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

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2nd Compliance report

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Bosnia and Herzegovina is a member of MONEYVAL. This compliance report was adopted at MONEYVAL's 36th Plenary Meeting (Strasbourg, 26 - 30 September 2011). For further information, please refer to MONEYVAL website: http://www.coe.int/moneyval.

SECOND 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 Procedures

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 (CEPs) in respect of the first 3rd

[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.26, R.23, R.35, R.36, R.40, SR.I, SR.III and SR.V

round 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. At the 35th plenary meeting, MONEYVAL decided to adopt and publish the first compliance report prepared by the Secretariat. The Committee noted in the first CEPs report: *"Since the adoption of the third round report in December 2009 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 last 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."*

4. It 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."*

5. As a result it decided to maintain step (i) in the procedures, which requires a member concerned to provide a report or regular reports on its progress in implementing the reference documents. It further reiterated its decision made at the 34th plenary that the report to be submitted before the 36th plenary of the MONEYVAL Committee (26-30 September 2011) should be a merged one that will 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).

6. In addition, the Committee invited Bosnia and Herzegovina to develop a clear action plan in response to the MONEYVAL's 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 with realistic timescales for remedying the major deficiencies identified. MONEYVAL underlined that if the Bureau is not satisfied with the action plan produced between the plenaries, the Chairman is mandated to implement step (ii) between plenaries. The Committee emphasised that in order to show a firm political commitment the agreed action plan should be approved at Government level.

7. In the meantime, BiH authorities prepared an action plan and submitted it to the Bureau on time. The Bureau examined the Action Plan, and noting the comprehensive work that had been put into it, it was satisfied with the Action Plan in its revised form. The Chairman in its letter dated 13 September 2011 invited the authorities to obtain governmental endorsement of the draft Action Plan prior to the discussions of Step (i) of the CEPs at the 36th Plenary.

II. SHORT DESCRIPTION OF BiH LEGAL AND INSTITUTIONAL FRAMEWORK

8. For a better understanding and evaluation of the progress achieved by BiH since the adoption of the 3rd round report, please see the short description of the BiH state system, legal and institutional system which was stipulated in the first CEPs report.

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 and 35th plenaries, 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 compliance report questionnaire (hereinafter referred to as "CRQ") submitted to the 36th plenary by the BiH authorities.

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 3rd round evaluation team 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 un-aggravated 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. The authorities made reference in the progress report adopted in April 2011 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. Authorities reported in the CRQ that the Team for monitoring and evaluating the application of criminal law in BiH has started its activities to make necessary amendments in the Criminal Code. Apart from this positive initiative, no concrete result has been achieved at this stage to address the lack of demarcation between the ML offences in the different Criminal Codes. Similarly, though the mentioned Team will consider these issues in its work, no tangible results have been achieved 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 level ML offences that can create a conflict between state and non-state level authorities.

16. The authorities reported that market manipulation is criminalised in the draft Law on Securities Market, which is a positive development, nevertheless, the law has not been adopted yet.

17. One of the main deficiencies identified in the 3rd round MER was the existence of serious deficiencies in the effective application of the criminal legislation such as 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 provided information in the CRQ 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 the 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.

18. With regard to the existence of very few ML cases that are prosecuted at the level of the Entities and the BD, which means that any cases below larger value remain uncovered at the other levels as well, the authorities reported one ML case at the FBiH level, where the amount of money laundered was EUR 4,550. The investigation of this case was reportedly commenced on 16 June 2008 and the judgement was given on 2 June 2010. The BiH authorities need to demonstrate if this situation has changed since the third round MER by reporting more number of such cases in all entities and the BD.

19. The significant backlog at state level courts and also at prosecutors' offices due to the excessive workload, understaffing, lack of specific expertise as well as evidentiary problems in prosecutors was the another important underlying rating factor in the 3rd round MER. Apart from some reported training activities organised for the judges and prosecutors in 2010 and 2011, no improvements have been reported on whether the workload of the judges and prosecutors had been addressed. This deficiency is difficult to be examined in a desk review. However, from the above-mentioned case numbers given in the CRQ, 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.

Remaining deficiencies:

- *Neither of the money laundering offences, as defined in all four Criminal Codes, is in full accordance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned.*
- *One of the designated categories of offences (market manipulation) is not covered by criminal legislation of Brčko District.*
- *The scope of competing money laundering offences are not adequately demarcated partly 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).*
- *Serious deficiencies in the effective application of the criminal legislation such as:*

- *The general perception of money laundering, at all levels of jurisdiction, did not appear to go beyond the laundering of proceeds of tax evasion. There is hardly any final conviction 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). Usually, prosecution of predicate offences other than tax crimes only targets the predicates while no further investigation takes place to follow the money trail and to discover laundering activities. As a result, proceeds of organised and other proceeds-generating crimes remain uncovered.*
- *Very few money laundering cases are prosecuted at the level of the Entities and Brčko District which means that any cases below "larger value" as defined by CC-BiH 209(1) remain uncovered at the other levels as well.*
- *Significant backlog at state-level courts and also at prosecutors' offices due to excessive workload, understaffing, lack of specific expertise as well as evidentiary problems in prosecutions.*

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

20. The authorities reported 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."

21. With regard to the obligation to apply CDD measures when carrying out occasional transactions that are wire transfers, the BiH authorities reported 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.

22. 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.

23. 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.

24. 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. The aauthorities reported that a state-wide training and awareness raising program has been put in place under which several sessions have already been held, and that they plan to continue to organise such sessions to all sectors of obliged entities. As no concrete information on these activities has been provided, it is difficult to conclude that the reported activities are at a sufficient level. It should be noted that it is difficult to judge on a desk review if the awareness on this matter has been raised enough, the authorities reported that in order to address all the other identified deficiencies

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

26. Article 7a of the draft law amending the AML/CFT Law which was prepared in June 2010 by the working group of experts and adopted by the Council of Ministers in July 2011 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 is presented in the PR, BiH could be regarded as having complied with this recommendation, but not before.

27. With regard to the lack of mandatory obligation to apply CDD measures to all existing customers, as required under essential criterion 5.17, the authorities reported that they are preparing a legislative proposals in order to address this deficiency.

28. Apart from the above-mentioned steps, it seems that the BiH authorities have not yet addressed most of the deficiencies identified in the 3rd round MER regarding R.5.

Remaining deficiencies:

- *Article 28 of the Law on Foreign Exchange should be reviewed.* ***(addressed)***
- *No obligation to apply CDD measures in all instances as required by Recommendation 5.***.**
- *No timing for the verification of identification information and need to revise Decisions on Minimum Standards accordingly.*
- *No mandatory obligation to apply CDD measures to all existing accounts.*
- *Lack of awareness on the concept and applicability of a comprehensive coverage of the beneficial owner, including identification procedures.*
- *No overall obligation to establish and identify the 'mind and management' of a legal person.*
- *The requirements for financial institutions to conduct ongoing due diligence on the business relationship are not clear.*
- *No requirement for obliged entities to consider filing a suspicious report where the identification process cannot be completed.*
- *No obligation to consider the termination of business where a business relationship is established but the identification process cannot be completed.*
- *Lack of guidance on the application of the newly introduced risk based approach and other new obligations under the new law as the new book of Rules has not yet been issued.* ***(addressed)***
- *Unable to measure the effectiveness of implementation of the newly introduced AML Law.*

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

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

29. The BiH authorities reported in the CEQ 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.

30. 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).

31. 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.

32. Consequently, though the refinements made to the Criminal Code of BiH appear to have enhanced the provisions relating to terrorism and terrorist financing, they do not seem 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.

33. With regard to the recommendation on further clarifying "funds", the authorities indicate that the team for monitoring and evaluating the application of criminal law in BiH has started its activities. However, since April 2011 no concrete proposal seems to have been produced by the team to resolve this deficiency.

34. 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.

Remaining deficiencies:

- *The present incrimination of terrorist financing ("funding of terrorist activities") in all four Criminal Codes appears not wide enough to clearly provide for 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 by an individual terrorist as required by SR.II.*
- *Further clarification is required as to the coverage of "funds" as provided for by CC-BiH Article 202 and similar offences in the other three Criminal Codes respectively.*

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

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

35. The BiH authorities reported 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.

36. 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. From the CRQ, it seems that no steps have been taken by the authorities to rectify this deficiency since April 2011.

37. 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. Since April 2011, no tangible progress has been achieved in removing of insubstantial preconditions of *in rem* confiscation of other objects at all levels.

38. 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 does not seem 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. As no new steps have been taken by the authorities since April 2011, this deficiency still remains.

39. The authorities did not provide any information in the CPQ to demonstrate any increase in the effectiveness of the confiscation regime, which was one of the deficiencies in the third round MER regarding Recommendation 3.

40. All in all, notwithstanding the above-mentioned improvements in the overall confiscation regime, the deficiencies identified in the third MER regarding Recommendation 3, still remain.

Remaining deficiencies:

- *High evidential standards as applied by trial courts, the structure of the confiscation regime and an insufficient proportion of confiscations and provisional measures not being taken with the desirable regularity all give rise to concerns over effectiveness.*
- *Mandatory confiscation of instrumentalities is subject to imprecise conditions in most of the cases, while in RS the application of such a measure is discretionary. The specific confiscation regime for money laundering cases does not allow for value confiscation.*
- *Confiscation of proceeds commingled with legitimate assets or that of income or benefits derived from proceeds of crime is not provided for by RS criminal legislation.*
- *No provisions in place to prevent or void 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.*
- *Effectiveness could not be assessed.*

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

41. The BiH authorities reported in the CRQ that the draft Law on the Securities Market will introduce 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. This Law has not been enacted since April 2011. Besides, 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 ensure that the draft covers all the mentioned deficiencies.

42. The authorities reported 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 Operations. As the translation of this law, which is applicable at the FBiH level, has been provided recently (21 September 2011) it could not be verified by the Secretariat whether or not or this law has introduced appropriate licensing/registration procedures for all those persons involved in the activities mentioned in the third round MER. A more thorough analysis is needed for that.

43. The authorities reported 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. No improvements have been reported in the CRQ in this direction. 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.

44. In addition, though the authorities referred in the PR adopted in April 2011 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. It is not clear in the CRQ if any further steps have been taken in order to address this issue since April 2011.

45. 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 the BiH authorities regarding Recommendation 23. Therefore, all deficiencies identified in the 3rd round MER appear to remain valid.

Remaining deficiencies:

- *No prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD.*
- *No requirement for a clean criminal record of the managers of market intermediaries in BD.*
- *No requirements for professional qualifications and expertise of directors and senior management of investment funds*
- *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, administering, managing or advising in the management of property of third persons; issuing, managing and performing operations with debit and credit cards and other means of payment, crediting, offering and brokering in negotiation of loans.*
- *No effective monitoring of the activities of the persons engaged in the provision of money transfer and exchange services.*
- *Lack of efficient, sufficiently frequent, risk-based supervision of financial institutions*

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

46. The third round evaluation team were concerned about the inefficient operation of the FID, where 7 analysts and 6 investigators were handling 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 in the CRQ 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 I2 system. They further stated that the material and technical equipment of the FID is at a high level and is in line with the highest standards.

47. The first CEPs report noted the explanations provided by the authorities and concluded that although the I2 software became functional in 2008, it was not functioning automatically as it was requiring a bridge-software, which did not exist at the time of adoption of the first CEPs report. There was no information reported indicating whether the situation had changed since April 2011.

48. Thus, this report reiterates the first CEPs report's conclusion that 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 level of use of electronic means for monitoring and analysis, as recommended.

49. 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 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 the establishment of a new Financial Intelligence Agency (FIA) as an administrative organisation within the Ministry of Security of BiH with the operational independence, and to be managed by a Director and funded by the budget of BiH. Overall, the new articles to be included in the new AML/CFT Law, when enacted as they were reported in the PR, will clearly strengthen the position of the BiH FIU in terms of identified deficiencies.

50. 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.

51. The third round evaluation team 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.

52. 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 appeared to remain almost unchanged at the time of adoption of the first CRQ. The only change was 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, as noted in the first CRQ report 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, as recommended in the first CRQ report, 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.

53. With regard to the deficiency of the lack of guidance provided to the non-banking sector by the FID regarding the manner of reporting, the authorities reported that FID has developed the guidelines (instruction) to address this deficiency. Authorities have recently provided the English translation of these guidelines. It seems that the guidelines titled "Guidelines for Risk Assessment and Enforcement of the Law on Money Laundering and Financing of Terrorist Activities for Persons under Obligation" were issued by the FID in October 2010. It addresses all the obliged entities referred to in Article 4 of the AML/CFT Law. The document has detailed guidelines, *inter alia*, for the performance of reporting obligations. Therefore, with the issuance of these guidelines that applies for the whole obliged entities authorities seem to have addressed one of the deficiencies identified in the third round MER.

54. Regarding the remaining deficiencies and the issues raised above and in the previous CEPs report, authorities reported that the Working Group of the Council of Minister will address these remarks. However, at the moment, apart from the reported guidelines and the draft Law amending the AML/CFT Law, no concrete progress has been achieved in relation to all deficiencies.

Remaining deficiencies:

- *FID appears to operate in isolation from other law enforcement agencies and financial intelligence at FID is not requested by or disseminated to other law enforcement agencies at the level of the entities and Brčko District when investigating predicate offences or money laundering.*
- *The power of the FID to disseminate information to domestic authorities is limited and subject to unacceptable constraints and effectiveness of dissemination of information to domestic authorities could not be demonstrated.*
- *No guidance provided to non-banking sector by FID regarding the manner of reporting.* ***(addressed)***
- *Manual review of large cash transaction reports brings into question the effectiveness of the computerised database and overall effectiveness of analysis by FID when analysing CTRs and STRs.*

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

55. As noted above, the amendments made to the 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 the 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.

56. 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.

57. Notwithstanding some improvements and draft legislation prepared, the steps that are reported in relation to R.1 and SR II and analysed above show that no meaningful improvement has been recorded since April 2011.

58. 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.

59. All in all, the deficiencies relating to R.35 and SR I still remain valid.

Remaining deficiency:

- *Insufficiencies in the effective implementation of the Conventions due to the existing deficiencies related to criminalisation of ML/TF offences.*

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

60. 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 a

publicly known 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.

61. The provisions of the draft Book of Rules presented in the PR were analysed extensively previously. As noted therein, although the draft Book of Rules 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.

62. Thus, the findings of the first CRQ are reiterated, namely that in order for the Book of Rules to 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 covers all the requirements of SR III properly.

63. The previous report had concluded that 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.

64. It seems from the reply given to the questionnaire that the Book of Rules has not been discussed by the Council of Ministers and therefore is not in force yet. Authorities reported in the CRQ that the Ministry of Security shall prepare an amendment to the existing draft Book of Rules to ensure that it is in compliance with the requirements of SR.III. At the moment the deficiencies under SR III remain valid.

Remaining deficiency:

- *A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place. The existing legal framework consists of parallel and remarkably overlapping regimes which either are incomplete particularly when it comes to procedural rules (Laws on Banking agencies) or were designed for other purposes (the IRM Law to support the ICTY mandate) thus both are only to a very limited extent applicable in this respect.*

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

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

65. As was reported by the BiH authorities in the PR, Article 22 of the AML/CFT Law would 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. As noted in the CRQ the draft law does not aim at making other significant changes to the existing AML/CFT Law in terms of PEPs. Therefore, it is not clear how the draft provision clarify the issue of the treatment of beneficial owners that are PEPs and remove the possible different interpretations that may arise from the definition.

66. Regarding the deficiency of the lack of awareness of the industry in identifying PEPs, the authorities reported that a state-wide training and awareness raising program has been put in place under which several sessions have already been held, and that they plan to continue to organise such sessions to all sectors of obliged entities. As no concrete information about the details of these

activities has been provided, it is difficult to conclude that the reported activities are at an appropriate level. Therefore, all the deficiencies identified in the 3rd round MER appear to remain.

Remaining deficiencies:

- *The treatment of beneficial owners that are PEPs is not clearly defined in the law.*
- *Definition may lend itself to different interpretations.*
- *Lack of awareness of the industry in identifying PEPs.*
- *Effectiveness cannot be assessed in a desk review.*

Recommendation 7 (rated PC in MER): Corresponding banking

67. The BiH authorities reported (in the PR and in the CRQ) on the upcoming amendments to the AML Law. These amendments seem to remedy two main deficiencies that were identified in the 3rd round MER, particularly requirements for banks to document the AML/CFT responsibilities of respondent banks and specific obligations regarding "payable through accounts".

68. Article 21 of the AML/CFT Law is added by two new paragraphs 5 and 6, which should address the above-mentioned deficiencies. Paragraph 5 states that banks are prohibited to establish loro correspondent relationship with foreign FIs if they may use the account to operate directly with its clients. Paragraph 6 requires banks to document the AML/CFT responsibilities of the respondent bank. It appears that the wording of this new article of the Draft Law will broadly cover these deficiencies when enacted as it currently stands.

69. In addition, after the adoption of this draft Law the BiH authorities should also consider providing, appropriate guidance for banks in respect to this issue, in particular what obligations should be included in the contract with the foreign banks.

Remaining deficiencies:

- *No requirement for banks to document the AML/CFT responsibilities of respondent banks.*
- *No specific obligations regarding 'payable through account'.*
- *Measurement of effectiveness.*

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

70. As noted in the previous CEPs report, 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). As concluded in the first CEPs report, 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.

Remaining deficiencies:

- *No provisions for financial institutions to take measures to prevent the misuse of technological developments.**(addressed)***
- *Need to clarify application and effectiveness of Article 10 of the Decisions on Minimum Standards (FBiH, RS) for the banking sector.*

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

71. 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, as noted in the first CEPs report, 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.

72. The authorities reported in the CRQ that these amendments to the AML/CFT Law have been adopted by the 155th Council of Ministers in July 2011 and their adoption by the Parliament was expected. For being regarded as rectified the deficiencies under R.9, the draft amendments should be enacted. At the moment, the deficiencies remain valid.

Remaining deficiencies:

- *No requirement to immediately obtain the necessary information from the third party.*
- *There are no specific provisions to ensure that the country base of the third party applies adequate AML/CFT measures.*
- *There are no requirements to ensure that the third party is a regulated entity.*
- *There are no provisions on introduced business.*
- *Measurement of effectiveness is difficult in a desk review.*
- *Lack of effectiveness.*

Recommendation 11 (rated NC in MER): Unusual transactions

73. The first CEPs report concluded that 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 the authorities referred to the Book of Rules in the PR, as noted in the first CEPs report, the reference made do not seem to be directly related to R.11.

74. The authorities reported that the Working Group of the Council of Ministers has prepared amendments for the law that will eliminate the deficiencies under R.11. However, texts of the reported draft amendments have not made available in the CRQ. Therefore, it is not possible to judge how these amendments will address those deficiencies.

75. With regard to the deficiency of the lack of awareness about the obligations, the authorities referred to on-going training activities without providing details, which makes the assessment impossible.

76. Therefore, the situation as to R.11 is considered not to have changed.

Remaining deficiencies:

- *No specific obligation to monitor and examine large, unusual or complex transactions for the rest of the sectors beyond banking and insurance.*
- *No obligation to examine the background and purpose and to keep a written statement of findings.*

- *No obligation to make such statements available to competent authorities.*
- *Lack of awareness and understanding of the obligations under the Recommendation and hence lack of effectiveness.*

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

77. 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. Regarding the deficiency of the lack of awareness of accountancy professions and notaries, the authorities reported that a training for the purpose of complying with the obligations provided for in the FATF Recommendations has been put in place, and that they will continue to organise such trainings. There is no doubt that those reported awareness raising activities contributed to better understanding of the non-financial obliged entities of the obligations, However, as no concrete information has been provided, it is difficult to conclude that the reported activities are at an appropriate level. With regard to the formal deficiencies under R.12 they report that the Working Group of the Council of Ministers will prepare amendments to the AML/CFT Law, however, at this stage no texts have been proposed by the Working Group.

78. Notwithstanding some positive steps that have been initiated, no sufficient progress have been achieved yet in addressing deficiencies identified.

Remaining deficiencies:

- *Weaknesses identified for the financial sector under Rec. 5 apply.*
- *Lack of awareness on and understanding of customer identification obligations under Recommendation 5.*
- *Scope of AML/CFT measures for the accountancy profession does not cover situations contemplated by the FATF Recommendations.*
- *Strong resistance of legal profession, including public notaries, to accept obligations under the AML LAW and comply therewith – effectiveness issue.*
- *Lack of awareness with most of the DNFBPs sector in relation to the concept of PEPs and the higher risks posed;*
- *Lack of mandatory provisions to monitor threats arising from technological developments;*
- *Need to clarify record keeping obligations as explained for the financial sector under Recommendation 10;*
- *Same weaknesses as identified for financial sector for Recommendation 11 (large complex transactions) apply;*
- *General lack of awareness of obligations under the AML Law and hence lack of effectiveness.*

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

79. With regard to the deficiency of the exemptions to small obliged entities from appointing a compliance officers and applying internal controls, even though the authorities reported in the PR that the draft amendment to be made to Article 32 of the AML/CFT Law would remove the full exemptions granted to small obliged entities from appointing a compliance officer and applying internal controls, however, there still seems to be no indication in the draft text that this amendment will indeed remedy this deficiency. It is reported that 155th Council of Ministers adopted these amendments in July 2011, but its adoption by the Parliament has not taken place yet.

80. Regarding the deficiency of the lack of industry training, the authorities reported that it is an on-going process and the authorities plan to continue to delivery such sessions to all sectors of obliged

entities. As no concrete and detailed information has been provided relating to these activities, it is difficult to conclude that the reported activities are at an appropriate level. Therefore, deficiencies identified in the 3rd round MER appear to remain.

81. In relation to the deficiency of the absence of adequate procedures for screening at recruitment stage, it is reported that the Working Group has made necessary amendments but no text has been made available to the Secretariat.

Remaining deficiencies:

- *Exemptions to small obliged entities (and possibly natural persons) from appointing a compliance officer and applying internal controls.*
- *Lack of industry training.*
- *No adequate procedures for screening at recruitment stage.*
- *Effectiveness could not be demonstrated.*

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

82. Apart from the reported legislative steps, which are still in process, and reported on-going training activities (without specifying them in the CRQ), no progress seems to have been achieved since April 2011 on R.16. In the absence of concrete information about these activities, it is not possible to examine if or to what extent those activities have changed the level of awareness of the DNFBPs sector. 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.

Remaining deficiencies:

- *Overall lack of awareness of AML/CFT obligations in general throughout most DNFBPs with some resistance in certain areas.*
- *Concern over the exclusion of applicability of certain provisions of the Law to small firms of DNFBPs and possibly natural persons.*
- *Lack of training.*
- *No adequate procedures for screening at recruitment stage.*
- *No specific obligation to terminate or decline business relationships with legal and natural persons from countries that do not apply adequate AML/CFT measures.*
- *No specific obligation to monitor, examine and record findings for large, unusual, complex transactions and to make such findings available to the authorities.*
- *Need to clarify position regarding 'trust' service providers.*
- *Lack of effectiveness.*

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

83. Apart from the future considerations about all identified deficiencies by various institutions, which are reported in the CRQ, no progress has been achieved since the adoption of the first CEPs report in April 2011. Therefore, this report reiterates the findings of the first CEPs report. The deficiencies identified in the 3rd round MER appear to remain unchanged.

Remaining deficiencies:

- *Duplication and overlap in the state level AML Law and the entity level Laws on Banks of FBiH and of RS.*
- *Lack of proportionate and comparable sanctions throughout the applicable legislation.*

- *Lack of legislatively provided sanctioning powers of the respective supervisory bodies in the insurance market.*
- *Not all requirements of the AML Law are enforceable.*
- *Lack of administrative sanctions applicable to the participants of the insurance markets*

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

84. 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 instruction to apply enhanced CDD in certain conditions. However, the 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.

85. The authorities reported in the CRQ that the Working Group of the Council of Ministers will prepare draft amendments to the AML/CFT Law in order to properly address these deficiencies. Apart from this future work to be done, no concrete steps since April 2011 have been reported. Therefore, all the deficiencies in the third round MER remain valid.

Remaining deficiencies:

- *No specific obligation to terminate or to decline business relationship or to undertake a transaction with legal/natural persons from countries not sufficiently applying AML/CFT measures.*
- *No specific obligation to monitor and examine such transactions beyond the banking and insurance sectors, or to keep a written statement of findings and to make these statements available to the authorities for the whole of the sectors.*

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

86. Apart from the reported future draft amendments to the AML/CFT Law to address the deficiencies relating to R.22, which will be prepared by the Working Group of the Council of Ministers, no concrete progress has been achieved in rectifying the deficiencies indentified in the third round MER. The analysis made in the first CEPs report is still valid.

Remaining deficiencies:

- *Requirement for parts of the financial sector other than banks to apply AML/CFT measures to their establishments abroad introduced recently and hence effectiveness cannot be measured.*
- *No requirement to apply the higher standard where standards differ.*
- *No obligation for financial institutions to inform home supervisor when a foreign branch or subsidiary is unable to apply standards.*

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

87. The authorities reported in the PR that the draft Law on Gambling in the BD has been prepared, which is expected to be adopted in 2011. 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 draft law seems to remedy

the deficiency related to the prohibition of individuals with criminal backgrounds from acquiring or becoming the beneficial owners of 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, the authorities referred in the PR 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. However, as noted in the previous CEPs report, since 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.

88. In the CRQ, the authorities reported that Working Group of the Council of Ministers has prepared amendments to rectify the deficiencies under R.24, however, no text has been provided to the Secretariat. Therefore, the reported steps could not be verified.

89. The deficiencies identified in the 3rd round MER remain unchanged.

Remaining deficiencies

- *Lack of legislatively defined basis for entity level Ministries of Finance and for the Tax Administration of BD to supervise implementation of AML/CFT requirements by casinos.*
- *Sanctions defined with regard to casinos for non-compliance with the requirements of the AML LAW cannot be effectively applied. (Applying Recommendation 17)*
- *No prohibition for an individual with a criminal backgrounds to acquire or become the beneficial owners of a significant or controlling interest, hold a management function in or be an operator of a casino.*
- *Lack of legislatively provided powers for the Chambers of Lawyers, the Chambers of Notaries, and the Associations of Accountants and Auditors at entity level to supervise implementation of the obligations set forth in the AML LAW; no systems and mechanisms for them to ensure compliance of the respective obligors with the national AML/CFT requirements.*

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

90. No new steps since April 2011 have been reported in the CRQ. Therefore, the findings of the first CEPs report are still valid. As noted in this report, 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 Guidelines that only address the insurance sector. (See the first CEPs report for further information on R.25.)

Remaining deficiencies

- *There is no mandatory obligation to provide general feedback.*
- *Lack of provision of meaningful feedback.*
- *Many of the obligors (especially the representatives of non-bank financial institutions) fail to have a proper understanding of their obligations under the AML/CFT framework*
- *Not all sectors have developed indicators for suspicious transactions.*
- *No specific guidance issued to all sectors of the industry other than the implementing guidance under the Book of Rules.*
- *Many of the obligors (especially the representatives of DNFBPs) fail to have a proper understanding of their obligations under the AML/CFT framework*

- *Not all DNFBP sectors have developed indicators for suspicious transactions.*
- *No specific guidance issued to all DNFBP sectors of the industry other than the implementing guidance under the Book of Rules.*
- *No general and specific feedback to DNFBPs.*
- *Impact of the above on the effectiveness of the system*.

Recommendation 29 (rated PC in MER): Supervisors

91. The BiH authorities reported that deficiencies would 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. The authorities reported that this issue will be addressed by the Insurance Supervision Agencies with the regulations that are to be prepared.

Remaining deficiencies

- *Lack of clearly defined supervisory powers of the FID and no mechanisms in place for the enforcement of its decisions regarding removal of irregularities in the operations of obligors.*
- *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 sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements*

Recommendation 30 (rated NC in MER): Resources

92. Apart from the reference made to the establishment of the new FOA (FIU) no steps have been reported in the CRQ. The BiH authorities are expected to take steps to make available an adequate structure, funding, staffing, and technical resources also 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. The authorities reported in the CRQ that after the establishment of the new FOA (FIU) with the adoption of the new AML/CFT Law, the level of resources will be increased. But at this stage, the deficiencies regarding this recommendation seem to remain valid.

Remaining deficiencies

- *Staffing level.*
- *The FID's IT system does not provide sufficient operational scope or capacity to effectively support FID's operations.*
- *As default supervisor of some DNFBPs FID does not have sufficient resources to carry out its responsibilities.*
- *Insufficient resources devoted to supervision of AML/CFT controls by supervisors of financial institutions and DNFBPs.*
- *Lack of adequate structure, funding, staffing, and technical resources available for supervision of implementation of the national AML/CFT requirements by DNFBPs.*
- *Lack of defined 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

93. 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

94. 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 that will allow assessing the effectiveness of the AML/CFT system. However, BiH authorities have recently provided the Secretariat with statistics on ML investigations, prosecutions and convictions at all levels. The statistics seem to be very detailed and comprehensive. It appears that the reported steps have improved the statistical system in relation to ML and TF investigations.

95. The authorities reported in the CRQ that Ministry of Justice is keeping statistics on international MLA requests. Authorities have recently provided number of MLA and extradition related to ML for the years 2010 and 2011. According to these data in the period from 1 January 2010 to 31 December 2010 BiH received two extradition requests and two ML requests and also to date in 2011 BiH authorities received 1 extradition request and five ML requests. However authorities were unable to provide more detailed information as required by R.32. Authorities should make sure that the statistics maintained are sufficiently comprehensive so as to provide statistics on all mutual legal assistance and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and TF, including the nature of the request, whether it was granted or refused, and the time required. The deficiency identified in the third round MER was related to lack of comprehensive and detailed statistics especially at the level of the Entities and BD. It is assumed that mentioned data represents the figures related to international cooperation at the state level.

Remaining deficiencies:

- *There are no comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions kept and maintained by relevant government authorities, particularly at the level of the Entities and Brčko District.* ***(addressed)***
- *No ongoing maintenance of comprehensive statistics by law enforcement agencies other than FID.*
- *Little or no use is made of statistical data by law enforcement agencies to pinpoint areas of risk or highlight where resources are required.*
- *No evidence that statistical data was required or used by the Working Group to develop its national strategy.*
- *No evidence of reviewing effectiveness of co-ordination and co-operation.*
- *No comprehensive and detailed statistics on MLA requests.*

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

96. This report reiterates the first CEPs report's conclusion that although 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 appears 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 meaningful steps since April 2011 have been reported. Therefore, the deficiencies still remain valid.

Remaining deficiencies:

- *Concerns over the viability of the Main Book of Registration at the Courts and the information contained in it and hence the achievement of adequate transparency concerning the beneficial ownership and control of legal persons. MER.*
- *No timely update of the Books of Registration at competent registration courts for all types of legal persons;*
- *The position of foreign legal persons that allow bearer shares becoming shareholders in domestically registered legal persons needs to be clarified.*

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

97. The authorities reported in the PR 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, as noted in the previous CEPs report, Article 68 of the AML/CFT Law was in force at the time of the adoption of the third round evaluation report and was assessed by the evaluators. The 3rd round 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. Authorities have not provided for further explanation or reported further steps since April 2011 in the CRQ. 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/CFT compliance.

98. 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. They reported in the CRQ that it will be including in the list of obligors as an obligor with the future amendments to be made to the AML/CFT Law.

99. At this stage no concrete progress appears to have been made in rectifying the identified deficiencies.

Remaining deficiencies:

- *Money transfer services provided by Post Office needs to be supervised by the relevant authorities.*
- *Need to re-assess position of Tenfore d.o.o vis-à-vis its relationship with the FID and the new AML Law.*
- *Need to clarify position re sanctions for banks in the light of the new AML Law and the Laws on Banks.*

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

100. The third round evaluation team 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. It seems from the CRQ that the authorities are aiming at addressing these deficiencies in the future. However, at this stage no progress appears to have been achieved and therefore the deficiencies remain unchanged.

Remaining deficiencies:

- *No obligation for full originator information to accompany cross-border transfers.*

- *No indication as to what information is to accompany an internal wire transfer. and no obligation for financial institutions to do so.*
- *No monitoring of the activities of the Post Office.*
- *Application of sanctions for non compliance not clear*.

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

101. The authorities reported in the CRQ that a draft Framework law on establishment of joint registry of non-governmental organisations in BiH and a draft amendments on the Law on Associations and Foundations, which, once enacted, appear to strengthening the transparency of NPOs. With these proposed amendments the authorities are planning to establish an efficient system to assess information on all NPOs and efficient system of providing the authorities with the necessary information to conduct investigation. In addition, the BiH authorities also planning to create a mechanism that will help to prevent the activities of an NPO that may be associated with terrorism, money laundering or other forms of organized crime. It is however not clear from the reported steps if a comprehensive review since April 2011 has been undertaken by the BiH authorities in order to identify the risks and prevent the misuse of NPOs for terrorist financing purposes or if these legislative proposals have been initiated as a result of such a review.

102. No steps have been reported in the CRQ for the deficiency of the lack of outreach to the NPO sector.

103. With regard to the deficiencies on the registration mechanism apart from above-mentioned drafts no steps since April 2011 have been reported. The authorities reported in the CRQ that the deficiencies on the supervisory activities and the lack of requirement for NPOs to maintain business records for a period of at least five years as well as the absence of a particular mechanism for responding to international requests regarding NPOs will be addressed by the authorities with the future amendments to be made to the existing legal framework. But at this stage no concrete progress has been achieved on these deficiencies.

104. With regard to the lack of sufficient national cooperation and information exchange between the national agencies that investigate ML/TF cases, authorities report that law enforcement agencies at all levels of BiH signed MoUs on enhancing cooperation.

105. All in all, notwithstanding some draft legislative proposal that might increase the transparency of NPOs and the MoUs that are reported to be signed for more ensuring the enhancement of national cooperation, none of the deficiencies appear to have been remedied yet.

Remaining deficiencies:

- *No review of the adequacy of the relevant laws in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes.*
- *Lack of outreach to the NPO sector.*
- *Deficiencies of the registration mechanism.*
- *Deficiencies of the supervisory activities and inspections.*
- *No explicit legal requirement for the NPOs to maintain business records for a period of at least five years.*
- *Lack of sufficient national cooperation and information exchange between the national agencies which investigate ML/FT cases.*
- *No particular mechanism established for responding to international requests regarding NPOs.*

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

106. The legal changes made at the FBiH and RS were analysed in the previous CEPs report, Its findings in this regard is still valid.

107. As noted in the first CEPs report those steps might have contributed to the enhancement of declaration system at the entities level (the FBiH and the RS), however 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 reported in the PR that above-mentioned 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 the first CEPs report)

108. The authorities reported in the CRQ that the obstacles arising during the practice of the ITA in the application of entities level laws have been discussed in a Working Group and the Group decided to initiate to prepare a draft Law on Foreign Exchange Operations, which will be applicable at the state level and will give necessary powers to the ITA for exercising its cash control functions at the state level. The authorities indicated that while such a Law is being prepared all the remaining deficiencies related to SR IX will be addressed in this Law.

109. Noting the future works to be done by the authorities, at present almost all deficiencies identified in the third round MER still remain valid.

Remaining deficiencies:

- *No obligation at the state level for reporting cash and negotiable instruments. Limited and varying reporting obligations exist at the entity level; but not for Bosnian currency (In the Federation and BD) and not for negotiable instruments.*
- *The ITA has no authority to obtain further information from the carrier upon discovery of a false declaration (SR IX.2).*
- *The ITA has no authority to restrain currency where there is suspicion of ML/FT or where there is a false declaration (SR IX.3).*
- *The ITA does not retain the information required by SR IX.4 and is therefore not able to make such information available to SIPA in accordance with SR IX.5.*
- *No or ineffective cooperation at the domestic level (SR.IX.6).*
- *No power to apply sanctions or seize funds by ITA (SR.IX.8) (SR.IX.9) (SR.IX.10) (SR.IX.11).*
- *Uncertainty on whether, upon a discovery of an unusual movement of gold or other precious metal, the ITA would cooperate with the authorities of the originating/destination countries.*
- *Lack of effectiveness.*

IV. OVERALL CONCLUSION AND NEXT STEPS

110. 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).

111. 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.

112. 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.

113. The first CEPs report noted that *"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"* It therefore 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."*

114. The preparation of the national Action plan, which was regarded by the Bureau as satisfactory, which specifically aims at addressing the action plan of the third round MER is a commendable step. This shows the BiH authorities' commitment to remedy (under certain timeframes) all deficiencies identified in the third round MER. However, governmental endorsement of the Action plan had not yet been obtained by the authorities, which was expected by the Bureau before the discussion of this report at the 36th plenary (see paragraph 117 below).

115. Notwithstanding reported future actions that are to be taken, it is concluded that apart from the preparation of the Action plan since April 2011 the BiH authorities have not reported any concrete steps that have improved the AML/CFT system and increased the level of compliance of BiH on the FATF Recommendations assessed in this report at the level of or at a level essentially equivalent to a C or LC.

116. The Committee proposed to adopt and publish the compliance report prepared by the Secretariat, and to maintain step (i) in the procedures, which requires a member concerned to provide a report or regular reports on its progress in implementing the reference documents. It further reiterated its decision made at the 34th plenary that the report to be submitted to the 37th plenary will be a merged one that will 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).

117. The Committee at the 36th plenary examined the draft action plan produced by the Bosnia and Herzegovina authorities in response to the MONEYVAL third round mutual evaluation report, and noted that it had now been submitted to the Council of Ministers for the governmental endorsement. MONEYVAL invited the Bosnia and Herzegovina authorities to obtain the governmental endorsement of the draft action plan, in its present form, before the end of October 2011. MONEYVAL decided that if governmental endorsement cannot be obtained before the end of October 2011, the Chairman is mandated by the Committee to implement step (ii) of the Compliance Enhancing Procedures between plenaries.

MONEYVAL Secretariat

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

Overall conclusion on the progress made to address the identified issue (s) of concern as of the April 2011 plenary	*Bosnia and Herzegovina has hardly made any progress on any of the important deficiencies identified at the 33rd Plenary. Some initiatives have commenced; however, all of these initiatives should be expedited through the adoption of concrete action plans with defined time scales, at senior government level, in order to achieve quick and tangible results.*
Overall conclusion on the progress made to address the identified issue (s) since the April 2011 plenary	*The conclusion of the former CEPs report is reiterated and noted. The proposed action points need to be taken and the preparation of the draft Action Plan needs to be completed. It is therefore concluded that none of the important deficiencies analysed above have yet been resolved.*
Recommended measure to be taken under the Rules of Procedure	*It was decided to adopt and publish the compliance report prepared by the Secretariat, and to maintain step (i) in the procedures, which requires a member concerned to provide a report or regular reports on its progress in implementing the reference documents. The decision made at the 34th plenary that the report to be submitted to the 37th plenary will be a merged one that will 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) was reconfirmed.* *Furthermore, in order to show a firm political commitment the agreed action plan should be approved at Government level, and the Bosnia and Herzegovina authorities were invited to obtain the governmental endorsement of the draft action plan, in its present form, before the end of October 2011. It was advised that, if the governmental endorsement cannot be obtained before the end of October 2011, the Chairman is mandated by the Committee to implement step (ii) between plenaries.*

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
Reported as of April 2011 plenary) **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 Brcko District Criminal Codes, which will also aim at addressing these deficiencies. Authorities now refer to relevant articles of the Criminal Codes at all 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 has 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.

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
(Measures taken since the April 2011 plenary) **R.1** • **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;	Article 209 of the Criminal Code of BiH, as well as Article 272 of the Criminal Code of FBiH, Article 280 of the Criminal Code of RS and Article 265 of the Criminal Code of Brcko District (which regulates the criminal offence of money laundering) have been harmonized with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention in a way that they regulate the following activities: disposing, exchanging, accepting, using, concealing, trying to conceal and keeping. Entity laws regulate that the right to dispose represents a part of the ownership right/ proprietary, which includes the possibility of transferring the ownership and/or alienation of property. (The Law Property Rights of RS, Official Gazette 124/08; the Law on Property-Legal Relations in FBiH, Official Gazette 6/98, 29/03; The Law on Ownership and Other Actual Rights of Brcko District, Official Gazette 11/01, 8/03, 40/04, 19/07).	On 7 June 2011 the B&H MONEYVAL delegation sent an official letter no. 05-06-2981/11 to the Team for monitoring and evaluating the application of criminal law in B&H, which requires the harmonization of criminal law in B&H with the recommendations of MONEYVAL Secretariat of the criminal offense of money laundering. Team started with the activities on design of the Amendments to the Criminal Code.	Adoption of Criminal Codes - medium term	The third round report accepted that the term "dispose" is interpreted in the meaning of the act of "transfer" in judicial practice; however, the evaluators recommended that an appropriate legislative clarification should be made to make this coverage clearer. It is reported that upon the letter of the BiH delegation dated 7 June 2011, the Team for monitoring and evaluating the application has started to work on preparing legislative proposals to remedy these two important deficiencies. Authorities expect that these deficiencies will be rectified in the "medium term", which according to the Action plan, refers to a time period up to one year.

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
• **2.**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;	The possibility of criminalization of money laundering only at the state level shall be discussed, and if the criminal offense of money laundering remains in Criminal Codes at all levels there will be made amendments to all Criminal Codes in order to clear delimitation of competencies between the State and Entities. Abovementioned law shall contain a provision under which the competent authorities of the Federation of Bosnia and Herzegovina, Republic of Srpska and the Brcko District of Bosnia and Herzegovina shall harmonize criminal laws with this law within a specified period from the date of enactment of this law.	On 7 June 2011 the B&H MONEYVAL delegation sent an official letter no. 05-06-2981/11 to the Team for monitoring and evaluating the application of criminal law in B&H, which requires the harmonization of criminal law in B&H with the recommendations of MONEYVAL Secretariat of the criminal offense of money laundering. Team started with the activities on design of the Amendments to the Criminal Code.	Adoption of Criminal Codes - medium term	It is reported that upon the letter of the BiH delegation dated 7 June 2011, the Team for monitoring and evaluating the application has started to work on preparing legislative proposals to remedy these two important deficiencies. Authorities expect that these deficiencies will be rectified in the “medium term”, which according to the Action plan, refers to a time period up to one year.

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
Reported as of April 2011 plenary) **R.5** • 1.include an obligation to apply the CDD measures when carrying out occasional transactions that are wire transfers;	-*(1st bullet)* Authorities report that Article 10 of the new Book of Rules address to this issue.	- No additional measures for the 1st, 2nd, 4th, 5th bullets reported.	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.
• 2. review the definition of "transactions" in the new AML/CFT Law;	-(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.	- No additional measures for the 1st, 2nd, 4th, 5th bullets reported. *-(2nd, 7th and 8th bullets)* The draft law will be sent to the Parliament for adoption.		*(2nd bullet)* BiH authorities should make sure that this deficiency is addressed in the draft Law, as it seems that it is not currently including such clarification.
• 3. introduce a clear timing for the verification of identification information with a review the Decisions on Minimum Standards accordingly; •	- *(3rd bullet)* The review of Decisions on Minimum Standards by the Banking Agency of FBiH is underway but have not yet been finalised.	*(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.		*(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.
• 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;	- (4th bullet) No steps reported	- No additional measures for the 1st, 2nd, 4th, 5th bullets reported.		(4th, 5th and 6th) No progress appears to have been achieved in rectifying these deficiencies.

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
• 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 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.	- (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 Security in May 2010.	- No additional measures for the 1st, 2nd, 4th, 5th bullets reported. -*(2nd, 7th and 8th bullets)* The draft law will be sent to the Parliament for adoption.		- *(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. 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.*

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
Measures taken since the April 2011 plenary **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;	The new amendments to AML/CFT Law will be amended to Article 26 which will include periodic electronic transfers. 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	The working group shall submit amendments to the existing AML/CFT Law in parliamentary procedure	Adoption of amendments on AML Law - medium term)	The Secretariat's comments stated above regarding R.5 remain valid. Authorities seem to be determined to address these deficiencies with the further amendments in the medium term, up to one year, and they believe that the adoption of the Action Plan will accelerate this process. At this stage no concrete progress appears to have been achieved.
• 3. introduce a clear timing for the verification of identification information with a review the Decisions on Minimum Standards accordingly;	B&H authorities started with a broader review of the Decision on Minimum Standards to address many issues, including this deficiency. However, this review could not be completed and this is planned to be made in the aftermath of enactment of necessary amendments to the Law on Banks by the Parliamentary Assembly.	Accelerate the procedure of adoption of relevant laws and regulations by adopting of the Action Plan		

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
• 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;	There is an obligation under Article 18 of the AML Law to apply CDD measures to existing clients not complied with FATF Recommendation. Working Group of the Council of Ministers will prepare a draft of amendments to the AML/CFT Law that will include recommendation of evaluators' remark	The Authorities of BIH are preparing the amendments to the AML Law which will resolve this deficiency and harmonise the AML Law (Article 18)) with the FATF requirements. Accelerate the procedure of adoption of relevant laws and regulations by adopting of the Action Plan	Adoption of amendments to the AML Law - medium term)	(see above)
• 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 to consider filing a suspicious report where the identification process cannot be completed;	Working Group of the Council of Ministers will prepare a draft of amendments to the AML/CFT Law that will include recommendation of evaluators' remark. 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.	Accelerate the procedure of adoption of relevant laws and regulations by adopting of the Action Plan.	Adoption of amendments to the AML Law - medium term)	

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
Reported as of April 2011 plenary) **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 Brcko District when investigating predicate offences of money laundering.	-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 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 Brcko 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.

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
• 2. remove the limitations to and unacceptable constraints of the power of the FID to disseminate information to domestic authorities, and demonstrate the effectiveness of dissemination of information to domestic authorities.	-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.	- *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 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 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.*

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(Measures taken since the April 2011 plenary) **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 Brcko 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 effectiveness of dissemination of information to domestic authorities.		Working Group of the Council of Ministers will prepare a draft of amendments to the AML/CFT Law that will include recommendation of evaluators' remark.	Adoption of amendments on AML Law - medium term	Analysis made above remains apt. Authorities report that the Working Group will prepare draft provisions that will fully rectify these deficiencies, which will eventually be enacted in medium term, up to one year. At this stage no improvement since April 2011 has been recorded regarding R.26.
Reported as of April 2011 plenary) **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 by an individual terrorist as required by SR.II.	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 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 Brcko 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.*

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(Measures taken since the April 2011 plenary) **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 by an individual terrorist as required by SR.II.	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	On 7 June 2011 the BiH MONEYVAL delegation sent an official letter no. 05-06-2981/11 to the Team for monitoring and evaluating the application of criminal law in BiH, which requires the harmonization of criminal law in BiH with the recommendations of MONEYVAL Secretariat of the criminal offense of terrorism financing. Team started with the activities on design of the Amendments to the Criminal Code.	Adoption of Criminal Codes - medium term)	It is reported that upon the letter of the BiH delegation dated 7 June 2011 the Team for monitoring and evaluating the application has started to work on preparing legislative proposals to remedy these two important deficiencies by taking into account the Secretariat's views stated above. Authorities expect that these deficiencies will be rectified in the "medium term", which according to the Action plan, refers to a time period up to one year. Apart from these positive steps, at this stage, no concrete progress in remedying the deficiencies has been achieved.

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Reported as of April 2011 plenary) **SR.III** • 1.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; • 2.create and/or publicise a procedure for considering de-listing requests and unfreezing assets of delisted persons; • 3.create and/or publicise 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.	*-(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, Usama bin Laden, the Taliban and other individuals, groups, undertakings and entities associated with them"	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, 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.*

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(Measures taken since the April 2011 plenary) **SR.III** • 1.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 timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the person is not a designated person.	Ministry of Security prepared the Book of Rules on the Implementation of Restrictive Measures established by the United Nations Resolution 1267 (1999), 1333 (2000), 1363 (2001), 1373 (2001), 1390 (2002), 1452 (2002), 1455 (2003), 1526 (2004), 1617 (2005), 1735 (2006), 1822 (2008) and 1904 (2009) regarding members of AL-Qaeda, Osama bin Laden, the Taliban and other individuals, groups, legal entities and organizations associated with them, is adopted by the Council of Ministers of Bosnia and Herzegovina.	Ministry of Security shall prepare an Amendment of existing Book of rules related to assets freezing which will cover all requirements under SR III	Revise the existing draft of the Book of rules on assets freezing - medium term	It seems that the Book of Rules has been adopted by the Council of Ministers and came into force As the Secretariat has not been provided with the adopted version of the Book of Rules its content could not be analysed and verified. However, if it was adopted as it had been presented to the April 2011 plenary, further amendments are still needed as discussed above. Authorities report that Ministry of Security will revise this Book of Rules in the medium term in order to make it fully in compliance with the SR III requirements, which have not been properly addressed.

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Reported as of April 2011 plenary) **SR VIII** • Concrete steps need to be taken to address the essential criteria under the AML/CFT Methodology to ensure that nonprofit organisations cannot be abused for financing of terrorism.	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 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)	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 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 regarding this deficiency. A more comprehensive approach is needed to address this deficiency.*

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(Measures taken since the April 2011 plenary) **SR VIII** • Concrete steps need to be taken to address the essential criteria under the AML/CFT Methodology to ensure that non-profit organisations cannot be abused for financing of terrorism.	The draft of the Framework Law on establishment of joint registry of non-governmental organizations in Bosnia and Herzegovina is in the procedure. A proposal on amending the Law on Associations and Foundations of BiH is also in the parliamentary procedure.	B&H authorities shall pass bylaws that will regulate supervision over non-profit organization financial operations in order to prevent their abuse for financing of terrorism	Medium term	Authorities report that the Framework Law on the establishment of joint registry of non-governmental organisations in BiH and a new proposal on amending the Law on Associations and Foundations of BiH are in the parliamentary procedure, as noted above (see second draft CEPs report), it is however not clear from the reported steps if a comprehensive review since April 2011 has been undertaken by the BiH authorities in order to identify the risks and prevent the misuse of NPOs for terrorist financing purposes or if these legislative proposals have been initiated as a result of such a review. As noted above a more comprehensive approach is needed to address this deficiency. It is questionable if these draft amendments will fully address the issue of non-profit organisations. SR VIII was rated NC in the third round report and the deficiencies identified in the report relate to almost all of the essential criteria of SR VIII including comprehensive review of the adequacy of relevant laws to identify the risks if abuse of NPO sector for TF, outreach activities, insufficient national cooperation, the lack of mechanism for international requests and the absence of record keeping obligation. BiH authorities report that by laws will be passed for ensuring the supervision of NPO sector in the medium term. Notwithstanding these positive legislative proposals that might increase the transparency of the NPO sector, a more comprehensive approach is expected from BiH authorities for a full compliance with the SR VIII requirements. Overall, the deficiency still remains unchanged.

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Reported as of April 2011 plenary) **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;	-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 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.

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• 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 power to ITA to apply sanctions or seize funds as required by SR.IX.8-11.	-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.	*-(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.

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(Measures taken since the April 2011 plenary) **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 power to ITA to apply sanctions or seize funds as required by SR.IX.8-11.		Working Group of the Council of Ministers will prepare a draft of The Law on Foreign Exchange Operations on the state level and that will include recommendation of evaluators' remark.	Adoption of the draft of the Law on Foreign Exchange Operations on the state level - long term)	The Secretariat reiterates its findings stated above. Authorities report that the Working Group of the Council of Ministers will prepare a Draft Law on Foreign Exchange Operations at the state level and the identified deficiencies will be addressed through this Law. They expect that it will be adopted in the long term, which refers to a time period up to 2 years. Apart from this future work, at this stage no concrete progress has been achieved in remedying these four important deficiencies.