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

THIRD ROUND DETAILED ASSESSMENT REPORT ON G E O R G I A[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

SUMMARY

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

[1] Adopted by MONEYVAL at its 22nd Plenary meeting (Strasbourg, 21-23 February 2007).

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1 Background Information

1. This report provides a summary of the AML/CFT measures in place in Georgia as at the date of the third on-site visit from 23 to 29 April 2006, or immediately thereafter. The report only covers those parts of Georgia under government control. It describes and analyses the measures in place, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Georgia's levels of compliance with the FATF 40 + 9 Recommendations.

2. Since the second evaluation in May 2003, there have been major changes. The basic building blocks of an AML/CFT system are now broadly in place. At the time of the last visit, Georgia had no anti-money laundering preventive law, no suspicious transaction reporting regime, no real provisional measures and confiscation regime or financial intelligence unit. The money laundering offence had never been used.

3. On 6 June 2003, after intensive dialogue between MONEYVAL and the Georgian authorities, the "Law of Georgia on Facilitating the Prevention of Illicit Income Legalisation" (the "AML Law") was signed and its provisions came into effect in January 2004. The Georgian authorities fully recognise that the AML Law now needs updating. On the basis of this Law, on 16 July 2003 a Financial Intelligence Unit was created (the Financial Monitoring Service - FMS) which began functioning (receiving reports) on 1 January 2004. In 2003 also a *Special Service on Prevention of Legalisation of Illicit Income* (*SSPLII*) was created at the General Prosecutor's Office of Georgia, which is responsible for the investigation of money laundering cases received from the FMS and from other sources. Since the second evaluation, money laundering cases have been brought to court and convictions achieved.

4. Organised crime and corruption remain major issues for the Georgian authorities to address. The main sources of illegal income are considered to be generated through smuggling, tax evasion, fraud, bribery, misappropriation and embezzlement, and abuse of power by public servants. In the second round report, casinos were thought to be a major money laundering vulnerability. Since then, many of them have been closed.

5. Various organised groups and also banking officials have been involved in money laundering cases which have been brought to court.

6. The AML Law covers a range of financial institutions and some but not all DNFBP, which are designated as "monitoring entities". The obligations of monitoring entities include some customer identification and record keeping requirements, requirements for internal control systems, and reporting requirements in respect of transactions "subject to monitoring". These are generally transactions or a series of transactions in excess of GEL 30,000 (i.e. 13,300 Euros). A suspicious transaction is defined in the AML Law as a transaction which, regardless of its amount, is supported by a grounded supposition that it had been concluded or implemented for the purpose of legalising illicit income or any person involved in the transaction is likely to be connected with a terrorist or terrorism supporting persons or the persons legal or real address or place of residence is located in a non-cooperative area and the transaction amount is transferred to or from such an area.

7. Further requirements have been made in various Regulations addressed to different categories of monitoring entities under Decrees issued by the Head of the FMS who is authorised under the AML Law to issue normative acts on the conditions and procedures for receiving, systemising, processing and forwarding the information, and on identification of the entity.

8. The Georgian authorities could not identify any terrorist group operating on Government-controlled Georgian territory, but recognised that Georgia can be used as a transit country for terrorists. The Georgian authorities were conscious of the risks of abuse of the non-profit sector

for financing of terrorism. One measure which had been taken in this regard was to make entities engaged in extension of grants and charity assistance "monitoring entities" under the AML Law.

9. The recommendation of the second evaluation team, that there should be put in place an effective system to detect the physical cross-border transportation of currency and bearer negotiable instruments, has hardly been addressed.

2 Legal Systems and Related Institutional Measures

10. The Georgian AML offence (Article 194 of the Georgian Criminal Code) follows, in principle, an "all crimes" approach. However, income from crime committed in the customs and taxation fields is excluded in the AML Law from the definition of illicit income, despite the fact that tax evasion remains a major source of illicit income. The Georgian authorities considered that Article 194, which does not contain this exemption, takes precedence over the AML Law. This contradiction between the legislative provisions should be addressed so that the restriction is clearly removed. Offences where the income is less than GEL 5,000 are not considered as predicate offences for the purposes of Article 194 CCG. This threshold should also be removed. As financing of terrorism was at the time of the on-site visit not a separate crime, terrorist financing in all its forms was not a predicate offence to money laundering. Insider trading, as it is generally understood, appeared not to be fully covered as a predicate offence, and should be.

11. The money laundering offence provides a broad range of dissuasive sanctions for natural persons, but in respect of legal entities no criminal, civil or administrative liability for money laundering is in place. This needs to be addressed.[2]

12. The ancillary offences of attempt, aiding and abetting, facilitating and counselling the commission of the money laundering offence appear to be adequately covered, but conspiracy (which is covered by the Georgian legal concept of "preparation") is only provided for money laundering in its aggravated forms.

13. There were 15 defendants convicted of money laundering, and at least two significant terms of imprisonment imposed. Of the 15 convicted persons, 12 pleaded guilty. The issue of the level of proof required in respect of the predicate base in autonomous money laundering prosecutions had not been confronted. No autonomous money laundering prosecution has yet been brought in relation to foreign (or domestic) predicate offences. More emphasis needs to be placed on autonomous money laundering prosecutions. The Georgian authorities should address the issue of the evidence required to establish the predicate criminality in autonomous money laundering cases by testing the extent to which inferences can be made by courts from objective facts.. Most of the money laundering cases that have been investigated and prosecuted involved banking transfers by using offshore companies.

14. At the time of the third on-site visit, terrorism financing was not a separate crime in Georgian legislation. An autonomous offence of financing terrorism was being considered by Parliament. It was only possible to prosecute financing of terrorism on the basis of aiding and abetting (and other ancillary offences) connected with offences in the Georgian Criminal Code relating to terrorist acts. However, there have been no prosecutions for terrorist financing using any of the offences in the Georgian Criminal Code relating to terrorist acts or based on aiding and abetting principles. The Georgian authorities indicated that the methods and institutions used for terrorist

[2] On 25 July 2006, the Georgian Criminal Code was amended to provide for the criminal liability of legal persons for specific offences, including Art 194 (money laundering).

financing purposes are similar to those used for money laundering. A fully autonomous terrorist financing offence should be introduced [3].

15. The Georgian legal framework covering provisional measures and confiscation has been significantly developed and now there is a basic legal structure in place for freezing, seizing and forfeiture of objects, instrumentalities and criminally acquired assets (proceeds) and for making value orders and for taking provisional measures to support such orders. Some of these provisions in the general criminal process were very new at the time of the on-site visit and it was clear that the practice of confiscation/forfeiture of all direct and indirect proceeds in major proceeds-generating cases was insufficiently embedded into the general criminal process. The Georgian authorities took the view that the new forfeiture provision in Article 52 (3) Criminal Code of Georgia is mandatory, but, in the absence of relevant practice, this cannot be confirmed. While there had been two significant value confiscation orders in money laundering cases, the effectiveness overall of the provisional measures and confiscation regime was questioned as more practice is needed in general criminal cases.

16. There are also some innovative administrative forfeiture provisions in place in special cases involving public officials and organised crime groups – which incorporate elements of the civil standard of proof, which are very welcome developments.

17. No assets have been frozen under the United Nations Security Council Resolutions. The lists received are notified by the FMS to the monitoring entities, but there was no clear legal structure for the conversion of designations into Georgian Law under UNSCR 1267 and 1373 or under procedures initiated by third countries. A Designating Authority is required for UNSCR 1373. Clarification is required that freezing should be without delay and not await the completion of transactions before UN and other lists are checked. Clearer guidance on these obligations is required. Publicly known procedures for considering de-listing and unfreezing, and for dealing with applications by persons inadvertently affected by these freezing mechanisms also need to be in place. All supervisors should be actively checking compliance with SR.III by monitoring entities

18. The FMS, which is an administrative type FIU, is the central body in the AML/CFT system of Georgia, and has the legal responsibility for reviewing the status of enforcement of the AML Law and the preparation of further legislative proposals and serves as the national centre for receiving, analysing and disseminating disclosures of STRs and other relevant information.

19. The arrangements to secure the operational independence of the FMS appear to be well balanced. The National Bank is responsible for the funding and the premises of the FMS. Funding by the National Bank ensures that the FMS is not lacking technical and other resources, and is not directly reliant on central government in this regard. The NBG does not have the right to interfere with the professional work and responsibilities of FMS. The AML Law contains provisions stating that no permission is required from any organ or entity before transmitting materials to the Prosecutor. In addition, under the AML Law, no one shall have the right to "assign" (i.e. delegate) the FMS to seek for (obtain) any information.

20. The Head of the FMS is appointed by the President of Georgia, from a nomination by the National Bank (which ensures the professional expertise). The FMS is staffed with highly professional, technical experts who were selected with particular care. Currently 40 people work for the Georgian FMS. Importantly, the FIU has the confidence of the financial sector. The Head of the FIU has been in post since the creation of the FMS.

[3] Article 331[1] which provides for a separate offence of financing of terrorism was adopted on 25 July 2006 and was brought into force on 9 August 2006.

21. On 23 June 2004, the FMS became a member of the Egmont Group. It is now an active member of this organisation and co-operates effectively with all financial intelligence units, of whatever type.

22. From 1 January 2004 (when the FMS began functioning) till 24 April 2006, the FMS received 43,053 reports from monitoring entities, of which 1,313 were either sent or categorised as suspicious by FMS. 91 cases were opened by the FMS involving 17,511 reports above the 30,000 GEL threshold and 683 suspicious reports. After these analyses, the FMS forwarded, in total, 26 cases to the General Prosecutor's Office. The cases sent to the General Prosecutor were the subject of investigations and several resulted in prosecutions and convictions. The FMS' analytical work in processing cases can be regarded as quite effective. However, the overall efficiency of the FIU could be adversely affected by the limited scope of the suspicious reporting obligation in respect of terrorist financing, as Article 2 (h) of the AML Law limits this obligation to persons rather than funds.

23. The examiners consider that the reporting obligations (under SR.IV) need to be clarified to ensure that monitoring entities are clearly obliged to report where they suspect or have reasonable grounds to suspect that (licit or illicit) funds are linked or related to, or to be used for terrorism, terrorist acts, or by terrorist organisations or those who finance terrorism.

24. There are designated law enforcement bodies in place to investigate money laundering and terrorist financing with most investigative tools but the effectiveness of investigation / prosecution of money laundering has yet to be fully tested in respect of autonomous money laundering cases. Law enforcement and prosecutors need more guidance and training on the minimum evidential requirements to commence money laundering cases and greater training and familiarisation with the new forfeiture and seizure provisions, and on financial investigation techniques generally. Better and more detailed statistical information needs to be kept on money laundering and terrorist financing investigations, prosecutions and convictions.

25. The AML Law now makes customs a monitoring entity and they are specifically required to monitor the import and export of monetary units exceeding 30,000 GEL. At the time of the on-site visit, the obligations on customs under the AML Law were totally inoperable and inefficient. Only two reports had been made by Customs to the FMS and these were based on voluntary declarations. Customs was in the process of being reformed and in this on-going work urgent review is needed of their powers and responsibilities to enforce SR.IX as the borders remain very insecure.

3 Preventive Measures – Financial institutions

26. The following financial institutions are monitoring entities: commercial banks, currency exchange bureaus; credit unions; brokerage companies, and securities registrars; insurance companies and non-state pension scheme founders. Postal organisations are included as financial institutions because they can carry out wire transfers. On the financial side, the Georgian AML legislation contains a basic customer identification obligation but the CDD requirements as set out in the FATF Recommendations are not yet fully implemented. In particular, there is no explicit legal requirement on financial institutions to implement CDD measures when:
    - carrying out occasional transactions that are wire transfers,
    - there is a suspicion of money laundering and financing of terrorism,
    - financial institutions have doubts about the veracity or adequacy of previously obtained customer identification data.

27. The concept of verification of identification should be further addressed. The Georgian authorities should take steps to apply an enhanced verification process in appropriate cases. They should consider requiring financial institutions to use in higher risk cases for the verification of the customer's identity not only the documents as currently prescribed by the AML Law but also to use *other* reliable, independent source documents, data or information.

28. A definition of "beneficial owner" within the meaning of the FATF Recommendations is not in the AML Law nor in FMS Decrees or in any other Georgian normative act. As a consequence, there are no legal requirements to take reasonable measures to determine the natural persons who ultimately own or control the customer or the person on whose behalf transactions or services are provided by financial institutions. Financial institutions should take reasonable measures to verify the identity of beneficial owners using other reliable source documents, data, or information.

29. Financial institutions should obtain information on the purpose and intended nature of the business relationship.

30. The scrutiny of transactions and the updating of identification data acquired during the CDD process should be undertaken as an ongoing process of due diligence on the business relationship and this requirement should be set out by the AML Law, in order to ensure that the transactions being conducted are consistent with the financial institutions' knowledge of the client.

31. The Georgian authorities should introduce a "risk based" approach in the AML/CFT legislation, that would require financial institutions to perform enhanced due diligence for higher risk categories of customer, transactions and products as described by the FATF Recommendations and to permit simplified or reduced CDD measures where the risks may be lower.

32. The Georgian authorities should, by enforceable means, take measures to cover the establishment and conduct of business relationships with politically exposed persons (PEPs), and should implement Recommendation 6. Neither has it implemented enforceable measures to cover the establishment and conduct of cross-border correspondent relationships as required by FATF Recommendation 7.

33. Georgia has not implemented Recommendation 8 through enforceable means. Financial institutions need to be required to have policies and procedures in place to prevent the misuse of technological developments for AML/CFT purposes, and to have policies and procedures in place to address specific risks associated with non-face to face transactions. It is understood, for example, at present that the Internet is not used for moving money from one account to another, but this and other non-face to face transactions may develop soon and policies need to be in place to guard against money laundering and financing of terrorism risks.

34. The AML Law only requires the maintenance of transactions "subject to monitoring" but not of all domestic and international transactions. The AML Law should require the maintenance of necessary records of all domestic and international transactions and not exclusively those transactions "subject to monitoring".

35. Although banks and Georgian Post are obliged under the AML Law to perform any transfer only after customer identification and record keeping (so far as it goes), there is no comprehensive legal framework addressing all the requirements as set out in SR VII in regard of commercial banks and the Georgian Post.

36. There is no clear and explicit requirement in the AML Law or other Regulation for financial institutions to analyse all complex, unusual large transactions or unusual patterns of transactions,

that have no apparent or visible economic or lawful purpose beyond those transactions "subject to monitoring" under the AML Law.

37. Although the AML Law requires financial institutions to retain a hardcopy of the reporting form for no less than five years, there is not a specific requirement in the AML Law or in FMS Decrees, to set forth their findings on complex, large and unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, in writing and to keep these findings available for at least 5 years

38. As regards internal control on AML/CFT, the AML Law defines some of the main elements that monitoring entities are required to include within the internal regulations, and requires monitoring entities to appoint an employee or a structural unit, who/which is responsible for reporting transactions "subject to monitoring" to the FMS. Clear provisions should be made for compliance officers to be designated at management level.

39. According to the explicit requirements of Recommendation 13, the AML Law should require financial institutions to report *promptly* to the FMS. The AML Law in its present formulation does not meet this requirement and should be reconsidered.

40. Despite that there is only very general guidance to most of the monitoring entities on what amounts to a suspicious transaction, the number of suspicious transaction reports has been rising since 2004, particularly in the banking sector. The FMS should satisfy itself that there is an even spread of reporting in the banking sector. It is important that more is done to explain the concept of suspicion to non-bank financial institutions. While brokerage companies and security registrars have begun reporting, it is notable that the exchange houses and insurance companies have made no suspicious transaction reports at all since the inception of the FMS. The FMS should actively pursue outreach to those financial institutions which are either not reporting or underreporting suspicious transactions. Financial institutions should receive guidance notes or instructions on how to determine whether a transaction is suspicious.

41. The STR regime should extend to suspicious transaction reports covering tax. A clear provision of general application should be introduced which covers tipping off, not just in respect of institutions but which also covers directors, officers, and employees and for which there is a clearly determined range of sanctions which can be imposed (whether criminal or administrative).

42. There is no clear requirement in law or regulation to ensure that financial institutions are obliged to report where they suspect or have reasonable grounds to suspect that funds of legal and physical persons (whether licit or illicit) are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism (apart from transactions involving persons that are on terrorist lists).

43. Financial institutions are subject to different licensing regimes. However, the licensing requirements for money remittance services conducted outside the banking sector have been abolished. Any person currently can open a money or value transfer service. The Georgian authorities should reintroduce a licensing or registration system for such persons. The Georgian authorities should introduce a comprehensive and consistent legal framework on fit and proper criteria that applies to all currently regulated entities in the same way, which ensures that Recommendation 23 is satisfied. Fit and proper criteria should apply to all administrators and managers and significant shareholders.

44. Supervision of the financial sector is conducted by the National Bank of Georgia for banks, exchange bureaus and credit unions. For the insurance sector and securities the respective supervisors are the Insurance State Supervision Service of Georgia and the National Commission

on Securities. Supervision of the postal organisations by the Ministry of Economic Development of Georgia had not commenced and needs to be brought into operation. Financial institutions that are subject to the Core Principles can be considered as under basically adequate regulation and ongoing supervision though the number of AML/CFT obligations that were specifically checked in inspections was not always clear. The statistics of on-site inspection need reviewing collectively and on a co-ordinated basis so that the Georgian authorities have a clearer picture of the level of AML/CFT compliance across the whole financial sector.

45. The overall policy on sanctioning is unclear. The AML Law appears to require that any violation of it, and normative acts adopted under it, should be sanctionable. However, sanctions are not defined in the AML Law. It is necessary to consider various sanctioning decrees to determine the types of infringement that attract sanctions and the types of penalty that can be imposed (e.g. the Decree for brokers does not cover financial sanctions). While *Bureaus de Change* have been sanctioned (particularly in respect of customer identification infringements) and some significant sanctions have been imposed on commercial banks (mainly for failure of reporting), the Georgian authorities should consider introducing a consistent, coherent and harmonised legal framework for imposing penalties (including financial penalties) across all supervisory laws and regulations on AML/CFT issues. The administrative sanctions regime should clearly extend to CFT issues.

4 Preventive Measures – Designated Non-Financial Businesses and Professions

46. The following DNFBP are defined as monitoring entities under the AML Law: casinos, dealers in precious metals, dealers in precious stones and notaries. Real estate agents, lawyers and accountants are not monitoring entities and thus no AML / CFT requirements apply. Trust and company service providers do not exist in Georgia and are also not covered by law or regulation.

47. Broadly, the main deficiencies that apply in the implementation of the AML/CFT preventive measures applicable to financial institutions regarding Recommendations 5, 6, and 8 to 11 and other preventive Recommendations apply also to DNFBP, since the core obligations for both DNFBP and financial institutions are based on the same general AML/CFT regime.

48. The CDD requirements applicable to casinos, dealers in precious metals, dealers in precious stones and notaries are established by the AML Law as well as by several regulations issued by the FMS. However, the effectiveness of the CDD requirements in respect of the DNFBP sector is insufficient or at least unknown (particularly regarding casinos and dealers in precious metals and stones). In respect of notaries, the implementation and supervision of existing standards is more advanced.

49. A clear provision is required that all necessary records on transactions shall be maintained. The existing one is limited (except for notaries) to suspicious transactions and all transactions exceeding 30,000 GEL.

50. Notaries are submitting transactions reports to FMS (of which 17 involved suspicious transactions). Casinos and dealers in precious metals as well as dealers in precious stones have not submitted any reports to the FMS. Thus, more outreach to this sector should be undertaken (including guidance provided by the FMS, together with the supervisory bodies, on indicators of suspiciousness).

51. The effectiveness of (the implementation of) the reporting requirements regarding casinos and dealers in precious metals and dealers in precious stones is questionable.

52. Although the number of casinos has reduced from 39 (as of 1 January 2006; before the entering into force of the new Law on Gambling and the introduction of an annual permit fee) to 2, these

institutions are, as at the time of the last evaluation, considered high risk. Casinos are not licensed in a way which requires steps to be taken to ensure that criminals or their associates do not hold controlling interests or management functions. Fit and proper requirements should be applied to holders or beneficial owners of significant or controlling interests in casinos and those holding management functions, or being operators. Supervision of casinos is inadequate at present. The role of the Ministry of Finance, as the designated supervisor in AML/CFT measures, needs revisiting. The examiners consider that the Ministry of Finance should undertake a proactive programme of AML/CFT inspection without the need of a court order The Ministry of Finance has no power to sanction AML breaches, and this should be introduced.

53. Monitoring or ensuring compliance regarding dealers in precious metals and dealers in precious stones has not been implemented. In this area too, the examiners recommend that the Ministry of Finance should ensure that dealers in precious metals and dealers in precious stones are subject to effective systems for monitoring and ensuring their compliance with the AML Law. The Ministry of Finance needs to ensure that it has (adequate) powers to sanction for non-compliance with the AML Law.

54. At present, the supervision and monitoring of DNFBP is very limited. The notaries appeared to be the most engaged DNFBP with AML/CFT obligations. The Ministry of Justice carried out on-site inspections and a sanctioning system is in place. So far, no sanctions have been imposed.

55. Apart from financial institutions (including postal organisations), customs authorities and DNFPB as referred to in Recommendation 12, also entities organizing lotteries and commercial games (not being casinos); entities engaged in activities related to antiques and entities engaged in extension of grants and charity assistance are monitoring entities. The Ministry of Finance is appointed as supervisory body for these entities. Effective implementation of the AML/CFT requirements still needs to be achieved.

5 Legal Persons and Arrangements and Non-Profit Organisations

56. Georgian legislation covers entrepreneurial and non-entrepreneurial (non-profit) persons as well as legal persons of public law. According to the Law of Georgia on Entrepreneurs only the following legal arrangements can be established: individual enterprises, companies of joint responsibility, limited partnerships, limited liability companies, joint stock companies and cooperatives. Registration of companies is mandatory. A collective Entrepreneurial Register is kept by the Tax Department of the Ministry of Finance. Any person may have access to the register, and can request written extracts.

57. Non-profit organisations are regulated by the Georgian Civil Code and the Tax Code of Georgia. There are two types of non-profit organisations: funds (financial or property based organisations which are not based on membership), and associations (or unions) for the achievement of common goals. Associations cover a wide range of different activities e.g. sports organisations, professional associations, non governmental organisations in the field of human rights, environmental protection, and religious organisations. Charitable organisations are associations which have also been registered for charitable purposes. Both funds and associations are registered by the Ministry of Justice.

58. Though there are procedures in place to ensure some financial transparency, it appears there has been no special overall review of the adequacy of the current legal framework that relate to non-profit organisations that could be abused for the financing of terrorism. The Ministry of Finance should begin AML/CFT monitoring for entities engaged in extensions of grants and charity

assistance. Consideration should be given to effective and proportionate oversight of the whole NPO sector. Closer liaison between the governmental departments involved is required and greater sharing of information between them and with law enforcement.

59. Georgia should review its commercial, corporate and other laws, with a view to taking measures to provide adequate transparency with regard to beneficial ownership.

6 National and International Co-operation

60. The AML Law contains provisions on cooperation both at domestic and international levels.

61. Mutual legal assistance is regulated by the Criminal Procedure Code of Georgia. In addition to the Vienna and Strasbourg Convention, the Georgian Parliament has ratified the European Convention on Mutual Assistance in Criminal Matters (ETS 030) and the Additional Protocol (ETS 99). The Second Additional Protocol (ETS 182) has not yet been signed. The Georgian Parliament has signed on 22 January 1993 the Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters among the Commonwealth of Independent States (CIS) and concluded several bilateral agreements/treaties which include provisions for exchange of information, documentary evidence, execution of warrants etc. for all kinds of criminal activities (including money laundering). If no agreement on mutual legal assistance is in place, decisions on mutual legal assistance can be made *ad hoc* by a special agreement between the Minister of Justice or the General Prosecutor with the corresponding officials of the foreign State. The average time for fulfilling requests is said to be 2-3 months. None of the received requests related to money laundering on financing of terrorism. Dual criminality is essential for rendering mutual legal assistance though it is not necessary that the action which is considered a crime in the requesting jurisdiction should have exactly the same characteristics in Georgian legislation. The examiners were advised that offences subject to requests are interpreted in a wide manner in order to provide assistance

62. The examiners had some concerns about the extent to which mutual legal assistance could be provided where compulsory measures are required and dual criminality is invoked particularly in respect of money laundering on the basis of tax and customs offences and those aspects of financing of terrorism not covered in domestic provisions.

63. Due to the amendments to the Criminal Code and Criminal Procedure Code as of December 2005, it now appears possible, on behalf of foreign countries, to seize, freeze, and forfeit objects, instrumentalities, direct and indirect proceeds, and to make confiscations on property and value based principles, and to take provisional measures to preserve the position in respect of both property and value based confiscations. If a foreign request for seizure or confiscation is accompanied by a court order, no further approval at a domestic level is required. If the request is accompanied by any other type of authorisation than a court order (e.g. prosecutorial order), the investigator/prosecutor in Georgia would apply to the court to make an order based on the foreign request. However, these procedures were new and had not been tested.

64. According to Article 13 para 4 of the Constitution of Georgia, extradition of a Georgian citizen is not permitted, unless an international agreement states otherwise. However, according to Article 253 para 3 CCP the competent authorities of Georgia will pursue this Georgian citizen, if he/she, being on the territory of a foreign state, has committed an action, which would be considered as a crime according to the CCG, but has not been convicted by the court of the relevant state.

65. “Dual criminality” is a key principle for extradition. The Georgian authorities are of the opinion that, even though financing of terrorism was not “directly” criminalised, it would be possible to

extradite a person for financing of terrorism as constituent elements are similar to other crimes provided by Georgian legislation. This has not been tested and, in any event, would not cover all aspects of terrorism financing. Thus, at the time of the on-site visit, not all aspects of financing of terrorism would appear not to have been extraditable.

66. At the domestic level the FMS is authorised to cooperate with supervisory and other authorities, provide them with information, and participate in drafting laws and other normative acts and discussions regarding the issues that regulate the economic sector and related authorities. The Law also obliges the supervisory bodies to collaborate with each other, and to assist law enforcement agencies within the scope of their competence. There are no specific rules for cooperation between the involved parties. During the on-site visit, no information about the effectiveness of coordination mechanisms (e.g. guidance documents; domestic MOUs; extent and types of information exchange) was available.

67. For the banking sector a "Special Coordination Group" was established between the FMS and the National Bank of Georgia to address issues related to the AML/CFT sphere. It thus appears that the authorities responsible for AML/CFT cooperate only on an occasional basis and that there are no mechanisms and rules concerning such a co-operation.

68. The FMS actively cooperates with all appropriate supervisory bodies, law enforcement agencies and other state institutions but during the on-site visit there were no statistics or information about such cooperation in practice available.

69. The examiners advise that the Georgian response to Recommendation 31 could be enhanced by a Co-ordination Group of senior officials responsible for AML/CFT in each of the relevant sectors to assess the performance of the system as a whole and make recommendations as necessary to Government. It should ensure that those bodies yet to issue decrees to complete the regulatory framework proceed to issue them.