



Strasbourg, 5 June 1998

PC-R-EV (98) 10 Summ.

EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Select Committee of Experts on the Evaluation
of Anti-Money Laundering Measures
(PC-R-EV)

FIRST MUTUAL EVALUATION REPORT ON
SLOVENIA

SUMMARY

Views expressed do not represent official views of the Commission of the European Communities.

1. The PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Slovenia between 7-10 April 1998.
2. Though crime rates in Slovenia are below the average European standard, its favourable geographic position, stable economy and developed financial system makes it vulnerable to money laundering operations. There are 28 banks operating in Slovenia, 4 of which are under full or major foreign ownership. Nevertheless, the Slovenian economy is still, to a very large extent, a cash-based economy. The major sources of significant illegal proceeds in the country are considered to be drug trafficking, organised car-theft, fraud, tax evasion, illicit immigration, smuggling and abuse of economic power. Slovenia, situated on one of the Balkan-routes, is considered to be a drug-transit country, though recent changes indicate that it is also becoming a drug-consuming country. Money laundering operations in Slovenia mainly occur at the placement and layering stage and involve the use of a wide range of techniques, mainly the misuse of non-residential accounts in Slovenian banks, the misuse of S.W.I.F.T., exchange of cash, exchange of cash into chips (in casinos), transport of money across the border, transactions with real estate property and back to back loans.
3. Slovenia is developing a strong anti-money-laundering regime based on international standards. It has ratified both the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The Law on the Ratification of the Council of Europe Convention was adopted by Parliament on 3 April 1998.
4. The Law on the Prevention of Money Laundering (LPML) was enacted in 1994 and amended in 1995. It contains a comprehensive set of measures for detecting and preventing money laundering activities and can be regarded as the centrepiece of the Slovenian anti-money-laundering regime. The money laundering offence is defined in Article 252 of the Penal Code, effective since 1st January 1995. It covers the intentional and negligent laundering of the proceeds of a "considerable value", generated by all predicate offences, even foreign-based, with the exception of "passive" tax evasion. It carries a maximum penalty of up to 5 years imprisonment if the perpetrator knew the illicit source of the proceeds and a maximum penalty of up to 2 years imprisonment in the case of "negligence" ("should have known" standard).
5. Taking into account internal and international practice, a draft law is currently pending in Parliament to substitute Article 252 of the Penal Code by another broader and more comprehensive money laundering offence. It will no longer be limited to acts that occur "in the performance of banking, financial or other economic operations", it will apply to all criminal offences from which proceeds may be generated, including "passive" tax evasion, "proceeds of a considerable value" will only be a qualifying element (with increased penalty) and it will explicitly apply to persons who committed the predicate offence.
6. Slovenia has established a system of confiscation "of objects used or intended for the use or gained through the commission of a criminal offence". This general provision applies to all criminal offences, including to money laundering. In the current confiscation-system, the prosecution has the burden to prove the illegal source of the property. In addition, conviction for a criminal (predicate) offence is a prerequisite for confiscation. The performance of the system in terms of seizure and confiscation as well as the relevant legal provisions are currently not up to the desirable level. Parliamentary proceedings are pending to change these provisions relating to confiscation to fully comply with the provisions of the Council of Europe Convention No. 141. The proposed amendments will enable the seizure and confiscation of the property even in cases

where the criminal procedure has been suspended or where the accused person died during the trial. These confiscation proceedings will be separate from the main criminal proceedings. The amendments will also make it possible for the police to obtain a freezing order (from the investigating magistrate) during pre-trial investigations. Another important amendment will be the possibility to secure property to the equivalent value of criminal proceeds already in the investigation stage.

7. Slovenia provides international co-operation on the basis of reciprocity with a number of foreign authorities in the field of information exchange related to money laundering cases. It has also entered into a number of bilateral agreements with other countries regarding police or legal assistance in criminal matters. Slovenia is also party to several Council of Europe Conventions in the field of criminal law, including the European Convention on Extradition. However, its capacity of providing assistance would be strengthened by ratification of the European Convention on Mutual Legal Assistance.
8. The 1994 LPML provides for the mandatory reporting by financial and non-financial businesses as well as supervisory authorities of suspicious transactions and all currency transactions above 3.600.000 SIT to the Office for Money Laundering Prevention (OMLP). The OMLP became operational in December 1994. Furthermore, the OMLP has significant powers of supervision and co-ordination in relation to money laundering cases. The reporting obligation is supplemented by a provision in the LPML making it an administrative offence for any entity or person covered by the LPML to fail to disclose data to the OMLP, e.g. on suspicions of money laundering. Over the period of 1995 – 1997 the OMLP processed 166 cases, 28 of which were passed on to the law enforcement authorities for investigation. Whereas the reporting system seems to function adequately, compliance is rather unbalanced. Most of the disclosures are made by the bank and credit institutions while the NBFIs and NFIs remains clearly deficient. For instance, only 1 disclosure is on record from the casinos, and the stock exchange is totally inactive in that respect.
9. Set up within the Ministry of Finance, the OMLP has wide-ranging powers and plays a central role in the anti money laundering strategy of Slovenia by evaluating and analysing suspicious transaction reports, initiating investigations, issuing directives and engaging in awareness raising and training initiatives. The OMLP is strongly committed to international co-operation and actively exchanges information with its foreign counterparts. However, it needs strengthening by an increase in its financial resources - as does the whole anti-laundering regime in general -, while its role of supervision, parallel to that of the Bank of Slovenia, needs clearer definition.
10. The anti-money laundering measures in the financial sector are based on the LPML and guidance by the OMLP. The LPML, in line with FATF recommendations, contains special provisions which require that all entities or persons engaged in financial and non-financial businesses listed by the Law to institute procedures on customer identification, record keeping, internal control and supervision, and staff training.
11. Overall Slovenia has established a sound legal and institutional structure, which seems to perform well. The operational achievements are promising, although no case has passed the final test of the courts yet, particularly on the issue of the proof of the predicate offence. The low compliance by NBFIs and NFIs should be met by enhanced and more effective supervision, where overreliance on the OMLP should be avoided. The Slovene authorities have already identified some problem areas in the current legislation and are taking appropriate action. The new, more self-contained, definition of money laundering and the revision of the confiscation

and seizure provisions will further enhance its anti-money laundering regime that can adapt to changing circumstances, including the removal of foreign exchange controls in the near future. In addition, the Law on the liability of legal persons for criminal offences will complete the legal arsenal of measures available against corporations engaged in illegal activities. Additionally, some other areas for improvement indicated in the Report, such as possible amendments of the LMPL on particular issues and others already mentioned, should be taken into consideration.

OoO