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**EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)**

**COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
AND THE FINANCING OF TERRORISM
(MONEYVAL)**

31st PLENARY MEETING OF MONEYVAL

Strasbourg, 7 – 11 December 2009

MEETING REPORT

Memorandum
prepared by the MONEYVAL Secretariat
Directorate General of Human Rights and Legal Affairs (DG-HL)

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EXECUTIVE SUMMARY

During the 31st Plenary meeting, held in Strasbourg from 7-11 December 2009, the MONEYVAL Committee:

- Discussed and adopted the 3rd round mutual evaluation reports and summaries, as amended, on Serbia and Bosnia and Herzegovina;
- With the adoption of these two mutual evaluation reports, concluded its 3rd round of mutual evaluations;
- Discussed and adopted the first progress reports of Azerbaijan and of Estonia;
- Discussed and adopted the second progress report of Latvia;
- Decided to withdraw MONEYVAL's previous public statements in respect of Azerbaijan and adopted a fourth public statement, which concluded the process of Compliance Enhancing Procedures which commenced in 2006;
- Decided to postpone a decision on the imposition of further Compliance Enhancing Procedures on Azerbaijan until a further full progress report on all aspects of the AML/CFT regime rated NC or PC is submitted by Azerbaijan and examined by the Plenary in March 2010;
- Adopted a questionnaire on enforcement of civil confiscation orders;
- Heard an update on the recent developments in jurisprudence on SR.III in the European courts;
- Held exchanges of views on the impact of the global economic crisis on AML/CFT and on policy options for combating proliferation financing;
- Elected for a mandate of two years its President, Mr Vladimir Nechaev (Russian Federation), its Vice-President, Mr Anton Bartolo (Malta), and three bureau members, Mr Damir Bolta (Croatia), Mr Alexandru Codescu (Romania) and Mr Armen Malkhasyan (Armenia);
- Took note of the current status of work on typologies in the context of the projects on (1) Money laundering through money service businesses; (2) The use of Internet gambling for ML and TF purposes, (3) ML through private pension funds and the insurance sector and (4) Criminal money flows on the internet: methods, trends and multi-stakeholder counteraction;
- Took note of information on AML/CFT initiatives in MONEYVAL countries and heard information on anti-money laundering issues in other fora;
- Took note of developments related to the entry into force of the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS 198), and of developments on the possible revision of the Convention on Mutual Administrative Assistance in Tax Matters (CETS No. 127);
- Thanked Israel for its voluntary contribution to MONEYVAL.

SUMMARY ACCOUNT OF THE MONEYVAL PROCEEDINGS

Items 1, 2 and 3 – Opening of the Plenary meeting, Adoption of the Agenda and Information from the Chairman

1. The Chairman, Mr Vasil KIROV (Bulgaria), opened the meeting, following which the Committee adopted the agenda as it appears in Annex I. The list of participants appears at Appendix II.
2. The Chairman announced that that would be the last time he will take the chair and underlined the achievements of the Committee for four years under his Chairmanship including achievement of associate membership of FATF and the appointment of a MONEYVAL representative as co-chair of the Europe and Eurasia Regional Review Group. He underscored the importance and role of Chairmanship for the work of the Committee. He also explained some of the difficulties which a Chairman can encounter and gave his views on the skills required for the position, which the Plenary might take into account in deciding who to nominate for his successor.
3. The Chairman explained the current status of the Compliance Enhancing Procedures in respect of Azerbaijan stressing their significant progress. The Chairman then informed the Plenary that proposals on next steps would first be discussed in the Bureau and the Bureau will inform the Plenary of its recommendations later in the week (discussed under agenda item 7 and the final decision is recorded under agenda item 26).

Item 4 – Information from the Secretariat

4. The Executive Secretary, Mr John Ringguth, welcomed and introduced a new member of the MONEYVAL Secretariat, Mr Sener Dalyan, PhD in Law, Rapporteur Judge. Mr Dalyan was seconded by the Ministry of Justice of the Republic of Turkey.

4.1 Information on elections

5. The Executive Secretary informed the Plenary about the need to hold elections for Chairman, Vice-Chairman and all Bureau members at this Plenary as their terms will expire at the end of 2009. He explained the procedures for elections of Chair and Vice-Chair, as well as Bureau members and invited delegations to submit proposals to the Secretariat in writing before midday on 9 December 2009 at the latest. A detailed information document on the procedure of elections prepared by the Secretariat was circulated before the meeting. Elections were held on Friday (under agenda item 25). A request was made for a secret ballot.

4.2 Agenda of evaluations and meetings for 2010

6. The Executive Secretary informed the Plenary of the draft MONEYVAL activities for 2010 and that an information document had been circulated in advance.
7. The Executive Secretary indicated that MONEYVAL looked forward to the designation of a new Head of delegation of Andorra and kindly requested from Andorra an early decision on the dates of an onsite visit in 2010. The representative of Andorra informed the Plenary that the new head of the FIU had been appointed and most probably would act as the Head of

delegation. There would be discussions in the margins with Albania about their onsite visit in 2010.

8. The Executive Secretary sought a volunteer country for hosting the training seminar planned to be held in July. He also informed the Plenary of the typology meeting which is planned to be held in October or November 2010, which will be a joint meeting with EAG.
9. The Russian delegation asked the Secretariat for information on the composition of evaluation teams and if it could be sent out after the Plenary to assist the secretariat in filling out the blanks. The Secretariat took note of this proposal.

4.3 Participation in FATF meetings

10. The Executive Secretary advised the Plenary that FATF's Plenary session in October was attended by a large MONEYVAL representation, especially for the ICRG process. He pointed out that as a result of the ICRG meeting and decisions of FATF Plenary in October, only three MONEYVAL countries remained in the ICRG process, and are subject to targeted review.
11. The Executive Secretary further informed the Plenary of the ongoing work of the Working Group on Evaluation and Implementation, comprising analysis of the scope and effectiveness of follow up by regional groups; review of some of the FATF recommendations and discussions on evaluation of SR.IX in the context of supranational jurisdictions (like the European Union).
12. Further information was provided by Mr Ringguth on his participation on behalf of MONEYVAL at the CFATF/FATF joint typology exercise from 18 to 20 November 2009. He had participated in the Working Group on Operational Issues and had presented developments under CETS 198 and our work on non-conviction based confiscation. There had been some particular interest in considering these issues further in the FATF review.

4.4 MONEYVAL Secretariat representation in other fora

13. The Secretariat informed the Plenary of its participation to the Egmont working groups meeting in Kuala Lumpur in October 2009. This enabled to inform Egmont Group members about MONEYVAL's ongoing typologies projects and discuss possible areas for co-operation between the Council of Europe/MONEYVAL and the Egmont Group.

Item 5 – ICRG process

14. The Chairman updated the Plenary about the anticipated next steps in the ICRG process and shared his opinion that this process has increased the importance of FSRBs.
15. The Chairman informed the Plenary that it was decided in the October discussions that some countries would remain subject to the focused review of the Europe/Eurasia Regional Review Group (ERRG). ERRG will hold a face-to-face meeting next week in Strasbourg. At this meeting the draft reports are to be discussed and those jurisdictions subject to a focused review will have the opportunity to explain their progress.
16. The Chairman reminded the Plenary that next ERRG meeting would take place on 14 and 15 December 2009 in Strasbourg.

Item 6 – Discussion on the First Progress Report of Azerbaijan

17. The Head of Delegation of Azerbaijan introduced the members of the delegation and presented the developments that have occurred in Azerbaijan since the adoption of the mutual evaluation report in December 2008.
18. Ukraine, in its capacity as rapporteur country, noted the significant steps taken by Azerbaijan particularly during the last year. It also raised several questions in relation to the following issues:
 - R.1 and SR.III: steps taken by Azerbaijan to eliminate the deficiencies regarding the physical elements of money laundering and terrorist financing offences;
 - R. 26: FMO`s authority to exchange information with other countries` FIUs.
19. Azerbaijan responded to the clarification requests. As regards the elimination of deficiencies regarding the physical elements of money laundering and terrorist financing offences, Azerbaijan explained how the draft law envisages the criminalisation of these offences to become fully in line with international conventions. The Statute of FMO authorises it to exchange information with other countries on the basis of memoranda of understanding and other international instruments.
20. Further clarifications were requested on the risk based approach, on the examinations regarding violation of AML/CFT requirements, the regulation of the financial market, the powers of FMO, sanctions, statistics, the supervision of the insurance sector, and circulation of non-cooperative countries lists by Latvia, Estonia, Russia and the Executive Secretary, which were responded by Azerbaijan. Ukraine, as rapporteur country, noted that Azerbaijan had fully answered the questionnaire.

Decision taken

21. The Plenary adopted the First 3rd Round Progress Report of Azerbaijan (as submitted), which would be subject to automatic publication in accordance with the Rules of Procedure.

Items 7 & 26 – Compliance enhancing procedures

7.1 Azerbaijan

22. The Executive Secretary drew attention to the Information Document at item 7.1 which comprehensively listed the actions taken by almost all MONEYVAL States in response to the last Public Statement issued under Step VI and urged the members which had not responded yet to send their replies to the Secretariat after the Plenary.
23. The Chairman referred broadly to the actions that had been taken by Azerbaijan and asked their delegation to respond. The Azerbaijan authorities thanked the Chairman for his introduction and stressed that both legislative and institutional deficiencies were being fully addressed in a detailed Action Plan and that the FIU had become operational. Azerbaijan requested members to support the lifting of the compliance enhancing procedure in respect of Azerbaijan.

24. The Chairman then indicated that the Bureau would consider the latest position and revert to the Plenary later in the week with their proposals in respect of the Compliance Enhancing Procedures.
25. The issue was brought back to the Plenary on last day of the meeting. The Executive Secretary introduced the circulated information paper (MONEYVAL(2009)INF6. It summarised the position in Azerbaijan as at this Plenary. The paper noted that the previous Plenary had concluded that if progress was made and the FIU was operational by this December meeting, consideration might be given to lifting the Public Statements at the December Plenary. The Bureau recognised that Azerbaijan had broadly done what was asked of them at the last Plenary. The Bureau recommended that the Plenary withdraw MONEYVAL's previous Public Statements and issue and 4th Public Statement to this effect. There were however a number of other issues still to resolve arising out of the 3rd Round Report. A separate paper had also been circulated containing a desk review on the present position in respect of outstanding ratings which were PC or NC in the last report (with a tentative re-rating). As further amendments to the legislative structure should be achieved by the next Plenary, the Bureau recommended that this decision be postponed to the March Plenary, when Azerbaijan have agreed to provide a further voluntary progress report.
26. Georgia, Moldova, the United States, San Marino, Malta, the Russian Federation and Bosnia and Herzegovina supported and congratulated Azerbaijan on the significant progress achieved.
27. Azerbaijan also supported the proposals of the Bureau and gave an overview of its progress. The Head of delegation confirmed that Azerbaijan is ready to submit a further voluntary progress report at the 32nd Plenary.

Decision taken

28. The Plenary recognised and welcomed the steps taken by Azerbaijan with speed in the last year to set up a working AML/CFT system.
29. The Plenary decided to withdraw MONEYVAL's previous public statements and to issue a fourth public statement. It adopted the revised public statement which is annexed to this report. This concluded the process of Compliance Enhancing Procedures which commenced in 2006.
30. The Plenary decided to postpone a decision on the imposition of further Compliance Enhancing Procedures until a further full progress report on all aspects of the AML/CFT regime rated NC or PC has been provided by Azerbaijan and analysed by the Secretariat and discussed at the next Plenary.

Item 8 - Special Recommendation III (SR.III) – Jurisprudence in the European Courts – update from Scientific Expert on Legal Issues

31. The Scientific Expert on legal issues, Prof. Bill Gilmore, made a presentation to update the Plenary on the recent developments in jurisprudence on SR.III in the European courts.
32. The Scientific Expert noted that in the course of the 3rd round of mutual evaluations within MONEYVAL, one recurring area of concern has been the difficulty of many states in securing full compliance with SR.I and SR.III. He stressed that in this, MONEYVAL

members have not been alone. He illustrated this fact by quoting the FATF President. On 26 October 2009 the FATF President noted that, of the 129 Jurisdictions assessed world wide under the common methodology, “only 21 had effective systems in place to freeze terrorist assets, 108 had not”. The President also remarked “the overall level should and could improve”.

33. According to Prof. Gilmore there were several reasons for this significant “compliance gap”. One feature is the complexity of the United Nations Security Council Resolutions (UNSCR) regimes in question. This issue has been progressively addressed by the FATF in the Interpretative Note to SR III and the Methodology as well as in the International Best Practices Guide of 23 June 2009. A second contributory factor is that, especially in relation to the Taliban and Al-Qaeda sanctions regime, there have been numerous successor resolutions which have introduced both procedural and substantive amendments which require action by members of the international community. Many of these have introduced process enhancements designed to improve the fairness and transparency of the procedures for listing and de-listing individuals’ groups and undertakings as well as for the granting of so-called humanitarian exemptions to the freezing of funds and other financial assets so that those affected could meet basic and extraordinary expenses. Despite these refinements, the regime deliberately imposes severe limitations on the moves of listed persons and the activities of listed entities by controlling their use of finance and other economic resources.
34. By referring to the 2009 Best Practices Paper, he emphasised that the measures to freeze assets may complement criminal proceedings against a designated individual or entity, but are not conditional upon the existence of such proceedings. The measures serve as a preventive or disruptive tool when criminal action is either not possible or not practical. Similarly, UNSC has frequently emphasised that the required measures are preventative in nature and are not reliant upon criminal standards set out under national law. Notwithstanding this, the Resolutions of UNSC in this sphere and the measures taken to implement them in national law have attracted extensive human rights criticism in both academic and political circles. They have also increasingly been the focus of challenge in the courts.
35. Prof. Gilmore touched upon human rights challenges in evolving jurisprudence. He underlined that measures implementing the requirements of UNSCRs 1267 and 1373 have been challenged by blacklisted persons in many parts of the world, including a growing list of CoE member states e.g. Switzerland, Belgium, the Netherlands, Turkey and the UK. In addition, aggrieved individuals and entities increasingly have recourse to international and regional bodies. He then focused on the UN Human Rights Committee, the European Court of Justice and the European Court of Human Rights.
36. As regards the UN Human Rights Committee he pointed out that, in the beginning there had been a feeling in some quarters that the Committee would not be in a position to address the merits of such complaints. The reasons for this approach were the following: firstly, all of these resolutions were passed under Chapter VII of the Charter which is binding. Secondly, under article 13, Charter obligations take precedence over other inconsistent obligations. Lastly, the Committee was precluded from entering a challenge to such resolutions. In the case of *Nabil Sayadi and Patricia Vinck v Belgium*, CCPR/C/94/D/1472/2006, 29 December 2008, Belgium heavily but unsuccessfully relied on this line of argument. In the view of the Committee it was competent to admit a communication alleging that a state party (Belgium)

had violated rights set forth in the Covenant, regardless of the source of the obligations implemented by the State Party.

37. Prof Gilmore provided the Plenary with detailed information about the facts of this case and raised several points of interest from the determination of the UN Human Rights Committee. He noted that the Committee accepted the proposition that the sanctions are preventive rather than punitive in nature and thus cannot be characterised as “criminal”. Consequently, fair trial guarantees (art. 4) and the principle of legality of penalties were not engaged. The Committee nonetheless found that the associated travel restrictions were violated. (art. 12) Finally, it considered that the stigmatisation involved in the inclusion of their names and personal details on the list and the resulting negative publicity amounted to an unlawful attack on their honour and reputation. (art 17) After the determination of the Committee, Belgium was ordered to do all it could to secure their removal from the blacklist, to make public the request for removal and to pay compensation.
38. As the European Court of Justice (ECJ) and the Court of First Instance (CFI) have been increasingly occupied in recent years in considering challenges to the European legislation giving effect to both Resolutions 1267 and 1373 procedures, he then drew the attention of the Plenary to the jurisprudence of the ECJ and the CFI.
39. The ECJ had affirmed its competence to review Community measures designed to implement binding UNSCR under Chapter VII in its landmark judgment of 3 September 2008, “*Kadi and the Al Barakaat International Foundation v Council of the EU*, ECJ. The court in its judgement noted that “Respect for human rights is a condition of lawfulness of Community acts ... and that measures incompatible with human rights are not acceptable in the Community”... In that case, because the Council had not communicated to Mr Kadi information as to why he had been listed nor afforded him a right to respond to it, the Court held that the rights of the defence and the right to effective judicial review had not been respected. In so doing, however, the Court stressed that such information did not have to be given in advance, but it should be given as swiftly as possible after that decision in order to enable those persons or entities to exercise, within the periods prescribed, their right to bring an action. The Court also pointed out that security concerns in connection with the fight against terrorism may militate against the communication of certain matters to the persons concerned and, therefore, against their being heard on those matters. The Court emphasised that the interference with property rights envisaged by the UNSC cannot *per se* be regarded as inappropriate or disproportionate and might in principle be justified. It also held that Kadi’s property rights, in these circumstances, had also been infringed, given the absence of the provision of a reasonable opportunity to put his case to the competent authorities. Under these circumstances the ACJ annulled the relevant EU regulation in so far as it freezes Mr. Kadi and Al Barakat’s funds.
40. During his presentation he also touched upon following cases: *Othman v Council and Commission*, CFI, Judgment of 11 June 2009, Case T-318/01; *People’s Mojahedin Organisation of Iran v Council of the EU*, CFI, Judgment of 4 December 2008, Case T-284/08; *Mohamed El Morabit v Council of the EU*, CFI, Judgment of 2 September 2009, joined Cases T-37/07 and T-323/07.
41. He highlighted that in the meantime EU institutions are considering a proposal by the Commission for amendment of the Regulation aimed at the inclusion of due process enhancements to take account of the Kadi judgement.

42. The judgements of the Court of First Instance “*People’s Mojahedin Organisation of Iran v Council of the EU*” and “*Mohamed El Morabit v Council of the EU*” are related to EU law and practice concerning UNSCR 1373. After shortly mentioning the facts of both cases, Prof Gilmore pointed out the findings of the second case. Mohamed El Morabit was added to the EU Terrorist List in December 2006 and acquitted in January 2008 by the Hague Court of Appeal and de-listed by the EU. In the meantime he instituted an action before the Court of First Instance. In that case, the Court held that the presumption of innocence is not breached by precautionary measures which do not amount to criminal sanctions; are not meant to prejudge guilt or innocence; are adopted by a competent authority; and are limited in time. It rejected the argument that listing could only take place on the basis of a final and definitive criminal conviction.
43. As far as the European Court of Human Rights (ECHR) is concerned, he pointed out that, by way of contrast to the above, the ECHR has, thus far, been relatively inactive in the terrorist financing sphere. Indeed, it has not had the opportunity to adjudicate a case on the merits which is directly on point. However, he mentioned *Segi and Gestoras pro-Amnistia v Germany and others*, Application Nos. 6422/02; 9916/02; 23/05/02 in which the Court took the opportunity to reaffirm the importance of combating terrorism and the legitimate right of democratic societies to protect themselves. He concluded that in these circumstances seeking to predict how the Court could react to Kadi type challenge would be highly speculative. The Scientific Expert also talked shortly about *Bosphorus Hava Yollari Turizm ve Ticaret Anonim Sirketi v Ireland*, Application No. 45036/98; 30/06/05 judgements of the ECHR.
44. Finally, he said that, notwithstanding the absence of definitive case law from the ECHR, concern over the tension between UNSCRs on terrorism financing and human rights continues to manifest itself in the work of the Parliamentary Assembly. Furthermore, developing jurisprudence from the EU and elsewhere continues to be monitored closely by the CoE Committee of Legal Advisers on Public International Law (CAHDI).
45. Prof. Gilmore further noted that it could be worthwhile for the Secretariat to keep the Plenary informed on a regular basis on developments in these and other relevant bodies, at least by providing the Plenary with outcome documents of their meetings. In addition, he pointed out that especially the Plenary must remain aware of this dimension of the difficulties facing courts in giving effect to SR.III. He concluded his presentation by quoting from FATF Best Practices Paper of 2009: “In determining the limits of or fostering widespread support for an effective counter-terrorist financing regime, jurisdictions must respect human rights, respect the rule of law and recognise the rights of innocent 3rd Parties”.
46. The Scientific Expert was thanked for this detailed overview and it was agreed that the Secretariat would keep the Plenary updated on future developments.

Item 9 – Enforcement of Civil Confiscation Orders – Draft MONEYVAL Questionnaire for adoption

47. The Chairman invited the Executive Secretary to report on the draft Non-Conviction Based Confiscation (NCB) questionnaire that had been circulated before. The Executive Secretary recalled that at the last Plenary meeting in September it was agreed to draft a questionnaire in order to examine problems in practice with NCB confiscation, with a focus on international cooperation.

48. He underlined that the AML/CFT Methodology on Recommendation 38 does not provide international impetus to cooperation in NCB confiscation matters, as the FATF Recommendation leads to coverage of this issue as it is an “additional criteria” rather than an “essential criteria” . Article 23 of CETS 198 brings a new development in international law in this regard. It creates a legal base for international cooperation on NCB confiscation. A similar provision is found in UNCAC but applicable for only a limited set of offences. Mr Ringguth mentioned the evidence given by him to the UK House of Lords on the issue during which the House of Lords questioned what more the CoE could do in this area, and, this questionnaire was at least partly a response to that question.
49. The Executive Secretary informed the Plenary that during the preparation of the draft questionnaire the MONEYVAL Secretariat was assisted by various international experts. MONEYVAL had been invited to join an informal platform of Experts in Brussels on Asset Recovery, hosted by the European Commission. During the platform's meeting, reference was made to the questionnaire and some EU countries volunteered to give comments.
50. The Secretariat briefly reported that MONEYVAL had been invited to participate in the aforementioned Expert meeting. Participants included experts of national Asset Recovery Offices, academics and representatives of the EC, as well as of EUROPOL, CARIN and EUROJUST. This platform mainly deals with asset recovery and all connected problems. The work of MONEYVAL was presented during the meeting and there was a lot of interest shown in the meeting in the draft questionnaire and on-going work, MONEYVAL's initiative on NCB confiscation being highly appreciated. MONEYVAL was invited to participate as a permanent member of this platform.
51. The Executive Secretary explained that one of the early draft versions of the questionnaire included the relevant EU framework decision, which, according to him, did not refer necessarily to NCB confiscation. He added that if, nevertheless, there was a suggestion that questions on those framework decisions should be included, that should be discussed. Prof Bill Gilmore supported this opinion, by confirming that the existing framework decisions were not sufficient for NCB confiscation.
52. The European Commission's Secretariat added that the EC was currently conducting a mutual evaluation on financial crime and this would look especially at the implementation of the framework decisions in question.
53. The FATF Secretariat mentioned that a working group was looking into confiscation matters, including NCB confiscation, and he suggested taking a closer look on its outcome in February, when the working group's report will be published. At the same time he stressed that the MONEYVAL questionnaire will be much more detailed and thus not duplicating FATF work.
54. Cyprus supported the draft questionnaire, which will enable the Committee to establish what measures are in place in other countries. The delegation also backed Mr Ringguth's proposal not to include questions on EU framework decisions in MONEYVAL's NCB questionnaire.
55. Latvia welcomed the draft questionnaire and advised that it has a NCB criminal confiscation procedure and that there were as well several other countries which had such a system. The Latvian delegation stressed that the questionnaire should also gather information on those systems. Also Armenia pointed out that the questionnaire should clearly comprise questions on criminal confiscation procedures which are non-conviction based and asked whether the questionnaire was a new form of monitoring or review.

56. In response, the Chairman assured that MONEYVAL's questionnaire on NCB confiscation was not part of a monitoring process and that consequently it was not a review. He underlined that the questionnaire was created for fact finding purposes and may lead to new proposals and initiatives in this area.
57. Mr Ringguth added that the results of the questionnaire were to be circulated and discussed within MONEYVAL. He also replied to the Latvian and Armenian delegations that the questionnaire did cover NCB criminal procedures and invited at the same time the two countries for bilateral talks on this topic in the margins of the Plenary to assure that their proposal is taken into account.
58. Mr Ringguth furthermore underlined that MONEYVAL was keen to finalise the questionnaire and to send it out to its member states shortly after the Plenary. He added that it would be very good if the MONEYVAL Secretariat could receive answers by the end of January 2010 and their analysis will be made available during March Plenary. The Secretariat would send the questionnaire not only to MONEYVAL's member states, but also to observer delegations and Israel. He mentioned further that if FATF wished to circulate this document it would be helpful. Finally he proposed to send the questionnaire to each Head of delegation for them to ensure that it would reach the appropriate authorities for completion.
59. The Chairman then asked the Plenary if there are any objections or other proposals. As there were none, he proceeded to ask if the Plenary was willing to adopt the questionnaire and the procedure proposed by the Executive Secretary. The Plenary adopted both.

Decision taken

60. The Plenary adopted the MONEYVAL Questionnaire which would be circulated as soon as possible to Heads of delegation and observers and responses would be analysed by the Secretariat.

Item 10 – Information on AML/CFT initiatives in other fora

10.1 FATF

61. The representative of the FATF informed the Plenary that the Republic of Korea had become its 35th member.
62. The Plenary was briefed about the outcome of the 21st Plenary of the FATF (14-16 October) at which the 4th follow-up report of Switzerland and the 2nd follow-up report of the UK; the mutual evaluation reports on Aruba, the Kingdom of the Netherlands and New Zealand were adopted. Greece was placed on enhanced follow-up and should report back in February 2010 on Recommendation 35 and Special Recommendations I, II and III. He advised the Plenary of the ongoing work and activities of the WGEI, WGTYP and WGTM, as well as the ICRG process. He mentioned that Iran, Uzbekistan, Turkmenistan, Pakistan and São Tome and Principe have remained subject to public statement. He advised the Plenary that the FATF's report on typologies of money laundering and terrorist financing in the securities sector has been published¹.

¹ <http://www.fatf-gafi.org/dataoecd/32/31/43948586.pdf>

10.2 World Bank and IMF

63. The representative of the World Bank informed the Plenary about the policy paper on strengthening preventive measures on politically exposed persons, which is available on website (www.worldbank.org/star). She highlighted that the paper looks at the implementation of PEPs standards by banks and regulatory authorities and focuses on helping banks and regulatory authorities in building regimes that will address the risks posed by PEPs and prevent corrupt PEPs from abusing domestic and international financial systems to launder their proceeds. It was explained that the process had involved a desk review of the FATF MERs, as well as field visits to 8 jurisdictions: Argentina, France, Hong Kong, Jersey, Liechtenstein, Switzerland, the United Kingdom, and the United States and that at least 2 banks in each jurisdiction, regulator and FIU had been visited. She then explained their findings and recommendations.

10.5 OGBS

64. A written report provided by the OGBS was circulated. On the basis of this paper, the OGBS representative informed the Plenary *inter alia* about the availability of mutual evaluation reports of OGBS members on its website, the assistance extended by and the active involvement of OGBS in FATF and FSRBs activities, and the outcome of its last Plenary meeting held in Jersey on 15-17 September 2009.

10.6 OSCE

65. The OSCE representative indicated that the OSCE continued to support MONEYVAL member states in their AML/CFT efforts by organising, facilitating and conducting a number of regional capacity building activities, focusing on the fight against money laundering and the financing of terrorism, in close co-operation with partner organisations, such as the Council of Europe/MONEYVAL, UNODC, the World Bank, the IMF and others. In this context, the representative described the Public-Private Expert Workshop on Preventing the Abuse of Non-Profit Organizations for Terrorist Financing, held in Vienna on 11 September 2009, which focused on the FATF Special Recommendation VIII on non-profit organizations and built on previous OSCE efforts to promote public-private partnerships in countering terrorism (MC.DEC.5/07). The OSCE representative further mentioned the regional seminar on FIU tactical analysis held on 13-15 October 2009 in Borovoe, Kazakhstan. In addition, the Plenary was informed of the International Seminar on Combating Terrorist Financing, entitled "Countering the Financing of Terrorism – the next decade" which was to be held on 15-17 December 2009 by the Basel Institute of Governance, the EBRD and the IMF, with the support of the OSCE, and aimed at financial sector officials, investigators, prosecutors and experts from Financial Intelligence Units from OSCE countries.

10.8 Eurasian Group on Combating Money Laundering and Terrorist Financing (EAG)

66. The Head of the delegation of the Russian Federation apologised on behalf of the EAG for being absent from the MONEYVAL Plenary due to the clash of dates with the 11th EAG Plenary meeting taking place in China during which progress reports of Belarus, China, Kyrgyzstan, the Russian Federation and Tajikistan, as well as reports on typologies research, will be discussed and adopted. He informed the Plenary that after the 30th MONEYVAL Plenary meeting, the EAG conducted a mutual evaluation of Uzbekistan in November and the report will be discussed at their 12th Plenary in summer 2010. He also drew the attention of

the Plenary to the EAG typologies seminar which was held in October 2009 where 3 topics were discussed and the reports have been sent for approval by the 11th EAG Plenary and to the seminar that was held in Moldova for supervisory authorities from EAG countries with the assistance of the “MOLICO” project.

Items 11 & 16 - Information from the European Union

European Commission and European Union Council Secretariat

67. The representative of the European Commission explained that it is examining the elaboration of a new directive on ML and would outsource the conduct of a study on the following subjects, including: beneficial owners, enhanced CDD, PEPs, postponement of transactions when reporting, supervision and monitoring. He stated that there was also work going on concerning statistics together with the justice department in order to achieve comparable data. He also informed the Plenary about the FIU.Net project. The representative of the European Commission stressed that significant progress had been made on the SR.IX issue; nevertheless a lot of practical issues remained to be tackled.
68. The representative of the Council of the EU underlined that the Lisbon Treaty changed the working structure of the Council, which will have major impact on the legislation of the 3rd pillar, referring to majority voting. He informed the Plenary of the agreement signed between the US and the EU providing a swift exchange of information relating to AML. The agreement will remain in force for 9 months. He gave an overview of the 5th round of mutual evaluations conducted within the Multidisciplinary Organised Crime Group. He also drew the attention of the Plenary to the fact that the Spanish Presidency has included the fight against terrorism into its priority agenda.
69. The Chairman thanked the representatives of the EU and welcomed their attendance to enhance the good link between MONEYVAL and the EC/Council.

Items 12 and 17 – Information on AML/CFT Initiatives in MONEYVAL countries (tour de table)

70. The Chairman informed the delegations which had not yet sent any information that in accordance with the new procedure, they could still do so in the week following the meeting.
71. The Secretariat had received only 3 responses from delegations before the meeting. The Executive Secretary advised the Plenary that the final compilation of information from the Tour de Table received from delegations would be available for consultation only on the restricted area website of MONEYVAL.

Item 13 - Discussion on the First Progress Report of Estonia

72. The Head of delegation of Estonia introduced the members of the delegation and presented the developments that occurred in Estonia since the adoption of the report. The Head of delegation also gave some statistical information regarding international cooperation.
73. Romania, as rapporteur country, highlighted the positive developments in particular the legislative steps taken and institutional capacity building activities that took place in line with the action plan approved by the Government in March 2009. The rapporteur country praised

the detailed content of the Progress Report. Romania raised further questions in relation to the certain recommendations and other issues, including:

- SR II: seeking more elaboration on the offences referred to in article 237 of the Criminal Code
- R 2: if there is any indictment against a legal person in case of ML/FT offence.
- SR III: if there is any legal provision in the Estonian legal framework addressing the issue of a freezing request from non EU country.
- R.5: usage of the terminology “high risk” vs. “higher risk” in the new amended AML law
- R.10: if the article 215 of the of the Code of Criminal Procedure was in force at the time of the evaluation; if there is any responsible supervising authority in the AML/CTF legal framework of Estonia which is empowered to apply fines for non-compliance with this record keeping obligation, apart from through the judicial system; if there are any, does the Estonian AML law directly empower them to apply sanctions for non-compliance with this obligation?
- R. 12: implementation of this recommendation for DNFBP.
- R.24: further elaboration on how the AML obligations are applied to lawyers that are not registered in the Estonian Bar Association and what was found in the 227 off-site inspections performed in the law offices.
- R. 17: if the FSA is empowered to apply sanctions for each failure to comply with the AML specific obligations.
- SR IX: if there is a designated competent authority which is authorised to stop or restrain currency or bearer negotiable instruments when there is a suspicion of money laundering or terrorist financing; procedural steps taken by the FIU and other law enforcement authorities during the 48 hours of retaining the cash by the Customs authority for suspicions of money laundering or terrorist financing.
- R. 30 & 32: if there is any plan to increase the human and IT resources of the FIU and other law enforcement authorities; further clarification in respect of the statistics provided in the table CTRs/STRs; more information about the efficiency of the recently implemented RABIS case management system with respect of automatic analysis and the speeding up of the process for analysing STRs.

74. Estonia addressed the above-mentioned clarification requests. In relation to the elaboration of the offences referred in article 237 of Criminal Code, it was decided that this elaboration will be included in a footnote within the report before its publication. Estonia replied to the second question by mentioning two indictments against legal persons in 2007 and 2008. With regard to the use of language “high risk” vs. “higher risk” in the new amended AML law, referring to the Commission they considered the European legislator did not make a distinction as sophisticated as that in the MER of Estonia and no such distinction appears in the French version of the Directive (only one term - *risqué élevé* - is used). Estonia informed the Plenary about the off-site inspections performed for the activity of the law offices. They confirmed that the FSA is empowered to apply sanctions regarding all AML specific obligations. Referring to paragraph 9 of the Customs Act which will come into force, Estonia replied that Customs has the right to stop cash irrespective of the amount and, as the competent authority to proceed with the money laundering or terrorist financing cases is the FIU, then in cases of suspicion of money laundering Customs informs the FIU, and a decision for further action is taken by the FIU. Estonia also elaborated on the procedure in respect of retaining of seized cash. The human resources of police remain unchanged and the number of staff of the FIU had increased by 1 person. They did not share the view of evaluators that technical resources needed to be improved, because both the FIU and the Police are using modern IT and other

technologies. Estonia informed the Plenary of the process of analysis of STRs and CTRs by the Estonian FIU.

75. Further questions on the number of convictions on stand-alone ML offence; STRs; definition of funds; conspiracy for ML were raised by Armenia and the Executive Secretary.

Decision taken

76. The Plenary adopted the First 3rd Round Progress report of Estonia (as amended), which would be subject to automatic publication in accordance with the Rules of Procedure.

Items 14 and 15 – Discussion on the draft Mutual Evaluation Report on Serbia

77. The Secretariat introduced the members of the evaluation team and outlined briefly details of the on-site visit and results of the pre-meeting. She expressed the team's appreciation of the co-operation of the Serbian authorities and thanked them warmly for their hospitality and co-operation throughout the evaluation process.

78. The Secretariat then explained the major changes that had been made to the report and pointed out that two information papers were available. The first one outlined the amendments to the mutual evaluation report as a result of the pre-meeting and the second one listed the issues raised by the members of the Ad Hoc and Permanent Review Group which had not been accepted by the evaluation team as well as the latter's position in this respect. Those changes reflected 3 upgradings in respect of recommendations 7, 22 and 31.

79. The evaluators presented an overview of their findings. The Serbian Head of delegation thanked the evaluation team for their work and introduced the members of the delegation. He indicated that the draft report reflected the situation in Serbia in an objective manner.

80. The three intervener countries were: Cyprus (legal aspects), San Marino (financial aspects) and Slovenia (law enforcement aspects).

Discussion

81. In discussions on the draft report, the interveners, the scientific experts and delegations from Estonia, Croatia, Malta, Romania, World Bank, sought further clarifications and information, inter alia, on the following issues:

- The application of the ML offence as defined in the Criminal Code and in the AML/CFT Law;
- Confiscation: the application of value confiscation for legal persons, the distinction between temporary and permanent seizure of property under Serbian law, the legal provisions for the registration and enforcement of foreign freezing and confiscation orders, the practice of confiscation of proceeds from offences other than ML;
- The role of the Financial investigation unit of the Ministry of Interior under the new Law on seizure and Confiscation of the Proceeds from Crime and its interaction with the public prosecutor and court in this process;
- The FIU: average length of time between the opening of a case and its dissemination to the authorities, statistics of number of investigations initiated by the FIU's disclosure, the number of employees of the FIU and actions planned to improve the recruitment of staff,

- their education and working conditions, due to the fact that the AML/CFT law sets out additional talks which have overloaded the daily operation of the FIU;
- The application of risk based approach and guidance available on this matter;
 - R.7 : legal requirements to document respective responsibilities of each institution in relation to cross-border correspondent banking relationships;
 - R.13 and SR.IV: the interpretation and implementation of the reporting obligation as set out in the AML/CFT Law (article 50);
 - R.17 and the sanctioning system;
 - Supervision aspects: the supervision plan for 2009, the exact number of on-site full scope inspections and plans for developing a methodology for supervision procedures, the legal basis for the exchange of information with foreign supervisory authorities.
82. The Plenary discussed in depth the issue of the proof of the predicate and the money laundering offence. During the visit, the evaluation team was told that the level of proof required to establish the predicate offence approached “reasonable doubt”, and that the evidence had to be undoubtedly established. In practice, the prosecution of the ML offence and the predicate offence was conducted simultaneously, so the specific predicate offence had to be identified and proved. It was also highlighted in the report that the fact that the predicate offence was regularly prosecuted simultaneously with the ML offence implied that there might be an evidential problem when the predicate offence could not be prosecuted. They concluded in the report that this could present an effectiveness problem. There was support in the Plenary for the evaluation team’s interpretation of this issue. The Chairman concluded the discussion by pointing out that if a country has a high level of proof in respect of the element of the ML offence establishing the existence of underlying predicate crime, a country may be in severe difficulties in proving ML offences at all. This was an important issue which countries needed to look at specifically, and which is addressed in the Warsaw Convention (CETS No. 198).
83. The Plenary discussed also the issue of interpretation and implementation of the reporting obligation as set out in the AML/CFT Law (article 50), which was raised by Romania. The Serbian delegation in this context requested the Plenary to consider upgrading R.13 (and respectively SR.IV) from PC to LC. While several delegations acknowledged that the AML/CFT provision lacked clarity, a majority of delegations supported the interpretation of the provision as explained by the Serbian authorities and agreed to an upgrade.
84. The Serbian authorities also requested the Plenary to consider upgrading R. 5 from PC to LC. The rating of R.5 remained unchanged in the absence of consensus among delegations to amend the draft report.
85. The Serbian authorities raised under R. 6 the issue of compliance management arrangements in the context of obligors with less than four employees, as the AML/CFT Law exempts such obligors to appoint a compliance officer and perform the internal control under the law, which was criticised by the evaluation team as not complying with the standards. The Plenary supported the position of the evaluation team.

Decisions taken

86. As a result of the discussions, the Plenary decided to amend the report to reflect the clarifications raised by delegations and to modify the ratings of R.7 (downgraded from

“Largely Compliant” to “Partially Compliant”) and of R.13 and SR.IV (upgraded from “Partially Compliant” to “Largely Compliant”).

87. The Plenary adopted the 3rd round draft mutual evaluation report on Serbia as amended and its draft executive summary (and subject to consequential editorial changes).

Item 18 – Discussion on the Second Progress Report of Latvia

88. The Head of delegation of Latvia introduced the members of the delegation and provided a brief overview of the developments since the adoption of the report, in particular in respect of the new AML/CFT law which includes all requirements of the 3rd EU Directive.
89. The Russian Federation, in its capacity as rapporteur country, highlighted the positive developments such as the new AML/CFT law and several regulations, the amendments to the Criminal Code, as well as the 5 draft laws for CETS No. 198, and stated that effectiveness in the DNFBP sector appeared to be enhanced.
90. The Russian Federation raised further questions in relation to the following issues to which it received responses:
- statistics on the amount of confiscated assets and if confiscated assets were shared;
 - the possibility to create Funds, which does not exist in Latvia;
 - steps taken by the Latvian authorities to implement the Recommendation to extend AML provisions on DNFBPs;
 - if there were supervisory bodies for notaries, counsellors, etc.;
 - particular measures to address risks arising from new technologies;
 - if any sanction had been imposed on senior management.
 - if the operational independence of the FIU was guaranteed.
 - person’s possibility to appeal when his funds are frozen.
91. He asked if a conviction for a predicate offence was needed in order to proceed to a ML conviction. Latvia explained that a ML conviction is possible without a conviction for the predicate offence, however the predicate offence had to be established. The delegation admitted that at that time there had been no stand-alone conviction for ML. The Chairman stressed that a direct link between ML and the predicate offence could raise effectiveness problems related to stand-alone convictions for ML.
92. Cyprus, Armenia, Malta, San Marino and the Secretariat of MONEYVAL raised some further questions. Latvia responded to the clarification requests. The Russian Federation indicated that the report itself was clear and described well the progress made.

Decision taken

93. The Plenary adopted the Second Progress report, which would be subject to automatic publication in accordance with the Rules of Procedure.

Item 19 – The impact of the global economic crisis on AML/CFT - exchange of views and discussion

94. The Executive Secretary stated that several delegations had expressed a strong interest in this and so it had been restored to the agenda . He explained that FATF was currently

working on the issue and that the Secretariat had prepared an analysis of responses from MONEYVAL countries to the FATF questionnaire on this issue.

95. The Secretariat explained that currently some of the elements like the risk based approach, Recommendation 5 and Recommendation 40, as well as tax crimes, are being discussed in FATF working groups. She highlighted that MONEYVAL would like to hear from the Plenary any further views and proposals to further elaborate MONEYVAL's position. Ms Visser asked delegations to focus on the questions in paragraph 10 of the disseminated document.
96. Armenia stated that they tried to give a thorough overview of the impact of the crisis. The delegation pointed out the importance of the following topics:
- Large investments of government and donor funding to the private and financial sectors pose new, large-scale fraud related ML vulnerabilities;
 - Reliance on cash is again an issue for national economies, which poses significant risks for money laundering and increases the role of non-financial businesses to appropriately identify the new ML risks;
 - Several respondents indicated a worrying decline in motivation of financial institutions to develop and practice effective ML preventive measures, influenced by the cost of such counter-measures and the non-grounded fear that such measures would deter the effective profitability of a given institution.
97. The delegation underlined that the result of the survey needs to be taken into consideration in FATF's revision of the Recommendations, especially with a focus on the risk-based approach, as found in Recommendation 5, 6 and others dealing with the financial sector. It was stressed that international stakeholders and national authorities should re-engage the necessity, relevance and added value of AML/CFT measures.
98. Malta gave an overview of the effects of the financial crisis that are most likely to have an impact in Malta. The Head of delegation stated that the crisis had impacted on cash transactions, which had increased. Such transactions could be used to camouflage criminal activities. Furthermore, the delegation outlined that the crisis has also revealed the existence of a shadow financial market carrying out largely similar activities as the banking sector. This implied that these shadow institutions could also be used as vehicles for money laundering. Hence, the delegation underlined the need to consider whether such institutions are subject persons in order to ensure that ML/FT is not diverted towards such institutions and escape the AML/CFT network. Also non-cooperative countries and entities should be tackled in a more intense manner.
99. Malta stressed that there is a need for closer co-operation between countries at an international level, particularly relating to transparency and the need to strengthen the identification of beneficial ownership and legal arrangements. The delegation found it thus of great importance that regulatory authorities increase their vigilance to identify the real owners/controllers of financial institutions. Malta therefore supported the on-going work of FATF. It added that especially Recommendation 5 had to be reviewed, particularly as concerns beneficial ownership. The delegation was also in favour of a review of Recommendations 32 and 33. Finally, Malta pointed out that tax fraud could easily be connected with ML, and that it was a sensitive topic which should be carefully reviewed, as the existing confusion between tax fraud and tax evasion could contribute to overburdening the system with a disproportionate number of STRs.

100. Poland supported the initiative to include tax crimes as predicate offence for ML. According to the Polish delegation, there are very high numbers of such crimes.
101. Hungary fully supported the FATF initiative to revise some of the Recommendations, especially Recommendation 5. The EU should, however, be respected as one jurisdiction, especially with regard to SR.VII and SR.I, and not only SR.IX. Furthermore there should be a distinction between tax crimes and tax fraud.
102. Moldova supported the FATF initiative and the Polish proposal on tax crimes.
103. The Czech Republic stated that it would like to enlarge on its written contribution. Attention had to be paid to financial injections. They observed an increased amount of “phishing” in the last year due to the crisis. Further fiscal fraud and tax crimes should be predicates for ML. The delegation also tackled beneficial ownership registers and requested the enforcement of supervision. Finally the delegation proposed that FATF should co-operate closer with the Egmont Group.
104. The delegation underlined that the issue of transparency of legal persons would be of high importance, as well CDD measures in this regard. Estonia expressed a wish to be given more guidance in this area. Another topic they raised was the development of new technologies, which challenge countries. Best practices (regarding supervision, etc) in this regard should be developed.
105. Latvia supported the revision of the existing Recommendations as proposed by FATF, but the delegation was opposed to adding new ones. The delegation added that Recommendation 5 was too complex and should be reviewed in any case. They stressed that FIUs should have greater competences and more access to different databases to facilitate their work and to enhance effectiveness. Therefore freezing of assets should be one of their competences and cooperation in this matter should be enforced especially with regard to stricter timelines when co-operating in order to freeze assets on foreign request.
106. Lithuania supported the review of the above-mentioned Recommendations. In the delegation’s opinion Recommendation 5 has become too sophisticated. Therefore, they claimed that it should be simplified. Another key issue for Lithuania was the identification of beneficial owners. Tax crimes were also a top priority on their list as regards the revision of the FATF Recommendations.
107. Albania also supported the initiative of FATF and confirmed that the country agreed with most of the comments. Finally they stated that they agreed with the Polish delegation as regards a review of Recommendation 5.
108. Liechtenstein stressed that the country was committed to fight tax crimes. Nevertheless the delegation pointed out that some questions on tax crimes as predicate offences had to be raised, including what the definition of tax crimes was to be. They considered the focus should remain on AML/CFT issues, because there are not yet fully solved.
109. The Chairman concluded that there is a strong support for the FATF initiative and that there is a need to revise some Recommendations, although some concerns regarding new Recommendations were expressed. Then he summed up the most important points of the discussion (beneficial ownership, FIU cooperation and exchange of information, tax crimes) He

stressed that there is no international standard obliging FIUs to have approximately the same powers and to be able to exchange the same information, which was vital to fight against ML.

110. The FATF Secretariat's representative welcomed the support for FATF. On the tax issue and eventual concerns he stated that the question is only if tax crimes would become a predicate offence. He informed the Plenary that the G.20 had already asked FATF to review tax crimes. He also pointed out that FATF is also currently looking at information exchange problems. He underlined that full information on the work within FATF is available to MONEYVAL.
111. The Chairman indicated that MONEYVAL will create a consolidated opinion to be advanced in FATF and will continue discussions if necessary in this forum. He welcomed that FATF grants to MONEYVAL full access to all FATF information.

Item 20 – Information on the Council of Europe Conventions

19.1 Information on the possible revision of the Convention on Mutual Administrative Assistance in Tax Matters [CETS 127 (1988)]

112. Mr. István Für from the Hungarian Ministry of Finance represented MONEYVAL in the Joint Meeting of the Co-ordinating Body (CB) and the Council of Europe Ad Hoc Committee on the Revision of the Convention on Mutual Administrative Assistance in Tax Matters (CAHTAX), held in Paris on 22-23 October 2009. He gave a presentation on the outcome of this meeting and the current status of ongoing work on possible amendments to the Convention [CETS 127 (1988)]
113. He drew the attention of the Plenary to the paper circulated [PLEN31-MONEYVAL (2009) INF20.1] as an information document. He recalled that the Coordinating Body of the Convention, at its meeting of 29 April 2009, considering the new international environment, gave a mandate to the OECD Secretariat to explore, in consultation with the Council of Europe, the possibility of amending the Convention to: bring it up to the internationally agreed standard on transparency and exchange of information; and to explore an amendment to the Convention in order to open it for signature by other countries and to make some other changes. He further reminded the Plenary that the OECD Secretariat, with the input of the Parties to the Convention and with the involvement of the CoE Secretariat, had prepared a draft protocol to the Convention which had been presented for discussion by MONEYVAL delegations at the last Plenary.
114. Mr Fur recalled that the Joint CB/CAHTAX Committee consisted of the OECD Secretariat, the Council of Europe Secretariat, and the delegates from the Parties to the Convention. Within the Council of Europe delegation, there were representatives from the DG Human Rights and Legal Affairs of CoE, from the Parliamentary Assembly of the CoE, the Data Protection Commissioner of the CoE, and himself, representing MONEYVAL. He noted that :
- the Convention should be aligned to the internationally agreed standard on transparency and exchange of information;
 - the Convention should be open for signature by countries which are not members of the CoE or the OECD with the aim of bringing more ratifications by countries, and to make this Convention more useful for the purposes of international co-operation, which is also in line with R 40 of FATF.

115. He highlighted the issues which remained open at the end of the meeting, such as its relationship with the EU legislation; an express reference to data protection instruments and the date of effect of the amended Convention. He added that at the end of the meeting it was agreed to continue to work on the open issues under a written procedure. Mr Für informed the Plenary that two of remaining issues were solved during the written procedure and only data protection issues remained unsolved as yet.
116. He further informed that, as planned, the draft protocol was sent to the Council of Europe Committee of Ministers on 10 November. The Revised Explanatory Report to the Convention was sent to the Committee of Ministers for approval as of 9 December 2009. At the end of his presentation he gave an overview on the adoption procedure of the draft protocol.
117. The Chairman thanked him for this update.

21.2 Information on the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime and Financing of terrorism (CETS 198)

118. The Executive Secretary updated the Plenary on the present status of the Convention. He mentioned that there have been 16 ratifications. He also listed all countries which had signed and/or ratified the Convention. He informed the Plenary about the meeting of the drafting group which will take place in the CoE office in Paris in the new year. A second Conference of the Parties will be held on 15-16 April 2010. At the next Conference of the Parties the questionnaire will be discussed and hopefully adopted.

Item 21 – Combating proliferation financing: policy options for the FATF – exchange of views

119. The Executive Secretary reminded delegates that a paper had been distributed and that this item should prepare MONEYVAL's position on decisions that could be taken in the next FATF Plenary on this issue. He explained that there were a number of policy options and that we would welcome opinions from the Plenary to respond to the FATF, as there are practical implications to the choices made in each of the policy options.
120. The Secretariat presented the paper and highlighted specific policy considerations. She indicated that some of the considerations could possibly involve, if adopted by the FATF, possible changes to the evaluation criteria to include some aspects of proliferation financing.
121. Mr Schmoll mentioned that there was an FATF proliferation financing project team and gave an overview of the team's work timetable. Comments from MONEYVAL should be provided as soon as possible for them to be taken into account by FATF.
122. Cyprus highlighted the following points: The document noted that there was no standardised crime at the moment. As regards the first bullet point on criminalisation, the delegation agreed with the approach presented in the document. The delegation proposed to consider proliferation financing as a predicate offence, as no reference to that was made in the Secretariat's document. Furthermore the delegation highlighted the importance of clear guidance for financial institutions on what they should be looking for.
123. The United States stated that they supported the initiative and especially the concept of targeted financial sanctions and asked for MONEYVAL's comments on the issue of guidance.

124. Estonia stated that its delegation was concerned about the practical effects of the topic and not so much about the legal aspects. The importance of the creation of a level playing field in terms of guidance was stressed.
125. Russia argued that the future of the paper was unclear and expressed its concerns about it. The delegation explained that there would be problems practically implementing proposals on this issue. The delegation were particularly looking for an international legal definition of proliferation financing. Russia stressed that it did not want to adopt a document before the 4th round of evaluations.
126. Albania wanted to see more guidance on how to implement several practical aspects of the proposals such as the screening of transactions.
127. Russia then commented on the paragraph on sanctions and stated that its meaning was not clear, and asked for clarification. FATF replied that the work on the topic was going on in co-operation with many of the represented countries and that many of the proposals are directly derived from Security Council Resolutions.
128. San Marino stated that its experience is insufficient to fully understand all implications of the document and that help for implementation would be needed. San Marino pointed out that solutions for this topic should be distinguished from solutions for terrorist financing.
129. Bulgaria supports the initiative of FATF and the document prepared by the Secretariat. Further guidelines are needed for the private sector and financial institutions.
130. The FATF representative reminded the delegations that there was a document on proliferation financing with a lot of useful information, published on the website.
131. The Chairman indicated that the different views would be reflected in any MONEYVAL submission.

Item 22 and 23 – Discussion on the draft Mutual Evaluation Report on Bosnia and Herzegovina

132. The Secretariat introduced the evaluation team. The Secretariat briefly outlined details of the on-site visit and thanked the Bosnian authorities for their excellent organisation and hospitality. There had been a pre-meeting in October and another one through Monday to Wednesday of the Plenary week. He gave an overview of the significant changes made to the report which had been previously circulated. He highlighted that due to the complex and multi-level state structure of BiH, the evaluators had to consider several levels of jurisdiction which all have different laws including different Criminal Codes. The same goes for state institutions and law enforcement authorities. Therefore, the Secretariat explained that the report was exceptionally long.
133. The legal evaluator, Mr Lajos Korona, presented the key findings in his sector. He pointed out that a lot of legal provisions are quite similar in all entities, mentioning as an example the confiscation regime. The ML criminalisation covered largely all physical elements; however clarification of the scope of the laws of the different entities and the State level was needed. He mentioned that self laundering was not clearly regulated, that corporate liability was included in the respective Criminal Codes, but that the number of convictions was still too low and that effectiveness of the ML offence beyond the predicate offence of tax crimes should

be targeted. Furthermore, Mr Korona pointed out that BiH fell partly short in complying with international conventions concerning CFT. The most robust part of the confiscation regime is that it is mandatory. Nevertheless, the high standard of proof is hampering effectiveness. Finally he noted that SR.III is not working and clear rules on listing and de-listing have to be established.

134. Ms Stela Buiuc, legal evaluator, informed the Plenary about the Bosnian provisions on legal entities and NPOs. She underlined the following findings: there are framework laws at State level covering that subject; however, there is no registration of legal entities at State level. A new database was created; nevertheless there is no information on the functionality of the system. For NPOs there exists a registration mechanism at State level, but due to several obstacles the system is not effective. Furthermore the new AML law introduced the concept of beneficial ownership but the courts are not obliged to carry out their identification for the respective databases. Bearer shares are prohibited but there is still a possibility for foreign legal entities to bypass the prohibition. BiH has signed the Warsaw Convention and a new law on mutual legal assistance was adopted after the on-site visit. Besides this improvement there are still problems hampering mutual legal assistance because of the lack of co-operation between the State level and the entities, as there are no rules governing their domestic coordination. Finally, Ms. Buiuc drew attention to a specific problem of countries in the region, which concerns dual nationality when it comes to questions of extradition, as many persons have dual nationalities.
135. With regard to financial aspects, the evaluator, Mr Laferla, gave an overview of the key findings after noting the complexity the evaluators had encountered when assessing the Book of Rules, which they finally considered as “other enforceable means”. He also explained to the Plenary that the new AML law addressed several weaknesses observed during the on-site visit and thus had been taken into account in the evaluation report. He stressed the fact that focusing on this law alone would reduce the evaluation to a desk review. He gave an overview of the most important supervision bodies in the banking and insurance sectors. He pointed out positively that nevertheless DNFBP are broadly covered by the existing provisions on supervision. Furthermore Mr Laferla underscored that there had been progress made since the last progress report and broadly the AML system produced results. Nevertheless there were concerns of the evaluators, in connection with the extent of CDD, the risk based approach, sanctioning and supervision. Finally Mr Laferla pointed out that the banking sector seemed to be relatively well covered.
136. The law enforcement evaluator, Mr Shaffer, highlighted the especially complex structure of the law enforcement bodies which are located at three levels (cantonal, entity and State level). Some of the major issues he mentioned included the FIU, which appeared to be somehow isolated from other law enforcement bodies. The power to disseminate information is limited and there is an extremely low level of STRs, which are only from the banking sector and of poor quality. Also the latter are not always submitted directly to the FIU. STRs are not leading to successful investigations. The FIU is part of SIPA, which operates at State level and which is well staffed and financed, targeting organised crime but also ML and FT; however, there is a lack of results due to the fact that organised crime is not sufficiently linked to ML by SIPA. He further underlined that at entity level, law enforcement and especially prosecutors are focusing on predicate offences not aware of ML. Finally he stressed the importance of the Working Group but he also pointed out that the group was not sufficient for legal co-operation on specific cases.

137. The Bosnian delegation thanked the evaluation team for their work and presented the team. The Head of delegation of BiH gave an overview of the AML/CFT situation in BiH with a special focus on the Working Group against ML and FT which was established in 2008. The Chairman proceeded with a discussion of the draft report.
138. The three intervener countries were: Andorra (legal aspects), Slovakia (financial aspects) and “the former Yugoslav Republic of Macedonia” (law enforcement aspects).

Discussion

139. The Plenary sought information on and discussed the following issues:
- lack of prosecution of legal persons;
 - complicated confiscation structure;
 - reasons for the decreasing number of convictions for FT;
 - staffing and training in BiH;
 - lack of guidance for other than banking institutions;
 - sanctions regime;
 - low number of STRs;
 - whether STRs are filed to supervisory authorities or to the FIU (R. 13 and SR IV);
 - whether the FIU is isolated from the general law enforcement;
 - FIU’s capacity to disseminate information
 - cooperation of the FIU and the crime investigation department;
 - Ministry of Interior’s involvement in detecting ML and FT;
 - if there are technical or legal obstacles to accessing databases

Decisions taken

140. As a result of the discussions, the Plenary decided to amend the report to reflect the clarifications raised by delegations and to modify the ratings of R. 13 and SR IV, which were upgraded to LC from PC as a result of votes taken on specific issues.
141. The Plenary adopted the 3rd round draft mutual evaluation report on BiH as amended and its draft executive summary (and subject to consequential editorial changes).

Items 24 – Voluntary Update on Progress by Ukraine

142. Ukraine made a presentation to update the Plenary on the progress of the AML/CFT system in place and the legislative steps taken so far. Clarifications were sought on the date of entry into force of the new AML/CFT Law. Ukraine indicated that according to the procedure, the law would be subject to a further vote in the Parliament. Several delegations welcomed the progress presented by Ukraine.
143. The Ukrainian delegation requested whether the Plenary could make a statement about the progress achieved. The Chairman clarified that there was no procedure to do so, however it was noted that delegations which took the floor expressed their positive assessment on developments underway in Ukraine. The Secretariat was requested to ensure that the presentation would be available on the secure website of MONEYVAL.

Item 25 – Election of President, Vice-President and Bureau members

144. The Executive Secretary explained that the ballot papers are distributed to the 28 member states of MONEYVAL and to the two members nominated by FATF, Austria and the UK. It was explained that to be elected on the first ballot would require a 2/3 majority. If there was no such majority the vote would be taken again.
145. The result of the first round of voting for the chair was 15 votes for Mr Vladimir Nechaev (Russian Federation) and 15 votes for Ms Eva Rossidou-Papakyriacou (Cyprus).
146. Thus a second ballot was required, which required only a simple majority. Latvia proposed a short presentation by the candidates. The Chairman agreed together with the Plenary and both candidates presented their priorities.
147. The Chair proceeded to a second ballot, which also produced a tie of 15 votes each. After a short break, a third ballot was held. Mr Nechaev received 16 votes and Mrs Rossidou-Papakyriacou received 14 votes. Mr Nechaev was duly elected.
148. The Plenary elected Mr Anton Bartolo (Malta) as vice-president.
149. The Plenary proceeded to vote for the three Bureau members. Mr Alexandru Codescu (Romania), Mr Damir Bolta (Croatia) and Mr Armen Malkhasyan (Armenia) received the highest numbers of votes and were elected.

Item 26 – Typologies work

150. A Room document was circulated on MONEYVAL's typologies work, with details on the on-going projects and future typologies projects for 2010-2011.
151. Money service businesses project : The Project Leader, Mr Raul Vahtra (Estonia), made a presentation on the findings of the draft report, highlighting the content of the report, the schemes and trends detected and possible policy implications. A working meeting will be organised on the margins of the Plenary to finalise the report before circulating it for comments to delegations. The draft report was expected to be presented during the forthcoming February FATF Plenary.
152. The use of internet gambling for ML and TF purposes: The Project leader, Mr Theodoros Stavrou (Cyprus), informed the Plenary that since November, the project team had initiated the analysis of the replies to the questionnaire and the literature review. The project team was planning the consultation with the private sector and a working meeting of the project team in the first half of 2010. The final draft will be presented to the Plenary in September 2010.
153. Money laundering through private pensions funds and the insurance sector: The Romanian FIU representative advised the Plenary on progress made. A questionnaire was circulated to all members on 8 December and replies are expected by 28 February 2010. Delegations were invited to respond timely to the questionnaire. The project team will prepare the red flag indicators, which will be presented at the March 2010 Plenary for adoption and subsequent publication.
154. Criminal money flows on the internet: methods, trends and multi-stakeholder counteraction: The Secretariat indicated that the project team was now formed and that several private sec-

tor representatives had expressed their interest to contribute to the project. A draft questionnaire had been prepared by the project team and will be finalised and circulated to MONEYVAL early January. A working meeting was organised by the Cybercrime project and Rosfin-monitoring in Moscow (30 November – 2 December 2009). The findings of the report would be discussed at the 2010 Typologies meeting and the final report is planned to be finalised and submitted to MONEYVAL for adoption by the end of 2010.

155. The Plenary thanked Ms Eva Rossidou-Papakyriacou for the excellent organisation of the November Typologies meeting and for her leadership of the Typologies Working Group in the last year.

Item 28 – Horizontal Review of third round of evaluations – interim report from the experts

1. The scientific experts on legal and financial aspects updated the Plenary about the progress made in completing the state horizontal review of the 3rd round evaluation reports regarding legal and financial aspects.
2. Mr Laferla presented the future timeframe. He said that the team would submit its first draft of the review by the end of 2009, taking into account the 26 mutual evaluation reports that had already been adopted. The first draft would be further updated in the first quarter of 2010 with the remaining two reports. The team anticipated to present the final version of the report to the Plenary at the March 2010 Plenary. He stressed that the main focus of this third round review will be on the core and the key Recommendations but it will also highlight some important aspects of all the other relevant Recommendations resulting from the third round mutual evaluations and in particular those ratings where a low compliance position has been registered.
3. He gave some preliminary information that he had extracted by the Plenary week regarding the financial sector. He stated that the mutual evaluation reports and the progress reports indicated that MONEYVAL countries continued to develop laws, rules or regulations and guidance. Mr Laferla addressed the specific Recommendations more in detail, namely R. 4, 5, 7, 9, 10, 11, 23, 40, and SR. IV. He added that the 3rd round reports confirmed the continued steady momentum in the implementation of measures to a reasonable overall degree of effectiveness.
4. Mr Lajos Korona took the floor and presented his findings regarding the legal aspect of the horizontal review of the 3rd round evaluation reports. He drew the attention of the Plenary to the fact that this part of the horizontal review would consist of five major sections: criminalisation issues; confiscation and provisional measures; freezing of terrorist assets; international co-operation issues, implementation of conventions; and the others, such as legal persons, non profit organisations. He briefly commented on his findings with regard to R.1, 2 and SR.II.

Item 29 - Ad Hoc Review Group of Experts for the next Plenary meeting

156. The Ad-Hoc Review Group of Experts for the next Plenary meeting will be constituted by Armenia for the 4th round mutual evaluation report on Slovenia.

Item 30 – Future representation in FATF meetings

157. The Secretariat called for expressions of interest in attending the forthcoming ICRG meeting (January 2010) and FATF working groups and Plenary meeting (February 2010).

Item 31 – Financing and staffing

158. The Executive Secretary made a brief report to the Plenary on this matter. He expressed that MONEYVAL was grateful for Israel's voluntary contribution. Mr Ringguth welcomed Sener Dalyan on board and thanked Ms Visser for her contribution to MONEYVAL as she would be leaving the Secretariat in December 2009.

Item 32 – Miscellaneous

159. Mr Ringguth formally thanked Dr Kirov for his leadership during the last four years. Mr Kirov thanked the Plenary and the Secretariat for their support and closed the meeting.

ANNEX I / ANNEXE I



Strasbourg, 2 December 2009

MONEYVAL-PLEN(2009)-OJ3rev4

**COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
AND THE FINANCING OF TERRORISM**

*COMITE D'EXPERTS SUR L'EVALUATION DES MESURES
DE LUTTE CONTRE LE BLANCHIMENT DES CAPITAUX
ET LE FINANCEMENT DU TERRORISME*

MONEYVAL

AGENDA / ORDRE DU JOUR

31st PLENARY MEETING / 31^e SESSION PLENIERE

Strasbourg, 7 - 11 December / Décembre 2009

Palais de l'Europe ROOM 1 / SALLE 1

Day 1: Monday 7 December 2009 / 1^e jour: lundi 7 décembre 2009

Morning 9h30 / matin 9h30

1. **Opening of the Plenary Meeting at 9h30 / Ouverture de la Réunion Plénière à 9h30**
2. **Adoption of Agenda / Adoption de l'Ordre du Jour**
3. **Information from the Chairman / Informations communiquées par le Président**
 - 3.1 **Azerbaijan / Azerbaïdjan**
4. **Information from the Secretariat / Informations communiquées par le Secrétariat**
 - 4.1 **Information on Elections / Information sur les Elections**
 - 4.2 **Agenda of evaluations and meetings for 2010 / Agenda des évaluations et réunions en 2010**
 - 4.3 **Participation in the FATF meetings (October 2009) / Participation aux réunions du GAFI (octobre 2009)**
 - 4.4 **MONEYVAL Secretariat representation in other fora / Participation du Secrétariat dans les activités des autres institutions internationales**
5. **ICRG process / Processus du Groupe d'examen des questions de coopération internationale (ICRG)**
6. **Discussion on the First Progress report of Azerbaijan / Discussion du Premier rapport de progrès d'Azerbaïdjan**
7. **Compliance Enhancing Procedures / Procédures visant à promouvoir la conformité**
 - 7.1 **Azerbaijan / Azerbaïdjan**
 - **Responses of MONEYVAL countries to the 3rd public statement / Action des Etats membres de MONEYVAL à la suite de la 3^e déclaration publique**
 - **Report from Azerbaijan / Rapport de l'Azerbaïdjan**
8. **Special Recommendation III (SR.III) – Jurisprudence in the European Courts – update from the Scientific Expert on Legal issues / Recommandation Spéciale III (RS.III) – Jurisprudence des Cours Européennes – mise à jour par l'Expert Scientifique sur les questions juridiques**

Afternoon 14h30 / après-midi 14h30

9. **Enforcement of Civil Confiscation Orders – Draft MONEYVAL Questionnaire for adoption / Exécution des décisions de confiscation au civil – projet de questionnaire MONEYVAL pour adoption**
10. **Information on AML/CFT initiatives in other fora / Informations sur les initiatives LAB/CFT dans d'autres institutions**
 - 10.1 **FATF / GAFI**
 - 10.2 **IMF and World Bank / FMI et Banque Mondiale**
 - 10.3 **UNCTC / CCTNU**
 - 10.4 **EBRD / BERD**
 - 10.5 **OGBS**
 - 10.6 **OSCE**
 - 10.7 **Egmont group / Groupe Egmont**

**10.8 Eurasian Group on Combating Money Laundering and Terrorist Financing (EAG) /
Groupe Eurasie sur le blanchiment de capitaux et le financement du terrorisme (EAG)**

11. Information from the European Union / Informations de la part de l'Union Européenne

11.1 European Commission / Commission européenne

**11.2 Secretariat General of the Council of the European Union / Secrétariat Général du
Conseil de l'Union européenne**

**12. Information on AML/CFT initiatives in MONEYVAL countries (tour de table) / Informations sur les
initiatives LAB/CFT dans les pays membres de MONEYVAL (tour de table)**

**(Meeting of the Bureau at the close of the afternoon's business / Réunion du Bureau à la clôture de la
session de l'après-midi)**

Day 2: Tuesday 8 December 2009 / 2^e jour: mardi 8 décembre 2009

Morning 9h30 / matin 9h30

**13. Discussion on the First Progress report of Estonia / Discussion du premier rapport de progrès de
l'Estonie**

**14. Discussion on the draft Mutual Evaluation Report on Serbia / Discussion du projet de rapport
d'évaluation mutuelle sur la Serbie**

Afternoon 14h30 / après-midi 14h30

**15. Continuation of the discussion on the draft Mutual Evaluation Report on Serbia / Poursuite de la
discussion du projet de rapport d'évaluation mutuelle sur la Serbie**

Day 3: Wednesday 9 December 2009 / 3^e jour: mercredi 9 décembre 2009

Morning 9h30 / matin 9h30

**16. Further Information from the European Union - DG Internal Market and Services / Informations de la
part de l'Union Européenne - DG Marché intérieur et services**

**17. Tour de table – continuation of the discussion as necessary / Tour de table - poursuite de la discus-
sion si nécessaire**

**18. Discussion on the Second Progress report of Latvia/ Discussion du deuxième rapport de progrès de
la Lettonie**

Afternoon 14h30 / après-midi 14h30

**19. The impact of the global economic crisis on AML/CFT – exchange of views and discussion/
L'impact de la crise économique mondiale sur la LAB/CFT- échange de vues et discussion**

**20. Information on Council of Europe Conventions / Information sur les Conventions du Conseil de
l'Europe :**

**20.1 Information on the possible revision of the Convention on Mutual Administrative
Assistance in Tax Matters (CETS No. 127, 1988) / Information sur la révision éventuelle**

de la Convention concernant l'assistance administrative mutuelle en matière fiscale (STCE No. 127, 1988)

- 20.2 Information on the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime and on the Financing of Terrorism (CETS No. 198) / Information sur la Convention du Conseil de l'Europe relative au blanchiment, au dépistage, à la saisie et à la confiscation des produits du crime et au financement du terrorisme (STCE no. 198)**

- 21. Combating proliferation financing : policy options for the FATF – exchange of views / Combattre le financement de la prolifération : choix en matière de politiques pour le GAFI – échange de vues**

Day 4: Thursday 10 December 2009 / 4^e jour: jeudi 10 décembre 2009

Morning 9h30 / matin 9h30

- 22. Discussion on the draft Mutual Evaluation Report on Bosnia and Herzegovina / Discussion du projet de rapport d'évaluation mutuelle sur la Bosnie-Herzégovine**

Afternoon 14h30 / après-midi 14h30

- 23. Continuation of the discussion on the draft Mutual Evaluation Report on Bosnia and Herzegovina / Poursuite de la discussion du projet de rapport d'évaluation mutuelle sur la Bosnie-Herzégovine**

- 24. Voluntary update on progress by Ukraine / Information sur les progrès en Ukraine à son initiative**

[A dinner will be organised in the evening / Un dîner sera organisé le soir]

Day 5: Friday 11 December 2009 / 5^e jour: vendredi 11 décembre 2009

Morning 9h30 / matin 9h30

- 25. Election of President, Vice-President and Bureau member(s) / Election des Président, Vice-président et membre(s) du Bureau**

- 26. Compliance Enhancing Procedures – further discussion as necessary / Procédures visant à promouvoir la conformité - poursuite de la discussion si nécessaire**

- 27. Typologies work / Travaux sur les typologies**

27.1 On-going projects : status of implementation / Projets en cours : état des travaux

- **Money service businesses project - update /** Projet sur les prestataires de services liés aux transferts de fonds – état des travaux
- **The use of internet gambling for ML and TF purposes/** L'utilisation des jeux en ligne aux fins du BC et FT
- **Money laundering through private pensions funds and the insurance sector/** BC par l'intermédiaire des fonds de pension privés et du secteur des assurances
- **Criminal money flows on the internet: methods, trends and multi-stakeholder counteraction/** Les flux de capitaux d'origine criminelle sur Internet: méthodes, tendances, et actions conjuguées des parties prenantes

- 27.2 Information on other on-going typologies projects /** Information sur d'autres projets en cours sur les typologies

28. Horizontal Review of third round of evaluations – interim report from the experts / *Rapport horizontal intérim sur le troisième cycle d'évaluations – compte rendu par les experts*

Afternoon 14h30 / après-midi 14h30

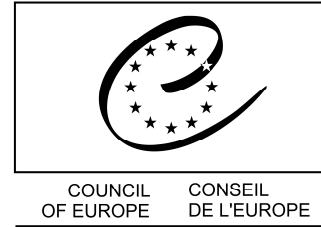
29. Ad Hoc Review Group of Experts for the next Plenary meeting / *Désignation du Groupe Ad Hoc d'experts pour la prochaine réunion plénière*

30. Future representation in FATF meetings / *Représentations futures dans les réunions du GAFI*

31. Financing and staffing / *Financement et questions de personnel*

32. Miscellaneous / *Divers.*

ANNEXE II / ANNEXE II



Strasbourg, 11 December 2009

MONEYVAL(2009)LIST 3

**COMMITTEE OF EXPERTS ON THE EVALUATION
OF ANTI-MONEY LAUNDERING MEASURES
AND THE FINANCING OF TERRORISM**

*COMITÉ D'EXPERTS SUR L'ÉVALUATION
DES MESURES DE LUTTE CONTRE LE BLANCHIMENT DES CAPITAUX
ET LE FINANCEMENT DU TERRORISME*

MONEYVAL

LIST OF PARTICIPANTS / LISTE DES PARTICIPANTS

31st PLENARY MEETING / 31^è RÉUNION PLÉNIÈRE

7-11 December 2009 / 7-11 décembre 2009

Palais de l'Europe
ROOM 1 / SALLE 1

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"EX-RÉPUBLIQUE YOUGOSLAVE DE MACÉDOINE"

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