

## MUTUAL EVALUATION OF KAZAKHSTAN

- I. Procedure of Discussion of the Mutual Evaluation Report of Kazakhstan at the EAG Plenary Meeting
- II. Issues for Discussion at the EAG Plenary Meeting

### **I. Procedure of Discussion of the Mutual Evaluation Report of Kazakhstan at the EAG Plenary Meeting:**

(Set forth in the EAG Mutual Evaluation Procedures, EAG/PLEN(2007)4)

*The Plenary Meeting will discuss 5-8 issues which have been identified by the WGEL. The discussion of the Mutual Evaluation Report at the Plenary Meeting is chaired by the EAG Chairman and the Executive Secretary. The Plenary meeting has the right to make any changes and modifications to the text of the Mutual Evaluation Report. The Plenary Meeting shall make the relevant decisions on the 5-8 issues identified by the WGEL. The Plenary Meeting shall decide on the ratings of compliance with the relevant Recommendations accordingly.*

#### **1. Introduction:**

- The EAG Chairman opens the discussion of the Mutual Evaluation Report.
- Introduction by the Head of the Evaluation Team and assessors.
- Introduction by the Head of the Delegation of Kazakhstan.

#### **2. Procedure for Discussion at the Plenary Meeting:**

- The EAG Secretariat briefly presents the issue.
- The representatives of Kazakhstan present their view.
- The evaluation team presents its view.
- Interventions by the representatives of the EAG-member states and observers, inter alia, on upgrading/downgrading the rating or keeping the current rating unchanged.
- If necessary, further interventions by Kazakhstan and the assessors for clarifications.
- The Chairman makes the final decision, inter alia, on compliance rating.
- After the discussion by the Plenary Meeting of all issues identified by the WGEL is completed, the delegations of the member-states and observers may raise any other issues.

#### **3. Conclusion**

- After the discussion of all issues and ratings is completed, the EAG Chairman asks Kazakhstan whether it agrees to adopt the Mutual Evaluation Report and the Executive Summary.
- Response of Kazakhstan.
- The EAG Chairman determines the timeline for Kazakhstan to report back to the Plenary on the progress in implementing the recommendations set forth in the Mutual Evaluation Report (1 year).

## **II. Issues for Discussion at the Plenary Meeting**

1. Listed below are the issues for discussion at the Plenary Meeting. This list includes the issues remained unresolved after the face-to-face meeting.
2. First, the Core Recommendations (R.1, 10, SR.II, 13, SR.IV) are discussed.

| No.                         | Key Issues                | Comments   |
|-----------------------------|---------------------------|--|
| <b>CORE RECOMMENDATIONS</b> |                           |  |
| <b>1</b>                    | R.1 rating:<br>ML Offence | <p><i>Current rating is PC. Kazakhstan considers that the rating should be LC.</i></p> <p><b><u>Kazakhstan's view:</u></b></p> <ul style="list-style-type: none"> <li>• The legislation of Kazakhstan provides for criminal liability for carrying out <u>financial and other deals with funds or other property knowingly obtained in illegal way</u>, as well as the use of such funds or other property for carrying out entrepreneurial (business) or other economic activities.</li> <li>• Conversion or transfer of property are actually transactions defined according to the Criminal Code as actions taken by the citizens aimed at establishing and terminating civil rights and obligations. Therefore the term 'transactions' covers conversion and transfer of property.</li> <li>• Kazakhstan believes that disposition of the Article 193 of the RK Criminal Code covers the indirect proceeds.</li> <li>• The current legislation of the Republic of Kazakhstan provides for not just criminal but also for administrative liability for insider trading. Such actions are covered by Article 200 of the RK Criminal Code (Illegal receipt and disclosure of information that constitutes commercial or banking secret), by Article 205 of the RK Criminal Code (Infringement of rules of conducting transactions with securities).</li> </ul> <p><b><u>Evaluation team's view:</u></b> PC rating is justified</p> <ul style="list-style-type: none"> <li>• According to the positions of the RK, conversion and transactions are criminalized only in case they are civilly formalized; therefore all the actions of the citizens which do not have civil effects are not covered by the disposition in the Article 193 of the Criminal code, which significantly narrows the scope.</li> <li>• According to the disposition of the Article 193 of the Criminal code, proceeds of crime have to be obtained illegally. It excludes the situation when the proceeds are gained from legal activity, but initially were invested by illegal income. It is proved by the decision of the RK Supreme court №2 on ML. In accordance with Item 10, ML offences are formed when receiving the income from prohibited activities.</li> <li>• Insider trading crimes have their specifics, therefore they are not covered by the Articles 200 and 205 of the RK Criminal code.</li> </ul> |

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| 2 | R.10 Rating: Record Keeping                   | <p><b>R.10 – Current rating is PC. Kazakhstan considers that the rating should be LC.</b></p> <p><b><u>Kazakhstan’s view:</u></b></p> <ul style="list-style-type: none"> <li>• The main requirements, concerning record keeping are regulated by the FMC and the National bank according to the laws on Accounting, Banks and banking activity, Insurance activities, Equity market.</li> <li>• Partially the record keeping requirements are regulated by the AML\CFT Law.</li> </ul> <p><b><u>Evaluation team’s view:</u></b> PC rating is justified</p> <p>Most of the R.10 requirements are regulated by the acts, which are not appropriate.</p>   |
| 3 | SR.II Rating: Criminalize terrorist financing | <p><i>Current rating is PC. Kazakhstan considers that the rating should be LC. In case the ratings R.I and SR.II are raised, R.35 rating is automatically raised to LC. In case neither ratings (R.I and SR.II) are raised, R.35 rating remains unchanged and R.39 rating is lowered.</i></p> <p><b><u>Kazakhstan’s view:</u></b></p> <ul style="list-style-type: none"> <li>• Absence of the needed statements in the Article 233-3 of the Criminal Code are supplemented by the norms of the statute “On combating terrorism”, which includes the whole range of requirements of the UN Convention and SR.II (including receiving and granting funds without the intention of carrying out terrorist activities).</li> <li>• There is an example of the sentence on TF for providing funds not connected with the concrete terrorist act.</li> </ul> <p><b><u>Evaluation team’s view:</u></b> PC rating is justified</p> <ul style="list-style-type: none"> <li>• The AML/CFT Law “On combating terrorism” includes the list of actions; their financing forms FT crimes.</li> <li>• The connection between the Article 233-3 of the RK Criminal code and the Law “On combating terrorism” is not enough in terms of the criminal process. Therefore the formulation of the Article 233-3 need to be adjusted in accordance with the Law “On combating terrorism”.</li> </ul> |
| 4 | R.13 Rating: Suspicious transaction reporting | <p><b>R.13 – Current rating is NC. Kazakhstan considers that the rating should be PC.</b></p> <p><b><u>Kazakhstan’s view:</u></b></p> <p>Even without the direct requirement for submission of STR in case of suspected ML, the system to report on a suspicious transaction functions effectively, therefore the PC rating seems understated.</p>  |

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|   |  | <p><b><u>Evaluation team's view:</u></b> PC rating is justified</p> <ul style="list-style-type: none"> <li>• There is no direct requirement for submission of STR in case of suspected ML.</li> <li>• The requirement to report on a suspicious transaction without any economic sense is not enough.</li> <li>• The deficiencies related to criminalization of ML may affect the STR submission regime.</li> </ul>   |
| 5 | SR.IV Rating: Suspicious transaction reporting | <p><b>SR.IV – Current rating is PC. Kazakhstan considers that the rating should be LC. This rating is considered only if the SR.II rating is raised.</b></p> <p><b><u>Kazakhstan's view:</u></b></p> <p>Kazakhstan believes that in case the SR.II rating is raised, the SR.IV rating should also be raised.</p> <p><b><u>Evaluation team's view:</u></b> PC rating is justified</p> <p>Raising SR.II rating can eliminate one of the deficiencies on SR.IV, but all in all it won't change the current rating, because the STR system is not effective enough. There are also a number of other deficiencies indicated in the rating template.</p> |