

MUTUAL EVALUATION OF TAJIKISTAN

- I. Order of the discussion of the Mutual Evaluation Report on the Working Group on Mutual Evaluations and Legal Issues (WGEL)
- II. Order of the discussion of the Mutual Evaluation Report at the EAG Plenary meeting
- III. Issues for discussion at the WGEL

I. Order of the discussion at the Working group

(the order is set by the EAG Mutual Evaluation Procedures, p. 25-29, EAG-II/PLEN/34, new ref. number EAG/PLEN(2007)4/rev.4)

1. The three principal tasks of this WGEL meeting are the following:
 - Identify 5-8 key issues for discussion at the EAG Plenary meeting;
 - Note any “horizontal issues”, as well as consistency with other MERs of the FATF and FSRBs, in order to ensure the quality and consistency of the report.
 - Identify any issues that require the interpretation/clarification of FATF standards, Methodology and EAG Procedures.
2. **The WGEL meeting can not:**
 - Make decisions on the text of the report (before the Plenary the decision on amending the text of the Report can only be made by the assessors). At the Plenary meeting changes to the text of the report can only be introduced by the Plenary meeting).
 - The WGEL cannot change the ratings.
 - The WGEL cannot act as a broker between the assessment team and the evaluated country.
3. **The procedure for the discussion at the WGEL is the following:** the meeting is chaired by one of the WGEL Co-chairs
 - The Secretariat briefly presents the issue for discussion (in the order of the Agenda)
 - The representatives of the assessed countries present their view.
 - The assessment team presents its view.
 - Interventions by the representatives of EAG member-states and observers. These interventions must take into account the 3 principal tasks of the WGEL, mentioned in p.1.
 - The WGEL Co-chair sums up the discussion on the issue based on interventions of member-states and refers/does not refer the issue to the Plenary.
 - After all of the issues have been discussed the delegations of member-states and observers may raise any other issues.

II. Order of the discussion of the Mutual Evaluation Report 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 the assessed country.

2. Procedure for discussion at the Plenary meeting:

- The EAG Secretariat briefly presents the issue.
- The representatives of the assessed country 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 the assessed country 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 the assessed country if it agrees to adopt the Mutual Evaluation Report and its Executive Summary.
- Response of the assessed country.
- The EAG Chairman sets the timeframe for the assessed country to report back to the Plenary on the progress of implementing the recommendations of the assessment.

III. Issues for discussion at the WGEL

1. The main issues for discussion at the WGEL are highlighted below. These are the issues highlighted by EAG delegations to the report of the assessed country.
2. **The de facto objective of the WGEL – is to identify those issues from the list, which will be discussed at the Plenary meeting. The WGEL has the right to change the text of the Comments.**

№	Key issues	Comments
1	<p>Recommendation 1: criminalization of ML</p> <p>Table of ratings</p>	<p><i>Recommendation 1: current rating – NC, Tajikistan considers that the rating should be PC.</i></p> <p><u>Assessment team view:</u></p> <ol style="list-style-type: none"> 1. ML criminal offence does not fully correspond to the Vienna and Palermo Conventions, since it doesn't cover also "the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property" and the "acquisition, possession or use of property". 2. The Amnesty Law currently in force prohibits the prosecution of Tajik natural and legal persons for property related money laundering offenses. 3. ML offence was not effectively implemented in practice since in 9 years there was only one investigation and prosecution under article 262 of the Criminal Code. <p><u>Tajikistan view:</u></p> <ol style="list-style-type: none"> 1. Tajikistan has criminalized money laundering in accordance with article 262 as "Conducting of property deals or other operations with cash assets or other property, which are known to be obtained by unlawful means, as well as use of such assets or other property for entrepreneurial or other economic activities or their use by other ways...." <p>Therefore the text of Article 262 has been formulated quite broadly, and covers all of the possible variants for using funds, including for the purpose of "concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property". Further on Article 262 directly criminalizes the "use" of property, while the assessors noted that "use" (along with "disposition and possession") is not covered.</p>

		<p>2. The Amnesty Law covers only the property, which is laundered from 8 offences, stipulated by the criminal code, which mostly relate to tax crimes. At the same time, the law does not envisage an amnesty related to other predicate offences.</p> <p>3. The statistics, which the assessors have is not correct, as according to the data from the single information center of the Ministry of Interior and the Anti-Corruption Agency there were 4 ML cases initiated in 2001-2008. There was no decision on one of the cases, and 1 case was sent for additional investigation. In addition, there were 49 sentences under Article 254 (“Acquisition and sale of property”) from 2005 to 2008.</p>
2	<p>Recommendation 2: sanctions for ML</p>	<p><i>Recommendation 2: current rating – PC, Tajikistan considers that the rating should be LC.</i></p> <p><u>Assessors view:</u></p> <p>1. The law does not permit the intentional element of the offence of money laundering to be inferred from objective factual circumstances..</p> <p>2. While civil and administrative liabilities apply for ML committed by legal persons, no information or examples were provided as to whether these provisions have ever been used.</p> <p><u>Tajikistan view:</u></p> <p>1. The law does permits the intentional element of the offence of money laundering to be inferred from objective factual circumstances. Articles 60, 62, 63, 64 of the Criminal Procedure code regulate the issues of proof, the contents and assessment of evidence. According to Article 62 of the Criminal Procedure Code “Evidence is any factual information, on the basis of which and in accordance with procedures established by Law the competent authorities establish the existence or non-existence of a crime, the guilt of a person and other circumstances, which are necessary for the correct resolution of the case”.</p> <p><u>Comparison with other reports:</u> the mentioned FATF requirements are regulated in a similar manner in the procedural legislation of all post-soviet states. The negative factors noted by the assessment team were not noted in the assessments of FATF/EAG/MONEYVAL of the Russian Federation, IMF (2004) and EAG (2008) of Belarus, and EAG assessment of Kyrgyzstan (2007). In this regard it is proposed to delete this negative factor.</p> <p>2. In addition to the mechanisms of civil and administrative liability, and in accordance with the Law on Combating Terrorism (Article 27) there is a mechanism of of liquidating legal persons on the basis of the request of the General Prosecutor to the Supreme court. There are relevant decisions of the Supreme court already.</p>

3	<p>Special recommendation II.</p> <p>Rating table.</p>	<p><i>Special Recommendation II: current rating – NC, Tajikistan considers that the rating should be PC.</i></p> <p><u>Assessors view:</u></p> <p>1. Terrorist financing offences do not apply to funding of individual terrorists 2. Terrorist financing offences are not extended to person who willfully provides or collects funds with the unlawful intention that they should be used to carry out a terrorist act, by a terrorist organizations, or by an individual terrorist 3. Terrorist financing offences are not predicate offences for money laundering when the funds derive from legal sources 4. Terrorist financing offences require that the funds were actually used to carry out or attempt a terrorist act(s); or be linked to a specific terrorist act(s).</p> <p><u>Tajikistan view:</u></p> <p>The deficiencies noted in relation to the criminalization are most probably noted due to the misunderstanding of Article 179.1, which is as following:</p> <p><i>“Involvement of the person in commission of the crime stipulated by Articles 179, 181, 184, 185, 310 and 402 of the present Code, or declination of the person to participate in activity of the terrorist organization, armament or training of people with a view of commission of the specified crimes, as well as financing of terrorist act or terrorist organization”.</i></p> <p>1. The Article envisages the criminalization of financing an act of terrorism, irrespective of whether it was committed by an individual terrorist or a terrorist organization. In this regard, the opinion of the assessors that the offence does not spread to the financing of an individual terrorist is not correct.</p> <p>2. The Article criminalizes the financing of a terrorist organization, irrespective of whether this organization is planning to carry out any terrorist act or not. In this regard the opinion of the assessors is ungrounded.</p> <p>3. The remark by the assessors on the fact that terrorism financing is not a predicate offence to money laundering, when the money originates from a legal source, is questionable. When funds are provided for terrorism financing, it means that the recipient obtains them as a result of a crime. This is the predicate offence of terrorism financing to money laundering, which is later performed by the launderer. <u>Comparison with other reports: Сравнение с другими отчетами:</u> the approach of the assessors on this issue does not coincide with any other reports, including the Russian Federation, Belarus and other countries. In countries where FT was criminalized and this Article was a predicate offence to ML, this deficiency was never mentioned.</p> <p>It should also be noted, that in 2008 new amendments were adopted into the Criminal Code and a new Article 179/2 was</p>
----------	--	--

		introduced, which criminalizes FT in accordance with international conventions. Other Articles were introduced, criminalizing terrorist conduct in accordance with international conventions.
4	<p>Recommendation 3: confiscation</p> <p>Ratings tables</p>	<p><i>Recommendation 3: current rating – PC, Tajikistan considers that the rating should be LC.</i></p> <p><u>Assessors view:</u></p> <p>The legislation does not provide for confiscation of property that constitutes instrumentalities intended for use in the commission of ML, FT or other predicate offences.</p> <p>While confiscations of property, other than the proceeds of crime and instrumentalities, is determined as a supplementary sanction, it does not apply for the basic ML offence under paragraph one of article 262 and for the FT offence under article 179.1 of the Criminal Code.</p> <p>Confiscation of property that is derived directly or indirectly from proceeds of crime is possible only as a supplementary sanction under article 48 of the Criminal Code and article 27 of the Law on combating terrorism, yet it is not allowed for all ML offences and for the FT offences. Moreover, it can't be applied also in respect of predicate offences.</p> <p><u>Tajikistan view:</u></p> <p>The special confiscation regime, established in accordance with Article 80 of the Criminal Procedure Code? Envisages the confiscation of the instrumentalities of a crime, as well as criminally gained income. This regime of confiscation functions in relation to all of the Articles of the Criminal Code, no matter of the qualification. Therefore, this regime is applied in relation to all ML/TF crimes and predicate offences.</p> <ol style="list-style-type: none"> 1. The legislation envisages the confiscation of property that constitutes instrumentalities intended for use in the commission of ML, FT or other predicate offences in the case of association (Article 39). Due to the fact that association is a form of participation in a crime, and therefore constitutes a separate offence, therefore all of the assets used in its commission are confiscated in accordance with Article 80 of the Criminal Procedure Code (special confiscation). In addition in accordance with Article 32 of the Criminal Code “Preparation to commit an offence is the intentional search and manufacture of means of a crime... if the crime was not finished due to circumstances, which did not depend on the person”. Criminal liability is envisaged for serious and very serious crimes, as well as in cases of association to commit a crime. Therefore the first factor set out by the assessors is ungrouped. 2. The second factor drawn out by the assessors lies outside the FATF Recommendations, due to the fact that the

		Recommendations call only for the confiscation of instrumentalities of a crime and criminal proceeds. The FATF Recommendations do not require the confiscation of other property.
5	<p>Special Recommendation III: freezing and confiscation.</p> <p>Rating table</p>	<p><i>Special Recommendation II: current rating – NC, Tajikistan considers that the rating should be PC.</i></p> <p><u>Assessors view:</u></p> <ol style="list-style-type: none"> 1. Confiscation and provisional measures do not apply to all FT cases; this limits the scope of confiscation measures in this regard. 2. There are no effective laws and procedures to freeze terrorist funds or other assets of persons designated under UNSC Resolution 1373 that would apply to non-banking and non-financial sectors. 3. Whilst authorities can give effect to the actions initiated under the freezing mechanisms of other jurisdictions, it remained unknown on what grounds such actions may be initiated. The adopted procedures are not effective, since they can not ensure taking freezing actions without delay. <p><u>Tajikistan view:</u></p> <ol style="list-style-type: none"> 1. The special confiscation regime, established in accordance with Article 80 of the Criminal Procedure Code? Envisages the confiscation of the instrumentalities of a crime, as well as criminally gained income. This regime of confiscation functions in relation to all of the Articles of the Criminal Code, no matter of the qualification. Therefore, this regime is applied in relation to all ML/TF crimes and predicate offences. 2. Due to the fact that there is factually no securities market in the Republic of Tajikistan and there are no life insurance firms, it is the measures in the banking sector that should be assessed for the purpose of of the evaluation. At the same time the Ministry of Finance has established a procedure for supervised entities, which must suspend operations of persons, which are listed in the relevant lists. Order No. 1120/a dated 15.11.2006 of the Ministry of Finance envisages the distribution of the relevant lists received from international organizations and foreign countries should be passed on to supervised entities. 3. The ground for taking actions by financial institutions are the letters of the National Bank, which according to Article 33 has the right of issuing mandatory orders to CIs. In turn this competency is exercised on the basis of government regulation dated 9.11.2001 «On bringing normative and legislative acts into conformity with the UNSCR 1373 adopted on September 28, 2001». In relation to the casethat is described in the report the National Bank took measures in the course of the month to distribute the lists. This was caused by the necessity to obtain the list through official diplomatic channels, therefore a request to redirect the list was sent. 4. In accordance with the Law on the Central Bank assets may be frozen at the request of the competent authorities

		by the Central Bank if there are signs of suspicious ML/TF activity, for 7 days.
6	<p>Recommendation 27: Law enforcement authorities</p> <p>Rating table.</p>	<p><i>Recommendation 27: current rating – PC, Tajikistan considers that the rating should be LC.</i></p> <p><u>Assessors view:</u></p> <p>Tajikistan has not considered taking measures to allow competent authorities investigating ML/FT cases to waive or postpone the seizure of money/other property for the purposes of identification of other persons or evidence gathering.</p> <p><u>Tajikistan view:</u></p> <p>The Law on operative search activity envisages a wide range of activities, which are aimed at gathering evidence on persons and assets, in order to further give them the form of evidence in criminal proceedings. This Law allows to fully postpone or waive the arrest of persons or property in order to determine the other participants of the crime or to gather evidence. Controlled delivery and operative infiltration are widely used and are envisaged by the Law on operative search activity, Customs code, Anti-Drug Law.</p> <p><u>Comparison with other reports:</u> the mentioned FATF requirements are regulated in a similar manner in the procedural legislation of all post-soviet states. The negative factors noted by the assessment team were not noted in the assessments of FATF/EAG/MONEYVAL of the Russian Federation, IMF (2004) and EAG (2008) of Belarus, and EAG assessment of Kyrgyzstan (2007). In this regard it is proposed to delete this negative factor.</p>
7	<p>Special Recommendation IX</p> <p>Rating table.</p>	<p><i>Special recommendation IX: current rating – NC, Tajikistan considers that the rating should be PC.</i></p> <p><u>Assessors view:</u></p> <ol style="list-style-type: none"> 1. Collected information on the amount of currency declared or otherwise detected and the identification data of the bearer are not stored in electronic format nor centralized, which in practice unable the effective use of such information by competent LEA, and in future also by the FIU, as well as for the purpose of international cooperation. 2. Due to several legal and practical impediments the CSuG or other competent authorities can not seize/confiscate currency or bearer negotiable instruments that are related to ML or FT. The legislation is not implemented in practice since there were no such seizures/confiscations.

		<p><u>Tajikistan view:</u></p> <p>1. The requirements for keeping information in an electronic database is an additional element under SR.IX and should not influence the rating.</p> <p>2. The customs authority according to the Criminal Procedure Code Articles 113 may carry out inquiries and according to Article 114 it must take actions to reveal crimes, including ML and TF. In accordance with Article 13 on Operative search activities the Customs may carry out the full range of operational techniques. In accordance with Article 9 of the Law on combating terrorism the customs authorities are required to carry out counterterrorism operations. In accordance with the abovementioned laws customs must stop and pass to other law enforcement authorities in accordance with their distribution of competencies the persons, who are suspected of committing a crime. In addition, the customs focus on the predicate offence of smuggling. Many facts of smuggling have been revealed in the republic, including of cash.</p>
8	<p>Recommendation 4: banking secrecy</p> <p>Rating table.</p>	<p><i>Recommendation 4: current rating – PC, Tajikistan considers that the rating should be LC.</i></p> <p><u>Assessors view:</u></p> <p>The existing law would inhibit suspicious transaction reporting and the sharing of information with entities other than with law enforcement authorities.</p> <p><u>Tajikistan view:</u></p> <p>In accordance with Article 33 of the Law on the National Bank the supervised entities must present all of the information that is requested from them by the National Bank. In this regard the comment that only law enforcement authorities would have access to this information is not correct. In addition the abovementioned deficiency should not be a reason for a double downgrade to PC.</p>
	<p>Recommendation 10: record keeping</p> <p>Rating table</p>	<p><i>Recommendation 10: current rating – NC, Tajikistan considers that the rating should be PC.</i></p> <p><u>Assessors view:</u></p> <p>There are no applicable requirements on record-keeping.</p>

9		<p><u>Tajikistan view:</u></p> <p>In Tajikistan the main requirement on record-keeping is formulated in the Law on accounting record-keeping. In accordance with Article 18 of this Law all primary accounting documents must be maintained for 5 years. These documents are sufficient to reconstruct all of the components of financial operations.</p> <p>As a measure of liability for the breach of these record-keeping requirements Article 272 of the Criminal Code “On severe breach of the rules of accounting record-keeping” envisages the relevant liability. There is also liability for the premature utilization of documents – Article 339 of the CC.</p>
10	Recommendation 15: internal control	<p><i>Recommendation 15: current rating – NC, Tajikistan is not requesting an upgrade.</i></p> <p><u>Assessors view:</u></p> <p>There are no relevant measures.</p> <p><u>Tajikistan view:</u></p> <p>The assessors did not take note of the fact that according to Article 19 of the Law on Banks and Banking activities the directors and chief accountant are screened before hire. This should be included into the text of the report.</p>
11	Recommendation 33: transparency of legal persons	<p><i>Recommendation 33: current rating – NC, Tajikistan considers that the rating should be PC</i></p> <p><u>Мнение оценщиков:</u></p> <p>Not enough information provided to assess the effectiveness.</p> <p><u>Tajikistan view:</u></p> <p>In Tajikistan there functions a similar system of registration of legal persons as in other EAG member-states. This system allows for the identification of the ultimate natural person exercising control over the legal person. As this system allows to see all of the levels of beneficiaries of a legal person, even if these beneficiaries are legal persons in themselves, it can trace all levels of ownership until it reaches the ultimate natural person.</p> <p>In other countries with similar systems of registration of legal persons received a higher rating for Recommendation 33</p>

		(Kyrgyzstan – PC).
12	Recommendation 34: legal arrangements	<p><i>Recommendation 34 – current rating – NC. Tajikistan considers that the rating should be N/A.</i></p> <p><u>Assessors view:</u></p> <p>Recommendation 34 is applicable to Tajikistan, legal arrangements can be created in Tajikistan.</p> <p><u>Tajikistan view:</u></p> <p>In Belarus it is impossible to establish legal arrangement, including trusts, in the sense in which these terms are used in the FATF Recommendations. This is due to the fact that the legal system of Belarus, much like those of other countries of the continental legal tradition (civil law) does not allow for the separation of the right of ownership into a legal title, which is given to the trustee along with the responsibilities of proprietorship, and an equitable title, which is given to the beneficiary.</p>
13	Special Recommendation VIII: NPOs	<p><i>Special Recommendation VIII: current rating – NC, Tajikistan considers that the rating should be PC.</i></p> <p><u>Assessors view:</u></p> <ol style="list-style-type: none"> 1. The authorities did not review the adequacy of legislation related to the non-profit organizations and can not obtain timely information on the activities, size and other relevant features of their non-profit sectors for the purpose of identifying the NPOs that are at risk of being misused for TF. 2. No steps necessary to promote effective supervision/monitoring of the risky NPOs have been taken yet. 3. The legislation does not require maintaining information on the person who own, control or directing activities of the charitable organizations. 4. The legislation does not require NPOs to maintain financial records for a period of at least five years. <p><u>Tajikistan view:</u></p> <ol style="list-style-type: none"> 1. The Republic of Tajikistan has recently undertaken a review of the sector of NPOs, which led to adoption of additional legislation on this issue. Such a review was presented to the executive and legislative authorities as a basis for the adoption of the legislation. 2. Supervision over the activities of NPOs is carried out by the Ministry of Justice, which carries out on-site inspections of the NPO sector to determine its compliance with the stated objectives. The relevant statistics are available. For example after the procedures for reregistering NPOs were carried out in 2007 over 40% of all NPOs

		<p>were not reregistered (over 700 NPOs). In case suspicious conduct is revealed in the activities of NPOs warning letters are sent and the NPO may be liquidated.</p> <ol style="list-style-type: none"><li data-bbox="698 300 2098 432">3. The legislation foresees a registration regime for NPOs as for all legal persons, therefore the information on the founders of NPOs is maintained in the single register of legal persons of the Ministry of Justice. Article 21 of the Law on Civil organizations requires that the relevant information on the founders is obtained. Article 17 of this Law denies persons with proven links to terrorist groups to be a founder of an NPO.<li data-bbox="698 437 2098 501">4. The legislation on accounting record-keeping requires that all financial documents must be maintained for 5 years. Therefore the deficiency stated by the assessors is questionable.
--	--	---