

# Cyprus scores high in unprecedented audit on the national application of anti-money laundering legislation



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In the course of negotiations with the Eurogroup early in 2013 a number of allegations were made that the financial system in Cyprus was being abused for money laundering purposes as a consequence of allegedly weak anti-money laundering (“AML”) procedures and laxity in their application. The Cyprus authorities responded that the AML regime is constantly reviewed and updated, fully conforms with, and in certain aspects exceeds, European and international best practice. Cyprus’s AML legislation is in line with the UN Convention (Vienna Convention), the Council of Europe Conventions on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, the relevant EU Directives, the EU Council Framework Decisions on Freezing and Confiscation and the Recommendations of the Financial Action Task Force (“FATF”) on money laundering and terrorist financing.

One example of the Cyprus legal framework being more rigorous than the FATF standard is in the identification of beneficial owners and controllers of legal entities. Cyprus requires individuals who control 10% or more of a legal entity or arrangement to be identified, rather than the 25% threshold specified in the FATF standard and the EU Third Anti-Money Laundering Directive. Another example is the power given in the law to the Financial Intelligence Unit to issue instructions for a transaction to be suspended or not executed – a feature that goes beyond international standards.

In order to assess the adequacy of the Cyprus anti-money laundering regime Deloitte, the international accounting firm, and the Committee of Experts of the Council of Europe on the evaluation of AML Measures and the Financing of Terrorism (Moneyval) were commissioned to undertake an in-depth appraisal of the effective implementation of customer due diligence (CDD) and other AML measures. The nature and depth of these assessments, which took place in March 2013, are unique and unprecedented anywhere in the world.

High level findings were extracted not only at the level of compliance of Cyprus’s legal

framework but also at the level of procedures which are being applied for CDD purposes by the banks in Cyprus. The consistency of statutory and regulatory requirements was also assessed and evaluated. The assessments generally demonstrated “a solid level of compliance” across the Cyprus banking sector but some shortcomings were also revealed. The complete reports have been published on the website of the Cyprus Ministry of Finance.

## MONEYVAL’S ASSESSMENT

The Moneyval assessment team examined the effectiveness of the banking system in Cyprus and the effectiveness of CDD implementation by the banks. The key conclusions and recommendations are summarised in the following paragraphs.

Moneyval’s assessment confirms that a significant part of the business conducted by banks in Cyprus is international and frequently involves complex corporate structures, with different layers of entities sited in two or more jurisdictions and cross-border transactions involving counterparties worldwide. Nominee shareholders or directors, client accounts and cash collateralised loans are often a feature of this type of business. Moneyval noted that even though tax incentives are important in attracting business to Cyprus, few suspicious activity reports have been submitted by the banks with regard to tax-related money laundering. The assessors recommended that guidance should be given on the identification of suspicious activities related to domestic and foreign tax evasion.

Business is also attracted by the fact that the Cyprus legal system is based on English law and provides access to common law wealth-protection structures such as trusts which are unavailable elsewhere. Moneyval estimated that 75% of the international business in Cyprus is introduced by local intermediaries. Many of these are members of the legal or accounting professions, and are regulated by their professional bodies for anti-money laundering or anti-terrorist financing purposes. There are also administrative service providers (ASPs) who until

very recently were unregulated. Moneyval regarded reliance on intermediaries, especially ASPs, as one of the most important areas of vulnerability, and recommended that “The supervisory regime for ASPs should be brought into effect as quickly as possible and the AML/CFT supervision of lawyers and accountants in their role as business introducers should be further strengthened.”

Overall, however, Moneyval noted that “In general, the banks interviewed demonstrated high standards of knowledge and experience of AML/CFT issues, an intelligent awareness of the reputational risks they face and a broad commitment to implementing the customer due diligence requirements set out in the law and in subsidiary regulations issued by the Central Bank of Cyprus. Implementation of CDD measures, as described by the banks, appeared strong under most headings.”

## DELOITTE’S ASSESSMENT

Deloitte assessed Cyprus’s legal framework in the area of compliance with CDD requirements and identified three areas as requiring attention, namely client acceptance, monitoring and reliance on third parties.

Nevertheless, Deloitte stressed that Cyprus’s CDD compliance requirements are more detailed and rigorous than in many other jurisdictions, including other EU Member States that have also implemented the Third Money Laundering Directive. With only minor exceptions the files reviewed by Deloitte consistently contained legible copies of passports, utility bills and the like. While acknowledging that omissions and exceptions had been identified, Deloitte pointed out that they were infrequent and that it is extremely difficult, if not impossible for any country to have a system that conforms perfectly to international AML standards and which is fully resistant to money laundering.

## THE LEAKED “TROIKA” SUMMARY

In May 2013 a statement purporting to summarise Moneyval’s and Deloitte’s conclusions, compiled by the “troika” of lenders, was leaked to the press. It was entirely negative, focusing exclusively on the deficiencies identified without putting them into context or making any reference to the positive features identified by Moneyval and Deloitte. The reaction of the Central Bank of Cyprus The Central Bank of Cyprus soon issued a detailed refutation of the leaked statement, saying that it made no attempt to provide a balanced summary of the Moneyval and Deloitte reports but instead quoted from them selectively in order to support the troika’s prejudices, and that inferences were made which were not included in the original reports. It stressed that the statement omitted any mention of the strengths of the AML framework and of the effective implementation of CDD by banks in Cyprus.

The Central Bank of Cyprus concluded that the troika’s failure to consult Deloitte or Moneyval and to present a balanced view of their findings resulted in erroneous and distorted conclusions in the media, especially the international press.

## THE POSITION OF THE CYPRUS AUTHORITIES

Like the Central Bank of Cyprus, the Cyprus government has argued that the allegations made against Cyprus were politically motivated and based on unsubstantiated suspicions rather than objective data. It has pointed out that prior to the 2013 review Moneyval had carried out four separate routine assessments of Cyprus’s anti-money laundering regime, all of which were favourable. The assessments praised the Cyprus authorities for their proactive approach and disclosed a very low level of suspicious activity or suspicious transactions, obviating the need for any follow-up investigation. Furthermore, Cyprus has never appeared on the FATF list of countries identified as having strategic deficiencies in their AML system.

In order to improve the effectiveness of anti-money laundering measures the Cyprus government believes that more work is needed on an international level to harmonise different countries’ legislative and practical anti-money laundering regimes and align them with international standards. At the international level there is a need for the implementation of the revised FATF recommendations, and of the draft Fourth Directive in the EU. Moreover, increased international cooperation, not only with the exchange of information but with the mutual recognition and enforcement of court orders, freezing and confiscating of assets, is an essential step towards a more effective global system.

Finally, the government has reaffirmed its commitment to continue implementing all measures, legislative or practical, required to improve the effectiveness of measures to prevent money laundering or terrorist financing, in accordance with the recommendations of the relevant international bodies. It has also made clear that Cyprus will implement measures surpassing international norms if this is necessary and appropriate.

The government-owned Cyprus Investment Promotion Agency (“CIPA”) has welcomed the publication of the Moneyval and Deloitte reports, hoping that it would end misinformed speculation, and noted that Moneyval’s report acknowledged that its review had been so thorough that “no country could emerge totally unscathed”

## CONCLUSIONS

The summaries prepared by the troika on the one hand and the Cyprus authorities on the other show a very different interpretation of the same reports. While the Cyprus authorities understandably seek to present the country in the best possible light they do nevertheless acknowledge the deficiencies identified in the reports and express a commitment to deal with them. The troika summary makes no attempt to present a balanced view, being merely a reshuffle of the negative findings of the reports, many of which are presented out of context. Publication of the reports will, at least, enable anyone who is interested to decide for himself or herself. ■