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4th ROUND MUTUAL EVALUATION OF AZERBAIJAN

EXIT FOLLOW-UP REPORT SUBMITTED TO MONEYVAL

**WRITTEN ANALYSIS ON PROGRESS IN RESPECT OF THE CORE AND
KEY RECOMMENDATIONS**

26 NOVEMBER 2018



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LIST OF ACRONYMS USED

ACD	Anti-Corruption Department with the Prosecutor General of Azerbaijan
AIC	Administrative Infringements Code of Azerbaijan
AML/CFT	Anti-money laundering/combating the financing of terrorism
BCR	Report on physical cross-border transportation of currency valuables
BLR	Report on transactions with countries in NCCT list
BO	Beneficial Owner
CARICC	Central Asian Regional Information and Coordination Centre
CBA	Central Bank of the Republic of Azerbaijan
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CIS	Commonwealth of Independent States
CPC	Criminal Procedural Code
CPI	Consumer Price Index
CSC	Civil Service Commission of Azerbaijan
CTR	Cash Transaction Reports
DGK	State Customs Committee of Azerbaijan
DNFBP	Designated Non-Financial Businesses and Professions
DT	Report on the transactions related to religious charities
ECDD	Enhanced Client Due Diligence
ESW	Egmont Secure Web
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FATF	Financial Action Task Force
FI	Financial Institution
FIR	Report on transactions in which it was detected that the identification of a customer or a beneficial owner was not correct
FIU	Financial Intelligence Unit
FMR	Report on suspicions that the client does not act on his/her behalf
FMS	Financial Monitoring Service
FUR	Follow up Report
GDP	Gross Domestic Product
GPO	General Prosecutor's Office
GRECO	Secretariat of the Group of States against Corruption
GUAM	Organization for Democracy and Economic Development
HR	Human Resources

IMF	International Monetary Fund
INTERPOL	International Police Organization
IOSCO	International Organization for Securities Commissions
IT	Information Technology
LAN	Local Area Networks
LEA	Law Enforcement Agency
MCIT	Ministry of Communications and Information Technologies
MER	Mutual Evaluation Report
MFA	Ministry of Finance of the Republic of Azerbaijan
MTA	Ministry of Taxes
MJA	Ministry of Justice of Azerbaijan
MLA	Mutual Legal Assistance
MNS	Ministry of National Security of Azerbaijan
MoFA	Ministry of Foreign Affairs
MOU	Memorandum of Understanding

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Mutual evaluation of Azerbaijan: Fourth Follow-up Report
Application to be removed from the regular follow-up process

Note by the Secretariat

1. Introduction

1. The purpose of this paper is to analyse the progress that the Republic of Azerbaijan has made to remedy the deficiencies identified in its Fourth Round Mutual Evaluation Report (MER), which was adopted at MONEYVAL's 46th Plenary in December 2014. Azerbaijan was then asked to submit an expedited follow-up report (FUR) on actions taken to address certain significant shortcomings concerning R.1, R.5 and SR.III by December 2015.
2. At the 49th Plenary in December 2015, Azerbaijan submitted its 1st Fourth Round FUR. The Secretariat noted that amendments to the AML/CFT Law had improved the legal framework for applying targeted financial sanctions (TFS) under SR.III; amendments to the Criminal Code (CC) (April 2015) had addressed concerns expressed in the MER in relation to the money laundering (ML) offence; new criminal cases on self-laundering had been opened and training for investigators, judges and prosecutors had been organised to continue increasing awareness and understanding of third-party and stand-alone ML; and a new regulation had provided more clarity on the scope of simplified customer due diligence (CDD) measures. Given the progress made, the Plenary agreed that Azerbaijan should not be required to submit another expedited follow-up report and should seek to exit the regular follow-up process by December 2017.
3. Azerbaijan presented an interim FUR to the 52nd Plenary in December 2016. The Secretariat noted that further progress appeared to have been achieved under several Core and Key Recommendations, including R.1, 5 and 23. Nevertheless, a number of deficiencies were yet to be addressed, in particular in the areas of confiscation and CDD. Further steps were being taken under SR.III. The Plenary concluded that Azerbaijan had made progress, adopted the interim report and took note of the country's wish to exit regular follow-up at the 54th Plenary.
4. At the 54th Plenary in September 2017, Azerbaijan submitted a 3rd FUR and applied for removal from the follow-up process. The Secretariat noted that sufficient progress appeared to have been achieved under several Core and Key Recommendations, including R.5, R.12, R.16, SR.III, SR.VI, SR.VII and SR.IX. However, a number of deficiencies were yet to be addressed, in particular important remaining gaps relating to the effectiveness of the implementation of R.1 and R.3; the liability of legal persons; the criminalisation of the offences defined in the treaties annexed to the Convention on Terrorist Financing; risk-based supervision; and the scope of the 'fit and proper' tests for financial institutions. The Plenary reached the conclusion that, in spite of the progress, Azerbaijan had not yet fulfilled the conditions for removal from the follow-up process and welcomed Azerbaijan's proposal to submit a further report in December 2018 and to seek removal from the 4th round at that occasion.
5. In October 2018, Azerbaijan submitted a 4th FUR to the MONEYVAL Secretariat and applied for removal from the follow-up process. According to the Fourth Round Rules of Procedure, in order to exit that process, countries must have an effective AML/CFT system in force, under which they have implemented those FATF Recommendations that are considered to be Core and Key at a level essentially equivalent to a "compliant" (C) or "largely compliant" (LC). The Plenary may retain some limited flexibility with regard to Key Recommendations if substantial progress has been made

on the overall set of recommendations that were rated “partially compliant” (PC) or “non-compliant” (NC).

6. In its Fourth Round MER, Azerbaijan obtained the following PC/NC ratings:

Core Recommendations rated PC (no Core Recommendations were rated NC)
Recommendation 1 (Money laundering offence) Recommendation 5 (Customer due diligence)
Key Recommendations rated PC (no Key Recommendations were rated N)
Recommendation 3 (Confiscation and provisional measures) Recommendation 23 (Regulation, supervision and monitoring) Recommendation 35 (Conventions) Special Recommendation I (Implementation of United Nations instruments) Special Recommendation III (Freezing and confiscation of terrorist assets)
Other Recommendations rated PC (no other Recommendations were rated NC)
Recommendation 2 (Money laundering offence - Mental element and corporate liability) Recommendation 12 (DNFBPs – R.5, 6 and 8-11) Recommendation 16 (DNFBPs – R.13-15 and 21) Recommendation 17 (Sanctions) Recommendation 24 (DNFBPs – Regulation, supervision and monitoring) Recommendation 27 (Law enforcement authorities) Recommendation 32 (Statistics) Recommendation 33 (Legal persons) Special Recommendation VI (AML requirements for money/value transfer services) Special Recommendation VII (Wire transfer rules) Special Recommendation IX (Cross-border declaration and disclosure)

7. Based on the report provided by Azerbaijan, the Secretariat prepared the present analysis of the progress made in relation to all the Recommendations rated PC in the MER.
8. On a general note, concerning all applications for removal from regular follow-up: the procedure is a paper desk-based review, and thus by nature less detailed and thorough than a MER. Effectiveness aspects can be taken into account only through consideration of data and information provided by the authorities. It is also important to note that the conclusions in this analysis do not prejudge the results of future assessments, as they are based on information which was not verified through an on-site process and was not, in all cases, as comprehensive as it would have been during a mutual evaluation.

2. Overview of progress made by Azerbaijan since the adoption of the MER

Policy developments

9. Azerbaijan conducted a National risk assessment (NRA), which was completed in 2016. The authorities advised that the preparation of the NRA involved a wide range of government agencies and self-regulating organisations. The NRA concluded that the national ML risk rating is medium. The major proceeds-generating crimes were found to be (i) tax evasion, (ii) corruption, (iii) smuggling and (iv) human trafficking. The ML/TF vulnerability of the banking and DNFBP sectors was considered as higher than that of the other sectors. The FT risk was assessed as high, mostly due to gaps in FT-related legislation. The NRA also noted that the capacities to combat ML and TF were

the country's key vulnerability. Based on the NRA, an AML/CFT Action Plan for 2017-2019 was approved by Presidential Decree no.2451 (18 November 2016). The Action Plan sets out the measures to be implemented by law enforcement agencies (LEAs), the Financial Monitoring Service (FMS), and supervisory and other relevant authorities to reinforce national AML/CFT capacities.

10. A National Strategy for Increasing Transparency and Combating Corruption 2016-2018 was also adopted on 27 April 2016 by Presidential Decree no.1993, with objectives pertaining to enhanced transparency in state institutions, accountability and public participation and the use of new technologies.

Legislation, regulations and guidance

11. Important legislative reforms have taken place since the adoption of the MER. In addition to amendments to the Criminal Code (CC) (April 2015 and June 2017) and the AML/CFT Law (November 2015 and March 2016), mentioned in the previous FURs, the Republic of Azerbaijan has adopted the following laws:
 - “On amendments to the Law of the Republic of Azerbaijan “On state registration and state register of legal persons”, 14 April 2017;
 - “On amendments to “The Statute of the Anti-Corruption Commission of the Republic of Azerbaijan” approved by the Law of the Republic of Azerbaijan 906-IIQ dated 3 May 2005”, 14 April 2017;
 - “On amendments to the Law of Republic of Azerbaijan “On securities market”, 14 April 2017;
 - “On amendments to the Law of Republic of Azerbaijan “On combating the legalization of criminally obtained funds or other property and financing of terrorism”, 14 April 2017;
 - “On amendments to the Law of Republic of Azerbaijan “On insurance activity”, 13 June 2017;
 - “On amendments to the Criminal Code of the Republic of Azerbaijan”, 13 June 2017;
 - “On amendments to the Law of the Republic of Azerbaijan “On currency regulation”, 13 June 2017;
 - “On amendments to the Code of Administrative Infringements of the Republic of Azerbaijan”, 13 June 2017;
 - “On amendments to the Criminal Code of the Republic of Azerbaijan”, 10 October 2018;
 - “On combating the legalization of criminally obtained funds or other property and financing of terrorism”, 10 October 2018; and
 - “On amendments to the Code of Execution of Punishment of the Republic of Azerbaijan”, 10 October 2018.
12. In addition, a number of Presidential Decrees and Ordinances of the Cabinet of Ministers have been adopted, relating to, inter alia, financial supervision, beneficial ownership information, declaration of the national currency in cash and targeted financial sanctions. Guidance on asset freezing, ML in free trade zones, confiscation and asset recovery, financial investigations, KYC and RBA for credit institutions has also been produced.

Institutional reforms

13. A major institutional reform has been the establishment of the Financial Markets Supervision Authority (FIMSA) by Presidential Decree no. 760 (3 February 2016). FIMSA became operational in April 2016 and acts as the AML/CFT supervisor for entities previously covered by the Central Bank (banks), the Ministry of Finance (insurance sector), the State Committee for Securities (securities market) and the Ministry of Communications and Information (Post offices). Its creation was aimed at improving the licensing, regulation and supervision of those sectors. FIMSA is not funded by the state budget but the fees paid by the supervised entities. FIMSA has the authority to issue normative acts.
14. Following the positive feedback on a proposed FIU model from the Egmont Group, Decree of the President of the Republic of Azerbaijan “On Establishment of the Financial Monitoring Service of the Republic of Azerbaijan” was signed on May 25, 2018. According to this Decree, the Financial Monitoring Service was established as an independent FIU in order to improve compliance with the requirements in the field of combating legalization of criminally obtained funds or other property and financing of terrorism, strengthen the capacity of the supervisory body, and increase effectiveness of the coordination of activities of the relevant public authorities and institutions.

3. Review of measures taken in relation to Core and Key Recommendations

R.1 – Money laundering offence

Deficiency (1): *the acquisition, possession or use of proceeds are not adequately criminalised under the ML offence.*

15. The deficiency has been addressed. See the 3rd Fourth Round FUR adopted at the 54th Plenary in September 2017.

Deficiency (2): *low number of convictions for ML and absence of cases of stand-alone and autonomous ML and no cases which relate to predicate offences conducted in another jurisdiction.*

16. The authorities report that the number of ML cases has increased. In contrast to 2015-2016 where two stand-alone criminal cases on ML were opened, in 2017-2018 9 ML convictions (regarding 12 persons) were handed down by the courts of first instance. One of them is a stand-alone ML case. Out of 8 cases that are currently under investigation, 2 are stand-alone ML cases and 1 case is related to a foreign predicate offence.

Deficiency (3): *lack of certainty as to whether a conviction for a predicate offence is a prerequisite to obtaining a conviction for money laundering.*

17. The authorities organised a number of training events in order to align investigative and judicial practice on the extent to which ML convictions can be obtained in the absence of a conviction for a predicate offence. In May 2018, the authorities hosted a training course on investigative techniques in ML cases. In March, a representative from Azerbaijan attended a MONEEVAL seminar on the investigation of ML and TF offences. In October, in cooperation with the Council of Europe, a training course on processing and adjudicating money laundering cases was organised.

Conclusion on R.1

18. Azerbaijan appears to have broadly addressed all the deficiencies. Overall, Azerbaijan now has a level of compliance that is essentially equivalent to an LC with R. 1.

R.2 – Money laundering offence – Mental element and corporate liability

Deficiency (1): the legislation extending criminal liability to legal persons for ML is not yet in force.

19. In October 2018, amendments to the Code of Execution of Punishments (Section 8 (Execution of criminal-legal measures) Chapter XXII (Execution of a criminal-legal measure in the form of special confiscation), Articles 183-1 – 190-7) were adopted. These amendments fully address the deficiency.

Deficiency (2): the principle that criminal intent, knowledge or purpose can be inferred from objective factual circumstances is not tested in practice in relation to the money laundering offence.

20. The authorities report that a number of events were conducted to raise awareness and guide authorities on the implementation of this principle. In addition, the authorities consider that statistics on convictions in ML cases for 2017 (four) and 2018 (five) confirm that in practice criminal intent, knowledge or purpose can be inferred from objective factual circumstances of the case. However, the practical examples that were provided by the authorities did not contain sufficient detail demonstrating how this principle is being applied in practice.

Conclusion on R.2

21. Azerbaijan appears to have broadly addressed all the deficiencies. However, deficiency (2) will need to be looked at more closely during Azerbaijan's Fifth Round Evaluation. Overall, Azerbaijan now has a level of compliance that is essentially equivalent to an LC with R. 2.

R.3 – Confiscation and provisional measures

Deficiency (1): property can only be confiscated from third parties if they knew or ought to have known that it had been obtained by criminal means, regardless of whether they obtained it for value or not.

22. The deficiency has been addressed. See the 3rd Fourth Round FUR adopted at the 54th Plenary in September 2017.

Deficiency (2): there is a lack of clarity whether the confiscation of indirect proceeds and proceeds in corresponding value is routinely made.

23. The authorities advised that seizure of direct and indirect proceeds of offences are guaranteed during the pre-trial investigation of ML cases. Such measures were applied in four cases during 2017-2018 which later resulted in convictions. During 2017, special confiscation amounting in total to 106,925 USD, 16,845 Euro and 1,010,062 Manats was applied. In 2018, confiscation of proceeds amounting to 5,400 USD, 3,215 Euro and 6,687,055 Manats was applied. This included jewellery, land plots, apartments, vehicles and other movable and immovable assets which were seized and later confiscated.

24. In three on-going ML cases, indirect proceeds and proceeds in corresponding value amounting in total to 1,361,300 Manats have been seized. These include apartments, vehicles and land plots.

Deficiency (3): confiscation relating to predicate offences was not demonstrated.

25. The authorities have provided the following figures indicating the volume of proceeds that were confiscated (ML and relating to predicate offences), which indicates that progress has been made in this area.

Years	Confiscated asset (AZN)
2015	43,654,241
2016	78,282,605
2017	15,381,275
2018 – I half	25,341,819
Total:	162,659,940 (EUR 84,135,262.88)

Conclusion on R.3

26. It appears that overall, Azerbaijan now has a level of compliance that is essentially equivalent to an LC with R. 3.

R.17 – Sanctions

Deficiency (1): sanctions are not effective, proportionate and dissuasive.

27. The deficiency has been addressed. See the 3rd Fourth Round FUR adopted at the 54th Plenary in September 2017.

Deficiency (2): no sanctions have been applied to FIs' senior management.

28. The authorities report that due to infringements of the AML/CFT Law, 34 members of senior management and 6 responsible persons of entities supervised by FIMSA were sanctioned. Moreover, the MoT (Ministry of Taxes) reported that 12 sanctions were applied to senior management as a result of 24 inspections.

Deficiency (3): no sanctions apart from written warnings have been imposed.

29. According to information from FIMSA, in 50 cases, banks, insurance companies, the postal office and non-bank organizations were sanctioned in total AZN 75,000: 30 banks were sanctioned in the amount of 45,000 AZN; 10 insurance companies were sanctioned in the amount of 15,000 AZN; 8 non-bank credit organizations were sanctioned in the amount of 12,000 AZN and; 2 postal offices were sanctioned in the amount of 3,000 AZN. Moreover, the authorities report that 37 notaries were subject to disciplinary responsibility for failure to implement identification of customers.

Deficiencies (4) and (5): a low number of sanctions has been applied by the CBA, SCS and MFA; no sanctions have been applied by the MCIT.

30. Since 2016, the AML/CFT supervisory functions of the MCIT (post offices), the CBA (commercial banks), the SCS (securities sector) and the MFA (insurance sector) have been taken over by FIMSA.

Since the last FUR, the FIMSA has conducted 2 on-site inspections in the Postal Office which resulted in financial sanctions in the amount of 3,000 AZN.

Conclusion on R.17

31. Azerbaijan appears to have broadly addressed all the deficiencies. Overall, Azerbaijan now has a level of compliance that is essentially equivalent to an LC with R. 17.

R.23 – Regulation, supervision and monitoring

Deficiency (1): there is no requirement to prevent persons who are associated with criminals from holding or being the BO of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils in FIs.

32. Pursuant to an amendment to the AML/CFT Law, persons associated with criminals cannot hold a significant shareholding in a FI or be the beneficial owner of such shares, as well as hold a management functions, a position in the audit committee or supervisory board, or serve on the board of directors of a FI.

Deficiency (2): the Postal Office was not subject to on-site supervision.

33. The deficiency has been addressed. See the 3rd Fourth Round FUR adopted at the 54th Plenary in September 2017.

Deficiency (3): the effectiveness of the RBA was on supervision not demonstrated due to the recent adoption of the procedures (referring to MFA and MCIT).

34. On the basis of the Law of the Republic of Azerbaijan “On amendments to the AML/CFT Law” dated October 12, 2018 the AML/CFT Law was amended to state that the risks of financing of terrorism, the legalization of money or other criminally obtained funds is to be estimated once a year and supervisory inspections are to be carried out in line with the identified risks. Moreover, according to the information from the authorities, FIMSA prepared a methodology on risk-based supervision which is being implemented in practice.

Conclusion on R.23

35. Azerbaijan appears to have largely addressed all the deficiencies. Overall, Azerbaijan now has a level of compliance that is essentially equivalent to an LC with R. 23.

R.24 – DNFBPs – Regulation, supervision and monitoring

Deficiency (1): undue procedural hurdles for all supervisory authorities of the DNFBPs to initiate procedures for violation of the AML/CFT Law provisions.

36. As a result of the amendments to the “List of officials authorized to compile a protocol on cases of administrative offenses by district (city) courts” (#361) and the Decree of the President of the Republic of Azerbaijan number 795 dated 29 December 2015 “On application of the Law of the Republic of Azerbaijan "On Approval of the Code of Administrative Offenses of the Republic of

Azerbaijan" (#360) dated November 23, 2018 and Draft amendments to the Article 43.1 of the Code of Administrative Infringements of the Republic of Azerbaijan, which were sent to the Parliament the same day, the DNFBP supervisors are now authorised to consider the cases regarding violations of the AML/CFT Law themselves and apply sanctions directly. Previously application of such sanctions was implemented through court decisions based on referrals from the supervisory bodies.

Deficiency (2): minimal active supervision undertaken for AML/CFT purposes.

37. As indicated in the 3rd FUR, supervisory measures are being taken with respect to professionals such as persons providing legal, audit and accounting services. However, it was also noted that inspections of dealers and real estate agents had been suspended. In order to address this matter, the Law “On suspending inspections in the field of entrepreneurship” was amended by the Parliament in November 2018. According to the amended law, AML/CFT-related inspections are excluded from the scope of the above mentioned Law. The amended law will restore the right of all the relevant supervisory agencies to conduct AML/CFT inspections.

Deficiency (3): several supervisory authorities not fully aware of their supervisory function.

38. The authorities advised that, as a result of the involvement of all DNFBP supervisors in the preparation of the NRA, their awareness of AML/CFT supervision has improved. Moreover, effective application of supervisory measures is expected to continue improving as part of the implementation of the National Action Plan (November 2016) based on the NRA.

Conclusion on R.24

39. Azerbaijan has broadly addressed all remaining deficiencies. Overall, Azerbaijan now has a level of compliance that is essentially equivalent to an LC with R. 24.

R.27 – Law enforcement authorities

Deficiency (1): divergent interpretations between law enforcement and judiciary on the level of proof required to convict a person of TF.

40. The authorities are of the view that, on the basis of trainings, conference and seminars¹, the divergence mentioned in the MER has been narrowed down. This is also supported on the basis of statistics (conviction in one TF case in 2017 and one on-going case), from which it can be inferred that the difficulties regarding the interpretation of TF offences in investigative and judicial practices are gradually being overcome. In addition, there were three TF cases in 2017 which were suspended due to that fact that accused individuals fled the country before criminal proceedings were initiated.

Deficiency (2): low level of investigations, prosecutions and convictions for ML and FT as opposed to the general volume of proceeds-generating crimes.

41. The authorities report that there is a considerable growth dynamic in the number of investigations, prosecutions and convictions for ML and FT. In 2015 and 2016 only two criminal cases on ML were opened, in 2017 – 4 cases were investigated and 6 persons were convicted on ML charges.

¹ For example in September 2018 a training activity was organised on “Concepts and challenges in terrorism financing” which was attended by the representatives of the Anti-Corruption Directorate, Prosecutor General’s Office, Judicial-Legal Council, Ministry of Taxes, FIU, State Security Service, Azerbaijan Bar Association and judges of various instance courts

Moreover, 1 conviction of a person was obtained on TF charges in the same year. In 2018, convictions in 5 ML cases regarding 6 persons were achieved. Currently, there are 8 on-going ML pre-trial investigations of 8 ML cases regarding 12 accused persons, and 1 TF case regarding 3 accused persons.

42. It can be concluded that compared to 2017, in 2018 the number of convicted and accused persons increased nearly 3 times (from 7 to 21) and number of cases over the same period increased almost twice, from 5 in 2017 up to 9 in 2018.

Deficiency (3): competence issues in investigating ML are affecting the effectiveness of the AML/CFT system.

43. The authorities report that pursuant to a Presidential Decree #358 dated 23.11.2018 the Ministry of Interior and Ministry of Taxes are empowered to conduct the investigation of ML cases which are detected in the course of the investigation of other crimes within their sphere of competence. Moreover, according to Presidential Decree #1894 dated 28.03.2018, the State Security Service can investigate ML cases if the crime detected by this Service significantly threatens interests of the state in public or economic sphere, and committed by a public or private official.
44. In accordance with the Article 215.6 of the CPC, during the pre-trial investigation of criminal cases that fall within the jurisdiction of several law enforcement agencies, in order to guarantee a comprehensive, complete and objective pre-trial investigation, joint investigative teams (JIT) composed of representatives of competent law enforcement agencies may be established in accordance with the decision of the prosecutor implementing procedural oversight over the pre-trial investigation of criminal cases.
45. According to the statistics provided by the authorities, in 2018, during the pre-trial investigation of corruption cases, 30 JITs comprising investigators from the police, the State Customs Committee, the State Security Service, the Ministry of Taxes and the Ministry of Emergency Situations were established. In 2017, in more than one hundred cases JITs comprising police, tax and customs officers were established.
46. Moreover, pursuant to Articles 215.7 and 215.9 of the CPC (with the amendments dated December 1, 2017) in order to guarantee comprehensive, complete and objective pre-trial examinations, the investigation of a criminal case can be transferred from one law enforcement to another or it can be continued being conducted by the investigative body that has detected the crime based on a substantiated decision of the Prosecutor General.

Deficiency (4): limited access of law enforcement to financial information affects its ability to identify, trace and seize proceeds of crime.

47. The authorities report that according to the Article 177.3.6. of the amended Code of Criminal Procedure, ML/TF investigating authorities will be allowed to access financial information including financial transactions, bank accounts or tax payments, private life or family, state, commercial or professional secret information in the pre-investigative phase without initiation of official investigation.

Deficiency (5): legal limitations on the use of special investigative techniques in ML cases may impact on the ability of LEAs to act.

48. In accordance with the amended Law “On Operational-Search Activity”, LEAs will be permitted to use undercover operations in the investigation of all ML, FT, corruption and other crimes of economic nature.
49. Moreover, the new structure of Anti-Corruption Directorate (ACD), and statutes of its structural units, was approved on 9th January 2015. According to these changes, the ACD now has an operational department, an operational technical support unit and an expert analysis unit. The operational department is responsible for the preparation and execution of covert operations in order to prevent and fight ML and corruption cases. The operational technical support unit is responsible for providing the necessary support and equipment for audio and video recording and use of other information systems. The expert analysis department is a specialised unit within ACD, providing expert reviews and key recommendations in AML, financial, auditing, accounting and other relevant spheres for the prevention and investigation of corruption and ML cases.

Conclusion on R.27

50. Azerbaijan has addressed most of the deficiencies.

R.32 – Statistics

Deficiency (1): inadequate statistics kept on penalties for ML.

51. The authorities report that in accordance with the Presidential Decree “On additional measures in the field of combatting money laundering and terrorism financing” which was adopted on October 2018, the ACD together with the Prosecutor General is responsible for collecting and maintaining centralised statistics on ML and TF offences. Moreover, judicial statistics on ML will also be periodically collected by the ACD.

Deficiency (2): statistics maintained on the level of funds-generating crime together with seizures and confiscations not being utilised to perform a strategic assessment of the AML/CFT risk.

52. The authorities did not provide detailed information in relation to this shortcoming. As it was already mentioned, accumulation of centralized statistical database on crimes was delegated to the Prosecutor General by the Presidential Decree #299 dated 08.10.2018 and implementation of the related measures is being carried out at the moment. Moreover, amendments to the “Statute of Anti-Corruption Directorate under the Prosecutor General” (#359) and “the Charter of the Financial Monitoring Service” (#362) dated November 23, 2018 and Draft amendments to “AML/CFT Law” which were sent to the Parliament on the same day, define obligations of ACD to provide crime statistics to FMS and the supervisory agencies for the purpose of developing an AML/CFT policy and strategy and conducting strategic analysis and assessment of the AML/CFT risk. Besides, the above-mentioned amendments to the AML/CFT Law and FMS Charter define an obligation for FMS to develop an AML/CFT policy and strategy and to conduct strategic analysis and assessment of the AML/CFT risk. As a result of these changes both maintenance of statistics and their strategic analysis will be implemented in the near future.

Deficiency (3): no statistics available on cooperation and exchange of information with other supervisory bodies.

53. On the basis of the information from the authorities it seems that statistics on cooperation and exchange of information with other supervisory bodies are available. The authorities report that the

employees from the FMS participated in 51 inspections carried out by FIMSA between 2016-2018. Moreover, different supervisory authorities requested information from FMS on 21 occasions regarding AML/CFT related issues.

Conclusion on R.32

54. Azerbaijan appears to have addressed most of these deficiencies and is now at a level equivalent to LC in relation to R. 32.

R.33 – Legal persons

Deficiency (1): amendments to the Law on Commercial Information place unnecessary restrictions on access to ownership and shareholder information.

55. The authorities report that the Regulation "On submitting beneficial ownership information, information on founders (participants) of commercial legal entities, their shares in equity and owners of securities to monitoring entities and other persons involved in monitoring" was approved on October 2018. The Regulation determines the procedure for submitting beneficial ownership information, information on founders (participants) of commercial legal entities, their shares in the authorized capital and owners of securities to monitoring entities and other persons involved in monitoring. In execution of that Regulation, the Unique Joint Information System which ensures that appropriate information is provided to monitoring entities and other persons involved in monitoring, has been established. The System provides reporting entities with the possibility of obtaining data within 1 business day.

Deficiency (2): commercial, corporate and other laws do not require adequate transparency concerning the BO and control of legal persons.

56. Please refer to Deficiency (1).

Conclusion on R.33

57. Azerbaijan appears to have addressed all the deficiencies. R. 33 is now at a level equivalent to LC.

R.35 – Conventions

Deficiency (1): deficiencies identified in the provisions in respect of the offence of acquisition, possession or use of property.

58. The deficiency has been addressed. See the 3rd Fourth Round FUR adopted at the 54th Plenary in September 2017.

Deficiency (2): offences in the Annex to the Terrorist Financing Convention not fully transposed into the CC.

59. The authorities report that the deficiency was fully addressed by amendments to the CC, namely by introducing Article 219-2 (Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf), Article 227-1 (Intimidation with plundering radioactive materials), Article 270-1 (Acts against the safety of aircraft) and Article 226.3 (Threatening to cause death or serious injury or significant damage to property using radioactive material). All the offences are grave or especially

grave and punishable by mandatory confiscation and imprisonment of 2 to twelve years depending on the Article. Therefore, the CC now includes all of the offences listed in the annex to the Terrorist Financing Convention.

Deficiency (3): authorities unable to attack property held by third parties where there is a gift made or inadequate value in exchange for the property.

60. The deficiency has been addressed. See the 3rd Fourth Round FUR adopted at the 54th Plenary in September 2017.

Deficiency (4): criminal liability for ML not yet extended to legal persons and no civil or administrative liability for ML by legal persons.

61. As noted under the analysis of R.2, the shortcoming has been addressed.

Conclusion on R.35

62. Azerbaijan appears to have addressed all the deficiencies.

SR.I – Implementation of United Nations instruments

Deficiency (1): SR.II (offences in the Annex to the Terrorist Financing Convention not fully transposed into the CC).

63. As noted under the analysis of R.35, this deficiency has been addressed.

Deficiency (2): SR.III.

64. The deficiency has been addressed. See the 3rd Fourth Round FUR adopted at the 54th Plenary in September 2017.

Conclusion on SR.I

65. Azerbaijan appears to have addressed all the deficiencies.

4. Overall conclusion

66. It would appear that since the adoption of its MER in December 2014, Azerbaijan has addressed the vast majority of the deficiencies. A very small number of outstanding deficiencies remain. These are expected to be addressed with the coming into force of various amendments very shortly. Overall, it is the view of the MONEYVAL Secretariat that Azerbaijan has taken sufficient steps to be removed from regular follow-up.

The MONEYVAL Secretariat

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