POSSIBILITIES TO ACCESS CONFIDENTIAL FINANCIAL INFORMATION BROADENS

 საერთაშორისო გამჭვირვალობა – საქართველო
TRANSPARENCY INTERNATIONAL GEORGIA

A bill on the amendments to the Law on Facilitating the Prevention of Money Laundering and the Financing of Terrorism, designed to broaden a circle of entities that have access to confidential financial information without a court order, has been submitted to the parliament of Georgia. The government requests that this legislative initiative proceed under the accelerated passage procedure.

THE BILL, INITIATOR

The bill: On the Amendments to the Law on Facilitating the Prevention of Money Laundering and the Financing of Terrorism

The initiator: Government of Georgia

SUBSTANCE OF THE BILL

According to the explanatory note, the amendments have been drafted with the aim to accommodate recommendations of the Council of Europe on bringing the Georgian legislation into line with the FATF[1] recommendations and rectifying the shortcomings that exist in practice.

The amendments are set to:

- Expand the list of the entities eligible to request confidential information from the Financial Monitoring Service;
- Expand the list of crimes on which confidential information can be requested.

EXPANDING THE LIST OF CRIMES ON WHICH INFORMATION CAN BE REQUESTED

CURRENT LEGISLATION	PROPOSED AMENDMENT
The Financial Monitoring Service is authorized to submit to the General Prosecutor, the Head of State Security Service or the Minister of Internal Affairs the confidential financial information that is necessary for the investigation into the following crimes under the Criminal Code: • *Legalization of illegal income (money laundering)* • *Use, purchase, possession or sale of property acquired through the legalization of illegal income* • *Financing of terrorism, provision of other material support and resources to terrorist activities* • *Drug-related crimes*	Information may be submitted for the investigation into **all categories of crime.**

EXPANDING THE LIST OF ENTITIES THAT MAY RECEIVE INFORMATION ON SUSPICIOUS TRANSACTION FROM THE FINANCIAL MONITORING SERVICE

CURRENT LEGISLATION	PROPOSED AMENDMENT
In the event a reasonable doubt arises, the Financial Monitoring Service shall submit confidential financial information to the following investigative entities: • Office of Prosecutor General • State Security Service • Revenue Service • Ministry of Internal Affairs	The list of eligible entities is extended to the **Investigation Service of the Ministry of Finance.**

ASSESSMENT

Broadening the possibility of investigative authorities to obtain confidential information involves risks. If the bill is adopted in the current form, the **investigative authorities will be able to obtain information without seeking a court order when investigating any category of crime.**[2]

The initiator of the bill substantiates the amendments by invoking Recommendation 29 of the Moneyval[3] evaluation report, which concerns aspects of operation of financial intelligence unit. In particular, the explanatory note says that "the country was recommended to also extend the list of those crimes on which the investigative authorities can request information from the Financial Monitoring Service." However, the abovementioned recommendation does not refer to all categories of crime, but only to those crimes that may constitute predicate offences[4] in money laundering.

Although it's true that confidential information may be conducive to the conduct of effective investigation, the access to such information without a court order must be conditional on a category of crime. The law in question concerns the issues of prevention, identification, elimination and investigation of money laundering and financing of terrorism and hence, the powers may be enhanced only with regard to the investigation into such crimes. The amendments, however, will extend this mechanism to the investigation into all categories of crimes, thereby **unjustifiably enhancing the powers of investigative authorities to obtain confidential information about individuals bypassing the court control.**

1 The Financial Action Task Force for combating money laundering and preventing mechanisms of financing terrorism.

2 Confidential information is the information (document) that contains professional secret, commercial secret or/and personal data.

3 The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval).

4 "Predicate offence" means a crime as a result of which illegal proceeds were generated that may become the subject of money laundering.

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