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COMMITTEE OF EXPERTS
ON THE EVALUATION OF ANTI-MONEY LAUNDERING MEASURES
AND THE FINANCING OF TERRORISM
(MONEYVAL)

THIRD ROUND DETAILED ASSESSMENT REPORT
ON BULGARIA¹

ANTI-MONEY LAUNDERING AND COMBATING THE
FINANCING OF TERRORISM

SUMMARY

Memorandum
Prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs (DG-HL)

¹ Adopted by MONEYVAL at its 26th Plenary meeting (Strasbourg, 31 March-4 April 2008).

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1. Background information

1. This report provides a summary of the AML/CFT measures in place in Bulgaria as at the date of the on-site visit from 22 – 28 April 2007, or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened. It also sets out Bulgaria's levels of compliance with the FATF 40 + 9 Recommendations.
2. The second evaluation of Bulgaria took place in October 2002. In general Bulgaria's crime situation has not changed since the second round. The major sources of illegal proceeds are still the illicit traffic of drugs, fraud and financial crimes, customs and tax crimes and smuggling of goods. In recent years illegal immigration and human trafficking have increased among profit-generating activities.
3. There have been some significant developments since the 2nd evaluation. Primary and secondary legislation have been amended and issued to incorporate the preventive measures that need to be provided for in law or regulation. The access of the Financial Intelligence Agency (FIA) to information has been extended to information which otherwise would be subject to bank secrecy.
4. Money laundering can now and has been prosecuted as a stand alone crime. Additionally, the law now explicitly covers foreign predicate offences.
5. A new development is the establishment of the Multidisciplinary Commission for establishing of property acquired from criminal activity (CEPACA). The Law on Forfeiture of Proceeds of Crime broadly subjects (after conviction for a serious offence) a defendant's identified, direct and indirect proceeds of significant value to a civil confiscation procedure. This procedure includes some provisions involving the reversal of the burden of proof and applies to third parties.
6. Since the second round, separate criminal offences of terrorist financing were introduced in the Criminal Code. At the same time the Law for the Measures against Financing Terrorism (LMFT) was adopted, which entered into force in February 2003. At the time of the on-site visit these provisions had not been tested in any investigation or prosecution.
7. A new system of mandatory reporting of all cash transactions in excess of BNG 30 000 (15 000 Euros) was established.
8. The AML Law now includes the requirement for identification and monitoring of the clients, verification of the collected information and the requirement to identify the beneficial owner of the client (legal person). It was the view of the evaluators that the definition of beneficial owner was not understood by all financial institutions and there are substantial concerns regarding the overall implementation. The AML Law has introduced limitations to establishing correspondent banking relationships. Financial institutions are obliged to apply extended measures to customers who occupy, or have occupied any supreme state position in Bulgaria or abroad. There is, however, no clear provision in law or regulation or other enforceable means for the determination of whether a customer is a political exposed person (PEP).
9. The scope of reporting entities is broader than prescribed by FATF Recommendations as the AML/CFT Laws now cover categories of reporting entities based on risk analyses for money laundering, including privatisation bodies, sport organisations; political parties; wholesale traders; and others. Supervisory authorities have also been designated as obliged persons.
10. Supervision is performed by several authorities; however, the FIA under the LMML has the leading AML/CFT responsibility. It should be noted that joint supervision between the FIA and

the prudential supervisory authorities is currently being undertaken. However, in the light of the number of covered entities and the limited resources of the FIA, Bulgaria should consider providing all supervisory authorities with the ability to impose sanctions under the AML Law, and grant the FIA additional resources for this activity.

2. Legal Systems and Related Institutional Measures

11. The Money laundering incrimination is provided in Article 253 and 253a in the Criminal Code, which are “all crimes” offences. The money laundering offence now covers acts that are dangerous to the public, which is intended to underline that a conviction for a crime is not first required. Furthermore the law now explicitly covers foreign predicate offences.
12. The prosecutors with whom the team met considered that they did not require a prior or simultaneous conviction for the predicate offence. This had been a major issue in past evaluations. One of the reasons for the introduction into Article 253 of the language “or another act that is dangerous to the public” was to ensure that courts did not interpret “acquired through crime” strictly to mean acquired as a result of a proven criminal offence, which has resulted in a sentence of a court. Any Act which is “dangerous to the public” is thus seen as embracing the full concept of predicate crime without opening up arguments that a prior conviction is needed. Moreover, it was indicated that autonomous money laundering had now been successfully prosecuted (once in the case of a foreign predicate and once in the case of a domestic predicate).
13. The Bulgarian money laundering offence has always been an “all crimes” offence. The examiners have examined the list provided (Annex II) which is very comprehensive, and almost all of the designated categories of offences required by the FATF are covered in Bulgarian Law. However, the examiners were not satisfied that insider trading and market manipulation, as it is generally understood, are covered. The offences listed here in this context relate entirely to embezzlement or abuse of office. The Bulgarian authorities should ensure that insider trading and market manipulation are fully covered as designated categories of predicate crime and that financing of terrorism in all its forms is also capable of being a predicate offence.
14. The mental element for natural persons is knowledge or assumption that property is acquired through crime or another act that is dangerous for the public. “Assumption” is equated with (subjective) suspicion. Thus, the knowledge standard in respect of the origin of the proceeds is mitigated and suspicion is an alternative mental element.
15. According to the Bulgarian Criminal Code, criminal liability can only be imposed on a physical person who has committed a crime. Bulgarian criminal law does not provide for criminal liability of legal persons. However a new law was adopted in 2005 – the Law on Administrative Offences and Sanctions (provisions on the liability of legal persons for criminal offences) which makes some limited inroads into the formal position.
16. Between 2002 and 2007, there were 18 indictments for money laundering. There was no statistics on how many indictments represent police/prosecution generated cases and how many represent STR generated cases. Until 2006, there were no convictions for money laundering. In 2006, 5 indictments were brought to court which achieved convictions (two resulted in final convictions and 3 in non-final convictions). All involved both domestic and foreign predicate offences. The number of postponed or suspended sentences raises questions about how dissuasive the penalties imposed actually are. There have been 3 acquittals for money laundering so far. The other 10 indictments remained outstanding at the time of the on-site visit.
17. Since the second round, separate criminal offences of terrorist financing were introduced in the Criminal Code in Article 108a. Attempt is criminalised for all offences for which an attempt is possible, including terrorism financing. While the incrimination is quite wide the major

reservation is that the offence does not appear on its face to cover the broader approach of SRIII in relation to contributions for any purpose (including legitimate activity which may support terrorism). The terrorism financing offence is punished by imprisonment from 3 to 15 years and a fine of up to BGN 30,000. At the time of the on-site visit there were no prosecutions and convictions for terrorist financing.

18. There are two types of confiscation under the Criminal Code. Firstly, there is confiscation of “existing property” as an additional penalty which can only be applied if the special provision criminalising the act provides for it. Secondly, there is the confiscation of the objects of crime, which is intended to implement the Palermo and Vienna Conventions in respect to confiscation of property. Since the second round the criminal code was improved for value confiscation and for offences committed outside the Bulgarian territory. The evaluators noted the differences of view between the Bulgarian authorities on third party confiscation. Clear guidance on this issue as well as on confiscation of indirect proceeds should be given to the prosecutors.
19. In 2005 new legislation, the Law on the Forfeiture to the State of Proceeds of Crime (civil confiscation) was introduced. This law regulates the terms and procedure for imposition of seizure and forfeiture to the State of any assets derived, whether directly or indirectly, from criminal activity which has not been restored to the victim or which have not been forfeited to the State or confiscated under other laws. By this law, the body handling the procedure is the Multidisciplinary Commission for Establishing of Property Acquired from Criminal Activity (CEPACA), which became operational in October 2006. This law broadly subjects (after conviction for a serious offence) a defendant’s identified direct and indirect proceeds of significant value to a civil confiscation procedure. This procedure includes some provisions reversing the burden of proof and applies to third parties. At the time of the on-site visit, it had only been operating for six months. The evaluators very much support the proactive pursuit of criminal proceeds by this state agency, and also encourage such an approach by investigators and prosecutors in other proceeds-generating cases.
20. Since the second evaluation the Law for the Measures against Financing Terrorism was adopted and entered into force in February 2003. This law provides for the listing and delisting of the persons on the United Nations Security Council Resolutions 1267 and 1373, European Union lists and other countries’ lists, as well as for the freezing and unfreezing mechanisms. The law explicitly provides for the obligation of the reporting entity which applies the freezing procedure under LMFT to immediately notify the Minister of Interior, the Minister of Finance and CEPACA about the measure taken. Due to the fact that in practice there were no matches found and that not all reporting entities are aware that the freezing obligation formally falls on them, the examiners cannot say whether the provisions are properly enforced in practice.
21. The Financial Intelligence Agency (FIA) which is an administrative FIU continues to undertake a leading role in the development, coordination and implementation of the AML/CFT system. It was noted by the examiners that the system, as a whole, is quite well integrated: joint inspections with the prudential supervisory authorities take place; there is a police liaison officer attached to the FIA; there are multi-agency groups working on major criminal cases and several joint working groups co-coordinating policy and operational practice. The FIA is fully involved in all these activities. In performing its activities as an independent administration, under the Minister of Finance², the FIA receives, obtains without limitations, analyses and discloses information to

² The Law on the State Agency for National Security which entered into force on 1 January 2008 provides that the status of Financial Intelligence Agency has changed to the Financial Intelligence Directorate at the State Agency for National Security. The State Agency for National Security is a specialised authority under the Council of Ministers. As a consequence The Law on Measures against Money Laundering, the Law on Measures against Financing of Terrorism and the Rules on implementation of the Law on Measures against Money Laundering have been changed respectively.

relevant bodies. FIA also undertakes AML/CFT on-site supervisions of all reporting entities. STRs received basically arise from the banking sector and the Customs Administration.

22. Bulgaria has designated authorities to investigate ML and TF offences and equipped them with necessary powers. The Chief Directorate for Combating Organised Crime (GDBOP) within the National Police Service is in general responsible for investigation of money laundering cases. The public prosecution office has discretion to institute criminal proceedings. The evaluators observed that the cooperation and coordination between law enforcement agencies has improved since the last evaluation. GDBOP and Chief Prosecutors' Office of Cassation comprise specialised units of jointly trained experts in the field of money laundering. The number of money laundering related investigations and convictions are, however, low compared with the total number of STRs passed to law enforcement. It was unclear how many cases law enforcement generated themselves. A proactive approach should be considered related to the financial investigations performed by police to better trace the proceeds of organized and economic crimes. Simplified access to the tax data should also be considered.

3.Preventive measures – Financial institutions

23. The Bulgarian prevention on money laundering regime is based on the Law on Measures to prevent Money Laundering (LMML) which has been amended several times since 1998. The LMML is supplemented by new Rules on Implementation of the Law on Measures against Money Laundering (RILMML), which further elaborate the preventive obligations under the AML Law. These cover the obligations required by Law or Regulation under the Methodology. Furthermore financial institutions and other subject persons shall adopt within 4 months as from their registration, internal rules for control and preventing money laundering. These rules provide further details as to criteria for identifying suspicious operations or transactions or customers; the training of the employees and the use of technical means for prevention and detection of money laundering; and also an internal control system for the compliance with the measures under the AML Law. The rules are required to be approved by the Director of the FIA. While in many ways the Bulgarian system for the issuing of internal rules is quite unique it was the view of the Plenary that its use in this context could not be viewed as producing texts which satisfied the "other enforceable means" test.
24. The AML Law requires the financial institutions to identify their customers (both individuals and legal entities) when establishing business or professional relations; when carrying out any operation involving more than 15,000 €; when performing an operation in cash exceeding 5 000€; when performing transactions in smaller amounts below the threshold but there is information that these operations are linked; and when suspicion of money laundering arises. Financial institutions cannot keep anonymous accounts or other types of accounts where the owner is not identified.
25. Bulgarian legislation and regulations on financial institutions' duty of diligence concerning customers and transactions are fairly satisfactory. The provisions seem to be fully consistent with the FATF recommendations on the extent to which customers must be identified and their identities checked information on the purpose and planned nature of business relationships, when customer identities have to be checked and the need for constant vigilance with regard to business relationships, including the regular updating of customer information. All financial institutions have specialised units for AML compliance.
26. Generally the institutions that were interviewed by the examiners seemed to be quite accustomed to all the requirements of identification and its verification. The industry's understanding and implementation appears to be the result of the focus given to AML by the FIA. As noted earlier, the effectiveness of the legislation is not reflected in the reports filed. With the exception of banks, financial institutions need to work harder to raise awareness and be effective in CDD due diligence.

27. The concept of beneficial owner is addressed in the AML Law and the definition is provided in the implementing rules. Financial institutions are required to identify the beneficial owner. Financial institutions are also required to verify the identification data of the customer and the beneficial owner. It was the view of the evaluators that the definition of beneficial owner was not fully understood by all financial institutions.
28. Financial institutions have to make an initial assessment of the risk profile of the customer. Then, on the basis of this assessment, the credit- and financial institutions have to place higher risk customers under special supervision and apply extended measures. These categories may include customers without registered address or place of business in the country, off-shore companies, companies with nominal owners or bearer stocks and shares, fiduciary management companies or other similar structures. At the time of the on-site visit, some financial institutions had special software to assess high risk customers and others had opened a tender for such software.
29. Financial institutions are obliged to apply extended measures to customers who occupy, or have occupied any supreme state position in Bulgaria or abroad. There is no clear provision in law or regulation or other enforceable means for the determination of whether a customer is a political exposed person (PEP). There was no requirement to have senior management approval prior to the establishment of such business relationships. The Bulgarian authorities were intending to adopt additional rules when implementing the Third European Union Directive.
30. Some measures are in place concerning correspondent banking relationships. There is, however, no enforceable requirement to assess the respondent institutions AML/CFT controls, and ascertain that they are adequate and effective. There is no enforceable requirement to obtain senior management's approval before establishing new correspondent relationship. Additionally there is no enforceable requirement to document the respective AML/CFT responsibilities of each institution.
31. There are no restrictions in the Bulgarian legislation to prevent competent authorities from accessing required information to perform anti-money laundering functions. No secrecy provisions inhibit the exchange of information between competent authorities.
32. The AML Law obliges subject persons to maintain for a period of 5 years the data about the customers and the documents for the transactions and operations carried out. With respect to customers, the time limit for holding this documentation starts from the beginning of the calendar year following the year in which the relationship is terminated or, in the case of transactions and operations from the beginning of the calendar year following the year of their performance. It is noted that the language is quite broad though may not provide sufficient guidance to reconstruct financial records.
33. A requirement to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations is introduced in the AML Law. There is, however, no requirement to set out in writing any findings of examinations on the background and purpose when transactions have no apparent economic or visible lawful purpose. Such findings should be set out in writing and maintained for a period of at least five years to assist competent authorities. Countermeasures in case such a country continues not to apply or insufficiently applies the FATF Recommendations should also be established in law or regulations.
34. The AML Law provides that wherever there is suspicion of money laundering, the subject persons are obliged to notify forthwith the FIA prior to carrying out the operation or transaction, holding up its completion within the period admissible under the legal acts that regulate the corresponding type of activity. In cases where delay of the operation or transaction is objectively impossible, the subject persons shall notify the FIA immediately after its performance. The

definition of money laundering in the AML Law includes laundering in relation to any criminal activity (tax matters are included for these purposes and are not excluded for STR reporting purposes). There is no financial threshold and all suspicious transactions should be reported. Attempted suspicious transactions are not explicitly covered.

35. LMFT provides that everybody who knows that certain operations or transactions are directed to financing terrorism shall be obliged to inform immediately the Minister of Interior. LMFT further provides that subject persons under the LMML shall be obliged on the occurrence of a doubt for financing terrorism, to inform the Minister of Interior and the FIA. There is no financial threshold. Attempted suspicious transactions related to financing of terrorism are not explicitly covered.
36. The Bulgarian legislation does not allow shell banks to be licensed for banking activities in Bulgaria. It is the licensing requirements which prohibit the establishment of shell banks rather than direct prohibition in any legislation.
37. Administrative sanctions for non-compliance with the AML Law may be imposed by the FIA. The range of permissible sanctions is low for corporations (50 000 BNG). Fines imposed by the FIA appear not to be frequent and the amount is relatively low compared with the maximum permissible. The major types of infringements that have been sanctioned are: “not filing a Suspicious Transaction Report”; “not filing a Cash Transaction Report”; “lack of internal rules”; “tipping off”; “no declaration of origin of funds” and different kind of “lack of client identification”. It is difficult to assess the level of effectiveness.
38. With respect to the Bulgarian National Bank it is believed that although they have the expertise and apparently conduct their inspections diligently the BNB seems to lack some resources to enable it to conduct more timely inspections with the same accuracy. The Bulgarian authorities should consider additional resources in this respect.
39. Although the evaluation team was assured that the Financial Services Commission is adequately resourced the number of inspections compared to the total subject persons seem to be disproportionate. It is believed that the large number of subject persons supervised calls for more human resources. The Bulgarian authorities should consider additional resources in this respect.
40. Money transfer services are offered only through licensed institutions with the exception of Postal Services which currently provide domestic transfers. Money transfers are affected through financial houses or exchange bureaus only on a contractual basis with banks. Banks and financial houses need a licence to perform such activities. Exchange bureaus perform their activities subject to registration. No informal alternative remittance systems are allowed and the evaluation team was informed that the informal money or value transfer services were not considered as a problem in Bulgaria. Moreover financial services operators who offer licensed money transfer services do not feel any form of competition from informal money or value transfers services and believe that if there is any it is negligible.

4. Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBP)

41. The general CDD obligations for financial institutions have equal force and applicability to DNFBP and are codified in law and regulation. Many of the systemic deficiencies noted for financial institutions are equally applicable to DNFBP. The AML/CFT laws cover a range of DNFBP beyond those specifically enumerated in FATF Recommendation 12 and those of the 2nd EU Directive. In addition to the regulated industry, supervisory agencies such as the Bulgarian National Bank, the National Tax Authority and Customs are all obliged entities and must report to, and file STRs with the FIA. Briefly, DNFBP, like financial institutions, must: identify

customers and beneficial owners; keep records, inform the FIA of suspicious activity; check lists for terrorist financing; delay unusual business activities if possible; and develop internal procedures and units dedicated to AML/CFT compliance.

42. During the past two years, the FIA has begun to engage in outreach and provide training to DNFBP to improve their understanding of AML/CFT requirements, including CDD measures. The FIA has increased the staffing and devoted more resources to inspection of the DNFBP sector. For specific industries, which do not have a self-regulating organisation, Bulgaria should consider continued training on CDD and record keeping.
43. The Bulgarian authorities should consider clarifying the obligations for reporting attempted suspicious transactions. Furthermore, Bulgaria should consider providing further guidance and feedback for DNFBP on STR filings. In particular, such guidance should be geared towards DNFBP, AML/CFT risks.
44. Based on its risk analysis, the FIA should consider continuing targeted training to sectors that pose the greatest AML/CFT risks. Specific training may be necessary to enhance the effectiveness of DNFBP use of their internal rules as well as to reinforce procedures for addressing business relationships and transactions with persons from countries that insufficiently comply with the FATF Recommendations. Additionally, many DNFBP did not fully comply with the requirements of LMFT and further outreach on terrorist financing indicators under the internal rules should also be considered.
45. The DNFBP are subject to FIA supervision and inspection, which has an array of powers under the AML/CFT Laws. In the light of the scope of covered entities, the FIA should have sufficient resources to fully supervise all subject entities.

5. Legal Persons and Arrangements & Non-Profit Organisations

46. The Law on Commercial Register provides for the setting-up of a commercial register, as a unified centralised electronic data base kept by the Registry Agency within the Ministry of Justice. The new commercial register was to enter in force as of 1 July 2007 (shortly after the on-site visit) replacing the present court registration with an administrative one conducted under the Commercial Register Law.
47. The ownership of shares in listed companies could be traced at the Central Depository where the issue of shares and their transfers are registered. Information on the shares of limited liability companies is available in the Commercial Register. The Commercial Register is public.
48. The examiners were advised that bearer shares can be issued in Bulgaria only by the joint stock companies. There is no limitation for the issuing of bearer shares, but banks and state companies are not allowed to issue bearer shares. The owner of the bearer share is known when first registered, but after having sold the share the owner of the bearer share is no longer known or registered. The Bulgarian authorities highlighted that bearer sharer are rarely used, due to the uncertainty which they have.
49. It cannot be guaranteed that in the future, the practise of issuing bearer shares will not be used more widely. This being said, the examiners recommend the Bulgarian authorities to consider providing the obligation of registering the ownership of bearer shares or to introduce other adequate transparency measures concerning bearer shares in the legal framework governing the commercial companies.
50. The concept of trusts is not known under the Bulgarian Law.

51. The examiners were advised that the NPO sector is one of the reporting entities sectors. The FIA is the overseeing body for NPOs. The non-profit sector is governed by the Law on Non-profit Corporate Bodies and a recent amendment in 2006 introduced detailed provisions regarding financial obligations and annual reports only applicable to NPOs for public benefit. Consideration should be given to widening the annual obligations of the NPOs for public benefit to the other NPOs.
52. No specific review of the risks in the NPO sector has been undertaken. Though there is some financial transparency and reporting structures (especially for NPOs for public benefit), Bulgaria should consider the development of a strategy of monitoring the most vulnerable parts of the NPO sector. Furthermore regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures should be undertaken.

6. National and International Co-operation

53. The assessment process clearly showed a number of examples of national co-operation among all relevant agencies on all levels, from policy makers to ad hoc case to case teams.
54. The examiners welcomed the fact that that Bulgaria has ratified all the relevant international instruments and that measures are taken to implement their requirements. Several issues raised in the domestic context still also need to be addressed in the international context, including the limited scope of liability of legal persons; and differences of view between the Bulgarian authorities on the application of third party confiscation need resolution. The awareness of some reporting entities with respect to their role in CFT mechanism and the specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person need also to be addressed in the context of international cooperation..
55. In the absence of any significant legal restriction in the field of mutual legal assistance, Bulgaria is in principle able to provide a wide range of assistance in the field of criminal proceedings and in ML and FT in particular. Likewise Bulgaria is in principle able to provide a wide range of assistance in the field of extradition and in ML and FT in particular.
56. The evaluators strongly advise that Bulgaria keeps more detailed statistics in order to allow its authorities to assess the effectiveness of the AML/CFT system more clearly.