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Select Committee of Experts on the evaluation of anti-money laundering measures (MONEYVAL)

REPORT ON ARMENIA ON THE STANDARDS FOR ANTI-MONEY LAUNDERING AND COUNTERING TERRORIST FINANCING

Memorandum prepared by
the Secretariat
Directorate General I (Legal Affairs)

SUMMARY

A. Introduction

1. This Report on the Observance of Standards and Codes (ROSC) for the FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism (FATF 40+8 Recommendations) was prepared by the MONEYVAL Secretariat on the basis of the Detailed Assessment report[1] on Armenia, which was adopted at the plenary meeting of the MONEYVAL Committee in Strasbourg, 9 July 2004. The report summarizes the level of observance of the FATF 40+8 Recommendations and provides recommendations to enhance observance.

B. Information and Methodology used for the Assessment

2. This assessment is based on a review of the AML/CFT legislation and regulations of Armenia. Furthermore, the assessment team received from the Armenian authorities information on the capacity and implementation of criminal law enforcement systems, and on supervisory and regulatory systems to deter money laundering and financing of terrorism. The assessment team held discussions with officials and technical experts from a number of Armenian departments and agencies, as well as financial institution representatives from the private sector. The assessment is based on the information available at the time of the on-site visit in Yerevan, 22-26 September 2003.

C. Main Findings

3. The AML/CFT regime in Armenia lacks a large number of essential components. Most importantly, there is not yet in place a Financial Intelligence Unit (FIU), and there is no general anti-money laundering law. There are for the financial sector as a whole and for other relevant sectors no general reporting obligations in cases of suspicion of money laundering or terrorist financing. However, for banks and other credit institutions, the Central Bank has issued a Regulation covering certain aspects of a suspicious transaction reporting (STR) regime, but without including a specific reference to reporting on terrorist financing. Customer identification and record keeping requirements are being dealt with in sector-specific legislation, but the legislative basis remains fragmented. Armenia has an all-crimes money laundering offence, but has no specific provision on terrorist financing. The country thus is relying on a combination of the provisions on terrorism and the generic provisions on aiding and abetting. The regime on provisional measures and confiscation needs considerable improvement. At the time of the on-site visit, the Central Bank had received 5 suspicious transaction reports, but no money laundering or terrorist financing investigations had been launched and no indictments or convictions had been obtained. On the positive side, it should further be noted, that the Armenian authorities are taking the problem seriously, and that a general anti-money laundering act at the time of the on-site visit was in the process of being drafted, and that the Armenian authorities generally have accepted the need to establish an FIU. However, the general AML/CFT response given by Armenia is still too fragmented, and as a consequence, Armenia is materially non-compliant with regard to a large number of the FATF 40 Recommendations and the 8 Special Recommendations.

[1] The detailed assessment was prepared by the MONEYVAL Secretariat based on contributions from an evaluation team which consisted of Mrs. Izabela Fendekova, the Slovak Republic; Ms. Elena Cocchi, Italy; Mr. Alion Cenolli, Albania; Mr. Klaudijo Stroligo, Slovenia, and a member of the MONEYVAL Secretariat.

(i) Criminal Justice Measures and International Co-operation

Criminalisation of Money Laundering and Financing of Terrorism

4. Armenia has ratified and implemented the UN 1988 Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). The UN 2000 Convention against Transnational Organised Crime (the Palermo Convention) has also been ratified by Armenia. The UN 1999 Convention for the Suppression of the Financing of Terrorism and the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime (the Strasbourg Convention) have not been ratified. The Council of Europe 1990 and the UN 1999 Conventions should be ratified and implemented as soon as possible[2].

5. Money laundering is criminalised under Article 190 of the Criminal Code. It covers "financial or other deals with evidently criminally obtained pecuniary means or other equity, for the use of these material values for entrepreneurial or other economic activities with the aim of hiding or distorting the nature of the aforementioned values or rights referring to the latter, sources of origin, place of incorporation, allocation, motion or real affiliation" and carries a maximum penalty of 4 to 12 years, with or without the confiscation of property. The evaluators recommend considering extending the money laundering provision to also include the acquisition, use and possession of laundered funds. There is no specific provision on terrorist financing in Armenian legislation. As a consequence, for the criminalisation of terrorist financing, Armenia is relying on a combination of the provisions on terrorism (article 217 and article 389 of the Criminal Code on respectively domestic and international terrorism) and the generic provisions on aiding and abetting in article 38 of the Criminal Code. In the light of this, the evaluators recommend that Armenia, as a matter of priority, adopts a specific provision on terrorist financing.

Confiscation of Proceeds of Crime or Property used to Finance Terrorism

6. In Armenia there is no general principle of mandatory confiscation of proceeds from crime. The confiscation regime is applied only as a supplementary punishment. Furthermore, the confiscation can only be assigned for grave and particularly grave crimes committed with mercenary motives. This means, for example, that confiscation of property is not possible even in respect of Article 190, paragraph 1, of the Criminal Code, which deals with ordinary money laundering. Confiscation of property is neither mandatory in cases of financing of terrorism, but due to the prescribed sanctions for terrorism it is possible to apply confiscation as a supplementary punishment. However, the property, which is intended or allocated for use in, the financing of terrorism, terrorist acts or terrorist organisations, cannot be confiscated. The UN Security Council resolutions 1267, 1269 and 1373 relating to the prevention and suppression of the financing of terrorist acts have not been implemented by a specific normative act. There is generally a lack of relevant statistics with regard to freezing, seizure and confiscation orders.

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[2] Subsequent to the evaluation visit, the evaluation team was informed by the Armenian authorities, that the UN 1999 Convention was ratified on March 3rd 2004 and became effective on April 15th 2004. The Council of Europe 1990 Convention was ratified on October 8th 2003 and became effective on March 1st 2004.

7. The evaluators consider that the confiscation regime should be mandatory in particular types of offences, including money laundering, and possibly drug trafficking and other major proceeds-generating offences. The Armenian authorities should carefully review their legislation to satisfy themselves that it is generally capable of confiscating both proceeds (with the wide meaning that is attached to the term by the Strasbourg Convention), property and instrumentalities. There should also be put in place a detailed and comprehensive regulatory mechanism to implement freezing or seizure of property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism.

8. In order to reach a sufficient level of expertise in the field of asset tracing, freezing and seizure and investigation of money laundering and financing of terrorism cases, much more training is necessary for the relevant agencies, including training in modern financial investigative techniques.

The FIU and processes for receiving, analysing, and disseminating intelligence at the domestic and international levels

9. There is no FIU or any other mechanism in place, which receives reports of cases of suspicious transactions or activities from the whole financial sector and other relevant sectors. According to Central Bank Regulation no. 5, the Central Bank receives some STRs from banks and other credit institutions, but only on certain types of money laundering operations, and not on terrorist financing. The evaluation team recommends the creation of an FIU as a matter of urgency. The proposed FIU should be adequately structured, funded and staffed, and provided with sufficient technical and other resources to fully perform its functions. The FIU should have access to relevant registers, and it should be authorised to disseminate financial information and other intelligence both to the national law enforcement authorities and to foreign FIUs.

Law enforcement and prosecution authorities, powers and duties

10. The Police are under the responsibility of the State Body of the Internal Affairs. Within the Police there is a Department of Organised Crime with special Divisions e.g. on Economic Crime and Corruption. The Ministry of National Security is responsible for the investigation of criminal cases related to terrorism and serious economic crime. The investigations by both the Police and the Ministry of National Security are carried out under the supervision of the Office of the Prosecutor General. The latter is responsible for the investigation of cases concerning article 190 of the Criminal Code. All investigators can exercise investigative techniques such as monitoring of correspondence, mail, telegrams and other communications if it is relevant to the investigation. However, legislation does not provide for the use of controlled delivery and for undercover operations. The evaluation team recommends that controlled delivery and the monitoring of accounts should be regulated and included among the investigative techniques, which can be used by the law enforcement and prosecutorial authorities. The Armenian authorities stated that those measures can be conducted on the basis of bilateral agreements signed with other states. The law enforcement and prosecutorial authorities do not have direct access to the documents and information on bank accounts, belonging to the suspect or charged person. With some exceptions relating to the information

on bank transactions of legal persons, only courts may during the criminal investigation order the production of bank account records.

11. The Customs Service checks the flow of large cash transactions (above the equivalent of USD 10.000), the import and export of goods across the border and is in charge of investigations against smuggling and Customs violations.

12. Generally, the law enforcement authorities in Armenia have sound investigative powers, and, broadly, the evaluation team had a positive impression of the way the law enforcement authorities handle their responsibilities. Nonetheless, very few concrete results in relation to AML/CFT are produced. There have been no investigations, prosecutions or convictions in relation to article 190 of the Criminal Code. Furthermore, very little attention is paid to financial investigations, just as no training is provided on how and when to conduct financial investigation in relation to a criminal case. The evaluation team thus recommends that these issues should be addressed by all relevant law enforcement authorities as a matter of urgency.

International Co-operation

13. As for requests for mutual legal assistance, these can be satisfied if the same process could be exercised in a similar domestic case. Furthermore, Armenia carries out legal assistance only on the basis of reciprocity (if no specific agreement with the requesting country). As for coercive measures, dual criminality is always needed. The specific issue of co-operative investigations has not been addressed by Armenia. Cross-border controlled deliveries are, in principle, possible, but only on the basis of an agreement, and no such agreements have yet been concluded.

14. The issue of extradition is covered both by article 16 of the Criminal Code and articles 480-493 of the Criminal Procedure Code. According to article 480 of the Criminal Procedure Code, extradition for the purpose of legal proceedings is possible where the envisaged punishment is imprisonment for not less than one year. Where the purpose of the extradition is the execution of a conviction, extradition is possible, if the person was sentenced to a minimum of 6 months of imprisonment. Article 481 of the Criminal Procedure Code defines some of the grounds that might deny a request for extradition. One example is where the requested person is an Armenian citizen.

15. The evaluators recommend the Armenian authorities to consider, whether a more pro-active approach in respect of co-operative investigations could be relevant, including possibly concluding agreements with neighbouring countries on the subject of cross-border controlled deliveries. The evaluators furthermore recommend the Armenian authorities to analyse whether the non-extradition of own nationals is being followed up by a proper transfer of criminal proceedings from the foreign country to Armenia, and to ensure that this occurs.

(ii) Preventive measures for Financial Institutions

Prudentially-regulated sectors

General framework

16. The most serious general impediment to effective implementation of the FATF Recommendations and other international standards is the lack of a general preventive law and the lack of a central authority to ensure the proper implementation of the law. The evaluators recommend that the Armenian authorities urgently draft the law on prevention of money laundering and terrorist financing. This law must – apart from defining the general AML/CFT obligations – provide for the establishing of a competent state authority (the FIU) to receive suspicious transaction reports.

Customer Identification

17. The client identification requirements for banks in relation to account opening are based on the Law on Banks and Banking article 38, according to which relations with clients must be based on contracts. According to article 5 and 6 of Regulation no. 5 of the Central Bank, each bank is obliged to have in place internal rules and procedures, which determine the scope of information required from each client when providing banking services and products. Insurance products and services are provided based on insurance contracts. Basic requirements of such a contract are set out in article 16 of the Law on Insurance. Paragraph 2, letter c), of this article refers to the identification of the insured person. According to article 19 of the Law on the Securities Market Regulation a prohibition of circulation of unregistered securities is in force. Furthermore, dealing with securities through intermediaries is executed only on a contractual basis and subsequent changes of ownership are subject to the notification and registration with the Securities Commission.

18. With regard to the existence of anonymous accounts, the Armenian authorities confirmed that according to the Civil Code, accounts can only be opened on the basis of written contracts setting out all parties to the contract. However, in the view of the evaluators this is not necessarily the same as a prohibition of anonymous accounts.

19. The evaluators are of the opinion that the current know-your-customer (KYC) rules for banks are insufficient since the Law on Banks and Banking only provides a provision stating that client relations must be based on contracts. The evaluators therefore recommend Armenia to provide clear legal obligations for banks and credit organisations to identify and record the identity of their permanent clients. Furthermore, the same requirements should apply for occasional clients when performing transactions over a specified threshold. The KYC rules for the insurance sector seem appropriate. By contrast, the evaluators recommend as a matter of priority, that a clear customer identification regime should be put in place for the securities sector.

Ongoing monitoring of accounts and transactions

20. There are no rules which specifically require any part of the financial sector to pay special attention to complex, large unusual transactions or unusual patterns of transactions. Neither are there in place any rules, which require an intensified monitoring of high risk accounts. There is also a lack of specific rules or guidelines concerning how the financial sector should react to transactions from institutions located in jurisdictions that have poor "know-your-customer" standards or have been identified as being non-cooperative in the fight against money laundering. The evaluators recommend the Armenian authorities to provide in enforceable legislation that financial institutions must perform ongoing monitoring of accounts and transactions. The evaluators recommend the Central Bank to consider providing all financial institutions in Armenia with information about which countries and jurisdictions should be considered non-cooperative in an AML/CFT context, and updating it periodically.

Record-keeping

21. Article 6 and article 9 of the Central Bank Regulation no. 5 contain certain provisions obliging banks and credit organisations to keep records. In article 6 it is stated, that banks and credit organisations must have internal regulations (rules, procedures, orders, regulations) on how to record and keep information on customers, and how to collect, record and maintain information on suspicious transactions. Article 9 sets out, that this information shall be kept at least for a five year period. Thus, while there are some requirements in place in the banking sector, these are not sufficiently detailed and concise. There are no explicit record-keeping requirements for the insurance and securities companies. The evaluation team recommends Armenia as soon as possible to introduce formal record-keeping requirements for the entire financial sector and other relevant sectors.

Suspicious transactions reporting

22. According to Central Bank Regulation no. 5, banks and other credit institutions must report certain suspicious transactions to the Central Bank. However, these obligations are too limited and do not deal with terrorist financing. For other sectors, no reporting regime is in place. The lack of appropriate reporting obligations is crucial to the effectiveness of the entire AML/CFT framework. The evaluators recommend that Armenia, as a matter of the highest priority, should set up a system of mandatory reporting of suspicious transactions and activities. The reporting obligation should relate both to suspicions concerning money laundering and to suspicions concerning financing of terrorism.

Internal controls, compliance and audit

23. According to Central Bank Regulation 5, all banks must have internal regulations in the following areas: 1) General procedures to perform financial operations, 2) the scope of information required by a bank from a client, 3) the compliance control procedure and 4) the responsibility of managers, staff members and compliance officer/unit. However, there are no obligations to train the employees on an on-going basis. With regard to screening procedures when hiring employees, the evaluation team was advised that the Central Bank applies strict procedures even though there is no legal basis for this. All securities companies must have

internal control units and the same applies to joint stock insurance companies. The evaluators recognise that some standards are in place but do at the same time recommend including in a new comprehensive preventive law also general components relating to the internal control of AML/CFT procedures and training of staff. Such provisions should apply in a uniform manner to all subjects of a new law.

Integrity standards

24. The licensing procedure for banks consists of 3 stages: preliminary approval, registration and issuing of the license. Requirements are stipulated in articles 25-29 of the Law on Banks and Banking. The applicants must e.g. provide information relating to the founders, to the amount of capital invested in a newly established bank, to its future business plan, fit and properness of future managers etc. For insurance companies, according to 2 regulations from the Ministry of Finance and Economy, information about e.g. the financial condition of the investors (potential owners) must be provided to the Ministry and a business plan likewise. In the securities sector, licensing criteria are determined by the Law on Securities Market Regulation. In case the applicant is a legal persons the existence of the minimum capital must be demonstrated, but the Securities Commission does not ask about the source of the capital. Where the applicant is a natural person a clean criminal record is sought. Proposed managers have to comply with professional and personal integrity requirements. In the view of the evaluators, generally the requirements to obtain a license in the financial sector are comparable with international standards, but a more effective co-operation between supervisory authorities in the area of monitoring the integrity of large investors and managers in financial entities is crucial and should be put into place as soon as possible.

Enforcement powers and sanctions

25. Articles 60-66 of the Law on Banks and Banking give the authority to the Central Bank to conduct different enforcement actions. The scope of actions ranges from instructions, through fines, and enables also the Central Bank to deprive a bank manager of his qualification certificate and to withdraw the license of the bank. Also the Ministry of Finance and Economy and the Securities Commission, as supervisor for insurance and securities companies, can enforce sanctions against the supervised entities if they do not comply with the legislation. Both supervisory authorities have the right to revoke the license of the supervised entity if instructions are not followed.

Co-operation between supervisors and other competent authorities

26. The co-operation between different financial supervisory authorities is based on the Law on Public Institutions which contains a general provision obliging all public institutions to co-operate. However, in the view of the evaluators, the co-operation in practice is quite limited, and could be improved.

Non-prudentially regulated sectors

Foreign exchange offices and money remitters

27. Foreign exchange offices and money remitters are not applying any client identification procedures, not even for large exchange operations. While it is obvious, that exchange offices and money remitters rarely create real permanent business relations with their clients, there should at least be in place an obligation to identify clients exchanging large portions of money. Foreign exchange offices do not have in place internal control units. Nonetheless, they are supervised by a department of the Central Bank, but not on a regular basis. The Central Bank issues licenses for foreign exchange offices. To get a license the professional integrity of the applicant is tested. However, it seems that a clean criminal record is not one of the criteria to get a license.

Other businesses

28. The gaming industry is quite well-developed in Armenia. Both casinos and lotto companies need a license from the Ministry of Finance and Economy in order to become operational. The evaluators recommend that the entire preventive regime, including customer identification, record keeping, training, internal reporting and suspicious transaction reporting should apply to all institutions and persons subject to the EC Directives 91/308/EEC and 2001/97/EC.

D. Summary Assessment of the FATF Recommendations

29. Armenia still is a long way from a sufficient level of compliance with the FATF 40 + 8 Recommendations. One immediate priority should be the drafting and adoption of a general anti-money laundering act (covering also suspicions of terrorist financing), which should put in place legal obligations concerning identification of clients, record-keeping, reporting of suspicions, training etc. Obligated parties under this law should be all intermediaries covered by the two EU anti-money laundering directives. The second immediate priority should be the establishing, and making operational, of a Financial Intelligence Unit (FIU), which should be properly resourced and which should be able to exchange information, both with national law enforcement authorities and with foreign counterparts. Table 1 beneath summarizes recommended actions in areas relating to the FATF 40 + 8 Recommendations, and Table 2 contains other recommendations to further enhance the AML/CFT regime.

Table 1. Recommended Action Plan to Improve Compliance with the FATF Recommendations

Reference FATF Recommendation	Recommended Action
40 Recommendations for AML	
Scope of the criminal offence of money laundering (FATF 4-6)	Ratification of the UN 1999 Convention for the Suppression of the Financing of Terrorism and the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime[3].
Provisional measures and confiscation (FATF 7)	Adopt provisions making it possible to seize and confiscate both proceeds, property and instrumentalities. Consider adopting provisions making confiscation mandatory in particular types of offences, including money laundering, and possibly drug trafficking and other major proceeds-generating offences.
Customer identification and record-keeping rules (FATF 10-13)	Adopt provisions for all relevant intermediaries on identification and record-keeping on occasional customers when performing transactions over a specified threshold. Adopt clear customer identification provisions for the securities sector.
Increased diligence of financial institutions (FATF 14-19)	Adopt provisions for all relevant intermediaries on the performance of on-going monitoring of accounts and transactions. Adopt for all relevant intermediaries a mandatory reporting regime on suspicious transactions and activities.
Measures to cope with countries with insufficient AML measures (FATF 20-21)	Consider on an up-dated basis providing all relevant intermediaries with information about which countries and jurisdictions should be considered non-cooperative in an AML/CFT context.
Administrative Co-operation – Exchange of information relating to suspicious transactions (FATF 32)	Adopt an STR regime making it possible internationally to exchange information relating to suspicious transactions, persons and corporations.
8 Special recommendations on terrorist financing	
II. Criminalising the financing of terrorism and associated ML	Adopt a separate offence on terrorist financing.
III. Freezing and confiscating terrorist assets	Adopt a comprehensive normative act providing a mechanism to implement the freezing without delay of assets suspected to be related to the financing of terrorism.
IV. Reporting suspicious transactions related to terrorism	Adopt for all relevant intermediaries a mandatory reporting regime on suspicious transactions and activities related to the financing of terrorism.
VI. Alternative remittance	Adopt an obligation to identify clients exchanging or transferring large portions of money or other assets (as a minimum, transactions exceeding the equivalent of Euro 15 000).

[3] See footnote no. 2.

Table 2. Other Recommended Actions

Reference	Recommended Action
Law Enforcement and Prosecution	Setting up and making operational a Financial Intelligence Unit (FIU). The FIU should be properly resourced and should be able to exchange relevant information with national law enforcement authorities as well as foreign counterparts.
	A comprehensive training strategy for the agencies involved in AML/CFT issues should be embarked upon.
	Further use of investigative means, including special investigative techniques, such as controlled deliveries.
	All relevant law enforcement authorities and the Office of the Prosecutor General should address the issue of the importance of financial investigations.

E. Authorities response

The ROSC is the same as the summary of the MONEYVAL report, which we accept and have no comments on it. Further progress is being made. The Parliament adopted in January 2005 the AML/CFT Law, which came into effect on December 14th 2004. The article 190 of the Criminal Code has also been amended, which now stipulates a separate offence on terrorist financing. We have established an FIU in the Central Bank and will make it operational in the course of 2005.