



Strasbourg, 13 December 2001

PC-R-EV (01) 14 Summ.

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
GEORGIA

SUMMARY

SUMMARY

1. A PC-R-EV team of examiners, accompanied by colleagues from the Financial Action Task Force (FATF) visited Georgia between 23 and 26 October 2000.
2. The main areas generating illegal proceeds and seriously jeopardising the economic development of Georgia are corruption, fraud and tax evasion as well as smuggling in goods (petroleum, alcohol, tobacco).
3. Georgia is very vulnerable to money laundering in all three stages. At present there are very serious deficiencies in the anti-money laundering system in all sectors – legal, financial and law enforcement. A lot of improvements should be introduced especially in the legal and financial sectors before international standards and requirements can be met. The most important step to be introduced urgently is the adoption of a comprehensive anti-money laundering preventive law meeting the FATF standards. It is also crucial that a preventive system becomes operational rapidly.
4. The economy is heavily cash based (80% of transactions are performed in cash). A very serious problem for the country is tax collection as there is no reliable, centralised system of control of registration of activities subject to taxes (according to different sources more than 60% of the Georgian economy is grey economy). The examiners had the impression that there is a lack of awareness of money laundering issues by the Georgian authorities. No studies have been carried out as regards money-laundering typologies in Georgia. Therefore, the examiners recommend that the organisation of a/several seminar(s) gathering all relevant authorities to develop a greater understanding of the typologies of money laundering in Georgia should be envisaged.
5. On the legal side, Georgia has signed and ratified the UN Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention). The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (the Strasbourg Convention) has not been signed by Georgia. Since 1st January 2000 a new Criminal Code is in force which contains a separate offence called “Legalisation of illicit income” (Article 194). To date there have been no investigations or prosecutions for money laundering. Article 194 has adopted the “all crimes” approach and also covers “self laundering”; this is welcomed by the examiners. However, the examiners recommend that the definition of money laundering be revisited – the exact scope of the predicate illegal activity should be delineated without abandoning the all-crimes approach and the mental element of the money laundering provision be clearly identified. Consideration should also be given to the introduction, as defined by the Strasbourg Convention, to the concept of negligent money laundering.
6. The examiners consider that the seizure and confiscation regime should be reviewed and brought up to internationally accepted standards. Seizure should be considered as a genuine investigative and conservative measure which should be used under judicial control, not necessitating prior intervention of the court. In the view of the examiners, the confiscation procedure should conform to the requirements of the Strasbourg Convention – with the introduction of the possibility of confiscating instrumentalities and proceeds, and if they have been altered into another kind of property, the corresponding value may be confiscated.
7. The legal basis for international cooperation is indeed of a relatively satisfactory level, even if improvements could still be made to make it really comprehensive. The examiners

recommend the speedy signature and ratification of Convention N°141, as well as the ratification of the European Convention on Extradition, in order to reinforce the international cooperation capabilities of Georgia. Georgian authorities should also devote attention to the introduction of the necessary amendments to the legislation in order to provide for the possibility to give effect to a foreign confiscation request, a foreign confiscation decision or asset sharing request as well as equivalent value seizure and confiscation at foreign request. The examiners recommend that the Georgian authorities, when establishing a reporting system around a FIU, should not omit to invest it with the necessary legal capacity to enter into effective and direct cooperation with its counterpart elsewhere.

8. As regards financial issues, the examiners recommend that concrete and rapid actions should be undertaken by the Georgian authorities in the following areas:
 - establishment of a general regulation stating the obligation of banks and financial institutions to report unusual and suspicious transactions to an investigative unit, which may investigate them without any constraint derived from banking secrecy rules;
 - establishment of a general binding obligation to identify customers in financial services and the beneficial owner of the funds placed or utilised in banking and financial operations as well as the obligation of record keeping in respect of the opening of accounts and performing of financial transactions;
 - establishment and active enforcement of strict rules as regards the licensing of banks, exchange offices and insurance companies;
 - amendment of the legislation so as to alleviate strict banking secrecy as one of the conditions *sine qua non* for the successful implementation of a comprehensive anti-money laundering policy;
 - establishment of a clear timetable for the conversion of existing anonymous accounts into normal accounts subject to the usual customer identification requirements;
 - strengthening of the role and responsibility of the supervisory authorities as a prerequisite for any efficient anti-money laundering system.
9. The examiners consider as a positive aspect the fact that all segments of law enforcement can be mobilised in the fight against money laundering, however there seems to be a lack of coordination and exchange of information between them. Moreover, a systematic approach focused on money laundering is clearly lacking. Therefore, the creation of a Financial Intelligence Unit answering to the Egmont definition is of crucial importance. Experience in other countries has shown that a multidisciplinary composition of the FIU is advisable. The FIU should be equipped with the necessary legal and material resources, including direct and full access to financial information, and provided it with a status conducive to a relation of trust with the financial sector.
10. By pursuing these recommendations urgently, the Georgian authorities would progress rapidly the creation of an effective preventive and repressive system against the money laundering phenomenon which meets international standards.