

MUTUAL EVALUATION OF BELARUS

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.

III. Issues for discussion at the Plenary meeting

№	Key issues	Comments
1	<p>Recommendation 1 and 35. Criminalization of the ML.</p> <p>Rating table:</p> <p>1.Are acquisition, possession or use covered</p> <p>2.Are indirect criminal proceeds covered</p> <p>3.Criminalization of insiders trading and market manipulation</p>	<p><i>Recommendation 1: Current rating – PC, Belarus is requesting an upgrade to LC</i> <i>Recommendation 35: Current rating – PC, Belarus is requesting an upgrade to LC</i></p> <p><u>Assessment team opinion:</u></p> <p>1. <i>Article 235 (ML offence) covers “Acquisition, possession or use” only partially – in cases when assets are used in economic and business activity.</i></p> <p>This limitation is clearly determined in the a/m Article. UN Conventions don’t provide such a limited interpretation of the ML offence. Additionally, Belarusian law enforcement bodies have noted that this limiting interpretation seemed to be a barrier for successful investigation and presentation of ML before a court.</p> <p>2. <i>Notion of «funds» in the Belarusian legislation doesn’t cover the indirect criminal proceed.</i></p> <p>There are no references to indirect criminal proceeds in the criminal and other legislation. It’s not clear on what grounds the Article 235 can cover indirect proceeds as well.</p> <p>3. <i>Insiders trading and market manipulation are not criminalized.</i></p> <p>There are no elements of the a/m crime in the Criminal Code. Other Articles specified by the Republic of Belarus as arguments have no direct relation to this offence. Due to the fact that FATF recommendations require the direct criminalization of this offence appropriate argumentation wasn’t accepted.</p> <p><u>Comparison with other reports:</u> The opinion of the assessment team is confirmed by the Russian and Kyrgyz reports where the a/m disadvantage was noted in spite of existence of the Articles in the Criminal Code, which Belarus has listed as substitutes. These Articles are marginally or indirectly related to the insider trading and market manipulation.</p> <p><u>Belarus opinion:</u></p>

		<p><i>1. Coverage of “Acquisition, possession and use”</i> The wording of the Part 1 of Article 235 covers all possible ways of the use of these assets for money laundering. “Use of material assets for business or other economical activity” – is the use of assets in organization and conducting this activity.</p> <p><i>2. Indirect criminal proceeds:</i> international legal acts ratified by the Republic of Belarus provide concretized definitions of “assets” and ‘criminal proceeds’. Absence of such a concrete definition in the legislation of Belarus doesn’t mean that there is no responsibility for legalization of direct criminal proceeds in it. The presence of a broader definition in criminal law allows the inclusion of all the possible forms of assets into the object of a crime which have the indication of being criminal proceeds.</p> <p><i>3. Criminalization of insider trading and market manipulation.</i> In spite of the absence in legislation of the Republic of Belarus of special standards which provide responsibility for the mentioned actions, it doesn’t mean their full impunity as these offences could be defined as indications of other punishable actions. For example, the Criminal Code provides responsibility for establishing or maintenance of monopolistic prices (Article 245 of the CC), compulsion to transaction or refusal (Article 246 of the CC), limitation of competition (Article 247 of the CC), illegal use of competitors’ business reputation (Article 248 of the CC), discredit of competitors’ business reputation (Article 249 of the CC), dissemination of false information on goods and services (Article 250 of the CC), commercial subornation (Article 252 of the CC), commercial espionage (Article 254 of the CC), divulging of commercial secret (Article 255 of the CC);</p>
	<p>Recommendation 2: Responsibility for ML</p> <p>Whether any responsibility of legal entities is established for ML</p>	<p><i>Recommendation 2: Current rating – PC, Belarus is requesting an upgrade to LC</i></p> <p><u>Assessment team opinion:</u></p> <p><i>Responsibility of legal entities for legalization of assets obtained from crime is applicable only if this legal entity is connected with an organized criminal group.</i></p> <p>Responsibility of legal entities for ML is indirectly established only in the law “On Combating Organized Crime” and only if this entity is connected with an organized criminal group.</p> <p>Administrative responsibility is established only for laundering of proceeds from violations (not criminal offences), stipulated by the Administrative code (Article 12.32).</p> <p>In accordance with Art. 51 of the Civil Code a legal entity could be liquidated in case of violation of the legislation.</p>

2		<p>Besides as there is no legislation forbidding legalization of criminal assets, the grounds of using Art. 51 of the CC with regard to liquidation of such a legal entity for laundering such assets are not clear.</p> <p><u>Comparing with other reports:</u> The a/m disadvantage is also mentioned in the Kyrgyzstan Evaluation Report as there are no respective methods of making legal entities accountable for ML. Similar provisions of civil mechanisms were not accepted in the Kyrgyz evaluation.</p> <p><u>Belarus opinion:</u></p> <p>In Art. 57 of the Civil Code of the Belarus Republic a possibility of judicial liquidation of a legal entity for any actions related to the activity prohibited by the law or to other repeated or gross violation of the legislation, or if this legal entity conducts systematic activity contradicting its purpose prescribed in the charter.</p> <p>Moreover Art. 61 of the Criminal Code of the Belarus Republic stipulates obligatory special confiscation consisting of compulsory free confiscation of instruments of a crime belonging to the convicted person; property obtained from crime; as well as objects directly connected with the crime if they are not subject to restitution to the victim or any other person.</p> <p>Moreover in Art. 11.32 of the Administrative Offences Code the responsibility of legal entities for legalization of assets is established.</p>
3	<p>Special recommendation IX: Customs rights; Use of the system for the purposes of AML\FT.</p>	<p><i>Special recommendation IX: Current rating –NC; Belarus considers the rating should be raised up to PC or LC;</i></p> <p><u>Assessment team opinion:</u></p> <p>The existing system of customs control was not set up for revealing ML/FT cases when transferring of monetary funds abroad. During the meetings with the customs authorities in the course of the mission they noted that they have no appropriate powers for suspension of monetary funds in case of suspicion of ML/FT. At the same time, it is worth noting that Article 235 of the Criminal Code and Article 290-1 do not belong to the jurisdiction of the customs authorities, which renders them unable to investigate ML/FT cases. The assessment team also had doubts as to the possibility to implement the Article 277 on freezing of assets in cases of suspicion of ML/FT.</p> <p><u>Belarus opinion:</u></p> <p>Customs control system acts also in order to prevent the events of ML/FT and is being implemented by the cooperation of the customs with other law enforcement bodies. Issues and methods of law enforcement cooperation are specified by joint decrees of MIA, KGB, SCC, State Customs Committee, General Border Committee, General Prosecutors Office which specifies that the information of other law enforcement and supervisory authorities gives the customs authorities the</p>

		<p>possibility on their instructions to carry out customs control with respect to natural persons as well as to suspend goods. The relevant agency will be notified in this case. At the same time in accordance with the Article 235 of the Customs Code officials have a right to suspend goods, which are not immediate objects of administrative customs offences, for a term established by the Article 308 of the Customs Code. During this term the relevant law enforcement or supervisory authority which has initiated the goods suspension have right to suspend or arrest it.</p>
4	<p>Recommendation 7: table of ratings</p> <p>Information receiving from correspondent banks</p>	<p><i>Recommendation 7: current rating – PC, Belarus supposes that the rating should be raised to LC.</i></p> <p><u>Assessment team view:</u></p> <p>1. <i>There is no requirement to request Category A correspondent banks to provide information on AML/CFT measures undertaken by them and measures in response to violations of AML/CFT laws.</i> Belarus has set up a simplified regime of the identification and receiving information from Group “A” correspondent banks that have the highest rating according to the ratings assigned by international agencies. The FATF Recommendations allow slightly relaxed requirements of the CDD, but only in cases of detailed analysis of risks. Belarus didn’t provide any information on any completed ML/FT risk assessment on the abovementioned regulations.</p> <p><u>Belarus view:</u></p> <p>Due to the fact that international rating agencies give due attention to analyze the AML/CFT system of the credit organizations Belarus believes that the exclusion of Group “A” banks was well-grounded since a positive assessment of the effectiveness of their AML/CFT systems was made by the international agencies. In this regard it is reasonable to soften the requirements for the credit organizations of Belarus. The bank may use the questionnaire at its own discretion upon establishing correspondent relations with Group A correspondent banks and can use a more comprehensive questionnaire if necessary. In this case, Belarus thinks that in the framework of the existing system all relevant risks are considered.</p>
5	<p>Special Recommendation VII: table of ratings</p>	<p><i>Special recommendation VII: current rating – NC, Belarus is requesting an upgrade to PC.</i></p> <p><u>Assessment team view:</u></p> <p>Belarus does not comply with the main requirement of SR.VII of accompanying wire transfers with originator information, as the regulations are missing. There are no requirements to identify the originators of wire transfers inside Belarus below the threshold of 30 000 USD. Other requirements of SR.VII that are not implemented: There are no risk-based procedures on transfers, which are not accompanied by full and accurate originator information. Thus the only requirement that is implemented by Belarus is identifying the originators of international transfers.</p>

		<p><u>Comparison with other reports:</u> similar deficiencies (no requirements to include originator information in the transfer, risk-based procedures on transfers, which are not accompanied by full and accurate originator information, no procedures for intermediary FIs) noted in the reports of Italy, Ireland, Portugal, Sweden and Turkey were rated as NC.</p> <p><u>Belarus view:</u></p> <p>Decree of the NB of BR subpara 1.24 of para 132, 133 determine the requirements regarding the implementation of the inter-bank transfers. The view and the form of the payment commission of the bank (bank-senders, correspondent banks) is defined in inter – banks’ agreement (contract), local regulations of banks considering the settled international practice and the legislation of Belarus. The payment commissions of banks are forwarded to the correspondent banks in electronic or paper form. The payment commissions of banks that are filled based on the payment direction of clients should include all the information about the details of the payments regarding the information stated in the payment directions of clients. The payment direction of clients includes all relevant information of the senders.</p>
6	<p>Recommendation 24: DNFBP supervision</p>	<p><i>Recommendation 24. Current rating – NC, Belarus considers that the rating should be upgraded to PC.</i></p> <p><u>Belarus view:</u></p> <p>1. The report states that accountants’ functions are carried out by auditors. At the same time according to the Law on auditors, these functions are only limited in nature, and do not fully coincide with the functions of accountants, as they are defined in the accounting Law. At the same time Belarus does not have independent accountants in the FATF understanding of the term, and therefore Belarus considers that R.24 is not applicable to Belarus in the case for accountants.</p> <p>2. Within the procedure of casino licensing there is a general requirement to comply with the legislation of Belarus, which includes AML/CFT legislation. In this regard it would be incorrect to say, that casino licencing is carried out without normative AML/CFT requirements.</p> <p><u>Assessors view:</u></p> <p>1. The report states that accountants’ functions are carried out by auditors. At the same time according to the Law on auditors, these functions are only limited in nature, and do not fully coincide with the functions of accountants, as they are defined in the accounting Law. At the same time Belarus does not have independent accountants in the FATF understanding of the term, and therefore Belarus considers that R.24 is not applicable to Belarus in the case for accountants.</p>

		2. The casino licencing procedure should include a specific AML/CFT component. The fact that there is neither a mention of AML/CFT in the procedure, nor is this component considered in practice, led the assessors to formulate this deficiency.
7	Special Recommendation 1.	<p><i>Special recommendation 1. Current rating – PC, Belarus considers that the rating should be upgraded to LC</i></p> <p><u>Belarus view:</u></p> <ol style="list-style-type: none"> 1. Belarus considers that the formulation of this deficiency is not precise, due to the fact that the assessors recognize that only some aspects of the convention are not covered. 2. On the protection of bona fide third parties, Belarus considers that there has been a technical mistake, as this deficiency has been deleted in R.3.