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(CDPC)

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

SECOND ROUND EVALUATION REPORT ON THE SLOVAK REPUBLIC

SUMMARY

1. Slovakia was the 4th MONEYVAL (PC-R-EV) member state to be evaluated in the framework of the second round of mutual evaluations conducted by the Committee. A team of examiners accompanied by a colleague from a Financial Action Task Force (FATF) country visited Bratislava between 15-18 October 2001. The purpose of the evaluation was to take stock of developments which had occurred since the first round evaluation (in June 1998) and to assess the overall effectiveness of the Slovakian anti-money laundering system in practice.

2. Economic crime and fraud offences remain significant. Drug trafficking is a continuing problem, as is corruption and smuggling. These offences together generate the most criminal proceeds. Organised crime continues to be a major threat and it is known to be involved in money laundering operations and responsible for numerous categories of predicate offence, particularly drug trafficking.

3. Cash transactions are still an important feature of the Slovak economy, and as such money laundering continues to be a threat in the banking sector. The Slovak authorities are also conscious that money launderers may diversify into purchase of real estate, the purchase of precious stones and securities investment.

4. At the time of the on-site visit, the central piece of preventive legislation in place was Act 367/2000 (on protection against the legislation of incomes from illegal activities and on amendments of some acts). This Act came into force on 1 January 2001 and 9 months before the on-site visit. It replaced the previous anti-money laundering law (Act 249/94), which had a number of deficiencies, enumerated in the first evaluation report. In particular, that evaluation had highlighted that the sole reporting duty was on banks and there were no provisions for sanctions in respect of breaches of anti-money laundering legislation. *Inter alia*, the circle of reporting entities was significantly widened by Act 367/2000 and a regime of sanctions had been created. A significant change was the replacement of the previous "suspicious transaction" reporting system with a regime based on the reporting by obliged entities of "unusual business activity". "Unusual business activity", though defined in the 2000 Act, still raises some problems for the examiners discussed below. Since the on-site visit, Act 367/2000 has itself been amended by Act 445/2002, which came into force on 1 September 2002. The 2002 Act was aimed, *inter alia*, at bringing the preventive regime into line with Directive 2001/97/EC and, together, these two acts now provide a basically sound preventive legal structure. The challenge is now to operationalise these laws. Issues relating to these acts are further considered beneath in relation to the preventive regime in the financial sector as a whole.

5. On the legal repressive side, a major development was the ratification of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime ("the Strasbourg Convention") in May 2001, and which was brought into force in September 2001.

6. Some amendments were also made to the money laundering offence, notably the removal of the financial threshold. The mental element of the offence, however, remains the knowledge standard and a lesser subjective mental element should be considered to assist the prosecutorial regime (such as suspicion with lesser penalties). Money laundering by negligence was not being actively pursued at the time of the on-site visit and the examiners urge, once again, its consideration in appropriate circumstances.

7. 39 prosecutions for money laundering were reported since the adoption of the first report and a modestly encouraging number of convictions had been achieved up to the time of the on-site visit (9). It was understood that most, if not all, of those convictions arose out of cases where there were also prosecutions for the underlying predicate offences. These predicate offences

were exclusively related to theft of motor vehicles from abroad. There had been no money laundering convictions arising out of drugs or corruption cases. No convictions were reported for money laundering as a "stand alone" offence or in the absence of a conviction for the predicate offence. Given the high number of drug trafficking, fraud and corruption offences investigated, the examiners were concerned that few, if any, money laundering cases had arisen out of such important proceeds-generating cases. The effectiveness therefore of the overall law enforcement response to money laundering was seriously questioned. Despite the training that had been given to law enforcement on the issue and the growth of prosecutor specialisation, the examiners consider that still greater efforts need to be made to follow the proceeds of crime in major proceeds-generating investigations, with a view to more money laundering prosecutions being brought, particularly where professional launderers are acting on behalf of third parties and/or organised crime groups, and where it may not be possible to prosecute an offender for the underlying predicate crime. Clear guidelines need to be drawn up as to the minimum evidential requirements to launch money laundering prosecutions. Similarly, major confiscation orders need to be achieved. No confiscation orders were reported in respect of any of the money laundering convictions, which was disappointing.

8. Though the police have broadly satisfactory investigative powers, including a range of most special investigative techniques, a more proactive use of them, together with a greater emphasis on modern financial investigative techniques would be beneficial. Controlled delivery of cash proceeds needs clearly providing for in the law.

9. There have been no changes to the regime of provisional measures and confiscation since the first report. The legal regime retains the same ambiguities, uncertainties and lack of clarity as at the time of the first evaluation. No confiscation statistics were provided in answer to the second mutual evaluation questionnaire and the examiners were left with the impression that confiscation was seldom used. It was impossible to make value confiscation orders domestically in respect of property legally obtained and this needs clearly providing for. Equally, confiscation of income and benefits from illegal property also appeared problematical[1]. If real progress is to be made in dismantling the economic basis of organised crime, then a robust legal regime, which allows for the making of serious and dissuasive confiscation orders is vital. The examiners therefore endorse the recommendations made in the first round and strongly urge the Slovak authorities to carefully review the legal framework to ensure that they have a comprehensive set of provisional measures and forfeiture /confiscation provisions, which facilitate the tracing, freezing and seizing of instrumentalities and criminal proceeds (as widely defined in the Strasbourg Convention) with a view to eventual confiscation orders, and which clearly allows for confiscation orders at the conclusion of criminal proceedings in respect of instrumentalities, and direct and indirect proceeds or property, the value of which corresponds to such proceeds. The Slovakian authorities should also consider the reversal of the burden of proof post-conviction to assist the court in identifying criminal proceeds liable to confiscation in appropriate cases. Moreover, a judicial culture needs to be developed in which confiscation orders are made routinely in relation to significant criminal proceeds post conviction.

10. So far as international co-operation is concerned, at the time of the first evaluation, Slovakia was not in a position to enforce foreign judgements on confiscation orders and orders for provisional measures. These major deficiencies have now been remedied though no requests for enforcement have, as yet, been made. The FIU, in particular, is an active member of the Egmont Group and is engaging effectively in the provision of international assistance to other foreign authorities. There still remains no possibility of sharing confiscated assets with other states. The examiners consider that Slovakia should empower its authorities, by legislation or otherwise, to share confiscated assets.

[1] It is understood that in October 2002, amendments to the Penal Code and the Code of Criminal Procedure have resulted in provision being made for the forfeiture of substitute assets.

11. On the preventive side, the two new anti-money laundering laws create a wide range of entities that have anti-money laundering reporting obligations and customer identification obligations in respect of "business activities" exceeding 15 000 Euros. The range of reporting entities is in line with Directive 2001/97/EC. The recognition of "unusual business activity", without further clarification in the law or general indicators as to what may amount to unusual business activity may be problematical. It was not clear to the examiners whether this regime was limited entirely to business/trade activities and excludes transactions on accounts of a personal nature. The Slovak authorities may now wish to review the operation of the new legislation to ensure that the creation of the new obligations has not inadvertently limited the scope of the reporting obligation. In any event, meaningful guidance needs to be prepared for each sector as to what may amount to "unusual business activity", and the examiners consider that the creation of such guidance needs to be co-ordinated, rather than rely on each bank or obliged entity to create its own indicators. At the time of the on-site visit, the banks remained the major reporter. Since the adoption of the first round report until 30 September 2001 the FIU received 1223 reports from banks, and it was understood 80% of the banks were reporting. Under-reporting banks need to be known to the National Bank of Slovakia (NBS). At the time of the on-site visit, reports from the non-banking sector were modest:

- Insurance companies: 7
- Securities centre: 17
- Leasing companies: 1
- Others: 2

There were no reports from casinos and exchange houses. Thus, at the time of the on-site visit, much work still needed to be done to develop real awareness of these issues outside the banking sector. The FIU has a major role in outreach and developing appropriate systemised feedback arrangements to all players in the financial sector.

12. The FIU is working effectively in analysing the information it receives and is generating a significant flow of reports to law enforcement. It was unclear how many money laundering cases were generated by the police outside of the reporting regime, and statistics on this would be useful. The FIU is vested with large responsibilities for supervision of compliance by virtue of Art. 10 of Act 367 and the FIU needs to be resourced accordingly. Prudential supervision over the banks is now exclusively vested in the NBS. The Ministry of Finance has the responsibility for casinos, and the Financial Markets Authority, created in November 2000 is responsible for the supervision of the capital market and insurance. At the time of the on-site visit, it was considered that the division of responsibilities between the prudential supervisors and the FIU needed clarification and various memoranda of understanding have since been signed. That said, at the time of the on-site visit, supervision outside the banking sector was in its infancy, and the prudential supervisors still remained too distanced from the anti-money laundering issue (which was a concern in the first report). They all need to include anti-money laundering supervision in their on-site inspections and the non-banking prudential supervisors' awareness of the dangers from money laundering needed raising, particularly in the Financial Markets Authority. All obliged entities need the role and responsibilities of compliance officers clarified.

13. The NBS exercises a generally strong licensing and monitoring regime for the banks, but the examiners were less certain about the regime for exchange houses. The NBS has, since 2000, begun to develop a more proactive anti-money laundering inspection regime (in 2002, there were 3 anti-money laundering inspections in larger banks). However, there were no substantial changes in the NBS' supervision over the exchange houses so far as anti-money laundering issues were concerned, and a thorough inspection regime needs to be in place, given the large role that cash still plays in the economy. The licensing regime outside the banking sector could be improved. In the insurance and securities sectors and in the licensing of casinos, the origin of capital needs greater investigation.

14. Neither Law 367/2000, now Law 445/2002, covers customer identification on the establishment of a business relationship. If not covered elsewhere, it should be. Equally, the reporting obligations in the laws should also be applicable to the NBS.

15. It is clear that there is within the Slovak Republic a political will to remove bearer passbooks in their entirety. The removal is a graduated process. As form 1 January 2007, bearer passbooks will no longer exist.

16. There have been significant developments in the identifications of beneficial owners of transactions. The new Banking Law (483/2001) provided that a bank or branch office of a foreign bank is obliged to determine the ownership of funds a client uses in transactions over 15 000 Euros. Ownership of funds shall be determined by a binding written statement of the client in which the client is obliged to declare whether these funds are his property and whether he is conducting the transaction on his own account. A similar rule needed to be extended to obliged entities other than banks[2] in respect of transactions. A similar rule would be helpful when commencing business transactions.

17. Undoubtedly, there has been considerable progress overall by Slovakia, for which credit is given. But it is still difficult to judge the overall effectiveness of the system, particularly in the absence of statistics in many areas. The jurisdiction would benefit from some defined performance indicators, periodically monitored by an overarching steering group. More work still needs to be done on the preventive side to generate reports from the vulnerable sectors beyond banking and active supervision needs developing further outside the banking sector. More focus on the repressive side on the pursuit of proceeds is critical. With greater emphasis on these issues, Slovakia can develop the effectiveness of its anti-money laundering structures even further.

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[2] A similar role was introduced for other obliged persons under Law 445/2002.