

Anti-money laundering and counter-terrorist financing measures

Hungary

Fifth Round Mutual Evaluation Report

September 2016



The Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism - MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation, as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. Through a dynamic process of mutual evaluations, peer review and regular follow-up of its reports, MONEYVAL aims to improve the capacities of national authorities to fight money laundering and the financing of terrorism more effectively.

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LIST OF ACRONYMS USED

AML	Anti-money laundering
ARO	Asset Recovery Office
BAR	Regional Bar Association
BNI	Bearer negotiable instrument
BO	Beneficial ownership
C	Compliant
CDD	Customer due diligence
CFT	Countering the financing of terrorism
CHA	Chamber of Hungarian Auditors
CHF	Swiss franc
CPC	Code of Criminal Procedure
CCAOC	Coordination Centre against Organised Crime
CSP	Company Service Provider
CTR	Cash transaction report
DNFBP	Designated non-financial businesses and professions
DPMS	Dealers in precious metals and stones
DPNK	Democratic People's Republic of Korea
ECHR	European Convention on Human Rights
EU	European Union
EUR	Euro
EUROPOL	European Police Office
FATF	Financial Action Task Force
FI	Financial institution
FIU	Financial intelligence unit
FT	Financing of terrorism
FTF	Foreign terrorist fighters
GBP	British pound
GDP	Gross domestic product
GRECO	Council of Europe's Group of States Against Corruption
GRETA	Council of Europe's Group of Experts on Action Against Trafficking in Human Beings
HBA	Hungarian Bar Association
HCC	Hungarian Criminal Code
HFIU	Hungarian Financial Intelligence Unit
HFSA	Hungarian Financial Services Authority
HTLO	Hungarian Trade Licensing Office
HUF	Forint
IMF	International Monetary Fund
INTERPOL	International Criminal Police Organisation
IO	Immediate outcome

ISIS/IS	The so-called “Islamic State”/Da’esh
IT	Information technology
JIT	Joint investigation team
LC	Largely compliant
LEA	Law enforcement authority/agency
MEQ	Mutual evaluation questionnaire
MER	Mutual evaluation report
ML	Money laundering
MLA	Mutual legal assistance
MNB	Central Bank of Hungary
MNE	Ministry for National Economy
MoI	Ministry of Interior
MoJ	Ministry of Justice
MoFAT	Ministry of Foreign Affairs and Trade
MoU	Memorandum of understanding
MTO	Money transfer operator
MVTS	Money and value transfer service
MVTSP	Money and value transfer service provider
NC	Non-compliant
NGO	Non-governmental organisation
NIC	National Institute of Criminology
NOK	Norwegian krone
NPHQ	National Police Headquarters
NPO	Non-profit organisation
NRA	National risk assessment
NTCA	National Tax and Customs Administration Hungary
PC	Partially compliant
PEP	Politically exposed person
PF	Proliferation financing
PIU	Passenger information unit
PNR	Passenger name records
PPO	Public Prosecutor’s office
R	Recommendation
RBA	Risk-based approach
SAR	Suspicious activity report
SSA	Stability savings accounts
STR	Suspicious transaction report
TC	Technical compliance
TCSP	Trust and company service provider
TEK	Counter Terrorism Centre
TFS	Targeted financial sanctions
UN	United Nations
UNODC	United Nations Office on Drugs and Crime

UNSCR	United Nations Security Council Resolution
USD	United States dollar
VAT	Value-added tax
VTC	Voluntary tax compliance
WMD	Weapons of mass destruction

EXECUTIVE SUMMARY

1. This report provides a summary of the anti-money laundering/counter-terrorism financing (AML/CFT) measures in place in Hungary as at the date of the on-site visit (7 March to 18 March 2016). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Hungary's AML/CFT system and provides recommendations on how the system could be strengthened.

Key Findings

- Hungary has a rather mixed understanding of its ML/FT risks. The NRA does not include sufficient depth with regard to potential ML/FT threats, vulnerabilities and their consequences. It also does not demonstrate the characteristics of a comprehensive assessment based on a robust methodology. The Hungarian authorities have not yet adopted a national AML/CFT strategy in the light of the outcome of the NRA, nor have they defined consequential policies and necessary actions coherently.
- Hungary's use of financial intelligence and other information for ML/FT and associated predicate offence investigations demonstrates to a large extent the characteristics of an effective system. The good quality, timely and relevant work produced and assistance provided by the Hungarian Financial Intelligence Unit (HFIU) to other competent authorities contributes significantly to the efforts to detect and disrupt ML threats and deprive criminals of ill-gotten gains. However, law enforcement and other competent authorities did not demonstrate that they make appropriate use of financial intelligence and other relevant information for ML/FT investigations.
- Although the number of investigations and prosecutions for ML are on the rise, the fight against ML activity is not a priority objective. The ML prosecutions are not commensurate with the risks and threats identified in the NRA. ML is treated mostly in a self-laundering context, with a limited number of cases highlighting structured ML schemes. The dependence of the ML offence on the identification of a specific predicate offence is a factor that has weighed on the effectiveness of the AML-system.
- The mandatory seizure/confiscation regime is legally sound and stringent, although the dependence on the predicate offence is a restraining factor. The statistics do not demonstrate the actual effective and successful application of the seizure/confiscation rules. However, some case examples are indicative of large amounts of proceeds susceptible to confiscation. The potential of the Asset Recovery Office (ARO) to provide support to investigations should be further exploited.
- Hungary adopts a proactive approach against terrorism, albeit not particularly focused on the FT-aspect. In the absence of FT-targeted investigations and prosecutions, an effectiveness assessment must rely mainly on structural elements. Although the professionalism and good intelligence work of the Counter Terrorism Centre (TEK) and the HFIU are recognised, there are a number of considerations highlighting some weaknesses that should be addressed to achieve a better performing CTF regime.
- Hungary has a legal basis to apply targeted financial sanctions regarding terrorist financing, but implementation has technical and effectiveness-related deficiencies. The Application of freezing measures under the EU framework results in delays. Moreover, there are concerns related to the implementation procedures under the FRM Act. Deficiencies were also

identified with regard to the national freezing mechanisms under the AML/CFT Act, in relation to communicating information to service providers and the application of criminal procedural measures for the enforcement of freezing measures.

- Hungary has not undertaken a formal domestic review to determine if there is a subset within the NPO sector which may potentially be at risk of being misused for FT. There are doubts about the level of transparency of the NPO sector. No authority or mechanism has been designated to conduct outreach to the NPO sector on FT issues and to monitor the NPOs posing a higher FT risk.
- AML/CFT supervisory activities in Hungary are not fully commensurate with the perception of ML/FT risks. While the Central Bank of Hungary (MNB) demonstrated a basic understanding of ML/FT risks for some FIs, this is not the case for all FIs. DNFBP supervisors do not identify and in principle maintain an understanding of ML/FT risks in their respective sectors, even though there are exceptions to this. Onsite inspections for compliance with AML/CFT obligations do not focus on areas of higher ML/FT risks. While the MNB and DNFBP supervisors are equipped with powers to impose administrative sanctions, the dissuasiveness of the sanctions imposed could be enhanced in order to create a greater incentive for all obliged entities to fully comply with the AML/CFT obligations.
- Hungary takes steps in relation to combating proliferation. However, the country's reliance on the EU framework for implementing the UNSCRs relating to targeted financial sanctions to combat PF results in a time-gap which has a negative impact on the system's effectiveness. Even though in practice there is a mechanism in place for the dissemination of information by the authorities on updates made in the relevant UNSC lists, no legal basis exists for implementing sanctions before these are transposed into EU Law.
- Hungary demonstrates many characteristics of an effective system of international cooperation. Respective authorities use a wide and comprehensive framework of multilateral, bilateral and national legal instruments and other cooperation mechanisms to seek and provide good quality and timely international cooperation. The countries that gave input on the international co-operation of the Hungarian authorities found it to be generally satisfactory.

Risks and General Situation

2. Hungary has a primarily cash-based economy with a GDP of about EUR 110.100 billion in 2015. Although the country is not a financial centre, it has a well-developed financial services industry. The banking sector (comprised of thirty-two banks) is the largest part of Hungary's financial sector. Between 1-3% of the banks' customers are in general classified as high-risk (e.g. offshore companies, foreign clients, clients from high risk jurisdictions, or certain types of businesses). The level of financial inclusion is considered as high, with 76% of the adult population maintaining an account at a formal financial institution.

3. Hungary's national risk assessment (NRA) was finalised in 2015. It was adopted by the Anti-Money Laundering Sub-Committee (the main coordination and policy making body regarding the fight against ML and FT, chaired by the Ministry for National Economy, MNE). The scope of the NRA includes money laundering, crimes-generating assets and terrorist financing. Participation comprised representatives of the most relevant departments of the ministries involved in the AML/CFT sphere, the competent authorities as well as the private sector. Two working groups were established, notably the law enforcement task force (led by the Hungarian Financial

Intelligence Unit, HFIU) and the task force of supervisory agency (led by the Hungarian Central Bank, MNB).

4. The NRA indicates as “risks/threats” fraud, corruption, trafficking in human beings and drug trafficking. With regard to the latter, Hungary has been identified as a transit country for illegal drugs coming from Turkey and Asia and moving to other European destinations. Hungary is primarily a country of origin and transit for victims of trafficking in human beings. The statistics provided also refer to other predicate offences, such as kidnapping and illicit arms trafficking, which usually also generate significant proceeds. The law enforcement authorities have observed an increase in organised crime groups, using Hungary for operations for cyber-related fraud, and the use of shell companies and the banking system to launder the proceeds.

5. The relatively large shadow economy is a major risk factor in a considerable number of suspicious transaction reports made by financial service providers. The widespread use of cash and the lack of cash limitations are considered as ML-vulnerabilities in the NRA. The latter also indicates that foreign companies domiciled in Hungary, as well as off-shore companies holding current accounts at Hungarian banks, pose significant risks if misused for illegal activities, mostly related to VAT frauds and “social engineering” frauds. The NRA also points to the use of straw men in the establishment of companies, opening of bank accounts and execution of transactions as high risks.

6. There are no serious indications of a terrorism-favorable environment in the Hungarian context. The competent authorities have under scrutiny the recent phenomenon of foreign terrorist fighters. Even if as to date there have been no concrete indications of terrorist-related activities, the authorities have identified several risk situations that need to be monitored. Amongst those are potential risks posed by charity NPOs, increased use of virtual currencies as well as Hungary’s geographical proximity of countries with higher risks and cross-border movements of cash on the so-called Balkan route.

Overall Level of Effectiveness and Technical Compliance

7. Since the last evaluation, Hungary has improved the level of technical compliance with the FATF recommendations in areas related to the ML offence and the HFIU. There are still significant shortcomings related to the terrorist financing offence, terrorist financing, financing of proliferation, CDD, PEPs, as well as transparency/beneficial ownership of legal persons and arrangements. The evaluation team noted the efforts made by the authorities to conduct a national risk assessment. However, additional measures are required to understand the potential ML/TF threats and vulnerabilities and their consequences.

8. In terms of effectiveness, Hungary achieves a substantial ratings in IOs 2 and 6, moderate ratings in IOs 3, 4, 9, 10 and 11, as well as low ratings in IOs 1, 5, 7 and 8.

Assessment of Risks, Coordination and Policy Setting (Chapter 2 – IO.1; R.1, R.2, R.33)

9. While commending the efforts of the Hungarian authorities with their first NRA, based on their own domestic methodology that involved numerous authorities and representatives of the private sector, the evaluation team takes the view that there is more to build on the foundation laid by this document. The NRA does not make a critical analysis of the outcomes of the risk factors identified by the two working groups and of their consistency, which may have led to different conclusions. The analysis of proceeds-generating crimes is very limited and not related to the presence of organised crime groups or foreign threats.

10. The evaluation team finds that that the NRA does not include sufficient breadth and depth with regard to potential ML/FT threats and vulnerabilities and their consequences. It fails to identify the underlying sources, causes and interdependencies of ML risks, as well as the most salient ML risks. Despite the shortcomings of the NRA, the HFIU appeared to have a better grasp of the overall risks, as perceived from the SARs it receives. The LEAs also seemed to understand the risks within the areas in which they operate, but no overall appreciation of ML risks was apparent to the assessment team. The FT component of the NRA seems to be limited and focused only on the preventive measures (i.e. sanctions by the EU and UNSCRs, domestic and international cooperation) rather than on the analysis of the existing cases related to FT. Other areas of significance within the context of Hungary, such as cash movements, have not been considered. The evaluation team thus concluded that the NRA process does not demonstrate characteristics of a comprehensive assessment based on a robust methodology.

11. The Hungarian authorities have not yet adopted a national AML/CFT strategy in the light of the outcome of the NRA, nor have they defined consequential policies and necessary actions coherently and which measures to take (and by which authority) in order to mitigate the risks. Moreover, the lack of requirement for FIs and DNFBPs to conduct their own risk assessments at the level of costumers and products with which they deal impact on the overall understanding of risk by the obliged entities.

Financial Intelligence, Money Laundering and Confiscation (Chapter 3 - IOs 6-8; R.3, R.4, R.29-32)

12. Hungary's use of financial intelligence and other information for ML/FT and associated predicate offence investigations demonstrates characteristics of an effective system, while moderate improvements are needed. In general, respective competent authorities have unfettered access to and share a wide variety of financial intelligence and other relevant information for ML investigations. The HFIU efficiently uses the available data. The good quality, timely and relevant work produced and assistance provided by the HFIU to other competent authorities contributes significantly to the efforts to detect and disrupt ML threats and deprive criminals of ill-gotten gains. In particular, the recently increased number of suspended transactions followed by individual coercive measures and the higher number of disseminations involving suspicion of money laundering show a welcome progress and positive development made by the HFIU.

13. However, other stakeholders do not sufficiently make use of the intelligence, operational and strategic analysis produced and disseminated by the HFIU. In particular in respect of law enforcement authorities (LEAs), the overall potential presented by intelligence and investigative leads generated by LEAs work or received from the HFIU and other sources is not sufficiently exploited for the purpose of pursuing large and complex money laundering investigations. The prevailing predicate offence-orientated focus, priorities, objectives and related activities of LEAs are considered to undermine the efforts made by the HFIU. In light of the ML risks associated with respective DNFBP sectors in Hungary, the persistently low number of SARs reported by DNFBPs remains a matter of concern.

14. Although the number of investigations and prosecutions for ML are on the rise, the law enforcement and judicial practice shows that the fight against ML activity is not considered a priority objective. Almost all investigations and prosecutions combined the predicate with the money laundering offence, with a clear emphasis on self-laundering cases. Third-party laundering prosecution is sporadic. Professional money launderers are not prosecuted or convicted. No statistical information is available on the types of ML (e.g. self- or third-party laundering, stand-alone laundering). It is also not recorded how many of the self-laundering cases were related to

foreign predicate offences. The ML prosecutions are not commensurate with the risks and threats identified in the NRA. As the vast majority of the convictions relate to several (predicate) offences, to which ML has been added, it is difficult to conclude whether the sanctions for ML are effective, proportionate and dissuasive. The dependence of the ML offence on the identification of a specific predicate offence is a factor that has weighed on the effectiveness of the AML-system. However, there has been recently a move towards drawing inferences from facts and circumstances to establish underlying predicate criminality in ML cases, which should be further developed.

15. The mandatory seizure/confiscation regime is legally sound and stringent, although the dependence on the predicate offence is a restraining factor. Although the Office of the General Prosecutor (GPO) considers this aspect a priority, the statistics do not demonstrate the actual effective and successful application of the respective rules. However, some case examples are indicative of large amounts of proceeds susceptible to confiscation. In any event, the low seizure numbers seem partly due to a lack of awareness of and focus by the investigating authorities. The Asset Recovery Office (ARO), which fulfils an increasing role in asset-tracing and recovery, has a potential to provide support to the investigations which is not fully exploited, and its lack of resourcing is a matter of concern.

Terrorist Financing and Financing Proliferation (Chapter 4 - IOs 9-11; R.5-8)

16. There have been no FT related investigations and prosecutions. Although there are no serious indications of a terrorism-favorable environment in the domestic context, and even if the chances of terrorist activity taking place in Hungary may be considered low, this does not extend to the financing of terrorism. The NRA's low rating of the FT risk does not seem to be fully substantiated. The remaining technical deficiencies in the full criminalisation of FT and with regard to foreign terrorist fighters should be remedied. The possibility of parallel financial investigations should be formalised.

17. The Hungarian authorities are taking steps to implement targeted financial sanctions. However, shortcomings remain related to the implementation of UNSCRs without delay. The country should reconsider the role of their domestic courts in the asset-freezing process. More guidance is needed to raise the awareness of the private sector on the implementation of the targeted financial sanctions. The country should take further steps to ensure that service providers are promptly updating their databases in line with new listings/designations for FT.

18. Hungary's NRA rated the FT-risks related to the NPO sector as low, while the Counter-Terrorism Centre opined that there is a potential risk amongst charity NPOs. Despite of this, Hungary has not undertaken a formal domestic review to determine if there is a subset within the NPO sector which may potentially be at risk of being misused for FT. Transparency of the NPO sector and control over funds raised by NPOs should be improved. There is no designated authority or mechanism to conduct outreach to the NPO sector on FT issues and to monitor the NPOs posing a higher FT risk.

19. Hungary is taking steps to address requirements relating to proliferation financing. The country relies on the EU framework for implementing UNSCRs relating to targeted financial sanctions on PF, with the result that the transposition time-gap has a negative impact on the system's effectiveness. Even though in practice there is a mechanism in place for the dissemination of information by the authorities on updates made in the relevant UNSC lists, there is no legal basis for implementing sanctions before these are transposed into EU Law. Further awareness-raising activities by the supervisory authorities are recommended to enhance knowledge and understanding by the private sector of PF-issues. Clarifying the role and status of the relevant

governmental committees/bodies and increasing their cooperation and coordination could improve Hungary's effectiveness in this area.

Preventive Measures (Chapter 5 - IO4; R.9-23)

20. Financial institutions demonstrated a basic understanding of ML and FT risks. They have not formally amended their internal control mechanisms in line with the risks identified therein. The banks met on-site have internal procedures to divide their business relationships into different risk categories. The understanding of the AML/CFT measures among the DNFBPs is generally less well-developed than in the financial sector. There is a lack of understanding of the identification requirements for the beneficial owners among the financial institutions as well as DNFBPs. Given that the use of "phantom companies" and straw men in the establishment of companies, opening of bank accounts and execution of transactions are considered as high risk, this has an impact on the effectiveness of the AML/CFT preventive system.

21. The application of adequate CDD measures is hindered because of legislative shortcomings connected with domestic PEPs and with the identification of beneficiaries of wire transfers. There seems to be no common approach among the service providers in requesting information on sources of funds. As in practice real estate agents are not involved in the financial side of transactions, CDD measures related to the real estate transactions are performed by lawyers. Existing technical deficiencies relating to the identification of beneficial ownership thus have an impact on the CDD measures applied by lawyers with regards to legal entities. Casinos seem to apply CDD measures, but difficulties were identified with the verification of declarations on the source of funds. Dealers in precious metals and stones encounter some difficulties in applying CDD measures.

22. The HFIU notes improvements in the quality of the reports submitted by service providers. While most ML-related SARs are reported by banks, the level of reporting by the DNFBP sector (especially by notaries, lawyers and casinos) is not considered adequate, given their involvement in transactions with high risk customers and products.

23. FT-related SARs have been made mostly by banks. Some financial institutions and DNFBPs seem to focus on UNSCR- and EU-lists, but do not further consider any other risks.

Supervision (Chapter 6 - IO3; R.26-28, R. 34-35)

24. While the MNB demonstrated a basic understanding of ML/FT risks for *Core Principles* FIs, this is not the case for all FIs. It has not assessed the ML/FT risks at the sectorial level and for each FI. Although the MNB has conducted supervisory activities on some relevant issues related to higher risk factors (e.g. relevant cash operations), the AML/CFT supervisory activities are not commensurate with the perception of ML/FT risks.

25. DNFBP supervisors (except the HFIU and the NTCA Gambling Department) do not identify and maintain an understanding of ML/FT risks in their respective sectors. While they mostly verify through onsite inspections compliance with AML/CFT obligations, they do not focus such inspections on areas of higher ML/FT risks. This related in particular to the Hungarian Bar Association and the Chamber of Notaries with regard related to the establishment and the management of companies identified in the NRA.

26. "Fit and proper" tests for applicants, including shareholders and senior managers, are conducted by the MNB. The evaluation team identified as the main shortcoming the proper mechanism for verifying the information on beneficial owner of financial institutions. Similar criticism relates to the gambling sector, if applicants or persons involved in the process are foreign

legal persons or arrangements. In case of agents acting as exchange offices, specific controls on “fit and proper” tests of legal and beneficial owners should be carried out by the MNB, while specific measures should be adopted in respect of real estate agents and dealers in precious metals and stones.

27. While the MNB and DNFBPs supervisors are equipped with powers to impose administrative sanctions, the amount of sanctions remains rather modest. The statistical data on administrative fines applied by the MNB for the AML/CFT do not demonstrate that the sanctioning regime is dissuasive. Minimum AML/CFT sanctions for all DNFBPs (other than casinos) have been recently reduced, considering that most of the DNFBPs receiving such sanctions are small and micro enterprises. This puts in doubt their dissuasiveness and proportionality.

Transparency of Legal Persons and Arrangements (Chapter 7 - IO5; R. 24-25)

28. Although there is no risk assessment of the ML/FT risks associated with the various types of legal entities, the NRA includes information on certain types that are misused for illegal purposes, mostly associated with the use of “straw men”. Basic information on legal entities is maintained in the Register of Companies, with certain minor exceptions.

29. Information on beneficial ownership is held by FIs and DNFBPs, which mostly rely on the declarations made by customers. This raises questions with regard to the accuracy of the information gathered. The competent authorities (i.e. prosecutors, LEAs and the HFIU) are able to obtain this information in due time.

30. Several shortcomings have been identified with regard to the legislation related to trusts and trustees. There are no other mechanisms in place to ensure that beneficial ownership information regarding trusts administered by “non-professional trustees” is available. Trustees considered as “non-professional trustees” under the Hungarian legislation are not subject to the AML/CFT obligations (including CDD measures). The AML/CFT Act does neither require trustees (regardless of whether they are professional or non-professional) to disclose their status to the service providers, nor to provide information on beneficial owner(s).

31. As regards beneficial ownership, the AML/CFT Act does not contain such notion for trusts. No information was provided on the sanctions imposed to legal entities for the failure to provide basic information or for providing incorrect information.

International Cooperation (Chapter 8 - IO2; R. 36-40)

32. With regard to international cooperation, Hungary demonstrates many characteristics of an effective system and only moderate improvements are needed. The authorities use a wide and comprehensive framework of multilateral, bilateral and national legal instruments and other cooperation mechanisms to seek and provide good quality and timely international cooperation. There have been some positive developments to increase the capacity and technological capability of law enforcement agencies and the HFIU. Judicial authorities actively seek and deliver international cooperation and utilise available tools and mechanism to effectively tackle cross-border criminality. The countries that gave input on the international co-operation of the Hungarian authorities found it to be generally satisfactory.

33. However, there are elements in the Hungarian system weakening the ability to achieve higher effectiveness of international cooperation. These concern the failure to ratify the Council of Europe’s Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959 (and to use this treaty as a complementary basis for mutual assistance with 17

Council of Europe member States which are not in the EU) and a lack of comprehensive and reliable statistics maintained by judicial authorities.

Priority Actions

34. The prioritised recommendations for Hungary, based on these findings, are as follows:
- A more detailed ML/FT-threat and vulnerability analysis (including the collection of in-depth data) should be undertaken through updating the NRA. A national AML/CFT strategy and related action plan relevant for all competent authorities should be determined on the most relevant ML/FT risks identified, with appropriate coordination of action and allocation of resources. More information should be shared with the private sector about the results of the NRA. Its main stakeholders should be encouraged to conduct their own individual risk assessments.
 - Hungary should ensure that it pursues investigations for the different types of ML consistent with its risk profile. It should review its statistical system to enable an objective understanding of the performance of its repressive AML/CFT system and an internal assessment of its effectiveness. The prosecutorial authorities should test in the courts the limits of the evidentiary requirements on the illegal origin of the laundered assets, taking into account the all-crimes scope of the ML offence. Parallel financial investigations should be systematically organised, particularly in serious and complex proceed-generating cases.
 - With regard to the confiscation of proceeds and instrumentalities of crime, Hungary should review its statistical system in order to produce reliable, comprehensive and sufficiently detailed figures. It is recommended to reinforce the role of the Asset Recovery Office (ARO), allowing it to function as both a financial police capable to conduct parallel investigations and as a criminal assets bureau. Steps should be taken to create a central bank register, as increasingly practiced in other Council of Europe member States.
 - The MNB and DNFBP supervisors should carry out their AML/CFT supervisory activities commensurate with the perception of ML/FT risks. They should issue (or amend the existing) procedures that take into account national and sectorial ML/FT risks. The MNB should adopt measures to assess the ML/FT risks at the sectorial level and for each financial institution, in order to obtain an overall perception of such risks for the entire financial sector. The authorities should reconsider the overall AML/CFT sanctioning regime in terms of dissuasiveness and proportionality. Supervisory activities on financial institutions should focus on straw men and “phantom companies”.
 - Hungary should undertake an assessment of the vulnerabilities related to legal entities, having regard to the possible use of “straw men” by organised crime. The country should ensure that competent authorities have access to accurate beneficial ownership information. Amendments should be introduced to the Trust Act or to the AML/CFT Act to unambiguously clarify that identities of the beneficial owner of trusts must be made available for CDD purposes to FIs and DNFBPs. Measures should be taken to ensure that non-professional trustees also disclose their status to FIs and DNFBPs upon opening a business relationship or when carrying out an occasional transaction above a certain threshold. Legal provisions should be introduced for prompt reporting of changes to the

legal ownership of companies to the Court of Registry, with dissuasive sanctions for breaches of such requirement.

- Hungary should remedy the remaining technical deficiencies affecting the full criminalisation of financing of terrorism and foreign terrorist fighters. Effectiveness of border controls should be improved by providing a legal basis for the possibility to administratively stop and restrain suspect assets. Parallel financial investigations should be formalised for future FT cases. The establishment of law enforcement sections specialised in countering the financing of terrorism should be considered.
- Hungary should undertake further steps for the prompt implementation of UNSCR-targeted financial sanctions, and reconsider the role of their domestic courts in the asset-freezing process. Hungary should take the necessary legislative measures in order to improve the implementation of the UNSCRs relating to targeted financial sanctions. It should be further ensured that service providers are promptly updating their databases in line with new listings/designations for FT and PF. Hungary should conduct a formal review of the entire NPO sector in order to identify NPOs that could potentially pose a higher FT risk. The country should establish an effective mechanism to conduct outreach to the NPO sector concerning FT issues and monitor the NPOs posing a higher FT risk.
- The authorities should take steps to ensure that financial institutions and DNFBPs are adequately applying preventive measures. They should take further steps to raise awareness of FT risks amongst all sectors. Hungary should amend the legislative framework in line with the international standards, and safeguard rapid implementation by financial institutions and DNFBPs of these provisions.

Effectiveness and Technical Compliance Ratings

Effectiveness Ratings

IO.1 Risk, policy and coordination	IO.2 International cooperation	IO.3 Supervision	IO.4 Preventive measures	IO.5 Legal persons and arrangements	IO.6 Financial intelligence
Low	Substantial	Moderate	Moderate	Low	Substantial
IO.7 ML investigation & prosecution	IO.8 Confiscation	IO.9 FT investigation & prosecution	IO.10 FT preventive measures & financial sanctions	IO.11 PF financial sanctions	
Low	Low	Moderate	Moderate	Moderate	

Technical Compliance Ratings

AML/CFT Policies and coordination

R.1	R.2
PC	PC

Money laundering and confiscation

R.3	R.4
LC	C

Terrorist financing and financing of proliferation

R.5	R.6	R.7	R.8
PC	PC	PC	PC

Preventive measures

R.9	R.10	R.11	R.12	R.13	R.14
C	PC	LC	PC	PC	LC
R.15	R.16	R.17	R.18	R.19	R.20
PC	PC	LC	PC	PC	C
R.21	R.22	R.23			
LC	PC	PC			

Transparency and beneficial ownership of legal persons and arrangements

R.24	R.25
PC	PC

Powers and responsibilities of competent authorities and other institutional measures

R.26	R.27	R.28	R.29	R.30	R.31
LC	LC	PC	C	C	LC
R.32	R.33	R.34	R.35		
PC	PC	PC	PC		

International cooperation

R.36	R.37	R.38	R.39	R.40
LC	LC	LC	LC	LC

MUTUAL EVALUATION REPORT

Preface

This report summarises the AML/CFT measures in place as at the date of the onsite visit. It analyses the level of compliance with the FATF 40 Recommendations and the level of effectiveness of the AML/CFT system, and recommends how the system could be strengthened.

This evaluation was based on the 2012 FATF Recommendations, and was prepared using the 2013 Methodology. It was based on information provided by Hungary as well as information obtained by the assessment team during its onsite visit to Hungary from 7 to 18 March 2016.

The evaluation was conducted by an assessment team consisting of:

- Ms Ani Melkonyan, Expert, International Relations Department, Financial Monitoring Center, Central Bank of Armenia (legal expert)
- Mr John Ringguth, Scientific Expert, MONEYVAL (legal expert)
- Mr Vladimir Jizdny, Jersey Financial Services Commission, Financial Crime Policy Team Jersey (law enforcement expert)
- Mr Boudewyn Verhelst, Deputy Director CTIF-CFI, Attorney General, Belgium; Scientific Expert, MONEYVAL (law enforcement expert)
- Mr Radzhami Dzhan, Head of Department, National Anti-Corruption Bureau of Ukraine (financial expert)
- Mr Nicola Muccioli, Deputy Director, Financial Intelligence Agency, San Marino (financial expert)
- Mr Matthias Kloth (Executive Secretary to MONEYVAL) and Ms Astghik Karamanukyan and Mr Mehmed Yerlikaya of the MONEYVAL Secretariat.

The report was reviewed by the FATF Secretariat, the Financial Market Integrity Staff of the World Bank and Mr Richard Walker (Director of Financial Crime Policy, United Kingdom Crown Dependency of Guernsey).

Hungary previously underwent a MONEYVAL Mutual Evaluation in 2010, conducted according to the 2004 FATF Methodology. The 2010 evaluation and the 2013 follow-up reports have been published and are available at:

http://www.coe.int/t/dghl/monitoring/moneyval/Countries/Hungary_en.asp

As a result of the evaluation process of Hungary, 22 FATF Recommendations were evaluated as “compliant”, 12 as “largely compliant”, 13 as “partially compliant” and one as “non-compliant”. One recommendation was rated “not applicable”.

CHAPTER 1. ML/FT RISKS AND CONTEXT

1. Hungary is a landlocked country bordered by Austria, Croatia, Romania, Slovakia and Slovenia within the European Union (EU). It has external EU borders with Ukraine and Serbia. The land area of the country is 93,030 square km, and its population is 9,840,000 (as of January 2016). The capital is Budapest (1,732 million inhabitants). The official currency of Hungary is the Forint (HUF).

2. Hungary is a parliamentary republic. According to the constitution of Hungary, the National Assembly (*Országgyűlés*) is the supreme representative body and holder of constitutional and legislative power in the country. The government is comprised of the Prime Minister (as the head of government) and a cabinet of ministers, who together are responsible for the executive affairs of the state. The head of state is the President, who holds a largely ceremonial position but also has a control function in the legislative process. Hungary's legal system is based on civil law principles.

3. Hungary joined the EU in 2004. The country is a member of numerous international organisations, such as the Council of Europe, the United Nations (UN), the North Atlantic Treaty Organisation (NATO), the Organisation for Security and Co-operation in Europe (OSCE), the Organisation for Economic Cooperation and Development (OECD), the World Trade Organisation (WTO), the International Monetary Fund (IMF), the World Bank, the European Bank for Reconstruction and Development (EBRD) and Interpol.

ML/FT Risks and Scoping of Higher-Risk Issues

Overview of ML/FT Risks

4. Hungary is not a major international financial centre. However, the US Department of State 2015 International Narcotics Control Strategy Report (INCSR) for 2015 (US State Department Money Laundering Assessment) provides that Hungary's EU membership and location make it a link between the territory of the former Soviet Union and Western Europe. The country's primarily cash-based economy and, at the same time, its well-developed financial services industry may make it attractive to foreign criminal organisations.¹

5. Hungary finalised its work on a national risk assessment (NRA) in 2015. The NRA contains detailed analysis on the following types of predicate offences – fraud (considered as high risk), corruption (considered as medium risk), trafficking in human beings and drug trafficking (considered as low risk). There is a limited amount of information in the NRA about the number, composition, operation and impact of organised crime and its impact on the overall ML risk situation in Hungary. The law enforcement authorities have observed an increase in organised crime groups using Hungary for operations for cyber-related fraud, and the use of shell companies and the banking system to launder the proceeds. The statistics provided also refer to other predicate offences which usually generate significant proceeds, such as kidnapping and illicit arms trafficking.

6. A number of external sources provide more detailed information on organised crime groups operating in Hungary.² In the absence of any information in the NRA and statistical data provided

¹ <http://www.state.gov/j/inl/rls/nrcrpt/2015/supplemental/239214.htm>

² <https://www.europol.europa.eu/content/human-trafficking-gang-jailed>

by the authorities on the economic costs of crime, it is however difficult to define the most prevalent proceeds-generating crimes.

7. The first report of the Council of Europe's Group of Action against Trafficking in Human Beings (GRETA) on Hungary, which was adopted on 20 March 2015, considered that, while there were indications that internal trafficking in Hungary has been on the rise, there was still not sufficient knowledge of its scale (including the prevalence of trafficking for the purpose of labour exploitation in Hungary).³ It stated that Hungary is primarily a country of origin and transit for victims of trafficking in human beings. Although this data is not broken down into categories, the great majority of identified victims are said to have been subjected to sexual exploitation.⁴ GRETA also noted that little attention has been paid to foreign victims of trafficking and there is currently lack of data in this area.⁵

8. Hungary has been identified as a transit country for illegal drugs coming from Turkey and Asia and moving to other European destinations. Particular vulnerabilities may exist on the Hungarian-Ukrainian border with regard to tobacco smuggling and trafficking in persons. However, the country was also reported as a country of destination in a Europol publication. According to that publication, an international organised crime network, responsible for large-scale drug trafficking in the European Union, was broken up in 2014 when Hungary was the final destination of 25 kg of cocaine smuggled from Panama.⁶

Hungary's risk assessment

9. The NRA was adopted in June 2015. Representatives of the most relevant departments of the Ministries involved in the AML/CFT sphere, representatives of the competent authorities as well as representatives of the private sector participated in the NRA project. Two working groups were established for preparing the Hungarian risk assessment: the law enforcement task force (led by the HFIU) and the task force of supervisory agency (led by the MNB). The co-chairman's tasks were performed by the MNE in both subgroups. The process is described in more detail under IO 1.

10. The scope of the national risk assessment includes money laundering, crimes-generating assets (predicate offences), and terrorist financing. The risk factors have been identified by the AML/CFT supervisors (distinguished between FIs and DNFBPs) and by the law enforcement authorities. The members of the WGs have then analysed the information provided, detected the risk factors and assigned the level of ML/FT risks (i.e. low, middle, high).

11. The NRA contains a general overview on the Hungarian economy, brief data on the financial and non-financial sectors and overview of the risks in the relevant sectors. The risk factors identified on the experience of the law enforcement authorities include the risks that can occur in relation to any crime-generating assets, and specific risks for one particular type of crime.

Scoping of issues of increased focus

[https://www.coe.int/t/dghl/monitoring/moneyval/Activities/MONEYVAL\(2015\)20_typologies_launderingtheproceedsofororganisedcrime.pdf](https://www.coe.int/t/dghl/monitoring/moneyval/Activities/MONEYVAL(2015)20_typologies_launderingtheproceedsofororganisedcrime.pdf)

<https://www.europol.europa.eu/content/antique-map-thieves-arrested-hungarian-and-french-police-operation>

³ GRETA(2015)11, p. 7.

⁴ *Ibid.*, p. 10.

⁵ *Ibid.*, pp. 10 and 32.

⁶ <https://www.europol.europa.eu/content/poly-drug-trafficking-network-broken>

12. The assessment team identified areas which required an increased focus through an analysis of information provided by the Hungarian authorities, including the NRA, and by consulting various open sources.
13. **Money laundering investigations and prosecutions:** The fight against ML activity does not appear to be considered as a priority, given that no AML-strategy has been developed based on the issues identified in the NRA. The assessment team thus analysed the existence of stand-alone/autonomous ML-cases and the dependence of the ML offence on the identification of the predicate offence.
14. **Predicate offences:** The analysis of proceeds-generating crimes in the NRA is very limited and does not consider certain issues, such as the presence and type of organised criminal groups. The NRA indicates as a “risk/threat” VAT fraud and “social engineering” frauds, corruption, trafficking in human beings and drug trafficking. The assessment team looked at the extent to which the authorities have made an assessment of the relative importance and consequences of the ML/FT risks or threats, and techniques and methods deployed to exploit sectors identified as the most vulnerable to money laundering.
15. **Corruption:** While the NRA considers corruption as a predicate offence of medium risk for ML, it does not include detailed information about the threats emanating from corruption. The NRA does not appear to consider the issue of corruption both as a predicate offence for ML, as well as a contextual factor potentially having an impact on the criminal justice process. Therefore, the assessment team considered the adequacy of the treatment of corruption as a risk factor.
16. **Organised Crime:** During the on-site visit the assessment team paid attention to the actions implemented by the Coordination Centre against Organised Crime and the potential threat originating from organised crime groups.
17. **Trafficking in Human Beings:** The reference in the NRA to a paucity of information and statistics concerning various forms of trafficking in human beings was considered by the assessment team which concluded that further enquiry was warranted.
18. **Shadow economy/use of cash:** The relatively large shadow economy and the widespread use of cash are major risk factors in a considerable number of suspicious transaction reports made by financial service providers. Moreover, it appears that cash is a major risk indicator featuring in 67% of all STRs submitted in 2014. The NRA acknowledges the risk of ML related to bulk cash in several sectors. The assessment team explored whether some of the most vulnerable sectors and professions where cash is potentially used had been fully considered in the NRA. It also looked at possible limitations to the use of cash. The assessment team further explored the implementation of cross-border currency requirements.
19. **Issues that can give rise to misuse for ML purposes:** The assessment team focused on various issues, such as: the increased risk of the rising number of payment institutions entering the financial market; risks arising from the casino and card-room operators; as well as the role of lawyers in company formation and company service providers.
20. **The banking sector:** The largest part of the financial sector is the banking sector. The evaluation team held meetings with eight banks which overall comprise more than 50% of the assets under control in the banking sector.

21. On the **supervisory side**, the assessment team, considered the potential risks and vulnerabilities of certain products and services which might be relevant (e.g. the continuing existence of “stability saving accounts”, the newly introduced legal agreements of domestically created trusts and fiduciary contracts). It also looked at the possible effects of the recent assignment of the Central Bank of Hungary (MNB) with the competence of AML/CFT supervision of financial institutions.

22. **Casinos:** In the NRA, casinos are considered vulnerable to ML threats, since they encounter difficulties during the CDD process and they are involved in transactions with high risk products. The assessment team decided to look into this issue while being onsite.

23. **Lawyers:** The assessment team considered the role of lawyers in company formation in the light of the risks related to straw men and creation of fictitious companies and their involvement in the establishment of non-professional trusts. It also focused on **auditors, accountants** and **tax consultants** which have a relevant role in the management of Hungarian companies that might be misused for illegal purposes.

24. **Transparency and beneficial ownership and misuse of legal persons and arrangements:** The NRA points to the use of straw men in the establishment of companies, opening of bank accounts and execution of transactions as high risks. Companies can be established in a very quick and simple way in Hungary⁷. While this has commercial benefits, it may also carry the potential risk of the creation of bogus companies in the name of fictitious owners which can be used for committing crime. The assessment team thus discussed with the authorities the effect of the use of straw men upon the effectiveness of the transparency of legal persons and arrangements, particularly whether the current arrangements in Hungary are sufficient to prevent legal persons and arrangements from misuse for ML or FT.

25. **Tax amnesties:** The assessment team considered the manner in which the Hungarian authorities mitigate the ML risks resulting from tax amnesties in the past, in particular with regard to the continuing existence of “stability savings accounts”.

26. **Terrorist financing:** During the onsite visit, the assessment team sought clarification on the actions the authorities have undertaken to enhance the control of cash, e.g. at the border or in respect of money transfer businesses. Attention was also paid to the control of charity-type NPOs as a possible FT vehicle. Although the NRA categorised FT as a low risk, the evaluation team considered the awareness levels of service providers in respect of FT risks and the understanding of NPOs concerning their potential for being abused for FT purposes.

Materiality

27. The banking sector, which is comprised of thirty-two banks, forms the major part of the financial sector and holds 85% of financial sector assets. 1% - 3% of customers are classified as high-risk in most of the banks (such as offshore companies, foreign clients, clients from high risk jurisdictions, or certain types of businesses).

28. The widespread use of cash and the lack of cash limitations are considered as a ML-vulnerability in the NRA. The use of cash is a major risk factor in a considerable number of reports made by financial service providers. On the basis of the 2014 annual statistics collected by the

⁷ It takes an average of five days to open a company in Hungary, one of the shortest periods in the region. Source: 2012 Doing Business Report, World Bank: <http://www.doingbusiness.org/data/exploretopics/starting-a-business>

service providers pursuant to the AML Act for the risk-based analysis of reports submitted to the HFIU, 67% of the reports included the use of cash without economic reasons (mainly large amounts of cash deposits made on payment accounts and collection of large amount of cash from payment accounts).

29. As indicated in the risk assessment, certain persons may act as executive officers of an unlimited number of companies, as the effective legal regulations do not impose any limitations in this regard. This raises the possibility that straw men might be used as (nominee) directors. The NRA also indicates that foreign companies domiciled in Hungary, as well as off-shore companies holding current accounts at Hungarian banks, pose similar risks if misused for illegal activities, mostly related to VAT frauds and “social engineering” frauds.

30. According to the review by the PPO over the last five years and the case examples provided by the police, almost all investigations and prosecutions combined the predicate with the money laundering offence. A clear majority were self-laundering cases with tax and fraud predicates.

31. Some areas of the DNFBP sector appear more vulnerable to the ML/FT threats, in particular casinos and dealers in precious metal and stone. An exemption of non-professional trustees from the AML/CFT Act framework makes the sector more vulnerable to ML/FT threats. Considering the involvement of legal professionals in company formation and as company service providers, the identified risk concerning fictitious companies and straw men may indicate a vulnerability of this category.

Background and other Contextual Factors

32. Based on the information from publicly-available sources, corruption could potentially have an impact on the effectiveness of the AML/CFT regime. The 2015 Corruption Perception Index (CPI) of Transparency International ranks Hungary 50th out of 168 countries surveyed (dropping three positions from the previous year). According to this non-governmental organisation, the main factors contributing to this result are an increased opacity in distribution of public funds, restricted accessibility of information of public interest and a lack of transparency concerning the tax benefit scheme designed to support the Hungarian sport sector.⁸ Additionally, the European Commission identified in its EU Anti-Corruption Report⁹ of 2014 the following risks associated with public procurement affecting major infrastructure projects in Hungary: i) conflicts of interest; ii) high frequency of certain companies being successful in tenders for EU co-financed contracts; and iii) use of disproportionate selection and award criteria to favour particular bidders. Conversely, according to the Eurobarometer report¹⁰ published in December 2015, an increasing number of companies (during the period 2013-2015, as opposed to the previous three-year period) that took part in a public tender or public procurement procedure in the country stated that they did not think that corruption had prevented them from succeeding in the procedure.

33. The establishment of the National Protective Service and the integrity test, regulated as a new legal concept in the amended Act XXXIV of 1994 of the Police (Police Act) in 2010, made some progress in the fight against corruption both in terms of prevention and evidence. New separate units specialising in the detection of corruption were set up during the organisational restructuring of the National Police Headquarters (NPHQ). The National Anti-Corruption Programme and the

⁸ http://transparency.hu/cpi_2015_eng?bind_info=index&bind_id=0

⁹ Annex Hungary to the EU Anti-Corruption Report, http://ec.europa.eu/dgs/home-affairs/what-we-do/policies/organized-crime-and-human-trafficking/corruption/anti-corruption-report/docs/2014_acr_hungary_chapter_en.pdf

¹⁰ <http://ec.europa.eu/COMFrontOffice/PublicOpinion/index.cfm/ResultDoc/download/DocumentKy/69434>

plan of related actions for 2015–2016 were approved in Government Resolution No. 1336/2015 (V. 27.).

34. The recent report issued in July 2015 by the Council of Europe’s Group of States Against Corruption (GRECO) evaluated the effectiveness of the systems in place in Hungary to prevent corruption in respect of members of parliament, judges and prosecutors. In particular, it highlighted the need for more checks and balances in the exercise of independent prosecutorial discretion.¹¹

35. The level of financial inclusion is considered as high, with 76% of the adult population maintaining an account at a formal financial institution. The website of the Central Bank of Hungary (MNB) offers a wide range of tools, publications and data, especially on consumer protection. This includes basic account features, account switching information, information on types of accounts available and account services (features and costs of accounts, payment cards and other payment services linked to the account). Despite of these measures, the use of cash is still identified as a major risk factor which the evaluation team took into closer consideration while being onsite.

Overview of AML/CFT Strategy

36. The findings of the NRA have not yet been used to formalise any AML/CFT national policies and strategy and to prioritise measures based on an action plan. The Hungarian authorities envisage an action plan at governmental level on measures aimed at mitigating the ML/FT risks in the long term.

Structural Elements

37. The AML/CFT policy-making and coordination is conducted by the AML Sub-Committee chaired by the Head of Department of the Ministry of National Economy (MNE). The Committee is composed of the representatives of the Ministries for National Economy, Interior, Justice, Foreign Affairs and Trade, the National Tax and Customs Administration, Hungarian Trade Licensing Office and the Permanent Representation to the EU. Permanent invitees are representatives from the MNB, the Prosecution Service of Hungary, as well as the National Office for the Judiciary. The representatives of the self-regulatory bodies (that perform AML/CFT supervisory functions) are also invited to attend the meeting, based on the items of the agenda.

The Institutional Framework

38. The main agencies involved in Hungary’s institutional structure to implement its AML/CFT regime are the following:

¹¹ GRECO, Fourth Evaluation Round, Evaluation of Hungary, adopted on 27 March 2015, paragraph 4: “The [Prosecution] service is built on a strict hierarchical structure, allowing superior prosecutors (ultimately the Prosecutor General) to instruct subordinate prosecutors, to overrule their decisions and to redistribute or take over cases. In such a system there is a need for adequate checks and balances in order to prevent the potential for malpractice and corruption and more could be done in this respect. Furthermore, the independence of the Prosecutor General from political influence would be clearer if this official could not be re-elected and, the current possibility to politically block the election of a new prosecutor general with a minority vote in Parliament, in which case the sitting prosecutor general will remain in office after the expiry of his/her mandate, ought to be discontinued for the same reason. Moreover, the disciplinary proceedings in respect of ordinary prosecutors would benefit from being made more transparent and connected to broader accountability. Superior prosecutors’ decisions to move cases from one prosecutor to another ought to be guided by strict criteria and justifications.”

([http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep\(2014\)10_Hungary_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round4/Eval%20IV/GrecoEval4Rep(2014)10_Hungary_EN.pdf))

Ministry for National Economy (MNE)

39. Regarding AML/CFT matters the MNE, which is the successor to the Ministry of Finance, is responsible for: preparing, forming and implementing AML/CFT laws; national cooperation in AML/CFT issues; coordinating the national AML/CFT risk analysis; performing the relevant legislative tasks related to the transposition of the new EU AML directive and the regulation on transfer of funds; and coordinating the implementation of the financial and asset-related restrictive measures imposed by the UNSC and the EU. In addition, the MNE is the main contact point for MONEYVAL and the Expert Group on Money Laundering and Terrorist Financing, an advisory body to the European Commission.

The Anti-Money Laundering Inter-ministerial Sub-Committee

40. The Anti-Money Laundering Inter-ministerial Sub-Committee (hereinafter: AML Sub-Committee) is the main inter-ministerial coordination and policy making body regarding the fight against ML and FT. The MNE is tasked with the coordination of this Sub-Committee. Its main responsibilities are the harmonisation of the tasks deriving from international and EU level requirements; the preparation of the mandate to be presented in international fora as regards AML/CFT issues; and the coordination of the implementation of financial regulatory tasks of the government in the field of AML/CFT.

Hungarian Financial Intelligence Unit (HFIU)

41. The Hungarian Financial Intelligence Unit (HFIU) carries out the FIU functions, namely receiving and analysing SARs, disseminating the results of the analysis, and suspending transactions if necessary. The HFIU has obtained a higher status since 2012 by becoming an independent department of the Central Office of the National Tax and Customs Administration (see below), which brought with it larger decision-making powers. It is also designated as the supervisory authority of accountants, tax advisors, tax consultants and real estate agents. In the context of the targeted financial sanctions regime, the HFIU has the responsibilities as the authority enforcing financial restrictive measures ordered by the EU, in accordance with the FRM Act.

Counter Terrorism Centre (TEK)

42. With changing the law enforcement and secret service structure in the area of fighting terrorism in 2010, the Counter Terrorism Centre (TEK) was created. It is responsible for fighting terrorism, in particular with detecting terrorist organisations; preventing, detecting, and averting efforts of private persons, groups and organisations; as well as carrying out prevention, detection, interruption duties and apprehension of perpetrators of acts of terrorism and any other crimes related to terrorism. The TEK does not exercise investigative authority powers. It performs secret intelligence collection with crime detection purposes and screening-searching secret intelligence collection.

Central Bank of Hungary (MNB)

43. In 2013, the MNB took over the responsibilities of the former financial supervisor, the Hungarian Financial Services Authority (HFSA). The MNB shall be independent in carrying out the tasks and meeting their obligations conferred upon them by the MNB Act. Its role in preventing and combating ML and FT in Hungary is as follows: exercising the supervisory functions defined in the AML/CFT Act and ensuring that AML/CFT requirements are fulfilled within the financial sector; entering into cooperation agreements and exchanging information with foreign financial

supervisory authorities; and promoting and facilitating the process of integration. The MNB is the authority responsible for licensing and prudential supervising of financial institutions. It applies supervisory measures, including the imposition of sanctions where legal or regulatory conditions are not met. It is also the supervisor of professional trustees as well as the registration authority of the non-professional trustees.

Ministry of Interior

44. The Ministry of Interior is supervising the National Police, the Counter Terrorism Centre, the National Protective Service and other agencies. It carries primary responsibility for governmental coordination, strategic guidance and legislation in the field of public security.

Ministry of Justice

45. The Ministry of Justice is responsible for the legislation of criminal law, criminal procedural law, the responsibility of legal persons, the codification of legislation concerning international cooperation and legal assistance, as well as civil law and judicial enforcement. As the central authority, the ministry is further responsible for receiving foreign mutual legal assistance and extradition requests, as well as sending such requests (unless such requests concern other EU member States).

Ministry of Foreign Affairs and Trade (MoFAT)

46. The MoFAT contributes to the governmental coordination concerning the compliance with the counter-terrorism resolutions and regulations and it is responsible for the official flow of information regarding the implementation of the sanctions imposed by the EU and the UN Security Council.

Ministry of Human Capacities

47. The Ministry of Human Capacities is a central administrative institution which has amongst its responsibilities regulative powers concerning the NGO sector and maintaining the monitoring system in order to coordinate the technical aspects of central subsidies provided to that sector.

National Police Headquarters

48. The Hungarian Police, which include the National Police Headquarters, are tasked with: the prevention and investigation of criminal offences; the protection of public security and public order; as well as the protection of the State borders. It operates under the direction of the government. The Police share competence for investigating ML together with the National Tax and Customs Administration, depending on the competence for the predicate offences assigned to them. The Police have also the competence for the investigation of cases of acts of terrorism and FT.

49. The Asset Recovery Office (ARO) operates within the Police. Its main task is to detect assets originating from criminal acts or which are in the possession of organised crime groups, as well as the freezing of such assets (asset recovery) and the provision of support for investigations in financial crime-related cases. It is entitled to conduct separate investigations related to financial crimes and to carry out covert investigations in order to identify the proceeds of crime. The ARO also performs tasks related to the cooperation concerning the tracing and identification of proceeds of crime and other crime related property.

National Tax and Customs Administration of Hungary (NTCA)

50. The NTCA was established in 2011 with the merger of the Tax and Financial Control Administration (tax administration) and the Hungarian Customs and Finance Guard (customs and excise administration, designated investigative authority for ML). The investigating function is carried out by the Directorate of Criminal Affairs (DG CA) as a central body and its regional directorates for criminal affairs. The NTCA shares investigating competence in relation to ML with the Police, depending on the competence for the predicate offences (see above).

51. The Department for Enforcement of the Central Office is responsible for the supervision of the control activities related to the physical cross-border transportation of cash across the external borders of the EU. The Department for Enforcement is responsible for enforcing the Cash Control Act and for checking compliance with the obligation to declare cash or bearable negotiable instruments (BNI) entering or leaving the EU if the amount exceeds €10.000. In order to check compliance with the obligation to declare, the customs authority is empowered to carry out controls on natural persons, their baggage and their means of transport. The Department for Gambling Supervision carries out duties relating to the authorisation and licensing of gambling operators. It maintains related records and registers, monitors and oversees compliance with the provisions of the relevant acts, and carries out the control and supervisory duties.

Prosecution Service of Hungary

52. The prosecutors are responsible for: exercising supervision to ensure that investigative authorities conduct independent investigations in compliance with the provisions of law (supervision of investigation); performing its share of the duties relating to international treaties, particularly seeking and providing legal assistance; performing the duties relating to Hungary's participation in Eurojust; and conducting investigations of the cases specified in the Code of Criminal Procedure (prosecutorial investigation).

Hungarian Trade Licensing Office (HTLO)

53. The HTLO is the supervisory body to the service providers engaged in trading with precious metals or goods made of precious metals and in trading in goods involving cash payments exceeding the amount of three million six hundred thousand forints (around EUR 11,400). Regarding these service providers the HTLO is responsible for: preparing model rules for these service providers; approving the internal rules of the service providers on the prevention of ML and TF; and conducting control procedures/supervising these service providers.

Hungarian National Chamber and five regional chambers of notaries public

54. The competent regional chambers are the supervisory bodies (members of the Hungarian National Chamber of Notaries Public) to the public notaries when they latter are: providing safe custody services or notary services in connection with the preparation and execution of buying or selling any share in a business association or other economic operator; buying or selling real estate; or founding, operating or dissolving a business association or other economic operator. They are responsible for forwarding the suspicious transaction reports made by the notaries to the HFIU. The Hungarian National Chamber of Civil Law Notaries draws up guidelines for notaries and approves the internal rules of the service providers on the prevention of ML and FT.

Hungarian Bar Association (HBA)

55. The regional bar associations are the supervisory bodies to lawyers when the latter: hold any money or valuables in custody or provide legal services in connection with the preparation and

execution of buying or selling any share in a business association or other economic operator; buying or selling real estate; or founding, operating or dissolving a business association or other economic operator. The bar associations are responsible for forwarding suspicious transaction reports made by the lawyers to the HFIU, and supervising the practical implementation of AML obligations by lawyers. The HBA draws up uniform internal or model rules for lawyers and law firms. It also approves the internal rules on the prevention of ML and FT.

Chamber of the Hungarian Auditors (CHA)

56. The CHA is a self-governing organisation of auditors. Membership is an obligation in order to obtain an auditor license. As the supervisory authority, the CHA shall monitor AML/CFT compliance, and approve internal rules.

The National Institute of Criminology

57. The National Institute of Criminology is the scientific research and training agency of the PPO, and aims to conduct research on crime; to improve the theory and practice of criminology, police science and criminal law; and to contribute to the practical use of the research results. The institute conducted in 2012 the ground research of the NRA.

Overview of the financial sector and (Designated Non-Financial Businesses and Professions, DNFBPs)

58. Due to its EU membership, Hungary is part of a single internal market that fully integrates 28 countries and, based on bilateral agreements, at least further 10-15 countries, where there is a free flow of capital and where financial and other services can be provided freely either through establishment, or as a cross-border service.

59. As at September 2015, the Hungarian financial system was comprised of 32 commercial banks, 10 specialised credit institutions, 110 saving co-operatives, 25 investment companies, as well as 21 securities, 20 life insurance and 31 collective investment bodies.

60. The number of licensed institutions remained largely stable since the 4th round report. An increase has been observed regarding the number of currency exchange offices. There are currently 322 such offices in Hungary. Currency exchange activities can only be performed by licensed banks or their contracted agents.

61. A number of large financial institutions are subsidiaries of major foreign financial groups. Hungarian financial institutions have branches/subsidiaries in Bulgaria, Croatia, Montenegro, Romania, Serbia, Slovakia, the Russian Federation and Ukraine.

62. The banks are considered to be the driving force in the whole financial sector, holding 85 % of financial system assets.

63. The AML/CFT supervision on FIs is within the responsibility of the MNB since 2013. The MNB is assigned with adequate powers which are widely used. It has categorised the banks for the purposes of AML/CFT risks, and applies resources accordingly. Such powers are used to carry out off-site and on-site inspections (“comprehensive”, “thematic” or “target”, which differ in the content and duration).

64. The table below sets out Hungary’s reporting entities as of September 2015 and asset value at the end of 2014:

Types of financial institutions	Registered number of financial institutions	Subject to AML/CFT Law	Total Assets (equivalent EUR billion)
Banks	32	Yes	90
Specialized Credit organizations	10	Yes	14
Credit Institutions incorporated as limited companies or set up as cooperatives	110	Yes	5
Investment companies	25	In the cases when they provide fund management services	19
Securities	21	Yes	8
Life Insurance	20	Yes	6
Money Service Businesses	/	Yes	
Currency exchange offices	322	Yes	N/A
Collective Investment Bodies	31	Yes	5
Non-Banking Financial Institutions	2850	Yes	N/A

65. Casinos and card rooms are licensed. The licensing authority is the Department of Gambling Supervision of the NCTA, which is also vested with supervisory functions. The scrutiny is done by the NTCA on the basis of documentary material and on-site inspections. The supervisory activities cover AML/CFT issues through off-site and on-site inspections.

66. The remaining DNFBPs have been assigned a variety of competent authorities and SRBs for AML/CFT supervision. The professions (i.e. notaries, lawyers and auditors) are supervised by the respective SRBs. The FIU is also vested with supervisory functions related to real estate agents and accountants.

67. The following facts and figures were provided by the Hungarian authorities in relation to the DNFBP sector:

Type of DNFBP	Licence/ Registration/Appointment/ Regulation	Competent authority/SRO	Subject to AML/CFT Law	Registered number of DNFBPs (as of 2015)
Casinos	Licence	Gambling Supervision Department of the NTCA	Yes	8
Real estate agents	Registration	HFIU / NTCA	Yes	2,058
Dealers in precious metals and stones	Licence and registration	Hungarian Trade Licensing Office	Yes	2,195
Lawyers	/	Regional Bar Association	Yes	12,601
Notaries	Certificate/Registration	Regional Chambers of Notaries Public	Yes	316
Accountants	/	HFIU /NTCA	Yes	9,784
Card Rooms	/	Gambling Supervision Department of the NTCA	Yes	10
Online Gambling (remote, online casinos)	Licence	NTCA	Yes	0
Auditors	/	Chamber of the Hungarian Auditors	Yes	2,794
Professional Trustees	/	/	Yes	2

68. At the time of the onsite visit (March 2016), 79,986 NGOs and 3,766 non-profit business companies were registered in Hungary, 1,350 of which were non-profit organisations with “public benefit”-status. The number of the associations were 52,145. There were 27,841 foundations in Hungary.

Overview of legal persons and arrangements

69. Different types of legal entities can be established in Hungary as described in the table below. The Civil Code adopted in 2013 (Chapter XLIII) provides for “fiduciary asset management contracts”, under which the fiduciary (who acts like a trustee) undertakes to manage the assets and rights entrusted to him by the principal, in his own name and on the beneficiary’s behalf, and the principal undertakes to pay the fee agreed upon. The Civil Code is complemented by a specific law (XV of 2014) “On trustees and the rules for their activities”. The Act regulates the operation of “corporate entity trustees”, which provide fiduciary asset management on a professional basis, and can only be corporate entities¹² and trustees acting on a non-professional basis.

Overview of supervisory arrangements

70. The MNB is the sole designated supervisory body for financial institutions. It is the authority in charge of licensing Core Principles FIs¹³. Money exchange offices may be operated only by banks and their agents. The respective use of agents by banks shall be authorised by the MNB. Agents and subagents of MVTPs in other EU member States are licenced and registered by the competent authorities of the home country of the MVTS, upon consulting the MNB on “fit and proper”-issues regarding the agent, who shall be registered at the MNB, and upon meeting the Hungarian AML/CFT rules.

71. Casinos are authorised by the Gambling Supervision Department of the NTCA, in particular with regard to land-based casinos, card rooms and “remote gambling”. Under the Act CXXXIX of 2015 amending the Act XXXIV of 1991 on Gambling Operations, the Department shall also authorise the operation of “online casinos”.

72. The following Self-Regulatory Bodies are responsible for AML/CFT supervision of DNFBPs: the Regional Bar Association (concerning lawyers and law firms), the Regional Chamber (concerning notaries) and the Chamber of Hungarian Auditors. The HFIU is responsible for the supervision of real estate agents, accountants, as well as service providers engaged in tax consulting services and tax advisory activities.

73. The Hungarian Trade Licensing Office (HTLO) exercises supervision over dealers in precious metal and dealers in trading. Dealers in precious stones are not covered *per se* but under the notion of dealers in trading. The MNB is responsible for the supervision of professional trustees. Non-professional trustees are not covered under the AML/CFT regime.

Overview of the Preventive Measures

74. The AML/CFT Act species obligation related to AML/CFT for the service providers. Model Rules are issued for service providers as non-binding recommendations. The AML/CFT Act was

¹² According to the Law on trustees these are: a) a private limited company or public company limited by shares with a registered office in the territory of Hungary, or b) a Hungarian branch office of a company with a registered office in another state party to the Agreement on the European Economic Area (Section 3, (1) a) and b).

¹³ Having regard to the Hungarian financial sector, “Core Principles FIs” include credit institutions, financial enterprises, investment firms, commodity dealers, insurance institutions and investment fund management companies.

amended after the adoption of the 4th round MONEYVAL report and has entered into force on 1st July 2013.

75. Hungary introduced the concept of domestically created trusts into its legal order in 2014. The AML/CFT Act was also modified due to the adoption of the Act on Trustees to extend the application of the AML/CFT Act to professional trustees.

76. The FIs and DNFBPs listed under the FATF standards are in principle covered under the AML/CFT regime. The concept of “non-professional trustees” in Hungary is however not covered by that law. This may raise an issue as that concept deviates from the FATF definition, as non-professional trustees may provide their services for remuneration under certain conditions (e.g. not more than one trust contract per year). Non-professional trustees in Hungary should thus be considered as trust service providers within the context of the FATF standards when acting on professional capacity.

CHAPTER 2. NATIONAL AML/CFT POLICIES AND COORDINATION

Key findings and Recommended Actions

Key Findings

Immediate Outcome 1

While commending the efforts of the Hungarian authorities with their first NRA, based on their own domestic methodology that involved numerous authorities and representatives of the private sector, the assessment team takes the view that there is more to build on the foundation laid by this document.

The NRA does not make a critical analysis of the risk factors identified by the two WGs, by verifying whether the outcomes of the WGs are consistent with each other. If this had been done, other and different conclusions might have been reached. The analysis of proceeds-generating crimes is very limited and not related to the presence of organised crime or foreign threats.

The assessment team finds that the NRA does not include sufficient breadth and depth with regard to potential ML/FT threats, vulnerabilities and their consequences. The NRA fails to identify the underlying sources, causes and interdependencies of ML risks (cross-cutting issues) that are essential in determining the nature and level of risks. This could be further broken down into comprehensive assessments and considerations of threats (including sound assessment of threats posed by organised crime and corruption, which are either missing or not duly considered).

The classification and use of certain terms (“threats”, “vulnerabilities” or “risks”) raise some concern about the sound understanding of the NRA methodology and its key concepts. The NRA fails to deliver an assessment of the relative importance and consequences of the ML/FT risks or threats. It does not clearly identify the most salient ML risks, and which measures should be considered (and by which authority) in order to mitigate them. A lack of statistics has not been properly addressed as a factor in the NRA.

The FT component of the NRA seems to be limited and focused only on the preventive measures (i.e. sanctions by EU and UNSCRs) rather than on the analysis of the existing cases related to FT. Other areas of significance within the context of Hungary, such as cash movements, have not been considered. This puts into question whether Hungary does properly understand its FT risks.

The NRA process does not demonstrate the characteristics of a comprehensive assessment based on a robust methodology.

The Hungarian authorities have not yet adopted a national AML/CFT strategy in the light of the outcome of the NRA, nor have they defined consequential policies and necessary actions coherently.

Coordination and cooperation within the Hungarian institutional framework in relation to combating PF needs to be developed. Results of the work done by different state agencies in relation to combating proliferation should be communicated and reflected in the policy-making by the AML Sub-Committee.

Recommended Actions

Immediate Outcome 1

A number of improvements are needed to Hungary's AML/CFT system in terms of its national policies and coordination:

- A more detailed ML/FT-threat and vulnerability analysis – by collecting in-depth data - should be undertaken by updating the NRA:
 - based on a wide range of information sources (e.g. ML investigations, intelligence services, MLA requests made and received, independent reports on risks in Hungary and in the region, analyses of movements of funds) in order to better articulate the main threats and significant domestic and foreign proceeds-generating crimes in the country (including the composition and activities of organised crime groups);
 - based on a thorough analysis of vulnerabilities (e.g. related to products and services provided by FIs).

A similar exercise should be undertaken for FT threats and vulnerabilities. The authorities should focus particularly on NPOs and cross-border movements of cash.

- A national AML/CFT strategy and related action plan relevant for all competent authorities should be determined on the most relevant ML/FT risks identified. The action plan should ensure that coordinated actions will be taken by all competent authorities involved in the process and that resources are effectively allocated.
- More information should be shared with the private sector about the results of the NRA.
- Main stakeholders of the private sector should be encouraged to conduct their own individual risk assessments at the level of the customers and products with which they are dealing. As appropriate, identified risks should be incorporated in the NRA.
- The exemption of non-professional trusts from the AML/CFT Act framework should be reconsidered.
- Exemptions from CDD should be based on a proper assessment of ML/FT risks.
- Hungary should develop coordination and cooperation within its institutional framework in relation to combating PF.
- Hungary should take further specific measures to limit the extensive use of cash, in particular with regard to payments of high amounts.

The relevant Immediate Outcome considered and assessed in this chapter is IO.1. The recommendations relevant for the assessment of effectiveness under this section are R.1 and 2.

Immediate Outcome 1 (Risk, Policy and Coordination)

The country's understanding of its ML/FT risks

77. Hungary's understanding of its ML/FT risks is largely reflected in the findings of the NRA. Before conducting the NRA, other initiatives had been undertaken to explore the threats that the country faces, such as the project led by the IMF on VAT frauds, the National Anti-Corruption

Programme as well as strategies adopted by the Police on trafficking of human beings¹⁴. However, these initiatives have not been fully used to understand and capture the related ML/FT component. Therefore, the assessment team, in evaluating Hungary's understanding of its ML/FT risks, focussed predominantly on the outcomes of the NRA.

78. Hungary launched its NRA in 2014. This project involved numerous participants, such as representatives of the most relevant departments of the ministries involved in the AML/CFT sphere, representatives of the competent authorities as well as representatives of the private sector.

79. The "concept note" and the domestic "NRA methodology" of the NRA were drafted by the MNE. In June 2015 the AML Sub-Committee, which is the coordinating and policy-making body regarding the fight against ML and FT, adopted the NRA. It was subsequently approved by the competent authorities involved in the process. In November 2015, the AML Sub-Committee decided to disseminate the findings to the private sector through the respective supervisors.¹⁵ Nonetheless, several of the actors in the private sector had only recently been made aware of the results of the NRA, more precisely in the days preceding the on-site visit in March 2016.

80. The NRA program has three phases: 1) the "Ground research" carried out in 2012 by the National Institute of Criminology (NIC)¹⁶; 2) the "Identification and assessment of risk" carried out by the Working Groups (WGs) based on domestic methodology; and 3) the "Fine-tuning and updating".

81. The NRA document" remains silent on the main findings and conclusions of the NIC research, even though these might have supported a clear articulation of the domestic and external ML/FT threats.¹⁷ Given that the NIC data did not go further than the year 2011, the Hungarian authorities considered the data as outdated and thus not relevant for the NRA. The research was conducted on the rather limited scope of finished cases dating pre 2012 thus while relevant to describe the previous practice, not connected to actual trends and modus operandi. Therefore – besides taking note of the weaknesses identified in the NIC research – the NRA was based on the more up-to-date perception of the LEA authorities. The Hungarian authorities recognised that wider scope of the NRA is needed and decide to set up working groups involving all relevant authorities, policy makers, supervisory authorities and the private sector.

82. The second phase, relating to the "Identification and assessment of risk", is composed of three steps carried out by the WGs¹⁸: 1) identification of the potential risk factors; 2) analysis of the potential risk factors and discussion; and 3) evaluation and determination of the levels of risks ("low", "medium" and "high") for each of the risk factors identified.

83. The process for the identification of risk factors was led by the AML/CFT supervisors (with a distinction made between FIs and DNFBPs) and by the Law Enforcement Authorities.

84. On the financial side, the extensive use of cash and the misuse of current accounts held by domestic "phantom companies" and off-shore companies have been considered the most relevant ML/FT risk factors. Most of the FIs met onsite confirmed these outcomes.

¹⁴ Concerning trafficking in human beings, Hungary is mostly a country of departure and transit of the victims which are sent to Western European Countries. In these cases, LEAs information indicates that proceeds of these illegal activity reaches Hungary in cash, through physical transportation.

¹⁵ The NRA was signed by the MNE in December 2015.

¹⁶ In 2012, the National Institute of Criminology (NIC) drafted a ground research paper to assess the ML/FT risks, threats, vulnerabilities and trends in Hungary. The NIC research focused on the files of the period between 2008 and 2011.

¹⁷ According to the FATF Guidance on Risk Assessment, the ML/FT threats, once matched with the ML/FT vulnerabilities identified by the WGs, would determine the ML/FT risks.

¹⁸ Such activities were carried out by two WGs as described in the TC Annex under R.1.

85. However, the assessment team takes the view that risks and vulnerabilities of financial products, services and delivery channels have not been thoroughly explored. While the potential risks and vulnerabilities of certain products and services have been reflected in the risk assessment, this has not been the case for other risks indicated based on information provided by the authorities and the private sector (e.g. stability saving accounts or the newly introduced legal agreements of domestically created trusts and fiduciary contracts).

86. With regard to DNFBPs, the NRA lists for each of the categories the vulnerabilities identified. Amongst these are difficulties in the application of certain CDD obligations (casinos), uncertainties about the number of supervised persons (accountants and dealers in goods), the issue of confidentiality and conflict of interest (auditors) as well as gaps in the reporting obligations (notaries). Moreover, one of the vulnerabilities identified with regard to chambers is their double function as both representatives and supervisors of their members.

87. LEAs have identified the risk factors associated with certain proceeds-generating crimes as follows: extensive use of cash transactions, domicile of foreign companies, misuse of off-shore companies, as well as the use straw men for the establishment of “phantom companies” or for the opening of accounts held by these companies and the execution of transactions on their behalf. The findings of the LEAs cause the assessment team to conclude that other categories of DNFBPs, as well as certain financial operations and FIs should also have been considered in terms of ML/FT risks and vulnerabilities.¹⁹

88. The NRA indicates as a risk/threat “social engineering” frauds, corruption, trafficking in human beings and drug trafficking. However, the NRA lacks a clear picture of the major proceeds-generating offences in Hungary and the prevalence of the identified offences. Moreover, the exact threat originating from organised crime - both domestic and foreign - remains rather unclear, as the composition and activities of organised crime in Hungary and the extent of professional laundering of its proceeds were not thoroughly analysed in the NRA.

89. Although the authorities have sought to highlight in the NRA what they considered to be the most prevalent ML modus operandi in major proceeds-generating crimes, none of the above-mentioned offences have been properly scrutinised with regard to their connection and relation to ML investigations, prosecutions or convictions. It thus remains unclear how (and to which extent) the proceeds generated by these specifically identified offences have been laundered in Hungary. This appears to be a major weakness of the NRA and raises the question whether the country fully understands the ML/FT risks it faces.

90. With regard to domestic and foreign ML/FT threats, the NRA does not contemplate the analysis of evidence related to ML investigations, prosecutions and convictions as well as to MLA²⁰.

¹⁹ For instance, lawyers play a relevant role in the establishment and management of domestic companies. However, in the context of risk factors, such role has not been properly scrutinised: lawyers are involved in the foundations of companies and the appointment of shareholders and executive directors, among which persons acting as straw men might be appointed. Moreover, documents of domestic companies may be deposited at the Court of Registry only through lawyers and/or other legal professions. Thus the latter come across relevant information for AML/CFT purposes. With regard to the misuse of current accounts held by domestic and off-shore companies used to transfer funds from/to several current accounts or to deposits or withdrawals large amounts of cash, the role of banks is particularly relevant in order to prevent misuse of financial products and to report SARs to the HFIU. These significant amounts may be invested in sectors - such as real estate and high value goods (e.g. cars, jewels etc.) - where public notaries, real estate agents and dealers might play relevant preventive roles.

²⁰ On certain issues, such as threats deriving from third-party launderers or the presence of organised crime groups in ML cases, there was only marginal or no focus. This was despite the fact that the NRA document indicates, for example, that trafficking in human beings is also related to Hungarian organised crime.

The NRA does not consider the ML/FT threats related to the context and geographic situation of Hungary, nor the analysis of cross-border movements of funds (i.e. inflows and outflows, both physical as well as through banking and MVTS channels) that might suggest the existence of illicit financial flows. This is despite the availability of such information by independent sources of information (such as Europol, the EU Commission or Interpol).

91. The FT threat is considered “low” or “very low”. This has been analysed from a preventive perspective and is based on co-operation among the authorities involved in the system of institutions combating ML and FT, international co-operation and the execution of the financial and asset-related restrictive measures. This assessment may have been incomplete, given that gaps have been identified by the assessment team under IO4 with respect to the implementation of the UNSCRs by the private sector. As clarified in more detail under IO 9, the statistics referring to some terrorism-related investigations and convictions may indicate sporadic terrorist activity. According to the authorities, this relates to minor incidents. Among the vulnerabilities connected to FT, they indicated that this is connected to NPOs or the use of pre-paid cards and payment services provided by mobile phone applications. However, no details have been provided in the NRA. Other areas appear not to have been considered in the context of FT, such as cross-border movement of cash. This puts into question whether Hungary fully captured the prevailing FT risk by rating it “low” or “very low”.

92. Despite the shortcomings of the NRA, the HFIU - because of its analytical capacities - appeared to have a better grasp of the overall risks, as perceived from the SARs it receives. The LEAs also seemed to understand the risks within the areas in which they operate, but no overall appreciation of ML risk was apparent to the assessment team. The MNB does not assess ML/FT risks at the sectorial level or for each FI, which makes it difficult to demonstrate a thorough understanding of the financial sectors supervised and of each FI.

National policies to address identified ML/FT risks

93. At the time of the onsite visit, Hungary had not yet articulated a national AML/CFT strategy, which takes into consideration the findings of the risk assessment. An envisaged action plan on measures aimed at mitigating the ML/FT risks had not yet been drafted and consequently not yet endorsed at national level. Nevertheless, the AML Sub-Committee has adopted a “Working document on the NRA” that is aimed at supporting the competent authorities in addressing the ML/FT risks identified. This document requires the authorities to adopt measures aimed at mitigating the risk factors and to inform the AML Sub-Committee on the actions taken and a respective time schedule. Although the assessment team welcomes this initiative, the AML Sub-Committee does not yet appear to have ensured that coordinated actions will be taken by all players involved in the process.

Exemptions, enhanced and simplified measures

94. Based on the results of the NRA, no exemptions have been provided to FIs and DNFBPs in relation to the FATF Recommendations. Although the NRA has not been used to justify exemptions and simplified measures for lower risk circumstances, the AML/CFT legal framework provides for certain exceptions.²¹ Simplified and enhanced CDD measures, as set forth under the AML/CFT Act,

²¹ These exceptions are indicated under Criterion 1.6 of the TC Annex 1. The Hungarian authorities have not yet designated a reporting entity in its own right for the category of “dealers in precious stones”, which is included in the larger category of “dealers in goods” (i.e. traders that execute transactions in cash exceeding HUF 3,6 million,

derive from the transposition of the third EU AML Directive and are not a result of a proper assessment of ML/FT risks. The lower risk circumstances set forth in the AML/CFT law do not conflict with the findings of the NRA.

95. With the adoption in 2014 of the Trustee Act, the notion of non-professional trustee deviates from the FATF definition. According to the AML/CFT Act, this category of trustee does not fall under the AML/CFT obligations (e.g. CDD, reporting requirements).

Objectives and activities of competent authorities

96. Although some initiatives have been undertaken, the assessment team is of the view that the objectives and activities of the authorities are not consistent with the risk factors identified in the NRA. Although some initiatives have been undertaken by the authorities on institutional level. The assessment team found no evidence that the prosecuting authorities brought ML cases based on an appreciation of the ML risks drawn from the NRA. According to them, the legality principle requires all offences to be prosecuted if the evidence is available, with the exceptions provided by the CPA.²² Within these parameters they could direct ML investigations and prioritise actions, but there was not yet real evidence of this in practice. The situation is similar for law enforcement authorities. Although the HFIU has an adequate grasp of the risks, lack of feedback from LEAs and prosecutors on their disseminations leads to a fragmented and uncoordinated response to the identified risks.

97. The MNB is lacking written policies, procedures and models that explicitly incorporate the ML/FT risks of the country, those among sectors and for each of the FIs. The MNB has, in practice and to certain extent, conducted supervisory activities on some relevant issues related to higher risk factors (e.g. extensive cash operations). However, the information and figures provided do not permit to conclude that AML/CFT supervision is focused on relevant ML/FT risks. Supervision on MVTs is limited due to the EU pass-porting regime.

98. DNFBPs supervisors were not able to demonstrate that they perform supervisory activities based on risks, with the exception of the HFIU (in performing supervisory functions for real estate and accountants) and, to a certain extent, the Department of Gambling of the NTCA.

National coordination and cooperation

99. The AML Sub-Committee is the main policy-making body of Hungary on AML/CFT issues. This body adopted the NRA and the “Working document on the NRA” drafted by the MNE. It is also likely to be entrusted with coordinating and managing the actions taken by the competent authorities in the light of the findings of the NRA.

100. At the operational level, the Hungarian authorities cooperate quite broadly. However, the results of the LEAs’ respective actions in terms of statistics (particularly on confiscation) lack coordination.

101. The HFIU is cooperating, domestically and internationally, in several areas. Within the supervisory framework, the HFIU is a member of the “Market Supervisory WG” chaired by the MNB. At the national level, the HFIU has signed memoranda with the MNB and Constitutional Protection Bureau and Police.

approximately EUR 12,000). The authorities indicated that this is a consequence of the transposition of the EU Directive 2005/60.

²² Section 187 of the CPA and Section 220 of the CPA.

102. In relation to national coordination and cooperation on CPF-issues, there are relevant national authorities involved in licensing and authorisation activities for trade in defense production, dual-use goods and technologies, as well as in safety control for the peaceful application of nuclear energy. However, even though a number of agencies are also members of the AML Sub-Committee (Ministry of National Economy, Ministry of Foreign Affairs and Trade, Ministry of Interior, National Tax and Customs Administration and Hungarian Trade Licensing Office), the results of their work in relation to combating proliferation are not communicated to and not reflected in the policy-making of the AML Sub-Committee. There has been no communication with the Inter-ministerial Committee on Non-Proliferation, established in 1999 and formally terminated in 2014.²³ That Committee was set up as a policy-making body responsible for compliance by Hungary with its international commitments, development of a non-proliferation strategy and oversight of the implementation of UNSCR 1540. It continues its work informally (see below, IO 11).

The private sector's awareness of the risks

103. Representatives of the private sector (FIs and DNFBPs) have been involved in the risk assessment and provided input in terms of information, data and brainstorming. The AML Sub-Committee decided to inform the industry on the main findings of the NRA. The AML/CFT supervisors have been requested to inform the FIs and DNFBPs of the respective findings of the NRA (i.e. the NRA document and templates), and make the relevant documents available. Some of the supervisors provided access to the outcome of the NRA on their restricted websites. Not all representatives demonstrated an awareness of the main findings of the NRA. However, those that were aware appeared to agree with its conclusions.

104. The level of understanding of the ML/FT risks by the private sector suffers from the fact that FIs and DNFBPs are not required to carry out their own risk assessments. While banks belonging to international financial groups adopt a risk-sensitive business model, other FIs do not. The understanding of ML/FT risks amongst DNFBPs is rather mixed and limited, as further described under IO3 and IO4. For this reason, the supervisors should develop proper guidance in order to support service providers to take appropriate steps to identify and assess their own ML/FT risks.

105. Overall, Hungary has achieved a low level of effectiveness for Immediate Outcome 1.

²³ Note that after the on-site visit, representatives of the Authority of Defence Industry and Export Control have been designated as permanent delegates of the AML-Subcommittee. Moreover, the representatives of the MNE took part in the meeting of the Informal Inter-ministerial Committee on Non-Proliferation in June 2016.

CHAPTER 3. LEGAL SYSTEM AND OPERATIONAL ISSUES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 6

Hungary's use of financial intelligence and other information for ML/FT and associated predicate offence investigations demonstrates to a large extent the characteristics of an effective system with only moderate improvements needed.

In general, respective competent authorities have unfettered access to and share a wide variety of financial intelligence and other relevant information for ML investigations.. The good quality, timely and relevant work produced and assistance provided by the HFIU to other competent authorities contributes significantly to the efforts to detect and disrupt ML threats and deprive criminals of ill-gotten gains. In particular, the recently increased number of suspended transactions followed by individual coercive measures and the higher number of disseminations involving suspicion of money laundering show a welcome progress and positive development made by the HFIU. The added value of the HFIU disseminations was also confirmed by LEAs and prosecutorial authorities during the on-site visit. However, the progress and efforts made by the HFIU are not adequately reciprocated by other relevant agencies and intelligence. Operational and strategic analysis produced and disseminated by the HFIU is insufficiently utilised by other stakeholders.

In respect of LEAs, the overall potential presented by intelligence and investigative leads generated by them or received from the HFIU and other sources is insufficiently exploited for the purpose of pursuing large and complex money laundering investigations. The prevailing predicate offence-orientated focus, priorities, objectives and related activities of LEAs are considered to undermine the efforts made by the HFIU.

In light of the established ML risks to be associated with the respective DNFBP sector in Hungary, the persistently low number of SARs reported by DNFBPs remains a matter of concern.

Immediate Outcome 7

Although the number of investigations and prosecutions for ML are on the rise, the law enforcement and judicial practice shows that the fight against ML activity is not a priority objective. The ML prosecutions are not commensurate with the risks and threats identified in the NRA, nor is there an overall AML-strategy. ML is treated on an ad hoc basis, as a subsidiary to and a consequence of the predicate offence, mostly in a self-laundering context. The number of cases highlighting structured ML schemes, where third parties assist with the laundering of the proceeds, appear limited. In this light the analysis and instructions of 24 November 2015 by the GPO for an increased focus on the ML aspect and the appropriate qualification of the offence is a very important and welcome initiative. However, the absence of comprehensive and detailed statistics is a serious impediment to any assessment, whether internal or external.

While the recent prosecutorial practice seems to move into the right direction, leaving the previous

restrictive approach behind, these changes are not yet supported by final court decisions. The development of jurisprudence should be monitored by the domestic authorities, with a view to legislative amendments if this proves to be necessary.

Immediate Outcome 8

The mandatory seizure/confiscation regime is legally sound and stringent, although the dependence on the proof of the existence of a predicate offence is a restraining factor. Although the GPO considers this aspect a matter of priority, the statistics do not demonstrate the actual effective and successful application of these rules in ML/FT cases. However, some case examples are indicative of large amounts of proceeds susceptible to seizure and confiscation. In any event, the low seizure numbers seem partly due to a lack of awareness of and focus by the investigating authorities on the financial aspects. Although theoretically confiscation is not contingent on previous seizure, it is to be assumed that effective asset recovery through confiscation is equally low, or at least not convincingly demonstrated.

Furthermore, the deficient conservatory measures in relation to the cross-border cash/BNI movements are a matter of concern. Although the ARO is already operational since 2009, its potential to provide support to the investigations is not fully exploited. Its lack of resourcing is a matter of concern, particularly as the office fulfills an increasing role in asset-tracing and recovery. Ultimately the ARO should be able to function as a financial police capable of conducting parallel financial investigations and as a criminal asset bureau.

Recommended Actions

Immediate Outcome 6

- The focus of the HFIU and the use of its analytical and other intelligence products should be increased in order to raise the number of professional third party and large and complex stand-alone ML investigations.
- Multi-disciplinary task forces across agencies and expertise further developed to effectively tackle the most serious and sophisticated forms of ML perpetrated by OCGs.
- Hungary should adopt and implement specific measures addressing the sector specific causes of the persistently low reporting number of SARs reported by individual DNFBP sectors.
- Hungary should ensure that adequate feedback is provided to the HFIU and comprehensive statistics are maintained by all relevant authorities on the use of HFIU disseminations.

Immediate Outcome 7

- Hungary should review its statistical system in order to engender reliable, comprehensive and sufficiently detailed figures, enabling an objective understanding of the performance of its repressive AML/CFT system and an internal assessment of its effectiveness.
- The prosecutorial authorities should test in the courts the limits of the evidentiary requirements on the illegal origin of the laundered assets, taking into account the all-crimes scope of the ML offence. The evaluators encourage prosecutors to bring more ML cases to court in order to develop jurisprudence along these lines.
- To this end, prosecutorial and law enforcement guidelines should be developed, backed up by training

for all prosecutors involved in proceeds-generating offences, on the minimum levels of evidence which the courts may require to establish underlying predicate criminality in a ML prosecution.

- Besides developing jurisprudence on the evidentiary burden on the predicate criminality, Hungary should exploit further the possibility of separating cases between predicates and the money laundering aspect, as well as continuing investigating the ML-aspect even after finalisation of the predicate offence investigation.
- The law enforcement and prosecution authorities should adjust their investigation policy to the findings of the NRA to reflect the major ML/FT threats in the country and give priority to the major proceeds-generating offences, besides increasing the focus on professional third party laundering.
- Parallel financial investigations, alongside or in the context of the basic investigation, should be systematically organised, particularly in serious and complex proceed-generating cases.

Immediate Outcome 8

- Hungary should review its statistical system in order to produce reliable, comprehensive and sufficiently detailed figures. This would enable an objective understanding of the performance of its seizure and confiscation system and an internal assessment of its effectiveness, particularly in terms of actual asset recovery.
- The competent authorities should continue to raise awareness and enhanced focus on asset-tracing as part of any investigation into proceed-generating offences.
- The conservatory measures' regime in relation to violations of the cross-border cash/BNI transportation rules should be revised by endowing customs with freezing powers in case of undeclared or suspicious assets.
- It is recommended to reinforce the role of the ARO in order to allow it to function as both a financial police capable to conduct parallel investigations and/or as a criminal assets bureau which centralises the seizure and sequestration efforts as well as the effective implementation of the confiscation orders. This may require a substantial increase in human resources and expertise.
- Steps should be taken to create a central bank register, as is increasingly practiced in other Council of Europe member States.

Immediate Outcome 6 (Financial intelligence ML/FT)

Access and use of financial intelligence and other information

106. All competent authorities in Hungary have access to and make use of a wide variety of sources providing good quality and timely financial intelligence and other financial information needed to develop evidence for ML/FT and associate predicate offence investigations as well as to trace and subsequently confiscate proceeds of crime.

107. However, representatives of some LEAs met on-site expressed concerns about the timeliness and completeness of responses to their requests for bank accounts and other financial information from financial institutions. These requests may take considerable time to complete, and information provided by financial institutions is often unstructured or incomplete. This poses challenges to the competent authorities, despite the presence and availability of a dedicated portal through which enquiries to multiple financial institutions can be made by investigative authorities. This deficiency is also reflected in the NRA which highlights the fact that absence of a central bank account register causes undue delays and uncertainties to competent authorities in identifying and

accessing information on assets held or controlled by natural or legal persons. Some additional sources of relevant financial information (e.g. annual financial statements filed to the Court of Registry or information held by the HFIU) are also accessed by competent authorities to further develop and corroborate their intelligence.

108. In accordance with the AML/CFT Law, the HFIU can access financial information held by service providers (e.g. regarding customers, beneficial ownership, sources of funds, or bank account information), irrespective of whether an SAR has been disclosed by a service provider from whom the information is sought. The HFIU has also direct access to a wide range of databases (e.g. tax returns and tax account databases, risk analysis database, customs database, company registry, land registry, motor vehicle database) and indirect access to databases of the government agencies, documents held by courts and records kept by designated supervisory authorities. With respect to access to law enforcement information, the HFIU is granted full direct access to databases operated by the NTCA investigative authorities, basic direct access to police databases, and direct access to the criminal records database, as well as wanted persons, stolen vehicles and ID documents databases.

109. The HFIU can also indirectly access databases of covert investigations (operated by the NTCA and the Police), public prosecutor's records, as well as databases of the National Security Services, the TEK and the National Protective Service.

Use of financial information and intelligence by the HFIU

110. The core activity of the HFIU is the processing and subsequent analysis of all information and intelligence it receives. The main focus is put on establishing links between individuals and illegal activities and on tracking financial flows so that the underlying proceeds-generating criminal activity can be identified. The HFIU also assists investigative agencies in obtaining financial information and plays an important role in using its statutory powers to suspend suspicious transactions (see Table 1 below).

Table 1: Number of suspended transactions

Year	Suspensions ordered by HFIU	All suspensions	Suspensions followed by provisional measures	Assets subjected to provisional measures following HFIU disseminations
2010	2	46	10	N/A
2011	1	27	8	N/A
2012	4	45	15	7.120 EUR
2013	19	92	30	334.139.484 HUF 9.703.844 EUR 188.000 USD

2014	32	152	37	1.642.955.287 HUF 1.248.396 EUR
2015	183	322	171	181.512.240.462 HUF 33.587.082 EUR 2.963.771 USD 126.104 GBP 96.276 NOK 3.049 CHF

111. Table 1 shows the increased number of cases where powers to suspend transactions set out in Section 24 of the AML/CFT Act were exercised by service providers or by the HFIU. The power to suspend transactions is also frequently exercised by the HFIU in circumstances where information indicating suspicion of money laundering is received and suspension requested by a foreign FIU or domestic investigative authority. Of all transactions suspended in 2015, approximately 50% were subsequently followed by provisional measures (sequestration or seizure orders made by investigative authorities) which indicates an increasingly effective application of powers to secure funds generated by criminal activities.

112. The assessment team was presented with statistical information collected by the HFIU which offers some insight into the usefulness and value of HFIU disseminations for ML, associated predicate offences and TF investigations (see Table 2). The information contained in that table not only demonstrates the prevalence of positive feedback, but also the steadily increasing number of cases disseminated by the HFIU to LEAs. Further details concerning the suspicion types of disseminated cases can be found in Table 6. However, this only provides a limited picture of the overall use and intrinsic value of HFIU disseminations as no coherent statistics showing the subsequent use of these disseminations in ML/FT investigations was provided by respective LEAs. The Hungarian authorities also stated that the considerable growth of requests sent by LEAs and public prosecutors to the HFIU (Table 3) should be seen as positive feedback.

Table 2: Feedback collected by the HFIU

Feedback on cases disseminated by the HFIU			
Year	Cases disseminated used by recipient	Cases disseminated not used by recipient	Total
2012	198	55	253
2013	235	82	317
2014	299	83	382
2015	367	90	457

113. Hungary is one of the first countries in the EU²⁴ that implemented a national legal framework allowing passenger name records (PNR) from flights entering or departing the EU to be processed by a national Passenger Information Unit (PIU). While the PNR data had been previously accessible to some security and counter-terrorism agencies, the CXCVIII Act of 2013 broadens the scope of the use of PNR which may be collected for the prevention, detection, investigation and prosecution of terrorist offences and serious crime. Pursuant to the same Act, the PIU was set up within the CCAOC and currently operates in a pilot mode. The main objective of the PIU is to carry out risk analysis, monitor respective watch-lists and send alerts to competent authorities.

114. While no example of analytical work carried out by the CCAOC utilising the PNR for general crime prevention or individual crime detection or investigation was provided, the HFIU gave an example of PNR data being included into their analysis of excessively large cash declarations made by an individual transiting through Hungary from North America to the Middle East. This serves as a good example of the use of PNR containing information on travel dates, ticket information and payment information corroborated with other criminal and financial intelligence (e.g. cash declarations) available to the authorities to identify individuals previously unsuspected of involvement in terrorist financing or in serious crime activities.

115. The CCAOC acts as Hungary's central data and intelligence fusion centre and is mandated to analyse and evaluate new and emerging trends concerning organised crime in Hungary including the production of annual OCG threat assessments. The assessment team considers it somewhat disappointing that no information, statistics or case studies demonstrating the extent of use, quality or usefulness of CCAOC's operational and strategic outputs in fighting organised crime and related offences were made available.

116. In respect of access and use of basic and beneficial ownership information by the HFIU and LEAs, no significant problems have been raised concerning the access to and accuracy of basic (legal) ownership information. However, some law enforcement authorities have expressed their concerns about the accuracy, adequacy and up-to-date nature of beneficial ownership information.

Types of reports received and requested

117. There are continuous efforts and concrete steps taken by the HFIU seeking to improve the quality of SARs. The HFIU interacts with industry representatives by organising general and bespoke trainings, seminars and awareness sessions. Moreover, the HFIU also provides SAR-specific and general feedback and publishes statistical overviews, typologies and other sector-specific strategic reports. In terms of the quality of reports made by the reporting entities, the HFIU representatives confirmed that this quality has improved following the introduction of a legal requirement into the AML/CFT Act to include all available documents and information into the reported SAR. This yields valuable contextual and structured information outlining the circumstances of the formed suspicion and improves the quality of the reported SARs.

118. Table 3 shows the main types and number of SARs received by the HFIU between 2012 and 2015. The number of SARs filed by the DNFBP sector in the period covered by the table shows a slight increase, but has been steadily very low and is considered by the assessment team as not commensurate with the size of the DNFBP sector, the number of service providers covered by the reporting obligation and the significance of associated ML/FT risks. Examples of DNFBP sectors that exhibit low level SAR reporting activity (not commensurate with the high risk profile of some

²⁴ According to the overview by the European Parliament's brief published in April 2015.

customers and products or services provided to these customers) include lawyers, notaries or casinos.

Table 3: Types and number of reports received by the FIU

	2012	2013	2014	2015
Number of SARs received from FIs	7657	12829	9585	8331
Number of SARs received from DNFBPs	26	26	33	38
Cash control reports	204	253	262	361
Requests and spontaneous info from foreign FIUs	292	292	438	607
Request from LEAs and public prosecutors	117	191	185	572
Reports from supervisory authorities	8	5	8	6
Total SARs received	8304	13596	10511	9915

119. The persistently low level reporting of SARs by the DNFBP sector is recognised by the Hungarian authorities and was subject of a strategic analysis conducted by the HFIU. According to the HFIU, the persistently low level reporting number of SARs submitted by DNFBPs is due to the direct and personal relationship nature of the business relationship between the service providers and their customers. However, the assessment team is of the view that there are multiple factors that cause the persistently low level reporting. These factors include incorrectly interpreted and implemented reporting obligations reducing the scope of a reporting obligation solely to instances where there is a suspicion of ML or FT, inadequate awareness of major ML/FT risks and a lack of clarity in respect of the scope of activities falling under reporting obligations applicable to respective DNFBP sector. In light of the above, the continuously low level reporting of SARs by DNFBPs remains a matter of concern.

120. Attempted transactions are also reported by service providers. The HFIU received 11 attempted transactions in 2014 and 225 in 2015, all of which were disclosed by banks. The HFIU attributes the noticeable rise of attempted transactions in 2015 to the industry outreach program carried out by the HFIU in order to increase awareness of the introduction of the attempted transaction reporting requirement into the AML/CFT Law in 2013. While this is a positive development, the fact that apart from banks, none of the other financial institutions and DNFBPs

reported attempted transactions raises question about the effective implementation and accurate interpretation of the reporting requirement by the service providers in Hungary. The explanation offered by the HFIU suggests that this is due to the non-transactional nature of business activities carried on by other FIs and DNFBPs in particular.

121. As displayed in Table 3, suspicious cross-border movements of cash and BNI entering or leaving the EU are reported to the HFIU by customs. The latter also stated that there were 17, 12 and another 17 non- or false declaration cases discovered in 2012, 2013 and 2014 respectively, resulting in penalties totaling EUR 92,494, EUR 97,434 and EUR 88,494. During the same three-year period, no criminal investigations prompted by suspicious cross-border movements or breaches of obligations to declare detected by customs have been launched. Furthermore, the customs authorities also reported that very limited feedback on the number, type and effectiveness of provisional measures subsequently applied by the national Police to suspicious cross-border cash detections is received.

122. There are significant hurdles to the effectiveness of the cash control regime and to efforts to tackle illicit cross-border flows of cash: the Hungarian customs are neither an investigative authority empowered to conduct criminal or money laundering investigations and have only limited powers to stop or restrain currency or BNI; the absence of a declaration system applying to movements of cash and BNI within the EU; as well as insufficient use of suspicious cash detections for ML investigations or application of coercive measures. This is seen as a major concern amplified by Hungary's risk profile where cash is assessed to be increasingly used for illegal activities and the number of SARs where suspicious use of cash is reported.

FIU analysis and dissemination

123. As explained by the HFIU, all SARs received are cross-checked, graded and pre-evaluated by an automated process which determines the level of priority based on a pre-determined set of risk elements and weightings. Once this stage has been completed, the heads of analysis units within the HFIU determine the subsequent treatment, priority and extent of analysis of the pre-graded SARs. This is done in accordance with the internal methodology guidance issued by the Head of the HFIU.

124. The HFIU has sophisticated software and other analytical tools to conduct in-depth and comprehensive analysis of all information and data. There are two analytical units that are adequately staffed and have the requisite skills and knowledge to develop high quality financial intelligence. The analytical capabilities and expertise of its staff, along with available technology and software equipment, enables the HFIU to increase the value of the information and reports it receives and to produce good quality operational and strategic products.

125. Strategic analysis is regularly performed by the HFIU. Strategic reports covering a wide range of new and existing trends and phenomena (e.g. strategic analysis of cash controls, strategic analysis of social engineering fraud related to ML) are disseminated to relevant partner agencies for their further action.

126. Based on the statistics produced by the HFIU, the number of individual SAR reports disseminated to LEAs and other agencies between 2011 and June 2015 fluctuated between 2711 (in 2011) and 3958 (in 2014). An overwhelming number of SARs are disseminated reactively, responding to a request from the partner agencies. As reported by the HFIU, the increased number of reactive disseminations provides evidence of a successfully met strategic priority set by the HFIU which aimed at further expansion of the use of financial intelligence held by the HFIU by competent authorities.

127. Table 4 shows the number of individual SARs and cases disseminated by the HFIU, either on its own initiative (proactively) or at the request of partner agencies (reactively). A pattern showing a noticeable increase in proactive dissemination of both individual SARs and cases (containing multiple processed and analysed SARs and other information) can be observed.

Table 4: Number of information and cases disseminated by the HFIU to domestic agencies

Number of cases disseminated	2013	2014	2015
Proactively	33	185	613
Reactively	542	525	645
Number of SARs disseminated			
Proactively	282	662	979
Reactively	3008	2813	2186

128. As displayed in table 5, the majority of cases prepared by the HFIU are disseminated to the DGCA of the NTCA with budgetary fraud as the suspected criminal activity. As regards the National Police, there is no reliable statistical or other information available about the number of HFIU disseminations that led to the initiation of ML or associated criminal investigations, or disseminations that were incorporated into the existing investigations. This is with the exception of the information provided by the Economic Crime Department of the Budapest Metropolitan Police (as set out in para. 137) where the focus of these investigations is put on an emerging phenomenon identified by the NRA ("social engineering" fraud). Neither the Budapest Metropolitan Police, nor any other Police force presented examples of successful large scale and complex of third party money laundering cases prompted by HFIU disseminations or development of their own intelligence.

Table 5: Number of cases disseminated by the HFIU to partner agencies

Number of cases	2012	2013	2014	2015
Investigative authority of the NTCA	390	454	442	473
Police	43	65	74	228
Prosecution authorities	7	4	19	67
National security service	19	32	99	169

Counter Terrorism Centre (TEK)	17	20	67	318
Total	476	575	701	1255

129. Cases prepared by HFIU are disseminated in accordance with Section 26(1) of the AML/CFT Law. The underlying purpose of dissemination can be split into two distinct areas: a) disseminations for the purposes of combating money laundering and terrorist financing; and b) disseminations for the purposes of prevention, detection and investigation of criminal acts listed in the aforementioned Section of the AML/CFT Act. Table 6 below presents a breakdown of the dissemination purpose.

Table 6: Number of cases disseminated by the HFIU reflecting the purpose of dissemination

Section 26 of the AML/CFT Act	Purpose of dissemination	2012	2013	2014	2015
General purpose	Combating ML/TF	31	38	101	426
Specific purpose	ML offence	26	47	72	157
Specific purpose	ML offence and associated predicate crime	38	15	9	41
Specific purpose	Associated predicate offence	381	475	528	634

130. Although disseminations of cases involving purely suspicion of ML, or cases with multiple suspicion combining (ML suspicion with the associated predicate offence) have increased, they still remain comparatively low compared to other categories. The overwhelming majority of cases disseminated to partner agencies were solely related to underlying predicate offences, which is indicative of the predicate offence-based dissemination practice aligned with objectives and activities across relevant agencies in Hungary. It is also worth noting that case disseminations made for the general purpose of combating money laundering and terrorist financing where the suspicion test is lower have increased exponentially (from 31 cases in 2012 to 426 in 2015).

131. Some concerns also remain in relation to a successful implementation of the SAR dissemination strategy adopted by the HFIU, which aims to increase the number of disseminations featuring serious and organised crime-related ML.

132. As table 5 shows, the number of cases disseminated by the HFIU to prosecution authorities has risen by a factor more than nine. The purpose of HFIU disseminations to prosecution service is twofold: i) prosecutors exercise their authority to instruct relevant investigative authorities to conduct an investigation; and/or ii) prosecutors themselves initiate investigations in order to expedite the application and use of provisional measures in cases where funds have been suspended by the HFIU or a service provider. All prosecution authorities met consider HFIU disseminations as both relevant and timely, which indicates the good quality of its analysis conducted.

133. A multilateral platform was put in place allowing effective cooperation among the Hungarian Banking Association, the Hungarian Police, the Public Prosecutor's Office and the HFIU responding to the rising number of cases where proceeds of criminal activities (concerning "socially

engineered” victims) committed abroad are channelled through bank accounts opened, utilised or held by individuals in Hungary (referred to as “social engineering” fraud). This bespoke arrangement facilitates effective use of intelligence and cases related primarily to the social engineering phenomenon, prompt application of coercive measures to secure ill-gotten proceeds and initiation of stand-alone money laundering investigations. The authorities confirmed that the launch of a multilateral platform targeting the “social engineering” fraud phenomenon is behind the sudden increase of the number of cases received by prosecution authorities in 2015. However, the prosecution authorities were unable to provide, mainly due to deficiencies in their case management system, reliable statistics showing the number of investigations and prosecutions initiated/ordered on the basis of the received SAR or the effectiveness of these measures.

134. Within the National Police, the Economic Crime Department of the Budapest Metropolitan Police receives the largest amount of SARs from the HFIU. Since the second half of 2015, there has been a steep increase in a number of SARs prompted money laundering investigations carried out by the MET Police, which can be attributed to the increased focus on the “social engineering” phenomenon.

135. Approximately 70% of money laundering investigations launched by the Budapest MET Police were prompted by SARs received from the HFIU. The remaining 30% are prompted either by criminal complaints filed by victims or by the Budapest MET Police’s own intelligence. However, given the breadth of the investigative remit of the National Police (National Police in Hungary is the general investigating authority responsible for investigation of a vast majority of proceed-generating crimes), the number of ML investigations initiated by the National Police force (as set out in IO7) is disproportionate to the number of proceeds-generating crimes investigated and the amount of intelligence and other information it generates and receives. The considerably low number of ML investigations thus brings into question effective use of intelligence for developing and pursuing money laundering investigations and is indicative of the prevailing predicate offence orientated approach and consequent priorities of the National Police.

136. NTCA DGCA experts regard that reports and additional information received from the HFIU to be relevant, timely and of a good quality. In instances where information received from the HFIU does not amount to the standard required to open criminal investigation, this information is permitted to be used as a basis for initiating covert information gathering. However, only statistics provided by the HFIU on feedbacks to cases disseminated demonstrate indirectly the added-value of HFIU intelligence for ML and associate predicate offence investigations carried out by NTCA DGCA.

Budgetary Fraud and associated ML case study (carousel fraud)

The DGCA of NTCA conducted a criminal investigation looking into suspicion of budgetary fraud perpetrated by an organised crime group operating across a number of EU member states. A sophisticated and complex structure consisting of numerous domestic and foreign companies was set up and controlled by the criminal enterprise in order to create a fictitious supply chain of cooking oil supplements delivered to a wholesaler based in Hungary. As it was later discovered, the amounts of fraudulently reclaimed V.A.T. from the Hungarian tax authority by the wholesaler (based on fictitious invoices drawn up by the conduit companies) were in excess of 3 billion HUF (more than 9 million EUR).

The investigation conducted by the DGCA of the NTCA involved cooperation with multiple domestic and foreign agencies, including the HFIU, which conducted parallel analysis of related SARs. Based on a swift and effective cooperation with the HFIU, administrative and coercive measures to transactions on several bank and investment accounts in Hungary were successfully applied. With the assistance of the HFIU, funds abroad were also secured following the discovery of further intelligence indicating that a spouse of the leader of the criminal enterprise had managed to transfer funds generated by the criminal activities abroad.

All members of the criminal enterprise were arrested and charged with offences related to budgetary fraud (Article 397 HCC) and money laundering charges (Article 399 HCC) were also brought against two individuals.

137. The case study depicted above illustrates the complexity, level of sophistication and cross-border nature of criminal activities and perpetrators investigated by the NTCA DGCA. Although the investigative remit of the NTCA DGCA is narrower compared to the one of the National Police and limited to specific criminal offences listed in para. 2 of Article 36 of the ACP, the number and level of sophistication of cases that involve money laundering element investigated by the NTCA appears to be proportionately higher. There is a well-established, close and productive exchange of intelligence between the HFIU and NTCA DGCA. The analysis of key factors determining this cooperation however demonstrates that intelligence cases disseminated by the HFIU to the NTCA DGCA involve predominantly disseminations with budgetary offences as the main suspected criminality, and that professional third-party ML investigations are not conducted by the NTCA DGCA. This raises concerns with regard to the use of financial intelligence by the NTCA DGCA to detect and disrupt major ML threats in Hungary.

Cooperation and exchange of information

138. There are no structural, operational, legal or practical issues that would prevent the HFIU and other competent authorities from cooperating and exchanging information and financial intelligence, which is realised via secure channels protecting the integrity and confidentiality of the exchanged information.

139. Numerous examples of coordinated analytical exercises and exchange of information and intelligence between HFIU and other competent authorities were provided to the assessors. Examples include bilateral co-operation and multi-lateral cooperation on both operational and strategic matters described under the present chapter and IO7. An example of a strategic cooperation at the national level is a project undertaken by the HFIU and the customs authority

responsible for enforcing the Cash Control Act, concerning the obligation to declare physical cross-border movement of cash and bearer instruments with the aim to identify high-risk routes, high-risk profiles of passengers and other risk indicators. The results of this project provided important knowledge and risk information subsequently actioned by the customs through targeted cross-border cash controls. Another example of a fruitful cooperation and expeditious exchange of information is a case initiated by a regional police force described in the box below.

Targeting international fraudulent activities by effective national cooperation

Based on a criminal complaint filed by a representative of a Hungarian company, a regional police department in Hungary started looking into fraudulent activities perpetrated by a fictitious representative of a foreign based company. The fraudster has managed to fraudulently obtain large sums of money from the Hungarian company and asked for the money to be transferred to a bank account belonging to the foreign based company. The regional police force promptly contacted the Hungarian ARO and HFIU in order to secure the fraudulently obtained funds transferred to a bank account belonging to the foreign based company. Within 6 days following the receipt of the complaint and with the assistance of foreign counterparts, the fraudulently obtained funds were secured and returned to the injured party, all perpetrators identified, arrested and accused of fraud and money laundering offences.

140. Overall, Hungary has achieved a substantial level of effectiveness for Immediate Outcome 6.

Immediate Outcome 7 (ML investigation and prosecution)

Identification of ML cases

141. Identification and investigation of potential cases of ML are triggered in three different ways:

- The main trigger is the investigation of a predicate proceeds-generating offence, which in its turn is activated by a complaint, report or denunciation, or on the basis of law enforcement intelligence or detection. The identification of a predicate offence being an essential element in any ML investigation, the ML aspect is then investigated together with the basic enquiry.
- The reports disseminated by the HFIU to the Police, the NTCA DGCA, the Public Prosecutor's Office and other law enforcement authorities for further investigation or other appropriate action. These reports generally give an indication of the specific criminal origin.
- To a lesser extent, ML investigations are initiated as a result of information obtained from foreign authorities in the context of MLA or through other international information exchange channels, particularly in the context of an asset recovery procedure.

142. ML investigations are conducted either by the Police (as the general authority investigating predicate offences) or by the investigative arm of the Tax and Customs Administration (NTCA DGCA) according to the distribution key defined in Art. 36 CPA. This division of tasks is determined

by the nature of the predicate offences, with the NTCA DGCA basically being in charge of ML-related fiscal (direct and indirect) offences (“budgetary fraud”). Serious corruption and other offences related to public officials, and consequently related to ML, are investigated by special investigating prosecutors of the Central Investigating Chief Prosecutor’s Office (*Központi Nyomozó Főügyészség*), supervised directly by the GPO office (Art. 29 CPA)²⁵. In the absence of a specialised financial section, ML is investigated according to the CPA, together with and in the context of a predicate offence by the law enforcement authority responsible for the latter. In that sense the authorities do not consider it necessary to organise a formal system of prioritisation or selection. Nor is there a policy of conducting parallel financial investigations in serious and complex cases, as the ML-aspect must be investigated in any event. Apart from the HFIU reports, the main trigger for ML investigations is the enquiry into the predicate offence itself, with the ML aspect investigated as an extension.

143. Whatever the trigger, the existence of a predicate offence - identified or to be identified - is a constant factor in all ML investigations, irrespective of whether the origin of the proceeds is foreign or domestic. In principle the decision on when and how to pursue the money laundering angle is taken by the investigating body, unless it is instructed by the Public Prosecutor. According to the Police the decisive factor would then be whether there is a money trace to be followed, possibly leading to the seizure of proceeds and asset recovery. Hence the decision is made subjectively and on an *ad hoc* basis, prone to lead to divergent approaches. In order to ensure a more consistent common approach, the National Police Headquarters issued Directive No. 45/2010 (OT 25.) “on the tasks of the Police concerning the tracing, identifying and recovering of the proceeds of crime and other assets related to crime” (see also IO.9). Although specifically aimed at effective seizure and confiscation, the instructions also require special attention to be paid to the laundering aspect, be it above a certain threshold (HUF 50 million, approximately EUR 170,000), which however unduly narrows down the unrestricted approach of the HCC. The NTCA DGCA issued a similar Regulation No. 5013/2013/81B. on asset-tracing profile, without threshold.

Investigative powers

144. Although there are no financial police units specialised in financial crimes and money laundering, the professional quality and standards of the relevant LEAs in this regard are undisputed. Common to a civil law jurisdiction, criminal investigations are conducted under the overall supervision and legal responsibility of the Public Prosecutor. Their inquisitive powers include all investigative measures and techniques provided for in the CPA, including the special techniques that are being used in “covert” operations (e.g. telephone/wiretapping, observation, undercover, infiltration). These SITs are being used in the course of the predicate offence and/or ML inquiries. The investigators have timely access to relevant financial and administrative information, in practice with the consensus or oversight of the prosecutor (Art. 178 *et seq.* CPA). The investigators and supervising prosecutors determine the tactics to be applied during the investigation. Postponing investigative measures, such as waiving arrest or seizure to maximise the effectiveness and hard evidence, is a routine practice.

145. Interaction between the police and the respective LEAs, particularly the HFIU and the Public Prosecutor, is frequent and productive. Joint and multidisciplinary investigations (Art. 37 CPA) are exceptional: the authorities mentioned one example of such investigation in a complex domestic case in the last three years (see the case example further below). The coordination of the

²⁵ No related money laundering cases are on record.

investigation and the task allocation is mainly in the hands of the Public Prosecutor, for example when there is a diffuse situation as to the predicate criminality determining the competence of the investigating authority.

146. The investigating authorities do not apply a formal system of prioritisation of ML cases. Any policy of prioritisation is applied at the level of the Public Prosecutor. In general, the Hungarian criminal law and criminal procedure provide for the principle of legality and an *ex officio* procedure, which means that all the cases have to be investigated. On the other hand, Art. 64/A CPA obliges the authorities to give priority to certain cases, namely those with coercive measures restricting personal freedom, certain crimes committed against minors, retrial, cases in which immunity was lifted, or cases concerning serious crime (e.g. corruption, organised crime, war crimes and crimes against humanity). Furthermore, the authorities give priority to certain types of crimes by way of specialised sections. At the Prosecutor General's Office, in addition to the general criminal law department, two specialised departments deal with corruption, organised crime and priority cases ("flagged" cases of special importance because of their gravity), terrorism, money laundering, financial crime, environmental crime and military cases. Similarly, the internal structure of the NNI reflects priorities with specialised units for narcotics, trade of human beings, illegal immigrant smuggling, cybercrime, economic crime and corruption.

147. The fundamental principles also dictate that the authorities shall duly investigate the crime and establish the factual circumstances.

Office of the Public Prosecutor

148. Financial intelligence (i.e. reports from the HFIU) is generally disseminated to the competent LEA. However, the HFIU may also communicate such information to the competent PPO in urgent cases, particularly when a transaction has been suspended and immediate action must be taken. During the previous years, the Metropolitan PPO received a number of such notifications, particularly in cases where assets derived from foreign predicates had already been frozen by the HFIU on bank accounts of one or more Hungarian (natural and legal persons), and a domestic investigation had to be launched in the absence of a MLA. The HFIU report and attached banking information can then be used as evidence. Occasionally the HFIU supplies financial intelligence from foreign counterparts to the PPO at his request to support a MLA request. No statistical information was obtained however on the number of prosecutions and convictions generated by FIU reports.

149. As stated above, all open investigations are under the supervision of the prosecutor who has the right to give instructions and orders to the investigative authority. All investigations are reported to the competent PPO. During the investigation there is a regular supervision by the prosecutor, who can be consulted for guidance by the investigators. ML cases are handled by the financial section of the different PPOs at county level. At GPO level, ML cases are allocated to the serious crimes department.

150. The prosecutors acknowledge the relatively low number of investigations and indictments in connection with asset-generating crimes, mainly due to a lack of awareness and the generally high focus on the predicate offences. Investigators are particularly inclined to leave the money laundering aspect aside whenever monetary coercive measures and asset recovery can already be applied on the basis of the predicate offence. Another restraining factor in self-laundering cases is the CPA rule that the investigation must terminate two years after a person has reached the status of suspect for both the predicate and for ML. This deadline forces the authorities to conclude the investigation by that time, putting additional time pressure that may affect the focus on the

investigation of the ML part. In any event, the quality of the ML investigations could be enhanced by separating the ML component from the predicate investigation.

151. In an effort to improve the performance of the prosecution side of ML cases, the General Prosecutor's Office conducted a review of the ML prosecutions over the last five years, whose astute analysis and conclusions deserve mentioning here:

- The number of ML investigations was significantly lower than the investigation on assets-generating crimes. However, the increasing number of ongoing ML investigations in the last two years suggests a tendency for improvement.
- The main types of ML investigations fall into two categories: self-laundering and negligent ML. In practice investigations of both categories have flaws: while there is basically the sporadic recognition of the crime in the first, the second category suffers from insufficient gathering of evidence and the incorrect interpretation of the criminal intent.
- The timeliness of the investigations should be improved: the average duration of investigations is about two years.
- There is an increase in the proactivity of the PPOs in recognising the suspicion of the crime and in extending the scope of the investigations to ML, respectively the initiation of investigations based on, for example, MLA requests.
- Assets recovery efforts are on the rise, both during the investigation phase and with regard to motions by the prosecutors to the courts.

152. The above review resulted in the Guidelines of 24 November 2015 from the Office of the Prosecutor General²⁶ for the supervising prosecutors. Their main principles are as follows:

- The investigation of proceeds-generating offences should focus more on the detection and securing of the illegally gained assets. On conclusion of the investigation of the predicate offence, the money laundering aspect and the application of Art. 399 and 400 HCC need to be examined.
- The laundering behaviour covered by Art. 399(2) HCC does not require a specific intention to conceal; the simple knowledge of the illegal origin is sufficient.
- Attention must be paid to the difference between the receiving offence and money laundering in order to achieve the correct qualification of the offence.
- The prosecution is inclined to favour the negligent money laundering offence (Art. 400 HCC) over Art. 399 HCC, although from the factual circumstances it could be deduced that the suspect should have realised he was dealing with tainted goods or values, particularly in ML cases related to so-called "financial agents" (or "money mules")²⁷. Consequently the suspect should be charged with the deliberate act of money laundering according to Art. 399 HCC.

²⁶ Ref: KF.9725/2004/379-II

²⁷ The *modus operandi* of such "financial agents" is as follows: The perpetrators agree with one or more unknown persons to open a bank account or to make available an already existing account for money transfers in exchange for an "agent's fee", which varies between 5-10% of the transferred money. After the money has been transferred, the "agent" either withdraws the money in cash or forwards it further (e.g. to a bank account in a third country). The predicate offence is usually fraud ("social engineering" fraud) or cybercrime. The separate amounts are mostly small.

- In case the nature of the predicate crime is unclear in view of its allocation to the Police or to the NTCA (particularly when that crime was committed in a foreign country), the chief prosecutor must designate the competent investigative authority.

Statistics concerning investigations, prosecutions and convictions for ML												
Year	ML 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	28 + 2	10 + 2	-	17	10	-				N/A		N/A
2011	22+2	8+2	-	13	8	-				10		10
2012	37+ 6	12+6	-	16	12	-				8		8
2013	41+3	19+3	-	16	18	-				12		12
2014	54+2	14+2	-	16	12	-				3		3
2015 (first half)	33+0	8+0	-	7	7	-				4		5

153. Bearing in mind that the number of finalised investigations also includes those resulting from a HFIU report, the available statistics show a moderate number of investigations concluded between 2010 and 2014. This number varies from 24 to 56, with the numbers steadily rising. Finalised investigations are not always followed by an indictment: judging from the Police statistics, more than half of the cases were closed without results, mainly because no (predicate) offence could be established (see the LE statistics).

154. Since 2015 there is a substantial increase of initiated ML investigations (133 by the Metropolitan Police alone, around half of them triggered by HFIU reports), to be attributed to the heightened attention by the LEAs on the financial aspects of proceeds-generating offences. This is mainly a result of the AML/CFT assessment exercise. The statistics on finalised investigations for 2015, although only available for the first half (33 investigations), also indicate a substantial increase. It is impossible, however, to determine the proportionality between the number of initiated ML investigations and those that were finalised. There is certainly a serious discrepancy between the number of HFIU reports passed on for investigation and the number of investigations actually conducted (e.g. 3985 reports compared to 56 finalised investigations in 2014). The number of prosecuted cases remains rather stable, with a modest number of around 16 per year and a total of 37 convictions from 2011 to 2015 (first half). No legal persons have been prosecuted, mainly because the relatively recent introduction of criminal liability for legal persons was not yet actually applied in practice.

155. As for the ongoing money laundering cases treated in the competent PPOs, the GPO was able to give some approximate figures based on their case management system, with the caveat that

the system only registers the most characteristic offence, which may be the predicate one. Even taking into account a margin of error, the figures are clearly on the rise:

2014: 82

2015: 132

2016 (by April): 87

156. In general, reliable statistics are not a strong feature in the Hungarian LE practice. The absence of comprehensive and detailed figures impedes the obtaining of an accurate overview of the various ML activity which is investigated, prosecuted and convicted. No statistical information is available on the types of ML (self- or third-party laundering, stand-alone laundering), or by categorisation according to the relevant predicate offence type (both domestic and foreign). The absence of such predicate offence specification makes it impossible to conclude on the consistency of the investigation/prosecution and seizure/confiscation results with the NRA analysis. As stated above, according to the review by the PPO over the last 5 years and the case examples by the Police and the NTCA DGCA, almost all investigations and prosecutions combined the predicate with the money laundering offence, with a clear majority of self-laundering cases, predicated mostly by tax (“budgetary”) offences and fraud. Third-party laundering prosecution is sporadic and no professional money launderer has ever been prosecuted or a fortiori convicted. In one case involving a lawyer as intermediary, the mens rea was not categorised as intentional conduct but as professional negligence.

157. Lately there have been more stand-alone ML prosecutions, particularly in relation to foreign predicate offences that were subject of a MLA procedure, where investigation and prosecution is initiated on the basis of the factual evidence of a predicate offence (no specific statistics available). The identification of the predicate offence allows initiating an investigation and prosecution for the money laundering activity in Hungary. According to the Metropolitan PPO, who is dealing with the international cooperation procedures, several ongoing ML investigations supervised by them relate to third party stand-alone ML activities from foreign predicates. The predicate offence is typically fraud (social engineering / internet fraud) committed mainly in EU countries, but also overseas (e.g. the USA, Hong Kong or the Middle East). The proceeds of these offences are channeled through European countries towards Asia, using the bank accounts of fictitious companies as a vehicle or, more recently, by having such proceeds cashed in relatively smaller portions by other bank account owners. The use of such money mules was typical for stand-alone ML, which was historically treated as negligent ML until the GPO issued its instructions in November 2015.

Case examples:

Social engineering: The Police (NBI) conducts several ML investigations where the proceeds laundered in Hungary had been derived from CEO frauds committed in EU countries (e.g. Belgium, Germany, Finland, Portugal and Spain). The modus operandi of the frauds shows significant similarities. A competent employee (accountant, senior manager) of the target company was approached by fraudsters “on behalf” of the CEO of the same company or, more typically, that of the parent company of the latter, convincing him/her to transfer a significant sum of money to various bank accounts (including Hungarian ones) as the equivalent of a very urgent and important purchase of shares in one or more companies abroad. The employee was manipulated by using insider information as well as false (masked) phone numbers and false (look-alike) email accounts. In addition, an accomplice intervened with the request from the “CEO” to transfer money, posing as the representative of the

European Securities and Markets Authority, including a false ESMA non-disclosure agreement document as a result of which the employee was not only fully convinced but also kept the details of the purchase confidential.

National: An organised crime group ran an illegal network specialised in distribution of copyright protected materials (mainly movies, music and software). Payments were made by SMS. In order to hide and distribute the incoming money, one member of the group organised a sub-network of persons with no connection to the predicate offence, acting as proxy owners of different firms, creating money transfers through fictitious invoices, with cash withdrawal at the end of the chain. This sub-network contributed in hiding and disguising about 761 million HUF (approximately EUR 2,15 million).

Transnational: A representative of a subsidiary of a French company owned by a company registered in Russia misappropriated funds from the mother company and transferred an amount of 479 million HUF (approximately EUR 1,52 million) to the bank accounts of different offshore companies with herself as beneficial owner. The transferred money was either collected in cash, or wired. She was found guilty – inter alia – of ML, and convicted to 7 years and 6 month imprisonment, as well as to a 2 million HUF (approximately EUR 6,347) fine, besides incurring a prohibition to exercise a professional activity as a manager/representative of a company for ten years.

Joint LEA investigation: In close cooperation with the NTCA and the HFIU, the Police conducted an investigation against a CEO of a natural gas trading company who over a period of 7 years misappropriated some EUR 160 million through fictitious contracts and channelled the proceeds to several offshore companies' and individual accounts, from where the money was forwarded to his own accounts. The police closely cooperated with the NTCA and the HFIU. The investigation has in the meantime led to the sequestration of EUR 15 million in Switzerland and the tracing of real estate worth around EUR 12,7 million, with further sequestration of property worth around EUR 9,5 million expected through international cooperation.

Consistency of ML investigations and prosecutions with threats and risk profile, and national AML policies

158. The Hungarian LEAs have not yet adapted their investigative and prosecutorial policy to the country's threats and risk profile identified in the NRA. As the Hungarian criminal justice system recognises the principle of legality (i.e. the obligation to open an investigation in every case for which there is a suspicion of criminal circumstances), the authorities are not induced to conduct their AML/CFT efforts on a risk-based approach. This, however, does not prohibit the prioritisation of cases. Although the NRA is predominantly based on LE information, the LE practice in respect of ML (as far as demonstrated through case examples) does not reflect the NRA findings. For instance, although drugs and human trafficking are identified as major money laundering risks, almost no ML prosecutions appear to have been initiated on the basis of these predicates. In fact, establishing a correlation between the recorded proceed-generating criminality and the number of ML cases (investigated, prosecuted and convicted) is not possible in the absence of specification of the originating offences in the ML statistics. Hence case examples are the only indicative source, though unreliable because of their fragmentary nature.

159. Furthermore, the NRA does not give a clear and thorough analysis of what are the most significant proceeds-generating crimes in Hungary. It is accepted that the NRA provides some examples of proceeds-generating crimes which have resulted in ML investigations, but the

outcomes in certain ML investigations, for example with regard to “social engineering” fraud²⁸, are unknown. Similarly, it is unclear whether the comparatively high number of ML investigations in these types of cases reflects the comparative seriousness and prevalence of this type of economic crime over and above other proceeds-generating crimes in Hungary.

Types of ML cases pursued

160. The impact of the technical deficiency identified in relation to the scope of the ML offence (unconditional use of own criminal proceeds) as an obstacle to effective prosecution may be considered relatively limited if prosecuted together with the predicate offence: although the intentional condition of concealing or disguising narrows the scope, it may be accepted that most of the use will occur in a business or financial activity context.

161. As most of the ML prosecutions/convictions result from the investigation of a (domestic) predicate offence with the laundering indictment as an additional element, the added value of such approach is questionable when it only relates to self-laundering: by prosecuting the predicate offender, conviction of the self-launderer and confiscation of the criminal proceeds can be achieved anyway. The only difference could be the possibility to obtain stiffer sentences. This is however relative considering that the ML penalties are generally in line – with few exceptions – with other financial and economic offences. Criminalisation of self-laundering is important to cover situations where the (foreign) predicate offence is outside the jurisdiction of the domestic courts. It is however not known how many of the self-laundering cases were related to such foreign predicates.

162. Although no previous conviction of a predicate offence is required, the identification of such predicate is essential in the Hungarian jurisprudence to a successful ML prosecution, being one of the main reasons why both aspects have been investigated/prosecuted together. Prosecution and conviction of ML where the indictment solely relates to ML activity is not excluded and covers situations where the (foreign) predicate is outside the Hungarian jurisdiction, as long as the predicate is positively identified. The possibility of securing a ML conviction without identification of a specific predicate offence has not been traditionally explored, as the doctrine and jurisprudence consider this contrary to the rules of evidence, requiring at least an identification of the predicate “punishable act” (Art. 399 HCC). This may impact on the effectiveness of the system, particularly in a cross-border context, where the foreign predicate offence falls outside the jurisdiction of the Hungarian courts, or when the investigative and prosecutorial authorities depend on the cooperative willingness and capacity of foreign counterparts. Moreover, the development of an approach of arriving at a prosecution-ready case by starting from the (suspected) money angle, as e.g. established by HFIU reports, can be hampered by the requirement of a specific predicate-offence link.

163. The all-crimes scope of Art. 399 HCC (“originating from a punishable act”, which is without further specification or limitation) may allow for an evidentiary standard based on the proof of any unspecified criminal origin. The emphasis on the predicate offence identification is not so much based on a fundamental principle interpretation, but seems to be rather a question of traditional doctrine and interpretation of the evidentiary burden. During the discussion with the judges, it was

²⁸ In a “social engineering” fraud, the perpetrators manipulate people and obtain confidential information, such as passwords and banking data. The objective is often to have access to a computer and then take control over the computer by installing spyware or by using some other methods and to execute unintended transactions in the internet bank system. The method combines the tools used in a classic fraud (psychological impact, making the victim believe that the perpetrator is a friend, communication of the boss, etc.) and a hacker attack.

not excluded that, if sufficient credible evidence was adduced by the prosecution of a link between the alleged launderer and circumstances or elements which demonstrate the existence of an identified predicate offence (e.g. drug trafficking), such evidence could in theory be considered also in a sole ML case. No such cases have however been brought before the courts. Hence this hypothetical possibility remained untested at the time of the onsite visit.

164. Lately, in the context of the NRA exercise, the prosecutors have been looking at this issue with a view to a change of approach. The PPO is currently considering some “money mule” and intermediary “straw men” cases, where the suspects are not aware of the specific criminal source, but they must (or at least should) have been aware that the money originated from criminal activity. As in these cases the identification of the predicate criminality (presumably “social engineering”) will require satisfying the burden of proof through circumstantial evidence, this may mark a softening of the evidentiary burden, if accepted by the courts. Eventually it should be possible for the public prosecution to prove their case presenting the whole of the factual circumstances, from which the judge (who is sovereign in the assessment of the evidentiary value of the information) may infer the existence of an identifiable type of predicate criminality. The courts should be called to pronounce themselves on the acceptability of this approach for identifiable predicate criminality, and ultimately on the acceptability of this approach to ML cases where the laundered proceeds are of an unspecified criminal origin.

Length of investigations/prosecutions

165. The average timespan of a ML investigation leading to prosecution and conviction is considerably long. Although the statute of limitation for ML (minimum 5 years, which is extendable) is not perceived as a real problem, there have been some cases that have failed on these grounds. Lengthy investigations, particularly in complex cases, are followed by slow procedures before the courts that may last longer than 5 years for various reasons, such as case backlog and procedural incidents. Hence the whole process, from investigation to final conviction, may easily take 8 years and more. This could lead to fair trial-challenges (length of criminal proceedings “within a reasonable time”, as provided in Article 6 ECHR) resulting in return in considerably lighter penalties.

166.

		Number of cases						
		duration of the process						
all together		0-3 month	3-6 month	6-12 month	12-24 month	24-36 month	36-60 month	above 60 month
2011	10	-	3	-	4	3	-	-
2012	8	-	2	-	3	1	2	-
2013	12	3	3	-	1	2	1	2

2014	3	1	-	-	2	-	-	-
2015 (first half)	5	1	-	-	2	-	1	1

Effectiveness, proportionality, and dissuasiveness of sanctions

167. The ML offence in Art. 399 HCC provides for a term of imprisonment from 1 to 5 years. In case of aggravating circumstances, the penalty is increased from 2 to 8 years imprisonment. As for the penalties that were actually imposed, the custodial sentences for ML vary from 5 months to 90 months imprisonment, according to the summary statistics. Confiscation as a criminal penalty is mandatory. It is difficult to conclude whether the sanctions for ML are effective, proportionate and dissuasive, as the vast majority of the convictions relate to several (predicate) offences, to which ML has been added. Some penalties even exceed the legal maximum penalty provided for ML, as a result of the aggregation of offences. No information was provided on the amount of fines imposed for ML.

Year	Non custodial sentences*			Custodial sentences*				No data available	
	Fines (average in EUR ²⁹)	Other than fines ³⁰	Total number	Imposed prison sentence (average in months)	Suspended prison sentence (average in months)	Other measures	Total number	no data available	acquittal
2011	N/A	5	6	42,3	-	-	3	-	1
2012	N/A	2	3	12	15	-	4	1	-
2013	N/A	-	1	17	18	-	9	-	2
2014	N/A	-	1	-	6	-	1	1	-
2015 I. semester	N/A	1	2	48	9	-	3	-	-

	Non-custodial sentences		Length of custodial sentences (in months)	
	Highest	Lowest	Highest	Lowest
2011			65	6
2012			24	9

²⁹ No information is available on the fines actually imposed.

³⁰ "Other" non-custodial sentences include community service work, prohibition to exercise professional activity, warning and conditional sentences.

2013			90	5
2014			6	
2015 I. semester			48	6

Extent to which other criminal justice measures are applied where conviction is not possible

168. Whenever a conviction for ML is deemed impossible, the prosecution focuses on the (domestic) predicate offence. This is of course not an option when the predicate activity is foreign and outside the Hungarian jurisdiction *ratione loci*. Confiscation *in rem* can be ordered in certain circumstances when it is not possible to secure a conviction (Art. 569 CPA).³¹ The courts can also order the dissolution of legal persons, or pronounce a prohibition to exercise a profession. However, this has not yet been applied in ML cases.

Capacity of the investigation bodies (Resources)

169. The legal and material arsenal at the disposal of the investigators is sufficiently comprehensive and adequate to meet the requirements of an efficient investigation and collection of evidence. The LEAs met by the assessment team did not indicate a shortage of human resources as a restraining factor. On the other hand, the interviews conducted on-site revealed a serious discrepancy between the initiated and the finalised ML investigations. Only the last category is known, since the statistics do not give an overall number of investigations started or ongoing. The number of investigations initiated as a result of a HFIU report is also unknown. In any event, the number of disseminated HFIU reports and the number of finalised investigations are highly disproportionate. This seems to indicate an insufficient capacity of the investigating bodies to cope with the incoming information. In another context, it should also be noted that there have been examples of cases where the lack of clarity concerning the application of territorial jurisdiction led to the assignment of a competent local authority responsible for investigating ML offences (e.g. in instances where the exact place or nature of the underlying criminal activities committed abroad is unknown) which was less experienced or less resourced.

170. **Overall, Hungary has achieved a low level of effectiveness for Immediate Outcome 7.**

Immediate Outcome 8 (Confiscation)

171. Each authority investigating the predicate offence is likewise responsible for investigating the money laundering aspect and for the related tracing and detection of assets, taking the appropriate measures to secure - through seizure or sequestration - the items subject to confiscation (instrumentalities, proceeds, substitute assets, equivalent value property).

NTCA DGCA

172. In view of its specific (and main) task of collecting and recovering state budgetary revenues, the NTCA pursues a policy of detecting and securing the proceeds of financial and economic criminal offences as a priority. To that end, the DGCA focuses on the degree of enrichment of the suspects and develops financial profiles as a tool to assist them in applying conservatory measures, besides providing relevant intelligence to supporting investigations. Financial profiling does not

³¹ Such circumstances may be: no criminal procedures were instituted; criminal proceedings were terminated; unknown location or mental disorder of the defendant.

only serve taxation purposes when a disproportion is established between the assets and the declared income, but is also used in order to trace assets and criminal proceeds in criminal investigations within the legal remit of the NTCA DGCA, particularly budget fraud, fraudulent bankruptcy and copyright violations.

POLICE / ARO

173. The police investigative authorities were reminded of their role in asset tracing and recovery in the Directive Nr. 45/2010 of the National Police Headquarters “on the tasks of the Police concerning the tracing, identification and recovery of the proceeds of crime and other assets related to crime”. The Directive underlines the purposes of the seizure and confiscation regime, i.e. enabling victim compensation and discouraging the criminals by taking away their criminal proceeds. It notes the “current perpetrator focused nature of the investigations” that should be extended to the financial aspects and recommends involving the Hungarian Asset Recovery Office in recovering the criminal proceeds. The Directive goes in detail of what is expected from the investigators in this respect in terms of application of coercive measures and the sources to be consulted to assess the financial situation of the suspects. Curiously it also lists the specific circumstances and offences where asset tracing and application of conservatory measures are mandatory, which is a more restrictive approach than the position of the General Prosecutor (mandatory in all cases) which is more in line with the HCC and CPA rules.

174. An important development in this domain since 1 March 2015 is the upgrading and reinforcement of the Asset Recovery Office as an operationally autonomous criminal assets department specifically targeting criminal proceeds. They mainly assist the investigating LE authorities (Police, NTCA, prosecution), who have the prime obligation to investigate the financial aspects of the basic offence, in tracing the criminal assets on their behalf (Art. 554 CPA) and conducting financial investigations in the margin of the criminal investigations of predicate offences. The ARO has the exclusive competence to conduct the asset recovery procedure after the Court has passed a final judgment (Article 554/R CPA). The law allows the ARO to conduct its own investigations independently without a link to an ongoing criminal investigation as well. Furthermore it takes part in joint investigating team operations with foreign agencies.

175. The *modus operandi* of the ARO in asset recovery matters consists of two phases. During the first phase, it tries to map all assets belonging to or being in possession by the suspects and to identify all natural or legal persons that can be linked to those assets, in order to expose possible networks of accessories and launderers. Subsequently, during the second phase, the historical data are analysed to trace the asset flow. This approach is said to be successfully resulting in an increase of identified and seized assets whenever the ARO was involved in a timely manner. The absence of a central bank register obviously does not facilitate their search.

176. The office also plays a significant role in the international domain and is actively cooperating with its counterparts. The law has entrusted the ARO with the exclusive right in matters concerning international co-operation related to the identification and recovery of the proceeds of crime and other criminal assets. In fact the police investigators are obliged to involve the ARO whenever information or other cooperation is needed from foreign agencies in asset tracing or recovery matters

PPO

177. The Hungarian authorities are aware of the importance of confiscation as an effective AML tool. Over the years, they have adopted a policy of increased focus on asset tracing, seizure and recovery.

178. According to the HCC confiscation upon conviction of criminal proceeds and laundered money is mandatory, where it does not matter if the assets have previously been seized or not. During the investigation it is mandatory to take appropriate measures to secure or seize, beside evidentiary items, all assets that may be subject to a confiscation order, thus including instrumentalities, proceeds, substitute assets and property apt to be confiscated as equivalent value. The prosecutor will then pursue confiscation through a court order. The identification of the criminal proceeds and of a nexus with the originating crime is said to be a recurrent and time-consuming challenge delaying or preventing confiscation.

179. In reality the practice does not always follow the rule. In 2015 the GPO conducted a work plan on “the practice of coercive measures aimed at the confiscation of assets with respect of economic crimes”, which prompted him to issue the Circular 2/2015 of 30 June 2015 “on the Prosecutor’s tasks relating to coercive measures for the confiscation of crime related assets”, denouncing the fact that prosecutors still did not pay sufficient attention to the confiscation of criminal proceeds. The circular stresses the necessity to examine the possibility of confiscation in all criminal cases and to apply the mandatory conservatory measures on these assets (Art. 151(2)b CPA), the omission to do so is being considered a serious violation. A priority sequence should be followed, going from bank accounts and cash to real estate, even if these are the object of a civil claim. Finally it emphasises the importance of asset-tracing and of paying attention to the possible money laundering angle.

180. The following statistics show the seized amounts in closed investigations, drawn from the central case management system:

Police:

	Property seized (ML conviction-based)	
	Cases	Amount (EUR)
2010	2	42,941
2011	0	0
2012	2	15,338
2013	4	897,571
2014	4	353,203
2015	1	27,729

NTCA:

	Property seized (ML-conviction based)	
	Cases	Amount (EUR)
2010	2	86,660
2011	2	3,173,862 (underlying predicate offence)
2012	6	723,353
2013	3	639,237
2014	2	8,346,866

181. The tables above are too unspecific to provide a reliable overall picture, as they do not give any information on the object of the seizures (e.g. corpus delicti, proceeds, instrumentalities, equivalent value), the nature of the seized or sequestered items (e.g. cash, real estate, shares, bonds, or other monetary values) or on the predicate offences, domestic or foreign. No seizures have been made in FT cases. Most importantly no statistics are available on the amounts confiscated by the courts and the amounts actually recovered on the basis of such confiscation orders.

ARO

The following statistics were provided by the ARO:

YEAR HUF)	CAUSED DAMAGE (billion HUF)	SECURED ASSETS (billion
2013	6,5	1,4
2014	100	10
2015	480	219

182. These figures relate to ongoing cases in general. The 2014 and 2015 figures mainly relate to three major investigations. No further details were provided on the nature of seizures or the specific underlying criminality.

HFIU

183. It is obvious that valuable information in respect of the identification and location of tainted money is obtained through the reporting system and the subsequent analysis and disseminations by the HFIU. Moreover, by using its powers of suspension of transactions and freezing accounts, the HFIU also plays a significant role by immobilising suspect assets that subsequently can be seized and ultimately recovered, either as a result of its own analysis, or at the request of a foreign FIU or a LEA. The statistics show that the HFIU uses this power increasingly and effectively, often followed by conservatory measures at the investigative stage. It is to be noted however that the amounts related to the conservatory measures cannot be linked to the seizure figures provided by the Police and DGCA.

HFIU and service provider freezing actions followed by provisional measures

Year	Number of transaction-suspension cases*	Suspensions followed by provisional measures	Funds and other assets in those cases where the HFIU dissemination was followed by provisional measures (seizure or other types of provisional measures)	Number of cases in which the HFIU suspended transactions	Suspensions followed by provisional measures out of those cases, where the HFIU suspended the transactions	Funds and other assets in those cases where the HFIU dissemination was followed by provisional measures (seizure or other types of provisional measures)
2010	46	10	N/A	2	2	N/A
2011	27	8	N/A	1	0	N/A
2012	45	15	73.181.516 HUF 115.988 EUR 217.500 USD	4	2	7.120 EUR
2013	92	30	334.139.484 HUF 9.751.651 EUR 477.276 USD	19	14	334.139.484 HUF 9.703.844 EUR 188.000 USD
2014	152	37	1.642.955.287 HUF 3.598.474 EUR	32	22	1.642.955.287 HUF 1.248.396 EUR
2015	322	171	181.512.240.462 33.587.082 EUR 2.963.771 USD 126.104 GBP 96.276 NOK 3.049 CHF	183	148	181.476.982.104 HUF 33.587.082 EUR 2.577.538 USD 126.104 GBP 96.276 NOK 3.049 CHF

*These figures cover both the suspension actions by the service provider and the suspensions ordered by the HFIU.

Cross-border movements and conservatory measures

184. As explained in the TC annex (R. 32, criterion 8), the powers of the customs in relation to false or non-declarations is quite restricted. The NTCA has no power to seize, but can only restrain the money or BNI for the duration of the administrative procedure if the traveler is not able to pay the administrative fine on the spot and then only up to the amount of the punishment. In theory the values could be seized whenever there is a real ML/FT suspicion, in which case the police would have to be summoned to apply conservatory measures. This event has not yet occurred. In any event, the fact that the officers at the border have neither direct access to the police records nor receive feedback from the police does impede the identification of suspicious cases. In practice, ML/FT suspicions are reported to the HFIU.

Statistics on cross-border transportation reports and restrained values

Cross border transportation of currency and bearer negotiable instruments									
Year	Number of declarations or disclosures				Suspicious cross border incidents			Assets restrained in Administrative procedure as described in the TC Q under Recommendation 32. point 32.8 (amount in EUR)	Penalty imposed in administrative procedure as described in the TC Q under Recommendation 32 point 32.5 (amount is EUR)
	Incoming		Outgoing		Suspicious of ML	Suspicious of FT	False declarations		
	Currency	Bearer negotiable instruments	Currency	Bearer negotiable instruments					
2010	348	-	47	-	22		7	-	
2011	472	-	46	-	171	-	11	-	2 057
2012	700	-	57	-	204	-	17	77 633	92 494
2013	614	-	86	-	253	-	12	16 690	97 434
2014	676	-	75	-	261	1	17	54 718	88 494
2015	824	-	38	-	145	24	11	1 370	34 775

185. The statistics do neither reveal how many of the suspicious cases resulted in investigations or prosecutions, nor the amount (if any) of the restrained or suspected values which were seized and eventually confiscated.

Specific issues relating to an effective confiscation system

186. The doctrine on the identification and proof of the predicate offence may again be considered an obstacle for effective confiscation. Without the investigation being capable to identify the criminal origin, information which clearly indicates money laundering activity (such as in HFIU or other intelligence reports) cannot result in confiscation of the proceeds. However, the legal conditions in principle enable confiscation of proceeds of unknown origin as the object of the ML offence (*corpus delicti*) in an autonomous ML case.

187. On operational level the Hungarian police structure does not include specialised sections of financial police. It is to be deplored that the Hungarian LE approach to a more effective asset recovery does not extend to a systematic conducting of actual parallel financial investigations in complex and serious proceeds generating cases. The combination of the basic offence investigation with that of the financial aspects performed by the same investigators may lead to a lengthy investigative process in important cases which - even if the judicial authorities see no problem in respect of the statute of limitation - could not only provoke the legal “reasonable time” challenge, but may also cause criminal assets not being detected. At the moment the ARO predominantly plays a subsidiary and supporting role to the basic investigation in tracing assets, but over time it could play a pioneering role by developing into an expert body of financial investigators capable to conduct real parallel investigations.

188. Otherwise the organisational and legal framework supporting the seizure and confiscation regime should be solid enough to enable an effective implementation with a substantial volume of criminal assets being recovered. This is however not the case: the (incomplete) statistics give a disappointing picture of modest seizure figures, whilst confiscation statistics are totally inexistent. Yet several case examples provided by the GPO show high proceeds (e.g. amounts relating to 40 Million HUF, 250 million HUF, 360 million HUF, as well as 5,1 million EUR and 472,000 USD) that normally would fall under the mandatory confiscation rule, unless they were returned to the prejudiced party. The authorities stated that victim compensation was applied whenever possible, as this takes priority for legal reasons.

189. There is a serious problem of reliable statistics as they are not only missing or incomplete, but there is also a significant disconnection between the available figures. Although asset tracing is a mandatory part of any investigation, the number of seizures deviates disproportionately from the stated number of investigations and prosecutions.

2010: 28 ML investigations	17 prosecutions	2 seizures
2011: 22	13	0
2012: 37	16	2
2013: 41	16	4
2014: 54	16	2
2015: 33	7	1

190. When comparing the above data, it is clear that the seizures fall significantly behind, even taking into account the unreliability of the statistics or the use of different criteria. They actually confirm the conclusions of the GPO on the insufficient focus on seizures and confiscations.

191. Statistically the figures on the freezing measures by the HFIU indicate a good performance level. However, as stated above, the number and amounts of cases that - according to the HFIU -

were followed-up by further conservatory measures cannot be articulated with the seizure figures supplied by the police and the NTCA.

192. The absence of comprehensive, detailed and reliable statistics is obviously a handicap which prevents a clear view on the performance of the asset-recovery regime and reaching a founded conclusion on the effectiveness of the system. In particular, the total absence of comprehensive confiscation/forfeiture figures is a matter of concern, not only in terms of confiscation orders pronounced, but also (and more importantly) in respect of assets actually recovered. This raises the question of how the Hungarian authorities manage to assess and improve their own effectiveness in this domain, inter alia by identifying the underperforming areas and issues to be addressed, and how they can draw pertinent conclusions relevant for their NRA.

193. To demonstrate their effectiveness the authorities have produced some case examples that allow obtaining a fragmentary picture. One can deduce a certain performance level from these cases, but the partial view they offer does not sufficiently underpin a conclusion of overall effectiveness.

Case example concerning a JIT

In 2014 the Dutch police started an investigation into a prostitution ring where Hungarian women were sexually exploited. The proceeds were transferred to Hungary through money service providers or by the women themselves as cash-couriers. A JIT was set up with the Hungarian police which had started their own investigation. The ARO was called in to start an asset-recovery procedure and support the basic investigation. In a joint action the team seized 7 real estates, 2 luxury cars, 22 500 EUR cash, bank accounts, jewels, paintings and a chariot. 3 suspects were extradited to the Netherlands.

Case example concerning the NTCA/DGA

In a 2013 budget fraud (tax fraud) investigation the DGA suspected the financial profile and the financial situation of the suspect, based on intelligence that real estate owned by a family relative of the suspect according to the land register, was actually the property of the suspect, who used it as his domicile. In the end confiscation was ordered of the luxury house worth around HUF 200 million (appr. EUR 650,000).

Resources issues

194. The ARO staff currently consists of 36 officers. This number is clearly insufficient in order to provide assistance to national asset-tracing and recovery investigations or conduct their own investigations on a regular basis. If the PP would assign the ARO to assist in a serious and complex case, it can be assumed that it would block most of the ARO's resources. Its capacity is presently mainly deployed in supporting cross-border asset tracing investigations, where the ARO has sole national jurisdiction. In May 2016 the ARO was dealing with 119 international cooperation requests and 13 asset recovery procedures.

Measures to preserve and manage seized/confiscated assets

195. At present there is no central management office or criminal assets bureau in Hungary. Each authority that has applied seizure or confiscation measures is responsible for the management of the assets, according to Decree 11 of 2003 MJ-MI-Ministry of Finance which regulates the handling, recording, anticipated sale, destruction and implementation of the confiscation of seized objects. The seized items come in numerous varieties which all need to be properly managed. Special

attention is given to items prone to deterioration or devaluation, in which case pre-sale can be ordered by the courts. Because of the fragmentation of the management arrangement, there exist no overall figures for the value of the seized objects or the amount of confiscations. No figures were provided divided by agency or district either. The authorities stated preparatory work has started on the establishment of a centralised management bureau, in line with the 2014/42/EU Directive.

196. Hungary has achieved a low level of effectiveness for Immediate Outcome 8.

CHAPTER 4. TERRORIST FINANCING AND FINANCING OF PROLIFERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 9

Although not particularly focused on the FT-aspect, Hungary adopts a proactive approach against terrorism, based on the intelligence work of the TEK and Police, with the HFIU in support. Particularly the TEK demonstrated its good understanding and insight of the FT-sensitive areas. The NRA conclusion, which categorises FT as a low risk, does not seem to be entirely justified. Even if Hungary is presently free from homegrown terrorist activity, the financing activity typically exceeds borders, with no exception for Hungary.

In the absence of objective elements that are normally provided by FT-targeted investigations and prosecutions, an effectiveness assessment must rely mainly on structural elements, which seem to be in place. Although recognising the professionalism and good intelligence work of the TEK and HFIU, there are a number of considerations highlighting some weaknesses that should be addressed to achieve a more performant CTF regime.

Immediate Outcome 10

The country has a legal basis to apply targeted financial sanctions regarding terrorist financing, but implementation has technical and effectiveness-related deficiencies. Application of freezing measures under the EU framework results in delays. Moreover, there are concerns related to the implementation procedures under the FRM Act. Concerning the implementation of UNSCRs (before EU transposition) deficiencies were also identified with regard to the national freezing mechanisms under the AML/CFT Act, in relation to communicating information to service providers and the application of criminal procedural measures for the enforcement of freezing measures.

Hungary has not undertaken a formal domestic review to determine if there is a subset within the NPO sector which may potentially be at risk of being misused for FT. There are doubts about the level of transparency of the NPO sector. No authority or mechanism has been designated to conduct outreach to the NPO sector on FT issues and to monitor the NPOs posing a higher FT risk.

Immediate Outcome 11

Hungary takes steps in relation to combating proliferation. However, the country's reliance on the EU framework for implementing the UNSCRs relating to targeted financial sanctions to combat PF results in a time-gap which has a negative impact on the system's effectiveness. Even though in practice there is a mechanism in place for the dissemination of information by the authorities on updates made in the relevant TFS lists, concerns remain of its effectiveness. There is no legal basis for implementing sanctions before these are transposed into EU Law. This undermines prompt and effective implementation of TFS. The understanding and implementation among service providers is varied, and in some cases limited. The lack of supervision of some service providers concerning the implementation of TFS obligations raises concerns.

Complex work is done in different aspects of combating PF. However, there is a lack of cooperation and coordination of policies and activities between competent bodies. It is not clearly stated that the AML-Subcommittee is also assigned to PF-related tasks. The Inter-ministerial Committee on Non-Proliferation operates on a legally informal basis.

Recommended Actions

Immediate Outcome 9

- The technical deficiencies affecting the full criminalisation of financing of terrorism and foreign terrorist fighters should be remedied. To this effect, it is also recommended that Hungary considers accession to the Additional Protocol to the Council of Europe Convention on the Prevention of Terrorism.
- Border controls should be improved by providing a legal basis for the possibility to administratively stop and restrain suspect assets, and to continue developing typologies and indicators to support the identification of such assets.
- In line with the ML-related asset recovery procedures, parallel financial investigations should be organised and formalised also in FT cases. Hungary should consider establishing LE sections specialised and trained in CTF.

Immediate Outcome 10

- Further steps should be undertaken for the prompt implementation of UNSC targeted financial sanctions. Hungary should reconsider the role of their domestic courts in the asset-freezing process.
- Hungary should review the legislative framework in order to ensure comprehensive national implementation and enforcement of the TFS on combating FT under the UNSCRs in line with R.6.
- Hungary should take further steps to ensure that service providers are promptly updating their databases in line with new listings/designations for FT.
- Hungary should conduct a formal review of the entire NPO sector in order to identify those NPOs falling within the relevant FATF definition, and identify NPOs that could potentially pose a higher FT risk.
- Hungary should establish an effective mechanism to conduct outreach to the NPO sector concerning FT issues and monitoring of the NPOs posing a higher FT risk.
- Hungary should ensure an adequate level of NPO transparency and control over funds raised by NPOs.

Immediate Outcome 11

- Hungary should enable targeted financial sanctions relating to PF to be implemented without delay, in line with the FATF Recommendations. Hungary should reconsider the role of their domestic courts in the asset-freezing process.
- Hungary should review the legislative framework in order to ensure comprehensive national implementation and enforcement of the TFS on combating PF under the UNSCRs in line with R.7.
- Further awareness-raising activities should be conducted by the authorities in order to enhance knowledge and understanding by the private sector of PF-issues, recent sanctions regime changes, manners in which respective businesses could be misused for PF purposes, as well as the manner in

which PF sanctions could be appropriately implemented.

- Hungary shall consider reinstate the legal basis and the formal status of the Inter-ministerial Committee on Non-Proliferation.
- The Rules of Procedures of the AML Sub-Committee need to be revised in order to clarify its mandate with regard to PF.
- Hungary shall consider establishment of co-operation between the AML Sub-Committee and relevant authorities involved in counter-proliferation activities, and co-ordination of policies and activities with the (currently informally operating) Inter-ministerial Committee on Non-Proliferation.
- Hungary should extend the supervision of the DNFBPs for TFS implementation compliance to trustees.

Immediate Outcome 9 (FT investigation and prosecution)

197. The police have the overall responsibility of investigating FT and to take all appropriate CFT measures, including prevention. The NBI has nationwide jurisdiction and sufficient capacity to conduct investigations into terrorism and its financing. The LE approach to FT is the same as with other offences that have to be investigated *ex officio*, without FT cases taking priority. As with ML, any suspected terrorism related investigation includes the financial aspects with the money trail being followed (see case example below). There are no specialised investigative sections focusing on terrorism and/or related (financial) offences.

The Counter Terrorism Centre (TEK)

198. At intelligence level the Counter Terrorism Centre (TEK) plays an essential role. Although they can use the police powers under Chapter 7 of the 1994 Police Act (covert operations), the TEK does not conduct investigations, but operates exclusively in the area of collecting intelligence. Their sources include human intelligence, financial intelligence (FIU), technical intelligence (telephone/wiretapping, internet and other communication surveillance) and foreign counterpart information. The information is classified until the TEK decides to file a report on suspicion of terrorism-related offences to the LE authorities. Though the TEK has not yet specifically focused on FT, this aspect has come up in other intelligence actions, for instance with regard to suspicions of business activities being used to financially support terrorist organisations (which were however later not confirmed).

199. The TEK is clearly well-informed and aware of terrorist threats, even if until now it has not found concrete indications of terrorist-related activities and considers that there is not yet need for immediate action, while at the same time recognising the importance of raising awareness for the terrorist threat. It has identified several risk situations that need to be monitored:

- The TEK is aware of the potential risks posed by charity NPOs, but finds the misuse of the donations difficult to substantiate. Cash is typically presented as donations (*zakat*) which are taken to Syria via Turkey; in the absence of a concrete suspicion of FT, the cash cannot however be intercepted at the border.
- The increased use of virtual currencies is a matter of concern because of its anonymity and the difficulty to follow the money trail.

- The geographical proximity of countries with higher risks and cross-border movements of cash on the so-called Balkan route, particularly when the amount stays below the EUR 10.000 benchmark. International cooperation is essential to the TEK's work. A close and productive working relationship has been built with the law enforcement and security agencies of the West Balkan region, considering its history of destabilisation which causes ethnic tensions and radicalisation. Combined with the market for illegal weapons, the increased terrorist threat is obvious.

- Money transfers being an obvious conduit for suspicious money and financing, MTSBs are a matter of attention.

- There is a serious concern about the *hawala*-type alternative money transfers which offer possibilities to terrorist supporters.

HFIU

200. The HFIU is potentially an important source of identification of possible FT cases through the dissemination of their analysis to the LEAs, although as yet there have been no FT investigations as a result of any such report. Particularly the disseminations to the TEK are rising, although this is perceived as no indication of increased terrorist activity, but rather as a consequence of raised awareness and adapted methodology based on relations with territories identified as high risk. The TEK and HFIU frequently interact. Their participation in working groups on *hawala* and virtual payment methods have resulted in an increase of HFIU reports.

Year	2012	2013	2014	2015
Number of cases disseminated by the HFIU to the TEK	17	20	67	318

201. Equally some cross-border cash declarations were identified and reported as suspicious FT (1 in 2014; 24 in 2015), primarily by reason of relation to risk territories. None of them resulted in a criminal investigation.

Investigations of FT activity

202. There have not yet been any FT investigations and consequently no prosecutions. The statistics below, referring to some terrorism-related investigations and convictions, may give an impression of sporadic terrorist activity. However, according to the authorities, they relate to minor incidents, such as faked bomb threats, except for one occasion where right-wing extremists, in order to influence a voting on a draft law, attempted and planned to attack the homes of some MPs with Molotov-cocktails. The reference in the NRA to twelve persons having been arrested in relation to terrorism is said to be misleading, as it relates to foreign cases where requests were made, without Hungary being directly involved. In any event, none of the statistical figures relate to FT.

INVESTIGATIONS for terrorism	2010	2011	2012	2013	2014	2015 (First semester)
Number	10	6	4	16	14	3

CONVICTIONS for terrorism	2011		2012		2013		2014		2015 (First semester)	
	C	P	C	P	C	P	C	P	C	P
Cases (C), Persons (P)										
Number	4	4	1	1	0	0	0	0	1	1

203. Other statistics show that, between 2012 and 2014, 22 investigations, statistically qualified as terrorism-related, were initiated as a result of intelligence or other sources: 14 cases concerned threatening with terrorist activity, 6 were related to MLA, and another 2 were initiated for “other reasons”. None of them presented a financial aspect to be further investigated (see however the 2015 case below).

204. The recent phenomenon of the foreign terrorist fighters and their financing is also under Police and TEK scrutiny. The probability of Hungary-based terrorist fighters leaving for Syria or subsequently (re)entering, which is current serious phenomenon in many Council of Europe member States, is considered minimal because of the general aversion to the terrorist cause of Da’esh (IS) and similar movements within the small Muslim community in Hungary. Suspected foreign terrorism fighters are monitored and stopped at the border whenever possible. From the intelligence and LE point of view, the recent influx of immigration carries a certain risk of potential terrorists hiding or sheltering amongst the refugees, particularly considering the difficulty of obtaining reliable identification data. It should be noted that at least one of the perpetrators of the recent terrorist attacks in Belgium passed the Hungarian border in those circumstances. Another element of alert the authorities are aware of is the geographical vicinity of regions that are more vulnerable to terrorism. The HFIU contributed by developing FTF profiles and indicators and sharing them with the private sector and the authorities involved in CFT, including the border control.

205. In 2015 the NBI, following intelligence collected by the TEK, conducted an investigation involving Syrian nationals suspected of having contacts with terrorist organisations. A search of their car resulted in the seizure of four foreign debit cards in their name. After the suspects refused to give any information, the ARO was called in to enquire with its foreign counterpart on the debit card trail. The case is currently in the judicial phase.

206. The above case demonstrates that the police was aware of the financial aspects and of the importance to follow the money trail. All in all, the Hungarian law enforcement system should be able to cope with the financial aspects when confronted with real terrorist activity or when acting on financial intelligence. Although in the present circumstances the necessity of creating specialized anti-terror units is considered minimal, sufficient finance-oriented expertise seems present within the law enforcement ranks (particularly the ARO), whilst an efficient interaction and coordination between the various law enforcement and intelligence segments has been demonstrated in other cases.

207. Although there are no serious indications of a terrorism-favorable environment in the Hungarian domestic context, and even if the chances of terrorist activity taking place in Hungary may be considered low, this improbability does not extend to FT in all its forms. From an effectiveness perspective, there are a number of risk considerations:

- The technical compliance aspects in relation to the deficient coverage of the FT offence in respect of the UN treaty offences, the collection of funds and the financing of the travel of

foreign terrorist fighters, may have a negative impact on the possibility (and consequently the effectiveness) of any future legal action to be taken.

- The historical inconstant focus on the financial aspects of the proceeds-generating offences, as witnessed by the GPO Circular 2/2015, may reflect on the FT approach when confronted with terrorist activity.
- Circumstantial elements increasing the probability are the risk posed by the NPO sector: misuse of legal persons and NPOs, insufficient financial transparency, inadequate control of funds raised by NPOs, and the absence of a system for monitoring the NPOs sector beside the legality check by the PPO (see IO 10).
- The limited ability of the custom authorities to restrain cash and BNI, as highlighted above, also raises questions on the effectiveness of stopping the cross-border movement of terrorist-tainted money.

FT investigation integrated with - and supportive of - national strategies

208. Hungary has not yet developed a national counter-terrorism strategy. In any case, in the absence of real FT-related investigations, any such strategy will primarily be based on intelligence.

Effectiveness, proportionality, and dissuasiveness of sanctions

209. No sanctions or measures have yet been applied in FT cases.

210. Overall, Hungary has achieved a moderate level of effectiveness for Immediate Outcome 9.

Immediate Outcome 10 (FT preventive measures and financial sanctions)

Implementation of targeted financial sanctions

211. Hungary implements targeted financial sanctions by the application of the EU Council decisions and regulations, and national legislation (namely, the FRM Act and the AML/CFT Act). There are also guidelines and model rules issued for the service providers, containing rules for the implementation of targeted financial sanctions. As an EU member state, Hungary is negatively impacted by the time-span between designation of persons or entities by the UNSCRs and their transposition into the EU legal framework.³² The FRM Act sets a mechanism for freezing terrorist assets provided under the EU framework. Although the domestic mechanism applied for freezing as described under R.6 seems cumbersome, the decision of the domestic courts to order the freezing in a non-trial legal procedure will be issued before expiration of the suspension applied by the service providers and will be final. There have been no cases of implementation of FT-related TFS. However, this mechanism was tested in relation to PF-related TFS (see details under IO11).

212. An issue may arise as to the decision-making process which involves the domestic courts, which order freezing in a non-trial legal procedure only if they conclude “that the conditions of the freezing do not exist” (see TC Annex, Criterion 6.5). The authorities stated that the court procedure

³² Based on the information and examples received from the Hungarian authorities this transposition procedure takes some (approximately 3-5) working days.

aims at preventing the freezing of the funds or assets of inadvertently affected persons or entities, and pointed to extracts of an “Official justification”-document to the FRM Act which states that “implementation of TFS must not depend on any discretionary decision by any national authority”. Although it can be assumed that the domestic courts would in principle decide in accordance with the respective EU regulations, the assessment team takes the view that this document cannot fully meet certain concerns about this procedure, as it appears to have the mere status of an explanatory memorandum. As such, it cannot override the explicit wording of the FRM Act, which gives the domestic courts (which are independent) the power to exercise their own discretion to conclude whether or not the conditions for freezing are met.

213. According to the authorities, measures were taken to overcome delays caused by the EU sanctions regime, by introducing a domestic procedure for the prompt implementation of UNSC targeted financial sanctions. For this purpose, a national regime is introduced under the AML/CFT Act and AML Sub-Committee decision, described in detail under R. 6.

214. Under this regime, the transfer of information on updated lists of designated persons to the service providers is discretionary, as it is performed “if feasible” by the relevant supervisory authorities. Hungary explained that a discretionary approach is applied taking into account the considerable number of the operating service providers.). Though steps are taken to disseminate information to service providers, most of them met on-site did not confirm the receipt of updates through the introduced chain. As for the time between the receipt of the information and its further dissemination, the evaluators were provided with examples of implementation of the above-mentioned mechanism which demonstrated the prompt communication of the UN-designated persons’ list updates, i.e. within 1-2 days from the date of the decision of the relevant UNSCRs Committees.

215. Some of the service providers, in particular banks and credit institutions having advanced automated mechanisms, use directly the website of the UN Security Council to update the database on a daily basis. Financial institutions which are part of financial groups use their group databases. In the absence of automated systems to implement UNSCRs, some exchange service providers update information on a weekly basis, and use the lists whenever serving foreign clients.³³ Most of the DNFBPs met during the on-site visit directly use the website of the UN Security Council. For example, representatives of the casinos confirmed that they monitor updates this way on a daily basis. The trustee stated that listed persons are not considered to be among their clients. As for the dealers in precious metals and precious stones, they did not demonstrate sufficient understanding of the UNSCRs requirements.

216. Insufficient understanding of the beneficial ownership requirements (see details under IO 4) raises concern that this could undermine service providers’ ability to establish whether their customers are acting on behalf or at the direction of listed persons.

217. As for the legal basis for the implementation of this mechanism before the EU transposition of UNSC listings, the Hungarian authorities stated that, pursuant to Section 24 of the AML/CTF Law, the service provider shall suspend the execution of a transaction order if any information, fact or circumstance indicates FT. The HFIU shall further disseminate information to the police, pursuant

³³ Currently the exchange service providers work on the development of a unified IT-system for the update of the designated persons’ lists to be used by all exchange service providers.

to Section 26 (1) of the AML/CFT Act, to undertake relevant measures under the criminal procedures. Based on the information received from the national authorities the aim of applying these measures before the EU transposition is a suspension of transactions and prevention of availability of funds to designated persons. However this mechanism does not seem to ensure prompt and permanent freezing of funds.

218. As the authority responsible for the implementation of the financial sanctions regime in Hungary, the HFIU confirmed that continuous efforts and concrete steps are taken in the form of consultations, trainings, seminars and awareness raising sessions to improve the knowledge and understanding of service providers in this field.

219. According to information provided by Hungary, the implementation of the targeted financial sanctions by the service providers constitutes part of the annual inspection program conducted by relevant supervisory bodies of FIs and DNFBPs. The statistics on the implementation of TFS by the service providers reflect on both FT- and PF-related sanctions (see in more detail below, IO 11).

220. There is no authority and formal mechanism established for proposing persons or entities for designation either to the 1267/1989 and 1988 Committees, or under UNSCR 1373. Hungary has neither received a designation request under UNSCR 1373 for the period under consideration, nor is there an explicit arrangement at the national level for verification of designation requests. Since there are no specific provisions at the national level, Hungary is negatively impacted by the gap in the EU framework on the application of freezing obligations under UNSCR 1373 in relation to EU internals. Although Article 75 of the Treaty on the Functioning of the European Union provides a legal basis for the introduction of such a mechanism, the European Commission has not yet put forward a proposal for a corresponding regulation. This in return has a negative impact on the effectiveness at domestic level.

Non-profit organisations (NPOs)

221. There were 79.986 NGOs and 3.766 non-profit business companies registered in Hungary by the time of the on-site visit. The regulatory framework for NPOs was revised after the previous assessment of the Hungary AML/CFT system in order to overcome considerable deficiencies identified and strengthen controls over the NPO sector.

222. According to Hungarian law, NPOs can be established in various legal forms. Detailed information on the various types of NPOs and legislation regulating their activities is provided in R.8. The table below provides an overview of the main types and activities of NPOs operating in Hungary.

Type of the NPO	Number of registered entities	Main activities area
NGO		
a) Association ³⁴	52.145	cultural activities, information activities (collection/analysis of information), research activities, religious activities, sports and leisure activities,

³⁴ 28,3% of associations are involved in leisure activities, 19,6% in sports activities, and 14,5% in cultural activities.

		education activities, health/medical activities, social activities, civil defence, fire-fighting, environmental, municipal development, housing policy, economic development and labour issues, rights defender, public safety protection, fund distribution, international, professional, economic advocacy.
b) Foundation ³⁵	27.841	-
c) Civil company (established through contracts, without legal personality) ³⁶	n/a	n/a
Non-profit business company ³⁷	3.766	economic development; cultural activities;
a) Non-profit business company with "Public benefit" status	(1.350)	education; municipal development; social services.

223. The risks of the NPO sector were assessed by Hungary in the framework of the NRA. However, the authorities applied a general approach and did not appear to have identified which entities fall within the FATF definition of NPOs and which are potentially at risk from being misused for FT.

224. The risks related to the NPO sector were considered based on submitted SARs and related criminal cases. However, instances of misuse of the NPO sector related to FT were not revealed. The analysed cases related to financial and economic-related criminality, i.e. ML and primarily tax violations-related predicate offences. Consequently, the Hungarian authorities rated the risks related to the NPO sector as low. However, the representatives of the TEK informed the evaluation team during the on-site visit that, in their view, there is a potential FT risk posed by charity NPOs as described under IO 9.

225. Representatives of banks met onsite demonstrated a good level of awareness of their NPO clients, including their areas of activities, geographical reach and transactions. They indicated that NPOs mainly operate domestically. International links are mostly with neighboring countries.

³⁵ 33,2% of foundations are involved in educational activities, 16,4% in social services, 14,7% cultural activities, and 9,9% in activities related to healthcare

³⁶ A civil company is a partnership set up by the natural persons for their common objectives aiming at achievement of non-economic goals, by means of a civil law partnership agreement. There is no information on their stated activities, as there is no registration requirement for the civil companies.

³⁷ 25,9% of non-profit business companies are involved in economic development, 15,4% in cultural activities, 15,0% educational activities, 14,7% in municipal development, and 9,7% in social services.

Banks indicated that NPOs are usually treated as high risk clients and relevant measures are applied to them. However, there is a lack of targeted approach applied to NPOs.

226. Representatives of the NPOs operating in Hungary met onsite indicated that NPOs receive financial recourses, both domestically (including from the state budget) and from foreign sources (mainly from the European Union or foundations based in the United States, Norway and Switzerland). Fundraising activities may be conducted if provided for by the NPO's statute. While the representatives of the NPO sector displayed some knowledge about ML-related offences to their work, only one of them demonstrated understanding of FT risks in relation to NPOs in general, mostly due to close cooperation with US foundations which have strict rules in this regard.

227. Although there are various databases with information on NPOs publicly available, the legislative gaps related to registration and completeness of the data identified under R. 8 hinder an appropriate level of transparency of the NPO sector.

228. A number of state bodies³⁸ conduct supervision over the different aspects of the NPOs' activities. Based on the area of activities Ministry of Human Capacities monitors system for coordinating the technical aspects related to financing received from the State budget.³⁹ However, there is not a holistic system for monitoring related to CFT matters, including control of funds raised by the NPOs. The above-mentioned governmental supervisory bodies did not demonstrate awareness of FT risks related to the NPO sector within the scope of their responsibilities. No outreach was conducted to the NPO sector regarding TF risks.

Deprivation of FT assets and instrumentalities

229. According to the Hungarian authorities, there have not been identified any positive matches with the UNSCR FT lists. As a result, no freezing of assets or instrumentalities of terrorists, terrorist organizations and terrorist financiers, were applied. There have been some terrorism-related cases, as further described under IO 9. However, no FT investigations and prosecutions had been initiated at the time of the on-site visit.

Consistency of measures with overall FT risk profile

230. Based on the NRA, Hungary has concluded that the overall risk of FT and the risks related to the NPO sector are low. However, it is not fully apparent how this conclusion was reached and whether it is fully justified, as further elaborated under IO 1 and IO 9. This may in return put into question whether the respective measures taken by Hungary are fully consistent with its overall FT risk profile, in light of the above-mentioned shortcomings. Although Hungary has developed various mechanisms for the implementation of the UNSCRs, there is room for further improvement. With regard to the NPO sector, Hungary has not identified and applied a targeted approach to overseeing NPOs of higher risk. No authority is identified with responsibilities to conduct supervision and outreach to the NPOs sector on the risks of terrorism and FT.

231. Overall, Hungary has achieved a moderate level of effectiveness for Immediate Outcome 10.

³⁸ These are namely the PPO and the Courts of Registry.

³⁹ According to information provided by the authorities, the number of budgetary aids inspected in 2015 was 14.600, while in the first 3 months of 2016 it was 2164. The proportion of denied aids was about 1% (23).

Immediate Outcome 11 (PF financial sanctions)

232. In order to evaluate an overall effectiveness of the system, a holistic approach was applied giving consideration to both the framework of combating PF and the prevention of proliferation of WMD.

Implementation of targeted financial sanctions related to proliferation financing

233. In Hungary, the implementation of the targeted financial sanctions defined in the UNSCRs relating to combatting PF is based on the European Union legal framework, which is set out in Council Regulation 329/2007 and Council Decision 2013/183/CFSP for UNSCR 1718 (concerning the DPRK), as well as Council Regulations 267/2012 and Council Decision 2010/413 for UNSCR 1737 (concerning Iran). As an EU member state, Hungary is negatively impacted by the time-span between designation of persons or entities by the UNSCRs and their transposition into the EU legal framework. In practice, the risks are to a certain extent mitigated, as the EU applies sanctions to a larger number of entities that are not concerned by a UN designation. In some cases, the EU is ahead in time of the UN. In addition, a prior-notification/authorisation procedure is used within the EU framework for transactions with Iranian persons, entities or bodies. Hence any transaction initiated can be delayed while the “European transposition” is in progress. These measures may mitigate the risks related to UN TFS implementation-delays in relation to Iran.

234. Implementation of the asset-freezing mechanisms under the EU framework is provided in the FRM Act. Concerns on the set mechanism described under the IO 10, remain for the effectiveness of implementation of the TFS related to PF. Although measures are taken for the dissemination of information by the authorities on updates made under the relevant TFS lists, and the Hungarian authorities stated that in practice service providers implement the UN TFS related to PF directly, before EU transposition, in fact there is no legal framework under the AML/CFT Act to deprive designated persons of the funds or other assets, before EU transposition, which in the view of the evaluation team could also impacts effectiveness of the system.

Identification of assets and funds held by designated persons/entities

235. There has been no case of identification of persons listed under the respective UNSCRs and application of freezing measures. However, with regard to the implementation of Council Regulation 267/2012 (concerning Iran), there was a match in 2013 with a designated entity. Based on the FRM Act, a report was filed immediately by the financial service provider to the HFIU. The latter sent a notification to the competent court, which ordered the freezing of available funds amounting to more than EUR 41 million. No similar case related to EU Council Regulation 329/2007 was identified during the period under consideration. Though it is difficult to make a conclusion based on one case, the provided example shows a successful implementation of the EU TFS.

236. As an EU member state, there is a broad approach at EU level to restrictive measures against Iran implemented in Hungary. Statistics of implementation of requirements for authorisation and notification of transactions with regard to the implementation of Council Regulation 267/2012 is figured in the table below. There have been requests for both the authorisation and notification of transactions to and from Iranian persons, entities and bodies. The decrease of requests for authorisation during the period 2011 (23) to 2015 (3) is considered to be due to the increase of the threshold since Council Regulation 961/2010 was repealed⁴⁰.

⁴⁰ Council Regulation 961/2010: http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2010.281.01.0001.01.ENG&toc=OJ.L:2010:281:TOC

Year	Request for Authorisation	Notification
2010	-	-
2011	23	117
2012	8	173
2013	3	107
2014	2	124
2015	3	162

237. According to information provided by the HFIU, these transactions were analysed. In some cases, there was close cooperation between domestic entities (e.g. NSS, HTLO, NPHQ and TEK) and foreign counterparts, in order to understand the nature of the transactions and to identify any possible links with PF. There were however no cases of freezing, since no match with the list of designated persons and substantiation of PF were identified.

238. The HTLO informed the assessment team about a case where a bank blocked the payment for the exporter of special equipment. The transaction was only completed after the HTLO had issued a statement (following a request from that bank) that these items were not covered by the relevant sanctions legislation. This case demonstrates that some service providers also take proactive measures in relation to prevention of PF.

239. There have been no cases of PF investigation in Hungary. However, as mentioned by the ARO, assistance to investigations conducted by other EU member States was provided. In particular, there was a request to identify and allocate property owned by certain persons suspected to be members of an organised criminal group involved in arms trafficking⁴¹. The ARO took relevant measures and promptly identified different kinds of property owned, either directly or indirectly (i.e. via family members or other relatives), and provided detailed information to the relevant authorities of the requesting country. Moreover, the ARO conducted its own parallel financial investigation and revealed additional members of the organised criminal group. Since this was an ongoing investigation at the time of the on-site visit, the authorities were not in a position to provide any further information. The example however suggests that there are adequate powers and mechanisms in place to identify and allocate property of persons related to PF, and that the competent authorities are in a position to effectively perform the required measures.

FIs and DNFPBs' understanding of and compliance with obligations

240. Most of the service providers met on-site demonstrated awareness and understanding of their TFS obligations. They also demonstrated understanding of obligations related to the implementation of the restrictions on transfers of funds and financial services to and from an Iranian person, entity or body set in the EU framework. However, for example, dealers in precious metals and precious stones do not understand their vulnerability of being abused for PF purposes.

241. When discussing the implementation of TFS, most of the service providers met on-site did not confirm the receipt of updates through the information dissemination chain introduced by the Hungarian authorities. There is no common approach among the reporting entities on the practical

Council Regulation 267/2012: <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32012R0267>

⁴¹ The foreign ARO did not provide information on the type of weapons to Hungarian counterpart. However, the example is deemed to be relevant as reflects on ability of country to provide assistance in relation to introduced cases.

implementation of the UNSCRs either (see above, in more detail, under IO 10). Some service providers revealed during the on-site visit that there is an insufficient understanding of the requirements for beneficial owner identification (see details under IO 4), which could undermine their ability to establish whether their customers are acting on behalf or at the direction of designated persons.

Competent authorities ensuring and monitoring compliance

242. Implementation of the targeted financial sanctions by the service providers constitutes part of the annual inspection program conducted by the relevant supervisory bodies of FIs and DNFBPs. Most commonly, violations of reporting obligations are related to the fact that Hungarian nationals are not checked against the lists of designated persons. As to date, no Hungarian citizens are known to be listed, and existing customers are not checked against the lists of designated persons immediately when the list is amended. As a result, in such cases service providers (FIs) were instructed to amend internal rules accordingly. Concerns remain with regard to the inspection of compliance with the TFS implementation by the trustees. Hence the latter have not yet been inspected as to date.

Supervisory measures applied for non-compliance with or inappropriate implementation of provisions related to targeted financial sanctions (FT and PF) by the MNB⁴²

243. As the authority responsible for the implementation of the financial sanctions regime in Hungary, the HFIU confirmed that continuous efforts and concrete steps are taken in the form of consultations, trainings, seminars and awareness-raising sessions, in order to improve the

Year	Type of institution	Supervisory letter issued	Resolution issued	Fine (HUF)	Fine (EUR)
2011	Bank	17	4	-	
	Insurance company	1	-	-	
	Investment firm	-	1	-	
2012	Bank	31	2	-	
	Insurance company	-	-	-	
	Investment firm	-	1	3.000.000	10.000
2013	Bank	24	-	-	
	Insurance company	3	-	-	
	Investment firm	-	-	-	
2014	Bank	11	3	3.000.000 + 1.000.000 + 500.000	10.000 + 3.330 + 1.650
	Insurance company	3	-	-	
	Investment firm	-	-	-	
2015	Bank	7	1	500.000	1.650
	Insurance company	5	-	-	
	Investment firm	2	2	1.500.000	5.000

knowledge and understanding of service providers in this field.

Domestic cooperation to implement measures to combat the financing of proliferation

244. There are a range of governmental authorities in Hungary, dealing with different aspects of the combating proliferation of WMD. The AML/CFT policy-making and coordination is conducted by the AML Sub-Committee. The authorities consider that PF-issues are likewise covered by virtue of their inclusion in the FATF Recommendations. However, formalising the powers in relation to the CPF will allow clarification of the scope of the Sub Committee mandate.

⁴² There are no statistics provided by the authorities with regard to inspections conducted of other service providers.

245. The Inter-ministerial Committee on Non-Proliferation, set up by Government Decision No. 2016/1999, was a policy-making body mainly responsible for Hungary's compliance with its international commitments, the development of a non-proliferation strategy, as well as overseeing the implementation of UNSCR 1540 (2004).⁴³ That committee formally terminated its work in 2010, although it started again to meet on an informal basis since 2014 (under the initiative of the Export Control Department of Authority of Defence Industry and Export Control). The authorities state that the committee's informal status does not affect its work, since regular meetings are taking place and results are being recorded in the form of reports.⁴⁴ However, the lack of a formal legal basis may hinder the effective operation of the Committee.

246. Even though it was confirmed by the authorities during the on-site visit that there is no cooperation on PF-matters between the AML-Subcommittee and the informal Inter-ministerial Committee on Non-Proliferation, discussions with representatives of the relevant authorities during the on-site visit confirmed that they recognise the importance of such cooperation. The authorities confirmed that further steps will be taken to ensure that both (sub-)committees coordinate their policies and activities in relation to prevention and combating PF.

247. In order to ensure effective measures to combat proliferation, there is a co-ordination mechanism set-up in Hungary for licensing and authorisation of trade in arms and defence-production, dual-use goods and technologies, as well as a system for safety controls for the peaceful application of nuclear energy. The Hungarian Trade Licensing Office is the national export/import-licensing authority, *inter alia* coordinating the activities of the expert group for licensing the export and import of military items⁴⁵, as well as the activities for licensing the export of dual-use goods.⁴⁶

248. According to information provided by the Hungarian Trade Licensing Office, about 80% of the production by the Hungarian defence industry is intended for export. Hungary is committed to maintain the safety and security of the non-proliferation regime, and there are no known exports of military goods to Iran or North Korea. After the lifting of sanctions against Iran over its nuclear program in January 2016, Hungary has authorised trade in certain goods⁴⁷ with the country under the application of the "catch-all" control provisions. These provisions are applied based on the HTLO's end-user country risk assessment.

249. The authorities confirmed that, while analysing application documents and information, checks are always made concerning the end-user certificates. Hungary issued 15 denials for exports of dual-use items over the past five years. The most common reasons for denial were the risk of

⁴³ National report of the Republic of Hungary on the implementation of Security Council resolution 1540 (2004). Source: <http://www.un.org/en/sc/1540/national-implementation/national-reports.shtml>

⁴⁴ The following authorities are invited to participate in the meetings: Authority of Defense Industry and Export Control (Export Control Department and Department of Defense Industry and Conventional Arms Trade Control); Ministry of Foreign Affairs and Trade (Department of Security Policy and Non-Proliferation, Department of Common Foreign and Security Policy); Hungarian Atomic Energy Agency; National Tax and Customs Administration; Special Service for National Security; Military National Security Service; Constitution Protection Office; Intelligence Office; National Centre for Epidemics; Ministry of National Economy (Department for Industry), and Ministry of Defence.

⁴⁵ The expert group for licensing the export of military items comprised of representatives of the following eight authorities: the Ministry for National Economy, the Ministry of Interior, the Ministry of Defence, the Ministry of Foreign Affairs and Trade, the National Tax and Customs Administration, the Headquarters of the Police, the Counter Terrorism Center as well as the Civil and Military Intelligence Services.

⁴⁶ The licenses of dual use goods are issued by the HTLO's Authority of Defence Industry and Export Control, with the expert opinion of the Ministry of Foreign Affairs and Trade. The authority may also consult the Ministry of Defence, the Military National Security Service and the Information Office for expert advice.

⁴⁷ As stated by Hungary, these are not dual-use goods or technologies.

diversion for military purposes in countries subject to arms embargo, the risk of diversion to MTCR-related purposes as well as the risk of diversion to WMD-related activities. Approximately 5-6 denials are issued per year concerning the exports of military items. The main reasons for denial are breaches of international arms embargoes, aggravation of regional armed conflicts and foreign and national security considerations. The number of denials is relatively low, as the exporters often pre-screen their planned transactions with the authorities to evade formal rejections.

250. There are also mechanisms in place for both monitoring the licensed companies and ensuring that decisions are respected in case of rejections. A complex audit is conducted when a company first applies for a license, with subsequent on-site inspections on a biannual basis. In cases of rejections, the respective companies are also visited regularly on-site to ensure that there was no illegal alienation of the disallowed goods.

251. Based on the above provided information, the evaluation team concluded that there is a considerable work undertaken in the area of prevention financing and of proliferation of WMD and further development of coordination of policies and activities among the respective competent authorities and committees would strengthen the overall system.

252. Overall, Hungary has achieved a moderate level of effectiveness for Immediate Outcome 11.

CHAPTER 5. PREVENTIVE MEASURES

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 4

Financial institutions demonstrated a basic understanding of ML and FT risks. They have not formally amended their internal control mechanisms in line with the risks identified therein. While the banking sector has risk categorisation procedures in place regarding business relationships, the MNB had - in the context of the NRA - instructed financial institutions to carry out more sophisticated risk assessments in respect of their existing customers and products. At the time of the onsite visit this was, at best, work in progress. Lack of understanding of the identification requirements for the beneficial owners among the financial institutions as well as DNFBPs were identified. Given that the use of fictitious companies and straw men in the establishment of companies, opening of bank accounts and execution of transactions are considered as high risk, this has an impact on the effectiveness of the system.

The application of adequate CDD measures is also hindered because of legislative shortcomings connected with domestic PEPs, shortcomings connected with the identification of beneficiaries of wire transfers and verification of beneficial owners. The approaches applied by all the service providers in requesting information on sources of funds are not appropriate.

In practice, real estate agents are not involved in the financial side of the transactions. CDD measures related to real estate transactions are performed by lawyers. Therefore, the technical deficiencies related to the identification of BOs have an impact on the CDD measures applied by lawyers with regards to legal entities.

Casinos seem to apply CDD measures, but difficulties were identified with the verification of declarations on the source of funds. Dealers in precious metals and stones encounter some difficulties in applying CDD measures.

Improvement in the quality of the reports submitted by service providers is noted by the HFIU. Most SARs are reported by banks. The level of SAR-reporting by the DNFBP sector - especially by lawyers, notaries and casinos - is not considered adequate by the assessment team considering their involvement in transactions with high-risk customers and products.

FT-related SARs have been made mostly by banks. Some financial institutions and DNFBPs seem to focus mostly on UNSCR- and EU-lists, but they do not further consider any other such risks.

Recommended Actions

Immediate Outcome 4

- Hungary should amend the legislative framework in line with the 2012 FATF Recommendations and ensure-[] rapid implementation by financial institutions and DNFBPs of these provisions, in particular with regard to the definition of beneficial owner, verification of beneficial owners, procedures in respect of domestic PEPs in high-risk business situations and all the other legislative shortcomings identified in the report.
- The authorities should ensure that information on risks identified in the NRA is communicated to the financial institutions and DNFBPs and reflected in their internal risk assessments, based on the nature and size of the business at the level of the customers and

products with which they deal.

- The supervisory authorities should take steps to ensure that DNFBPs are adequately applying preventive measures.
- The authorities should ensure that financial institutions and DNFBPs, especially lawyers, notaries and casinos – dealing with cash transactions, apply appropriate identification and verification measures of ultimate beneficial owners of legal entities and legal arrangements and apply thorough CDD with regard to them in order to prevent the misuse of straw men and fictitious companies. The authorities should issue or amend detailed guidance in relation to the process for the identification of beneficial owners, including case studies regarding complex structures and guidance on possible verification measures.
- The authorities should ensure that all financial institutions and DNFBPs are applying adequate specific measures in relation to PEPs.
- Consideration should be given to requiring all customer-facing staff in financial institutions to consult compliance in the on-boarding of higher risk customers.
- The authorities should take further steps to raise awareness on FT risks amongst all sectors especially focusing on the implementation of targeted financial sanctions and identification of potential cases of FT suspicions.

Immediate Outcome 4 (Preventive Measures)

Understanding of ML/FT risks and AML/CFT obligations and applying mitigating measures

253. The banking sector forms the major part of the financial sector. Banks met onsite seem to have an understanding of the risks which apply to them (e.g. with regard to cash, fictitious companies and straw men). This is also the case with respect to other financial institutions. Although the MNB has disseminated guidelines to the financial institutions on the application of risk based approach the provisions of the AML/CFT Act do not require service providers to carry out their own risk assessments based on nature and size of the business (customers, products, services, delivery channels etc.). There are also no requirements to update such risk assessments and provide competent authorities with relevant information. As a result, the internal policies of the financial institutions do not always reflect the existing risks and risk mitigation measures to be applied. The MNB had, in the context of the NRA instructed the financial institutions to carry out more sophisticated risk assessments as required by FATF in respect of their existing customers and products. At the time of the on-site visit this was, at best, work in progress in most financial institutions.

254. The private sector has been involved in consultations to collect information from the industry for the NRA. The HFIU participated in the meetings on the results of the NRA with the representatives of accountants and real estate agents.

255. As noted under IO.1, the outcomes of the NRA had not been fully communicated to the financial institutions at the time of the on-site visit. Hence they were not in a position to formally amend their internal control mechanisms in line with the risks identified therein.

256. The banks met onsite by the assessment team have internal grading procedures through which they categorise their business relationships into “high”, “medium” and “low risk”. In most of the banks met onsite between 1% and 3% of customers are graded as “high risk”. These involve offshore companies, foreign clients, clients from high risk jurisdictions, or certain types of

businesses (e.g. dealers in precious stones and jewellery, gambling). A significant number of SARs submitted by the service providers can be considered as directly related to offshore companies. The NRA points to the existence of risks of straw men used for the establishment of legal entities and the existence of fictitious companies. Banks appear to understand these risks. Enhanced due diligence measures are applied by banks for high risk customers, while some banks apply these measures also to medium risk clients. Banks also considered PEP relationships as presenting higher risks. Internet banking and application of other new technologies were also considered as factors bearing an increased level of risk. The use of cash is identified as a major risk factor in a considerable number of reports made by financial service providers, especially banks. As for FT-related risks, some financial institutions seem to focus mostly on UNSCR- and EU-lists, but do not further consider any other such risks.

257. Money service businesses consider cash, geographic position and designated countries as high risk factors.

258. Only investment firms and credit institutions may engage in investment service activities. Investment service providers consider as high risk clients from offshore jurisdictions as well as unusual schemes and transactions including large amounts. They apply enhanced due diligence measures in such cases. Investment service providers met on-site which acts as a subsidiary of a bank accesses CDD data of the bank directly.

259. Currency Exchange Offices consider their services as low risk since they mostly serve tourists with low amounts of transactions. Where they serve clients on a regular basis, the offices indicated that they know these clients and their business profile. In cases of a client avoiding identification, a STR would be filed.

260. Credit organisations interviewed onsite noted that they do not perform cross-border activities and they mostly provide services in rural areas. In the absence of wealthy or foreign clients, they do not consider their customers as being of high risk.

261. Life insurance agents consider PEPs as high risk customers. Lists of high risk countries are on the monitoring list and the results of the screenings are considered by the managers on a daily basis. As the issue of ransom payments to terrorist organisations occurred elsewhere, the HFIU promptly discussed this issue from an operational perspective with the Association of Hungarian Insurance Companies.

262. The Understanding of the AML/CFT measures among the DNFBBs is generally less well-developed than in the financial sector. Most of the DNFBBs consider cash as a high risk. Some of the DNFBBs met on-site link high-risk situations rather with tax evasion or corruption than with ML.

263. The casino sector considers PEPs, persons from high risk countries and the use of cash as posing the highest risks. Casinos mostly concentrate on non-resident customers and request information on the source of funds from PEPs. Representative of the private sector and supervisory authority indicate that the amounts involved in the gambling activities are small (average of 80 euro per person)⁴⁸ and winning certificates are issued rarely. Another possible ML risk, which is related to large cash deposits held by a casino and which can be used by the person who deposited the cash, was also considered during the on-site visit. However, the Gambling Supervision Department of the NTCA emphasised that the handling of deposits by the casinos is merely a custody service. Since deposits can be paid out only to the depositor, the risk is mitigated. In

⁴⁸ According to the information provided by the representative of the casinos, “live gaming” represents 30% where (with a share of 69 % for “american roulette”) and “slot gaming” 70% of the total gamings.

practice the service providers follow the transactions of the players (purchase or cashing in of casino chips or tokens) and issue the winning certificates according to the actual winnings obtained. Where winnings are paid out by transfer of funds (e.g. deposit in a bank), the disclaimer “Do not use as certificate of winning” shall be entered in the comments box of the payment order. Therefore the risk of misuse of deposits held by the casinos for depositing illegally obtained proceeds may be mitigated. The declarations on the source of funds provided in these cases are however difficult to verify. In few cases infringements of CDD requirements were detected by the supervising authority and fines were imposed.

264. Accountants do not manage customer assets and funds. However, they have access to important information that may raise suspicions. Most accountants operate in small-size enterprises or are self-employed sole entrepreneurs. Accountants consider the use of cash as high risk and act in case of suspicious transactions which do not correspond to the business profile of the client. Auditors advised consider offshore companies as high risk.

265. Notaries appear to apply basic due diligence measures, irrespective of the risks identified. However, there are concerns that the risk-based approach is not being fully implemented in higher risk situations. The NRA identified a vulnerability in relation to notaries, as they are not required to provide SARs, e.g. during inheritance procedures or notary public deposit procedures. Notaries are involved in real estate transactions. However, they appear not to be involved in the actual payment. With regard to the Court Registry, they are also involved in the process of reporting to the registry any changes with regard to the legal entities subject to registration.

266. Lawyers consider real estate transactions and company formation to present high ML risk. The lawyers that the assessment team met indicate that they are also involved in the establishment of trusts. Lawyers are also providing escrow services related to cash and/or other valuables. It appears that they apply regular due diligence measures irrespective of the risks identified.

267. Hungary introduced the concept of domestically created trusts into its legal system in 2014. While a professional trustee may only be a legal person, a non-professional trustee can both be a natural or legal person. As further elaborated under IO.5, the concept of “non-professional trustee” does not match with the FATF definition and should be considered as a trust service provider within the context of the FATF standards. There was one professional trustee in Hungary at the time of the onsite visit whom the assessment team met. The trustee has numerous trust contracts involving significant sums. He reported a good understanding of its customers. Non-professional trustees are exempted from the AML/CFT legal framework. There are currently twelve non-professional trust relationships established, with some significant amounts involved. Non-professional trustees have deposited 12 trusteeship agreements with MNB worth about 43 million EUR, consisting mainly of the equity of a single publicly traded company and of 25 real estates. Non-professional trustees are not obliged to keep internal records or announce the status to the bank. Thus it is difficult to verify whether all the requirements for CDD for legal arrangements stipulated by the FATF are met if the bank simply relies on a beneficial owner certificate provided by the trustee upon opening a business account.

268. Real estate agents met onsite expressed difficulties in conducting CDD and identifying beneficial owners. However, since they are not conducting transactions on behalf of their customers and are not involved in financial transactions, the evaluation team does not consider the risks high.

269. Dealing in precious metals is an activity that requires a license issued by the Hungarian Trade Licensing Office; therefore the service providers are registered and known to the supervisory agencies. Traders in good (including traders in precious stones) are registered and supervised by

the Hungarian Trade Licensing Office. The use of cash is described as a high risk by the representatives of this sector.

Application of CDD and record keeping requirements

270. Financial institutions demonstrated awareness of their CDD and record keeping requirements. Although they undertake CDD measures and apply identification and verification requirements, and request relevant documents for identification purposes, there are concerns with regard to the identification and depth of verification of beneficial owners of legal persons and arrangements with complex structures, as further elaborated upon in the present chapter as well as under IO5. Due to data protection concerns, the applicable law does not allow the scanning and maintaining of copies of ID documents by the financial institutions without the consent of the customer.

271. The assessment team had concerns with regard to beneficial ownership requirements which are of particular importance, considering the risks posed by straw men in the establishment of companies, opening of bank accounts and execution of transactions, as well as concerning the risks linked with offshore companies. The legislative shortcoming as identified in the TC Annex connected to the identification and verification of the beneficial owners also has impact on the application of CDD requirements. Some financial institutions interviewed revealed an inadequate understanding of the identification requirements for the beneficial owners. It is not always understood that the ultimate natural persons should be identified. The service providers place undue reliance on the declarations submitted by the customers. Verification of beneficial owners of legal entities includes the checking of the Register of Companies which however does not contain information on ultimate beneficial owner, as described in detail under IO.5. Moreover, not all service providers appear to take additional measures to verify the beneficial owners of legal persons. As described further under Recommendation 10, effective application of CDD requirements with regard to legal entities is also hindered by the fact that there is no explicit and enforceable requirement to understand the control structure of the legal entity and collect information on the senior management of the company. Some of the financial institutions met onsite indicated that, in case offshore companies are involved in the ownership structure, this may render impossible the verification of the identity of the beneficial owner. DNFBPs showed inadequate knowledge of the notion of beneficial ownership and CDD requirements which need to be applied. Identification of the beneficial owner is also considered an issue for the auditors. For instance, some auditors indicated that they will consider information on shareholders and representatives of the legal entity for identifying the beneficial owner. Some lawyers indicated that they would consider information on the management of the legal entity. It is of particular importance in view of the misuse of domestic legal entities and use of the credit institutions by offshore companies.

272. As for the new legislation on trustees, the information held by the professional trustee is not accessible for the financial institutions and DNFBPs due to confidentiality provisions. It is not explicitly provided in the legislation that banks are required to identify and take reasonable measures to verify the identity of the beneficiary (as well on the settlor(s), protectors and class of beneficiaries (if any) and other natural persons exercising ultimate effective controls over the trust) in respect of trust accounts. It was understood that one bank had sought and obtained some beneficial ownership information (information on settlor and beneficiaries were obtained) in respect of a trust contract.

273. Although there are technical deficiencies related to understanding the nature of the customer's business, in practice financial institutions demonstrated understanding of the business profile of their customers.

274. Financial institutions monitor customer relationships on an on-going basis. Monitoring mechanisms are different across banks; the banks which are member of financial groups apply group-wide policies. The type of on-going monitoring applied mostly depends on the risk level. Most of the financial institutions indicated that information on the source of funds would be requested for high risk customers (e.g. Stability Savings Accounts, PEPs). Some of the DNFBPs met on-site indicated that they have difficulties to obtain information on the source of funds.

275. Reliance on third parties for conducting the CDD process is permitted. However, it does not seem to be widely applied in practice. Some banks indicated that they rely on data of other (financial) group member institutions but they appear to have a mature understanding of the rules to be applied during the third-party reliance. Accountants have indicated that they rely on lawyers for conducting the CDD process.

276. The DNFBPs appear to have some understanding of the CDD requirements. The real estate agents indicate that CDD requirements are undertaken mostly by lawyers. Only in cases when a written bid is signed between the parties do real estate agents conduct CDD on the basis of official documents. In these cases, the parties will not be in a position to proceed with the agreement unless CDD is completed.

277. Notaries and lawyers appeared to be overall aware of the identification and record keeping requirements. The lawyers met onsite indicated that they match their internal procedures to comply with the record keeping requirements. Client-related data and information are maintained for eight years. Considering the involvement of the lawyers in the real-estate transactions, the issues related to identification of BOs in the cases when real estate transactions are conducted by the lawyers will be important. Some technical deficiencies related to the definition of BO have an overall impact on the implementation of full CDD requirements. Lawyers met on-site were also involved in the formation of non-professional trusts and appear to have a good level of understanding of their clients' activities.

278. The assessment team considered that dealers in precious metal and stones experienced difficulties in conducting CDD. This was also confirmed by the supervisory authority. Dealers in precious metals and stones interviewed by the team appeared to have long-term customers.

279. Casinos have CDD measures in place. There is a difficulty on verification of declarations on the source of the funds provided in these cases. In few cases infringements in connection with the process of CDD were detected by the supervising authority and fines were imposed.

280. The Central Bank of Hungary indicated that supervised financial institutions comply with the record-keeping requirements. Based on the answers to the requests from the Gambling Supervision Department of the NTCA, casinos and card rooms comply with the record-keeping requirements. During the course of supervisory practices carried out, no information has emerged related to the failure of compliance with record-keeping obligations of casinos and card rooms. The representatives of the sector, the evaluation team met during the on-site visit, also appear to be aware of record keeping requirements. According to the assessment of the HFIU, the level of complying with the record-keeping requirements by the supervised sector (accountants, tax consultants/tax advisors, real estate agents) is considered as acceptable. However, sector specific provisions in the AML/CFT legislation, which respects the diversities of different categories of obliged entities, would support the implementation of record-keeping requirements (as identified

by the NRA). Minor shortcomings in terms of record-keeping are identified in the majority of the onsite inspections. Although the financial institutions met on-site expressed concerns about the prohibition to maintain copies of ID documents, the information of the customer identity is maintained by the financial institutions.

281. Other supervisory authorities have not found serious shortcomings in this regard.

Application of CDD or specific measures

282. The requirements of the AML/CFT Law do not cover domestic PEPs, even though some financial institutions indicated that they apply specific measures to them as a result of group policy.

283. As there are no standard risk management systems in place to determine whether a customer or the beneficial owner is a PEP, practices vary among the service providers. Several technical deficiencies have been identified in the process to identify foreign PEPs which impact the application of measures. While some banks indicated that they use the internet and private databases to identify PEPs, others demand a declaration from foreign clients to confirm whether or not the customer is a PEP.

284. Some DNFBPs indicated difficulties in identifying foreign PEPs because of lack of databases.

285. Overall there did not appear to exist a systemic process applied by the financial institutions and DNFBPs. The measures applied to identify foreign PEPs vary among the service providers. Banks met on-site indicated that, in order to establish relations with customers which are PEPs, approval of the CEO or head of the AML unit is required and a statement of the source of fund is requested.

286. Some banks met onsite indicated that they use questionnaires to assess the quality of potential correspondent banks and, in case they refuse to provide necessary information, will refuse establishment of correspondent banking relationships without obtaining such information. Relevant information is periodically updated. However, there is a possibility not to apply general provisions with respect to correspondent banking to respondent institutions within the EU, as provided under the AML/CFT Act (which is more restrictive than the FATF standard).

287. With regard to new technologies, no sophisticated products are offered by the service providers. The banks met onsite confirmed that the use of internet and mobile banking is considered as high risk. Although there are no enforceable requirements for the financial institutions to undertake the risk assessments and take appropriate mitigating measures, the financial institutions met on-site indicated that they meet with the clients face-to-face when establishing business relationships or apply other measures to mitigate the risks. The MNB considers products connected with new technologies as high risk. When considering the requests concerning the introduction of these products, its AML/CFT Unit is largely involved in the process. There appear to be gaps in the legal framework for wire transfers. It is not required to include details of beneficiaries in such transfers. The money service businesses met onsite state that they include relevant information on the originator but not on the beneficiary. This issue has been also identified by the authorities in the NRA, and it was noted that in cash transfers (through non-account-based transfer systems) it may be extremely difficult to identify the source of the funds and the identification of the beneficiary and its objective. It was noted during the interviews that the money service businesses are screening for matches with the lists related to UNSC resolutions. However the check will include only the sender and not the beneficiary. The service providers met on-site were using their internal procedures for conducting check and informed that they had cases of false matches but no designated persons have been found. In line with the increasing global threat posed by ISIL, the HFIU as supervisory body conducted off-site inspections of accountant

firms through questionnaires on the implementation of targeted financial sanctions and measures related to high risk countries (FATF Public Statements). The accountant firms have been selected on the basis of a risk based approach by the HFIU, as a supervisory authority among the service providers supervised it.

288. The HFIU shared a non-paper on foreign terrorist fighters (FTF) profiles with the private sector and competent authorities. The non-paper on FTF profiles and indicators briefly sums up the relevant UNSCRs with regard to FTFs.

289. Regarding the implementation of the targeted financial sanctions on FT, there is a good understanding among the financial institutions and most of the DNFBPs about the lists and necessity to conduct checks against the lists with regard to both customers and beneficial owners. However, as described in more detail under IO.10, the application is impeded by the deficiencies in the procedure to update the lists and inform the service providers. The process is partially facilitated in the larger financial institutions (especially banks which are member of financial groups). However, the overall timely updating of the lists (as well as the internal procedures for screening the customers' names against the lists) is not effective.

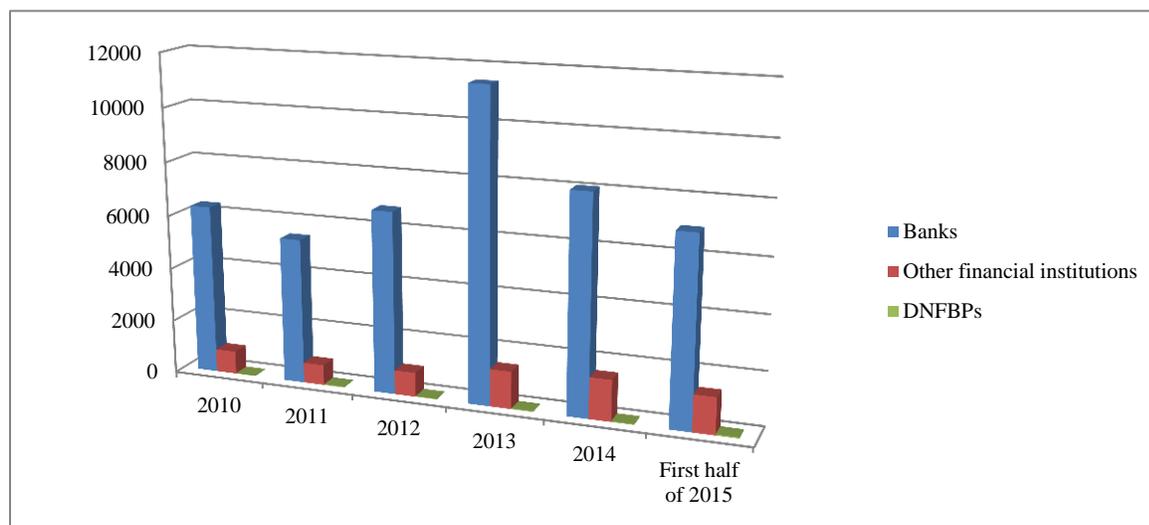
290. Legislative deficiencies exist with respect to legal requirements to apply enhanced due diligence for countries which insufficiently apply or do not apply FATF Recommendation. Even though there is no legal requirement to apply enhanced due diligence proportionate to the risks, to business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF, there is awareness among banks on the list of high risk countries issued by the FATF. Some of them indicated that they apply enhanced measures based on their internal requirements.

Reporting obligation and tipping off

291. The HFIU considers that there is an improvement in the quality of the reports submitted by the service providers. The SARs include relevant information and documents (e.g. CDD records, documents on the source of funds). SARs are submitted mostly by the financial institutions, and the vast majority of SARs is made by banks (see the table below). In a number of case studies provided by the HFIU, the good quality of SARs, identification of beneficial owners and effective cooperation between the service provider and the HFIU was highlighted. The HFIU gradually perceived the improving quality of SARs since 2012 which could be a consequence of the changes in the legislation. A new provision was introduced under the AML/CFT Act (Article 23 (1) c)) which requires that SARs shall contain the documents supporting the detailed description of information, fact or circumstance indicating money laundering or terrorist financing. The assessment team would have expected that DNFBPs submit more SARs, especially notaries, casinos and lawyers which are considered to be dealing with high risk customers and products. During the onsite visit banks demonstrated a sound understanding of the reporting requirements and described cases of reporting on high risk products, e.g. stability saving accounts.

292. As identified in the NRA, in practice the implementation of the reporting obligation by some DNFBPs is reduced only to the cases when there is a suspicion of money laundering and not if they suspect that funds are the proceeds of criminal activity. The authorities, in particular the HFIU discussed this issue with the service providers, and other activities (strategic analysis on the activities of auditors, amendments to the Model Rules). The HFIU imposed fines in 10 cases during the period 2012-2015 for the failure to comply with the reporting obligation.

Table - Statistics on submitted SARs



293. After amendments to the AML/CFT Law, attempted transactions are also subject to reporting requirements. According to the statistical data provided, attempted transactions are reported to some extent. However, during the period from 2014 to 2015, these were only reported by banks.

	Total SARs	Attempted transactions
2014	9618	11
2015	8369	225

294. The number of SARs reported by money service providers increased as a result of the consultations organised by the FIU in the framework of the NRA.

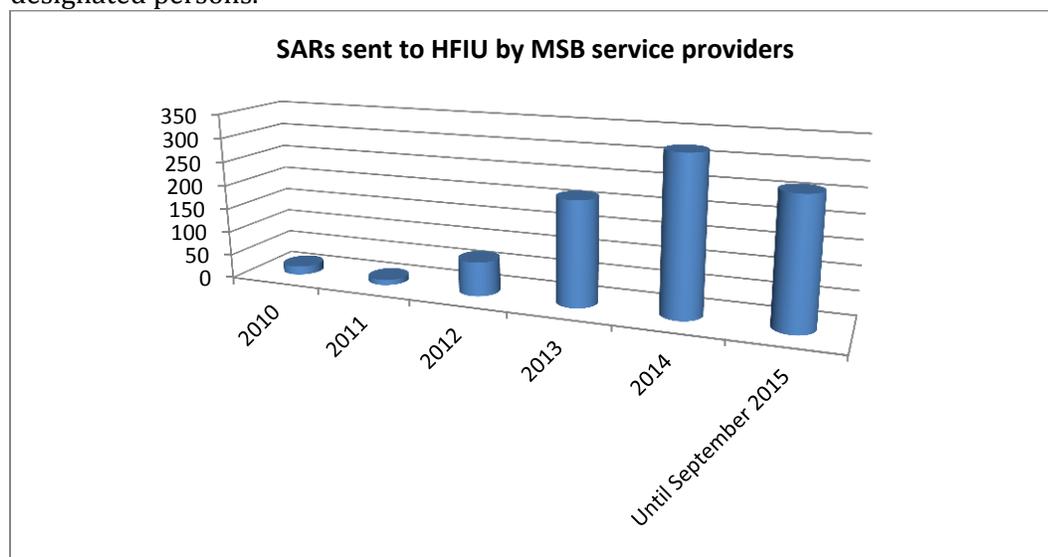
295. The reporting level of DNFBPs remains low which might be a result of the lack of awareness of DNFBPs. For example representatives of the industry stated that since customers are screened at the onboarding stage any suspicious customers would be turned down. Therefore the need to report would not arise. This indicates that DNFBPs are not aware that suspicions may be identified in the course of the business relationship with respect to customers who did not necessarily raise any suspicion at the beginning of the business relationship. There are also gaps in CDD process which can impact the low level of STR reporting among the DNFBPs. Only one report has been submitted by a card room. During the interview the representatives of casinos explained that the amounts played are small and winning certificates are issued very rarely. Therefore, they do not encounter suspicious cases.

296. It appears that there have been no issues with regard to tipping off. The compliance with the prohibition of disclosure (no tipping off rule) in transaction-suspension cases occurred during the meeting with the banks and the latter appear to be familiar with the tipping-off requirements. A project on international best practices was prepared by the HFIU, the result which was provided to the Hungarian Banking Association. No additional measures have been undertaken in the DNFBP sector.

297. FT-related SARs have been submitted mostly by banks – the total number of FT-related SARs submitted during the period from 2010 to 1st half 2015 by the service providers is 17 (out of

which 9 were submitted by banks, 2 by cooperative savings banks, 1 by currency exchange and 5 by other financial institutions). Financial institutions appear to have better understanding of FT risks not linked to UN-lists. One of the banks met onsite described a case when a SAR was submitted related to FT suspicions (not a match with UN lists) and freezing measures were applied.

298. A number of SARs were received by the HFIU from the MSB agents which contained suspicions correlated to the migration influx: since relevant measures were taken to decrease migration, the number of SARs also went down (see the box below). As described by both the authorities and the service providers, these were cases of money transfer from/to high risk countries where the sender or recipient of the transfer was a person with insufficient identification documents (temporary documents provided to migrants not being regarded as sufficient). The above however indicates that financial institutions take proactive measures for FT prevention and do not limit their activities to mere mechanical matches with names or other identification data of designated persons.



299. As regards the DNFBPs, FT risks are not understood at a sufficient level and are mostly linked with the UN lists.

300. The typologies, red-flag indicators, new trends and feedbacks are presented by the semi-annual and annual reports of the HFIU. Its assistance in preparing/amending the typologies, red-flags of model rules and the consultations on a regular basis contributed to the improvement of reporting.

301. Although the HFIU gives feedback on a case-by-case basis (as far as it does not jeopardise the success of the analyzing/assessing activity or the ongoing criminal investigation), the service providers indicated that feedback on the SARs submitted is not sufficient.

302. To improve the quality of SARs and to mitigate the consequences of certain phenomena, the HFIU organises trainings and consultations with service providers (financial institutions and DNFBPs) and meetings with representatives of the main target authorities. Reporting obligations have always been on the agenda of these meetings. The authorities as well as representatives of service providers confirmed the usefulness of the trainings/consultations in improving SAR quality.

Internal controls and legal/regulatory requirements impeding implementation

303. Internal training programs of financial institutions are examined inter alia by the MNB during the inspections. Banks have their internal procedures for categorising the customers by risk

and have good internal control mechanisms and training programs. Larger banks have screening procedures and professional requirements in the internal procedures for the staff, including checks of criminal records. However, this does not seem to be general practice and it appears that some banks do not conduct checks of criminal records. Banks interviewed during the onsite visit informed about internal checks conducted by the internal audit, which did not reveal any significant problems. Other financial institutions have also indicated that they conduct regular annual trainings on the AML/CFT issues for their staff.

304. As for the compliance officers, there is no mandatory requirement that employees of financial institutions are checked when nominated for senior positions. Fit and proper requirements exist for senior executive at a managerial level, therefore in the absence of the explicit requirement to nominate compliance officers at a management level this requirement is not fulfilled.

305. The compliance officers met on-site indicated that they are often consulted on different aspects of AML/CFT measures, though there is no requirement to do so in high-risk situations. It is advised that a requirement for customer-facing staff to routinely consult compliance in the onboarding of higher risk customers is considered by the Hungarian authorities. Some evidence was provided that clients had been rejected at the request of a compliance officer. One of the biggest banks indicated that it receives an average of 500 alerts per month which leads to the closing of an average of five accounts per week. The compliance officers indicated that they have access to relevant information for implementing their functions.

306. As for DNFBPs, their senior officials conduct educational programs for employees. The HFIU held a number of trainings on AML/CFT issues in the period from 2012-2014. The HTLO has imposed warnings with regard to dealers in precious metals and stones for not updating their internal rules.

307. Some technical deficiencies have been identified with the requirements to ensure that the foreign branches and majority-owned subsidiaries apply at least measures equivalent to the home country requirements. This is limited to specific provisions indicated in the AML/CFT Act.

308. If the legislation of a third country does not permit the application of such equivalent measures, the financial institutions have to inform the supervisory authority, which has to forward that information to the minister without delay. Foreign branches of Hungarian banks are supervised by the Central Bank of Hungary in co-operation with EU and third-country competent supervisory authorities. Inspections of banks with foreign branches also cover the activities of these branches. Within the EU, the supervisory system provides for a number of opportunities for bilateral or multilateral consultations. In the case of branches in third countries, the financial supervisory authority concluded MoUs with its foreign counterparts to the same effect. These MoUs apply to both AML/CFT data provision and inspection.

309. Although there is no requirement for financial institutions to implement group-wide programs, the issue is considered during the onsite inspections according to the Guidelines of the MNB. Some banks confirmed during the onsite that they obtain information from other members of the group.

310. **Overall, Hungary has achieved a moderate level of effectiveness for Immediate Outcome 4.**

CHAPTER 6. SUPERVISION

Key Findings and Recommended Actions

Key findings

Immediate Outcome 3

The MNB conducts “fit and proper” tests for applicants, including shareholders and senior managers. The main shortcoming identified relates to the proper mechanism aimed at verifying the information on BO for FIs. Similar criticism concerns the gambling sector if applicants or persons involved in the process are foreign legal persons or arrangements. Shortcomings have also been identified for some categories of DNFBPs where “fit and proper” tests are not in place (i.e. real estate agents and dealers in precious metals and stones) or are not periodically updated for further verification including legal professionals.

The MNB does not assess ML/FT risks at the sectorial level or for each FI. Therefore, it has not demonstrated an in-depth understanding of the financial sectors supervised and of each FI. Although processes and procedures for the identification and the understanding of ML/FT risks are to a certain extent in place for *Core Principles* FIs, this is not the case for the remaining FIs. The main concern is related to MVTs that operate as agents of foreign payment service providers (PSPs) under EU agreements, as the level of cooperation between supervisors needs further improvement.

The MNB supervises the compliance of FIs with the AML/CFT requirements through supervisory activities carried out by the AML/CFT Supervision Division. Although written policies, procedures and models do not explicitly incorporate the ML/FT risks at country, sectorial or individual FI-level, the MNB has conducted supervisory activities on some relevant issues related to higher risk factors (e.g. relevant cash operations). However, the information and figures provided do not demonstrate that AML/CFT supervision is focused on relevant ML/FT risks. Supervision of MVTs is limited due to the EU pass-porting regime.

With the exception of the HFIU and the Gambling Department of the NTCA, the understanding by DNFBPs supervisors of the ML/FT risks is very limited. While they mostly verify through onsite inspections the compliance with AML/CFT obligations, they have not demonstrated a focus of their supervisory activities in circumstances where the ML/FT risks are higher. The MNB and DNFBPs supervisors are equipped with powers to impose administrative sanctions. However, the amount of sanctions imposed are rather modest in terms of dissuasiveness.

The exact number of supervised service providers is not available (e.g. only a few goods traders are registered) which has an impact on the overall effectiveness of supervision.

Recommended actions

Immediate Outcome 3

The MNB should adopt measures to assess the ML/FT risks at the sector level (e.g. banking, insurance, securities, MVTs) and for each FI in order to obtain an overall perception of the ML/FT risks for the entire financial sector.

The MNB and DNFBP supervisors (including SRBs) should issue or amend the existing procedures and processes that take into account the national ML/FT risks as well as the sectorial ones. Consequently, they should carry out AML/CFT supervisory activities commensurate with the perception of ML/FT risks. To this end, the authorities should consider assigning the AML Sub-Committee the function to coordinate the DNFBP supervisors (including SRBs).

The MNB should strengthen cooperation with home country supervisors of MVTs providers who operate in Hungary under the EU pass-porting regime to ensure that AML/CFT risks associated with such entities are properly understood and managed effectively.

Where applicants are legal entities or arrangements, the MNB should strengthen measures aimed at detecting the origin of funds and at verifying during the licensing procedure beneficial ownership and structure information.

In case of agents acting as exchange offices, specific controls on “fit and proper”-tests of legal and beneficial owners should be carried out by the MNB, while measures should be adopted in respect of real estate agents and dealers in precious metals and stones.

The authorities should reconsider the overall AML/CFT sanctioning regime in terms of dissuasiveness and proportionality, having regard to the fact that individuals belonging to certain categories of service providers (e.g. directors and senior managers of casinos) as well as certain categories of legal professions are not subject to sanctions.

The MNB and DNFBP supervisors (including SRBs) should adopt further initiatives in order to raise awareness of ML/FT risks amongst service providers.

The Hungarian Bar Association and the Chamber of Notaries should focus their supervisory activities on high risk circumstances related to the establishment and the management of companies, considering the ML/FT risk of “phantom companies”.

As regards the misuse of business relationships with offshore companies and domestic companies connected with straw men/“phantom companies”, the MNB should carry out focused supervisory activities on financial institutions (e.g. on-site and off-site inspections, guidance, warning letters or typologies).

The authorities should adopt measures to identify and ensure mandatory registration for all service providers (e.g. registered goods traders).

Immediate Outcome 3 (Supervision)

Licensing, registration and controls preventing criminals and associates from entering the market

Financial Institutions

311. *Core Principles* FIs are licensed by the MNB under the respective sectorial legislation. The procedures related to the licensing are the same for all FIs belonging to this category. According to the licensing procedures, the MNB shall verify the source of capital (i.e. whether it derives from a legitimate source of funds), the ownership structures, the business plans and the AML/CFT internal regulations as well as the good standing of the owners and senior managers. These activities are carried out by the pertinent department of the MNB, including the AML/CFT Supervision Division.⁴⁹

⁴⁹ As for the licensing process, the AML/CFT Supervision Division is in charge of verifying the compliance of the AML/CFT internal rules with the AML/CFT legal requirements and Model Rules.

312. The legitimacy of the funds is verified by checking whether the assets under scrutiny come from the income of the applicants (in case of Hungarian citizens and residents, by providing certificates issued by the NTCA). When the applicant is a domestic and foreign legal entity, the company shall provide company documents (e.g. annual reports, balance sheets), the original document that proves the existence of funds as well as copies of balance sheet accounts from which the funds originated. The MNB checks the applicant legal person's annual report whether the financial sources may originate from the company's main business activity. The existence of funds can be proved by the actual statement of its payment account. When the applicant is a legal arrangement, the information and document required for legal persons acting as trustees are those indicated above, whereas in the case of natural persons acting as trustees the MNB directly requests a certificate from the tax authorities. However, the assessment team has some doubts whether the required information for trustees is useful for the purpose of the overall assessment.

313. As regards owners and senior managers, the MNB gathers information and documents with the aim of verifying the absence of criminal records, whether the applicants have been sanctioned or fined by the MNB, and whether any authority has taken any measures against these persons, including prosecutions in criminal proceedings related to economic crimes. Such information is gathered through questionnaires, statements and official documents provided by the applicants as well as by requesting information to the domestic competent authorities (i.e. LEAs and the HFIU).

314. As concerns the beneficial ownership information of applicants that are not individuals, the MNB requests them to provide a declaration to indicate the beneficial owner. It then verifies this information by checking the relevant data of the register of companies in connection with the applicant's owners. Moreover, the MNB uses other registers and databases.⁵⁰ However, it is not clear how information on the accuracy and completeness of the beneficial owner will be verified, considering the issues raised under IO5. On beneficial owners, the MNB requests additional information from domestic investigative authorities. However, such requests are not extended to foreign LEAs in case of non-residents or foreign citizens (e.g. through Interpol). Although representatives of the MNB have indicated that exchange of information with foreign supervisory counterparts is regularly taking place in the process of licensing or authorisation to operate, the MNB has not documented such exchange (e.g. figures on requests/replies, countries involved).

315. In case of changes in the legal and beneficial ownership structures of the FIs based on the thresholds indicated in the sectorial legislation, as well as in the managing position, these shall be reported for the authorisation to the MNB.⁵¹

316. The MNB authorises currency exchange offices - which can only be legal entities - acting as agents of banks. For this reason, the latter provides to the MNB the application on behalf of the agents, including the contract between the two and documents on "fit and proper" tests for cashiers, managing directors and persons in charge of internal controls of the agents. The MNB requests the police to provide information on the applicants on criminal records. Where an

⁵⁰ Representatives of the MNB have indicated that the MNB uses a database which comprises the links between the companies and its owners. In case of doubt concerning the accuracy and completeness of the information provided on the identity of the BO, requests by applicants are refused.

⁵¹ With regard to "fit and proper" tests in the course of licensing process, the MNB has provided detailed statistics for the last five years on the number of the procedures in relation to the "election or appointment of senior executives" (ranging from 140 applications of 2012 to 108 application of 2015) and on the "acquisition of a qualifying holding" for credit institutions (from 7 applications in 2012 to 9 applications in 2015). One procedure is closed with one resolution. As the resolution may relate to more than one person; therefore, the number of procedures is lower than the number of persons scrutinised before approval.

individual has a record or has been prosecuted or indicted, this is disclosed to the MNB that shall deny the agent's request to operate. The MNB requests specific information only on the legal entity's business activities and not about its ownership structure (including or beneficial ownership information). This is a weakness given the use of large amounts of cash by exchange offices identified in the NRA. The MNB has indicated that the currency exchange agent does not use its own assets when it starts the business: the principal bank provides the assets for the currency exchange activity. The representatives of the MNB informed the team that banks, applying to the MNB on behalf of the agents, conduct verification of the documents submitted to the MNB, ensure that internal rules of the agents are consistent with the internal rules of the bank and carry out on-site visits in a year after the starting of the agents' activities, requesting to the latter periodic reports on turnovers.

317. Despite the fact that money transfers services are provided by credit institutions under the CIFE Act, these services are also performed by companies that operate as agents or subagents of foreign MVTs. The latter are payment service providers (PSPs)⁵² authorised to operate in an EEA Member State and, under the EU "pass-porting" arrangements, are permitted to operate through agents with whom contracts have been signed, once registered in Hungary at the MNB. Upon registration, agents and sub-agents of MVTs shall provide criminal records to the MNB. The latter that verifies this information by requesting feedback from the police⁵³.

318. As for all FIs, with regard to the procedures of licensing, the representatives of the MNB indicated that processes are characterised by constant dialogues between applicants and the MNB. Refusals on "fit and proper" tests are extremely rare, because applicants usually withdraw their applications when the input provided by the MNB clearly indicates that the criteria are not satisfied.⁵⁴

DNFBPs

319. Casinos are authorised by the Department for Gambling Supervision of the NTCA. Amongst the conditions that shall be met in order to obtain the authorisation by the NTCA are the absence of criminal records for the following categories of persons: applicants, persons controlling at least 25% of the voting rights, and its executive officers; as well as the absence of any final convictions of the above persons for the crimes listed in the Section 2 of the Act XXXIV of 1991. Such conditions cover a period of three years prior to submitting the application. Moreover, applicants shall not be authorised if they have been involved in unauthorised gambling activities, during the five years prior to submitting the application. In order to verify if these conditions are met, the Department for Gambling Supervision of the NTCA requests the above-mentioned categories of persons to provide official documentary evidences (e.g. certificates of criminal records) or requesting from the penal register the information needed. In case of foreign citizens, these certificates shall be provided by them as certified copies.

320. It was not clear to the assessment team how the Department for Gambling Supervision of the NTCA verifies "fit and proper"-tests (including beneficial ownership information) where the applicants or the members controlling at least 25 % of the voting rights are foreign legal entities or legal arrangements (either established under domestic or foreign law). The assessment team is of

⁵² As set forth by the EU Directive on Payment Services.

⁵³ The procedures is the same, illustrated above, for currency exchange officers,

⁵⁴ In the last five years, seven rejection resolutions have been passed by the MNB due to deficiencies related to "good business reputation" (3 of which related to the insurance sectors, 3 related to the capital market and 1 referred to money market sector)

the view that the capabilities of the Department for Gambling Supervision of the NTCA to request information abroad for AML/CFT purposes are limited. The latter does not participate in any bilateral or multilateral organisation or agreements. This limits its pro-active role in requesting and obtaining information useful for market entry purpose. Representatives of the department have indicated that the maintenance of the conditions indicated above is verified annually. During the course of the inspections of gambling operations, inspectors continuously verify whether the above-mentioned conditions are still met by requesting updated information and documents.

321. In the event that gambling operators fail to comply with the provisions prescribed for the maintenance of compliance with personnel requirements, or if compliance with personnel requirements is not satisfied, the Department for Gambling Supervision of the NTCA shall declare the authorisation issued to this gambling operator void, and shall declare the gambling operation in question as terminated. The lack of compliance was detected in very few cases, mostly related to tax debt or delay in paying tax.

322. DNFBPs other than casinos are differentiated in term of measures aimed at verifying whether criminals and their associates are prevented from holding, controlling or managing DNFBPs or being associated with DNFBPs. According to the Attorney Act, Kjtvt Act and Auditors Act, lawyers, notaries public and auditors shall become members of their respective Regional Bar Associations (BARs) or Chambers once they provide their criminal records to the BARs or the Chambers. However, these Bodies do not request updated documents on ongoing basis. Nevertheless, under the Police Law, the Police is obliged to inform BARs and Chambers upon indictments about the persons involved, the number of the criminal cases concerned and the name involved in the investigation. Moreover, the legal professionals under indictment shall inform the respective BAR or Chamber providing additional information on criminal proceedings. The National Bar Association of lawyers informed the assessment team that 171 disciplinary procedures concerning suspensions were conducted in 2015 (one of which related to a ML offence). In the past nine years, there were four cases of ML in total. As regards accountants, they shall be registered at the MNE, while accounting firms are registered at the Court Register (within the Register of Companies). Clean criminal records are required upon registration, but records are not checked thereafter at regular intervals⁵⁵. However, the courts will ban persons that have criminal records. Under the trustee legislation, professional trustees are corporate entities authorised by the MNB, while non-professional trustees may be natural and legal persons that shall be registered at the MNB. Professional trustee provisions on “fit and proper” tests broadly follow the provisions related to other sectorial financial legislations on “market entry”. The remaining categories of DNFBPs (i.e. real estate agents and dealers in precious metals and stones (later covered by traders in goods) have not yet in place any provisions that might prevent criminals and their associates from holding, controlling, managing or being associated with DNFBPs.

323. The Hungarian authorities have indicated in the NRA that the lack of mandatory requirement to be registered as supervised service providers has consequences in the exact number of supervised service providers and in the overall effectiveness of supervision (e.g. the number of registered goods traders is extremely low).

324. Due to the lack of provision that require the appointment of the person in charge of accounting procedures for domestic and foreign companies in respect of which tax registration is required in Hungary, the authorities have indicated that accounting and fiscal documents (i.e. the

⁵⁵ The Hungarian authorities indicated that clean criminal records are the prerequisite for the registration of tax advisors, tax consultants as well as of real estate agents.

supplementary notes of tax statements and reports) are submitted through the “client gate” based on the registration of the executive officers that contains only the name of the executive officers, but does not contain the name of the appointed accounting expert. According to laws and regulations, the public data of the individual providing the accounting service must be specified in the supplementary notes. However, the lack of such information limits the supervisory authority (HFIU) to conduct supervisory activities on service providers offering accounting service.

Supervisors’ understanding and identification of ML/FT risks

Financial Institutions

325. The MNB participated in the NRA process as one of the leading authorities. The NRA indicates that the main (potential) ML risks associated with the financial sectors are related to the use of large amount of cash⁵⁶, including - but not limited to - operations executed by exchange offices and the misuse of straw men operating in current accounts held by domestic and foreign (including off-shore) companies with banks (most likely connected to the VAT fraud scheme, missing trading phenomena). Moreover, virtual currencies have been considered posing high ML risk factor, while prepaid cards and payments via mobile phones have been detected as vulnerable for FT. The authorities take the view that these may affect the country, according to international trends.

326. During the on-site visit, these outcomes were confirmed by the representatives of the MNB. However, no information on the magnitude, frequency and typologies of these phenomena were provided. On “phantom companies” and off-shore companies, the representatives of the MNB specified that the main sources of information are on-site inspections. However, no further information has been provided on this.

327. In addition to the ML/FT risks identified by the NRA, the MNB has indicated that the Stability Saving Accounts (SSAs)⁵⁷ are considered risky for ML/FT purposes, which is an issue not being addressed in the NRA. The private sector has shared this view. Some of the banks met on-site had refused opening and servicing such accounts, while others also consider this as a ML/FT high risk product. The MNB has identified a risk, and certain actions have been taken in order to address it (i.e. amendment to the on-site inspection manual, targeted on-site inspections, off-site reporting mechanism, or a circular letter to banks where reference to the FATF VTC programme was made). However, the assessment team considers that these measures do not fully mitigate the high risk of the VTC programme with its unlimited duration.

328. As regard risk-sensitive supervision, the MNB, as prudential supervisor, has implemented the EBA SREP⁵⁸ Guidelines where the “risk structure”⁵⁹ includes the ML/FT risk as a component of the “operational risk”. The Financial Stability Board of the MNB defines a five-year high level

⁵⁶ With regard to the use of cash, NRA states that: “On the basis of the 2014 annual statistics collected by the service providers pursuant to the AML Act for the risk-based analysis of reports submitted to the Hungarian FIU, it may be concluded that 67% of the reports included the use of cash (mainly large amounts of cash deposits made on payment accounts and collection of large amount of cash from payment accounts).”

⁵⁷ With regard to SSAs, the MNE is the authority in charge of dealing with this issue. The FIU is informed on the number and amount of the SSAs. This information is provided to the MNB, on the broad basis subject to a Memorandum of Understanding between the two authorities.

⁵⁸ EBA SREP stands for “European Banking Authority Supervisory Review and Evaluation Process”.

⁵⁹ The “risk structure” considers: Business Model, Governance, Financial risks (i.e. credit risks, market risks and interest risks) and operational risks (where AML risk is included), Capital, Liquidity and Market appearance.

document on supervision (i.e. MNB Supervision Plan)⁶⁰ as required by MNB Act, described under Criterion 26.5 of the TC Annex. The MNB uses an algorithm, adjusted every year, aimed at categorising and classifying banks in terms of prudential risk. A similar mechanism for supervision has been implemented for other *Core Principles* FIs.

329. According to the information provided, the ML/FT risk for *Core Principles* FIs is determined having regards to: i) the information held as prudential supervisor; ii) the HFIU information provided under section 25(7) of the AML/CFT Act⁶¹; iii) the information gathered in the context of international cooperation among supervisors; iv) the media; and v) the experience of previous inspections. The information and data gathered generate, for each *Core Principles* FI, the “inherent ML/FT risk” that - mitigated by information and data on the “AML/CFT controls” - determines the “residual ML/FT risk”. However, no further information and data have been provided to the evaluation team in order to verify how - in practice - each FI is ranked in term of ML/TF risk. The representatives of the MNB stated that, regardless of the rating generated by the “risks structure”, they conduct on-site inspections based on the results of the ML/FT risks identified.

330. The measures described above are applicable to *Core Principles* FIs only. As for independent insurance intermediaries, pension and mutual funds, institutions for occupational retirement provisions, MVTs and currency exchange offices, the MNB does not have proper formal mechanisms in place for assessing the respective ML/FT risks. Nevertheless, the representatives of the MNB have indicated that the exposure of ML/FT risks, although not formalised, is taken into account during the supervisory activities⁶². As a result of this, the AML/CFT Supervision Division has conducted targeted inspections based on the triggers generated by relevant authorities or other departments of the MNB where possible ML/FT risks and AML/CFT breaches were referred to. Although some onsite inspections are being conducted based on ML/FT risks and vulnerabilities identified, it must be concluded that the MNB does not assess these risks at the sector level or for all FIs. Thus it has not demonstrated to have an in-depth understanding of the ML/FT risks among financial sectors and of each FI.

331. With respect to MVTs, local agents operate on behalf of foreign payment service providers (PSPs) in the context of the “EU pass-porting regime”⁶³. The MNB has illustrated to the assessment

⁶⁰ The MNB has published its supervision plan for 2016 on its website where it is publicly available in Hungarian: <https://www.mnb.hu/letoltes/3-nyilvanossagra-hozatal-ellenorzesi-terv-20151201-honlapra.pdf>

According to that plan, “the purpose of the supervision at supervised institutions is the inspection of compliance with MNB regulations and other legal acts including EU regulations as well as the exploration of risks and the evaluation of risk mitigation procedure”. The plan is organised by financial sectors. At the beginning, it has a section on the five subjects to be inspected at each and every sector. One of these subjects is “the enhanced inspection of the compliance of AML monitoring processes”. On an annual basis, this document is complemented by a “process plan” that determines the key priorities defined by the Supervisory Department. The assessment team has been informed that this “process plan” contains an AML/CFT element. However, the assessment team was not provided with these documents or further information in this respect.

⁶¹ Under section 25(7) of the AML/CFT Act, the HFIU informs the MNB of any possible infringements of the AML/CFT obligations by FIs.

⁶² To this aim, the AML/CFT Supervision Division collects information from various sources, including internal sources (e.g. prudential supervisory information, information related to financial consumer protection regulation, information provided at international level between supervisors, previous onsite initiatives) and external sources (e.g. FIU information, media).

⁶³ With respect to the supervision of passported payment institutions under the current EU framework, the home supervisor is responsible for the AML oversight of the authorised payment institution operating under the free provision of services. In that case, should the host supervisor become aware of concerns about the AML/CFT compliance in its territory, it should inform the home supervisor who can take the adequate action to address the shortcomings, including by delegating supervisory powers to the host authority. When a payment institution operates under the freedom of

team the level of cooperation with other supervisors (e.g. the Central Bank of Ireland). However, the assessment team takes the view that such cooperation does not provide the MNB with a clear understanding of the ML/FT risk associated with local agents operating on behalf of PSPs. In order to increase the set of information useful to understand the ML/FT risks associated with FIs and DNFBPs, the HFIU and LEAs should continue to provide the MNB and DNFBPs supervisors with typologies and trends on vulnerabilities and threats.

DNFBPs

332. The results of the NRA process reflect the position of the Department for Gambling Supervision of the NTCA as well as that of the industry. The main vulnerabilities refer to the difficulties in the determination of the source of funds, the CDD obligations and the matching between the sanctions lists and customers. As for the MNB, this outcome is mainly generated by on-site inspections experiences by the dialogues with other competent authorities and with representatives of the private sector. The Department for Gambling Supervision of the NTCA has indicated that, in order to assess the risk associated with the supervised entities, the following elements are considered: the frequency of the AML/CFT infringements; other breaches related to different legislations; complaints received; size of the casino/card rooms; as well as the occurrence of relevant events (e.g. tournaments, bonus chips).

333. According to the outcome of the NRA, winning certificates are not considered a high risk factor, as confirmed by the representatives of casinos as the issuance is, in practice, very limited.

334. Apart from the ML/FT risks identified by the NRA, the issue of deposits was discussed during the onsite visit. The customer's money may be kept at the cashier desk for a maximum of thirty days in casinos. According to the supervisor and the industry, this service is not considered a risk, as in practice the money can only be withdrawn by the same persons who deposited it. As regards emerging ML/FT risks, the Department for Gambling Supervision of the NTCA indicated that the licenses on remote gambling and online casino (recently permitted) constitute new challenges in term of ML/FT risks and vulnerabilities. However, no action has been taken in order to address and mitigate such risks.

335. With respect to persons involved in accounting, tax advisory services and tax experts, the HFIU⁶⁴ considers as high ML/FT risk the use of large amounts in cash by customers for the purpose of avoiding the traceability of transactions on accounting. According to the authorities, this is related to the threats of non-taxed income and corruption. The Hungarian legislation obliges accountants (tax advisors and tax experts) to be registered. Not all the registered accountants fall under the scope of the AML/CFT Act, since not all registered accountants perform accounting services. Therefore, this limits the capabilities to properly identify all service providers that carry out accounting services. (Out of 61,939 registered accountant service providers in 2015, only around 9,784 have sent the data on designated persons to the HFIU⁶⁵).

336. In order to mitigate ML/FT risk, the HFIU has illustrated cases where SARs have triggered initiating supervisory activities. Once companies using large amounts of cash are reported, the HFIU detects the accountants that keep its bookings and decides on supervisory initiatives. According to the case example provided by the HFIU acting as a supervisory authority of accountants, it commenced complex and coordinated supervisory actions with regard to the accountants of companies involved in the suspicious activities connected with large amounts of

establishment in the host country, AML supervisory competences belong to the host supervisor. The 4th EU AML Directive is expected to further strengthen the cooperation.

⁶⁴ The HFIU exercises AML/CFT supervisory functions over these activities, as well as over real estate agents.

⁶⁵ "Dynamic data" according to the HFIU's registration [Section 23(3) of the AML/CFT Act].

cash. As a result of the supervisory actions fines were imposed by the HFIU in the total value of HUF 900,000 (approximately EUR 3,000) on the accountants of the companies in the cases failures to meet the reporting obligations and other provisions of the AML/CFT Act were established.

337. Despite the cases illustrated above, based on the findings of the discussion with the representatives of the remaining DNFBPs supervisors (including SRBs), the understanding and identification of ML/FT risks is very limited. Moreover, it is not the main driver of the supervisory activities carried out by the HTLO, the BARs and Chambers. Accordingly, these supervisors do not identify and maintain an understanding of ML/TF risks in their respective sectors.

Risk-based supervision of compliance with AML/CTF requirements

Financial Institutions

338. As regards a risk-based approach to supervision, the MNB does not have written policies and risk models on AML/CFT supervision that incorporate the ML/FT risks present in the country and among FIs sectors. Furthermore, the MNB does not assess and determine the ML/FT risk of all FIs. Nonetheless, the MNB has established the AML/CFT Supervision Division staffed with four full time employees, vested with responsibilities and functions related to AML/CFT activities⁶⁶ and has issued an inspection manual and handbook that integrate the ML/FT risks within the prudential risk associated to the supervised entity. As indicated in the TC Annex under R.26, the MNB is requested to carry out supervisory activities with a certain frequency as set forth by MNB Act (Section 64). This provision guarantees the frequency and the coverage of inspections among FIs sectors. Unlike the MNB, the assessment team considers that this might limit the capabilities of the MNB to focus primarily on the ML/FT risks identified.

339. The MNB performs its AML/CFT supervisory functions, using off-site surveillance and on-site inspections. These modalities of supervision are much more integrated and developed for Core Principles FIs than for other financial institutions, with a certain degree of differentiation between Core Principles FIs. Offsite activities for AML/CFT function mainly consist in the regular reporting (i.e. quarterly data, so-called “table 9D”⁶⁷) on 36 different ML/FT issues and AML/CFT activities.

⁶⁶ This AML/CFT Supervision Division is responsible for:

- participating in elaboration and maintenance of AML/CFT/Anti-Fraud supervisory methodology (e.g. on-site inspection manuals, risk based supervisory off-site methodology, Model Rules, AML/CFT Recommendations, Guidelines, circular letters, etc.) and giving supervisory legal opinions on the interpretation of the AML/CFT Act
- setting up and application of transaction based statistical models in order to detect and filter the suspicious financial movements in the systems operated by FIs
- determining minimum criteria and providing guidance on methods for FIs based on the information resulted from statistical models
- participating in comprehensive and follow-up onsite and offsite inspections on the initiative of prudential and market supervision departments, conducting target or thematic inspections
- in supervisory licensing procedures checking the compliance of AML/CFT internal rules submitted by applicants with legal and supervisory requirements, in case of need organizing consultations with the applicants
- representing the MNB in the work of national and international organizations and authorities, maintain the relationship with regulators and law enforcement agencies
- organising training programs and consultations for FIs and their associations

⁶⁷ According to the information provided, banks are required to provide the following information: number and volume of accounts subjected to CDD procedures (in term of “simplified”, “enhanced” “normal” CDD) where information on PEP is also required. Information on the number of cases where CDD procedures have been carried out at the establishing of business relationships and when performing occasional transactions. Detailed information is collected for CDD executed in the context of exchange officers, pawnshops and third party CDD process. Moreover Table 9D contains information on the number of accounts opened and amounts involved for SSAs, the number of STRs for ML/TF suspicious sent to the HFIU, the number of suspended transactions, as well as the number and volume of accounts/transactions where assets have been frozen under sanctions lists. The scope of Table 9D is to collect information and data for a desk review analysis and to support the onsite inspection activities.

This is the one of the core data sources for off-site⁶⁸ and also for on-site AML/CFT supervision. Onsite inspections are mainly based on the information provided by the offsite activities and by the findings of the previous onsite visits⁶⁹. As for the quality and comprehensiveness of onsite inspections, the FIs met onsite confirmed the coverage of the most relevant topic (inter alia, governance, internal process, procedures, three levels of controls, sample testing, record keeping, AML Officer, STR reporting regime, AML-IT infrastructure).

340. Onsite inspections consist of an *ex ante* analysis of the documents (internal regulations, group policy, internal audit reports, training materials, description and parameters of the monitoring and filtering system) provided by the FI to be inspected⁷⁰ in order to determine the main elements to be scrutinized on-site. The onsite visits mostly consist of interviews with senior managers on the topics identified and the examination of customer files through sample-testing scrutiny.

341. Interviews mostly focus on the analysis of the data reported regularly to the MNB, documents provided *ex ante* and the outcome of the questionnaires while sample testing is determined based on the following elements: The documents are selected with targeted and layered sample testing. The MNB checks the documentation of the identification and verification of the client and the beneficial owner, understanding the ownership structure and the risk profile of the client, availability of documents from independent and reliable sources, record keeping in the core accounting system, account opening procedure, keeping up-to-date information on the client, verification of PEP status, requesting information on the source of funds where necessary. The number of selected documents (client file) depends on the ML/FT risk of the FI, which is determined by the size and activity of, products and services provided by the FI, as well as on the composition of the clients, including their geographical location (e.g. off-shore companies are checked entirely). Usually, sample testing consists in the analysis of twenty to hundreds of sample profiles. On average the duration of the onsite inspections takes from 2 weeks to 6 weeks from which the AML/CFT component is from 2 days to 5 days where 40 % of the time is devoted to meetings and the rest of the time dedicated to sample testing analysis. The MNB may extend the onsite period if it finds it necessary. The MNB has adopted this approach for all FIs including Core Principles FIs.

342. Once it has terminated the so-called “comprehensive onsite inspection”⁷¹, the MNB drafts a “report document” and a “matrix of the findings”. These documents are sent to the FIs inspected that are requested to report back on the implementation with the report of the Internal Audit on the measures adopted. In case of breaches, FIs are requested to adopt proper measures in due time, providing feedback on the follow-up actions.

343. The MNB conducts thematic inspections *ex officio* and also ad hoc inspections based on information received or gathered⁷². On a periodic basis, the AML/CFT Supervision Division of the

⁶⁸ The assessment of the draft internal AML/CFT rules and the obligation to amend them according to the opinion issued by the MNB are also part of the off-site inspection according to the MNB.

⁶⁹ In this respect, it is worth noting that follow-up initiatives are taken into consideration by the MNB.

⁷⁰ The documents provided by the FI to be inspected are: AML/CFT internal regulations; policies; procedures and findings of the AML/CFT internal controls; description of responsibilities of the MLRO and of the deputy MLRO; the notification on them to the FIU; the number of STRs made in the period inspected; model agency contracts; description of the filtering and of the monitoring system; the updated rules, list of countries and territories considered by the institution as risky/offshore; documents on training, participants, test questions and results; AML/CFT reports made for the owners or a group hub; and internal control (compliance and internal audit rules and reports, plans, results of follow-up procedures).

⁷¹ According to the MNB methodology “comprehensive inspections” are aimed at carrying out a complete overview about the activities carried out by the FI under supervision, covering all fields of the FI’s activities. These usually cover other matters such as compliance with prudential and conduct of business rules.

⁷² These are carried out by AML/CFT Supervision Division and are mostly triggered by information provided by other departments of the MNB, by other domestic authorities (e.g. the HFIU) or by its own initiative.

MNB decides to focus its supervisory activities on specific topics. The most recent one was focused on the quality of the IT systems of banks which are aimed to detect possible suspicious transactions and to monitor targeted financial sanctions. The most relevant banks (i.e. “systemic banks”) have been inspected in this regard, as confirmed by their representatives.

344. The average duration of thematic inspections *ex officio* and also ad hoc inspections takes from 8 weeks to 16 weeks (the MNB Act provides for 6 months for the accomplishment of the examination), where 50 % of the time is devoted to meetings and the rest of the time dedicated to sample-testing analysis. The thematic inspections consist of several institutions, or a subsector of the financial system.

345. With regards to “financial group supervision” the MNB has concluded Memoranda of Understanding (MoU) with foreign supervisory counterparts. Under EU law, supervisors responsible for the financial institutions providing services in countries other than their home country, as well for different members of the same group, form a so-called “Supervisory College”. With regard to this, Hungary is mostly in a “host-country situation”: the subsidiaries banks have to adopt a group approach not conflicting with the AML/CFT Act, thus the MNB verifies the existence of this circumstance. The scrutiny of UNSCR lists is done at “group level” in case of FIs which are part of financial groups. Having regard to the fact that one Hungarian bank has branches abroad, the MNB has MOUs with foreign counterparts (“Supervisory College”), according to which two meetings are held annually, while onsite visits (that are not inspections) will be organised in the forthcoming years.

346. The AML/CFT Act requires MVTSS - operating as agents of foreign PSPs - to comply with the domestic AML/CFT obligations and subjects them to the MNB supervision⁷³. However, the cooperation with home supervisory authority is extremely relevant in order to exercise an effective AML/CFT supervisory function over these legal persons.

347. Representatives of the MNB illustrated in detail how the MNB carries out its supervisory activities. This information has been supported by documents (i.e. Directives) issued by the Deputy Governor of the MNB that set out the process and procedures in place. Meetings with the representatives of the private sector confirmed the modalities and the outcome illustrated to evaluators.

348. The Hungarian Authorities provided figures of AML/CFT inspections: both thematic/“ad-hoc” inspections and those where AML/CFT compliance was considered as part of a more general supervisory review (i.e. “comprehensive inspections”). From the data provided, it is clear that the MNB tends to supervise and cover compliance with AML/CFT requirements through general inspections rather than “stand alone” AML/CFT inspections. This approach derives from the fact that, with regards to banks, the AML/CFT Supervision Division staff - in the context of “comprehensive” onsite inspections - is supported by the staff of the MNB that covers prudential issues. As for other non-banks FIs, the AML/CFT supervision is carried out by the staff of the sectorial departments of the MNB for which the AML/CFT Supervision Division provides documents, information and support during the onsite inspections. While, thematic and ad-hoc onsite inspections are carried out by the AML/CFT Supervision Division only.

FINANCIAL SECTOR	Total number of FIs	Number of AML/CFT thematic/ “ad-hoc” on-site inspections				Number of AML/CFT combined with general supervision on-site inspections (i.e. “comprehensive inspections”)			
	2015	2012	2013	2014	2015	2012	2013	2014	2015

⁷³ The MNB requires the agents to submit their internal rules on AML/CFT, and in many cases instructed them to change it in order to bring it in line with the domestic requirements. In 2015 a target inspection was carried out with regard to the largest agent.

Credit Institutions and Banks	152*	0	2	2	3	44 (8 Banks)	50 (13 Banks)	21 (12 Banks)	13 (8 Banks)
Securities	56	0	0	0	0	8	12	11	9
Life insurance	20	0	0	0	0	5	10	6	7
Independent insurance intermediaries	460	0	0	0	0	1	4	6	4
Pension and mutual funds	93	0	0	0	0	23	28	18	16
Institutions for Occupational Retirement Provision	1	0	0	0	0	0	0	0	0
MVTSs and exchange offices	330	0	0	0	1 MVTS (agent) + 2banks **	5 banks**	4 banks**	1 bank** + 1 bank***	3 banks**

* the number includes 32 Banks and 120 credit institutions. The financial services of the latter are provided in the largest extent to rural area, while banks provide for traditional retail services providers.

** banks operating exchange offices network

*** bank operating as MVTS.

349. With regard to the banking sector (including banks, specialised credit institutions and other credit institutions), the figures report a declining trend, as the number of “comprehensive onsite inspections” was reduced significantly in recent years: 44 in 2012, 50 in 2013, 21 in 2014 and 13 in 2015. It should be noted that the MNB is in charge of AML/CFT supervision since October 2013; before that date, the HFSA was the sole AML/CFT supervisor. The MNB states that the high numbers in 2012-2013 represented a peak at the end of a supervisory cycle launched in 2009.

350. Evaluators have noted that some of the most relevant risk factors occur through banking services⁷⁴, and that figures do not suggest that AML/CFT supervisory initiatives (including, but not limited to onsite inspections) have not properly focused on relevant ML/FT risks.

351. Nevertheless the following initiatives have been undertaken by the MNB: in 2015 the MNB has decided to devote 3 thematic inspections to exchange offices (mainly the most relevant players in Hungary) that operate as agents for banks with the aim to verify whether AML/CFT controls between the two are properly executed. Moreover, in the last 4 years, the MNB has carried out so-called 14 “comprehensive onsite inspections” of banks that include their exchange offices networks (i.e. agents) covering 80% of the foreign exchange agents operating in Hungary. On the misuse of current accounts held by companies where straw-men operate, the MNB has indicated that CDD obligations are checked on-site and FIs have been sanctioned in case of a failure to comply with beneficial owner requirements. The representatives of the banks confirmed this, sometimes challenging the depth of that scrutiny by the MNB (i.e. leaving room to understand that this verification was mainly formal rather than substantial).

⁷⁴ In particular, the NRA refers to the widespread use of cash and abuse of current accounts managed by straw men.

DNFBPs

352. Most DNFBP-supervisory authorities carry out AML/CFT supervisory functions through onsite inspections, with the aim of ensuring compliance of DNFBPs with the AML/CFT requirements.

353. The Department for Gambling Supervision of the NTCA monitors the AML/CFT compliance taking into consideration the characteristics of the casinos and card rooms. The annual schedule of supervision (planned in daily and monthly terms) defines the specific aspects of supervision, including AML/CFT issues. This is adjusted to the practical experience gained by supervision. The Department has considered the ML/FT risk profiles of the supervised entities when scrutinising internal controls, policies and procedures⁷⁵ in the internal written procedures. According to the internal procedure adopted, the following activities shall always be performed: operations related withdrawals from slot machines; inspecting live games; checking the measures taken by the operator after data or circumstances connected to ML emerge; and checking the contact information of the person responsible for reporting. During onsite inspections, documents, records, certificates and data are obtained to this aim, as well as access to video surveillance. The Department for Gambling Supervision (Control Division) of the NTCA has a 16 staff of inspectors, 10 of which are competent particularly in the supervision of casinos and card rooms with professional experience⁷⁶. Once the onsite inspection by the Department for Gambling Supervision of the NTCA team is terminated, minutes are provided to the gambling service provider. In case of breaches of the legal and regulatory requirements, an administrative decision is issued.

354. The HFIU has adopted “methodological guidelines” for real estate agents and accountants (including tax advisors and tax experts) for supervision. These guidelines include elements of ML/FT risks, both at national and sectorial level. The HFIU has also indicated that, in line with the increasing global threat posed by the ISIL, the HFIU has conducted off-site inspections by use of questionnaires on the subject of the implementation of targeted financial sanctions and measures related to high risk countries (FATF Public Statements). The HFIU has devoted four full time staff members responsible for AML/CFT supervision.

355. The Quality Control Committee of the Chamber of Auditors selects, on an annual basis, auditors who have not yet been reviewed, have been subject to disciplinary procedures or have been in breach of the AML/CFT requirements in the past, and so is partly risk-based. The Quality Control Committee has the information on the client list of the auditors selected for the annual quality control review and makes a risk-based selection of client files to be reviewed. A team of inspectors (quality controllers) do the quality control reviews of the client files pre-selected by the Quality Control Committee, and sends the completed AML/CFT questionnaire and its appendices (i.e. minutes closing the on-site review, statement on confidentiality and independence, copies of documents taken over, written notes of the reviewed service provider) to the Quality Control Committee within eight days of the date of the on-site inspections.

356. The Regional Presidential Board carries out supervisory activities over the operations of the notary public one year after his/her appointment and subsequently at least once every four years (so called “regular inspection”). Furthermore, the Board can order supervisory initiatives on the activities of the notary public at any time, in justified cases (i.e. “specific inspection”). According to

⁷⁵ It is worth mentioning that in February 2016, the NTCA has amended the methodological guide and control rules for inspecting casinos and card rooms in relation to preventing and combating ML/FT. The methodological guide includes guidance on the risk-sensitive supervision (e.g. the selection of operators and activities for inspections based on the risk-profiles of operators).

⁷⁶ At least two people conduct each inspection jointly in a 12 hours working schedule (which differs from the ordinary working hours), often inspecting in the evenings and at nights, as well as on weekends.

policies and procedures adopted⁷⁷, inspectors shall always examine whether AML/CFT requirements are properly applied by the notary public. In case of the suspicion of a violation of AML/CFT obligations, the Regional Presidential Board can order specific inspections related to AML/CFT matters. During the regular and specific inspections carried out, no AML/CFT violations and shortcomings have been discovered so far. No sanctions have been applied yet, as also shown in the statistics.

357. The regional bar association shall monitor the compliance of lawyers with the requirements set out in the AML/CFT Act. The investigating officer shall have the necessary powers. The presidency of the competent bar association shall adopt a resolution in conclusion of such investigations. If a lawyer is found in compliance with the obligations conferred upon him/her, the presidency of the bar association shall terminate the investigation by way of a resolution. If a lawyer has infringed upon the obligations conferred upon him/her, the presidency of the bar association shall adopt a resolution. The presidency may advise the lawyer affected to abide by the provisions of the relevant laws and regulations and to take any measure that has been omitted. It may also to recommend to the presidency of the bar association to order a preliminary investigation, if there is any suspicion of a disciplinary infraction.

358. The HTLO supervises dealers in precious metals and stones mainly through specific AML/CFT onsite inspections rather than in the context of general supervision. On dealers in precious metal and dealers in goods, the HTLO terminates onsite activities by issuing “official decisions” that contain breaches identified. In case of violations of the AML/CFT Act, warnings are issued and fines imposed. It also investigates (by questionnaire) with the non-registered dealers in goods if there is a presumption that the service providers falls within the AML/CFT scope. The HTLO conducts not only on-site examinations, but also comprehensive investigations in the case of dealers in precious metals and goods providers. HTLO controls the total cash turnover (annually or biannually).

359. The following conclusions can be made in the light of data provided on supervisory activities carried out with regard to DNFBPs. The Department for Gambling Supervision, the HFIU (as supervisor), and the HTLO have carried out several initiatives in terms of supervision, with stable trends⁷⁸. This is not the case for auditors, where there is a declining trend in the number of onsite inspections in the last 4 years.⁷⁹ Trustees have never been inspected.

360. As regard notaries public, the Board of the Chamber verifies the compliance with the AML/CFT obligations with a stable trend, covering on average 20% or 25% of the total amount of notaries public per year (around 70 legal professionals). It thus guarantees a certain coverage and frequency of this category. This is not the case for the remaining legal professions where, regarding lawyers, the number of inspections are roughly the same, but the number of persons to be inspected is much more relevant (in 2015, there were 12,601 lawyers). With regard to auditors, as indicated above, the number of inspections has fallen. This may raise questions with regard to the sufficient coverage and frequency on AML/CFT supervision. This is particularly relevant for

⁷⁷ The detailed procedures and rules of the inspections related to AML/CFT issues are governed by Guidance 31 of the Hungarian National Chamber of Civil Law Notaries.

⁷⁸ 84 casinos have been inspected in 2004; 89 in 2013; 60 in 2014 and 221 in 2015, while card rooms have been inspected with an average of more than 200 inspections per year in the same period. The HFIU has carried out in the last four years intensive supervisory activities relying on onsite and offsite inspections (where offsite is the predominant). In the last four years, DPMSs have been inspected both via specific AML/CFT inspections (with an average of 400 inspections) and in the context of general inspections (with an average of 25 inspection per year).

⁷⁹ With regard to the 2,794 auditors, the Chambers have carried out the following onsite inspections: 578 in 2012, 450 in 2013, 72 in 2014 and 55 in 2015.

lawyers, as they are involved in the process of establishment and management of companies that might be misused by straw-men.⁸⁰

DNFBPs SECTOR	Total number of DNFBPs	Number of AML/CFT thematic on-site inspections				Number of AML/CFT combined with general supervision on-site inspections			
	2015	2012	2013	2014	2015	2012	2013	2014	2015
Casinos	8	0	0	1	0	84	89	60	221
Card rooms	10	90	0	1	0	263	193	205	389
Real estate	2,058*	2	0	6 (and 144 offsite inspections)	0 (and 110 offsite inspections)	N/A	N/A	N/A	N/A
Dealers in precious metals and stones	2,195	410	398	415	568	30	23	25	26
Lawyers	12,601 lawyers (altogether as the members of the chambers-5,021 law firms)	0	0	0	0	90	98	101	80
Notaries	316	0	0	0	0	64	77	73	66
Auditors	2,794	0	0	0	55	578	450	72	55
Accountants	9,784	46 (and 188 offsite inspections)	27 (and 198 offsite inspections)	22 (and 71 offsite inspections)	29 (and 25 offsite inspections)	N/A	N/A	N/A	N/A
Trust(ee)**	2	N/A	N/A	0	0	N/A	N/A	0	0
Trading in goods	408	0	0	0	0	20	4	83	47

**"Dynamic Data" according to the HIFU's registration.

**The Trust Act was enacted in 2014, which is the reason of having put "N/A" (i.e. not applicable) for the previous years. Note that "N/A" has been put for real estate agents, as inspections are focused on AML/CFT obligations only.

Remedial actions and effective, proportionate, and dissuasive sanctions

⁸⁰ The authorities stated that, although auditors might be involved in the examination of accounts held by "phantom companies", they are able to report SARs *ex post*, while lawyers might be in a better position to prevent (e.g. by avoiding the execution of operations in case of failure to conduct proper CDD) and to report cases to the competent authorities in due time.

Financial Institutions

361. The MNB carries out follow-up inspections in order to verify the correctness and appropriateness of the measures adopted. All the proceedings of the MNB (including applications related to licensing) are closed with a “public resolution”. As regard onsite inspections, the results are communicated by the MNB to the management of the inspected FI in a “resolution” and a “supervisory letter” accompanied with a table of findings, measures to be implemented and deadlines. The supervised FIs have to report back on the achievements and the implementation. Follow-up examinations are the practice of the MNB which aims to check the compliance with the prescribed measures. Once the MNB detects AML/CFT infringements, written warnings are sent to the supervised FIs, which shall adopt proper remedial actions within a specific deadline.

362. In case of failure to comply with the AML/CFT obligations, the MNB is also able to apply fines to FIs from HUF 200,000 (approximately EUR 635) up to HUF 500 million (approximately EUR 1,600,000), In addition to fines, as noted under R.35.1 in the TC annex, other administrative sanctions shall be adopted in case of infringement of the AML/CFT requirements.⁸¹

363. Sanctions can also be imposed on individuals. As indicated in the TC Annex R.35, directors and senior managers of FIs cannot be sanctioned under the AML/CFT Act, but can be sanctioned under sectorial acts. However, the assessment team has not been provided with the amount of sanctions imposed to directors and senior management.

FINANCIAL SECTOR	Number of onsite inspections having identified AML/CFT infringements				Type of sanctions/measures applied											
					Written warning				Fines							
									N.	Amount (EUR)	N.	Amount (EUR)	N.	Amount (EUR)	N.	Amount (EUR)
Year	'12	'13	'14	'15	'12	'13	'14	'15	2012	2013	2014	2015				
Credit institutions and Banks	30	33	21	14	30	33	21	14	11	47,000	5	30,000	10	108,300	3	16,700
Securities	3	3	0	2	3	3	0	2	3	40,000	2	15,000	0	0	2	10,000
Life insurance	5	9	5	3	5	9	5	5	0	0	1	In one case there was a 16,700 EUR fine which includes an AML/CFT fine among others	1	In one case there was a 73,300 EUR fine which includes an AML/CFT fine among others	1	1,700
Independent insurance intermediaries	1	2	1	1	1	0	0	0	0	0	0	0	1	In one case there was a 100,000 EUR fine	0	0

⁸¹ The representatives of the MNB has specified that the criteria used to determine the amount of sanctions to be imposed are the following: the systemic importance of the FI concerned, the gravity of violations, the frequency of the breaches identified and the cooperation or not cooperative attitude of the FI concerned. These do not diverge from the common principles.

														which includes an AML/CFT fine among others		
Pension and mutual funds	16	18	13	5	16	17	11	4	0	0	0	0	0	0	0	0
Institutions for occupational retirement provision	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
MVTs and exchange offices	0	0	0	1	0	0	0	1	0	0	0	0	0	0	1	5,000

364. The Hungarian Authorities have provided figures on the number of inspections having identified AML/CFT breaches and the follow-up actions taken by the MNB (written warnings and sanctions imposed). As for the banks, as the most relevant financial institutions, at least 57% of the inspections carried out have identified AML/CFT breaches (in 2014, almost all inspections carried out have detected violations) for which the MNB has written warnings. Fines have not been imposed in all circumstances (in 2014, half of the inspections resulted in sanctions for a total amount of EUR 108,300⁸²). Summing up all the sanctions imposed in the last four years to all credit institutions and banks, the total amount is around EUR 202,000, while the average is EUR 6,900. This suggests that the sanctioning regime cannot be considered dissuasive.

365. The most relevant deficiencies identified by the MNB are related to: delays in the reporting requirements; internal rules not updated, monitoring and filtering IT system not properly managed; shortcomings in the number of the staff in charge of AML/CFT compliance controls; level of seniority not adequate to the compliance functions assigned; and deficiencies in the identification of BO for certain categories of customers (e.g. foundations). On the issue of identification and verification of the identity of BO, the MNB staff stresses the importance of carrying out proper checking and accurate analysis of the information provided by the customers and gathered through third parties, in order to determine the identity of the BO and FIs that rely on declaration provided by the FIs. However, the assessment team noted that reliance on declarations of ultimate BO provided by the customers is the practice among FIs met on-site.

DNFBPs

366. The Department for Gambling Supervision of the NTCA, the HFIU acting as supervisor and the HTLO, upon completion of the respective supervisory activities, communicate the findings to the supervised service providers with minutes. The procedures are closed by an administrative decision.

367. In case of minor shortcomings, warning letters are issued by the supervisors. In case of detection of violations of AML/CFT requirements, administrative sanctions (i.e. fines) are imposed. However, the directors and senior managers of casinos and card rooms are neither subject to

⁸² In 2014, the total amount paid by all sanctioned banks (and not by individuals) amounts to EUR 10,800. This corresponds to less than the GDP *per capita* of EUR 12,259 (see: <http://data.worldbank.org/indicator/NY.GDP.PCAP.CD> "Hungary").

sanctions for AML/CFT infringements under the AML/CFT Act nor under the Gambling Act. With respect to dealers in precious metal and dealers in goods, the HTLO performs follow-up initiatives to monitor the adoption of corrective measures. Follow-up initiatives are also carried out by the HFIU in respect of accountants, tax advisors, tax experts and real estate agents. The Chamber of Auditors sends “decisions” to the inspected auditors. These include breaches identified and requests to remedy deficiencies. The Quality Control Committee of the Chamber of Auditors may also propose initiating disciplinary procedures. Other SRBs have adopted similar procedures. However, no follow-up procedures are foreseen.

DNFBPs Sector	Number of inspections having identified AML/CFT infringements				Type of sanctions/measures applied											
					Written warning				Fines							
									N.	Amount (EUR)	N.	Amount (EUR)	N.	Amount (EUR)	N.	Amount (EUR)
Year	'12	'13	'14	'15	'12	'13	'14	'15	2012	2013	2014	2015				
Casinos	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
Card rooms	1	2	1	0	0	0	0	0	1	400 000 HUF/1,400	2	1 400 00 HUF/4,670	1	300.000 HUF/1,000	0	0
Dealers in precious metals and stones	101	398	415	150	74	72	134	107	27	10,339	38	19,701	19	6,769	43	8,250
Lawyers*	6	3	3	2	1	0	3	0	6	(circa) 2,000	3	(circa) 733	3	(circa) 1666	2	(circa) 533

Notaries	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
Auditors	107	86	10	11	10	86	107	11	0	0	0	0	0	0	0	0
Trust(ee)	N/A	N/A	0	0	N/A	N/A	0	0	N/A	N/A	N/A	N/A	0	0	0	0
trading in goods	13	3	0	18	7	15	6	13	0	0	21	11,664	16	4,821	6	959

Year	Accountants, tax advisors/tax consultants, real estate agents				
	Number of approved internal rules	Number of inspections	Measures		
			Number of measures without fines *	Number of cases where fines were imposed	Fines ** (EUR)
2012	427	onsite: 48/offsite: 188	128	21	9,4000
2013	2807	onsite: 27/offsite: 198	90	23	11,000
2014.	751	onsite:28/offsite: 215	607	45	15,000
2015	495	onsite: 29/offsite: 136	1,108	8	7,000

* Measures without fines: obligation, warning, notification

** These figures do not cover the procedural fines imposed by the HFIU. Amounts in euros proxied.

368. The analysis of the data provided on actions taken by the DNFBPs supervisors in case of detection of AML/CFT infringements suggests the following considerations. Once AML/CFT breaches have been detected, the Department for Gambling Supervision of the NTCA has imposed administrative sanctions (from EUR 1,000 to 4,670) to card rooms only. On the basis of the information provided, such violation refers to the AML/CFT record keeping obligations. The assessment team takes the view that the amount of sanctions imposed seems to be very low if compared with the monthly net gambling receipts.⁸³

369. As regards DPMSs, the HTLO has issued several written warnings in the last four years (peak in 2014 with 134) and follow up with small number and amount of fines (in 2014, 19 sanctions have been imposed for a total amount of 6,769 euro), while this is not the case for real estate agents, accountants, tax consultants and tax advisors where administrative measures and fines have been imposed.⁸⁴

370. As noted under R.35.1 in the TC annex, the AML/CFT Act does not contain sanctions applicable to legal professionals, who may be sanctioned instead under the respective professional

⁸³ As for the size of the gambling sector, the net gambling receipts (stakes minus winnings or prizes) reach a monthly amount of 1,8 - 2,3 billion HUF (approximately EUR 5,700,000 – 7,300,000) in casinos and 80 - 115 million HUF (approximately EUR 255,000 – 370,000) in card rooms, based on the data of the first 7 months in 2015. The number of visitors was around 22-30.000 person per month in card rooms, while around 92-102.000 persons visited casinos per month.

⁸⁴ Out of 28 onsite inspections and 215 offsite initiatives carried out by the HFIU in 2015, 607 measures without fines have been issued and 45 instances resulted in fines for total amount of EUR 15,000.

laws that provide for administrative measures rather than administrative fines.⁸⁵ These measures range from the warning to the exclusion from the respective BARs or Chambers. Figures provided indicate that few and low fines have been imposed on lawyers, while notaries public have never been sanctioned. No fines have been imposed on auditors, despite the detection of AML/CFT infringements.

371. It is worth mentioning that - as for all DNFBPs other than casinos - the Hungarian authorities have stated that minimum AML/CFT sanctions have been recently reduced in order to maintain the proportionality of sanctions, considering that most of the DNFBPs receiving such sanctions are small and micro enterprises. As noted above, minimum statutory fines do not appear to be dissuasive and proportionate.

Impact of supervisory actions and compliance

Financial Institutions

372. The MNB has illustrated the attitude towards which it monitors the adoption of corrective measures in the light of the AML/CFT breaches identified during the onsite inspections. FIs inspected are requested to report back on the implementation with the report of the Internal Audit on the measures adopted. In case of breaches, FIs are requested to adopt proper measures in due time, providing feedbacks on the follow-up actions to the MNB. Moreover, the MNB performs follow-up onsite inspections with the aim to verify the effective implementation of corrective measures. Such approach has been confirmed by the representatives of the FIs met onsite: some FIs have received follow-up onsite inspections aimed at verifying the correct implementation of measures related to AML/CFT breaches previously identified. As indicated above, according to the view of the MNB, the compliance with the AML/CFT obligations has been strengthened by seminars and periodic meetings with the representatives of the private sector and written interpretation of the AML/CFT requirements. The representatives of the private sector confirmed that the supervisory activities have increased their compliance with the AML/CFT obligations. However, they stated that additional guidance would be appreciated.

DNFBPs

373. With regard to the supervision of DNFBPs (including SRBs), the use of follow-up initiatives aimed at verifying the adoption of corrective measures when AML/CFT breaches have been identified is not widespread. The Department for Gambling Supervision of the NTCA and the HFIU monitor the implementation of proper corrective measures by conducting follow-up inspections. This is not the case for the remaining DNFBPs supervisors.

Promoting a clear understanding of AML/CTF obligations and ML/FT risks

Financial Institutions

374. The assessment team has been provided with information and data on AML/CFT trainings during the period 2011-2015 which were addressed to the private sector where the MNB, jointly with the HFIU, has organised seminars, conferences and workshops (including consultations) on AML/CFT issues. The main issues dealt with were both focused on AML obligations (e.g. CDD, record keeping and SARs obligations) and on CFT requirements (e.g. SARs obligations and freezing

⁸⁵ Exceptions exist for attorneys: under the Act on Attorneys, fines can be imposed in case of infringements of the AML/CFT legislation.

mechanisms). The representatives of the private sectors confirmed the attendance of such events, expressing the view that additional and more focused information and clarifications for the interpretation of the AML/CFT requirements would be appreciated. The view of the representatives of the MNB in this regard is that the supervisor has taken action on an *ad hoc* basis, creating “Q&A-sections” on the MNB website on AML/CTF matters, amending the Model Rules in order to address certain issues (e.g. the missing trading phenomena) and issuing specific circular letters, as for the issue of SSAs. On the latter issue, in order to face the ML/FT risk issues related to SSAs, the MNB has sent a circular letter addressed to the banks on the ML/FT-risks associated with the VTC programme, whereby banks were encouraged to follow the provisions of the FATF. The representatives of the MNB also indicated that they have changed the inspection manual by inserting sections related to SSA. The MNB has conducted onsite inspections in this regard.⁸⁶ However, this approach should have been much more in-depth (e.g. by issuing typologies on SSAs associated to ML/FT-risks, or by amending Model Rules in order to incorporate SSAs as risk products). Accordingly, the assessment team does not consider that the MNB has promoted a clear understanding of ML/FT risks in this area (notwithstanding that banks visited by the assessment team indicated that SSAs are considered as posing a risk).

375. The main findings of the NRA process have been made available to FIs (and DNFBPs) through the respective supervisors. However, neither AML/CFT Act nor the Model Rules require FIs (and DNFBPs) to ensure that ML/FT-risks identified at national level are properly addressed and that service provider identify their own ML/FT risks and mitigate it properly. The absence of these requirements – or of any other enforceable measures or guidance on this topic – has as a consequence that FIs do not always apply ML/FT Risk Based Approach (RBA). Hence they are not in a position to adopt proper countermeasures.

376. Having regard to the above initiatives undertaken, the assessment team takes the overall view that FIs appear to have a good knowledge of the AML/CFT requirements and a certain degree of understanding in relation to ML/FT risks associated to their business activities.

DNFBPs

377. The HFIU and sectorial supervisors have organised in recent years AML/CFT training events aimed at ensuring the proper application of the AML/CFT requirements. In order to ensure that casinos and card rooms know their ML/FT risks and their AML/CFT obligations resulting from the relevant acts, the Gambling Supervision Department published sample rules and recommendations on its official website for casinos, card rooms, remote gambling and online casino games providers. Additionally, the full text of NRA was provided upon request to casinos and card rooms and consultations, trainings were carried out for casinos and card rooms as well. The HFIU acting as supervisory authority for real estate agents and accountants (including Tax Advisors and Tax Experts) promotes understanding of the AML/CFT obligations and ML/FT risks by organising meetings and training events with the supervised entities and persons.

378. The representatives of the HTLO have indicated that dealers in precious metals and dealers in goods are supported by the HTLO in the fulfilment of AML/CFT requirements. Representatives of the Chamber of notaries public, Chamber of Auditors and Regional Bar Associations (for lawyers) have declared to organise trainings related to AML/CFT matters. However, the assessment team remains rather hesitant as to the breadth and depth of these events.

379. DNFBPs supervisors have provided the assessment team with a set of information on outreach program. However, the assessment team takes the view that additional efforts should be done by the supervisors (including SRBs) to better promote a clear understanding of the

⁸⁶ It should be noted that the assessment team was neither provided with the version of the inspection manual dedicated to SSA, nor with figures and outcomes of onsite inspections initiatives have been supplied.

AML/CFT obligations and ML/FT risks. The latter is considered very limited by the evaluators. Thus, additional efforts may be needed. For example, events should be differentiated and tailor-made, having regard to the variety of service providers. They should include events, such as seminars and workshops and publications (e.g. guidance), also jointly with other domestic competent authorities (e.g. HFIU, LEAs).

380. Having regard to the forthcoming initiatives in terms of risk assessment, the MNB and DNFBPs supervisors (including SRBs) should consider - in cooperation with other domestic authorities - to adopt awareness-raising initiatives. This would prepare service providers for the new emerging risks, threats and vulnerabilities that would permit FIs and DNFBPs to adopt countermeasures in due time.

381. **Overall, Hungary has achieved a moderate level of effectiveness for Immediate Outcome 3.**

CHAPTER 7. LEGAL PERSONS AND ARRANGEMENTS

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 5

The authorities have not assessed the ML/FT risks associated with all types of legal entities created in Hungary, even if they have indicated that certain legal entities are misused for illegal purposes (in particular VAT and “social engineering” frauds), mostly associated with the use of so-called straw men. The phenomenon of straw men has not been explored in terms of use by organised crime.

Basic information on legal entities is maintained in the Register of Companies, with the exception of the list of directors. However, some of the information by the Register is cross-checked with other databases. Controls and checks are carried out by the Court of Registry, including a judicial oversight procedure.

The information on BO is held by FIs and DNFBPs, which mostly rely on the declarations made by the customers. This modality raises issues of accuracy and veracity of the information gathered.

Several shortcomings have been identified with regard to the legislation related to trust and trustees, which require certain amendments to the AML/CFT Act and other relevant regulations. The evaluation team also noted that FIs and DNFBPs do not have access to the information provided by non-professional trustees to the MNB under the Trust Act when performing CDD. The above-mentioned shortcomings should be properly fixed as well as the deficiencies identified in the TC Annex on R.24.

Recommended Actions

Immediate Outcome 5

A number of improvements are needed to Hungary’s AML/CFT system with regard to transparency on legal entities and legal arrangements:

- Hungary should undertake an assessment of the vulnerabilities related to legal entities, having regard to the possible use of straw men by organised crime.
- The country should ensure that the competent authorities have access to accurate and up-to-date basic and BO information in due time. The Court of Registry should proper powers and more appropriate mechanism of checks in order to verify more extensively the accuracy of the information registered.
- The Hungarian authorities should address the issue of the abuse of legal entities, through the use of straw men in company formation, in a more concerted and coordinated way. In particular, lawyers and notaries public should carry out the CDD requirements by properly interpreting the notion of beneficial owner as these legal professions are involved in the process of establishment and registration of domestic companies. SARs which are sent to the HFIU identifying possible straw men should be followed up by police and prosecutors. Likewise, supervisors should follow up identified CDD failures and use of straw men as nominee director in a more determined manner. The police should be proactive in detecting possible links to organised crime in the use of straw men for laundering purposes.

- Amendments should be introduced to the Trust Act or to the AML/CFT Act to unambiguously clarify that identities of the beneficial owner (namely the settlor, beneficiary, class of beneficiaries and others) of trusts must be made available for CDD purposes to FIs and DNFBPs.
- Measures should be taken to ensure that non-professional trustees are also explicitly required to also disclose their status to FIs and DNFBPs upon opening a business relationship, or when carrying out an occasional transaction above a certain threshold.
- Legal provisions should be introduced for prompt reporting of changes to the legal ownership of companies to the Court of Registry, with dissuasive sanctions for breaches of such requirement.
- Shortcomings in the technical compliance annex should be fixed by the Hungarian Authorities (e.g. the list of directors shall be provided to the Court of Registry)
- The distinction between non-professional trustees and professional trustees should be reviewed and amended. At a minimum, AML/CFT obligations (including CDD measures) should apply to all trustees who receive money for their services.
- The creation of a register of bank accounts in Hungary should be considered.

Immediate Outcome 5 (Legal Persons and Arrangements)

Public availability of information on the creation and types of legal persons and arrangements

The following table lists the type and number of legal persons⁸⁷ established in Hungary at the end of July 2016 and registered at the Court of Registry.

Type	Number of entities
General partnership (Kkt.)	3,872
Limited partnership (Bt.)	139,623
Private limited-liability companies (Kft.)	400,794
Public limited companies (Nyrt)	49
Private limited companies (Zrt.)	5,998

382. Legal persons other than companies can be formed, such as associations (52,145), and foundations (27,841).

383. By March 2016, one professional trustee operated under the Trustee Act (while two have been licensed), as well as twelve non-professional ones.

384. The risk assessment indicates that foreign companies domiciled in Hungary are considered a ML/FT risk factor.⁸⁸ However, their exact number was not available at the time of the onsite visit.

⁸⁷ This table does not include the number of associations, civil companies and foundations established under the Hungarian law.

⁸⁸ According to the findings of the NRA, "Companies registered at (virtual) office addresses cannot be contacted; authorities cannot apply any control, official documents cannot be delivered and no relevant sanctions can be imposed either" (findings of the LEAs WG).

385. As indicated in the TC Annex, the Civil Code (Act V of 2013) regulates the establishment of legal persons and incorporates the provisions of Act IV of 2006 on Business Associations which was repealed by the Civil Code. Act V of 2013 has also introduced the concept of trusts into the Hungarian legal system. It has created general rules concerning establishment of a trust (as a fiduciary asset management contract). The Act on Trustee governs the establishment and activities of professional and non-professional trustees.

386. In the Hungarian legal system, associations, civil companies and foundations (NGOs) are governed by Act CLXXV of 2011, Act V of 2013 (Civil Code) and Act CLXXXI of 2011 while non-profit business companies (whose profit cannot be distributed among members) are regulated by the Civil Code.

387. The information on the creation and type of legal entities is publically available from the website of the Company Information Service⁸⁹, while the same information on legal arrangements established under the Hungarian legislation is provided on the website of the MNB. The Civil Information Portal is a public available website⁹⁰ that provides information on NGOs. Moreover, the National Office for the Judiciary (NOJ) has established a register of NGOs where annual accounts are posted. This register is likewise publically available.⁹¹

Identification, assessment and understanding of ML/FT risks and vulnerabilities of legal entities

388. The Hungarian authorities have not carried out a specific assessment on the ML/FT risks associated with all types of legal persons and arrangements created in the country.

389. However, the NRA, while being silent on vulnerabilities and risks associated with trustees, clearly indicates that certain domestic legal entities (referred to as “phantom companies”) are considered a high ML risk factor when misused by straw-men, while non-profit organisations might be related to terrorism financing⁹² due to the lack of proper regulation and controls.

390. The risk assessment indicates that straw men are used to establish companies or become shareholders or executive directors of these companies as well as opening and operating current accounts held by the latter. Authorities have also indicated that straw men usually request the execution of transactions on behalf of companies at the banks accompanied by individuals who give them instructions.

391. Representatives of FIs and DNFBPs have confirmed this practice, and have also indicated that, in most of the cases, straw men replace shareholders or executive officers of existing and operating companies that already hold current accounts. Upon the entrance into the businesses of straw men, the accounts of the companies concerned have been seen to expand their activities into very different areas.⁹³

392. In this respect, the Hungarian authorities have stressed that banks should carry out the CDD requirements by properly interpreting the notion of beneficial owner.⁹⁴ According to the assessment team, this should also be emphasised for lawyers and notaries public, as these legal

⁸⁹ <http://www.e-cegjegyzek.hu/index.html>

⁹⁰ <http://www.civil.info.hu/nyilvantartas>

⁹¹ <http://birosag.hu/allampolgaroknak/civil-szervezetek/civil-szervezetek-nevjegyzeke-kereses>

⁹² It is worth noting that, as indicated under IO.1, on NPOs related to FT, there is no information on the analysis that led to this conclusion.

⁹³ As indicated under IO1, current accounts held by these legal entities in such circumstances have frequently shown significant turnovers of wire transfers and large deposits or withdrawals in cash.

⁹⁴ Hungarian Authorities pointed out the importance of terminating business relations and rejecting customers in case of off-shore companies and straw men when the FIs are not satisfied with the CDD outcomes. However, they also noted that, in case of existing current accounts, the termination of the contracts does not have immediate consequences as the general deadline leaves a 60 days period in which the accounts can operate.

professions are involved in the process of the establishment and registration of domestic companies.⁹⁵ In particular, the supervisors and the domestic authorities should raise awareness about the ML/FT risks associated with domestic legal entities, with the aim of improving the CDD obligations and the reporting requirements.

393. Having regard to the information provided onsite as well as the input of the NRA, the assessment team raised the question as to whether organised crime was behind the use of straw men as a systematic basis to launder proceeds. However, this has not yet been explored by the Hungarian authorities, even though the assessment team considers that there is an urgent need to do so.

394. As indicated in the NRA, there might be persons that act as (professional) straw men for an unlimited number of companies, as the effective legal regulations do not impose any limitations in this regard. This raises the possibility that straw men might be used as executive directors acting on behalf of a number of entities.⁹⁶

395. The NRA also indicates that foreign companies domiciled in Hungary, as well as off-shore companies holding current accounts at Hungarian banks, pose equivalent risks when these are misused for illegal activities, mostly related to VAT frauds and “social engineering” fraud.

396. LEAs have indicated that recurring problems on investigations are due to the fact that there are enterprises that provide registered offices for hundreds of foreign companies in the same office. This makes it difficult to identify the natural persons behind or representing the foreign companies.

397. The NRA also indicates that the process of establishing companies electronically increases the vulnerabilities of domestic companies, as the registration is based only on the submitted documents, the legitimacy and veracity of which might be challengeable. However, the extent to which these legal entities might be related or connected with ML cases has not been explored. The authorities have not provided any information on the number of ML/FT cases (SARs and investigations). However, in the NRA, these risk factors were established by the SARs submitted to the HFIU and practical experience.

398. The statistics on seizure and confiscation do not indicate that the competent authorities have taken any preventive measures (e.g. seizures of shares) against such domestic companies on ML/FT cases. Therefore, the extent to which the competent authorities have an overall understanding of the ML/FT risk associated with domestic legal persons is limited. While they are aware of the misuse of domestic companies, they do not appear to have a clear knowledge of the magnitude of the topic.

399. Meetings with the representatives of the FIs and DNFBPs have confirmed the misuse of domestic legal entities, domicile of foreign companies and current accounts held by off-shore companies. The assessment team observes that there has not yet been any active measures taken in response to these issues.⁹⁷

Mitigating measures to prevent the misuse of legal persons and arrangements

⁹⁵ According to the Hungarian legislation, legal representation (by lawyers or public notaries) is required during the company registration proceedings. They shall submit document and information to the Court of Registry.

⁹⁶ Hungarian Authorities have indicated that, according to the Civil Code provisions (Section 3:22 (3)), executive directors shall be executed “in person” and he/she is liable to civil actions. Thus, although nominee directors are not explicitly prohibited in Hungary, these are not allowed. Role and functions of executive directors are set forth under Section 3:29 of the Civil Code.

⁹⁷ The Hungarian authorities stated that within the framework of the NRA process the discussions on risk mitigations have started before the onsite visit. A more effective overall approach could be launched in light of the outcomes of the present MONEYVAL evaluation.

400. Basic information⁹⁸ on all companies is registered at the Register of Companies held at Court of Registry, with the exception of the list of directors (although the identities of the persons with powers of attorney are registered). The basic information is accessible by the competent authorities upon request to the Court of Registry⁹⁹ and by FIs and DNFBPs through Company Information Service (that is authorised to issue authentic instruments) and different service providers that deliver this product to the public upon the payment of a fee.

401. All legal persons are required to maintain a list or a register of partners, members or shareholders (with the exception indicated in the paragraph above). This information shall be kept by legal entities and provided to the Court of Registry. Changes in legal ownership (shareholders) are required to be registered. However, the effectiveness of this reporting requirement is undermined by the fact that companies have up to 30 days to report any register changes.¹⁰⁰ The authorities state that effectiveness of this reporting requirement is ensured by checks and controls carry out during the process of registration, including the judicial oversight proceedings conducted by the Court of Registry, *ex officio* or upon request by the public prosecution office or other authorities. The aim of the judicial oversight proceeding is to ascertain the authenticity of records at the register and for lawful purposes. In case of limited companies, the register can be outsourced to other persons or entities (FIs, central depository, clearing houses, lawyers and auditors), while public limited companies shall disclose the information on their website and keep it up-dated.

402. In order to guarantee the completeness of the data in the Register of Companies, data are collected upon registration. When these are not provided, the registration is denied.¹⁰¹ For this reasons, checks are conducted upon registration by IT mechanisms aimed at verifying the existence and the accuracy of the information and data related to registered office and branch offices, data of the persons representing the legal persons and their tax ID numbers, main activities carried out by the registered legal person and information related to VAT taxation. Such scrutiny is carried out by cross-checking other linked databases of other government authorities.¹⁰² If mandatory information is missing or information is obviously incorrect, the registration is rejected. If the registration is rejected the applicant is informed in a letter of the identified deficiencies and has 30 days to resubmit the application. About 20% of applications need to be resubmitted¹⁰³ due to formal or substantive deficiencies, such as missing signature samples, approval for licensed activities or contracts not being in line with the Civil Code. In about 99% of these cases, the deficiencies are remedied upon the letter from the Court of Registry. If the required information is not provided, the incorporation of the company is denied. Moreover, as obtaining a tax number is a prerequisite of the registration, the tax authority also checks the information submitted to the Court of Registry during the registration procedure.

403. Representatives of the Court of Registry have indicated that further manual checks are carried out to verify whether all the information and documents required by law have been properly provided. These checks are aimed at ensuring the consistency and the correctness of the

⁹⁸ Basic information means company name, proof of incorporation, legal form and status, the address of the registered office.

⁹⁹ The Register of Companies contains an historical overview of the information and data (all existing and deleted data and information) related to domestic companies.

¹⁰⁰ According to the Hungarian Authorities, 30 days is a reasonable time, as documents and information shall be provided to the Court of Registry by an appointed lawyers or by notaries public and not by the legal entities itself ("legal representation")

¹⁰¹ As set forth under Section 38 of the Act V of 2006 Rules of Taxation, CRA Act and others.

¹⁰² The assessment team has not verified onsite the effective application of these IT procedures.

¹⁰³ Subsequent filing of changes/amendments in information contained in the companies register with the Courts of Registry is organised in a similar way as the submission of registration application. The provided information is automatically and manually checked for its completeness and correctness. If a deficiency is identified, the company is given 30 days to remedy the deficiency, while sanctions apply.

data inserted in the Register of Companies with other relevant database from government authorities (e.g. the licences office, the citizen registry, the immigration office, the real estate registry). However, no specific information on the numbers, frequency and coverage of these controls has been provided to the assessment team. Therefore, the effective operation of these checks is difficult to understand.

404. According to the information provided onsite, all domestic legal entities are required¹⁰⁴ to have a current account held at the banks in Hungary for fiscal purposes.¹⁰⁵ Under the CRA, the FIs shall notify the Court of Registry by way of electronic means concerning the particulars of the bank accounts. As a consequence, all legal entities shall undertake CDD measures and provide the most relevant information (including BO information) to the banks and the Register of Companies contains information on the number of current accounts (and the name of the bank) held by legal entities. This mechanism supports the competent authorities to identify the banks and follow up requests. However, it was not clear to the assessment team whether there are additional requirements for legal entities to provide updated information in this regard.

405. Beneficial ownership information is not kept at the Register of Companies. As a consequence, the identity of the ultimate natural person(s) is registered and maintained by the FIs or DNFBPs that provide services to the legal entities in the context of CDD obligations. However, as indicated under R.10, the identification of the beneficial owners is provided by a declaration given by the customer. It is therefore questionable how this information is verified by the service providers.

406. The assessment team notes that the accuracy and the updating of the information on the ultimate natural persons are affected by the quality of the application of the CDD requirements applied by FIs and DNFBPs. The frequent misuse of straw men raises doubts on the quality of the CDD process executed by FIs and DNFBPs and the robustness of the identification of beneficial owners.

407. Meetings with the representatives of the private sector indicate that they usually obtain the declaration on beneficial ownership and consult the Court of Registry when they perform the AML/CFT obligations. Almost all persons met onsite have indicated that the information held in the Register of Companies is accurate and updated. Some FIs prefer to rely on external service providers that complement this basic information with other relevant information particularly related to “credit risk”.

408. Although the FIU has provided indicators of anomalies related to VAT frauds (that usually refer to the misuse of straw men involving domestic and foreign companies), the assessment team has no information on the number of SARs reported by FIs and DNFBPs, involving failures to identify or verify the identity of the ultimate natural persons. The Hungarian authorities have indicated that the SARs reporting mechanism has permitted them to detect the phenomenon of straw men. Moreover, the regulatory acts (e.g. AML/CFT Act and the Model Rules) do not contain any specific provisions in case of detection of accounts misused by straw men.

409. The MNB, when carrying out onsite inspections, verifies through sample testing the CDD requirements including the information on the beneficial owners. However, some representatives of the private sector indicated that this is in practice merely a formal check, rather than a full scrutiny of the accuracy of the information and data gathered. On the other hand, the MNB

104 As set forth by the following Acts: Act XCII of 2003 on the Rules of Taxation, 227/2006 Government Regulation on Payment Services and Electronic Means of Payment, Act LXXXV of 2009 on the Pursuit of the Business of Payment Services and the Act V of 2006 (CRA).

105 Accountants indicated evaluators that the current accounts shall be opened within 15 days after the registration at the Court of Registry.

indicated that breaches of the beneficial ownership requirements have been identified. However, no guidance has been provided by supervisors on how to properly comply with the CDD requirements in case of domestic and foreign companies.

410. Nominee shareholders are allowed under the Capital Market Act to reveal the identity of the principal shareholder to other shareholders or to the MNB upon request. The nominee has to be registered together with the owner into the companies' shareholder register under section 140 and 151 -153 of CMA.¹⁰⁶

411. As indicated above, there are no provisions that limit the number of companies for which a person may operate as executive director. Having regard to the widespread use of straw men, these persons may act in practice as nominee directors. As indicated above, the Hungarian authorities refer to provisions of the Civil Code, stating that executive directors shall act in person and are liable to civil actions. Nominee directors are not explicitly prohibited. Hungary has not adopted any mechanism to ensure that these persons disclose their status.

412. With regards to associations, civil companies and foundations, NGOs shall deposit on an annual basis their annual accounts at the National Office for Judiciary (NOJ), which are published on its website. The register of the NOJ also contains the following information: registration number, denomination, address, type of organisation, objectives and purpose, as well as the names of the executive officers. Non-profit business companies shall be registered at the Court of Registry which collects its denomination, information on activities carried out, its members and their financial contributions, the companies' senior officers and the persons authorised to represent them.

413. Under the Trust Act, professional trustees are corporate entities that shall be authorised by the MNB which carries out "fit and proper" tests. Being legal entities, it is therefore required for professional trustees to be registered at the Court of Registry where basic information on (corporate entity) trustee is provided. However, there is neither a requirement to provide any information on beneficial ownership¹⁰⁷ and list of directors.

414. The AML/CFT Act does neither require trustees (regardless of whether they are professional or non-professional) to disclose their status to the service providers, nor to provide information on beneficial owner(s). As regards beneficial ownership, the AML/CFT Act does not contain such notion in cases of trusts.¹⁰⁸

415. With regards to non-professional trustees, whether natural and legal persons, they are obliged to be registered at the MNB according to the Trust Act. However, they are not required to provide criminal records or any information on beneficial ownership (in case the non-professional trustee is a legal entity). Under Section 19 of that Act, the non-professional trustee shall report to the MNB data (on settlor, beneficiaries and details of the contract) pertaining the trust contract within 30 days following the conclusion of the contract. Moreover, the register of non-professional trustees is not accessible to FIs and DNFBPs when they perform CDD obligations.

416. Professional trustees under the Trust Act (Sections 39-40) shall keep records of the following information: personal identification data of the settlor and the beneficiary; subject matter of the main and auxiliary services undertaken; eventual terms, place and date of the conclusion of the contract; legal statements and identification data of the party making such statements for establishing, modifying or terminating trust contracts. The professional trustees are required to

¹⁰⁶ With regard to bearer shares and bearer warrants, the Hungarian Authorities have indicated that, under the Civil Code provisions (Section 215), printed certificates of shares shall contain the name of shareholder. In case of a transfer of share to another shareholder, his/her name shall be overlaid.

¹⁰⁷ Having regards to the FATF standards, this means the identity of settlor, beneficiaries or class of beneficiaries, protector/guardian (if any).

¹⁰⁸ See IO4 for further details.

keep this information recorded for ten years. No corresponding record-keeping obligation is prescribed for non-professional trustees. However, according to Section 6:312 (1) of the Civil Code, non-professional trustees (as well as professional trustees) are obliged to separate the managed assets from their own assets and keep separate records of the managed assets for a period of 5 years.

Timely access to adequate, accurate and current basic and beneficial ownership information on legal persons

417. As indicated above and under R.24 regarding basic information maintained by the Court of Registry, the accuracy of the information and data are questionable because of the time-limit indicated in the relevant legislation.

418. In case of unlawful data recorded in the Register of Companies, enforcement measures might be applied by the judicial authorities.

419. The information on the beneficial ownership shall only be gathered from the FIs and DNFBPs involved in the CDD obligations.

420. The competent authorities (i.e. Prosecutors, LEAs and FIU) have the power to access the information held by service providers. They are thus able to obtain this information, either by requesting the legal entity holding the beneficial ownership information, or by consulting the Court of Registry where the number of the account of the legal entity under scrutiny is indicated. Both ways, the authorities are able to obtain this information in due time.

421. With regards to associations, civil companies, foundations and non-profit business companies, the competent authorities have full access to the information provided in the NOJ Register and the Register of Companies.

422. The NRA suggests establishing a register of current accounts that contains updated information on current accounts held by domestic and foreign companies for several purposes. This would have advantages despite the fact that the police have already full access to financial information and the LEAs cooperate with HFIU. The establishment of such register would speed up the financial investigate phase, as it would permit the immediate detection of all current accounts held by persons under investigation.

Effectiveness, proportionality and dissuasiveness of sanctions

423. The Court of Registry is responsible for conducting judicial oversight proceedings *ex officio* or upon request by the prosecution office or by other competent authorities, with the aim of ascertaining the authenticity of records at the register and for lawful purposes. Under Act V of 2006, the court may adopt the following measures: issuing a notice to the company; imposing fines (from 300 to 30,000 EUR); overturning a company resolution; taking over of the management; appointing a supervisory commissioner; and liquidating the entities.

424. The Court of Registry conducts a desk audit in order to ensure the consistency and correctness of the data provided. Where discrepancies have been detected, legal entities are required to provide the correct information within 30 days. In case of infringement, the court launches judicial oversight proceedings. The authorities indicated an increased number of measures adopted against companies. However, no statistics have been provided on the number of legal entities or directors sanctioned, the amounts involved or the types of violations ascertained.

425. The authorities have not provided information on the sanctions imposed to legal entities for the failure to provide basic information or for providing incorrect information. For these reasons, they have not demonstrated the effectiveness and dissuasiveness of the sanctions set forth by law. As far as FIs are concerned, the MNB has indicated that – when conducting onsite inspections - the

main breaches for the BO are the following: incomplete declaration on BO; the declaration on BO has not been verified; and misunderstanding of the requirements related to the identification and verification of the BO. The assessment team is of the view that, considering the results of the NRA described above, the authorities should have taken a more proactive approach in monitoring the compliance with the requirements of legal entities.

426. **Overall, Hungary has achieved a low level of effectiveness.**

CHAPTER 8. INTERNATIONAL COOPERATION

Key Findings and Recommended Actions

Key Findings

Immediate Outcome 2

With regard to international cooperation, Hungary demonstrates many characteristics of an effective system and only moderate improvements are needed. Respective Hungarian authorities use a wide and comprehensive framework of multilateral, bilateral and national legal instruments and other cooperation mechanisms to seek and provide good quality and timely international cooperation. There have been some positive developments and concrete measures put in place, seeking to increase the capacity and technological capability of law enforcement agencies and the HFIU in international cooperation. Similarly, judicial authorities actively seek and deliver international cooperation and utilise available tools and mechanism to effectively tackle cross-border criminality. However, there are elements in the Hungarian system weakening the ability to demonstrate and achieve higher effectiveness of international cooperation. These include the failure to ratify the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959 and the enduring lack of comprehensive and reliable statistics maintained by judicial authorities.

Recommended Actions

Immediate Outcome 2

- Hungary should consider the ratification of the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 1959;
- Hungary should develop and implement case-management systems providing for comprehensive data, statistics and other information relevant to the effectiveness and efficiency of the AML/CFT system;
- The country should ensure that requests for MLA are executed without undue delay.

Immediate Outcome 2 (International Cooperation)

Providing and seeking mutual legal assistance and extradition

427. In Hungary, the Prosecutor General and the Minister of Justice function as central authorities for the receipt, processing and allocation of MLA requests to relevant authorities with territorial and subject-matter jurisdiction. According to the Prosecutor General's Office, an overwhelming majority of mutual legal assistance is related to ongoing investigations. Hence the incoming requests and the preparation and submission of outgoing requests are almost exclusively channeled through or carried out by the Prosecutor's Office.

428. Major EU and international multilateral treaties are the most frequent legal instruments used for mutual legal assistance in criminal matters by Hungary. These include the European Convention on Mutual Assistance in Criminal Matters of 1959 (with regard to those members States of the Council of Europe which are not members of the EU), the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (the Warsaw Convention), and a number of UN Conventions (the UN Convention against Transnational Organised Crime, the UN Convention against Corruption or the UN Convention

against illicit traffic in narcotic drugs and psychotropic substances). The UN conventions are mostly used for MLA with countries and territories that are not covered by the EU or Council of Europe treaties. MLA based on reciprocity (in accordance with the Act XXXVIII of 1996) is rarely used by Hungary. As regards EU member States (as well as Norway and Iceland), the European Convention for Mutual Legal Assistance in Criminal Matters between the member States of the EU of 2000 (Council Act of 29 May 2000) provides for a direct exchange of requests for mutual assistance in criminal matters between competent judicial authorities (courts and prosecutor's offices with territorial competence) without the need to involve central authorities.

429. Statistical information on the number of incoming and outgoing MLA requests presented in table 1 highlights an increase in both ways of MLA requests with a noticeably greater upward dynamics in the incoming requests category. Further breakdown of the statistics made by the authorities indicated that more than 90% of all incoming MLA requests are submitted by EU member States using the Council Act of 29 May 2000. The average execution time for these requests ranges from 2 to 3 months. It is worth noting that, in order to expedite the execution of MLA, the Hungarian authorities endeavor to answer individual parts of the requests as soon as evidence becomes available, without waiting for and unnecessarily delaying the completion of the whole evidence gathering process. Irrespective of the fact whether requests for MLA are routed through the central authority or made directly, the prosecution authorities confirmed that adequate processes are in place and tools are available to the appointed prosecutor to monitor the timeliness and quality of the execution of the request.

Table 1: Number of MLA requests routed through the Prosecutor General Office

Year	Incoming MLA requests (total)	Outgoing MLA requests (total)
2010	1,524	1,237
2011	1,800	1,378
2012	1,637	1,453
2013	1,976	1,434
2014	2,310	1,660
2015	2,434	1,853
Total	11,981	9,015

430. Although some limited information and statistics were provided by the Prosecutor General's Office, the overall availability and comprehensiveness of statistical information pertaining to ML and FT related MLA requests is prevented by an obsolete case management system operated by respective central authorities for MLA as well as the courts.

431. Requests for extradition are made and received by the Minister of Justice which acts as the designated central authority. Requests for provisional arrest in order to secure successful extradition (both incoming and outgoing) may be submitted from and to the requested country via the International Law Enforcement Co-operation Centre (NEBEK). There is a set of criteria that

helps the Minister of Justice to prioritise the requests for extradition and ultimately decide whether an extradition request will be granted. The same powers apply to decision on requests for surrender made under the European Arrest Warrant procedure.

432. Extradition within the EU works on the basis of the European Arrest Warrant, which also includes possibilities to extradite Hungarian nationals on the condition that the extradited person is returned after conviction to serve the sentence in Hungary. The extradition under the European Arrest Warrant scheme takes between 10 days (when the accused person consents to his/her surrender) and a maximum of 60 days (when the accused person refuses to consent to his/her surrender).

433. In terms of extradition, Hungary received 17 extradition requests related to trafficking in human beings and associated money laundering in 2014 which were all granted. No further statistical information concerning effectiveness of the extradition process has been provided by Hungary. There are currently 10 extradition treaties in place (with Australia, the Bahamas, Canada, Fiji, Kenya, Monaco, Paraguay, Swaziland, Uganda and the United States of America) and 7 MLA treaties that also cover extradition (with Belgium, Egypt, France, Italy, Spain, Tunisia and Turkey).

Seeking and providing other forms of international cooperation for AML/CFT purposes

The HFIU

434. The HFIU, acting in the capacity of a national financial intelligence, is empowered by the AML/CFT Act to request and provide financial intelligence and additional information (both spontaneously and upon request) to and from foreign financial intelligence units for the purpose of combating money laundering and terrorist financing. Besides the direct exchange of information, the AML/CFT Act grants powers to the HFIU to conclude a Memorandum of Understanding (MoU) with foreign counterparts if necessary. To date, the HFIU has concluded 6 such MoUs (with “the former Yugoslav Republic of Macedonia”, Georgia, the Holy See, Kosovo*, Panama and Serbia). Another 4 MoUs are currently in progress, driven by either operational and strategic needs or a legal requirement by a foreign FIU to have an MoU in place.

435. Egmont Secure Web and FIU.NET are the main channels used by the HFIU to exchange information and intelligence with its foreign counterparts. Detailed information is captured and maintained by the HFIU concerning quantity and nature of international information exchange allowing further breakdown, analysis and monitoring of international co-operation.

HFIU prompt and effective cooperation with foreign FIU

Following the receipt of a suspicious activity report, stating that funds amounting to EUR 850,000 and believed to be the proceeds of foreign fraudulent activities were credited to a bank account belonging to a Hungarian company, the HFIU immediately started analysis of the reported activity and expeditiously contacted the foreign FIU. Swift reaction to the situation was considered essential as information available to the HFIU indicated that the person controlling the bank account intended to transfer the funds further to bank accounts located in the Far East. Information obtained from the foreign FIU confirmed the criminal origin of the funds transferred to initially one (but as it was revealed by the HFIU to a number of) bank account(s) held by several Hungarian companies operated by individuals with criminal records. The prompt cooperation between the

* All references to Kosovo, whether to the territory, institutions or populations, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

two FIUs facilitated effective and speedy application of the transaction suspension powers and subsequent provisional measures in order to secure and return the ill-gotten funds to the victim. The HFIU subsequently disseminated all relevant information to the public prosecutor's office to initiate a criminal investigation.

436. In order to boost its operational capability to establish cross-border links, the HFIU has introduced the "Ma3tch technology" developed by the FIU.NET which allows its members to match their data with other FIUs in an anonymous way. This is a very welcome development and a positive example of the use of technology to expand and enhance the HFIU's operational capabilities.

437. Table 2 below shows a steady increase both in the number of requests and number of spontaneous information sent by the HFIU. This is a clear sign of a more proactive international assistance sought by the HFIU. International assistance by the HFIU is delivered in an appropriate and timely manner. Management information (including feedback) is captured through a comprehensive and sufficiently granular data management system (specific templates utilised). Reviews of various aspects of international cooperation (e.g. subject matters of incoming requests, compliance with Egmont standards) are conducted.

438.

Table 2: FIU to FIU international cooperation

International co-operation	2011	2012	2013	2014	2015
Requests received	160	164	172	208	282
Spontaneous information received	128	128	120	230	325
Total	288	292	292	438	607
Requests sent	96	164	253	226	502
Spontaneous information sent	41	60	70	149	168
Total	137	224	323	375	660

Police cooperation

439. The Hungarian ARO exchanges financial intelligence and other relevant information related to identification, freezing, seizure and confiscation of the proceeds of crime with its foreign counterparts by using the Council Decision 2007/845/JHA for the formal exchange of requests with

EU based partners, the CARIN¹⁰⁹ network for the informal exchange of requests and information, and bilateral treaties for the exchange of information with competent authorities from other countries.

Table 3: International cooperation by the Hungarian ARO

	ARO incoming requests	ARO outgoing requests	CARIN incoming requests	CARIN outgoing requests	Total
2010	18	18	3	3	62
2011	0	36	0	22	58
2012	8	29	1	12	50
2013	38	33	1	8	80
2014	55	50	0	4	109
2015 (until 30 June)	22	19	0	4	45
Total	141	185	5	53	404

440. As regards the exchange of law enforcement information with foreign law enforcement agencies, NEBEK acts as a single point of contact for a secure and timely cross-border exchange of intelligence and data and facilitates the exchange of asset tracing request made by AROs. The main channels used by NEBEK include Interpol, the Schengen Information System, Europol and the South Eastern European Law Enforcement Centre (SELEC) platform, complemented by a network of liaison officers and police attachés.

441. In the area of bilateral international cooperation, the Act LIV of 2002 provides the legal basis for competent Hungarian law enforcement agencies to engage in many forms of cooperation with their foreign counterparts. They may form joint crime detection teams, engage in direct exchange of information with their foreign counterparts (pursuant to Article 8 of the Act LIV of 2002) or initiate the setting-up of joint investigation teams (JITs) through the competent prosecutor (subject to permission granted by the Prosecutor General). However, the assessment team has neither been provided with the number/extent of use of the respective forms of cooperation provided for by the Act LIV of 2002, nor with the respective criminal activities investigated.

Judicial cooperation

¹⁰⁹ The Camden Asset Recovery Inter-Agency Network (CARIN) is a global informal network of judicial and law enforcement practitioners established in 2004.

442. Decisions whether to make requests for assistance are primarily governed by the principle of legality. However, the applicable legal provisions oblige authorities to prioritise cases where coercive measures restricting personal freedoms are used, cases where crimes against minors have been committed, cases of re-trial, cases where immunity is lifted and cases where serious crime is involved (e.g. corruption, organised crime, war crimes and crimes against humanity). Although ML/FT related requests for MLA are not prioritised *per se*, all MLA requests with asset recovery elements are duly prioritised and promptly executed.

443. The prosecuting authorities frequently engage with their foreign counterparts (bilaterally or multilaterally) to avoid or resolve conflicts of jurisdiction as well as to find the most effective and mutually acceptable solutions. There are examples of a proactive approach by the prosecution authorities in instances where information available to the authorities relate to criminal offences, the punishment or handling of which falls outside the competence of the authorities (e.g. a foreign national committing a criminal offence abroad). Spontaneous exchange of information with the receiving country is initiated using Article 7 of the Council Act of 29 May 2000 or Article 21 of the 1959 Strasbourg Convention, whichever is applicable. This type of cross-border cooperation is regularly used in trafficking in human beings and corruption cases detected at the border crossings. No such cooperation involving money laundering or terrorist financing has been made.

444. Since May 2011, Hungary has participated in 14 JITs formed with at least one foreign country. Almost all JITs have been set up with other EU member States on the basis of the Council Act of 29 May 2000.

JIT case example

A JIT was set up between respective Hungarian and French judicial authorities targeting an organised crime group engaged in trafficking in human beings for the purpose of sexual exploitation. Following a joint law enforcement operation, the group was dismantled, 12 suspects (all Hungarian citizens) arrested and surrendered (within 2 weeks time) to France for prosecution of the underlying criminal activities. The estimated amount of assets recovered by the Hungarian authorities exceeds HUF 300 million (approximately EUR 1 million), and asset-sharing agreements are being prepared. In response to additional information that emerged during the investigation, further individuals involved in the laundering of funds were investigated.

445. Owing to the failure to ratify the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters, which aims at strengthening and streamlining international cooperation among Council of Europe member States, Hungary is not able to directly contact counterparts and exchange information expeditiously of those 17 States that are members of the Council of Europe but not subject to the aforementioned EU Convention (Council Act of 29 May 2000, which also applies to Iceland and Norway). Moreover, forming JITs with these countries, some of which are in direct proximity to Hungary, is more cumbersome.

446. One of the channels utilised by the Prosecutor General's Office for international cooperation and exchange of information and evidence is Eurojust. This organisation is increasingly relied upon by the Hungarian prosecutorial authorities to strengthen and expedite international co-operation with the EU and also with some non-EU countries. As can be seen in table 4, the number of coordination cases in which Hungary took part either as a participating or as an organising country

has risen. To demonstrate the usefulness and effectiveness of the Eurojust network, a case study was presented to the assessment team pointing out the direct and fruitful cooperation in a “social engineering” case which helped to identify a hierarchically structured criminal network operating in several EU countries. Furthermore, the Southeast European Prosecutors Advisory Group (SEEPAG)¹¹⁰ is used for facilitating judicial cooperation in trans-border crime investigations and cases.

Table 4: EUROJUST Coordination meetings

Year	Hungary’s involvement in EUROJUST Coordination Meetings		
	as participant	as organiser	total
2013	12	1	13
2014	11	1	12
2015	19	7	26

447. According to the Act XXXVIII of 1996, extradition for the purpose of conducting criminal proceedings shall be granted where the offence for which extradition is requested is punishable under both the law of Hungary and the law of the requesting State by imprisonment of at least one year. However, the dual criminality condition, as set out in Article 11(2) of Act XXXVIII of 1996, refers to “acts” being punishable under both laws. The formulation of “acts” instead of “offences” may allow flexible interpretation based on similar behaviour, irrespective of the actual terminology and formal qualification. However, the incomplete coverage of the ML and FT offences under the Hungarian Criminal Code could present challenges in the extradition context, if the dual criminality principle is rigorously interpreted and applied.

Customs cooperation

448. One of the legal instruments, utilised by the customs authority administering the Cash Control Act in Hungary, is Council Regulation no. 515/97 on mutual assistance between the administrative authorities of the EU member States. Several requests have been made by the customs authorities to proactively exchange operational information with their EU counterparts on cases in which cash carried across the borders substantially exceeded the EUR 10,000 reporting threshold and in which the passenger is known to be leaving the EU from another EU country. While this can be considered as a good example of proactively sharing of information for the purposes of preventing and detecting ML and FT between the customs authorities of EU member States, the scarce use of this instrument and a lack of feedback on action taken by the foreign authority brings the effective implementation and use of this legal instrument into question.

NTCA

¹¹⁰ The Southeast European Prosecutors Advisory Group (SEEPAG) is based in Bucharest, Romania. Hungary took over the presidency of SEEPAG in 2014.

449. Respective departments of the NTCA, which are designated law enforcement agencies responsible for investigating ML/FT and associated underlying criminal activities, actively participate in international cooperation. The NTCA DGCA exchanges intelligence with its foreign counterparts by utilising all available legal instruments (both bilateral and multilateral). The NTCA DGCA is also a member of several Europol focal points through which it shares and exchanges operational information and co-ordinates cross-border investigations.

The Central Bank of Hungary (MNB)

450. The MNB as a supervisory authority is a voting member of three main EU supervisory authorities, namely the European Banking Authority, the European Securities and Markets Authority and the European Insurance and Occupational Pensions Authority. The membership in these European authorities provides a platform for the sharing of information and cooperation with other EU member states in the AML/CFT area. Furthermore, the MNB has concluded and makes use of a large number of bilateral and multilateral agreements with its foreign counterparts (currently with 97 countries and territories).

Other supervisory authorities

451. There are no regular interactions, and a very limited amount of information is exchanged between the respective supervisory authorities of the DNFBP sector and their foreign counterparts on AML/CFT issues.

452. The NTCA Department for Gambling Supervision has a mechanism for international cooperation. It provided information requested by the Greek authorities to assist them on an issue concerning the application of CDD measures during the purchase of lottery and betting tickets in Hungary.

453. Despite having adequate legal powers to engage in international cooperation on AML/CFT issues with their foreign counterparts, neither the HTLO nor the Chambers of Civil Law Notaries have ever utilised these powers in order to seek or deliver cooperation on AML/CFT supervisory matters.

General international cooperation matters

454. Largely positive feedback has been provided by other countries on the quality and timeliness of international cooperation. This is particularly the case with the HFIU, for which cooperation with some neighbouring has often been referred to by the latter as fruitful, prompt and very positive. There were some countries, however, which indicated that reminders needed to be sent to Hungary in order to expedite the execution of their MLA requests.

455. Hungary is finalising the accreditation of SIENA¹¹¹ developed by Europol which will be made available to respective law enforcement agencies. The SIENA platform enables fast and secure communication and exchange of sensitive and classified information between competent authorities in the EU and beyond.

456. With respect to the exchange of basic and beneficial ownership information of legal persons and legal arrangements, the competent authorities stated that they provide and respond to foreign requests in a constructive and timely manner, although this was not supported by any statistical evidence. However, problems identified under IO 5 with regard to the accuracy, adequacy and up-to-date nature of beneficial ownership information are also likely to impact on foreign requests for foreign cooperation on the matter.

¹¹¹ SIENA is a secure information exchange network application developed and operated by Europol.

457. Overall, Hungary has achieved a substantial level of effectiveness with Immediate Outcome 2.

TECHNICAL COMPLIANCE ANNEX

This annex provides detailed analysis of the level of compliance with the FATF 40 Recommendations in their numerical order. It does not include descriptive text on the country situation or risks, and is limited to the analysis of technical criteria for each Recommendation. It should be read in conjunction with the Mutual Evaluation Report.

Recommendation 1 - Assessing Risks and applying a Risk-Based Approach

These requirements were added to the FATF recommendations when they were last revised in 2012 and, therefore, not assessed during MONEYVAL's 3rd and 4th round assessment of Hungary which occurred prior to that date.

Risk assessment

1. **Criterion 1.1.** In 2014, the Hungarian authorities launched the NRA project whose concept note and methodology were prepared by the MNE and adopted by the AML Sub-Committee. The final product is the NRA that constitutes the basis of the knowledge of the Hungarian authorities on ML/FT risk factors and vulnerabilities. However, this document does not contain an analysis of ML/FT threats and consequences as defined by the FATF standards. The domestic methodology, involving numerous players (i.e. competent authorities and representatives from the private sector), provides for the establishment of two Working Groups (WGs), focusing on law enforcement issues and on supervisory matters respectively.¹¹² The WGs have collected from both the authorities and the private sector information, data and documents, mainly through the use of questionnaires, interviews and data reporting. The WGs have also used police force information, case studies and typologies developed by the HFIU, as well as supervisory information. The members of the WGs have analysed the information provided, detected the risk factors and assigned the level of ML/FT risks (i.e. "low", "middle" or "high"). The tables contain the summary of the risk factors and their description, as well as the classification into risk categories.
2. The risk assessment consists of the NRA with templates and tables as Annexes. The NRA gives an overall macroeconomic background and a short introduction on the financial and non-financial sector as well as details of the most relevant risks factors (e.g. the extensive use of cash, the use of straw-men and the use of domestic "phantom" companies and off-shore companies that hold current accounts at banks in Hungary). It contains the description of case studies related to those offences that, according to the Hungarian authorities, generate proceeds of crimes (e.g. "social engineering" fraud). Corruption is considered as a possible associated predicate offence. The analysis of FT is very limited, based on the adoption of UN/EU sanctions and on domestic and international cooperation on preventive side while it not focused on domestic phenomena related to the FT.
3. Although several competent authorities have been involved in the NRA project, the assessment team considers that the Hungarian authorities have not explored some relevant factors in order to properly understand the ML/FT threats, vulnerabilities and risks, as well as the context in which the latter operate. For example, the ML/FT threats have not been properly analysed using:

¹¹² Working Groups (WGs) were established as follows: i) WG for law enforcement authorities (co-chaired by the MNE and the FIU); and ii) WG for supervisory authorities (co-chaired by the MNE and the MNB). While the latter was attended by the supervisory bodies under the scope of the AML/CFT Act, including the self-regulatory bodies with supervisory functions, the members of the WG for law enforcement authorities were: the HFIU, the National Tax and Customs Administration (as investigating authority and customs guard for cash control), the Ministry of Justice, the National Police Headquarters, the Counter Terrorism Centre, the Prosecutor General's Office and the National Judicial Office.

i) evidence of ML/FT investigations, prosecutions and convictions, or intelligence and information generated by MLA; ii) information on cross-border movements of funds that might be associated with illicit activities; and iii) multiple independent sources of information (e.g. Europol reports) to explore the illegal activities in connection with the location of the country (e.g. the Balkan routes).

4. Therefore, the evaluators do not consider that the NRA includes sufficient breadth and depth about potential ML/FT threat and vulnerabilities and their consequences. The NRA failed to identify the underlying sources, causes and interdependencies of ML risks (cross-cutting issues) that are essential in determining the nature and level of risks. The classification and use of certain terms (“threats”, “vulnerabilities” and “risks”) raises some concern about the sound understanding of the NRA methodology and its key concepts, as these are neither consistent with the FATF Guidance nor with the World Bank methodology. This divergence may lead to misunderstandings. The level of uncertainty is increased by the fact that the NRA does not provide any statistics (in terms of threats and vulnerabilities). In conclusion, the NRA process does not demonstrate the characteristics of a comprehensive assessment, based on a robust methodology.

5. **Criterion 1.2.** The Hungarian authorities have designated the AML Sub-Committee for the coordination, adoption and updating of the NRA.

6. **Criterion 1.3.** According to the information provided by the Hungarian authorities, the NRA shall be updated on annual basis. The NRA requires that any major risk occurring in relation to FT or any other practical experience will be reviewed and integrated immediately.

7. **Criterion 1.4.** The AML Sub-Committee has decided to provide a copy of the NRA to all the relevant competent authorities and AML/CFT supervisors involved. As regards the information provided to the private sector, the AML Sub-Committee has decided that an extract of the NRA would be provided to the service providers¹¹³, upon request submitted to the respective AML/CFT supervisors. Moreover, service providers may have access to the full contents of the NRA, based on an *ad hoc*- request submitted to the respective supervisory authorities.

Risk mitigation

8. **Criterion 1.5.** Based on the results of the NRA, the competent authorities have not yet taken any coordinated actions aimed at allocating resourcing and implementing measures to prevent and mitigate the ML/FT as identified. According to the “Working document on NRA” prepared by the MNE, the competent authorities and the AML/CFT supervisors shall inform the MNE and the AML Sub-Committee biannually on the steps taken in order to mitigate risks. Moreover, the adoption of an action plan by the government is envisaged for June 2017, following the elaboration of an official strategic plan.

9. **Criterion 1.6.** Although Hungary does not provide for any explicit exemptions from the application of the FATF Standards, the evaluators have found that the notion of non-professional trustees (which are not required to apply AML/CFT obligations) does not match with the FATF definition. Hungary has not demonstrated that the ML/FT risks associated with this category is low, as required under letter (a) of that criterion.

10. **Criterion 1.7.** The Hungarian AML/CFT regime does not require FIs and DNFBPs to take enhanced measures to manage and mitigate the risks identified by the national risk assessment, except in the cases (i.e. customers and products) foreseen by the AML/CFT Act when enhanced CDD measures shall be applied (Section 14 to 17 of the AML/CFT Act). According to Section 33 (1) of the AML/CFT Act, FIs and DNFBPs are required to prepare internal rules, which shall contain the internal procedure and rules of enhanced CDD measures. These internal rules shall refer to model rules issued by the supervisors. However, these model rules have not been amended in order to require FIs and DNFBPs to ensure that the information of the NRA is incorporated in their risk

¹¹³ Service providers are the parties obliged to comply with the AML/CFT Act.

assessments. Despite the legal requirements illustrated above, the results of the NRA have neither been used by the FIs and DNFBPs in the management of their ML/FT risks (e.g. in the AML/CFT policies, procedures and controls), nor have they been incorporated in their own risk assessments.

11. **Criterion 1.8.** Under Sections 12 and 13 of the AML/CFT Act, FIs and DNFBPs are allowed to carry out simplified CDD measures in certain instances. However, these have neither been generated by an assessment of the ML/FT risks, nor have they been evaluated against the results of the NRA for consistency purposes. The results of the NRA have thus not been used to justify the simplified CDD measures.

12. **Criterion 1.9.** As far as the financial sector is concerned, the MNB has a special unit (the Anti-Money Laundering Supervisory Division) that primarily deals with issues related to AML/CFT. The supervisory activities are based on prudential risks, where ML/FT is considered a risk component of the overall risk of the supervised entities. In the DNFBP sector, the HFIU supervises real estate agents, accountants, tax advisors and tax consultants on a risk-basis. To a certain extent, this is also the case for the NTCA Gambling Supervision Department with regard to casinos and card rooms. As far as the other DNFBPs supervisors are concerned, they have not demonstrated the adoption of a risk-sensitive AML/CFT supervision. Based on the information and documents provided, the supervision of AML/CFT compliance does not cover the requirements for FIs and DNFBPs to assess their own ML/FT risks and implementing measures for risk-mitigation as this is not a provided as a mandatory requirement under laws or other enforceable means.

13. **Criterion 1.10.** According to Section 33 (1) of the AML/CFT Act, the service providers are required to prepare internal rules, which shall contain internal procedural rules as well as rules for a risk-based approach, simplified and enhanced CDD measures. Neither this provision nor the model rules require service providers to carry out their risk assessments based on the nature and size of the business (e.g. customers, products, services and delivery channels). Moreover, there is no requirement to document and update the assessments, and to provide information on them competent authorities. However, the HFIU supports the understanding of risks of the FIs and DNFBPs with typologies and analysis of cases.

14. **Criterion 1.11.** According to the Section 33 of the AML/CFT Act, the supervisors shall approve the internal rules adopted by the service providers, in order to verify whether these contain the contents set out in the AML/CFT Act. However, there are no provisions in the legislation, regulations or other enforceable means that require FIs and DNFBPs to adopt risk mitigating measures (e.g. policies, procedures and internal controls) based on the risks identified at country level and/or for certain service providers, to monitor such measures and enhance them if necessary and where higher risks are identified.

15. **Criterion 1.12.** FIs and DNFBPs are not required to carry out their own ML/FT risk assessment and to mitigate the risks identified. Service providers are not permitted to take simplified measures when lower risks occur. According to Section 12 (1), simplified CDD measures cannot be applied when there is any information, fact or circumstance indicating ML and FT risks.

Weighting and Conclusion

16. Hungary launched its first NRA in 2014 with a domestic methodology. The process mainly consisted in the acquisition of information from representatives of several authorities and some representatives of the private sector. This information has been analysed and assessed by members of the WGs in terms of risks. The NRA illustrates the outcome of this project. However, the Hungarian authorities have not explored certain relevant factors in order to properly understand the ML/FT risks. This concerns, in particular, domestic and foreign ML/FT threats, ML/FT vulnerabilities related to certain products, customers and FIs/DNFBPs (e.g. “stability savings accounts” or professional/non-professional trustees). Following the adoption of the NRA, no coordinated measures have yet been adopted (i.e. a national AML/CFT strategy and action plan) in

order to address the risks identified. Service providers are neither required to undertake their own risk assessment nor to incorporate the findings of the NRA into already existing assessments. FIs and DNFBPs are neither obliged to take enhanced measures to manage and mitigate the ML/FT risks identified at national level (where appropriate), nor to address the risks identified by their own risk assessments. **Hungary is Partly Compliant with Recommendation 1.**

Recommendation 2 - National Cooperation and Coordination

17. In the 4th Round Mutual Evaluation Report, Hungary was assessed as “compliant” with the requirements set forth under former R.31 (see paras. 762 to 785 of that report). Nonetheless, the evaluators indicated in that report that there were insufficient formal co-ordination agreements in place (e.g. regarding information sharing) between the AML/CFT supervisory bodies, inviting competent authorities to consider deriving a formal agreement for cooperation and co-ordination on supervisory matters or avail themselves of the AML Sub-Committee, in order to take up this task.

18. **Criterion 2.1.** The AML Sub-Committee is the main policy making body on AML/CFT matters, chaired by the Head of the Department for International Finance of the MNE. Although the AML Sub-Committee has adopted the NRA and drafted the respective “working document”, the findings of the NRA have not yet been used as a basis for any (coordinated) AML/CFT national policy and strategy and to prioritise measures based on an action plan.

19. **Criterion 2.2.** The body in charge of coordinating the national AML/CFT policies, whose meetings are held 4-5 times per year, is the AML Sub-Committee. The main responsibilities of the AML Sub-Committee are: i) to harmonise the tasks deriving from international and EU level requirements; ii) to prepare the mandate to be presented in international fora as regards AML/CFT issues; iii) to coordinate and contribute in the implementation of financial regulatory tasks of the Government in the field of AML/CFT; and iv) to monitor the identified trends, criminal acts, cases new methods, and prepare the NRA. The members of the AML Sub-Committee are the MNE (4 departments), MoI, MoJ, MoFAT, the National Tax and Customs Administration, Hungarian Trade Licensing Office and the Permanent Representation to the EU. Permanent invitees are representatives from the MNB, the Prosecution Service of Hungary, as well as the National Office for the Judiciary. The representatives of the self-regulatory bodies (which perform AML/CFT supervisory functions) are also invited to attend the meeting, as appropriate (i.e. based on the items of the agenda).

20. **Criterion 2.3.** The mechanism for cooperation at policymaking level are mainly dealt with in the context of the AML Sub-Committee. The MNE has drafted a working document on risk-mitigating measures which supports the competent authorities in the adoption of proper actions in the light of the findings of the NRA. However, the overall coordination and the cooperation amongst competent authorities for the development and implementation of AML/CFT policies and activities is taking place only at a marginal level.

21. At the operational level, although the coordination among the relevant competent authorities is achieved in several different ways, these initiatives do not encompass the issues which emerged from the NRA.

22. According to section 26 of the AML/CFT Law, the HFIU is authorised to disclose the results of the financial analysis to LEAs (e.g. police, investigative authority of NTCA, national security services, public prosecutors) for the purposes of combating ML/FT as well as for the prevention, detection and investigation of the listed criminal offences. Moreover, the HFIU cooperates with the NTCA under the Cash Control Act.

23. Investigative activities are covered by the ACP Act and NTCA Act that permit the establishment of joint task forces (section 37 of the ACP Act) and cooperation among LEAs at the preventive and investigative stage (section 14 of the NTCA Act).

24. On AML/CFT supervision, model rules have been issued by the respective supervisory authorities and bodies in collaboration with the HFIU and in agreement with the MNE. These are considered non-binding recommendations and shall support service providers in the drafting of internal regulations. However, no initiatives have been taken to amend these rules in light of the finding of the NRA.

25. Agreements and consultations are in place between the HFIU and the AML/CFT supervisory authorities and bodies (e.g. MNB, the Chamber of Hungarian Auditors, the Hungarian Trade Licensing Offices and the Department of Gambling Supervision).

26. **Criterion 2.4.** No information has been provided on cooperation between national authorities or any co-ordination mechanisms with a view to combat the financing of weapons of mass destruction.¹¹⁴

Weighting and Conclusion

27. No initiatives have been adopted to transpose the risks and the vulnerabilities identified into a (coordinated) national AML/CFT policies and strategies. For these purposes, the AML Sub-Committee might be the proper venue, considering the number and the relevance of the authorities involved. Although the MNE has drafted a working document on risk-mitigating measures which supports the competent authorities in the adoption of proper actions in the light of the findings of the NRA, the coordination and the cooperation among competent authorities for the development and implementation of AML/CFT policies and activities is marginal. Despite the presence of legal provisions that allow cooperation and the existence of concrete cases, no initiatives have been adopted to transfer the findings of the NRA into the activities of the competent authorities (e.g. re-drafting of the model rules based on risk identified, decisions on allocating resources, adoption of enhanced measures of higher risk scenarios). No coordination and cooperation mechanisms are in place for the financing of proliferation of weapons of mass destruction. **Recommendation 2 is rated Partially Compliant.**

Recommendation 3 - Money Laundering Offence

28. Hungary was rated PC on the previous R. 1 and was rated C on R. 2 (money laundering offence). Since then there have been some amendments to the ML offence (Art. 399 HCC) to accommodate the following technical comments:

- Insufficient coverage of the physical elements of the ML offence
- Insufficient coverage of designate predicate offences
- Effectiveness concerns

29. **Criterion 3.1.** Art. 399 HCC now sufficiently covers all physical elements, with the addition of the conversion or transfer for the purpose of helping a person who is involved in the commission of money laundering to evade the consequences, the purpose of disguising the illicit origin, as well

¹¹⁴ After the on-site visit, representatives of the Authority of Defence Industry and Export Control have been designated as permanent delegates of the AML-Subcommittee. The representatives of the MNE took part in the meeting of the Informal Inter-ministerial Committee on Non-Proliferation in June 2016.

as the act itself of concealing or disguising the illicit origin. Third party acquisition, possession and use are also covered (Art. 399, para. 2 HCC).

30. **Criterion 3.2.** The ML offence is an “all crimes” offence, covering all criminal offences apt to generate illegal proceeds, thus including all designated predicate offences (see the 4th round MER). There remains however an issue with the full coverage of all aspects of the FT offence (as required by the international standards) as a predicate (see R. 5).

31. **Criterion 3.3.** Hungary does not apply a threshold approach.

32. **Criterion 3.4.** The ML offence extends to all kinds of direct and indirect proceeds (“object”). Art. 402 HCC clarifies the broad definition of “object”.

33. **Criterion 3.5.** The terminology used in Art. 399 HCC refers to a “punishable act”, thus excluding any requirement of a previous conviction.

34. **Criterion 3.6.** Subject to the dual criminality principle, it is irrelevant where the predicate was committed.

35. **Criterion 3.7.** The HCC ML offence is primarily a third party offence. Laundering by the author of the predicate offence is covered by Art. 399(3) HCC, but only to the extent that the illegal proceeds are used in business activities or in financial activities or services in order to conceal or disguise the illegal origin. This falls short of the FATF standard requiring the criminalisation of simple acquisition, possession and use of illegal proceeds. The “*non bis in idem*” or double jeopardy exception, invoked by the Hungarian authorities, is only pertinent in the circumstances of acquisition and possession, as by committing the predicate offence one simultaneously acquires and possesses. As such this conduct does not imply a separate act. This is not the case when the predicate offender uses the illegal proceeds, as this requires a new act or further conduct not coinciding with the original offence. Furthermore, making the use by the predicate offender punishable cannot be considered a form of self-incrimination.

36. **Criterion 3.8.** The principle of free evidence with the sovereign appreciation of the judge of the evidentiary value of the elements submitted in court, including the moral element, is a fundamental concept in countries with a civil law tradition, such as Hungary.

37. **Criterion 3.9.** The sanctions applicable to natural persons convicted for ML (from 1 year up to 5 years imprisonment, from 2 to 8 years with aggravating circumstances) appear proportionate and dissuasive. They are equivalent to other comparable financial offences, such as budget fraud. Art. 33, para. 1 HCC provides for the possibility of additionally imposing fines and other forms of punishment.

38. **Criterion 3.10.** As a rule, legal persons are subject to criminal sanctions (fines) if there is a link to a natural person committing the offence with the aim of creating benefit for the legal person or with the offence merely resulting in such benefit, or if the criminal offence was committed by a representative with the use of the legal person (Art. 2 Act CIV 2001). Such mandatory link with the prosecution of a natural person being controversial, Art. 3 of that act now provides for criminal liability even when the perpetrator cannot be identified or his liability cannot be established for some reason, whenever the legal person benefited from or was used in the offence. Other possible sanctions consist of the dissolution of the legal person, restriction of its activities and civil liability for the damages caused.

39. **Criterion 3.11.** Art. 10 – 14 HCC provide for appropriate offences ancillary to the ML offence: attempt, participation, instigating and complicity (aiding and abetting). The association or conspiracy to commit ML is covered by Article 399, para. 5 HCC.

Weighting and Conclusion

40. Overall, the amendments to Art. 399 HCC have brought the offence in line with the international standards. There are still some deficiencies in the coverage of the predicate offences (i.e. concerning all aspects of the internationally required FT-offence), self-laundering (use of illegal proceeds). **Recommendation 3 is rated Largely Compliant.**

Recommendation 4 - Confiscation and provisional measures

41. Hungary was rated LC on the previous Recommendation 3 (confiscation and provisional measures deficiency related to effectiveness (affected by lack of detailed and meaningful statistics on all aspects of confiscation)). Since then, Hungary has adopted a new criminal code (CC) in 2012 (which, as in the previous regime, differentiates between confiscation and forfeiture) and modified the ACP Act, providing for a comprehensive and solid seizure and confiscation system.

42. **Criterion 4.1.** Confiscation and forfeiture apply to all criminal offences, including ML, FT and terrorism-related offences. Art. 72.1 HCC imposes confiscation of the instrumentalities used or intended to be used (a), the product of the offence (b), the object (*corpus delicti*)¹¹⁵ (c), and illegal or dangerous objects (d). It is mandatory, except in certain circumstances where it cannot be ordered (Article 72 (3), (5), (7) HCC). Confiscation is discretionary if considered disproportionate. However, such discretion is overridden if the exception is excluded by an international legal obligation (e.g. the Vienna and Palermo Conventions), if the offence was committed in the context of a criminal organisation or if it is related to certain specific offences (Art. 73 HCC). Confiscation/forfeiture can be imposed even when the perpetrator cannot be punished (Article 72 (4) or Article 331 (4) ACP). Forfeiture applies to proceeds and substitute assets (Art 74.1.a and d).

43. Through reference to “assets that were supplied or intended to supply for the purpose of committing a criminal offence in order to provide the conditions required for or facilitating it”, the HCC covers also property used in, or intended or allocated for use in the financing of terrorism and terrorist-related offences. Art. 75 provides for forfeiture of property of corresponding value. Confiscation and forfeiture apply also to objects/assets held by third parties. In the case of forfeiture, it needs to be established that the assets have served the enrichment of the third party.

44. **Criterion 4.2. Criterion 4.2.(a):** The competent investigative authorities have broad powers to trace and identify property subject to confiscation, which include powers to obtain bank and other confidential information, and information held by the tax authorities (without the consent of the prosecutor), or other personal information or information subject to business secret (with the consent of the prosecutor, Art. 178A ACP). Powers to request information extend to both private and public authorities, including the possibility to query the FIU, pursuant to Art. 26, para. 4 of the AML/CFT Law, which triggers reactive dissemination that can also contribute to identifying and tracing property. Experts can be called in by the investigating authority, the prosecutor or the acting court to give an expert opinion should there be a need to evaluate the property. The concept of pro-active parallel financial investigations in relation complex or major proceeds-generating offences is neither institutionalised nor put in practice.

¹¹⁵ Such as money laundered in a stand-alone ML offence.

45. *Criterion 4.2.(b)* Provisional measures are seizure and sequestration. Art. 151 ACP provides that the court, prosecutor or investigating authority can order the seizure of objects (which includes information system, data medium containing data stored by such a system, or data, but not real estate), that have evidential value (2.a) or may be subject to a confiscation or forfeiture measure as provided for by the law (2.b), thus including equivalent value seizure. Sequestration can be ordered by the court (or, in urgent cases, by the prosecutor or investigative authority) when, *inter alia*, forfeiture may be ordered on the objects, property rights, claim or money managed upon a contract (Art. 159). It extends to real estate, if subject to confiscation. In addition to the above, the AML/CFT law (Art. 24) provides for the suspension of transactions, which can be triggered by the service providers, as well as by the HFIU. The HFIU can order a suspension of a transaction, on the basis of its own analysis, on the basis of the request of a foreign FIU and on the basis of the request of the investigating authority, public prosecutor.

46. *Criterion 4.2.(c)* The public prosecutor is entitled to bring action to eliminate a violation of public interest, requesting both the annulment of the contract as well as the application of the legal effects of such nullity. Based on paragraphs (2)-(3) of Section 53/A of the Act CLXXVII of 2013 on the transitional and authorizing provisions related to the entry into force of Act V of 2013 on the Civil Code, the public prosecutor, with reference to the public interest violation, may bring action for the establishment of the nullity of the contract if, in relation to certain specific criminal offences, for instance the assets of the accused have been transferred with gross disparity in the values exchanged, free of charge, or to a relative, within one year prior to the beginning of the authority procedure forming the basis of the launching of the criminal procedure, or if the right to dispose or the right of exploitation has been limited in a way that results in a significant decrease of the value of the assets.

47. *Criterion 4.2.(d)* Beside the tracing and detection of property as part of the investigation into the basic offence, an asset recovery procedure is now in place since 1 July 2013 to secure objects or assets whose confiscation/forfeiture upon court order did not lead to a result (Art. 554/P ff ACP). The asset recovery authority (ARO) acts on request of the prosecutor or in cooperation with the investigating authorities.

48. *Criterion 4.3.* The rights of *bona fide* third parties are protected by law (Art. 74, para. 5 HCC and Art. 156, para. 3 ACP).

49. *Criterion 4.4.* Management of frozen or seized assets is not specifically organised. The authorities effectuating the conservatory measures are responsible for storing and managing the seized property. The court may order the pre-sale of those assets deterioration or decreasing value (Art. 156 ACP).

Weighting and Conclusion

50. The legal framework of the seizure and confiscation/forfeiture regime is comprehensive and covers all relevant items or assets, including confiscation of the money laundered in a stand-alone ML situation and equivalent value seizure. Detection and management of criminal assets are organised on an *ad hoc* basis by the investigating authorities. Parallel financial investigations do not figure in the Hungarian law enforcement practice. **Recommendation 4 is rated Compliant.**

Recommendation 5 - Terrorist financing offence

51. Hungary was rated PC on the previous SRII (criminalisation of terrorist financing) on the basis of the following technical deficiencies:

- Financing of an individual terrorist for any purpose not covered;
- Incrimination of financing of terrorist organisations' day to day activities doubtful;
- Collection of funds for terrorist organisations' day-to-day activities not covered;
- No definition of "funds";
- 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.

52. **Criterion 5.1.** FT is now criminalised according to Art. 314 and 318 HCC. These provisions have done away with some of the deficiencies established in the previous round. Art. 314 (1) and (4) HCC enumerate the criminal acts considered to be terrorist in nature, if committed with the purpose of disrupting or compelling a governmental agency or international organisation, to commit or abstain from some act, or intimidating the public. This unduly merges the financing of the specific treaty terrorist activity (Art. 2.1a FT Convention) with the generic FT offence of Art. 2.1b FT Convention. These forms of FT should be criminalised separately, as unconditional financing of the treaty offences and as a generic and purpose-bound FT offence ("any other act") respectively.

53. **Criterion 5.2.** The (conditional) terrorist activity listed in Art. 314(4) HCC includes the offences covered by the treaties annexed to the FT Convention, with the exception of the activity enumerated in Art. 2 (a) (seizing control) and (c) (destruction/damaging) of the 1988 Protocol for the suppression of unlawful acts against the safety of fixed platforms on the Continental Shelf. On the other hand, the Safety of Civil Aviation Treaty seems sufficiently covered. The simple financing of an individual terrorist as such is now covered by Art. 318(1) HCC as "support", which does not include the collection of funds for that purpose. The same applies for the financing of a terrorist organisation according to Art. 318(2) HCC ("supports the activities"), which likewise does not include the collection of funds. Finally, Art. 318(1) in its present formulation does not cover the financing of travel of individuals to other States for perpetrating, planning of, or participation in, terrorist acts or for receiving or providing terrorist training.

54. **Criterion 5.3.** Art. 318 (3) HCC adequately defines "financial assets" with an express reference to the Council Regulation No. 2580/2001 of 27 December 2001.

55. **Criterion 5.4.** The formulation of Art. 318 HCC implies that it is not required that the funds were actually used in terrorist activity or linked to a specific terrorist act.

56. **Criterion 5.5.** The principle of free evidence with the sovereign appreciation of the judge of the evidentiary value of the elements submitted in court, including the moral element, is a fundamental concept in countries with a civil law tradition, such as Hungary.

57. **Criterion 5.6.** The sanctions on FT of imprisonment of 2 to 8 years for an individual, and 5 to 10 years in the case of a terrorist group seem sufficiently proportionate and dissuasive. Moreover, Art. 33 (1) HCC provides for the possibility of additionally imposing fines and other forms of punishment.

58. **Criterion 5.7.** As a rule, legal persons are subject to criminal sanctions (fines) if there is a link to a natural person committing the offence with the aim of creating benefit for the legal person or with the offence resulting in such benefit anyhow, or if the criminal offence was committed by a representative with the use of the legal person (Art. 2 Act CIV 2001). Such mandatory link with the prosecution of a natural person being controversial, Art. 3 of that act now provides for criminal liability, even when the perpetrator cannot be identified or his liability not established for some reason, whenever the legal person benefited from or was used in the offence. Other possible sanctions consist of the dissolution of the legal person, restriction of its activities and civil liability for the damages caused.

59. **Criterion 5.8.** The relevant ancillary offences are covered: attempt (Art. 10 HCC); participation (Art. 11 and 14 HCC); organising or directing (Art. 14 HCC) and contributing to the commission by a group of persons (criminal organisation – Art. 91, 321 and 459, para. 1 HCC).

60. **Criterion 5.9.** Art. 399 HCC being an all-crimes offence, FT is a predicate to ML.

61. **Criterion 5.10.** The location of the financier does not play a role, as long as the Hungarian courts have jurisdiction over the FT activity.

Weighting and Conclusion

62. Although the authorities have made efforts to meet the lacunae highlighted in the 4th round MER, there remain some formal - but essential – deficiencies, that may even have an effectiveness impact, particularly concerning the full and correct coverage of the activities applicable to FT.

Recommendation 5 is rated Partially Compliant.

Recommendation 6 - Targeted financial sanctions related to terrorism and terrorist financing

63. In its 4th MER Hungary was rated PC with former SRIII. The main technical deficiencies identified were: lack of awareness in the non-banking sector of the UN and EU lists; absence of national procedures for delisting of designated persons and unfreezing of funds or other assets; short deadline for freezing transactions (assets) by the service providers; absence of the evaluation system of requests to freeze the funds of EU internals; fragmented communication of actions taken under freezing mechanisms (both between authorities and with the private sector); absence of designed measures for some of the supervisory authorities to monitor implementation of TFS by service providers, and of the capacities to sanction in the event of non-compliance. Since then, Hungary took steps to resolve indicated deficiencies, *inter alia*, amended the AML/CFT legislation and initiated further awareness-raising activities.

Identifying and designating

64. **Criterion 6.1.** Hungary implements targeted financial sanctions pursuant to UNSCRs 1267/1989 and 1988 principally through Common Position 2002/402/CFSP, Council Decision 2011/486/CFSP, Council Regulations 881/2002 and 753/2011.

65. **Criterion 6.1(a)** Hungary has not established an authority competent for proposing persons or entities to the 1267/1989 and 1988 Committee. As a rule the Ministry of Foreign Affairs and Trade (MoFAT) as a coordinating body is responsible for the official flow of information to the relevant UNSC Committee through the Permanent Mission of Hungary to the United Nations.

66. *Criterion 6.1.(b)* Hungary has not established a formal mechanism for identifying targets for designation, based on the criteria set out in the relevant UNSCRs.

67. *Criterion 6.1.(c)* There are no special rules on the evidentiary standard for making proposal for designation. However, as indicated by the authorities, general requirements for the evidentiary standard of proof of “reasonable grounds”, set either under the criminal or administrative national procedures, would be applied when making a decision. Any proposal for designation does not seem to be conditional upon the existence of criminal proceedings.

68. *Criterion 6.1.(d)* There was no designation proposal made by Hungary pursuant to the UNSCR 1267/1989 and 1988 sanctions regimes. Hence it has not had to put into practice the procedures and standard forms for listing adopted by the 1267/1989 or 1988 Committees¹¹⁶.

69. *Criterion 6.1.(e)* Hungary indicated that in case of submission of a proposal for designation pursuant to the UNSCR 1267/1989 and 1988 sanctions regimes, as a matter of principle, as much relevant information as possible will be provided. Disclosure of the status as a designating state would be decided on a case-by-case basis. However, this approach has not been tested in practice¹¹⁷.

70. **Criterion 6.2.** Hungary implements UNSCR 1373 principally through Common Position 2001/931/CFSP and Council Regulation 2580/2001.

71. *Criterion 6.2.(a)* At European level the EU Council is the competent authority for making designations according to EU Council Common Position 2001/931/CFSP and EU Council Regulation 2580/2001. Although the MoFAT is a coordinating body, Hungary has not formally identified a competent authority for designation of persons or entities either at its own initiative or at the request of another country.

72. *Criterion 6.2.(b)* - At European level, identification of targets for designation is handled by the EU Common Position 2001/931 /CFSP. EU Council considers submissions from the competent authorities of the Member states, third States¹¹⁸ and designations made by the UNSC. At the national level Hungary has not established a formal mechanism for identifying targets pursuant to UNSCR 1373.

73. *Criterion 6.2.(c)* Verification of the reasonable basis of received requests is handled at the European level by the EU Council “*Working Party on implementation of Common Position 2001/931/CFSP on the application of specific measures to combat terrorism*” (the CP 931 Working Party) which examines and evaluates the information to determine whether it meets the set criteria¹¹⁹. At the national level, there does not seem to be an explicit arrangement for the verification of designation requests received from third countries.

74. *Criterion 6.2.(d)* The CP 931 Working Party assesses whether the request is sufficiently substantiated and meets the designation criteria set forth in Common Position 2001/931/CFSP, and takes a decision to make a recommendation for further adoption by the EU Council, based on

¹¹⁶ In 2011, there was one entity designated under the UNSC 1970 (2011) sanctions regime. However, as there was no significant progress in the Sanctions Committee's decision making process until December 2012, Hungary submitted an identical listing proposal to the EU which was successfully accepted, and the proposed entity was listed under the EU sanctions regime.

¹¹⁷ Please see the previous footnote for Criterion 6.1.d).

¹¹⁸ <https://www.consilium.europa.eu/uedocs/cmsUpload/st10826-re01en07.pdf>

¹¹⁹ The criteria specified in CP 2001/931/CFSP are consistent with the designation criteria in resolution 1373.

reliable and credible evidence, without it being conditional on the existence of an investigation or conviction (therefore based on “reasonable grounds”). There are no special rules on the evidentiary standard at the national level, however, as indicated by the authorities, general requirements for evidentiary standard of proof of “reasonable grounds” set either under the criminal or administrative national procedures would be applied when making a decision.

75. *Criterion 6.2.(e)* At the European level, there is no specific mechanism that allows for asking non-EU member countries to give effect to the EU list. In practice, some countries (notably those in the process of becoming EU members) are invited to abide by all new CFSP decisions. It is the President of the Council (the member State that chairs most of the meetings of the Council, including those of the CP 931 Working Party) that contacts the country through the Secretariat of the Council. All designations must be sufficiently substantiated to identify the person to be designated, thus facilitating the exculpation of those bearing the same or similar names (Art. 1(5), 2001/931/CFSP). At the national level, there is no formalised procedure under which Hungary could ask another country, including the EU countries, to give effect to freezing measures undertaken in Hungary.

76. *Criterion 6.3.(a)* At the European level, all the EU member States are required to share with one another all the pertinent information in their possession in application of the European regulation on the freezing of assets. They must work together by mutual agreement, through police and legal co-operation mechanisms in criminal matters, to achieve the most extensive level of assistance possible to prevent and combat terrorist acts (Reg. 881/2002 Art. 8; Reg. 754/2011, Art. 9; 2580/2001, Art. 8; and CP 2001/931/CFSP, Art. 4). At national level, there are no further specific legal authorities and procedures or mechanisms, outside the genuine law enforcement investigation means, to collect or solicit information to identify persons and entities that, based on reasonable grounds, or a reasonable basis to suspect or believe, meet the criteria for designation.

77. *Criterion 6.3.(b)* In line with the EC Regulation 1286/2009, the designations take place without prior notice (*ex parte*) to the person or entity identified. The Court of Justice of the EU confirmed the exception to the general rule of prior notice of decisions, so as to avoid compromising the effectiveness of the freezing measure. There is no further regulation on the national level on the prior notice matter.

Freezing

78. *Criterion 6.4.* Hungary applies the targeted financial sanctions through the directly applicable EU Council Regulations implementing freezing procedure by the FRM Act. The European procedure implies a delay between the date of a designation by the UN and the date of its transposition into European law. Consequently, targeted financial sanctions are not implemented “without delay”, which is not compliant with UNSCRs 1267/1989 and 1988. A delay between the date of designation by the UN and the date of its transposition into European law arises systematically. An expedited procedure has been adopted by the Commission for implementation of new listings required under the UNSCR 1267/1989 regime transposed under EU Regulation 881/2002. This expedited procedure ensures that new listings to come into effect faster.¹²⁰ Even

¹²⁰ See the Commission Implementing Regulation 2016/307 of 3 March 2016 amending for the 243rd time Council Regulation (EC) No 881/2002 imposing certain specific restrictive measures directed against certain persons and entities associated with the Al Qaida network, and the successor Regulations.

though EU Regulations are directly applicable in the member States, Hungary took steps to develop a mechanism for the prompt communication of the UNSCR targeted financial sanctions to relevant authorities, service providers and other parties, before their transposition into European law (please see criterion 6.5). Although the AML/CFT Act does not contain any explicit formal obligation to implement the UN targeted financial sanctions directly, service providers may consider such information as indicating terrorism financing and can suspend the execution of transaction (Section 24)¹²¹.

79. Targeted financial sanctions in application of UNSCR 1373 are implemented through EU Council Regulation 2580/2001. Once the decision is taken by the EU Council it is immediately implemented in Hungary. As a result, these sanctions are implemented “without delay”. As for the freezing measures decided at the national level and whether these are to be implemented immediately without delay, there is no information available, as Hungary does not have such formal designation/listing procedure and has not have any designations at its own initiative or at the request of another country yet .

80. **Criterion 6.5.** According to the *Government Decree 485/2015 (XII. 29.) on the powers and competence of the bodies of the NTCA*, the HFIU is designated as the a competent authority responsible for the implementation and enforcement of the targeted financial sanctions under the EU framework, based on the provisions of the FRM Act.

81. Criterion 6.5.(a) Pursuant to UNSCRs 1267/1988 and 1989, European regulations establish the obligation to freeze all the funds and economic resources belonging to a person or entity designated on the European list. It is apparent, however, that because of the delays in the transposition of UN designations (see C.6.4), freezes are not implemented “without delay”, and this delay can result in *de facto* prior notice to the persons or entities in question.

For designations under UNSCR 1373, it should be noted that the regulations are self-executing in all member States and that no prior notice is to be given to the designated persons or entities. EU nationals are not subject to the freezing measures set forth in Regulation 2580/2001. They are only subject to police and legal co-operation measures in criminal matters. Art. 75 of the Treaty of Lisbon (2007) allows for the freezing of assets of designated EU nationals, but the EU has not yet implemented this provision.

Under the FRM Act, in case of a match with the EU list of designated persons subject to TFS, service providers are required to suspend the execution of the transaction and to submit a report to the HFIU without delay. If the individual or organisation subject to TFS has economic resources registered in an asset registration, the authority operating the asset registration shall submit a report to the HFIU without delay. In case the HFIU concludes that the funds concerned are covered by the restrictive measures, it informs without delay the competent court. The latter is authorised to order freezing in a non-trial legal procedure allowing for a fast decision-making process. The court will not order freezing if it “concludes that the conditions of the freezing do not exist”. There are no further provisions to clarify the court powers under the FRM Act. However, the authorities provided extracts of an “Official justification”-document to the FRM Act which states that “[i]mplementation of TFS must not depend on any discretionary decision by any national authority”. Although it can be assumed that the domestic courts would in principle decide in accordance with the respective EU regulations, the assessment team takes the view that this

¹²¹ Please see the IO 10 on effectiveness of implementation of the set practice.

document cannot fully meet certain concerns about this procedure, as it appears to have the mere status of an explanatory memorandum. As such, it cannot override the explicit wording of the FRM Act, which gives the domestic courts (which are independent) the power to exercise their own discretion to conclude whether or not the conditions for freezing are met. In case the service provider receives updates on UN sanctions list before transposition into the EU legal framework under the AML/CFT Act (Section 24(1)), it may consider this as information indicating terrorism financing, suspend the execution of the transaction order, and submit a report to the HFIU. Under the AML/CFT Act (Section 26(1)), the HFIU is authorised to disseminate information to the police, applying a criminal procedure, which however does not seem to ensure a permanent freezing of funds. On the national level prohibition of the prior notice to the designated persons or entities is widely covered under the Section 27 of the AML/CFT Act.

82. *Criterion 6.5.(b)* Pursuant to UNSCR 1267/1989 and 1988, the freezing obligation extends to all funds/other assets that belong to, are owned, held or controlled by a designated person/entity. The obligation to freeze the funds or assets of persons and entities acting on behalf of, or at the direction of, designated persons or entities is covered by the notion of “control” in Regulations 881/2002, and 753/2011.

With regard to UNSCR 1373, the freezing obligation does not cover a sufficiently broad range of assets under the EU framework - EU Regulation 2580/2001.

83. *Criterion 6.5.(c)* At the European level and in compliance with the relevant UNSCRs, the EU Regulations 881/2002, 753/2011 and 2580/2001 prohibit EU nationals and all other persons or entities present in the EU from making funds or other economic resources available to designated persons or entities. At the national level, according to the FRM Act upon submission of the report to HFIU the service providers must refrain from carrying out the transaction¹²², and authority operating an asset registration - carrying out the request for registration or request for registration of changes¹²³. Service providers or authorities operating the asset registration are allowed to carry out the transaction if no feedback from the HFIU is received within the time limit defined in the FRM Act, or if the HFIU confirms that there are no grounds for freezing. It is prohibited to make funds or economic resources available to the designated persons in case there is a court order on freezing of funds or other assets.

84. *Criterion 6.5.(d)* Designations decided at EU level are published in the Official Journal of the EU. At national level the FRM Act contains the relevant implementation provisions related to financial and asset-related restrictive measures based on these aforementioned EU regulations such as freezing of funds and economic resources ordered and prohibition of making funds or economic resources available. In the interest of the proper and prompt implementation of the sanctions ordered both by the EU and the UN, the AML Sub-Committee has established the following procedure:

85. The Hungarian Permanent Representation to the EU, and Permanent Representation to the UN conduct ongoing monitoring of the activities of the relevant EU working groups¹²⁴ and UNSCs,

¹²² Actions shall not be carried out within 2 working days in case of domestic transaction, and 4 working days in case of foreign transactions. The timeframe can be extended by the HFIU for additional 3 working days.

¹²³ Actions shall not be carried out within 3 working days. The timeframe can be extended by the HFIU for additional 3 working days.

¹²⁴ The Working Party of Foreign Relations Counsellors (RELEX) and other committees and working groups dedicated to financial or property related restrictive measures in the EU framework.

promptly updating the MoFAT and the MNE on the amendments to the sanctions lists. . The MNE immediately communicates information to the supervisory authorities laid down in Section 5 of the AML/CFT Act, the authorities operating property registration, the HFIU and TEK. The supervisory agencies and HFIU immediately publish the change on their websites and, simultaneously, the supervisory agencies immediately electronically disseminate information to the interest representation bodies, regional organisations of the service providers and, if feasible, all service providers.

86. The HFIU - as the supervisory authority of accountants, tax advisors, tax consultants and real estate agents - sends a notification via e-mail to the representing bodies of the service providers subject to the HFIU's supervision. In order to improve the efficiency of the distribution of the relevant information, new points of contact have been designated in recent years.

87. There are guidelines and model rules issued by the supervisory bodies for the service providers, containing rules for the implementation of targeted financial sanctions. Training-seminars and consultations to the service providers are organized on implementation of the TFS regularly.

88. *Criterion 6.5.(e)* Within the EU framework, the natural and legal persons shall immediately provide all information that would facilitate compliance with the relevant EU regulation (881/2002, 753/2011 and 2580/2001) to the competent authorities of the member States where they are resident or located, and, directly or through these competent authorities, to the EU Commission.

89. The FRM Act provides that, if an individual or an entity is subject to financial restrictive measures, all service providers and authorities operating asset registration are required to inform the HFIU without delay, whether this individual or entity has funds or other assets in Hungary. The HFIU examines these reports and if the funds concerned are covered by the restrictive measures, it informs without delay the competent court which orders freezing in a non-trial legal procedure. In addition, concerning the exchange of information the FRM Act requires the MNE to communicate information on asset freeze to the Member States and the EU Commission.

90. Before transposition of the updates on UN sanctions list into the EU legal framework, under the AML/CFT Act information on designated persons and entities can be considered as information indicating terrorism financing. In line with the AML/CFT Act (Section 24) service provider suspends the execution of a transaction order, and submits a report to the HFIU for the further actions (Section 26).

91. The reporting obligation of attempted transactions is covered under the FRM Act (Section 10) and AML/CFT Act (Section 23).

Criterion 6.5.(f) According to EU regulations (Art. 6 of 881/2002, Art. 7 of 753/2011), and AML/CFT Act (Section 24) if acting in good faith, natural or legal person, group or entity or its directors or employees shall not be held liable for freezing (suspension) of funds, other financial assets and economic resources, unless it is proved that the freezing was due to negligence. There are no specific measures for the protection of bona fide third parties affected by sanctions. According to the Act LIII of 1994 on Judicial Enforcement and procedures provided under the Act III of 1952 on Code of Civil Procedure, any adversely affected person acting in good faith has right to challenge the measures imposed, appealing against the Court order.

De-listing, unfreezing and providing access to frozen funds or other assets

92. **Criterion 6.6.** Hungary applies the following procedures for de-listing and unfreezing the funds or assets of persons and entities no longer meeting the designation criteria:

93. *Criterion 6.6.(a)* De-listing requests are ruled by the Government resolution adopted on December 20, 2011 No. 1444/2011 determining that the citizens and residents of Hungary as well as other entities based in Hungary shall address their de-listing requests to the focal points of the relevant UN SC Sanctions Committees directly. Similar approach i.e. direct communication for delisting requests is applied in the EU framework. The MoFAT publishes and regularly updates guidelines containing rules on application of de-listing requests both pursuant to the UN Sanctions Regimes and in the EU framework, on the government website¹²⁵.

94. *Criterion 6.6.(b)* Pursuant to UNSCR 1373, the EU Council revises the list at regular intervals. Modifications to the list under Regulation 2580/2001 are self-executing. Procedure for submission of the de-listing requests is described in Criterion 6.6 (a). As at the national level Hungary has not a separate designation procedure, it has not established a national procedure for requesting removal from domestic lists either.

95. According to the FRM Act¹²⁶, if a person or an entity no longer meets the criteria for designation, restrictive measure (freezing) shall be terminated. The HFIU shall initiate the process, a competent court shall order unfreezing in a non-trial legal procedure, informing the HFIU and the MNE. The latter shall inform the Member States and the relevant EU institutions about the actions taken.

100. *Criterion 6.6.(c)* Designated persons and entities may challenge the EU act imposing relevant sanctions by instituting proceedings (according to Art. 263, para. 4 and Art. 275, para. 2 TFEU) before the EU Court of Justice. The procedure can be applied in all cases, no matter if the designation was initiated by the EU on its own motion, or pursuant to UN sanctions. Considering that Hungary relies on the EU level designations made in line with the UNSCR 1373, there are no further national procedures set.

101. *Criterion 6.6.(d) and (e)* For designations pursuant to UNSCR 1988 and 1989, designated persons and entities are notified of their designation and the reasons, as well as its legal consequences. They have the right to request a review of the designations. At the European level, there are procedures that provide for de-listing names, unfreezing funds and reviewing designation decisions by the EU Council. At the UN level, the review can be brought before the Ombudsperson (established pursuant to UNSCR 1904 (2009)) for the examination of de-listing requests, in compliance with UNSCR 1989 and 2255, or, where applicable, before the UN Focal Point Mechanism (established pursuant to UNSCR 1730 (2006)) for UNSCR 1988. As described under Criterion 6.6 (a), interested parties may apply their requests directly to the above-mentioned EU and UN institutions.

¹²⁵ <http://www.kormany.hu/hu/kulgzadasagi-es-kulugyminiszterium/biztonsagpolitikai-es-nemzetkozi-egyuttmukodesert-felelos-allamtitkar/hirek/eu-szankcios-tajekoztato>

¹²⁶ The same mechanism is applied in case of unfreezing funds or other assets of designated persons pursuant to UNSCRs 1267/1989 and 1988.

102. *Criterion 6.6.(f)* The judicial procedures described in Criterion 6.5 (f) for protection of *bona fide* third parties rights acting in good faith apply to the unfreezing of funds or other assets of persons or entities whose name is the same as or similar to that of designated persons or entities inadvertently affected by a freeze mechanism.

103. *Criterion 6.6.(g)* De-listing and unfreezing decisions taken in accordance with European regulations are published in the Official Journal of the EU, and the updated list of designated persons and entities is published on a dedicated site. The mechanisms for communicating de-listings are similar with once described under the Criterion 6.5 (d).

104. **Criterion 6.7.** Access to frozen funds and other assets is provided for in EU Regulations 881/2002 (Art. 2a) and 753/2011 (Art. 5-6), which are directly applicable in Hungary. At the national level, relevant provisions are stipulated under the FRM Act (Sections 6 and 6/A).

Weighting and Conclusion

105. Hungary has made a serious effort to comply with the relevant UN and EU instruments on freezing of terrorist assets. There are, however, still some significant gaps in the system. In particular, Hungary has not adopted national measures to supplement the EU framework in relation to the designation of persons and entities pursuant to UNSCRs 1267/1989, 1988 and 1373. The freezing regime is based on the relevant EU Regulations, resulting in inevitable delay in implementing the UNSCR Resolutions. FRM Act is not clear on the court powers to order execution of freezing. Efforts are made by Hungary to overcome delay and directly implement UN TFS. However, applied mechanisms are not compliant with the requirements. **Recommendation 6 is rated Partially Compliant.**

Recommendation 7 – Targeted financial sanctions related to proliferation

106. R.7 sets new requirements that were not part of the previous assessment. As with the freezing of terrorist assets, introduced in R.6, targeted financial sanctions related to proliferation based on UNSCRs are mainly implemented in Hungary through directly applicable EU legislation. UNSCR 1718 concerning the Democratic People’s Republic of Korea is transposed into European law by Council Regulation 329/2007, and Council Decision 2013/183/CFSP. UNSCR 1737 concerning the Islamic Republic of Iran is transposed into European law by Council Regulation 267/2012 and Council Decision 2010/413.

107. **Criterion 7.1.** R.7 requires the implementation of targeted financial sanctions "without delay", in line with the FATF definition meaning "ideally, within a matter of hours of a designation". Although European regulations are implemented immediately in all EU member States upon the publication of decisions in the Official Journal of the EU, there are delays in the transposition into European law of UN decisions (a detailed analysis of these delays provided in R.6). However, in practice, in the case of targeted sanctions relating to proliferation, the risks are to some extent mitigated, because the EU applies sanctions to a larger number of entities that are not concerned by a UN designation, and in some cases is ahead of UN. Moreover, the European procedure for prior authorisation of transactions with Iranian entities also allows authorities to refuse authorisation for any transaction with entities designated by the UN but not yet designated at the European level.

108. At the national level, Hungary ensures implementation of freezing requirements in accordance to FRM Act (further details are provided under the Criteria 6.4 and 6.5). Hungarian

authorities are of the view that the time span between designation and transposition into European law can be covered in practice by application of the suspension mechanisms stipulated under the AML/CFT Act (Section 24). However, specific reference to “information, fact, circumstance indicating terrorism financing” means that, under the AML/CFT Act, service providers are not empowered to suspend funds related to proliferation financing.

109. **Criterion 7.2.** According to the *Government Decree 485/2015 (XII. 29.) on the powers and competence of the bodies of the NTCA*, the HFIU is designated as the competent authority responsible for the implementation and enforcement of the targeted financial sanctions¹²⁷ under the EU framework, based on the provisions of the FRM Act. Implementation rules laid down in the FRM Act are also applicable to TFS-related proliferation of weapons of mass destruction and its financing.

110. *Criterion 7.2.a)* European regulations are applicable to all natural persons who are EU citizens and to all legal persons established or formed under the law of a Member State or associated with a commercial transaction carried out in the EU (Regulation 267/2012, Art. 49 and Regulation 329/2007, Art. 16). The freezing obligation is activated upon publication of the decisions and regulations in the EU Official Journal. The inevitable delays in transposition raise the question of compliance with the obligation to execute freezing measures “without delay” and “without prior notice”.

111. Under the FRM Act, in case of a match with the EU list of designated persons subject to TFS, service providers are required to suspend the execution of the transaction and to submit a report to the HFIU without delay. If the individual or organisation subject to TFS has economic resources registered in an asset registration, the authority operating the asset registration shall submit a report to the HFIU without delay. In case the HFIU concludes that the funds concerned are covered by the restrictive measures, it informs without delay the competent court. The latter is authorised to order freezing in a non-trial legal procedure allowing for a fast decision-making process. The court will not order freezing if it “concludes that the conditions of the freezing do not exist”. There are no further provisions to clarify the court powers under the FRM Act. However, the authorities provided extracts of an “Official justification”-document to the FRM Act which states that “implementation of TFS must not depend on any discretionary decision by any national authorities”. Although it can be assumed that the domestic courts would in principle decide in accordance with the respective EU regulations, the assessment team takes the view that this document cannot fully meet certain concerns about this procedure, as it appears to have the mere status of an explanatory memorandum. As such, it cannot override the explicit wording of the FRM Act, which gives the domestic courts (which are independent) the power to exercise their own discretionary powers to conclude whether or not the conditions for freezing are met.

112. As indicated above, the AML/CFT Act does not contain provisions on CPF matters.

113. *Criterion 7.2.b)* Within the EU framework, the freezing obligation applies to all types of funds¹²⁸ referred to under the relevant UN resolutions.

¹²⁷ The HFIU is also a competent authority for implementation of financial and asset-related restrictive measures and sanctions related to transfer of funds in case of Iran.

¹²⁸ Council Regulation 329/2007, Art. 1; Council decision 2013/183/CFSP, Art. 15; Council Regulation 267/2012, Art. 1; Council Decision 2010/413, Art 20.

114. *Criterion 7.2.c)* The regulations prohibit making available, directly or indirectly, funds or economic resources to designated persons or entities or for their benefit, unless otherwise authorised or notified in compliance with the relevant UN resolutions (Regulation 329/2007 Art. 6.4 and Regulation 267/2012 Art. 23.3 - Art. 6 and 6/A, 10 and 11 FRM Act).

115. At the national level, according to the FRM Act upon submission of the report to HFIU the service providers must refrain from carrying out the transaction¹²⁹, and authority operating an asset registration - carrying out the request for registration or request for registration of changes¹³⁰. Service providers or authorities operating the asset registration are allowed to carry out the transaction if no feedback from the HFIU is received within time limit defined in the FRM Act, or if the HFIU confirms that there are no grounds for freezing. It is prohibited to make funds or economic resources available to the designated persons in case there is a court order on freezing of funds or other assets.

116. *Criterion 7.2.d)* The lists of designated persons and entities are communicated to financial institutions and DNFBPs through the publication of a consolidated list on the EU website¹³¹. The EU also published EU Best Practices for the effective implementation of restrictive measures¹³². Domestic measures for communicating designation to service providers are described under the Criterion 6.5 (d). There are guidelines and model rules issued by the supervisory bodies for the service providers, containing rules for the implementation of targeted financial sanctions. However, these are specifically addressing the FT matters. Training-seminars and consultations to the service providers are organized regularly.

117. *Criterion 7.2.e)* The natural and legal persons targeted by the European regulations must immediately provide all information to the competent authority that will facilitate observance of the EU regulations, including information about the frozen accounts and amounts (Regulation 329/2007, Art. 10 and Regulation 267/2012, Art.40 – Art. 10 and 11 FRM Act).

118. The FRM Act provides that, if an individual or an entity is subject to financial restrictive measures, all service providers and authorities operating asset registrations are required to inform the HFIU without delay, whether this individual or entity has funds or other assets in Hungary. The HFIU examines these reports and if the funds concerned are covered by the restrictive measures, it informs without delay the competent court which orders freezing in a non-trial legal procedure. Concerning the exchange of information, the FRM Act requires the MNE to communicate information on asset freeze to the EU member States and the EU Commission. Reporting obligations of attempted transactions are covered under the FRM Act (Section 10).

119. *Criterion 7.2.f)* According to EU regulations (Art.11 Regulation 329/2007 and Art. 42 Regulation 267/2012) if acting in good faith, natural or legal person, group or entity or its directors or employees shall not be held liable for freezing (suspension) of funds, other financial assets and economic resources, unless it is proved that the freezing was due to negligence. There are no specific measures for the protection of bona fide third parties affected by sanctions. According to the Act LIII of 1994 on Judicial Enforcement and procedures provided under the Act III of 1952 on

¹²⁹ Actions shall not be carried out within 2 working days in case of domestic transactions and 4 working days in case of foreign transactions. The timeframe can be extended by the HFIU for additional 3 working days.

¹³⁰ Actions shall not be carried within 3 working days. The timeframe can be extended by the HFIU for additional 3 working days.

¹³¹ http://eeas.europa.eu/cfsp/sanctions/consol-list/index_en.htm

¹³² <http://register.consilium.europa.eu/doc/srv?l=EN&f=ST%2011679%202007%20INIT>.

Code of Civil Procedure, any adversely affected person acting in good faith has right to challenge the measures imposed, appealing against the Court order.

120. **Criterion 7.3.** EU Member States are required to take all necessary measures to ensure that the EU regulations on this matter are implemented and to determine a system of effective, proportionate and dissuasive sanctions (Regulation 329/2007, Art. 14 and Regulation 267/2012, Art. 47). According to Section 35/B of the AML/CFT Act, the supervisory authorities are required to ensure the service provider's compliance with the FRM Act and with the legal acts of the EU while exercising their supervisory functions. Compliance with the targeted financial sanctions rules is integral part of the supervisory function. As provided in the Section 35 (1) of the AML/CFT Act, non-compliance with these rules can lead to the following administrative sanctions imposed by the supervisory authority:

- order the service provider to take the necessary correcting measures and to address the deficiencies;
- impose special training of the responsible employees (executive officers), or hiring employees (executive officers) with the appropriate professional skills in this domain, strengthening its internal rules according to specific criteria, or conducting an internal investigation and initiate sanctioning procedures against the person responsible;
- issue a warning to the service provider;
- order the service provider to cease the unlawful conduct; or
impose a fine. Depending on the type of activities of the service providers imposed fines may vary: for service providers engaged in the activities referred to in Paragraphs *a)–e)* and *l)* of Subsection (1) of Section 1 of the AML/CFT Act from 200,000 HUF to 500,000,000 HUF, for service providers engaged in activities referred to Paragraphs *f), h)–j), k)* and *n)* of Subsection (1) of Section 1 of the AML/CFT Act from 50,000 HUF to 20,000,000 HUF.

121. Criminal sanctions (imprisonment) may also be imposed, according to Art. 327 HCC, for violation of EU or UN economic restrictions.

122. **Criterion 7.4.** The European regulations establish measures and procedures for submitting de-listing requests in cases where the designated persons or entities do not meet or no longer meet the designation criteria.

123. *Criterion 7.4.(a)* The EU Council communicates its designation decisions, including the grounds for inclusion, to the designated persons or entities which have the right to comment on them. If this is the case or if new substantial proof is presented, the Council must reconsider its decision. Individual de-listing requests must be processed upon receipt, in compliance with the applicable legal instrument and EU Best Practices for the effective implementation of restrictive measures. Designated persons or entities are notified of the Council decision and can use this information to support a de-listing request filed with the UN (notably via the Focal Point established pursuant to UNSCR 1730/2006). When the UN decides to de-list a person, the Commission modifies the lists in the annexes of the European regulations without the person in question having to request it (Regulation 329/2007, Art. 13.1 (d) and (e) and Regulation 267/2012, Art. 46). The listed persons or entities can file an appeal with the European Court of Justice to challenge the decision to add them to the list.

124. De-listing requests are regulated by government resolution No. 1444/2011, adopted on 20 December 2011, determining that the citizens and residents of Hungary as well as other entities based in Hungary shall address their de-listing requests to the focal points of the relevant UNSC Sanctions Committees directly. A similar approach (i.e. direct communication for delisting requests) is applied in the EU framework. The MoFAT publishes and regularly updates guidelines on the implementation of restrictive measures, including the application of de-listing requests both pursuant to the UN Sanctions Regimes and in the EU framework, on the government website¹³³.

125. *Criterion 7.4.(b)* The judicial procedures described in Criterion 7.2 (f) for protection of *bona fide* third parties rights acting in good faith apply to the unfreezing of funds or other assets of persons or entities whose name is the same as or similar to that of designated persons or entities inadvertently affected by a freeze mechanism.

126. *Criterion 7.4.(c)* Access to frozen funds and other assets is provided for in EU Regulations 329/2007 Art. 7-8 and 267/2012 Art. 24, 26-27, which are directly applicable in Hungary. At national level, relevant provisions are stipulated under the FRM Act (Section 6 and 6/A).

127. **Criterion 7.5.(a)** Hungary completely relies on the direct implementation of the European regulations 329/2007 (Art. 9) and 267/2012 (Art. 29), permitting the payment of interests or other sums to the frozen accounts, or payments due under contracts, agreements or obligations that arose prior to the date on which those accounts became subject to the provisions of this resolution, provided that these amounts are also subject to freezing measures.

128. *Criterion 7.5.(b)* Furthermore, concerning freezing measures taken pursuant to UNSCR 1737, special provisions set out in Regulation 267/2012 (Art. 24 and 25) authorise the payment of sums, due under a contract entered into prior to the designation of such person or entity, provided that this payment does not contribute to an activity prohibited by the regulation (and *de facto* the UNSCR), and after prior notice is given to the UN Sanctions Committee.

Weighting and Conclusion

129. As for R.7, the ability to ensure asset freezing without delay is the element that distinguishes targeted financial sanctions from other measures relating to criminal proceedings. The freezing regime is based on the relevant EU Regulations, resulting in inevitable delay in implementing the UNSC Resolutions. FRM Act is not clear on Court powers to order execution of freezing.

130. **Overall, Hungary is partially compliant with R.7.**

Recommendation 8 – Non-profit organisations

131. In the 4th round MER, Hungary was rated Non-Compliant with the previous SR.VIII (non-profit organisations). The MER noted the lack of a special review of the risks in the NPO sector; insufficient outreach to the sector on FT risks; no clear legal provisions in place to require and maintain information on NPOs purposes and objectives in relation to; 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 and no specific meaningful

¹³³ <http://www.kormany.hu/hu/kulgazdasagi-es-kulugyminiszterium/biztonsagpolitikai-es-nemzetkozi-egyuttmukodesert-felelos-allamtitkar/hirek/eu-szankcios-tajekoztato>

measures or sanctioning capability for the most vulnerable parts of the sector. Since the MER, several provisions of the relevant legal framework concerning NPOs have been amended, including the adoption of Act CLXXV of 2011, which regulates non-governmental organisations (NGOs), and non-profit business companies that have “public benefit”-status. Hungarian law distinguishes between NGOs (associations, foundations and civil companies) from non-profit business companies. This report uses the term “NPO” for all cases and NGO when specific rules exist for these types of NPOs¹³⁴. In the context of its 3rd regular follow up report to MONEYVAL (September 2013), a desk review undertaken by the Secretariat concluded that all deficiencies had been addressed (see para. 231 of that report).

132. **Criterion 8.1.** A review of the sector was undertaken as part of the implementation of MONEYVAL recommendations during the 4th round MER, and has resulted in revising the legal framework concerning NPOs, by *inter alia* establishing new accounting rules, extending the rules on court deposit, publicity, and setting up a freely accessible and searchable electronic database/register. There are currently four separate systems for ensuring access to information regarding NPOs: i) a Civil Information Portal (a nationwide, uniform, electronic, freely available website with information related to the NGOs); ii) a Network of Civil Information Centres (which contributes to the proper use of state aid as well as supplying of data about NGOs from 1st July 2013); iii) a monitoring system, operated pursuant to the Act CXCV of 2011 on public finances, which allows an overview of the operations of NPOs as well as on the use of donations and public grants; and iv) the freely accessible online register of NGOs of the National Office for the Judiciary (information and data on non-profit business companies are also accessible through the Register of Companies).

133. **Criterion 8.2.** No specific outreach to the NPO sector concerning FT issues exists.

134. **Criterion 8.3.** There are several legal requirements that contribute to promote transparency, integrity and public confidence in the administration and management of NPOs¹³⁵. There is an electronic register of NGOs. Moreover, all NPOs are required to prepare annual accounts, and file them with the National Office for the Judiciary (NOJ). The NOJ publishes the accounts in the register of NGOs, available on its website. Executive officers of NGOs that receive substantial financial support from the state are under the obligation to file a declaration of assets. Finally, non-profit business companies must deposit their accounts at the Company Information and Electronic Company Registration Service.

¹³⁴ In the context of Hungary, the term “NPO” includes NGOs as well as non-profit business companies. The following types of NPOs exist in Hungary: 1. NGOs (regulated by the Act CLXXV of 2011, registered by the competent general court, they must file their annual report with the National Office for the Judiciary). They include: a) Associations; b) Foundations; c) Civil companies (established through contracts, without legal personality). 2. Non-profit business companies. They may be established and operated in any corporate form as long as their instrument of constitution specifically indicates that the profit from the company’s operations may not be distributed among the members. Non-profit companies are regulated by the same laws as business associations (with the exception of non-profit companies that achieved “Public benefit”-status), such as Act V of 2013 on the Civil Code and Act V of 2006 on Public Company Information, Company Registration and Winding-up Proceedings. Non-profit business companies are registered by the Courts of Registry and they must file their annual report with the Company Information and Electronic Company Registration Service. Political parties, trade unions, mutual associations, public foundations and party foundations are not considered to be NPOs.

¹³⁵ See Section 5 of the Act CLXXXI of 2007 on the transparency of aids provided from public funds; Section 13, 28-30, 53/A-E of the Civil Act; Section 10, 18-19 of the CRA; Section 39 of the Act CLXXXI of 2011 on the judicial registration of Civil Society Organizations and related procedural rules; and Section 4 and 153-155 of the Accounting Act.

135. **Criterion 8.4.**

(a) The application for registration of NGOs must include the purpose of the organisation, the representative's name, the scope of his/her right of representation and the method of exercising the same. The Register of Companies, which is publicly accessible, contains records about the company, the subscribed capital and the data of the person authorized to represent the non-profit business company. There appear to be no requirement to maintain information on owners or board members (for those NPOs that have a board).

(b) Every NGO is obliged to prepare annual accounts, and deposit them at the NOJ, which maintains them on a website. Non-profit business companies are obliged to draw up and publish accounts, and must deposit their accounts at the Company Information and Electronic Company Registration Service.

(c) This element of the criterion is only partially met. For NPOs that receive public funds there are reporting obligations related to budgetary aids, control of the use of funds, financial accounts and audit related to the aid from the National Cooperation Fund.

(d) NGOs (with the exception of civil companies) may only be established if registered by the competent general court. Non-profit companies have to be registered by the Court of Registry.

(e) This element of the criterion is not met.

(f) There are requirements (stemming from tax legislation and from legislation concerning grants) that entail record-keeping periods on transactions (5 years) and aid-related documents (up to 10 years). As regards the identity of owners and controllers, these are limited to members of the board for NGOs (maintained by the register of the NOJ) and the person vested with representation power for non-profit business companies (maintained by the Court of Registry).

136. **Criterion 8.5.** There is not a holistic system for monitoring NGOs, except for the prosecutorial oversight in case of alleged violations of NGOs' requirements (legality check). Except for the case of NPOs that receive public funds, there do not appear to be checks that allow for the verification of whether the funds are used in accordance with the stated purpose and objectives of activities. The Courts of Registry conduct judicial oversight proceedings - *ex officio* or upon request - with a view to ascertain the authenticity of registers of official company records and for the lawful operation of non-profit business companies. The Ministry of Human Capacities set up and operates a monitoring system for coordinating the technical aspects (core data of tender notices, assistance decisions and aids granted) of central subsidies provided to civil society organisations from the central subsystem of the State budget and for eliminating double financing of the same tasks. As regards sanctions, there is an array of sanctions for violating the various requirements to which NPOs are subject, including cancellation of the tax number and winding up of the NPOs. Sanctions for senior officers of NGOs are primarily tax violations-related, and do not appear to be dissuasive or proportionate – given the various types of violations that could be envisaged.

137. **Criterion 8.6.** Most information is available online, and information concerning NPOs can be accessed administratively or in the course of a criminal investigation without impediments. There are no impediments in the sharing of information between competent authorities.

138. **Criterion 8.7.** Hungary uses the general procedures and mechanisms for international cooperation to handle requests relating to NPOs, particularly the HFIU, and does not identify additional points of contact or procedures for requests involving NPOs.

Weighting and Conclusion

139. Hungary should undertake a formal review of the NPO sector to assess the potential vulnerability of the sector to terrorist activities and reassess this information periodically. It appears that no outreach activities have been conducted to the NPO sector concerning FT issues.

140. **Recommendation 8 is rated Partially Compliant.**

Recommendation 9 – Financial institution secrecy laws

141. In the 4th round MER, Hungary was assessed as Compliant with the requirements set forth under former R.4 (see paras. 438 to 445 of that report).

142. **Criterion 9.1.** The sectorial financial legislation (bank, insurance, securities, business, funds, trusts) provide for obligations of confidentiality (“secrets”) for the service providers. Nonetheless, this legislation (as well as the AML/CFT Act) sets forth specific provisions that enable the competent authorities to access to data and information held by the financial institutions.

Financial Intelligence Unit

143. Under Section 25/A, Section 26 and Section 26/B of the AML/CFT Act, the HFIU is entitled to obtain information and data by the service providers prescribed by the sectorial legislation (“bank secrets, payment secrets, securities secrets, fund and insurance secrets, occupational retirement pension secrets, and trade secrets”).

144. In case of failure to provide information, documents and data to the HFIU, the latter is authorised - under Section 25/A(7) of the AML/CFT Act - to initiate proceedings falling under the competence of the supervisory authorities and bodies, sending all the information which is necessary for starting and conducting such proceedings. The requested supervisory authority shall inform the HFIU about the results of the conducted proceedings.

LEAs

145. The capabilities of the LEAs to obtain financial information is governed by Section 26 of the AML/CFT Act, Section 178 and Section 178/A of the ACP (i.e. Act XIX of 1998 on the criminal proceedings) and Section 68 of the Police Act.

Supervisory authority

146. According to sectorial financial legislations, the respective secretcies shall not be invoked against the supervisors. In the light of recent amendments to the financial legislation, the MNB is the sole licensing and supervisory authority for the whole financial sector. For these reasons, the MNB has full access to the information, data and documents held by financial institutions.

Sharing of information among competent authorities, domestically and internationally

147. As far as the capability of the HFIU to exchange information with foreign counterparts is concerned, the legal framework is robust enough to permit it to request and obtain information by the services provides and to exchange it with the foreign counterparts, as well as to exchange information spontaneously as indicated under section 26/A of the AML/CFT Act.

148. The LEAs exchange information in the context of the ARO, set forth by the Council Decision 2007/845/JHA of 6 December 2007 and governed in Hungary by Government Decree 329/2007 and the ACP.

149. As far as domestic cooperation is concerned, the collaboration between the HFIU and the supervisory authorities is prescribed under section 25 of the AML/CFT Act, while the exchange of information with LEAs and prosecutors as well as with “national courts, the national security service, the coordination centre for combating organised crime delegated for the risk analysis of passenger data or the EUROPOL under the Act on International Cooperation or to authority responsible for internal prevention, investigation and counter terrorism under the Act of the Hungarian Police” is governed by section 26 of the same Act.

Sharing of information between financial institutions

150. As indicated in the 4th MER, although there are no explicit exemptions from banking, securities, insurance or funds secrecy on information exchanged in relation to correspondent banking, reliance on third parties and wire transfers, secrecy rules are not considered as an obstacle to information exchange. However, the Hungarian authorities have indicated that the smooth sharing of information among competent financial authorities (domestically and internationally) is assured by national and EU institutional and legal instruments, as well as by bilateral and multilateral MoUs between the MNB and its foreign counterparts.

Weighting and Conclusion

151. The sectorial financial legislations, the AML/CFT Act as well as the Act on the criminal proceedings and the Police Act set forth specific provisions that enable the competent authorities (i.e. the supervisors, LEAs and the HFIU) to access to data and information held by financial institutions. **For these reasons, Recommendation 9 is rated Compliant.**

Recommendation 10 – Customer due diligence

152. Hungary was rated Largely Compliant on the previous Recommendation 5.

153. **Criterion 10.1.** Reporting entities are not allowed to keep anonymous accounts due to the identification and verification requirements. However, the legal provisions do not contain direct prohibition to maintain anonymous accounts or accounts in fictitious names. Holders of savings deposits passbooks may be released to a person who first presents the document if the credit institution has completed the customer due diligence procedures specified in the MLT in respect of the customer.

154. **Criterion 10.2.** According to Section 6 of the AML/CFT Act service providers are required to apply customer due diligence procedures:

- a) when establishing a business relationship;
- b) with the exception set out in Section 11/A and in Section 17, when executing transaction orders (shall also apply to individual transaction orders linked in effect) amounting to three million six hundred thousand HUF or more;

c) when there is any information, fact or circumstance indicating money laundering or terrorist financing, where the due diligence measures referred to in Paragraphs (a)-(b) have not been carried out yet;

d) when there are doubts about the veracity or adequacy of previously obtained customer identification data.

155. **Criterion 10.3.** According to Section 7 of the AML/CFT Act, service providers shall identify the customer and verify their identity using the documents listed in para. 4 of that provision. Paragraphs 1-3 specify identification-related data that service providers are required to record. A customer is defined under the AML/CFT Act as any person entering into a business relationship with a service provider in order to use any of the services falling within the scope of the activities described in the AML/CFT Act, or who places an order with the service provider to carry out a transaction order.

156. **Criterion 10.4.** Pursuant to AML/CFT Act financial institutions are required to identify the authorised representative, the authorised signatory as well as the representative and to verify their identity in the course of the same CDD procedure. During this process financial institutions have to verify the validity of the letter of authorisation in the case of an authorised representative and the legal title of disposition in the case of a person with right of disposal, as well as the right of representation of the representative. The Act LXXXV of 2009 on the Pursuit of the Business of Payment Services provides that the payment service provider shall assure that the right of disposition is exercised only by the account holder and the persons he has authorised.

157. **Criterion 10.5.** Under Section 8 of the AML/CFT Act, customers who are natural person shall make a written statement as to whether he is acting in his/her own name or in the name or on behalf of the beneficial owner. If the written statement indicates that the customer is acting in the name or on behalf of the beneficial owner, the written statement shall contain required data (name, address and nationality) on the beneficial owner.

158. The representative of the customer, if the latter is a legal entity or an organisation without legal personality, shall make a written statement about the beneficial owner of the customer and provide required data (name, address and nationality).

159. The beneficial owner is defined under Section 3(r) of the AML/CFT Act.¹³⁶

160. It is considered that Section 3(r)(a) is not consistent with the FATF standard, given that it does not include the beneficial owner who controls the legal person through other means.

¹³⁶ Section 3(r) of the AML/CFT Act defines it as follows: a) the natural person, who directly or – in a manner specified in Subsection (4) of Section 8:2 of Act V of 2013 on the Civil Code (hereinafter referred to as ‘Civil Code’) – indirectly owns or controls at least twenty-five per cent of the shares or voting rights in a legal person or in an organisation not having a legal personality, if that legal person or organisation not having a legal personality is not a registered company on the regulated market to which publication requirements consistent with Community legislation or equivalent international requirements apply; b) the natural person, who has a dominant influence in a legal person or an organisation not having a legal personality as determined in Subsection (2) of Section 8:2 of the Civil Code; c) the natural person, on whose behalf a transaction order is executed; d) in the case of foundations, the natural person: 1. who is the beneficiary of at least twenty-five per cent of the property of the foundation, if the future beneficiaries have already been determined; 2. in whose main interest the foundation is established or operates, if the beneficiaries have yet to be determined; or 3. who is a member of the managing organisation of the foundation, or who has a dominant influence over at least twenty-five per cent of the property of the foundation, or who acts on behalf of the foundation; and e) in the absence of a natural person specified in Subparagraphs a)–b), the executive officer of the legal entity or the organisation not having a legal personality.

161. Similar inconsistency is identified in Section 3(r)(d)(3) of the AML/CFT Act in the definition of the beneficial owner of foundations.

162. The definition of the beneficial owner for natural persons covers only the natural person, on whose behalf a transaction order is executed and is not extended to the person who controls a customer (natural person).

163. According to Section 7 of the AML/CFT Act, where there is any doubt concerning the identity of the beneficial owner, the financial institution shall request a new statement concerning the beneficial owner. Where there is any doubt concerning the identity of the beneficial owner, the service provider is required to take the necessary measures in order to check the beneficial owner's identification data in a publicly available register or in any other register from whose manager it has statutory right to request data.

164. There is no explicit requirement to take reasonable measures to verify the identity of the beneficial owner using the relevant information or data obtained from a reliable source in all cases without any doubts concerning the identity of the beneficial owner.

165. **Criterion 10.6.** Section 9 of the AML/CFT Act requires service providers to record information regarding, the type, subject matter and the term of the contract of the business relationship, as well as the subject-matter and the value of the transaction orders. In addition, the service provider may also record the particulars of performance (place, time, mode) and may request for the disclosure of information concerning the source of funds where it is deemed necessary for the identification of the customer, the business relationship and the transaction order, on the basis of the results of the procedure specified in the internal rules referred based on the nature of the business relationship or on the type and value of the transaction order and on the customer's circumstances in the interest of preventing and combating money laundering and terrorist financing.

166. **Criterion 10.7.** Pursuant to Section 10 of the AML/CFT Act, service providers are required to conduct ongoing monitoring of the business relationship, including the analysis of the transaction orders executed during the existence of that business relationship in order to establish whether a given transaction order is consistent with the information available to the service provider on the customer in accordance with the relevant provisions. The service provider may carry out the continuous monitoring of the business relationship in the framework of an enhanced procedure, and it has to pay special attention to all complex and unusual transactions. Service providers are required to ensure that the data and information as well as documents held in connection with business relationships are kept up-to-date. The service providers may also request information concerning the source of funds where it is deemed necessary.

167. **Criterion 10.8.** Article 9 of the AML/CFT Act requires service providers to record information regarding the type, subject matter and the term of the contract of the business relationship. The model rules for financial institutions require that the internal rules have to include process specifications for the activities, to explore the purpose and expected nature of the business relationship and to monitor that relationship. However, there is no explicit legal requirement to understand the nature of the customer's business.

168. Although the requirement to identify beneficial owners of legal persons and organisations without legal personality set an implicit obligation for FIs to understand to a certain extent the ownership and control structure of the legal person or arrangements, there is no explicit requirement to understand the control structure of the legal entity.

169. **Criterion 10.9.** Section 7 of the AML/CFT Act contains requirements for service providers to obtain name and the address of registered office or in case of foreign-registered enterprises, the

address of their branch in Hungary and, in the case of legal persons registered by the court of registry, the company registration number. In the case of other legal persons, the number of the resolution of their foundation (registration, incorporation) or their registration number must be obtained. For the purposes of the verification of identity, service providers should require respective documents to be presented from legal persons, or organisations not having a legal personality, in addition to the documents of the natural persons who are authorised to act in their names and on their behalf, to be issued within thirty days to date, and to verify:

- a) if the person/organisation is a domestic economic operator, that it has been registered by the court of registration or that the application for registration has been submitted; if it is a private entrepreneur, that he has a private entrepreneur's license, or the certificate of registration has been issued;
- b) in case of domestic legal persons whose existence is subject to registration by an authority or the court, the fact that the registration has taken place;
- c) in case of foreign-registered legal persons or organisations not having a legal personality, the fact that the person or body has been registered under the law of the country in which it is established;
- d) prior to the submitting of an application for company registration to the court of registration, or an application for registration by an authority or the court to the competent authority or court, the articles of incorporation (articles of association, charter document) of legal persons and organisations not having a legal personality.

170. The AML/CFT Act does not contain requirements to obtain data on relevant persons having a senior management position within the legal person or arrangement and a principal place of business (if different). Although for the domestic legal persons this information is available in the court of registry, service providers are not explicitly obliged to obtain this information. Pursuant to Section 7 (8) of the AML/CFT Act the service providers may verify the identity-related information in a publicly available register or in a register from whose manager it has statutory right to request data where it is deemed necessary for the identification of the customer, the business relationship and the transaction order, on the basis of the results of the procedure specified in the internal rules and based on the nature of the business relationship or on the type and value of the transaction order and on the customer's circumstances, with a view to the prevention and combating of money laundering and terrorist financing.

171. **Criterion 10.10.** Please refer to criterion 10.5 for the analysis of definition of beneficial owner.

172. **Criterion 10.11.** Under the AML/CFT Act service providers are not explicitly required to identify and take reasonable measures to verify the identity of the settlor; protector¹³⁷ or trustee; and any beneficiary and any other person exercising ultimate effective control over the trust. The authorities state that the definition of a beneficial owner will cover the beneficiaries of the trustee, the trustee will be considered as a customer. However, there is no explicit requirement to identify the settlor and the protector. It is not clear why there is no reference to the potential beneficiaries in the cases the beneficiaries are not yet determined.

173. **Criterion 10.12.** The beneficiary of a life insurance contract is also the subject of the general CDD requirements. Pursuant to Section 11(3) of the AML/CFT Act the service providers engaged in

¹³⁷ The authorities indicated that "protector" is not an existing category under fiduciary management contracts in Hungary. However, the service providers should be required to fulfil this obligation when providing services to foreign trusts.

the providing insurance services, insurance intermediary services or employer pension services in connection with insurance policies within the field of life assurance, may carry out the verification of the identity of the beneficiary under the policy and any other person entitled to receive services of the insurer/insurance provider even after the establishment of the business relation, if they were not known at the time of signature of the contract. In that case, verification of identity shall take place at or before the time of pay-out or at or before the time the entitled person enforce his/her rights originating from the contract (policy).

174. **Criterion 10.13.** The criterion is not implemented.

175. **Criterion 10.14.** Pursuant to Section 11 of the AML/CFT Act, service providers may carry out the verification of the identity of the customer and the beneficial owner during the establishment of a business relationship if it is necessary in order to avoid the interruption of normal conduct of business and where there is little risk of money laundering and terrorist financing occurring. In such cases the verification of identity shall be completed before the first transaction order is executed. In cases the customer has not been physically present for identification purposes or for the verification of his identity, only certified copies of the document shall be acceptable for identification and verification of the identity of the customer.

176. **Criterion 10.15.** The criterion is not implemented.¹³⁸

177. **Criterion 10.16.** Pursuant to Section 42 of the AML/CFT Act the service provider is required to refuse the execution of a transaction order after 31 December 2014, if:

- a) it has established a business relationship with the customer prior to 1 July 2013;
- b) the customer failed to appear at the service provider personally or by way of a representative until 31 December 2014 for the purpose of carrying out customer due diligence procedures; and
- c) regarding the customer, the outcome of the customer due diligence procedures specified under Sections 7-10 is not fully available on 31 December 2014.

178. Pursuant to Section 10(1a) of the AML/CFT Act, the service provider may carry out the continuous monitoring of the business relationship in the framework of an enhanced procedure specified in the internal rules, where it is deemed necessary for the identification of the customer, the business relationship and the transaction order, on the basis of the results of the procedure specified in the internal rules and based on the nature of the business relationship or on the type and value of the transaction order and on the customer's circumstances, with a view to the prevention and combating of money laundering and terrorist financing.

179. **Criterion 10.17.** The AML/CFT Act requires the financial service provider to apply enhanced customer due diligence measures in the following cases: failure of the customer to appear in person for identification purposes; establishment of a cross-border correspondent banking relationship with a service provider domiciled in a third country; establishment of business relationships with politically exposed persons resident in other Member States or in third countries, or execution of transaction orders for such persons; for service providers engaged in currency exchange in the amount of five hundred thousand forints or above. No other high risk

¹³⁸ As indicated by the authorities, with the implementation of the 4th EU AML/CFT Directive, this requirement will be introduced and further improved.

situations are described in the AML/CFT Act. The Act requires service providers to request further information in the cases described above.

180. **Criterion 10.18.** Pursuant to Section 12 of the AML/CFT Act, in cases defined in the AML/CFT Act the financial institution is required to conduct ongoing monitoring of the business relationship and further CDD measures have to be carried out only where it is deemed necessary for the prevention and combating of ML/FT. This provision provides a blanket exemption from CDD requirements, whereas the FATF recommendations only allow the application of simplified CDD.

181. **Criterion 10.19.** Section 11(6) of the AML/CFT Act requires that, where the service provider is unable to carry out the customer due diligence measures specified in Sections 7-9, it may not carry out a transaction through a payment account, establish a business relationship or execute a transaction order. Otherwise it is required to terminate the business relationship with the customer in question. As provided under Section 23(2), 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, as well as in the case where the service provider is unable to conduct the CDD measures. Although there is not an explicit requirement to consider making a STR in relation to the customer, this can be inferred from the specific requirement to consider whether there is suspicion of ML or FT, together with the reporting obligation, which requires filing an STR in every case of identified suspicion.

182. **Criterion 10.20.** The AML/CFT Act does not permit reporting entities to refrain from performing CDD obligations and file a STR in the cases where financial institutions form a suspicion of ML or FT, and they reasonably believe that performing the CDD process will tip-off the customer.

Weighting and Conclusion

183. The following deficiencies have been identified under Recommendation 10: limited definition of the beneficial owner; deficiencies in the simplified due diligence regime, which includes blanket exemptions without consideration of specific risks; and the lack of a requirement to identify and take reasonable measures to verify the identity of the protector or potential beneficiary if the beneficiaries are not yet determined. **Recommendation 10 is rated Partially Compliant.**

Recommendation 11 – Record-keeping

184. Hungary was rated Largely Compliant on the previous Recommendation 10, for two reasons:

- there was no provision to ensure that the mandatory record-keeping period may be extended in specific cases upon request of the competent authorities; and
- there was no requirement to maintain records of business correspondence.

185. **Criterion 11.1.** According to Section 28-28/A of the AML/CFT Act, financial institutions are required to keep a record of:

- data and documents or copies of such documents obtained due to the CDD process;
- records of performing the reporting obligations and transmitting data;

- documents certifying the suspension of the execution of the transaction orders; and
- records of all executed cash transaction orders in the amount of three million six hundred thousand HUF or more for a period of eight years from the time of recording or reporting. This time limit for keeping the data or documents begins at the time of the termination of the business relationship.

186. Based on the modified requirements in the AML/CFT Act, the prolongation of the record keeping period in case of the request of relevant authorities is possible. If so requested by the supervisory body, the HFIU, the investigating authority, the prosecutor's office or the courts, the service provider shall keep the data or documents for a period prescribed in such requests, but no more than for a maximum period of 10 years.

187. According to the model rules for the financial sector, financial institutions are obliged to have internal rules for data processing, data storage and data protection with respect to information obtained during the CDD process, for sending suspicious transaction reports as well as for the protection of employees concerned.

188. **Criterion 11.2.** Section 28 of the AML/CFT Act provides that service providers are required to keep on file the data and documents they have obtained in the process of CDD, business relationship and the transaction order, the records of compliance with reporting obligations, data transmitting requirements specified in the AML/CFT Act and the documents certifying the suspension of the execution of transaction orders by virtue of the AML/CFT Act, or the copies of such documents, for a period of eight years from the time of recording or the time of reporting (suspension). The time-limit for keeping the data or documents, or their copies, obtained under paragraph a) of Subsection (1) of Section 6, shall commence upon the termination of the business relationship.

189. According to Section 169(1) of the Accounting Act, economic entities are required to retain in a legible form the annual account of the financial year, the annual report, along with the inventory, valuation, the ledger statement and the general ledger and other registers maintained in compliance with the requirements of this Act in support of the annual account, for a period of at least eight years. Financial institutions are not specifically required to maintain records of business correspondence.

190. **Criterion 11.3.** According to the requirements on the enhanced monitoring and the special attention for complex unusual transactions (Section 10 of the AML/CFT Act), service providers have to keep the data about transactions. As for the other transactions not covered by the AML/CFT Act, the requirements set by the Accounting Act will be applied.

191. **Criterion 11.4.** On the basis of Article 178/A of the ACP, if deemed necessary owing to the nature of the case, the prosecutor or the investigating authority may request data – according to the rules of official requests – on the suspect (the person against whom the report was filed, the potentially suspected perpetrator) from the tax authority, social security body, pension insurance institution, health insurance institution, organisation providing communication services, organisations managing medical and related data, as well as from organisations managing data classified as bank secret, securities secret, fund secret or business secret, and from road traffic records and real-estate register in order to uncover the facts of the case. According to Section 48 of the Act on MNB, the financial institution should make available requested data to the supervisory authority.

Weighting and Conclusion

192. The provisions of the AML/CFT Act, together with the Accounting Act and the provisions of the ACP mostly cover record-keeping requirements. However, there is no explicit provision to keep records related to business correspondence. **Hungary is largely compliant with Recommendation 11.**

Recommendation 12 – Politically exposed persons

193. In the 3rd MER of 2005, Hungary was rated “Largely Compliant”, due to the lack of an explicit requirement regarding the approval by the senior management of continuing business relations with persons becoming PEPs after the establishment of a business relationship. In line with the procedural decisions taken by MONEYVAL for the 4th round MER, the former Recommendation 6 on PEPs was not assessed.

194. **Criterion 12.1.** According to Section 4 (1) of the AML/CFT Act, PEPs are natural persons residing in another state who are or have been entrusted with “prominent public functions” within one year before the carrying out of CDD measures, as well as immediate family members, or persons known to be close associates of such persons.

195. There are two elements that are not in line with the FATF Recommendation 12, namely the residency requirement and the time-limit of one year for the notion of PEP¹³⁹.

196. The same section contains definitions of “persons entrusted with prominent public functions”, “close relatives” and “persons known to be close associates”.

197. The notion of “natural persons entrusted with prominent public functions” provides for a list of public functions that covers the categories indicated in the FATF Methodology and Glossary, with the exception of “senior politicians” and “important political party officials”. However, the Hungarian authorities have indicated that all politicians and all members of the political parties (without reference to the importance of the political party) fall under the notion of PEPs.

198. The notion of “family members” has been properly transposed to the national domestic AML/CFT preventive legislation and includes (according to the civil code) spouses, next of kin, adopted children, stepchildren, foster children, adoptive parents, stepparents, foster parents, and siblings, including domestic partners.

199. The definition of “close associates” (as set forth under Section 4 (4)) refers only to “business partners”, while the FATF Guidance on PEPs (June 2013), albeit not a binding document, indicates that this should include “personal relationships”, such as partners outside the family unit (e.g. girlfriends, boyfriends, mistresses), as well as prominent members of the same political party, civil organisation, labour or employee union. Therefore, the notion of “close associates” under the AML/CFT Act does not fully capture the FATF Guidance.

200. **Criterion 12.1.(a)** There are no provisions in the AML/CFT Act that require financial institutions to put in place risk management systems to determine whether a customer or the beneficial owner is a PEP. Section 16 (1) of the AML/CFT Act requires customers residing abroad to make a written statement to the financial institutions, declaring whether they are classified as PEPs

¹³⁹ The Hungarian authorities indicated that this notion is, in fact, in line with the Directive 2005/60/EC of the European Parliament and the Commission Directive 2006/70/EC.

according to the law of their countries. The reason for this provision is not entirely clear. Section 8 (5) indicates that financial institutions, if deemed necessary, may request the customer to make a statement on whether its beneficial owner is considered a PEP. The aforementioned provisions cannot be considered an appropriate risk management system, as this should depend on several elements, including the nature of the service providers' business, the clients' profile, the expected transactions and services and products offered. All foreign residents have to declare whether they are a PEP or not (based on the notion of PEP applicable in theory country of residence). The reason for this provision remains unclear.

201. **Criterion 12.1.(b)** Under section 16 (3) of the AML/CFT Act, in case of a foreign PEP, the establishment of a business relationship or the execution of a transaction order shall take place only after the approval of the executive officer specified in the organisational and operational rules of the service provider (i.e. the financial institution). A general possibility for service providers to request the executive officer's approval is set forth under Section 9(3) of the AML/CFT Act.

202. **Criterion 12.1.(c)** According to section 16, (1) letter a), if a customer residing abroad is considered a PEP, the statement shall indicate data concerning the source of funds, but not the source of wealth as prescribed by the FATF Standards. Moreover, such provision does not apply to beneficial owners indicated as PEPs. The model rules, which are not mandatory, contain CDD forms which include information on the "source of funds".

203. **Criterion 12.1. (d)** Under Section 10, subsection 1a) of the AML/CFT Act, the service provider may carry out the continuous monitoring of the business relationship in the framework of an enhanced procedure specified in the internal rules referred to in Section 33.

204. **Criterion 12.2.** There are no AML/CFT legal or regulatory measures that refer to domestic PEPs or persons entrusted with a prominent function by an international organisation in Hungary.

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205. **Criterion 12.3.** The provisions of the AML/CFT Act apply to "family members" and "close associates" with all the deficiencies identified above and limited to foreign PEPs.

206. **Criterion 12.4.** The AML/CFT Act does not contain specific provisions in case of higher risk circumstances related to PEPs for life insurance products.

Weighting and Conclusion

207. The notion of foreign PEPs should be brought in line with the FATF definition and standards. The preventive measures in case of PEPs apply when the customer is identified as "(non-resident) PEP" and not when the beneficial owner is considered such. The AML/CFT Act neither sets forth provisions related to "risk management systems", "sources of wealth" and "enhanced ongoing monitoring" nor do the model rules issued by the competent authorities. The notions of "domestic PEP" and "persons entrusted with prominent function by an international organisation" are not set forth under the AML/CFT Act. Therefore, the respective preventive measures are not incorporated in the legislation, regulation or other enforceable means. Minor shortcomings arise from the notions of "close associates" and "natural persons entrusted with prominent public functions" that do not exactly match the FATF Standards and Guidance. Moreover, there are no

¹⁴⁰ As indicated by the authorities with the implementation of the 4th EU AML/CFT Directive the AML/CFT provisions are intended to be extended to domestic PEPs.

provisions that govern the issue of PEPs in relation to life insurance policies. **For these reasons, Recommendation 12 is rated Partially Compliant.**

Recommendation 13 – Correspondent banking

208. Hungary was rated Compliant on the previous R. 7.

209. **Criterion 13.1.** Pursuant to Section 15 of the AML/CFT Act, with regard to correspondent banking relationships with service providers having their registered offices in a third country, persons providing financial services are required to apply the following measures:

- prepare a comprehensive assessment on the respondent institution, for the purposes of assessing and evaluating its system against ML and FT;
- establish the correspondent banking relationship only after the approval of the executive officer (specified in the organisational and operational rules) of the financial institution.

210. There is no requirement to clearly understand the respective AML/CFT responsibilities of each institution.

211. Within the meaning of Section 15 of the AML/CFT Act, a “third country” shall mean any State that is not member of the European Union. This exemption is not in line with the FATF standards.

212. **Criterion 13.2.** According to Sections 3 and 15 of the AML/CFT Act, financial institutions have to ascertain whether the respondent institution carried out the CDD measures (i.e. the verification of the identity of the customer and performance of ongoing monitoring on the direct access to the correspondence account). The institution is also required to ascertain whether a service provider having its registered office in the third country is able to provide the relevant CDD data on request. This applies to third countries only.

213. **Criterion 13.3.** According to the AML/CFT Act, financial institutions are prohibited from establishing or maintaining a correspondent banking relationship with a shell bank, or with a service provider that maintains a correspondent banking relationship with a shell bank.

Weighting and Conclusion

214. While the general provisions with respect to correspondent banking are substantially in line with the standards, they do not apply with respect to respondent institutions within the EU.

215. **Hungary is Partially Compliant with Recommendation 13.**

Recommendation 14 – Money or value transfer services

216. Hungary was rated Compliant on the previous SR VI.

217. **Criterion 14.1.** Pursuant to Hungarian legislation (Section 3 of CIFE Act), money remittance service is a financial auxiliary service. Financial institutions are required to obtain an authorisation from the MNB in order to perform such activities.

218. **Criterion 14.2.** According to Section 408 of HCC Act, any person who, without authorisation prescribed by law, engages in financial service activities or auxiliary financial service activities is guilty of a felony punishable by imprisonment for up to 3 years prison term.

219. **Criterion 14.3.** MVTS providers are subject to the requirements of the AML/CFT Act. According to Section 5 of the AML/CFT Act, the Central Bank of Hungary is the supervisory authority for service providers engaged in providing financial services or in activities auxiliary to investment services. According to Section 34 of AML/CFT Act, the supervisory body shall, in the process of exercising supervisory functions, ensure the compliance of service providers with the provisions of the AML/CFT Act.

220. **Criterion 14.4.** MVTS shall register their agents with MNB before beginning their activities. Subcontractors shall also be registered with the MNB according to Section 21 of Act CCXXXV of 2013 on Payment Service Providers. MNB keeps updated and publishes promptly the list of registered agents and their subcontractors.

221. **Criterion 14.5.** Article VII.2 of the Model Rules issued by the MNB for the financial sector provides for a regular, but at least annual, examination by the compliance function of the principal of agents for compliance with AML/CFT law and regulations. According to Article XI. 55 of the Recommendation 3 of 2008 of the Hungarian Financial Supervisory Authority (merged in 2013 with the MNB), the money laundering reporting officer of the financial institution should monitor the AML/CFT activities of the agent for compliance with the internal AML/CFT rules of the principal. However these are not considered as enforceable legal provisions.

Weighting and Conclusion

222. **Recommendation 14 is rated Largely Compliant.**

Recommendation 15 – New technologies

Hungary was rated C on the previous R. 8.

223. **Criterion 15.1.** The Hungarian authorities have prepared the country risk assessment, taking into account the risks emanating also from new business practices and products and the use of new technologies. There is no requirement for financial institutions to identify and assess the ML/FT risks that may arise in relation to the development and new business practices, and the use of new or developing technologies.

224. **Criterion 15.2.** The “MNB Recommendation on the Establishment and Operation of Internal Protection Lines and on the Management and Control Functions of Financial Institutions” recommends in its “Point 90” a risk control prior to the introduction of new products and services, as well as in “Point 99” a risk analysis of new products and processes. However, there are no enforceable legal provisions requiring financial institutions to undertake the risk assessment prior to the launch or use of such products, practices and technologies, and take appropriate measures to manage and mitigate the risks.

Weighting and Conclusion

225. **Recommendation 15 is rated Partially Compliant.**

Recommendation 16 – Wire transfers

226. Hungary was rated Compliant on the previous SR VII. Significant changes were made to the requirements in this area during the revision of FATF standards.

227. **Criterion 16.1.** According to EU Regulation 1781/2006, financial institutions are required to ensure that all cross-border wire transfers of EUR 1,000 or more are accompanied by complete information on the originator, including name, address and account number. The address may be substituted with the date and place of birth of the originator, his customer identification number or national identity number. If the originator does not have an account number, the ordering financial institution has to substitute it by a unique identifier which allows the transaction to be traced back to the originator. However, there is no requirement to ensure that such transfers are also accompanied by the required beneficiary information.

228. **Criterion 16.2.** The requirements of EU Regulation 1781/2006 regarding batch files are consistent with the FATF requirements regarding originator information. However, there is no requirement to include full beneficiary information in the batch file.

229. **Criterion 16.3.** FIs are required to ensure that transfers of funds are accompanied by complete information on the originator as mentioned in Criterion 16.1. There is no requirement in EU Regulation 1781/2006 for the ordering institution to include the required beneficiary information.

230. **Criterion 16.4.** Pursuant to Article 5 of EU Regulation 1781/2006, without prejudice to Article 7(c) of Directive 2005/60/EC, the payment service providers shall verify the information on the originator only where the cross-border transfer exceeds EUR 1,000, unless the transaction is carried out in several operations that appear to be linked and together exceed EUR 1,000. In addition, Article 6 of the AML/CFT Act provides that the service provider is obliged to apply CDD measures when any information, fact or circumstance indicating ML or FT occurs where the due diligence measures have not been carried out yet.

231. **Criterion 16.5.** Transfers within the EEA are considered to be domestic transfers for the purposes of R.16, and are treated as such within EU Regulation 1781/2006. Domestic transfers of funds are required to be accompanied only by the account number of the originator or a unique identifier allowing the transaction to be traced back to the originator (Art. 6).¹⁴¹

232. **Criterion 16.6.** If the beneficiary financial institution requests information, the originator financial institution has to make available to the beneficiary the complete information within three working days. The Regulation does not, however, currently contain the same requirement concerning information about the beneficiary. Upon the request of the supervisory authority (MNB) and the HFIU, service providers are required under the AML/CFT Act to provide information on the payer. Competent investigative authorities empowered to conduct money laundering, associated predicate offences and terrorist financing investigations in Hungary are able to obtain access to all necessary documents and information for use in those investigations.

233. **Criterion 16.7.** Ordering financial institutions are required to keep records of complete information on the originator for five years (Art. 5.5). There is no requirement to maintain beneficiary information collected.

234. **Criterion 16.8.** Penalties are applicable to infringements of the provisions of the EU Regulation 1781/2006 or non-compliance with the obligations set out in EU Regulation 1781/2006.

¹⁴¹ The definition of a domestic transfer within the EEA-area in the Regulation (Art. 6(1)) is wider than that in R.16, which refers to "a chain of wire transfers that takes place entirely within the EU". The Regulation refers to the situation, where the PSP of the payer and the PSP of the payee are situated in the EEA-area. Hypothetically, this means that according to the Regulation, a domestic transfer could be routed via an intermediary institution situated outside the EEA-area.

However, requirements only concern the originator in the context of wire transfers, not the beneficiary.

235. **Criterion 16.9.** Intermediary FIs are required to ensure that all information received on the originator accompanying the transfer of funds is kept with the transfer (Art. 12). However, there is no requirement to ensure that any accompanying beneficiary information is also retained with it.

236. **Criterion 16.10.** The intermediary financial institution may use a payment system with technical limitations which prevents information on the originator accompanying the transfer to send to the beneficiary financial institution in the course of the wire transfer (when it does not become aware that information required is missing or incomplete). Where the intermediary financial institution uses a payment system with technical limitations, it has to make available all the information on the originator which it has received within three working days, upon request from the beneficiary financial institution. The intermediary financial institution must keep the records of all information received for five years (Art. 13). This requirement does not extend to beneficiary information.

237. **Criterion 16.11.** There is no requirement for intermediary institutions to take reasonable measures to identify cross-border wire transfers that lack originator or beneficiary information.

238. **Criterion 16.12.** Intermediary FIs are not required to have risk-based policies and procedures for determining when to execute, reject, or suspend a wire transfer lacking originator or beneficiary information, and when to take the appropriate action.

239. **Criterion 16.13.** Beneficiary FIs have to detect whether the information of the originator is missing or incomplete, and they are required to have effective procedures in place (Art. 8). However, there are no requirements to detect whether the required beneficiary information is missing.

240. **Criterion 16.14.** There is no requirement in EU Regulation 1781/2006 for the beneficiary financial institution to verify the identity of the beneficiary if it has not been previously verified, for cross-border transfers of EUR 1,000 or more, and to keep such information.

241. **Criterion 16.15.** When there is incomplete information on the originator, the beneficiary financial institution is required to either reject the transfer, or ask for the complete information on the originator (Art. 9). There is no provision for suspension of a wire transfer or lacking required information. The beneficiary financial institution is required to consider missing or incomplete information on the originator as a factor in assessing whether the transfer of funds or any related transaction causes a higher risk and it is suspicious, and whether it must be reported to the authorities responsible for combating ML or FT (Art. 10). There are no requirements relating to cases where the required beneficiary information is missing or incomplete.

242. **Criterion 16.16.** The EU Regulation refers generally to payment service providers which mean any natural or legal person whose business includes the provision of transfer of funds service (Art. 2).

243. **Criterion 16.17.** The EU Regulation does not contain any specific requirement relating to measures to be taken when the MVTS provider acts both as the originating entity and beneficiary of the transfer. In the event of noticing any information, fact or circumstance indicating ML or TF the service provider shall, without delay, submit a report to the HFIU.

244. **Criterion 16.18.** Hungary mainly implements measures to freeze funds or other assets of terrorists and who finance terrorism and terrorist organizations based on the UNSC Resolutions

1267 and 1373 by means of directly applicable EU Regulations. Based on the FRM Act, FIs are obliged to report to the HFIU without delay any data, facts or circumstances indicating that the individual or entity designated has funds or economic resources covered by the financial restrictive measures in the territory of Hungary.

Weighting and Conclusion

245. **Recommendation 16 is rated Partially Compliant.**¹⁴²

Recommendation 17 – Reliance on third parties

246. Hungary was rated Compliant on the previous R. 9. The AML/CFT Act have been modified as regards reliance on third-parties.

247. **Criterion 17.1.** Pursuant to Section 18, financial institutions may use the services of third-party introducers. Pursuant to Section 20 of the AML/CFT Act, the responsibility for CDD measures should remain with the service provider accepting the outcome of the customer due diligence procedures carried out by another service provider. If the financial institution performing the CDD procedure and the financial institution accepting the results of it have agreed on the submission of these results, the former has to disclose “without delay, upon request” a copy of the data and information and other relevant documentation obtained for the purposes of identification and verification of the identity of the customer and the beneficial owner - subject to the prior consent of the customer affected - to the financial institution. Service providers are entitled to accept the outcome of CDD measures carried out by financial institutions, with the exception of service providers carrying out money transmissions and currency exchange activities in Hungary, EU member States, and third countries which conduct CDD as required under the AML/CFT act and meets the following requirements:

- the service provider is included in the mandatory professional register;
- applies CDD procedures and record keeping requirements as laid down or equivalent to those laid down in the AML/CFT Act;
- its supervision is executed in accordance with the requirements laid down or equivalent to those laid down in the AML/CFT Act;
- or its registered office is in a third country, which applies equivalent requirements to those laid down in the AML/CFT Act.

248. **Criterion 17.2.** Third parties can only be based in the territory of Hungary, another EU member State or a non-EU country that meets equivalent requirements. The non-EU countries which impose requirements equivalent to those laid down in the AML/CFT Act are determined by a Decree published by the Ministry of Finance. The establishment of a white list of the so-called “equivalent third countries” has been based on the EU “Common Understanding between Member States on third country equivalence under the Anti-Money Laundering Directive (Directive 2005/60/EC)”. This approach is not in line with the FATF requirements, as there is no focus on the information available at the level of country risks.

¹⁴² As indicated by the authorities, with the implementation of the new funds transfer regulation (2015/847) of June 2017, the relevant requirements will be introduced.

249. **Criterion 17.3.** The Hungarian framework does not provide for a different regime in case the third party introducer is part of the same financial group.

Weighting and Conclusion

250. **Recommendation 17 is rated Largely Compliant, given that criterion 17.1 is met.**

Recommendation 18 – Internal controls and foreign branches and subsidiaries

251. Hungary was rated Compliant on the previous R. 15 and on the previous R. 22.

252. **Criterion 18.1.** Article 23 of the AML/CFT Act requires service providers, within five working days from starting its activity, to designate one or more persons to forward without delay the reports received from the executive officer, employee or contributing family member of the service provider to the authority operating as the financial intelligence unit. Service providers are required to notify the authority operating as the financial intelligence unit concerning the appointment of the designated person, including the name and the position of such officer, and any subsequent changes therein, within five working days of the date of appointment or the effective date of the change. Compliance mechanism and the role and functions of the designated person are not further detailed in the AML/CFT Law.

253. According to the Model Rules issued by the MNB for the financial sector, the designated person shall participate in the organisation of training for employees, and play a leading role in combating money laundering and terrorist financing. According to Article 7 of the Model Rules, the designated person should be preferably a senior employee of the service provider. However, this requirement is not mandatory.

254. Article 137 of the Act CCXXXVII on Credit and Financial Institutions prescribes “fit and proper” requirements for senior executive of a financial institution. However, these requirements will not be always applied, as it is not obligatory that a designated person is nominated as a senior employee.

255. Pursuant to Section 32 of the AML/CFT Act, financial institutions are required to ensure that their employees are aware of the legal provisions relating to ML and FT as well as relating to the financial restrictive measures, and they are able to recognise business relationships and transactions through which ML or FT may be (or are) realised, and to instruct them to how to deal with it in line with the AML/CFT Act. Article XIII on training and retraining of the Model Rules provides that designated officer should organise AML/CFT trainings.

256. According to Section 31 of the AML/CFT Act, there is a requirement for the establishment and operation of an internal control system covering the CDD, the reporting and registration functions’ compliance with AML/CFT rules. Sectorial laws contain requirements on internal control or audit department for investment firms and commodity dealers, insurance companies, credit and financial institutions.

257. **Criterion 18.2.** Pursuant to Section 27(5) of the AML/CFT Act financial institutions are exempted from the prohibition of disclosure of information between the two or more service providers involved, provided that:

- a) the information refer to the same customer and the same transaction order;

b) of the two or more service providers involved, at least one is engaged in activities defined by this Act, while the other service providers are resident in a Member State, or in a third country which imposes requirements equivalent to those laid down in this Act;

c) the service providers involved are engaged in the same activity defined in the AML/CFT Act; and

d) the service providers involved are subject to obligations as regards professional secrecy and personal data protection equivalent to those laid down in the AML/CFT Act.

258. This provision provides conditions which are more restrictive than the requirements under R.18 and is limited only to EU Member States and equivalent third countries.

259. There is no requirement for FIs to implement group-wide programs, or provisions to address (a), (b) and (c) of this criterion on a group-wide level.

260. **Criterion 18.3.** According to Section 30 of the AML/CFT Act, branches and subsidiaries of financial institutions located in third countries are required to take at least equivalent measures during the CDD process (Sections 6-11) and related to the record keeping (Section 28) and Section 30. Financial institutions shall also keep their branches and subsidiaries located in third countries informed concerning their internal control and information system (Section 31), and the contents of their internal rules (Section 33). However, the requirement to ensure that the foreign branches and majority-owned subsidiaries apply at least measures equivalent to the home country requirements is limited only to specific provisions indicated above. If the legislation of a third country does not permit application of such equivalent measures financial institutions have to inform the supervisory authority, which has to forward that information to the minister without delay. Then the minister in charge informs the European Commission and the other EU member States. In this case, financial institutions have to prepare a comprehensive assessment of their branches and subsidiaries located in that third country.

Weighting and Conclusion

261. There are number of deficiencies with respect to reporting entities' internal controls. In particular, there are no requirements on the appointment of a compliance officer at a management level and to apply screening procedures to ensure high standards when hiring employees. There are also concerns with regard to implementation of criterion 18.2. Criterion 18.3 is largely met.

Recommendation 18 is rated Partially Compliant.

Recommendation 19 – Higher-risk countries

262. Hungary was rated Compliant on the previous Recommendation 21.

263. **Criterion 19.1.** The Hungarian competent authorities keep continuously the relevant institutions informed about AML/CFT related developments. FATF updates of the public statements on high-risk and non-cooperative jurisdictions are constantly available on the web pages of the supervisory authorities (MNB, HFIU) and the obliged institutions are encouraged to consult regularly those pages. Model rules for the financial sector also include provisions to screen such transactions in their internal control system. However, there is no requirement in the law or other enforceable means to apply enhanced due diligence proportionate to the risks, to business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF.

264. **Criterion 19.2.** The MNB has issued letters addressed to the financial institutions to request them to pay attention to the countries and territories that are listed in the FATF statement. FATF updates of the public statements on high-risk and non-cooperative jurisdictions are available on the web sites of the supervisory authorities and the obliged institutions are encouraged to consult regularly those pages. The emergence of any circumstances in connection with these high risk countries constitutes higher risk in the course of the risk-based analysis carried out by the HFIU and it has been integrated in the risk-based analysis protocol accordingly. However, there are no legal provisions enabling the application of countermeasures when decided so by the state authorities or to transpose a call for such measures by international organisation.

265. **Criterion 19.3.** The homepage of the MNB provides regularly updated access to all AML/CFT concerns of the FATF, Moneyval and the EU, as well as of the UNSC and the US Treasury. Prompt access is available to the EU sanctions list.

Weighting and Conclusion

266. There are no provisions to apply CDD as required under criterion 19.1. In addition, no countermeasures are provided in the legislation. **Recommendation 19 is rated Partially Compliant.**

Recommendation 20 – Reporting of suspicious transaction

267. Hungary was rated partially compliant with former R. 13 and SR. IV. The main technical deficiencies in that last MER of Hungary related to: i) the incrimination of money laundering and terrorist financing negatively impacting on the reporting of suspicious transactions; ii) no clear reporting obligations covering funds suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations; and iii) the fact that attempted transactions not explicitly covered. Hungary addressed these deficiencies through various amendments made to the HCC and AML/CFT Laws and was assessed to be at a level equivalent to compliant with the former R. 13 and SR. IV.

268. **Criterion 20.1.** The obligation for financial institutions to submit a report where they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity, or are related to terrorist financing is stipulated in Section 23 of the AML/CFT Act. Financial institutions are required to report any information, fact or circumstance indicating money laundering or terrorist financing. The mere fact that information, facts or circumstances indicating money laundering or terrorist financing has emerged puts the threshold for reporting below the reporting threshold required by the current FATF standard. This reporting requirement is unequivocally set out in law.

269. The term “money laundering” as defined in Section 3(w) of the AML/CFT Act has the meaning of criminal offences specified in Sections 399-400 of the current and Sections 303-303/A of the former HCC. Sections 399 and 400 HCC define the crime of money laundering in terms of proceeds realised or derived from a punishable act which covers all predicate offences as set out in the HCC.

270. **Criterion 20.2.** Section 23 of the AML/CFT Act explicitly requires financial institutions to report all suspicious transactions, regardless of the amount of the transaction. This includes obligation to report attempted transactions as stipulated in Section 23(2) of the AML/CFT Act.

Weighting and Conclusion

271. **Hungary is rated compliant with R. 20.**

Recommendation 21 – Tipping-off and confidentiality

272. Hungary was rated Compliant with requirements under former R. 14.

273. **Criterion 21.1.** All service providers including their executive officers, reporting officers, employees and contributing family members of the service provider that are under the obligation to report their suspicions to the HFIU, when report is made in good faith, are protected by law (Section 23(7) of the AML/CFT Act) from liability. This protection is also available in circumstances where the reported suspicion ultimately proves to be unsubstantiated. In addition to that, Section 24(8) of the AML/CFT Law provides protection to the service providers and the HFIU, if acting in good faith, from liability in instances of the suspension of a transaction order if it can ultimately be carried out. As the definition of liability in Articles 23(7) and 24(8) of the AML/CFT Act does not explicitly cover protection from criminal and civil liability (nor does it specify the types of restriction breaches to which the protection applies), the exact application and extent of protections cannot thus be determined.

274. **Criterion 21.2.** Pursuant Section 27(1) of the AML/CFT Act, the reporting persons and the service providers requested to provide information to the HFIU (in accordance with Section 25/A (3) of the AML/CFT Act) are prohibited from disclosing: i) the fact that an STR has been made; ii) the content of the STR; iii) the fact that transaction order has been suspended; and iv) the name of the reporting person.

275. Breaches of the disclosure can be qualified as an administrative offence for violations of the AML/CFT Act or as a criminal offence when the HCC is breached. In case of an administrative offence, the respective supervisory body may sanction the offending person/entity in line with Article 35 of the AML/CFT Law. If the infringement is classified as a criminal offence according to Article 413 HCC (violation of economic secrets) or Article 223 HCC (invasion of privacy), the offending person can be punished by imprisonment up to two years (in case of Article 413) and imprisonment not exceeding one year (in case of Article 223).

Weighting and Conclusion

276. **Hungary is rated Largely Compliant with Recommendation 21.**

Recommendation 22 – DNFBPs: Customer due diligence

277. In the 4th MER of 2010, the main shortcomings identified at that time related to: i) some concerns in the implementation of the actual CDD and record keeping requirements; ii) the scope of legal privilege for lawyers and notaries was unclear; iii) weakness in the implementation of the CDD obligations for real estate agents and dealers in good exceeding 3.6 million HUF; and iv) the activities of the game rooms were not adequately limited in order to allow for a distinction from the casinos and therefore exclude them from the scope of the AML/CFT Act.

278. **Criterion 22.1.(a)** The overall CDD framework related to casinos (i.e. land-based casinos, card rooms) is described under relevant sections of the 4th round MER.

279. Online casino games and remote gambling are now allowed in Hungary. Hence changes occurred in the notion of “business relationship” (Section 3 (1) letter v.c) where the notion of “long-term contractual relationship” includes the registration of the gambler by the organiser of on line gambling.

280. According to the Gambling Act (Section 29/L), “online casino games” mean casino games offered through communications equipment and networks, offered by concession companies authorized to operate (land based) casino games while “remote gambling” covers sports betting, if offered through communications equipment and networks exclusively. Sports betting offered within the framework of remote gambling covers horse race betting and bets placed on sporting events as set forth under Section 29/C of the Gambling Act.

281. The Model Rules addressed to “remote gambling” organisers was adopted on 15 December 2015. This document was made available by the NTCA Department for Gambling Supervision on its official website on 17 December 2015. The Model Rules addressed to “online casino games” organisers were adopted on 29 January 2016. The document was made available by the NTCA Department for Gambling Supervision on its official website on the 2 February 2016.

282. CDD measures shall be applied at the entrance of the casinos and card rooms. However, there are provisions neither in the legislation nor in the Model Rules that require casinos and card rooms to link the CDD information for a particular customer to the transactions that the customer conducts in the casino.

283. *Criterion 22.1.(b)* Concerning real estate agents, the Hungarian authorities have amended since the last on-site visit the notion of “customer” that now covers any person requesting for a proposal for the sale or purchase of a real estate. They have issued the pertinent Model Rules governing real estate agency or brokering and any related services.

284. Thus, the sectorial legal framework is now completed, and the Model Rules have been issued. The 4th round MER of Hungary describes the relevant measures in place under paras. 642-646.

285. *Criterion 22.1.(c)* Dealers in precious stones are not covered *per se*, but are included under the category of dealers in trading and thus are subject to the AML/CFT regime. For dealers in precious metals, the AML/CFT Act applies as described under paras. 647-648 of 4th round MER of Hungary.

286. *Criterion 22.1.(d)* On lawyers, notaries (public), accountants and other independent legal professions, the overall CDD legal framework remains unchanged. A detailed description of the requirements can be found under paras. 654-665 of the 4th round MER.

287. In 2009, the Moneyval evaluators criticised how the legal privilege has been introduced in the AML/CFT legislation for lawyers and notaries (paras. 657-661 of the 4th round MER). Such exception is not only limited to the reporting requirements as recommended by the FATF standards, but it goes beyond inhibiting the application of all the preventive measures, including CDD requirements. Since the enactment of the Act of Trust, the notion of legal arrangements has been introduced in Hungary. However, the AML/CFT Act has not been amended accordingly:

- The notion of beneficial owner (section 3(1) letter r)) does not incorporate the specific CDD measures as envisaged by the FATF Standards (R.10.11 of the FATF Methodology);

- The circumstances under which legal professionals are required to carry out CDD measures in case of legal arrangements have not been extended as indicated by R.22.1 letter d), last bullet point, of the FATF Methodology.

288. *Criterion 22.1.(e)* On Trust and Companies Service Providers, the context has changed since the last round of evaluation. The Trust Act has been enacted and, today, “professional trustee” and “non-professionals trustees” operate in Hungary.

289. However, the notion of “non-professional trustees” (defined as trustees operating on a non-regular basis, i.e. with not more than one trust contracts per year, and for a fee or any other economic advantage not exceeding one per cent of the value of the trust fund at the time the contract was concluded differs from the concept provided by the FATF standards.

290. The Hungarian “non-professional trustees” are not covered by the AML/CFT Act. A list of “non-professional trustees” is held by the MNB.

291. “Professional trustees” are required to carry out AML/CFT obligations including CDD requirements as set forth under the AML/CFT Act. However, no dedicated Model Rules have been issued yet. This implies that “professional trustees” shall use the Model Rules for financial service providers.

292. The deficiency identified in relation to CDD requirements also applies in the case of DNFBPs.

293. *Criterion 22.2.* With regard to the record keeping requirement reference should be made to the analysis under R.11.

294. The compliance of legal professionals and of trustees with the obligations on record keeping requirements is negatively affected by the restrictions and limitations in the CDD requirements as described above.

295. Pursuant to Section 28(2) of the AML/CFT Act, the service providers are required to keep records of all executed cash transaction orders in the amount of three million six hundred thousand forints or more (whether in forints or any other currency).

296. *Criterion 22.3.* With regard to the provisions related to PEPs, the deficiencies identified under Recommendation 12 apply to DNFBPs.

297. *Criterion 22.4.* On new technologies that might pose threats and vulnerabilities related to ML/FT risks, the AML/CFT Act does not address this issue explicitly. Neither regulatory measures, nor any other enforceable measures have been issued to support DNFBPs to address this issue. According to the Hungarian Authorities there is no information that new technologies would be relevant or would be used by these sectors.

298. *Criterion 22.5.* The reliance on third parties to perform elements of the CDD requirements is governed by section 18 to section 21 of the AML/CFT Act. These provisions apply to all FIs and DNFBPs, with the exception of trustees. Detailed information on the reliance are provided in the 4th round MER of Hungary (paras. 684-686).

Weighting and Conclusion

299. Compliance with CDD measures for DNFBPs varies. Whereas the most relevant breaches are related to legal professionals and trustees that are regulated by provisions which are partially in

line with the FATF standards, deficiencies in the legal and regulatory framework related to CDD requirements, PEPs and new technologies affect the compliance. Minor shortcomings affect the casinos sector. **Recommendation 22 is rated Partially Compliant.**

Recommendation 23 – DNFBPs: Other measures

300. In the 4th round MER, Hungary was assessed as “partially compliant” with the requirements set forth under former R.16. The main deficiencies identified at that time were considered: i) low number of STRs from DNFBPs; and ii) shortcomings identified under STR obligations (deficiencies in the incrimination of ML and FT could affect the reporting obligation, and not clear reporting obligations on funds related to FT).

301. **Criterion 23.1.** The overall reporting obligation remained unchanged since the last round of evaluation. The reporting obligation is set forth under Section 23 of the AML/CFT Act for all “service providers” including DNFBPs, except lawyers and public notaries to whom special provisions apply under Sections 36 and 37 of that act. The sectorial Model Rules support the service providers in the reporting obligation process.

302. While all the categories of DNFBPs report STRs directly to the HFIU, lawyers and public notaries report STRs via the SRBs. The whole process is described in paras. 709-713 of the 4th round MER of Hungary.

303. With regard to “trust and company service providers”, as indicated above in the report, not all the categories of trustees apply the AML/CFT requirements, including the reporting obligations.

304. **Criterion 23.2.** For a description of the internal control requirements, reference should be made to the analysis under R.18.

305. **Criterion 23.3.** For a description of the requirements to be applied with regard to higher-risk countries, reference should be made to the analysis under R.19.

306. **Criterion 23.4.** For a description of the requirements on tipping-off and confidentiality requirements, reference should be made to the analysis under R.21.

Weighting and Conclusion

307. **Recommendation 23 is rated Partially Compliant.**

Recommendation 24 – Transparency and beneficial ownership of legal persons

308. Hungary was rated Compliant on the previous Recommendation 33. Since then, the FATF Recommendations have changed concerning legal persons. Hungary adopted a new Civil Code in 2014, which regulates the following types of legal entities: general partnerships (kkt); limited partnerships (bt); private limited-liability companies (kft); public limited companies (nyrt); and private limited companies (zrt). The Civil Code regulates also other legal persons, such as associations, co-operatives and foundations.

309. **Criterion 24.1.(a)** As provided under Section 3.1(4) of the Civil Code, legal persons shall be established in a form defined by law. Hungary has mechanisms for identifying and describing the various types, forms and features of entities which may be incorporated under Hungarian law, including foundations, co-operatives and associations, and (b) procedures for creating such entities and methods for obtaining and recording basic information (CRA) but not in all instances concerning their beneficial owners (to an extent for European public liability companies and

private limited companies) Such information is maintained by the Court of Registry and is publicly available (Section 10 CRA).

310. **Criterion 24.2** Hungary has not specifically assessed the risk associated with different categories of legal persons that can be created under Hungarian law. However, as indicated by the authorities Hungary has considered risks of straw men and fictitious business associations (i.e. “phantom companies”) but not risks associated with different types of legal persons as required by this criterion.

311. **Criterion 24.3.** Basic information concerning all types of legal persons (except for list of directors: for all companies only the person with power of attorney and in the case of public liability companies the type of management) is kept with the companies register (Section 23 *et seq.* of the CRA) and is publicly accessible, according to the Section 3:247 of the Civil Code and Section 10 of the CRA.

312. **Criterion 24.4.** For general and limited partnerships, information on a member of partnership should be maintained in the Register of Companies. For private limited liability companies, a “register of members” must be maintained by the managing directors and submitted to the Register of Companies. Limited companies are required to keep a “register of shareholders”, which is maintained by the management board of the company. The management board can outsource the keeping of the register of shareholders to a clearing house, a central depository, an investment firm, a financial institution, a lawyer at law or an auditor (which are all subject to the AML/CFT Law). In the case of public limited companies, the identification of the subcontracted keeper of the register has to be published by the company on its internet homepage (Section 3:245(3) of the Civil Code). The law requires that the general public shall have unlimited access to the registers of shareholders and that the registers should be accessible inside Hungary, at head office of the company or that of the keeper of the register continuously (Section 3:247 Civil Code). Private limited companies can issue shares in dematerialised or printed form (Section 3:214(1) of the Civil Code). However, the shares of public limited companies can be issued in dematerialised form only (Section 3:214(2) of the Civil Code). Dematerialised shares are dematerialised securities whose ownership are constituted by entry in the securities account kept by the Central Depository (Sections 5(1)(29) and 140(1) of CMA). The securities account can be operated only by investment firms, credit institutions and investment fund management companies operating on capital market, subject to the AML/CFT Act (Section 140(1) of CMA). The management of the association shall keep records on members. Cooperative societies shall keep a register of their members, containing the member’s name and home address, or registered office of members that are not natural persons, the amount of the member’s capital contribution, and the date of commencement and termination of membership. As for the foundations, information on the beneficiaries is included in the charter document.

313. **Criterion 24.5.** For information that is required to be sent to the Court of Register there is an automatic check for completeness. The automatic check includes technical (formal) check and in parallel verification of some further information (i.e. registered office, branch office, data of the representative of the company, data of the members, tax ID numbers, main activity and other activities of the company, information related to VAT taxation). Incomplete submission of data may also result in denying of the registration. Moreover, a company can only start its business activity after its tax number has been issued, if a company does not obtain an individual tax number from the tax authorities during the registration procedures, it cannot be registered by the Court of

Registry. Thus the gathering of the tax number is a prerequisite for the registration procedures at the Court of Registry. During this procedure the tax authority also checks the information in the application. There are no explicit legal provisions on ensuring that information maintained by the Court of Register is accurate. However pursuant to Section 72 of the CRA judicial oversight procedures can be applied if the instrument of constitution or any amendment of it, or any data recorded in the companies register is found or becomes unlawful. In the case of limited companies, shareholders can only exercise their right of vote if registered in the shareholders registry, and changes “to the particulars of the shares” (which include ownership) must be reflected in the shareholders registry (Section 3:245 (2) of the Civil Code). While there are instances in which other types of companies are required to notify the Register of changes of data, it is not clear that this applies in all instances (particularly as regards changes of ownership) and information is updated on a timely basis.

314. **Criterion 24.6.** There is no requirement for the companies to obtain and hold up-to-date information on the companies’ beneficial ownership in the country. Hungary partly meets this criterion through a combination of mechanisms (i.e. using existing information available at the Registers on legal ownership of companies, using information obtained in the CDD process and using information held or accessible by competent authorities). In those instances in which legal entities have business relationships with financial institutions and DNFBPs, through the requirements on the beneficial owners stipulated by the AML/CFT Law, complemented by the power of the HFIU to request information to reporting subjects. For the analysis of identification and verification of beneficial owners by the financial institutions and DNFBPs, see Recommendations 10 and 22. All legal persons which have registered offices, business premises and branches in Hungary, are required to have at least one domestic current account according to the Rules of Taxation and the CRA and will have business relationships with banks in Hungary. Moreover, under section 24 (para. 1(j) and para. 6) of the CRA, banks shall notify the Court of Registry by way of electronic means concerning the particulars of the bank accounts. These are hence registered in the Register of Companies.

315. **Criterion 24.7.** Beneficial ownership information is included in the records of the financial institutions subject to AML/CFT Law. However, there is no explicit requirement to verify the identity of the beneficial owner and the evaluation team has concerns with regard to the definition of the beneficial owner. Therefore, all beneficial ownership information is not required to be as accurate as possible. Other than that there are no specific requirements concerning this criterion.

316. **Criterion 24.8.** There is no specific obligation for companies to cooperate with the competent authorities in determining the beneficial owner as set forth is this criterion. In the cases described under criterion 24.6 beneficial ownership information can be obtained from financial institutions and DNFBPs.¹⁴³

317. **Criterion 24.9.** As regards basic information, the Court of Registry is required to maintain information and records after that data has been deleted as prescribed under section 12 of the CRA. In cases of dissolvent of companies, the Court of Registry shall keep information as set forth under

¹⁴³ The Hungarian authorities have indicated that all service providers and natural persons have to cooperate with the courts, investigation authorities, prosecutors, tax authorities. If a non-resident legal person or an unincorporated business association, or the foreign natural person indicated in the application does not have a residence in Hungary, an agent for service of process shall be designated. This agent shall be responsible for collecting any document relating to the company’s operation and addressed to his principal by a court or other authority and to forward these documents to the principal.

Section 24 (1) and Section 62(4) of the CRA. As indicated above, all legal persons are required to have bank accounts as indicated under criterion 24.6. Records concerning ownerships of legal entities are subject to an eight year retention period, from the termination of the business relationship by relevant banks.

318. **Criterion 24.10.** The Courts of Registry (when information is missing during the registration), the HFIU (when the information is maintained by entities subject to the AML/CFT Act), and the prosecutor and investigative authorities, in the course of an investigation, can have access to all information on legal entities.

319. **Criterion 24.11.** The HCC states in Section 3:213 that shares are equity securities representing membership rights in the issuing limited company and must be registered.

320. **Criterion 24.12.** Nominee shareholders are allowed by section 152 of the CMA, in the case of a limited company upon being registered in the relevant register of shareholders in that capacity. Section 153 requires that the nominee shall expressly indicate being a representative of the actual owner of the shares and to reveal the identity of the principal shareholder when so requested by any other shareholder or the Authority, but it is unclear whether the fact that a shareholder is a nominee of the principal is subject to registration in the company's register or elsewhere in all instances (there is a registration requirement, but only when the acquisition of shares is subject to public authorities' authorization). Nominee directors are not allowed under Hungarian law. Given that there is no prohibition to provide nominee director services, it is important to set up relevant mechanisms to ensure that they are not misused (having regard to the fact that "straw men" are considered a relevant risk factor for Hungary).

321. **Criterion 24.13.** In the case of non-compliance with the requirements relevant to this recommendation, the CRA provides for a judicial oversight proceeding, which may be concluded with the application of an array of administrative sanctions (which can also be concurrent and repeated. Sanctions/measures which can be imposed/taken by the Court of Registry in case of companies' or other registered entities non-compliance are the following:

- Issuing a notice to the company to rectify within 30 days or be subject to sanctions;
- a fine of HUF 100 000 (approximately EUR 330) to HUF 10 million (approximately EUR 33 000) payable by the company;
- overturning any company resolution considered to be unlawful and direct that a new lawful resolution be passed;
- taking over the management of the executive body of the entity and ensure lawful operation of the company is restored; or
- appointing a supervising commissioner for up to 90 days;
- liquidating the entity if deficiencies are not addressed following measures taken by the Court.

Sanctions may be issued depending on the reason or the gravity of the action for which the proceedings were opened. Presumably, this ensures proportionality. The legal consequences of non-compliance with obligations under the tax law are contained in chapter VIII (Sections 165 to 174/A) of the Act on the Rules of Taxation. Section 172 prescribes a default penalty of up to HUF 500 000 (approximately EUR 1,600) in respect of various defaults committed by the company.

322. Please see also the analysis for Criteria 27.4 and 28.4(c) and Recommendation 35.

323. **Criterion 24.14.** The competent authorities have measures for international co-operation and investigative powers which may be used to exchange information about companies, shareholders and beneficial owners. Directive 2012/17/EU on the interconnection of central, commercial and company registers, once implemented, should improve access to such information. Please see also the analysis for Recommendations 37 and 40.

324. **Criterion 24.15.** In the course of the information exchange, the HFIU provides assistance to foreign counterparts on BO information. This possibility is frequently used by the HFIU if it needs information. In return, the HFIU provides information when requested by foreign FIUs. The HFIU is able to obtain additional information from obliged entities. No information on the monitoring the quality of assistance the country receives from other countries on beneficial ownership or locating beneficial owners residing abroad was provided by the authorities.

Weighting and Conclusion

325. Five criteria under Recommendation 24 are met, three are mostly met, five are partly met and two criteria are not met. There are some weaknesses related to the assessment of the ML/FT risks associated with different types of legal persons. There are deficiencies with respect to the mechanisms for ensuring that the basic information maintained by the Court of Registry is accurate and updated. The list of directors is not publicly available as it should be. **Recommendation 24 is rated Partially Compliant.**

Recommendation 25 – Transparency and beneficial ownership of legal arrangements

326. The previous Recommendation 34 was rated “Not applicable” in the context of Hungary. The Civil Code adopted in 2013 (Chapter XLIII) provides for “fiduciary asset management contracts”, under which the fiduciary (who acts like a trustee) undertakes to manage the assets and rights entrusted to him by the principal, in his own name and on the beneficiary’s behalf, and the principal undertakes to pay the fee agreed upon. The Civil Code is complemented by a specific law (XV of 2014), “On trustees and the rules for their activities”. The Act regulates the operation of “corporate entity trustees”, which provide fiduciary asset management on a professional basis, and which may only be corporate entities¹⁴⁴ (professional trustees) and trustees (natural or legal persons) acting on a non-professional basis. Finally, the AML/CFT law applies also to corporate entity trustees acting as professional trustees but not to non-professional trustees (Section 1, (1), n).

327. **Criterion 25.1.** The Act XV of 2014 on trustees and the rules for their activities provides that, in the case of corporate entity trustees, the name of the entity (which is the trustee) be included in a register of corporate entities trustees (hereinafter: “the register”). The corporate entity trustees shall be obliged to keep records of trust relationships, including information on the identity of the settlor and the beneficiaries (Section 39, (2) a)). A similar requirement is in place for trustees not acting on a professional basis (Section 20). Except in the case in which the trust services are outsourced to a third party, there is no specific requirement for trustees to hold basic information on other regulated agents of, and service providers to, the trust. Only information

¹⁴⁴ According to the Law on Trustees, these are: a) a private limited company or public company limited by shares with a registered office in the territory of Hungary, or b) a Hungarian branch office of a company with a registered office in another state party to the Agreement on the European Economic Area (Section 3, (1) a) and b).

related to the assets management (including contracts with agents or service providers) is subject to record keeping under Section 40(2). Information obtained under the AML/CFT Act is subject to a retention period discussed under R. 11. In addition to that retention period, information entered into the registers of trust relationships and trust-related legal statement is subject to a 10-year retention period (Section 41 (2) of Act of Trustee). In both cases, this information would not include regulated agents of and service providers to the trustee.

328. **Criterion 25.2.** For professional trustees, there are record keeping requirements. However the requirements under the AML/CFT Act do not cover all information related to trusts. As for non-professional trustees, there are no special requirements. However, the non-professional trustees have to submit, within 30 days following the conclusion of the contract, information on the settlor and the beneficiary specified in the contract. The announcer is obliged to announce changes in its data incorporated in the register within eight days following the occurrence of the circumstance giving rise to the modification.

329. **Criterion 25.3.** No specific provisions are addressing this criterion. For professional trustees, given that they can only operate in corporate form, the name of the entity would itself show the nature of the business. However, this would not be the situation of non-professional trustees.

330. **Criterion 25.4.** No legal or regulatory provision prevents professional trustees from communicating information concerning a legal arrangement to the competent authorities. Specific provisions exist which lift confidentiality requirements vis-à-vis public authorities, including the HFIU (Sections 29 and 42 of the Law on Trustees). However, the confidentiality requirements to which trustees are subject are not specifically lifted with regard to professions subject to due diligence, when asking CDD-related information. There is a general requirement in the AML/CFT Act (Section 8) requiring customers to provide data on beneficial owners. However, it is unclear whether the specific confidentiality requirements in the Act on Trustees would prevail; and, even if they would not, the notion of beneficial owners do not include settlors of legal arrangements, as previously indicated.

331. **Criterion 25.5.** The general powers of prosecution and investigative authorities apply to information regarding trusts. The analysis of R.31 states that LEAs have comprehensive powers to obtain access to all necessary documents and information for use in those investigations, prosecutions, and related actions. There are specific provisions that lift confidentiality requirements vis-à-vis certain public authorities, including bodies performing domestic crime prevention and crime investigation duties in compliance with the Act on Police, bodies combating terrorism, and the HFIU.

332. **Criterion 25.6.** The analysis of R.37 to R.40 does not identify any major deficiencies that would affect the exchange of information on legal arrangements.

333. **Criterion 25.7.** There is a range of sanctions for corporate entities trustees and non-professional trustees (warnings, fines suspension or termination of license or trusts), which appear proportionate and dissuasive, taking into consideration that they can be repeatedly applied.

334. **Criterion 25.8.** Sanctions outlined under criterion 25.7 can be applied for a violation of the Act XV of 2014 on trustees and the rules for their activities or other statutory instrument or regulation or the conditions described in the licence applicable to trust activities or suggestions of a violation In addition to the sanctions outlined above, professional trustees are also subject to the sanctions provided in the AML/CFT law for failure to provide information.to competent authorities.

Weighting and Conclusion

335. Hungary meets four out of eight criteria under this Recommendation, with two criteria being partly met. There are some weaknesses in the transparency of legal arrangements. No provisions on providing information on the beneficial ownership of trusts and the assets to be managed to financial institutions and DNFBPS. There is no requirement for non-professional trustees to disclose their status. **Recommendation 25 is rated Partially Compliant.**

Recommendation 26 – Regulation and supervision of financial institutions

336. In the 4th round MER, Hungary was rated “Largely Compliant”, due to the fact that criminal records regarding members of the supervisory board of the investment firms, as well as records regarding persons holding a qualifying interest in investment fund management companies, were not assessed. Moreover, “fit and proper” requirements applied only to directors/executive officers and not to the senior management of FIs. In this context, it should be noted that, until 1 October 2013, the Hungarian Financial Service Authority (HFSA) was the AML/CFT supervisor for the whole financial sector. With the entrance into force of the MNB Act (Act CXXXIX of 2013), the MNB has become the AML/CFT supervisor for FIs.

337. **Criterion 26.1.** Under section 5 of the AML/CFT Act, the MNB is the sole designated supervisory body for “service providers”¹⁴⁵, as referred to in paragraphs a)-e) and l) of Subsection (1) of Section 1 of the AML/CFT Act. According to the section 39 of the MNB Act, the supervisory function shall be performed within the framework of its responsibilities set out in Section 4 (9), letter c) of that Act¹⁴⁶. On the regulatory side, under Section 33 of the AML/CFT Act, the MNB shall – in collaboration with the HFIU and in agreement with the MNE - issue “Model Rules” that are considered non-binding recommendations. Such Model Rules shall be used by the service providers in the adoption of internal rules that have to be approved by the MNB. The MNB is required to keep the Model Rules updated and consider amendments every 2 years under the procedure indicated above.

Market Entry

338. **Criterion 26.2.** The MNB is the authority in charge of licensing *Core Principles* FIs¹⁴⁷. Money exchange offices shall be authorised by the MNB, while agents and subagents operating as MVTSS shall be registered at the MNB. Credit institutions and financial enterprises are authorised to carry out financial services and financial auxiliary services under section 14 *et seq.* of the CIFE Act. Investment firms and commodity dealers are authorised under section 27 and 28 of the Act CXXXVIII of 2007, while insurance institutions and insurance businesses are licensed under Section 57 of the Act LX of 2003 and by Section 41(1) of the Act LXXXVIII of 2014 on the Business of Insurance which entered into force on 1 January 2016. Investment fund management companies are regulated by the Capital Market Act (Act CXX of 2001) and authorised under Section 5 of that Act.

¹⁴⁵ The notion of “service providers”, as indicated in the 4th round MER (paras. 515 and 516), covers all financial activities described in the FATF definition for “financial institutions”.

¹⁴⁶ According to this section, the supervisory function is aimed at: “[D]iscovering undesirable business and economic risks threatening individual financial organisations or individual sectors of financial organisations, mitigating or eliminating existing individual or sector-related risks, and taking preventive measures with a view to ensuring the prudent operation of individual financial organisations”.

¹⁴⁷ Having regard to the Hungarian financial sector, *Core Principles* FIs include credit institutions, financial enterprises, investment firms, commodity dealers, insurance institutions and investment fund management companies.

339. As regards the deficiencies identified in the 4th round MER, amendments to the Act CXXXVIII of 2007 (Section 4, point 71 a)) on investment firms and commodity dealers have been adopted. On these issues, Act XVI of 2014 (Section 4, point 102) on collective investment trusts and their managers have been enacted. The amended provisions require that members of the supervisory board shall be considered as “senior executive” for whom “fit and proper” tests shall be carried out by the MNB. Similar provisions apply for persons holding a qualifying interest in investment fund management companies by Act XVI of 2014 on collective investment trusts.

340. Although credit institutions perform “money transfer services” and “money changing services”, defined as “financial services” and “financial auxiliary services” respectively, under the CIFE Act, money transfers services are also provided by Postal Office¹⁴⁸ and private companies which operate as agents or sub-agents of foreign MVTs under the EU passporting legislation. Upon registration at the MNB, agents and subagents are requested to provide criminal records.

341. The activity of “money changing” (i.e. currency exchange officers) is regulated by the Government Decree 297/2001 on “money exchange services”, whose authorisation is granted by the MNB if the conditions specified in CIFE Act and in Decree 297/2001 (Sections 3-5 and 10-12) are satisfied. The exercise of this activity is performed by companies operating as agents of credit institutions. Prior to granting an authorisation to operate, the MNB shall request the opinion of the National Police Headquarters on founders and senior executives of these companies. As regard the establishment of “shell banks”, the general rules of the authorisation set forth under the CIFE Act (Section 11 *et seq.*) provide for a legislative framework under which a company, which might be considered a “shell bank” under the FATF notion, shall not be authorised to operate in Hungary. Moreover, under Section 15(3) of the AML/CFT Act, (financial) service providers are prohibited to establish or maintain a correspondent banking relationship with a “shell bank” or with a service provider that maintains a correspondent banking relationship with such a bank.

342. **Criterion 26.3.** As regards credit institutions and financial enterprises the acquisition of “qualifying holding” in these entities (and any subsequent escalating operation) shall be authorised by the MNB as set forth under Sections 14 and 15 of the CIFE. The MNB shall also authorise the election or appointment of their senior executives. The same provisions apply when credit institutions and financial enterprises are incorporated in a branch. Such authorisations are not required when financial institutions are incorporated in another EEA member State, under the conditions indicated in the sections above. The requirements for a person with “qualifying holding” are indicated under Section 125 of the CIFE Act, as described in para. 581 of the 4th round MER. Under the same Act, persons with “qualifying holding” and executive officers shall have requisites of “good business reputation” (as defined under Section 139).

343. According to the CIFE Act, the MNB is required to carry out enquires to examine whether the applicants comply with the provision of this Act. The MNB shall refuse authorisation (Sections 129-131 of the Act) in case if the conditions are not met or in case of pending criminal proceedings against the applicant. Senior executives shall demonstrate “good business reputation” and the absence of criminal records. In case of an indictment (for the crimes indicated under Section 137), they shall inform the MNB for further action.

¹⁴⁸ The Postal Office might provide money transfers activities under the scope and in the context of the UE Directive on Payment Services 2007/64/EC.

344. As of 31 December 2015, insurance companies were regulated by similar provisions set forth under Act LX of 2003 (Section 60): persons who want to obtain a “qualifying interest” in the insurance companies shall apply for authorisation to the MNB. The persons shall provide documents and information as detailed under Section 111 of the Act. The MNB shall check and verify the information provided. It may refuse authorisation in case of failure to comply (Section 112). The persons with “qualifying interest” and the executive officers – who shall be authorised by the MNB – are required to have a good business reputation (Section 91 of the Act).

345. Since 1 January 2016, the Act LXXXVIII of 2014 on the Business of Insurance entered into force. Section 41 of the Insurance Act includes the licensing principle of insurance (reinsurance) activity. Section 237 stipulates a two-step licensing procedure (foundation licensing and operational licensing). Sections 238-242 and 243-246 list the documents required for an application for a foundation and an operational license.

346. The legal framework on investment firms is similar to those described above. It is governed Section 37 *et seq.* of the Act of 2007. The MNB shall verify whether the applicants with “qualifying interest” meet the conditions indicated in the Act. In case of failure, the MNB shall refuse to grant its consent. Such provisions are applicable to executive managers as well.

347. Investment firms and commodities dealers are regulated by Capital Market Act, according to which the authorisation is required under Section 91 of the Act. Under Section 97 of the Act, investment firms shall be run by at least two officers with no prior criminal records, with three years of experience in the field, one of whom must be a resident. Commodities dealers shall appoint a person to direct business operations who has no prior criminal record and at least two years of professional experience (Section 98). The authorisation for the acquisition of “qualifying interests” is granted by the MNB under the condition indicated in Section 107 of the Act, including the absence of criminal records and “disqualifying factors” (Section 357).

348. Pursuant to Section 300 of the Act, the MNB authorises the exchange market. In case of a person with a “qualifying holding”, this person shall have no prior criminal record, while any executive officer shall not meet the disqualifying factors specified in Section 357 (and detailed in Schedule No. 11). Authorisation is not provided in case the conditions set forth in the Act are not met.

349. **Criterion 26.4.** Pursuant to Section 34 of the AML/CFT Act, the MNB is required to ensure the compliance of service providers (i.e. FIs) with the provisions of that Act. The MNB shall perform its supervisory function in accordance with Sections 34 and 35 of the AML/CFT Act and Section 39 of the MNB Act and the Act on General Rules of Administrative Proceedings. With regards to “financial group supervision”, the MNB has concluded Memoranda of Understanding (MoU) with foreign supervisory counterparts. Under EU law, supervisors responsible for the financial institutions providing services in countries other than their home country, as well for different members of the same group, form a so-called “Supervisory College”. In order to perform the supervisory function, the context and the activities that the MNB shall perform (e.g. on-site and off-site inspections, as well as the analysis of data and documents) are set forth in Section 48 of the MNB Act. This obligation was enacted recently under the Act LXXXV of 7 July 2015 that amended the MNB Act. Pass-ported agents of EU-licensed PSPs operating under the PSD fall under the supervisory responsibility of their home supervisors.

350. **Criterion 26.5.** Chapter VII of the MNB Act (Section 62 *et seq.*) regulates the supervisory activities that the MNB shall perform, regarding frequency (giving a minimum timing), type of controls, procedures and follow up initiatives. Such controls shall also be performed at “financial group level”. These provisions became effective with the entering into force of Act LXXXV of 7 July 2015. Section 64 of that Act requires the MNB to perform “comprehensive” on-site inspections, according to the frequency imposed by legislation (with a frequency varying from 1 year to 5 years).¹⁴⁹ Moreover, all FIs shall be inspected after one year following the time of taking up the pursuit of their activities. The MNB may also conduct thematic inspections *ex officio*. It shall also launch *ad hoc*-inspections in the event of any suspicion of a significant breach of the statutory provisions provided for in Subsection (1) of Section 62, if the breach: a) concerns a large number of clients; b) leads to significant systemic risks (which include ML/FT risks); or c) constitutes an overall threat to confidence in the given market. The MNB shall also conduct follow-up inspections for the purpose of verifying compliance with its resolutions, covering data obtained through regular and extraordinary data disclosures, as well as the findings of on-site and off-site inspections.

351. Neither the AML/CFT Act nor the MNB Act indicates that the AML/CFT supervision shall be performed on ML/FT risk sensitive basis. The inspection manual and handbook manual of the MNB of May 2014 consider the ML/FT risks within the overall prudential risk assessment for the supervised entity. However, results of the NRA, analysis of sectorial ML/FT risks, and stand-alone ML/FT risk profiles of the FI or financial group are not incorporated into the AML/CFT supervisory framework of the MNB.

352. **Criterion 26.6.** There are no provisions in the MNB Act and in the AML/CFT Act that require the MNB to review the assessment of the ML/FT risk periodically or when major events occur. The procedures adopted by the MNB on risk profile for banks incorporate the ML/FT risk within the “operational risk” that is part of the overall assessment of the “prudential risk”. Thus the relevance of the ML/FT risk is limited¹⁵⁰. As far as the other non-*Core Principles* FIs are concerned, there are no procedures indicating that the MNB reviews the assessment of ML/FT risks profile and updates it when necessary. Although there are neither legal requirements nor adopted procedures by the MNB on a risk-based approach to AML/CFT supervision embracing all FIs, the AML/CFT Supervision Division has collected information from various sources and has carried out onsite inspections with regard to circumstances involving ML/FT risks.

Weighting and Conclusion

353. The responsibility for regulating and supervising FIs on AML/CFT issues is clearly assigned to the MNB that avails itself of the powers set forth under the AML/CFT Act, the MNB Act and the

¹⁴⁹ The frequency indicated under Section 64 is the following:

- every year: organisations carrying out central counterparty activities and at central securities depositories;
- every 2 years: operators of the payment system and at bodies providing clearing or settlement services;
- every 3 years: credit institutions, insurance and reinsurance companies, electronic money institutions, payment institutions, investment firms, commodity dealers, investment fund managers, the stock exchange, and at persons and bodies covered by the acts enumerated in Section 39, which are subject to supervision on a consolidated basis (i.e. “financial group”);
- every 5 years: credit institutions that have acceded to the Integration Organisation provided for in Act CXXXV of 2013 on the Integration of Credit Institutions Set Up as Cooperative Societies and on the Amendment of Regulations Relating to the Economy, small insurance companies covered by Part Six of the Act on the Business of Insurance, venture capital fund managers, private pension funds, voluntary mutual insurance funds, and institutions for occupational retirement provision.

¹⁵⁰ As described under IO3, a similar mechanism applies for other *Core Principle* FIs.

sectorial financial legislations. The sectorial legislations regulate “market entry” requirements for licensing *Core Principles* FIs, for the registering of MVTs and for the authorisation of exchange offices. However, neither the AML/CFT Act nor the MNB Act indicates that the AML/CFT supervision shall be performed on a ML/FT risk-sensitive basis. Moreover, neither the results of the NRA, nor the analysis of the ML/FT risk-sector and the ML/FT risk profile of the FI/“financial group” are incorporated in the AML/CFT supervisory framework of the MNB. **Recommendation 26 is rated Largely Compliant.**

Recommendation 27 – Powers of supervisors

354. In the 4th round MER, Hungary was rated Compliant on the powers of supervisors that were at that time assigned to the HFSA.

355. **Criterion 27.1.** The MNB Act and the Administrative Act (on the General Rules of Administrative Proceedings and Services) set forth the provisions for the supervisory framework related to FIs. These laws complement the AML/CFT Act in this respect. Since 1 October 2013, the supervisory tasks for all FIs are performed by the MNB, as provided by Section 39 (1) of the MNB Act.¹⁵¹ Moreover, under Section 42, letter c) and letter e) of that Act, the MNB shall inspect the financial institutions and persons covered by the acts referred to in Section 39. It shall exercise ongoing supervision of the financial markets relying on the data and information supplied by the financial institutions and persons covered by the act enumerated in that section, and on facts which are officially known and which are public knowledge.

356. **Criterion 27.2.** The MNB has the authority to carry out AML/CFT on-site inspections, as set forth under Sections 62, 67 and 67/A of the MNB Act.

357. **Criterion 27.3.** The MNB has the power to compel production of information in its capacity as AML/CFT supervisor.

358. **Criterion 27.4.** Under Section 35 of the AML/CFT Act, the MNB shall adopt administrative measures and fines in case of infringement of the AML/CFT requirements. Disciplinary measures might be imposed (e.g. calling upon the supervised entities to remediate the deficiencies, issuing warnings) as well as administrative sanctions that range from approximately EUR 640 to 1,6 million. The AML/CFT sanction regime does not provide for the withdrawal, restriction or suspension of the financial institution’s licenses in case of a violation of the AML/CFT requirements.

Weighting and Conclusion

359. The MNB has adequate powers to supervise FIs on AML/CFT requirements, to conduct inspections and to gather information, data and documents. The MNB is also vested with the power

¹⁵¹ According to Section 39 (1), the MNB shall supervise the bodies and persons, and the activities covered by the sectorial financial legislations, as listed below: a) the Act on Voluntary Mutual Insurance Funds; b) the Act on the Hungarian Export-Import Bank Corporation and the Hungarian Export Credit Insurance Corporation; c) the Act on Credit Institutions and Financial Enterprises; d) the Act on Home Savings and Loan Associations; e) the Act on Mortgage Loan Companies and Mortgage Bonds; f) the Act on Private Pensions and Private Pension Funds; g) the Act on the Hungarian Development Bank Limited Company; h) the Capital Market Act; i) the Act on Insurance Institutions and the Insurance Business; j) the Act on the Distance Marketing of Consumer Financial Services; k) the Act on Occupational Retirement Pension and Institutions for Occupational Retirement Provision; l) the IRA; m) the Act on Collective Investment Trusts and Their Managers, and on the Amendment of Financial Regulations; n) the Act on Reinsurance; o) the Act on the Pursuit of the Business of Payment Services; p) the Act on Insurance Against Civil Liability in Respect of the Use of Motor Vehicles; q) the Act on the Central Credit Information System; r) the Act on Settlement Finality in Payment and Securities Settlement Systems; and s) the Act on Payment Service Providers.

to impose administrative measures and sanctions with the exception of withdrawing, restricting or suspending the FI's license within the context of the AML/CFT legislation. **Recommendation 27 is rated Largely Compliant.**

Recommendation 28 – Regulation and supervision of DNFBPs

360. In the 4th round MER of 2010, Hungary was not assessed under this Recommendation. In the 3rd round MER of 2005, the rating received was Largely Compliant. At that time, the main shortcomings identified were related to the limited number of resources of DNFBP supervisors.

361. **Criterion 28.1.(a)** The operation of land-based casinos is not a liberalised activity. It shall be conducted by either a company owned only by the State that obtained a written consent of the MNE, or not-State owner(s) that concluded a “concession contract” with the MNE, according to the provisions set forth under Act XVI of 1991 on concessions related to “Special Regulations Relating to Concession Contracts”¹⁵². The activity of card rooms is recognised as liberalised activity. For this reason, neither a written consent of the MNE nor a conclusion of a concession contract with the MNE is required in order to operate a card room. In any event, a licence issued by the NTCA is mandatory for the commencement of liberalised and non-liberalised activities. As concerns land-based casinos, Decree No. 32/2005 of the MNE “On the implementation of regulations concerning the authorisation, organisation and control of gambling activities” details the procedures for the authorisation under sections 2, 3, 53 and 53/A. Similar provisions apply for “card rooms” under section 73/A of that Decree, while the procedures for “remote gambling” and “online casinos” activities are set forth under sections 24 and 25. Provisions on “remote gambling” and “online casinos” entered into force on 2 January 2016. Under Act XXXIV of 1991 on “Gambling operations”, the Department for Gambling Supervision of the NTCA shall authorize (land based) casinos, “card rooms” and “remote gambling”. Under the Act CXCV of 2015, the Department shall also authorise operations of “online casinos”. According to the text of the Gambling Act, in force since 1 January 2016, “remote gambling” operations shall be conducted by companies owned only by the State, while “online casino” operations shall be conducted only by licensed (land-based) casinos. The NTCA maintains an official public register on authorised operators accessible on the internet web site¹⁵³. Since the on-site visit in March 2016, “remote gambling” or “online casino” licences have not been issued. However, the Hungarian authorities have indicated that in the course of 2016 such licences are planned to be issued.

362. **Criterion 28.1.(b)** The authorisation under Act XXXIV of 1991 on “Gambling operations” is granted by the Department for Gambling Supervision of the NTCA in the circumstances indicated under section 2. The absence of criminal records for applicants or for any of its members controlling at least 25 % of the voting right and/or for its executive officers, as well as the absence of final convictions for the crimes listed in that section, are some of the conditions that shall be met in order to obtain that authorisation. Such conditions apply within the three years prior to submitting the application. Moreover, the applicants shall not be authorised if these persons have been involved in unauthorised gambling activities, within the five years prior the submitting the application for the authorisation. The Department for Gambling Supervision of the NTCA shall

¹⁵² The company to which the concession contract is awarded (the signatory of the concession contract) is required to establish a business association in order to provide gambling services specified in the “concession contract”.

¹⁵³ http://nav.gov.hu/nav/szerencsejatek/engedelyek/Engedelyek_kozhitele20150521.html

perform controls on the conditions indicated above by processing personal data of the applicants, members (who control 25 % of the voting rights) and its executive officers. Such controls under Section 7/A of the Act XXXIV of 1991 shall be carried out by obtaining official documentary evidence or by requesting from the penal register the information needed. During the course of the regulatory inspections of gaming operations, the NTCA, as set forth under para. 8 of the Section 7/A, shall verify whether the above-mentioned conditions are met. The application is granted or refused, depending on the gambling operators' meeting of the requirements. The authorisation may later be revoked, if the requirements are not or no longer met.

363. **Criterion 28.1.(c)** Under Section 5 of the AML/CFT Act, the designated supervisory body for casinos, card rooms, online casinos and remote gambling is the Department for Gambling Supervision of the NTCA. The Act XXXIV of 1991 on gambling operations assigns the NTCA with the power to impose sanctions in case of infringements of the AML/CFT requirements by adopting administrative measures listed under Sections 13 (1), (2) and (3). With regard to the enforcement of the supervisory activities, apart from the penalties set forth under Section 35 of the AML/CFT Act, the NTCA may also ban operations and suspend the authorisation of the operator of gambling in case of infringement of the AML/CFT requirements (Section 13 of the Gambling Act).

364. **Criterion 28.2.** The AML/CFT Act sets forth the competent authorities and SRBs (self-regulatory bodies) responsible for the supervision of DNFBPs with the AML/CFT requirements. The overall AML/CFT licencing and supervisory framework for DNFBPs is regulated as follows:

- Real estate agents are supervised by the HFIU. Section 64/C (2) a) of the Act LXXVIII of 1993 sets forth the rules of renting and disposing houses and premises, while the Government Decree 217/2009 (X. 2.) designs the supervisory authority over the real estate companies. Decree of the Ministry for National Economy 23/2013 (VI. 28.) sets out in detail the conditions and the registration of the real estate managers and real estate agencies.
- Dealers in precious metals are registered and supervised by the Hungarian Trade Licensing Office (HTLO).
- Dealers in precious stones are not covered *per se* but under the notion of "dealers in goods". The latter are registered and supervised by Hungarian Trade Licensing Office (HTLO);
- Lawyers (and law offices) are supervised by Regional Bar Association (i.e. SRB). The Attorney Act (Act XI of 1998 on Attorneys) governs lawyers' activities.
- Notaries (public) are supervised by the Regional Chamber (SRB). The Kjtv. Act (Act XLI of 1991 on civil law notaries) regulates solicitors.
- Auditors are supervised by the Chamber of Hungarian Auditors (SRB). The Act LXXV of 2007 governs the Chamber of Hungarian Auditors, the activities of auditors and on the public oversight of auditors.

365. Under the AML/CFT Act, any person engaged in trading in goods involving the acceptance of cash payments in the amount above 3,600,000 HUF (approximately EUR 12,000) is subject to the AML/CFT requirements and registered and supervised by the HTLO, as set forth under para. 4 of Section 33 of the AML/CFT Act. The category of traders in goods includes persons that are dealers in precious stones. Thus the latter, although not explicitly referred to in the AML/CFT Act, falls within the scope of the AML/CFT legislation.

366. For this reason, the Hungarian authorities indicated that the category of dealers in precious stones is covered under the category of dealers in goods, with the consequence that AML/CFT obligations apply. As “trading in goods” shall mean the sale of goods by way of business to buyers, traders or processors, the AML/CFT provisions shall be applied to persons who are engaged in Hungary with trading in precious metals or articles made of precious metals, and/or are engaged with trading goods in involving the acceptance of cash payments exceeding the threshold indicated above.

367. As regard TCSPs: when the trustee operates as a “non-professional trustee”, whose notion differs from the FATF Standards, the AML/CFT requirements do not apply.

368. The AML/CFT Law does not cover company service providers activities (i.e. CSPs), as the exercise of the activities listed by the FATF for CSPs are not performed in Hungary as a separate business.

369. Under Section 34 of the AML/CFT, all the designated AML/CFT supervisory authorities and bodies shall ensure compliance of the categories of DNFBPs with the provisions of the AML/CFT Act.

370. The “Act on the General Rules of Administrative Proceedings” contains general and detailed provisions of proceedings administrative authorities that complement the relevant provisions on AML/CFT supervision set for the AML/CFT Act.

371. As indicated above, auditors, lawyers and notaries public are supervised for AML/CFT purposes by the respective SRBs (i.e. Chamber of Hungarian Auditors, Regional Bar Association and Regional Chambers) under the sectorial legislations. According to the FATF Standards, these SRBs shall be supervised by a competent authority in relation to the (AML/CFT) supervisory functions assigned.

372. The legislation assigns the function to oversee the activities of the SRBs to the competent ministries. The MNE is in charge of the supervision of Chamber of Hungarian Auditors, as set forth under section 198(1) and 200/A (1) of the Auditors Act, while the Ministry of Justice oversees the operations, regulations and decisions of the Regional Bar Associations of lawyers and of the Hungarian Bar Association (under Section 121 Act on Attorneys). The Ministry of Justice supervises the operations of the Regional Chambers under the section 15/A of the Kjt Act in respect of Notaries public.

373. **Criterion 28.3.** The categories of DNFBPs are covered by the AML/CFT Act and are subject to the AML/CFT monitoring system with the following exceptions. The AML/CFT Law prescribes that “non-professional trustees” - as determined by the Act on Rules of Trustees - are neither subjected to the AML/CFT requirements, nor to any system for AML/CFT monitoring, although the notion of “non-professional trustees” does not mirror the FATF Glossary definition. Thus, the category of “non-professional trustees” - as defined by the Hungarian legislation - is not subject to the AML/CFT monitoring system.

374. **Criterion 28.4.(a)** With regard to the AML/CFT regulation, the supervisory authorities and bodies are required to issue – in collaboration with the HFIU and in agreement with the MNE - the Model Rules, as set forth under Section 33, para. 3 of the AML/CFT Act. All AML/CFT- supervisors have issued model rules. The model rules shall be considered as samples rules (“non-binding recommendations”) that service providers (including DNFBPs) shall use as reference when issuing

internal rules, as prescribed under Section 33, para. 1. The internal rules shall be approved by the supervisory authorities or bodies, and supervised/modified, if necessary, every two years. As regard the supervisory framework, the designated competent authorities and SRBs are vested - under the respective sectorial legislations - with powers to perform the supervisory function assigned under the AML/CFT Act.

375. **Criterion 28.4.(b)** The provisions of the respective sectorial legislation that prevents criminals and their associates from being accredited, or holding (or being the beneficial owners of) a significant or controlling interest, or holding a management function in a DNFBP, are the following:

- Real estate agents are registered under the conditions and procedures set forth by Decree of the Ministry for National Economy 23/2013 (VI. 28.);
- Dealers in precious metals are registered under Section 4 of the Act CLXIV of 2005 (Commercial Act);
- Lawyers (and law offices) are governed by Section 13 of the Attorney Act;
- Notaries (public) are governed by Section 17 (3) of the Kjt Act;
- Auditors are governed by Section 12 of the Auditors Act;
- Trust service providers (i.e. professional trustees) are governed by Section 4 and Section 10 of the Act on Trustee.

376. Legal professionals are required to become members of the respective Regional Bar Associations or Chambers, and provide to the latter upon registration clean criminal records. No specific provisions apply in case of law firms, accounting firms or auditing firms, where criminals might hide under the status of shareholders or managers. Legal persons, including those referred to above and those belonging to the remaining categories of DNFBPs, shall provide to the Court of Registry criminal records upon registration with the Register of Companies. However, these documents are not checked at regular intervals. Therefore, there are circumstances where certain categories of DNFBPs (in particular real estate agents, and DPMSs) are not subject to proper measures on “fit and proper” tests, and where updated information is not required by sectorial legislation.

377. **Criterion 28.4.(c)** Under section 35 of the AML/CFT Act, in case of any infringement of the provisions set forth in that Act, the supervisory authorities or bodies shall apply the administrative measures (including fines) indicated in that section based on criteria therein. With regard to the DNFBPs supervised (i.e. real estate agents, accountants and service providers engaged in tax consulting services and tax advisory activities), the HFIU avails itself of the provision set forth above, as well as Section 61, paras. 1 and 2 of the Administrative Act. With regard to lawyers, notaries and accountants), the sanctions regime is prescribed by their respective sectorial legislations (Section 120/A, Section 69/A, 70 and Sections 173/A and 177 respectively) while the criteria to determine the seriousness of the infringements are determined under Section 35/A of the AML/CFT. As described under Recommendation 35, for certain categories of DNFBPs (i.e. lawyers, notaries and auditors) available sanctions are not considered proportionate.

378. **Criterion 28.5.(a) and (b)** Few AML/CFT supervisors demonstrated that they conduct supervision on a risk-sensitive basis, and those who did only conduct it to a certain extent. For example, the HFIU - the supervisor for real estate agents, accountants, tax advisors and tax

consultants - has adopted “methodological guidelines” for supervision that clearly includes elements of risk, both at national and at sectorial level. The Department for Gambling Supervision of the NTCA, according to the information and documents provided onsite, monitors the AML/CFT compliance, taking into consideration the characteristics of the casinos and card rooms. However, the department has only recently¹⁵⁴ introduced in its supervisory activities the ML/FT risk profiles of the supervised entities when performing supervision on internal controls, policies and procedures. No further information and documents has been provided on other supervisory bodies for the remaining categories of DNFBPs in terms of risk-sensitive supervision.

Weighting and Conclusion

379. The main deficiencies identified in the Recommendation 28 are related to the lack of legal requirements to avoid the presence of criminals and their associates among DNFBPs (and prevent them from holding, being the beneficial owner of, or managing a DNFBP) as well as the absence of measures and widespread practices among supervisors on a risk-basis AML/CFT supervision. Legal gaps on the AML/CFT sanctions regime limit its dissuasiveness. **Recommendation 28 is rated Partially Compliant.**

Recommendation 29 - Financial intelligence units

380. Hungary was rated Partially Compliant with the former FATF Recommendation 26. The main deficiencies affecting technical compliance pertained to the operational independence and autonomy of the HFIU and the absence of a timeframe in legislation for indirect access to information on a timely basis. These deficiencies were subsequently addressed by Hungary and the follow-up progress report concluded that Hungary was at a level equivalent to largely compliant or compliant with the former Recommendation 26. The new FATF standard on FIUs has introduced requirements with an increased focus on the FIU’s strategic and operational analysis functions, the FIU’s powers to disseminate information upon request and request additional information from reporting entities.

381. **Criterion 29.1.** The AML/CFT Act (Section 3(l) of the AML/CFT Act) and complementary regulations establish a unit within the National Tax and Customs Authority as the authority operating as the HFIU. The HFIU acts as a national centre for receipt and analysis of suspicious transaction reports and other information relevant to ML/FT and associate predicate offences, and for disseminating the results of that analysis. The HFIU does not have any investigative powers, is considered to be a hybrid type of FIU combining the powers and functions inherent to the administrative model with its positioning under the law enforcement branch of NTCA.

382. **Criterion 29.2.** The HFIU serves as a central agency for the receipt of a) suspicious transaction reports filed by reporting entities as required by R.20 and 23; and, b) other disclosures containing information as required by national legislation. These disclosures include information on suspicious cross-border movements of cash and bearer negotiable instruments (pursuant to Section 26 of the AML/CFT Act, information on suspicion of ML/FT formed by authorities acting as supervisory bodies or authority responsible for the implementation of financial and asset-related restrictive measures).

¹⁵⁴ On February 2016, the Department for Gambling Supervision of the NTCA has issued a methodological guide that includes risk-sensitive supervision.

383. **Criterion 29.3.** Section 25/A of the AML/CFT Act empowers the HFIU to request and use additional information from reporting entities, as needed to perform analysis. The same section grants the HFIU a direct or indirect access to a wide range of data and information. This includes direct access to information and data held in the NTCA investigative database, Police databases, criminal records database, the Hungarian Tax Authority's databases, customs database, company register, the annual financial statements of the companies database and indirect access to administrative information and data held in databases maintained by various government agencies, courts, respective supervisory bodies, and information and data held by the public prosecutors, the National Security Service, the National Protective Service and the Counter Terrorism Centre databases.

384. **Criterion 29.4.** In accordance with Section 26/B of the AML/CFT Act, the HFIU is required to conduct operational analysis in order to establish and interpret connections between various data sources it is entitled to use, monitor financial transactions and examine relationships in connection to the links established. The scope of operational and strategic analysis activity is further detailed in an internal document issued by the President of the NTCA. Operational and strategic analysis is conducted by two analytical units formed within the HFIU's organisational structure.

385. **Criterion 29.5.** The HFIU is authorised to disseminate, both spontaneously and upon request, information and the results of its analysis to relevant competent authorities. These disseminations can be made to a range of competent authorities including relevant investigative authorities, relevant judicial authorities, Europol, national security services, the national protective service, the coordination centre for combating organized crime mandated to perform risk analysis of passenger data and to the Counter-Terrorism Centre (TEK) for the purpose of counter terrorist financing.

386. When disseminations are made electronically, the HFIU channels the information through an application embedded with its proprietary IT-system called 'ROBOTZSARU' which is audited and certified by an independent auditor. In case information is disseminated by physical transfer, information is transferred in a sealed enveloped inside security-approved briefcases and handovers are properly recorded.

387. **Criterion 29.6.** There is a general provision set out in Section 27 of the AML/CFT Act prohibiting the disclosure of information held by the HFIU unless permitted by a specific provision in the AML/CT Act. There exist also a legal framework, provisions and rules that govern the security and confidentiality of information handled by the HFIU. Egmont Secure Web is used for exchange of information between the HFIU and foreign FIUs.

388. All HFIU staff must attend a general security training which covers responsibilities for data protection, data processing procedures and regulations governing the security and protection of information held by the HFIU. No data handling and processing is possible without prior training and authorisation. Furthermore, both commissioned and non-commissioned HFIU officers can be subjected to lifestyle monitoring carried out by the National Protective Service. The HFIU is housed in the premises of the NTCA. Access to the HFIU facilities is restricted. Staff working in the HFIU must be security cleared.

389. **Criterion 29.7.** The HFIU is an autonomous department under the Deputy Head for Law Enforcement and Investigation authorities of NTCA, which is a functional part of the NTCA. Since

the HFIU is an autonomous department, no staff abstractions have occurred. The decision-making powers granted to the Head of the HFIU derive from its higher status in the organisational hierarchy granted to the HFIU in 2013 and include the authority to make necessary arrangements, make independent decisions concerning its core functions, take decisions to analyse/prioritise STRs and other information or engage independently with other domestic competent authorities and foreign counterparts. The Head of the HFIU is appointed and dismissed by the Commissioner of the NTCA, as provided for in the Ministerial Decree n. 26/2015. Although there are no legal or internal provisions granting full budgetary independence to the HFIU, funds allocated to it are considered to sufficiently cover its budgetary needs.

390. The HFIU has its own internal organisational structure with 36 permanent staff members. Core functions performed by HFIU are distinct from other departments within the NTCA (granted by Section 3(l) of the AML/CFT Act, Section 13(7) of the NTCA Act and Section 9 of the Government Decree 485/2015).

391. **Criterion 29.8.** The SHFIU is a member of the Egmont Group.

Weighting and Conclusion

392. **Hungary is rated Compliant with Recommendation 29.**

Recommendation 30 - Responsibilities of law enforcement and investigative authorities

393. Hungary was rated largely compliant with the former FATF Recommendation 27. The deficiency identified in the last MER of Hungary related exclusively to effectiveness, which is not assessed in this part of the report.

394. **Criterion 30.1.** There are two law enforcement authorities in Hungary responsible for the investigation of money laundering and associate predicate offences, namely the Hungarian National Police, being the general investigative authority, and the NTCA by virtue of Article 36(2)(g) of the ACP Law. Responsibilities to investigate the offence of terrorist financing belong exclusively to the Hungarian National Police. In addition to these two main law enforcement authorities, the Hungarian public prosecutor's office has an exclusive competence to investigate money laundering, associated predicate offences and terrorist financing offences committed by individuals that are enjoying immunities or granted special status by direct provision of the law, election or appointment by public authority, as stipulated in Article 29 of the ACP.

395. **Criterion 30.2.** The Hungarian criminal/penal legal system does not differentiate between general criminal and financial investigations. Authorities investigating ML, associated predicate offences and FT proceed *ex officio*. If criminal proceedings are initiated it is incumbent upon the competent investigative authority to ascertain the matter of fact subject to a criminal procedure. This includes enquiries to be made into the financial affairs related to the criminal activity. Hence only the Hungarian National Police, the NTCA and the PPO (with complementary competence as outlined above) are authorised to pursue financial investigations. During the pre-trial proceedings, all competent Hungarian authorities are authorised to request assistance of a specialised unit within the National Police (the ARO) to assist them with asset-tracing and asset recovery procedures. None of the competent authorities have a dedicated and permanently established unit or team specialising solely in financial investigations.

396. **Criterion 30.3.** The competent authority designated to expeditiously identify, trace, and initiate freezing and seizing of property which is, or may become, subject to confiscation, or is suspected of being proceed of crime is the Hungarian Police. By virtue of the Government Decree no. 329/2007, the tasks related to the cross-border tracing and identification of proceeds of crime and to the asset recovery procedure (in accordance with Articles 554/P-R of the ACP) are performed by the ARO, a department established within the National Bureau of Investigation of the Riot Police in Hungary.

397. **Criterion 30.4.** Hungary does not have any competent authorities that are not law enforcement authorities with responsibilities for pursuing financial investigations of predicate offences.

398. **Criterion 30.5.** Hungary does not have a dedicated anti-corruption enforcement authority designated to investigate ML/FT offences arising from, or related to, corruption offences. All corruption and associated ML/FT offences are investigated by the Hungarian Police and by the Prosecutor's office of Hungary (the authority to investigate corruption offences by the Prosecutor's office is limited to active and passive bribery offences committed by public officials).

Weighting and Conclusion

399. **Hungary is rated compliant with Recommendation 30.**

Recommendation 31 - Powers of law enforcement and investigative authorities

400. Hungary was rated compliant with the former FATF Recommendation 28. This recommendation, has been further expanded by introducing requirements for countries to have mechanisms in place to identify whether natural or legal person hold or control accounts, and to ensure that competent authorities have a process to identify assets without prior notification to the owner.

401. **Criterion 31.1.** Competent investigative authorities empowered to conduct money laundering, associated predicate offences and terrorist financing investigations in Hungary are able to obtain access to all necessary documents and information for use in those investigations. Article 71 of the ACP gives powers to court, the public prosecutor and the investigative authorities to request the production of information data or documents. These general powers are supplemented by additional powers conferred to investigative authorities under Article 178 of the ACP to collect information and data that may be used as evidence during criminal proceeding. These powers, which are only applicable after formal criminal proceedings have commenced, include the use of compulsory measures for:

- the production of records held by FIs, DNFBPs and other natural and legal persons;
- the search of persons and premises;
- taking witness statements; and
- seizing and obtaining evidence.

402. **Criterion 31.2.** Pursuant to Article 200 of the ACP, Hungarian investigative authorities and the public prosecutor may use a wide range of investigative techniques (collectively referred to as covert data gathering) which are subject to judicial permit. The application of these techniques is

governed by the provisions stipulated in Article 201(1)(a) of the ACP, which conditions the application of these techniques to the criminal proceedings conducted for a criminal offence which was, inter alia, committed intentionally and is punishable by five years' or more imprisonment. This condition prohibits the application of the covert data gatherings that are subject to judicial permit in money laundering investigations as set forth in Article 400 of the HCC as the aforesaid offence is punishable by a maximum of three years' imprisonment. Some forms of special investigative techniques (e.g. controlled delivery, use of informants or discreet surveillance) can be used without a judicial permit. These techniques are only available to the investigative authorities of the National Police and NTCA under respective laws, and can be deployed both prior to and after the commencement of criminal proceedings.

403. **Criterion 31.3.** Competent authorities have mechanisms in place to identify whether natural or legal persons hold or control accounts, and to identify assets without prior notification to the owner. Competent authorities in Hungary use powers granted under Articles 71 and 178/A of the ACP to identify whether natural or legal person hold or control account or any type of asset. Whilst there are sufficient powers allowing competent authorities to identify accounts held or controlled by natural or legal persons and provisions compelling financial institutions to assist with their enquiries, the mechanism in place do not ensure the provision of that information in a timely manner. This is mainly due to the fact that not all financial institutions are members of the platform currently used by competent authorities to identify account holders and controllers. The platform cannot be also used in instances where covert investigations are conducted by competent authorities.

404. **Criterion 31.4.** In accordance with Section 26(4) of the AML/CFT Act, competent authorities conducting investigations of money laundering, associated predicate offences and terrorist financing as specified in para. 1 of Section 26 may request data from the HFIU and use this information as intelligence for advancing their ML, associated predicate offences and FT investigations.

Weighting and Conclusion

405. Hungarian competent authorities cannot use the full range of investigative techniques when they investigate the ML offence defined in Article 400 HCC. Criterion 31.3 is largely met, as the mechanism in place does not allow for the timely identification of whether a natural or legal person holds or controls an account.

406. **Hungary is rated Largely Compliant with Recommendation 31.**

Recommendation 32 – Cash Couriers

407. Hungary was rated partially compliant with the former FATF Special Recommendation IX. The main deficiencies affecting technical compliance identified in the 4th round MER of Hungary pertained to not having the administrative ability to stop/restrain or seize where there is suspicion of ML/FT or predicate offence or in instances where false declaration is made, sanctions available were not effective, proportionate or dissuasive. Moreover, deficiencies identified in the implementation of former FATF SR. III on targeted financial sanctions related to terrorism and FT negatively impacting upon the effectiveness of the regime, as well as a lack of available statistics. Since then, authorities have taken several steps to address some of the deficiencies identified. These

steps include amendments made to the Cash Control Act to ensure that sanctions available to customs authorities are effective, proportionate and dissuasive. However, some of the technical deficiencies remained unresolved and Hungary was considered to be at a level equivalent to largely compliant when the follow-up report was considered by MONEYVAL in September 2013.

408. **Criterion 32.1.** Hungary has implemented a declaration system for incoming and outgoing cross-border transportation of currency and bearer negotiable instruments (BNI). The general framework of the declaration regime is set forth in the EU Regulation 1889/2005 and is further implemented in Hungary through the Cash Control Act. However, this declaration system applies only to movements (both inward and outward) of cash and BNI from and to the European Union (extra-Communitarian), meaning that only movements that cross the external borders of the European Union are subject to the declaration requirements. Movements of cash and BNI within the European Union (intra-Communitarian) are not considered to be cross-border movements under the Hungarian Cash Control Act and are not subject to any declaration/disclosure obligation. The declaration requirements in place apply to different modes of transportation.

409. **Criterion 32.2.** By virtue of Article 2 of the Cash Control Act implementing the EU Regulation no. 1889/2005, the obligation to declare cash of a value of EUR 10,000 or more is only fulfilled when the declaration is made in writing. The declaration obligation applies to any natural person entering or leaving the EU borders carrying amounts equal to or greater than the EUR 10.000 threshold.

410. **Criterion 32.3.** This criterion is not applicable to Hungary as it operates a declaration system.

411. **Criterion 32.4.** When a false declaration is discovered or a traveller fails to disclose the currency or BNI subject to the declaration obligation, customs controls can be carried out in accordance with Article 3 of the Cash Control Act by customs officials in order to request and obtain further information from the traveller with regard to the origin of the currency or BNI, their intended use and the rightful owner of the currency (if applicable).

412. **Criterion 32.5.** A person fails to meet the obligation to declare, as set out in Article 3 of the EU Regulation 1889/2005, if the information provided is incorrect or incomplete. The person who fails to comply with the obligation is subject to a fine of: i) 10% of the amount of cash carried where the amount transported is from EUR 10,000 to 20,000; ii) 40% of the amount of cash carried where the amount transported is from EUR 20,000 to 50,000; and iii) 50% of the amount of cash carried where the amount transported is more than EUR 50,000. The fine is payable immediately and is determined in HUF.

413. **Criterion 32.6.** Pursuant to Article 4(3) of the Customs Control Act, the Hungarian customs authorities are obliged to immediately forward information to the HFIU which is obtained either through the declaration process or as a result of cash controls where the information indicates the act of ML or FT. In addition to the requirement to disclose the information to the HFIU, the latter is also granted direct access (by virtue of Article 4(2a) of the Cash Control Act) to all declarations maintained by the customs authorities.

414. **Criterion 32.7.** The customs authorities in Hungary co-operate and co-ordinate their activities on issues related to the implementation of Recommendation 32 on the basis of Memoranda of Understanding concluded with a number of domestic agencies (e.g. the Office of Immigration and Nationality, the National Police and the Constitution Protection Office). These

bilateral arrangements allow the customs authorities to also perform targeted inspections of travellers on the basis of information and intelligence received from other authorities.

415. **Criterion 32.8.** In instances where a false declaration is made and discovered, the customs authorities in Hungary have no direct powers to stop or restrain the currency or BNIs involved in the infringement. This is due to the nature of the infringement (neither a minor offence nor a criminal offence) and the powers conferred to the customs authorities. The only possibility to retain currency is confined to instances where a non-declaration or false declaration is discovered by the customs, an administrative fine is imposed and the traveller fails to pay that fine immediately. However, the amount that can be retained must not exceed the fine imposed.

416. **Criterion 32.9.** Section 5 of the Cash Control Act provides the basis for exchange of information with competent authorities of the EU member States, third countries (non-EU members) or the EU Commission in instances where there are indications that the sums of cash are related to any illegal activity associated with the movement of cash. Sanitised information on declarations exceeding EUR 10,000 is disclosed to the EU Commission on a quarterly basis. Information on false or non-declarations is also subject to the aforesaid exchange mechanisms. In addition to that, customs authorities at local level utilise powers conferred to them by Article 14 of the Council Regulation 515/97, which allows the exchange of operational information related to false declarations with other EU member States. Information obtained from the declaration regime is retained by the customs authority for a period of two years where there is no suspicion of ML and FT, and for a period of five years where there is such a suspicion.

417. **Criterion 32.10.** The information collected through declaration system is subject to strict safeguards ensuring its proper use. Provisions set out in Article 8 of the EU Regulation 1889/2005 are implemented in Hungary through Regulation 2107/2015, issued by the President of the National Tax and Customs Administration. There are no constraints in place limiting trade payments between countries for goods, services or the freedom of capital movements.

418. **Criterion 32.1.** Persons carrying out a physical transportation of currency or BNI related to ML/FT or predicate offences are subject to criminal sanctions. Since confiscation and forfeiture applies to all criminal offences, including ML and FT, cash or BNI involved is subject to confiscation and provisional measures.

Weighting and Conclusion

419. Although Hungary has made some steps seeking to improve compliance with Recommendation 32, there is still no administrative ability to stop or restrain currency and BNI in case of ML/FT suspicions and Hungary has not implemented any system requiring all physical movements of cash and BNI (covering all different modes of transportation) crossing the intra-Communitarian borders (within the EU) to be declared or disclosed.

420. **Hungary is rated Partially Compliant with Recommendation 32.**

Recommendation 33 – Statistics

421. Hungary was rated partially compliant with the former FATF Recommendation 32. The main technical deficiencies identified in the last MER of Hungary related to insufficiently comprehensive or no statistics kept by Hungarian authorities on matters relevant to the effectiveness and efficiency of their AML/CFT systems (para. 713 of the MER report). Despite some

effort put into this area by Hungarian authorities, a number of deficiencies still remained at the time of adoption of the progress report by Moneyval plenary in September 2013 (para. 218).

422. **Criterion 33.1.** Section 29(1) of the AML/CFT Act mandates the HFIU to maintain and publish statistics regarding the core functions performed by the HFIU and statistics allowing the assessment of the overall effectiveness of the AML/CFT regime in Hungary. In order to meet this requirement, the HFIU shall be supplied with pertinent statistical information and data by relevant law enforcement, prosecutorial and judicial authorities in Hungary. These statistical information and data shall include:

- the number of STRs received by the HFIU;
- the number of transactions suspended pursuant to Section 24 of the AML/CFT Law;
- the number of cases, value in HUF of assets and economic resources frozen by the service providers or frozen by a court order;
- the number of reports disseminated by the HFIU;
- the number of criminal proceedings launched including the number of cases and the number of persons prosecuted (based on the information disseminated by the HFIU); and
- the number of court verdicts and the number of persons convicted, number of cases, type and value of property which has been frozen, seized or confiscated.

423. Whilst sufficiently comprehensive, reliable and up-to-date statistics pertaining to its financial intelligence function are maintained and regularly published by the HFIU, no complete or adequate statistical information and data is maintained by other key stakeholders. This entails statistical information and data on:

- the number of ML/FT investigations, prosecutions and convictions;
- the property frozen, seized and confiscated; and
- mutual legal assistance or other international requests for co-operation made and received.

Weighting and Conclusion

424. Hungary has only partly rectified the key deficiencies identified in the last progress report. Significant shortcomings still remain in relation to the collection and maintenance of relevant statistical information and data on matters relevant to the effectiveness and efficiency of its AML/CFT system.

425. **Hungary is rated Partially Compliant with Recommendation 33.**

Recommendation 34 – Guidance and feedback

426. Hungary was rated largely compliant with requirements related to the former FATF Recommendation 25. The main technical deficiency was related to the fact that no guidance on CFT provided to DNFBPs.

427. **Criterion 34.1.** Section 33 of the AML/CFT Act contains a requirement for financial institutions and DNFBPs to draw up and submit internal rules for approval. Internal rules prepared by the service providers must contain mandatory element stipulated by the AML/CFT Act and are

subject of approval by respective supervisory authorities. The mandatory elements of internal rules are determined by the Ministry of Finance by ministerial decree. Individual supervisory bodies are required to provide sample rules to the financial institutions and DNFBPs which serve as a non-binding guidance. These sector specific model rules are drafted by the individual supervisory body in conjunction with the HFIU and in agreement with the competent minister.

428. Although service providers are required to apply AML/CFT measures on a risk-sensitive basis, the sample rules do not contain any information assisting financial institutions and DNFBPs with the implementation and application of that approach. Sample rules issued by respective supervisory bodies do not contain any specific guidance on the salience and application of comprehensive business and customer risk assessments which are a key pre-requisite for a successful application of a risk-based approach.

429. In respect of guidance on detecting and reporting suspicious transactions, model rules issued by respective supervisory authorities contain annexes with consolidated typologies on complex and unusual activities and transactions that may assist service providers in detecting suspicious transactions.

430. However, there is a noticeable disparity in the attention paid by competent authorities in their guidance to ML and FT. Whilst indicators, unusual characteristics and activities indicating ML appear to be sufficiently covered in respective model rules, guidance provided in relation to FT is often general, not reflecting the type of activity provided by the service providers, or limiting its scope to circumstances where the customer is subject to the targeted financial sanctions related to terrorism and FT.

431. General feedback on the receipt, use and dissemination of STRs is provided to the reporting entities via annual and biannual reports published on the HFIU's website. Individual feedback is provided by the HFIU upon receipt of an STR from a reporting entity, as well as in instances where the STR submitted resulted in further dissemination to other competent authorities pursuant to Section 26(1) of the AML/CFT Act.

Weighting and Conclusion

432. Guidance and additional material provided by the competent authorities contain sufficient and up-to-date information concerning new and emerging ML typologies. This is not, however, replicated for CTF. There is also insufficient guidance pertaining to understanding and application of a risk based approach by financial institutions and DNFBPs.

433. **Hungary is rated Partially Compliant with Recommendation 34.**

Recommendation 35 – Sanctions

434. Hungary was rated Partially Compliant on the previous Recommendation 17. The 4th round MER noted that senior management was not included in the sanctioning regime of the CIFE Act, and that the range of sanctions under the Investment Act and the CIFE Act were not broad enough. Paragraph 560 of the MER also noted that the range of measures following the AML/CFT Act *per se* was not broad or proportionate enough according to the FATF standards, and that sanctions only be imposed to the service provider itself, and not to its directors or senior management. The amount of the maximum fine was considered to be “very low”¹⁵⁵. There have been some changes

¹⁵⁵ At the time of the MER: 5 million HUF (approximately EUR 18,500).

concerning the legal framework on sanctions, most notably an extension of the supervisory measures established by the AML/CFT law and new legislation concerning NPOs, including sanctions¹⁵⁶. Reference can be largely made to the MER and follow up report, and to the analysis of criterion 8.5.

435. **Criterion 35.1.** There is an array of sanctions available, stipulated by Section 35 of the AML/CFT law, which appear to be proportionate.¹⁵⁷ The amount of statutory fines was increased since the MER, and they are differentiated between financial institutions and DNFBPs (see also analysis of 8.5. concerning NPOs). The sectorial acts (e.g. CIFE Act) also provide for a set of measures (sanctions) for credit and financial enterprises, investment and insurance sectors for infringements of, *inter alia*, the AML/CFT law (e.g. Articles 184 and 185 of CIFE). Auditors, notaries public and lawyers are not subject to the sanctions under the AML Act. In the case of lawyers, the law on attorneys is the basis for providing sanctions for non-compliance with AML/CFT requirements. The maximum amount of fines for the attorneys is HUF 300,000 (approximately EUR 950). As for notaries, in line with the seriousness of the infringement or deficiency, the disciplinary court initiates disciplinary proceedings against the notary public and might impose relevant sanctions.¹⁵⁸ The maximum amount of statutory fines for civil law notaries is HUF 2,000,000 (approximately EUR 6,500), and HUF 500,000 (approximately EUR 1,600) for deputy civil law notaries and candidate civil law notaries. Maximum amount of fines for attorneys and notaries do not seem to be proportionate. In case of auditors, the sanctions can be imposed in case of any violation of or non-compliance with the provisions of the AML/CFT Act in compliance with the Auditors Act. However, they are very limited in scope and do not appear to be proportionate.

436. **Criterion 35.2.** In the case of credit and financial enterprises subject to sectorial acts (such as the CIFE Act), there are measures applicable to senior executives of these institutions for infringements of the requirements of the AML/CFT law. These consist of “warnings” or - when the infringements are considered severely jeopardising the prudent operation of the financial institution - may result in prohibiting or making subject to conditions the remuneration of executive officers. These sanctions, which do not apply to securities and insurance sectors, do not appear to be proportionate. Sanctions for securities and the insurance sector are provided under sectorial legislation. The Act on the National Bank provides for fines which may be imposed upon the director or the senior executives, ranging from HUF 100,000 (approximately EUR 300) to HUF 500,000,000 (approximately EUR 1,600,000).

Weighting and Conclusion

¹⁵⁶ Other changes include the extension of responsibility for casinos directors and senior managers.

¹⁵⁷ Such sanctions are: a) call upon the service provider to take the measures necessary for compliance with the provisions of the AML/CFT Act, and to eliminate the deficiencies; b) advise the service provider: ba) to ensure the participation of their relevant employees (executive officers) in special training programs, or to hire employees (executive officers) with the appropriate professional skills required for those activities; bb) to recondition the internal rules according to specific criteria within a prescribed deadline; bc) to carry out the investigation according to the internal rules and initiate procedure against the person responsible; c) issue a warning to the service provider; d) conclude in a decision that an infringement has occurred and at the same time dispose for the elimination thereof; e) order the service provider to cease the unlawful conduct; f) in addition to or independent of the measures listed above, it may impose a fine of minimum two hundred thousand and maximum five hundred million forints, and a fine of minimum fifty thousand and maximum twenty million forints for different types of service providers.

¹⁵⁸ Such sanctions are: warning, written reprimand, deprivation of office chamber, fine, suspension from office for a definite period of time, removal from office.

437. Sanctions available under the AML/CFT Act are proportionate. However, auditors, notaries public and lawyers are not subject to these sanctions. The sanctions applicable based on the sectorial legislation are not proportionate. It appears that sanctions are not available for managerial functions of DNFBPs as foreseen by the FATF Standards. **Recommendation 35 is rated Partially Compliant.**

Recommendation 36 – International instruments

438. Hungary was rated Partially Compliant on the previous Recommendation 35 and Partially Compliant with Special Recommendation I. The rating for Recommendation 35 was based on the shortcomings with the elements listed in Vienna, Palermo and FT Convention; lack of definition for funds, partly covered self-laundering, dual criminality for MLA, lack of legal person's liability for FT offences were the factors underlying the rating. The rating for SR. I was based on the inconsistency with the UN Convention on FT and with the implementation of UNSCR 1373.

439. **Criterion 36.1.** Hungary is a party to the Vienna Convention, the Palermo Convention, the Merida Convention, and the FT Convention. It should be noted that it has also become a party to the Council of Europe's 2005 Warsaw Convention and the 2001 Convention on Cybercrime.

440. **Criterion 36.2.** Hungary has largely implemented into domestic law the provisions of the Vienna, Palermo, Merida and FT Conventions. The level of implementation of the Vienna, Palermo and Merida Conventions is subject to the shortcomings described in the analysis under Recommendation 3. There is a framework in place enabling Hungarian law enforcement agencies to participate in joint investigations (Recommendation 40) and to share assets (Recommendation 38) with other member States of the European Union. Provisions of the Vienna Convention, notably Article 10 and 17, do not appear to be implemented in the national legal order. The level of implementation of the FT Convention is, as mentioned in the section covering Recommendation 5, lacking as regards its Article 2.

Weighting and Conclusion

441. A few provisions of the Vienna, Palermo and Merida Conventions have not yet been implemented in the Hungarian legal order. The remaining provisions have been implemented into domestic law, although there are certain shortcomings identified with respect to Recommendations 3, 5, 37 and 38. **Recommendation 36 is therefore rated Largely Compliant.**

Recommendation 37 - Mutual legal assistance

442. Hungary was rated Largely Compliant on the previous Recommendation 36, and Largely Compliant with previous Special Recommendation V on the technical ground that the application of dual criminality may negatively impact Hungary's ability to provide assistance due to shortcomings identified in respect of the scope of the ML and FT offences.

443. **Criterion 37.1.** The Hungarian legal framework for mutual legal assistance in respect of money laundering, associated predicate offences and terrorist financing is still based on Act XXXVIII of 1996 on international legal assistance in criminal matters. As before, this allows for Hungary to cooperate even in the absence of treaties, generally (but not necessarily) on the condition of reciprocity, rapidly and with the widest range of assistance. As far as the cooperation with EU member States is concerned, specific legislation was introduced with Act CLXXX of 2012 on the criminal cooperation with the member States of the European Union. Hungary is also Party to the

(Council of Europe) European Convention on Mutual Assistance in Criminal Matters of 1959 and to the 2005 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

444. **Criterion 37.2.** The Prosecutor General and the Minister of Justice function as central authorities for the processing of MLA requests and the allocation to the appropriate authorities (public prosecutor or court). There is an established procedure for ensuring a timely execution of such requests. The judicial authorities of the EU member States may directly contact each other without the assistance of any central authority on the basis of the Council Act of 29 May 2000. The processing of the request is monitored through the general case management system of the Public Prosecutor's Office, which allows prioritisation of the requests. The system however does not generate detailed and reliable statistics.

445. **Criterion 37.3.** The conditions to provide MLA, as laid down in the Act XXXVIII of 1996, are justifiable and generally common or accepted in the international cooperation domain (prejudice to sovereignty, security and public order; dual criminality; political and military exceptions; inconsistency with human rights and fundamental legal principles). The dual criminality rule, if strictly applied, may hinder ML- and FT-related MLA.

446. **Criterion 37.4.** The 1996 Act does not provide a refusal ground because of the fiscal nature or motivation of the MLA request, nor on confidentiality grounds in relation to financial institutions or DNFBPs, as banking secrecy cannot be invoked against a judicial authority (See R.31).

447. **Criterion 37.5.** According to Section 64 of Act XXXVIII of 1996, procedural assistance in MLA matters is subject to the Hungarian rules of criminal procedure, which include the fundamental principle of the secrecy of the investigation.

448. **Criterion 37.6.** Section 5 (1) a) of the Act XXXVIII of 1996 expressly states the dual criminality principle in a MLA context, making no exception for non-coercive actions. According to Section 62, however, requests for procedural assistance may be executed if the requesting State guarantees reciprocity in this respect as well. Within an EU context, the dual criminality principle is not applied. On the other hand, Hungary maintained the dual criminality condition in relation to the (Council of Europe) European Convention on Mutual Assistance in Criminal Matters of 1959.

449. **Criterion 37.7.** Section 5 (1) a) of the Act XXXVIII of 1996 refers to "acts" punishable in both countries. This formulation ("acts" instead of "offences") allows for a flexible interpretation based on similar behaviour, irrespective of the actual terminology and formal qualification.

450. **Criterion 37.8.** Section 10 of the Act XXXVIII of 1996 provides that, as a rule, the provisions of the Criminal Code and of the Code of Criminal Procedure of Hungary shall apply *mutatis mutandis* in MLA matters. This opens up to the Hungarian investigative and judicial authorities all powers and techniques available in a domestic context (see R. 30).

Weighting and Conclusion

451. Even if not supported by relevant statistics on the handling of MLA requests, a well-established process is in place for the prioritisation of incoming requests. A strict application of the dual criminality may still hinder the execution of non-coercive actions, as well as ML and FT-related requests due to the cascading effect of the shortcomings in the criminalisation of these offences (see R. 3 and 5). **Recommendation 37 is rated Largely Compliant.**

Recommendation 38 – Mutual legal assistance: freezing and confiscation

452. Hungary was rated Compliant on Recommendation 38.

453. **Criterion 38.1.** Except for the introduction of the Act CLXXX of 2012 on the criminal cooperation with the member States of the European Union, which has intensified and expanded the cooperation between the EU States also in this domain, there have been no relevant changes in the legal framework of the MLA related to identification, freezing, seizure and confiscation of illegal proceeds. The HCC provisions of confiscation and forfeiture of assets and the ACP provisions on seizure and other investigative steps apply to international legal assistance executed in Hungary. The Act CLXXX of 2012 deals with legal assistance within the EU concerning the decisions on preservation of evidentiary items, the confiscated or forfeited objects and assets (Ch. VI), as well as on the execution of confiscation orders (Ch. XI). In general, the dual criminality rule applies, except in an EU context when related to certain listed offences.

454. The items enumerated in Art. 72 (1) and 74(1) HCC are subject to forfeiture/confiscation, also in an international context. The list clearly covers all illegal proceeds or products, (intended) instrumentalities and substitute assets (a),(b) (e) (h). It basically also covers the laundered property as the object (*corpus delicti*) of the ML criminal offence (c), enabling in principle the execution of a foreign confiscation order based on autonomous ML.

455. Equivalent value confiscation is provided for in Art. 75(1) HCC in case the assets are no longer available, or the forfeitable assets (Art. 74(1)) are intermingled with other assets and cannot be separated from each other or separating them would create disproportionate difficulties, or in case Art. 74 (5) (protection of the bona fide third party).

456. **Criterion 38.2.** Although as a rule confiscation/forfeiture is conviction-based, there are exceptions provided in the ACP (Art. 331, 334 and 569), enabling forfeiture even in case of acquittal on grounds of exclusion of criminal liability (e.g. minority, coercion, insanity or self-defence), as well as in case of death of the defendant or pardon. Other reasons may be that no criminal proceedings have been instituted against any person, or the criminal proceedings have been terminated or suspended due to the unknown location or mental disorder of the defendant. Forfeiture at the request of a foreign authority on non-conviction based grounds is consequently also possible in the occurrence of the above circumstances.

457. **Criterion 38.3.** Although Hungary does not have formal coordination arrangements in relation to seizure and confiscation actions, such coordination is in practice governed and implemented within the framework of procedural assistance. Management and disposal of seized or confiscated assets is governed by Art. 154 and 156 ACP organising the deposit of and custody over these items, including the possibility of preliminary sales. This domestic system is also applied in a MLA context.

458. **Criterion 38.4.** The sharing of confiscated assets between EU member States is organised according to Art. 159 (5) of the Act CLXXX of 2012, providing for the possibility of such arrangement whenever the value exceeds EUR 10,000. In the case of proceeds from the confiscation of property enforced on behalf of another member State, Section 210/G of the Act LIII of 1994 on judicial enforcement provides that 50% of the remaining sum shall be transferred to that State, if that sum exceeds 10,000 EUR after the costs of the enforcement procedure have been deducted.

Weighting and Conclusion

459. The Hungarian seizure and confiscation regime is comprehensive, allowing compliance with related MLA requests. Sharing of confiscated assets with other cooperative foreign states is formally only provided for in an EU context.¹⁵⁹ **Recommendation 38 is rated Largely Compliant.**

Recommendation 39 – Extradition

460. The previous MER did not include an analysis Recommendation 39 (rated Compliant in the 3rd round MER).

461. **Criterion 39.1.** Except for the Act CLXXX of 2012 on the criminal cooperation with the member States of the European Union, introducing the European arrest warrant and surrender procedures, the legal framework surrounding extradition has remained unchanged since the previous evaluation of R.39. Although ML and FT are both extraditable offences, the shortcomings in their criminalisation may have a negative impact as a result of the dual criminality principle. The procedure is well established under the Act XXXVIII of 1996, allowing for an adequate execution of the extradition requests, including the provisional arrest regime and the decisive role of the Budapest Metropolitan Court (*Licet* or *Non Licet*), although no formal system of case management or prioritisation seems in place. The general refusal grounds are justifiable and commonly accepted. As for the European arrest warrant, the refusal grounds are those allowed by the relevant Council Framework Decision of 13 June 2002.

462. **Criterion 39.2.** As a rule Hungary, with a civil law tradition, does not extradite its own nationals, except in cases of dual nationality and non-residence in Hungary. It can extradite its own nationals to another EU member State under a European arrest warrant on the condition that the extradited person is returned after conviction to serve his sentence in Hungary. Article 28 of the Act XXXVIII of 1996 on mutual legal assistance provides that if extradition is refused Hungary can apply the principle of *aut dedere, aut judicare* in which case the file will be referred to the Prosecutor General to decide on further action. Moreover, if the execution of an European arrest warrant is refused in the circumstances of Art. 8(1) Act CLXXX of 2012 (executing sentence or deprivation of liberty of a Hungarian citizen in another country), Hungary will take over the proceedings and execute the sentence in Hungary.

463. **Criterion 39.3.** The dual criminality condition stated in Art. 11(2) of Act XXXVIII of 1996 refers to “acts” being punishable under both laws by imprisonment of at least one year. This formulation (“acts” instead of “offences”) allows for a flexible interpretation based on similar behaviour, irrespective of the actual terminology and formal qualification. The incomplete coverage of the ML and FT offences under the HCC may however raise challenges in an extradition context if the dual criminality principle is strictly applied.

464. **Criterion 39.4.** Simplified extradition procedures are possible, both under the Act XXXVIII of 1996 (Art. 23) and under the Act CLXXX of 2012 (art. 12) if the extraditable person consents.

Weighting and Conclusion

¹⁵⁹ In June 2016 a legislative proposal was submitted to the Parliament allowing for asset-sharing with jurisdictions other than the EU member States.

465. The Hungarian extradition regime is generally solid and well-organised. The strict interpretation of the dual criminality principle may legally jeopardise extradition proceedings for ML and FT as a result of the shortcomings in the criminalisation of those offences in Hungary (cascading from R. 3 and 5). **Recommendation 39 is rated Largely Compliant.**

Recommendation 40 – Other forms of international cooperation

466. Hungary was rated Largely Compliant on Recommendation 40 on effectiveness grounds (lack of statistics).

467. **Criterion 40.1.** No changes from the previous assessment. Both Police and the HFIU have broad powers to provide the widest range of international cooperation at operational level in circumstances where MLA procedures are not required.

468. **Criterion 40.2.(a)** Act LIV of 1999 on Co-operation and Information Exchange with the Law Enforcement Network of the European Union and the International Criminal Police Organisation and Act LIV of 2002 on International Co-operation of Law Enforcement Agencies provide the legal bases for the international co-operation between law enforcement authorities outside a criminal procedure. For the HFIU the legal basis for international cooperation is found in Art. 25A of the AML/CFT Act. **Letter (b)** There is no impediment to use the most effective means of co-operating. **Letter (c)** The HFIU (through the Egmont Secure Web) and the law enforcement authorities (through Interpol and the Schengen Information System) use clear and secure channels, circuits and mechanisms to facilitate transmission and execution of requests. **Letter (d)** The HFIU Rules of Procedures and Methodological Guidance and the Act LIV for the law enforcement authorities contain clear processes for establishing priorities and facilitating timely transmission and execution of requests. **Letter (e)** The competent authorities have clear procedures for protecting information received (see Criterion 40.6).

469. **Criterion 40.3.** Neither the law enforcement agencies, nor the HFIU require formal agreements in order to cooperate with counterparts

470. **Criterion 40.4.** The HFIU provides feedback to foreign counterparts upon request. There are no legal restrictions for the law enforcement agencies to provide feedback to its counterparts when so requested.

471. **Criterion 40.5.** Beside the generally accepted grounds for refusal (see the section on MLA and extradition), there are no restrictions to operational cooperation with other police forces or counterpart FIUs. In particular, there is no restriction on the four specific grounds indicated by this criterion.

472. **Criterion 40.6.** Section 11 (1) of Act LIV of 2002 states that the LEAs complying with the foreign request may transfer any personal or special data to the foreign State only in accordance with the provisions of Hungarian legal regulations for data management. The HFIU applies the prior consent rule in respect of dissemination requests.

473. **Criterion 40.7.** The LEAs and the HFIU are obliged to ensure a level of confidentiality appropriate to any request for co-operation and the information exchanged, in compliance with obligations of privacy and data protection, such as those provided for by the Directive 23/2013 (V.17.) of the National Police Headquarters on data protection and data security regulations, based

on Act CXII of 2011 on the Right of Informational Self-Determination and on Freedom of Information (Privacy Act) and the 2009 Act CLV on the protection of qualified data.

474. **Criterion 40.8.** Except in MLA (coercive) circumstances the law enforcement authorities are able to make inquiries on behalf of foreign counterparts and exchange any information with them.

475. **Criterion 40.9.** Sections 25/A, 26 and 26/A of the AML/CFT Act regulates the exchange of information of the HFIU. These provisions enable the HFIU to exchange information for the purpose of combating ML and FT. Although the law does not expressly refer to associated predicate offences, the formulation of the relevant provisions is broad enough to allow the exchange of information on the associated predicate offences as well.

476. **Criterion 40.10.** The HFIU provides feedback to its counterpart upon request or spontaneously on the use of the provided information and on the outcome of the analytical work for which the information supplied by the foreign FIU was used.

477. **Criterion 40.11.** The HFIU have the power to exchange all information obtained in parallel with the provisions of R.29, or any other information which can be obtained or to which the HFIU has access directly or indirectly. The provisions of Section 25/A, para. 10 of the AML/CFT Act may affect the international information exchange ability of the HFIU with its counterparts.

Exchange of information between financial supervisors

478. **Criterion 40.12.** Having regard to the fact that the MNB is the sole AML/CFT supervisory for all FIs, the main legal provisions that govern the exchange of information among counterparts are provided for under the sections of the MNB Act. In particular, Section 44, para. 2 of that Act indicates that the MNB may enter into cooperation agreements and - in accordance with the relevant legislation - exchange information with foreign financial supervisory authorities in the interests of exercising supervision on a consolidated basis and supplementary supervision, and in promoting and facilitating the process of integration. Foreign financial supervisory authorities shall be deemed to be any authorities which are vested with powers under national law to discharge any of the responsibilities assigned to the MNB specified. Moreover, the MNB cooperates with the bodies of the European Union (e.g. European Commission, ESAs or ESRB) under section 140 of the MNB Act. Although none of the above mentioned sections of the MNB Act refer explicitly to the exchange of information for AML/CFT purpose, the Hungarian authorities have indicated that all the memoranda concluded with foreign competent supervisory authorities contain the provision on exchange of information for AML/CFT purposes.

479. **Criterion 40.13.** Under sections 57 and 163 of the MNB Act and Section 8 of the Act CXII of 2011 on “the Right of Informational Self-Determination and on Freedom of Information”, the MNB shall transfer information to foreign financial supervisory authorities when the requirements of the Section 8 of the Act CXII of 2011 are met. This means that personal data may be transmitted if the data subject has given his consent unambiguously, or data processing are satisfied an adequate level of protection with respect to the control and processing of the personal data transmitted. Having said that this, the legal framework on international cooperation permits the MNB to exchange with foreign counterparts information obtained by domestic FIs.

480. **Criterion 40.14.** The MNB Act permits the supervisory authority to exchange information with foreign financial supervisory counterparts (see Section 42, letter h)). While this exchange of information clearly covers the regulatory information as well as the prudential information, the AML/CFT exchange of information among financial supervisory authorities lacks of an explicit legal reference. MNB has indicated that the concluded memoranda with all relevant EU and third country supervisory authorities provide for the exchange of all kinds of data including on AML/CFT issues upon request or upon its own initiative. The MNB refers to the Regulations (EU) No. 1093, 1094 and 1095 of 2010 that provide for unimpeded mutual data exchange within colleges of supervisors, the national financial supervisory authorities and the European Financial Supervisory Authority (ESA). The ESA is also empowered by these EU legal acts to conclude memoranda on data provision “with third country supervisory authorities, international organisations and the administration of these countries not preventing Member states and their competent authorities from concluding bilateral or multilateral arrangements with those third countries”.

481. **Criterion 40.15.** Under sections 73 and 39 of the MNB Act, the MNB may carry out control procedures at the request of foreign financial supervisory authorities. Section 75 of the MNB Act contains the provisions on EU and third country financial supervisory authorities conducting on-site inspections in Hungary. Further details on mutual on-site inspections of EU financial supervisory authorities are available in Section 38 on supervisory colleges. The establishment of supervisory colleges is compulsory under EU Regulation 1093/2010 establishing the European Supervisory Authorities. Furthermore, the MNB is signatory to multilateral agreements on supervisory co-operation like the IOSCO MoU¹⁶⁰, containing provisions on supplying data upon request or without it. However, these MoU do not include AML/CFT issues.

482. **Criterion 40.16** There is no explicit legal provision that governs the procedures of authorisation for the dissemination of information with foreign supervisory authorities. Nonetheless the memoranda signed by the MNB contain detailed procedures of data provision including the names, positions, e-mail addresses or phone numbers and the fields of competence of the designated contact persons/managers at the respective authorities. Requests from EU or third country counterparts often refer only to the number or of data provision clause of the MoU. The bilateral MoUs contain specific provisions on immediate information about financial crime and specifically about suspicion of ML.

483. **Criterion 40.17.** For the purposes of crime prevention and detection as well as of the protection of public order and public security, in cases falling under its competence the Hungarian law enforcement agency may exchange information directly with the competent authority of a foreign state. Consequently the law enforcement authorities are able to exchange domestically-accessible information with their foreign counterparts for intelligence or investigation purposes in ML cases, underlying predicate offences and FT, except in MLA (coercive) circumstances.

484. **Criterion 40.18.** Police co-operation takes place particularly within the framework of conventions and agreements signed by Interpol, Europol or Eurojust with third-party countries (see also criterion 40.8).

485. **Criterion 40.19.** Law enforcement authorities in Hungary are able to form and participate in joint investigation teams (JIT) set forth in Articles 57-61 of the CLXXX of 2012 and joint crime detection teams pursuant to Articles 20 – 24 of the LIV Act of 2002. There are also powers to establish, when necessary, bilateral or multilateral arrangements to enable such joint

¹⁶⁰ <https://www.iosco.org/library/pubdocs/pdf/IOSCOPD386.pdf>

investigations. Both the joint investigation teams and joint crime detection team provisions permit participation of Europol officials and involvement of persons co-operating with the law enforcement agency when operating in Hungarian territory. However, the possibility to set up a JIT with the Council of Europe members that are not members of the EU is restricted by the fact that Hungary has not ratified the Second Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters of 2001.

486. **Criterion 40.20.** It is unclear whether the Hungarian competent authorities have the legal possibility to exchange information, directly or indirectly, with foreign non-counterparts, nor whether this happens in practice.

Weighting and Conclusion

487. Hungary fulfils most of the requirements for this Recommendation. However, the possibility for the LEAs to participate in joint investigations with non-EU countries is restricted. It is unclear whether the competent authorities have the legal possibility to exchange information, directly or indirectly, with foreign non-counterparts, nor whether this happens in practice.

488. **Recommendation 40 is rated Largely Compliance.**

Summary of Technical Compliance – Key Deficiencies

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
1. Assessing risks & applying a risk-based approach	PC	<ul style="list-style-type: none"> • The NRA process does not demonstrate the characteristics of a comprehensive assessment, based on a robust methodology. • The Hungarian authorities have not explored domestic and foreign ML/FT threats and ML/FT vulnerabilities related to certain products, customers and FIs/DNFBPs. • Following the adoption of the NRA, no coordinated measures have yet been adopted (i.e. a national AML/CFT strategy and an Action Plan) in order to address the risks identified. • Service providers are neither required to undertake their own risk assessment nor to incorporate the findings of the NRA into already existing assessments. • FIs and DNFBPs are neither obliged to take enhanced measures to manage and mitigate the ML/FT risks identified at national level (when appropriate) nor to address the risks identified by their own risk assessments. • Conditions for the exemption from the application of the FATF Standards and for application of simplified and enhanced CDD requirements are not based on the results of the NRA.
2. National cooperation and coordination	PC	<ul style="list-style-type: none"> • No initiatives have been adopted to transpose the risks and the vulnerabilities identified into a (coordinated) national AML/CFT policies and strategies. • The overall coordination and the cooperation amongst competent authorities for the development and implementation of AML/CFT policies and activities is taking place only at a marginal level. • No coordination and cooperation mechanisms are in place to combat the financing of proliferation of weapons of mass destruction.
3. Money laundering	LC	<ul style="list-style-type: none"> • Not all categories of the predicate offences are covered, as there remains an issue with the full

Compliance with FATF Recommendations		
Recommendation	Rating	Factor(s) underlying the rating
offence		coverage of the FT offence and self-laundering (use of illegal proceeds).
4. Confiscation and provisional measures	C	
5. Terrorist financing offence	PC	<ul style="list-style-type: none"> • HCC enumerate the criminal acts considered to be terrorist in nature if committed with the purpose of disrupting or compelling a governmental agency or international organisation, to commit or abstain from some act, or intimidating the public. This unduly amalgamates the financing of the specific treaty terrorist activity (Art. 2.1a FT Convention) with the generic FT offence of art. 2.1b TF convention. • The (conditional) terrorist activity does not cover all acts defined in the treaties listed in the Annex to the Convention. • The financing of travel of individuals to the States for perpetrating, planning of, or participation in, terrorist acts or for receiving or providing terrorist training is not covered.
6. Targeted financial sanctions related to terrorism & FT	PC	<ul style="list-style-type: none"> • Targeted financial sanctions of UNSCRs 1988 and 1989 are not applied without delay. • No mechanisms for the application of freezing obligations under UNSCR 1373 in relation to EU internals. • The mechanisms for the implementation of UNSCRs 1267, 1373 and 1988 do not cover all the requirements.
7. Targeted financial sanctions related to proliferation	PC	<ul style="list-style-type: none"> • Targeted financial sanctions of UNSCRs relating to the prevention, suppression and disruption of proliferation of mass destruction and its financing are not applied without delay. • The mechanisms for the implementation of the relevant UNSCRs do not cover all the requirements.
8. Non-profit organisations	PC	<ul style="list-style-type: none"> • No formal review of the NPO sector was conducted to assess the potential vulnerability of the sector to terrorist activities and reassess this information periodically. • No specific outreach to the NPO sector concerning FT issues. • There is not a holistic system for monitoring NGOs,

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		except for the prosecutorial oversight in case of alleged violations of NGOs' requirements (legality check).
9. Financial institution secrecy laws	C	
10. Customer due diligence	PC	<ul style="list-style-type: none"> • The legal provisions do not contain direct prohibition to maintain anonymous accounts or accounts in fictitious names. • The definition of beneficial owner does not include the beneficial owner who controls the legal person through other means. • The definition of the beneficial owner for natural persons covers only the natural person, on whose behalf a transaction order is executed and is not extended to the person who controls a customer (natural person). • There is no explicit requirement to verify the identity of the beneficial owner using the relevant data from a reliable source in all cases without any doubts concerning the identity of the beneficial owner. • AML/CFT Act provides a blanket exemption from CDD requirements.
11. Record keeping	LC	<ul style="list-style-type: none"> • No explicit provision to keep records related to business correspondence.
12. Politically exposed persons	PC	<ul style="list-style-type: none"> • There are no requirements relating to domestic PEPs or persons who are or have been entrusted with a prominent public function by an international organisation. • No provisions related to "risk management systems", "sources of wealth" and "enhanced ongoing monitoring". • There are no requirements in relation to life insurance policies.
13. Correspondent banking	PC	<ul style="list-style-type: none"> • The general provisions with respect to correspondent banking are substantially in line with the standards, but they do not apply with respect to correspondent institutions within the EU.
14. Money or value transfer services	LC	<ul style="list-style-type: none"> • MVTS providers that use agents are not required to include them in their AML/CFT programmes and monitor them for compliance with these programmes.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
15. New technologies	PC	<ul style="list-style-type: none"> • No requirement for financial institutions to identify and assess the ML/FT risks that may arise in relation to the development and new business practices, and the use of new or developing technologies. • No enforceable legal provisions requiring financial institution to undertake the risk assessment prior to the launch or use of such products, practices and technologies; and take appropriate measures to manage and mitigate the risks.
16. Wire transfers	PC	<ul style="list-style-type: none"> • The EU regulation in force does not cover beneficiary information and contains limited requirements for intermediate financial institutions, which affects almost all the criteria in this Recommendation.
17. Reliance on third parties	LC	<ul style="list-style-type: none"> • Reliance on members of the EU is not based on the information available on the level of country risk.
18. Internal controls and foreign branches and subsidiaries	PC	<ul style="list-style-type: none"> • No requirements on the appointment of a compliance officer at a management level and to apply screening procedures to ensure high standards when hiring employees. • Deficiencies in the requirement for FIs to implement group-wide programs. • The requirement to ensure that the foreign branches and majority-owned subsidiaries apply at least measures equivalent to the home country requirements is limited only to specific provisions
19. Higher-risk countries	PC	<ul style="list-style-type: none"> • No requirement in the law or other enforceable means to apply enhanced due diligence proportionate to the risks, to business relationships and transactions with natural and legal persons (including financial institutions) from countries for which this is called for by the FATF. • No legal provisions enabling the application of countermeasures when decided so by the State authorities or to transpose a call for such measures by international organisation.
20. Reporting of suspicious transaction	C	
21. Tipping-off and confidentiality	LC	<ul style="list-style-type: none"> • Provision of the AML/CFT Act does not explicitly cover protection from criminal and civil liability nor does it specify the types of restriction breaches to

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
		which the protection applies. The exact application and extent of protections cannot thus be determined.
22. DNFBPs: Customer due diligence	PC	<ul style="list-style-type: none"> • Not all trustees are covered by the AML/CFT framework. • Deficiencies in the legal and regulatory framework related to CDD requirements, PEPs and “new technologies” affect the compliance on these matters.
23. DNFBPs: Other measures	PC	<ul style="list-style-type: none"> • Deficiencies identified under Recommendations 18, 19 and 21 are also applicable to compliance with Recommendation 23.
24. Transparency and beneficial ownership of legal persons	PC	<ul style="list-style-type: none"> • Hungary has not specifically assessed the risk associated with different categories of legal persons that can be created under Hungarian law. • Not in all companies are required to notify the Register of changes of data (particularly as regards changes of ownership) and it is not clear if information is updated on a timely basis. • There is no specific obligation for companies to cooperate with the competent authorities in determining the beneficial owner. • There is no requirement for the companies to obtain and hold up-to-date information on the companies’ beneficial ownership in the Country. • Beneficial ownership information is not required to be as accurate as possible. • Given that there is no prohibition to provide nominee director services it is important to set up relevant mechanisms to ensure that they are not misused. • No information on the monitoring the quality of assistance the country receives from other countries on beneficial ownership or locating beneficial owners residing abroad was provided by the authorities.
25. Transparency and beneficial ownership of legal arrangements	PC	<ul style="list-style-type: none"> • No provisions on providing information on the beneficial ownership of trusts and the assets to be managed to financial institutions and DNFBPs. • No requirement for non-professional trustees to disclose their status to financial institutions and DNFBPs.
26. Regulation and	LC	<ul style="list-style-type: none"> • Neither the AML/CFT Act nor the MNB Act indicate

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
supervision of financial institutions		<p>that the AML/CFT supervision shall be performed on ML/FT risk sensitive basis.</p> <ul style="list-style-type: none"> Neither the results of the NRA, nor the analysis of ML/FT risk-sector and nor the ML/FT risk profile of the FI or “financial group” are incorporated in the AML/CFT supervisory framework of the MNB.
27. Powers of supervisors	LC	<ul style="list-style-type: none"> The AML/CFT sanction regime does not provide for the withdrawal, restriction or suspension of the financial institution’s licenses in case of a violation of the AML/CFT requirements.
28. Regulation and supervision of DNFBPs	PC	<ul style="list-style-type: none"> The lack of legal requirements to avoid the presence of criminals and their associates among DNFBPs (and prevent them from holding, being the beneficial owner of or managing a DNFBP). Absence of measures and widespread practices among supervisors on risk-basis AML/CFT supervision. Legal gaps on the AML/CFT sanctions regime limit its dissuasiveness.
29. Financial intelligence units	C	
30. Responsibilities of law enforcement and investigative authorities	C	
31. Powers of law enforcement and investigative authorities	LC	<p>Hungarian competent authorities cannot use the full range of investigative techniques when they investigate the ML offence</p>
32. Cash couriers	PC	<ul style="list-style-type: none"> There is no administrative ability to stop or restrain currency and BNI in case of ML/FT suspicions. Hungary has not implemented any system requiring all physical movements of cash and BNI (covering all different modes of transportation) crossing the intra-Communitarian borders (within the EU) to be declared or disclosed.
33. Statistics	PC	<ul style="list-style-type: none"> Significant shortcomings remain in relation to collection and maintenance of relevant statistical information and data on matters relevant to the effectiveness and efficiency of its AML/CFT system.

Compliance with FATF Recommendations

Recommendation	Rating	Factor(s) underlying the rating
34. Guidance and feedback	PC	<ul style="list-style-type: none"> • Guidance and additional material provided by the competent authorities do not sufficiently cover FT related issues. • There is insufficient guidance pertaining to understanding and application of a risk based approach by financial institutions and DNFBPs.
35. Sanctions	PC	<ul style="list-style-type: none"> • Sanction for auditors, notaries public and lawyers under the sectorial legislation are not proportionate. • Sanctions are not available for managerial functions of DNFBPs.
36. International instruments	LC	<ul style="list-style-type: none"> • Not all the relevant provisions of the Vienna, Palermo and Merida Conventions have been implemented in the Hungarian legal order. • Shortcomings from Recommendations 3, 5, 35 and 38 also impact on compliance with Recommendation 36.
37. Mutual legal assistance	LC	<ul style="list-style-type: none"> • A strict application of the dual criminality still may hinder the execution of non-coercive actions, as well as ML and TF related requests due to the cascading effect of the shortcomings in the criminalisation of these offences.
38. Mutual legal assistance: freezing and confiscation	LC	<ul style="list-style-type: none"> • Sharing of confiscated assets with other cooperative foreign states is formally only provided for in an EU context.
39. Extradition	LC	<ul style="list-style-type: none"> • The strict interpretation of the dual criminality principle may legally jeopardise extradition proceedings for ML and FT as a result of the shortcomings in the criminalisation of those offences in Hungary.
40. Other forms of international cooperation	LC	<ul style="list-style-type: none"> • The possibility for the Hungarian law enforcement agencies to participate in joint investigations with non-EU countries is restricted. • It is unclear whether the Hungarian competent authorities have the legal possibility to exchange information, directly or indirectly, with foreign non-counterparts, nor whether this happens in practice.

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Anti-money laundering and counter-terrorist financing measures

Hungary

Fifth Round Mutual Evaluation Report

This report provides a summary of the anti-money laundering/counter-terrorism financing (AML/CFT) measures in place in Hungary as at the date of the on-site visit (7 March to 18 March 2016). It analyses the level of compliance with the Financial Action Task Force (FATF) 40 Recommendations and the level of effectiveness of Hungary's AML/CFT system and provides recommendations on how the system could be strengthened.