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COMITÉ EUROPÉEN POUR LES PROBLÈMES CRIMINELS
(CDPC)

SELECT COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
(PC-R-EV)

FIRST MUTUAL EVALUATION REPORT
ON MOLDOVA

SUMMARY

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1. A team of expert evaluators from PC-R-EV, accompanied by colleagues from the Financial Action Task Force (FATF), visited Moldova from 20 to 23 June 2000.
2. Moldova, a country in the south-east of Europe that has borders with Romania and Ukraine, is currently undergoing a grave economic and political crisis, which has prompted the development of a parallel economy and many different types of trafficking. The establishment in the east of the country of a self-proclaimed republic - Transnistria - has also given rise to substantial problems over the past ten years or so. Crime, in particular organised and economic crime, is steadily rising and developing in an alarming manner. The Moldovan authorities estimate criminal organisations' income at over half the total income in the national economy. This income comes mainly from trafficking in drugs, arms and oil products, prostitution, theft of assets belonging either to the state or to private individuals, smuggling tobacco or alcohol, bank and financial fraud and tax evasion. The losses incurred through economic offences in 1999 was 142.3 million Moldovan lei¹. The Moldovan authorities believe that a large proportion of this income is laundered through the official financial system and through the infiltration of entire sectors of the economy by criminal organisations. Numerous financial frauds are perpetrated through often fraudulently established bogus companies, whose economic activities are fictitious but which are financially very active. These companies are used not only for tax evasion, but also to launder money.
3. Moldova is confronted with every aspect of the money laundering problem (placement, layering and integration). Cash transactions are still very common and some of the people interviewed said that large sums of money enter the country uncontrolled. Moreover, the fragility of the banking and financial system - caused by the difficult economic situation - and the very small number of inspections carried out by the supervisory bodies, give little encouragement to banking and financial institutions to verify in a satisfactory manner the origin of their clients' funds.
4. The measures taken by the Moldovan authorities seem to be very limited. Indeed, money laundering has not been made a criminal offence and there are very few preventive measures. Only the Law on Financial Institutions contains a provision prohibiting banks from laundering money or other "assets". However, the National Bank (BNM) has not introduced any type of sanction that might act as a deterrent in this field². Moreover, obligations to either identify clients or know them well and so prevent money laundering are seldom in place or complied with, whereas a BNM regulation requires banks to make appropriate enquiries about clients' identity when they open an account. It should be pointed out that such requirements are not imposed on other financial sectors such as bureaux de change and stockbrokers. Some government authorities, for example the Ministry of the Interior, the Ministry of Finance and the Ministry of Justice, are nevertheless aware of the country's openness to money laundering and seem determined to set up appropriate machinery to deal with the problem. In this context, it should be noted that Parliament has drafted a bill on the prevention and combating of money laundering and adopted it after a first reading. The Ministry of the Interior has also

¹ Moldovan lei is worth approximately USD 0.08 or FRF 0.60.

² During preliminary discussions prior to the plenary meeting, the BNM held that it had already applied, on several occasions, sanctions against banks for failure to implement Article 23 of the Law on Financial Institutions. Those sanctions were, in the main, written warnings, but also, on some occasions, prohibition to perform certain transactions, and, once, a fine of lei 3 million. The BNM clarified that pecuniary sanctions are difficult to impose, because of the fragile nature of the banking system.

drafted an amendment to the existing Criminal Code to make money laundering a criminal offence, in keeping with the same principles as those set out in the draft legislation. Article 266 of the new draft Criminal Code also makes money laundering a criminal offence; this text is at the second reading stage in Parliament. Lastly, the national programme for combating organised crime, corruption and nepotism provides for the stepping up of anti-money laundering measures, in particular by increasing control over banking and financial activities and setting up machinery for implementing the law on money laundering once it has been enacted.

5. Moldova has ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances, which took effect in respect of Moldova on 16 May 1995. However, although Moldova signed the Council of Europe 1990 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in May 1997, it has not yet ratified it. On the other hand, the 1957 Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters have been ratified and came into force in respect of Moldova on 31 December 1997 and 5 May 1998 respectively. Moldova is also a party to several regional and bilateral treaties (with Black Sea countries) on co-operation in combating organised crime and/or drug trafficking, as well as to regional and bilateral treaties (with CIS countries) on mutual assistance in criminal matters. Although the ratification of a number of international treaties is a step in the right direction, it is nonetheless evident that the absence of an appropriate legal framework for combating laundering, of a specific offence of laundering and of provisions relating to the seizure and confiscation of the proceeds of laundering, sets real limits on the implementation of international co-operation to combat money laundering in Moldova. In view of the obstacles raised by banking confidentiality during national investigations, it would be very surprising if Moldova could satisfactorily meet foreign requests for information held by banks, and which could be used in a foreign judicial procedure.
6. In the absence of a specific offence of laundering and of legal provisions relating to prevention, the only legal provision currently in force in this field (but which, according to the evaluators, is not enforced in practice) is Article 23 of the Law on Financial Institutions of 1 January 1996, which prohibits banks from “concealing, converting or transferring money or other known proceeds of criminal activities with a view to disguising their illegal origin or helping any other party involved in such activities to escape the legal consequences of his or her acts”. The public prosecutor’s office has said that it does its best to prosecute cases of money laundering under the existing laws against smuggling, tax evasion and corruption, for example. However, as the situation is so serious, the government has decided to prepare draft anti-money laundering legislation³. At this stage it mainly contains a list of definitions, but does not manage to make the terms used readily comprehensible. The experts’ general impression is that the obligations imposed by this text are not clear and that the distribution of tasks to the various central government bodies is difficult to understand. It is consequently not easy to see how this text will operate in practice, especially given that the setting up of a financial intelligence unit is no longer envisaged. The evaluators recommend that failure to report suspicious transactions be made an offence. If not, the obligation to report such offences may remain a dead letter.
7. As money laundering as such is not officially a criminal offence in Moldova, the confiscation and interim measures actually concern other offences, particularly economic offences. Article 155 of the Code of Criminal Procedure obliges the investigating authority to seize a prosecuted person’s assets if required for the purposes of a civil action, i.e. when there is

³ On 15 November 2001 Moldova passed a law on the Prevention and Repression of Money Laundering.

damage to be made good, or when subsequent confiscation is possible under the criminal law provisions applicable to the prosecuted offence. This provision applies to the accused person's assets of every kind, which may be seized only when criminal proceedings have been opened and the suspect has been formally indicted. There must also be no doubt that the property seized actually belongs to the accused, who must be a natural person, as the property of legal entities cannot be seized under Article 155 of the Code of Criminal Procedure. The evaluators consider that this system is not satisfactory and therefore recommend that Moldova adopt appropriate procedural instruments so that it is possible to order seizure at the very start of the investigation. Article 33 of the Criminal Code provides for confiscation of property belonging to a convicted person which derives from crime or was used, or intended for use, to commit the crime, as well as income from the criminal use of property or assets. Confiscation is possible only when specific provision is made for it among the penalties for the offence concerned. The assets thus confiscated become the property of the state by virtue of Article 70 of the Code of Criminal Procedure. Confiscation is supposed to be mandatory in respect of offences involving pecuniary damage. However, these provisions also have their limits. It would, in particular, be necessary to make confiscation an additional measure to the main penalty and ensure that it is aimed at confiscating assets and property recognised as having been laundered. The evaluators recommend that the Moldovan authorities ensure that appropriate steps are taken to make it possible to confiscate assets of equivalent value and to confiscate property held by third parties.

8. As far as prevention is concerned, other than Article 23 of the Law on Financial Institutions, there are no binding obligations on financial institutions, or even banks, aimed at devising a co-ordinated anti-money laundering policy. Article 23 of this law requires banks to report to the relevant authorities any information that comes to their attention concerning the illegal origins of money or assets. According to the evaluators, however, this is not enforced. Other regulations introduced by the *Banca Nationala a Moldovei* (BNM), mainly to meet prudential requirements, entail formalities concerning the opening and closing of bank accounts and significant shareholdings in the capital of Moldovan banks. In a non-binding document (known as "the handbook for in-house checks"), the BNM has also invited banks to adopt an anti-money laundering policy. The handbook, which was produced in October 1998, lays down the official procedure for in-house checks. These measures do not constitute an adequate basis for combating money laundering, nor are they in conformity with international standards. The evaluators noted a lack of vigilance and collaboration by Moldova's banking and financial institutions in the combating of money laundering, which depends just as much on the behaviour of the financial institutions themselves as on the not very receptive attitude of the BNM. This is highly regrettable. The evaluators therefore recommend that the Moldovan Parliament, which is responsible for supervising the BNM, take urgent steps to ensure that the National Bank attaches proper importance to the combating of money laundering and makes use of its powers to impose penalties for laundering within the banking system, inter alia through application, in a more satisfactory manner, of Article 23 of the Law on Financial Institutions. The experts consequently recommend that a real obligation to report suspicious transactions be introduced, not only for banks, but also for the whole financial sector (including currency exchange offices, pawnbrokers and investment companies) and that a financial intelligence unit able to deal with these data be set up as rapidly as possible so that criminal proceedings can be instituted.
9. Institutions outside the banking and financial sectors (currency exchange offices, pawnbrokers, investment companies, financial market operators, savings and loans associations, lottery and gaming establishments and insurance companies) all have supervisory authorities, but it seems that no supervisory authority has carried out practical checks on money laundering. The experts therefore recommend that these sectors should also

be subjected to elementary anti-laundering measures (obligation to identify customers, keeping of documents relating to transactions and customer identification, reporting of suspicious transactions, preparation of an internal programme against laundering), whether these are based on the anti-money laundering legislation now being drawn up (when it comes into force) or on provisions to be adopted by the supervisory authorities themselves and whose application they would be responsible for monitoring. This recommendation relates especially to currency exchange offices, pawnbrokers and investment companies, which currently seem very susceptible to money laundering.

10. The law-enforcement agencies have a fairly wide range of investigative means at their disposal under Law N° 45/1994 on investigative operations. They include searches, surveillance, telephone tapping, interception of communications, undercover operations/infiltration and the use of informers. As money laundering is not yet officially a criminal offence, these measures are aimed not against money laundering itself but rather against economic crime in general. In practice, however, it appears that a large number of investigations are frustrated because of the reluctance of the banking sector to co-operate. Banks cite bank confidentiality to justify their refusal to provide requested information. They cannot be obliged to divulge information until the Public Prosecutor has officially opened a criminal investigation and this can only be done if there is a sound case, for which financial information held by banks is often necessary. The evaluators recommend that effective collaboration be established among the various law enforcement authorities, but also between these authorities and the other state institutions which should play a part in combating laundering, inter alia the BNM, the CNVM and the company registration authority.
11. The evaluators are also convinced that it is absolutely necessary to instil greater responsibility into the various institutions or persons involved in combating money laundering, starting with the public agencies and also extending to public officials (including notaries) and the private sector (including the banks), so that the checks provided for at every stage are effectively carried out, ensuring that the entire anti-laundering system does not rely on the law enforcement bodies. In fact, unless such an approach is taken, any regulatory action may prove completely ineffective. The experts also believe that it is essential to set up machinery to co-ordinate the activities of the various institutions and persons with a role in combating money laundering, including the law enforcement authorities but also extending to the authorities responsible for supervising the banking and financial sectors.
12. The evaluators believe that it is in the Moldovan authorities' interest to review existing legislation so as to identify possible sources of difficulty and study ways of removing these difficulties. They recommend that the Moldovan authorities obtain an expert legal opinion on the draft legislation on the prevention and combating of money-laundering, as it does not, as it stands, provide the necessary basis for effectively countering money laundering. In particular, its field of application ought to be clarified by the definition of laundering that ought to be set out in the Criminal Code.
13. In short, the evaluators note that Moldova is at the moment completely open to money laundering. Unless the Moldovan authorities decide to apply the measures already in place in respect of banks and to finalise and very speedily adopt the texts intended to make laundering a criminal offence and to set up an appropriate anti-laundering system, as well as to remove the obstacles currently standing in the way of criminal investigations (including banking confidentiality), money laundering, and financial crime in the broader sense, may well become a very serious impediment to the country's economic development.