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(CDPC)

Select Committee of Experts on the Evaluation
of Anti-Money Laundering Measures
(MONEYVAL)

SECOND EVALUATION REPORT ON
BULGARIA

SUMMARY

1. In the framework of the second round of evaluations, a MONEYVAL team of examiners, accompanied by a colleague from the Financial Action Task Force (FATF), visited Bulgaria between 7-10 October 2002.
2. Since the first evaluation round, a number of new measures and initiatives have been adopted or put in train. These include:
 - adoption of the Law on the Amendments and Complements to the Law on Measures against Money Laundering (which entered into force on 6 January 2001). This law amended the Law on Measures against Money Laundering (LMML), including, extending the list of entities subject to the law, enhancing the powers and independence of the Bureau of Financial Intelligence (BFI). It also introduced other changes, particularly with regard to insurance and gambling supervision;
 - adoption of amendments (in 2000 and 2001) to the “Regulations for Implementing the Law of the Measures against Money Laundering”;
 - adoption of the Government Regulations on the Structure of the BFI (in force since 20 February 2001 and subsequently amended);
 - drafting of further amendments (adopted by the Government on 19 September 2002) to the LMML as regards the BFI (functional independence of its Director and new control mechanisms over the Bureau), the implementation of the EU Directive 2001/97/CE and the establishment of a currency transaction reporting regime¹;
 - drafting of new Penal Code provisions on the criminalisation of money laundering (e.g., in order to include preparation of and incitement to money laundering, and money laundering by negligence)²;
 - drafting of a Law on Measures against Financing of Terrorism (LMFT) providing for the possibility of provisional measures against terrorism finances and linking the reporting system of the LMML with the LMFT. At the time of the visit, a working group was dealing with these issues³;
 - drafting of a Law on the forfeiture of proceeds of crime (civil confiscation)⁴;
 - continued enhancement of co-ordination/cooperation among the different institutions (liaison officers, memoranda of understanding). An anti-money laundering working group (task force) involving all Bulgarian law enforcement

¹ The Bulgarian authorities later advised that these draft amendments were adopted by the National Assembly in March 2003 (published SG 31/04/2003): the amendments to the Regulations for the Implementation of the LMML entered into force on 27 May 2003 and the Organic Rules on the Structure of the Financial Intelligence Agency on 12 August 2003 (the BFI was re-established as the Financial Intelligence Agency - FIA). The Bulgarian authorities underlined that according to the 2003 Regular Report on the EU accession, Bulgaria now fully complies with the EU Directive 2001/97/EC.

² The Bulgarian authorities later advised that these amendments to the Penal Code were adopted at the beginning of 2004 (SG 26/2004), and that the instigation, preparation and conspiracy in relation to money laundering are at present criminalized. The new law also provides for the confiscation of assets which have been converted as a result of the laundering process, and for the prosecution of the money laundering offence when the predicate offence has taken place abroad. The Bulgarian authorities underlined that the definition of money laundering was brought closer to that of the Strasbourg Convention and the Second Directive of the EU.

³ Later, the Bulgarian authorities advised that the law had been adopted in February 2003, and published in the SG N° 16 from 18.02.2003, amend. SG from 04.04.2003.

⁴ Later, the Bulgarian authorities advised that the draft was approved by the Government on 2 March 2004 and introduced in Parliament for adoption.

- agencies has been operational since June 2002;
- training of staff on money laundering issues (BFI, police, prosecutors);
 - improvement of computer and network facilities, including database interconnections between the BFI and Customs.
3. The Bulgarian authorities indicated that the major sources of illegal proceeds are still the illicit traffic of drugs and precursors, as well as financial and tax crimes. The smuggling of cigarettes and high value goods like jewellery has also appeared during the past year as a major source of illegal proceeds. Organised crime and corruption are serious problems for the Bulgarian Government; they are thus at the top of the agenda. The statistics provided on the types of serious crimes committed in Bulgaria show that drug trafficking, smuggling, corruption and fraud remain the major sources of illegal income.
 4. It will be recalled that the Bulgarian authorities began to engage with the money laundering issue in 1997, when the money laundering offence was established by the introduction of Article 253 of the Penal Code. Anti-money laundering mechanisms inspired by international standards were established the year after, with a Law on Measures against Money Laundering and the creation of a specialised unit responsible for implementing the law – the Bureau of Financial Intelligence. Since then, the number of suspicious transactions reports received by the BFI has been constantly increasing from about 130 reports during the first twelve months of its existence, to an average of 300 reports for each of the following years (including 2002 according to a reasonable projection). For the period 2000 to August 2002, the vast majority of reports came from the banking sector (about 80-90%). During the same period:
 - 15 transactions were suspended (the same figure as at the time of the first evaluation);
 - over 200 cases were forwarded by the BFI to the police or prosecution services; and,
 - 14 money laundering investigations were opened. However, no accusations were brought and no convictions were secured (an older “test case” is presently in court).
 5. On the legal side, the money laundering offence is the same as at the time of the first evaluation round. Some mandatory elements of the definition in the Strasbourg Convention are not included and conspiracy to commit money laundering is not an offence⁵. On the other hand, it would seem that self laundering is covered, although jurisprudential confirmation is not yet available. The liability of legal persons for money laundering offences has not yet been introduced.⁶
 6. Most importantly, there was no unanimity among those Bulgarian practitioners with which the team met as to whether money laundering is an autonomous offence and if a prior conviction for the predicate offence would be needed to obtain a conviction for money laundering. The provisions on confiscation were the same too, at the time of the visit, and the weaknesses identified during the first round remain (only direct proceeds can be seized/confiscated, and they must belong to the offender). As for legal provisions on

⁵ Legislation was passed in 2004 to address these issues (which does not include negligent money laundering – which is not a mandatory requirement).

⁶ Projects are under way to do so in 2004

temporary measures, their main objective remains the prevention of crimes and the collection of evidence. These issues need to be addressed.⁷

7. The absence of figures as to the amount of assets frozen/seized or confiscated made it difficult to say whether targeting the proceeds of crime is an established practice in Bulgaria.⁸
8. On the preventive side, the LMML was amended to extend the list of entities subject to the reporting duty.⁹ Most preventive requirements are in place in Bulgaria and it was confirmed that the “Customer Identification Units” are performing the same tasks as money laundering compliance officers (particularly internal supervision, assistance, training).
9. Turning to the obligated entities, the cooperation of the banking sector seems quite satisfactory. Greater attention to the implementation of the Basel principles on “know your customer” might be useful since, for the time being, the banking sector relies mostly on the basic identification requirements contained in the LMML and those provided for in a general regulation of the National Bank on transactions and the opening and functioning of bank accounts. The situation remained somewhat unclear regarding non-bank financial institutions: there are no systematic detailed statistics on the reporting of certain obligated entities (foreign exchange bureaux, financial houses, stock brokers etc.) and it appears that the FIU is the only entity explicitly responsible for monitoring the implementation of the LMML. It is on a voluntary basis that the National Bank has also been active in this field by taking into account the LMML requirements as part of the on-site controls.
10. The examiners found that the current distribution of responsibilities has led to the existence of loopholes in the supervision network, and that there is no systematic normal and money-laundering specific supervision ensured over the various sectors covered by the LMML (especially those which are vulnerable to money laundering according to the Bulgarian authorities themselves or in the light of the examiners’ findings – particularly foreign exchange offices, securities market and providers of cash transfer services etc.).¹⁰
11. Economic transactions are still heavily based on cash and measures need to be taken to reduce them. On-line banking is at an early stage of development.
12. As for international cooperation, the Republic of Bulgaria ratified the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in 1992

⁷ Article 156a of the Penal Procedure Code was amended in 2003, allowing for the securing of property subject to confiscation.

⁸ The authorities later advised that a system for the systematic collection of such figures is being put in place in 2004, and that a Law on the forfeiture of proceeds of crime was approved by the government and introduced in Parliament for adoption (March 2004).

⁹ Further amendments which took place after the visit would have brought the coverage in line with the EU Directive 2001/97/EC

¹⁰ Newer amendments (in 2003, after the visit) to the LMML would have improved the situation by conferring specific anti-money laundering supervisory responsibilities to all supervision agencies; the information provided by the Bulgarian authorities also suggest that there is at present a tendency to integrate supervision (a Financial Supervision Commission was established shortly after the visit to take over the supervision of the insurance sector and the securities market, the latter having appeared during the visit to be insufficiently involved in the anti-money laundering effort).

and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1993.

13. The situation seemed to be satisfactory as far as the exchange of information is concerned. The insufficiency of statistics on formal mutual legal assistance cases and their outcome did not permit the evaluators to fully assess the situation in this field¹¹. However, it is clear that Bulgaria still needs to introduce a legal framework to enable it to execute foreign confiscation orders.
14. Overall, the examiners welcomed the efforts deployed by the various institutions to improve inter-agency cooperation (an anti-money laundering working group was established at higher level, measures have been taken to facilitate the interaction between the FIU on the one side, and the police and prosecution on the other), and to overcome the current difficulties.
15. The FIU itself, which was re-established as an independent agency after the first evaluation visit, seems to have access to sufficient information, with one or two exceptions, and steps are being/need to be taken to improve the analytical work (training, software etc.). The FIU – in cooperation with other supervisory bodies - needs to focus more on under-reporting sectors and to reconsider the issue of feedback in a form that would both preserve the confidentiality of the on-going investigations, and provide encouraging signals and helpful indications to the reporting entities.

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¹¹ As indicated later by the Bulgarian authorities, efforts are being made at the level of the Ministry of Justice to introduce a database for the screening of the flow and outcome of incoming and outgoing requests for mutual legal assistance in money laundering cases.