

MUTUAL EVALUATION OF THE RUSSIAN FEDERATION

I. Order of the discussion of the Mutual Evaluation Report of Russia at the EAG Plenary meeting

II. Issues for discussion at the Plenary meeting

I. Order of the discussion of the Mutual Evaluation Report of Russia at the EAG Plenary meeting:

(the order is set by the EAG Mutual Evaluation Procedures, p. 30-34, EAG-II/PLEN/34, new ref. number EAG/PLEN(2007)4)

The Plenary meeting will discuss 5-8 issues, which have been forwarded from the WGEL. The discussion of the MER at the Plenary meeting is chaired by the EAG Chairman and the Executive Secretary. The Plenary meeting has the right to make any changes to the text of the MER. The Plenary meeting must make the relevant decisions on the 5-8 issues referred by the WGEL. The Plenary meeting must decide on the ratings for the Recommendations accordingly.

1. Introduction:

- The EAG Chairman opens the discussion on the Mutual Evaluation Report.
- Introduction by the Head of the assessment team and the assessors.
- Introduction by the Head of delegation of Russia.

2. Procedure for discussion at the Plenary meeting:

- The EAG Secretariat briefly presents the issue.
- The representatives of Russia present their view.
- The assessment team presents its view.
- Interventions by the representatives of EAG member-states and observers, including on the issue of upgrading/downgrading the rating or leaving the current rating.
- If necessary, further interventions by Russia and the assessment team for clarifications;
- The Chairman makes the final decision, including on the issue of ratings.

- After all of the issues that were referred by the WGEL have been discussed the delegations of member-states and observers may raise any other issues

3. Conclusion

- After the discussion on all issues and ratings has been concluded the EAG Chairman asks Russia if it agrees to adopt the Mutual Evaluation Report and its Executive Summary.
- Response of Russia.
- The EAG Chairman sets the timeframe for Russia to report back to the Plenary on the progress of implementing the recommendations of the assessment.

II. Issues for discussion at the Plenary meeting

1. The main issues for discussion at the Plenary meeting are highlighted below.

Number of issues	Section and paragraph of the MER	FATF Rec.	Short description of the issue
1.	Sec. 2.4 Rating box Para 168, 178, 192,	SR III	<p><u>Issue: National mechanism to examine and give effect to freezing actions taken by other countries.</u></p> <p><u>Issue: Reliance on the criminal justice system risks creating problems with the effective implementation of UNSCR 1373.</u></p> <p><u>Issue: Publicly-known procedure for unfreezing the funds of persons inadvertently affected by a freezing action.</u></p> <p><u>Russia view:</u></p> <p>(1) <i>Reliance on the criminal justice system risks creating problems with the effective implementation of UNSCR 1373.</i> Russia understands that assumption that “reliance on the criminal justice system risks creates problems with the effective implementation of UNSCR 1373” is based on some of the established procedures of Russia’s designation criteria. According to law, the national section of the List includes not the physical and legal entities that are suspected of the financing of terrorism, but exclusively the following categories: persons convicted for terrorist crimes, or against whom a criminal case has been initiated for such crimes, as well as terrorist organizations liquidated under a court decision, or against which a case on banning and liquidation is being initiated. So, the assessment team’s concern is that “difficulties in obtaining sufficient evidence to convict may result in a terrorist being acquitted and his funds unfrozen”. Such a result would frustrate the objectives of UNSCR 1373” (para 192). To our view, the possibility of such acquittance is not higher than the possibility in other jurisdictions of delisting by mistake (approving delisting application) of a disguised terrorist who was listed on the grounds of suspicion, that is, out of framework of the criminal justice system.</p> <p>(2) <i>Russia does not have a national mechanism to examine and give effect to freezing actions taken by other countries.</i> The Russian authorities are able to give effect to designations under freezing mechanisms of other jurisdictions Existence of an international agreement on recognizing a decision on freezing by a foreign court or a competent authority is an option. Another existing mechanism of implementing designations for freezing from other countries is sending by a foreign state a relevant request within the framework of mutual legal assistance to the General Prosecution of the Russian Federation which in its turn, in accordance with the AML/CFT Law, has the right to refer these data to Rosfinmonitoring for inclusion into the List and subsequent freezing of assets.</p>

			<p>(3) <i>Russia does not have an effective and publicly-known procedure for unfreezing the funds of persons inadvertently affected by a freezing action.</i> The publicly-known procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by the freezing mechanism(for example, coincidence of names) is that their funds are automatically unfrozen after two working days. Moreover, entities listed on the Russian national list are the names of entities that have been convicted, are at trial or are being investigated. Under the circumstances, it is impossible for someone to have been listed by inadvertence. In the case of a listed entity that is being tried and ultimately acquitted, the name of the entity is removed from the list and the funds are unfrozen. For the entity being investigated, the funds are unfrozen if the investigation is terminated without going on trial.</p> <p><u>Proposed decision for the Plenary meeting:</u></p> <p><i>To take into account the proposal of the Russian Federation in the summary record of the Plenary meeting. To take into account the position of the Russian Federation in the follow-up process.</i></p>
2.	s. 3.2	Law or regulation R.5	<p><u>Issue: whether there is consistency in relation to the treatment of the issue of “law or regulation” in the MER of Russia and other FATF/EAG reports.</u></p> <p><u>Russia view:</u></p> <p>The AML/CFT Law specifically gives Government and Central Bank authority to issue regulations on such an AML/CFT issues, as customer and beneficiary identification and internal control rules (Article 7, para. 2), as well as reporting procedures (Article 7, para. 7) and on several other issues. This is a direct authorization by the legislature to issue regulations in these matters. In accordance with existing definition of “regulation” by the FATF, legislative authorization and sanctions available for non-compliance give a document the force of “regulation”.</p> <p>The approach taken by experts in determining which documents have the force of regulation in Russia is inconsistent with the UK report, where the acts of the FSA are considered to be “regulations” (para. 489 of UK MER). In addition the Spain MER considers governmental decrees to have the status of regulation, where they complement the AML/CFT Law (para. 330 of Spain MER).</p> <p>In addition, in the Kyrgyzstan MER the acts on the National Bank, when they are adopted following the authorization of the AML/CFT regulatory powers granted to the National Bank through the Banking Law were considered to have the force of Regulation.</p> <p>In this regard some of the provisions in such acts as Central Bank Regulation 262-P must be taken into account when assessing the asterisked criteria of Recommendation 5, such as the requirement to carry out repeated CDD, when there are doubts about the veracity of previously obtained data. This requirement is contained in Item 2.6 of the Regulation 262-P, which states that the CI must carry out repeated identification of the customer if there is doubt about the veracity of previously obtained information.</p> <p><u>Proposed decision for the Plenary meeting:</u></p> <p><i>To take into account the proposal of the Russian Federation in the summary record of the Plenary meeting. To take into account the position</i></p>

			<i>of the Russian Federation in the follow-up process.</i>
3.	s. 3.2 Ratings box	R.5	<p><u>Issue: whether the issue of accounts under fictitious names has been consistently treated in the Russian MER in comparison with other reports.</u></p> <p><u>Russia view:</u></p> <p>The experts agree that opening of accounts in fictitious names is impossible as the AML/CFT Law requires presentation of authentic identification documents at opening the account and periodic updating of the information on clients. Carrying out operations under accounts on behalf of fictitious persons also is impossible, as the AML/CFT Law also requires supporting all operations with trustworthy information on the originator. Thus, opening and handling accounts in fictitious names in Russia is not allowed and is impossible. In other assessments similar requirements on identification (in the absence of specific prohibition for fictitious accounts) did not lead to downgrading (Denmark, Iceland, Norway).</p> <p><u>Proposed decision for the Plenary meeting:</u></p> <p><i>To take into account the proposal of the Russian Federation in the summary record of the Plenary meeting. To take into account the position of the Russian Federation in the follow-up process.</i></p>
4.	s.3.10.3 Ratings box	R.29 R.17	<p><u>Issue: whether the FATF Standard requires supervisors to withdraw an FIs licence when founders are convicted of criminal offences</u></p> <p><u>Russia view:</u></p> <p><i>No powers for BoR, FSFM, FISS, Roscom, Rosfin to withdraw licence when founders are convicted for criminal offences. In the Russian view this deficiency goes outside the scope of the FATF Recommendations, which require (under R.23) to prevent criminal ownership of FIs. The withdrawal of an FIs licence for an independent criminal act committed by a founder (i.e. robbery) seems unwarranted. In addition, any issues related to market entry should be dealt with under R.23.</i></p> <p><u>Proposed decision for the Plenary meeting:</u></p>

			<i>To take into account the proposal of the Russian Federation in the summary record of the Plenary meeting. To take into account the position of the Russian Federation in the follow-up process.</i>
5.	s.3.10	R.29 R.17	<p><u>Issue: whether the assessment of effectiveness of supervisory sanctions is accurate.</u></p> <p><u>Russia view:</u></p> <p>System to sanction FIs other than credit institutions not effective. It seems that the draft report has underestimated the effectiveness of sanctions by other supervisors, for example the FSFM (Securities). FSFM has suspended 16 licences for AML/CFT breaches in the past 4 years, and withdrew another 8 licences, and also imposed numerous financial sanctions – a total of 632 measures and actions in 2004-2006. For leasing companies Rosfinmonitoring has applied a total of 753 financial sanctions for AML/CFT breaches. When compared with the numbers of sanctions applied in other assessed countries, the figures for Russia seem adequate. In addition, sometimes when deficiencies are corrected by financial institutions in the course of the inspection, there is no need for a sanction. For example in the course of 168 inspections in 2006 the FISS has revealed 62 infringements of AML/CFT legislation, which were corrected by the FI on the spot. Another 97 orders to correct deficiencies were sent to insurance companies by the FISS resulting from information from the Rosfinmonitoring database. Thus sanctioning should be considered in the context of the whole range of measures carried out by the supervisor.</p> <p><u>Proposed decision for the Plenary meeting:</u></p> <p><i>To take into account the proposal of the Russian Federation in the summary record of the Plenary meeting. To take into account the position of the Russian Federation in the follow-up process.</i></p>
6.	Section 3.10 Ratings box	R.23	<p><i>Current rating for R.23 – PC, no rating change is requested by Russia. A change to the ratings box is requested.</i></p> <p><u>Issue: whether the assessment team has gone outside the FATF Recommendations in formulating the deficiencies</u></p> <p><u>Russia view:</u></p> <p>The rating box currently states that Russia has established an “Inadequate threshold with respect to major shareholders of credit institutions”. The threshold in Russia is 20%. The FATF Recommendations do not require the threshold to be lower. Therefore the assessment team has made a judgement outside the FATF requirements. It seems that this is unfair taking into consideration the fact that the threshold in the United States is 25% (see para. 753 of US MER) and this was not criticized in the US report.</p>

			<p>The FATF Plenary meeting in June noted that this issue goes outside the FATF Standard, and this should be noted accordingly in the report. Unfortunately the assessment team has not altered the text of the MER, which is even more disturbing. Therefore Russia requests that the text of the MER be amended accordingly.</p>
--	--	--	--

Proposed decision for the Plenary meeting:

To take into account the proposal of the Russian Federation in the summary record of the Plenary meeting. To take into account the position of the Russian Federation in the follow-up process.

**EAG Secretariat
July 15, 2008**