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"FINANCIAL CRIME AND FINANCIAL INVESTIGATIONS"**

REPORT ON SLOVAKIA

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DECLASSIFIED

1. INTRODUCTION

At the meeting of the Multidisciplinary Group on Organised Crime (MDG)¹ on 26 February 2008, the Presidency proposed three possible topics for the fifth round of mutual evaluations², two of which received substantial support. At the MDG meeting on 6 May 2008, the majority of delegations were in favour of selecting financial crime and financial investigations. On 17 June 2008, the Group decided that the subject of the fifth round was to be "financial crime and financial investigations". The scope of the evaluation covers numerous legal Acts relevant to countering financial crime. However, it was also agreed that the evaluation should go beyond simply examining the transposition of relevant EU legislation and take a wider look at the subject matter³, seeking to establish an overall picture of a given national system. On 1 December 2008 a detailed questionnaire was adopted by the MDG⁴.

The importance of the evaluation was emphasised by the Czech Presidency when the judicial reaction to the financial crisis was being discussed⁵. The significance of the exercise was once again underlined by the Council when establishing the EU's priorities for the fight against organised crime based on OCTA 2009 and ROCTA⁶.

Topics relating to the evaluation, in particular the improvement of the operational framework for confiscating and seizing the proceeds of crime, were mentioned by the Commission in its Communication on an area of freedom, security and justice serving the citizen⁷.

¹ Since 1 July 2010 the responsibilities for this process have been transferred to the Working Party on General Affairs and Evaluations (GENVAL).

² 6546/08 CRIMORG 34.

³ 10540/08 CRIMORG 89.

⁴ 16710/08 CRIMORG 210.

⁵ 9767/09 JAI 293 ECOFIN 360.

⁶ 8301/2/09 REV 3 CRIMORG 54.

⁷ 11060/09 JAI 404.

Experts with substantial practical knowledge in the field of financial crime and financial investigation were nominated by Member States pursuant to a written request to delegations made by the Chairman of the MDG.

At its meeting on 17 March 2009 the MDG discussed and approved the revised sequence for the mutual evaluation visits⁸. The Slovak Republic (SR) was the sixteenth Member State to be evaluated during this round of evaluations.

The experts charged with undertaking this evaluation were Mr Gergely Kunyák, (Public prosecutor, Central Office of Investigation of the Chief Prosecutor, Budapest/Hungary), Mr Stefan Benner (Deputy Head of the International Cooperation in Criminal Matters division, *Bundesministerium für Justiz*, Vienna/Austria and Mr Jaan Riima (Head of Division (Northern I Division), Investigation Department, Estonian Tax and Customs Board, Tallinn/ Estonia). Three observers were also present: Mr Christian Tournié (DG Home Affairs, European Commission), Mr Mickaël Roudaut (European Commission, DG Home Affairs), Mr Christian de Beaufort (*OLAF*, European Commission), and Mr Burkhard Mühl (Criminal Finances and Technology Unit, Europol) together with Ms Anja Lipska and Mr Peter Nath from the General Secretariat of the Council. Eurojust did not participate in the on-site visit.

This report was prepared by the expert team with the assistance of the Council Secretariat, based on findings arising from the evaluation visit that took place between 24 and 28 January 2011, and on Slovakia's detailed replies to the evaluation questionnaire.

⁸ 5046/1/09 REV 1 CRIMORG 1.

2. NATIONAL SYSTEM AND CRIMINAL POLICY

2.1. Specialized units

2.1.1. Investigative authorities

2.1.1.1. Police - Organized Crime Bureau

The Organized Crime Bureau (OCB) of the Presidium of the Police Force is a specialized unit of the Police Force located in the organizational structure of the Presidium of the Police Force, which is one of the sections of the Ministry of Interior of the Slovak Republic.

The departmental structure of the OCB reflects its competencies: There are departments dealing with: coordination and criminal analysis, human trafficking, fight against terrorism, a national anti-narcotics unit and the Financial Intelligence Unit (FIU).

At territorial level the OCB is divided into the following executive stations (that are departments of the OCB):

- Department Bratislava (Bratislava),
- Department West (Trnava)
- Department Centre (Banská Bystrica)
- Department East (Košice)

The powers of the OCB are laid down in the following Acts and the amendments thereto:

- Law. № 171/1993 on the Police Force
- Law. № 297/2008 on the Prevention of Legalization of Proceeds of Crime and Terrorist Financing
- Law. № 300/2005 Criminal Code (CC)
- Law. № 301/2005 Code of Criminal Procedure (CCP)

The OCB investigates criminal offences falling within its competence according to Section 7 of the Regulation № 17/2007 of the Minister of Interior of the Slovak Republic. It focuses on combating

- the most serious forms of organized crime with selective competence by detecting, performing operative measures and documenting for criminal procedure purposes criminal activity committed by organized, criminal and terrorist groups,
- criminal activity pertaining to the competence of the Specialised Criminal Court,
- criminal activity related to terrorism, narcotics, human trafficking and sexual exploitation of human beings and arms trafficking.

Furthermore it has the competence to investigate selected cases of tax evasion, legalization of proceeds of crime, unlawful financial operations, capital and financial markets, terrorist financing and performs duties under Law № 297/2008.

Financial Intelligence Unit (FIU)

The Financial Intelligence Unit (FIU) of the Slovak Republic is a specialized unit within the Organized Crime Bureau (OCB) and its powers are governed by the same Acts as those for the Police Force.

All FIU personnel are officers of the Police Force of the Slovak Republic; In order to be admitted to FIU duties, officials need to have formerly served in Police Force units and additionally hold an advanced university degree, preferably in Law, security services or economy.

The organisational structure of the FIU comprises five units, dealing with unusual transactions, control of obligated entities, international cooperation, analysis and property check-up. The latter unit has been designated as the Asset Recovery Office of the Slovak Republic.

The FIU is tasked with the responsibilities of the national unit for prevention and detection of laundering the proceeds from crime and terrorist financing. The FIU further receives analyses, evaluates and processes reports on unusual commercial transactions and other information related to money laundering or terrorist financing, under Sect. 26 (2) (a) of Law № 297/2008. The whole process of receipt, cataloguing and screening, analysis and evaluation of reports on unusual commercial transactions is regulated in detail by an internal regulation. The procedure performed by the FIU does not have the characteristics of verification under the Code of Criminal Procedure; it is a financial investigation independent from the criminal procedure. The FIU is not a criminal procedure authority and does not have investigative powers. The FIU also performs financial verification, which is defined by the internal regulation as the process of search and documentation of assets or proceeds of crime and the subsequent creation of an assets profile.

Asset Recovery Office (ARO)

The Asset Recovery Office (ARO) of the Slovak Republic is a unit of the Police Force within the FIU - the so called **property check-up department**, staffed by six⁹ police officers from the property check-up department and two police officers from the international cooperation department of the FIU. The latter operate as contact points for the ARO in the Slovak Republic.

The ARO cooperates with other police units and, when performing its tasks under Law №171/1993, Section 3, it is also authorized to cooperate with other public authorities, legal and natural persons and organs of self-administration in the fight against crime. It has to be noted however, that the Slovak ARO does not cooperate with prosecutors directly owing to lacking the status of a Law enforcement body according the Code of Criminal Procedure.

The ARO does not cover cases other than those related to criminal proceedings.

⁹ Staff number at the time of the onsite visit.

Particulars of the activity of the ARO are regulated by an Order¹⁰ of the Director of the OCB, which regulates the procedure to be applied by its employees while conducting a financial verification. The Slovak authorities define 'financial verification' as a process of searching for and creating documentation on property or the proceeds of crime that may be subject to forfeiture. At the time of the visit the proposal for an information by the 1st Vice-President of the Police Force had been tabled, aimed at informing all judicial and criminal police bureaux about the availability (on demand) of the FIU to conduct financial verifications in Slovakia and also to forward any request for financial verification to other Member States of the EU.

Apart from the legislation that governs the police forces of the Slovak Republic and that has already been referred to, **Law № 101/2010 on the Verification of the Origin of Property** that has entered into force on 1 January 2011 - shortly prior to the onsite visit - is setting the legal framework for the ARO. The purpose of this new Law is to regulate the conditions and proceedings of public authorities when, following the verdict by a court, property of natural and legal persons that had been obtained from illegal income is to be declared forfeit. The new Law № 101/2010 enables the Slovak courts to deal with any form of criminal gain that cannot be sanctioned under the Criminal Code.

Reports on illegally gained assets or income are investigated by the FIU and the police departments Bratislava, West, Centre and East. To provide for a unified way of proceeding of the regional police departments when enforcing Law № 101/2010 an instruction of the OCB Director has been issued.

Should such an investigation by the FIU establish that the property of a person is 1500 times the value of his or her legal and verifiable income, the police shall forward to the competent prosecutor a proposal to initiate the procedure pursuant to Law № 101/2010. The motion is then filed by the prosecutor with the competent court. If the court decides that the property difference defined in the motion is obtained from illegal sources, this property shall be forfeited to the State.

¹⁰ Order of the Director of the OCB No. 2/2009.

In their answers to the Questionnaire the Slovak authorities have explained that the anticipated rise in activity emanating from the implementation of Law № 101/2010 is expected to require additional staff in the FIU and therefore it was proposed to create property check-up units within the field offices composed of seven officials.

2.1.1.2. Police - Criminal Police Bureau

Just prior to the onsite visit the Slovak police structure had undergone a substantial rearrangement. As per 1 January 2011 the Judicial Police has been abolished and the former Judicial and Criminal Police Bureau (CPB) been re-named Criminal Police Bureau (CPB) as have its subsequent structures at directorate and district level.

The Criminal Police structure in the Slovak Republic consists of a centralised and a territorial structure. While the **8 criminal police departments (CPD) within the regional police headquarters** and **53 criminal police departments (CPD) within the district police headquarters** are directly subordinated to the President of the Police Presidium while the **Criminal Police Bureau (CPB)** within the Presidium of the Police force is subordinate to the 1st Vice President of the Presidium.

The CPB has the highest position within the structure of the criminal police departments and its competence stretches over the entire territory of the Slovak Republic. It has the mission to investigate criminal offences and operational-investigative activity in specified cases of serious economic crime and general crime (inter alia the limited scope of the criminal offences of counterfeiting, alteration and unauthorized production of money and securities falling within the competence of the Specialised Criminal Court, the investigation into economic and general crime for which district or regional levels would be otherwise competent, if the nature of the case so requires, given the manner of perpetration, parties to the proceedings or other important aspects).

It further provides methodical direction and controls the detection, clarification, investigation and summary investigation of criminal offences, provides assistance in cases of organized crime, particularly serious or dangerous crime. In determined areas, it directs, coordinates and controls the activities of the criminal police service at the district and regional directorates, it analyses and generalizes new manners of committing crime and elaborates methodical directives on the detection, clarification and investigation of particular types of criminal offences, directives and indications aimed at unifying investigation procedures, it directs and controls the investigation of criminal offences and summary investigation of criminal offences. It also participates in the increase of educational and professional level of Police Force investigators and officers of the criminal police service, and it serves as a national centre for the fight against the offences of counterfeiting and alteration of money, securities, postage stamps, State technical measures of identification of goods, public instruments, official seal, official closure, payment cards and telephone cards; it also performs the detection, documentation and investigation of those offences.

No authorized officers of the Police Force serve in the CPB of the Presidium of the Police Force.

The CPB consists of the following departments:

- a) analytical – organizational dept.
- b) judicial police dept.
 - 1) general crime unit
 - 2) economic crime unit
- c) criminal police dept.
 - 1) general crime unit
 - 2) motor vehicle theft and protection of cultural heritage unit
 - 3) counterfeiting and computer crime unit
 - 4) economic and environmental crime unit
- d) extremism and juvenile crime dept.
- e) detection and forensic-technical procedures dept.

The primary mission of the eight Criminal Police Departments (CPD) at **district headquarter level** is to prevent, detect and investigate crime within their area of responsibility (i.e. any criminal offence not falling into the primary competence of the regional headquarters, that of the presidium of the Police Force, specialized Police Force units or other authorities according to the Code of Criminal Procedure) while at the same time coordinating with other police services and external actors.

In the CPDs of the district headquarters located in the territories of the regional headquarters Bratislava, Nitra, Banská Bystrica and Trenčín there are, in addition to departments of criminal police, departments of summary investigation, in which authorized officers of the Police Force are active. In the territories of other regional directorates, authorized officers serve outside of the CPBs of the district headquarters, namely in circuit units of the Police Force subject to the departments of public order police of the respective district headquarters.

The 53 CPBs at **regional headquarter level** have the mission to detect, clarify and investigate cases of general and economic crime committed by a criminal, organized criminal or terrorist group, if no specialized unit of the Police Force has assumed responsibility for those cases.

Furthermore a CPB at regional headquarter level will perform investigations into economic and general crime in the following cases:

- when a district CPB is competent, if the nature of the case so requires, given its seriousness, scope, complicated structure or other important aspects,
- to coordinate activities of different CPBs at district level exceeding the territorial scope of one district directorate,
- to cooperate with the relevant entities of the Presidium of the Police Force when investigating organized crime and corruption cases,
- to cooperate with subjects outside the structure of the Ministry of Interior active in the territory of a regional directorate in preventing and fighting crime,
- to detect the causes and conditions of crime,

- to cooperate with police authorities of neighbouring countries in preventing and fighting crime,
- to provide analysis, reports and information on crime falling within its competence, on causes and conditions enabling or facilitating crime.

No officers of the Police Force authorized to carry out summary investigations¹¹ serve in these CPBs.

2.1.1.3. Police - Anti-Corruption Bureau

The Anti-Corruption Bureau (ACB) that was set up in January 2004 is located in the organizational structure of the Presidium of the Police Force.

The ACB is a central executive unit within the structure of the Presidium, which is specialized in fight against corruption. It has selective competences of operative detection, operative investigation and law enforcement documentation of criminal offences under the substantive jurisdiction of the Special Criminal Court and the most serious economic crime

¹¹ In the following text such officers will be referred to as 'authorized' officers.

Pursuant to Regulation № 17/2007, Section 5, of the Minister of Interior of the Slovak Republic, the ACB is responsible to detect and investigate cases of corruption, criminal offences of obstruction of justice, if any person who, in proceedings before the court or in criminal proceedings promises, offers or provides an undue advantage with the aim of exerting influence on a party to criminal proceedings, party to the proceedings before the court, witness, expert, interpreter, translator, or a body active in the criminal proceedings (Sect. 344 (1) (d) of the Criminal Code); property-related criminal offences under Title IV of the special part of the Criminal Code and economic criminal offences under Title V of the special part of the Criminal Code if such criminal offence caused a damage or benefit obtained amounting to at least 25000 times of a small damage under the Criminal Code (i.e. 6.65m euro); criminal offences of plotting in connection with the winding-up and bankruptcy proceedings; criminal offences of plotting at public procurement and public auction where a criminal Action shows signs of corruption or a large-scale damage has been caused (at least 133.000 euro) or if the criminal offence is committed by a offender as member of a dangerous grouping (Sect. 266 (2) (d), Sect. 266 (3), Sect. 267 (b) (c), Sect. 268 (b) and (c) of the Criminal Code); criminal offences if a Member of the National Council of the Slovak Republic, Government of the Slovak Republic, State Secretary, President of a Central State Authority, President and Vice-president of the Supreme Audit Office of the Slovak Republic, judge of the Slovak Republic Constitutional Court, judge, prosecutor, ombudsman, Head of the Slovak Republic Government Office, Director of the National Security Authority, Director of the Slovak Intelligence Office, Member of the Bank Board of the National Bank of Slovakia, Member of the National Security Authority, Member of the Slovak Intelligence Service and Member of the Military Intelligence is suspected of having committed a criminal offence. The Bureau of Combating Corruption detects and investigates criminal offence of damaging financial interests of the European Communities.

The ACB is organised into the following five departments:

- A department of strategic analysis and international cooperation with a coordination and criminal analysis unit and an international cooperation unit
- The Anti Corruption Department Bratislava
- The Anti Corruption Department West
- The Anti Corruption Department Centre
- The Anti Corruption Department East

All four territorial executive departments are further divided into units of criminal analysis, investigation and operations.

2.1.2. Judicial authorities

2.1.2.1. Public Prosecution Service of the Slovak Republic

The Public Prosecution Service of the Slovak Republic safeguards the rights and interests that are protected by law. It is an independent, hierarchical system of state authorities, headed by the General Prosecutor's Office of the Slovak Republic. Its territorial organisation is divided into 8 regional and 54 district prosecution offices that are identical with those of the respective courts. Although the organisation structure of the Public Prosecution Service corresponds to the organisation structure of the courts of the Slovak Republic the experts were informed that however, the organisation of courts and prosecution services does not correspond with the territorial and administrative division of the state at the district level.

Furthermore the Higher Military Prosecution Office is also part of the Public Prosecution Service.

Within its scope of authority and in public interest the role of the Public Prosecution Service in the Slovak Republic is to enforce the law. While exercising its competence, the Public Prosecution Service is obliged to use all legal instruments so that a thorough, efficient and fast protection of rights and interests of natural and legal persons and state protected by law is provided without any influences.

The competence¹² of the Public Prosecution Service is exercised by the prosecutors primarily through performing criminal prosecution of persons suspected of having committed a criminal offence and supervision of keeping the legality prior to the criminal prosecution within the scope of application under a special Law and in a pre-trial procedure.

Special Prosecution Bureau

Within the General Prosecutor's Office of the Slovak Republic (GPO) the **Special Prosecution Bureau** (a special part competent for the whole territory) has specialised organisational sub-divisions (departments and units) dealing with crime that are subject to this evaluation. These are in particular:

- the **General Crime Department** with units dealing with corruption and specialising in organised crime, terrorism and international crime,
- the **Economic Crime Department**,
- the **Unit of Criminal Offences of State Officials**

Furthermore, other departments exist (as sub-divisions of the General Prosecutor's Office, next to the Special Prosecution Bureau) likely to exercise competence in the field of financial crime and when conducting financial investigations. These are namely:

- the **Criminal Department**
- the **International Department** with units dealing a) with legal contact with abroad and extradition, b) bilateral cooperation and translation and c) relations with the European Union and the European Communities.

¹² The competencies and status of prosecutors are governed by and enshrined in a number of Laws and Directives, namely the following: Law No. 153/2001 on the Public Prosecution Service, Law No. 154/2001 on Prosecutors and Legal Juniors of the Public Prosecution Service, Law No. 300/2005 Criminal Code, Law No. 301/2005 Criminal Procedure Code, Law No. 458/2003 on establishment of the Special Court and of the Special Prosecution Bureau, Law No. 291/2009 on the Specialized Criminal Court and on the modification and amendment of certain Acts, Law No. 330/2007 on the Registry of Penalties and on the modification and amendment of certain Acts, Law No. 459/2002 on the professional education of the employees of the Public Prosecution Service, Law No. 548/2003 on the Justice Academy, Directive No. 200/2001 on simple Acts of a Prosecutor which may be carried out by a Legal Juniors of the Public Prosecution Service, Directive No. 199/2001 establishing details regarding the official clothing of a Prosecutor.

The Slovak authorities stated that in addition to the specialisation within the Special Prosecution Bureau, a certain degree of **specialisation for economic crime** can also be found in the prosecution offices **at district and regional level**. These are handled within the Public Prosecution Service organizational structure by the **Property Crime Unit** which is a part of the Criminal Department of the General Prosecutor's Office.

The competencies of the Special Prosecution Bureau are laid down in Article 14 of the Code of Criminal Procedure (CCP) and cover the following offences:

- Criminal offence or premeditated murder,
- Criminal offence of plotting at public procurement and public auction under Sect. 266 (3) of the Criminal Code,
- Criminal offence of falsification, alteration and illegal production of money and securities under Sect. 270 (4) of the Criminal Code,
- Criminal offence of abuse of power by a public official under Sect. 326 (3) and (4) of the Criminal Code committed in concurrence with criminal offences under (b), (c), (e), (f), (g), (j) or (k),
- Criminal offences of accepting a bribe under Sects. 328 through 331 of the Criminal Code,
- Criminal offences of bribery under Sects. 332 through 335 of the Criminal Code,
- Criminal offence of an indirect corruption under Sect. 336 of the Criminal Code,
- Criminal offence of establishing, masterminding or supporting a criminal group and criminal offence of establishing, masterminding or supporting a terrorist group,
- Particularly serious felonies committed by a criminal group or terrorist group,
- Criminal offences against property under Title IV of the special part of the Criminal Code or economic criminal offences under Title V of the special part of the Criminal Code if a damage caused or a benefit made by such criminal offence amounts to at least 25000 times of the small damage under the Criminal Code, or if such criminal offence has been committed in a amount amounting to at least 25000 times of the small damage under the Criminal Code (i.e. at least 6.65 m euro).

- Criminal offence of damaging financial interests of the European Communities,
- Criminal offences relative to criminal offences under (a) to (j) or (k) provided the requirements for the common procedure are met.

2.1.2.2. *Court System in the Slovak Republic*

The system of courts in the Slovak Republic consists of general courts (The Supreme Court of the Slovak Republic, 8 regional courts, 54 district courts and the Specialized Criminal Court) and the Constitutional Court of the Slovak Republic.

Specialisation of pre-trial judges

Financial criminal activity and/or financial investigations are handled by the pre-trial procedure judges involved in the pre-trial phase of the process. Pre-trial judges however, do not constitute a specialized body at the level of judges.

General Courts

Independence and impartiality of the courts is a constitutional principle and they exercise their powers at all levels separately from other state authorities.¹³

The judiciary of the Slovak Republic is governed by the principle of two-instance judicial proceedings. 54 district courts are competent for the first instance procedure, except for those cases within the competence of a specialised criminal court. 8 regional courts are competent to rule in appeal procedures as an appellate court. The Supreme Court is competent to rule in extraordinary appeal procedures as a court hearing an appeal against the appellate court's judgment. As a higher judicial authority the Supreme Court does not act as a first instance authority.

The courts rule in civil and criminal procedures, examine legality of administrative authorities' decisions. They deliberate in judicial panels unless the law provides for the matter to be handled by a single judge. The law provides for when lay associate judges also participate in the chambers decision-making and which cases may be ruled by a court clerk authorised by a judge.

¹³ Cf. Article 141 (1) and (2) of the Constitution of the Slovak Republic.

Basic status of judges, president and vice-presidents of the Supreme Court (appointment, dismissal, resignation and other) is covered by the Constitution. A more detailed arrangement of the courts system, their competence, organization and procedure, way of constitution of associate judges is laid down in Articles 143 and 148 of the Constitution of the Slovak Republic.

The Specialised Criminal Court

The **Specialised Criminal Court** belongs to the court system of the Slovak Republic. It is established in Pezinok, and its territorial competence extends over the whole Slovak territory¹⁴. The competencies and status of judges are laid down in a multitude of Laws.¹⁵

The Specialised Criminal Court acts and deliberates in criminal matters and other matters as laid down in the Code of Criminal Procedure. It is a first instance court and appeals against its judgments are decided on by the Slovak Republic Supreme Court. The competence of the Specialised Criminal Court is covered by the Law № 291/2009 on the Specialised Criminal Court and the Code of Criminal Procedure.

¹⁴ Cf. Law No. 371/2004 on Seats and Court Circuits of the Slovak Republic, Sect. 5.

¹⁵ Namely: Law No. 460/1992 Constitution of the Slovak Republic, Law No. 757/2004 on Courts and on amendments of certain Acts, Law No. 385/2000 on Judges and on amendments of certain Acts, Law No. 99/1963 Civil Procedure Code, Law No. 371/2004 on Seats and Court Circuits of the Slovak Republic, Law No. 38/1993 on the Organization of the Constitutional Court of the Slovak Republic, Procedure and Status of its Judges, Law No. 291/2009 on the Specialized Criminal Court and on the amendment of certain Acts, Law No. 300/2005 Criminal Code, Law No. 301/2005 Criminal Procedure Code, Law No. 385/2000 on Judges and Lay Associate Judges and on amendments of certain Acts, Law No. 549/2003 on Justice Clerks, Law No. 550/2003 on Probation and Mediation Clerks and on amendments of certain Acts, Law No. 548/2003 on the Justice Academy and on amendments of certain Acts. Furthermore several implementing regulations were issued by the Ministry of Justice of the Slovak Republic, particularly: Decree of the Ministry of Justice of the SR No. 599/2002 on reimbursements for Acting as associate Judge, Decree of the Ministry of Justice of the SR No. 118/2005 on elements of the work schedule, Decree of the Ministry of Justice of the SR No. 119/2005 on internal revision of the court, Decree of the Ministry of Justice of the SR No. 120/2005 establishing details on usage of working clothes by judges, prosecutors and barristers in the proceedings before the court, Decree of the Ministry of Justice of the SR No. 543/2005 on Administration and Office Rules for District Courts, Regional Courts, Special Court and Military Courts by the Decree of the Ministry of Justice of the SR No. 417/2006

The competence of the Specialised Criminal Court is laid down in Article 14 of the Criminal Procedure within the scope of the criminal offences that are in parallel with the ones that have been enumerated in chapter 2.1.2.1.1 on the Special Prosecution Bureau.

The Constitutional Court

The **Constitutional Court of the Slovak Republic** has a special status. It is an independent judicial authority for the protection of the Constitution (Article 124 of the Slovak Republic Constitution). Fundamentals of the status of the Constitutional Court and its judges are covered by the Slovak Republic Constitution. Except that it rules on conformity of Laws of inferior legal force with Laws of superior legal force, the Constitutional Court also rules on competence conflicts of the central government authorities unless the Law provides for that such disputes are to be handled by other state authority. The Constitutional Court also rules on complaints and interprets the Constitution or constitutional Acts in case of disputable matters. Details of organisation of the Constitutional Court of the Slovak Republic are stipulated by a special Law.

The status of the Constitutional Court of the Slovak Republic as an independent judicial authority for the protection of constitutionality, its powers and competence, conditions for commencement of such procedure, requirements of appointment of Constitutional Court judges, their status, conditions of their service are laid down in Title VII of the Constitution, as well as in the Law № 38/1993 on Organization of the Constitutional Court of the Slovak Republic, Procedure and Status of its judges that covers organisational issues of the Constitutional Court, proceedings and status of the judges in a more detailed way.

2.1.3. Customs - Customs Criminal Office

The Customs Criminal Office (CCO) is a specialised body within the Customs Directorate of the Slovak Republic, under the competence of the Ministry of Finance.

The competences and powers of the Customs Criminal Office officers derive from the Criminal Code, the Code of Criminal Procedure (CCP) and Law № 652/2004 on the State Authorities in Customs. Therefore operative units of the customs have the same competence as the Police Force, with the exception from using the special investigative techniques of undercover agent and controlled delivery.

It falls within the Customs Criminal Office's remit to fight illegal import, export or transit of narcotics, psychotropic substances, their precursors, protected plant and animal species and specimen, illegal transport of radioactive and other highly dangerous.

The Customs Criminal Office provides for and performs a customs supervision upon agreement with customs authorities of other states in an undisclosed way of shipment or in other secret way of surveillance if there is a reason to believe that the shipment contains narcotics, psychotropic substances, their precursors, protected plant and animal species and specimen for which a respective permit has not been issued, or other object the auction of which requires a respective permit, objects designed for committing a criminal offence or objects originated in the criminal offence with the aim of identifying persons participating in handling with such shipment.

The Customs Criminal Office fulfils and provides for tasks in the field of detection and investigation of criminal offences committed while breaching customs or tax regulations and identifying their offenders.

In order to fulfil its tasks the CCO has the following organisational subdivisions:

- (a) Investigation Unit
- (b) International Cooperation Unit
- (c) Serious Customs and Tax Crime Unit
- (d) Special Activities Unit
- (e) Service Intervention Unit
- (f) Three CCO branch offices (in Trnava, Banská Bystrica and Košice)
- (g) Support units (operational centre, Economics and Logistics, Employment and Organization)

2.1.4. Tax Administration

The tax authorities of the Slovak Republic consist of the Tax Directorate of the Slovak Republic and its subordinate 102 Tax Offices. Furthermore there is a tax authority for selected tax entities which has a special position in terms of substantive competence.

In order to safeguard the execution of certain tasks of the Tax Directorate, it may set up so-called 'facilities' and determine their competence as well as their territorial scope of activities. The same mechanism applies with regard to the Tax Offices. At the time of the visit, eight Tax Directorate Facilities had been created.

References to the competencies and the status of tax administration officials are laid down in a number of laws, namely Law № 150/2001 on Tax Authorities to name but one.¹⁶

The Tax Directorate of the Slovak Republic is the most important level of direction and decision-making, responsible for the whole range of tasks regarding levying and administration of taxes.

On the basis of the appropriate law the tax administration performs the following tasks:

- keeps records and registration of tax entities
- keeps records of tax incomes
- performs tax inspection
- performs the tax execution procedure
- verifies collection of administration fees and enforces them under a special Law,
- performs administration and records of justice fees
- informs tax entities on their rights and duties as regards the tax issues

¹⁶ Other laws are: Law No. 400/2009 on Civil Service, Law No. 511/1992 on Tax and Fees Administration and on modifications in the framework of territorial financial authorities, Law No. 595/2003 on Income Tax, Law No. 222/2004 on Value Added Tax, Law No. 554/2003 on Real Property Transfer and Transition and on amendment of certain Acts, Law No. 431/2002 on Accountancy and Law No. 171/2005 on Gambling.

- informs the authorities involved in the criminal proceedings on suspicion of committing the criminal offences in connection with breach of special Acts
- performs a state supervision
- operates tax information systems

2.1.5. Training

2.1.5.1. Police

Police officers in investigation units must meet requirements under Sect. 34 of the Law № 73/1998 on the Civil Service of Officers of the Police Force, Slovak Intelligence Service, Penitentiary and Judicial Guard Force of the Slovak Republic and Railway Police, i.e. only a police officer with the second university degree in the field of Law, security services or in the study programme of security and legal protection of persons and property and who, as a junior investigator in a preparatory civil service or a permanent civil service has passed a final investigation examination, may be appointed as Police Force investigator. The final investigation exam is not required for a police officer having passed a final state exam in investigation theory. In exceptional cases, a police officer with an advanced university degree other than in the field of law, security services or in the study programme of security and legal protection of persons and property, which had passed the final investigation exam may be appointed as a Police Force investigator by the Minister of Interior of the Slovak Republic. The period of junior investigator practice is one year. Exemptions can be granted by the Minister of Interior of the Slovak Republic in cases of persons having an advanced university degree in law or security services or in the case of a police officer who has been performing summary investigation for at least three years.

Authorized officers of the Police Force performing summary investigation on criminal offences punishable by no more than 3 years of imprisonment must meet the general recruiting requirements of the Police Force. If the defendant is being detained, imprisoned or under observation in a medical institution or if the prosecutor so orders, investigation is performed instead of summary investigation. Similarly in cases when it is necessary to perform investigation of at least one criminal offence of the same defendant, investigation shall be performed of all criminal offences of the same defendant against all defendants, the criminal offences of whom are mutually related, summary investigation shall thus not be performed.

Other police officers who do not perform investigation or summary investigation under the Code of Criminal Procedure must meet the general recruiting requirements of the Police Force. No requirement concerning university education applies to them, except for the officers serving in the Judicial and Criminal Police Bureau of the Presidium of the Police Force.

2.1.5.2. *Judicial authorities*

The Justice Academy

The Justice Academy of the Slovak Republic seated in Pezinok is an independent educational institution with nation-wide competence and has a special role in the training of the judiciary of the Slovak Republic. Its major task, governed by law, is to guarantee, organise and perform training for the judiciary (i.e. judges, prosecutors, judicial clerks).

The Justice Academy of the Slovak Republic has established extensive cooperation with national and foreign partners, particularly in the field of training judges and prosecutors, as well as project activities in further developing the Justice Academy. At the time of the onsite visit negotiations on cooperation with university experts from law faculties of Slovak universities were under preparation. Joint projects with national partners of the Justice Academy are implemented in the framework of special bilateral agreements with other entities in the Slovak Republic; these are *inter alia*: the Judges' Association of Slovakia, EUROIURIS – European Legal Centre and the Information Bureau of the Council of Europe.

In 2007 and 2008, the Academy entered into cooperation with partners from neighbouring countries within the Visegrad Group in the framework of bilateral international agreements on cooperation, namely with: the Polish National College for Justice and Public Prosecution Service, the Justice Academy of the Republic of Hungary and the Justice Academy of the Czech Republic.

The Justice Academy of the Slovak Republic has also actively fostered cooperation within the European judicial area with a number of national and supranational institutions whose main activity is to train judges, prosecutors and other workers in the field of justice. Among the most important EU partners of the Academy in the field of training are inter alia: the French National Justice College (*ENM - École Nationale de la Magistrature*), the European Law Academy (*ERA - Europäische Rechtsakademie*), the European Judicial Training Network (EJTN) and the Lisbon Network.

Finally, contacts with the European Court of the European Union, Council of Europe and European Court of Human Rights mainly through visits, study stays and internships of Slovak judges and prosecutors in these institutions fall under a framework of successful cooperation

Prosecutors

As regards the general entry qualification for prosecutors, they are required to have a general advanced university degree in law. Furthermore, within their specialization prosecutors participate at least twice a year in further expert training organised by the Justice Academy and the General Prosecutor's Office of the Slovak Republic.

Judges involved in the pre-trial phase

Like prosecutors, judges need to have a general advanced university degree in law. Within their fields of specialization judges participate in further professional training organized by the Justice Academy of the Slovak Republic and other institutions both in Slovakia and abroad.

2.1.5.3. *Customs - Customs Criminal Office*

Customs officers working for the investigation unit within the Customs Criminal Office have to meet the requirements laid down in Articles 12 and 13 of Law № 200/1998 on the Civil Service of Customs Officers. A customs officer with an advanced university degree in the field of law, security services or in the study programme of security and legal protection of persons and property or economics and management and who, as a junior investigator, has successfully passed the final investigation exam may be appointed as an investigator.

Customs administration authorities tasked with the summary investigation of criminal offences punishable up to a term of imprisonment of three years do not need a university degree.

Other customs officers neither performing investigations nor summary investigations under the Criminal Procedure Code have to meet general requirements for recruitment into the service. There is no requirement for a first or advanced university degree.

2.1.5.4. *Tax Administration*

All new tax administration officials at the basic level have to undergo an entrance training, basic tax course and functional training in the APV DIS (Slovak Tax Information System). As regards their specialisation, tax administration officials also participate in further expert training, i.e. a specialised training. The training is provided by the Tax College.

Under the basic and specialised training schemes different activities for the various categories of officials of the tax authorities and the Tax Directorate have been tailored that are held at the Tax College,. Such training activities also comprise the area of cooperation with authorities involved in criminal proceedings with a particular view to the following issues:

- evaluating breaches of tax legislation (e.g. suspicion of criminal offences, chain and carousel frauds)
- reporting suspicions of crime
- providing documents, written information and statements
- informing tax administration officials about their competencies and duties in criminal proceedings

In addition to training of tax administration officials, the Tax College also holds trainings for law enforcement authorities (i.e. operative police officers and the Police Force investigators) in the area of application of tax procedure and substantive tax Acts. These are held upon request and in mutual agreement between the Police Force Presidium and the Tax College.

2.2. Criminal policy

2.2.1. Proceeds-oriented Policy

In their answers to the questionnaire the Slovak authorities have explained that to their understanding „proceeds-oriented policy” was describing the activity of Law enforcement authorities focused on detecting, freezing and subsequent confiscation of proceeds of crime. In the Slovak Republic, the detection of proceeds of crime is **not considered a separate task of law enforcement authorities** and there is **no legislative, internal-organizational or strategic document** defining such activity as a separate goal of activity of law enforcement agencies. The detection of the proceeds of crime is, however, considered an integral part of criminal investigation, according to Sect. 119 (1) (f) CCP which states that among other things, in the course of criminal procedure it is necessary to prove the proceeds of crime, means used to committing crime, their location, nature, state and value. This provision is the basis for applying several other provisions on criminal procedure, namely securing procedures.

Securing procedures are procedures envisaged by the Code of Criminal Procedure that enable achieving the purpose of financial investigation. The application of such procedures depends from the procedural standing of the person whose property is targeted, i.e. the person has to be charged according to the Code of Criminal Procedure. There is also a separate securing procedure envisaged by the Law on the Police Force.

1.) According to Sect. 95 CCP, if detected information leads to the conclusion that financial resources in a bank account or in a branch of a foreign bank or other financial resources are the proceeds of crime, the president of the judicial panel (in trial proceedings) or prosecutor (in pre-trial proceedings) may issue the order to freeze those financial resources (criminal charge against the person affected by that freeze is not required). The freezing order may also affect money and their collateral that have been added to the account after the freezing order has been executed, if the reasons for freezing cover them as well.

2.) According to Sect. 425 (1) CCP, if the defendant is being prosecuted for a criminal offence, for which it is reasonable to expect the imposition of the penalty of forfeiture of property, given the nature, the seriousness of the offence and the circumstances of the defendant, and there is a concern that the execution of that penalty will be avoided or impaired, the court in trial proceedings and the prosecutor in pre-trial proceedings may freeze the property of the defendant after hearing the defendant. According to Sect. 426 (1) CCP, the freezing is effective against the whole property of the defendant including property the defendant acquires after the freezing; it is not effective, however, against resources and things excluded from the execution of forfeiture according to Law. Simultaneously Sect. 426 (4) CCP provides for an obligation of all persons holding a thing forming part of the frozen property to inform the prosecutor as soon as they become knowledgeable about the freezing.

This procedure of freezing property is a sufficient protection of the social interest of taking away illegally, criminally acquired property.

3.) According to Sect. 428 (2) of the CCP, if the defendant is being prosecuted for a criminal offence for which, in consideration of the nature and seriousness of the offence and circumstances of the defendant, the imposition of the penalty of forfeiture of a thing may be expected and there is reasoned concern that the execution of that penalty would be impaired or avoided, the court or, in pre-trial proceedings, the prosecutor may freeze a thing belonging to the defendant.

The forfeiture of a thing is a penalty that may be imposed if the thing in question was:

- a) used to commit the 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 referred to in (c).

According to Sect. 60 (4) of the Criminal Code, the meaning of a thing includes the proceeds of crime and interest, profit or other gain from such income or things.

4.) The most frequently used tool applied for freezing property is the procedure set out in Sect. 89 of the Code of Criminal Procedure, providing for an obligation of everybody to issue a thing important for the criminal procedure, following an exhortation by the police officer, the prosecutor or the court. This freezing procedure enables the securing of things that may later serve as evidence, but also of things that may later be affected by confiscation of forfeiture. The obligation to issue the thing affects the person holding the thing, irrespective of ownership-related circumstances. The Code of Criminal Procedure simultaneously provides in Sect. 91 for a procedure in a situation of a person holding a thing important for the criminal procedure who denies voluntary issue; in such case it is possible to take it away from such person following an order by the president of a judicial panel in trial proceedings or by the prosecutor or police officer in pre-trial proceedings. Given the interference with constitutional property rights involved in this procedure, the police officer is required to have obtained the consent of the prosecutor to issue such order.

5.) According to Sect. 96 (1) CCP, if detected information leads to the conclusion that a book entry security is to be used for the perpetration of a criminal offence, was used for the perpetration of a criminal offence or is part of the proceeds of a criminal offence, the president of the judicial panel in trial proceedings or the prosecutor in pre-trial proceedings may issue the order to register the freezing of the right to make transactions concerning that security. According to Sect. 96 (2) CCP, if the issue permits no delay, the prosecutor may issue the order even before the commencement of criminal prosecution, but that order must receive the consent of the judge for pre-trial proceedings within 48 hours or else it ceases to be valid.

6.) The authorization for freezing a thing is also contained in Law No 171/1993 on the Police Force. According to Sect. 21 thereof, a Police Officer is authorized to secure a thing for necessary procedures if he or she has a suspicion of that thing has a relation to a criminal offence and its freezing is necessary for determining factual circumstances or for a decision in criminal procedure. The freezing may last no longer than 90 days, if a law does not provide otherwise. In continuation of this provision, Sect. 92 CCP provides, that if a thing was frozen for the purposes of criminal procedure according to another Law (such as the Police Force Law), and it shall be collected by the prosecutor or police officer.

2.2.2. Prioritisation of tracing, seizure and confiscation of assets

It should be noted that “acquisitive crime” is a term referring to all criminal activity, the objective of which is the immediate property gain of the perpetrator. The Slovak authorities maintained that in the context of their national terminology, this included property-related as well as economic crime and that therefore priority of investigation was equal concerning all criminal offences. If the Criminal Code, an international agreement or a decision of an international organization by which the Slovak Republic is bound does not provide otherwise, the prosecutor is obliged to prosecute all criminal offences he or she has become knowledgeable about, according to Sect. 2 (5) of the Criminal Code (principle of legality).

2.2.3. Tracing, seizing and confiscation of assets as separate objective of criminal investigations

Detection, freezing and subsequent confiscation of proceeds of crime is not considered a separate goal of activity of Law enforcement agencies. However, according to the information given by the Slovak authorities that does not preclude the deployment of additional workforce, time and resources.

2.3. Conclusions

- The Slovak Republic has the legal provisions and organizational structures in place to deal with financial crime and to conduct financial investigation. Still some areas can be identified, where there might be room for further improvement – training, planning, prioritizing and specialization.

2.3.1. Investigative authorities

- The experts were informed that 21% of all cases dealt with in the OCB were economic crime cases. It seems that financial crimes and economic crime cases are mainly investigated by the OCB field offices. OCB co-operates with Europol in the context of work files but also within the CARIN Network and the Asset Recovery Offices Platform. The organizational structure of the OCB, neither at HQ level nor at the level of the field offices, does not foresee a dedicated Economic Crime Unit.

Given the relatively high number of economic crime cases investigated, the experts were of the opinion that the OCB should envisage to adapt their internal structures to have a special emphasis on the investigation of financial and economic crime.

- The FIU is seated within the police although it has no investigative powers. Despite its close links to the investigative authorities it was mentioned that there was some room for improvement as regards the co-operation between FIU and investigators.

The OCB needs to ensure a smooth information flow between their FIU and other investigating law enforcement agencies including the exchange of information with tax authorities. On the positive side the expert team noted that problems that have been identified by the FIU during the course of its operation have been addressed by the management of the unit and appropriate action taken.
- The Slovak ARO is a department of the FIU. In 2009 the ARO has received four requests from other AROs, one CARIN request and four requests from the Slovak Police. In 2010 the ARO has received 20 requests from other European AROs. The ongoing Europol project to link the European AROs to the SIENA communication system is appreciated and seen as a key factor in the international information exchange to trace and seize criminal assets. It was mentioned that the powers of the European AROs should be aligned to enable them to access certain types of information like bank account information. It was pointed out that an Asset Management Office would be needed.

The experts concluded that the ARO should try to increase the number of requests, in particular received from the Slovak Police to trace and identify assets abroad. This will need an awareness raising campaign and a specialized financial investigation training for asset recovery within the Police and a close co-operation between the ARO and Police in investigations.
- The Criminal Police Bureau has undergone considerable restructuring in the last few years and the new organization took effect as of 1 January 2011, i.e. shortly before the onsite visit. There seem to be some problems with personnel due to retirement and a change of social benefits. In particular senior investigators seem to have left the Criminal Police in the last years. There was no specific information provided on how many police officers actually are dealing with financial and economic crime but it seems to be evident that there is lack of specialized officers in this field. In addition to that there seems to be no specialized training on investigating financial crime. Some training on economic crime is offered but this only one part of a general training provided. However, it is interesting to note that investigators need to have a university degree.

- The experts would consider it beneficial for the overall attractiveness of this field of policing if the Criminal Police Department offered attractive career perspectives for investigators to attract skilled personnel required to deal with complex issues like financial crime. A special emphasis should be put on training in financial crime to raise the skills of the investigators in this area.
- The Anti Corruption Bureau (ACB) seems to be an elite unit within the Slovak Police with special requirements for recruitment including a higher salary. The ACB is competent for economic crime cases above a threshold of 6.6m euro. The experts were informed that the ACB expected to set up two specialized units to deal with financial crime. It was however, unclear how this initiative links in with fighting financial crime within the OCB and the Criminal Police Bureau.
- Given the resources at hand, the Slovak Ministry of the Interior should consider developing clearer structures and increasing capacities to fight financial crime. The competences of the OCB, the Criminal Police Bureau the ACB and the Financial Police seem to be somewhat overlapping and not very well defined. Standards should be raised, both in the number of personnel and training devoted to fight financial crime. Discussion should be held on the possibility of establishing a financial crime bureau within the existing structures, streamlining the work undertaken by the various agencies.

2.3.2. Judicial authorities

- There are no specialised judges dealing with financial issues in Slovak Republic. Slovak courts have the possibility to establish different panels – civil, criminal, commercial, administrative or other, but concerning different types of crimes (economic for example), there is lack of specialization. Although there is the Specialized Criminal Court in Slovak Republic, which deals with most serious crime (economic and financial interests of EU included), its competencies are also rather wide.

- It was mentioned during the interviews, that there was specialization of criminal judges some years ago and it had shown its benefits. On the other and it was stated, that the judges were handicapped in keeping up with other aspects of legal changes. As the Justice Academy has been set up in Slovak Republic 2004 with an overall role to train the judiciary, this institution could take up the issue of overall awareness about changes in legislation and as the economic and financial crimes are getting more complex and specific knowledge is needed, the formalised specialisation of judges could be beneficial.
- Over the last few years the importance of seizing criminal assets has been increasingly acknowledged by the courts. Problems in this area are that assets are often transferred to third parties to avoid seizure and confiscation. Furthermore, the management of seized assets seems to be problematic. As the court procedures can be quite lengthy, the value of the seized goods can decrease significantly. Confiscation is regarded as the most complicated part of the prosecution procedure. Two cases were reported where criminal assets were forfeited by the Specialized Criminal Court.
- Although the Slovak authorities stated that in addition to the specialisation within the Special Prosecution Bureau, a certain degree of specialisation for economic crime was to be found in the prosecution offices at district and regional level the expert team was not in a position to verify this.

2.3.3. Criminal policy

- In the Slovak Republic, the detection of proceeds of crime is not considered a separate task of law enforcement authorities and there is no legislative, internal-organizational or strategic document defining such activity as a separate goal of activity of law enforcement agencies.

- Despite the fact that the Slovak authorities have tried to outline their efforts in implementing a ‘proceeds-oriented’ approach on the basis of the implementation of provisions from the Code of Criminal Procedure (the reasoning of which is depicted in chapter 2.2.1 of this report), there is no separate policy laid down for financial investigations and strategy concerning criminal assets. Moreover, in accordance with the Code of Criminal Procedure, tracing, the arrest (seizure) and confiscation of assets are not considered a separate purpose of criminal investigation. Therefore, an investigation in which the aforementioned activities need to be carried out is performed according to the general rules of procedure and no additional human or other resources are involved.
- Furthermore, there is no evidence of tackling the crime with proceeds-oriented approach and overall awareness of the usefulness of that kind of approach could be higher. Further it was explained that as the authorities are obliged to investigate all known offences, prioritisation is possible only to a limited extent. Therefore, despite the appreciation that generally more than 70% of all crimes are committed for financial gain, the additional attention and resources allocated to those issues are limited.
- The experts gained the impression that, even in organised and serious crime cases, the investigators are focused primarily on identification of criminals and evidence gathering. Officers in the field nor their superiors and prosecutors do not regard tracing and seizing of criminal assets as priority. Of course, there are authorities, which are more focused on criminal assets resultant to their areas of responsibility.
- There is no national policy or strategy for financial crimes and financial investigations. Thus the existing authorities and their committed staff may not always be used in an optimal way in that sense. The approach in criminal investigations seems to be more on a reactive level, the investigations are evidence- and conviction-orientated, and the criminal proceeds are not pursued separately. Enhancing strategic and operational planning and developing a cost-effective and proactive approach may prove to be useful.

- Financial aspects of crime do not seem to play any significant role in investigations, nor are financial investigations based on any special procedural provisions. In most cases, should financial aspects arise during an investigation, no additional resources or expertise will be allocated. This indicates that criminal assets, their tracing, seizure and subsequent confiscation are not yet regarded as priorities. More attention needs to be paid to criminal assets and financial investigations.

2.3.4. Training

- More attention should be paid on the coherent and coordinated training to all law enforcement agencies together with prosecutorial and judicial authorities on the issue of financial crime and financial investigation. The experts deemed the FIU's initiative on training the police and also the reporting entities, which has increased remarkably in 2010, as a positive initiative. The apparent capacity of the Justice Academy on training prosecutors and judges should also be pointed out. There just seems to be room for improvement in co-ordination between the issues different target groups are trained in.
- As financial investigations do not entail any particular procedures and there are no financial investigators as such, there is no separate, coherent training policy in the field of financial investigations. However, training sessions covering the topics of money laundering, economic crimes, corruption and others were mentioned. During the visits it became apparent, that practitioners feel that it would be useful to have more mutual trainings between investigators, prosecutors and judicial authorities. The events, where representatives of all those professions were present, had left positive sensations.
- At the same time it was acknowledged at all levels, that there is a need for additional training in the field of financial investigation. The level of expertise is inconsistent. It is more apparent on the district level, where the caseload seems to be biggest and a handful of people must deal with all types of crimes, so that it is virtually impossible to become specialized. It was even stated that from some districts it is impossible to send a representative to be trained because of the workload. This issue should be addressed.

- The Justice Academy in the Slovak Republic, which is an independent educational institution with a nation-wide competence whose major task under a Law is to guarantee, organize and perform a training of the target group – the judiciary. The training is thus not available to law enforcement personnel. As the Justice Academy is able to prepare tailor-made courses on requested subjects, the opportunity to use the competences of the Justice Academy on specific subjects (financial investigation for example) for a wider audience should be looked in to. The Law enforcement agencies could also benefit from the expertise of the Justice Academy. Could the present obstacle of the legal restriction of target groups for the Justice Academy be overcome, the benefits would materialise on different levels – for example awareness-raising on difficult subjects, common understanding of issues, same practice or practical approach on all levels (investigation, prosecution, court) and better networking among different agencies.
- The experts noted with interest that in addition to training of tax administration officials, the Tax College also holds trainings for law enforcement authorities (i.e. operative police officers and the Police Force investigators) in the area of application of tax procedure and substantive tax acts upon request and in mutual agreement between the Police Force Presidium and the Tax College.

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3. INVESTIGATION AND PROSECUTION

3.1. Information and databases available

3.1.1. Databases and Registers

3.1.1.1. Bank accounts

At the time of the onsite visit the Slovak Republic had no centralised database on bank accounts. However, cooperation between the FIU and the Slovak Banking Association was underway to establish such a central register of bank accounts. At the time of the on-site visit these two institutions were conducting a questionnaire survey in credit institutions with regard to the necessary changes in reports on unusual transactions and the necessity to create a central bank accounts register. Financial analyses of several solutions are being developed and information is being collected on the number of queries in credit institutions and their substance. An analysis is also being developed on the best possible model of administering the register by the Ministry of Interior of the Slovak Republic or the FIU in particular. As such administration is likely to be financially demanding, further consultations with professional associations are planned for the near future.

3.1.1.2. Land Register

The Land Register is a publicly accessible database of real estate, administered by the Geodesy, Cartography and Land Register Authority of the Slovak Republic. It permits direct access to the most important data in connection with land and real estate.

The data is updated weekly according to information forwarded from Land Register Administrations. There is no information as to the total number of entries.

The database is accessible in two modes: one being public¹⁷ with limited search possibilities and the other being a privileged mode enabling mass search of all Land Register Areas by one query. The privileged access is available to designated police officers via a login-and-password identification. It is granted to the Organized Crime Bureau, Bureau of combating Corruption and to the district, regional and central offices of the Judicial and Criminal Police Bureau.

3.1.1.3. *Business Register*

The Business Register is a publically accessible¹⁸ list containing entries determined by the Law on entrepreneurs and other persons, if a separate Law so provides. The registration is obligatory of companies and partnerships, cooperatives and other legal persons, if a Law so provides. Entries are furthermore made on natural persons domiciled in the Slovak Republic, if:

- They are entrepreneurs based on a trade license
- They are entrepreneurs based on some other license than a trade license
- They are agricultural entrepreneurs registered in a separate register,

These persons are registered in the Business Register on their voluntary request or if a Law provides so. Foreign persons¹⁹ are also registered in the Business Register.

An excerpt from the Business Register contains all information entered into the register and contained in it on the day the excerpt is made.

¹⁷ Cf. www.katasterportal.sk

¹⁸ Accessible via: www.orsr.sk

¹⁹ A foreign person is a natural person domiciled or a legal person with seat outside the territory of the Slovak Republic, which have a business or a branch in established in the territory of the Slovak Republic.

3.1.1.4. *Trade Register*

The Trade Register is a public register administered by the Ministry of Interior of the Slovak Republic containing data on natural persons and legal persons who are issued a license for trade activities under Law № 455/1991 on Trade. The register is being administered by a district administration office, according to the entrepreneur's domicile or seat.

The database is accessible to the public²⁰ (there is also a possibility of privileged access – search by National Identification Number)

3.1.1.5. *Vehicles*

The Evidence of Vehicles is an information system administered by the Ministry of Interior of the Slovak Republic containing data on motor vehicles and trailer registered in the Slovak Republic, their holders and owners. It can be accessed by authorized employees of the Police Force and authorized officers from the Customs Criminal Bureau directly.

3.1.1.6. *Maritime registers*

All law enforcement authorities have indirect access, i.e. upon request, to the information contained in the databases on ships and vessels administered by the State Navigation Administration of the Slovak Republic and the Ministry of Transportation, Posts and Telecommunications of the Slovak Republic:

The **Register of Vessels** contains data on vessels owned by natural persons or legal persons who have their domicile or seat in the Slovak Republic or outside the Slovak Republic, but are not registered in another State.

²⁰ Accessible via: www.zrsr.sk

The **Naval Register** of the Slovak Republic contains data on naval vessels, naval vessels under construction and on recreational vessels in the following structure a) national naval register (registration of naval vessels owned by a legal person with seat in the Slovak Republic or a citizen of the Slovak Republic domiciled in its territory); b) international naval register (registration of naval vessels owned by a legal person with seat in the territory of the Slovak Republic; a legal person registered in another State, which proves due registration in its State of origin, a citizen of the Slovak Republic of 18 years of age or older domiciled in its territory; a natural person of 18 years of age or older who is not a Slovak citizen or who has no citizenship).

Furthermore, the Slovak Republic has a **Register of Recreational Vessels** that is accessible to law enforcement upon request.

3.1.1.7. ARO database

The ARO uses its own financial database established at the FIU where reports on unusual transactions, the manner of processing them and other operative information obtained in the course of performing its tasks, are stored.

3.1.1.8. Access of the ARO to databases

The ARO staff has access to the following databases:

Apart from access to all information systems of the Ministry of Interior of the Slovak Republic and the Police Force, e.g. the centralised verification interface, the Central Lustration Console the ARO staff has **direct access** (either online or if not within the Ministry of Interior via alternative direct channels) to other particular information systems such as:

- Register of inhabitants (identification of a person, national identification number, date of birth, domicile, family members, identification documents including passports, wanted persons),
- Register of Vehicles, information on the administration of road traffic, information on restricted vehicle license numbers, information on registration of arms, ammunition and firing ranges, wanted arms, information on registration of foreigners with permission of stay in the territory of the Slovak Republic, information on undesirable persons,

- Register of persons of interest of the Police Force („ZOP“), information on criminal activities of a person („OTE“),
- Information on the current state of criminal prosecution against perpetrators within the Police Force („AVÍZO“),
- Information of the border police service for the purpose of control of persons and vehicles,
- Information on wanted persons, identification of found corpses, information on stolen vehicles, stolen or lost vehicle license numbers,
- Centralised register of seized, released and found vehicles, identified and returned vehicles,
- System of dactyloscopic identification of persons,
- Complete register of landlines and cell phone numbers,
- Centralised register of prisoners,
- Centralised register of prison service in the Czech Republic,
- Register of criminal prosecution files (called „DVS“)
- Information contained in the FIU's own financial database.

Further information may be obtained via a **specific request** from:

- information and additional documents from State authorities, self-governing bodies, legal and natural persons under Sect. 76 (1) of the Law № 171/1993 On the Police Force,
- information related to clients of banks or foreign bank branches under Sect. 29a (4) of the Law № 171/1993 on the Police Force, despite being subject to bank secrecy under Sect. 91 (4) of the Law № 483/2001 on Banks and on amendments and supplements to certain Laws, when detecting tax evasions or unlawful financial operations or legalisation of proceeds of criminal activity and thereto related criminal offences and their perpetrators,
- additional information to supplement an unusual transaction report shall be provided to financial police by the obliged entity following a written request under Sect. 17 (5) of the Law № 297/2008 on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing and on amendments and supplements to certain Laws,

Finally information may be obtained from publically accessible databases or open sources such as:

- the Land Register – search based on national identification number of a person via privileged password access,
- information on legal and natural persons, i.e. from open source registers: Business Register of the Slovak Republic, Trade Register of the Slovak Republic.

3.2. Cooperation at national level

3.2.1. Identification of bank accounts

3.2.1.1. Legal Framework and competent authorities

Under the Slovak legal regime the legal basis for

- (h) the identification of an unknown bank account belonging to a specified person
- (i) the identification of the unknown owner of a specified bank account
- (j) the identification of operations from and to a specified bank account in a specified period in the past

depends on which authority is requesting the information.

If the measures under (a), (b) or (c) are **requested** by a police officer (i.e. a member of the criminal police service or the financial police service) **on the basis of Sect. 29a of Law. № 171/1993 on the Police Force**, the request is directed to the banking institution of the relevant account. The information is then sent directly to the requesting police officer.

If those measures are being **requested** by a police officer during the course of a criminal procedure **according to the Code of Criminal Procedure**, the request is being referred to the banking institution after having obtained the consent of the prosecutor, according to Sect. 3 (5) CCP. The resulting information is then sent directly to the requesting police officer.

The legal system of the Slovak Republic has no provision for
(k) the monitoring of operations to and from a specified bank account in the future.

3.2.1.2. Types of crimes covered

If the identification of a bank account is requested by a police officer (i.e. a member of the criminal police service or the FIU) according to Sect. 29a of Law № 171/1993 on the Police Force, he or she may do so with the aim of detecting tax evasion, unlawful financial transactions or attempted legalization of the proceeds of crime.

If the identification of a bank account is requested by a police officer as a part of criminal procedure, according to the Code of Criminal Procedure, the request is not limited to a specific crime. Generally speaking, a police officer may request information subject to bank secrecy when investigating any kind of crime, provided that having the consent of a prosecutor has been obtained.

3.2.1.3. Duration of a measure regarding a bank account

Concerning the measures referred to under (a), (b) and (c) in chapter 3.2.1.1, the requests are made *ad hoc* and contain specific questions, which are answered by the banking institution by a relevant, usually final answer. That means that there is no temporal dimension of such measures.

3.2.1.4. Information of persons affected by the measure

Neither prosecutors nor police officers are obliged by national legislation to inform the person affected by a request concerning bank information.

3.2.1.5. Secrecy obligations or privileges impeding or affecting the measure

The Slovak legal system foresees no secrecy obligations or privileges impeding or affecting the measures under (a) to (c) referred to in chapter 3.2.1.1.

3.2.1.6. Enforcement of the measures in practice

In practice, these measures are executed by the means of requests delivered from the investigator after having obtained the consent of the prosecutor or the police officer (member of the criminal police service or the financial police service) to the relevant banking institution. The banking institution is held to respond within a reasonable time. In special cases, the request may be delivered personally to accelerate the process of delivering information.

3.3. Cooperation at European level**3.3.1. Legal Framework**

Slovakia has adopted and ratified the Protocol to the Convention on Mutual Legal Assistance between Member States of the EU²¹. It entered into force on 1 October 2006 in conformity with art. 28 (4). The Protocol attached to the Convention became binding entered into force on the same date in conformity with art. 14 (4) (announcement № 572/2006).

²¹ COUNCIL ACT of 16 October 2001 establishing, in accordance with Article 34 of the Treaty on European Union, the Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union, OJ C 326 21.11.2001, p.1ff

According to Sect. 478 CCP, the provisions of Part Five thereof, regulating the “Legal Relations with Abroad”, shall be used unless an international agreement provides otherwise. An international agreement for that purpose is a published international agreement binding on the Slovak Republic, according to Sect. 477 (a) CCP. No specific national measures to implement the Protocol have been adopted at national level; its implementation is governed by the national legislation that had been deemed sufficient for its implementation prior to the accession of the Slovak Republic to the European Union.

3.3.2. Simplified information exchange on bank accounts

The information related to measures concerning bank accounts referred to in chapter 3.2.1.1 except for the monitoring of a bank account can be provided to a law enforcement authority in another Member State through "police cooperation", including the provisions of Framework Decision 2006/960/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between Law enforcement authorities of the Member States of the European Union.²²

To be admissible in court proceedings however, the information has to be obtained by means of legal assistance between judicial authorities.

3.3.3. Information requests via the ARO

If the ARO of another Member State requests information related to the detection and identification of proceeds of crime from the Slovak ARO, the request is processed in accordance with relevant national legislation and the response includes a remark that the information is for intelligence purposes only and may not be forwarded to third persons, used in criminal procedure or another legal procedure as evidence.

If the evidence is to be used in criminal proceedings, it will have to be obtained through a rogatory letter.

²² OJ L 386, 29.12.2006, p. 89ff.

When processing requests for information concerning detection and identification of proceeds of crime, the Slovak ARO Acts on the basis of the following provisions, based on FD 2009/960/JHA, referred to by FD 2007/845/JHA²³:

- According to recital 6 of FD 2007/845/JHA, the cooperation between AROs and between AROs and other authorities charged with the facilitation of the tracing and identification of proceeds of crime should take place on the basis of the procedures and time limits provided for in FD 2006/960/JHA²⁴.
- Art. 3 (1) of FD 2007/845/JHA - for the purpose of making requests to an ARO of another Member State, FD 2006/960/JHA and rules made for the implementation thereof shall be used (Title Two – Exchange of Information and Intelligence)
- Art. 3 (2) of FD 2007/845/JHA - for the purpose of making requests, the requesting ARO fills in the form included in Annex B of FD 2006/960/JHA and for the purpose of sending information or delay or denial of the information, the requested ARO fills in the form included in Annex A of FD 2006/960/JHA.

In the exchange of information, the Slovak ARO uses the forms indicated in FD 2007/845/JHA referring to FD 2006/960/JHA.

The Slovak authorities have reported that from their practical experience these procedures have proven to be working in a satisfactory manner.

It was however, noted that the absence of a secured electronic communication channel for the exchange of information between AROs - at the time of the onsite visit communication took place via fax - was hampering safe and swift communication. In order to remedy this deficiency the Slovak authorities have consequently joined the Europol project of connecting the Slovak ARO to the SIENA secure channel, enabling direct communication with AROs in other Member States.

²³ OJ L 332, 18.12.2007, p. 103.

²⁴ Cf. FD 2007/845/JHA, Title Two – Exchange of Information and Intelligence.

At the date of the onsite visit the Slovak ARO reported the following numbers of handled requests:

- 2009 - 5 incoming requests from AROs
- 2010 – 2 incoming requests from AROs, 1 outgoing request sent to an ARO

3.3.4. Competent authorities

Within the legal and law enforcement system of the Slovak Republic the prosecutor is the competent authority for channelling any request, either when acting as issuing State or as receiving State.

3.3.5. Problems encountered

In the Slovak Republic, judicial authorities (the Public Prosecution Service) were not included among the authorities competent to give access to information on the basis of FD 2006/960/JHA. The reason given was the fact that such information is exclusively of intelligence nature and does not serve as evidence in criminal procedure. Despite this, the Public Prosecution Service has been directly approached several times by law enforcement agencies of EU Member State for the exchange of intelligence information.

3.4. Financial investigations and use of financial intelligence

3.4.1. Legal framework

Simultaneously with the investigation of a particular crime, the police officer also investigates its financial aspects. That means that the police officer (member of the financial police service or the criminal police service) acting according to Law № 171/1993 on the Police Force simultaneously detects the property of possible perpetrator(s), which may be relevant for purposes of later use as evidence in criminal procedure according to the Code of Criminal Procedure. According to Sect. 119(1)(f) CCP, the gathering of evidence should - among other aspects - be directed at detecting the proceeds of crime. In this context the Slovak authorities in their answers to the questionnaire and the information received during the visit reiterated that although there was no special framework for financial investigations, they were performed within the normal investigation of criminal offences.

3.4.2. Special legal powers and tools for investigating the financial aspects of criminal activities

In their answers to the questionnaire the Slovak authorities maintained that the proceedings according to **Law № 101/2010 on the verification of the origin of property** may be considered a special legal framework for financial investigation. With its entry into force at the beginning of 2011, the financial police service is authorized, outside the criminal procedure, to scrutinize income, the value of property and the manner of acquiring property if there will be suspicion that the property will have been acquired from illegal income. It will also be authorized to submit a proposal to the prosecutor for the commencement of a procedure aimed at a judicial decision that the property of the affected person exceeds proved income by at least 1500 times the minimal wage. If such difference will have been proven by the prosecutor before court, the court will decide that the property was acquired by illegal income and the property will be confiscated by the State.

3.4.3. Continuation of an investigation into the financial aspects of crime after closure of a case

The continuation of investigation into the proceeds of crime or, more generally, into the financial aspects of crime after the conclusion of proper investigation of crime or conviction is possible in case of the criminal offence of legalization the proceeds of crime under Sect. 233 of the Criminal Code. The conviction of the perpetrator of a predicate crime is a prerequisite for the subsequent prosecution of the aforementioned criminal offence according to Sect. 233 CC or the criminal offence of participating according to Sects. 231 and 232 CC.

3.4.4. Involvement of private experts during investigations

With the aim of investigating the proceeds of crime and of investigating crime in general it is possible to include private experts in the criminal procedure (accountants, financial experts, auditors, tax consultants etc.) according to Sect. 141 CCP, a provision regulating expert activity. It is provided in this section that if expertise is required for clarifying an issue important for the criminal procedure, the criminal procedure authority in pre-trial proceedings or the president of the judicial panel in trial proceedings shall request an expert consultation outside the normal scope of expert activity according to a separate Law. An expert consultation is usually requested from an organization specialized in the activity subject of the expert consultation.

If the issue in question is too complicated to for the procedure under Sect. 141 CCP to be a satisfactory option, the criminal procedure authority shall summon an expert for the purposes of obtaining an expert opinion, according to sects. 142 through 147 CCP. In specific cases demanding expertise, criminal procedure authorities may use the assistance of expert consultant to receive advice based on his or her expertise on issues related to the issue in question.

If the clarification of a question important for the mission of the Office of Special Prosecution requires special expertise, the Supreme Audit Office of the Slovak Republic and state administration authorities, most importantly those competent in customs, taxes and financial control have the obligation to make the necessary number of their personnel available to the Special Prosecution Bureau for the necessary period of time, as foreseen in Sect. 551 (4) of Law № 153/2001 on the Public Prosecution Service.

3.4.5. Financial intelligence

3.4.5.1. Financial investigations in the intelligence phase

Police officers and the personnel of the Customs Criminal Office carry out financial investigation in the intelligence phase as a part of operative-detective activity by means of usually classified intelligence measures with the aim of detecting and documenting crime and identifying the perpetrators. Information obtained by such measures are further analyzed, verified against other available information and by operative measures, further relevant information is obtained for the purposes of the criminal procedure according to the Code of Criminal Procedure. Financial investigation aimed at further detecting proceeds of crime is being carried out simultaneously alongside the criminal procedure.

The FIU takes a special position in financial intelligence which, in addition to the aforementioned measures, carries out special measures according to Sect. 26 (2) (a) of Law № 297/2008 on the Prevention of Legalization of Proceeds of Criminal Activity and Terrorist Financing and according to amendments and supplements to certain Laws. On this legal basis the FIU receives, analyses, evaluates and processes unusual transaction reports (UTRs) and other information related to the attempted legalization of proceeds from crime and on terrorist financing. Among other activities of the FIU, there are notable responsibilities that include the creation of assets profiles within financial preliminary investigation of suspicious subjects using information from the sources that have inter alia been described in chapter 3.1.1 [Databases and Registers] of this report.

3.4.5.2. Financial investigations in the intelligence phase- cooperation with other authorities

If the FIU, following the analysis and evaluation of a UTR, has indications for a crime the case will be submitted to the competent law enforcement body which may then initiate criminal proceedings under the Code of Criminal Procedure.

3.4.5.3. Financial intelligence information as a starter for criminal and financial investigations

When the analysis of financial intelligence sustains the suspicion that a crime has been committed, the competent criminal procedure authority must instigate criminal proceedings under the Code of Criminal Procedure.

3.4.5.4. Cooperation with and collection of financial intelligence from other authorities in the intelligence phase

Law enforcement authorities cooperate with diverse institutions, in particular with tax administration authorities, the Customs Directorate of the Slovak Republic, banking and non-banking financial institutions, public authorities. The information obtained from them include chiefly intelligence related to criminal activity and also information on the suspicions of crimes. The evaluation team was informed that extent and manner of such cooperation depends on the kind of crime in question.

3.5. Cooperation with Europol and Eurojust

3.5.1. Cooperation with Europol

3.5.1.1. Experience to date

In the area of financial investigations, the cooperation of competent police authorities with Europol takes place either by direct exchange of information (concerning checks of businesses of interest, natural persons of interest, persons suspected of committing serious economic crime) or by indirect exchange of information via the Analytical Work Files (AWF). At present, the Slovak Republic participates in the following AWFs: SOYA, TERMINAL, MTIC, SUSTRANS, COPPER, CHECKPOINT, HEROIN, EEOC, CYBORG, SMOKE, HYDRA, PHOENIX.

MTIC

The Slovak Republic became a member in February 2008, by a joint participation of OCB and ACB. Until now, several contributions have been entered, leading to identified matches with Hungary, the Czech Republic and Austria. In cooperation with the competent Hungarian authorities and the MTIC AWF, a Chinese organized group was targeted which was committing extensive tax-related criminal activities. The case was carried out by Hungarian partners and the investigation in Slovakia is still ongoing. In relation with this organized group, a joint investigative team with the Czech Republic was created. In the course of its operative activity, the ACB has identified extensive carousel fraud with scrap metal. According to the information contained in the MTIC AWF, these cases of fraud also involve neighbouring countries. The case will be carried out in Slovakia using the MTIC AWF.

SUSTRANS

The Slovak Republic became a member on 24 April 2009. Information contained in the SUSTRANS AWF is gathered and analysed focusing on unusual transactions and the legalization of proceeds of crime. The Slovak Republic is represented by the FIU. Since the indicated date, the FIU enters information relevant for the SUSTRANS AWF by data collecting forms. In 2009, the FIU has made 6 contributions to the AWF and in the period between 1 January 2010 and 10 May 2011, it has made 4 contributions.

SOYA and TERMINAL

There are positive views of the involvement of the CPB in the SOYA AWF (production and uttering of counterfeit currency) and the TERMINAL AWF (payment card fraud). Normal cooperation focuses on information exchange and using analytical support of Europol. In this regard, it should be mentioned that concerning counterfeit currency, Europol has provided financial assistance to the specialized Slovak investigative team for covert purchase of counterfeit Euro banknotes. Regarding the adoption of the Euro by Slovakia, the Europol developed a risk analysis and provided trainings on Euro counterfeiting and payment card fraud.

3.5.1.2. Expectations regarding Europol support

The Slovak authorities stated that they expected further cooperation with police or other competent authorities via means Europol in the context of investigating serious economic crime. In this perspective, they advocated the creation of joint investigation teams (JITs) as a useful tool for enhancing the efficiency of operative and investigative units and consequently welcomed the support provided by the Europol, chiefly the analytical support when setting up JITs, including the meetings of their members. Furthermore, they were favourable with regard to a further development of an enhanced Europol cooperation, as its experts and analysts may become members of JITs and can provide assistance in tackling crime in the Member States. The high degree of readiness of Europol staff combined with their rapid deployment capabilities within the EU following a request, access to the most recent databases as well as communication channels enabling fast search, visualisation and connecting of information found the praise of the Slovak practitioners.

3.5.2. Cooperation with Eurojust

3.5.2.1. *Experience to date*

According to the information received from the Slovak authorities their national representative in Eurojust has to date not been involved in any case of financial investigations or financial crime. The experts were however, informed during the visit that the Slovak authorities were involved in three JITs via Eurojust.

As concerns general cooperation, the Slovak Republic has been the requesting State in 44 (39) cases in 2009 (2008). In 2009 (2008), the Slovak Republic was the requested state in 51 (42) criminal cases.

At the time of the on-site visit 81 cases were pending from the previous period 2005 – 2008. It was noted that Eurojust assistance was most frequently sought for in cases of property-related crime (58 cases) and economic crime (10 cases) during the 2004 – 2009 period.

3.5.2.2. *Expectations regarding Eurojust support*

With regard to Eurojust assistance or support in financial investigations the Slovak authorities expected Eurojust to facilitate the information exchange between Member States, assist in processing the petition for legal assistance aimed at detecting the property of the defendant as well as freezing and confiscation. Furthermore, Eurojust was also seen as a helpful agent in solving possible legal problems arising from differences between legal provisions of Member States relevant to the area. A particular issue that was brought up was Eurojust's possible reconciliation in cases of conflicting confiscation orders issued against the same natural person, which does not have enough property in the executing state to satisfy all orders. Additionally, any possible assistance is greeted favourably where Eurojust could help solving situations foreseen by Art. 20 (2) of FD 2006/783/JHA on the application of the principle of mutual recognition to confiscation orders.

3.6. Conclusions

3.6.1. Information and data bases

- There is no centralised bank account register in the Slovak Republic, although the need for such a register is acknowledged and steps have been taken by law enforcement authorities to create such a database. The co-operation between bank authorities and law enforcement services appears to be fully satisfactory. There are no obstacles to get the relevant necessary data and the speed of information exchange is sufficient.

3.6.2. Cooperation at national level

- According to the information received the Slovak legal system apparently does not foresee the possibility to monitor bank accounts. As this might be an important and useful tool to gather evidence in cases of financial and economic crime the experts deem it necessary to introduce such a possibility.
- The system of dividing competencies between different law enforcement authorities appeared to be a bit odd, namely on the organizational side and the members of the evaluation team were unable to finally conclude to which extent this resulted in overlaps or duplication of efforts when conducting an investigation. There are a lot of selective powers in different authorities when pursuing criminals. ACB, OCB and CPB all have the possibility to select their cases. Anything not falling into the special competencies falls into the remit of the ordinary criminal police, or as referred to in questionnaire and presentations – the inferior criminal police.
- However, it remained a bit unclear whether any specific criteria, priorities, guidelines, policies or strategies were in place how to pick cases in higher instances. There are Laws, which specify the competencies or jurisdiction somewhat, (for example in general; ACB – corruption, OCB – organized crime, CPB – serious offences) but no basic rules or criteria, when a case could be suitable for all authorities. It remained unclear how - for example - the information is handled in the pre-prosecution phase, when authorities are still in the operative (sensitive/pro-active) stage of an investigation.

- Due to the extensive selective powers of different law enforcement agencies the co-ordination of information flow in investigations is important to avoid overlapping or ineffective use of resources. As there is an information system (log file system) for handling cases in the pre-trial investigation stage, when the criminal case is initiated, the risks seem to be minimized. On the other hand there seems to be a lack of information system and subsequently lack in information flow, if the case is in the earlier stage, in the phase of intelligence gathering (pre-prosecution). To avoid double investigation in that stage, this situation should be improved and it was also told during the interviews, that such an information system to cover this area is in creation.
- The new Law on the Proof of Origin of Property (Law of 4 March 2010) which entered into force on 1 January 2011 introduces the possibility of non-conviction based confiscation. Although the Law has entered into force only recently, there seems to be serious concern within the Judicial Authorities about its constitutionality. Nevertheless this Law seems to be in line with recent developments in other EU countries introducing non-conviction based confiscation legislation.
The experts were of the opinion that the new Law on the Proof of Origin introduces potentially powerful measures in the confiscation of criminal proceeds and therefore encourages practitioners to apply this Law in practice, in particular by targeting members of serious and organised crime groups..

3.6.3. Cooperation at European level

- Slovakia has transposed and implemented all necessary EU instruments in the field under revision. However, it was interesting to note that information exchanged under FD 2006/960/JHA and FD 2007/845/JHA had to be validated by instruments of mutual legal assistance if such information was to be admissible in court at a later stage of the proceedings.

3.6.4. Financial investigations and use of financial intelligence

- Financial investigations and criminal assets do not seem to play a major role for Slovak Republic law enforcement. No outstanding procedural frameworks or investigative tools have therefore been established. The financial investigation seems to be of secondary importance in the criminal investigation. The resources are directed to solve the main case – in other words to convict the criminals. When there is possibility to seize assets in regular criminal investigation, then the assets will be seized, but it is not a goal in itself. Key aspects would be here prioritizing and still awareness rising combined with adequate training on all relevant levels.
- There is also lack of specialization in Law enforcement, prosecution and judicial authorities, when it comes to financial investigation, tracing the proceeds of crime and conducting money-laundering investigation. Also additional training in the subject is needed and the experience of the related parties is inadequate. The workload and composition of units especially in the smaller districts limits the specialization due to the principle of legality and broad competences.

3.6.5. Cooperation with Europol and Eurojust

3.6.5.1. Europol

- Although Slovakia has not yet been participating in a Joint Investigation Team with Europol the establishing of such teams was strongly supported. Furthermore the support that had been provided by Europol to the Slovak authorities so far was praised by the Slovak practitioners.

3.6.5.2. Eurojust

- Eurojust has so far not been involved in any case of financial investigations or financial crime. However, a possible Eurojust assistance on cases that could arise in the future from the application of FD 2006/783/JHA would be welcomed by the Slovak Republic's authorities.

4. FREEZING AND CONFISCATION

4.1. Freezing

4.1.1. At national level

4.1.1.1. Legal basis

The freezing of assets before conviction in the Slovak Republic is governed by several provisions in the Code of Criminal Procedure, namely Sections 89, 91, 95 and 96:

Sect. 89 CCP - Duty to surrender a thing. Any person having on him a thing relevant for criminal proceedings shall have the duty to present it upon request to a police officer, a prosecutor or the court; if the thing is to be seized for criminal proceedings purposes, he shall have the duty to surrender it to the aforesaid bodies upon request

Sect. 91 CCP – Withdrawal of a thing. If a thing relevant for criminal proceedings or computer data is not surrendered upon request by the person holding them, they may be withdrawn from that person on an order of the presiding judge of a panel or, in pre-trial proceedings, order of a prosecutor or a police officer.

Sect. 95 CCP – Seizure of financial resources. If the detected information indicate that financial resourced located in an account in a bank or a foreign bank branch are to be used for the perpetration of a criminal offence, were used for the perpetration of a criminal offence or are the proceeds of a criminal offence, the presiding judge of a panel or, in pre-trial proceedings, order of a prosecutor may issue an order for those financial resources to be seized.

Sect. 96 CCP – Seizure of book entry securities. If the detected information indicate that a book entry security is to be used for the perpetration of a criminal offence, was used for the perpetration of a criminal offence or is the proceeds of a criminal offence, the presiding judge of a panel or, in pre-trial proceedings the prosecutor, may issue an order to register the freezing of the right to make transactions concerning that security.

For the purposes of executing the aforementioned procedure, it is possible to use the following provisions of the Code of Criminal Procedure: house search and search of a person, search of other premises or property, entry into a dwelling, other premises or the property (Sects. 99 through 107), interception of a delivery (Sect. 108).

4.1.1.2. Types of crime for which the measure can be obtained

The application of the measures regarding the freezing of assets is not limited to proceedings related to specific kinds of crime, they are generally available.

4.1.1.3. Duration of the measure

The duration of each measure is determined by the specificity of the case, the measures are imposed as long as the particulars of the case require them.

4.1.1.4. Other conditions necessary to obtain the measure

No other conditions than those referred to in Sections 89, 91, 95 and 96 of the Code of Criminal Procedure are necessary to obtain the freezing or seizure of assets.

4.1.1.5. Competent authority

Prior authorisation

Depending on the measure, the competent authorities are: a police officer, prosecutor or the president of the judicial panel (judge). The rules are laid down in the following provisions of the CCP:

Sect. 91 (1) CCP – for the order to withdraw a thing, the police officer needs the previous consent of the prosecutor.

Sect. 95 (2) CCP – before the commencement of criminal prosecution, if the issue permits no delay, the prosecutor may issue the order to seize financial resources, the order has to be certified by the judge for pre-trial proceedings within 48 hours, otherwise the order ceases to be valid.

Sect. 96 (2) CCP – before the commencement of criminal prosecution, if the issue permits no delay, the prosecutor may issue the order to seize book entry securities, the order has to be certified by the judge for pre-trial proceedings within 48 hours, otherwise the order ceases to be valid.

Authority competent to enforce the measure, if different from the authority competent to request/take the measure

According to Sect. 95 (6) CCP, when seizing financial resources, the measure shall be executed by the banking institution of the account in question or the subject entitled to make transactions concerning the targeted financial resources.

According to Sect. 96 (3) CCP, when seizing book entry securities, the measure shall be executed by the subject registering the targeted securities.

4.1.1.6. Information of persons affected by the measure

Pursuant to Sects. 95 and 96 CCP the respective orders are not delivered to the persons affected by the freezing or seizure until after the execution of the orders.

4.1.1.7. Legal remedies for the person concerned by the measure

An affected person may according to Sects. 95 and 96 CCP file a reasoned motion to reverse or object the measure. According to Sect. 95 (8) CCP, the person affected by the measure may repeatedly file that motion with identical reasoning no sooner than 30 days after the decision on the previous motion became effective. If the motion has the same reasoning and it is filed less than 30 days after the previous one, it will not be considered; this provision has been added by Law № 576/2009 on the amendment of the Criminal Code and the Code of Criminal Procedure.

4.1.1.8. Withdrawal of a freezing order

If the thing surrendered under Sect. 89 CCP or seized under Sect. 91 CCP is no longer necessary for the proceedings and neither forfeiture nor confiscation of the thing may be expected, it is to be returned to the person who had surrendered it or from whom it had been seized. If the seizure of financial resources or book entry securities is no longer necessary for the criminal proceedings, the seizure shall be abolished and the seized items shall be returned to the person from which they had been seized. If other persons than the one from which the items had been seized demand possession of them, the items shall be returned to their owner or legal possessor, whose right of possession is beyond doubt.

4.1.1.9. Management of seized assets

Following the provisions of Sect. 94 CCP related to sects. 89 and 91 CCP, the things seized in pre-trial proceedings are administered by the police officer and the prosecutor. The court administers the things seized or surrendered during trial proceedings. If court, prosecutor or police are unable to do so by themselves, they provide for appropriate administration by the means of another State authority, a legal person or natural person conducting business activity in this field.

4.1.2. Cooperation at European level - Implementation of Framework Decision

2003/577/JHA

The Slovak Republic has implemented Council Framework Decision 2003/577/JHA²⁵ by Law № 650/2005 on the execution of the freezing order on property or evidence in the European Union. In practice, the mechanism based on that Framework Decision is used very scarcely, as the standard procedure of legal assistance seems faster, more practicable and thus more efficient.

The Slovak authorities however, emphasised in their answers to the questionnaire that the FD 2003/577/JHA does not preclude cooperation based on other instruments. If the authority of another Member State has competence related to legal assistance, the Order may be considered as a request of legal assistance, especially if lacking relevant annexes. In the Slovak Republic, the preferred methods are those based on applicable international agreements related to judicial cooperation in criminal matters.

Other legal instruments based on processing requests for legal assistance are being used, e.g. the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, e.g. the 2005 Council of Europe Convention on the Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and on the Financing of Terrorism (the “Warsaw” Convention)²⁶.

4.1.3. Mutual assistance in the area of freezing

4.1.3.1. Statistics

Despite the fact that the aforementioned FD 2003/577/JHA has been adopted into the legal system of the Slovak Republic, the mechanism foreseen by it is not being used in practice. The Slovak Republic has knowledge of one sole instance of Actual use, but Slovak translation was absent and the issuing State has subsequently filed a petition for legal assistance.

²⁵ Council Framework Decision 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence, OJ L 196, 2.8.2003, p. 45.

²⁶ CoE CETS 198.

4.1.3.2. *Experience when acting as an issuing State*

Competent authority

The judicial authority of the Slovak Republic authorized to issue a freezing order is, according to the Code of Criminal Procedure, the prosecutor, the judge for pre-trial proceedings or the court, respectively.

Guidance on freezing order

Guidance on the practical completion of the certificate has not been issued because of the absence of experience at both the national level and the EU level. The orders are being issued in national criminal procedure according to the Code of Criminal Procedure, the **Law. № 650/2005 on the execution of the freezing order on property or evidence in the European Union** contains a reference to this effect.

Guidance concerning the content of an order issued by a foreign authority have not been issued either for the same reasons and because in order to be recognized and executed, these have to contain information necessary for the national order. The International Department of the General Prosecutor's Office of the Slovak Republic organizes and provides lecturing personnel for the education on this Law, by means of which it guides the activities of subordinate Prosecution Offices in the area of legal relations with abroad.

The information on the application of FD 2003/577/JHA is received from the heads of International Departments in Regional Prosecution Offices. With respect of the Law, the Framework Decision receives standard interpretation and application. The only exceptional circumstance is however, that in the context of freezing property, the Slovak Republic examines double criminality, which is permitted, but not preferred by the Framework Decision.

The Slovak authorities maintained that guidance was satisfactorily contained in Sect. 13 [Execution of a freezing order by a judicial authority of the Slovak Republic] of the Law № 650/2005 implementing FD 2003/577/JHA.

Preferred transmission channels

The main transition option is directly between the judicial or central authorities. Europol and Eurojust have not been used so far. In practice, there has been only one case, already mentioned. The central authority and the ARO do not have any responsibilities in this regard.

Judicial authorities use the Judicial Atlas and the European Judicial Network.

Difficulties observed

Owing to the fact that there has only been one case to date the Slovak authorities were not in a position to report any difficulties with the procedure under the FD, the more as mutual legal assistance instruments were used between judicial authorities.

4.1.3.3. Experience when acting as an executing State

Mechanisms of receipt

The authorities of the Slovak Republic have informed that they only accepted the order in the original, accompanied by the original certificate. If the certificate had not been issued or delivered containing data mentioned in Annex 2, the certificate is incomplete or evidently not in accordance with the freezing order or the certificate is not in Slovak language and those deficiencies have not been rectified by the issuing authority despite a request to do so and unless Sect. 8 (9) CCP provides otherwise, the order shall not be accepted.

The receipt mechanism is governed by Sect. 7 [The freezing order and the certificate] of Law № 650/2005.

Additional information required by the Slovak Republic

The single case recorded so far had deficiencies as it was not translated into Slovak and was lacking the precise date of the national decision.

Competent authorities and role of ARO

The authorities competent to decide on the execution and the enforcement of a freezing order are laid down in Section 8 [Competence and decision of the judicial authority of the Slovak Republic as the executing State] of Law № 650/2005 under the heading of ‘Competence and decision of the judicial authority of the Slovak Republic as the executing State’.

The Slovak ARO has no duties or responsibilities in the decision-making process on the execution and enforcement of the freezing order.

Additional information requests

The request for additional information is sent if the information received is not sufficient for executing a seizure of property. The requests for additional information are processed by the competent prosecutor. For rapid processing, the Slovak authorities recommended to send requests in Slovak, while conceding that it was also possible to execute non-translated requests. In this respect they noted that the Framework Decision was lacking clear provisions on the language regime.

Difficulties observed

Cf. the observations laid down in section 4.1.3.3.2. of this report.

Legal remedies

Legal remedies are regulated in Law № 650/2005, Sect. 18. Under this provision, a legal or natural person whose rights were injured or otherwise affected by the order has the right to seek protection of its rights in a court of the State of its origin.

Evaluation of FD 2003/577/JHA from its application

From the perspective of the Slovak Republic's authorities, FD 2003/577/JHA does not represent an improvement of the speed and efficiency of the procedure, because the freezing of property or evidence must be preceded by a recognition procedure, despite that procedure being simplified and not taking much time. The recognition procedure focuses on safeguarding human rights, non-discrimination and equal treatment. The resulting double procedure impairs to a certain degree the flexibility and speed of action of the judicial authority.

Given the present state of differences of Member States' respective legal provisions, this procedure is not practicable and the Slovak authorities noted that its use at European level did not contribute to efficiency.

In addition to the reasons mentioned above, the Slovak authorities stated that the main obstacles to an efficient use of the provisions of FD 2003/577/JHA were stemming from inconsistencies between the adoptions of the FD in the respective Member States, in particular:

- inconsistent provisions on double criminality, differing extent of criminal acts listed,
- inconsistent provisions on direct contact between executing authorities,
- in addition to the reasons for non-recognition and non-execution mentioned in the FD, more than half of all Member States, including Slovakia, have provisions on other grounds for refusal, often referring vaguely to national law in general. Additional reasons for refusal are related mainly to the protection of fundamental rights and freedoms, fundamental principles of Member States' legal systems or measures being prohibited by national law.
- reasons related to the language regime, the national public order and fundamental security and justice policies
- differing understanding of provisions related to the administration of the frozen property

In the view of the Slovak Republic's authorities further steps are needed to increase the practical efficiency of FD 2003/577/JHA. Provided there will be an analysis of the Member States' legal provisions and the resulting problems with freezing and subsequent handling the frozen property. The fundamental requirement for the proper functioning of an EU tool in this area should be its general applicability (uniform rules unambiguously imposed by a supranational document).

4.2. Confiscation (including FD 2005/212/JHA and FD 2006/783/JHA)

4.2.1. Confiscation at national level

4.2.1.1. Legal basis

In the Slovak legal system the basis for confiscation is rooted in the appropriate provisions of the Code of Criminal Procedure²⁷ and the Criminal Code²⁸ ().

The legal basis for confiscating an item in criminal procedure is composed of the Criminal Code provisions governing the imposition of sanctions. These sanctions include the forfeiture of property (Sects. 58 and 59 CC), the forfeiture of a thing (Sect. 60 CC) and the protective measures of confiscation of a thing (Sect. 83 CC), confiscation of a sum of money (Sect. 83a CC) and confiscation of property (Sect. 83b CC). These provisions are put into effect by Sects. 425 – 428 CCP and 461, 461a and 461b CCP.

The protective measures of confiscation of a sum of money (Sect. 83a CC) and confiscation of property (Sect. 83b CC) are sanctions which may be imposed by a court upon a legal person, pursuant to the criminal liability of legal persons established recently by the Law № 224/2010, amending the Criminal Code and the Code of Criminal Procedure, effective since 1 September 2010.

²⁷ Law № 301/2005, as amended by Law № 93/2011, that has entered into force on 1 April 2010.

²⁸ Law № 300/2005, as amended by Law № 576/2009, effective since 1 January 2010.

4.2.1.2. *Types of crime for which confiscation is possible*

In general, the court may impose the penalty of forfeiture of property for any kind of criminal offence if the conditions of Sect. 58 (1) CC are met (i.e. if the perpetrator is being sentenced to life imprisonment or to a non-conditional imprisonment for a particularly serious felony, by which the perpetrator had obtained or had strived to obtain property gain of a large extent or by which the perpetrator had caused damage of a large extent). Forfeiture may only be imposed on natural persons.

That condition does however, not apply to criminal offences exhaustively enumerated in Sect. 58 (2) CC, a list²⁹ that was further expanded by Law № 224/2010 that has amended the Criminal Code and which became effective on 1 September 2010.

²⁹ This list contains the following criminal offences:
 Illicit production of intoxicating and psychotropic substances, poisons or precursors, possession and trading thereof according to Sect. 172 (2), (3) or (4) CC or Sect. 173 CC, human trafficking according to Sect. 179 CC, trafficking of children according to Sect. 18 (2) or (3) CC or Sect. 181 CC, extortion according to Sect. 189 (2) (c) CC, gross pressuring according to Sect. 190 (1), (3), (4) or (5) CC or Sect. 191 (3) or (4) CC, pressuring according to Sect. 192 (3) or (4) CC, participating according to Sect. 231 (2), (3) or (4) CC or Sect. 232 (3) or (4) CC, legalization of the proceeds of crime according to Sect. 233 or 234 CC, counterfeiting, alteration and unauthorized production of money or securities according to Sect. 270 CC, introduction of counterfeit, altered or unauthorized produced money or securities according to Sect. 271 (2) CC, production and possession of counterfeiting tools according to Sect. 272 (2) CC, diminishing of tax or insurance fee according to Sect. 267 CC, failure to deduct tax or insurance fee according to Sect. 277 CC, failure to pay tax according to Sect. 278 (2) or (3) CC, violation of regulations on State technical measures of identification of goods according to Sect. 279 (2) or (3) CC, foundation, organization and support of a criminal group according to Sect. 296 CC, foundation, organization and support of a terrorist group according to Sect. 297 CC, terror according to Sect. 313 or 314 CC, accepting a bribe according to Sect. 328 (2) or (3) CC or Sect. 329 (2) or (3) CC, bribery according to Sect. 334 (2) or Sect. 335 (2) CC, counterfeiting and alteration of public instruments, official seal, official closure, official sign and official mark according to Sect. 352 (6) CC, border human trafficking according to Sect. 355 or 356 CC, pandering according to Sect. 367 (3) CC, production of child pornography according to Sect. 368 CC, dissemination of child pornography according to Sect. 369 CC, endangering morality according to Sect. 372 (2) or (3) CC, terrorism and some forms of participation on terrorism according to Sect. 419 CC and the perpetrator acquired property at least to a significant extent by criminal activity or from income proceeding from criminal activity.

4.2.1.3. *Competent authorities*

The court is the authority competent to impose sanctions affecting property.

The execution of property-related sanctions depends on the type of sanction imposed as follows:

- penalty of forfeiture of property: the execution is carried out by the bankruptcy court (Sect. 423 CCP)
- penalty of forfeiture of a thing: the execution is carried out by the authority responsible for the administration of the property of the State according to the Law No 278/1993 on the administration of the property of the State . This authority is mostly appropriate administrative authority - the Circuit Administration headquartered in a regional capital (Sect. 428 CCP)
- protective measure of confiscation of a sum of money from a legal person: the execution is carried out by the Judicial Treasury, the administrative authority competent under the regulation on administration and enforcement of judicial debts (Sect. 461a CCP)
- protective measure of confiscation of property from a legal person: the execution is carried out by the bankruptcy court (Sect. 461b CCP)

4.2.1.4. *Information of persons affected*

Persons affected by a property-related decision of a court are informed by the means of having that decision delivered to them.

4.2.1.5. *Legal remedies*

The following legal remedies are available for a person affected by confiscation under the Slovak legal system:

- (a) APPEAL AGAINST A JUDGEMENT
- (b) complaint against a decision
- (c) resistance against a penal order

A defendant may file an appeal within 15 days of the delivery of the judgement against the judgement of a district court, imposing the penalty of forfeiture of property, the penalty of forfeiture of a thing or the protective measure of confiscation of a thing,. A complaint is admissible against the decision on freezing property or a thing. The complaint against the property freezing decision of the prosecutor is to be decided by the judge for pre-trial proceedings of the court competent for the proceedings of first instance. The complaint against the decision of a district court is to be decided by its superior regional court

4.2.1.6. Involvement of the ARO during confiscation

The legal system of the Slovak Republic does not foresee any involvement of the ARO in the execution of securing assets after conviction.

4.2.1.7. Confiscation of property owned by corporations

The legal system of the Slovak Republic has provisions to ‘pierce the corporate veil’ and confiscate property owned by corporations in cases

- (d) where the corporation has not been prosecuted, but the court assumes the property is owned by beneficial owners who have been convicted
- (e) where the court assumes the property is owned by beneficial owners who have not been convicted.

The reasoning attached to the Law amending the Criminal Code effective since 1 September 2010³⁰, reads as follows:

³⁰ Special Part B, concerning article II. (Law No. 301/2005 Code of Criminal Procedure), point 6.

„In the course of Criminal Procedure the motion to impose a protective measure may be made by the prosecutor either as a separate motion or as a part of the indictment, provided the same is being filed against a certain person of the defendant, as provided by the proposed text of Sect. 236 (1) of the Amendment of the Code of Criminal Procedure. Further procedure is also provided for by the proposal. The imposition of a protective measure according to sects. 83 or 83b is therefore not conditioned by the conviction of a natural person of having committed a criminal offence, these sanctions must not be imposed simultaneously (the confiscation of property involves the whole property of the legal person).”

“Considering the possible fusion, absorption or division of the legal person, the procedure shall be governed by the provisions of sects. 83a (4) and 83b (5). The criminal sanction may therefore affect the successor of the legal person as well.”

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4.2.2. Confiscation at European level

4.2.2.1. *Legal basis for execution of confiscation order*

At the time of the onsite visit the legal situation only permitted to execute a foreign decision imposing the forfeiture of a thing or a part thereof or the confiscation of a thing or a part thereof if that thing was located on the territory of the Slovak Republic and the decision was recognized by a Slovak court. The competent court for recognizing a property-related foreign decision is the regional court, in the territory of which the thing or property is located. The regional court decides by a judgement that is announced to the defendant, the prosecutor and the Ministry of Justice of the Slovak Republic. Appeal against the judgement is possible, the plaintiff, the prosecutor and the Minister of Justice of the Slovak Republic are entitled to filing the appeal.

Following the petition from a foreign authority, under the conditions set by an international treaty and following a motion by the prosecutor, the court may decide on the preliminary securing of things, a bank account, securities or other property located in the territory of the Slovak Republic that belongs to a person under criminal prosecution abroad. The court competent for such decision is the district court on the territory where the property targeted for securing is located. This procedure is only applied under the condition of reciprocity. The purpose of preliminary securing is the future execution of the penalty involving forfeiture of the thing or forfeiture of the property imposed by a foreign property-related decision. In this case, the procedure is considered to be a procedure of legal assistance.

Following a petition by a foreign authority which had previously petitioned for the preliminary securing, the district court shall annul the preliminary securing. Preliminary securing may also be annulled if the foreign State does not file a petition for the execution of a foreign property-related decision against the secured thing or property within a reasonable time.

Law № 650/2005 on the Execution of the Freezing Order on Property or Evidence in the European Union regulates the freezing of property that is to be subject to forfeiture, if a freezing order had been issued by a judicial authority of an issuing Member State of the European Union. The freezing of property according to this Law continues until the execution of the decision recognizing the property-related decision of the issuing Member State imposing forfeiture or until the abolishing of freezing according to Sect. 19 of the aforementioned Law.

Under the prevailing legal situation an approach where the competent authority of a Member State that has already implemented FD 2006/783/JHA to issue a confiscation order together with a certificate and forwarded it to the Slovak Republic for it to be treated as a request for judicial cooperation under the "normal" regime is only hypothetically possible. The Slovak Republic may recognize a foreign property-related decision only if foreseen by a specific international agreement or a specific Law, in that case the conditions of recognition are to be met pursuant to that agreement. The Slovak Republic however, has no practical experience in this area.

4.2.2.2. Implementation of FD 2006/783/JHA

At the time of the onsite visit, the proposal for a Law transposing FD 2006/783/JHA into Slovak legislation had been in its final stage of preparation by the Ministry of Justice. Pursuant to the legislative programme of the Government, the initiation of the legislative process was planned during the month in which the on-site visit took place and the Law was proposed to become effective at the latest by 1 April 2011.

4.2.2.3. Competent authorities

Under the provisions of the implementation Law the authorities competent to issue a confiscation order will be all courts of the Slovak Republic. Authorities competent for recognition and execution of a confiscation order will be regional courts.

4.2.2.4. *Practical guidance*

The creation of a best practice guide for practitioners is not under consideration at this moment. The need of such a guide will be assessed later, following experience with implementing the legislation.

4.3. Conclusions

- The Slovak Republic authorities seem to have all the necessary tools to freeze and confiscate criminal assets. On the other hand the statistical data, most importantly about the final decisions about confiscations (or forfeiture), seems to be not gathered and analyzed on the state level. The statistical data seems to be collected only for frozen assets. The further progress to keep track of the successfulness of securing the assets for the state is not followed. Thus the effectiveness is not analyzed and conclusions about best practises are not derived and used. The approach implies that tackling organized crime (or crime in general) via depriving criminals from their assets is of secondary importance. Asset freezing, confiscation and asset recovery do not seem to be priorities for the Law enforcement agencies and prosecution. Those measures are generally undertaken to compensate for damages caused by crime.
- The Slovak Republic has transposed Council FD 2003/577/JHA of 22 July 2003 on the execution in the European Union of orders freezing property or evidence into national law. At the time of the visit only one case had been reported where a request from another MS following FD 2003/577/JHA has been received by the Slovak authorities. The case was obviously unsuccessful and apart from the reasons given it was not possible to obtain further information on the actual grounds which led to the failure of this request. The experts would therefore advocate that the Slovak judicial authorities should examine the application of the FDs on mutual recognition of freezing and confiscation orders and establish the reasons why these measures are not applied in practice.
- The Slovak authorities maintained that given the present state of differences between Member States' respective legal provisions, the procedure under FD 2003/577/JHA was not practicable and did not contribute to the efficiency of the procedure and therefore advocated further steps (e.g. in the form of uniform rules that are unambiguously laid down in a supranational document) to increase the practical efficiency of this Framework decision.

- At the time of the onsite visit, the Slovak Republic had not yet transposed Council FD 2006/783/JHA of 18 December 2006 on simplifying the exchange of information and intelligence between law enforcement authorities of the Member States of the European Union.
- On the 1 January 2011 Law № 101/2010 on the verification of the origin of property entered into force, which is considered a special legal framework for financial investigation by Slovak Republic authorities. According to this Law, the financial police service is authorized, outside the criminal procedure, to scrutinize income, the value of property and the manner of acquiring property if there is suspicion that the property has been acquired from illegal income. It is also authorized to submit a proposal to the prosecutor for the commencement of a procedure aimed at a judicial decision that the property of the affected person exceeds proved income by at least 1500 times the minimal wage. If the prosecutor before the court proves such a difference, the court will decide that the property was acquired by illegal income and the property will be confiscated by the State. Currently it is not possible to evaluate the effectiveness of this provision, but the development moves on a direction of putting the burden of proof in some instants on the possible perpetrator and is commendable. During the interviews the sensation was though, that the Law might still be raw and its real effectiveness will be put to test and might not be in line with constitution.

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5. PROTECTION OF THE FINANCIAL INTERESTS OF THE COMMUNITIES

5.1. Available mechanisms, particularly cooperation with OLAF

5.1.1. Measures to ensure pro-active transmission of information to OLAF

By an amendment to Law № 10/1996 on Control in State Administration, the cooperation of State authorities, natural persons and legal persons with the Government Office of the Slovak Republic was reinforced, concerning activities related to the protection of the EU's financial interests and cooperation with the European Anti-Fraud Office. Proactive forwarding of information responding to a request by OLAF is also promoted by the "National Strategy for the Protection of Financial Interests of the EC in the Slovak Republic" and the "Action Plan" adopted on its basis. It is the responsibility of the Government Office of the Slovak Republic (Section of Control and Fight against Corruption, Department Central Contact Point of OLAF and Fight against Corruption) to spontaneously inform OLAF on any suspicion of fraud or other illegal conduct damaging the financial interests of the EU.

5.1.2. Information of OLAF on the outcome of relevant cases

The Government Office of the Slovak Republic has concluded an agreement with the General Prosecutor's Office of the Slovak Republic on cooperation concerning the protection of financial interests of the EU. Based on that agreement, the General Prosecutor's Office regularly provides information to the Government Office on prosecutions related to the felony on damaging financial interests of the EC. On the operational side, a contact point for the exchange of detailed information has been established at the Special Prosecution Bureau of the General Prosecutor's Office of the Slovak Republic. The Government Office transfers the relevant information to OLAF.

5.1.3. Possible role of the European Commission in a criminal investigation

Following the accusation principle enshrined in Sect. 2 (15) CCP, criminal trial is only possible based on indictment or other motion filed by the prosecutor, who guarantees the legality of pre-trial proceedings and represents the prosecution in trial proceedings. Based on the previous, it is impossible for another person to Law as plaintiff in criminal procedure.

According to the Code of Criminal Procedure, the victim is a person who had suffered any injury, such as injury of health, property or moral standing, or a person whose rights or liberties protected by Law had been infringed or threatened. In prosecution of the felony of damaging the financial interests of the European Communities, this role is assumed by an authorized person of a national authority, of a managing authority or of an intermediary body subordinated to a managing authority, which had allocated resources from the general budget of the European Communities or a budget administered by the European Communities. An intermediary body subordinated to a managing authority is a private or public body acting in the capacity of the managing authority or executing tasks in the name of the managing authority, the scope and definition of its tasks is set by the managing authority and forms a part of authorization delegating responsibilities; the intermediary body prepares strategic and managing documents, calls for projects, oversees the implementation of projects and payments from structural funds and it is also the body communicating with the beneficiary throughout the project cycle.

It is possible for the European Commission to assume the procedural role of the victim, but no such case has occurred so far.

5.1.4. Participation of OLAF officials in a criminal investigation

5.1.4.1. OLAF official Acting as representative of an EU body

In the first part concerns the possible inclusion of an OLAF agent acting as a representative of an EU body in a joint investigative team. According to Sect. 10 (9) CCP, a “police officer” also means, within the limits of his or her authorization, a representative of another State, of a body of the European Union or of a body created jointly by the Member States of the European Union, who is included in a joint investigative team created by an agreement. A joint investigative team may be created chiefly if the criminal investigation requires complicated procedures involving another State or if the criminal investigation is conducted jointly by several States and the circumstances require them to Law in a joint and coordinated way. The leader of a joint investigative team is always a representative of a criminal prosecution authority of the Slovak Republic; other conditions are to be regulated by the agreement on the creation of the joint investigative team.

The authority competent for making such agreement is the General Prosecutor's Office of the Slovak Republic after a previous consultation with the Minister of Justice of the Slovak Republic. It results from the aforementioned Law that a representative of a body of the European Union such as OLAF may participate in criminal investigation, provided a joint investigative team is created. No such cooperation has taken place in practice so far, i.e. no OLAF personnel have participated in a joint investigative team created in the Slovak Republic.

5.1.4.2. OLAF official acting as expert

The second case concerns the possibility of using an OLAF agent as an expert. Such participation of OLAF personnel in Slovak criminal procedure is virtually impossible, because of legal requirements for an expert. It is however not impossible to consider their participation as expert consultants according to Sect. 151 CCP. The advantage of such approach, which has not yet been used in practice, would be the use of their expertise in complicated specialized issues.

By application of general rules, a member of OLAF personnel may have the procedural role of a witness if he or she is knowledgeable on circumstances of the crime. Previous authorization to divulge information normally treated as non-public should be requested from his/her superiors in order to be a witness. It is also possible for OLAF to have the procedural role of informer, i.e. the person who suggested the initiation of criminal proceedings by informing the authorities of a probably criminal Law.

5.1.5. OLAF participation in a joint investigative team (JIT)

The possible representation of OLAF in a joint investigative team has been explained in chapter 5.1.4.1 of this report. As no such team has been formed so far, it was not possible to evaluate the impact of an OLAF participation in a JIT.

5.1.6. Experience with JITs dealing with fraud against the financial interests of the European Communities

As explained in chapter 5.1.5 of this report, there has been no joint investigative team established in relation to the felony of damaging the financial interests of the European Communities as stated in sects. 261 – 263 of the Criminal Code.

5.1.7. Coordination of contacts with OLAF

Concerning the criminal procedure in general, the coordination of contacts with OLAF lies in the hands of the Government Office of the Slovak Republic (Section of Control and Fight against Corruption, Department of Protection of Financial Interests of the European Union) which is responsible for the exchange of information in general.

On the operational side, a contact point for the exchange of detailed information has been established at the Special Prosecution Bureau of the General Prosecutor's Office of the Slovak Republic.

5.1.8. Expectations with regard to support from OLAF

Concerning the protection of the EU's financial interests, the Slovak authorities stated that they would like to benefit from OLAF providing general information with regard to the present state of criminal activities (such as methodology for risk analysis) and also by cooperating in actual cases through providing access to documents and other information that may be used as evidence.

The Slovak authorities have explained that practical cooperation with OLAF in cases where damages to the financial interests of the EU have occurred takes place through bilateral meetings where OLAF is updated on the ongoing investigation and on any progress made.

5.2. Conclusions

- Slovakia aims at protecting the financial interests with its National Strategy for the Protection of Financial Interests of the EC in the Slovak Republic approved by the government in 2007. Under this National Strategy the coordination of the Slovak Activities against frauds and irregularities affecting the EU budget are defined. The document formulates a strategic approach based on three pillars: prevention, detection and investigation and thirdly, sanctioning.
- The National Strategy includes a Manual for AFCOS network Cooperation and a Manual for the Reporting of Irregularities.

5.2.1. Manual for the AFCOS Network Cooperation.

- As far as the structure is concerned, a decentralised system is put in place. The relevant agencies and bodies, such as the ministries that Law as managing authorities for the of EU funds in the Slovak Republic, the Financial Control Administration, the Public Procurement Office, Customs and Tax authorities, the Supreme Audit Office, the National Bank, the Slovak Intelligence Service (?) and the Office of the Prosecutor General are included in the AFCOS network. The coordination is ensured by the Government Office, which is the central contact point for OLAF.
- A Steering Committee, chaired by the Government Office and composed of representatives of the network partners, supervises the performance of measures within the National Strategy. The Steering Committee has several working parties, for instance for the coordination of inspections and for the irregularities.
- Partners of the AFCOS network have powers to carry out inspections, controls or audits. AFCOS coordinates those Activities between the bodies concerned. It defines the controlling action and coordinates the selection of individual targets in order to avoid duplicity. Moreover, it furthers the exchange of information, which facilitates risk analysis and the determination of priority areas. AFCOS also supports OLAF during its on the spot controls. AFCOS either gives assistance itself during the on the spot check if the check falls within its own competence (however, the Government Office can only perform check which are meant to verify the working of the administration itself and cannot carry out inspections at the premises of economic operators) or, otherwise, acts as intermediary between OLAF and the responsible body in Slovakia.

5.2.2. Manual on Reporting of Irregularities.

- All relevant bodies have to report irregularities to the Department for the Protection of the EC's Financial Interests of for the Fight against Corruption, which subsequently forwards the notifications to the European Commission. Around 25 irregularities are notified quarterly to the European Commission. Customs directly report irregularities in the own resources area to the European Commission through OWNRES.
- AFCOS monitors the recovery of unduly paid EU funds and stimulates the exchange of relevant information between state bodies responsible for the recovery on the one hand and the Law enforcement bodies on the other.
- Under the agreement between the Government Office and the Office of the Prosecutor General the latter provides AFCOS with information concerning criminal proceedings related to offences that affect the EU's financial interests. AFCOS transfers this information to OLAF. Since 2007 around 60 cases have been reported by the Office of the Prosecutor General. In 18, predominantly minor cases convictions were pronounced.

5.2.3. Action Plan

- The Action Plan of December 2009 is an integral part of the National Strategy for the Protection of the EU's Financial Interests and aims at its implementation. It defines specific tasks that have to be carried out in a given time frame by the various state bodies concerned. A key role is given to the Department of the Protection of the EU's Financial Interests in the Government Office, whereas the Steering Committee supervises the related activities. The tasks to be performed are in the following areas: coordination and cooperation, legislation and guidance, awareness raising, training, management, control and audit system, reporting and analysis of irregularities, detection and investigation, remedy and prosecution and national strategy implementation and development. By including this last area, the Slovak authorities seem to have created a dynamic model for the National Strategy and its implementation.

5.2.4. Investigations and criminal proceedings

- The Anti Corruption Bureau is competent for offences affecting the financial interests of the European Union (§§ 261 – 263 of the Penal Code). These provisions apply not only to illegal receipt of expenditure, but also to the illegal withholding of own resources. Specific offences laid down in customs Law also concern the protection of EU own resources. The Customs Criminal Office is competent for investigating these offences and it is not very likely that the Anti Corruption Bureau will investigate them. On the other hand, the Organised Crime Bureau is not only competent in the area of customs, but also seems to investigate customs offences, provided that the relevant offences are to be considered “organised crime”. On a practical level the split of tasks between the Customs Criminal Office and the Organised Crime Bureau is sorted out during operational meetings called by the Customs and Police desk in the Police Force. This Desk apparently is not only active in the fight against drugs, as one could gather from the police organisation chart.

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- Both the Special Prosecution Bureau and the Specialised Criminal Court are competent for criminal offences affecting the EU's financial interests (under art. 14 Criminal Procedure these offences include offences affecting EU revenue as well as offences affecting EU expenditure).

5.2.5. PIF Convention

- In 2008, the European Commission established in Slovakian legislation three deficiencies with respect to the implementation of the Convention on the protection of the European Communities' financial interests and its protocols.
- The criminal liability of heads of business is limited to fraud, whereas under article 7 of the first protocol to the Convention and article of 12 of the Second Protocol the criminality liability of heads of businesses also should cover corruption and money laundering.
- In 2008, Slovakia had not yet laid down provisions for holding a legal person liable for criminal offences (cf. article 3 of the Second Protocol). Since, sections 83a and 83b of the Penal Code were introduced. However, these provisions only provide for confiscation of "a specific sum of money" and of "a property" belonging to the legal person, and do not include the possibility to impose a fine on a legal person.
- According to the Commission it appears useful to keep an eye on the actual application of the various provisions which penalise corruption, since there maybe be doubt whether these differs provisions are compatible with the requirement of legal certainty, insofar as the corrupt conduct is criminalised by superseding provisions;, depending on different circumstances for he person Acting an d the facts of the cases. The information provided by the Slovak authorities during (or shortly after the mission) does not refer to this practice.

6. RECOMMENDATIONS

6.1. Recommendations to Slovakia

Given the present legal and organisational set-up, while taking into account the specificities of the Slovak governmental and administrative services, the evaluation team came to the conclusion that cooperation between the different players works very well in general terms. All practitioners met seemed to be highly motivated and dedicated to their duties. Nevertheless the evaluation team thought fit to make a number of suggestions for the attention of the Slovak authorities.

The experts would like to summarise their suggestions in the form of the following recommendations:

1. The Slovak Ministry of the Interior should consider developing clearer structures and increasing capacities to fight financial crime; (cf. 2.3.1. and 3.6.2)
2. The Organised Crime Bureau (OCB) should envisage adapting their internal structures to have a special emphasis on the investigation of financial and economic crime; (cf. 2.3.1)
3. The Criminal Police Department should offer attractive career perspectives for investigators to attract skilled personnel required to deal with complex issues like financial crime; (cf. 2.3.1)
4. A special emphasis should be put on training in financial crime to raise the skills of the investigators in this area; (cf. 2.3.1 and 2.3.4)
5. The Organised Crime Bureau (OCB) should ensure a smooth information flow between their FIU and other investigating law enforcement agencies including the exchange of information with tax authorities; (cf. 2.3.1)
6. The Asset Recovery Office (ARO) of the Slovak Republic should try to increase the number of requests by means of domestic awareness-raising; (cf. 2.3.1)
7. The creation of a policy for financial investigation and proceeds-oriented approach should be considered at national level, ensuring that targeting criminal assets is among top priorities and available financial intelligence is used to the full extent. (cf. 2.3.3)

8. In setting up such a policy some basic criteria, rules or guidelines should be considered to clarify the allocation of tasks between different authorities with selective competencies, as well as the prioritization of serious international crime cases; (cf. 2.3.1 and 2.3.3)
9. A training curriculum on financial investigations should be set up for judges, prosecutors and financial crime investigators and the overall awareness for the financial aspects of crime should be raised throughout the law enforcement community; (cf. 2.3.4)
10. In order to enhance the effectiveness of criminal procedures with regard to financial crime the specialization of the courts of first instance and corresponding prosecution offices should be considered. (cf. 2.3.2 and 2.3.4)
11. With regard to the workload of the prosecution service at district level and the reported deficiencies in specialization and training, the structure of these bodies should be reviewed; (cf. 2.3.2, 2.3.4 and 3.6.4)
12. The initiatives on the creation of a unified bank account register should be further pursued. (cf. 3.6.1)
13. The creation of a database for handling sensitive cases before pre-prosecution stage (in the intelligence or operative stage) should be further pursued; (cf. 3.6.2)
14. A clear mechanism should be developed in order to facilitate gathering and analysis of data on assets frozen or confiscated and on assets actually recovered. Results achieved, weaknesses of the recovery system and countermeasures undertaken by criminals should be discussed regularly by all entities involved. (cf. 4.3)
15. Practitioners should be encouraged to apply the new Law № 101/2010 on the Proof of Origin in practice (cf. 3.6.2 and 4.3);
16. The competent Slovak authorities should consider changing their practice with regard to the application of the Law implementing FD 2003/577/JHA in order to facilitate the execution of the freezing orders; (cf. 4.3)
17. Slovakia should ensure the transposition of the Council Framework Decision 2006/783/JHA in the very near future; (cf. 4.3)
18. Should conduct a follow-up on the recommendations given in this report eighteen months after the evaluation and report on progress to the Working Party on General Affairs, including Evaluations (GENVAL).

6.2. Recommendations to the European Union, its Member States, institutions and agencies

19. EU institutions and agencies are invited to support all actions undertaken by the Slovak Republic in order to implement the recommendations listed above.
20. The scope of Framework Decision 2003/577/JHA could be reconsidered as the freezing order is not practical in cases where other investigatory activities are also required. (cf. 4.3)
21. Increasing the number of training schemes at the European level could be considered a remedy for limited training capabilities of law enforcement agencies.

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ANNEX A: PROGRAMME FOR VISIT

Time	Venue	Subject
24 January 2011		
	Vienna Airport	Pick up from the airport
		Transfer to the hotel
25 January 2011		
9.30	Presidium of Police Force	Welcome Meeting with 1. vice-president of the Police force
9.40	Presidium of Police Force	Plenary Working Meeting with the experts from all the Slovak institutions involved in the evaluation
10.00		Transfer from Presidium of Police Force to Ministry of Justice
10.25	Ministry of Justice	Ministry of Justice - Working meeting with experts form Ministry of Justice
		Courts – Working meeting with the judges from different levels of courts
		Justice Academy – Working meeting with representatives of Justice Academy
12.30		Lunch
14.00	General Prosecutor Office	General Prosecutor Office (Special prosecutor office) - Working Meeting with the representatives of the General Prosecutor Office and representatives of Special Prosecutor Office
16.00		Transfer from General Prosecutor Office to Presidium of Police Force
16.20	Presidium of Police Force	Government Office of the Slovak Republic, Control Division and fight against corruption
17.00	Transfer to hotel	

Time	Venue	Subject
26 January 2011		
09.00	Presidium of Police Force	Organized Crime Bureau – Criminal Investigation unit (OCB) - Working meeting with police officers, experts from OCB Investigation unit (OCB)
		Session I
10.30		Coffee break
10.45	Presidium of Police Force	National Financial Intelligence unit (FIU) - Working meeting with police officers, experts from FIU
		Session II
12.00		Lunch
14.00	Presidium of Police Force	Criminal Police Bureau (CPB) - Working meeting with police officers and representatives from CPB
15.20		Coffee break
15.40	Presidium of Police Force	Anti-Corruption Bureau (ACB) - Working meeting with police officers and representatives from ACB
17.00		Transfer to the hotel
27 January 2011		
08.30	Hotel	Pick up from the hotel
09.00	Field office of OCB in Bratislava	Working visit of Organized Crime Bureau (OCB) premises – especially Field Office Bratislava
12.00		Lunch
13.30		Transfer from the Presidium of Police Force to Specialized Penal Court and Specialized Prosecutor Office in Pezinok
14.00	Specialized Penal Court and Specialized Prosecutor's Office in Pezinok	Working visit of Specialized Penal Court and Specialized Prosecutor's Office premises in Pezinok
16.00		Transfer back to Bratislava to the hotel
18.30	Hotel Bôrik	Dinner hosted by the Minister of the Interior

Time	Venue	Subject
28 January 2011		
08.30	Hotel	Pick up from the hotel and transfer to the premises of Presidium of Police Force
09.00	FIU - ARO	Working meeting with police officers and representatives from FIU - ARO
10.00		Coffee break
10.15	Presidium of Police Force	Tax Directory of Slovak republic - Working Meeting with the representatives of National Agency for Tax Administration,
10.50	Presidium of Police Force	Customs Criminal Office - Working meeting with experts and representatives from Customs Criminal office
11.30	Coffee break	
11.45	Presidium of Police Force	Debriefing
Afternoon		Transfer to the airport

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ANNEX B: LIST OF PERSONS INTERVIEWED/MET

[The list of persons interviewed will be inserted once the Slovak authorities have submitted their observations to this report to the General Secretariat of the Council]

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ANNEX C: LIST OF ABBREVIATIONS/GLOSSARY OF TERMS

ACRONYM ABBREVIATION TERM	ACRONYM IN THE ORIGINAL LANGUAGE	ENGLISH TRANSLATION/EXPLANATION
ACB		Anti-Corruption Bureau
AFCOS	AFCOS	Slovakian Anti Fraud Coordination Service
APV DIS		Slovak Tax Information System
ARO		Asset Recovery Office
AVÍZO	AVÍZO	Information on the current state of criminal prosecution against perpetrators within the Police Force
AWF		Analytical Work Files
CARIN	-/-	Camden Assets Recovery Inter-Agency Network
CCO		Customs Criminal Office
CCP		Code of Criminal Procedure
DVS	DVS	Register of criminal prosecution files
EJTN		European Judicial Training Network
ENM		Ecole Nationale de la Magistrature
ERA	Europäische Rechtsakademie	European Law Academy
EU		European Union
FIU		Financial Intelligence Unit

GPO		Special Prosecution Bureau
HQ		Head-quarters
CPB		Criminal Police Bureau
JITs		Joint Investigation Teams
MDG		Multidisciplinary Group on Organised Crime
OCB		Organized Crime Bureau
OCTA	-/-	Organised Crime Threat Assessment
OLAF	Office européen de lutte anti-fraude	European Anti-Fraud Office
OTE	OTE	Information on Criminal Activities of a Person
PC		Penal Code
ROCTA	-/-	Russian Organised Crime Threat Assessment
SAR	-/-	Suspicious Activity Report
SIENA	
SR	-/-	Slovak Republic
UTR	-/-	Unusual Transaction Report
ZOP	ZOP	Register of persons of interest of the Police Force