

COUNCIL OF EUROPE



CONSEIL DE L'EUROPE

Strasbourg, 8 December 2014

MONEYVAL(2014)45

**COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
AND THE FINANCING OF TERRORISM**

MONEYVAL

**Procedures related to
the implementation of voluntary tax compliance programmes
and AML/CFT requirements by countries and territories evaluated by
MONEYVAL**

PROCEDURES RELATED TO THE IMPLEMENTATION OF VOLUNTARY TAX COMPLIANCE PROGRAMMES AND AML/CFT REQUIREMENTS BY COUNTRIES AND TERRITORIES EVALUATED BY MONEYVAL

MONEYVAL recognises the potential for Voluntary Tax Compliance programmes (VTC)¹ to be abused by criminals for the purpose of moving funds, particularly where the programme fully or partially incorporates elements of tax amnesty or asset repatriation.

These procedures are aimed at ensuring that when implementing a VTC programme that encourages or requires asset repatriation, countries and territories evaluated by MONEYVAL take prompt action to ensure that the programme is not negatively impacting:

- a) technical compliance with the Financial Action Task Force (FATF) recommendations (for example if the programme explicitly exempts full or partial application of AML/CFT measures)
- b) the effectiveness of their AML/CFT system² (for example, if excessively large volumes of transactions related to the programme overwhelm the capacity of financial institutions, DNFBPs, FIUs or other competent authorities to apply AML/CFT measures effectively); and/or
- c) ML/TF risks across the global network (for example, if the operation of a VTC programme is impeding the effective implementation of AML/CFT measures).

Notification, co-operation and responding to requests for further information

1. All countries and territories evaluated by MONEYVAL should notify directly and without delay the MONEYVAL secretariat, through their Head of delegation, when a Voluntary Tax Compliance (VTC) programme is being introduced.
2. Countries and territories should, where practicable, send a prior notification to the MONEYVAL secretariat in advance of the VTC programme coming into force.
3. The notification should include detailed information regarding the programme, its implementation period and duration, as well as the translation(s) into English of French of the relevant applicable legislation and any related procedures, including any information on AML/CFT safeguards that the country or territory has taken in this regard.
4. Countries and territories implementing a VTC programme (or considering the implementation of one) should cooperate with the MONEYVAL secretariat throughout the process by responding in a timely manner to requests for information or translations of applicable legislation. This applies regardless of whether a direct notice was given regarding the (pending) programme, or to situations where the secretariat became aware of it through other means. They should continue providing updated information to MONEYVAL

¹ The term “Voluntary Tax Compliance programme” in these procedures refers to any programme that is designed to facilitate legalisation of the taxpayer’s situation vis-à-vis funds or other assets that were previously unreported or incorrectly reported, and particularly those which include elements of asset repatriation or granting criminal immunity.

² See FATF’s paper setting out international best practices to assist countries in their implementation of VTC programmes, with a view to ensuring that such programmes do not impede the effective implementation of AML/CFT measures at <http://www.fatf-gafi.org/media/fatf/documents/reports/BPP%20VTC.pdf>

throughout the period of implementation of the VTC programme, particularly in cases where modifications or relevant additional legislation may have been adopted.

Taking steps when the MONEYVAL secretariat becomes aware of a VTC programme

For programmes in draft form being considered by a country or territory

5. Upon becoming aware of a VTC programme in draft form, the MONEYVAL secretariat shall
 - a) contact the Head of delegation considering the programme, without delay, to gather further information on its proposed substance and timeline
 - b) continue to monitor the situation, and
 - c) take further action, as indicated below, if the country or territory proceeds to implement a VTC programme.

For programmes for which legislation has been promulgated and which are not yet in force

6. Upon becoming aware of a pending VTC programme in this situation, the MONEYVAL secretariat shall:
 - a) obtain from the Head of delegation, without delay, English or French translations of the applicable legislation and any other relevant information (if this has not already been provided)
 - b) analyse the VTC programme on the basis of material received from the implementing country or jurisdiction³
 - c) circulate this preliminary report to the Bureau, the scientific experts and the country or territory for review and comments within a set deadline, depending on the urgency of the situation,
 - d) modify where necessary the report and circulate it, together with any comments made by the country or territory when these have not been reflected in the analysis, to the MONEYVAL Plenary for comment⁴, and
 - e) continue to monitor the situation, advising MONEYVAL delegations of any new developments, and views submitted by delegations in response to the preliminary report.
7. The next steps will be determined by Plenary decision, based on the comments and views submitted by delegations in response to the preliminary report.

For programmes which are already in force

8. Upon becoming aware of a VTC programme being in force, the MONEYVAL secretariat shall:

³ When conducting this analysis, the negative impact of criminal immunity on the implementation of AML/CFT measures, express or de facto will be considered to be a risk factor.

⁴ Delegations will be invited, on a no objection basis, to either confirm the secretariat's analysis and recommendations, or put forward alternative views.

- a) obtain from the Head of delegation, without delay, English or French translations of the applicable legislation and any other relevant information (if this has not already been provided)
 - b) inform the AML/CFT global network of the VTC programme and invite all delegations to collect and submit as soon as possible information concerning their experience with the programme to date, including, where available, information on the volume of funds that have been repatriated or regularised from their jurisdiction, and any unusual patterns or activities that have been observed during the duration of the programme.
 - c) analyse the VTC programme on the basis of material received from the implementing country or jurisdiction and feedback from other delegations⁵
 - a) prepare a preliminary report, which shall outline the basic principles of the VTC programme and its duration, whether the programme impacts on technical compliance with the FATF recommendations and the effective implementation of AML/CFT measures in practice (taking into account the feedback received from delegations), and making recommendations for action to be taken.
 - b) circulate this preliminary report to the Bureau, the scientific experts and the country or territory for review and comments within a set deadline, depending on the urgency of the situation
9. The next steps will be determined by Plenary decision, based on the comments and views submitted by delegations in response to report, as set out below.

Taking action to address VTC programmes of concern

10. The report and any comments made by the country or territory, when these have not been reflected in the analysis, will be circulated to the MONEYVAL Plenary for review and discussion.
11. The initial discussion of the VTC programme will take place at the earliest possible opportunity, and, if relevant, consolidated with any other discussions of the country or territory that are already scheduled in the context of a mutual evaluation or compliance enhancing procedures (CEPs) processes.
12. The country or territory implementing the VTC programme shall present the VTC's main elements following which the secretariat will present its analysis and recommendations. When consideration of a VTC programme is being made by the Plenary, the following factors shall be taken into account:
- a. the impact that the programme is having on technical compliance or the effective application of the FATF recommendations, based on the analysis of the programme;
 - b. any action that the country or territory has taken to address the concerns raised in this context; and

⁵ When conducting this analysis, the negative impact of criminal immunity on the implementation of AML/CFT measures, express or de facto will be considered to be a risk factor.

- c. feedback from the implementing country or territory and any other jurisdictions concerning their experience with the programme.
13. The Plenary is responsible for determining the next steps in the process, taking into account any actions already taken in the context of an ongoing mutual evaluation or CEPS. If the Plenary is satisfied with the information provided and the VTC programme is found to respect AML/CFT measures and FATF recommendations, the Chairman shall inform the country or territory about the Plenary's decision. The report, as adopted, shall be published on the restricted MONEYVAL website.
14. In cases where the VTC programme will expire before the best appropriate MONEYVAL meeting, the Bureau will however be responsible for approving within a set deadline the secretariat report and recommendations for actions to be taken. The Chairman shall inform the country or territory of the outcome of the process through a letter sent to the relevant Minister(s) of the country or territory concerned, with a copy to its Permanent Representative to the Council of Europe and the Head of delegation to MONEYVAL.
15. The Plenary or the Bureau in circumstances which require urgent action as set out above shall apply additional measures, as appropriate, in cases where it identifies concerns about the impact of a VTC programme on the effective implementation of AML/CFT standards. Such cases may include, for instance, situations where a notification has not been made to the secretariat as required under these processes or has been made with important delays which impact negatively on these procedures, where there are serious concerns about the speed with which the country or territory is taking corrective action to implement the recommendations, where it identifies a lack of continued cooperation in the process, etc.
16. The following additional measures may be applied in such circumstances:
 - a. the Chairman of MONEYVAL sending a letter to the relevant Minister(s) of the country or territory, with a copy to the Secretary General of the Council of Europe, drawing his attention to the issues of concern and the need for immediate action;
 - b. MONEYVAL undertaking a high level mission to the country or territory concerned in order to reinforce this message;
 - c. the Chairman of MONEYVAL sending a letter to the FATF President to alert the global AML/CFT network about issues of concern; and
 - d. MONEYVAL making a referral to the FATF's International Cooperation Review Group of the country or territory concerned.
17. In addition, in cases where a country or territory does not cooperate or does not take action, as recommended, to address the issues of concern, MONEYVAL shall decide to issue a formal declaration to the effect that a country or territory has insufficiently cooperated to address the issue of concern during the period of implementation of the VTC programme. This declaration shall be published on MONEYVAL's public website.

Co-ordination and co-operation with the AML/CFT global network

18. Addressing VTC programmes should be part of taking action to combat ML/TF and foster effective implementation of AML/CFT measures at a global level. The FATF has strongly encouraged all FATF style regional bodies to implement for their members procedures along the same lines as those of FATF.

19. MONEYVAL shall:

- a) inform the members of the AML/CFT global network of any VTC programmes of countries and territories evaluated by MONEYVAL, as set out under these procedures and invite them to provide information and feedback;
 - b) liaise with the FATF regarding MONEYVAL's procedures for dealing with specific VTC programmes;
 - c) liaise, as necessary, with the FATF secretariat regarding a (pending) VTC programme and provide updates on any actions taken by MONEYVAL in relation to the implementing country or territory.
 - d) circulate to MONEYVAL countries and territories any requests for information or reports (and relevant supporting materials) received from the FATF and other FATF-regional styles bodies regarding their members' VTC programmes, for consideration and feedback.
20. MONEYVAL's reports regarding a VTC programme shall be made available to the FATF Plenary, through its secretariat, including any updates as necessary on MONEYVAL's actions (planned or taken) in accordance with these procedures. The MONEYVAL secretariat shall also update the FATF Plenary through the FATF secretariat, of decisions taken when the VTC programme has expired.

Implementation of VTC Programmes by countries and territories evaluated by MONEYVAL which are also FATF members

21. (Pending) VTC programmes of countries and territories evaluated by MONEYVAL which are also FATF members will be addressed pursuant to FATF's procedures⁶, in consultation with the MONEYVAL secretariat.
22. The country or territory shall also notify MONEYVAL, in accordance with these procedures, and provide a copy of the relevant legislation and related information. MONEYVAL shall ensure that the documents and analysis prepared by the FATF are circulated for comments to its membership and that adequate input is provided throughout the process of consideration of the VTC programme by the FATF. Discussion of VTC programmes of concern shall also take place in MONEYVAL plenaries and any concerns shall be notified to the FATF, as appropriate.

1. *Adopted by MONEYVAL at its 43rd Plenary meeting (9-13 December 2013)*

2. *Last modified by MONEYVAL at its 46th Plenary meeting (8-12 December 2014)*

⁶ See FATF/PLEN(2014)17/FINAL