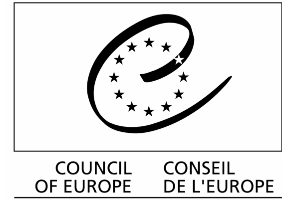

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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

SELECT COMMITTEE OF EXPERTS ON THE EVALUATION

OF ANTI-MONEY LAUNDERING MEASURES

MONEYVAL

SECOND ROUND EVALUATION REPORT ON GEORGIA

SUMMARY

1. A MONEYVAL team of examiners, accompanied by one colleague from the Financial Action Task Force (FATF) visited Georgia between 21 – 23 May 2003, in the context of MONEYVAL's second round of evaluations.

2. Prior to the on-site visit, as part of its continuing monitoring process, discussions had taken place by the Council of Europe/MONEYVAL with very senior officials in Georgia with a view to ensuring that several of the minimum standards which a jurisdiction needs to have in place and which were recommended in the first report, were brought into effect. The second evaluation of Georgia, as with all MONEYVAL second round reports, looks more broadly at the effectiveness of the system as a whole to counter money laundering.

3. At the time of the second on-site visit (almost 2½ years after the first on-site visit), though the development of anti-money laundering legislation had commenced, broadly, little had changed in respect of the overall findings of the first evaluation team. A preventive law was not in place, though the Law of Georgia on "Facilitating the Prevention of Illicit Income Legislation" (the Preventive Law) was enacted and signed into law on 6 June 2003, shortly after the on-site visit[1]. There was therefore no suspicious transaction regime at the time of the second visit. There was a criminal offence of money laundering, though it had never been used. The 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) had been signed in 2002 but was yet to be ratified[2]. There was no clear binding obligation to identify customers or beneficial owners when the financial system was used. Anonymous accounts could still be opened. The Georgian economy also remained predominantly cash-based. Money laundering was often described, in these circumstances, as essentially an external threat to the country's young financial institutions. Since the first on-site visit, however, the Law on Activities of Commercial Banks had been amended to increase public confidence in the banking sector and to help guard against the infiltration of banks by criminals.

4. Although the pace of progress has undeniably been slow, the examiners noted that there had been a generally positive response to the intensive dialogue between Georgia and MONEYVAL in the context of MONEYVAL's continuing monitoring process since the adoption of the first evaluation report. Nonetheless, at the time of the second on-site visit an anti-money laundering system had still to be put in place.

5. There was at the time of the second on-site visit, large-scale smuggling of goods and the ease with which money (and goods) could enter Georgia from outside its borders was highlighted. Smuggling, as well as bribery, tax evasion,

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[1] This law was brought into effect on 1 January 2004.
[2] It was ratified by the Parliament of Georgia on 17 February 2004 and instruments of ratification were deposited with the Council of Europe on 13 May 2004.

abuse of power by public servants and counterfeiting of VAT invoices were among the major offences pointed to as the major sources of illicit income.

6. Money was thought to be laundered through the banking system, and through casinos. Illicit proceeds were also reported to be invested in the construction industry.

7. A. 194 of the Criminal Code ("Legalisation of illicit income") had been on the statute books since 1996. While it appears to be based on an "all crimes" model it covers any kind of illicit activity. The wording of the Article seems to include "own proceeds" laundering, though in the absence of jurisprudence it was difficult for the evaluators to assess whether this interpretation of the definition would be upheld in practice. It is advised that this is clarified in legislative amendment, if the courts interpret the current criminal provision so that self-laundering is not covered. At the time of the on-site visit, no money laundering offence had apparently been investigated or prosecuted since the first evaluation (which had found the same situation).[3] The previous examiners had made a number of legal recommendations which would have helped to clarify the ambit of the offence, and perhaps stimulate investigations and prosecutions, but these had still to be taken up. A. 194 should unequivocally extend to indirect proceeds, substitute assets and yields. The physical elements of the offence should be clarified in line with international documents, such as the Strasbourg Convention. The mental element should comprise at least wilful blindness and inferences as to intent should be capable of being drawn from objective, factual circumstances. It is advised that the Georgian authorities consider introducing negligent money laundering, at least in respect of employees in the regulated sectors.

8. Confiscation as a measure exists in the Georgian system though its use appears very limited. Confiscation of the objects of the offence and instrumentalities is possible, under A. 52 of the Criminal Code, though "objects" is interpreted in such a way as to exclude indirect proceeds; value confiscation was not regulated in Georgian legislation at the time of the on-site visit. Indeed, the absence of a real measure of confiscation was given as one of the prime reasons for the lack of money laundering investigations or prosecutions. There needs to be a completion of the legal framework to create an enabling legal structure to support confiscation (and provisional measures) in respect of all criminal proceeds (both direct and indirect), and equivalent value based confiscation should be introduced.[4] It is advised that elements of practice which have proved of value elsewhere, including the reversal of the onus of proof regarding the lawful origin of alleged proceeds, should be considered in particular serious proceeds- generating offences. Seizure of property was not available for assets unrelated to the offence. The ability to take provisional

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[3] The Georgian authorities have advised that since the on-site visit a first money laundering case has been opened, which involves one Georgian bank and that an indictment is anticipated. Subsequently a second criminal case was opened on 11 January 2005.

[4] In February 2004, the President had signed into law amendments to the Criminal Procedure Code to include the concepts of Procedural Confiscation and Deprivation of property acquired through criminal means (which includes value confiscation).

measures (without the prior intervention of the court) in respect of indirect proceeds still needs to be provided for in Georgian legislation.

9. The underlying problem for international co-operation at the time of the second on-site visit was the lack of ratification of the Strasbourg Convention and the need to amend the domestic provisional measures and confiscation regime, which also presented obstacles at international level, to the execution of foreign request for seizures and confiscations.[5] Provision should be made for asset-sharing in joint investigations.

10. At the time of the second on-site visit, the unamended A. 875 of the Civil Code of Georgia remained in place (which allowed banks to issue savings certificates on the name of the presenter), though it was to be changed after the preventive law was passed.[6]

11. At the time of the on-site visit, the National Bank of Georgia (NBG) had written to commercial banks, enclosing the document "Due Diligence for Banks developed by the Basel Committee on Banking Supervision" (October 2001) and had asked banks to develop their relationships with clients on this basis. The preventive law introduced formal identification and record-keeping obligations, though the law could also clarify that reasonable measures should be taken to identify third parties also when monitoring entities suspect that accounts are being opened or transactions are being conducted on behalf of third parties.

12. Some basic measures have been put in place to prevent acquisition or control of credit institutions by criminals and their confederates. The 2002 Law of Georgia on Activities of Commercial banks and the NBG regulation on "Fit and Proper Criteria" for Administrators go in the right direction but it is unfortunate that no similar regulation fully details the fit and proper criteria for founders and owners. The source of funds should be the subject of enquiry and the examiners advise that the NBG should be able to reject unsuitable founders and significant shareholders without recourse to a court procedure.

13. The examiners consider that all supervisors should have the power to impose dissuasive fines for anti-money laundering breaches and that failure to report should, in the examiners' view, be made the subject of criminal sanctions for particularly egregious breaches.[7]

14. The NBG is responsible for the licensing and supervision of the 303 currency exchange bureaux operating at the time of the on-site visit. The examiners were not advised of any procedures in place designed to verify the "fitness and properness" of owners of these institutions. Verification with law enforcement on this issue should take place in the licensing process and checks on the

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[5] With the ratification of the Strasbourg Convention, clear legislative provisions should be introduced explaining how the international assistance provisions of the Convention are to be implemented.
[6] This has since been amended to allow for account opening only on the basis of a name.
[7] An amendment to the Preventive Law was passed in February 2004 which envisages financial sanctions also where the supervisory body detects failure to report transactions subject to monitoring or the violation of normative guidelines, though the range of sanctions is not set out.

sources of capital should be made. Most money remittance services are undertaken through the commercial banks. In the case of any other entities offering such services, the examiners recommend that the Georgian authorities should have a clear overview of all agencies offering these services, and consider the feasability of direct supervision of them. Anti-money laundering and customer identification issues should be given greater attention in the inspection process of bureaux de change and, indeed, in financial sector supervision generally. Much stricter controls on the licensing and supervision of casinos is required, as they are considered a clear money laundering vulnerability.

15. At the time of the on-site visit, no FIU was in place, though since then, the FMS, within the structure of the NBG, has been brought into existence. The adequate resourcing of the FIU, both in personnel and IT, needs to be given a high priority to demonstrate that there is a real political commitment to fight money laundering effectively. The FMS should apply to join the Egmont Group.[8]

16. The examiners recommend that there should be put in place an effective system to detect the physical cross-border transportation of currency and bearer negotiable instruments including a declaration system or other disclosure obligation. Effective detection of these issues by Customs should be taken forward, and Customs should be brought more directly into the national fight against money-laundering.

17. The lack of progress on investigations and prosecutions needs now to be examined and addressed in the light of the new situation arising from relevant legal changes. There needs to be greater focus on financial investigations into proceeds once confiscation as a criminal measure and an enabling provisional measures regime are fully in place. More guidance and training needs to be given to prosecutors and investigators on minimum evidential requirements to commence money-laundering cases. The legal structure needs amending to allow sufficient time for police investigations, with access to bank information, under judicial control, at sufficiently early stages in their enquiries.

18. The high level co-ordination committee for the preparation of the preventive law was a welcome development. The examiners advise that a similar body should now be created. It should develop performance indicators for the system as a whole, ensure that statistics are kept centrally and monitor the overall performance of the anti-money laundering regime.

19. Thus, once the essential building blocks are in place, Georgia can begin the long process of building an anti-money laundering system which can deliver some results.

[8] The FMS became a member of the Egmont Group on 23 June 2004.