COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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

MONEYVAL(2011)18

Bosnia and Herzegovina

1st Compliance report

11 April 2011

Bosnia and Herzegovina is a member of MONEYVAL. This compliance report was adopted at MONEYVAL's 35th Plenary Meeting (Strasbourg, 11-15 April 2011). For further information, please refer to MONEYVAL website: http://www.coe.int/moneyval.

FIRST COMPLIANCE REPORT

I. INTRODUCTION

Evaluation of Bosnia and Herzegovina under the third round (December 2009)

1. MONEYVAL adopted the mutual evaluation report (MER) of Bosnia and Herzegovina (BiH) under the third round of evaluations at its 31st plenary meeting (7 – 11 December 2009). As a result of the evaluation process, BiH was rated Non compliant (NC) on 13 Recommendations and Partially compliant (PC) on 18 Recommendations, including on several core and key recommendations, as indicated in the table below:

Partially compliant (PC)	**Non-compliant (NC)**
Core Recommendations[1] R.1 – Money laundering offence SR.II - Criminalisation of terrorist financing	**Core Recommendations** R.5 - Customer due diligence
Key Recommendations[2] R.3 - Confiscation and provisional measures R.23 – Regulation, supervision and monitoring R.26 - The FIU R.35 – Conventions SR.I - Implementation of United Nations instruments	**Key Recommendations** SR.III - Freezing and confiscating terrorist assets
Other Recommendations R.6 - Politically exposed persons R.7 - Correspondent banking R.15 - Internal controls, compliance & audit R.17 – Sanctions R.22 - Foreign branches & subsidiaries R. 25 - Guidelines & Feedback R.29 – Supervisors R.31 - National co-operation R.33 - Legal persons SR.VI - AML requirements for money/value transfer services SR.VII - Wire transfer rules	**Other Recommendations** R.8 - New technologies & non face-to-face business R.9 – Third parties and introducers R.11 - Unusual transactions R.12 - DNFBP (R.5, 6, 8-11) R.16 - DNFBP (R.13-15 & 21) R.21 - Special attention for higher risk countries R.24 - DNFBP (regulation, supervision and monitoring) R.30 - Resources, integrity and training R.32 – Statistics SR.VIII - Non-profit organisations SR.IX - Cross Border Declaration & Disclosure

Background information of the Compliance Enhancing Procedure

2. At its 34th plenary (7-10 December 2010), in view of the result of the discussions on the First 3rd round written progress report (PR) of Bosnia and Herzegovina, the Committee concluded that the report raised significant concerns about the extent of progress or speed of progress overall to rectify deficiencies identified in the 3rd round mutual evaluation report. It took note of the progress report and the analysis of the progress on the core Recommendations and pursuant to Rule 43 of the Rules of Procedure, invited Bosnia and Herzegovina to provide a fuller report to the 35th plenary. MONEYVAL, therefore, opened Compliance Enhancing Procedures in respect of the First 3rd round

[1] The core Recommendations as defined in the FATF procedures are R.1, SR.II, R.5, R.10, R.13 and SR.IV
[2] The key Recommendations as defined in the FATF procedures are R.3, R.4, R.23, R.26, R.35, R.36, R.40, SR.I, SR.III and SR.V

progress report for Bosnia and Herzegovina at step (i), which requires a non-complying member to provide a report or regular reports on its progress in implementing the reference documents.

3. Given the existence of the Compliance Enhancing Procedures which were opened at the 33rd plenary in respect of important deficiencies in Recommendations rated NC or PC in the mutual evaluation report, the Committee decided at the 34th plenary to merge the existing Compliance Enhancing Procedures with the Compliance Enhancing Procedures instituted at this (the 34th) plenary in respect of the submitted progress report at the same level (step (i)). The summary of the progress of BiH under the Compliance Enhancing Procedures opened at the 33rd plenary is set out in Annex I of this report. The Committee further decided that the progress report to be submitted to the 35th plenary will be a merged one that will also contain replies to the important deficiencies, which were identified at the 33rd Plenary, under some core and key Recommendations (R.1, R.5, R.26, SR II and SR III), and also under other Recommendations (SR VIII and SR IX). This report (together with its annex) reflects these decisions.

II. SHORT DESCRIPTION OF BiH LEGAL AND INSTITUTIONAL FRAMEWORK

4. For a better understanding and evaluation of the progress achieved by BiH since the adoption of the 3rd round report a short description of BiH state system, legal and institutional system is given here.

5. BiH is a State comprising two entities: the Federation of BiH (FBiH), and the Republic of Srpska (RS) (the entities) and Brčko District (BD). As a result of this division both of the entities and Brčko District (BD) have their own legislative frameworks including Criminal Codes, Laws on Banks, etc. This legislation is, in some cases (e.g. Criminal Codes), additional to legislation at the level of the state of BiH. In these circumstances, there is a need to consider progress on the relevant legislation at the entities and BD levels, as well as state level legislation.

6. Although certain law enforcement agencies and supervisory bodies operate across the whole of BiH, this legislative framework is largely replicated in law enforcement and supervisory structures. For example, the State Protection and Investigation Agency (SIPA), which houses the Financial Intelligence Unit (FID), has the authority to operate across the whole of BiH, whereas each of the entities and BD maintain their own police forces. In these circumstances, it is necessary to consider bodies operating both at state level, as well as at the level of the entities and BD in order to assess the overall effectiveness of the AML/CFT regime.

7. There is a new AML/CFT Law that was enacted on 15 June 2009 at state level, which replaced separate laws for the FBiH, the RS and BD with one unified AML/CFT Law for the whole country. Guidance on application of the new AML/CFT law was provided by the publication of a Book of Rules on Data, Information, Documents, Identification Methods and Minimum Other Indicators Required for Efficient Implementation of Certain Provisions of the Law on the Prevention of Money Laundering (Book of Rules), which clarifies the requirements for obligors. The formal compliance of this Law with the international standards was evaluated in the 3rd round Report but the effectiveness assessment of the AML system was made according to the former AML/CFT Law.

8. In the third round assessment the evaluators concluded that the Book of Rules on Data and Information (at State level) could not be considered as "other enforceable means" as a whole. However, the evaluators further concluded that those sections of the Book of Rules on Data and Information, where, as indicated in Table 11 (see 3rd round MER), there is a direct empowering clause and are, as such, sanctionable under the main (old) AML/CFT Law, could be treated as "other enforceable means". The new AML/CFT Law required the Minister to issue a new Book of Rules within 3 months from the date of enforcement of the new law. At the time of the adoption of the third round MER the Book of Rules was not published. The next level of regulation within Bosnia and Herzegovina is comprised of the Decisions on Minimum Standards issued by the respective Banking Agencies at the level of the FBiH and the Republic of Srpska. The third round evaluators considered

the Decisions on Minimum Standards issued by the respective Banking Agencies as "other enforceable means".

III. OVERVIEW OF BiH's PROGRESS AND REVIEW OF THE MEASURES TAKEN TO ADDRESS IDENTIFIED DEFICIENCIES

9. This desk review is carried out based on the current Rules of procedures of MONEYVAL for the third evaluation round. It summarises the measures taken by BiH since the adoption of the mutual evaluation report in respect of the core and key Recommendations rated PC or NC as well as of the other Recommendations rated PC or NC. Given that it focuses only on the measures taken to address deficiencies in respect of the Recommendations that were rated PC or NC, it is not intended to cover comprehensively the BiH's AML/CFT system. As decided by MONEYVAL at its 34th plenary meeting, BiH was required to demonstrate that sufficient progress has been made to rectify the deficiencies in an effective manner.

10. In preparing this paper, the Secretariat has taken into consideration the progress report submitted to the 35th plenary by BiH authorities and related annexes (covering laws, implementing regulations, book of rules, and guidance as well as data to assess effectiveness).

11. This paper provides a summary of the main conclusions of the review of the measures taken to address deficiencies of all Recommendations rated PC and NC, outlining the main changes to the AML/CFT system since the adoption of the third round mutual evaluation report.

12. The report does not analyse **R.4, 10, 13, 36** and **40,** as well as **SR IV** and **V** as they were given *Compliant (C)* (only R.4) or *Largely Compliant (LC)* ratings in the third round MER. These are also among the listed Recommendations under paragraph 43 of the Rules of procedure that the plenary should normally seek sufficient action from a country at the level of or at least at a level essentially equivalent to C or LC. It should be noted that the paper does not include other Recommendations rated C or LC.

13. It is particularly important to note that the effectiveness can be taken into account only through consideration of data and statistics provided by the authorities and as such, not all effectiveness aspects can be covered. Thus, this paper does not attempt to re-rate compliance with the above-mentioned Recommendations nor form a definite opinion on the level of implementation of the standards, as this could only be objectively and thoroughly undertaken through a verification of the information received in the context of an on-site evaluation visit.

1. Overview of the measures taken in relation to the Core Recommendations

Recommendation 1 (rated PC in MER): Money Laundering Offence

14. The third round evaluators noted the lack of demarcation between the ML offences in the different Criminal Codes because of the failure to harmonise the respective thresholds in the state-level and non-state level offences, and the overly ambiguous conditions in CC-BiH Article 209(1). As explained in the third round MER, according to that article, the state-level jurisdiction deals with any ML offences above the limit of 10,000 KM ("larger value") (approx. 5,110 EUR) as well as with those, regardless of the value, that endanger the common economic space of BiH or has detrimental consequences for the operations or financing of its institutions. If it exceeds 50,000 KM (approx. 25,560 EUR) [This amount was increased to 200,000 KM (approx.102,160 EUR) with the amendments made to BiH CC in 2010] this will also be dealt with at the state level, as this is regarded as the aggravated form of state level ML offence. However, the entities and BD have explicit competence over all offences without regard to the value of proceeds laundered. However, laundering of money or property below "large/high value" according to relevant articles of CCs of the entities and that of BD (accepted as 50,000 KM by the Supreme Courts of entities and BD), which are all identical, is dealt with as an unaggravated non-state level ML offence while such acts committed above this

threshold will constitute the aggravated form of large/high value ML. Briefly, as pointed out in the MER, neither of the non-state level CCs defines any maximum threshold above which a ML offence should necessarily be dealt with at state level. Particularly, taking into account the fact that the state level jurisdiction has no hierarchical status over those at the level of the two entities and BD, the absence of such a maximum threshold creates a clear visible conflict of competence between state and non-state level judicial authorities in respect of this subset of ML offences.

15. Apart from making reference to the Supreme Court's legal opinions reported to be adopted on 30 June 2004, which indeed appear to have been noted in the 3rd round MER, and providing explanations as elaborated above, no concrete steps have been taken to address the lack of demarcation between the scope of the ML offences in the different Criminal Codes. No legislative steps have been taken yet by the BiH authorities to bring ML offences into full compliance with the Conventions and to review the value threshold and other ambiguous conditions in all ML offences that can create a conflict between state and non-state level authorities.

16. The authorities report in the PR that market manipulation is criminalised in the draft Law on Securities Market and they expect the adoption of this Law by the Parliament in the first half of 2011.

17. It was recommended in the third round MER that investigators and prosecutors need to have a clear understanding of the potential of the offences beyond the tax evasion and fiscal predicate offences, if ML criminalisation was to be meaningful. Effective implementation of ML incrimination beyond the tax predicate was required to be a priority. The necessity of more resources and training especially in the prosecution service was also noted in the MER. It is reported that the BiH head of delegation to MONEYVAL wrote a letter, on 3 March 2011, to the Centres for Education of Judges and Prosecutors in the FBiH and the RS, and to the High Judicial and Prosecutorial Council to ensure that AML/CFT related issues are included in the training schedules of judges and prosecutors. However, it is not certain if such issues have been included in the training schedules yet. The Criminal Assets Recovery Act, which came into force on 1 July 2010, might be a useful tool in tracing proceeds of crime if used effectively in practice. However, due to the recent enactment of this Law it is too early to judge its practical impact. Furthermore, it should be noted that this act is only applicable in the RS.

18. One of the main deficiencies identified in the 3rd round MER was the comparative lack of convictions for money laundering related to predicates other than tax crimes (particularly organised criminality such as drug crimes, trafficking etc. which are prevalent in the country). BiH provides information in the PR about two cases, in one of which a final judgment was rendered. While in the first case a person was convicted of ML and human trafficking offences with forfeiture of unlawfully obtained property gain in the amount of KM 172,000 and a real estate, the second case where the persons have been charged with the criminal offences of ML and drug trafficking is still pending before the Court of BiH.

19. The Criminal Codes of the FBiH and BD have not been amended yet to explicitly criminalise "own proceeds" laundering, as recommended in the 3rd round MER. No steps have been reported in the PR as to whether the RS has reviewed the policy reasons for providing higher penalties for self-laundering than ML by third parties. In addition, no legislation has been introduced at all levels to allow the prosecution and conviction of defendants in absentia though some legislative attempts were made in the past.

20. With the amendments made to Article 209 of the CC BiH in 2010 the penalties for basic ML and aggravated ML offences appear to have increased, and self-laundering was explicitly criminalised in the state level CC. However, amendments made in the state level and non-state level Criminal Codes did not appear to have addressed other major issues raised in the 3rd round MER, including the need for broader harmonization across the state and non-state level in respect of the language of ML incrimination.

21. In order to address the backlog in ML cases as noted in the third round MER, the authorities report that the letters were sent by the head of delegation to the above-mentioned authorities. From the above-mentioned case numbers given in the PR, it seems that the first case referred to in paragraph 18 was opened in 2006 and the second case referred to in paragraph 18 was opened in 2007. The second case is still pending after 4 years. Though the complexity of or details about the cases are unknown, this could be an indication of a continuing backlog problem in such cases.

Recommendation 5 (rated NC in the MER): Customer Due Diligence

22. The authorities report in the PR that a new Law on Foreign Exchange Operations was adopted and published on 4 August 2010. It appears that the new Law and the Rules of Procedure issued by the Ministry of Finance (under this Law) have addressed the deficiency identified in the third round MER as to the opening and retention of bearer saving accounts in foreign currency. Article 33 of the new Law obliges banks to determine the identity of residents and non-residents and act in accordance with the AML/CFT Law when opening of foreign currency accounts, accounts in convertible marks and foreign currency savings books, and when executing a payment transaction. Article 5 of the new Rules of Procedure, enacted by the Minister of Finance in accordance with the Article 34 of the new Law, states "Foreign currency savings deposits on barrier or on barrier with secret code are not permitted."

23. With regard to the obligation to apply CDD measures when carrying out occasional transactions that are wire transfers, the BiH authorities report that they are preparing supplementary amendments to the AML/CFT Law, which will remove this deficiency and harmonise the Law (Article 6(1)) with the FATF requirements. But this deficiency has not yet been fully addressed.

24. The definition of "transaction" in the new AML/CFT Law has not been reconsidered yet. Though it is reported in the PR that the new draft law amending the AML/CFT Law will rectify this deficiency. The BiH authorities should make sure that this deficiency is addressed in the draft law as it seems that it does not currently include such a clarification.

25. With the issue of the new Book of Rules, which includes risk assessment guidelines and indicators, and the Guidelines for customers under the jurisdiction of the Insurance Supervision Agencies of the FBiH and the RS as well as the Guidelines for customers under the jurisdiction of the Securities Commission of the FBiH in 2010, it can be concluded that the necessary guidance on the newly introduced risk-based approach and other obligations under the new Law are now broadly in place. Besides the legal requirements imposed on the insurance and securities sectors by the said Guidelines (which are not enforceable means), the authorities reported that a state-wide training and awareness programme has been put in place under which several sessions have already been held for a number of obliged entities. However, it is uncertain if these activities include any specific awareness raising programme for the financial sector on the applicability of the risk-based approach for CDD.

26. The revision of the Decisions on Minimum Standards in order to address properly the timing of verification was recommended by MONEYVAL in the third round MER. The BiH authorities report that a broader review of the Decision on Minimum Standards to address many issues, including this deficiency, has been initiated only by the Banking Agency of the FBiH. However, this review could not be completed and this is planned to be made after the enactment of necessary amendments to the Law on Banks by the Parliamentary Assembly. In addition, such a review needs to be conducted by all respective banking agencies. Therefore, no concrete progress that rectifies this deficiency has been achieved yet.

27. Article 15 of the new AML/CFT Law appears to have been reviewed in the draft law amending the new AML/CFT Law (as recommended in the third round MER). However, in addition to taking steps to finalise the legislative process of the draft law, the BiH authorities should ensure that the state-wide training and awareness programme includes specific activities which provide awareness and understanding for the industry on the newly-introduced concept of the beneficial owner.

28. As the relevant decisions on Minimum Standards[3] of the respective Banking Agencies have not been changed yet, an obligation for all obliged entities and persons to identify the mind and management of a legal person has not been introduced.

29. Article 7a of the draft law amending the AML/CFT Law which was prepared in June 2010 by the working group of experts and submitted to the Council of Ministers appears to cover a requirement for the obliged entities to terminate the business relationship where it is established but the identification process cannot be completed. If the draft law is enacted as it stands, BiH could be regarded as having complied with this recommendation, but not before. The Guidelines for the Implementation of AML/CFT for customers under the jurisdiction of the Insurance Supervision Agency of the FBiH, dated 31 May 2010, and the Application Guidelines of the Law on Prevention of Money Laundering and Financing of Terrorist Activity for customers under the jurisdiction of the Securities Commission of the FBiH, dated 8 April 2010, include such an obligation. However, as noted above and in the 3rd MER, Guidelines cannot be regarded as "other enforceable means". BiH authorities should introduce such a requirement by law, regulation or other enforceable means.

30. No new legislative steps appear to have been taken by the BiH authorities to introduce a legal obligation to apply CDD measures to existing customers beyond what is currently provided for banks under the relevant Decisions on Minimum Standards. Though they report, without specifying the exact legal basis, in the PR that provisions covering ongoing monitoring of customers were introduced in the field of securities and insurance, it is uncertain if this monitoring requirement covers the obligation to apply CDD measures to existing customers, as required under essential criterion 5.17.

Special Recommendation II (rated PC in MER): Criminalisation of terrorist financing

31. MONEYVAL recommended that the criminal codes be amended to incorporate the funding of terrorist organisations and individual terrorists at both State level and that of the entities and BD.

32. The BiH authorities report in the PR that amendments were made to the Criminal Code of BiH (state level Criminal Code), published in the Official Gazette of BiH, no.8/10, on 2 February 2010, to strengthen the provisions relating to terrorism, including the terrorist financing offence. The first paragraph of Article 201 of the Criminal Code of BiH defines terrorism. Its fourth paragraph, inserted in the Code with these amendments, provides *"Whoever procures or prepares any means of, or removes an obstacle to or undertakes any other act to create conditions for, the perpetration of the criminal offence under paragraph (1) of this Article, shall be punished by a prison sentence between one and ten years."* The authorities argue that this provision regulates financing of terrorist organisations and individual terrorists. However, this provision clearly regulates aiding or abetting of terrorism, and according to the FATF Methodology (see footnote 59), the criminalisation of terrorist financing solely on the basis of aiding and abetting does not comply with SR II.

33. In addition to the above-mentioned amendments to Article 201, Article 202 of the BiH Criminal Code that regulate the offence of funding of terrorist activities was also refined in February 2010. The new article modified the penalty. While the sentence for the TF offence, according to the previous version of the Article, was imprisonment from 1 to 10 years, in the new provision the sentence is imprisonment for not less than 3 years. In addition to this amendment, now Article 202 provides for the confiscation of funds collected for the perpetration or obtained as a result of financing of terrorism. However, although this amendment appears to bring the definition of terrorist financing offence broadly into line with the UN Terrorist Financing Convention in terms of incrimination of financing of terrorist acts, the Criminal Code still lacks complete criminalisation of terrorist organisations' or individual terrorists' other activities (e.g. day-to-day activities) as opposed to specific terrorist acts (which is required by SR II and see paragraph beneath).

[3] The 3rd round evaluation team considered the Decisions on Minimum Standards issued by the respective Banking Agencies as "other enforceable means".

34. Another important enhancement seems to be the addition of Article 202d to the Criminal Code of BiH in February 2010. This Article incriminates organising a terrorist group and being a member of a terrorist group. Paragraph (2) of Article 202d provides *"Whoever becomes a member of the group referred to in paragraph (1) of this Article or otherwise participates in the activities of a terrorist group, which includes providing financial or any other assistance, shall be punished by a prison sentence of not less than three years"*. This article seems to criminalise provision of funds or any other assistance to terrorist organisations, including their activities other than specific terrorist acts. However, in the absence of an explicit reference, it seems that the separate act of "collection of funds" for terrorist organisations' day-to-day activities, as required under SR II, is not covered in the Criminal Code.

35. Consequently, though the refinements made to the Criminal Code of BiH appear to have enhanced the provisions relating to terrorism and terrorist financing, they seem not to have addressed this specific deficiency completely, as required under SR II. With the amendments made in the state level Criminal Code in February 2010, this Law now covers financing of terrorist acts adequately. It also includes the provision of funds for terrorist organisations in respect of all types of activities. However, it still lacks incrimination of collection of funds for terrorist organisations' day-to-day activities as well as provision or collection of funds for individual terrorists' day-to-day activities. Furthermore, as recommended, amendments should still be made to the Criminal Codes of the entities and Brčko District as well. Therefore, the same deficiency still appears to remain.

36. With regard to the recommendation on further clarifying "funds", the authorities refer to the definition of property made in the AML/CFT Law. In addition, the draft Book of Rules on implementation of restrictive measures defines the term funds. However, as it is explicitly mentioned in Article 3 of the AML/CFT Law, this article defines certain terms for the purposes of this Law. Therefore, it is questionable if the judiciary would take into account the definition of property used in the AML/CFT Act in the criminal proceedings. This would also be the situation with the draft book of rules, if it is brought into force.

37. The BiH authorities were recommended to consider abandoning the use of "double definitions" of legal terms pertaining to criminal substantive law in multiple legal instruments. They were also required to consider whether the financing of terrorism should remain criminalised at all levels of legislation in BiH or be qualified among those exclusively dealt with at the state level. Notwithstanding the letter explaining such requirements, dated 3 March 2011, which was sent by the MONEYVAL Head of BiH delegation to the BiH Ministry of Justice, the due on these issues could not be demonstrated by the authorities.

38. In conclusion, notwithstanding the abovementioned legislative refinements made in the Criminal Code regarding terrorism and terrorist financing, apart from the introduction of the offence of provision of funds for terrorist organisations' day-to-day activities in the State level Criminal Code, all the other MONEYVAL recommendations made in the 3rd round MER with regard to SR II remain outstanding.

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

Recommendation 3 (rated PC in MER): **Confiscation and provisional measures**

39. The BiH authorities report in the PR that the Law on the Amendments of the CC of the BiH was published in the Official Gazette on 2 February 2010 and parallel amendments were made to non-state level CCs. However, it could not be established exactly when the amendments came into force in state level CCs. It appears from the information given that the new Article 110a that has been added to the Law, which regulates reversal of the burden of proof for corruption offences, offences against the economy, including market integrity etc. Similarly, parallel amendments appear to have been made to Article 114 of the CC FBiH and the CC RS, which introduce reversal of burden of proof. In addition, they reported that in the RS the Criminal Assets Recovery Act was adopted and published in the

Official Gazette on 19 February 2010 and came into force 6 months after its publication date. The Act defines conditions, procedures and institutions to detect, recover and manage the criminal assets originating from the offences defined in the CC of the RS. These are all positive steps that should contribute to the improvement of the confiscation regime to some extent. MONEYVAL made numerous other recommendations in the third round MER regarding R.3. It seems that none of the legislative steps reported by the authorities appears to have remedied any of the major deficiencies identified in the 3rd round MER.

40. As noted under paragraph 231 of the MER, Article 111 of the BiH CC applies to value confiscation, as required R.3. However, the CC of the RS has not been amended yet to make confiscation of proceeds commingled with legitimate assets or that of income or benefits derived from proceeds of crime available. The Criminal Assets Recovery Act, which is a procedural law, does not seem to fill this existing gap in the CC of RS.

41. Though some amendments were made to the Criminal Codes of BiH, the FBiH and BD to address the overly vague conditions for confiscation of instrumentalities described in the MER, the mere deletion of the word "absolute" does not seem to eliminate the remaining overly vague conditions found out in the third round in relation to confiscation of instrumentalities or other objects. Similarly, no changes made to Article 62(1) of the CC RS to introduce compulsory confiscation of such objects. It is noted that currently this is only mandatory where it is explicitly provided for in the Law. In addition, apart from the letter sent to Ministry of Justice indicating the necessity of legislative steps, no tangible progress has been achieved in removing insubstantial preconditions of *in rem* confiscation of other objects at all levels. In addition, no consideration appears to have given to provisions in the criminal procedure that would enable the confiscation of proceeds where the criminal procedure cannot be concluded because of the death or absconding of the perpetrator or for any other reason, on the basis of proof that the assets derive from criminal offences. The authorities believe that this would be contrary to BiH's criminal law concept.

42. With regard to preventing or voiding actions where the persons involved knew or should have known that, as a result of those actions, the authorities would be prejudiced in their ability to recover property subject to confiscation, the authorities refer in the PR to Article 103 (1) of the Code of Obligations applicable at all levels. According to this article, "*an agreement which is contrary to mandatory regulations, public system or good practices is void if the aim of confirmed rule does not point any other sanction or if the law in specific case does not specify otherwise"*. It is not clear if the authorities submitted this article to the evaluators as there is no reference to Article 103(1) in the MER. However, this article seems not to be applicable in the case of the commission of a criminal offence since another penalty is always prescribed for offences in the Criminal Codes at all levels. Therefore, this deficiency remains.

43. Notwithstanding the reference made to some legislation that constitutes a legal obligation for keeping statistics, no steps have been reported in the PR as to whether the domestic authorities have reviewed the practical functioning of the provisions on confiscation and provisional measures to assess their overall effectiveness and to satisfy themselves that the necessary tools are in place for compiling and maintaining comprehensive statistics on confiscation and provisional measures. Nevertheless, the authorities later reported to the Secretariat that the Strategy and Action Plan for the prevention of ML and TF Activities in BiH includes actions that aim at strengthening the confiscation regime in the period of 2009-2012. It appears that in the light of this Action Plan, the authorities have begun to review the confiscation regime, however, the BiH authorities should ensure that the planned actions will fully address the deficiencies identified in the MER.

44. With regard to the possibility of taking provisional measures at earlier stages of preliminary proceedings, apart from Article 73 of the CC BiH that gives power to authorized officials in certain situations, no such provisions have been introduced in the legislation of the entities and BD. The third round report recommended that practitioners be trained to apply these measures as early as possible to prevent dissipation of proceeds. BiH authorities report that training seminars have been organised by

the Centre for Education of Judges and Prosecutors. In this respect, two five-day-seminars were reported to have been organised in 2009 with the participation of prosecutors and members of law enforcement agencies. In addition, six other seminars were also organised in 2003-2009. The authorities further reported that some training activities on combating corruption and economic crime have been organised in 2010 and the Centres for training of judges and prosecutors in the RS and FBiH are planning to hold training activities for judges and prosecutors directly involving ML and TF proceedings in 2011. However, no such training activity appears to have been held in 2011 as at the date of the adoption of this progress report. The authorities should continue to hold regular training activities for judges, prosecutors and law enforcement officials, which focus on the application of provisional measures as early as possible to prevent dissipation of proceeds, as recommended.

45. Regarding the recommendation made as to the establishment of a unified statistics systems at all levels, BiH authorities refer to a draft BiH Criminal Assets Recovery Act. This Act seems to establish an agency, which will have certain powers. While the draft law gives some powers to the agency to keep and manage seized and confiscated assets and establishes an asset-sharing mechanism, the authorities should make sure that Article 9 of this draft Law gives a clear power to the Agency to gather and keep meaningful statistics on the amounts of property seized and confiscated.

Recommendation 23 (rated PC in MER): Regulation, supervision and monitoring

46. The BiH authorities report in the PR that the draft Law on the Securities Market will introduce under Article 141 a prohibition against criminals and their associates holding a significant or controlling share in securities market intermediaries in the FBiH and in BD, and a requirement for a clean criminal record in respect of the managers of market intermediaries in BD, as well as requirements for professional qualifications and expertise of directors and senior management of investment funds in the FBiH, in the RS and in BD. The BiH authorities expect that this draft will be adopted by the Parliament in the first half of 2011. Nevertheless, it is not clear if this draft law, when enacted, will be applicable at all levels. The authorities were not able to provide clarity on this issue. The authorities should make sure that the draft covers all the mentioned deficiencies.

47. The authorities report that the lack of licensing/registration procedures for persons involved in money transfer and exchange services, as well as for the persons exercising professional activities of sale and purchase of claims, safekeeping, investing, etc. have been resolved with the adoption of the new Law on Foreign Exchange. As the translation of this law has not been made available and no further information provided in the report, it is uncertain how or to what extent this law introduced appropriate licensing/registration procedures for all those persons involved in the activities mentioned in the third round MER.

48. The authorities report the establishment of a new agency, Agency for Supervision of the Post Office Operation (which includes payment transfers). They report that this new agency will eventually be recognized under the AML/CFT Law as the supervisory authority for AML purposes for the Post Office, and that necessary arrangements will be considered for cooperation of the new Agency with the Agencies for Banks in order to ensure a level playing field and harmonisation in the supervision of the payments sector. However, it seems that this agency is still not regarded as a supervisory authority according to the AML/CFT Law. Moreover, it is uncertain how the establishment of this agency will harmonise the efficiency of monitoring activities in respect of persons involved in money transfer and exchange activities, as recommended.

49. In addition, though the authorities refer to the relevant parts of Guidelines issued in 2010 to the securities and insurance sectors, these guidelines do not give any indication as to whether adequate efficient, risk-based supervision of financial institutions has been developed and implemented for the whole financial sector.

50. Apart from the draft law on the Securities Market, which is reportedly in the parliamentary process and might resolve some issues, no meaningful progress has been reported by BiH the

authorities regarding Recommendation 23. Therefore, all deficiencies identified in the 3rd round MER appear to remain to be addressed.

Recommendation 26 (rated PC in MER): **The FIU**

51. The third round evaluators were concerned about the inefficient operation of the FID where 7 analysts and 6 investigators handle all the CTRs and STRs received and rely on manual procedures with little or no support. With regard to the need for development of the Financial Intelligence Department's (FID) database capability, its analytical tools and greater use of electronic monitoring and analysis, the authorities report that the FID developed an instruction that requires data not to be entered and processed manually, but directly in an electronic form, and that analysts and investigators received training in the I2 system. They further state that the material and technical equipment of the FID is at a high level and is in line with the highest standards.

52. The BiH authorities provided further information in their reply to the first draft of this report that the Anti-Money Laundering System (AMLS) is an electronic system for reporting legally prescribed transactions by persons under obligation, the analytical processing of received reports, and for creating files and cases for the purpose of investigation. This system was established in 2005 and became fully functional and operational as of 1 January 2006. There followed two physically separated AMLS' applications: the first AMLS application is located at the Internet, and is accessible by all persons under obligation, as defined by the Law, for reporting of CTRs in amount of 30.000 KM and more. Thus, persons under obligation, through the Internet, automatically report online all CTRS, STRs and linked transactions, as regulated by the Law. These reports are then accumulated at the FID server that is located on the Internet. The second application, which is physically separated through the network, is located within the internal network of the SIPA. Data coming to the Internet server is automatically transferred to the database server through special program routines. As soon as data arrives to database server, FID employees, through the AMLS, which is on the internal side of the network (Intranet), may automatically access transactions, and they are analytically processed as a first step. It is possible to have an immediate overview and insight into the time when a transaction has been reported, which person under obligation reported it, and what was the nature of the transaction (CTR, STR or linked transaction). They emphasize that the AMLS also offers the possibility for manual personal creation of files and cases by analysts and investigators; everything else is purely automatic. However, they further report that although the I2 software became functional in 2008; it does not function automatically as it requires a bridge-software, which does not exist for the time being.

53. As the situation has not changed considerably since the third round, the authorities should speed up the process of strengthening the technical capacity of the FID and the use of electronic means for monitoring and analysis, as recommended.

54. It was recommended to prioritise the recruitment of suitably qualified staff to fill in the current vacancies in the Investigation Department at the FID. The authorities point out that currently 66% of positions the FID's Investigation Section are full, and this is satisfactory. Given the type of the new FIU to be established after the entry into force of the draft law, where police officers are not to be employed, they consider employing high skilled police investigators is unnecessary.

55. As noted in the 3rd round MER in a more detailed fashion, the FID of BiH is currently a division of the State Information and Protection Agency (SIPA); and the powers and duties of the FID are set out in the SIPA Law and in the new AML/CFT Law. It is considered as a law enforcement type FIU. Article 18 of the draft law (amending Article 45 of the AML/CFT Law) envisages establishing a new Financial Intelligence Agency (FIA) as an administrative organisation within the Ministry of Security of BiH with operational independence, and to be managed by a Director and funded by the budget of BiH. Overall, the new articles to be inserted in the new AML/CFT Law, when enacted as they stand, will clearly strengthen the position of the BiH FIU in terms of identified deficiencies.

56. Unlike the existing legislation with regard to the FID, the draft provisions appear to define the competences and tasks of the FIA in more detail. The draft provisions define the status of the FIA's employees, management of the FIA and appointment of the director, duties and responsibility of the director and the deputy director, removal of director and FIA's access to information etc.

57. The third round evaluators noted that the FID is not asked for information by or freely provided with information by other law enforcement agencies at the level of the entities and BD. The draft Law does not bring a novelty to the existing Article 51 in relation to interagency cooperation. In the absence of further data or statistics, which indicates if the situation has changed, the deficiency remains apt.

58. Unlike the current Article 46 of the new AML/CFT Law, which requires the FID, for the purpose of prevention of ML and TF, to forward information only to the competent prosecutor's office, the draft Articles 45a and 46 empower the FIA to forward information or data to the competent bodies in relation to money laundering and funding of terrorist organisations. This can be interpreted as covering all domestic competent authorities dealing with AML/CFT. On the other hand, draft Article 51 regulates the interagency cooperation of the FIA. It states *"At reasoned request, the FIA shall send information about money laundering and financing of terrorist activities to the competent bodies and institutions referred to in paragraph 1 of this article only if such information and data may be of significance to the said bodies when making decisions falling under their competency and for investigative purposes."* The text of this article appears to remain almost unchanged at present. The only change is the removal of the necessity for the approval of the SIPA Director for the provision of information to other authorities. In addition, instead of "upon a detailed request", the draft requires "a reasoned request". Therefore, the draft Law still seems not to allow the FIA to disseminate information on its own initiative to domestic authorities for investigation or action when there are grounds to suspect ML or TF. Therefore, the BiH authorities need to consider deleting this requirement in the draft provision to prevent possible misunderstandings that may occur in the future, as noted in the 3rd round MER.

Recommendation 35 & Special Recommendation I (rated PC in MER): Conventions and Implementation of UN Instruments

59. The amendments made to CC BiH appear to bring the definition of the terrorist financing offence at the state level broadly into line with the UN Terrorist Financing Convention in terms of incrimination of financing of terrorist acts. However, the term "funds" has still not been defined in the CC in line with the Convention. As no meaningful legislative changes have been made so far, the implementation of and compliance with relevant Conventions appear not to have changed substantially since the adoption of 3rd round MER. In addition, as recommended in the third round MER, parallel amendments should still be made to the Criminal Codes of the Entities and BD as well.

60. Furthermore, as noted above under R.1 there are still shortcomings identified in relation to criminalisation of ML and pending deficiencies relating to effective implementation of the Conventions.

61. With regard to the implementation of the relevant UNSCRs, apart from the draft Book of Rules, which appears to need further consideration in order to fully comply with the requirements of SR III and is still draft, no concrete progress has been achieved.

Special Recommendation III (rated NC in MER): Freeze and confiscate terrorist assets

62. The main deficiency in relation to SR III in the third round report was the lack of a comprehensive system in place for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing. Other deficiencies were the lack of procedure for considering de-listing requests and unfreezing of assets of de-listed persons, the absence

of a procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the person is not a designated person.

63. The draft Book of Rules appears to establish a new system to implement in particular UNSCR 1267. Although it does mention UNSCR 1373 in its title and in Article 1, the system to be established does not seem to include any provisions relevant to the implementation of this Resolution. The draft includes provisions on publication procedures for the UN consolidated list, implementation of financial restrictive measures, exemption for living expenses and the exemption for certain obligations, listing and de-listing procedures, unfreezing upon de-listing, and determines sanctions in case of violations of this Book of Rules, as well as assigning the relevant Ministry as the competent authority for monitoring implementation of the Book of Rules.

64. Though it is clear that the Book of Rules will establish a more robust, unified and comprehensive system than the existing one, the BiH authorities should make sure that the new system to be established in the Book of Rules covers all the requirements of SR III properly.

65. Article 5 of the Book of Rules obliges the authorities of BiH to freeze all funds or economic resources of listed persons. However, as the Book of Rules does not seem to impose any obligations on financial institutions, other persons or entities that may be holding targeted funds and assets, the BiH authorities should ensure that the procedures will be effective, as required under SR III. The BiH authorities refer to the relevant provisions of the draft Book of Rules on implementation of restrictive measures established by UNSCRs including Resolutions 1267 and 1373 for the remaining recommendations made under SR III of the 3rd round MER.

66. However, if further refinements are not made on or further consideration is not given to the current draft, the system would appear likely not to be in compliance with the requirements under Essential Criteria III.1, III.2, III.3, III.5, III.6, III.8, III.10, and III.13.

3. Review of measures taken in other Recommendations rated NC or PC

Recommendation 6 (rated PC in MER): Politically exposed persons

67. The BiH authorities reported that Article 22 of the AML/CFT Law will be amended by the draft law. Unlike the current AML/CFT Law, the draft law refers to the Laws on Conflict of Interest for the definition of PEPs. As the relevant texts in English were not made available, it is not possible to analyse the definition of foreign PEPs. The draft law does not aim at making other significant changes to the existing AML/CFT Law in terms of PEPs. It seems that Guidelines issued for the insurance sector in RS and FBiH include some further clarifications. But no other guidance on the identification process, including where the beneficial owner is a PEP, has been provided to the whole financial sector, as recommended.

Recommendation 7 (rated PC in MER): Corresponding banking

68. The absence of any requirement for banks to document the AML/CFT responsibilities of a respondent bank and the lack of specific obligations regarding 'payable through accounts' were the main deficiencies identified in the third round MER. Though the authorities reported on the amendments to be made in Article 21 of the AML/CFT Law, it is unclear how these amendments will resolve these existing shortcomings.

Recommendation 8 (rated NC in MER): New technologies and non-face-to-face business

69. Article 2 of the new Book of Rules requires financial institutions to adopt a written internal program that determines the risk level of new technical developments in respect of their possible misuse for the purposes of money ML and TF. In addition, there are similar obligations prescribed in the Guidelines addressing the insurance sector (in the FBiH and the RS) and the securities sector (in

the FBiH). It seems that the new Book of Rules has partially addressed the deficiency identified in the 3rd round MER. The BiH authorities still need to clarify the application and effectiveness of Article 10 of the Decision on Minimum Standards (the FBiH, the RS) for the banking sector. Furthermore, the draft law amending the AML/CFT Law, which requires financial institutions to have policies in place to prevent the misuse of technological developments should be enacted in order to comply with R.8.

Recommendation 9 (rated NC in MER): Third parties and introduced business

70. The new Book of Rules requires financial institutions to ensure that the information and documentation on identification of the client can be obtained and that the third party will provide such information upon request. In addition, Articles 10, 11 and 12 of the draft law on amending the AML/CFT Law appear to address remaining deficiencies when enacted as they currently stand.

Recommendation 11 (rated NC in MER): Unusual transactions

71. No sufficient steps as required by R.11 appear to have been taken by the BiH authorities to remedy the deficiencies identified in the 3rd round MER. The AML legislation and the Banking Decisions for minimum Standards have not been revised yet, as recommended, so as to establish particularly: a specific obligation to monitor and examine large, unusual or complex transactions for the rest of the sectors beyond banking and insurance; an obligation to examine the background and purpose and to keep a written statement of findings; and an obligation to make such statements available to competent authorities. Though authorities refer to the Book of Rules in the PR, the references made do not seem to be directly related to R.11.

Recommendation 12 (rated NC in MER): DNFBPs (R.5, 6, 8-11)

72. Even though the authorities reported that the FID initiated a series of trainings to introduce the issue of PEPs to the DNFBP sector, it is not clear enough what kind of training and awareness raising activities have been conducted and if the reported trainings included the entire DNFBP sector as recommended. The FID Guidelines for the non-banking sector, which are said to have addressed some recommendations under R.12, were not made available to the Secretariat. The level of compliance of BiH with Recommendations 5, 6, 8, 9, 10 and 11 has been analysed above and the situation does not differ for the DNFBPs.

Recommendation 15 (rated PC in MER): Internal controls, compliance & audit

73. Though a provision on the admission procedures for new employees has been introduced by the Guidelines to the insurance sector in the FBiH and the RS, these are not enforceable or sanctionable. Even though the authorities reported that the draft amendment to be made to Article 32 of the AML/CFT Law will remove the full exemptions granted to small obliged entities from appointing a compliance officer and applying internal controls, there seems to be no indication in the draft text that this amendment will indeed remedy this deficiency.

Recommendation 16 (rated NC in MER): DNFBPs (R.13-15 and 21)

74. The authorities believe that the guidelines which will be issued will contribute to raising the awareness of the non-banking sector. But no training activity for raising of awareness of DNFBPs for their reporting obligation has been reported in the PR. As noted under R.15, Article 32 of the draft AML/CFT Law does not seem to remove the full exemptions granted to small obliged entities from appointing a compliance officer and applying internal controls. With regard to the involvement of the FID in the trainings for the DNFBP sector, the authorities reported some training activities that involved accountants and auditors where the FID representatives appear to have been present. The level of compliance of BiH with Recommendations 15 and 21 has been analysed in this report and the situation in respect of financial institutions is no different for the DNFBPs.

Recommendation 17 (rated PC in MER): **Sanctions**

75. The draft law appears to modify Articles 72 and 73 of the AML/CFT Law. The draft provision seems to regulate sanctions in a more comprehensive manner than the existing articles in the Law. However, it is uncertain if the draft law will resolve the duplication and overlap between the state level AML/CFT Law and the entities level Laws on Banks of the FBiH and the RS. The authorities should ensure that the draft law now makes all requirements enforceable. BiH was recommended that all sanctions should be reviewed to ensure that they are effective, proportionate and dissuasive. The draft law does not seem to change the sanctions or amounts of fines significantly. Therefore the BiH authorities should ensure that the draft law will address this recommendation properly. With regard to the introduction of sanctioning powers for the respective supervisory bodies in the insurance sector, the BiH authorities reported that the Insurance Agency of BiH has prepared a draft law on intermediaries in the insurance sector in order to ensure the harmonization of the regimes of the applicable sanctions that currently differ in the laws on insurance intermediaries in the FBiH and the RS.

Recommendation 21 (rated NC in MER): **Special attention for higher risk countries**

76. Article 4 of the new Book of Rules prescribes that obliged entities shall consider that a client which has its seat or central office in countries that have inadequate AML/CFT measures in place might present a higher risk of ML and TF. According to this article, obliged entities shall consider applying enhanced CDD measures to these customers. There appear to be further guidance in the Guidelines for the insurance sector in the FBiH and the RS. In addition, the authorities presented an internal program sample of a company, which includes instructions to apply enhanced CDD in certain conditions. However, BiH authorities appear not to have taken any steps to introduce a specific obligation to terminate or to decline a business relationship or to undertake a transaction with legal/natural persons from countries not sufficiently applying AML/CFT measures, and a specific obligation to keep a written statement of findings and to make these statements available to the authorities for the whole of the sectors. Therefore, Article 4 of the new Book of Rules seems to be insufficient to cover all necessary obligations for all the reporting entities, as required under R.21.

Recommendation 22 (rated PC in MER): Foreign branches and subsidiaries

77. The draft law amends Article 8 of the AML/CFT Law to improve compliance with the requirements of R.22. Draft provisions seem to introduce an obligation for financial institutions to inform the FIA when the regulations of the country where a foreign branch is situated do not stipulate execution of measures in the same scope as stipulated by the BiH AML/CFT Law. However, the draft still lacks a requirement for financial institutions to apply higher standards where the minimum AML/CFT requirements of the home and the host countries are different. When enacted, the draft law might bring the BiH system closer to R.22. However, the authorities still need to ensure that the draft amendments cover the requirement of criterion 22.1.2. As reported by the authorities these issues appear to have been further elaborated by the Guidelines issued on 31 May 2010 for the insurance sector in the FBiH and the RS in the light of the draft law. Similarly, these Guidelines do not cover the requirements of criterion 22.1.2. Furthermore, BiH authorities should take further measures that cover the entire financial sector at all levels.

Recommendation 24 (rated NC in MER): **DNFBP - Regulation, supervision and monitoring**

78. Apart from the draft Law on Gambling in BD, no new steps appear to have been undertaken by the BiH authorities to rectify other deficiencies identified under R.24. It is noted that if Article 79 of the draft Law is enacted as it stands, the supervisory authority of the Tax Administration for casinos in BD will be clarified, as recommended. Nevertheless, parallel steps should still be taken in other entities to resolve the unclarity of supervisory powers of Ministries of Finance over casinos. The law seems to remedy the deficiency related to the prohibition of individuals with criminal backgrounds from acquiring or becoming the beneficial owners of a significant or controlling interests, holding

management functions in or being/becoming an operator of a casino. However, this deficiency seems to be rectified only in BD as there are no parallel changes drafted in other entities in this regard. Furthermore, the BiH authorities have still not addressed the necessity of defining the powers of SROs; and no system or mechanism seems to have been established yet to ensure the compliance of the respective obligors with the national AML/CFT requirements. With regard to the monitoring of real estate agencies and traders in precious metal and stones with the national AML/CFT requirements, authorities referred to Article 68 of the AML/CFT Law that gives power to the FID to supervise the obligors that are not supervised by any agency. As no concrete data or statistics were provided, it is difficult to conclude that real estate agencies and traders in precious metal and stones are indeed supervised by the FID in practice.

Recommendation 25 (rated NC in MER): Guidelines and feedback

79. With regard to the guidelines to obliged entities, particularly to DNFBPs, the authorities referred to the Guidelines issued for the insurance sector in the FBiH and the RS as well as to the Guidelines issued by the FID for the non-banking sector. No sufficient concrete steps appear to have been taken by the BiH authorities to remedy the deficiencies identified in the third round MER apart from the provisions of the Guidelines that only address the insurance sector. At this stage, in the absence of the text, it is not possible to verify if it addresses the whole non-banking sector including the entire DNFBP sector. The third round report noted that the specific feedback was not provided by the FID to obliged entities. The authorities claim in the PR that regular feedback is now provided to obliged entities. However on a desk review it is difficult to verify this aspect. In addition, the BiH authorities have not reported in the PR if, or to what extent, the quality of the general feedback provided by the FID through its annual report has increased since the adoption of the third round MER. It is also unclear from the PR how the supervisory authorities ensure that the indicators provided in legislative texts are not interpreted as being exhaustive, such that the examination of transactions is only guided by them without any flexibility.

Recommendation 29 (rated PC in MER): Supervisors

80. Apart from referring to Article 68 of the AML Law which was already assessed and taken into account by the third round evaluators, the authorities have not reported any steps that have been taken to define the supervisory process of the FID and to establish mechanisms for the enforcement of its decisions to remove irregularities in the operations of obliged persons. Though the authorities reported that these deficiencies will be addressed in the course of establishing the FI Agency, no tangible progress appears to have been made on R.29. Hence, deficiencies identified in the MER still remain. Similarly, the lack of adequate powers of supervisors in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement measures and sanctions for both the institutions/businesses and their directors/senior management for non-compliance with AML/CFT requirements does not seem to be rectified yet. Though the authorities referred to the Guidelines issued for the insurance sector in the FBiH and the RS, the text referred to in the PR does not seem to give such comprehensive and effective powers to the supervisors in the insurance sector as recommended by MONEYVAL.

Recommendation 30 (rated NC in MER): Resources

81. No meaningful progress that is directly related to deficiencies identified in the 3rd round MER in relation to R. 30 has been reported in the PR. Therefore, the BiH authorities should take steps to make available an adequate structure, funding, staffing, and technical resources for supervision of implementation of the national AML/CFT requirements by DNFBPs. They should also take steps in order to define professional standards including confidentiality and integrity requirements, and required expertise/skills of the staff of bodies implementing supervision of DNFBPs.

Recommendation 31 (rated PC in MER): National cooperation

82. The deficiencies identified in the third round report under this Recommendation are related to the questions on effectiveness, coordination and information sharing, as well as related to the operational efficiency of the Working Group. Therefore, it is difficult to measure the level of compliance of BiH with R.31 on a desk review.

Recommendation 32 (rated NC in MER): Statistics

83. The BiH authorities reported that, based on a research mission of the UNODC in partnership with the Joint Research Centre on Transnational Crime, the Programme Guidelines which provide a set of recommendations for the improvement of statistical systems on crime and criminal justice as well as on migration, asylum and visa are being developed. They further reported that the High Prosecutorial and Judicial Council of BiH has begun to keep more detailed and comprehensive statistics. However, these steps are currently far from being accepted as fully rectifying the identified deficiencies.

Recommendation 33 (rated PC in MER): Legal persons – beneficial owners

84. Although these are the amendments planned to be made to Article 15 of the AML/CFT Law to further enhance the obligations of obliged entities for identification and verification of beneficial owners, still no steps appear to have been taken to require the registration courts, while registering a business entity, to identify and keep data on the beneficial ownership and control of legal persons, as recommended. No further steps were reported by the authorities for the rest of the recommendations made in the third round MER.

Special Recommendation VI (rated PC in the MER): AML requirements for money/value transfer services)

85. The authorities reported that the FID supervises the Post Office under its default monitoring competence, in addition to the general supervisory role of the Agency for the Postal Traffic. However, Article 68 of the AML/CFT Law was in force at the time of adoption of third round evaluation and was assessed by the evaluators. The MER noted that although the Post Office is seen as an obliged entity in the AML/CFT Law, there is no supervision in place in respect of AML compliance by the Post Office. In the absence of any statistics provided by the authorities that demonstrate the contrary, it is still unclear if the Post Office is supervised by the FID under its default monitoring competence or by the Agency for AML compliance. With regard to the need for reassessment of the position of Tenfore d.o.o vis-à-vis its relationship with the FID and the AML/CFT law, the authorities reported that they held discussions with Tenfore on this matter and that they will analyse the information/statistics submitted by it. The authorities are still expected, as recommended in the third round MER, to officially formalise the situation of Tenfore d.o.o in the AML/CFT Law.

SR VII (rated PC in MER): Wire transfer rules

86. The third round evaluators analysed Article 26 of the new AML/CFT Law. The authorities have not reported in the PR any new steps regarding the deficiencies identified under SR VII, apart from referring to the text of Article 26 and the establishment of the new Agency for Supervision of the Post Office Operation. However, as noted above, this new agency has not yet been covered under the AML/CFT Law.

SR VIII (rated NC in MER): Non-profit organisations

87. BiH authorities have not reviewed the adequacy of its relevant laws and no outreach seems to have been undertaken by the authorities in order to identify the risks and prevent the misuse of NPOs for the terrorism financing purposes. They gave some results of the researches made at the government level, however, these cannot be regarded as a comprehensive review that is required under SR VIII. The BiH

Ministry of Justice is reported to have been considering the creation of a unique and single database for the registration of all NPOs, however, at present no tangible progress has been achieved on avoiding double/triple registration and counting of NPOs and improving the mechanism of reciprocal recognition of associations and foundations. With regard to the deficiencies on the registration mechanism and supervisory activities, they reported that, with the creation of a single database, the supervision of NPOs will also be refined. Concrete steps are needed to remedy this deficiency. As for the record keeping obligation, the AML/CFT Law under Article 4, as reported by the authorities, lists the legal and natural persons performing the activities of receiving and distributing money or property for humanitarian, charitable, religious, educational or social purposes as obliged entities, and thus subject them to record keeping obligations, as with other obliged entities. (Article 65 of the AML/CFT Law). Whilst it might be interpreted that those records under Article 65 include the records of donations or other commercial activities of NPOs with the clients, it is difficult to conclude that this obligation under Article 65 also applied to the records of domestic and international expenditures of NPOs themselves. Therefore, it seems questionable if this requirement covers keeping of all data and records that will verify that funds have been spent by an NPO in a manner consistent with the purpose and objectives of the organization.

SR IX (rated NC in MER): Cross Border Declaration and disclosure

88. The Law on Foreign Currency transactions was adopted and published in the Official Gazette of the FBiH on 4 August 2010. This Law appears to have strengthened the declaration system in the FBiH by introducing a declaration obligation when entering or leaving the country with foreign currency, Bosnian marks and cheques, which exceed the amounts to be prescribed by the Council of Ministers of the FBiH. Articles 52 and 53 of the Law prescribes that the Customs authorities shall control cross border cash movement. It also gives power to Customs authorities (ITA) to seize temporarily the undeclared foreign cash above the threshold prescribed by the Government. Article 62 of this Law sets out a fine from 10,000 KM to 15,000 KM for non-declaration. However, the Law still does not give power to the ITA to obtain further information from the carrier upon discovery of a false declaration(SR IX.2). Except for the discovery of non-declaration, the ITA does not have power to restrain currency in the cases of suspicion of ML/TF or a false declaration. The law also has not addressed the remaining deficiencies identified in the third round. It is reported that similar regulations have been made with amendments to the Law on Foreign Exchange Business of the RS (Official Gazette of the RS no: 123/06 and 92/09). Though the previous Law on Foreign Currency of FBiH was implemented in BD through the Brcko District Supervisor's Order dated 4 August 2006, it is not clear if the new law of FBiH is applicable in BD in the same manner.

89. Though those steps might have contributed to the enhancement of the declaration system at the entities level (the FBiH and the RS), the absence of a legislative regime at the state level of BiH for the full implementation of SR. IX to include domestic cash and negotiable instruments and lack of appropriate powers for the Indirect Taxation Authority of BiH were the major concerns raised in the 3rd round MER. The third round found out that a significant number of essential criteria did not appear to be met in the third round evaluation. Therefore, the need to review the whole framework of cross border declarations and disclosures against the essential criteria for SR IX was stressed in the report. The authorities report that the abovementioned laws amended in 2010 give necessary powers to the ITA. However, these laws appear not to have provided all necessary powers to the ITA as required under SR IX (See above). Therefore, almost all deficiencies identified in the third round MER seem to remain. With regard to training of customs officers, the authorities report some training activities that were conducted in 2010 and 2011.

IV. OVERALL CONCLUSION AND NEXT STEPS

90. According to paragraph 43 of the Rules of Procedure, in order for a country to be removed from the process of reporting, the Plenary should satisfy itself that the country in Compliance Enhancing Procedures has taken sufficient action implementing the following Recommendations at the level of or at a level essentially equivalent to a C or LC:

- money laundering and terrorist financing offences (R.1 & SR.II);
- freezing and confiscation (R.3 and SR.III);
- financial institution secrecy (R.4) and customer due diligence (R.5);
- record-keeping (R.10);
- suspicious transaction reporting and the FIU (R.13, 26 & SR.IV);
- financial sector supervision (R.23); and
- international co-operation (R.35, 36 and 40; and SR.I & V).

91. The plenary should however retain some limited flexibility with regard to those Recommendations listed above that are not core Recommendations if substantial progress has also been made on the overall set of Recommendations that have been rated PC or NC.

92. This report does not assess R.4, 10, 13, 36, 40 and SR.IV as they were rated LC or C in the third round MER.

93. Since the adoption of the third round report in December 2009 the BiH authorities have taken a number of steps especially on the legislative front to comply with the FATF Recommendations assessed above. Although this progress report covers actions taken within the 16 months since the adoption of the report, it appears that BiH has made slow or very little progress to deal with the majority of the deficiencies related to those Recommendations.

94. It is concluded that BiH has not taken sufficient action implementing any of the Recommendations assessed in this report at the level of or at a level essentially equivalent to a C or LC. In addition, with regard to the Compliance Enhancing Procedures opened at the 33rd plenary (September 2010) in respect of important deficiencies in Recommendations rated NC or PC in the mutual evaluation report and merged these Compliance Enhancing Procedures, BiH has hardly made any progress on any of the important deficiencies identified at the 33rd Plenary. There appear to be some initiatives commenced; however, all these initiatives should be expedited through a concrete action plan with clear milestones and time scales to achieve quick and tangible results.

95. The Committee, having adopted this Compliance report, invited Bosnia and Herzegovina to develop a clear action plan in response to the MONEYVAL third round mutual evaluation report. To this end, the Committee gave a mandate to the Chairman to correspond with Bosnia and Herzegovina with a view to agreeing within two months a satisfactory and practicable action plan for remedying the major deficiencies identified in the 3rd round MER, and which should be approved at Governmental level. If the Bureau were not satisfied with the action plan produced between the plenaries, the Chairman was mandated to implement step (ii) in the Compliance enhancing procedures between plenary meetings.

MONEYVAL Secretariat

ANNEX I
SUMMARY OF PROGRESS REPORTED BY BOSNIA AND HERZEGOVINA UNDER COMPLIANCE ENHANCING PROCEDURES

Issue of concern identified in the context of the CEPS	Corrective measure(s) taken by the authorities to address the identified concern	Additional measures planned to be taken by the authorities to fully address the identified concern	Reported timeline for the implementation of the corrective measures	Comments regarding the adequacy of measures taken and/ or timeline envisaged
R.1 • ensure full compliance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention by clearly incriminating the "transfer of property" in all Criminal Codes; • ensure the clear demarcation between the scope of the ML offences in the different Criminal Codes, to prevent conflict of competences between state level and non-state level jurisdictions;	BiH authorities reported in December that The Ministry of Justice and the Chief State Prosecutor have initiated a legislative process to make necessary amendments and harmonisations in the State and entity level, as well as Brčko District Criminal Codes, which will also aim at addressing these deficiencies. Authorities now refer to relevant articles of the Criminal Codes at tall levels, which criminalise ML offence, as well as relevant articles of the Law on Proprietary Rights at entities level.	No additional measures have been reported	Not available.	No steps are currently being taken to address both deficiencies. Authorities believe the existing legislation, which have not been amended since the adoption of the MER to directly address these deficiencies, is sufficiently covering "transfer of property". They argue that the right to access presents a part of the ownership right/right to property, implying the possibility of transfer of ownership or seizure of objects. Taking into account the wording of Article 17 of the Law on Proprietary Rights of the RS, it seems

				unclear how the term "accessing" used in the CCs at all levels can be interpreted as "transferring". Apart from referring to the Supreme Court's legal opinions reported to be adopted on 30 June 2004, which indeed appear to have been noted in the 3rd round MER, and providing some explanations no concrete steps have been taken to address the lack of demarcation between the scopes of the ML offences in the different Criminal Codes.
R.5 • 1. include an obligation to apply the CDD measures when carrying out occasional transactions that are wire transfers; • 2. review the definition of "transactions" in the new AML/CFT Law; • 3. introduce a clear timing for the verification	-*(1st bullet)* Authorities report that Article 10 of the new Book of Rules address to this issue. -(2nd bullet) Working Group of the Council of Ministers prepared a draft amendment to the AML/CFT Law that will include this remark, and eliminate the definition of cash transactions to avoid all doubt in the application of CDD measures. - *(3rd bullet)* The	- No additional measures for the 1st, 2nd, 4th, 5th bullets reported. *(3rd bullet)* The review of Decisions on Minimum Standards will be completed upon adoption of the proposed amendments to the Law on Banks by the Parliamentary Assembly. -*(2nd, 7th and 8th bullets)* The draft law will be sent to	Not available.	- *(1st bullet)* Article 10 of the new Book of Rules arguably covers this obligation, as BiH authorities were not able to provide the presence of any legal basis of supervision for this article and indicate any sanction determined in case of violation, if this article can be regarded as other enforceable means is uncertain. *(2nd bullet)* BiH

of identification information with a review the Decisions on Minimum Standards accordingly; • 4. introduce a legal obligation to apply CDD measures to existing customers beyond what is currently provided for banks under the relevant Decisions on Minimum Standards; • 5. introduce an obligation for all obliged entities and persons to identify the 'mind and management' of a legal person beyond the requirements for banks under the relevant Decisions on Minimum Standards of the respective Banking Agencies; • 6. establish clear requirements for financial institutions to conduct ongoing due diligence on the business relationship; • 7. require obliged entities	review of Decisions on Minimum Standards by the Banking Agency of FBiH is underway but have not yet been finalised. - (4th bullet) No steps reported. - (5th bullet) No steps reported. - (6th bullet) No steps reported. - *(7th and 8th bullets)* The Management Board of Insurance Agency of BiH issued Guidelines for the implementation of AML/CFT Law for customers under the jurisdiction of Insurance Supervision Agencies of FBiH and the Republic of Srpska on 31 May 2010 and the Application Guidelines of the Law on Prevention of Money Laundering and Financing of Terrorist Activity for customers under the jurisdiction of Securities Commission of FBiH dated of 8 April 2010 were issued. A draft law amending the Law on Prevention of Money Laundering and Financing of Terrorist Activities (AML/CFT Law) was prepared and submitted to the Council of Ministers in June 2010 by the working group of experts established in the Ministry of	the Parliament for adoption.		authorities should make sure that this deficiency is addressed in the draft Law, as it seems that it is not currently including such clarification. *(3rd bullet)* The review of Decisions on Minimum Standards is undertaken on by FBiH authorities and needs to be completed. In addition, such a review needs to be conducted by all respective banking agencies. (4th, 5th and 6th) No progress appears to have been achieved in rectifying these deficiencies. - *(7th and 8th bullets)* Article 7a of the draft law amending AML/CFT Law which was prepared in June 2010 by the working group of experts and submitted to the Council of Ministers appears to cover a requirement for obliged entities to terminate the business relationship and to file a suspicious report where it is established but the identification process cannot be completed.

to consider filing a suspicious report where the identification process cannot be completed; • 8. require obliged entities to consider the termination of business where a business relationship is established but the identification process cannot be completed.	Security in May 2010.			When the draft law is enacted as it is, BiH could be regarded as being addressed to the 7th and 8th deficiencies. The Guidelines issues include such obligations but they are not regarded as other enforceable means. *Notwithstanding some ongoing steps, none of the deficiencies under R.5 appear to have been addressed yet.*
R.26 • 1. ensure that the FID does not operate in isolation from other law enforcement agencies and financial intelligence at the FID is requested by or disseminated to other law enforcement agencies at the level of entities and Brčko District when investigating predicate offences of money laundering. • 2. remove the limitations to and unacceptable constraints of the power of the FID to disseminate information to domestic authorities, and demonstrate the	-A draft law amending the AML/CFT Law was prepared and submitted to the Council of Ministers in June 2010 by the working group of experts established in the Ministry of Security in May 2010. Articles 19-26 of the draft law appear to amend Article 45, 46, 52, 57 and to insert new articles (45a, 45b, 45c, 45e, 45f, 45g, 46a, 51a and 57a) into the existing AML/CFT Law.	No additional measures have been reported.	Not available.	As noted in the 3rd round MER in more detail, the Financial Intelligence Department (FID) of BiH is currently a division of the State Information and Protection Agency (SIPA) and the powers and duties of the FID is set out in the SIPA Law and in the new AML/CFT Law. It is considered as a law enforcement type FIU. Article 18 of the draft law (amending Article 45 of the AML/CFT Law) envisages establishing a new Financial Intelligence Agency (FIA) as an administrative organisation within the Ministry of Security of BiH with the

effectiveness of dissemination of information to domestic authorities.				operational independence, and to be managed by a Director and funded by the budget of BiH. Overall, the new articles to be inserted in the new AML/CFT Law, when enacted as they stand, will clearly strengthen the position of the BiH FIU in terms of identified deficiencies. Unlike the existing legislation with regard to the FID, the draft provisions appear to define the competences and tasks of the FIA more in detail. It defines the status of the FIA's employees, managing of the FIA and appointment of the director, duties and responsibility of the director and the deputy director, removal of director and FIA's access to information etc. *-1st bullet:* The evaluators of the 3rd round MER noted that the FID is not tasked by or freely provided with information by other law enforcement agencies at the level of the entities and Brčko District. The Draft Law does not bring a

				novelty to the existing Article 51 in relation to interagency cooperation. In the absence of further data or statistics that indicates if the situation has changed, the deficiency remains apt. - *2nd bullet:* Unlike the current Article 46 of the new AML/CFT Law, which requires the FID, for the purpose of prevention of ML and TF, to forward information only to the competent prosecutor's office, the draft Articles 45a and 46 empowers the FIA to forward information or data to the competent bodies in relation to money laundering and funding of terrorist organisations. This can be interpreted as covering all domestic competent authorities dealing with AML/CFT. On the other hand, Draft Article 51 regulates the interagency cooperation of the FIA. It states "At reasoned request, the FIA shall send information about money laundering and financing of terrorist activities

				to the competent bodies and institutions referred to in paragraph 1 of this Article only if such information and data may be of significance to the said bodies when making decisions falling under their competency and for investigative purposes. The text of this paragraph appears to remain almost unchanged currently. The only change is removal of necessity of the approval of the SIPA Director for providing for information to other authorities. In addition, instead of "upon a detailed request", the draft requires ""the reasoned request". The draft law still seems not to allow the FIA to disseminate information on its own initiative to domestic authorities for investigation or action when there are grounds to suspect ML or TF. Therefore, BiH authorities need to consider deletion of this requirement in the draft provision to prevent possible misunderstandings that may occur in the future as noted in the 3rd round MER.

				Apart from these legislative steps, the effectiveness of the disseminations could not be demonstrated by the BiH authorities, as no statistics have been made available in this regard. *Despite the draft AML/CFT Law that establishes a new FIU, none of the deficiencies under R.26 appears to have been addressed yet. Moreover, BiH authorities need to make sure that the draft law will address these identified important deficiencies.*
SR.II • The terrorist financing ("funding of terrorist activities") offences need to be incriminated in all four Criminal Codes so as to clearly provide criminal sanctions concerning the collection and provision of funds with the unlawful intention that they are to be used, in full or in part, by a terrorist organisation or	Amendments were made to the Criminal Code of BiH (state level Criminal Code), published in the Official Gazette of BiH, no.8/10, on 2 February 2010. Article 201 (terrorism) and 202 (funding of terrorist activities) of the CC were refined and a new Article 202d (organising a terrorist group and being a member of a terrorist group) was inserted in the Code.	No additional measures have been reported.	Not available.	-Provision of funds or any other assistance to terrorist organisations, including for their activities other than specific terrorist acts is now covered under Article 202d of the BiH Criminal Code (State level). -Collection of funds for terrorist organisations' activities other than terrorist acts is still not covered (State level). -Collection or provision of funds for individual

by an individual terrorist as required by SR.II.				terrorists' activities other than terrorist acts is still not covered (State level). -No amendments have yet been made to the Criminal Codes of Entities and Brčko District. *In spite of some refinements made to the BiH State level Criminal Code after the adoption of the 3rd round MER, the important deficiency appear mostly unchanged.*
SR.III • establish a comprehensive system for freezing of terrorist assets in accordance with the requirements of SR.III together with the provision of clear and publicly known guidance to financial institutions concerning their responsibilities; • create and/or publicise a procedure for considering de-listing requests and unfreezing assets of delisted persons; • create and/or publicise a procedure for unfreezing in a	*-(2nd and 3rd bullets)* Authorities reported in December 2010 the establishment of a working group tasked with the development of a procedure for considering requests of de-listing and unfreezing assets of de-listed persons and persons inadvertently affected by that mechanism. Now they presented the draft "Book of rules on implementation of restrictive measures established by resolutions of the un security council 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009) against members of Al-Qaida,	No additional measures have been reported.	Not available.	The draft Book of Rules appears to establish a new system to implement particularly UNSCR 1267. Although it does mention UNSCR 1373 in its title and Article 1, the system to be established does not seem to include any provisions relevant to implementation of this Resolution. The draft includes provisions on publication procedure for the UN consolidated list, implementation of financial restrictive measures, exemption for living expenses and the exemption for certain obligations,

timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the person is not a designated person.	Usama bin Laden, the Taliban and other individuals, groups, undertakings and entities associated with them“			listing and de-listing procedure, unfreezing upon de-listing, and determines sanctions in case of violation of this Book of Rules, as well as assigns the relevant Ministry as the competent authority for monitoring of implementation of the Book of Rules. Though it is obvious that the Book of Rules will establish more robust, unified and comprehensive system than the existing one, BiH authorities should make sure that the new system to be established in the Book of Rules comprises all the requirements of SR III properly. Article 5 of the Book of Rules obliges the authorities of BiH to freeze all funds or economic resources of listed persons. However, as the Book of Rules does not seem to impose any obligation on financial institutions, other persons or entities that may be holding targeted funds and assets BiH authorities should make sure that the procedure

				will be effective as required under SR III. BiH authorities refer to the relevant provisions of the draft Book of Rules on implementation of restrictive measures established by UNSCRs including Resolutions 1267 and 1373 for the remaining recommendations made under SR III of the 3rd round MER. However, if further refinements are not made on or further consideration is not given to the current draft, the system might not comply with the requirements under Essential Criteria III.1, III.2, III.3, III.5, III.6, III.8, III.10, and III.13. *Apart from preparation of a draft Book of Rules, that appears to need further enhancements, no concrete progress has been achieved yet to remedy these deficiencies.*
SR VIII • Concrete steps need to be taken to address the essential criteria under the AML/CFT Methodology to ensure that non	Authorities reported in December 2010 that an amendment, which will subject the humanitarian organisations to record keeping obligation, is to be made to Article 65 of the new AML/CFT	No additional relevant measures have been reported.	Not available.	- With regard to the draft Article 65, the AML/CFT Law under Article 4, as reported by the authorities, lists the legal and natural persons performing the activities of receiving and

profit organisations cannot be abused for financing of terrorism.	Law by the draft law. No further steps have been reported apart from referring the relevant articles of with the Law on Associations and Foundations of Bosnia and Herzegovina (Official Gazette of BiH ", Nos. 32/01, 42/03, 63 / 08)			distributing money or property for humanitarian, charitable, religious, educational or social purposes as obliged entities, and thus subject them to record keeping obligations as other obliged entities. (Article 65 of the AML/CFT Law) Whilst it might be interpreted that those records under Article 65 include the records of donations or other commercial activities of NPOs with the clients, it is difficult to conclude that this obligation under Article 65 also apply to the records of domestic and international expenditures of NPOs themselves. Therefore, it seems questionable if this requirement cover keeping of all data and records that will verify that funds have been spent by an NPO in a manner consistent with the purpose and objectives of the organization. *Overall, no concrete progress appears to have been achieved yet to regarding this deficiency. A more comprehensive*

				approach is needed to address this deficiency.
SR IX • 1. adopt a legislative regime on the state level of BiH for full implementation of SR.IX to include domestic cash and negotiable instruments; • 2. ensure that the Indirect Taxation Authority of Bosnia and Herzegovina (ITA) has appropriate powers to obtain further information from the carrier upon discovery of a false declaration and to restrain currency where there is suspicion of ML/TF or where there is a false declaration; • 3. ensure ITA retains the information required by SR.IX.4 and makes such information available to State Investigation and Protection Agency (SIPA) in accordance with SR.IX. • 4. give	-The Law on Foreign Currency transactions was adopted and published in the Official Gazette of the FBiH on 4 August 2010. This Law appears to have strengthened the declaration system in the FBiH by introducing a declaration obligation while entering or leaving the country with a foreign currency, Bosnian marks and checks which exceed the amounts to be prescribed by the Council of Ministers of the FBiH. -It is reported that similar regulations have been made in the Law on Foreign Exchange Business with the amending law (Official Gazette of Republic of Srpska no: 123/06 and 92/09).	No additional measures have been reported.	Not available.	- (1st bullet) No such legislative steps have been taken yet at the state level. Though those reported legislative steps might have contributed to the enhancement of declaration system at the entity level (the FBiH and the Republic of Srpska), the absence of a legislative regime at the state level of BiH for full implementation of SR IX to include domestic cash and negotiable instruments and lack of appropriate powers for the Indirect Taxation Authority of BiH were the major concerns raised in the 3rd round MER. These are the major issues that urgent steps are needed to be taken. *(2nd bullet*) Articles 52 and 53 of those Law prescribes that the customs authorities shall control the bringing out from the Federation to abroad and bringing in from abroad to the Federation foreign cash, KM and checks. It also

power to ITA to apply sanctions or seize funds as required by SR.IX.8-11.				gives power to Customs authorities (ITA) to seize temporarily the undeclared foreign cash above the threshold prescribed by the Government. Article 62 of the said Law sets out a fine from 10,000 KM to 15,000 KM for non-declaration. However, the Law still does not give power to the ITA to obtain further information from the carrier upon discovery of a false declaration. (SR IX.2). Except discovery of non-declaration, the ITA does not have power to restrain currency in the cases of presence of suspicion of ML/TF or false declaration. It is reported that similar regulations have been made in the Law on Foreign Exchange Business with the amending law in the RS (Official Gazette of the RS no: 123/06 and 92/09). Though the previous Law on Foreign Currency of FBiH was implemented in BD through the Brcko District Supervisor's Order dated 4 August 2006, it is not clear if the new law of

				FBiH is applicable BD in the same manner. *-(3rd bullet)* Apart from the legislative position at the time of the adoption of the third round MER, no new steps appear to have been taken to ensure the ITA retains the information required by SR.X.4 and makes such information available to State Investigation and Protection Agency (SIPA) in accordance with SR. IX. - (4th bullet) No steps appear to have been taken to give power to ITA to apply sanctions or seizure funds as required by SR.IX.8-11. As reported by the authorities ITA does not have power to sanction. In addition, Article 58 of the Law on Foreign Exchange Operations (Official Gazette of FBiH No. 47/10) in the contents of the provisions of Article 48 of the Law on Foreign Exchange Operations ("Official Gazette of the Republic of Srpska" No. 96/03) do not empower the ITA to seize money as required under

				IX.10. They only give such power in case of non-declaration. The need to review the whole framework of cross border declarations and disclosures against the essential criteria for SR IX was stressed in the report. Authorities report that abovementioned laws amended in 2010 give necessary powers to the ITA, however, these laws appear not to have provided all necessary powers to the ITA as required under SR IX. (See above) Therefore, almost all deficiencies identified in the third round MER seem to remain valid at present. Overall, no concrete steps seem to have been taken yet to remedy the identified important deficiencies.