COUNCIL OF EUROPE CONSEIL DE L'EUROPE

Strasbourg, 27 June 2005 **MONEYVAL (2005) 15 SUMM**

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

THIRD ROUND DETAILED ASSESSMENT REPORT ON SLOVENIA [1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

SUMMARY

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

[1] Adopted by MONEYVAL at its 17th Plenary meeting (30 May – 3 June 2005).

EXECUTIVE SUMMARY

1. The third evaluation of Slovenia by MONEYVAL took place from 30 January 2005 to 5 February 2005. The evaluation was based on the Forty Recommendations of the FATF and the 9 Special Recommendations on FATF of the FATF, together with the two Directives of the EC (91/308 EEC and 2001/97/EC).

2. The evaluation team comprised Mr Boudewÿn VERHELST (legal examiner, Belgium), Mrs Izabela FENDEKOVA (financial examiner, Slovakia), Mr Paolo COSTANZO (financial examiner, Italy), Mrs Marketa HLAVINOVA (law enforcement examiner, Czech Republic) and the MONEYVAL Secretariat. 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 (DNFBPs), as well as examining the capacity, the implementation and the effectiveness of all these systems.

3. The Office for Money Laundering Prevention (OMLP), the FIU, remains the crucial and leading body in this area, in both the national and the international contexts in Slovenia. It performs many varied functions and activities from the preparation of legislation to galvanising the system as a whole to perform effectively.

4. In the international context also, the FIU is highly regarded and often provides important technical assistance and expertise to newer FIUs in the region, and beyond.

5. The main actors in the Slovenian AML/CFT regime have been heavily engaged in the preparation of new AML/CFT instruments internationally (the third EU Directive and the revision of the Strasbourg Convention [ETS No. 141]). The examiners were advised that the internal Slovenian legislative agenda would then be directed towards harmonising domestic law with the provisions of these new instruments, and to bring domestic legislation into line with the new standards on the countering of the financing of terrorism.

The situation of money laundering and the financing of terrorism

6. In Slovenia, the major sources of domestic criminal proceeds are fraud, abuse of economic power, tax evasion, unjustified acceptance of gifts, abuse of office or official duties, acceptance of a bribe, unlawful manufacture of and trade in weapons and explosive materials. The number of economic offences against property, and drugs offences are increasing and the Slovenian authorities recognise that, accordingly, the demand for money laundering will grow.

7. Money laundering investigations are based both on domestic and foreign predicate offences. In other countries within the region, smuggling of cigarettes, alcohol and human beings and trafficking in drugs, business and tax frauds are increasing and so they expect

Slovenia to remain a target for money laundering. Banks appear to be the most used financial intermediary for money laundering and make the most reports.

8. Money laundering has been criminalised since 1995 and, despite the overall strength of the legislative framework, only 2 money laundering cases had been concluded in the courts (resulting in acquittals) and no final convictions had been achieved at the time of the on-site visit.

9. The Slovenian authorities have, as yet, had no experience of the offence of financing of terrorism, which was made a separate criminal offence in March 2004. Prior to that, the Slovenian authorities considered financing of terrorism could have been prosecuted by using the aiding and abetting articles of the Penal Code. No criminal charges or indictments have been filed in this respect and no freezing orders made under either the United Nations Security Council or European Union Resolutions. Notwithstanding that, Slovenia had (on 21 June 2002) amended a pre-existing Law on Restrictive Measures, which entitles the Slovenian Government to adopt restrictive measures, such as freezing accounts in all cases in which Slovenia is bound to adopt such measures, as a member of the United Nations or other international organisations. Since 1 May 2004, on accession to the European Union, Slovenia is obliged to follow relevant European legislation on the freezing of terrorist assets.

Overview of the financial sector and DNFBPs

10. As at 31 October 2004, there were 19 banks operating in Slovenia, 2 savings banks and 2 savings and loan undertakings, supervised by the Bank of Slovenia, which also supervises the 136 foreign exchange offices. The number of exchange offices is decreasing.

11. There are numerous other financial institutions operating in Slovenia. These include 156 public companies issuing securities, 29 active participants in the securities market (11 of them banks and 18 stock-broking companies), 11 management companies, managing 20 mutual funds, and 5 mutual pension funds. The Securities Market Agency (SMA) is now responsible for checking anti-money laundering compliance in this sector. Insurance market participants include 13 insurance companies, 2 reinsurance undertakings and 4 pension companies, licensed and supervised by the Insurance Supervision Agency.

12. The following types of non-financial businesses operate in Slovenia, and have anti-money laundering obligations on an analysis of potential risks: organisations performing payment transactions, post offices, pawnbrokers offices and legal and natural persons involved in safekeeping and the travel agency business. At the time of the on-site visit, there were 320 travel organisations (some offering foreign exchange services), 1,135 real estate agents and 252 traders in precious metals and stones. The OMLP has an indirect supervisory role in respect of organisations without a direct supervisor. They also have an indirect supervisory role in respect of the 5 professions separately covered in the preventive law (lawyers, law firms, notaries, audit companies, independent auditors and legal and natural persons performing bookkeeping services or tax advisory services). The

most numerous of these are the 3081 legal and natural persons performing accountancy services, and the 933 lawyers. The other chambers are smaller: 67 notaries public; and 41 audit companies. The professional bodies in Slovenia have no AML/CFT competence.

13. There were, at the time of the on-site visit, also 14 concessions for casinos granted to six joint stock companies. The State Office for Gaming Supervision is the principal casino supervisory body.

14. There are numerous non-profit organisations (NPOs) that meet the functional FATF definition of non-profit organisations. These include, but are not confined to associations and foundations. There were 19, 246 associations registered in Slovenia on 31 December 2004 and 153 foundations are registered.

15. The Companies Act provides that companies acquire the character of a legal person upon their entry in the court register. The prevailing legal form in the financial market is either the joint stock company or the limited liability company. On 31 December 2004, there were 40048 limited liability companies and 1172 joint stock companies. Other legal entities which provide data to be entered in the court register include unlimited companies and partnerships (some partners have unlimited liability, others have limited liability). So-called "dormant partnerships" are not legal entities and as a consequence data on a "dormant partnership" is not available in the court register. The court register is available on the internet and banks and credit institutions and other financial institutions have access to it through concessions. Membership in most joint-stock companies is transparent from the registry at the Central Securities Clearing Corporation and is publicly accessible. If bearer shares (which can be used to establish joint stock companies) are issued, holders, as a rule, would not be transparent and/or accessible. The existence of such companies is marginal at present, but should the situation change in the future, the responsible authorities will need to propose the adequate changes to the current policy.

16. Since the second round evaluation, numerous steps have been taken by Slovenia to meet recommendations made in that report. In particular, the lack of a clear obligation on supervisory authorities to monitor compliance with the Law on Prevention of Money Laundering (LPML), identified in the second report, was remedied in the last amendments to the preventive law - in July 2002. The July 2002 amendments prescribed new identification procedures, which ensured that bearer passbooks are no longer considered as deposits, but are treated as transaction accounts. All transactions and customers with bearer passbooks (that come into a bank) are now identified. The current market share of these passbooks is considered to be marginal.

17. Since the last evaluation, strategic goals and programmes have also been developed in connection with the investigation of economic crime in general and were agreed by the Government in June 2003 in the Strategy of Economic Crime in the Republic of Slovenia. This strategy includes the investigation of money laundering.

Legal systems and related institutional measures

18. On the repressive side, the basically sound and comprehensive money laundering offence, in A 252 Penal Code remained basically unchanged since the second evaluation, save for amendments to the penalties. It covers the mandatory and physical elements in the Vienna and Palermo Conventions. It has a wide "all crimes" predicate base, which includes extraterritorial offences (subject to dual criminality). It goes beyond the mandatory international standards by including negligent money laundering in the mental element. Self laundering is also covered (the absence of which had hitherto caused legal problems). It is also an offence to which corporate criminal liability can be applied. The requirement to prove the intent to conceal the assets – even if compliant with the international standards – is a potential extra burden which may sometimes incapacitate the prosecution. Case law is needed to define the extent of this requirement and to interpret the concept of "concealment". If this proves to be a problem, the criminalisation of knowing use of proceeds should be considered, insofar as it is not contrary to the constitutional principles or basic concepts of the legal system.

19. The seizure and confiscation regime under Slovene law is basically comprehensive and well-balanced. Direct and indirect proceeds are subject to compulsory seizure and confiscation, and equivalent value confiscation is possible. The seizure and confiscation regime is thus firmly imbedded in the law and covers all criminal proceeds and instrumentalities. A definition of "property benefits" which includes substitute assets and investment yields would enhance the transparency and solidity of the confiscation regime. Consideration could also usefully be given to provisions in some serious proceeds-generating offences, which require an offender to demonstrate the lawful origin of the property. Ineffective implementation, however, of the current legal framework has resulted in an absence of money laundering related confiscation, which negatively affects the system. No statistics were submitted on confiscation in other criminal offences.

20. Given the strength of the legislative framework, the range of police powers, and firm institutional co-ordination with the FIU, it was disappointing to see, as noted above, that there had been no final convictions in the courts for the money laundering offence. Prosecutions still founder on the proof of the predicate offence and no statutory alleviation of this evidential requirement was being considered. At the time of the on-site visit, there were nonetheless several prosecutions pending. The slow speed of the judicial process was acknowledged and serious efforts need to be made to speed up cases. In its reports to Government over the last 4 years, the OMLP has highlighted the lack of speed in respect of court decisions, which they recognised as diminishing the effectiveness of the anti-money laundering system as a whole. The judges, with whom this team met, acknowledged this problem and indicated that they were working to speed up the system.

21. Slovenia has ratified the UN Convention on the Suppression of Terrorist Financing. It implements the UN Security Council Resolutions and the EU Regulations on the freezing of terrorist related accounts, though the practical implementation of these requirements needs further elaboration. The account holding institutions need clear guidance and instructions concerning their rights and obligations under the freezing mechanisms, such

as in the case of errors, namesakes or requests for unfreezing and for access for basic expenses.

22. Slovenia made terrorist financing a separate criminal offence in A 338a Penal Code from 30 March 2004. It meets the requirements of the 1999 UN Convention, so far as funding of terrorist acts is concerned. The offence is not wholly in line with SR II and its interpretative note in respect, in particular, of the funding of terrorist organisations and individual terrorists. This issue would benefit from explicit coverage. There is no practice as yet with A 388a, so its effectiveness is difficult to judge.

23. LPML is robust and largely in line with the applicable international standards. It covers all the relevant aspects in respect of organisations (financial institutions) and designated non-financial businesses and professions. Areas of non-financial activities beyond those covered by the EU and the FATF provisions have been identified as exposed to risks and made subject to the AML/CFT provisions.

24. There are not yet any obligations in the law to report suspicions of terrorist financing, though amendments to the legislation are proposed after the introduction of the 3rd EU Directive. The absence of this in the law is the real shortcoming as regards the observance of relevant international standards. Nonetheless, the FIU does take certain measures in the financing of terrorism area. In accordance with the Act Amending the Restrictive Measures Act of 2001, it checks the names from the UN and other relevant lists in its databases. If the FIU identifies someone from a list, it would use its powers prescribed in the LMLP and it would report.

25. The Slovenian FIU, the OMLP, was established in December 1994 as a constituent body of the Ministry of Finance, though is operationally independent and has a powerful central role in the anti-money laundering system. It is the national centre for receiving, requesting and analysing and disseminating data and information received from organisations and others bound under the law to report cash transactions exceeding 5.000.000 SIT (approx. 21 000 Euros), transfers of cash and other negotiable instruments across the border (3.000.000 SIT) and all suspicious transactions, irrespective of the amount. It has the power to temporarily postpone transactions for no longer than 72 hours and it has issued 27 such orders, and in all cases except one (which was withdrawn by the OMLP), a judge subsequently issued a freezing order. The FIU has access, on a timely basis, to all relevant financial, administrative and law enforcement information that it requires, and can also request necessary additional information from reporting parties to properly undertake its functions. The financial and manpower resources of OMLP have increased since 2002. At the time of the present on-site visit, they had 16 staff members, with one position open. Statistical data available to the team confirmed the efficiency of the unit, though the examiners consider that the OMLP's resources could be further strengthened in relation to their role in monitoring of organisations with no prudential supervisor, and monitoring of the professions. OMLP resources could also be increased for the handling of CTRs. The examiners considered that the CTRs received could be further exploited, as few cases had been opened on the basis of them.

26. The OMLP has been a member of the Egmont Group since 1996 and participates in its activities very actively. When exchanging information with its foreign counterparts, the OMLP follows the Egmont Principles for Information Exchange.

27. In the last 3 years, banks and savings banks account for most of the cases opened by the OMLP, on the basis of STRs received. Other organisations and professions have hardly reported, despite the preparation of indicators in most sectors and training seminars supported by the FIU. Though the broad framework for reporting is in place, more work still needs to be done. Indeed, the FIU (and all those monitoring the system collectively) need to be assured that guidelines and indicators have been issued in each of the relevant sectors to support the implementation of LPML (and the directives under it). Equally, none of the guidance issued so far related to the financing of terrorism and this needs to be addressed urgently in all sectors.

28. The OMLP sent in 2002-2004, 11, 10 and 9 files on money laundering respectively to the Criminal Police Directorate / State Prosecution and 18, 15 and 24 pieces of written information respectively, in respect of other serious offences.

29. The FIU collects comprehensive statistics from all relevant agencies and makes an annual report to Government on the workings of the anti-money laundering system. On the basis of this, the Government can request action from specific departments.

30. The role of the police in the overall anti-money laundering system is detection and investigation of money laundering activities. There appears to have been general training on anti-money laundering issues and police powers are adequate. Since the last evaluation, on the basis of recommendations made, an officer within the General Police Directorate was appointed who co-ordinates the investigations of money laundering cases by various police units on both national and regional levels, and who co-operates directly with OMLP. The co-ordinator works in the Division for Financial Crime. The number of officers involved in money laundering investigations at the central level seems arguably to be about adequate to deal with the cases that come from the FIU but not for much proactive money laundering investigation. Though some police-generated money laundering enquiries have taken place, the police have a basically reactive stance on money laundering investigation, based on notifications from the FIU, rather than focusing on the pursuit of money laundering on their own initiative in major proceeds-generating cases. Shortly before the on-site visit, in October 2004, the General Police Directorate issued a Guide stipulating that financial investigation should become a necessary part of each investigation in defined proceeds-generating cases. It was unclear if the resource implications of this new stipulation had been fully considered, and, if not, they should be reviewed. It may be that on a cost/benefit analysis, a specialised Assets Recovery Unit, as recommended by the previous evaluation team, would better meet Slovenia's needs in this area. Either way, more resources are required to focus on police-generated money laundering cases or a re-orientation of the law enforcement effort giving more priority to properly resourced asset detection and recovery.

31. There are now 6 State Prosecutors who deal with the money laundering issue (the Group of State Prosecutors dealing with special cases), besides the district State prosecutors,

with whom the police can liaise. Prosecutors should give guidance to the police, particularly as to levels of evidence which may be required when money laundering is being investigated and prosecuted autonomously, and they should work closely with the Police in early stages of cases. The State Prosecution Service should review the numbers of trained prosecutors to ensure that they can handle the likely increases in money laundering caseloads and related confiscation issues, arising from the new police stipulation on financial investigation.

Preventive measures – Financial institutions

32. With regard to the provisions defining the scope of financial institutions subject to anti-money laundering measures, all the relevant actors in the financial sector are encompassed. No exceptions are made on the ground of a perceived lower degree of risks. However, the application of existing measures varies in different circumstances depending on the identified risks, having regard to the nature of the customers and to the nature of the activities carried out.

33. The obligation set out in Criteria 5.7 of the AML / CFT Methodology, which requires financial institutions to conduct ongoing due diligence on the business relationship should be in law or secondary legislation.

34. In practice, the application of identification procedures varies. Supervisory bodies and supervised entities interpret the provisions differently, which could substantially undermine effective implementation. The way in which beneficial ownership identification is established, according to LPML, is that a client must declare to the organisation whether he acts on his own or on someone else's behalf. It seems this is done generally without a written statement, unless there is a suspicion that the person does not act on his own behalf. More clarification and guidance and a uniform and co-ordinated approach on this issue across the financial sector is strongly advised. The Slovenian authorities have manifested an intention to implement enhanced measures on politically exposed persons once the 3rd EU Directive is in place. Guidance needs to be given on this urgently.

35. There are no provisions addressing the issues of CDD performed relying on third party introduction. Although, so far as the examiners were aware, third party introduction was rarely used and the lack of provisions in this area could be interpreted as a strength in the CDD regime.

36. There are no particular restrictions preventing competent authorities from accessing information which may be limited by financial institution secrecy or confidentiality. Any specific limitations are lifted when forwarding data to LPML, complemented by "safe harbour" provisions. The exceptions for lawyers (and other professions) to report, as transposed from the EU legislation, appear particularly broad without specific interpretation as to how to apply it.

37. Record-keeping requirements, under FATF Recommendation 10 fully meet the standards. So far as SR VII is concerned, identification procedures are applied for wire transfers

above the FATF *de minimis* threshold, and the relevant provision(s) should be reviewed (though if a transaction is suspicious, no threshold applies).

38. LPML and the relevant directive (8 November 2002) provide for a number of measures on internal procedures, policies and controls. The examiners consider that the room for discretion in the procedure for the appointment of the compliance officer should be reduced, and more precise and binding requirements imposed dealing with the position the compliance officer should occupy in the organisation's hierarchy. In the context of the existing provisions, it is intended that he/she should have free and immediate access to information needed to perform his/her duties. A general requirement is needed for financial institutions to ensure that their foreign branches observe AML/CFT measures consistent with home country requirements.

39. Progress has undoubtedly been made on supervisory oversight since the 2nd evaluation, particularly in the banking sector, but given the lack of reporting outside the banking sector, the Securities Market Agency and the Agency for Insurance Supervision need to remain vigilant in supervisory checks. Perceptions of the risks of money laundering still need further strengthening across the whole financial sector.

Preventive measures – Designated non-financial businesses and professions

40. DNFBPs, like financial institutions, are subject to CDD, record-keeping and STR requirements. There are special identification threshold and record-keeping requirements for legal or natural persons organising auctions or trading with arts (when carrying out cash transactions – or several connected cash transactions) exceeding 3 million SIT. For casinos, identification is obligatory when a person enters the premises or conducts transactions over 3 million SIT or cash transactions over 5 million SIT (when the transactions are carried out at the cashier's desk). For professionals, identification is required when performing the activities set out in the FATF Recommendations, when they establish the business relationship, and in the case of transactions (or linked transactions) over 3 million SIT, and always in the case of suspicions of money laundering. The same concerns in relation to the identification of beneficial owners and the lack of coverage of politically exposed persons, as were raised in the context of financial institutions, apply also for DNFBPs. Slovenia's CDD regime for casinos complies with the 2nd EU Directive (identification on entry).

41. More emphasis on identifying unusual rather than suspicious transactions in the context of DNFBPs is required (in the context of FATF Recommendation 11).

42. Supervision of this sector is shared between the FIU and the State Office for Gaming Supervision, which is now explicitly required to supervise the compliance of casinos with LPML. Thus, the majority of organisations and professions are subjected mainly to the control of OMLP. The basic feature of this control system is that it is done without on-site inspections. The internal control unit within the organisation has a duty to prepare an annual report with prescribed content, which is delivered to the OMLP regularly. The FIU analyses these reports and is authorised to ask for additional information.

43. There is a basically sound sanctioning system in place, but the speed of the application of sanctions by the courts calls into question their overall effectiveness. The licensing and supervisory structure of DFNBPs is basically compliant with international anti-money laundering standards, but this does not yet cover CFT issues. The risks in this extensive sector have yet to be fully assessed. 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, and that more resources are required, as noted earlier, for the FIU in this regard.

Legal persons and arrangements and non-profit organisations

44. The transparency regime of corporate vehicles is mostly founded on the information contained in the court register.

45. As to the beneficial ownership of companies, notwithstanding Article 38(1) (14) LPML, there is no general obligation to disclose the relevant information to the Register of Companies. This could cause difficulties in identifying the underlying interests and the actual controllers of legal persons, especially for bigger companies. The level of transparency of companies ownership appears high. There is a need to acquire updated information on the beneficial ownership and controlling shareholders particularly in respect of the larger companies and joint stock companies.

46. There has been no special review of the risks, from the point of view of terrorist financing, inherent in the registration and creation of associations and foundations, or any risk-based review of the threats which may be posed by other non-profit organisations, which do not have the legal characteristics of associations or foundations. Similarly, no guidance had been given to financial institutions with regard to CDD and STR reporting where the client is an NPO. A review, as required by SR VIII, should be undertaken urgently, and consideration given to effective and proportional oversight of the NPO sector, guidance to financial institutions on CDD and STR issues in relation to this sector and consideration should be given to if and how further measures need taking in the light of the Best Practice Paper for SR VII.

National and international co-operation

47. At the operational level, it is understood that national co-operation is good among the supervisory bodies and the OMLP and between the OMLP and the Police, the Tax Authority, the Foreign Currency Inspectorate, the State Prosecution Office and the Secret Service. There is also understood to be good co-operation between Self regulatory organisations (SROs) and the OMLP, though it was acknowledged that more work still needs to be done to strengthen the ties with SROs of DNFBPs.

48. The mutual legal assistance framework, both in money laundering and in terrorism financing cases, is comprehensive and complete. Everything is in place to render effective and timely assistance in investigations, seizures and confiscations, and in practice, there are no indications to the contrary. The establishment of an asset forfeiture fund should however be the subject of proper consideration.

49. There is still room to improve the statistics by making them more specific and detailed, especially in respect of the MLA requests related to money laundering and predicate offences, including how many outgoing and ingoing requests have been executed or refused.

50. The FIU has a broad capacity to exchange information and is doing so very effectively. It was less clear whether any information exchange agreements between supervisors include AML/CFT issues and how much AML/CFT exchanges are taking place independently of the FIU by the regulators. The Slovenian authorities should satisfy themselves that the supervisory bodies are exchanging information on request (and otherwise) with their counterparts. Annual statistics on this should be kept which show whether requests were granted or refused.