

MUTUAL EVALUATION OF TAJIKISTAN

The WGEL in the course of its session discussed 13 issues raised by Tajikistan. The WGEL chose 8 issues from the list to be discussed at the Plenary meeting.

After consideration of the 8 issues Tajikistan decided to withdraw a range of issues:

- 1. Tajikistan withdrew its comments for Recommendation 1;**
- 2. From 4 out of 8 Recommendations Tajikistan withdrew its position to change the rating of the report and to change the text of the report (SR.IX, R.10, R.33, SR.VIII). On the given recommendations Tajikistan will present the information to the Plenary meeting with the purpose of possibly including this information in the footnote (subject to decision by the assessors) to the MER or the summary record of the meeting.**
- 3. On 3 recommendations Tajikistan is requesting a change in the rating (R.2, R.27 and R.34).**

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

II. Issues for discussion at the WGEL

I. 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.

II. Issues for discussion at the Plenary

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

№	Key issues	Comments
1	<p>Recommendation 1: criminalization of ML</p> <p>Table of ratings</p>	<p><i>Tajikistan withdrew its position on Recommendation 1</i></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 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>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>
4	<p>Special Recommendation IX</p> <p>Rating table.</p>	<p><i>Tajikistan is not requesting a change to the rating of the report and to change the text of the report.</i></p> <p><u>Assessors view:</u></p> <p>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.</p> <p>.</p> <p>2. Due to several legal and practical impediments the CSuG or other competent authorities can not seize/confiscate</p>

		<p>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> <p><u>Tajikistan view:</u></p> <p>1. The requirements for keeping information in an electronic database as 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>
5	<p>Recommendation 10: record keeping</p> <p>Rating table</p>	<p><i>Tajikistan is not requesting a change to the rating of the report and to change the text of the report.</i></p> <p><u>Assessors view:</u></p> <p>There are no applicable requirements on record-keeping.</p> <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>
	<p>Recommendation 33: transparency of legal persons</p>	<p><i>Tajikistan is not requesting a change to the rating of the report and to change the text of the report.</i></p> <p><u>Мнение оценщиков:</u></p>

6		<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 registraton of legal persons as in other EAG member-states. This system allows for theidentification of the ultimate natural person excercising control over the lega 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 (Kyrgyzstan – PC).</p>
7	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>
8	Special Recommendation VIII: NPOs	<p><i>Tajikistan is not requesting a change to the rating of the report and to change the text of the report.</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.

		<ol style="list-style-type: none"> 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 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. 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. 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.
--	--	---