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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***  
***“THE FORMER YUGOSLAV REPUBLIC OF***  
***MACEDONIA”***

**SUMMARY**

1. A Moneyval team of examiners, accompanied by a colleague from a Financial Action Task Force (FATF) country, visited “the Former Yugoslav Republic of Macedonia” between 30 September and 3 October 2002.
2. Since the first round evaluation, although “the former Yugoslav Republic of Macedonia’s economy has been depressed by political instability and the security crisis of 2001, some welcome changes have nonetheless occurred with regard to the legal and institutional framework for the fight against money laundering. However, at the time of the on-site visit, many serious deficiencies still remained.
3. The most significant changes were the adoption on 29 August 2001 of the Law on the Prevention of Money Laundering (‘the AML Act’), which became operational on 1 March 2002, and the creation of an FAU. The Money Laundering Prevention Directorate (DMLP) was created as the National Financial Analytical Unit, and is an administrative body within the Ministry of Finance. It was, however, at the time of the on-site visit, (and remains) seriously under-resourced. A strategy for the FAU encompassing its full role and remit had still to be developed at the time of the on-site visit.
4. Some basic supervisory regimes have been put in place, but these need developing further.
5. At the time of the on-site visit, though the money laundering offence in Article 273 had been in force since 1996, there had been no money laundering convictions and very few money laundering investigations. Confiscation, as envisaged in the Strasbourg Convention, was very limited and bank accounts appeared hardly, if ever, to have been frozen in enquiries.
6. The country’s geographical position, as a transit corridor on the Balkan route, together with its transition to a market economy, has resulted in highly profitable criminal activity, particularly trafficking in arms, aliens, and drugs, and smuggling. With the increasing entry of foreign capital, and the development of the privatisation process, economic and financial crime is becoming ever more widespread (particularly fraud and tax evasion). Corruption is a major threat to the economic stability of the state. At the time of the on-site visit, a new government was in the process of taking office and had made the fight against corruption a high priority.
7. While “the Former Yugoslav Republic of Macedonia” remains a heavily cash-based economy, there has been significant progress in breaking down the distrust within the public generally of the financial system, reported in the first evaluation report. Domestic deposits from householders accounted for almost 60% of the funds deposited in banks at the end of 2001.
8. The Macedonian authorities are clearly aware of the primary vulnerability of the banks to money laundering. The vulnerability of the small insurance sector to money laundering was also understood by the supervisors. Licences had been granted to 7 casinos and their vulnerability to money laundering was also acknowledged.
9. Money laundering criminalisation (A. 273 Criminal Code) remained unchanged from the first evaluation, though at the time of the on-site visit amendments to the Criminal Code were planned. Specifically it was intended to bring A.273 fully into line with the Strasbourg Convention. Some of the concerns about A.273 in the first report appeared to be addressed in proposed amendments but some were not. The examiners consider that a newly-formulated

provision, clearly based on the language of the Strasbourg Convention, should be introduced, which clarifies all previously identified inconsistencies. Abandonment of the perceived need for a prior conviction for the predicate offence (in the case of both foreign and domestic predicates) in money laundering prosecutions in “the former Yugoslav Republic of Macedonia” is urged, in favour of a more flexible approach, which relies on sufficient circumstantial or other evidence. Likewise, simple possession of laundered proceeds should be criminalised.

10. The same legal structure for provisional measures, confiscation and “taking away” property gains remained in place as at the time of the first report. In practice many of the provisions have individual problems associated with them. The examiners were left with the impression that confiscation/taking away of criminal proceeds was rarely addressed by the Macedonian authorities in criminal cases, partly because the provisional measures regime does not allow for satisfactory freezing or seizing at a sufficiently early stage before proceeds are dissipated. The current provisional measure regime is quite inadequate. The examiners endorse the recommendations of the first examination team, which still need to be actioned in a review of the regime. Specifically, while identified individual Articles in the various Acts could be improved, the examiners consider the regime would benefit from complete simplification and revisiting, and that confiscation of criminal proceeds, as widely defined in the Strasbourg Convention, should be clearly introduced as a specific criminal measure. The legal structure needs to be an enabling one, which will encourage the use of financial investigation into all the proceeds derived from major crimes (both direct and indirect). Without this “the former Yugoslav Republic of Macedonia” is unlikely to make serious progress in the fight against organised crime and corruption. Prosecutors should be able to propose freezing and other temporary measures. Instrumentalities, and property being the proceeds of crime (or property of equivalent value) need to be capable of being seized and frozen at sufficiently early stages in enquiries and they should be retained or frozen until a decision on confiscation is made. The Macedonian authorities should also consider the reversal of the burden of proof post-conviction, to assist the court in identifying criminal proceeds in appropriate cases.
11. The Macedonian authorities had recognised at the time of the on-site visit that the AML Act needed amendment to bring it fully in line with international standards, and draft amendments were being prepared. Firstly, the AML Act is unclear as regards coverage and responsibilities of obliged persons and institutions. It is necessary to set out clearly which financial and non-financial institutions (and physical persons) are covered and it should be made clear that they all have the same basic responsibilities with regard to customer identification, reporting to DMLP suspicious and/or other transactions and introduction of internal programmes for money laundering prevention. The obliged persons should clearly cover all those set out in the 2<sup>nd</sup> EU Directive. Customer identification for casinos should be lowered to the equivalent of €1000 or more.
12. The general customer identification requirements were fragmented at the time of the first evaluation. It is a considerable improvement that they are now set out in the AML Act. These provisions, together with the Anti-Money Laundering Manuals of the National Bank, meet the basic standards of FATF Recommendations 10 and 11 in the banking sector. However, to meet the requirements of the EC Directives fully the identification requirement in relation to transactions and linked transactions should be extended to all transactions in the amounts of €15,000 or over and not just cash. The Macedonian authorities have indicated that it is their policy not to have numbered accounts. If the National Bank finds that such accounts do exist they should suppress them.

13. Record keeping requirements have been consolidated in the AML Act and appear now to be in general compliance with international standards. None-the-less, it should be clarified that records kept should be sufficient to permit reconstruction of individual transactions in a manner that can be used in prosecutions to ensure that “the former Yugoslav Republic of Macedonia” is fully in line with FATF Recommendation 12.
14. The DMLP and the National Bank had reviewed the anti-money laundering programmes submitted to them by various financial institutions and confirmed that they formally comply with the law. In the months leading to the on-site visit concentration had been placed on the banks, and it was unclear how many of the internal programmes other than banks had been reviewed by the DMLP, given their extremely limited resources. It was also unclear whether brokerage houses had appointed compliance officers. The examiners, like the Macedonian authorities, at the time of the on-site visit, could not say whether FATF Recommendation 19 was fully complied with outside the banking sector.
15. The proactive approach of the National Bank to anti-money laundering supervision was not replicated elsewhere at the time of the on-site visit. Anti-money laundering supervision outside the banking sector is undeveloped. There had been no clear strategy agreed for the FAU’s role in supervision. Decisions urgently need to be made as to who does what in anti-money laundering supervision outside the banking sector. Clear legal authority should be given to current supervisors in each sector to inspect anti-money laundering compliance, as the National Bank is doing. Where no supervisors exist, the Macedonian authorities must decide the precise role of the DMLP and ensure a supervisor is assigned for anti-money laundering purposes, with clear legal authority to act. This is particularly the case for foreign exchange offices. The money transmitters also need to have a licensing and supervisory body assigned with clear anti-money laundering responsibilities.<sup>1</sup> The supervisory system also needs the capacity for quick monetary fines in respect of administrative infringements: Assigned anti-money laundering supervisors need the legal right to sanction directly. Locally based guidance also needs preparing on money laundering indicators for those entities that have not received them.
16. The Constitutional Court has rendered it impossible to enquire into past criminal records to determine “fitness and properness” of owners and managers of insurance companies. Legal means should be found to enquire into the previous records of owners (principal shareholders) and managers of insurance companies and any other financial entities (and market participants) caught by this ruling to ensure that “the former Yugoslav Republic of Macedonia” can comply with FATF Recommendation 20. Moreover, the origin of funds should be checked within licensing procedures (and where there are subsequent significant changes in ownership) in respect of casinos, exchange offices and the insurance sector.
17. At the time of the on-site visit the cash transaction reporting regime under the new AML Act had resulted in 9,300 reports. 2 were from the insurance sector and all the rest were from banks. There had been 105 suspicious transactions reported. The breakdown was as follows:  
  
Banks – 92  
Insurance – 2  
Attorney-at-law – 2  
Private citizens – 6  
Other FIUs – 4

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<sup>1</sup> On 19 November 2003, the Macedonian Parliament passed legislation under which money transactions will be licensed and supervised by the National Bank.

18. There were no reports from financial regulators, exchange houses, casinos, money transmitters or notaries at the time of the on-site visit. An awareness-raising campaign by DMLP and the relevant supervisors needs to be developed to ensure that these obliged persons and other sectors vulnerable to money laundering are trained to identify suspicious transactions and to make reports.
19. “The former Yugoslav Republic of Macedonia” is a party to the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ratified since the first evaluation), the Convention on Mutual Legal Assistance in Criminal Matters (1959) and its Additional Protocol. They have also signed several bilateral agreements regulating extradition and legal assistance. As a general rule, all promulgated international conventions are binding on the Macedonian authorities and directly applicable. Overall, the underlying provisions for international co-operation are soundly based. However, given uncertainties in domestic law, the examiners recommend that the Macedonian authorities review their provisions to ensure that effective international co-operation can be given where the requesting state is seeking the identification, freezing and seizure of proceeds or property of corresponding value, and where the enforcement of foreign confiscation judgements is sought. Measures to empower the sharing of confiscated assets should be adopted.
20. On the operational side, the priority is to increase substantially the resources for the DMLP and increase the police resources for dedicated money laundering investigators and financial investigation generally, so that the police are also generating money laundering enquiries independently of the STR system.
21. The police are still focused on investigations of the predicate offences and “following the money” needs to become a routine component of major proceeds-generating crime investigation beyond the tax predicate, particularly in cases of drugs and human trafficking and corruption. Despite the work of diligent officers, there had been no real progress on money laundering investigation since the first round. Moreover, the examiners perceived a lack of communication between prosecutors and the police on money laundering cases. A team approach to major money laundering cases and the creation of specialised prosecutors is encouraged. As in the first round, perceived constitutional difficulties in the use of special investigative means were said to provide major obstacles to police enquiries. If the constitution does need amending for the full use of special investigative techniques, then this process should be addressed speedily.
22. The examiners had serious concerns that the DMLP, as presently resourced, could be thought of as an FAU in name only. At the time of the on-site visit, there were 3 people (including a newly appointed director) working in it, of the 15 employees envisaged in its organisational structure. It is seriously overstretched and the provision of much more in the way of professional qualified personnel to it and an adequate IT infrastructure to replace the manual reporting system will be a signal of the Macedonian commitment to fight money laundering properly. Of the reports received, 27 cases had been analysed in depth. One case had been sent and accepted by the Public Prosecutor, which involved predicate crimes of tax evasion and forgery. Two other cases had been analysed and were expected to go to law enforcement. Even with their limited resources, the tiny number of cases sent to law enforcement by the DMLP raises concerns. The need for grounded suspicion based on firm evidence set out in the legislation should be re-visited to ensure that DMLP (which is not an investigative body) is not looking for too much evidence before sending cases to law enforcement. The Unit

needs to send more reports to the investigators, and should not focus exclusively on the tax issue.

23. There is a clear need for greater co-ordination of the work on anti-money laundering across departments and agencies, both at the strategic level and the working level. At the strategic level, an interdepartmental co-ordination body should be created, chaired at a suitably senior level:

- to develop a co-ordinated national strategy for the fight against money laundering;
- to assess the effectiveness of the system periodically and develop and monitor key performance indicators;
- to make recommendations to government where changes are required.

24. In this way, “the former Yugoslav Republic of Macedonia” can move to the development of a working anti-money laundering regime. There is a long way to go to achieve this.

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