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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
BULGARIA

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 Bulgaria between 16-19 November 1999. At the time of the on-site visit the anti-money laundering regime in Bulgaria had effectively been in operation for one year.
2. Bulgaria, bordering the Black Sea, is strategically positioned between East and West. Its geographical position means that it is vulnerable to the traffic of drugs from outside Europe, and a convenient transit point for traffic in human beings. Crime, and organised crime in particular, is a growing problem. The fight against organised crime is a major national priority, as is combating corruption.
3. The Bulgarian authorities advised that the most serious money laundering problems currently involve the proceeds of drug trafficking and proceeds obtained from financial/economic crime. Bulgaria is vulnerable to money laundering at the placement, layering and integration stages. The banking sector is primarily considered to be vulnerable at the placement stage as are the exchange offices and casinos.
4. Recognising its vulnerability, Bulgaria began to engage with the money laundering issue in 1996, but the first law was never implemented. In 1997 a separate money laundering offence was established by the introduction of Article 253 of the Penal Code. In 1998 a new Law on Measures against Money Laundering (LMML) was adopted, providing a coherent framework for fighting money laundering. A specialised unit responsible for implementing the law was established, the Bureau of Financial Intelligence (BFI), which has the status of a General Directorate in the Ministry of Finance. It is an Administrative Unit responsible *inter alia* for collecting, processing, disclosing, keeping and analysing information on STRs from obligated entities. An extensive range of undertakings which are potentially vulnerable to money laundering are covered, including banks and non-banking financial institutions (bureaux de change fall within this category), insurers, investment companies and intermediaries, persons organising games of chance, notaries, stock exchanges and stockbrokers, auditors and chartered accountants. The BFI is working on a step-by-step basis (through training and the creation of discrete guidelines on suspicious transactions for those covered by the law) to ensure that those with obligations under the LMML understand their responsibilities. This process is encouraged. In due course the Bulgarian authorities may also wish to bring in other non-financial businesses not covered at present which are perceived as vulnerable to money laundering: car dealerships and others that trade in high value goods and possibly real estate agents.
5. From 01.11.98 until 01.09.99 the BFI received 132 STRs, 44% of them from banks. This had resulted, as of October 1999, in the arrest of 26 persons and the initiation of 4 trials. 613,000 US \$ and 279,000 DM and 37,000 Euro had been frozen and then seized or held and then seized.
6. On the legal side the UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) were ratified at early stages though work is still being done to incorporate all relevant provisions into Bulgarian Law. The money laundering offence in Article 253 of the Penal Code contemplates considerable terms of imprisonment and heavy fines. While the *actus reus* of the money laundering offence appears limited to financial or other transactions and would

not cover all the physical elements of the offence as provided for in the Strasbourg Convention it is understood that the receiving offence provided for in Article 215(1) would be available to the prosecutor for, e.g. the simple acquisition of laundered proceeds knowing that the property was proceeds.

7. It is not a requirement that the predicate offence needs to be committed in Bulgaria (only that the offence constitutes a crime under Bulgarian Law). The Bulgarian authorities explained that, in their view, subject to judicial ruling, a person can be convicted for both the predicate offence and a money laundering offence, though amendments to clarify this point should be considered to ensure “own proceeds” laundering can be successfully prosecuted. It is also welcome that the Bulgarian authorities have adopted an “all crimes” approach to predicate offences. However the strict interpretation in some quarters of the need for a conviction for the predicate offence before proceeding for money laundering looks like a major potential obstacle to the overall effectiveness of the money laundering offences. In this regard the legal structure needs to be improved. It should be possible to establish that a predicate offence has been committed in other ways through circumstantial or other evidence. It is helpful that the mental element of the offence of money laundering covers both knowledge and strong suspicion that proceeds have been acquired by crime, though money laundering by negligence is not covered. Serious consideration should be given to the introduction of negligent money laundering, as envisaged in the Strasbourg Convention.
8. Only physical persons are criminally liable under the Penal Code. Consideration should be given to the introduction of criminal liability of legal entities¹. The Bulgarian authorities should consider the introduction of a provision for the criminalising of conspiracy to commit money laundering.
9. Turning to confiscation, the money laundering offence under Article 253 expressly provides in paragraph 4 for the confiscation of the object of the crime or its value if it no longer exists. Confiscation is ordered by the court and follows conviction. It is understood to be mandatory. With no completed money laundering conviction this provision has yet to be tested. Apart from this, there are other provisions in Articles 44, 45, 46 and 53 of the Penal Code that were pointed to. Once again these provisions require a conviction for the crime². The Bulgarian authorities explained that in their system confiscation is a kind of punishment and that compensation is also an objective of the confiscation regime. They consider that they do not have confiscation in the sense it is provided for in the Strasbourg Convention and have decided to make separate legislative provision for this. In the absence of statistical information about the operation of the current system it was difficult to draw firm conclusions about it. While the present provisions, taken together, appear capable in theory of meeting some of the requirements of the Strasbourg Convention the examiners welcome the present review as a positive development that recognises the need for modern provisions which are geared to the confiscation of proceeds rather than confiscation being seen as an additional

¹ Since the evaluation visit it is understood that a new Chapter of the Violations and Punishments in the Administration Act has been presented to the National Assembly for adoption which provides for forfeiture, seizure and provisional measures of illegally acquired property and a special procedure for the indictment of legal persons.

² The Bulgarian authorities explained that in their opinion the confiscation provisions could be interpreted such that in cases where a person is prosecuted but a conviction cannot be obtained due to insanity, death or other circumstances confiscation of the object of the crime may still take place. This, however, is still subject to court interpretation.

penalty. There are no provisions for the reversal of the burden of proof in establishing what are unlawful proceeds and subject to confiscation. The Bulgarian authorities should in their review seriously consider this issue. Equally consideration could also be given to invoking the civil standard of evidence when establishing the lawful origin of alleged proceeds. The only provisions allowing for seizure and freezing orders are the generic provisions (Articles 134, 135 and 138 of the Penal Procedure Code). Though they are said to have a wide interpretation (and have apparently been used in the ongoing money laundering cases) they appear on their face inadequate to satisfy the requirements of the Strasbourg Convention for provisional measures which would clearly preserve the position regarding proceeds which are potentially subject to confiscation orders. Consideration should be given in the planned new legislation to putting in place comprehensive provisions on provisional measures.

10. On international co-operation Bulgaria has not only ratified the most important conventions in this field and entered into bilateral agreements with some countries but is also able to assist on the basis of reciprocity without any treaties or more formal agreements. Furthermore, the BFI is legally allowed to exchange information with other countries' FIUs regardless of their nature³. However it is a serious deficiency that there is no direct possibility of enforcing foreign confiscation orders. This should be addressed urgently.
11. The financial structure and the preventive system appear basically sound on paper and there is a large measure of formal compliance with FATF Recommendations. An interesting and helpful feature of the Bulgarian system is the declaration of the origin of proceeds for transactions above 30,000 Levs⁴, and the examiners felt this could be extended to those opening accounts and commencing business relationships. Customer identification for transactions above 30,000 Levs (including linked transactions) apply to both cash and non-cash transactions. However the Bulgarian authorities might consider whether or not 30,000 Levs is not rather high for the Bulgarian economy – particularly for the exchange offices where most day-to-day operations are likely to fall below the threshold and escape identification requirements (unless there is a suspicion of money laundering). Article 6(3) of the LMML provides for a structure of specialised units to be in place within obligated entities for the collection of information, enforcing the other preventive measures, and liaising with the BFI, and generally involving shared responsibility for internal systems. While it is positive that the BFI are developing working relationships with these units, it would assist the preventive regime if there are clearly designated compliance officers at management level, in line with FATF Recommendation 19, with ultimate responsibility for the system.
12. The BFI appears to have been the driving force in anti-money laundering supervision by virtue of the Ministry of Finance's role in the control of implementation of the law though work has also begun in this area by the BNB and the Insurance Surveillance Directorate without formal legal requirements to do so. The Bulgarian authorities should not lose sight of the need for the prudential supervisors to become, where they are not already, fully involved in anti-money laundering supervision and they should be formally tasked with that role, which could for the time being, be undertaken in co-ordination with the BFI. The work of the

³ A proposed amendment to the LMML was drawn to the attention of the plenary meeting, which would hinder the BFI in obtaining information from those covered by the LMML on behalf of foreign countries in the same way as is permissible under the current legislation. Such a development, if enacted, would significantly inhibit the BFI's ability to afford international co-operation between FIUs and the plenary strongly urges that the BFI should continue to be able to assist foreign countries in this field.

⁴ The Lev is pegged to the DM.

Insurance Surveillance Directorate in this area may provide a model for other regulators. The Bulgarian authorities should satisfy themselves that financial sanctions are strong enough to prevent breaches of the LMML and can be applied by all supervisory authorities. The BFI needs to analyse more closely, with the supervisory authorities, the reasons for non-reporting in some sectors and build closer relations with those sectors which are underreporting. The BFI needs more resources. A signal of the national commitment to fight money laundering will be the improved resourcing of the BFI to enable it to fulfil its potential. The BNB and the BFI are not in agreement as to whether the BFI's powers to require further information extend beyond the obligated entity that made the suspicious transaction report. Legal provision should be made to allow the BFI to require further information from all covered by the LMML.

13. The examiners consider that all law enforcement bodies are committed to fighting money laundering. Co-operation between the BFI and the National Service for Combating Organised Crime (NSCOC) seemed to be well developed so that the NSCOC are informed of relevant future cases at an early stage. A system is being developed, which should be built upon, of creating discrete working groups with experts from the BFI, the Ministry of the Interior, investigation and prosecution for significant money laundering cases. The NSCOC also ensure that it is a routine part of all their investigations to follow up the money laundering aspects. The extent of the use of available special investigative techniques in money laundering investigations was, however, unclear and the Bulgarian authorities should examine whether full benefit is being made of them in relevant cases or whether a more proactive approach to their use would benefit the anti-money laundering effort. The examiners also consider that an increased level of interaction between the BFI and the Customs Authorities would benefit the system.
14. While co-ordination at the working level appears to be in place a high level co-ordination group, chaired at a suitably senior level and drawn from the relevant parts of the anti-money laundering system, with the capacity and authority periodically to review objectively how the system as a whole is working would benefit the system.
15. In this way the Bulgarian authorities should take stock of existing arrangements in order to develop the practical operation of the basically sound anti-money laundering system which has been formally put in place.

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