist financing vulnerabilities, to resolve inter disciplinary issues (where appropriate), to review periodically the performance of the system as a whole against some key strategic performance indicators and report to Government; and to review collectively, where appropriate, the available statistical information to better carry out each agency's tasks and thereby enhance the AML/CFT framework. The lack of meaningful statistics on so many significant matters is an issue which this group should address urgently.

552. More emphasis also needs to be given to consultation and feedback to the financial sector and other reporting entities.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**Partially Compliant**	The existing mechanisms for co-operation and co-ordination between domestic authorities point in the right direction but appear not to be effective at present in ensuring that all necessary co-operation and co-ordination happens in practice. The arrangements for supervision and sanctioning need greater co-ordination and the FIU needs feedback and statistical information on the cases it sends to law enforcement. Strategic co-ordination and collective review of the performance of the system as a whole (including analysis, where appropriate, of better statistical information) needs developing in more detail. More detailed statistics are required across the board to assist proper strategic analysis.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.1)

6.2.1 Description and analysis

553. Slovakia is a full Party to the Vienna Convention. The Methodology requires assessors to check whether Articles 3-11, 15, 17 and 19 of the Vienna Convention are covered. Slovakia signed the Palermo Convention on 14 December 2000 and ratified it on 3 December 2003. The General Prosecutor's Office is the competent authority for providing legal assistance in pre-trial cases and the Ministry of Justice on trial cases. The Ministry of the Interior is competent in respect of cases involving transnational organised crime. The Methodology requires assessors to check whether Articles 5-7, 10-16, 18-20, 24-27, 29-31 and 34 are implemented. The comments made earlier in respect of the physical elements of the money laundering offence apply also here.

554. Slovakia has, as already noted, signed and ratified the Convention for the Suppression of the Financing of Terrorism. According to its reservation to the Convention, it exercises its jurisdiction under this Convention under all circumstances stipulated in Article 7, paragraph 2 of the Convention. The Methodology requires assessors to be satisfied that Articles 2-18 are fully implemented. With regard to Article 2 of the Convention, the criminalisation of financing of terrorism is, as noted earlier, at best very incomplete, and a specific autonomous offence needs creating which fully covers all the elements of the Methodology and IN.

555. Article 18 (1) (b) of the United Nations Convention requires measures requiring institutions and other professions involved in financial transactions to utilise the most efficient measures available for the identification of their usual or occasional customers, as well as customers in whose interest accounts are opened, and to pay special attention to unusual or suspicious transactions and report transactions suspected of stemming from a criminal activity. For this purpose, States Parties shall consider:

(i) Adopting regulations prohibiting the opening of accounts the holders or beneficiaries of which are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions;
(ii) With respect to the identification of legal enterprises, requiring financial institutions, when necessary, to take measures to verify the legal existence and the structure of the customer by obtaining, either from a public register or from the customer or both, proof of incorporation, including information concerning the customers name, legal form, address, directors and provisions regulating the power to bind the entity;
(iii) Adopting regulations imposing on financial institutions the obligation to report promptly to the competent authorities all complex, unusual large transactions and unusual patterns of transactions, which have no apparent economic or obviously lawful purpose, without fear of assuming criminal or civil liability for breach of any restriction on disclosure of information if they report their suspicions in good faith;
(iv) Requiring financial institutions to maintain, for at least five years, all necessary records on transactions, both domestic or international.

556. As already noted in the financial section of the report most of the issues covered here under (i) and (ii) need further work for effective implementation.

557. As discussed in relation to SR.III above, Slovakia has also implemented the United Nations Security Council Resolutions relating to the prevention and suppression of financing of terrorism, largely using the European Union machinery. As noted above, there are some concerns about the practical implementation of these Resolutions.

Additional elements

558. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime [ETS 141] was signed by Slovakia in September 1999, ratified in May 2001, and came into force in September 2001. Comments made earlier about the effectiveness of implementation of current confiscation provisions in Slovakia indicate that the Convention was not fully implemented at the time of the on site visit in all its aspects. Slovakia has yet to sign or ratify the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the financing of Terrorism (CETS No 198).

6.2.2 Recommendations and comments

559. It is recommended that Slovakia review in detail its implementation of the relevant Conventions and the United Nations Special resolutions.

6.2.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.35	**Largely Compliant**	Though the Palermo, Vienna and TF Conventions have been brought into force there are still reservations about the effectiveness of implementation in some instances, particularly terrorist financing criminalisation and some of the preventive standards in Palermo.
SR.1	**Partially compliant**	While Slovakia has the ability to freeze funds in accordance with the United Nations Resolutions a comprehensive system is not yet fully in place. In particular insufficient guidance and communication mechanisms with all financial intermediaries and DNFBP. Slovakia has not made clear and publicly known procedures for de-listing and unfreezing. The definition of funds in the EC Regulations is not quite broad enough. The TF Convention though in force is not yet fully implemented, particularly A. 2 (1) (see SR.III).

6.3 Mutual legal assistance (R.32, 36-38, SR.V)

6.3.1 Description and analysis

Recommendation 36 and SR.V

560. Legal assistance in Slovakia is conducted on the basis of international treaties, reciprocity, or upon requests of international courts. The Slovak Republic has not signed or ratified any specific bilateral treaty on mutual legal assistance in relation to money laundering / financing of terrorism. The Slovak Republic prefers to give precedence to multilateral solutions. The Slovak Republic however has signed more than 40 bilateral treaties on mutual assistance in criminal matters. In principle, any bilateral treaty can be used for the purposes of international co-operation including money-laundering ((or terrorist financing).

561. In addition to the Vienna, Palermo, and Strasbourg Conventions already referred to, Slovakia has also ratified the Council of Europe Convention on Mutual Assistance in Criminal Matters of 1959 [ETS 30] and its additional Protocols [ETS 99 and ETS 182]. These conventions were implemented through Chapter 23 of the Criminal Procedure Code, as amended in June 2002 (Legal Relations with abroad), which governs international judicial legal assistance. The provisions in Articles 371 to 444 are annexed. The Slovak authorities explained that there are two key principles applicable in the field of international co-operation in criminal matters: the principle of precedence of international treaties over national law; and the principle of direct applicability of the conventions. Therefore, the Slovakian authorities advised that, in principle, relevant provisions of the Code of Criminal Procedure apply only in cases of non-treaty based co-operation or regulate issues not covered by the applicable international treaty.

562. As noted earlier, the General Prosecutor's Office is one of the Central Judicial authorities (together with the Ministry of Justice) responsible for mutual legal assistance under ETS 030 and the Strasbourg Convention. The Slovak authorities may commence the legal assistance procedure on the basis of a request by a foreign authority, which can be transmitted by facsimile or by electronic means in urgent circumstances (in which case the official request must be submitted subsequently). Incoming and outgoing requests can also be transmitted through INTERPOL. The Slovak Code of Criminal Procedure does not provide for the possibility of making oral requests with subsequent written confirmation.

563. There are no domestic provisions permitting information to be submitted without prior request if the Slovak authorities believe that such information could assist foreign authorities in undertaking enquiries or criminal proceedings. Despite this, the Slovakian authorities explained that they can provide spontaneous information on the basis of applicable international treaties. At the time of the on-site visit, Article 10 of the Strasbourg Convention was in place which permits the spontaneous provision of information without prior request and the Slovakian authorities pointed to that as a legal basis for them to do so[10].

564. The content and form of a request is governed by Article 426. The content and form of the request may also be covered by the international treaty itself. In such a case the provisions of the treaty would apply. Mutual legal assistance which can be provided covers a wide range including: the production, search and seizure of information, documents or evidence, including financial

[10] Additionally, shortly before the on-site visit, the Slovakian authorities were in the process of bringing into effect the Second Additional Protocol to the Mutual Assistance in Criminal Matters Convention (CETS 182) which was brought into force on the 1st of May 2005.

records, the taking of evidence or statements from persons, the provision of originals or copies of relevant documents and records and other evidential items; the identification, freezing and confiscation of assets (intended to be laundered within the possibilities of the current domestic legal regime (see beneath). In the course of execution of requests, foreign investigators or prosecutors can be present in actions taken in Slovakia with the prior consent of the Slovakian responsible prosecutor or court as provided by Article 433 (3) of the CPC. The main criterion was explained as being that the requested assistance is not contrary to the public order.

565. Requests are executed in accordance with national procedures and procedures stipulated in international treaties. If assistance is to be provided on the basis of foreign legal provisions, a judge shall decide upon a motion of a prosecutor whether the foreign procedure does not conflict with domestic law / public order.

566. Under Article 375 of the Criminal Procedure Code, legal assistance requests cannot be executed if to do so would be incompatible with the Slovak Constitution or with a mandatory rule of the Slovak law or would violate an important protected interest of Slovakia.

567. Dual criminality applies to legal assistance requests where there is no international treaty between Slovakia and the country seeking MLA and to specific types of MLA (e.g. where coercive measures are requested). However, no strict interpretation of the principle is made and offences are interpreted in a wide manner if necessary. They look for the basic elements of the offence regardless of how it is qualified and try to find a similar domestic provision. Thus the interpretation of the Slovak authorities on this is not unduly restrictive (and complies with Criterion 36.2). A request for assistance is not refused on the sole ground that the offence is also considered to involve fiscal matters (and is in line with Criterion 36.4). In the course of execution of foreign requests issues of secrecy or confidentiality do not present obstacles.

568. The powers of competent authorities required under Recommendation 28 are generally available for use in response to requests for mutual legal assistance.

569. No information was provided on-site on whether Slovakia has considered devising and applying mechanisms for determining the best venue for prosecutions in cases that are subject to prosecution in more than one country. The Slovak authorities advised that in principle the Slovak criminal law is based on the legality principle. However if any of the conditions for the transfer of criminal proceedings are fulfilled, a transfer could take place. As a member of the European Union, Slovakia participates in Eurojust, a body of prosecutors within the EU that can assist in the coordination of prosecutions in such cases.

Statistics

570. No statistical data was presented to the team providing information on the requests received under ETS 030 or the Strasbourg Convention.

571. General information was provided that in 2004 the Pubic Prosecutor received 27 requests for legal assistance (in money laundering matters). There was no refusal of these requests, and the average length of response time was said to be up to six months. The majority of requests involved the questioning of witnesses, submission of documentary evidence and house searches (2 cases). In the same year, Slovakia requested foreign assistance in 12 cases (of money laundering) and received positive responses within the same timescales that they responded to requests.

572. The team was also advised that, in 2003, Slovakia took over one money laundering case from Romania and in 2004 it had taken over two criminal cases (from Liechtenstein and Hungary) and it transferred two criminal proceedings abroad (to the Czech Republic and Ukraine).

Additional elements

573. It is understood that the powers of competent authorities required under Recommendation 28 are available for use by judicial authorities and law enforcement where there is a direct request for assistance.

Recommendation 38 - Confiscation / Freezing

574. Sections 3 and 5 of the Criminal Procedure Code, as amended, regulate issues of legal assistance in this context. Slovakia can recognise and enforce a foreign decision in respect of an act which constitutes a criminal offence in Slovakia, including a decision taken in such proceedings resulting in the "confiscation of property or of its part or the forfeiture or confiscation of a thing" (referred to as a "foreign property decision"). The conditions for recognition are set out in Article 409 (Annex 5). This contemplates recognition of such decisions on a proposal by the Ministry of Justice, where an international treaty so provides and the proceedings in which the confiscation took place to comply with Article 6 of the Convention on the Protection of Human Rights and Fundamental Freedoms. Recognition cannot be granted if the sentence is not provided for in Slovak Law or contrary to the interests of the State (*Ordre Public*). Article 409 is only applicable if the international treaty does not state otherwise. The conditions in Article 409 are cumulative.

575. A foreign decision is recognised by a Slovak Court by converting the sanction imposed (i.e. the confiscation order) into a sanction which the Slovakian Court could have imposed if it had proceeded with the criminal offence. This includes in the case of a foreign property decision deciding who shall receive the title to the confiscated property, or part or thing.

576. The procedure for recognition of the foreign confiscation order is set out in Article 411. A motion for recognition is submitted by the Ministry of Justice to the Regional Court in the district where the relevant property or thing is located . Once recognised, the District Court in which the property is located has jurisdiction to order the enforcement of the order (Article 414).

577. Thus the confiscation of laundered property from proceeds, and instrumentalities used in or intended to be used in money laundering, financing of terrorism or other predicate offences by a foreign court is capable of being enforced in Slovakia in so far as similar action is possible domestically. A clearer legal base domestically to confiscate indirect proceeds and value orders would thus assist in the context of international co-operation.

578. Article 442 covers the surrender of "things" (subject to provisions on return where necessary for the purposes of criminal proceedings in the requesting country). This covers evidence required abroad and covers provisional seizure of instrumentalities for the purpose of foreign criminal proceedings. This provision has been implemented. Prosecutors indicated that cars seized in Slovakia had been sent abroad for use in foreign proceedings.

579. Article 443 covers provisional seizure of property, and freezing on behalf of foreign authorities. The same procedure as for enforcement of foreign confiscation orders is followed in these cases. Prosecutors also indicated that this provisional measure had been implemented on behalf of Germany, but no statistics on overall numbers of provisional measures or confiscation orders taken on behalf of foreign countries were provided.

580. Criterion 38.3 does not appear to have been formally addressed as yet though in the context of individual cases it was understood that arrangements could be made for coordinating seizure and confiscation actions. At the time of the on-site visit confiscated funds were deposited in the State Budget and a separate asset forfeiture fund has not been considered. Thus, criterion 38.4 is not fully satisfied.

581. Mechanisms for sharing confiscated assets with other countries (where there has been coordinated law enforcement action) are not provided for. It is understood that this is yet to be considered (Criterion 38.5).

Terrorist financing

582. As for terrorist financing, there is no exception provided for the application of the above mentioned rules. In so far as terrorist financing is an offence under Slovak Law, the normal mutual legal assistance rules would apply to applications by requesting States where the conduct involved is covered under Slovakian Law. As noted earlier, not all conduct required to be covered is covered in the present formulation of the offence; and this would inhibit international co-operation in this area.

Additional elements

583. Foreign non-criminal confiscation orders cannot be recognised and enforced in the absence of a bilateral or multilateral agreement.

6.3.2 Recommendations and comments

584. It seems that Slovakia has provisions which cover general judicial legal assistance and that they are providing it where required, though detailed statistics on legal assistance requests were not forthcoming.

585. Complete, detailed and precise statistics must be kept on AML / CFT mutual legal assistance, which will assist in strategic analysis, as well as identifying efficiency issues / timing and fulfilment of requests in whole or in part. These statistics should be available to a central coordinating body on AML / CFT issues (see Recommendation 31 above).

586. The basic problems that appear to arise in the context of international judicial legal assistance flow from uncertainties and unclarity in the relevant domestic provisions. The financing of terrorism offence needs extending, as recommended above, to ensure it can be fully the subject of international assistance. The Slovak authorities state that Article 372 of the Criminal Procedure Code means that the provisions of international treaties take precedence over domestic law e.g. the enforcement of third party confiscation orders (which may not be possible in domestic proceedings) may be possible in MLA but in the absence of statistical information that this is happening and the uncertainties in some parts of the domestic legislation, the examiners cannot confirm that all relevant assistance in this area would be granted, and recommend that, where domestic law conflicts with international standards, its clarification is important in the international context also. This is particularly important as Article 409 (d) states that recognition of a foreign decision *inter alia* is only possible where the enforcement of the sentence is not prescribed[11] under the Law of Slovakia. It is unclear whether something which is not provided for in domestic law is "not prescribed" in Slovakia. Thus the Slovak authorities should in this context also:

- fully extend the financing of terrorism offence;

[11] The Slovak authorities advised shortly before the report was debated that the translation provided in the annexes was incorrect and that "prescribed" should read as "time barred".

587. It is unclear whether the language of Article 409 of the Criminal Procedure Code limits the enforcement of foreign decisions to contracting parties to the international treaties. If so (and no bilateral treaty applies) it is assumed Slovakia would have to start its own domestic proceedings to allow for confiscations in situations not covered by the Vienna and Strasbourg Conventions. Recognition of foreign confiscation judgments being conditional upon the existence of an international treaty is not an issue which can be addressed through the principle of reciprocity (Article 373 of the Code of Criminal Procedure). It is assumed that Slovakia would have to start its own proceedings to allow for confiscations in such situations. A procedure which requires a case to be made out before a local court on the basis of foreign evidence is inherently less effective than one where the requested country satisfies itself that a foreign court has made an order, and then gives effect to it. The Slovak authorities may wish to consider more general domestic legislation to cover the enforcement of foreign orders.

588. Arrangements for coordinating seizure and confiscation action with other countries should be established.

589. Consideration should also be given to:

- establishment of an asset forfeiture fund;
- sharing of confiscated assets with other countries when confiscation is directly or indirectly the result of coordinated law enforcement action.

6.3.3 Compliance with Recommendations 32, 36 to 38, and Special Recommendation V

	Rating	Summary of factors underlying rating
R.32	**Partially compliant**	There is no precise statistical data on the nature of mutual assistance requests, on the time required to handle them, and on predicate offences related to requests. There is no data on other formal requests for assistance made or received by the FIU or any spontaneous referrals made by the FIU to foreign authorities. Slovak authorities do not keep statistics on the amounts of property frozen relating to money laundering, financing of terrorism and criminal proceeds, as well as on the number of persons or entities and the amounts of property frozen under United Nations Resolutions relating to financing of terrorism.
R.36	**Largely compliant**	Slovakia has general MLA provisions, covering judicial legal assistance which are not applied in an overly strict way or made subject to unreasonable conditions. The width of the domestic financing of terrorism offence could severely limit MLA based on dual criminality. No information on whether best venue mechanisms had been considered. Of the statistics provided average response times were acceptable, though comprehensive statistics were lacking.
R.37	**Largely compliant**	Dual criminality is not interpreted in a particularly strict way. No statistical data which demonstrates whether this is a problem.
R.38	**Partially compliant**	Mutual legal assistance on identification, freezing, seizure or confiscation of property related to money laundering, financing of terrorism, or other predicate offences is more problematic than general MLA requests. Uncertainties about the domestic provisions need clarifying in the international context, particularly in relation to forfeiture from third parties. There are no arrangements for coordination seizure and confiscation actions with other countries as well as for the sharing of confiscated assets between them. Absence of statistical data makes judgment on effectiveness

		difficult.
SR.V	**Partially compliant**	Financing of terrorism is not an independent offence in Slovakia and many elements of the offence as described in the TF Convention and the Methodology and IN are not covered, such as to raise problematic MLA under 36.1 and 37.1 when applied to terrorist financing under this Special Recommendation. There are no special provisions concerning mutual legal assistance in relation to financing of terrorism offences.

6.4 Extradition (R.32, 37 and 39, SR.V)

6.4.1 Description and analysis

590. Slovakian extradition has three different schemes:

- Extradition relating to States applying the European Convention on Extradition [ETS 24] and its additional Protocols [ETS 86 and 98], or other international treaties. These procedures are largely provided for in Section 2 of Chapter 23 of the Code of Criminal Procedure (Annex 5);
- The surrender procedure relating to States applying the European Arrest Warrant;
- Extradition based on reciprocity in the absence of a relevant international treaty. Slovakia is bound by 46 bilateral treaties concerning extradition (some of which are with countries which are also Parties to the European Convention on Extradition or apply the European Arrest Warrant).

European Convention

591. The relevant provisions in domestic law are set out in Articles 383 to 407 of the Code of Criminal Procedure.

592. According to Article 392, extradition is admissible if the act for which extradition is requested is a criminal offence under the Law of Slovakia and is punishable under the same law by a prison sentence for a maximum period of at least one year. Thus, money laundering and preparation for or participation in terrorism, forming a criminal or terrorist group, managing such a group or providing aid to it, are extraditable offences. Thus, within the limits of the present offence of financing of terrorism, such conduct is extraditable. The principal elements of the scheme in the Code of Criminal Procedure are:

- the request for extradition is submitted to the Office of the Prosecutor General or to the Ministry of Justice;
- a prosecutor conducts preliminary investigation;
- a court decides whether extradition is admissible;
- the Minister of Justice grants the extradition order;
- the Speciality Rule applies.
- a simplified extradition procedure is possible dependent on consent and which can involve waiver of the Speciality Rule (Article 396).

The maximum period of each stage is not set out in legislation.

593. There are no constitutional prohibitions preventing extradition of own nationals. However, the Criminal Code states that Slovak nationals cannot be extradited to another State unless a Special Act states that this may occur (as set out in Act No. 403/2004 Coll. on European Arrest Warrant – see below), or an international treaty or a decision of the competent international body is binding on Slovakia and constitutes an obligation to extradite its own nationals. In the case of an

extradition request under Articles 383 to 407 of the Code of Criminal procedure, Article 394 of the Code of Criminal Procedure provides nine reasons which render extradition inadmissible including that:

- it concerns a Slovak national, unless the obligation to extradite own nationals is contained in an international treaty or a decision of an international organisation which is binding on Slovakia. There is no international treaty binding on Slovakia which would allow for the extradition of own nationals. Surrender would be possible to the International Criminal Court.
- political offence;
- violation of tax, customs or other fiscal rights (fiscal offences);
- capital punishment may be imposed
- if the criminal prosecution or the enforcement of the sentence are prescribed under Slovak Law.

594. The authority for the possibility of prosecution domestically of own nationals where extradition is not possible would appear to be Section 18 of the Criminal Code, which provides that where a national of Slovakia commits a crime abroad, he is criminally liable under the Slovak Criminal Code. Thus, it appears that it is legally possible for the Slovak authorities to submit cases to the competent bodies in Slovakia where extradition is refused on the grounds of nationality. The provision for prosecution of Slovak nationals had not been used. The Slovak authorities advised that if extradition was refused on the basis of nationality then the case would be brought before the relevant prosecution authority.

595. The inadmissibility of extradition proceedings on the basis that the offence is fiscal in the Criminal Procedure Code was not readily understood. It is in conflict with the Second Protocol to the European Convention on Extradition (which Slovakia has ratified) and Article 16 (15) of the Palermo Convention, which they have also ratified. Equally it is surprising because the Slovakian Act on the European Arrest Warrant states that the execution of such a warrant shall not be refused on the ground that Slovakia does not impose the same kind of tax or duty as the issuing European Union member State. The Slovakian authorities indicated that everything in the relevant part of the Criminal Procedure Code regulating relations with abroad is applicable unless a binding international treaty provides otherwise. In the light of the exclusion of such a refusal under the 2nd additional protocol, it was submitted that this would be directly applicable and take precedence over domestic law.

European Arrest Warrant (EAW)

596. Slovakia's implementing legislation Act No. 403 / 2004 Coll. came into operation on 1 August 2004. This implements the Council Framework Decision on the European Arrest Warrant and the surrender procedures between member States. According to this Act, both the criminal offence of money laundering and financing of terrorism fit into categories of criminal offences for which the principle of dual criminality is abolished (Section 4).

597. The fact that a requested person is a national of Slovakia shall not be used as the ground for refusing execution of a European Arrest Warrant (Section 14, para. 4 of the Act).

598. Simplified surrender procedure is allowed by the provisions of Section 20 of the Act and is made dependent on consent of the person subject to surrender.

599. The EAW should be in the form set out in the Framework Decisions and must contain:

- the name and nationality of the person sought;
- details of issuing judicial authority;

- details of the offences, the date, time and circumstances in which they were committed and the degree of involvement of the person sought;
- whether the person has been convicted, sentenced or is liable to detention or whether a warrant for the person's arrest has been issued; the penalty to which the person would be liable if convicted or to which he or she is liable, having already been convicted, or the penalty imposed.

600. The preliminary investigation is undertaken by the Regional Prosecutor's Office (which includes verification of the form and content of the EAW). If the person agrees, the prosecutor issues a final decision on the execution of the EAW. If there is no consent of the person, the case is brought before the Regional Court. A separate decision is made on custody of the Regional Court upon the motion of the Regional Prosecutor's Office.

601. Two Slovak nationals have been extradited to Austria using the EAW procedure for murder.

602. Section 373 of the Slovak Code of Criminal Procedure states that, if the requesting State is not bound by an international treaty, its request shall be executed by the Slovak authorities, only if the requesting State guarantees that it would execute a comparable request submitted by the Slovak authority and it is that kind of a request whose execution is not made conditional upon the existence of an international treaty.

603. The following bilateral treaties have been concluded with the following countries:

Afghanistan, Albania, Algeria, Armenia, Azerbaijan, Belgium, Belarus, Bosnia and Herzegovina, Bulgaria, Cyprus, Czech Republic, Greece, Croatia, Yemen, Republic of South Africa, Canada, Kazakhstan, Kenya, Korea (North), Cuba, Lesotho, The Former Yugoslav Republic of Macedonia, Hungary, Moldova, Monaco, Mongolia, New Zealand, Poland, Portugal, Austria, Romania, Russia, Slovenia, United States of America, Serbia and Montenegro, Swaziland, Syrian Arab Republic, Tajikistan, Italy, Tunis, Turkmenistan, Uganda, Ukraine, Uzbekistan, United Kingdom, Vietnam.

604. No statistics on extradition requests on money laundering or terrorist financing offences were provided to the examiners.

6.4.2 Recommendations and comments

605. Slovakia has fully implemented the European Arrest Warrant, which means that within the EU Slovak nationals can in principle be returned for ML and TF without a strict application of the dual criminality principle. With regard to non EU requests for extradition, the fiscal excuse appears incompatible with treaty obligations. The Slovakian authorities indicated that treaty obligations would prevail over national law in the event of a conflict but this anomaly should be reviewed and corrected[12]. Given that under Article 394 of the Code of Criminal Procedure extradition is rendered inadmissible (for non EU cases) if the criminal prosecution is not prescribed in Slovakian law, extradition in these circumstances might be problematic in respect of a large number of the elements of financing of terrorism incrimination under the TF Convention, Methodology and IN. Given that there are no statistics it is difficult to determine whether relevant extradition proceedings are handled without due delay.

[12] The Slovak authorities indicated that the new Code of Criminal Procedure effective since 01.01.2006 no longer states that extradition would be inadmissible in relation to a fiscal offence.

6.4.3 Compliance with FATF Recommendations

	Rating	Summary of factors relevant to Section 6.4 underlying overall rating
R.32	**Partially Compliant**	There is a lack of statistical data on ML TF extradition requests.
R.37	**Partially Compliant**	Dual criminality as permitted in international treaties is required for extradition in non EU countries. Within the EU borders the dual criminality principle has in principle been abolished under the European Arrest Warrant. Because financing of terrorism is insufficiently described currently in national legislation, the requirement of dual criminality for extradition would mean that for non-EU countries, some financing of terrorism offences would not be extraditable.
R.39	**Largely Compliant**	In the absence of statistics it is not possible to determine whether these requests are handled without undue delay.
SR.V	**Partially Compliant**	The lack of a comprehensive domestic incrimination of financing of terrorism would render extradition for FT difficult outside the EU context. There are no special provisions concerning extradition requests in relation to financing of terrorism offences.

6.5 Other forms of international co-operation (R.32 and 40 and SR.V)

6.5.1 Description and analysis

606. As a matter of general policy the competent authorities in Slovakia have indicated that they give a clear priority to exchanging information with international counterparts as widely as possible, and as promptly as possible. Slovakia (save for extradition as outlined above) does not refuse to assist solely on the ground that the request is considered to involve fiscal matters. Nor does it refuse on grounds of secrecy laws or confidentiality requirements (other than where legal professional privilege applies). Police authorities directly exchange information with police authorities of foreign countries using Europol or Interpol channels. There was no statistical data available showing the level of informal police assistance. The FIU has signed Memoranda of Understanding with the FIUs of Belgium, the Czech Republic, Slovenia, Poland Ukraine, Monaco, Australia, and Albania. At the time of the on-site visit, the FIU had entered into negotiations with Romania, Taiwan and Canada.. They indicated that they co-operate with 42 partner FIUs within Egmont. They advised that there are no legal restrictions on exchange of information with FIUs of any type in Egmont, though this is not reflected in legislation. They take into account the Egmont Group Statement of Purpose and its Principles for Information Exchange. They indicated, in this context, that though they are statutorily obliged to provide information to Tax authorities this does not apply to information received from foreign FIUs. They can retrieve information from their own and State databases for responding to foreign requests. Regarding the exchange of information with foreign FIUs, the Slovakian FIU advised that in 2003, they processed in total 156 letters in connection with requests made to and coming from other FIUs. In 2003 the detailed registration of individual requests was not processed, so it is not possible to be precise as to how many were sent by the Slovak FIU and how many received. By contrast, the figures for 2004 were recorded precisely: 58 requests were received and 126 requests sent. It is understood that all were responded to, though the timescales for responses is not recorded and therefore uncertain. The FIU do keep figures on spontaneous referrals by them to foreign FIUs.

They made 7, 13, and 21 spontaneous reports in 2002, 2003, and 2004 respectively. It is not possible to distinguish the nature of requests and spontaneous referrals into those relating to financing of terrorism and money laundering.

607. The NBS is authorized to co-operate with foreign supervisory bodies for the purposes of consolidated supervision and to exchange information gained by supervisory activities (under Article 6 Act on Banks and Article 34a of the NBS Act). Based on these provisions the NBA has signed 10 international MOUs (with the United States, France, Italy, The Netherlands, Germany, Czech Republic, Austria, Hungary, Malta and Cyprus) The FMA is understood to be able to cooperate internationally by virtue of Article 48 of the Act No 96/2002 Coll. on Supervision of the Financial Market (which has not been provided).

6.5.2 Recommendation and comments

608. The FIU has abroad capacity to exchange information and no major obstacles are in the way of constructive information exchange. There is no statistical data on how quickly they are able to respond and it is recommended that the FIU maintains this information in order that it can demonstrate the efficiency of its response times. It may assist if they were given a statutory basis to cooperate with non Egmont Group FIUs. The Slovakian authorities should satisfy themselves that the supervisory bodies are exchanging information on request (and otherwise) with foreign counterparts. Statistics should be kept to show whether requests made to supervisory bodies were met in whole or in part.

6.5.3 Compliance with Recommendations 32 and 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.32	**Partially Compliant**	FIU statistics were basically adequate to demonstrate the FIUs ability to cooperate constructively though they could be refined to include response times. Statistics on information exchange by supervisory bodies were lacking.
R.40	**Largely Compliant**	Broad capacity for exchange by FIU and supervisory authorities but lack of detailed statistics undermines effectiveness.
SR.V	**Largely Compliant**	Unclear how many requests for information FIU deals with on FT though they have a remit in this area. The restricted width of the TF offence domestically may inhibit provision of information.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

7 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating[13]
Legal systems		
1. Money laundering offence	**Largely compliant**	Some of the legislative provisions need further clarification. Not all of the essential criteria are provided for in Slovak Law (e.g. financing of terrorism as a predicate offence; conspiracy as an ancillary offence). While the number of prosecutions is increasing, the effectiveness of money laundering criminalisation could be enhanced by placing more emphasis on third party laundering and clarifying the evidence required to establish the underlying predicate criminality in autonomous prosecutions.
2. Money laundering offence Mental element and corporate liability	**Partially compliant**	The intentional element of the money laundering offence is not comprehensively provided for in Article 252 and it is unclear whether the intentional element can be inferred from objective facts and circumstances. Criminal liability does not apply yet to legal persons.
3. Confiscation and provisional measures	**Partially compliant**	There remain some doubts about the legal regime's effectiveness in confiscating "proceeds" (in the widest sense of the term). Also there are concerns about the legal structure of the seizure and freezing regime to ensure that all indirect proceeds, substitutes etc may be liable to confiscation in due course. The laws do not clearly provide for forfeiture from third parties and for the protection of bona fide third parties. No clear authority to take steps to prevent or void actions, whether contractual or otherwise, where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. The lack of any statistics on forfeiture/freezing and seizing makes a judgement on the effectiveness of the system impossible. No property forfeited in money laundering cases during the period under evaluation.

[13] These factors are only required to be set out when the rating is less than Compliant.

Preventive measures		
4. Secrecy laws consistent with the Recommendations	**Largely compliant**	Most of the basic provisions are in place to mitigate the rules of financial secrecy but clearer provision should be made for supervisory authorities to exchange information with other competent authorities enquiring into activities which might be in breach of AML / CFT requirements.
5. Customer due diligence	**Partially compliant**	The Act on Banks Article 89 provides for identification requirements in the banking sector and determination of ownership of funds and determination of whether the customer acts on his own behalf. However: • The provisions of the AML Law on identification do not relate to account opening or establishing business relations; while some other legislation covers this in part, it would be preferable for this issue to be covered across all reporting entities in the AML Law. • No reference in insurance and securities laws or regulations to the requirement to undertake CDD measures when establishing business relations. • No reference in Law or Regulation to CDD measures when carrying out occasional wire transfers (which fully include the verification process) and in cases of doubts regarding the veracity or adequacy of previously obtained customer identification data; • No reference in Law or Regulation to the need to carry out CDD measures in occasional transfers covered by the Interpretative Note to SR.VII; • No specification in the insurance and the securities laws as to which documents are reliable independent documents for verification of identification for natural persons; • No enforceable guidance on how the verification process should apply to legal persons (especially non-resident legal persons). • The timing of verification should be clarified across the whole of the financial sector; • The definition of beneficial owner as set out in the FATF Recommendations in respect of ultimate control of the customer and the natural persons who exercise ultimate effective control over legal persons or arrangements is missing; • The notion of ongoing due diligence is insufficiently embedded in Law or Regulation; • The need for enhanced due diligence, in respect of a higher risk customers, needs to be incorporated in enforceable guidance across the whole financial sector; • The practice of making an STR where CDD cannot be completed satisfactorily was uncertain;

		• Enforceable guidance to all financial institutions covering the policy on application of CDD measures to existing customers could be refined.
6. Politically exposed persons	**Non compliant**	Slovakia has not implemented adequate measures concerning PEPs, which are enforceable.
7. Correspondent banking	**Non compliant**	No enforceable guidance on cross-border correspondent relationships. No guidance on payable through accounts.
8. New technologies and non face-to-face business	**Non compliant**	No specific enforceable guidance on measures to be put in place to avoid the risks associated with technological developments and non face to face relationships.
9. Third parties and introducers	**Largely compliant**	Though intermediaries are rarely used, there is the possibility for investment service providers (which are a small part of the financial sector), to act in this way and the examiners had insufficient information on their compliance.
10. Record keeping	**Largely compliant**	Article 42 of the Law on Banks covers transaction records and Article 6 of the AML Law broadly covers the obligations. However: • it would be helpful to provide a legal basis for keeping transaction records and identification data for longer than five years if necessary when properly required to do so in specific cases by a competent authority; • the period of retention of identification data should be the same in the Act on Banks and the AML Law (i.e. at least five years following the termination of the account or business relationship); • identification data to be retained should be clarified in the AML Law or in Decree to include account files and business correspondence;
11. Unusual transactions	**Non compliant**	The Recommendation as such is not required by law, regulation or by other enforceable means. It should be transposed and financial institutions should be required to examine the background and purpose of such transactions, set their findings out in writing and keep the findings available for at least five years.
12. DNFBP – R.5, 6, 8-11	**Non Compliant**	The same concerns in the implementation of Rec. 5 apply equally to obliged Financial Institutions and DNFBP (see S. 3.2 of the report). All requirements in relation to full identification of beneficial ownership and additional identification/KYC rules should apply to DNFBP especially regarding higher risk activities. CDD should be required by real estate dealers, lawyers, notaries and other independent legal professionals whenever they carry out specified transactions regardless of size (currently only those over 15,000 Euro are caught). No adequate implementation of Rec. 6. No clear guidance re emerging technological developments (Rec. 8). Not all essential criteria marked with an asterisk in Rec. 10 are covered by law or

		regulation. Rec. 11 – paying special attention to all complex, unusual large transactions needs applying to DNFBP by law, regulation or other enforceable means. Current level of implementation of FATF requirements by DNFBP raise significant concerns. An awareness raising programme is urgently required to promote effective compliance.
13. Suspicious transaction reporting	**Partially compliant**	There is a direct mandatory reporting requirement in the AML Law, though: • the reporting system on unusual business activity is unclear and the examiners have reservations as to its effectiveness; • attempted transactions not covered; • no guidance on the reporting system; • financing of terrorism is only partially covered. • the NBS is not covered in respect of its commercial activities
14. Protection and no tipping-off	**Largely compliant**	It should be clarified that all civil and criminal liability is covered.
15. Internal controls, compliance and audit	**Partially compliant**	General duty to establish and maintain internal procedures, policies and controls to prevent money laundering is set out in broad terms in Article 6 of the AML Law, but: • fuller treatment needed by enforceable means in respect of the content of ongoing employee training programmes (Criterion 15.3); • screening procedures to ensure high standards when hiring employees need requiring by enforceable means (Criterion 15.4); • the requirement of a designation of a compliance officer at management level needs to be covered by enforceable means (15.1.1) and it would assist to delineate his / her functions from internal audit and ensure he/she can act independently, and greater clarification of the compliance officer's powers and role is needed.
16. DNFBP – R.13-15 & 21	**Non compliant**	While the reporting duty is in place, there have been hardly any reports from DNFBP. There are concerns about the effectiveness of implementation in all aspects of Recommendation 16. As noted earlier there are concerns about the breadth of the financing of terrorism reporting obligation, which needs clarification.
17. Sanctions	**Partially compliant**	Some sanctions which may be proportionate and dissuasive are available for AML breaches by the FIU and some supervisory authorities, and some sanctions have been imposed, but the effectiveness of the overall sanctioning regime, at present, is questioned. In any event, not all obligations under the Methodology, which should be required by law, regulation, or other enforceable means, are sanctionable at present. The

		obligation of sanctioning in respect of failure to report unusual business operations involving funds which may be linked or related to terrorism and financing of terrorism should be clarified. The role(s) of the supervisory authorities in sanctioning for AML/CFT breaches should be clarified to avoid double sanctioning in some cases, and working arrangements between the FIU and the supervisory authorities on sanctioning should be more clearly set out, preferably by Memoranda of understanding and greater practical co-ordination. Some sanctions have been imposed on DNFBP but the level of monitoring given the size of the sector is tiny.
18. Shell banks	**Largely compliant**	The Act on Banks imposes licensing conditions which require conditions for establishment of banks with a physical presence in Slovakia. Decree No. 9/2004 of the NBS establishes the particulars to be required of an applicant for a banking license. Both sets of provisions could act as a barrier against shell banks operating in Slovakia. However, there is no legally binding prohibition on financial institutions on entering into or continuing correspondent banking relationships with shell banks. Neither is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks.
19. Other forms of reporting	**Non compliant**	No consideration of the feasibility of reporting all transactions above a fixed threshold to national central agency.
20. Other DNFBP and secure transaction techniques	**Partially compliant**	DNFBP coverage has been extended beyond that required by Recs 12 and 16 in the context of money laundering risks but not of terrorist financing risks (Criteria 20.1). Some action has been taken in respect of Criteria 20.2 (more payment cards issued and a fully automated payment system controlled by the NBS) but no overarching strategy on the development and use of modern and secure techniques his was provided to the assessment team.
21. Special attention for higher risk countries	**Non compliant**	• No broad requirement to pay special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations; • Factors underlying the rating on Recommendation 11 (Essential Criterion 21.2) are also relevant here.
22. Foreign branches and subsidiaries	**Partially compliant**	• No general obligation for financial institutions which ensures their branches and subsidiaries observe AML/CFT measures consistent with Slovakian requirements and the FATF Recommendations to the extent that host country laws and regulations permits;

		• There is no requirement to pay particular attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations; • Provision should be made that where minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.
23. Regulation, supervision and monitoring	**Partially compliant**	The FIU exercises some supervision over AML issues. At the time of the on-site visit, the NBS had begun covering AML in on-site visits in credit institutions but had reported no breaches of the AML Law to the FIU. Information on the amount of supervision by the FMA was insufficient to judge the quality of AML supervision in the insurance and securities sectors. No formal AML supervision in exchange houses by the NBS. The fitness and propriety of future owners and significant shareholders in foreign exchange houses needs more enquiry.
24. DNFBP - Regulation, supervision and monitoring	**Partially compliant**	More resources needed for monitoring and ensuring compliance by Casinos, and other DNFBP.
25. Guidelines and Feedback	**Non-compliant**	No guidance to the financial institutions (and DNFBP) to assist their implementation of the reporting duties on AML / CFT.
Institutional and other measures		
26. The FIU	**Partially compliant**	No explicit reporting obligation on suspicions of financing of terrorism. No guidelines or indicators to the financial sector on "unusual business activity" has been issued. Unclear reporting system. Since the 2nd evaluation there have not been any publications to the financial sector or otherwise covering statistics, typologies and trends in the AML/CFT field. The overall weak position in the current police structure raises concerns about the operational independence and autonomy of the FIU.
27. Law enforcement authorities	**Largely Compliant**	While there are designated law enforcement authorities with responsibility for money laundering and terrorist financing investigations, with adequate powers, there is a reserve on the effectiveness of money laundering and terrorist financing investigations.
28. Powers of competent authorities	**Compliant**	
29. Supervisors	**Partially compliant**	No power to perform AML supervision in foreign exchange offices by prudential supervisors. No general power in the whole financial sector to supervise CFT issues.
30. Resources, integrity and	**Partially**	More resources are needed for the FIU (particularly for

training	**Compliant**	supervision). More staff and training required for prudential supervisors. Law enforcement needs more training and guidance.
31. National co-operation	**Partially Compliant**	The existing mechanisms for co-operation and co-ordination between domestic authorities point in the right direction but appear not to be effective at present in ensuring that all necessary co-operation and co-ordination happens in practice. The arrangements for supervision and sanctioning need greater co-ordination and the FIU needs feedback and statistical information on the cases it sends to law enforcement. Strategic co-ordination and collective review of the performance of the system as a whole (including analysis, where appropriate, of better statistical information) needs developing in more detail. More detailed statistics are required across the board to assist proper strategic analysis.
32. Statistics	**Partially Compliant**	More detailed statistics on money laundering investigations, prosecutions and convictions are required and need also to be communicated to the FIU. More detailed statistics required in relation to freezing under UNSCRs outside of the banks and on confiscation orders. Similarly more statistics are required on supervision showing the nature of problems in AML/CFT implementation and more detailed statistics on judicial co-operation.
33. Legal persons – beneficial owners	**Partially Compliant**	Slovakian Law, although requiring some transparency with respect to immediate ownership, does not require adequate transparency concerning beneficial ownership and control of legal persons. Access to information on beneficial ownership and control of legal persons, when there is such access, is not always timely.
34. Legal arrangements – beneficial owners	**Not applicable**	
International Co-operation		
35. Conventions	**Largely Compliant**	Though the Palermo, Vienna and TF Conventions have been brought into force there are still reservations about the effectiveness of implementation in some instances, particularly terrorist financing criminalisation and some of the preventive standards in Palermo.
36. Mutual legal assistance (MLA)	**Largely compliant**	Slovakia has general MLA provisions, covering judicial legal assistance which are not applied in an overly strict way or made subject to unreasonable conditions. The width of the domestic financing of terrorism offence could severely limit MLA based on dual criminality. No information on whether best venue mechanisms had been considered. Of the statistics provided average response times were acceptable, though comprehensive statistics were lacking.

37. Dual criminality	**Partially compliant**	Dual criminality is not interpreted in a particularly strict way for mutual legal assistance. No statistical data which demonstrates whether this is a problem. Dual criminality as permitted in international treaties is required for extradition in non EU countries. Within the EU borders the dual criminality principle has in principle been abolished under the European Arrest Warrant. Because financing of terrorism is insufficiently described currently in national legislation, the requirement of dual criminality for extradition would mean that for non-EU countries, some financing of terrorism offences would not be extraditable.
38. MLA on confiscation and freezing	**Partially compliant**	Mutual legal assistance on identification, freezing, seizure or confiscation of property related to money laundering, financing of terrorism, or other predicate offences is more problematic than general MLA requests. Uncertainties about the domestic provisions need clarifying in the international context, particularly in relation to forfeiture from third parties. There are no arrangements for coordination of seizure and confiscation actions with other countries as well as for the sharing of confiscated assets between them. Absence of statistical data makes judgment on effectiveness difficult.
39. Extradition	**Largely Compliant**	In the absence of statistics it is not possible to determine whether these requests are handled without undue delay.
40. Other forms of co-operation	**Largely Compliant**	Broad capacity for exchange by FIU and supervisory authorities but lack of detailed statistics undermines effectiveness.
Nine Special Recommendations		
SR.I Implement UN instruments	**Partially compliant**	While Slovakia has the ability to freeze funds in accordance with the United Nations Resolutions a comprehensive system is not yet fully in place. In particular insufficient guidance and communication mechanisms with all financial intermediaries and DNFBP. Slovakia has not made clear and publicly known procedures for de-listing and unfreezing. The definition of funds in the EC Regulations is not quite broad enough. The TF Convention though in force is not yet fully implemented, particularly A. 2 (1) (see SR.III).
SR.II Criminalise terrorist financing	**Non compliant**	The Criminal Code provides for an offence covering a person who "supports" a terrorist group. The Slovakian authorities also relied on the possibility of proceeding for aiding and abetting an offence of terrorism or the establishment of a terrorist group. There are no cases and therefore there is no jurisprudence. Criminalising terrorist financing solely on the basis of aiding and abetting principles is not in line with the Methodology. The present incrimination of terrorist financing appears

		not wide enough to clearly sanction criminally (in respect of both individuals and legal persons [the latter are, in any event, not covered by Slovak law]): • The collection of funds with the intention that they should be used or in the knowledge that they should be used in full or in part to carry out the acts referred to in A.2a and b of the TF Convention (including whether or not the funds are actually used to carry out or attempt to carry out a terrorist act) • The provision or collection of funds for a terrorist organisation for any purpose including legitimate activities • The collection and provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist (for any purpose) • All types of activity which amount to terrorist financing so as to render all of them predicate offences to money laundering.
SR.III Freeze and confiscate terrorist assets	**Partially compliant**	Slovakia has the ability to freeze funds in accordance with S / RES / 1373 and under 1267 under European Union legislation though the definition of funds in the European Commission Regulations does not fully cover the terms in SR.III. They have the legal capacity to act in relation to European Union internals and on behalf of other jurisdictions. However they need to develop guidance and communication mechanisms with all financial intermediaries and DNFBP and a clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner. Currently, notwithstanding adequate administrative penalties, compliance is not adequately monitored.
SR.IV Suspicious transaction reporting	**Non-compliant**	Reporting of financing of terrorism is not explicitly covered. The present Slovak provisions said to cover this are, in any event, insufficiently broad. No reports received so effectiveness of the current formula for reporting is an issue of concern.
SR.V International co-operation	**Partially compliant**	Financing of terrorism is not an independent offence in Slovakia and many elements of the offence as described in the TF Convention and the Methodology and IN are not covered, such as to raise problematic MLA under 36.1 and 37.1 when applied to terrorist financing under this Special Recommendation. There are no special provisions concerning mutual legal assistance in relation to financing of terrorism offences.
SR.VI AML requirements for money/value transfer services	**Largely compliant**	The NBS is obliged to register and license the persons performing money or value transfer services. However there was no provision determining what kind of information regarding transactions should be recorded

		as a minimum, no regulation requiring money exchange companies to examine the purpose of complex, unusual large transactions or unusual patterns of transactions.
SR.VII Wire transfer rules	**Partially Compliant**	• No complete statements in the Act on the Payment System as to what information should accompany wire transfers; • Not all full originator information provided with cross-border transfers; • The full scope of SR VII has not yet been covered by the Slovakian authorities. In addition to the foregoing, there are no provisions which would cover SR VII.4 and SR.VII.5. The full scope of SR VII is not monitored. • No clear obligation to verify the accuracy of data provided, and examiners had a reserve on the effectiveness of verification procedures; • No clear procedures for enhanced scrutiny of funds transfers without complete originator information; • Not all of the obligations of SR.VII were sanctionable.
SR.VIII Non-profit organisations	**Non-compliant**	No special review of the risks in the NPO sector undertaken, though there is some financial transparency and reporting structures regarding foundations. However these measures do not amount to effective implementation of Essential Criteria VIII.2 and VIII.3. Consideration needs to be given to ways in which effective and proportionate oversight of this sector can be achieved in the context of SR VIII.
SR.IX Cash Couriers	**Partially compliant**	While there is a declaration system in place when making cross-border transportations of cash, the requirements of SR IX had not been fully considered at the time of the on-site visit.

8 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

FATF 40+9 Recommendations	Recommended Action (listed in order of priority)
1. General	The maintenance of meaningful and comprehensive statistics on AML/CFT performance, and for strategic analysis of Slovakia's AML/CTF vulnerabilities.
2. Legal System and Related Institutional Measures	
Criminalisation of Money Laundering (R.1 and 2)	• Satisfy themselves that all the language of article 6(1) (a) (b) of Palermo Convention and article 3(1)(b) and (c) of the Vienna Convention on the physical and the mental aspects of the ML offence are covered in article 252. • Ensure FT in all its forms is a predicate to the ML offence • Ensure conspiracy to commit ML involving two persons is covered not only in cases involving organised crime • Consider ensuring in guidance or legislation that knowledge can be inferred from objective factual circumstances • More emphasis should be place on the third party laundering and clarifying the evidence required to establish the underlying predicate in autonomous ML prosecutions • Keep more detailed statistics covering the nature of ML investigations, prosecutions, convictions and sentences including the details of predicate offences and whether prosecutions were brought autonomously
Criminalisation of Terrorist Financing (SR.II)	• Introduce an independent, autonomous offence of FT which explicitly addresses all the requirements of SR.II and the IN.
Confiscation, freezing and seizing of proceeds of crime (R.3)	• Ensure that the legal regime for seizure and freezing covers all indirect proceeds, substitutes etc which may be liable to confiscation in due course. • Clear legal provisions for confiscation from third parties • Establish a culture in the prosecution and judiciary which seeks routinely to apply provisional measures and confiscation in major proceeds-generating cases • Keep accurate statistical data
Freezing of funds used for terrorist financing (SR.III)	• Develop guidance and communication mechanisms with all financial intermediaries and DNFBP and a clear and publicly known procedure for de-listing and unfreezing in appropriate cases in a timely manner
The Financial Intelligence Unit and its functions (R.26, 30 and 32)	• Undertake more systematic training and provide guidelines and indicators on unusual business activities, particularly on FT • Provide more feedback • Re-assess resourcing of FIU for outreach, training and supervisions

	• Clarify FT reporting obligations in line with SR.IV • Revisit the system for requesting delays in transactions under Section 9 AML law • Maintain statistics on outcomes of information transmitted to other bodies by the FIU • More training for the FIU on FT issues required.
Law enforcement, prosecution and other competent authorities (R.27, 28, 30 and 32)	• More relevant law enforcement training and guidance required in money laundering cases (and financing of terrorism) • More policy and practical guidance needed to ensure proactive financial investigation in major proceeds-generating crimes • More coordination needed to join up the law enforcement effort.
3. Preventive Measures– Financial Institutions	
Risk of money laundering or financing of terrorism	• Articulate the national policy on risk of ML/CFT(in light of 3rd EU directive) and improve and enhance guidance notes across the whole financial sector.
Financial institution secrecy or confidentiality (R.4)	• Clearer provision for supervisory authorities to exchange information with other competent authorities enquiring into AML/CFT breaches
Customer due diligence, including enhanced or reduced measures (R.5, R.7)	• It would be preferable for the AML Law to cover identification at account opening or establishing business relations across all reporting entities. • Provide reference in insurance and securities laws or regulations to the requirement to undertake CDD measures when establishing business relations. • Cover in Law or Regulation the requirement for CDD measures when carrying out occasional wire transfers (which fully include the verification process) and in cases of doubts regarding the veracity or adequacy of previously obtained customer identification data; • Provide in Law or Regulation for the requirement to carry out CDD measures in occasional transfers covered by the Interpretative Note to SR.VII; • Provide in the insurance and the securities laws guidance on which documents are reliable independent documents for verification of identification for natural persons; • Promulgate enforceable guidance on how the verification process should apply to legal persons (especially non-resident legal persons); • Clarify the timing of verification across the whole of the financial sector; • The definition of beneficial owner as set out in the FATF Recommendations in respect of ultimate control of the customer and the natural persons who exercise ultimate effective control over legal persons or arrangements should be provided for in Law or Regulation; • Review the notion of ongoing due diligence comprehensively in all financial sector laws or regulations;

	• The requirement for enhanced due diligence, in respect of a higher risk customers, needs to be incorporated in enforceable guidance across the whole financial sector; • Review and ensure that the practice of making an STR where CDD cannot be completed satisfactorily is provided for and is effectively operating; • Enforceable guidance to all financial institutions covering the policy on application of CDD measures to existing customers could be refined. • Implement by law, regulation or other enforceable means guidance on cross-border correspondent relationships in accordance with Recommendation 7.
(R.6)	• Put in place by Law, regulation or other enforceable means rules regarding PEPs covering criteria 6.1 to 6.4 of the Methodology in the whole financial sector.
(R.8)	• Put in place by Law, regulation or other enforceable means procedures to prevent the misuse of technological developments and non face to face relationships
(R.9)	• Ensure that supervision covers the requirements of Recommendation 9 across relevant parts of the financial sector.
Record keeping and wire transfer rules (R.10 and SR.VII)	• Consider providing a legal basis for keeping transaction records and identification data for longer than five years if necessary when properly required to do so in specific cases by a competent authority; • Consider harmonizing the period of retention of identification data between the Act on Banks and the AML Law (i.e. at least five years following the termination of the account or business relationship); • Clarify in the AML Law or in Decree that identification data should be retained to include account files and business correspondence; • Clarify in the AML Law that customer identification data (as well as transaction records) should be available on a timely basis to a competent authority in specific cases upon proper authority (which should include the Police generally and not just the Financial Police); • Ensure that full originator information, including name, address (or other permitted data in lieu of address) is available if requested in respect of domestic wire transfers; • The originator's address (or other permitted data in lieu of the address) should accompany all cross-border wire transfers; • Ensure that financial institutions conduct enhanced scrutiny of (and monitor for) suspicious activity funds transfers which do not contain complete originator information.
Monitoring of transactions and relationships (R.11 and 21)	• Recommendation 11 should be transposed and financial institutions should be required by law or regulation or other enforceable means to examine the background and purpose of all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.
Suspicious transaction reports	• Clear guidance on unusual business activities needs

and other reporting (R.13 and 14, 19, 25 and SR.IV and SR.IX)	providing to all the financial sector (which includes guidance on personal transactions) • AML Law should provide for attempted transactions • The financing of terrorism reporting obligation needs explicitly clarifying in the law to ensure that subject entities report where they suspect or have reasonable grounds to suspect that funds are linked or related to, or are to be used for terrorism, terrorist acts or terrorist organizations. • Article 12 of the AML law needs clarifying to clearly cover all civil and criminal liability for bona fide reports • The reporting duty should cover the NBS in respect of its commercial activities
Internal controls, compliance, audit and foreign branches (R.15 and 22)	• More enforceable guidance on the content of on-going employee training programs required • Screening procedures to ensure high standards when hiring employees need requiring by enforceable means • The requirement of a designation of a compliance officer at management level needs to be covered by enforceable means and it would assist to delineate his / her functions from internal audit and ensure he/she can act independently, and greater clarification of the compliance officer's powers and role is needed • A general obligation is required for financial institutions to ensure their branches and subsidiaries observe AML/CFT measures consistent with Slovakian requirements and the FATF Recommendations to the extent that host country laws and regulations permits; • Provision should be made for a requirement to pay particular attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations; • Provision should be made that where minimum AML/CFT requirements of the home and host countries differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.
The supervisory and oversight system – competent authorities and SROs Roles, functions, duties and powers (including sanctions) (R.17, 23, 29 and 30)	• A general power to supervise and to sanction for CFT issues is required across the whole financial sector • NBS should have power to monitor AML/CFT in exchange houses • Greater clarification of roles in supervision is required between the FIU and prudential supervisors to avoid double sanctioning • More staff and training for all supervisory authorities and the FIU to adequately perform AML/CFT supervision
Shell banks (R.18)	• Provision should be made by law, regulation or other enforceable means prohibiting financial institutions entering or continuing correspondent relationships with shell banks. FIs should be obliged to satisfy themselves that a respondent financial institution does not permit its accounts to be used by shell banks.
Financial institutions – market entry	• Provision should be made to examine the fitness and

and ownership/control (R.23)	propriety of owners and significant shareholders of FXs houses.
Ongoing supervision and monitoring (R23, 29)	• All AML/CFT obligations which under the Methodology should be required by law, regulation or other enforceable means should be capable of being sanctioned. • More AML/CFT supervision is required across the whole financial sector.
AML/CFT Guidelines (R.25)	• Coordinated and consistent sector-specific guidelines on both AML/ CFT issues should be established to assist financial institutions and DNFBP and adequate and appropriate feedback should be addressed in line with the FATF Best Practices Guidelines.
Money or value transfer services (SR.VI)	• Those licensed to provide money or value transfer services should have guidance on the kind of information regarding transactions that should be recorded as a minimum. Money exchange companies should be required to examine the purpose of complex, unusual, large transactions or patterns of transactions.
4. Preventive Measures – Designated Non-Financial Businesses and Professions	
Customer due diligence and record-keeping (R.12)	• All requirements in relation to full identification of beneficial ownership and additional identification/KYC rules should apply to DNFBP especially regarding higher risk activities. • CDD should be required by real estate dealers, lawyers, notaries and other independent legal professionals and accountants in the circumstances set out in Recommendation 12. • Implementation of Rec. 6 (PEPs) required for DNFBP. • Clear guidance re emerging technological developments required (Rec. 8). • All essential criteria marked with an asterisk in Rec. 10 should be covered for DNFBP by law or regulation. • Information campaign and outreach required to DNFBP to explain obligations.
Monitoring of transactions and relationships (R.12 and 16)	• Rec. 11 – paying special attention to all complex, unusual large transactions needs applying to DNFBP by law, regulation or other enforceable means.
(R.13)	• Reporting obligations needs explaining in guidance, particularly on FT. • The issue of potential risks that may arise having business relationships and transactions with persons from countries which do not or insufficiently apply the FATF recommendations needs to be addressed in regard of the DNFBP.
(R.14)	• Safe harbour provisions should cover both criminal and civil liability in respect of DNFBP employees.
Internal controls, compliance and audit (R.16)	• Greater clarification of the position of compliance officers at management level (in so far as relevant to DNFBP) should be provided and internal systems and policies need developing

Regulation, supervision and monitoring (R.17, 24-25)	• More work and resources are required to create an effective risk based system for monitoring and ensuring compliance with AML/CFT throughout the sector and the provision of such sectoral guidance.
Other designated non-financial businesses and professions (R.20)	• Consideration should be given to those DNFBP that are at risk of being misused for TF as well as ML. • Develop an overarching strategy on the use of modern and secure techniques of money management.
3. Legal Persons and Arrangements and Non-profit Organisations	
Legal Persons–Access to beneficial ownership and control information (R.33)	• Commercial, cooperate and other laws should be reviewed with a view to taking measures to provide adequate transparency with respect to the beneficial ownership.
Legal Arrangements–Access to beneficial ownership and control information (R.34)	No recommendation.
Non-profit organisations (SR.VIII)	• Formal analysis required of threats posed by the sector as a whole • Assess adequacy of current legal framework • Consider how effective and proportionate oversight can be achieved (including program of verification and direct field audits in particular vulnerable sectors) • Consider guidance to FIs on specific risks of this sector • Consider whether further measures need taking in the light of the Best Practices Paper for SR.VIII
6. National and International Co-operation	
National Co-operation and Co-ordination (R.31)	• Strategic co-ordination and collective review of the performance of the system as a whole (including analysis, where appropriate, of better statistical information) needs developing in more detail. More detailed statistics are required across the board to assist proper strategic analysis.
The Conventions and UN Special Resolutions (R.35 and SR.I)	• Provide for adequate TF criminalisation and more guidance and communication mechanisms needed with FIs and DNFBP re UN Resolutions.
Mutual Legal Assistance (R.32, 36-38, SR.V)	• Fully extent the FT offence in line with SR. II and IN • Complete, precise and detailed statistics should be kept on AML/CFT MLA.
Extradition (R.32, 37 and 39, and SR.V)	• The FT offence needs extending as the current incrimination could limit extradition possibilities • Complete, precise and detailed statistics should be kept on AML/CFT extradition
Other forms of co-operation (R.32)	• FIUs statistics on response times should be kept • Slovak authorities should satisfy themselves that the supervisory bodies are exchanging information with foreign counterparts.

9 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

Relevant sections and paragraphs	Country Comments

LIST OF ANNEXES

See MONEYVAL(2006)09 Addendum