



Strasbourg, 3 June 2004

**Moneyval (2004) 24 Summ**

**EUROPEAN COMMITTEE ON CRIME PROBLEMS**  
**(CDPC)**

**Select Committee of Experts on the evaluation  
of anti-money laundering measures  
(MONEYVAL)**

**SECOND ROUND EVALUATION REPORT ON AZERBAIJAN**

**SUMMARY**

## **A. Introduction**

1. This Report on the Observance of Standards and Codes (ROSC) for the FATF 40 Recommendations for Anti-Money Laundering and 8 Special Recommendations for Combating the Financing of Terrorism (FATF 40+8 Recommendations) was prepared by the MONEYVAL Secretariat on the basis of the Detailed Assessment report<sup>1</sup> on Azerbaijan, which was adopted at the plenary meeting of the MONEYVAL Committee in Strasbourg, 10 December 2003. The report summarizes the level of observance of the FATF 40+8 Recommendations and provides recommendations to enhance observance.

## **B. Information and Methodology used for the Assessment**

2. This assessment is based on a review of the AML/CFT legislation and regulations of Azerbaijan. Furthermore, the assessment team received from the Azerbaijani authorities information on the capacity and implementation of criminal law enforcement systems, and on supervisory and regulatory systems to deter money laundering and financing of terrorism. The assessment team held discussions with officials and technical experts from a number of Azerbaijani department and agencies, as well as financial institution representatives from the private sector. The assessment is based on the information available at the time of the on-site visit in Baku, 26-30 May 2003.

## **C. Main Findings**

3. The AML/CFT regime in Azerbaijan is very under-developed. There is not yet in place a Financial Intelligence Unit (FIU), and there is no general anti-money laundering law. There are no reporting obligations in cases of suspicion of money laundering or terrorist financing. Likewise identification and record keeping requirements, other than in respect of general account opening by banks, are seriously deficient. As a consequence, Azerbaijan is non-compliant or materially non-compliant with regard to a very large number of the FATF 40 Recommendations and the 8 Special Recommendations. The criminalisation of money laundering is very limited, and the criminalisation of the financing of terrorism needs extending. At the time of the on-site visit there were no money laundering or terrorist financing investigations, prosecutions or convictions. On the positive side, the Azerbaijani authorities are taking the problem seriously, which has resulted in the creation of an Expert Committee by the Cabinet of Ministers. This Committee consists of members of all relevant state agencies, and has been set up to assess the existing AML/CFT framework and to prepare an outline of measures to be taken.

### **(i) Criminal Justice Measures and International Co-operation**

#### *Criminalisation of Money Laundering and Financing of Terrorism*

4. Azerbaijan is a party to most international conventions relevant to AML/CFT. However, the UN 2000 Convention against Transnational Organised Crime (the Palermo Convention) had not been ratified at the time of the on-site visit. The Convention should be ratified as soon as

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<sup>1</sup> The detailed assessment was prepared by the MONEYVAL Secretariat based on contributions from an evaluation team which consisted of Mr. Evgeny Volovik, the Russian Federation; Mr. Liutauras Zygas, Lithuania; Mr. Lambros Themistocleous, Cyprus; Mr. Jose-Maria Fernandez Lacasa, Spain and a member of the MONEYVAL Secretariat.

possible<sup>2</sup>. Money laundering is criminalised under Article 241 of the Criminal Code. It covers “the laundering of funds or other assets gained from illicit trafficking of narcotic drugs and psychotropic substances, namely the realisation of financial or other transactions by using the funds or other assets gained from illicit trafficking of narcotic drugs and psychotropic substances, as well as the use of such funds or other assets for the purposes of business or other economic activity” and carries a maximum penalty of 7 to 12 years, with or without the confiscation of assets. However, as noted, it is limited only to a range of predicate offences all associated with illegal trafficking in drugs and psychotropic substances. The law should extend the predicate offences for money laundering to all serious proceeds-generating offences, including corruption and those offences committed by organised crime, as well as offences of financing of terrorism. Article 214-1 of the Criminal Code, which was adopted on 17 May 2002, provides for the criminalisation of the financing of terrorism. The offence covers “intentionally directing of funds or other assets, partially or wholly, directly or indirectly, to the perpetration of terrorism as well as intentionally collecting funds or other assets for that purpose” with a penalty of imprisonment of between 8 and 12 years with the confiscation of property. The provision covers only terrorism as such, and not the financing of terrorist organisations.

#### *Confiscation of Proceeds of Crime or Property used to Finance Terrorism*

5. Confiscation can be applied only where it is explicitly stated in a specific offence, as in the case of (drugs) money laundering. In some offences, where confiscation is explicitly referred to in the offence, its use is only discretionary. Legal provisions setting out the principles for the use of the confiscation regime should be addressed. The evaluators consider that the confiscation regime should be mandatory in particular types of offences, including money laundering, and possibly drug trafficking and other major proceeds-generating offences. The Azerbaijani authorities should carefully review their legislation to satisfy themselves that it is generally capable of confiscating both proceeds (with the wide meaning that is attached to the term by the Strasbourg Convention), property and instrumentalities. There is no comprehensive normative act providing a mechanism to implement the freezing, without delay, of assets deposited into a bank account. There should also be put in place a detailed and comprehensive regulatory mechanism to implement freezing or seizure of property that is the proceeds of, or used in, or intended or allocated for use in the financing of terrorism. The National Bank has, in practice, been able to freeze terrorist-related deposits. There is generally a lack of relevant statistics with regard to freezing, seizure and confiscation orders.
6. In order to reach a sufficient level of expertise in the field of asset tracing, freezing and seizure and investigation of money laundering and financing of terrorism cases, much more training is necessary for the relevant agencies, including training in modern financial investigative techniques.

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<sup>2</sup> The Convention has now been ratified.

*The FIU and processes for receiving, analysing, and disseminating intelligence at the domestic and international levels*

7. There is no FIU, or any other mechanism in place, which receives reports of cases of suspicious transactions or activities from the financial sector or other businesses. The evaluation team recommend the creation of an FIU as a matter of urgency. The proposed FIU should be adequately structured, funded and staffed, and provided with sufficient technical and other resources to fully perform its functions. The FIU should have access to relevant registers, and it should be authorised to disseminate financial information and other intelligence both to the national law enforcement authorities and to foreign FIU's.

*Law enforcement and prosecution authorities, powers and duties*

8. The Police are under the responsibility of the Ministry of Interior. There are special Sections e.g. on Drugs and on Organised Crime. The Ministry of National Security is responsible for the investigation of criminal cases on acts of terrorism. The investigations by police forces from both ministries are carried out under the supervision of the Office of the Public Prosecutor. The police have normal investigative powers, such as search and surveillance, when conducting investigations relating to money laundering or terrorist financing. As for further special investigative techniques, such as controlled deliveries, undercover operations and the use of informers, these can be applied for in special circumstances, but are – according to the Azerbaijani authorities – believed to be more relevant in international cases than in domestic cases. For the production of bank records, the police always need a court order, i.e. the prosecutor will also have to be involved.
9. The Customs Service checks the flow of cash, the import and export of goods across the border and is in charge of investigations against smuggling and customs violations.
10. The Ministry of Tax is responsible for the investigation of cases concerning illegal and false entrepreneurship and of tax offences. The Ministry of Tax can furthermore be involved in 26 different types of cases, if the case was started on the basis of either illegal/false entrepreneurship or tax offences. Examples are certain cases of fraud, theft, counterfeiting of money and bribery. Where relevant, joint investigation teams between the Ministry of Tax and other law enforcement authorities, including the police, can be established.
11. Generally, the law enforcement authorities in Azerbaijan have sound investigative powers. Nonetheless, the Azerbaijani authorities produce very few concrete results in relation to AML/CFT. There have, as noted, been no investigations, prosecutions or convictions in relation to article 214-1 or 241 of the Criminal Code. The evaluation team recommends, that even within the limited scope of the money laundering offence under article 241 of the Criminal Code, there should be room for initiating specific money laundering investigations. In this regard, closer co-operation between the Customs Services, the police and the Prosecutors Office is needed.

*International Co-operation*

12. Azerbaijan has joined the UN Convention for the Suppression of the Financing of Terrorism, the Council of Europe Convention on Extradition (including additional

protocols) and has signed the Council of Europe Convention on Mutual Legal Assistance in Criminal Matters. Furthermore, a number of bilateral agreements on various aspects of legal assistance are in place. The specific issue of co-operative investigations is tackled both in an agreement between Azerbaijan, Georgia and Turkey and in an agreement between the GUUAM states (Georgia, Ukraine, Uzbekistan, Azerbaijan and Moldova).

13. There is a specific Law on Extradition, which applies where there is no relevant bilateral agreement between Azerbaijan and a requesting state concerning the extradition of a charged person. Azerbaijani citizens cannot be extradited to a foreign state.
14. Requests for mutual legal assistance (excluding requests for extradition) in 2001 numbered 253, and in 2002, 144. All these requests were satisfied. In the same years, Azerbaijan received 22 and 17 requests for extradition. 11 and 7 of those requests were satisfied in 2001 and 2002 respectively. The reason for failure to satisfy the other extradition requests was because they related to Azerbaijani nationals. In spite of the positive statistics, Azerbaijan can only assist on coercive measures relating to money laundering cases, if the predicate crime abroad relates to the various drugs crimes enumerated in article 241. In the view of the evaluators, this is a serious obstacle to efficient international legal assistance in this field, and an early enactment of a broader based money laundering offence is recommended as a matter of urgency to remedy this.

## **(ii) Preventive measures for Financial Institutions**

### *Prudentially-regulated sectors*

#### *General framework*

15. The most serious general impediment to effective implementation of the FATF Recommendations and other international standards is the lack of a general preventive law and the lack of a central authority to ensure the proper implementation of the law. The evaluators recommend that Azerbaijan urgently drafts the law on prevention of money laundering and terrorist financing. This law must – apart from defining the general AML/CFT obligations – provide for the establishing of a competent state authority (the FIU) to receive suspicious transaction reports.

#### *Customer Identification*

16. The client identification requirements for banks in relation to account opening are based on the regulation of the National Bank on Organising Internal Control and Internal Audit. It seems generally to be sound, though so-called “nameless accounts” are available as deposit accounts (though the evaluators were advised no transactions can be effected through them). As explained, they seemed more akin to numbered accounts, as they are only opened for previously identified account holders. None-the-less, the evaluators considered them a potential money laundering danger. The team was advised that a law was being drafted which provides that banks must close them within eighteen months. For securities firms there is a general requirement in the Rules on the Realisation of Broker Activity in the Securities Market for securities intermediaries to seek from their customers information

about their identity. However, there is a lack of formal identification requirements in the insurance sector, which is a serious obstacle to prevention of this sector from misuse for the purposes of money laundering or financing of terrorism. It is recommended, as a matter of priority, that a clear customer identification regime should be put in place for the insurance sector.

#### *Ongoing monitoring of accounts and transactions*

17. No detailed obligations are set out in the National Bank Rules covering ongoing monitoring of accounts and transactions. The evaluators recommend that the Azerbaijani authorities provide directly in legislation that credit and financial institutions must perform ongoing monitoring of accounts and transactions for the purpose of preventing money laundering and financing of terrorism. The evaluators were not provided with information about the extent to which banks are able to recognise jurisdictions as non-cooperative in terms of money laundering prevention. The evaluators recommend that the National Bank consider providing all financial institutions in Azerbaijan with information about which countries and jurisdictions should be considered non-cooperative in an AML/CFT context, and to keep it updated.

#### *Record-keeping*

18. The requirements for the banking sector concerning record-keeping seem to be relatively comprehensive. However, in the insurance and securities sectors, currently there is a complete lack of formal requirements or obligations to record relevant information on customers and transactions. The evaluators recommend that Azerbaijan introduces as a matter of urgency formal record-keeping requirements in the insurance and securities sectors.

#### *Suspicious transactions reporting*

19. There is no formal reporting regime of suspicious transactions/activities. This is crucial to the effectiveness of the entire AML/CFT framework. The evaluators recommend that Azerbaijan, as a matter of the highest priority, should set up a system of mandatory reporting of suspicious transactions and activities. The reporting obligation should relate both to suspicions concerning money laundering and to suspicions concerning financing of terrorism.

#### *Internal controls, compliance and audit*

20. In accordance with the regulation of the National Bank on Organising Internal Control and Audit in Banks, banks must establish programmes which include internal control, procedures and policies, law compliance, employee training and an audit function of the internal system. However, the regulation is of a general character, and none of its provisions relate directly to AML/CFT matters. Furthermore, in the insurance and securities sectors, no screening procedures are in place for ensuring high standards when hiring staff. The evaluators also recommend including in a new comprehensive preventive law components relating to the internal control of AML/CFT procedures and training of staff. The evaluators furthermore recommend that the National Bank considers amending the Corporate

Management Standards in order to include more specific requirements concerning prevention of money laundering and terrorism financing. Moreover, the evaluators recommend providing in the Law on Insurance and the Law on Securities that insurance companies and market intermediaries should be required to comply with standards for internal organisation and operational conduct.

#### *Integrity standards*

21. Applicants for banking licenses need to present to the National Bank the following documentation: Documents evidencing state registration as a company; the constituent instruments; the accounting balances, documents reflecting financial state of founders, accounts of profits and losses and audit statement; documentation relating to professional competence of candidates for leading positions and for the position of chief accountant, together with criminal records for the same persons. Furthermore, large shareholders (more than 10 % of the share capital) both in banks and in securities companies are checked by the respective supervisory bodies. No information was submitted to the evaluators on specific integrity standards in the insurance sector. The evaluators recommend providing in the legal acts regulating all financial sectors that all persons wishing to acquire large portions of shares (10 % or more) of credit or financial institutions, as well as those seeking to take management positions in these institutions must be adequately checked.

#### *Enforcement powers and sanctions*

22. The National Bank can exercise usual supervisory competences, including obtaining access to all information relating to the activities of the banks, including information on specific accounts. The powers of the National Bank to sanction the credit institutions in case of non-compliance with the legislation and the orders issued by the National Bank seem quite appropriate and wide-ranging. On the other hand, the evaluators recommend that the Azerbaijani authorities should ensure, that appropriate sanctions can be exercised by the supervisory bodies in the insurance and also the securities sectors, including the possibility of revocation of licenses.

#### *Co-operation between supervisors and other competent authorities*

23. The National Bank may submit information concerning evidence of criminal acts to law enforcement agencies and other appropriate authorities. The National Bank can also exchange information with foreign supervisory agencies. No information concerning how, in practice, the insurance and securities supervisory bodies can co-operate with other competent authorities, including foreign supervisors, was given to the evaluators.

#### *Non-prudentially regulated sectors*

##### *Foreign exchange offices and money remitters*

24. Licenses for foreign exchange services are issued by the National Bank and such operations can be carried out only by branches of commercial banks. Money remitters also must obtain a license from the National Bank in order to operate. The National Bank supervises both foreign exchange offices and money remitters. There is no money laundering prevention

component in the programme of inspections. Changing money without a proper license constitutes a criminal offence.

*Other businesses*

25. In Azerbaijan there are no off shore companies, trusts, casinos or other gaming companies, other than one state-owned lottery. The evaluators recommend that the entire preventive regime, including customer identification, record keeping, training, internal reporting and suspicious transaction reporting should apply to all institutions and persons subject to the EC Directives 91/308/EEC and 2001/97/EC.

**D. Summary Assessment of the FATF Recommendations**

26. Azerbaijan still has a very long way to go before a sufficient level of compliance with the FATF 40 + 8 Recommendations is reached. Indeed, almost all aspects of the AML/CFT framework need additional attention, and in many areas the building of a new and reliable system is necessary and should be given the highest priority. One immediate priority should be the drafting and adoption of a general anti-money laundering act (covering also suspicions of terrorist financing), which should put in place including legal obligations concerning identification of clients, record-keeping, reporting of suspicions, training etc. Obligated parties under this law should be all intermediaries comprised by the two EU anti-money laundering directives. The second immediate priority should be the establishing, and making operational, of a Financial Intelligence Unit (FIU), which should be properly resourced and which should be able to exchange information, both with national law enforcement authorities and with foreign counterparts. Table 1 beneath summarizes recommended actions in areas relating to the FATF 40 + 8 Recommendations, and Table 2 contains other recommendations to further enhance the AML/CFT regime.

**Table 1. Recommended Action Plan to Improve Compliance with the FATF Recommendations**

<b>Reference FATF Recommendation</b>	<b>Recommended Action</b>
<b>40 Recommendations for AML</b>	
Scope of the criminal offence of money laundering (FATF 4-6)	Ratification of the UN 2000 Convention against Transnational Organised Crime. Extension of the predicate offences to money laundering to all serious offences, including financing of terrorism.
Provisional measures and confiscation (FATF 7)	Adopt provisions making it possible to seize and confiscate both proceeds, property and instrumentalities.
Customer identification and record-keeping rules (FATF 10-13)	Prohibition of the opening and/or the keeping of nameless savings accounts. Adopt provisions for all relevant intermediaries on identification and record-keeping on occasional customers when performing transactions over a specified threshold. Adopt clear customer identification provisions for the insurance sector.



Increased diligence of financial institutions (FATF 14-19)	Adopt provisions for all relevant intermediaries on the performance of on-going monitoring of accounts and transactions. Adopt for all relevant intermediaries a mandatory reporting regime on suspicious transactions and activities.
Measures to cope with countries with insufficient AML measures (FATF 20-21)	Consider on an up-dated basis providing all relevant intermediaries with information about which countries and jurisdictions should be considered non-cooperative in an AML/CFT context.
Administrative Co-operation – Exchange of information relating to suspicious transactions (FATF 32)	Adopt an STR regime making it possible internationally to exchange information relating to suspicious transactions, persons and corporations.
<b>8 Special recommendations on terrorist financing</b>	
II. Criminalising the financing of terrorism and associated ML	Extension of the predicate offences to money laundering to all serious offences, including financing of terrorism.
III. Freezing and confiscating terrorist assets	Adopt a comprehensive normative act providing a mechanism to implement the freezing without delay of assets suspected to be related to the financing of terrorism.
IV. Reporting suspicious transactions related to terrorism	Adopt for all relevant intermediaries a mandatory reporting regime on suspicious transactions and activities related to the financing of terrorism.
VI. Alternative remittance	Not applicable

**Table 2. Other Recommended Actions**

<b>Reference</b>	<b>Recommended Action</b>
Law Enforcement and Prosecution	Setting up and making operational a Financial Intelligence Unit (FIU). The FIU should be properly resourced and should be able to exchange relevant information with national law enforcement authorities as well as foreign counterparts.
	A comprehensive training strategy for the agencies involved in AML/CFT issues should be embarked upon.
	Further use of investigative means, including special investigative techniques, such as controlled deliveries.
	Further use of joint investigations between the various law enforcement agencies, including between the police and the Customs Service.
	The Prosecutor's Office should play a more active role in the classification of cases in order to ensure that a greater focus is given to the money laundering offence instead of exclusively focusing on the predicate crime.

## **E. Authorities response**

The Government of Azerbaijan appreciates the report on Azerbaijan on the standards for anti-money laundering and countering terrorist financing prepared by the MONEYVAL Secretariat and considers the recommendations made as priority in implementation of relevant measures to this end.

Following the MONEYVAL report on Azerbaijan adopted during the plenary meeting of MONEYVAL on 10 December 2003, the legislative work on measures against money laundering and financing of terrorism, as well as activities aimed at its implementation have been intensified.

The Law on Banks, entered into force on 31 March 2004, defines obligations on application of measures against money laundering in banking system of Azerbaijan. The Law gives legal powers for application of measures against money laundering and financing of terrorism, such as customer identification, active monitoring of accounts, transactions and bargains, record keeping, suspicious transactions reporting, performance of internal control and audit, identification of the countries and territories non-cooperative in implementation of measures against money laundering and financing of terrorism and notification to financing and banking structures to that end, and other measures. The Law also prohibits opening of all kind of anonymous accounts including accounts of which the holders could not be identified.

For the purpose of preventing money laundering and financing of terrorism in the security market, the relevant Rules on measures to be applied by professional participants of the security market have been adopted. These Rules include requirements for identification of participants of the security market and their bargains, reporting on transactions exceeding the set limit and suspicious transactions, and keeping documentation at least for the period of 5 years. According to the Rules, financial intermediaries have obligations in respect of internal strategy, procedures, internal control and audit, and check of the high reliability of new employees. In case of violation of legislation by financial intermediaries the State Committee for Securities can apply sanctions (withdrawal of licenses) against them.

The Group of Experts by the Cabinet of Ministers of the Republic of Azerbaijan on measures against money laundering and financing of terrorism has drawn up the Plan of Measures against money laundering and financing of terrorism and has submitted it to the Government for approval.

The Plan of Measures covers the recommendations put forward in this Report under the sections Criminal Justice Measures and International Co-operation, Preventive measures for Financial Institutions and Action Plan, as well as the FATF 40+8 Recommendations and includes in general the following:

### **In the field of the legislation and legal system**

- Preparation of the law on combating money laundering and financing of terrorism and creation of the Financial Intelligence Unit (FIU);
- More extensive criminalisation of money laundering and financing of terrorism, and provisions for its direct implementation as an additional measure of punishment, including:
- Application of the criminal liability to the legal entities;
- Improvement of legal mechanisms for direct confiscation, freezing and imposing of arrest on property, funds, incomes and used means related to these crimes or caused suspicions;

- Strengthening of the responsibility for hiding of a site of illegal means and property and their movements, and covering of such cases;
- Definition of the responsibility for persons involved deliberately to money laundering, to gain, transfer and changing of owners of means while being aware that they are proceeds of crime and to making assistance in evasion from the responsibility of the persons engaged in such activities;
- Improvement of legislative basis for exchange of information in the field of the international cooperation, conducting investigative operations, freezing, arrest, confiscation and extradition of means, and other measures;

Concerning the activity of the financial intermediaries and bodies responsible for state regulation

- Creation of mechanisms of reporting to the FIU about the sum exceeding the established limit, including suspicious payments, operations, bargains and means, as well as definition of responsibility for reporting information;
- Improvement of the normative acts determining obligations of financial intermediaries with respect to observance of internal control, strategy and legislation against money laundering and financing of terrorism, training of employees and implementation of procedures and programs on functions of internal audit and monitoring;
- Preparation of the normative legal acts on identification of clients, beneficiaries, operations, bargains, as well as personalities of the owners of the property, record keeping, storage of the documents by financial intermediaries and on definition of the degree of the responsibility for set forth above;
- Completion of the process of bringing the normative legal acts regulating bank activity, insurance, financial leasing, operation with securities, post payments, investment and other professional financial activity in compliance with the FATF 40+8 recommendations for Anti-Money Laundering and Combating Financing of Terrorism.

Taking into account set forth above, the Government of Azerbaijan is determined to implement measures against money laundering and financing of terrorism and it is intended to intensify the activities of state bodies in this area. The measures taken by the Government are directed to the prompt and complete implementation of the FATF's recommendations.