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Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate Action against Crime Department

Prepared on the basis of expertise by
Mr Paolo Costanzo and Mr Lajos Korona

on

Draft amendments to the Criminal Code as regards the money laundering, terrorism financing and confiscation provisions

Contents

1 EXECUTIVE SUMMARY

At the request of Slovak authorities, the present opinion assesses compliance of proposed amendments to the Criminal Code covering a range of areas, namely the money laundering (ML) offence, the terrorism financing offence (by predicate to ML), and provisions regulating the confiscation of criminal proceeds, as drafted by Slovak authorities to implement the recommendations of the 4th round Moneyval evaluation report (2011). These mainly include the expansion of the definition of "property" as a key material element in the money laundering offence, establishing a clear link between the terrorism financing offence and offences referenced in the International Convention for the Suppression of the Financing of Terrorism, strengthening confiscation provisions to include coverage of bona fide parties, indirect proceeds, voidance of contracts and confiscation from third parties. Unfortunately the texts provided for the review of confiscation provisions did not specify the proposed changes, therefore only an overall assessment of this last component was carried out.

The opinion considers the draft amendments through the prism of the relevant international standards, in particular the FATF Recommendations (2003), the UN Convention on Transnational Organized Crime, International Convention for Suppression of the Financing of Terrorism and the UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

It can be overall concluded that the proposed amendments are steps taken generally in the right direction but the current format and content of the amended (modified or completed) provisions fall short of achieving the necessary level of compliance with international standards. The Slovakian authorities are therefore recommended to further elaborate on the amendments and to pay attention to the issues left unaddressed or only partially covered by the current draft.

The key recommendations that emerge from the opinion are as follows:

Recommendation 1 – to clarify and, if possible, unify the existing different references to the material element of the money laundering conduct in Section 233 of the Criminal Code (also with a view to aligning this particular provision with the complementary one under Section 231).

Recommendation 2 – to develop a definition of the term "property" covering the whole spectrum of necessary elements, thus eliminating duplications of terminology, loopholes and ambiguity in the current framework.

Recommendation 3 – to ensure that the terrorism financing offence includes cross-references to existing articles included in the Slovak Criminal Code, which criminalize conduct as per Article 2 (1(a)) of the International Convention for the Suppression of the Financing of Terrorism (1999).

Recommendation 4 – to introduce a further amendment into Section 419 para (2) of the CC to specifically criminalize the financing of a person, when he organizes or directs others to commit terrorist acts or contributes to the commission of terrorist acts by a group of persons.

Recommendation 5 - to explicitly foresee that the CC provision covers the financing of an individual terrorist even when this is not related to any specific terrorist act.

Recommendation 6 – to ensure that the terrorism financing offence includes explicit language fully covering the financing of terrorist organizations, including the mere collection of funds, as well as their provision without a link to a specific terrorist act.

2 INTRODUCTION

2.1 Background

By letter of 19 September 2014 addressed to the Council of Europe the Minister of Justice of the Slovak Republic requested a legal opinion on proposed amendments to the Criminal Code covering a range of areas, namely the money laundering (ML) offence, the terrorism financing offence (by predicate to ML), and provisions regulating the confiscation of criminal proceeds. The necessary draft provisions of the Criminal and Criminal Procedure Codes were provided to the Council of Europe for review on 24 November 2014 and the review was undertaken throughout December 2014 – February 2015 by two experts acting in their national capacity – Mr Paolo Costanzo (Italy) and Mr Lajos Korona (Hungary).

The draft amendments provided by Slovak authorities specifically focus on rectifying deficiencies identified by the Moneyval mutual evaluation of the Slovak Republic carried out in 2011. The mutual evaluation report (hereinafter - MER) was adopted at Moneyval's 36th Plenary Meeting on 26 September 2011. These amendments are intended to address all technical deficiencies in relation to FATF Recommendations 1 (Money laundering offence) and 3 (Confiscation) as well as Special Recommendation II (Terrorism financing offence).

The proposed amendments to the CC were provided in a document under the title "Proposal of legislative changes resulting from Recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval)". The document, which is entirely in English language, consists of various articles of the CC where the proposed amendments (added or modified provisions) relevant to the criminalization of money laundering are indicated in bold type.

The text provided with regard to confiscation provisions (articles 89, 90, 91, 92, 93, 95, 96, 97 and 98 of the CPC) does not highlight the proposed changes, thus significantly hampering the review in this area (the corresponding provisions of the CPC are not available in the material published as Annex to the MER, thus also making a comparison impossible). In this context, it is not possible to identify the provisions to comment, having in mind the need not to duplicate the assessment already done in the mutual evaluation process and focus specifically on the changes or innovations that have been subsequently devised by the Slovak authorities. For these reasons, the following comments address only general aspects of the issues submitted for consideration, and ***thus no specific recommendations could be given on the confiscation provisions***.

2.2 Methodology and standards

Given that the focus of the Slovak authorities in preparing these amendments was mainly centered on implementation of the Moneyval recommendations, this review has also been carried out mainly through this prism - namely identifying whether the draft legislation is sufficient to rectify the deficiencies identified in the Moneyval evaluation report. At the same time, a number aspects that are raised in this paper go outside the immediate vicinity of Moneyval recommendations.

The main standards used to benchmark the proposed draft amendments under FATF Recommendations 1, 3 and Special Recommendation II include:

- The FATF Recommendations (2003);
- UN Convention on Transnational Organized Crime (2000);
- International Convention for the Suppression of the Financing of Terrorism (1999);
- UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (1988).

This paper is structured in order to discuss separately each deficiency identified in the evaluation report of the Slovak Republic and review the adequacy of the legislative responses in the draft amendment.

Deficiencies identified in relation to the effective application of the legal framework and recommendations made in order to enhance effectiveness and efficiency are outside the scope of this assessment.

During the review, the document received by CoE was compared to the respective provisions of the CC as these were quoted in and annexed to the MER. It could be established with certainty that both the MER and the present document made reference to the very same English-language version of the CC, as a result of which the original (un-amended) text of the relevant CC articles was found to be identical in both sources. It could also be verified that no amendment to the relevant CC articles has taken place since the adoption of the MER.

It should be noted that in the course of the review some complications arose due to grammatical and terminological inaccuracies in the English text of the proposed amendments. Nonetheless, as a result of a thorough analysis of the respective texts, the risk of misunderstanding could successfully be minimized so that the review was carried out with appropriate certainty.

3 EXAMINATION OF KEY LEGAL PROVISIONS

The Slovak authorities made reference to the following CC articles as being subject to amendment in order to achieve compliance with the recommendations made in the MER:

- Section 233 on the offence of legalisation of the proceeds of crime
  - paragraph (1) amended (range of punishment)
- Section 130 on the definition of a "thing"
  - paragraph (1) extended in its scope (subparagraphs 'c' to 'e')
  - former paragraph (2) transposed into the new subparagraphs 'c' and 'e' of paragraph (1) above
  - new paragraph (2) to define the term "another property value" (which is likely to mean "other property" or "other property rights")
  - and new paragraph (3) to define which thing or "another property value" is to be considered to belong to the offender
- Section 60 on the forfeiture of a thing
  - extended to "another property value" or its part
  - new paragraph (3) on restriction of disposal with forfeited things etc.
  - former paragraphs (2) and (3) on the forfeiture of replacement value deleted (but transposed to new Section 60a) and so is the former paragraph (4) on the coverage of indirect proceeds
  - former paragraph (5) becomes paragraph (2) and former paragraphs (6) and (7) become paragraphs (4) and (5)
- New Section 60a on the forfeiture of replacement value
- Section 83 on the confiscation of a thing
  - extended to "another property value" or its part
  - new paragraphs (2) and (3) on the conditions under which confiscation can be applied
  - former paragraphs (2) and (3) become paragraphs (4) and (5)
- New Section 83a on the confiscation of replacement value
- Section 419 paragraph 2 on the FT offence (within the offence of terrorism)
  - subparagraph 'a' extended in its scope.

3.1 Recommendation 1: money laundering offence

As it was explained in the Mutual evaluation report[1] the Slovakian CC incriminates ML offences under Sections 231 (sharing) 232 (negligent ML) and 233 (legalization of the proceeds of crime) and therefore any reference to "money laundering" or "ML offence" would necessarily cover all three offences.

The report also noted that "it is not easy to see at first glance how these different offences coexist in practice and how they are used by the Courts"[2] and that Section 233 "reproduces the main physical elements set out in the Vienna and Palermo Conventions" but "some uncertainties and shortcomings still appear to remain"[3]. However, as the criminalization of negligent ML is not required under the FATF Methodology, the Moneyval evaluators only focused on the offences under Sections 231 and 233 as "ML offences" and this review will follow the same approach.

The definition of "property"

Evaluators of the 4th round Moneyval assessment noted that, whilst terms such as "income or other property" and "thing" are used in these Sections to refer to the object of the money laundering conducts, the definition of "thing", provided for in Section 130 of the Criminal Code, "does not comply with the definition of 'property' in the Glossary of definitions used in the Methodology" (the 2009 FATF Methodology) and also noted that the same issue had already been raised as a deficiency in the 3rd round MER[4]. It was thus noted as a technical deficiency and, as a consequence, the Recommended Action Plan to improve the AML/CFT system (Table 2 on page 199) prescribed that Slovak authorities should define "property" in accordance with the FATF Methodology.

R.1 requires that the offence of ML extends to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime (FATF Methodology EC 1.2). In this context, the term "property" is defined by the Glossary to the FATF Methodology as follows: *"Property means assets of every kind, whether corporeal or incorporeal, moveable or immoveable, tangible or intangible, and legal documents or instruments evidencing title to, or interest in such assets".*

In establishing whether the ML offences (Sections 231 and 233) extend to any type of property as defined by the FATF Methodology, one can find that
- the sharing offence (Section 231) uses the word "thing" (*"…a thing obtained through a criminal offence…"*)
- while the legalization offence (Section 233) uses "income or other property" but also "income or thing" which appear to be equal terms (*"…with regard to income or other property obtained by crime with the intention to conceal such income or thing…"*).

Although it was not emphasized in the MER, it nevertheless needs to be pointed out that the terminology used in these provisions is rather confusing. First, the scope of the two ML offences is different. Whereas Section 231 is only applicable to a "thing" the other offence in Section 233 clearly refers to a wider range of property by using the term "income or thing" (where "income" must necessarily go beyond the notion of "thing"). Second, as noted above, the legalization offence in Section 233 appears to use different terms, in the very same sentence, to denote the same range of property. The object of the offence is first mentioned as "income or other property" but then it is immediately referred to as "income or thing" (see quoted above) which implies that these two categories may presumably cover the same range of property (i.e. that the phrase "other property" must be equal to the notion of "thing").

Unfortunately, the proposed amendments would have practically no impact on the ML offences (apart from a minor change to the range of punishment under Section 233) even though the confusing

[1] Moneyval MER (2011), para 41
[2] Ibid.
[3] Ibid, para 45-46
[4] Ibid, para 49-50.

terminology was noted by the Slovak authorities too. In their document, the simultaneous use of "income or other property" and "income or thing" is noted as a deficiency in itself, for the removal of which "*is proposed unification of the terms on 'income or thing from criminal activity' and at the same time (…) a new extended modification of the term "thing" in Section 60 para 1 d of the Criminal Code…*" Nonetheless, the proposed amendments seem to do nothing for the unification of the alternative terminology in Section 233 (let alone the difference between the coverage of Sections 231 and 233 which had not been noted by the evaluators either).

The terms by which the scope of the ML offences is defined are thus "property" "income" and "thing". As for "property" in general, the proposed amendments would not at all deal with its definition and therefore the findings the evaluation team made in this respect remain valid[5]. As for "income" there is no definition either in the existing CC or in the proposed amendments thereto.[6]

In this context ***it is recommended to clarify and, if possible, unify the existing different references to the material element of the money laundering conduct in Section 233 (also with a view to aligning this particular provision with the complementary one under Section 231).***

Thus, the only term that is currently clearly defined by the CC is "thing" as it can be found under Section 130. The main proposed changes in this regard include:

- bracketing the elements of a "thing" listed under para 1 with the term "especially"; this seems to imply that the list should no longer be meant as exhaustive and that, therefore, there may be other objects eligible to fall under the definition of "thing" and thus in the scope of the material element of the money laundering offence;

- enlarging the notion of "security paper" in lett. c) with additional references to "legal document, legal system, legal programme, database or video recording, audio-video recording, audio-video recording or audio recording on technical device". The English text, however, is not clear as to whether these are additional items which are to be considered "things" alongside and besides a "security paper" in the same lett. c) or if these additions are only meant to clarify or broaden the relevant "form" of such "security paper": see the reference to "irrespective of its form" which precedes the newly introduced wording). In addition the actual meaning of a "legal system" or a "legal program" in this context would definitely require further explanation and neither is it clear why the notion of "database" is not covered by "intangible information, computer data", as listed under lett. e);

- referring to additional items in a new lett. d) ("financial means on account") and in a new lett. e) ("intangible information, computer data");

- adding a new definition of "another property value", covering "property law or another value appreciable by money, on which provisions on thing under para 1 are not applicable".

Undoubtedly, the extension of this definition would bring it closer to the definition of "property" in the FATF Methodology by making explicit reference to specific property items or property rights that have not yet been covered (e.g legal documents). However, these added references in some instances lack clarity and still appear to fall short of the scope of "property" relevant under the FATF and UN requirements, potentially missing relevant aspects, such as incorporeal assets or documents or instruments evidencing title to or interest in such assets.

There is a more general issue of concern however, which relates to the place and role of the term "thing" in the context of the money laundering offence vis-à-vis the broader applicability of this term

5 Idid.

6 Although it was not pointed out in the MER it needs however to be underlined that the term "income" is not a category of property in itself and hence it is not able to define a certain set of property items or property rights. It is particularly true when "income" is meant to denote property that is beyond the scope of a "thing" considering that "things" can also be obtained as someone's income. This is obvious bearing in mind that the definition of a "thing" would expressly be extended to "financial means on account" which is quite a usual form of income.

in the overall Criminal Code. First of all it is clear that the notion of "thing" is significantly more general than the term "property" and extends to a much wider range of [tangible or intangible] objects, than those that could be associated with proprietary relationships. This means that not all "things" can or should become the object of a money laundering offence (e.g. concealment of an illegal weapon; a case of identity theft for non-pecuniary purposes, etc.). Secondly the term "thing" is neutral from the point of view of proprietary attributes, which are however essential in identifying the material element in any pecuniary crime. Hence, the conclusion can be drawn that "thing" is perhaps the less adequate of the terms that could be used to implement the relevant provision of the international standard and the relevant Moneyval recommendation. Instead, a comprehensive definition of "property" in all of its aspects and forms would be much more relevant and highly necessary in the context of general acquisitive crime and ML in particular. The introduction of the phrase "another property value" under para 2 of Section 130 does not at all alleviate the problem, but rather complicates the framework further by suggesting that the notion "property value" encompasses the notion of "thing", which is clearly not the case.

While going a step further than what was suggested in the Moneyval report, this paper thus recommends that Slovak authorities ensure the unification of different references to the material element, currently embodied in the terms "property", "any other property", "thing", (the latter – as relevant in its proprietary connotation) under a single term "property" that could be comprehensively utilized for purposes of the Criminal Code. In defining the term "property" Slovak authorities should consider the context of those definitions of "property" that may already exist e.g. in civil legislation of the Slovak Republic.

It is therefore ***recommended that the Slovak authorities develop a definition of the term "property" covering the whole spectrum of necessary elements as required by international standards, thus eliminating duplications of terminology, loopholes and ambiguity in the current framework.***

Another deficiency the Moneyval evaluators noted in this respect was that the ML offence did not clearly extend to the indirect proceeds of crime. Interestingly, this deficiency was only indicated in the ratings box but was not explained further in details in the body of the report but no specific recommendation was given and neither was this issue referred to in the Recommended Action Plan. In fact, it cannot be established with certainty from the wording of the respective provisions whether and to what extent indirect proceeds of crime are covered by the ML offences and the proposed amendments are equally silent in this respect.

<u>Scope of predicate offences for money laundering (terrorism financing element)</u>

The other main deficiency under FATF Recommendation 1 identified by the 4th round Moneyval assessment report was that not all designated categories of offences were fully covered as predicates, as there was no full criminalization of financing of individual terrorists' day-to-day activities or of the financing of the acts defined in the treaties annexed to the UN TF Convention.

As regards the criminalisation of terrorist financing, which is relevant also for compliance with SRII, the MER welcomed the introduction of an autonomous offence of terrorist financing in the Slovak Criminal Code and, at the same time, flagged a number of shortcomings which still prevent the Slovak legislation on this point from being in line with FATF standards. Particularly, the MER concluded that the TF offence, as regulated in Section 419(par.2) of the Criminal Code, read in conjunction with Sections 129 and 297 is not in line with the FATF standards for the following reasons:

- The prohibition to finance terrorism does not cover the financing of all relevant acts. Notably, whilst Section 419(2) only refers to the financing of the acts referred to in the first paragraph of the same Section, this scope does not include all of the acts mentioned in the Treaties listed in the Annex to the UN TF Convention (recalled also under FATF SR II). Not all relevant acts are therefore covered by the TF offence in the Slovak Criminal Code, although they may be considered terrorist acts per se under different articles of the same Code (such as Section 291), which are however not referenced in Section 419(2) for the purposes of the TF offence.

- Also, in light of the same limitation to the acts described in Section 419(1), the TF offence in Section 419(2) does not even cover the financing of terrorists` day-to-day activities, that is those outside of the commission of the said terrorist acts. In contrast with FATF SRII, therefore, financing terrorists is only relevant in the Slovak legislation when the financial support is specifically directed to those relevant acts.

The Slovakian authorities address this issue in the proposed amendments to the CC as a result of which Section 419 paragraph (2) by which TF is criminalized, would be amended as follows (the proposed new text is indicated in ***bold underlined*** type)

"The same sanction as in the paragraph 1 shall be imposed to the person who;
a) collects or provides financial or other means, personally or through another person, even partially, for the purposes of their use or allowing their use for commitment of the act listed in paragraph 1 ***and in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, or who supports this way a person, who plans, prepares or commits such act (…)".***

As regards the coverage of the full range of terrorism-related offences, as stipulated by the TF Convention, the envisaged legislative solution is based on introducing new wording in Section 419(2) which, in addition to the terrorist acts listed in paragraph 1, would also extend the financing offence to the acts listed "in article 2 of the international Convention for the Suppression of the Financing of Terrorism".

This amendment would formally bring the scope of the Slovak TF offence in line with the FATF requirements under SR II and its Interpretative Note. In fact, Article 2 of the TF Convention refers to, i.a., "an act which constitutes an offence within the scope of and as defined in one of the Treaties listed in the Annex" (and also referenced in FATF Interpretative Note to SR II). Theoretically, this solution could be acceptable, however from a practical standpoint it would make the scope of this provision difficult to grasp and effectively apply for practitioners, who would have to cross-reference and follow multiple links throughout the various conventions without any practical guidance on their actual application in the context of a TF offence.

In this sense it would be more proper from a practical point of view, as well as from the point of view of preserving the integrity of the legal structure of Slovak Criminal law to reference not the Convention but rather the CC articles by which the nine "treaty offences" are criminalized in the Slovakian law. As it was noted in the MER[7], all of these offences are expressly covered by various provisions of the CC.

It is therefore ***recommended that the amendments with regard to the terrorism financing offence cross-reference existing articles included in the Slovak Criminal Code, which criminalize conduct as per Article 2 (1(a)) of the International Convention for the Suppression of the Financing of Terrorism (1999).***

As for the financing of day-to-day activities of individual terrorists, it would be introduced in the CC by the insertion of the phrase "*who supports this way a person, who plans, prepares or commits such act*" as quoted above. This phrase must be examined from two aspects, namely whether it meets the criteria for "individual terrorist" under the FATF Methodology and second, whether the term "supports" complies with the requirements of SR.II.

In the Glossary to the FATF Methodology, the term "terrorist" refers to *"any natural person who: (i) commits, or attempts to commit, terrorist acts by any means, directly or indirectly, unlawfully and willfully; (ii) participates as an accomplice in terrorist acts; (iii) organizes or directs others to commit terrorist acts; or (iv) contributes to the commission of terrorist acts by a group of persons acting with a common purpose where the contribution is made intentionally and with the aim of furthering the terrorist act or with the knowledge of the intention of the group to commit a terrorist act."*

[7] Moneyval MER (2011), para 95

It goes without saying that the new wording used in Art. 419 paragraph (2) subparagraph "a" (as amended) would be significantly more restrictive than the FATF definition. It would clearly cover the actual perpetrators of terrorist acts or those who plan or prepare such acts but this would only be sufficient to meet subsections (i) and (ii) of the FATF definition above (and it is a further question whether planning and preparing are different categories and whether any of them would cover attempted terrorist acts) while subsections (iii) and (iv) would be left uncovered.

It is therefore ***recommended that a further amendment is introduced into Section 419 para (2) of the CC to specifically criminalize the financing of a person, when he organizes or directs others to commit terrorist acts or contributes to the commission of terrorist acts by a group of persons.***

The amended part of the offence would cover the support provided "this way" that is, by the *mutatis mutandis* application of the preceding part of the same article, which appears to mean the provision of support "by financial or other means, personally or through another person, even partially, for the purposes of their use or allowing their use" by individual terrorists. The problematic point here is the use of "*support*" which appears too restrictive to fully cover all aspects of collecting and providing funds and particularly to the mere collection of funds (i.e. where no actual support can be proven to have been provided to any recipient). A rephrasing of this construct is therefore recommended.

Most importantly, however, the criminalisation seems still connected to terrorist acts ("plans, prepares or commits such acts") and, contrary to the FATF requirements and the concerns expressed in the MER, appears to duplicate what is already covered in the previous part of Section 419(2) and does not extend to the financing of terrorists` activities beyond those related to particular acts. I.e. there is nothing in the proposed amendments that would, to any extent, positively provide that the offence also covers the financing of the everyday expenses (accommodation and other allowance costs) of individual terrorists, that is, that the support needs not to be linked to any actual terrorist activity and can be provided for any purpose.

It is therefore ***recommended to explicitly foresee that the CC provision covers the financing of an individual terrorist even when this is not related to any specific terrorist act.***

It needs to also be noted that the financing of a terrorist organization, to the extent it is currently covered by the CC, also suffers from some technical deficiencies, even if this was not pointed out in the MER as an actual shortcoming (ether under R.1 or SR.II). The term used in Section 297 (to "support" a terrorist group), fails to adequately meet all aspects of collecting and providing funds for the purposes of the terrorist organization and particularly for its day-to-day or non-terrorism related activities (i.e. when there is no link to a specific terrorist act).

It is therefore ***additionally recommended that the terrorism financing offence include explicit language fully covering the financing of terrorist organizations, including the mere collection of funds, as well as their provision without a link to a specific terrorist act.***

3.2 Recommendation 3: confiscation and provisional measures

The text provided with regard to confiscation provisions (articles 89, 90, 91, 92, 93, 95, 96, 97 and 98 of the CPC) does not highlight the proposed changes, thus significantly hampering the review in this area (the corresponding provisions of the CPC are not available in the material published as Annex to the MER, thus also making a comparison impossible). In this context, it is not possible to identify the provisions to comment, having in mind the need not to duplicate the assessment already done in the mutual evaluation process and focus specifically on the changes or innovations that have been subsequently devised by the Slovak authorities. For these reasons, the following comments address only general aspects of the issues submitted for consideration, and ***thus no specific recommendations could be given***.

The document appears to indicate that the deficiencies identified in the MER for Recommendation 3 would be addressed specifically:

- By introducing a reference to "another property value" (as defined in the proposed revised Section 130 of the CC) in Sections 89, 91, 97 and 98 of the CPC (see comments on this in the first part of this paper under Recommendation 1);

- By amending Section 93 of the CPC on the particular issue of the protection of rights of bona fide third parties.

Confiscation of indirect proceeds for money laundering offences.

On this deficiency, the MER indicates that the evaluators are satisfied that the existing provisions in the Criminal Code "provide for the confiscation of property that has been laundered or which constitutes proceeds from, instrumentalities used in and instrumentalities intended for use in the commission of money laundering, terrorist financing and other predicate offences and property of corresponding value as required under essential Criterion 3.1". At the same time, however, the MER also flags that "there is not any explicit indication [emphasis added] that extends the property to the indirect proceeds of money laundering offences as required under essential criterion 3.1.1(a)."

It is important to recall that:

- Criterion 3.1.1(a) of the FATF Methodology, referenced to in the MER for this identified shortcoming, refers to the need to extend confiscation to "property that is derived directly or indirectly from proceeds of crime, including income, profits or other benefits from the proceeds of crime";

- the conclusion in the MER is that the confiscation of such indirect proceeds in unclear due to the lack of "any explicit indication in this respect".

As regards the proposal to introduce references to "another property value" (which, as recalled, includes [although, it has be stressed, only "for the purpose of the CC"] "property law or another value appreciable by money" in the scope of the material element of the money laundering offence) in Sections 89, 91, 97 and 98 of the CPC, this amendment will likely enlarge the scope of application of the confiscation provided for therein so as to include other objects beyond the notion of "thing". It is not clear, however, how Slovak authorities intend to tackle through these amendments the deficiency identified in the lack of explicit reference to the confiscation of indirect proceeds.

Rights of bone fide third parties

On this point, while noting that the English text of Section 93 of the CPC appears scarcely precise and difficult to read and contains several *omissis*, it has to be observed that this Section seems to set out some provisions aimed at recovering property that is seized or confiscated (but the inclusion of confiscation in this scope is not clear). The language in paragraphs 3 and 7 of Section 93 may be relevant to some extent for a regime of protection of bona fide third parties in this respect but would need to be substantially clarified before being properly evaluated.

In any case, contrary to what is flagged as a shortcoming in the MER, no explicit reference can be found to the protection of the rights of bona fide third parties in relation to property subject to confiscation procedures in a money laundering or terrorist financing context. It is important to recall that assessors have already carefully considered the provisions in the CPC and have concluded in the MER that "Section 45 of the CCP is the only relevant Section relating to this issue". The provisions in this Section are however considered not sufficient to cover the FATF requirement and the evaluators "conclude that no positive substantive protections exist for parties with rights to a seized object, other than those bearing pledges or mortgages on a property". Slovak authorities should directly address these concerns by devising more explicit and targeted legislative amendments.

Confiscation from third parties

Likewise, no indications are available on plans to address the other deficiencies relevant under Recommendation 3 identified in the MER, namely the scarce use in practice of existing provisions on confiscation from third parties and the lack of clear authority to take steps to prevent or void actions that would prejudice the authorities' ability to recover property subject to confiscation.

As regards forfeiture and confiscation from third parties, actions should also be taken by Slovak authorities to address the concerns expressed in the MER. Assessors conclude on this point (see especially par. 125) that, while Section 83 of the Criminal Code seems to allow confiscation of an object when it belongs "to the person who cannot be prosecuted or sentenced" (which the Slovak authorities have construed as a form of confiscation from third parties), that offenders could still "avoid confiscation by transferring property to third parties" as "third-party forfeiture is not, practically, an option". Moreover, assessors also note that, although "the provisions of Section 83 par. 1 (a), (c), (d) and (e) might be applied on things that belong to a legal person", "this has not yet been confirmed in practice".

Authority to prevent or void actions that prejudice confiscation

On the capacity to void actions prejudicing confiscation, in particular, Slovak authorities should address, by means of appropriate regulatory tools, the conclusion in the MER according to which "legislative steps" have not been taken "to create a clear authority to take steps to prevent or void actions, where the persons involved knew or should have known that as a result of these actions the authorities would be prejudiced in the ability to recover property subject to confiscation" (par. 132).

4 CONCLUSIONS AND LIST OF RECOMMENDATIONS

The proposed amendments are to be considered as steps taken generally in the right direction but the current format and content of the amended (modified or completed) provisions fall short of achieving the necessary level of compliance. The Slovakian authorities are therefore recommended to further elaborate on the amendments and to pay attention to the issues left unaddressed or only partially covered by the current draft. In particular they are recommended to consider the following key aspects:

Recommendation 1 – to clarify and, if possible, unify the existing different references to the material element of the money laundering conduct in Section 233 of the Criminal Code (also with a view to aligning this particular provision with the complementary one under Section 231).

Recommendation 2 – to develop a definition of the term "property" covering the whole spectrum of necessary elements, thus eliminating duplications of terminology, loopholes and ambiguity in the current framework.

Recommendation 3 – to ensure that the terrorism financing offence includes cross-references to existing articles included in the Slovak Criminal Code, which criminalize conduct as per Article 2 (1(a)) of the International Convention for the Suppression of the Financing of Terrorism (1999).

Recommendation 4 – to introduce a further amendment into Section 419 para (2) of the CC to specifically criminalize the financing of a person, when he organizes or directs others to commit terrorist acts or contributes to the commission of terrorist acts by a group of persons.

Recommendation 5 - to explicitly foresee that the CC provision covers the financing of an individual terrorist even when this is not related to any specific terrorist act.

Recommendation 6 – to ensure that the terrorism financing offence includes explicit language fully covering the financing of terrorist organizations, including the mere collection of funds, as well as their provision without a link to a specific terrorist act.

ANNEX

The Annex is attached as provided by Slovakian authorities.

Proposal of legislative changes resulting from Recommendations of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL)

-LEGISLATION-

Recommendation 1 (Money Laundering Criminal Offence)

Deficiency 1: The definition of "property" is not sufficiently clear and the ML offence does not clearly extend to the indirect proceeds of crime.

Deficiency 2: Not all designated categories of offences are fully covered as predicates, as there is no full criminalisation of financing of individual terrorists' day-to-day activities or of the financing of the acts defined in the treaties annexed to the UN TF Convention.

Recommended Action: Slovak authorities should define "property" in accordance with the FATF Methodology.

Proposal for solution of fulfilment of Recommendation 1/Deficiency 1:

In respect of Recommendation of the Committee Moneyval the Slovak Republic stated that „property" is in legal order of the Slovak Republic civil law category, which is not necessary to define in Criminal Codes; in the context of Money Laundering Criminal Offence (Section 233 of the Criminal Code) is used the term „income or property from criminal activity" (first part of the sentence) and also the term (income or thing from criminal activity" (second part of the sentence). For removal of this deficiency is proposed unification of the terms on „income or thing from criminal activity" and at the same time for fulfilment of Recommendation in relation to this deficiency is proposed a new extended modification of the term „thing" in Section 60 para1 letter d) of the Criminal Code and in new wording of the para 2 and 3 Section 83 of the Criminal Code. At the same time with respect on requirement of the Committee Moneyval for increase of efficiency of use of seizure and confiscation means in relation to incomes from criminal activity is propsed more precise and extended wording of criminal sanctions of forfeiture of the thing and confiscation of the thing and at the same time supplementation of the legislation in force about forfeiture of the replacement value (new Section 60a of the Criminal Code) and confiscation of the replacement value (Section 83a of the Criminal Code). The stage of preparation in relation to the criminal offence of Legislation of the Proceeds of Crime is regulated in para 1 of the Section 233 of the Criminal Code. In this connection was increased the maximum imprisonment from five to six yearswhat is the basis for criminalisation of the preparation of this criminal offence.

Criminal Code (proposed changes in Bold)

Legalisation of the Proceeds of Crime
Section 233

(1) Any person who performs any of the following with regard to income or other property obtained by crime with the intention to conceal such income or thing, disguise their criminal origin, conceal their intended or actual use for committing a criminal offence, frustrate their seizure for the purposes of criminal proceedings or forfeiture or confiscation:

a) transfers to himself or another, lends, borrows, transfers in a bank or a subsidiary of a foreign bank, imports, transits, delivers, transfers, leases or otherwise procures for himself or another, or b) holds, hides, conceals, uses, consumes, destroys, alters or damages,
shall be liable to a term of imprisonment of two to **six** years.

(2) The offender shall be liable to a term of imprisonment of three to eight years if he commits the offence referred to in paragraph 1
a) by reason of specific motivation, or
b) and obtains larger benefit for himself or another through its commission.

(3) The offender shall be liable to a term of imprisonment of seven to twelve years if he commits the offence referred to in paragraph 1
a) as a public figure,
b) and obtains substantial benefit for himself through its commission, or
c) acting in a more serious manner.

(4) The offender shall be liable to a term of imprisonment of twelve to twenty years if he commits the offence referred to in paragraph 1,
a) and obtains large-scale benefit for himself or another through its commission,
b) with respect to things originated from the trafficking in narcotics, psychotropic, nuclear or high risk chemical substances, weapons and human beings or from another particularly serious felony, or
c) as a member of a dangerous grouping.

Thing
Section 130

(1) For the purposes of this Act, a thing shall mean **(especially)**
a) a movable or immovable thing, dwelling or non-residential premises, or animal, unless the relevant provisions of this Act provide otherwise,
b) a controllable force of nature or energy,
c) a security paper irrespective of its form, **legal document, legal system, legal programe, dabase or video recording, audio-video recording or audio recording on technical device,**
d) financial means on account, or
e) intangible information, computer data.

(2) **By another property value for the purpose of this Act means property law or another value appreciable by money, on which provisions on thing under para 1 are not applicable.**

(3) **Thing or another property value belongs to offender, if the offender this thing or another property value possesses, is a part of his property or effectively dispose in time of decidion making or the person, who is entitled to have the thing or another property value in possession, in not known.**

(**4**) For the purposes of this Act, an entrusted thing shall mean a thing owned by another person, which the offender is authorised to use under a contract, or which the offender has in his possession in order to perform certain tasks as instructed by the owner of the thing, with the obligation to use it only for agreed purposes or return it to the owner under agreed conditions.

(**5**) For the purposes of this Act, misappropriation of a thing shall mean divesting the owner or other person who has legal possession of the thing of the right to dispose with that thing without consent and with the intent to dispose with it as with one's own.

(**6**) For the purposes of this Act, addictive substances shall mean alcohol, narcotics,

psychotropic substances and other substances capable of exerting adverse effects on one's mental state and self-control or recognition abilities, or on one's social conduct.

(**7**) For the purposes of this Act, means of public transport shall mean the things with the capacity to transport at least nine persons.

Section 60
Forfeiture of a Thing or another property value or its part

(1) The court shall order the forfeiture of a thing **or another property value or its part**, which was
a) used to commit a criminal offence,
b) intended to be used to commit a criminal offence,
c) obtained by means of a criminal offence, or as remuneration for committing a criminal offence, or
d) obtained by the offender in exchange for a thing **or another property value or its part** referred to in c).

(2) The court may impose the sentence of forfeiture of a thing **or another property value or its part** only if the thing **or another property value or its part** belongs to the offender.

(3) **Before decision becomes in force (final) applies a restriction of disposal with the forfeited thing or another property value, which includes restriction of another disposal with the thing of another property value directed to the defeat of the criminal sanction of forfeiture of the thing or another property value or its part.**

Remark: *Para 3 will be a subject of examination in relation to Section 425 of Criminal Code.*

(**4**) The forfeited thing **or another property value or its part** shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State.

(**5**) The provisions of paragraph 1 shall not apply if a) the victim is entitled to a compensation for damage caused by the offence, which the forfeiture of a thing would make impossible,
b) the value of the thing is prima facie disproportionate to the gravity of the minor offence, or
c) the court waives the punishment of the offender.

§ 60a
Forfeiture of replacement value

(1) If offender the thing or another property value or its part, which the court could declare for forfeited under Section 60 para 1 or 2, before sentencing by criminal sanction of forfeiture of replacement value or another property value or its part destroys, damages or otherwise invalidates, alienates, makes useless, removes or capitalizes, especially consumptes, or otherwiseits forfeiture defeats, the court can impose forfeiture of replacement value up to the high corresponding to the value of such thing or another property value.

(2) If the thing, another property value or its part is invalidated, made useless or removed, the court can impose ferfeiture of replacement valuebeside forfeiture of the thing or another property value under Section 60 para1.

(3) Forfeited replacement value devolves to the State, unless the court decides otherwise on the basis of a promulgated international treaty binding for the

Slovak Republic.

Section 83
Confiscation of a Thing or another property value or its part

(1) In case that the sanction of the forfeiture of a thing **or another property value or its part** referred to in Section 60 par. 1 was not imposed, the court shall order the confiscation of such a thing **or another property value or its part** if
a) it belongs to the offender who cannot be prosecuted or sentenced,
b) it belongs to the offender whose punishment the court waived, or the offender whose prosecution was stayed, or the offender whose prosecution was conditionally stayed, or the offender whose prosecution was stayed due to the conclusion of a conciliation agreement,
(c) it consists of goods that are not marked with control stamps or goods that were not subjected to other technical control measures required by generally binding legal acts for taxation purposes,
(d) the circumstances of the case justify the presumption that the thing could be used as a source to finance terrorism, or
(e) this is necessary with regard to the security of people or property or other similar general interest.

(2) Without fulfilment of the conditions under para 1 the court can impose confiscation of a Thing or another property value or its part exclusively in case the thing or another property value or its part originates in criminal activity, especially if the thing or another property value or its part was
a) received from criminal offence or as a remunaration for criminal offence and does not belong to the offender,
b) obtained by another person as an offender even as a part for thing or another property value or its part, which was received from criminal offence or as a remunaration for criminal offence , and is not in relation to the value of obtained thing or another property value or its part negligible, or
c) obtained by another person as an offender even as a part for thing or another property value or its part, which was received from criminal offence or as a remunaration for criminal offence, which an offender even as a part obtained for thing or another property value or its part, which was received from criminal offence or as a remunaration for criminal offence, till the value of the thing or another property value or its part, which was received from criminal offence or as a remunaration for criminal offence, is not in relation to the value of obtained thing or another property value or its part negligible.

(3) Provision of section 60a para 2 applies mutatis mutandis for storage of confiscated Thing or another property value.

(**4**) The confiscated thing shall, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic, become a property of the State.

(5) The provision of paragraph 1 shall not apply if:
a) the injured party is entitled to the compensation for damage caused by the offence, which the confiscation of the thing would render impossible, or
b) the value of the thing is manifestly disproportionate to the gravity of the minor offence.

Section 83a
Confiscation of replacement value

(1) If the person to whom the Tihng, another property value or its part belongs, which should be confiscated under section 83 para 1 and 2, this Thing, another property value or its part before sentencing destroys, damages or otherwise invalidates, alienates, makes useless, removes or capitalizes, especially

consumptes, or otherwiseits forfeiture defeats, the court can impose confiscation of replacement value up to the high corresponding to the value of such thing or another property value.

(2) Confiscated Thing or replacement value or its part devolves to the State, unless the court decides otherwise on the basis of a promulgated international treaty binding for the Slovak Republic.

Recommendation 1 (Money Laundering Criminal Offence)

Deficiency 2: Not all designated categories of offences are fully covered as predicates, as there is no full criminalisation of financing of individual terrorists' day-to-day activities or of the financing of the acts defined in the treaties annexed to the UN TF Convention.

Proposal for solution of fulfilment of Recommendation 2/Deficiency 2:

Question of prosecution of financing of criminal offences of terrorism is proposed to solve by modification of section 419 para 2 of the Criminal Code in view of amendment of the reference to Article 2 of the International Convention for the Suppression of the Financing of Terrorism. This amendment ensures criminalization of financing of all acts, which are considered by relevant international conventions (UNO, Council of Europe) for criminal offences of terrorism. Wording of section 419 para 2 of the Criminal Code in force, which regulates criminalization financing of terrorism, is binding only for acting regulated in section 419 para 1 of Criminal Code, what is according Evaluation Report of Moneyval Committee closer regulation that is assumed by the Convention of Council of Europe on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, which refers on all actings listed in Article 2 of the International Convention for the Suppression of the Financing of Terrorism. Scope of these international conventions is wider than the regulation in section 419 para 1 of the Criminal Code. Criminalization of certain actings, which falls under scope of these international conventions, is also regulated in other provision of the Criminal Code.

Question of criminalisation of financing day-to-day activities of individual terrorist is proposed to solve by amendment of section 419 para 2 of the Criminal Code in the wording „... or who supports person, which plans, prepares or commits such act or otherwise contributes to its commission.". Amendment is based on the definition in FATF Dictionary.

Section 419 para 2 letter a) of the Criminal Code:

„(2) The same sanction as in the paragraph 1 shall be imposed to the person who;
a) collects or provides financial or other means, personally or through another person, even partially, for the purposes of their use or allowing their use for commitment of the act listed in paragraph 1 **and in Article 2 of the International Convention for the Suppression of the Financing of Terrorism, or who supports this way a person, who plans, prepares or commits such act,..".**

Recommendation 3 (Confiscation and provisional measures):

Deficiencies:

- Confiscation of indirect proceeds for ML offences is unclear.

- Though the confiscation from third parties is clearly provided by the law, the relevant provisions are not used in a sufficient manner in practice.

- There are not sufficient provisions for protection of the rights of bona fide third parties.
- There is no clear authority to take steps to prevent or void actions, whether contractual or otherwise,

Recommended Actions:

- Though Slovakia has taken some legislative steps to comply with R.3, further legislative steps in order to fully comply with international standards appear to be needed.
- Effectiveness of the implementation of seizure/freezing measures and forfeiture/confiscation should be improved as a matter of priority.

Proposal of legislative changes:

For fulfilment of Recommendation 3 is from the view of legislation proposed amendment of existing regulation of Fourth Part of the Criminal Procedral Code (Surrendering, removing and taking over a thing, safeguarding and surrendering computer data) abou these provisions:

- seizure of another property value,
- seizure of replacement value,
- seizure of real estate.

In this regard in connection with proposed changes in Criminal Code is proposed amendment of section 89 and section 91 and section 97 and section 98 with reference to „another property value or its part".

For solution of recommendation related to rights of third persons is proposed amendment of section 93 – Common Provisions about general reference to application of rights under special regulation (Civil Code).

Fourth Part
Seizure acts/Issuance, withdrawal, seizure of thing, another property value or its part and manipulation with it

§ 89
Obligation to issue thing, another property value or its part

(1) Who is carrying the thing, another property value or its part important for the criminal proceedings, is obliged at the call to submit to police officer, prosecutor or court; if it is necessary for the purpose of criminal proceedings, is obliged the thing, another property value or its part at the call to give to these authorities. By call it is necessary to pointed out that if the call is not complied, the thing, another property value or its part can be withdrawn, as well as for other consequences of non-compliance.

(2) The obligation under paragraph 1 is not applicable to the the thing, another property value or its part, which content relates to the circumstance, about which applies restriction of interrogation, except the case there was an exemption from the obligation to preserve the thing, another property value or its part in secret or an exemption from the obligation of silence.

(3) Call for the submission of the thing, another property value or its part is entitled to the presiding judge before the beginning of the criminal prosecution or in pre-trial proceedings

or police officer.

§ 90
Withdrawal of the thing, another property value or its part

(1) If the thing, another property value or its part is important for the criminal proceedings at the call is not withdrawn by the person, who has it with, it can be on on the order of the presiding judge or in pre-trial proceedings on the order of the prosecutor or police officer withdrawn. Police officer needs for issueing of such an order prior consent of the prosecutor.

(2) If the authority, which issued the order for withdrawl of the thing, another property value or its part, withdrawl of the thing, another property value or its part itself, it is executed on the basis of the order by police officer.

(3) Without prior consent under paragraph 1, the police officer can issue an order only if prior consent can not be obtained and the thing, another property value or its part can not be postponed.

(4) To the withdrawal of the thing, another property value or its part gains if possible non-aligned person.

(5) The record on the issue and withdrawal of the thing, another property value or its part thereof must contain, inter alia, a precise description of the issuing and withdrawing thing, another property value or its part, which would allow to determine its identity.

(6) A person, which the thing, another property value or its part issued or the thing, another property value or its part has been already withdrawn, the authority, which executed the act, issues immediately written acknowledgment of receipt of the thing, another property value or its part, or copy of the record.

§ 91
Seizure of the thing, another property value or its part

(1) If detected circumstances indicate that the thing, another property value or its part is intended to commission of the criminal offense, is used for its commission or is a proceeds of criminal activity, the presiding judge and in pre-trial proceedings the prosecutor can issue an order for seizure of the thing, another property value or its part.

(2) If the thing, another property value or its part can not be postponed, the prosecutor can issue an order under paragraph 1 before the beginning of criminal prosecution. The order must be confirmed by the pre-trial judge within 48 hours, otherwise it expires.

(3) The order must be issued in writing and must be justified. In it is stated, inter alia, a precise description of the seized thing, another property value or its part, which would allow to determine its identity. If the presiding judge ir in pre-trial proceedings the prosecutor does not decides otherwise, in order is restricted any disposal or other disposal with seized does not decides.

(4) If the thing, another property value or its part, which was seized under special law, to seize for the purposes of criminal proceedings, i tis assumed by the prosecutor or police officer.

(5) If there are no reasons for seizure of the thing or another property value, seizure is canceled. If there are no reasons for seizure of a part of the thing or another proterty value, seizure is restricted. About cancelation or restriction of seizure decides presiding judge or in pre-trial proceedings the prosecutor by order.

§ 92
Seizure of the replacement value

If there is not possible to reach the issue or withdrawal of the thing, another property value or its part or if it is not possible to seize the thing, another property value or its part, which is intended to commission of the criminal offense, is used for its commission or is a proceeds of criminal activity, instead of it can be seized replacement value, which corresponds, even if only in part, to its value; it proceeds similarly according to the relevant provisions regulating its issuance, withdrawal or seizure.

§ 93
Disposal with issued, withdrawn and seized thing, another property value or its part

(1) Storage of the thing, another property value or its part issued, withdrawn and seized in pre-trial proceedings ensures police officer or prosecutor, if this Act does not provide otherwise.

(2) The court ensures storage of the thing, another property value or its part, if
a) it was issued, withdrawn or seized in court proceedings, or
b) in pre-trial proceedings the court requieres the issued, withdrawn or seized thing from police officer or prosecutor, that it, due to the evidentiary purposes, was not because of excessive dimensions submitted to evaluation and i tis not sufficient its photo documentation, prepared expert reports or other evidence used in the pre-tiral proceedings.

(2) Storage of the issued, withdrawn or seized thing, another property value or its part is be ensured through another state authority, legal or natural person engaged in this field of business. If n the case of property, the court, prosecutor or police officer can designate in writing a legal person or natural person who performs in this field of business with property management and resolution on seizure of property is serviced to the competent authortiy of state administration in the land registry.

(3) If the thing, another property value or its part, which was under § ... issued, under § ... or withdrawn, and under § ... seized, for further proceedings is unnecessary and if it is not eligible ifs forfeiture or confiscation, the thing, another property value or its partis returned to the person, who it issuedt, to whom it was withdrawn or to whom it was seized under special law. If another person applies the right to it, it is issued to the owner of thing, another another property value or its part, or to another entitled holder, whose right to the thing, another property value or its part is undoubted. In doubts the thing, another property value or its part is kept in storage under § ... and a person, who makes a claim to the thing, another property value or its part, is pointed out to apply it in civil proceedings. If the person, who is the owner of the thing, another property value or its part, or its entitled hoder, despite of the call does not assume it, or person, who makes a claim to the thing, another property value or its part, this claim does not apply in civil proceedings within appropriate time, the thing, another property value or its part, is sold and the sum for it is stored in the storage of the court. For the possibility of such a procedure the person must be pointed out. The thing, another property value or its part solds the authority under paragraph ... or on the basis of its measure another state authority or legal person under § ..., while the sale are required to act with due diligence in that way thad the thing, another property value or its is sold at a price at which the same or similar thing, another property value or its part on time and place of storage usually solds; authority under paragraph 4 can decide by measure on sale of the thing, another property value or its part to another state authority or a legal person under § ... only on the basis of its prior consent.

(4) If there is a danger, that the thing, another property value or its part, which can not be returned or issued under paragraph 1, spoils, solds and the sum for it is stored in the storage

of the court. For sale apply mutatis mutandis paragraph 3.

(5) Decisions under paragraphs 3 and 4 makes the presiding judge and in pre-trial proceedings the prosecutor or police officer. Against the resolution on return and issuance of the thing, another property value or its part, a complaint is admissible complaint, which has suspensive effect; against another resolutions complaint is not admissible.

(6) If the accused person issued or the thing, another property value or its part, which obtained or propably obtained by criminal offence, or was used for commission of criminal offence, was withdrawn, or i tis not known the residence of aggrieved person, it is publicly declared describe thing, another property value or its part. Declaration is done in the most effective way to seek out the aggrieved person, together with a declaration to the aggrieved person to report within six months from the declaration.

(7) If somebdy else than the accused person applied within the period referred to in paragraph 6 a claim to the thing, another property value or its part, it proceeds under § ... . If a claim to the thing, another property value or its part did not apply somebody else, or if in the meantime it was because of the danger of destruction already sold, the sum for it returns to the accused person on its request, i fit is not going for the thing, another property value or its part, which was obtained by criminal offence. If the accused person did not request for return of the thing, another property value or its part, it proceeds under § ... . By this the right of owner to request for issuance of the sum for the thing, another property value or its part, is not affected.

(8) If it is a worthless thing, another property value or its part with negligible value, it can be destroyed, even without a prior call of its description.

(9) The measures and decisions referred to in paragraphs 6 to 8 makes the presiding judge and in pre-trial proceedings the prosecutor or police officer.

(10) Against a resolution on issuance or submission of the thing, another property value or its part to the competent authority under special laws for realization of destruction of the thing, another property value or its part, complaint is admissible, which has suspensive effect.

Special seizure acts

§ 95
Seizure of financial means in the account

(1) If circumstances indicate that the financial means in the account in bank, in branch of foreign bank or another legal person or natural person, which dispose with financial means, are intended to commission of the criminal offense, are used for its commission or are a proceeds of criminal activity, the presiding judge and in pre-trial proceedings the prosecutor can issue an order for seizure of the of the financial means in the account. Order can concern financial means additionally credited to account including accessory, if the reason for seizure relate also to it. This order does not apply to financial means, which are necessary for satisfaction of essential living needs of the accused person or person, to who were seized, for satisfaction of essential living needs of the person, whose education or nutrition accused person or person, to who were financial means seized, are obliged under law to care.

(2) If the matter is urgent, the prosecutor can issue an order under paragraph 1 before the beginning of the criminal prosecution. Such order must confirm the judge for pre-trial proceeedings within 48 hours, otherwise expires.

(3) In the order is stated
a) bank connection, which means the account number and bank code,
b) amount / amount of money in the currency, to which the seizure relates, and

c) instruction that the account owner can not dispose of the seized financial means on the account up to the amount of seizure from the moment of service of the order (except enforcement of the decision), if the presiding judge and in pre-trial proceedings the prosecutor decides otherwise.

(4) The order is served to the bank holding the account, and after the seizure of financial means in the bank account holder. Seizure refers to financial means, that were in the account at the time, in which the bank received the order, up to the sum / amount of money referred in the order and its accessories. If the sum / amount of money specified in the order exceeds the balance of financial means in the account, seizure also applies to financial means, that were credited to the account additionally, up to the sum / amount of money referred in the decision, including its accessories. For requital of claims, that are the subject of execution of a judicial or administrative decision, financial means not affected by order are used prior. With financial means, subject to an order can, in the frame of the execution of the decision, dispose after the prior consent of the presiding judge and in pre-trial proceedings the prosecutor; it does not apply if execution of the decision is carried out to satisfy the claims of the State.

(5) If the reasons for seizure of financial means in the account for the purposes of criminal proceedings or seizure is not necessary in a specified amount lapsed, the presiding judge or in pre-trial the proceedings prosecutor immediately issues an order on cancelation the seizure of the financial menas in the account or on restriction of its seizure in the account to the necessary extend. Order on cancelation or restriction of the seizure of the financial means in the account is serviced to the bank and account holder.

(6) The account owner, whose financial means in the account were seized, has the right at any time to ask for a cancellation or restriction of the seizure. About such a request must presiding judge and in pre-trial proceedings the prosecutor to decide without delay. Against this decision complaint is admissible. If the request was refused, the account owner, whose financial means in the account were seized , can, if does not provide new reasons, repeat it at the earliest 30 days from the date of the decision entered into force; otherwise does not act on it.

(7) From the reasons, for which it is possible to seize financial means in an account in the bank, can be
a) seized financial means in an account at a savings and credit cooperative or other entity, which holds the account, or
b) block financial menas of pension supplementary insurance with state contribution, the financial loan or financial lease.
Paragraph 1 to 6 apply mutatis mutandis.

(8) If in criminal proceedings it is necessary to ensure financial means in the account for the purposes for ensurance of the claim of the aggrieved person, it proceeses appropriately in accordance with paragraphs 1 to 6.

§ 96
Seizure of the book-entry securities

(1) If circumstances indicate that the book-entry security is intended to commission of the criminal offense, was used for its commission or is a proceeds of criminal activity, the presiding judge and in pre-trial proceedings the prosecutor can issue an order for registration of suspension of the right to dispose with book-entry securities.

(2) If the matter is urgent, the prosecutor can issue an order under paragraph 1 before the beginning of the criminal prosecution. Such order must confirm the judge for pre-trial proceeedings within 48 hours, otherwise expires.

(3) The order is served to a person entitled for record keeping of investment instruments

under a special law or to the person, who register book-entry securities, and after their seizure to an owners of book-entry securities. With seized book-entry securities is not allowed to dispose from the receipt of the decision to the person entitled for record keeping of investment Instruments under a special law or to the person , who register book-entry securities. Person entitled for record keeping of investment Instruments or person, who register book-entry securities establishes to their owner a special account, in which the book-entry securities keeps.

(4) By seizure, cancelation or restriction of seized book-entry securities proceeds appropriately under § ... .

(5) The owner of the seized book-entry securities has the right at any time to ask for a cancellation or restriction of the seizure. About such a request must presiding judge and in pre-trial proceedings the prosecutor to decide without delay. Against this decision complaint is admissible. If the request was refused, the owner of the seized book-entry securities, can, if does not provide new reasons, repeat it at the earliest 30 days from the date of the decision entered into force; otherwise does not act on it.

(6) For the process to administration of the seized book-entry securities applies a special law.

(7) If in criminal proceedings it is necessary to ensure financial means in the account for the purposes for ensurance of the claim of the aggrieved person, it proceeses appropriately in accordance with paragraphs 1 to 4.

§ 97
Seizure of computer data and computer system

(1) If a clarification of the circumstances important for criminal proceedings is necessary storage of computer data or computer system, the presiding judge and in pre-trial proceedings the prosecutor can issue an order, which must be justified by the factual circumstances, to the person, in whose possession or under its control are such data or system or provider of such services
a) to have such data or system stored and maintained in its entirety,
b) was allowed to copy and retain copies of such data,
c) has not been given access to such data or system,
d) data were also removed from the computer system,
e) data were also issued for the purposes of criminal proceedings.

(2) In order under paragraph 1 letter a) or letter c) must be provided a time during which the storage of data is carried. Computer data or computer system can be stored for 90 days. If it is necessary to store data or system longer than 90 days, the presiding judge or prosecutor in pre-trial proceedings issues a new order.

(3) The person, in whose possession or under its control are computer data or computer system, issues such data or system, or service provider issues information concerning these services, which are in its possession or under its control, to the person, who issued the order under the paragraph 1 or to the person mentioned in the order under paragraph 1.

(4) The order under paragraphs 1 to 3 are served to the person, in whose possession or under its control are such data or system, or to the service provider, to whom can be imposed obligation of silence about measures specified in the order. The person, who computer data or computer system issued or to whom computer data or computer system was withdrawn, the authority, which executed an act, issues immediately acknowledgment in writing on issuance or withdrawal of computer data or computer system or a copy of the acknowledgement. The persons, to whom computer data were siezed, the authority, which computer data or computer system assumed, notifies in writing.

(5) The person, who computer data or computer system issued or to whom computer data or computer system was withdrawn or computer data or computer system was seized has the right at any time to ask for a cancellation or restriction of the seizure. About such a request must presiding judge and in pre-trial proceedings the prosecutor to decide without delay. Against this decision complaint is admissible. If the request was refused, the person, who computer data or computer system issued or to whom computer data or computer system was withdrawn or seized, can, if does not provide new reasons, repeat it at the earliest 30 days from the date of the decision entered into force; otherwise does not act on it.

(6) If the storage of computer data or computer system for the purposes of the criminal proceedings is not necessary, presiding judge and before beginning of the criminal prosecution or in pre-trial proceedings the prosecutor issues an order on cancelation of storage of such data or system without any delay.

§ 98
Seizure of real estate

(1) If circumstances indicate that real estate is intended to commission of the criminal offense, was used for its commission or is a proceeds of criminal activity, the presiding judge and in pre-trial proceedings the prosecutor can issue an order for seizure of such seizure of real estate.

(2) In order is, inter alia, the real estate owner instructed that
a) must not dispose with the real estate; after notification of an order can not especially not the real estate transferred to someone else or it to encumbered,
b) is responsible for damage caused by applying of the right of first refusal or another right to real estate, if the real estate owner within 15 days after notification of an order to the presiding judge or to the prosecutor did not report, whether and who has the right of first refusal or another right to real estate.

(3) Copy of an order the court or the prosecutor sends to the competent land registry office.

(4) The presiding judge or in pre-trial proceedings the prosecutor examines the real estate and its accessories, if necessary; the time and place of examination notifies to the real estate owner or to the person, who lives with in common household, and to another person, about who is known, that has right to real estate, are obliged the examination of the real estate to enable.

(5) An order in force the court or the prosecutor services to
a) persons, about who is known, that they have the right of first refusal, rental or another right to the real estate,
b) Financial Office, and
c) municipal office, in whose jurisdiction the real estate is situated and in which the jurisdiction the real estate owner has permanent residence.

(6) The transfer of ownership or another right to the seized real estate under a special law can, after informing the competent land registry, make only with the prior consent of the authority, which issued the order. The proposal for transfer of ownership related to the seized real estate imposed under special law before issuance of the order on seizure of the real estate, about which was not decided up to now, loses legal effects to the day the order entries in force.

(7) Third party rights to the real estate for the purposes of the criminal proceedings can apply under special law. With seized real estate can, in frame of execution of the decision, dispose only with the prior consent of the judge and in pre-trial proceedings the prosecutor; it does not apply if execution is carried out to satisfy claims of the State.

(8) If the seizure of the real estate is not necessary for the purposes of the criminal proceedings or seizure of the real estate is not necessary in a given extent, the presiding judge or in pre-trial proceedings the prosecutor the seizure cancels or restricts.

(9) The owner of the real estate, which was seized, has the right at any time to ask for a cancellation or restriction of the seizure. About such a request must presiding judge and in pre-trial proceedings the prosecutor to decide without delay. Against this decision complaint is admissible. If the request was refused, the owner of the real estate, can, if does not provide new reasons, repeat it at the earliest 30 days from the date of the decision entered into force; otherwise does not act on it.

(10) Procedure by administration of seized real estate is regulated in a special law.

Special Recommendation II (Terrorism Financing Offence):

Deficiency 1: No full criminalisation of financing of an individual terrorist's day-to-day activities.

Recommended Action: The financing of individual terrorist's day-to-day activities should be criminalised as required by criterion II.1.

Deficiency 2: Non-criminalisation of the financing of the acts defined in the treaties annexed to the TF Convention.

Recommended Action: The CC should be revised to ensure proper criminalisation of financing of the acts arising from the Convention by amending Section 419 (b) so that it covers financing of offences under the other sections of the CC criminalising the acts pursuant to the treaties listed in the annexes to the UN TF Convention.

Regulation in section 419 para 2 of the Criminal Code, which defines criminal offence of terrorism and certain forms of participation on terrorism.