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**EUROPEAN COMMITTEE ON CRIME PROBLEMS**
**(CDPC)**

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

# *THIRD ROUND MUTUAL EVALUATION REPORT ON MOLDOVA*[1]

# *ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM*

## SUMMARY

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

[1] Adopted by MONEYVAL at its 24th Plenary meeting (Strasbourg, 10 - 14 September 2007).

# SUMMARY

## 1. Background information

1. This report provides a summary of the AML/CFT measures in place in the Republic of Moldova as at the date of the third on-site visit from 24 to 29 January 2005) or immediately thereafter. The report describes and analyses those measures and provides recommendations on how certain aspects of the system could be strengthened and sets out Moldova's levels of compliance with the 40 + 9 FATF Recommendations. The report only covers those parts of Moldova under government control. It also refers to major developments, which had occurred by the time of the updating visit (6-8 December 2006), though these have not been considered for the purposes of the rating.

2. The third round on-site visit took place shortly after the adoption of the second mutual evaluation report (July 2004), leaving Moldova little time to take account of the second round recommendation. The two previous evaluation rounds highlighted a large number of shortcomings and resulted in the application of compliance enhancing procedures in respect of Moldova.

3. The Moldovan authorities strived to address some of these shortcomings through the modification of the existing laws, the adoption of new ones and of implementing legislation and recommendations. The AML law, in force since November 2001, was amended almost every year since, to address a number of changes, particularly in relation to the suspicious transaction reporting regime and the competences of the authorities responsible for AML/CFT matters. Efforts to implement the CFT dimension remained modest but under development. The limited data and information available indicate that the overall requirements in place to prevent and combat money laundering and terrorist financing are generally inadequate to meet relevant international standards and that additional efforts are required to address the concerns regarding the effectiveness of the AML/CFT system in place.

4. The main sources of illegal income are considered to be generated through drug trafficking, smuggling (tobacco, petroleum products, alcohol), tax evasion, corruption and trafficking in human beings. The gross quantities and sums of money represented by these offences remained surprisingly stable during the period 2001-2005, and it is not possible to speak of trends.

5. There is limited information available and no consensus on the most commonly used money laundering methods and techniques as well as on which sectors are vulnerable to laundering.

6. Moldova is perceived by the authorities as a low risk for terrorist financing and, as regards the financing of international terrorism, no assets of terrorist groups or terrorist have been found in Moldova so far.

## 2. Legal system and related institutional measures

7. The money laundering offence was introduced in September 2002 and was subsequently repealed with the entry into force of a new Criminal Code on 12 June 2003. The provision which is now in force - article 243 of the Criminal Code – adequately reflects the moral and material elements required by international standards. All designated predicate offences are covered in the Criminal Code, except for the offence of insider dealing (penalised since 24/11/2006). Penalties, which apply to both natural and legal persons, are in line with international practices, however the scope of corporate criminal liability is limited to commercial legal entities. The current legal basis could serve as an adequate tool to combat money laundering if further refined and clarified (for instance as regards the level of proof of the predicate offence, self laundering, foreign predicate offences, etc). The limited data on the number of cases investigated and cases brought to court (on the basis of the old or new ML offence) and the absence of convictions achieved indicate a lack of effective implementation and that serious efforts need to be made to increase the effectiveness of the system, particularly in the judiciary phase.

8. Article 279 of the Criminal Code on "financing of and materials support for terrorist acts" covers both domestic and international terrorism. The TF offence however does not currently cover the financing of terrorists and terrorist organisations, unrelated to the actual perpetration, attempt or preparation of terrorist activities. The absence of case law prohibits any substantiated assessment of the effectiveness and implementation of the provision. In terms of dissuasiveness however, the penalties are adequately severe. Legal persons cannot be held liable for terrorist financing.

9. Provisional measures and confiscation are provided for in the newly adopted Criminal Procedure Code, which entered into force in June 2003. As the statistics indicate the authorities still make insufficient use of the new provisions enabling to seize, freeze and confiscate. Also, the power to suspend transactions where there is a risk of laundering (both under the AML Law and under the Act on the CCCEC) was hardly used. A number of deficiencies still need to be addressed such as providing unequivocally for the confiscation of the body of the offence, both in (stand alone) money laundering and in terrorist financing cases; further addressing the full protection of the interests of the bona fide third party in confiscation matters; raising the awareness of the law enforcement and judiciary authorities to make full use of these provisions and taking measures to solve practical problems arising from the application of provisional measures.

10. At the time of the on-site visit, very limited action had been taken to ensure compliance with the UN Security Council resolutions and, despite several measures taken in the course of 2006, the legal structure for the implementation of the UN Resolutions remained incomplete. Almost none of the requirements of SR. III are fulfilled.

11. Articles 7 and 9 of the AML Law provide that the Centre for Combating Economic Crimes and Corruption (CCCEC) has the overall responsibility for the enforcement of the law, for the co-ordination of activities conducted by the AML/CFT authorities, as well as for international co-operation in this field. In 2003, the Office for Prevention and Control of Money Laundering (OPCML), a specialised section of the CCCEC, took over the function of Financial Intelligence Unit, which was exercised since November 2001 by a special section of the Public Prosecutor's Office. The OPCML was officially established on 15 September 2003 and has a staff of 10 permanent officials. At the time of the on-site visit, the OPCML did not have a computer system for electronically analysing and recording statements; it relied heavily on the logistic support of other CCCEC services. Statistics were difficult to produce in real time. No periodical/ annual reports were elaborated and published with statistics, typologies and trends. Supervisory powers of the CCCEC/ OPCML under the AML Law are not clearly defined. Though meanwhile the OPCML has been delegated, through orders of the Director of the CCCEC, additional powers and responsibilities, the evaluation team considers that the FIU's structure, powers, organisation, human and technical resources raise serious concerns and need reviewing.

12. Several authorities have responsibilities in the field of investigation and prosecution of money laundering and the financing of terrorism offences, namely the CCCEC, the Ministry of Internal Affairs, the Information and Security Service (SIS), the Prosecutor's Office. The CCCEC investigates laundering cases uncovered as part of its own inquiries into predicate offences and may place an important role in ML offences launched by the Police. The Ministry of Internal Affairs and the SIS mainly retain responsibility for terrorist financing cases. The Prosecutor's Office directs and supervises criminal investigations carried out by the law enforcement agencies and has exclusive responsibility for investigating money laundering cases committed by specific categories of persons (president, members of Parliament, members of Government, judges, prosecutors, generals, criminal prosecution officers). Adequate powers are available to the law enforcement to conduct searches, hear witnesses, seize documents and perform all the typical investigative activities aimed at collecting evidence and tracing criminal assets. Financial information held by the financial institutions is also accessible through the intervention of the judiciary authorities and no particular difficulties were voiced in the use of the above-mentioned powers. However, there was little information and data available to assess the efficiency of the ML/FT investigation and prosecution process.

**3. Preventive measures – Financial institutions**

13. The preventive side of the AML/CFT system is based on the AML Law, which defines the "organisations which perform financial transactions" that are subject to AML/CFT obligations and the Recommendations of the National Bank of Moldova (NBM) on developing programs on prevention and combat of money laundering and the financing of terrorism, applicable to the banking sector and other entities licenced by the NBM. It is to be pointed out that the examiners have a reservation about the legal status of the latter. The Moldovan authorities

indicated that this text is of a legal mandatory nature, it was published in the Official Journal and is said to be sanctionable and sanctioned in practice. However, the evaluators are not convinced that the NBM Recommendations qualify as "other enforceable means" as provided for by the Methodology, in the absence of a clear legal basis for sanctions to be issued under them.

14. The AML law lists the following financial institutions: banks, subsidiaries of foreign banks, peoples savings and loans associations, bureaux de change, the stock exchange of Moldova, professional participants on the securities market (independent recorders, brokerage companies, investment funds, underwriting companies, fiduciary administrators, depositories of investment funds, audit companies, dealers, self regulatory organisations), insurance companies.

15. Overall, the preventive system regarding customer due diligence is insufficient and not in line with international standards. Major changes are required, either by amending the AML law and sector-specific regulations or by adopting new legislation and by-laws to ensure that the following mechanisms are adequately provided for: identification of beneficial owner, know your customer policies, on-going due diligence in respect of the business relationship, enhanced due diligence mechanisms for specific high-risk customers (including PEPs), modalities for the verification of identification, etc.

16. The AML law addresses only a small part of the FATF requirements and most steps are required to fully comply with the basic requirements of Recommendations 5 to 8. Anonymous accounts and accounts in fictitious names are explicitly prohibited. The legal requirements in the AML Law cover explicitly only simple identification at account opening and the requirement for a CDD process, including verification, is not clearly provided for. There are no requirements in the AML law or regulation to verify the customer's identify using reliable, independent source documents, data or information.

17. Regarding the identification of the beneficial owner, neither the AML law nor the NBM regulations or any other normative acts contain a definition of "beneficial owner" within the meaning of the FATF Recommendations. 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 for by financial institutions, nor to understand the ownership and control structure of the customer.

18. Similarly, there is no clear provision found, of a general application, which requires financial institutions, with the exception of banks, to inquire of all clients the purpose and intended nature of the business relationship. The notion of on-going due diligence is insufficiently embedded in law or regulation. Also, there is no specific requirement of general application for financial institutions across the whole financial sector to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

19. There are no general legal or regulatory provisions applicable to the entire financial and non-financial sector covering the requirements of Recommendation 6 on politically exposed persons.

20. The AML Law is silent on the issue of correspondent banking relationships and the references to this issue in the NBM's regulations and recommendations do not address the requirements of Recommendation 7.

21. Moldova has not implemented Recommendation 8 through enforceable means. Despite the existence of a general requirement for banks to have internal measures needed to address the risks related to information technologies, there are no specific policies and procedures in place to address specific risks associated with non-face to face business relationships or transactions.

22. The provisions of the AML law on bank secrecy are generally satisfactory and no practical problems to obtain information from financial institutions were reported in practice, so long as the information and documents were in fact available.

23. Moldova's record-keeping requirements are generally not satisfactory. The provisions of the AML law do not cover the entire transactions carried out by financial institutions but exclusively those regarding suspicious and limited transactions. Also, there is no clear specific legal requirement on the financial institutions to ensure that information on customers and on all customer and transaction records are available on a timely basis to competent authorities. Legislative changes are required to address issues relevant to compliance with most requirements of SR.VII.

24. The current requirements to pay special attention to all complex and unusual large transactions, or unusual patters of transactions that have no apparent or visible economic or lawful purpose do not adequately meet the FATF standards. Also, there are no enforceable obligations to examine transactions with persons from countries that do not or insufficiently apply FATF recommendations, with no apparent economic or visible lawful purpose, and to make written findings available to assist competent authorities nor any mechanism to apply counter-measures apart from the automatic suspicious transaction reporting.

25. Moldova has put in place a reporting system. The AML law requires the institutions concerned to report transactions likely to be linked to money laundering and, since December 2004, suspicious transactions related to terrorism, although the latter's formulation is rather restrictive. A fully comprehensive provision should be introduced by law or regulation requiring financial institutions to report to the FIU whenever they suspect or have reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism, in line with SRIV. The attempted transactions are not reported.

26. Transaction reporting calls for specific forms for each sector or profession concerned and the CCCEC is responsible for elaborating and distributing them, thus officially indicating that the institutions concerned are required in practice

to report transactions. At the time of the first visit (January 2005), such forms existed for banks, bureaux de change, insurance companies, intermediaries in the securities market and notaries.

27. In general the overall reporting system performance is fairly ineffective: the thresholds for reporting transactions had to be revised as it was leading to an excessive number of reports, also few suspicious transactions reports were made outside the banking sector, and the overall figures remained very low. The FIU does not appear to have a policy on feedback. The CCCEC and the supervisory authorities have not yet and should be authorised to provide guidance to the reporting institutions to assist in improving the quality of STRs submitted. The issue of sanctions in the AML Law in case of non-compliance with the prohibition of tipping off also needs clarifying.

28. The import and export of currency and cheques above a threshold of the equivalent of 10.000 € is subject to mandatory declaration to the Customs. The obligation does not extend to other bearer negotiable instruments. Violation of the rules are dealt with by the Customs, who interact with the CCCEC on suspicious transportations. They however do not really focus on the detection of criminal assets crossing the border.

29. As regards internal controls, the situation in banks and bureaux de change is fairly satisfactory. In the other financial sectors, the implementation of the requirements is not evidenced by available information. Moldovan financial institutions do not have branches abroad.

30. The establishment of shell banks is not permitted by the Moldovan legislation. However, there are no requirements, in law, regulation or other enforceable means which oblige financial institutions to discontinue existing correspondent banking relationships with shell banks, if any. Also, there is no obligation on financial institutions to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

31. Moldova's supervisory and oversight system is fairly complex and raised serious concerns regarding the allocation of powers and responsibilities among competent authorities. The AML Law refers to "authorities controlling the legitimacy of operations conducted by the financial institutions". In practice, the FIU carries out onsite inspections and relies also on checks carried out by the sectoral supervisory authorities. The latter are not listed or named specifically in the AML Law. The information available did not permit to conclude that the securities and the insurance sector's supervisory bodies are sufficiently vigilant in monitoring all the relevant AML obligations. Moldova should thus address the various shortcoming in the field of supervision and monitoring of the whole financial sector, in particular the explicit designation of the supervisory bodies, the need for adequate powers to monitor and ensure compliance, to ensure full coverage of AML/CFT aspects in inspections in the whole financial sector, to put in place supervisor programmes for AML/CFT purposes with proper inspection procedures. Also better statistical data should be kept by all supervisory bodies, detailing the nature of AML/CFT violations detected and penalties imposed.

**4. Preventive measures – Designated Non-Financial Businesses and Professions**

32. A range of Designated Non Financial Businesses and Professions, are listed in the AML law: trusts (though it seems that there are none in Moldova and it was explained that these are fiduciary companies performing the function of professional participants on the securities market), agencies providing legal assistance – in practice lawyers, agencies providing notarial assistance, agencies providing accounting assistance, agencies providing financial and banking assistance, pawnbrokers, casinos, clubs with gambling equipment and other institutions which organise and set up lotteries and games of chance, and any other natural or legal person which concludes transactions outside of the financial – banking sector.

33. The main deficiencies that apply in the implementation of the AML/CFT preventive measures applicable to financial institutions apply also to the DNFBPs. Moldova has not yet and should implement Recommendations 5, 6 and 8 fully. Also, the requirements under the Moldovan legislation do not comply fully with the requirements set out in Recommendations 11 and 21 regarding the monitoring of transactions and the vigilance regarding business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations nor to business relationships with a PEP.

34. At the time of the visit, the only specific form for DNFPBs was for notaries and forms were being elaborated for casinos and pawnbrokers. Additional measures are required to ensure that all DNFPBs comply with their reporting obligations and more outreach and guidance should be developed for all DNFBPs. The requirements regarding internal controls, compliance and audit (R. 16) were not implemented. In practice, DNFPBs did not appear to be adequately supervised and monitored for AML/CFT purposes.

35. Although DNFBPs are covered by the AML law, overall there are major concerns regarding the level of implementation of effective AML/CFT measures by the non-financial businesses and professions and their level of awareness and commitment. Moldova should urgently address this issue. Efforts are needed to be made to raise the AML/CFT awareness within the non-financial sector, especially through sectoral and practical guidelines.

**5. Legal persons and Arrangements & Non-Profit Organisations**

36. There are several types of legal persons in Moldova: commercial companies, co-operatives, State and municipal enterprises and non-commercial organisations.

37. Registration of all legal entities has been greatly modernised with the creation, in 2001, of the State Registration Chamber in the Department of Information Technology, and the introduction of computerised central registers of natural

and legal persons to which relevant administrative departments and agencies (including the supervisory and monitoring bodies and the CCCEC) have timely access.

38. The main weaknesses observed derive from the fact that the State Registration Chamber and the Licensing Chamber perform to a certain extent a verification of investors' histories on the basis of the information available to them (Interpol, the Moldovan police), but they lack the means to check the origin of funds, especially in cases of increases in capital, where the Registration Chamber is concerned. Moreover, account auditing obligations are limited (they apply only to a few financial firms such as banks).

39. There are three legal forms in which non-commercial organisations can operate in Moldova: associations, foundations and institutions. The Ministry of Justice is currently in charge of registering the public and philanthropic associations and exercises the control over the compliance of the association's activities with the purpose and the provision in its statutes. The Service of Cults under the Government registers religious associations. The financial and fiscal authorities exercise the control over the course of income, expenditure, payment of taxes and other financial activities and the Prosecutor's Offices supervise the compliance of public associations' activities with the Constitution and existing legislation in force. The CCCEC has the authority, under the Act on the CCCEC, to perform specialised audits for public associations and foundations aimed at detecting misuse of collected funds under their control.

40. Moldova has not carried out a comprehensive formal review of the laws and regulations that relate to NPOs that could be abused for the financing of terrorism, nor any analysis of the TF threats posed by this sector. No information was provided with regard to effective supervision or monitoring of the NPOs. As regards the specific investigative and information gathering approaches, as well as special procedures to respond to international requests related to NPOs, no measures are in place.

41. Moldova should implement adequate measures in line with the international requirements regarding legal persons, arrangements and non-profit organisations.

**6. National and International Cooperation**

42. There are a number of inter-institutional agreements and working parties in place in Moldova. However, the differences of opinion and lack of precision frequently observed during the visit suggested that there is still room for improvement as regards co-operation and co-ordination mechanisms. Dialogue with the non-banking private sector should also be developed rapidly.

43. Moldova ratified the Vienna Convention on 15 December 1995 and the Palermo Convention after the on-site visit. The International Convention for the Suppression of the Financing of Terrorism was ratified in 2002, with two declarations. Certain aspects of the ML and FT offences, as well as the scope and application of the provisions regarding provisional measures and

confiscation need to be addressed in order to ensure an effective implementation of the international Conventions. The implementation of UN resolutions 1267 and 1373 is deficient.

44. As regards mutual legal assistance, there are no indications of the existence of legal obstacles jeopardising the system, nor of particular problems with the execution of requests. The legal grounds for refusal are founded and no specific problems or undue obstacles have been reported. In theory, there are still the domestic weaknesses already observed such as the controversy on the use of special investigation methods in mutual assistance procedures and the absence of full corporate criminal liability.

45. Moldova has ratified the Council of Europe Convention on Extradition and its two protocols. Extradition is based in accordance with bilateral and multilateral treaties to which Moldova is a Party or on the basis of reciprocity where such an agreement does not exist. There are no reports of unreasonable delays in the procedure. The extradition system does not seem to pose problems though the lack of detailed statistical information makes it difficult to ascertain fully how the system works, whether or not in the AML/CFT context.

46. As for other forms of international cooperation, gaps in the framework enabling financial supervisory bodies to exchange information and cooperate with foreign counterparts need to be addressed. As part of the reinforcement of its organisational autonomy, the OPCML should also be able to exchange information directly with its foreign counterparts and if possible, have the power to enter into agreements directly for this purpose.

**7. Other issues**

47. The report raises a number of serious concerns regarding the inadequacy of the legal AML/CFT requirements to combat money laundering and terrorist financing with the FATF standards and the effectiveness of the AML/CFT system in place. This calls for a concerned and clearly co-ordinated national strategy on AML/CFT matters, involving all the different supervisory and monitoring authorities and agencies, and as far as possible, the private sector.

48. Stepping up the effort against corruption should also remain a priority, in particular on the part of the various authorities and supervisory bodies involved in efforts to tackle money laundering and the financing of terrorism.