

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

3rd REGULAR FOLLOW-UP PROGRESS REPORT

4th ROUND MUTUAL EVALUATION OF HUNGARY

SEPTEMBER 2013



Hungary is a member of MONEYVAL. This follow-up progress report was adopted at MONEYVAL's 42nd plenary meeting (Strasbourg, 16 – 20 September 2013). For further information on the examination and adoption of this report, please refer to the Meeting Report of the 42nd plenary meeting at <http://www.coe.int/moneyval>

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List of Acronyms used

AML/CFT	Anti-Money Laundering/Counteracting Financing of Terrorism
APMLTF	Act on the Prevention of Money Laundering and Terrorist Financing
CC	Criminal Code
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
COE	Council of Europe
CPA	Criminal Procedure Act
CTR	Cash Transaction Report
DNFBP	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EU	European Union
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
FT	Financing of Terrorism
ISA	Insurance Supervision Agency
IT	Information Technology
LEA	Law Enforcement Agency
MER	Mutual evaluation report
ML	Money Laundering
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NC	Non-compliant
NPO	Non-Profit Organisation
OMLP	Office for Money Laundering Prevention
PC	Partially compliant
PEP	Politically Exposed Person
SMA	Securities Market Agency
SRO	Self-Regulatory Organisation
STR	Suspicious Transaction Report
UN	United Nations

Mutual evaluation of Hungary: 3rd follow-up report

Application to move from regular follow-up to biennial updates

Note by the Secretariat

I. Introduction

1. The purpose of this paper is to introduce Hungary's second follow-up report to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the mutual evaluation report on the fourth assessment visit (MER) on selected FATF Recommendations¹.
2. Hungary considers that it has taken sufficient action to be considered for removal from the regular follow-up process and has applied to be removed from the process.

1. Background information

3. The on-site visit to Hungary took place from 18 to 23 January 2010. MONEYVAL adopted the mutual evaluation report (MER) of Hungary under the fourth round of assessment visits at its 33rd Plenary meeting (September 2010)². As a result of the evaluation process of Hungary, 22 FATF Recommendations were evaluated as "compliant", 12 as "largely compliant", 13 as "partially compliant" one as "non-compliant" and one was "not applicable".

<i>Core Recommendation³</i>
Recommendation 1 (Money laundering offence)
Recommendation 13 (Suspicious transaction reporting)
Special Recommendation II (Criminalise terrorist financing)
Special Recommendation IV (Suspicious transaction reporting)
<i>Key Recommendation⁴</i>
Recommendation 26 (The FIU)
Recommendation 35 (Conventions)
Special Recommendation I (Implement UN instruments)
Special Recommendation III (Freeze and confiscate terrorist assets)
<i>Other Recommendations</i>

¹ It should be pointed out that the FATF Recommendations were revised in 2012 and that there have been various changes, including their numbering. Therefore, all references to the FATF Recommendations in the present report concern the version of these standards before their revision in 2012.

² www.coe.int/moneyval

³ The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV.

⁴ The key Recommendation are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III and SR.V.

Recommendation 16 (DNFBPs),
Recommendation 17 (Sanctions),
Recommendation 32 (Statistics)
Special Recommendation VIII (Non-profit organisations)
Special Recommendation IX (Cash Couriers)

4. Hungary was placed into regular follow-up on the basis of Rule 48 (a) of the Rules of Procedure⁵. In accordance with Article 49 of MONEYVAL's Rules of Procedure, two years after the 4th round MER is discussed, Hungary was obliged to report back to the plenary and provide information on the actions it has taken or is taking to address the factors/deficiencies underlying any of the 40 + 9 Recommendations that are rated partially compliant (PC) or non-compliant (NC). Hungary has presented short interim follow-up reports at both the 39th and 40th plenary meetings.

5. The Rules of Procedure indicate that MONEYVAL states and jurisdictions are encouraged to seek removal from the follow-up process within three years after the adoption of the 4th round MER, or very soon thereafter, though the Plenary will always have the discretion to allow further time where this is necessary. At the 41st plenary meeting, Hungary initially indicated to the MONEYVAL Secretariat that it considered that it had taken sufficient steps to deal with the deficiencies, and had made satisfactory progress to be removed from the process. However, as the AML/CFT Law was still awaiting adoption in the Hungarian Parliament and the Criminal Code had yet to come into force and effect the Hungarian authorities subsequently withdrew their application to be removed from regular follow-up at the 41st plenary. Hungary has advised the MONEYVAL Secretariat that the relevant legislation has now been adopted and is in force and effect and indicated that it considers that it has taken sufficient steps to deal with the deficiencies and has made satisfactory progress to be considered for removal from the regular follow-up process.

6. Hungary has provided the Secretariat with a report on its progress. The Secretariat has drafted an analysis of the progress made for the seven MONEYVAL core Recommendations which were rated PC. The Secretariat has also prepared an analysis of the five other Recommendations which were rated PC or NC.

7. **Section II** sets out the Secretariat's detailed analysis of the progress which Hungary has made in relation to the core Recommendations rated PC or NC (R.1, 13, SR.II and SR.IV).

8. **Section III** sets out the Secretariat's detailed analysis of the progress which Hungary has made in relation to the key Recommendations rated PC (R.26, 35, SR.I and SR.III).

9. **Section IV** sets out the Secretariat's detailed analysis of the progress which Hungary has made in relation to the MONEYVAL Core Recommendations rated NC/PC (R.16, 17, 32, SR.VIII and SR.IX).

2. Overview of Hungary's Progress

Action Plan

10. On the basis of the 4th round MER the Government of Hungary has adopted an Action Plan in a Government Resolution which is mandatory and publicly available.

⁵ http://www.coe.int/t/dghl/monitoring/moneyval/About/Rules_en_2013.pdf

11. This Action Plan (see Annex I) reflects the recommendations made by MONEYVAL and sets out all of the tasks for the relevant supervisors and authorities responsible for AML/CFT issues according to three categories:

- i. Legislative tasks;
- ii. Impact studies (in order to identify the concrete necessary measures); and
- iii. Training, consultation.

12. The Hungarian authorities report that the relevant authorities have implemented the tasks determined by the Action Plan of the Hungarian Government with several important results in all categories.

13. Following the full implementation of the Action Plan a comprehensive report will be provided for the Government regarding the results and findings of the implementation, the progress achieved, as well as the proposed further steps in order to improve the AML/CFT system.

Legislative and other changes

14. Amendment of Act IV of 1978 on the Criminal Code (hereinafter HCC): The Act C of 2012 on the Criminal Code (hereinafter new HCC) has been adopted by the Parliament and it entered into force on 1st July 2013.

15. Amendments to Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing (hereinafter AML/CFT Act) and Act CLXXX of 2007 on the implementation of financial and asset-related restrictive measures ordered by the European Union, and on respective amendments of other laws (hereinafter FRM Act) have set out in Act LII of 2013 on the Amendment of Act CXXXVI of 2007 on the Prevention and Combating of Money Laundering and Terrorist Financing, and of Certain Related Acts. This Act has been adopted by Parliament and it entered into force on 1st July 2013.

Impact studies

16. The authorities report that all impact studies determined by the Action Plan have been prepared, in order to better address certain issues of the AML/CFT Act and the relevant sector-specific acts. Some of the most important studies are:

- Impact studies aimed at the potential amendment of the HCC and the related legal provisions;
- Impact studies aimed at the potential amendment of the AML/CFT Act and the related sector-specific legal provisions;
- Impact studies related to the execution of financial or asset-related restrictive measures;
- Impact studies related to the operation of the Hungarian Financial Intelligence Unit (hereinafter HFIU);
- Impact studies regarding the control of cross-border transportation of cash;
- Impact study regarding the non-profit sector;
- Impact studies regarding keeping of statistics.

17. It is understood that, on the basis of the findings of certain impact studies, preparatory work also has been started (or implemented by the amendment to the AML/CFT Act), in order to address the relevant issues and implement the MONEYVAL recommendations in the most suitable way.

Training and awareness raising

18. The authorities report that, following from the recommendations made by MONEYVAL, and on the basis of the determined tasks of the Action Plan, several training seminars as well as

other outreach were held and further are planned for the relevant service providers and for the employees of the responsible authorities.

19. Following the full implementation of the Action Plan a comprehensive report will be provided for the Government regarding the results and findings of the implementation, the progress achieved, as well as the proposed further steps in order to improve the AML/CFT system.

National Risk Analysis

20. Following tasking from the Ministry for National Economy, a formal national risk assessment (NRA) has been undertaken by the National Institute of Criminology to assess the ML/TF risks, threats, vulnerabilities and trends in Hungary. The analysis has started in March 2012 under the contract signed by the Ministry for National Economy (MNE) and in cooperation with other authorities, like the HFIU, and the NRA was finalised by December 2012.

21. The main aim of the risk assessment is to understand and identify the ML/TF risks, threats and vulnerabilities of the country for the HFIU, the supervisory authorities determined in the AML/CFT Act and the service providers under the scope of the AML/CFT Act. The elements of the research have been based on: processing national and international documents, guidance; the analysis of criminal statistics; sample selection (to identify the framework of the source of data); statistics and file research; focus group meetings; in-depth interviews; closing-study. Furthermore the main sources of information and data used in the assessment were: files of law enforcement; information of the HFIU (dissemination of typical cases with anonym data submitted earlier to law enforcement); national statistics published for national and international purposes; international survey.

22. The Hungarian Authorities have decided on a limited publication of the NRA as it contains some sensitive information and findings. The summary of the findings has been published on the official website of the Government and the Ministry for National Economy.

Legislative developments

23. As set out above under legislative and other changes, the new HCC has already been adopted and came into force on 1 July 2013. The new HCC modifies the money laundering provision in order to comply with MONEYVAL's recommended action points in the MER. It also regulates the financing of terrorism in a separate provision which contains the financing of an individual terrorist for any purpose and makes the incrimination of collection of funds for a terrorist group's day-to-day activities clearer pursuant to the Recommendation. The new HCC contains the concept of "funds" due to the MONEYVAL recommendation.

24. Furthermore, from 1st July 2013, with the adoption of Act CCXXIII of 2012 on the amendments of certain Acts concerning the entry into force of the new HCC, the criminal offence of money laundering will be in the shared investigating competence of the NTCA and the Police depending on the underlying predicate offence.

25. The amendment of the AML/CFT Act and the FRM Act are intended to modify several provisions in order to implement MONEYVAL's recommended action points in the MER as well as the findings of the relevant impact studies. These were adopted by the Parliament and came into force on 1 July 2013. The main changes introduced by Act LII of 2013 are:-

- The definition of the beneficial owner now covers direct and indirect ownership and is extended to senior officials;
- Interpretative provisions on the customer, business relationship, money laundering, terrorist financing and politically exposed persons have been refined;
- Customer due diligence measures related to beneficial owners have been refined;

- New risk based measures for implementation of CDD requirements determined in the internal rules such as verification of data in registers, source of funds and economic resources, management approval or enhanced monitoring and special attention to all complex and unusual transactions have been introduced;
- Enhanced CDD provisions are extended in order to provide for opening a client account, a securities account, or a securities deposit account online;
- Additional cases for when reporting obligations shall be performed have been introduced, including where the service provider knows, suspects or has reasonable grounds to suspect that money laundering or terrorist financing is being or has been committed or attempted;
- Revised provisions and deadlines for suspension of transaction, if prompt action by the national financial intelligence unit is deemed appropriate and necessary;
- Clarification of the powers of the HFIU to access and dissemination information;
- Powers provided for the HFIU to access data managed service providers in its own capacity or based on the request of a foreign national financial intelligence unit, if any information, fact or circumstance suggesting money laundering or terrorist financing occurs;
- Determination of the crimes related to the purposes of the dissemination of the information by the HFIU, extending the scope of authorities relevant in the disseminations as well as defining the cases for disclosure and dissemination for foreign financial intelligence units;
- Prolongation the record keeping period in case of the request of relevant authorities;
- Extending the available supervisory measures and developing proportionate sanctions; and
- Providing an administrative procedure for the HFIU, to be differentiated from the judicial procedure of the court, for the purpose-limited permission of exercising the right to dispose of funds or economic resources connected to financial and the asset-related restrictive measures determined in Community legal acts.

26. A list of additional AML/CFT legislation, regulations and guidance adopted and in force as well as greater detail on the changes introduced by Act LII of 2013 are set out on pages 5 to 9 of the report submitted by the Hungarian authorities.

3. Main conclusions and recommendations to the plenary on progress made since March 2010

Core Recommendations

27. With regard to Recommendation 1 and Special Recommendation II, Hungary has taken a number of steps to enhance compliance with the requirements since the adoption of the 4th round mutual evaluation report. There has been an increase in the number of convictions for money laundering and legislative changes have been adopted. Although certain technical deficiencies in legislation still remain, both Recommendation 1 and Special Recommendation II are now at a level equivalent to largely compliant.

28. With regard to Recommendation 13 and Special Recommendation IV, the amendments to the Criminal Code and to the AML/CFT Act appear to broadly address the technical deficiencies identified in the 4th round report. With regard to effectiveness, there is a definite improvement in the level of reporting by financial institutions.

Key Recommendations

29. With regard to Recommendation 26, it would appear that the deficiencies regarding the operational independence and autonomy of the HFIU have been resolved by the Hungarian authorities with the amendments to the AML/CFT Law being adopted and brought into force and effect.

30. Concerning Recommendation 35 and Special Recommendation I, the amendments to the Criminal Code would appear to address many of the technical deficiencies identified in the 4th round report. Both Recommendations are now considered to be at a level equivalent to largely compliant.

31. With regard to Special Recommendation III, a number of steps have been taken to address the deficiencies identified in the 4th round report. In particular, awareness raising programmes have been deployed and there are now national procedures for de-listing and un-freezing which are publicly known.

Conclusion

32. Since the on-site visit in January 2010, Hungary has taken positive steps to remedy a number of the identified deficiencies. Many of the identified deficiencies have been dealt with. Overall it is the view of the MONEYVAL Secretariat that Hungary has taken sufficient steps to be removed from Regular Follow-up.

II. Review of the measures taken in relation to the Core Recommendations

33. This section sets out the Secretariat's detailed analysis of the progress, which Hungary has made in relation to the Core Recommendations rated NC/PC.

Recommendation 1 – Money laundering offence (rating PC)

Deficiencies

- *The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions:*

- *Conversion or transfer for the purpose of helping person who is involved in the commission of money laundering to evade consequences is not covered by Hungarian legislation;*
- *Conversion or transfer for the purpose of disguising the illicit origin of property is unclear;*
- *Unnecessary requirement of purpose element of concealing the true origin of the thing for the acts of concealment and suppress (disguise) of location, disposition or ownership of or rights with respect to property as well as for the act of "use in his economic activities";*
- *Concealment or disguise of the true nature, source and movement is not covered (Palermo A.6(1)(a)(ii));*
- *Self laundering is only partly covered.*

- *Not all designated categories of offences are fully covered as predicates, as incrimination of the financing of an individual terrorist for any purpose is not covered, and collection of funds for a terrorist organisation' day-to-day activities is not clear.*

- *Autonomous investigation and prosecution of the money laundering offence still constitute a challenge for the police and prosecutors. Given the level of proceeds generating offences in Hungary and the type and quality of the cases being brought (mainly self-laundering) the overall effectiveness of money laundering incrimination still needs to be enhanced.*

Recommended actions

- *Hungary should criminalise self-laundering fully in line with the Vienna and Palermo Conventions.*

- *The Hungarian authorities should make legislative changes to the money laundering offence to bring legislation into full compliance with the Vienna and Palermo Conventions.*

- *The offence of financing terrorism should be widened to cover all relevant issues as predicate offences to money laundering by incriminating the financing of an individual terrorist for any purpose and making the incrimination of the provision or collection of funds for a terrorist organisation's day-to-day activities clearer.*

- *The Hungarian Authorities should consider more training for law enforcement authorities, particularly for police and prosecutors on the way in which money laundering cases should be efficiently investigated and prosecuted.*

- *Case law should be established on autonomous ML cases in order to clarify the level of proof required where there has been no conviction for the predicate offence.*

- *The Hungarian authorities should pursue more investigations and prosecutions of third party laundering.*

Measures adopted and implemented

Deficiency No.1 – *The physical elements of money laundering offence do not fully correspond to the Vienna and Palermo Conventions:*

- *Conversion or transfer for the purpose of helping person who is involved in the commission of money laundering to evade consequences is not covered by Hungarian legislation;*
- *Conversion or transfer for the purpose of disguising the illicit origin of property is unclear;*
- *Unnecessary requirement of purpose element of concealing the true origin of the thing for the acts of concealment and suppress (disguise) of location, disposition or ownership of or rights with respect to property as well as for the act of “use in his economic activities”;*
- *Concealment or disguise of the true nature, source and movement is not covered (Palermo A.6(1)(a)(ii));*
- *Self laundering is only partly covered.*

34. With the amendments brought to the legislation, the criminalisation of money laundering is provided for by Art. 399 of the new HCC as: *“(1) Any person who a) converts or transfers an object originating from a punishable act committed by another person or performs any financial activity or receives any financial service in connection with such an object in order to aa) conceal or disguise the origin of such an object; or ab) frustrate the criminal proceedings against the other person who committed a punishable act; b) conceals or disguises the origin of the object originating from a punishable act committed by another person, any right attached to such an object or any change to this right, or any change in the location of the object or the location of the object is guilty of a felony punishable by imprisonment from one to five years. (2) The punishment specified in Subsection (1) shall also be imposed upon any person who: a) obtains an object that originates from a punishable act committed by another person for himself/herself or for a third person; or b) safeguards, handles, uses or utilises an object that originates from a punishable act committed by another person, or obtains other financial assets by way of or in exchange for such an object, provided that he or she was aware of the origin of the object when committing the crime. (3) The punishment specified in Subsection (1) shall also be imposed upon any person who, in order to conceal or disguise the origin of an object that originates from an offence committed by himself/herself, a) uses the object in his or her business activities; or b) performs any financial activity or receives any financial service in connection with such an object.”*

35. With the new provision the ML crime extends to the persons who *“frustrate the criminal proceedings against the other person who committed a punishable act* (Art. 399 of the HCC Paragraph 1, letter ab)). Although not following the exact wording of the Vienna and the Palermo Conventions, the new amendment is designed to cover the *“help”* provided to the person committing the predicate offence.

36. The new introduced letter aa) in the Paragraph 1) of Art. 399 of the HCC reads: *“conceal or disguise the origin of such an object”* thus covering the word *“disguise”* which was missing at the time of the 4rd Round MER.

37. It is noted that, according to the new Hungarian legislation, the term *“thing”* used in the definition of ML offence analysed in the 4rd round report, has been replaced with the word *“object”*. There was no definition of *“thing”* at the time of the 4th round report, although the evaluation team considered that there were no limitations in the law as to the nature and value of the criminally acquired property, and made reference to an interpretative note clarifying the term⁶.

38. At the time of this desk review, neither the new HCC, nor the Hungarian Civil Code contains

⁶ See paragraph 79 of the 4th round MER

a separate definition concerning the word “object”. However, Article 402 Paragraph (1) of the new HCC notes: *that for the purposes of Articles 399-400, “object” shall also include documents and dematerialized securities embodying rights of pecuniary value which ensure disposal over the pecuniary value or right attested therein to the holder, or, in the case of dematerialized securities, to the beneficiary of the securities account.*

39. The wording “*use in his economic activities*” was eliminated from the Art. 399 Para 1 therefore, in case of third party laundering, the “*acquisition, possession or use of property*” as provided by the Vienna and Palermo Conventions, are to be found in the new Para. 2 (a) and (b) of the Article 399.

40. The 4th round MER criticised the absence of provisions concerning the concealment or disguise of the *true nature, source and movement* of the criminal property as required by the Palermo Convention, Art.6(1)(a)(ii). When comparing the new provisions of Art. 399 Para. 1 letter b) with the text in force at the time of the 4th round, the following additions are identified: “*conceals or disguises the **origin of the object** originating from a punishable act committed by another person, any right attached to such an object or any change to this right, or **any change in the location** of the object or the location of the object...*”. Thus, the “source” and “movement” are clearly covered by the new legal text. Concerning the concealment and disguise of the “*true nature*” of the criminal assets, the Hungarian authorities maintained that the wording “*origin of the object*” covers both the “*true nature*” and the “source”, as one cannot interpret the “*true nature*” otherwise than in the framework of the criminal origin of the assets.

41. Self-laundering is criminalised in the HCC under Art. 399 (3) and little progress has been made in this respect.

42. While the Vienna and Palermo Conventions do not differentiate between third-party laundering and the laundering of its own criminally acquired property, the HCC separate them into two distinct paragraphs of Art. 399. The Hungarian authorities argued in the 4th round MER that this approach is due to fundamental principles of domestic law, prohibiting the double assessment. This argument was partially accepted by the evaluation team in respect of the “*acquisition*” and “*possession*”.

43. However, the acts of *conversion or transfer* of self-obtained proceeds (other than through financial activity or involving the receipt of any financial service), the *concealment and disguise* of the true nature, location, disposition, movement or ownership of the rights with respect to that property, as well as the *use* of that property other than as an object in the perpetrator’s business, remain uncovered by the Hungarian legislation. The authorities have pointed out that the Palermo Convention, allows a State Party to the Convention not to punish self-laundering, if this is required by the fundamental principles of the domestic law of a State Party, which is the case in Hungary.

Deficiency No. 2 – *Not all designated categories of offences are fully covered as predicates, as incrimination of the financing of an individual terrorist for any purpose is not covered, and collection of funds for a terrorist organisation’ day-to-day activities is not clear.*

44. The new HCC criminalises the terrorist financing in its Art. 318 as “(1) *Any person who provides or collects assets for ensuring the conditions of terrorist act, or supports a person preparing to commit a terrorist act – or another person on behalf of such a person – with assets, is guilty of a felony punishable by imprisonment of two to eight years.*(2) *Any person who commits the crime defined in Paragraph (1) with the aim of committing terrorist act in a terrorist group or in the interest of a member of a terrorist group, or supports the activities of a terrorist group in any other form shall be punishable by imprisonment of five to ten years.*“

45. With the new legal provisions, the financing of an individual terrorist is partially covered by the wording “*supports a person preparing to commit a terrorist act – or another person on behalf of such a person – with assets*”. However, the financing of an individual terrorist remains linked to a specific terrorist which is not in compliance with essential criterion II.1(c).

46. The collection of funds for a terrorist organisation's day-to-day activities is still not covered by the new article of the HCC. Significant deficiencies appear to remain in this respect, as described under SRII below.

Deficiency No.3 – *Autonomous investigation and prosecution of the money laundering offence still constitute a challenge for the police and prosecutors. Given the level of proceeds generating offences in Hungary and the type and quality of the cases being brought (mainly self-laundering) the overall effectiveness of money laundering incrimination still needs to be enhanced.*

47. The following statistics have been made available for the Follow-up report:

	ML/TF Investigations by law enforcement			Prosecutions commenced			Convictions (first instance)			Convictions (final)		
	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons	Cases	Natural persons	Legal persons
2010	16	38	26	17								
2011	10	12	7	13							14	
2012	13	15	53	16							8	
2013*	1			1								

*1st quarter

48. While it appears from the statistics that 22 convictions for ML were achieved in 2011 and 2012, there is no indication as to whether those convictions are self-laundering or third-party laundering cases. It is therefore not possible to assess the quality of the convictions.

Recommended action No.1 – *Hungary should criminalise self-laundering fully in line with the Vienna and Palermo Conventions.*

49. As discussed above, this recommendation has only partially been implemented into the Hungarian legislation. Deficiencies remain in respect of the criminalisation of self-laundering through acts of *conversion or transfer* of proceeds (other than through financial activity or involving the receipt any financial service), the *concealment and disguise* of the true nature, location, disposition, movement or ownership of the rights with respect to property, and the *use* of property other than as an object in perpetrator's business.

Recommended action No. 2 – *The Hungarian authorities should make legislative changes to the money laundering offence to bring legislation into full compliance with the Vienna and Palermo Conventions.*

50. The Hungarian authorities have taken significant steps to bring the criminalisation of money laundering more into line with the Vienna and Palermo Conventions. From a desk review it appears that this recommendation was addressed.

Recommended action No. 3 – *The offence of financing terrorism should be widened to cover all relevant issues as predicate offences to money laundering by incriminating the financing of an individual terrorist for any purpose and making the incrimination of the provision or collection of funds for a terrorist organisation's day-to-day activities clearer.*

51. Legal amendments have been adopted in respect of the criminalisation of the TF offence. However, the offence of TF remains limited and does not extend to financial assistance provided for individual terrorist and terrorist groups for any purposes.

Recommended action No. 4 – *The Hungarian Authorities should consider more training for law enforcement authorities, particularly for police and prosecutors on the way in which money laundering cases should be efficiently investigated and prosecuted.*

52. The *Action Plan* calls for considering more training for law enforcement authorities on the way in which money laundering cases should be efficiently investigated and prosecuted. In order to fulfil this obligation, the law enforcement authorities have participated in and organised several *trainings* and conferences. In particular these include:

- The Criminal Investigating Service of the National Tax and Customs Administration (NTCA) officers are participating in an on-going (2012-2014) “Economic and Financial Investigators” (EFI) project, organised by the Italian “Guardia di Finanza” and co-financed by the EU. The project is designed to train practicing financial investigators. The basic training (9 months) includes topics such as financial investigative techniques, measures to tackle ML and TF issues on international cooperation in order to combat organised crime, deterring Intellectual Property Rights fraud, etc. Overall it is planned that 18 financial investigators representing the Criminal Investigating Service of the NTCA are or will be assigned to take part in the project.
- The Criminal Investigating Division of the US Internal Revenue Service provided training on financial investigating techniques for 28 representatives of the Criminal Investigating Service of the NTCA and 2 representatives of the Prosecution Service (14-18 November 2011 and 19-23 November 2012). The training focused on budgetary related offences and corruption as well as on how to detect and investigate ML when it is linked with those crimes.
- In 2012, the Department for Criminal Affairs (DCA) of the Directorate General of Criminal Affairs of the NTCA, based on its annual supervisory plan, had examined all on-going ML investigations and instructed the Regional Criminal Investigating Offices on the necessary steps to be taken. Based on the findings of the DCA, local trainings on issues regarding the investigation of ML have taken place including the obtaining of legal standpoints of the prosecution in certain cases, which were lacking in both jurisprudence and legal practice.
- Regarding the *Prosecution Service*, the curriculum of the postgraduate degree in criminalistics has a detailed module dedicated to money laundering. 59 prosecutors already have this postgraduate degree, 19 of whom earned it during the last 3 years.
- On 17th December 2012 the National Judicial Office and the Prosecutor General’s Office organised a conference on organised crime for judges, prosecutors and policemen. The topics of the conference included money laundering. 50 prosecutors attended the conference.
- In the first half of 2013 all of the prosecutors have been trained on the new provisions of HCC through in-house training by the Prosecutor Service.
- Training on effective investigation and prosecution methodology of money laundering cases is planned for prosecutors working in this field in the training programme of the Prosecution Service for 2013.
- In May 2013 one of the senior officers of the Criminal Investigating Service of the NTCA presented to a selected group of prosecutors from a local Prosecutor’s Office the key

findings and relevant characteristics of ML that touched upon issues such as self-laundering, negligent and autonomous ML investigative case law and international expectations. The same presentation on ML investigations was presented to the judges attending the annual course of the Hungarian Judicial Academy.

- As a consequence of the new HCC entering into force, one of the senior experts of the Criminal Investigating Service of the NTCA has made a presentation on ML investigations, tax crimes as a predicate offence, asset recovery, and international cooperation to the judges of the Hungarian Judicial Academy.

53. Training was also provided for the National Tax and Customs Administration officers working in two Directorates. However, other Law Enforcement Agencies (especially the National Police) were not included in the range of training provided. From a desk review it is difficult to determine to what extent the training for the latter is relevant in the context of ML/TF as Recommendation 27 was not re-evaluated under the 4th round MER. It appears that training programs for prosecutors and judges were recently initiated. However, this process must continue in order to ensure effective awareness rising for prosecutions and judiciary.

Recommended action No. 5 – *Case law should be established on autonomous ML cases in order to clarify the level of proof required where there has been no conviction for the predicate offence.*

54. The *Action Plan* reflects this recommendation of the MONEYVAL report in its second part (impact studies, II/A/1) and identifies a task to review and statistically analyse the autonomous money laundering cases with the aim of more effective detection, investigation and prosecution and establishment of a uniform judicial practice.

55. The Prosecutor General's Office prepared an *impact study* on the identified cases (2007-2011) which included both statistical review and analysis of individual cases.

56. The *conclusions* of the study were:

- The current statistical databases and the methods of data gathering need to be reviewed and improved;
- The prosecution phase of the relevant criminal procedures shows consistency in the practice; and
- On judicial practice, no conclusions can be drawn due to the low number of final sentences and to the complexity of factors influencing adjudication. Statistics on judicial practice should be improved.

57. In monitoring the practice in order to identify possible issues in this field, the first step has been to identify, gather and analyse relevant cases of autonomous ML on a country-wide scope.

58. From July 2013 many changes have been implemented to the Prosecution Services' case management systems and its data gathering systems. The main changes are based on the changes to the HCC, which generated the complete renewal of the ENYÜBS system (law enforcement database mainly based on finished cases). The Hungarian authorities reported that the Prosecution Service is continuously improving its systems. The main (and long term) goal of the developments is still the extension of the new electronic case management system EIR (which was launched this year) to help the data gathering with exact and detailed data supplying.

Recommended action No. 6 – *The Hungarian authorities should pursue more investigations and prosecutions of third party laundering.*

59. There is no information available on the number of third-party laundering investigations and prosecutions achieved in Hungary.

Effectiveness

60. According to the statistics provided by the Hungarian authorities, 22 ML convictions were achieved since 2010, and 39 investigations and 40 prosecutions were initiated. The sentences were custodial and non-custodial. The non-custodial sentences vary from community service to probation and the custodial sentences range from 6 month to 5-8 years imprisonment. The authorities have confirmed that 14 convictions in 2011 were for third party laundering with a further 8 in 2012.

Overall conclusion

61. Since the adoption of the 4th round mutual evaluation report, Hungary has taken a number of steps to enhance compliance with the requirement set under Recommendation 1. The physical elements of money laundering have been brought largely into line with the Vienna and Palermo Conventions. However, the following technical deficiencies still remain in respect of the criminalisation of self-laundering.

- The acts of *conversion or transfer* of self-obtained proceeds (other than through financial activity or involving the receipt of any financial service), the *concealment and disguise* of the true nature, location, disposition, movement or ownership of the rights with respect to that property, as well as the *use* of that property other than as an object in the perpetrator's business, remain uncovered by the Hungarian legislation;
- the financing of an individual terrorist remains linked to a specific terrorist which is not in compliance with essential criterion II.1(c); and
- The collection of funds for a terrorist organisation's day-to-day activities is still not covered by the new article of the HCC.

62. With regard to effectiveness, 22 ML convictions have been achieved since 2010, all of which were for third party laundering.

63. In conclusion, the adopted amendments to the Criminal Code would appear to bring Hungarian legislation broadly in line with Recommendation 1, however certain minor technical deficiencies remain. It is therefore concluded that this Recommendation is now at a level equivalent to largely compliant.

Special Recommendation II - Criminalise terrorist financing (rating PC)**Deficiencies**

- *The Criminal Code does not provide for an offence of terrorist financing in the form of provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used by an individual terrorist for any purpose.*
- *It is unclear whether the financing of terrorist organisations' day to day activities are incriminated, and collection of funds for terrorist organisations' day to day activities is not covered.*
- *No definition of "funds" as defined in the Terrorist Financing Convention.*
- *No explicit coverage of direct or indirect collection of funds/usage in full or in part, without the funds being used or linked to a specific terrorist act.*
- *The financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation have not been criminalised.*

Recommended actions

- The financing of individual terrorists' day-to-day activities should be criminalised as required by SR II.

- The incrimination of the financing of terrorist organisations' day-to-day activities should be clarified by further legislative change and by issuing appropriate guidance to law enforcement agencies and the provision or collection of funds for terrorist organisations' day to day activities should be criminalised.
- "Funds" should be defined.
- Hungary should consider legislative changes to render legal persons liable for more effective prosecutions of TF offences in practice.
- The legislation should be revised to ensure proper criminalisation of the acts arising from the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation for placing or causing to place on an aircraft in service a device or substance which is likely to destroy that aircraft.

Measures adopted and implemented

Deficiency No.1 – *The Criminal Code does not provide for an offence of terrorist financing in the form of provision or collection of funds with the unlawful intention that they should be used or in the knowledge that they are to be used by an individual terrorist for any purpose.*

64. On the basis of the recommendation of the MONEYVAL report, the *Action Plan* recommended legislative changes to the offence of terrorist acts in order to incriminate the financing of an individual terrorist for any purpose and the collection and provision of funds for a terrorist organisation's day-to-day activities.

65. The *new HCC* regulates the financing of terrorism in a separate provision, which contains the financing of an individual terrorist.

66. The terrorist financing crime is provided by Art. 318 of the new HCC as follows:

(1) Any person who provides or collects funds with the intention that they should be used in order to carry out an act of terrorism, or who provides material assistance to a person who is making preparations to commit a terrorist act or to a third party on his behalf is guilty of a felony punishable by imprisonment between two to eight years.

(2) Any person who commits the criminal offense referred to in Subsection (1) in order to carry out an act of terrorism in a terrorist group, or on behalf of any member of a terrorist group, or supports the activities of the terrorist group in any other form is punishable by imprisonment between five to ten years.

(3) For the purposes of this Section 'material assistance' shall mean the assets specified in Point 1 of Article 1 of Council Regulation (EC) No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism, including legal documents and instruments in any form."

67. With the new legal provisions, the financing of an individual terrorist is partially covered in that the material elements of collection and provision of assets refers to any terrorist act, regardless if it is prepared or carried-out by an individual terrorist or by a terrorist group. Further on, the text mentions providing material assistance to a person who is making preparations to commit terrorist acts, thus effectively excluding the persons who have already committed one or more terrorist acts (the actual terrorists). The Hungarian authorities have explained that the accompanying statement of legislative intent, which is available for use by practitioners, clarifies the issue by clearly stating that the amendments to the HCC are designed to cure defects identified in the MONEYVAL report.

68. With regard to on-going financing of a person who has committed terrorist acts, the harbouring provisions under 282 of the HCC, cover "providing assistance to the perpetrator" and include specific references to "acts of terrorism [Subsections (1)-(2) of Section 314], terrorist

financing [Subsections (1)-(2) of Section 318]”. This would appear to cover the residual concern regarding those who have committed acts of terrorism.

69. Another difficulty arises in respect of the “collection” of funds for the purpose of financing an individual terrorist. While the first part of Art. 318 (1) covers the provision *and collection* of assets, the use of the word “or” divides the offence and therefore, the second part of the same paragraph only criminalises the provision of material assistance of an individual terrorist, but not the collection of funds for the same purposes.

Deficiency No.2 – *It is unclear whether the financing of terrorist organisations’ day to day activities are incriminated, and collection of funds for terrorist organisations’ day to day activities is not covered.*

70. The second Paragraph of Art. 318 refers to the financing of terrorist organisations for any purposes. In fact, Paragraph 2 consists of two major parts: one describing aggravating circumstances for the commission of the crime provided in paragraph 1 (*Any person who commits the crime defined in Paragraph (1) with the aim of committing a terrorist act in a terrorist group or to support a member of a terrorist group*) and the second part incriminating the support provided to a terrorist group (*Any person who ... supports a member of a terrorist group, or supports the activities of a terrorist group in any other form*).

71. However, as in the case of an individual terrorist, the criminalisation of the act of *collection* of funds with the aim of supporting a terrorist group for any purposes is still missing.

Deficiency No.3 – *No definition of “funds” as defined in the Terrorist Financing Convention.*

72. The *new HCC* inserts Paragraph (3) to Article 318 defines assets on the basis of Article 1 Point 1 of the EU Council Regulation No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism⁷.

Deficiency No.4 – *No explicit coverage of direct or indirect collection of funds/usage in full or in part, without the funds being used or linked to a specific terrorist act.*

73. There is no reference in Art. 318 of the new HCC to the *direct or indirect* collection of funds to be used in full or in part, without being used or linked to a specific terrorist act. The Hungarian authorities have explained that both direct and indirect collection of assets/usage are covered by the Hungarian Criminal Code since there is not any reference to the “*method or way*” through which the collection has to occur. Consequently, in their view, both direct and indirect perpetration is included in the crime of financing terrorism.

Deficiency No. 5 – *The financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation have not been criminalised.*

74. The *Action Plan* reflects this deficiency and recommendation in its second part (impact studies) under point II/B/4 and requests consideration of whether the current HCC provisions fully comply with the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed in Montreal on 23 September 1971.

75. Accordingly, the Hungarian authorities further *examined* the question and still consider that Article 184 of the HCC is a suitable provision that covers Paragraph 1 c) of the Convention as well. This crime contains the reference to the commission “*by acting in any other similar manner*” as a criminal conduct. It is considered by the authorities as an “*auxiliary*” manner

⁷ Funds, other financial assets and economic resources’ means assets of every kind, whether tangible or intangible, movable or immovable, however acquired, and legal documents or instruments in any form, including electronic or digital, evidencing title to, or interest in, such assets, including, but not limited to, bank credits, travellers’ cheques, bank cheques, money orders, shares, securities, bonds, drafts and letters of credit.

(besides those that appears in the text explicitly) which would cover the criminal conducts set up in the Convention. Hungary does not consider the modification of the HCC necessary in this respect.

76. The Hungarian authorities mentioned in the follow-up report that in cases where the perpetrator prepares, obtains, possesses etc. the explosives or destructive devices placed on the aircraft without authorisation, then he/she can be punished in accordance with Article 184 and Article 263 (Illegal Possession of Explosives or other Destructive Devices). The new HCC leaves this latter crime unchanged, except that there is one more criminal conduct in it, namely putting of the explosives or destructive devices on the market.

Recommended action No.1 – *The financing of individual terrorists' day-to-day activities should be criminalised as required by SR II.*

77. The criminalisation of the collection and the provision of funds to an individual terrorist for any purposes remains incomplete.

Recommended action No.2 – *The incrimination of the financing of terrorist organisations' day-to-day activities should be clarified by further legislative change and by issuing appropriate guidance to law enforcement agencies and the provision or collection of funds for terrorist organisations' day to day activities should be criminalised.*

78. With the adoption of the new HCC this recommendation has been partially addressed. The provision of support for a criminal organisation has incriminated. However, the *collection* of funds with the purpose of financing any activity of a terrorist organisation (even if not related to terrorism) is still not criminalised.

Recommended action No.3 – *“Funds” should be defined.*

79. The *new HCC* inserts Paragraph (3) to Article 318 which defines assets on the basis of Article 1 Point 1 of the Council Regulation No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

80. This recommended action has been addressed by the Hungarian authorities.

Recommended action No.4 – *Hungary should consider legislative changes to render legal persons liable for more effective prosecutions of TF offences in practice.*

81. The *Action Plan* reflects this recommendation in its second part (impact studies) under point II/B/3 and has laid down the task of considering legislative changes to render legal persons liable for more effective investigations and prosecutions of the TF offence in practice.

82. With the adoption of the new HCC, Hungary has made the *review* of the Act CIV of 2001 on the criminal measures applicable to legal persons. From 1st July 2013, the scope of the modified Act covers cases when the crime is committed with the use of a legal person. One of the obstacles identified in the effective application of this Act is the condition according to which, even in case of the commission of an intentional crime, measures can only be applied against a legal person if the perpetration of such a criminal is act aimed at or has resulted in the legal person gaining benefit.

83. The 4th round MONEYVAL report states that unlike corruption and corruption-related crimes, terrorist financing is usually not committed in order to obtain financial or any other kinds of advantage or benefit. That is why the requirement of *“benefit”* makes the application of measures against a legal person impractical in connection with the crime of terrorist financing. In order to comply with this action point, Hungary has created the criminal liability of legal

persons in those cases when the perpetrator commits a crime with the use of the legal person, even if the crime did not aim at or result in the legal person gaining benefit.

84. Another obstacle of the effective application of the Act is the condition pursuant to which, to establish the criminal liability of the legal person, the criminal liability of the natural person (the perpetrator) must be established. However, this latter fact cannot be determined in every case.

85. For this reason the legislator has significantly widened the scope of those cases when a measure can be applied against a legal person, even if the natural person committing the crime cannot be held criminally liable, though the fact that a crime occurred is obvious. These cases are as follows:

- a) the identity of the perpetrator could not be established in the investigation, thus the investigating authority or the prosecutor suspended the investigation;
- b) the prosecutor has terminated the investigation, since the crime was not committed by the suspected person or on the basis of the data of the investigation it could not be established that the crime was committed by the suspected person;
- c) the court in its acquittal has established that the crime was not committed by the accused or on the basis of the data of the proceedings it could not be established that the crime was committed by the accused;
- d) the perpetrator cannot be punished due to his/her death, mental illness, voluntary restitution or coercion or threat; or
- e) the proceedings have been suspended because the perpetrator stays in an unknown place, he/she has chronic, serious illness or he/she became mentally ill which occurred after the commission of the crime.

86. For those cases when it is possible to apply a measure against a legal person, but the prosecutor or the investigating authority has suspended or terminated the investigation against the natural person, the Act has set up new procedural rules.

Recommended action No. 4 – *The legislation should be revised to ensure proper criminalisation of the acts arising from the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation for placing or causing to place on an aircraft in service a device or substance which is likely to destroy that aircraft.*

87. The Hungarian authorities further examined the question and still consider that Article 184 of the HCC is a suitable provision that covers Paragraph 1 c) of the *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation*.

Effectiveness

88. There is no indication of any investigation, prosecution or conviction in Hungary for the terrorism financing crime.

Overall conclusion

89. The Hungarian authorities have taken steps to address the deficiencies related to SRII in the 4th round MONEYVAL report. With the adoption of the new HCC, the definition of “assets” as required under SRII is now included. Financing of an individual terrorist and the provision of support to a terrorist organisation for any purposes is also properly criminalised. However, a number of technical deficiencies remain, namely:

- While the first part of Art. 318 (1) covers the provision *and collection* of assets, the second part only criminalises the provision of support of an individual terrorist, but not

the *collection* of funds for the same purposes, furthermore, the act of *collection* of funds with the aim of supporting a terrorist group for any purposes is still missing; and

- The financing of certain aspects of the Convention for the Suppression of Unlawful Acts against the safety of Civil Aviation remains unchanged since the 4th round evaluation.

90. In conclusion, the adopted amendments to the Criminal Code would appear to bring Hungarian legislation broadly in line with Special Recommendation II, however certain minor technical deficiencies remain. It is therefore concluded that this Recommendation is now at a level equivalent to largely compliant.

Recommendation 13 – Suspicious transaction reporting (rating PC)

Deficiencies

- *Deficiencies in the incrimination of money laundering and terrorist financing could have an impact on the reporting of suspicious transactions.*
- *No clear reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations.*
- *Attempted transactions are not explicitly covered.*
- *Declining number of STRs give rise to general concerns over the effectiveness of the system.*

Recommended actions

- *There is no clear provision in the AML/CFT Act requiring reporting of predicate offences (including tax matters) to the HFIU. The evaluators consider that a clear provision requiring reporting for all predicate offences or a link in the preventive law to the definition of money laundering and terrorist financing would make the overall provisions in the Hungarian legislation more comprehensive.*
- *There is no explicit mention in Section 23 of the AML/CFT Act and model rules that the reporting obligation also covers attempted transactions, therefore, the Hungarian Authorities are invited to adopt such explicit provisions.*
- *The Hungarian Authorities are invited to review the new electronic reporting system in order to make sure it is not an obstacle for more active reporting and make it more user-friendliness in cooperation with reporting entities. Furthermore, as not all reporting entities might have an internet access (which could become an obstacle for fulfilling reporting obligations), the Hungarian authorities should implement alternative reporting options for such situations.*

Measures adopted and implemented

Deficiency No.1 – *Deficiencies in the incrimination of money laundering and terrorist financing could have an impact on the reporting of suspicious transactions.*

91. This deficiency is dealt with under Recommendation 1 above.

Deficiency No.2 – *No clear reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations.*

92. Section 23 of the AML/CFT Act already held a requirement to report any “*fact or circumstance suggesting money laundering or terrorist financing.*” Section 1 (5) x) of Act LII of 2013 has amended the AML/CFT Act to add a definition of terrorist financing. under Section 3 x). The definition is “*‘terrorist financing’ shall mean the provision or collection of financial instruments required to commit a criminal act under Subsections (1) and (2) of Section 261 of Act IV of 1978 or the crimes specified in Section 318 of the Criminal Code;*”. Section 318 of the Hungarian Criminal Code then sets out the main terrorist financing offence as:

- (1) *Any person who provides or collects assets for ensuring the conditions of a terrorist act, or supports a person preparing to commit a terrorist act – or another person on*

behalf of such a person – with assets is guilty of a felony punishable by imprisonment of two to eight years.

(2) Any person who commits the crime defined in Paragraph (1) with the aim of committing a terrorist act in a terrorist group or in the interest of a member of a terrorist group, or supports the activities of a terrorist group in any other form shall be punishable by imprisonment of five to ten years.

(3) For the purposes of this Article, “assets” shall mean the assets, legal documents and deeds specified in Point 1 of Article 1 of Council Regulation No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

93. With the introduction of these this interpretative provision, Act LII appears to create the explicit link between the preventive law and the money laundering/terrorist financing offences of the HCC, as well as making it clear that the relevant provisions (Section 23) of the AML/CFT Act also require the reporting of the predicate offences. This would appear to remedy the identified deficiency.

Deficiency No.3 – Attempted transactions are not explicitly covered.

94. As stated above Section 23 of the AML/CFT Act already required reporting “*In the event of noticing any information, fact or circumstance indicating money laundering or terrorist financing, the executive officer, employee or contributing family member of the service provider shall, without delay, submit a report to*” the designated officer for reporting suspicious transactions. Section 14 of Act LII has introduced a new subsection (2) to Section 23 of the AML/CFT Act. The requirement now states that:

The executive officer, employee and contributing family member of the service provider shall examine any information, fact or circumstance indicating money laundering or terrorist financing in the case of the transaction order performed or to be performed or the transaction order initiated by the customer but not yet performed,

95. This requirement now clearly includes attempted transactions

Deficiency No.4 – Declining number of STRs give rise to general concerns over the effectiveness of the system.

96. The following statistics indicate that there has been an overall rise in the number of STRs received in the period from 2009 to 2013, following a decline in the period covered by the MER.

Year	STRs received	Proactive dissemination (STRs)	Reactive dissemination (STRs)
2005	11,382	*	*
2006	9,999	*	*
2007	9,475	*	*
2008	9,928	*	*
2009	5,683	442	1,268
2010	7,605	247	1,674
2011	6,776	507	2,711
2012	8,304	653	2,828

2013*	6,529	67	2,014
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*No equivalent data available.

+ To 30 June

97. In the MER it was reported that in the period from 1 January 2005 to 31 December 2009, the HFIU forwarded 235 case reports on suspicious transactions relating to money laundering offences to law enforcement agencies. There has therefore been a significant increase in the number of disseminations.

98. Taking all of these factors into account it would appear that this deficiency has been remedied.

Recommended action No.1 – There is no clear provision in the AML/CFT Act requiring reporting of predicate offences (including tax matters) to the HFIU. The evaluators consider that a clear provision requiring reporting for all predicate offences or a link in the preventive law to the definition of money laundering and terrorist financing would make the overall provisions in the Hungarian legislation more comprehensive.

99. Section 1 (5) w) of Act LII of 2013 has added a definition of money laundering to be included in Section 3 w) of the AML/CFT Act. The definition states “*‘money laundering’ shall mean the crimes specified in Sections 303-303/A of Act IV of 1978 on the Criminal Code, in force until 30 June 2013 (hereinafter referred to as ‘Act IV of 1978’) or in Sections 399-400 of Act C of 2012 on the Criminal Code (hereinafter referred to as ‘Criminal Code’);*”. Sections 399-400 of the Hungarian Criminal Code are the main sections defining the crime of money laundering. These sections define money laundering in terms of “*criminal act*” and “*proceeds of crime*” it would therefore appear that the act of money laundering now covers all predicate offences as set out in the Hungarian Criminal Code. However, although the Hungarian Criminal Code deals with a number of offences concerning customs and excise tax it does not appear to cover offences relating to avoidance of direct income and corporate taxation. The Hungarian authorities consider that this is covered as the criminal offense of budgetary fraud (Section 396) states that: “*Any person who*

a) uses deceit, deception, or trickery or conceals the true facts in respect of budgetary payment obligation or funds deriving from the budget...

b) by unlawfully taking advantage of benefits/favors in respect of budgetary payments obligations,

c) by using funds deriving from the budget for purposes other than approved,

...and thereby causes pecuniary injury to one or more budgets, commits a misdemeanor punishable up to two years of imprisonment”. It is therefore their view that it can be concluded that any type of illicit activity that has a direct link with any type of budgetary payment obligation and thus resolve in budgetary pecuniary injury is covered.

Recommended action No.2 – There is no explicit mention in Section 23 of the AML/CFT Act and model rules that the reporting obligation also covers attempted transactions, therefore, the Hungarian Authorities are invited to adopt such explicit provisions

100. This recommended action is considered under Deficiency No. 3 above.

Recommended action No.3 – The Hungarian Authorities are invited to review the new electronic reporting system in order to make sure it is not an obstacle for more active reporting and make it more user-friendliness in cooperation with reporting entities. Furthermore, as not all reporting entities might have an internet access (which could become an obstacle for fulfilling reporting

obligations), the Hungarian authorities should implement alternative reporting options for such situations.

101. The Hungarian authorities report that they have considered the possible introduction of an alternative reporting system in one of the impact studies. However during the discussions of the draft amendment of the AML/CFT Act, It was concluded that the exclusive requirement to report electronically should remain. Section 23 (4) of the AML/CFT Act as revised by Section 14 of Act LII now states:

“..the service provider shall submit the report to the authority operating as the financial intelligence unit in the form of a secure electronic message,...”

Effectiveness

102. Since the adoption of the 4th round MER there has been an improvement in the level of reporting by financial institutions. This has been backed up by an increase in the level of reports disseminated both proactively and reactively.

Overall conclusion

103. The amendments to the HCC and the draft amendments to the AML/CFT Act would appear to broadly address the technical deficiencies identified in the 4th round MER.

104. With regard to effectiveness, there is has been a consistent improvement in the level of reporting by financial institutions.

105. Overall it is concluded that the majority of the deficiencies identified in the 4th assessment visit report have been remedied. It is therefore concluded that this Recommendation is now at a level equivalent to compliant.

Special Recommendation IV - Suspicious transaction reporting (rating PC)

Deficiencies

- *No clear reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations.*
- *Deficiencies in the criminalisation of terrorist financing limit the reporting obligation.*
- *Attempted transactions are not explicitly covered.*
- *Low number of STRs gives rise to concerns over effectiveness of implementation*

Recommended actions

- *The small number of STRs related to terrorist financing raises concerns about effective implementation. More outreach and guidance to reporting sector is necessary in order to increase the number of STRs related to TF.*
- *Not all designated categories of offences are fully covered as predicates, as incrimination of the financing of an individual terrorist or terrorist organisation is not fully covered. The Hungarian authorities should take legislative measures in order to ensure that there is a clear obligation to report to the FIU when a financial institution suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism.*

Measures adopted and implemented

Deficiency No.1 – *No clear reporting obligation covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations.*

106. See Secretariat assessment of deficiency No.2 to Recommendation 13 above.

Deficiency No.2 – *Deficiencies in the criminalisation of terrorist financing limit the reporting obligation.*

107. This deficiency is dealt with under Special Recommendation II above.

Deficiency No.3 – *Attempted transactions are not explicitly covered.*

108. See Secretariat assessment of deficiency No.3 to Recommendation 13 above.

Deficiency No.4 – *Low number of STRs gives rise to concerns over effectiveness of implementation.*

109. The authorities state that this deficiency is considered in the Action Plan which calls for intensified efforts on the part of the HFIU and its supervisory organs to draw the attention of and provide guidance to service providers in order to increase the number of suspicious transaction reports. The HFIU and the supervisory authorities of both the financial and non-financial sector have made efforts to raise awareness as regards CFT issues particularly through training.

110. It is, however, noted that the volume of reporting of reporting of suspicious transactions linked to the financing of terrorism, as set out in the following table, has continued to decline with only six reports being received in the period since the adoption of the 4th round MER.

	2005	2006	2007	2008	2009	2010	2011	2012	2013*
Banks	3	2	5	12	7	1	0	2	2
Other	0	0	0	0	0	0	0	1	0

* To June 2013

Recommended action No.1 – *The small number of STRs related to terrorist financing raises concerns about effective implementation. More outreach and guidance to reporting sector is necessary in order to increase the number of STRs related to TF.*

111. See under Deficiency No.4 above.

Recommended action No.2 – *Not all designated categories of offences are fully covered as predicates, as incrimination of the financing of an individual terrorist or terrorist organisation is not fully covered. The Hungarian authorities should take legislative measures in order to ensure that there is a clear obligation to report to the FIU when a financial institution suspects or has reasonable grounds to suspect that funds are linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism*

112. This Recommended action is considered under Special Recommendation II above.

Effectiveness

113. As set out under Deficiency No.4 above, the volume of reporting of suspicious transactions linked to the financing of terrorism has continued to decline. This continued decline does bring into question the effectiveness of the reporting system.

Overall conclusion

114. As with the assessment of Recommendation 13 above, the new HCC and the amendments to the AML/CFT Act would appear to address the technical deficiencies identified in the 4th round MER. There are, however, concerns about the continued decline in the level of reporting of suspicious transactions linked to the financing of terrorism as even false positives do not appear to have been reported.

115. It is overall concluded that this Recommendation is now at a level equivalent to largely compliant.

III. Review of the measures taken in relation to the Key Recommendations

Recommendation 26 – The FIU (rating PC)

Deficiencies

- *There exist some deficiencies regarding the operational independence and autonomy of the HFIU.*
- *The absence of a timeframe in legislation for indirect access to information on a timely basis in order to enable the HFIU to properly undertake its functions, including the analysis of STR could undermine its operational effectiveness.*
- *The low number of case reports submitted to law enforcement agencies for initiating common and organised crime related ML brings into question the effectiveness of the HFIU as well as the absence of indictments arising from the dissemination of STRs.*

Recommended actions

- *The HFIU should be provided by the Law direct (or timely indirect) access to all law enforcement information, including intelligence information as this would significantly improve its effectiveness to undertake its analytical function*
- *The Hungarian authorities should consider increasing the suspension period and should introduce a timeframe to ensure that the HFIU has indirect access, on a timely basis, to the relevant financial, administrative and law enforcement information that requires to properly undertake its, functions, including the analysis of STR.*
- *The FIU should carry out a more in depth analysis of the reports, aimed at adding value to the STRs received, with the view of improving the quality of the information it disseminates. An enhanced analysis of the STRs aimed at selecting those worth investigating and at improving the quality of information that is disseminated to law enforcement for initiating new criminal investigations would make AML/CFT systems more effective and would, therefore make a more effective use of law enforcement resources and provide a more robust buffer between the reporting and investigation stages.*
- *The Hungarian authorities should adopt clear legal provisions in order to assure the operational independence and autonomy of the HFIU and grant the head of HFIU with powers to decide on dissemination of STRs.*

Measures adopted and implemented

Deficiency No.1 – *There exist some deficiencies regarding the operational independence and autonomy of the HFIU.*

116. At the time of the on-site visit, the Hungarian FIU (HFIU) was a department of the Central Criminal Investigation Bureau of the Hungarian Customs and Finance Guard. On the 1st January 2011, the Hungarian Customs and Finance Guards and the Tax Authority merged into the National Tax and Customs Administration (NTCA). At the same time, the HFIU was reorganised and became an independent department under the umbrella of the Directorate General for Criminal Affairs of the NTCA. Due to this organisational change, the head of HFIU gained the exclusive power to decide on dissemination. The Hungarian authorities have additionally explained that as of 1 January 2011 the HFIU has gained a higher status in the organisational hierarchy: it has been raised from the level of its former organisational status, which was “*osztály*” (department) to the level of “*főosztály*” (main/high department). Therefore, the authorisation for independent dissemination in 2011 derived from the fact that the higher status in the organisational hierarchy gained by the HFIU is accompanied with larger decision-making independence. This decision-making independence was laid down in the internal rules of the NTCA Directorate General for Criminal Affairs.

117. Furthermore, as of 1 January 2012 there was a further restructuring based on the amendments of the Law on the NTCA and the Government Decree on the Organisational Structure of the NTCA, which serve as the legal basis for the operational independence (according to these provisions the HFIU is the organisational division that carries out the FIU functions). The NTCA Code of Conduct (which is an order of the Minister of National Economy) reaffirms this by breaking down the different roles of the HFIU including the dissemination function. In addition, the document on internal rules of the NTCA Central Office specifies that the Head of the HFIU signs the documents for dissemination.

118. Nevertheless, the authorities also conducted an *impact study* on the basis of the *Action Plan* (II/E/6). The impact study reviewed the actual system in the context of FIU independence and autonomy as well as other international concepts. In line with the findings of the impact study, the Hungarian Parliament amended the Act on the NTCA and the Government Decree on the organization of the NTCA. Subsection 7 of Section 13 of the Act CXXII of 2010 on National Tax and Customs Administration clearly lays down that NTCA carries out the FIU tasks and Subsection 1 of Section 41 of the Government Decree 273/2010 (XII.9) on the organisation of the NTCA and designation of certain organs designates explicitly the HFIU for carrying out the FIU tasks.

119. Following the legal amendments, the HFIU has become an autonomous department within the central office of NTCA since 1 January 2012. Within this new organisational structure, the HFIU remains in the field of criminal affairs and it is supervised by the vice-president of NTCA in charge of criminal affairs. Its Hungarian name has been changed to “*Pénzmosás Elleni Információs Iroda*” (Anti-Money Laundering Intelligence Bureau); however, it still uses the “Hungarian Financial Intelligence Unit” (HFIU) in English language correspondence or documents.

120. According to the Hungarian authorities, operational independence and autonomy is provided by this new organisational structure. The Order 23/2011 (VI.30) of the Minister of National Economy on the Organizational and Operational Regulation of NTCA (NTCA Code of Conduct) under point 7.2 of Annex 2 clearly regulates that the HFIU is in charge of analysing the reports (STRs), disseminating information, exchanging information with foreign FIUs, carrying out its supervisory function as well as carrying out its tasks determined under the FRM Act. In addition the document on the internal rules of the NTCA Central Office specifies that the Head of the HFIU signs the documents for dissemination

121. The functional independence was also increased as according to the new provisions, the head of HFIU has competences to make autonomous decisions related to human resources issues. These competences derive from the NTCA Code of Conduct.

122. The HFIU has also moved from its old offices on 1 January 2012 to a totally separated section of the building where more secured offices are provided. Only the staff of the HFIU is authorised to enter this section.

123. As regards *budgetary independence* the HFIU has an increased influence on budgetary decisions within the new structure although there are no legal provisions setting out the budgetary independence of the HFIU.

124. Overall, from a desk-based review, it would appear that the HFIU has a greater degree of operational independence that was evident at the time of the on-site visit.

Deficiency No.2 – *The absence of a timeframe in legislation for indirect access to information on a timely basis in order to enable the HFIU to properly undertake its functions, including the analysis of STR could undermine its operational effectiveness.*

125. Section 15 of Act LII of 2013 has introduced amendments to Section 24 of the AML/CFT Act which sets out the requirements concerning suspension of transactions. Although many of the requirements remain the same as at the time of the 4th round MER, the amendments allow the HFIU to prolong the suspension of a transaction for an additional three working days if such extension is required for the analysis and dissemination of information.

Deficiency No.3 – *The low number of case reports submitted to law enforcement agencies for initiating common and organised crime related ML brings into question the effectiveness of the HFIU as well as the absence of indictments arising from the dissemination of STRs.*

126. The following table sets out proactive and reactive dissemination of reports by the HFIU since the 4th round MER was adopted.

Year	STRs received	Proactive dissemination	Reactive dissemination
2009	5,683	442	1,268
2010	7,605	247	1,674
2011	6,776	507	2,711
2012	8,304	653	2,828
2013 ⁺	6,529	67	2,014

⁺ To 30 June

127. It is clear that there has been an increase in both proactive and reactive dissemination of reports by the HFIU. In particular, there has been a significant increase in reactive disseminations which indicates that law enforcement agencies are making greater use of the HFIU.

128. The law enforcement agencies have started to send feedback to the HFIU on the reports disseminated. Feedback was received on over 30% of the reports disseminated. The chart below indicated that over 90% of the feedback received was positive.

Disseminated STRs	Feedback (on the basis of STRs)	Positive feedback (the information was used in the course of the investigation)	Negative feedback (the information was not used in the course of the investigation)	No feedback (on the basis of STRs)
1661	503	461	42	1158

Recommended action No.1 – *The HFIU should be provided by the Law direct (or timely indirect) access to all law enforcement information, including intelligence information as this would significantly improve its effectiveness to undertake its analytical function*

129. Section 16 of the Act LII of 2013 has added a new Section 25/A to the AML/CFT Act. The new Section 25/A (4) states “*When there is any information, fact or circumstance indicating money laundering or terrorist financing, the authority operating as the financial intelligence unit may, in its own capacity or based on the request of a foreign national financial intelligence unit, access the data managed by central administrative agencies, courts or supervisory bodies mentioned under Section 5.*” Section 5 includes:

- The Hungarian Financial Services Authority;
- The Hungarian National Bank;

- The State Tax Authority;
- The Chamber of Hungarian Auditors;
- Competent regional bar association in which the lawyer in question is registered;
- Competent regional chamber in which the notary public in question is registered; and
- Trade licensing authorities.

Recommended action No.2 – *The Hungarian authorities should consider increasing the suspension period and should introduce a timeframe to ensure that the HFIU has indirect access, on a timely basis, to the relevant financial, administrative and law enforcement information that requires to properly undertake its, functions, including the analysis of STR.*

130. See Deficiency 2 above.

Recommended action No.3 – *The FIU should carry out a more in depth analysis of the reports, aimed at adding value to the STRs received, with the view of improving the quality of the information it disseminates. An enhanced analysis of the STRs aimed at selecting those worth investigating and at improving the quality of information that is disseminated to law enforcement for initiating new criminal investigations would make AML/CFT systems more effective and would, therefore make a more effective use of law enforcement resources and provide a more robust buffer between the reporting and investigation stages.*

131. See deficiency 3 above.

Recommended action No.4 – *The Hungarian authorities should adopt clear legal provisions in order to assure the operational independence and autonomy of the HFIU and grant the head of HFIU with powers to decide on dissemination of STRs.*

132. See deficiency 1 above.

Effectiveness

133. It is not possible to adequately assess improvements in effectiveness from a desk-based review. There has been an increase in the number of disseminated reports by the HFIU. In particular, there has been a significant increase in reactive disseminations which indicates that law enforcement agencies are making greater use of the HFIU. Furthermore the feedback from STR recipients indicates that the distributions are considered to be useful.

Overall conclusion

134. From a desk review it can be concluded that the deficiencies regarding the operational independence and autonomy of the HFIU appear to have been resolved by the Hungarian authorities. There have been amendments to the provisions on postponement of transactions which would appear to give the HFIU more time to analyse transactions if require. The number of disseminations by the HFIU has also increased.

135. Taking into consideration the enhanced autonomy provided to the HFIU and the progress reported on the effectiveness issues it can be concluded that from this desk review compliance with recommendation 26 is now at a level equivalent to largely compliant or compliant.

Recommendation 35 – Conventions (rating PC)

Deficiencies

- *Reservations about certain aspects of the implementation of the Vienna Convention, Palermo Convention and the TF Convention.*
- *Effectiveness of the implementing the standards in relation to ML and TF give rise to doubts.*
- *There is no definition of “funds” in the Criminal Code.*

- Some of the acts defined in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are not criminalised as terrorist offences.
- Legal persons do not appear to be liable for TF offences as required by UN TF Convention.

Recommended actions

- Hungary has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. The legislation has been amended in order to implement the Conventions, but existing legislation does not cover the full scope of these Conventions as stated above and in the individual discussion on R. 1 and SR II. Therefore, it is recommended that Hungary amend its Criminal Code to fully cover ML and TF offences and thus fully implement the Vienna, Palermo and Terrorist Financing Convention.

Measures adopted and implemented

Deficiency No.1 – Reservations about certain aspects of the implementation of the Vienna Convention, Palermo Convention and the TF Convention.

136. Since the adoption of the 4th round mutual evaluation report, Hungary has taken steps to bring the physical elements of money laundering more into line with the Vienna and Palermo conventions (as described under Recommendation 1). However, deficiencies still remain in respect of the self-laundering criminalisation.

Deficiency No.2 – Effectiveness of the implementing the standards in relation to ML and TF give rise to doubts.

137. As reported by the Hungarian authorities, a number of third party ML convictions have been achieved since the 4th round MER.

Deficiency No.3 – There is no definition of “funds” in the Criminal Code.

138. The new HCC inserts Paragraph (3) to Article 318 which defines assets on the basis of Article 1 Point 1 of the EU Council Regulation No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism. This recommendation has been addressed.

Deficiency No.4 – Some of the acts defined in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are not criminalised as terrorist offences.

139. The new HCC leaves this latter crime unchanged, except for including one additional criminal conduct, namely the putting of the explosives or destructive devices on the market.

Deficiency No.5 – The legal persons do not appear to be liable for TF offences as required by UN TF Convention.

140. As described under SR II above, this recommendation should be addressed with the review of the Act CIV of 2001 on the criminal measures applicable to legal persons.

Recommended action No.1 – Hungary has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. The legislation has been amended in order to implement the Conventions, but existing legislation does not cover the full scope of these Conventions as stated above and in the individual discussion on R. 1 and SR II. Therefore, it is recommended that Hungary amend its Criminal Code to fully cover ML and TF offences and thus fully implement the Vienna, Palermo and Terrorist Financing Convention.

141. Hungary has amended the HCC to increase compliance with Recommendation 35. However, deficiencies remain as described under R 1 and SR II.

Effectiveness

142. Money laundering convictions have been achieved by the Hungarian authorities since the last evaluation report.

Overall conclusion

143. Steps have been taken by the Hungarian authorities in order to address the deficiencies identified in the 4th round report. However, deficiencies still remain as described under SR II above. The level of compliance with R35 is now at a level equivalent to largely compliant.

Special Recommendation I – Ratification and implementation of the UN instruments (rating PC)**Deficiencies**

- *Implementation of UNSCRs 1373 is not yet sufficient.*
- *There is no definition of “funds” in the Criminal Code.*
- *Some of the acts defined in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are not criminalised as terrorist offences.*
- *Legal persons do not appear to be liable in practice for TF offences as required by UN TF Convention.*

Recommended actions

- *Hungary has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. The legislation has been amended in order to implement the Conventions, but existing legislation does not cover the full scope of these Conventions as stated above and in the individual discussion on R. 1 and SR II. Therefore, it is recommended that Hungary amend its Criminal Code to fully cover ML and TF offences and thus fully implement the Vienna, Palermo and Terrorist Financing Convention.*
- *Measures still need to be taken in order to properly implement UNSCRs 1267 and 1373. The Hungarian authorities should particularly introduce a procedure for making possible the freezing of funds and assets held by EU-internals in all instances set forth by SR.III.*

Measures adopted and implemented

Deficiency No.1 – *Implementation of UNSCRs 1373 is not yet sufficient.*

144. As described under SR III below, steps have been taken by the Hungarian authorities in order to address the 4th round report action points. Awareness raising programmes were undertaken by the HFIU and relevant SROs for the accountants, tax advisors/consultants, real estate agents and notaries, in respect of the UNSCR lists. However, some action points are incompletely addressed or still pending.

Deficiency No.2 – *There is no definition of “funds” in the Criminal Code.*

145. The *new HCC* inserts Paragraph (3) to Article 318 which defines assets on the basis of Article 1 Point 1 of the Council Regulation No. 2580/2001 of 27 December 2001 on specific restrictive measures directed against certain persons and entities with a view to combating terrorism.

146. This action point has been addressed with the adoption of the new HCC which entered into force and effect in July 2013.

Deficiency No.3 – *Some of the acts defined in the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation are not criminalised as terrorist offences.*

147. The new HCC leaves this latter crime unchanged, except that there is one more criminal conduct included, namely the putting of the explosives or destructive devices on the market.

Deficiency No.4 – *Legal persons do not appear to be liable in practice for TF offences as required by UN TF Convention.*

148. As described under SRII above, this recommendation should be addressed with the review of the Act CIV of 2001 on the criminal measures applicable to legal persons.

Recommended action No.1 – *Hungary has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. The legislation has been amended in order to implement the Conventions, but existing legislation does not cover the full scope of these Conventions as stated above and in the individual discussion on R. 1 and SR II. Therefore, it is recommended that Hungary amend its Criminal Code to fully cover ML and TF offences and thus fully implement the Vienna, Palermo and Terrorist Financing Convention.*

149. Hungary has amended the HCC to improve compliance with SRI. However, some deficiencies still remain as described under R1 and SRII.

Recommended action No.2 – *Measures still need to be taken in order to properly implement UNSCRs 1267 and 1373. The Hungarian authorities should particularly introduce a procedure for making possible the freezing of funds and assets held by EU-internals in all instances set forth by SR.III.*

150. The impact study conducted by the Hungarian authorities concludes that the use of Article 75 of the Treaty on the Functioning of the European Union (TFEU) to implement binding legislation on EU-internals would provide for a clear and effective legal basis for all the Member States without separate regimes. Hungary supports the European Commission's intention in this matter which was also highlighted in expert level meetings with EU officials and national authorities.

Effectiveness

151. There have been no investigations or convictions for TF in Hungary. No assets have been frozen based on UNSCR lists.

Overall conclusion

152. As described under R1, SRII and SRIII, significant progress has been achieved since the 4th round MER. However, deficiencies still remain as described under SRII above. Nonetheless, taking into account the progress achieved, it is concluded that Special Recommendation I is now at a level equivalent to largely compliant.

Special Recommendation III – Freeze and confiscate terrorist assets (rating PC)

Deficiencies

- *Lack of awareness in the non-banking sector of the UN and EU lists gives rise to concerns of effectiveness of implementation.*
- *Within the context of UNSCR 1373, there is no national mechanism for evaluation of requests to freeze the funds of EU internals (citizens or residents).*
- *Hungary does not have an effective and publicly known national procedure for the purpose of delisting.*
- *Hungary does not have effective national procedure for unfreezing, in a timely manner, requests upon verification that the person or entity is not designated person.*
- *The scheme for communication of actions taken under freezing mechanisms appears to be fragmented and may not operate effectively.*

- *Apart from the HFSA, there is no clear supervision by other regulators of compliance with SR.III and no clear capacity by them to sanction in the event of non-compliance.*
- *The deadline for freezing transactions (assets) by the service providers is relatively short and that this is a significant gap in the system in terms of having effective procedures to freeze terrorist funds without delay.*

Recommended actions

- *The Hungarian authorities should provide more guidance to the private sector, especially the non-banking financial industry and DNFBPs, on the freezing obligations stemming from the international standards. The mechanism on dissemination of the lists should also be improved. In particular, the proposed plan to examine the system of coordination and dissemination of lists should be implemented as soon as possible.*
- *The sample rules should be reviewed and brought up to-date on a regular basis.*
- *Apart from the HFSA, the competence of all supervisory authorities on monitoring effectively the compliance of reporting entities with the FRM Act and imposing civil, administrative or criminal sanctions for failure to comply with the Act should be made clear in the AML/CFT Act.*
- *The Hungarian authorities should provide a procedure for making possible freezing of funds and assets held by EU-internals in all instances set forth by SR.III.*
- *The Hungarian authorities should provide an effective and publicly known national procedure for the purpose of delisting.*
- *The effective national procedure for the purpose of unfreezing requests in a timely manner upon verification that the person or entity is not a designated person should be established.*
- *The deadline for freezing transactions (assets) by the service providers is relatively short and should be extended (especially in the case of international transactions) in order to be able to perform necessary checks.*

Measures adopted and implemented

Deficiency No.1 – *Lack of awareness in the non-banking sector of the UN and EU lists gives rise to concerns of effectiveness of implementation.*

153. The *Action Plan* addresses this deficiency in its second part (impact studies) under point II/D/1. The Ministry of Foreign Affairs has reviewed the procedure of disseminating the UN sanctions lists. In order to improve the efficiency of the distribution at the central level of the public administration, new points of contact have been designated by the relevant ministries.

154. The adoption of the model rules is in process and it is based on the amendments of the AML/CFT Act and the FRM ACT.

155. The extended coordination between the public administration officers has also enhanced the cooperation between the supervisory authorities as all these institutions provide experts to exchange information on best practice regarding the implementation of sanctions provisions.

156. Point III/2 (Training, consultation) of the *Action Plan* required enhanced guidance to service providers (especially non-banking financial service providers and non-financial providers) on the execution of financial and asset-related restrictive measures by supervisory authorities pursuant to international requirements.

157. This deficiency of the Report was also addressed by the *relevant supervisory authorities* through extensive outreach to the sector including updates of homepages and training-seminars. The HFIU has provided several consultations and other trainings to the service providers on both implementation of financial restrictive measures and compliance with obligations stemming from the AML/CFT rules. As regards the non-banking sectors, one of the

items of the consultation agenda for cooperative savings banks, accountants, tax advisors/consultants and real estate agents was the implementation of financial sanctions. As regards the supervisory issues, the HFIU conducted an off-site inspection covering 188 accountants/tax advisors in 2012. One of the issues examined by off-site inspections was to detect whether service providers complied with their obligation to train their employees about financial restrictive measures.

158. As to the mechanism of dissemination of EU legislation determining, amending or repealing financial restrictive measures, all of the relevant EU legislation is uploaded on a timely basis and made available on the website of the HFIU/NTCA.

159. The Hungarian Trade Licensing Office (HTLO) has put more information about restrictive measures on its web-site. It has also changed its internal rules and increased the number of presentations (meetings/conferences) to improve the awareness of service providers, including their awareness of their potential criminal liability.

160. The Notarial Chamber has provided guidance to civil law notaries concerning their obligations on tasks relating to the prevention and combating of money laundering and terrorist financing, including the sanctions provisions. Furthermore, the Notarial Chamber regularly makes civil law notaries aware of their reporting obligation by means of information leaflets focusing on the fight against money laundering and financing of terrorism (last updated in 2012) and in the framework of the general training on the notarial profession.

161. The authorities reported that the HFIU acts as the authority in charge of executing financial restrictive measures ordered by the EU. In one particular case (due to the interaction between a bank and the HFIU), a court decision was issued, which prohibited conducting any transaction for more than 40 million EUR indirectly linked to a listed entity. Although this case proved not to be TF related, it emphasises that the system of enforcing financial restrictive measures is working in practice.

Deficiency No. 2 – *Within the context of UNSCR 1373, there is no national mechanism for evaluation of requests to freeze the funds of EU internals (citizens or residents).*

162. The *Action Plan* reflects this recommendation in its second part (impact studies) under point II/D/2 and laid down the task to have an overview of measures on freezing of funds and assets held by EU-internals.

163. The *impact study* reiterated the general notion that in Hungary, the measures to freeze funds or other assets of terrorists, those who finance terrorism and terrorist organisations in accordance with the United Nations Security Council Resolutions (UNSCR), are mainly implemented by means of directly applicable European Council Regulations. Separate sanctions regimes are applicable for non-EU-based entities or non-EU residents or citizens listed as terrorists (EU externals) and for so called EU-internals. For the latter, the EU has adopted two Council Common Positions, No. 2001/930/CFSP and No. 2001/931/CFSP on the fight against terrorism, which are also applicable to persons, groups and entities based or residents within the EU (EU-internals); however, their implementation requires subsequent enactment of either binding EU Regulations or national legislation.

164. UNSCR 1373 was implemented by the directly applicable Council Regulation (EC) No 2580/2001 of December 27 2001 which does not directly cover EU-internal terrorists. The study draws attention to the fact that only Article 4 of Common Position No. 2001/931/CFSP applies for EU-internal terrorists which requires only an extended police and judicial cooperation in these cases.

165. Although no separate provisions exist for freezing measures for EU-internals' assets as laid down in the FRM Act, a judicial-based procedure is applicable for terrorist funds including the possibility of seizure (freezing), confiscation, sequestration and precautionary measures. This includes requests from other Member States authorities or the execution from foreign court orders.

166. The impact study concludes that the use of Article 75 of the Treaty on the Functioning of the European Union (TFEU) to implement binding legislation on EU-internals would provide for a clear and effective legal basis for all the Member States without separate regimes. Hungary supports the European Commission's intention in this matter which was also highlighted on expert level meetings with EU officials and national authorities.

167. In the presence of criminal procedural tools which provide a solution to the remaining issues, it is not considered to be proportionate to have a separate national legislation on EU-internals and it could have an effect of creating parallel legislation with the EU.

Deficiency No. 3 – Hungary does not have an effective and publicly known national procedure for the purpose of delisting.

168. The *Action Plan* reflects this issue in its second part (impact studies) under point II/D/3. According to the review, Hungary has *established a procedure* for the purpose of sanctions delisting in relation to the UN Security Council resolutions by Government Resolution 1444/2011/XII.20./ adopted on December 20, 2011. This resolution determines that the citizens and residents of Hungary as well as other entities based in Hungary are required to address their delisting requests to the relevant UN Security Council Sanctions Committees directly through the focal point of the United Nations established under United Nations Security Council resolution 1730 (2006). Hungary has informed the Chairpersons of the Sanctions Committees about this decision. The Ministry of Foreign Affairs has at the same time prepared and made available on the website of the government guidelines, informing the public how to proceed with both UN and EU delisting requests.

Deficiency No. 4 – Hungary does not have an effective national procedure for unfreezing, in a timely manner, requests upon verification that the person or entity is not designated person.

169. The *Action Plan* reflects this deficiency and action point in its second part (impact studies) under point II/D/4 and has laid down a task to review the provisions on an effective national procedure for unfreezing requests in a timely manner upon verification that the person or entity is not a designated person.

170. On the basis of the *Action Plan* an impact study has been prepared by the MNE (in collaboration with other relevant authorities) in order to review the provisions on the national procedure for unfreezing requests (upon verification that the person or entity is not a designated person) and if needed to modify the FRM Act or the relevant legal acts.

171. An overview of the present procedure, based on the legal provisions of the FRM Act and the relevant legal acts, has been conducted in order to consider effectiveness and timeframes. According to the FRM Act, the competent court shall order the freezing in a non-trial legal procedure on the basis of a notice from the HFIU. It is the Hungarian authorities' view that this non-trial procedure provided for freezing cases allows for a fast decision by the court. However, the evaluators did not consider it as a publicly-known procedure for unfreezing, in a timely manner, the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

172. In the view of the Hungarian authorities, the competent court responsible for freezing according to the FRM Act, can also decide on unfreezing upon a request in a non-trial

procedure, since the enforcement order could be appealed based on the general rules of the Act LIII of 1994 on Judicial Enforcement and the Act III of 1952 on the Code of Civil Procedure. Furthermore, it has to be mentioned, that the court can terminate the enforcement order if the conditions for ordering the freezing of assets no longer apply under Community law.

173. In conclusion, it is the view of the Hungarian authorities that, in the absence of judicial practice and statistics, it is not possible, or it is difficult to decide whether the ordinary appeal process is an effective and appropriate mechanism to remedy (in a timely manner) the above mentioned situation. On the basis of the other statistics regarding the average duration of the appeal processes in courts, the Hungarian authorities are of the opinion that the ordinary appeal process can be an appropriate and effective tool.

174. The Hungarian authorities state that, under the framework of a future comprehensive review of the FRM Act, some options are going to be reconsidered and consequently the relevant legal acts may be modified (reference to the rules regarding the ordinary appeal process and an exact timeframe can be inserted into the FRM Act; exact timeframe for the appeal of the enforcement order can be inserted into the Act LIII of 1994 on Judicial Enforcement; or special (separate) appeal process (and timeframe) can be set up in the FRM Act).

Deficiency No. 5 – The scheme for communication of actions taken under freezing mechanisms appears to be fragmented and may not operate effectively.

175. According to the Hungarian authorities, both the coordination between authorities and the dissemination of legal acts towards the private sector have been reviewed.

176. In order to improve the efficiency of the distribution at the central level of the public administration, new points of contact have been designated by the relevant ministries. The authorities – including those with supervisory functions on sanctions regulations – are included in the national working group on AML/CFT issues.

177. In addition, the FRM Act itself provides for information sharing between authorities and other EU member states authorities as it requires the authorities, competent courts and Company Registration Court, together with the MNE to share information regarding asset freezes and also to forward this information towards the Member States and Institutions of the European Union.

178. The authorities are of the opinion that these formal and informal channels of communication (partly embedded in national legislation) operate effectively, although few cases have emerged which would allow a detailed assessment of the system.

179. An additional important element of the enhancement of the effective use of the system is the new legal basis for the exchange of information between the HFIU in its AML/CFT function and the authority being responsible for the execution of financial and asset-related restrictive measures. According to Subsection (2) of Section 26 of the amended AML/CFT Act, the HFIU in its AML/CFT function, may provide information to the authority being responsible for the execution of financial and asset-related restrictive measures.

Deficiency No. 6 – Apart from the HFSA, there is no clear supervision by other regulators of compliance with SR.III and no clear capacity by them to sanction in the event of non-compliance.

180. The *Action Plan* addresses this deficiency in its first part (legislative tasks) under point I/C and requires that necessary changes should be made to ensure that all supervisory authorities have a clear legal basis to monitor effectively the compliance of reporting entities

with the FRM Act and impose civil, administrative or criminal sanctions for failure to comply with the Act or the underlying EU regulations.

181. This legal deficiency is considered to be remedied by the review of the AML/CFT Act which includes also a wide-ranging review of the FRM Act.

182. On the basis of this recommendation, the amendments of the AML/CFT Act and the FRM Act include modifications regarding the obligations of the supervisory authorities. According to Section 35/B of the amended AML/CFT Act, the supervisory authorities must ensure the compliance of the service providers with the FRM Act and the EU regulations within the scope of the FRM Act. This new provisions provides for a clear basis for all supervisory bodies in enforcing the FRM Act.

Deficiency No. 7 – The deadline for freezing transactions (assets) by the service providers is relatively short and that this is a significant gap in the system in terms of having effective procedures to freeze terrorist funds without delay.

183. The amendments to the AML/CFT Act modify the obligations of service providers and authorities operating asset registrations and the applicable measures. The service providers and authorities operating asset registrations are obliged to report to the authority being responsible for the execution of financial and asset-related restrictive measures (HFIU), without delay, any data, fact, circumstance indicating that the individual or organisation subject to financial and asset-related restrictive measures gains advantage from a transaction. The HFIU is required to examine the report in the case of a domestic transaction within two working days and in the case of a non-domestic transaction within four working days. The HFIU is also required to examine the report sent by the authorities operating asset registrations within three working days.

184. After sending the report, the service provider is obliged to refrain from carrying out the transaction within two or four days depending on domestic or non-domestic transaction which involves funds or economic resources covered by the financial and asset-related restrictive measures, unless otherwise instructed by the HFIU.

185. The new AML/CFT Act as well as in the FRM Act, address the identified deficiency and extends the freezing timeframe allowing the HFIU to make the necessary checks.

Recommended action No.1 – The Hungarian authorities should provide more guidance to the private sector, especially the non-banking financial industry and DNFBPs, on the freezing obligations stemming from the international standards. The mechanism on dissemination of the lists should also be improved. In particular, the proposed plan to examine the system of coordination and dissemination of lists should be implemented as soon as possible.

186. According to the information provided by the Hungarian authorities awareness raising programmes were deployed by the HFIU and relevant SROs for the accountants, tax advisors/consultants, real estate agents and notaries. However, apart from the up-dating of the various websites, there is no information about dedicated training for the non-banking financial institutions, such as insurance companies, securities intermediaries, MTS or exchange offices. This action point appears to be only partially addressed.

Recommended action No.2 – The sample rules should be reviewed and brought up to-date on a regular basis.

187. Service providers are required to prepare internal rules for performing their tasks related to the obligations determined in the AML/CFT Act. The supervisory bodies are required to provide sample rules as non-binding recommendations for the service providers.

188. The *Action Plan* reflects this recommendation of the MONEYVAL report in point I/B1 and determines the enactment of legal provisions to ensure that the model rules issued by supervisory authorities are reviewed and brought up-to-date on a regular basis. This task was included in the general overview of the legal provisions of the AML/CFT Act.

189. The amendments brought to the AML/CFT Act include the obligation to prepare sample rules and internal rules which shall be updated on a regular basis. According to the Section 33 of the amended AML/CFT Act, the supervisory authorities are obliged to overview and modify sample rules every two years. Section 45 provides that, for the purposes of drawing up the internal rules, the supervisory bodies shall, in collaboration with the HFIU and in agreement with the Minister for National Economy, provide sample rules as non-binding recommendations 45 days after the entry into force of the Act. The service providers (including the law firms) are then required to overview and modify their internal rules due to the changes in the sample rules or internal policies within 90 days.

190. With the adoption of the AML/CFT Law this recommendation appears to be addressed.

Recommended action No.3 – Apart from the HFSA, the competence of all supervisory authorities on monitoring effectively the compliance of reporting entities with the FRM Act and imposing civil, administrative or criminal sanctions for failure to comply with the Act should be made clear in the AML/CFT Act.

191. The amendments of the AML/CFT Act and the FRM Act includes modifications regarding the obligations of the supervisory authorities. According to Section 35/B of the draft amendment of the AML/CFT Act, the supervisory authorities must ensure the compliance of the service providers with the FRM Act and the EU regulations within the scope of the FRM Act.

192. This recommendation appears to be implemented with the adoption of the new AML/CFT Law.

Recommended action No.4 – The Hungarian authorities should provide a procedure for making possible freezing of funds and assets held by EU-internals in all instances set forth by SR.III.

193. The impact study carried out by the Hungarian authorities concludes that the use of Article 75 of the Treaty on the Functioning of the European Union (TFEU) to implement binding legislation on EU-internals would provide for a clear and effective legal basis for all the Member States without separate regimes. Hungary supports the European Commission's intention in this matter which was also highlighted on expert level meetings with EU officials and national authorities.

194. The Hungarian authorities consider that in the presence of criminal procedural tools which provide a solution to the remaining issues, it would be not proportionate to introduce a separate national legislation on EU-internals and it could have an effect of introducing parallel legislation with the EU.

195. The situation remains the same as described at the time of the 4th round report.

Recommended action No.5 – The Hungarian authorities should provide an effective and publicly known national procedure for the purpose of delisting.

196. Hungary has established a procedure for the purpose of delisting in relation to the UN Security Council resolutions by the resolution of the Government adopted on December 20, 2011 (No. 1444/2011. /XII.20./). The Ministry of Foreign Affairs has at the same time prepared and made available on the website of the government the guidelines, informing the public how to proceed with both UN and EU delisting requests.

197. From a desk review it appears that this recommendation has been addressed.

Recommended action No. 6 – *The effective national procedure for the purpose of unfreezing requests in a timely manner upon verification that the person or entity is not a designated person should be established.*

198. In the view of the Hungarian authorities the competent court responsible for freezing assets according to the FRM Act shall also decide on unfreezing upon a request in a non-trial procedure. The court shall terminate the enforcement order if the conditions for ordering the freezing of assets no longer apply under Community law.

199. No changes in the Hungarian legislation have been adopted in this respect since the 4th round MER.

Recommended action No. 7 – *The deadline for freezing transactions (assets) by the service providers is relatively short and should be extended (especially in the case of international transactions) in order to be able to perform necessary checks.*

200. The new AML/CFT Act implements the recommendation of MONEYVAL as regards the extension of timeframe for the HFIU to make the necessary checks.

Effectiveness

201. There were no cases of terrorist assets freezing in Hungary.

Overall conclusion

202. Steps have been taken by the Hungarian authorities in order to address the 4th round report recommendation. Awareness raising programmes were deployed by the HFIU and relevant SROs for the accountants, tax advisors/consultants, real estate agents and notaries, in respect of the UNSCR lists. A new delisting procedure in relation to the UN Security Council resolutions was adopted by resolution of the Government No. 1444/2011. /XII.20./. With the adoption of the new AML/CFT Act, it appears that most of the MONEYVAL recommendation are addressed (sample rules revision, competence of all supervisory authorities in monitoring compliance with SRIII requirements, new deadline for freezing transactions).

203. However, a series of recommendations are incompletely addressed or still pending. There is no information about training dedicated for the non-banking financial institutions, such as insurance companies, securities intermediaries, MTS or exchange offices. For the rest of the recommendations the situation remains the same as at the time of the 4th round MER.

204. Nonetheless, taking into consideration the progress achieved on the legislative side by the Hungarian authorities, together with the new procedures introduced, it can be concluded that, from this desk review, compliance with Special Recommendation III is now at a level equivalent to largely compliant.

IV. Review of the measures taken in relation to other Recommendations

Recommendation 16 – DNFBP – R.13-15 & 21 (rating PC)

Deficiency

- Low number of STRs from DNFBPs (effectiveness issue).
- The same shortcomings as identified under Recommendation 13 and Special Recommendation IV apply.

Recommended Action

- The HFIU and SROs should, in cooperation with the HFIU, review the reasons for the significant decrease in reports from lawyers and notaries.
- Furthermore, the Hungarian authorities should take continued and enhanced measures (especially through improved feedback from the HFIU and trainings) in order to increase the number of STRs submitted.

Measures adopted and implemented

205. The shortcomings related to Recommendation 13 and Special Recommendation IV are dealt with under section 4. Above.

206. The concerns about the low level of STRs received from DNFBPs remain as there continues to be a decline in the number of STRs received. This decline is considered under recommended action No.3 under Recommendation 13.

	2005	2006	2007	2008	2009	2010	2011	2012	2013*
Banks	9,964	7,197	7,675	7,730	4,497	6,315	5,401	6,753	5,517
Other FI	1,239	2,100	1,667	1,808	756	857	759	904	629
DNFBP	112	83	77	20	14	13	24	26	14

* To June 2013

Overall conclusion

207. As noted under Recommendation 13 and Special Recommendation IV above, the legislative changes would appear to largely address the technical deficiencies identified. However, a concern remains that the level of reporting remains very low, particularly in comparison to the level of reporting prior to the introduction of the electronic reporting system at the start of 2008.

Recommendation 17 – Sanctions (rating PC)

Deficiency

- Senior management not included in the sanctioning regime of the CIFE Act.
- Range of sanctions under the Investment Act and the CIFE Act not broad enough.
- Limited effectiveness.

Recommended Action

- The authorities should include senior management in the sanctioning regime of the CIFE Act.
- The authorities should extend the range of sanctions available for institutions covered by the Investment Act and include suspension of license and removal from office in the range of sanctions available with regard to the CIFE Act.

- The authorities should use the existing sanctioning regime to a broader extend respectively consider applying the full range of sanctions (including higher fines and removal of licences) with regard to identified breaches to increase the effectiveness and dissuasiveness of the system.

Measures adopted and implemented

208. With regard to the lack of sanctions for senior management in the Act CXII of 1996 on Credit Institutions and Financial Enterprises (CIFE Act), the authorities consider that there are appropriate sanctions available for senior management in the ACT CXXXV of 2007 on the Hungarian Financial Supervisory Authority (HFSA Act) and that it is not necessary to amend the CIFE Act.

209. The Hungarian authorities refer to Section 62 of the HFSA Act which stipulates:

- (1) *The amount of the fine which may be imposed on a person or body referred to in Section 4 may be between one hundred thousand and two billion forints:*
 - a) *for any infringement of the provisions laid down in the regulations governing the operations of the persons and bodies covered by the acts referred to in Section 4, and for any breach of internal policies;*
 - b) *for any violation, circumvention, evasion or late performance of the obligations set out in the Authority's resolution.*
- (2) *By way of derogation from Subsection (1), the upper limit on the fine that may be imposed may range up to two hundred per cent of the annual supervision fee (comprising the minimum charge and the variable-rate fee) payable by the persons and bodies covered by the acts referred to in Section 4⁸, if this is higher than two billion forints.*
- (3) *The amount of the fine which may be imposed on executives, employees specified by the acts referred to in Section 4 may be between one hundred thousand and twenty million forints. The bodies covered by the acts referred to in Section 4 may not assume responsibility for payment of the fine imposed on executives employees.*
- (4) *In the application of Subsection (3), above and beyond the personnel defined as such in the acts referred to in Section 4, the executives employees, managing directors and deputy managing directors of voluntary mutual insurance funds and private pension insurance funds, and persons carrying out the management of the activities of independent insurance intermediaries shall also be deemed executives employees.*

210. This Section was not considered at the time of the 4th round evaluation. This section refers in §(3) to “executives employees specified by the acts referred to in Section 4 and provides for fines of between one hundred thousand and twenty million forints” (c. €350 to €70,000). Section 4 includes the CIFE Act. Thus, although the CIFE Act has not been amended it does appear that there is the ability to sanction members of senior management of financial institutions covered by the CIFE Act.

211. As Section 4 of the HFSA Act also embraces the Act CXXXVIII of 2007 on Investment Firms and Commodity Dealers, and on the Regulations Governing their Activities (the Investment Act), the deficiency concerning the range of sanctions under the Investment Act and the CIFE Act now appears to be covered.

212. The level of inspections which include an AML/CFT Element remains broadly the same as set out in the 4th round MER.

⁸ Section 4 covers the full range of financial institutions supervised by the HFSA, including the CIFE Act.

Inspections including an AML/CFT element

	2010	2011	2012	2013*	No. of entities 2013
FINANCIAL SECTOR					
Banks and co-operative credit institutions	15	45	42	67	149
Securities	14	14	13	10	26
Insurance	11	13	9	13	53
Other financial institutions (supervised by the HFSA)	5	11	21	9	257
Voluntary pension funds	13	5	13	13	58
Occupational pension fund					1
CITs	3	2	1		6
Total Financial Sector	61	90	99	112	550
NON-FINANCIAL SECTOR					
Casinos	15	87	84	46	3
Card Rooms		119	263	105	23
Dealers in precious metals	2	26	30	15	2,971
Lawyers			13		10,610
Notaries	76	64	64	19	315
Auditors	392	497	654	132	
Traders in goods	15	113	20	3	382
TOTAL Non-Financial Sector	500	906	1,128	320	14,305

* To 30 June

213. Section 5.2 of the statistics supplement to the follow-up report sets out details of the sanctions applied. These statistics indicate that the full range of sanctions is being applied to both financial institutions and DNFBPs. The most common sanction applied is a written warning although the number and amount of fines is increasing. The average amount of fine levied still appears to be low and this does raise the question of whether the sanctioning regime can be considered to be effective, proportionate or dissuasive although it is difficult to assess this from a desk-based review.

Sanctions applied

Financial Institutions	Warnings	Fines	Total fines €	Licence withdrawn	Other Sanction
2010	6	2	10,830		
2011	22	9	36,328	1	
2012	11	15	93,357		
2013*	5	6	35,986		
NON-FINANCIAL SECTOR					
2010	292	14	4,268	11	9
2011	152	12	3,916	1	17

2012	357	40	11,367		34
2013*	49	24	13,859	215	

* To 30 June

Overall conclusion

214. Overall it would appear that adequate steps have been taken to address the deficiencies in the sanctioning regime although it is difficult to assess its effectiveness from a desk-based review.

Recommendation 32 – Statistics (rating PC)

Deficiency

- *Inadequate statistics on investigation and prosecution of funds generating crimes*
- *Coordination on gathering of statistics is lacking which prevents the authorities from undertaking a comprehensive review of the effectiveness of the system on combating money laundering and terrorist financing*
- *It is not clear whether the Hungarian authorities perform a regular overview of the effectiveness and efficiency of the AML/CFT system based on statistical analysis.*
- *No statistics on the outcome of STRs forwarded to law enforcement agencies.*
- *No statistics maintained about on-site examinations conducted by DNFBP supervisors relating to or including AML/CFT and any sanctions applied.*
- *No detailed statistics related to mutual legal assistance.*
- *No statistics kept on MLA requests refused, grounds for refusal, on the time required to handle them and on predicate offences related to requests.*
- *Statistics of MLA by MoJLE and the Prosecutor General's office not easily available.*
- *No statistics on other forms of international cooperation.*

Recommended Action

- *It is recommended that:*
 - *Comprehensive statistics should be maintained on investigations, prosecutions and convictions relating to funds generating crimes;*
 - *Precise statistics on amounts restrained and confiscated in each instance should be maintained so as to be able to establish an overview of the efficiency of the system;*
 - *Comprehensive statistics on STRs should be prepared including details of predicate offences, attempted transactions and the outcome of STRs disseminated to law enforcement agencies. Moreover, the commissioners of police, HCFG and HFIU should take steps in order to make sure that the HFIU receives relevant feedback on the STRs disseminated ;*
 - *Statistics on administrative penalties applied for persons making a false declaration under SR.IX, statistics on criminal investigations initiated for physical cross-border transportation of currency or bearer negotiable instruments that were suspected to be related to ML/TF and statistics on information exchange with foreign counterparts regarding SR.IX should be maintained;*
 - *Comprehensive annual statistics on all mutual legal assistance and extradition requests - including requests relating to freezing, seizing and confiscation - that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond should be maintained;*

- *Procedures should be put in place to centrally record and monitor all international requests for cooperation on matters related to money laundering and the financing of terrorism.*

- *Furthermore, it is recommended that all relevant statistics should be regularly reviewed by the Hungarian authorities in order to assess the effectiveness and efficiency of the AML/CFT system.*

Measures adopted and implemented

215. The authorities have provided a statistics template with detailed statistics on STRs, investigations, prosecutions and convictions, supervisory actions (including sanctions), FIU and law enforcement cooperation and training. However, there are no statistics on provisional measures and confiscations (apart from funds seized by the HFIU in 2012 and 2013 on the basis of the provisions on suspending the transactions) and no information on mutual legal assistance and other international requests for co-operation⁹ (apart from FIU and law enforcement cooperation). Furthermore, the statistics on STRs do not provide any information on subsequent judicial procedures.

216. The authorities do report that the gathering of statistics by the Prosecution Service is currently work in progress. A short term goal is to identify relevant cases. The long term goals besides overall improvement and the introduction of an electronic case handling also include the overall development of this area. It is indeed reported that from 1 July 2013 a number of changes have been implemented to the Prosecution Services' case management systems and its data gathering systems. The main changes, which are based on the amendments to the Criminal Code following the Adoption of Act C of 2012, include the renewal of the law enforcement database based on finished cases.

217. In 2012, the HFIU have started development of a feedback application within the law enforcement investigating database and IT case management system. This application should enable the HFIU to retrieve the list of those criminal investigations which were either triggered by the HFIU (proactive dissemination), or disseminated by the HFIU for ongoing criminal investigations (reactive dissemination). The prosecution service is also developing a new database and it is anticipated that this will facilitate the production of meaningful statistics.

Overall conclusion

218. It must therefore be concluded that a number of the identified deficiencies relating to Recommendation 32 remain.

Special Recommendation VIII - Non-profit organisations (rating NC)

Deficiency

- *No special review of the risks in the NPO sector undertaken.*
- *Insufficient outreach to the NPO sector on FT risks. There is no formalised and efficient system in place that focuses on potential vulnerabilities.*
- *No clear legal provisions in place to require and maintain information on NPOs purposes and objectives in relation to their activities.*
- *No clear identification of those NPOs that account for a significant portion of financial resources under the control of the sector and a substantial share of the sector's international activities.*
- *No specific meaningful measures or sanctioning capability for the most vulnerable parts of the sector.*

⁹ It is, however, noted that Recommendations 36 to 40 are not being considered as part of this review.

Recommended Action

- *The recommendation from the 3rd round MER to conduct a review of the sector in order to be fully compliant with the FATF Recommendations should be implemented.*
- *The authorities should provide clear legal provisions to require and maintain information on NPOs purposes, activities and the identity of person(s) who own, control or direct their activities.*
- *Steps should be taken to raise awareness in the NPO sector about the risks of terrorist abuse. In particular, the active steps should be taken to clearly identify those parts of the NPO sector that account for a significant portion of the financial resources of the sector and a substantial share of the sector's international activities, and ensure at a minimum in these areas that:*
 - *Publicly accessible information is available on the purposes and objectives of their stated activities, and on those who own, control or direct their activities;*
 - *Promotion of effective oversight measures (supervision and monitoring) of these parts of the sector should be undertaken;*
 - *Appropriate measures are in place to sanction violations of oversight measures.*

Measures adopted and implemented

Deficiency No.1 – *No special review of the risks in the NPO sector undertaken.*

Recommended Action No.1 – *The recommendation from the 3rd round MER to conduct a review of the sector in order to be fully compliant with the FATF Recommendations should be implemented.*

219. A review of the non-profit sector was undertaken as part of the Hungarian authorities Action Plan to implement the recommendations of the 4th round MER. As a consequence of this review, the authorities report that sector several provisions were amended and enacted enhancing the transparency of the sector and other significant improvements have been proposed. The proposals take into account the judicial practice as well as experiences and practices of the European Union and other Member States. A complex system of legal rules have been developed by establishing new accounting rules, extending the rules on court deposit, publicity, penalty and setting up a freely accessible and searchable electronic database/register, as well as by the extension of rules related to bankruptcy, liquidation and winding-up proceedings for non-governmental organisations (NGOs) (For further details see section 12/1 of the Follow-up report). These measures increase significantly the transparency in the NPO sector and ensure effective fight against illegal activities.

220. The a number of legislative changes which been implemented as a consequence of the review are set out in the report submitted by the authorities.

221. This action point appears to have been addressed.

Deficiency No.2 – *Insufficient outreach to the NPO sector on FT risks. There is no formalised and efficient system in place that focuses on potential vulnerabilities.*

Recommended Action No.3 – *Steps should be taken to raise awareness in the NPO sector about the risks of terrorist abuse. In particular, the active steps should be taken to clearly identify those parts of the NPO sector that account for a significant portion of the financial resources of the sector and a substantial share of the sector's international activities, and ensure at a minimum in these areas that:*

- *Publicly accessible information is available on the purposes and objectives of their stated activities, and on those who own, control or direct their activities;*
- *Promotion of effective oversight measures (supervision and monitoring) of these parts of the sector should be undertaken;*

- *Appropriate measures are in place to sanction violations of oversight measures.*

222. The authorities report that in Hungary NGOs have the opportunity to participate at conferences, trainings and consultations on AML/CFT issues including the active role of the supervisory authorities in this regard. Furthermore, the National Cooperation Fund (NEA) provides assistance for the sector. The college of Mobility and Conformity (which is one of NEA colleges) which operates a number of projects related to the protection of life and property safety, public safety, civil defence, etc. including the problem of terrorism. In 2012 the budget of this college was 608.4 million HUF (€2m) for these projects.

223. Although it is clear that steps are being taken to raise awareness in the NGO sector it is not possible to assess the effectiveness of these measures from a desk-based review.

Deficiency No.3 – *No clear legal provisions in place to require and maintain information on NPOs purposes and objectives in relation to their activities.*

Recommended Action No.2 – *The authorities should provide clear legal provisions to require and maintain information on NPOs purposes, activities and the identity of person(s) who own, control or direct their activities.*

224. The Action Plan (II/G/2) has tasked the authorities to provide clear legal provisions to require and maintain information on NPOs' purposes, activities and the identity of person(s) who own, control or direct their activities.

225. The new legal framework (Act CLXXV of 2011) has set up three separate micro systems in order to ensure complete access to information regarding NGOs:

- Civil Information Portal: the Portal is a nationwide, uniform, electronic, freely available system with data related to the NGOs (updated accounts, information about funds, assistance etc.).
- Network of Civil Information Centres: contribute to the proper use of state aid as well as supplying of data about NGOs from 1st July 2013.
- Monitoring system: operated pursuant to the Act on the Public Finance (Act CXCV of 2011) in order to ensure professional coordination of state aid programs and to avoid parallel financing thus contributing the transparent functioning of the sector. The purposes of this system are to take an overview of the operation of NGOs, of the use of donations and assistances, as well as to filter out parallel grants for the same purposes.

226. Information and data related to NGOs in the register of the courts (Act CLXXXI of 2011) have been available on the Internet since 30 June 2012.

227. Requirements for transparency concerning the operation of these entities have already been established through the Court Register of Companies containing information on activities carried out by the company, its members and their financial contributions, the company's senior officers and the main data of its financial statements.

228. This action point appears to have been addressed.

Deficiency No.4 – *No clear identification of those NPOs that account for a significant portion of financial resources under the control of the sector and a substantial share of the sector's international activities.*

229. This Deficiency is addressed under Deficiency No.3 above.

Deficiency No.5 – *No specific meaningful measures or sanctioning capability for the most vulnerable parts of the sector.*

230. The new Act also sets out sanctions for senior officers of NPOs. Within 3 years after the termination of an NGO the executive/senior officer cannot assume the same position in another NGO if the previous NGO was terminated without a successor and its tax and customs debt was not paid, or the tax and customs authority revealed a significant amount of tax deficiency, or applied business closure measures, or imposed a fine instead of the closure, and whose tax identification number was suspended or cancelled.

Overall conclusion

231. Although a desk based cannot assess the effectiveness of the highlighted changes it would appear that Hungary has made considerable progress in remedying the identified deficiencies relating to Special Recommendation VIII.

Special Recommendation IX – Cash couriers (rating PC)

Deficiency

- *No administrative ability to stop/restrain or seize in the case of ML/FT.*
- *Sanctions available are not effective, proportionate or dissuasive.*
- *Deficiencies in the implementation of SR.III may have an impact on the effectiveness of the regime.*
- *Lack of available statistics meant that the authorities could not fully demonstrate the effectiveness of the declaration system.*
- *The system is limited to movements beyond the EU (effectiveness issue).*

Recommended Action

- *The HCFG should be given the administrative authority to immediately stop/restrain cash to ascertain whether evidence may be found for ML/FT.*
- *The penalties for false declaration are relatively low (€550). Therefore sanctions should be more effective and dissuasive.*
- *Hungarian authorities should take steps to heighten the awareness of arriving and departing travellers by making the signage at ports of entry and exit alerting travellers to the requirements much more visible (and perhaps in multiple languages).*
- *In order to be able to evaluate the overall effectiveness of the system, the Hungarian authorities should maintain more detailed statistics on administrative penalties applied for persons making a false declaration under SR.IX, statistics on criminal investigations initiated for physical cross-border transportation of currency or bearer negotiable instruments that were suspected to be related to ML/TF and statistics on information exchange with foreign counterparts regarding SR.IX.*
- *The EU Regulation does not affect the possibility for Member States to apply controls on EU internal borders, in accordance with the existing provisions of the Treaty establishing the European Community. In order to comply with SR IX, Hungary should consider developing an appropriate domestic legal mechanism for cash control at the EU internal borders.*
- *Specialised training activities related to SR.IX (ML and TF related cross-border transportation of cash and bearer negotiable instruments) for the staff of the HCFG should be continued.*

Measures adopted and implemented

Deficiency No. 1 – *No administrative ability to stop/restrain or seize in the case of ML/FT.*

Recommended action No.1 – *The HCFG should be given the administrative authority to immediately stop/restrain cash to ascertain whether evidence may be found for ML/FT.*

232. As the infringement is neither a minor offence nor a crime, it is still not possible to seize or confiscate, although it is possible to retain the amount of the penalty (as set out under Deficiency No. 2 below) if there is a possibility of default in payment of the fine.

Deficiency No. 2 – *Sanctions available are not effective, proportionate or dissuasive.*

Recommended action No.2 – *The penalties for false declaration are relatively low (€550). Therefore sanctions should be more effective and dissuasive.*

233. On the basis of the *Action Plan* (II/F/2) an *impact study* has been prepared by the NTCA in order to review of the sanctioning system as regards SR IX. The conclusions of the review and the measures proposed in the impact study resulted in the establishment of a new sanctioning system that is considered by the authorities to be properly dissuasive and effective.

234. The new penalty system was enacted by Article 9 of the Regulation (EC) No. 1889/2005 of the European Parliament and of the Council of 26 October 2005 on controls of cash entering or leaving the Community (Cash Control Regulation).

235. In May 2012, the amendments of the Cash Control Act entered into force and effect. According to the new provisions, in cases of non-declaration or false declaration, the administrative penalty imposed (the penalty imposed has to be paid in HUF) shall be the following:

- In case of €10,000 – €20,000 10% of the amount
- In case of €20,001 – €50,000 40% of the amount
- In case of €50,001 or more 60% of the amount
- All fines to be paid immediately on the spot.

236. This recommendation appears to have been addressed.

Deficiency No.3 – *Deficiencies in the implementation of SR.III may have an impact on the effectiveness of the regime.*

237. Please see the analysis under SR.III above.

238. Under the Cash Control Act, where it appears from the information declared or obtained during the controls carried out under the this Act that the movement of cash may be associated with money laundering or financing of terrorism, the customs authority is obliged to transmit such information immediately to the HFIU.

239. Training has been organised for customs authorities, covering CFT requirements. Further details of the training provided to customs and border officials is set out under section 7.1 c. of the statistics template.

240. This recommendation appears to have been addressed.

Deficiency No.4 – *Lack of available statistics meant that the authorities could not fully demonstrate the effectiveness of the declaration system.*

Recommended action No.4 – *In order to be able to evaluate the overall effectiveness of the system, the Hungarian authorities should maintain more detailed statistics on administrative penalties applied for persons making a false declaration under SR.IX, statistics on criminal investigations initiated for physical cross-border transportation of currency or bearer negotiable instruments that were suspected to be related to ML/TF and statistics on information exchange with foreign counterparts regarding SR.IX.*

241. On the basis of the *Action Plan* an *impact study* has been prepared by the NTCA in order to review of the statistics at disposal in relation to detailed statistics as regards SR IX.

242. Prior to the change of the sanctioning system in Hungary (15 May 2012), when the modification (as regards administrative sanction) of the Cash Control Act entered into force,

statistics on sanctions applied upon non-compliance with the obligation to declare could be accessed from the national database for minor offences. Since then, developments were carried out in the IT system during 2012 which include the following:

- When a cash declaration is input into the system of the Customs Authority and it is indicated as an ML/TF suspicion, an automatic notification is sent to the generic mailbox of the HFIU. This notification includes the reference number of the cash declaration. The HFIU has direct access to the system.
- When completing a cash declaration in the system (in case of non-declaration or false declaration) the amount of the administrative penalty imposed has to be registered.

243. The developments scheduled for 2013 include enhancement of inquiry functions including detailed query options for the penalties imposed.

244. Table 4.4 in the Statistics Template provides details of reports filed on cross border transportation of currency and bearer negotiable instruments. It is, however, noted that although there have been a number of suspicions of money laundering reported, there are no reports of any assets being restrained.

Deficiency No.5 – *The system is limited to movements beyond the EU (effectiveness issue).*

Recommended action No.5 – *The EU Regulation does not affect the possibility for Member States to apply controls on EU internal borders, in accordance with the existing provisions of the Treaty establishing the European Community. In order to comply with SR IX, Hungary should consider developing an appropriate domestic legal mechanism for cash control at the EU internal borders.*

245. MONEYVAL discussed the evaluation of SR IX in its EU Member States in the follow-up round during its 35th plenary meeting in April 2011. MONEYVAL noted that under the supranational approach, there is a pre-condition for a prior supranational assessment of relevant SR IX measures. It further noted that there is as yet no process or methodology for conducting such an assessment (although one is planned). It noted that, for the purpose of Criterion IX.1, the EU has been recognised by the FATF as a supranational jurisdiction and therefore there is no obligation to comply with this criterion for intra-EU borders. Downgrading solely for the lack of a declaration/disclosure system is thus not appropriate. The other criteria that mention supranational approach (C.IX.4, C.IX.5, C.IX.7, C.IX.13 and C.IX.14) would not be evaluated against the requirements that apply to the supranational approach, and C.IX.15 would not be evaluated. The FATF was advised of this solution as it involves a departure from the language of the AML/CFT Methodology. At its plenary meeting in Mexico in June 2011 the FATF took note of this interim solution for EU Member States in MONEYVAL's follow-up round.

Recommended action No.3 – *Hungarian authorities should take steps to heighten the awareness of arriving and departing travellers by making the signage at ports of entry and exit alerting travellers to the requirements much more visible (and perhaps in multiple languages).*

246. To address this recommendation a number of initiatives have been undertaken including, roll-ups (in both English and Hungarian) on cash controls being placed at visible points on all external border crossing points, as well as posters (in English, Hungarian, Serbian and Croatian) and information leaflets in various languages. Further details of the procedures undertaken are set out in the report by the authorities.

247. When the sanction system changed on 15 May 2012, all the embassies were informed and the change in the sanctioning system was published in the media.

248. From a desk review it appears that this action point has been addressed.

Recommended action No.6 – *Specialised training activities related to SR.IX (ML and TF related cross-border transportation of cash and bearer negotiable instruments) for the staff of the HCFCG should be continued.*

249. As previously stated, training has been organised for customs authorities, covering CFT requirements. Furthermore, network meetings for search experts, heads of customs offices at the external border, as well as for officers dealing with minor offences and cash control infringements have been and are organised on a regular basis, where information and experience of customs officers is exchanged.

250. The NTCA recently established contacts with the Hungarian National Bank as regards the training of officers on original and counterfeit banknotes. The training will be incorporated in the training strategy of the NTCA. Further plans are to incorporate the training into the training strategy of the customs students of the Police and Customs Academy.

251. From a desk review it appears that this action point has been addressed.

Effectiveness

252. Since the entry into force it is reported that there have been 9 cases of non-declaration/false declaration. The total amount of penalty imposed in these 9 cases was around 46,000,000 HUF (€154,000). There are, however, no reports of any assets being restrained.

253. There have been no reported criminal investigations initiated on the basis of cash declarations.

Overall conclusion

254. Hungary made welcome steps in order to enhance compliance with the SR.IX requirements. The sanctioning regime is significantly improved and the statistics kept by NTCA provide more relevant information. However, there is no administrative ability to stop or restrain assets in case of ML/TF suspicions. Taking into consideration the progress made since the 4th round MER, the special recommendation can be considered to be at a level equivalent to largely compliant.

MONEYVAL Secretariat