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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

Select Committee of Experts on the Evaluation
of Anti-Money Laundering Measures
(PC-R-EV)

FIRST MUTUAL EVALUATION REPORT ON
“THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA”

SUMMARY

Views expressed do not represent official views of the Commission of the European Communities.

1. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited "The Former Yugoslav Republic of Macedonia" between 26-29 October 1999.
2. The transition to a market economy and more recently, the events in Kosovo created an excellent opportunity for various types of criminals to operate in the country. Though reported crime appears steady, its structure is changing: narcotic related crimes, economic crimes and trafficking in weapons have sharply increased in recent years, generating significant amounts of illegal proceeds which need to be laundered.
3. "The Former Yugoslav Republic of Macedonia" is vulnerable to the placement, layering and integration phases of the money-laundering process. The economy of the country is heavily cash based due to a profound distrust within the population of the banking, financial and tax systems. As a consequence, financial institutions, exchange offices and the gambling industry appear not to be very concerned by the need to develop preventive measures with regard to money laundering. Moreover, the control over foreign money seems rather loose, notably regarding cross-border cash transactions but also in the framework of the privatisation process.
4. The Macedonian Government has already taken certain steps in the fight against money laundering. A specific offence of money laundering following an all-crime approach has been inserted in the Criminal Code enacted in July 1996 (Article 273) and several provisions regarding the seizure and confiscation procedures exist. It is also to be noted that the country acceded to the Vienna Convention and recently ratified the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime Convention (ETS N° 141)¹. The Macedonian authorities intend to develop anti-money laundering measures in order to strengthen its capacities to fight criminal activities and to align its legislation and practice with European standards. It is in this context that a draft law on prevention of money laundering has been established.
5. Only one money laundering case was under investigation at the time of the evaluation visit and there had been no prosecutions and therefore no convictions in this field. It is not clear to the examiners whether certain investigations have specifically targeted money laundering aspects.
6. The money laundering offence established by Article 273 of the Criminal Code seems to cover a wide range of mechanisms or methods that can be used to launder crime proceeds and establishes stiff penalties. However, the examiners consider that the wording of the offence should be closer to the language of the Council of Europe Convention. They are concerned by the fact that the wording of the offence is very economics oriented and includes a number of concepts that do not appear to be precisely defined. This is particularly the case regarding the terms "economic operation" and "money". Moreover, the fact that the conversion of crime proceeds is only envisaged as the "release in trade and circulation" is another cause of concern for the examiners. Concerning predicate offences, the Macedonian authorities have decided to adopt an all crime approach, which is a good step. Even though the Macedonian authorities do not consider it to be a problem, they should nonetheless ensure that the two predicate offences specifically identified (drugs and arms trafficking) are only examples and can, under no circumstances, be construed as limiting the all crime approach.

¹ The Macedonian authorities ratified Convention N° 141 on 19 May 2000 and it will enter into force on 1st September 2000.

7. In addition, though it is difficult at this stage to fully appreciate how the offence would operate in practice as it has not yet been tested in court, the examiners were of the opinion that the knowledge standard should be inferred from objective factual circumstances in order to ensure effective use of the offence.
8. According to the examiners, Article 273 of the Criminal Code should also clearly state that the perpetrator of the predicate offence can be convicted both for the predicate offence and for money laundering.
9. The Macedonian confiscation regime is conviction based and, in the context of the money laundering offence confiscation is compulsory. The Macedonian legal system comprises various provisions dealing with the confiscation and provisional measures contained in the Criminal Code, the Code of Criminal Procedure and the law on execution proceedings. The great number of provisions and their complexity did not allow the examiners to get a clear picture of the way these provisions function in practice and their interrelationship. It is therefore very difficult to appreciate their effectiveness, especially in the context of money laundering, as they have not yet been tested. Given the central place of the confiscation and provisional measures in the arsenal developed to fight money laundering, the examiners recommend that the Macedonian authorities should review their confiscation and provisional measures regime with a view to simplifying it and ensure that it is fully operational and effective. This review should notably deal with the scope of application of the different provisions, the relevance of the distinction between "objects" and "property", the definition of unclear expressions such as "objects which according to the Criminal Code are to be confiscated" (Article 203 CCP) and the level of proof required to trigger confiscation or apply provisional measures. The examiners were of the opinion that several areas need to be clarified, notably the possibility of confiscating laundered proceeds in the hands of third parties and the possibility to apply provisional measures to legal persons. Finally, the possibility of introducing a civil action in rem against the assets suspected to be the proceeds of crime could be considered.
10. The inclusion of a specific offence of money laundering in the Criminal Code as well as confiscation measures is a positive start. However, the examiners are convinced that the lack of proper mechanisms to detect money laundering cases renders any conviction under this provision very difficult. The absence of a reporting mechanism of suspicious transactions as well as of a clear and compulsory system of client identification and record keeping requirements, do not allow criminal provisions to be applied in a proper way. The examiners recommend to the Macedonian authorities to consider taking appropriate measures to raise awareness among the private sector and the public at large of the necessity to counter money laundering. It is also central, especially concerning the banking sector, to apply efficiently the preventive measures such as identification of clients, the "know your customer" rule and reporting of suspicious transactions, to establish clear record keeping requirements and to prohibit the "tipping off" of those who could be suspected of money laundering. The monitoring of the due application of these measures is also essential, including through internal and external control more targeted at anti-money laundering measures as well as by appointing money laundering compliance officers. It is also recommended that adequate supervisory controls over the exchange offices, the casinos, ZPP (central payment house) and the privatisation process be established rapidly as well as proper control of the activities carried out by money remitters and company formation agents. It is further recommended that strict control mechanisms be put in place to ensure that "gift contracts" and "collateral contracts" with respect to trading in securities are not used to launder money. It is clear from the draft law on money laundering that the Macedonian Government is very aware of the

necessity to adopt the preventive measures referred to above and to ensure their implementation. The examiners strongly encourage the Government to proceed rapidly in this direction.

11. The "Former Yugoslav Republic of Macedonia" is a party to a wide range of international and bilateral instruments. It is nonetheless unsure whether these instruments are effectively implemented notably as regards certain provisions of the Vienna Convention (Articles 3 to 9). Therefore the necessary steps, including legislative amendments if necessary, should be taken to ensure that the Vienna and Strasbourg Conventions are fully implemented. On the other hand, the Macedonian legal system comprises a number of useful provisions regarding legal assistance, enforcement of foreign criminal judgements and extradition as well as a possibility for direct police cooperation and exchange of information between the National Bank and its foreign counterparts. The effective implementation of such measures is difficult to assess, however, the examiners have identified several areas where clarification or improvement should be sought. For instance, the laundering on the national territory of the proceeds from a predicate offence committed abroad should clearly constitute a criminal offence in the country and appropriate rules governing the level of evidence should be established. It should also be clear that Macedonian nationals who have committed offences abroad, especially regarding money laundering, are investigated and considered for prosecution by national authorities as they cannot be extradited. The Macedonian authorities should also ensure that the widest range of confiscation measures (including value based and confiscation with respect to legal persons) can be used in mutual assistance requests. It would also be very useful to undertake a review of the conditions required to enforce foreign confiscation judgements with a view to assess if such conditions prevent in practice enforcement of such judgements and if this is the case, take the necessary steps to remedy such situations and ensure as well that foreign civil and value based confiscation judgements are enforceable. A review would also be necessary to determine whether legal assistance requests where the requesting state is seeking the identification, freezing, seizure of the proceeds of money laundering or of the predicate offence or of the property or corresponding value can be given effect and, if needed, take the necessary steps to allow effective international cooperation in this field. The banking secrecy provisions seem to be quite rigid and a court order or, in some cases, a special authorisation from the Ministry of Finance is required for the communication of any information even to law enforcement authorities. Consequently, it appears necessary to review carefully the provisions concerning banking secrecy to ensure that bank secrecy is not an obstacle to the provision of the widest possible measure of investigative assistance. The examiners further suggest that necessary measures be considered to allow prosecutors and investigative judges to cooperate directly with their counterparts abroad and for asset sharing including when confiscated assets would have to be returned abroad.
12. On the operational front, the fact that a Financial Intelligence Unit has not yet been established and that none of the criminal police departments seem to have acquired a relevant level of specialisation as regards money laundering cases are also significant impediments to the effectiveness of the criminal offence of money laundering. Consequently, the examiners underline the need for an urgent establishment of a FIU with the necessary powers as far as national and international cooperation is concerned. Likewise, the Macedonian authorities should consider clarifying the repartition of powers between the judiciary, the prosecution services and the police forces and ensuring that those who have the task to investigate money laundering cases within these institutions have the necessary specialisation and that sufficient resources are provided for this purpose. Moreover, the examiners gained the impression that some obstacles in the sharing of information undermined real cooperation among different law enforcement bodies as well as between law enforcement bodies and other relevant

institutions. The examiners therefore recommend that necessary mechanisms are put in place to allow an effective exchange of information among law enforcement bodies and between these bodies and other relevant institutions including the banking sector and that obstacles to interagency cooperation are removed. Certain special investigative means are now frequently used in a growing number of countries, however, some of these techniques cannot be used on the Macedonian territory due to constitutional obstacles. It is urgent that the Macedonian authorities consider carefully whether or not the constitution prevents the use of such special investigative means and, if necessary, carry out the requisite constitutional reform.

13. As mentioned above, a committee under the Ministry of Finance has prepared a bill on prevention of money laundering. The anti-money laundering act will present a solid legislative foundation for combating money laundering and several of the legal problems raised by the examiners on the current situation are addressed in this draft. The most important parts of the draft are the introduction of customer identification rules, rules on record keeping for at least 5 years, establishment of a FIU, the delimitation of legal and natural persons obliged to take measures for detection and prevention of money laundering, the prohibition of the "tipping off" and a clear obligation to report suspicious transactions. It should be noted however, that to ensure a firm basis to address the anti money laundering issue it is necessary to change and amend other legislation, e.g. the Constitution, the Criminal Procedure Code, The National Bank Act and the Banks and Savings Houses Act. After careful consideration of the examiners' suggestions, an effective and complete implementation of the proposed bill is crucial to properly develop the Macedonian approach to money laundering. Much remains to be done to ensure effective implementation of anti-money laundering measures. As yet there is a very long way to go before "the Former Yugoslav Republic of Macedonia" has an adequate legal structure in place to combat money laundering which meets the international standards, and even further to go before it can create an operational system.

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