

ASSESSMENT OF TURKEY'S ANTI-MONEY LAUNDERING AND COMBATING TERRORIST FINANCING SYSTEM

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ABSTRACT

International financial system evolves rapidly and is global in nature. It provides opportunities to carry out transactions across borders quickly with a relative degree of anonymity. It is therefore imperative to highlight and share current information about potential vulnerabilities of jurisdictions' financial system for robust anti-money laundering and combating the financing of terrorism (AML/CFT) system. Furthermore, it is crucial to review and consider issues related to international cooperation in identifying and examining vulnerable jurisdictions that are falling in implementing vigorous AML/CFT system so that others can take actions against those jurisdictions which are reluctant in reforming its system adequately. The objectives of this study are a) to give information about the money laundering and Financial Action Task Force (FATF) as an international standard setter for combating money laundering and terrorist financing b) to explain steps taken by FATF for the sake of international cooperation for combating money laundering and terrorist financing and c) to show how Turkey's current situation are in the scope of international cooperation for combating money laundering and terrorist financing as a result of FATF assessment.

Keywords: *money laundering, anti-money laundering, financing of terrorism, combating, Turkey*

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Motivation

International financial system evolves rapidly and is global in nature. It provides opportunities to carry out transactions across borders quickly with a relative degree of anonymity. It is therefore imperative to highlight and share current information about potential vulnerabilities of jurisdictions' financial system for robust anti-money laundering and combating the financing of terrorism (AML/CFT) system. Furthermore, it is crucial to review and consider issues related to international cooperation in identifying and examining vulnerable jurisdictions that are falling in implementing vigorous AML/CFT system so that others can take actions against those jurisdictions which are reluctant in reforming its system adequately.

There have been many works made by the FATF¹ as an international standard setter for combating money laundering and terrorist financing. The need for this report is driven by the aim of showing whole efforts for this work and assessing Turkey's current AML/CFT system in the scope of these international works. Furthermore, the evolutions in the international standards also contribute to the need for seeing the efforts. To illustrate, in 2004, the FATF first decided to create a *tour de table* mechanism where member jurisdiction could raise issues when international co-operation is or has been difficult. In 2006, the FATF agreed that the examination of the merits of particular referrals under the *tour de table* process should take place in a smaller group, to consider the *prima facie* merits of the referrals, and to follow up on cases. During 2008, the FATF decided that further work should be done to improve its internal procedures for assessing jurisdictions and progressing through a more consistent process.

This study especially addresses the current situation of Turkey's AML/CFT system that is crucial in the sense of international reputation. In the first part, an overview of potential definitions of money laundering and phases of laundering process is made. The second part handles the short history, mission and the role of the FATF. In the third part, steps taken by the FATF for the sake of international cooperation for combating money laundering and terrorist financing is given in order to clear the historical evolution of FATF's procedures. In the fourth part, Turkey's current situation with respect to international cooperation against money laundering and terrorist financing in accordance with FATF's assessment is evaluated and finally, the study ends by concluding remarks.

1. Money Laundering

Money laundering can be defined in a number of ways. Most countries subscribe to the definition adopted by the United Nations (UN) Convention against Illicit Traffic Narcotic Drugs and Psychotropic Substances (1988 - Vienna Convention) and UN Convention against Transnational Organized Crime (2000 - Palermo Convention) as shown below².

- The conversion or transfer of property, knowing that such property is derived from any offence (drug trafficking) or offences or from an act of participation in such offence or offences, for the purpose of concealing or disguising the illicit origin of the property or of assisting any person who is involved in the commission of such an offence or offences to evade the legal consequences of his actions.
- The concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from an offence or offences or from an act of participation in such an offence or offences.
- The acquisition, possession or use of property, knowing, at the time of receipt, that such property was derived from an offence or offences or from an act of participation in such offence or offences.³

The FATF, the international standard setter for AML-CFT efforts, defines "money laundering" as the processing of the criminal proceeds to disguise their illegal origin. This process enables the criminal to enjoy these profits without jeopardizing their source.⁴

¹ FATF is an intergovernmental policy making body formed in 1989 by G-7 countries (Canada, France, Germany, Italy, Japan, United Kingdom and United States) aiming at to develop and promote an international response to combat money laundering and financing of terrorism.

² Paul Allan Schott, Reference Guide to Anti-Money Laundering and Combating the Financing of Terrorism, The World Bank, International Monetary Fund (IMF), 2nd edition, 2006, p:1-2.

³ See Vienna Convention, Article 3(b) and (c) (i); and Palermo Convention, Article 6(i).

⁴ FATF, Money Laundering FAQ, What is money laundering?

As seen that, peculiarity of these definitions lies in the purpose of laundering to conceal the illicit origin of the funds. Generality of these definitions lies in the fact that money laundering concerns the funds generated by criminal activities. At this point, there arises a question of which activities generate illicit funds needed to be laundered. The underlying criminal activity that generated proceeds, which when laundered, results in the offence of money laundering is called money laundering predicate offence.⁵ As a predicate offence, FATF set out the list covering 20 designated categories of offences⁶, which should be minimum, incorporated in to the AML/CFT legislation of member states of the FATF.⁷ These offences cover mostly organized crimes such as illicit trafficking in narcotic drugs and psychotropic substances.

1.1. Money Laundering Stages

Money laundering should be construed as a dynamic three stage process that requires firstly moving the funds from direct association with the crime; secondly, disguising the trail to foil pursuit; thirdly, making the money available to the criminal once again with its occupational and geographic origins hidden from view.⁸ In this respect, money laundering is more than hiding criminal proceeds and a consequence of almost all profit generating crime. Literally it can be said that money laundering takes place in three stages.

1.1.1. Placement Stage

In the initial - or placement - stage of money laundering, the launderer introduces his illegal profits into the financial system. This can be done by breaking up large amounts of cash into less conspicuous smaller sums that are then deposited directly into a bank account, or by purchasing a series of monetary instruments (cheques, money orders, etc.) that are then collected and deposited into accounts at another location.⁹ The exchange of one currency into another, as well as the conversion of smaller notes into larger denominations may occur at this stage. Furthermore, the illegal funds may be converted into financial instruments and commingled with legitimate funds. And also, placement may be accomplished by the cash purchase of a security or form of an insurance contract.¹⁰

1.1.2. Layering Stage

After the funds have entered the financial system, the second – or layering but also referred to as “agitation” or “commingling”¹¹ – stage takes place. In this phase, the launderer engages in a series of conversions or movements of the funds to distance them from their source. The funds might be channeled through the purchase and sales of investment instruments, or the launderer might simply wire the funds through a series of accounts at various banks across the globe. This use of widely scattered accounts for laundering is especially prevalent in those jurisdictions that do not co-operate in anti-money laundering investigations. In some instances, the launderer might disguise the transfers as payments for goods or services, thus giving them a legitimate appearance.¹² In this stage, the money is set around the globe in order to disguise its illegal origin.

available at http://www.fatfgafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html# 20.12.2009

⁵ Paul Allan Schott, p: 3.

⁶ “Designated categories of offences” means: participation in an organized criminal group and racketeering, terrorism, including terrorist financing, trafficking in human beings and migrant smuggling, sexual exploitation, including sexual exploitation of children, illicit trafficking in narcotic drugs and psychotropic substances, illicit arms trafficking, illicit trafficking in stolen and other goods, corruption and bribery, fraud, counterfeiting currency, counterfeiting and piracy of products, environmental crime, murder, grievous bodily injury, kidnapping, illegal restraint and hostage-taking, robbery or theft, smuggling, extortion, forgery, piracy, insider trading and market manipulation.

⁷ FATF, Forty Recommendation, available at <http://www.fatf-gafi.org/dataoecd/7/40/34849567.PDF> 21.12.2009

⁸ United Nations Office for Drug Control and Crime Prevention (UNODCCP), Financial Heavens, Banking Secrecy and Money Laundering, p: 4.

⁹ FATF, Money Laundering FAQ, How is money laundered? available at http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html# 20.12.2009

¹⁰ Paul Allan Schott, p: 7.

¹¹ Peter Lilley, Dirty Dealing: The Untold Truth About Global Money Laundering International Crime And Terrorism, 2006, p: 50.

¹² FATF, Money Laundering FAQ, How is money laundered? available at http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html# 20.12.2009

So, this stage can be very complicated as money can circle the globe many times in a couple of hours.¹³ The trick at this stage is to move money around: within the same financial institutions; to other financial institutions; to other countries; into other currencies; to other types of investments; or by investment in real estate.¹⁴

1.1.3. Integration Stage

Having successfully processed his criminal profits through the first two phases the launderer then moves them to the third stage – integration – in which the funds re-enter the legitimate economy. The launderer might choose to invest the funds into real estate, luxury assets, or business ventures.¹⁵ This stage is where the launderer will try to permanently park the money as soon as the money appears safe from prosecution.¹⁶

In many securities markets, only certain permitted persons or firms, such as stockbrokers, banks or certain independent financial advisors may perform transactions. These market operators are generally restricted or prohibited outright from accepting cash to carry out such transactions. Criminal funds in the form of cash must therefore be introduced into the financial system before entering the securities sector. Consequently, the use of the securities sector for laundering is considered by the FATF experts to be primarily part of the layering and integration stages of money laundering¹⁷ so, the securities sector is unsuitable for the placement stage of laundering,

After all these stages, illegal money gets the legal image which is a threat for international community. In March 1998, Dow Jones News reported that money laundering amounted to between 2 and 5 per cent of world GDP: in other words between \$1 and 3 trillion.¹⁸

2. Financial Action Task Force (FATF)

In response to mounting concern over money laundering, the FATF was established by the G-7 Summit that was held in Paris in 1989. Recognising the threat posed to the banking system and to financial institutions, the G-7 Heads of State or Government and President of the European Commission convened the Task Force from the G-7 member States¹⁹, the European Commission and eight other countries. Thus, the FATF is an inter-governmental body whose purpose is the development and promotion of policies, both at national and international levels, to combat money laundering and terrorist financing. The Task Force is therefore a "policy-making body" which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas. In April 1990, less than one year after its creation, the FATF issued a report containing a set of *Forty Recommendations*, which provide a comprehensive plan of action needed to fight against money laundering. In 2001, the development of standards in the fight against terrorist financing was added to the mission of the FATF. In October 2001 the FATF issued the *Eight Special Recommendations* to deal with the issue of terrorist financing. The continued evolution of money laundering techniques led the FATF to revise the FATF standards comprehensively in June 2003. In October 2004 the FATF published a Ninth Special Recommendations, further strengthening the agreed international standards for combating money laundering and terrorist financing - the *40+9 Recommendations*.²⁰ As a result, in the end of the 2003, the FATF has set up the 40+9 Recommendations, which are shown in the annex 2, for the sake of realization of its mission.

¹³ Masciandaro, Takats and Unger, p: 105.

¹⁴ Peter Lilley, p: 50.

¹⁵ FATF, Money Laundering FAQ, How is money laundered? available at http://www.fatf-gafi.org/document/29/0,3343,en_32250379_32235720_33659613_1_1_1_1,00.html 20.12.2009

¹⁶ Masciandaro, Takats and Unger, p: 105.

¹⁷ FATF, Report on Money Laundering Typologies 2002-2003, 14 February 2003, p: 11.

¹⁸ Peter Lilley, p: 32.

¹⁹ G-7 was formed in 1976, when [Canada](#) joined the [Group of Six: France, Germany, Italy, Japan, United Kingdom](#), and [United States](#)

²⁰ FATF, About the FATF, available at http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236836_1_1_1_1,00.html 31.01.2010

work will be complementary to other efforts aimed at improving the international regulatory and supervisory system.²⁶

3. INTERNATIONAL COOPERATION FOR COMBATING MONEY LAUNDERING AND TERRORIST FINANCING

The FATF 40 + 9 Recommendations are the AML/CFT international standards. A higher level of international co-operation plays a crucial role in reducing the vulnerability of the international financial system to ML/FT. Furthermore, international co-operation helps in improving the worldwide compliance with the broad range of the 40 + 9 Recommendations which in turn enhances the international community's ability to effectively cooperate and combat ML and FT. Thus, in order to protect the international financial system from ML/FT risk and to encourage greater global compliance with the international standards, the FATF maintains the role of identifying those jurisdictions with which international co-operation has been difficult or impossible, or where there exists significant deficiencies in the AML/CFT regime that result in unprotected systems. In this section, we will focus on the process for the identification of the non cooperative jurisdictions or jurisdictions with crucial deficiencies in the international co-operation in the scope of combating ML and TF.

4.1 NCCT Initiative

Throughout the 1990s the many efforts of FATF to spread the AML message to all regions of the world resulted in substantial progress being recorded. However, as the decade drew to a close a more proactive stance on compliance with AML standards emerged, the G-7 nations playing an important role in molding the new agenda. In May 1998, G-7 finance ministers drew attention to their concerns "at the number of countries and territories, including some financial offshore centers, which continue to offer excessive banking secrecy and allow screen companies to be used for illegal purposes". Ministers called upon the FATF to review the position and to make recommendations as to a course of action to rectify such abuses.²⁷

In response, the FATF established an Ad Hoc Group and four regional review groups (Americas; Asia/Pacific; Europe; and Africa and the Middle East) in order to identify and analyse countries and territories which should be considered as not fully participating in international co-operation within the scope of twenty-five criteria²⁸ defined in a report issued by FATF on 14 February 2000.²⁹ These criteria cover the issues of loopholes in financial regulations, obstacles to international cooperation and inadequate resources for preventing and detecting money laundering activities. Furthermore, these criteria are consistent with the FATF Forty Recommendations. The report also described a process designed to identify jurisdictions which have rules and practices that can impede the fight against money laundering and to encourage these jurisdictions to implement international standards in this area. Finally, the report contained a set of possible counter-measures that FATF members could use to protect their economies against the proceeds of crime.

As stated in the report, a review procedure, through which jurisdictions would be subject to examination, has been established. According to this procedure, firstly, the Ad Hoc Group undertakes a fact-finding survey of each jurisdiction which has been mentioned for review by the help of review groups which could consist of several FATF members and Secretariat or relevant FATF-style regional bodies. A report that should indicate the presence or absence of each criterion referred in the annex 4 is prepared by a review group and Ad Hoc Group. Once the FATF determines its conclusions as to the status of the reviewed jurisdictions under the twenty-five criteria, a list of non-cooperative jurisdictions is drawn up which states the reasons of the determinations made by the Ad Hoc Group and FATF. Finally, it also mentions the steps that the jurisdictions identified as non-cooperative should take to eliminate the detrimental aspects of their rules and practices. This list takes into account the legislative, regulatory and behavioural changes observed in the countries and territories concerned.

²⁶ FATF, Report to G-20 Finance Ministers and Central Bank Governors, FATF/PLEN (2009)35/FINAL, 14 August, 22-26 June Lyon, France p: 4.

²⁷ William C. Gilmore, *Dirty Money, the Evolution of International Measures to Counter Money Laundering and the Financing of Terrorism*, Council of Europe Publishing, 2004, p: 146.

²⁸ The list of criteria is to be found in Annex 4.

²⁹ FATF, Report on Non-Cooperative Countries and Territories, 14 February 2000.

The FATF and its members implement many efforts in order to convince non-cooperative jurisdictions to improve legislation and domestic practices and to participate actively in international cooperation through providing advice and technical co-operation by the FATF, its members, a FATF-style regional body, or an appropriate international organisation/body to implement the necessary change or sending a letter from the FATF President to the concerned government explaining the purpose of the FATF's work in this.

In the event of a failure to remedy for non-cooperation, counter-measures designed to protect economies against money of unlawful origin are applied such as conditioning, restricting, targeting or even prohibiting financial transactions with non-cooperative jurisdictions or preventing financial institutions located in identified non-cooperating countries or territories from using facilities (for example, information technology facilities) located in the FATF members' territory.³⁰ In other words, in cases where Non Co-operative Countries and Territories (NCCTs) had failed to make adequate progress in addressing the serious deficiencies previously identified by the FATF, and in cases where progress had stalled, the FATF recommended the application of further counter-measures which should be gradual, proportionate and flexible regarding their means and taken in concerted action. These included the possibility of:

- Stringent requirements for identifying clients and enhancing advisories (including jurisdiction-specific financial advisories) to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries.
- Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious.
- Taking into account the fact that the relevant bank is from an NCCT, when considering requests for approving the establishment in FATF member countries of subsidiaries or branches or representative offices of banks.
- Warning non-financial sector businesses that conducting transactions with entities within the NCCTs might run the risk of money laundering.³¹

By June 2000, this process had resulted in the creation of black list of some fifteen jurisdictions³² where serious problems had been identified. While majority were offshore centers in the Caribbean and the Pacific, it also included states as diverse as Israel, the Russian Federation and the Philippines. None were FATF members.³³ All were urged to address the deficiencies as a matter of priority. In July of 2000, these developments were welcomed by the G-7 in 21 July statement as follows;

*"We are prepared to act together when required and appropriate, to implement co-ordinated countermeasures against NCCTs that do not take steps to reform their systems appropriately, including the possibility to condition or restrict support from (IFIs) International Financial Institutions to them."*³⁴

The FATF has monitored developments closely and addressed the NCCT process at each plenary by the help of review groups. From 2000-2004, the review groups monitored progress made by NCCTs as well as de-listed jurisdictions subject to the monitoring process. In October of 2004, the FATF consolidated the four review groups into two: the Review Group on Asia/Pacific and the Review Group on the Americas, Europe and Africa/Middle East.³⁵ During this process some countries has been removed while others have been added.³⁶ As of July 2004, six jurisdictions which were Cook Islands, Indonesia, Myanmar, Nauru, Nigeria, Philippines remained on the list. As of June 2006, there was now only one country designated as an NCCT: Myanmar.³⁷ In October 2006, FATF removed Myanmar from NCCTs list.³⁸

³⁰ FATF, Report on Non-Cooperative Countries and Territories, 14 February 2000.

³¹ FATF, AML/CFT Methodology, Recommendation 21, 2003, p:

³² The fifteen jurisdictions were Bahamas, Cayman Islands, Cook Islands, Dominica, Israel, Lebanon, Liechtenstein, Marshall Islands, Nauru, Niue, Panama, Philippines, Russia, St. Kitts and Nevis and St Vincent and the Grenadines.

³³ FATF, Progress Report on Non-Cooperative Countries and Territories, 5 October 2000.

³⁴ William C. Gilmore, p: 146

³⁵ International Co-operation Review Group (ICRG), Eighth And Final NCCT Review, FATF/ICRG(2007)11, 01-Oct-2007, p:4.

³⁶ In October 2002, Russia, Dominica, Niue and Marshall Islands, identified as NCCTs in June 2000, had been removed them from the NCCTs list. In February 2003, Grenada had been removed from the list of NCCTs.

FATF, Annual Review of Non-Cooperative Countries and Territories, 20 June 2003, available at <http://www.fatf-gafi.org/dataoecd/4/30/33922392.PDF>

³⁷ FATF, Annual Review of Non-Cooperative Countries and Territories, 2005-2006, 23 June 2006,

Consequently, NCCT exercise began in 1998 at a time when many countries around the world did not have adequate AML measures in place. Forty seven jurisdictions were referred to NCCTs process and were reviewed in two rounds (31 in 2000³⁹ and 16 in 2001⁴⁰). A total of 23 jurisdictions were identified as NCCTs (15 in 2000 and 8 in 2001). The FATF recommended that financial institutions give special attention to transactions involving the NCCTs, in accordance with Recommendation 21. No additional jurisdictions have been reviewed under this process since 2001. And, all were removed from the NCCT list as of October 2006.⁴¹ Then, the 25 NCCT criteria are outdated by the current 40+9 Recommendations to combat money laundering and terrorist financing. With the ending of the NCCTs process, the FATF has begun a new process to react to jurisdictional AML/CFT risks and threats. The FATF established the International Cooperation Review Group (ICRG) to consider particular cases where countries do not adequately engage in international cooperation or do not adequately implement current AML/CFT standards. The ICRG makes recommendations to the FATF Plenary as how best to encourage progress in these countries and respond to these threats as necessary.⁴²

While non-members have been assessed against the NCCT criteria, the FATF agreed in September 2001 merely to carry out a self assessment exercise among its own members in order to determine their level of compliance. The results of that exercise were expected to be formulated during the 2002-03 round of FATF activities but have been further delayed. This fact has served to reinforce the perception of inequality of treatment.⁴³

4.2 Tour De Table Mechanism

Tour de table mechanism was created by the decision of the FATF in October of 2004 Plenary. It was the mechanism where members could raise issue and present cases for discussion by the FATF when international co-operation is or has been difficult. This process was further refined at subsequent plenaries which proposed criteria for determining the scope of the problem encountered and a series of potential follow up actions to take in particular cases. The FATF also agreed to key concepts to broaden the scope of this process while aiming to make it more efficient. These concepts included that:

- The process should go beyond the FATF recommendations specifically dealing with international co-operation.
- Examination of the merits of particular referrals should take place prior to the plenary in a smaller group.
- The process could also apply to FATF members.

Furthermore, the FATF decided not to pursue the process with respect to entities or sectors in February 2006. The FATF agreed that the process should go beyond those FATF Recommendations specifically dealing with international co-operation.

In February of 2006, the FATF agreed that the examination of the merits of particular referrals under the *tour de table* process should take place in a smaller group, to consider the *prima facie* merits of the referrals, and to follow up on cases that were raised during the Plenary.

available at <http://www.fatf-gafi.org/dataoecd/0/0/37029619.pdf>

³⁸ FATF, Annual Review of Non-Cooperative Countries and Territories, Eighth Review, 2006-2007, 12 October 2007, available at <http://www.fatf-gafi.org/dataoecd/14/11/39552632.pdf>

³⁹ Antigua & Barbuda, *Bahamas*, Belize, Bermuda, British Virgin Islands, *Cayman Islands*, *Cook Islands*, *Cyprus*, *Dominica*, Gibraltar, Guernsey, Isle of Man, *Israel*, Jersey, *Lebanon*, *Liechtenstein*, Malta, *Marshall Islands*, Mauritius, Monaco, *Nauru*, *Niue*, *Panama*, *Philippines*, *Russia*, Samoa, Seychelles, *St. Kitts & Nevis*, St. Lucia, *St. Vincent & the Grenadines* and Vanuatu. (The 15 jurisdictions identified as NCCTs at that time are in italics.)

⁴⁰ Costa Rica, Czech Republic, *Egypt*, *Grenada*, *Guatemala*, *Hungary*, *Indonesia*, *Myanmar*, *Nigeria*, Palau, Poland, Slovakia, Turks & Caicos Islands, United Arab Emirates, *Ukraine* and Uruguay. (The 8 jurisdictions identified as NCCTs at that time are in italics.)

⁴¹ FATF, Annual Review of Non-Cooperative Countries and Territories, Eighth Review, 2006-2007, 12 October 2007, available at <http://www.fatf-gafi.org/dataoecd/14/11/39552632.pdf>

⁴² ICRG, Eighth And Final NCCT Review, FATF/ICRG (2007)11, 01-Oct-2007, p: 3.

⁴³ William C. Gilmore, p: 149

In June of 2006, the FATF agreed that the scope of the criteria for referral into the process would be the entire FATF 40+9 Recommendations. This was agreed with the understanding that only cases where there is unwillingness or inability to respond adequately to requests or where non-compliance with certain recommendations results in serious vulnerabilities in the AML/CFT framework of the given jurisdiction would be considered.⁴⁴

4.3 The Process of The International Cooperation Review Group (ICRG)

The International Co-operation Review Group (ICRG) was formally established at the October 2006 Plenary in Vancouver. In that plenary, the ICRG's main objective was defined as to review and consider issues related to international co-operation in the fight against money laundering and terrorist financing, and recommend to the Plenary any necessary action or measures in this respect. Specifically, the ICRG was responsible for considering cases where particular jurisdictions met the *prima facie* standards of not adequately responding to requests for assistance or for having serious AML/CFT deficiencies. Where the ICRG believed that the case represented the *prima facie* standard, it would ask the Plenary for a mandate to conduct a more detailed review of the situation, pursuant to the *Tour de Table* process. Also, the ICRG was responsible for completion of the monitoring of countries after they have been removed from the NCCTs list.⁴⁵

Before the establishment of ICRG, in the February 2006 Plenary, FATF agreed that the examination of the merits of particular referrals under the *tour de table* process should take place in a smaller group, to consider the *prima facie* merits of the referrals, and to follow up on cases that were raised during the Plenary.

Further, in the June 2006 Plenary, FATF agreed;

- a) To incorporate the work of the two existing NCCT review groups into a new International Cooperation Review Group (ICRG), which would follow up on the NCCTs and the countries monitored and also be given the task of following up on any new matters referred to it by the Plenary under the *tour de table* process⁴⁶;
- b) That the scope of the criteria for referral into the process would be the entire FATF 40+9 Recommendations;
- c) That the new review group could serve as an informal filter to receive and/or discuss possible nominations, and review them to determine whether the case in question meets a *prima facie* standard of non-compliance, if it did, the review group (not the nominating country) would then present its referral to the Plenary.⁴⁷

For those jurisdictions under the NCCTs process, the current NCCTs criteria and processes would continue to apply, whereas the *tour de table* process would only apply to those jurisdictions mentioned during the *tour de table* process. This has provided one forum for the several areas where the FATF was addressing problematic areas of international co-operation, thus minimising demand on the resources of FATF members and the Secretariat, and used existing groups with established contacts and experience to encourage the progress of non-members. The mandate of this new group was discussed and adopted at the October 2006 Plenary as shown in the annex.

Pursuant to the ICRG discussions in Rome from 11-12 January, the ICRG prioritised 10 jurisdictions and one area of concern where more information should be sought: Angola, Bahrain, Belarus, Comoros Islands, Iran, Libya, North Korea, São Tomé & Príncipe, Sudan, and Turkmenistan. Moreover, the ICRG expressed concern

⁴⁴ FATF, Tour De Table on International Co-Operation And Other Issues, FATF/PLEN(2006)57, 27 September 2006, p:1-2.

⁴⁵ ICRG, Report by the International Co-operation Review Group (ICRG) Co-chairs, FATF/PLEN (2007)2, 21 - 23 February 2007, Council of Europe, Strasbourg, France, p: 2.

⁴⁶ In accordance with the ICRG mandate, the ICRG will, as directed by the Plenary:

- Review and consider issues related to international co-operation against money-laundering and terrorist financing, recommending to the Plenary any necessary action or measures in this respect.
- Identify and examine vulnerable jurisdictions that are failing to implement effective AML/CFT systems, reaching out to those jurisdictions and, where appropriate, recommending that the Plenary take firm action when a jurisdiction chooses not to engage with the FATF or the relevant FSRB or to reform its system adequately.
- Where appropriate, recommend any future adjustments or clarifications to the *tour de table* process and set, as necessary, internal policy, guidance and/or detailed procedures.

⁴⁷ ICRG, Procedures of the International Co-Operation Review Group, FATF/ICRG (2009)7/REV1, Paris 12-13 May 2009, p: 2-3.

about the ML/FT threats in the northern part of Cyprus. The ICRG also agreed on four main criteria to help prioritise jurisdictions. These were:

- 1) Severe deficiencies in implementing the AML/CFT standards (e.g. lack of criminalisation of ML/FT, lack of preventative measures, lack of FIU),
- 2) Concrete cases of not adequately responding to requests for international cooperation,
- 3) Size of financial sector and integration into world markets,
- 4) Actual ML/FT risk/ threats.⁴⁸

During the October 2008 ICRG meeting, there was general agreement that further work should be done within the ICRG to improve its internal procedures for assessing jurisdictions and progressing through a more consistent process. The current ICRG procedures for the referral and monitoring of jurisdictions, which have been in active use for two years, were flexible and have been implemented successfully thus far to engage with a number of jurisdictions. However, the process has also yielded difficulties that result in a general lack of uniformity in the review process due to;

- lack of criteria and procedures for determining when a jurisdiction should be removed from the review process,
- lack of consistency in the timeliness and thoroughness of reports to the FATF on jurisdictions' progress,
- lack of consistency in communication with the jurisdiction under review,
- lack of clarity in the criteria for determining when to recommend that the FATF take follow-up actions for a jurisdiction under review, and what the appropriate follow-up actions are in each case.

The FATF delegations have called for refining the procedures to address several key challenges that are recurrent within the ICRG process.

On the other hand, as part of efforts to address the global financial crisis, the Leaders of the Group of 20 (G-20), agreed in its communiqué following its 1 April 2009 meeting "to take action against non-cooperative jurisdictions, including tax havens." In particular, the G-20 "agreed that the FATF should revise and reinvigorate the review process for assessing compliance by jurisdictions with AML/CFT standards, using agreed evaluation reports where available," and indicated that a report on the FATF's progress in this regard should be provided to the G-20 Finance Ministers at their next meeting in November 2009. The G-20 Working Group on Reinforcing International Cooperation and Promoting Integrity in Financial Markets (WG2) had previously emphasized the FATF's role in identifying uncooperative jurisdictions and its March 2009 report "urged the international bodies responsible for prudential and regulatory standards, anti money laundering and terrorist financing, and tax matters – the FSF, the FATF, and the OECD – to accelerate their work of identifying uncooperative jurisdictions and developing a toolbox of effective countermeasures against these jurisdictions.

To adequately respond to concerns raised by FATF members regarding the ICRG process, as well as the G-20 calls for action regarding uncooperative jurisdictions, the ICRG should widen and deepen its scope to identify uncooperative jurisdictions and should consider incorporating in its criteria for referral, among other elements, the identification of a jurisdiction as uncooperative in related fields by the OECD and FSB.⁴⁹

As a response, a new ICRG internal procedure as shown in the annex 6 has been approved by FATF in June 2009 Plenary with the goal to increase the consistency and transparency of the ICRG process and to address the issues identified for urgent action by the G-20. On the other hand, FATF members agreed a revised and strengthened process for identifying unco-operative and high risk jurisdictions. The review stages of this new process would be completed by February 2010 and shortly thereafter the FATF would publicly identify unco-operative and possible high-risk jurisdictions.⁵⁰ The G-20 Leaders met on 24 and 25 September 2009 and has welcome FATF work on ICRG internal procedure as shown below;

⁴⁸ ICRG, Report by the International Co-operation Review Group (ICRG) Co-chairs, FATF/PLEN (2007)2, 21 - 23 February 2007, Council of Europe, Strasbourg, France, p: 2.

⁴⁹ ICRG, Procedures Of The International Co-Operation Review Group, FATF/ICRG(2009)7/REV1, Paris 12-13 May 2009, p: 3.

⁵⁰ FATF, Report to G-20 Finance Ministers and Central Bank Governors, FATF/PLEN(2009)35/FINAL, 14 August, 22-26 June Lyon, France p: 1.

*"We welcome the progress made by the Financial Action Task Force (FATF) in the fight against money laundering and terrorist financing and call upon the FATF to issue a public list of high risk jurisdictions by February 2010."*⁵¹

As for new ICRG internal procedures, mainly, contrary to the two objective criteria used previously by ICRG as a starting point for its activities from January 2007, specifically

1) jurisdictions that were not members of the FATF, an FSRB, nor working towards establishing membership of an FSRB and,

2) jurisdictions that had been assessed using the 2004 AML/CFT Methodology but had not yet published their full mutual evaluation or detailed assessment report; in accordance with the ICRG procedures agreed in October 2006, new jurisdictions have been added to the ICRG review on an ad hoc basis. The flexibility to add new jurisdictions when serious concerns arise in relation to international co-operation with a particular jurisdiction is one of the strengths of the ICRG process. In order to preserve this flexibility, the ICRG could retain this "nomination" process, with additional clarification to the procedures, as one avenue for referrals to the ICRG. In order to address the issues related to the lack of consistency and uniformity described above, however, the ICRG could also consider creating a second avenue for referrals. This second avenue would be based on a minimum threshold of results of past mutual assessments by the FATF, FSRBs and the international financial institutions. In addition, given the G-20's call for action regarding tax havens and prudential regulation, the ICRG could consider establishing a third avenue for referral that would address jurisdictions identified as not yet sufficiently implementing internationally agreed standards in those areas. As a result, there would be three ways for a jurisdiction to be referred to the ICRG for consideration for a more formal review.⁵²

On the basis of new ICRG internal procedure, a pool of jurisdictions for review has been established on the basis of nomination by delegations and automatic referral based on mutual evaluation results or non participation in FSRBs.

As for nomination, individual FATF or FSRB delegations through their Secretariats can make a nomination in cases where there is unwillingness or inability to respond adequately to requests or where non-compliance with certain Recommendations results in serious vulnerabilities in the AML/CFT framework. A FATF member or FSRB making a nomination should present in writing its concerns or outline the nature of the difficulties encountered. In particular, nominations should refer to deficiencies in the 16 core and key Recommendations⁵³, making clear what specific Recommendations the jurisdiction appears to be deficient in their view.

In respect of automatic referral based on mutual evaluation results, jurisdictions whose assessments include 10 or more NC or PC ratings for these 16 relevant recommendations will be automatically referred to the ICRG for prima facie review. This approach of using mutual evaluation results does not take into account those jurisdictions where a mutual evaluation has not been finalised. The ICRG would therefore need to consider the results of new mutual evaluations on a periodic basis.

In respect of referral based on non-participation in FSRBs and non-publication of reports, The ICRG will automatically consider for prima facie review jurisdictions that are not members or observers of FSRBs subject to mutual evaluation procedures, as well as jurisdictions that do not allow publication of their finalised mutual evaluation/detailed assessment reports in a timely manner.⁵⁴

Initial *prima facie* reviews of these jurisdictions will be undertaken by regional review groups, each of them co-chaired by an FATF and an FSRB member. These *prima facie* reviews will provide an up-to-date factual basis to determine implementation progress in each reviewed jurisdiction. Following this, those jurisdictions that represent a potential threat to the international financial system in relation to AML/CFT, will be subject to a more comprehensive review. The *prima facie* analysis will be concluded by October 2009, and the

⁵¹ FATF, Update to the G-20 Paper-Note by the Secretariat, FATF/PLEN (2009)80, 9 October 2009, 14-16 October 2009, Paris, France, p: 3.

⁵² ICRG, Procedures Of The International Co-Operation Review Group, FATF/ICRG(2009)7/REV1, Paris 12-13 May 2009, p: 4.

⁵³ The core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13, SRII and SRIV. The key Recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SRI, SRIII, and SRV.

⁵⁴ ICRG, Procedures Of The International Co-Operation Review Group, FATF/ICRG(2009)7/REV2, 03 June 2009,

comprehensive review of the jurisdictions remaining under the ICRG review will start at that time. Throughout the process, the ICRG will engage with jurisdictions under scrutiny.

After the comprehensive reviews are completed, the FATF will decide whether any of the jurisdictions should be publicly identified. Any public statement will indicate what significant systemic problems have been identified in each of those jurisdictions. The first comprehensive review will be concluded by February 2010 and the FATF will publicly identify high-risk and uncooperative jurisdictions at that time. The FATF will subsequently call on members and urge all jurisdictions to advise their financial institutions to give special attention to transactions involving the jurisdiction, including legal persons and other financial institutions.

The FATF will consider the progress of every publicly identified jurisdiction on an ongoing basis to determine whether a jurisdiction has made sufficient progress to address the main identified deficiencies. If it has, the FATF will issue a public statement acknowledging the progress made and that the jurisdiction is no longer the subject of a formal ICRG review. The FATF will monitor the situation to assure continued progress and implementation.

However, if the jurisdiction has not made adequate progress, then the FATF will consider and, where appropriate, apply further counter-measures.⁵⁵

To sum up, the new revised ICRG internal procedures as shown in the annex 5 and mentioned above has intended to replace the Paper on the Tour de table adopted in 2006.

4. TURKEY'S ASSESSMENT BY FATF

4.1. An Overview of the FATF's Assessment

The FATF is an intergovernmental body, which sets standards to protect the financial system against money laundering and terrorist financing. 40+9 Recommendations issued by the FATF define criminal justice and regulatory measures that should be implemented to counter this problem. These recommendations also include international co-operation and preventive measures to be taken by financial institutions and others such as casinos, real estate dealers, lawyers and accountants. The FATF Recommendations are recognized as the global AML and CFT standard.⁵⁶

The FATF Recommendations provide the international standard for combating money laundering and terrorist financing. The Recommendations and the criteria set out in AML/CFT Methodology are applicable to all countries. The assessment of the adequacy of a country's AML/CFT framework in regard to these standards is a tool in order to determine whether the necessary laws, regulations or other measures required under the essential standard are in force and effect, that there has been a full and proper implementation of all the necessary measures, and that the AML/CFT system as implemented is effective. This process is defined as the mutual evaluation in which country has been reviewed whether the laws and regulations meet the appropriate standard and whether there is adequate capacity and implementation of those laws. The mutual evaluation process represents a central pillar of the work of the FATF. Through this process, the FATF monitors the implementation of the FATF Recommendations and assesses the effectiveness of the AML/CFT systems in the FATF member jurisdictions. The evaluations are conducted by a team of experts (from the financial, legal and law enforcement areas) and the FATF Secretariat. The findings of the FATF assessment team are compiled in a [Mutual Evaluation Report](#) (MER), which describes in detail the system in place and assesses and rates its effectiveness.⁵⁷

⁵⁵ FATF, Report to G-20 Finance Ministers and Central Bank Governors, FATF/PLEN(2009)35/FINAL, 14 August, 22-26 June Lyon, France p: 6.

⁵⁶ FATF, Handbook for Countries and Assessors, AML/CFT Evaluations and Assessments; April 2009, p: 1.

⁵⁷ FATF, Mutual Evaluations Programme, available at http://www.fatf-gafi.org/pages/0,3417,en_32250379_32236982_1_1_1_1_00.html, 27.02.2010.

Mutual evaluation is a tool for determining whether countries are in compliance with the FATF Recommendations. As a result of evaluation, assessed country has been rated in accordance with FATF recommendation.

For each Recommendation there are four possible levels of compliance: compliant, largely compliant, partially compliant, and non-compliant. Countries should only be regarded as fully complying with criteria if the relevant laws, regulations or other AML/CFT measures are in force and effect. In exceptional circumstances a Recommendation may also be rated as not applicable. These ratings are based only on the essential criteria, and defined as follows⁵⁸

Compliant (C)	The Recommendation is fully observed with respect to all essential criteria.
Largely compliant (LC)	There are only minor shortcomings, with a large majority of the essential criteria being fully met.
Partially compliant (PC)	The country has taken some substantive action and complies with some of the essential criteria.
Non-compliant (NC)	There are major shortcomings, with a large majority of the essential criteria not being met.
Not applicable (N/A)	A requirement or part of a requirement does not apply, due to the structural, legal or institutional features of a country e.g. a particular type of financial institution does not exist in that country.

4.2. Turkey's Mutual Evaluation

Turkey has been a member of FATF since 1991. Turkey's AML/CFT system has been evaluated by FATF within the scope of mutual evaluation in 1994, 1998 and 2006 respectively. Its Third Mutual Evaluation Report (MER) has been adopted by FATF in February 2007 Plenary. According to the MER in 2007, Turkey's AML/CFT system has been rated with 33 PC and NC over the 40+9 recommendations as shown in the below.⁵⁹

Recommendation	Explanation	Rating
LEGAL SYSTEM		
1	ML Offence	PC
2	ML offence – mental element and corporate liability	LC
3	Confiscation and provisional measures	LC
PREVENTIVE MEASURES		
4	Secrecy laws consistent with the Recommendations	LC
5	Customer due diligence	NC
6	Politically exposed persons	NC
7	Correspondent banking	NC
8	New technologies & non face-to-face business	PC
9	Third parties and introducers	NC
10	Record keeping	C
11	Unusual transactions	NC
12	Designated Non Financial Business and Professions (DNFBPs) – R.5, 6, 8-11	NC
13	Suspicious transaction reporting (STR)	PC
14	Protection & no tipping-off	LC
15	Internal controls, compliance & audit	PC
16	DNFBP – R.13-15 & 21	NC
17	Sanctions	PC
18	Shell banks	PC
19	Other forms of reporting	C

⁵⁸ FATF, Methodology for Assessing Compliance with the FATF 40 Recommendations and the FATF 9 Special Recommendations, 27 February 2004 (Updated as of February 2009), p: 1-6.

⁵⁹ Turkey Third Mutual Evaluation Report Anti-Money Laundering and Combating the Financing of Terrorism, 23 February 2007, available at <http://www.fatf-gafi.org/dataoecd/14/7/38341173.pdf> 27.02.2010.

20	Other NFBP & secure transaction techniques	C
21	Special attention for higher risk countries	NC
22	Foreign branches & subsidiaries	NC
23	Regulation, supervision and monitoring	PC
24	DNFBP - regulation, supervision and monitoring	NC
25	Guidelines & Feedback	PC
INSTITUTIONAL AND OTHER MEASURES		
26	The FIU	LC
27	Law enforcement authorities	PC
28	Powers of competent authorities	LC
29	Supervisors	PC
30	Resources, integrity and training	PC
31	National cooperation	LC
32	Statistics	PC
33	Legal persons – beneficial owners	PC
34	Legal arrangements – beneficial owners	N/A
INTERNATIONAL COOPERATION		
35	Conventions	PC
36	Mutual legal assistance (MLA)	LC
37	Dual criminality	LC
38	MLA on confiscation and freezing	PC
39	Extradition	LC
40	Other forms of cooperation	LC
NINE SPECIAL RECOMMENDATIONS		
SR.I	Implement UN instruments	PC
SR.II	Criminalise terrorist financing	PC
SR.III	Freeze and confiscate terrorist assets	PC
SR.IV	Suspicious transaction reporting	PC
SR.V	International cooperation	PC
SR.VI	AML requirements for money/value transfer services	PC
SR.VII	Wire transfer rules	NC
SR.VIII	Non-profit organisations	PC
SR. IX	Cross Border Declaration & Disclosure	LC

Among these recommendations, some are defined as core and key. The core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13, SRI and SRIV. The key recommendations are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SRI, SRIII, and SRV. Deficiencies in those recommendations indicate that assessed country's AML/CFT system needs to take serious measures to address for the sake of robust international financial system. As for Turkey, its assessment includes 9 PC and 1 NC out of 16 core and key recommendations according to the MER dated 2007. Therefore, in accordance with new ICRG procedure for which there are three methods by which a jurisdiction could come to the attention of the ICRG (*i*) nomination; (*ii*) referral based on mutual evaluation results; and (*iii*) referral based on non-participation in an FSRB and non-publication of reports, Turkey has been placed under ICRG review due to the its mutual evaluation results.

4.3. ICRG Review on Turkey

Given that the results of Turkey's mutual evaluation adopted in 2007 by the FATF resulted in Turkey's automatic referred to the ICRG for *prima facie* review under the new proposed procedures (see annex 6), at the June 2009 FATF Plenary the FATF agreed that Turkey warranted further review with respect to the international standards for AML/CFT. In accordance with this decision, the ICRG decided to assign Turkey to a regional review group called Europe/Eurasia for conducting the review, in related to this for collecting additional information to continue the *prima facie* analysis.

Table on results of Mutual evaluation of Turkey based on core and key recommendations⁶⁰

Rec.	1	3	4	5	10	13	23	26	35	36	40	I	II	III	IV	V
Rating	PC	LC	LC	NC	C	PC	PC	LC	PC	LC	LC	PC	PC	PC	PC	PC

ICRG initiated the review process by sending letters in early July 2009 to Turkey. This letter provided background on the ICRG process, explained that the FATF has identified Turkey for prima facie review, indicated which regional review group and co-chairs would manage the review, and requested Turkey's assistance in gathering relevant information for the review. As a response, a report dated 14 August 2009 was prepared by MASAK for prima facie review. On the base of this report, the Europe/Eurasia Regional Review Group (ERRG) conducted the prima facie review. During preparation, factors such as the size and integration of the jurisdiction's financial sector, relative to both its region and the rest of the world, concrete cases of not adequately responding to requests for international cooperation and the degree to which the jurisdiction has demonstrated willingness to reform its AML/CFT deficiencies have been taken into consideration in the *prima facie* review. Then, ERRG prepared a report for ICRG consideration with a recommendation that;

*"The ERRG recommends continuing to monitor the situation in Turkey. However, there was no consensus as to whether the review group should begin a comprehensive review at this time or await the results of Turkey's next follow-up report (to be discussed in February 2010). The issue is put to the full ICRG for discussion."*⁶¹

The ICRG discussed and decided on more comprehensive review of Turkey by the ICRG. It referred this recommendation to Plenary for ultimate decision in October 2009 Plenary. At October 2009 FATF Plenary, pursuant to the revised the ICRG procedures, the FATF decided that targeted reviews of 25 jurisdictions one of which was Turkey should be conducted prior to the February 2010 Plenary. In this respect, FATF agreed that there was a prima facie case for Turkey which are SR II and III. The identified deficiencies regarding the combating terrorist financing which are criminalising the financing of terrorism and associated money laundering (SR II) and, freezing and confiscating terrorist assets (SR III) were to be seen as most important as a prima facie case.

The FATF authorised the ICRG to conduct more focused or targeted review, to further consider the merits of the original referral, and make particular recommendations. At this time, the FATF president notified Turkey of the Plenary's decision, and requested that Turkey cooperated fully with the ICRG by the letter dated 16 October 2009. This letter identified that the ICRG process could ultimately result in the FATF making a public statement about Turkey when risk posed by deficiencies of Turkey's AML/CFT system for the international financial system existed.

As a result of the FATF's decision, an interagency working group in coordination of MASAK that in order to overcome with these deficiencies has been established in October 2009. This interagency working group containing specialized representatives from; Ministry of Justice, Foreign Affairs, Prime Ministry and Ministry of Interior, has been assigned the duty of to prepare a technical action report and to submit this report to the related Ministers. The group has done a comprehensive study. The study took into account Turkey's obligations derived from relevant international instruments to which Turkey is a party. Examples of best practices of other jurisdictions have also been examined. The report produced by the interagency working group produced a report, was later submitted to the decision making levels at the each Ministry. ICRG again authorized ERRG for reviewing the case in greater detail. The ERRG conducted targeted reviews of five jurisdictions including Azerbaijan, Slovakia, Turkey, Ukraine, Greece. ERRG's main task was to prepare a targeted review report for ICRG discussion, based primarily on MER if available and progress and/or compliance reports adopted by the FATF or the FSRBs, and to work with the jurisdiction to create a proposed action plan to address any identified AML/CFT deficiencies.

The targeted review report should analyse the specific issues that gave rise to the ICRG review, but the report might also examine other significant deficiencies relating to FATF 40 + 9 Recommendations that the ERRG became aware of during the preparation of the report. The report and action plan should be shared with the

⁶⁰ ICRG, Report by the Europe/Eurasia Regional Review Group Co-Chairs, FATF/ICRG (2009)19, 30 September 2009, p: 96.

⁶¹ ICRG, Report by the Europe/Eurasia Regional Review Group Co-Chairs, FATF/ICRG (2009)19, 30 September 2009, p: 107.

jurisdiction under review by the ICRG co-chairs, allowing sufficient time for the jurisdiction to comment on it, before it is submitted to the ICRG. The collection of additional and detailed information have realised through face-to-face meeting between the ERRG and the proposed jurisdictions.⁶² The ERRG informed Turkey and other proposed jurisdictions about face-to-face meeting to be held on 14-15 December 2009 by a letter dated 22 October 2009. In the meeting, strategically important deficiencies of Turkey's AML/CFT system were discussed. MASAK on the behalf of Turkey was in charge of deficiencies which have not been remedied at this time. So, MASAK has argued that there were no deficiencies in CFT system of Turkey. In accordance with MASAK argument, the comments about Turkey stated in the report by the Europe/Eurasia Regional Review Group Co-Chairs were as follows;

“Regarding insufficient legal and regulatory framework of Turkey: in terms of SR.II and S.R.III, there has been little change since 2006. The main reason for this is that Turkey has another interpretation of the Turkish legal framework than the Mutual Evaluation team and the ERRG. According to the Turkish point of view the existing law is sufficient in order to fulfil the requirements of the FATF Special Recommendations II and III.”⁶³

ERRG settled this December face to face meeting to a decision of holding another face to face meeting on 20-21 January 2010. After December meeting, the report submitted to the decision making levels at the each Ministry by the interagency working group has been elaborated among decision making levels at each ministry. Then MASAK have implied changing the backbone of our anti-terrorism legislation. Initiating such a revision process required political blessing at the highest governmental level. In this respect, Turkish government is determined to amend its TF legislation in compliance with the FATF recommendations in order to address the deficiencies underlined in SR II which has adversely impact on some Core and Key Recommendations (R 13, R 35, SR I, SR IV, and SR V) and SR III. To this end, the Turkish government has adopted an action plan on 15 January 2010 by a high committee chaired by the deputy prime minister, included Justice, Interior and Foreign Ministers as well as FIU. In the scope of ICRG process, MASAK wrote a letter and asked to change in the Targeted Review Report of Turkey by providing justifications for the change in the report in related to Action Plan.

In the 21-22 January 2010 face to face meeting, MASAK underlined that “Turkey was already aware of its deficiencies and elaborating on the provisions to address deficiencies in related to the issue of terrorist financing. The process to remedy for addressing the deficiencies required time and meticulous work in order to fully comply with the FATF standards. In this scope in Action plan adopted by Turkish government on 15 January 2010, Turkish government has undertaken to submit a package bill including provisions addressing these recommendations to the parliament by the end of June 2010 and it is expected that it will be enacted by the end of 2010. The package bill would include provisions such as to both meet all standards and criteria pointed out in SR II and SRIII, and to remedy deficiencies underlined in MER.”

Because of latest advances in Turkey's expression regarding CFT deficiencies, the report by the Europe/Eurasia Regional Review Group Co-Chairs has been reviewed in accordance with Turkey's action plan as seen below.

“The Turkish government submitted on the 18th January 2010 a detailed governmental action plan regarding several deficiencies inter alia on criminalizing the financing of terrorism and associated money laundering (SR II) and freezing and confiscating terrorist assets (SR III) to the ICRG Co-Chairs. This action plan has been adopted on a high level by a committee chaired by the deputy prime minister and consisting of several involved authorities, including the Ministries of Justice, Interior and Foreign Affairs as well as the Turkish FIU (MASAK)”⁶⁴

⁶² For ERRG, Azerbaijan, Slovakia, Turkey, Ukraine, Greece have been under targeted review.

⁶³ ICRG, Report by the Europe/Eurasia Regional Review Group Co-Chairs, FATF/ICRG (2010)4, 15 January 2010, p: 27.

⁶⁴ ICRG, Report by the Europe/Eurasia Regional Review Group Co-Chairs, FATF/ICRG (2010)4/REV1, 5 February 2010, p: 19-25.

The ERRG completed its report and action plan and provided it to the ICRG prior to the Plenary to allow sufficient time for review. ICRG presented its findings to the Plenary regarding the identified AML/CFT deficiencies and the actions Turkey should take to address those deficiencies by a recommendation of

“The above report and action plan address the strategic deficiencies identified by the ICRG. This does not mean that other AML/CFT deficiencies do not remain. It is expected that the jurisdiction will continue to work to address the broader range of deficiencies identified in the mutual evaluation process, and will work within the FATF follow-up process to do so.”⁶⁵

At February 2010 Plenary, as part of its on-going work and in response to the G-20 call to identify jurisdictions, the FATF has produced two documents:

- [FATF Public Statement](#)
- [Improving Global AML/CFT Compliance: On-going Process](#)

Through public statement, for the sake of protecting the international financial system from ML/TF risks and to encouraging greater compliance with the AML/CFT standards, the FATF identified jurisdictions that have strategic deficiencies and, along with the FATF-style regional bodies (FSRBs), works with them to address those deficiencies that pose a risk to the international financial system. In public statement, Iran is identified as the jurisdiction subject to a FATF call on its members and other jurisdictions to apply countermeasures to protect the international financial system from the ongoing and substantial money laundering and terrorist financing (ML/TF) risks emanating from the jurisdiction.

Angola, Democratic People's Republic of Korea (DPRK), Ecuador and Ethiopia are identified as the jurisdictions with strategic AML/CFT deficiencies that have not committed to an action plan developed with the FATF to address key deficiencies as of February 2010. The FATF calls on its members to consider the risks arising from the deficiencies associated with each jurisdiction. Pakistan, Turkmenistan and São Tomé and Príncipe are identified as the jurisdictions previously publicly identified by the FATF as having strategic AML/CFT deficiencies, which remain to be addressed as of February 2010.⁶⁶

In the second document called “[Improving Global AML/CFT Compliance: On-going Process](#)”, as part of its ongoing review of compliance with the AML/CFT standards, the FATF identified the jurisdictions which have strategic AML/CFT deficiencies for which they have developed an action plan with the FATF. While the situations differ among each jurisdiction, each jurisdiction has provided a written high-level political commitment to address the identified deficiencies. FATF welcomes these commitments. Turkey is one of these jurisdictions listed in this document.⁶⁷ Comments on Turkey are as follows;

“Turkey has demonstrated progress in improving its AML/CFT regime; however, the FATF has determined that certain strategic AML/CFT deficiencies remain. Turkey has made a high-level political commitment to work with the FATF to address these deficiencies, including by: (1) adequately criminalizing terrorist financing (Special Recommendation II); and (2) implementing an adequate legal framework for identifying and freezing terrorist assets (Special Recommendation III).”⁶⁸

⁶⁵ ICRG, Report by the Europe/Eurasia Regional Review Group Co-Chairs, FATF/ICRG (2010)4/REV1, 5 February 2010, p: 25.

⁶⁶ FATF, Public statement, 18 February 2010, available at <http://www.fatf-gafi.org/dataoecd/34/29/44636171.pdf> 02.03.2010

⁶⁷ Antigua and Barbuda, Azerbaijan, Bolivia, Greece, Indonesia, Kenya, Morocco, Myanmar, Nepal, Nigeria, Paraguay, Qatar, Sri Lanka, Sudan, Syria, Trinidad and Tobago, Thailand, Ukraine Yemen,

⁶⁸ FATF, [Improving Global AML/CFT Compliance: On-going Process](#), 18 February 2010, p: 5.

Available at <http://www.fatf-gafi.org/dataoecd/34/28/44636196.pdf> 02.03.2010

4.4. Risks posed by ICRG Review on Turkey

Having suffered from terrorism for decades, Turkey is a leading actor in global efforts to fight this scourge and has long been calling for increased international cooperation. Turkey is one of the first countries to enact an Anti-Terror Law, long before the 9/11 attacks. Turkey has actively contributed to the finalization of several international conventions on terrorism and one of the first to sign them. Turkey's contributions in Afghanistan are regarded as an indispensable part of fight against Al Qaida by the international community. At home, Turkey's authorities are vigilant against all forms of terrorist groups, regardless of their origins and purposes. Despite all this, Turkey has been subjected to the targeted review process of the FATF since October 2009, due to certain deficiencies of the Turkish legislation in the field of TF. So the picture formed by the ICRG review has damaged the prestige of Turkey as a country combating terrorism. Furthermore, the ICRG process has resulted in a "public list of high risk jurisdictions" as for February of 2010, creating huge economic and political repercussions on the countries listed either in public statement or other documents.

Turkey is a member of the G-20 which asked FATF to strengthen its review procedures on AML/CFT in order to reinforce international co-operation to maintain the integrity of the international financial system, making it well-placed to contribute to G-20's work to overcome the current financial crisis. Therefore, Turkey fully supported the work of the FATF and its bodies. However, Turkey has been placed under a list of jurisdictions which have certain strategic AML/CFT deficiencies and where there are substantial ML/TF risks or threats. Because, the end result of the ICRG process was to make a kind of black and white list, leaving no room for middle category jurisdictions, which have made consistent progress over the last years such as Turkey.

The list to be prepared by the FATF is very important and critical in terms of AML/CFT regime because the list is publicized and constitutes the basis of future actions. Additionally, the definition of "high risk jurisdiction" is very sensitive. So upon which criteria the FATF defines this term has a crucial impact on listed countries in such an increasingly interconnected world. Defining as a high risk jurisdiction might discourage foreign investment, and distort international capital flows. The integrity of national financial systems may be shaken which is essential to financial sector and macroeconomic stability both on a national and international level.

Assessment and Concluding Remarks

New ICRG procedure has two dimensions in related to Turkey, which are G-20 side and FATF global network side. On the one hand, Turkey is a member of the FATF since 1991 which sets global standards for anti-money laundering and countering the financing of terrorism (AML/CFT) and aims to ensure full and effective implementation of AML/CFT standards worldwide and reduce the vulnerability of the international financial system to ML and TF. For realization of its aim, the FATF is continuously taking actions that reinforce international co-operation and the promotion of integrity and stability in financial markets. On the other hand, Turkey is also a member of G-20 which deals with policy issues pertaining to the promotion of international financial stability and asked FATF to strengthen its review procedures on AML/CFT in April 2009 in order to overcome financial crisis effect on international economy. Therefore it is all the more important for Turkey as a member of G-20 to support FATF and comply with its standards.

The global financial crisis has affected most of the countries in the world undermining financial markets. The financial crisis appears to have had an impact on the environment in which the FATF standards are being implemented. Therefore, the FATF reinforces international co-operation to maintain the integrity of the international financial system, making it well-placed to contribute to G20's work to overcome the current financial crisis. While the financial crisis has damaged economies, it has strengthened international willingness to apply effective and appropriate regulation. The FATF recognizes this willingness as an opportunity to obtain greater co-operation for the international fight against money laundering. In the context of the FATF's financial crisis initiative and in response to the G-20 Leaders' request, in June 2009, FATF agreed a revised and strengthened process for addressing the problems posed by high risk and uncooperative jurisdictions through building on the work of the FATF's ICRG.

For identifying unco-operative and high risk jurisdictions, the ICRG process has resulted in two lists one of which is "public list of high risk jurisdictions" and the other of which is the "list of countries of [improving global AML/CFT compliance: on-going process](#)" as for February of 2010, creating huge economic and political

repercussions on these countries listed. Turkey is one of these countries listed in the document called [improving global AML/CFT compliance: on-going process](#) due to the deficiencies in its CFT system.

Although, Turkey is placed under such a list due to its deficiencies in fighting against terrorist financing, as a country suffering from terrorism for decades, Turkey has always been on the forefront of international efforts aimed at strengthening AML-CFT system. Turkey is party to all UN conventions on counter-terrorism including financing terrorism. In accordance with our constitution these conventions constitute part of Turkish national legislation, and our judiciary treats them as such. The relevant UN Security council resolutions are also strictly abided by Turkey. Despite of this situation, Turkey's CFT system is defined as insufficient due to the lack of legislation compliance with FATF standards. So, the Turkish government is determined to adjust the legislation in this scope to meet the expectations of the international community by taking account the fact that countering terrorism and terrorist financing is a dynamic field which requires constant re-evaluation and action.

In terms of G-20 side, due to Turkey's being placed in such as list, Turkey can be perceived as a country which undermines the soundness and stability of financial system of Turkey that in turn discourages foreign investment and distorts international capital flows. The existence of principles of transparent governance and effective fiscal administration in Turkey might be questioned by the international actors which will damage the prestige and in related to this, credit rating of Turkey.

Moreover, if Turkey has not made sufficient progress after one year of issuing a public statement in related to its deficiencies in CFT system, the FATF should call upon its members to apply counter-measures consistent with FATF Recommendation 21 and invite FSRBs to consider similar action. FATF Recommendation 21 is applicable where a country continues not to apply or insufficiently applies the FATF Recommendations. Appropriate counter measures are defined in R.21 as follows;

- Stringent requirements for identifying clients and enhancement of advisories, including jurisdiction-specific financial advisories, to financial institutions for identification of the beneficial owners before business relationships are established with individuals or companies from these countries;
- Enhanced relevant reporting mechanisms or systematic reporting of financial transactions on the basis that financial transactions with such countries are more likely to be suspicious;
- In considering requests for approving the establishment in countries applying the countermeasure of subsidiaries or branches or representative offices of financial institutions, taking into account the fact that the relevant financial institution is from a country that does not have adequate AML/CFT systems;
- Warning non-financial sector businesses that transactions with natural or legal persons within that country might run the risk of money laundering.
- Limiting business relationships or financial transactions with the identified country or persons in that country.

The ultimate purpose of these counter-measures is to protect the international financial system from these identified deficiencies. In this respect, when counter measures are applied for Turkey, Turkey will be perceived as an element against which the financial system should be protected.

Reputation is crucial in the global world, which facilitates the movement of every kind of information through raising awareness of the potential issues such as threats and risks posed by insufficient AML/CFT. Globalization results in very rapid spread of consequences of a country's instable financial system due to the interconnection of national markets. In such a world, the crisis has highlighted the consequences of globalisation, and the interconnection of national markets. Conversely, the financial crisis provides further impetus to cooperate on AML/CFT in the context of greater readiness internationally to apply effective and appropriate regulation.

In this respect, the progress made by the FATF and ICRG in the fight against money laundering and terrorist financing and call upon the FATF to issue a public list of high risk jurisdictions strengthen the commitment to fight non-cooperative jurisdictions as a remedy for global financial crisis. Turkey's was being placed in such a list has negative consequences on its financial markets strength and credibility in international arena. Therefore, it is crucial to play along with FATF and international bodies, which have a voice and get remedy for CFT deficiencies as soon as possible.

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