COUNCIL OF EUROPE CONSEIL DE L'EUROPE

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

MONEYVAL(2010)28 REV1

# Bosnia and Herzegovina

## Progress report and written analysis by the Secretariat of Core Recommendations [1]

11 April 2011

[1] First 3rd Round Written Progress Report Submitted to MONEYVAL

Bosnia and Herzegovina is a member of MONEYVAL. This progress report was adopted at MONEYVAL's 35th Plenary meeting (Strasbourg, 11-14 April 2011). For further information on the examination and adoption of this report, please refer to the Meeting Report (ref. MONEYVAL(2011)17) at http://www.coe.int/moneyval

# Table of Contents



**This is the first 3rd Round written progress report submitted to MONEYVAL by the country. This document includes a written analysis by the MONEYVAL Secretariat of the information provided by Bosnia and Herzegovina on the Core Recommendations (R. 1, R. 5, R. 10, R. 13, SR.II and SR.IV), in accordance with the decision taken at MONEYVAL's 32nd plenary in respect of progress reports.**

# Bosnia and Herzegovina

## First 3rd Round Written Progress Report Submitted to MONEYVAL

## 1. *Written analysis of progress in respect of the FATF Core Recommendations*

### *1.1. Introduction*

2. The purpose of this paper is to introduce Bosnia and Herzegovina's (BiH)[1] first progress report back to the Plenary concerning the progress that it has made to remedy the deficiencies identified in the third round mutual evaluation report (MER) on selected Recommendations.

3. BiH was visited under the third evaluation round from 24 May to 3 June 2009 and the mutual evaluation report was examined and adopted by MONEYVAL at its 31st Plenary (7-11 December 2009). According to the procedures, BiH submitted its first year progress report to the December 2010 Plenary in accordance with Rule 42 of the Rules of Procedure.

4. This paper is based on the Rules of Procedure as revised in March 2010 which require a Secretariat written analysis of progress against the core Recommendations[2]. The full progress report is subject to peer review by the Plenary, assisted by the Rapporteur Country and the Secretariat (Rules 38-40). The procedure requires the Plenary to be satisfied with the information provided and the progress undertaken in order to proceed with the adoption of the progress report, as submitted by the country, and the Secretariat written analysis, both documents being subject to subsequent publication.

5. At its 34th plenary (7-10 December 2010), in view of the result of the discussions on the First 3rd round written progress report of Bosnia and Herzegovina and taking into account the insufficiency of information provided, the Committee took note of the progress report and the analysis of the progress on the Core Recommendations. Moreover, pursuant to Rule 43 of the Rules of Procedure, it invited BiH to provide a fuller report to the 35th plenary in addition to opening the Compliance Enhancing Procedures in respect of the First third round PR of BiH at step (i).

[1] For better understanding and evaluation of the progress achieved by Bosnia and Herzegovina (BiH) since the adoption of 3rd round report the structure of BiH state, legal and institutional system should be taken into consideration. BiH is a State comprising two entities: The Federation of BiH (FBiH), the Republic of Srpska (RS) (the entities) and Brčko District (BD). Because of this division, both the entities and Brčko District (BD) have their own legislative frameworks including Criminal Codes, Laws on Banks, etc. This legislation is, in some cases (e.g. Criminal Codes), additional to legislation at the level of the state of BiH. In these circumstances, there is a need to consider progress on the relevant legislation at entity and BD level as well as at the state level legislation. Although certain law enforcement agencies and supervisory bodies operate across the whole of BiH, this legislative framework is largely replicated in law enforcement and supervisory structures. For example, the State Protection and Investigation Agency (SIPA), which houses the Financial Intelligence Unit (FID), has the authority to operate across the whole of BiH, whereas each of the entities and BD maintain their own police forces. In these circumstances, it is necessary to consider bodies operating both at state level as well as at the level of the entities and BD in order to assess the overall effectiveness of the AML/CFT regime.

[2] The core Recommendations as defined in the FATF procedures are R.1, R.5, R.10, R.13, SRII and SRIV.

6. BiH has provided the Secretariat and Plenary with a full report on its progress, including supporting material, according to the established progress report template. The Secretariat has drafted the present report to describe and analyse the progress made for each of the core Recommendations.

7. BiH received the following ratings on the core Recommendations:

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| R.1 – Money laundering offence (PC) |
| SR.II - Criminalisation of terrorist financing (PC) |
| R.5 - Customer due diligence (NC) |
| R.13 - Suspicious transaction reporting (LC) |
| SR.IV - Suspicious transaction reporting related to terrorism (LC) |

8. This paper provides a review and analysis of the measures taken by BiH to address the deficiencies in relation to the core Recommendations (Section II) together with a summary of the main conclusions of this review (Section II). This paper should be read in conjunction with the progress report and annexes submitted by BiH.

9. It is important to be noted that the present analysis focuses only on the core Recommendations and thus only a part of the Anti-Money Laundering/Combating the Financing of Terrorism (AML/CFT) system is assessed. Furthermore, when assessing progress made, effectiveness was taken into account to the extent possible in a paper based desk review, on the basis of the information and statistics provided by BiH, and as such the assessment made does not confirm full effectiveness.

## *1.2. Detailed review of measures taken by BiH in relation to the Core Recommendations*

### 1. Main changes since the adoption of the MER

10. Since the adoption of the MER, BiH has taken the following measures with a view to addressing the deficiencies identified in respect of the Core Recommendations:

- amending of Criminal Codes and Criminal Procedure Codes at all levels;
- adoption and coming into force of a new Law on Foreign Exchange Operations on 4 August 2010;
- preparation of a draft law amending the Law on Prevention of Money Laundering and Financing of Terrorist Activities in June 2010 by the working group of experts established in the Ministry of Security in May 2010;
- issuing of the new "Book of Rules on risk assessment, data, information, documents, identification methods and minimum other indicators required for efficient implementation of provisions of the Law on Prevention of Money Laundering and Financing of Terrorist Activities" on 1 December 2009;
- issuing of Guidelines by the Management Board of Insurance Agency of BiH for the Implementation of AML/CFT for customers under the jurisdiction of Insurance Supervision Agencies of FBiH and the Republic of Srpska;
- issuing of 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 on 8 April 2010;
- submission of draft amendments to Article 47 of the Law on Banks of FBiH to the Parliamentary Assembly;

11. BiH authorities have also taken some additional measures to address deficiencies identified in respect of the key and other Recommendations, as reflected in the progress report, however these fall outside of the scope of the present report and thus are not analysed therein.

## 2. Review of measures taken in relation to the Core Recommendations

### Recommendation 1 - Money laundering offence (rated PC in the MER)

12. Deficiencies 1 and 2 identified in the MER (*The Bosnian authorities should address the lack of clear demarcation between the scope of the money laundering offences in the different Criminal Codes. It is recommended that consideration should be given as to whether it would be more effective to restrict all money laundering cases to the State Court, and abolish the Entity and Brčko District jurisdictions.) (If money laundering is not criminalised exclusively at state level, the conditions in CC-BiH Article 209(1) should be reviewed, especially those not related to value thresholds as, in the view of the evaluators, the existing conditions are overly ambiguous and thus very unlikely to be adequately proven in a criminal procedure. These should, therefore, either be replaced by more precise criteria (like the involvement of organised criminality in the predicates, the fact that the offence was committed on the territory of more than one non-state level jurisdiction etc.) or substituted merely by the application of value limitations.)* As explained in the third round MER, according to that article, the state-level jurisdiction deal 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 endangers the common economic space of BiH or has detrimental consequences to 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 jurisdictions of entities and BD have explicit competence over all offences without regard to value of proceeds laundered. 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 considered as an unaggravated non-state level ML offence while such acts committed above this threshold will constitute the aggravated form of large/high value ML. Briefly, as pointed out in the MER, neither of the non-state level CCs defines any maximum threshold above which a ML offence should necessarily be dealt with at state level. Particularly taking into account the fact that the state level jurisdiction has no hierarchy over those at the level of the two entities and BD, absence of such a maximum threshold creates a clear visible conflict of competence between state and non-state level judicial authorities over this common subset of ML offences. Apart from making reference to the Supreme Court's legal opinions reported to be adopted on 30 June 2004, which indeed appear to have been noted in the 3rd round MER, and providing explanations as elaborated above no concrete steps have been taken to address the lack of demarcation between the scopes of the ML offences in the different Criminal Codes.

13. Deficiency 3 identified in the MER (*As a minimum requirement, definitions of value thresholds should be publicly known and should be provided for by the legislation (such as the Criminal Code). At the State level, steps need to be taken to fill the gap between positive criminal law and actual judicial practice by finding an adequate legislative solution instead of the current contra legem interpretation of the law.)* No steps have been taken to remedy this deficiency. Moreover, the authorities believe that specifying the definition of "larger value" in the legal texts is unacceptable, since unstable social, political and economic circumstances in the country might require more often change in the opinion on the amount considered to be "higher" amount.

14. Deficiency 4 identified in the MER *(Definition of money laundering offences should be brought fully into line with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned.*) The MER found out that neither of the definitions of ML offences is in full compliance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned. Evaluators of the third round concluded so on the basis that the transfer of property was not clearly covered by either of the respective provisions, even if it seemed to be clearly considered by the judicial practice. Therefore, BiH authorities were recommended to cover this loophole by taking appropriate legislative steps. No legislative steps appear to have been taken so far to address this deficiency.

15. Deficiency 5 identified in the MER *(The authorities of Brčko District should criminalise market manipulation in their respective legislation (either in the Law on Securities or elsewhere) to ensure that the range of offences which are predicates to money laundering include all required categories of offences in all the relevant forms.)* The authorities report in the PR that market manipulation is criminalised in the draft Law on Securities Market and they expect the adoption of this Law by the Parliament in the first half of 2011. When the draft law is enacted, BiH could be regarded as being rectified this deficiency.

16. Deficiency 6 identified in the MER *(Investigators and prosecutors need to have a clear understanding of the importance of money laundering beyond the tax evasion and fiscal predicates if money laundering criminalisation is to be meaningful. Effective implementation of money laundering incrimination should urgently be achieved beyond the tax predicate.)* It is reported that the BiH head of delegation to MONEYVAL wrote a letter, on 3 March 2011, to the Centers for Education of Judges and prosecutors in the FBiH and the RS, and to the High Judicial and Prosecutorial Council to ensure that AML/CFT related issues are to be included in the training schedules of judges and prosecutors. The authorities provided further information to the Secretariat regarding the training activities organised in 2010 and planned in 2011 particularly for prosecutors at non-state level. The seminars and a conference held in 2010 are reported to cover the issues of confiscation of proceeds of crime, investigation of financial crimes and organized crimes, as well as corruption. The project funded by the Swiss Government seems to include a component that aims at, inter alia, underlining the importance of ML beyond the tax evasion and fiscal predicates. Nevertheless, in the absence of statistical data, it is difficult to judge on a desk review if these seminars have changed the understanding of practitioners. The Criminal Assets Recovery Act that came into force on 1 July 2010 might be a useful tool in tracing proceeds of crime if used effectively in practice. However, due to the recent enactment of this Law it is too early to judge the practical impact of this Act. Furthermore, it should be noted that this act is only applicable in the RS.

17. Given the lack of any training and awareness raising activities, details of which have been made available, since the adoption of third round MER, at this stage it is difficult to conclude solely based on those two examples if the understanding of the investigators and prosecutors has changed.

18. Deficiency 7 identified in the MER *(Financial investigation into proceeds needs to become an integral part of investigation of various proceeds generating offences. For this to be achieved, more resources and training are needed especially by the prosecution service.)* The authorities report in the PR that 6 seminars were organised in 2003-2009 with the participation of 373 judges and prosecutors. No training activities in 2010 or any increase in the level of resources have been reported in the PR in this regard.

19. Deficiency 8 identified in the MER *State-level incrimination as well as those in the Federation and Brčko District should expressly include "own proceeds" laundering or, at least, appropriate guidance should be given to practitioners in this respect in all the three jurisdictions where self-*

*laundering is not explicitly covered by law (especially in the Federation and Brčko District where there is no relevant judicial practice either).* The CC BiH was amended in 2010 and Article 209 now criminalises self-laundering. Nevertheless the Criminal Codes of FBiH and BD have not been amended yet to explicitly criminalise "own proceeds" laundering as recommended in the third round MER. Moreover, no guidance has been given to practitioners in this respect in the RS and BD.

20. Deficiency 9 identified in the MER (*Authorities of Republic Srpska should review the policy reasons whether and why it was considered expedient and proportionate to threaten self-laundering with higher penalty than money laundering by third parties.*) The policy review has yet to be taken by the authorities of Republic Srpska to figure out the reasons of existing different level of penalties for self-laundering and third party laundering.

21. Deficiency 10 identified in the MER (*The language of money laundering incrimination and penalties should be harmonised across the State level, the Entities, and Brčko District.)* With the amendments made to Article 209 of the CC BiH in 2010, the penalties for basic ML and aggravated ML offences were increased the penalties and self-laundering was explicitly criminalized in the state level CC. Other than this, no other broader harmonization across the state and non-state level in terms of the language of ML incrimination and penalties appears to have been undertaken yet. Though the Criminal Codes of FBiH and the RS were also amended in the meantime, as no refinements were made to ML offences in these Codes, these modifications did not contribute to the broader harmonization of the language of ML incrimination.

22. Deficiency 11 identified in the MER *(Legislation should be introduced at all levels to allow the prosecuting and convicting of defendants in absentia.)* The third round MER noted this as another obstacle to effectively prosecuting money laundering. None of the Criminal Procedure Codes provides for prosecuting or convicting any defendant in absentia in BiH, so whenever the perpetrator successfully evades from being involved in the criminal proceedings, he cannot be indicted or convicted even if authorities have already gathered the evidence against him. Indeed as noted in the report, trial in absentia had been possible under the previous Criminal Procedure Codes being in force until 2003. Nevertheless, this was abandoned in the new Codes, partly because of practical reasons (a large number of such cases needed to be re-trialed after the defendant reappeared and in many cases, the previous verdicts that had been delivered in absentia proved to be unfounded). The examiners of the third round however shared concerns of some practitioners they met onsite and were thus convinced that this feature of domestic procedural law could particularly be abused by criminals possessing double citizenship who, being investigated for criminal offences, could easily leave for neighbouring Serbia or Croatia which refuse to extradite their own citizens and their Courts may not prosecute as an alternative. Indeed this concern had also been raised in the previous round of evaluation.

23. BiH has not yet introduced legislation at all levels to allow the prosecution and conviction of defendants *in absentia* though some legislative attempts made in the past. The authorities report that these amendments were made in 2003 as trial in absentia had been conflicting with other articles of the CCs and CPCs at all levels.

24. Deficiency 11 identified in the MER *(Domestic authorities should, at all levels of jurisdiction, consider whether the benefits of negligent money laundering in the statute are being maximised.)* The evaluators of the third round appreciated the anti-money laundering criminalisation (which includes negligent ML) and noted that this potential of the regime had not been made us of, as there had been no investigation or prosecution as at the time of third round evaluation. Authorities did not provide any statistics or information about any such investigations or prosecutions involving negligent ML. Therefore the situation here appears to remain unchanged.

25. Deficiency 12 identified in the MER *(The backlog in money laundering cases pending before the Court of Bosnia and Herzegovina is a problem that must be addressed by state-level authorities. It is recommended that appropriate training of the judiciary and prosecutors be provided.)* In order to address the backlog in ML cases as noted in the third round MER, authorities report the letters sent by the head of delegation to the above mentioned authorities. From the figures given in the PR, it seems that the first case was opened in 2006 and the latter in 2007. Though the complexity or further details of the cases are unknown, this could be an indication of the continuing problem of backlog in such cases. No information has been made available of whether any training activities has been organised or planned for the judiciary and prosecutors since the adoption of third round report. Therefore it is difficult to conclude that the situation has changed.

*Effectiveness*

26. No progress could be noted in respect of the effectiveness of investigation and prosecution of ML offences in BiH. Looking at the statistics, while the total number of investigations from 2005 to 2008 is 573 and there were 116 prosecutions as well as 24 ML convictions in the same period, the figures appear to have fallen sharply in 2009-2010. The declining trend on the number of investigations, prosecutions and convictions since 2005 should also be noted. The total number of investigations in 2009-2010 has dramatically declined to 77 and the total number of prosecutions in this period has been only 3. In addition, from 2009 to 2010 there has been only one conviction for ML offences. The decline of the number of investigations from 111 in 2008 to 57 in 2009 and to 20 in 2010 as well as decrease in the number of prosecutions from 17 in 2008 to 2 in 2009 and 1 in 2010, gives rise to significant concerns about the effectiveness of the enforcement of ML offences in BiH. Furthermore, huge differences between the numbers of investigations and prosecutions, as well as the lack of convictions since 2008, call the quality of investigations and prosecutions in ML cases into question.

27. One of the main deficiencies identified in the 3rd round MER was the presence of 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). BiH provides information in the PR about two cases in one of which a final judgment was rendered. BiH authorities were unable to specify the date on which the judgment has become final and the penalty given to the person. Whether the ML offence in this conviction is a self-laundering offence or third party laundering is also not known. While in the first case a person was convicted of ML and human trafficking offences with forfeiture of unlawfully obtained property gain in the amount of KM 172,000 and a real estate, the second case where the persons have been charged with the criminal offences of ML and drug trafficking is still pending before the Court of BiH.

**Special Recommendation II - Criminalisation of terrorist financing (rated PC in the MER)**

28. Deficiency 1 identified in the MER (*Criminal laws should be amended to incorporate the funding of terrorist organisations and individual terrorists, both at State level and that of the Entities and Brčko District.)* BiH authorities report in the PR that amendments were made to the Criminal Code of BiH (state level Criminal Code), published in the Official Gazette of BiH, no.8/10, on 2 February 2010, to strengthen the provisions relating to terrorism including the terrorist financing offence. The first paragraph of Article 201 of the Criminal Code of the BiH defines terrorism. Its fourth paragraph, inserted in the law 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."* Authorities argue that this provision regulates financing of terrorist organisations and individual terrorists. However, this provision is clearly regulating 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.

29. In addition to the amendments made to Article 201, Article 202 of the BiH Criminal Code that regulates 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 where 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).

30. Another important enhancement in the Criminal Code of BiH seems to be the addition of Article 202d 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 providing funds or any other assistance to terrorist organisations, including their activities other than specific terrorist acts. However, in the absence of 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.

31. As a consequence, though the refinements made to the Criminal Code of BiH appear to have enhanced the provisions relating to terrorism and terrorist financing, they seem not to have addressed this specific deficiency as required under SR II. In other words, with the amendments made in the state level Criminal Code in February 2010 this Law is now covering financing of terrorist acts properly. 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 Entities and Brčko District as well. Therefore, the same deficiency still appears to remain apt.

32. Deficiency 2 identified in the MER *(Domestic authorities at all competent level should satisfy themselves that the full definition of "funds" according to Criterion II.1b is properly covered by the current terrorist financing offences.)* The authorities refer to the definition of property made in the AML/CFT Law. However, as it is explicitly mentioned in Article 3 of the AML/CFT Law, this article defines certain terms for the purposes of this Law. Therefore, it is questionable if the judiciary takes into account the definition of property used in the AML/CFT Act in the criminal proceedings. This would also be the case in the draft book of rules even if it is brought into force

33. Deficiency 3 identified in the MER *(Consideration should be given to whether the financing of terrorism should remain criminalised at all levels of legislation in Bosnia and Herzegovina or be qualified among those exclusively dealt with at state level.)* Notwithstanding the letter explaining such needs, dated 3 March 2011, which was sent by the MONEYVAL Head of BiH delegation to the BiH Ministry of Justice, the due consideration reported to have been given in practice could not be demonstrated by the authorities.

34. Deficiency 4 identified in the MER: *(Consideration should be given to abandoning the use of "double definitions" of legal terms pertaining to criminal substantive law in multiple legal sources.)* Notwithstanding the letter explaining such needs, dated 3 March 2011, which was sent by the MONEYVAL Head of BiH delegation to the BiH Ministry of Justice, the due consideration reported to have been given in practice could not be demonstrated by the authorities.

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

**Recommendation 5 - Customer due diligence regarding FIs (rated NC in the MER)**

36. Deficiency 1 identified in the MER (*Article 28 of the Law on Foreign Exchange should be reviewed)*. As noted in the 2nd and 3rd round MERs, the evaluators of both rounds believed that Article 28 of the Law on Foreign Exchange Transactions allowed banks to open and keep savings deposits in bearer form denominated in foreign currency for resident legal persons and non-resident natural persons. It was recommended that BiH authorities review this article. The authorities report in the PR that a new Law on Foreign Exchange Operations was adopted and published on 4 August 2010. It appears that the new Law and the Rules of Procedure issued by the Ministry of Finance (under this Law) have addressed the deficiency identified in the 3rd 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, as well as 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." In conclusion, it seems that BiH has addressed this deficiency.

37. Deficiency 2 identified in the MER *(An obligation to apply the CDD measures when carrying out occasional transactions that are wire transfers should be introduced by legislation or other enforceable means).* Authorities report that they are preparing the supplement 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.

38. Deficiency 3 identified in the MER *(A review should be undertaken of the definition of "transaction" in the new AML Law which may not necessarily include "cash transactions" and hence there is doubt on the application of CDD measures).* BiH has not yet reviewed the definition of "transaction" in the new AML/CFT Law. Though BiH authorities report in the PR that the new draft law amending the AML/CFT Law will rectify this deficiency, BiH authorities should make sure that this deficiency is addressed in the draft law, as it seems that the draft law is not currently including such clarification.

39. Deficiency 4 identified in the MER *(An awareness raising programme together with related guidance on the applicability of the risk based approach for CDD should be developed.) BiH authorities issued the new Book of Rules on the 1st December 2009.)*[3] The second part of the Book of Rules includes

[3]Based on the third round assessment the evaluators concluded that the Book of Rules on Data and Information (at State level) could not be considered as "other enforceable means" as a whole. However, the evaluators further concluded that those sections of the Book of Rules on Data and Information, where, as indicated in Table 11 (see third round MER), there is a direct empowering clause and are, as such, sanctionable under the main (old) AML Law, could be treated as other enforceable means. The new AML/CFT Law required the Minister to issue a new Book of Rules within 3 months as of the

risk assessment guidelines and indicators. In addition, the Management Board of Insurance Agency of BiH issued Guidelines for the Implementation of AML/CFT for customers under the jurisdiction of Insurance Supervision Agencies of FBiH and the Republic of Srpska on 31 May 2010. Furthermore, 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 were also issued on 8 April 2010. Though the latter two are applicable only to insurance sector and securities sector in FBiH, they also include guidance on risk assessment, given that the Book of Rules applies to the whole financial sector, 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), authorities reported that a state wide training and awareness programme has been put in place where a number of sessions have already been held for a number of obliged entities. However, it is uncertain if these activities comprise any specific awareness raising programme for the financial sector on the applicability of the risk based approach for CDD. The authorities further reported in their comments to the draft Secretariat analysis that a seminar on AML/CFT was held on 25 June 2010 in cooperation with the Associations of Insurance Companies in Sarajevo with the participation of 12 insurance company representatives. In addition, a seminar is also reported to be held on 24-25 February 2011 where the representatives from the insurance sector and the securities sector participated. Though it should be acknowledged that these seminars might have contributed to the rising of awareness in the insurance, a more comprehensive awareness raising programme that aims at reaching to all the sectors of the obliged entities is needed.

40. Deficiency 5 identified in the MER *(Although specific provisions have been included in the new AML Law imposing an obligation for the verification of the identity of customers, these provisions do not address the timing of verification and, therefore, the Decisions on Minimum Standards should accordingly be reviewed.)* 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 FBiH. However, this review could not be completed and this is planned to be achieved after the enactment of necessary amendments to 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 could be achieved yet.

41. Deficiency 6 identified in the MER *(The relevant authorities should ensure there is awareness and understanding by the industry on the newly introduced concept of the beneficial owner, and a revision of Article 15 of the new AML Law should be considered.)* Article 15 of the new AML/CFT Law seems to be reviewed in the draft law amending the new AML/CFT Law as recommended in the third round MER. However, in addition to the take steps to finalise the legislative process of the draft law, BiH authorities should ensure that reported state wide training and awareness programme includes specific activities that provide awareness and understanding to the industry on the newly introduced concept of the beneficial owner.

42. Deficiency 7 identified in the MER (An obligation for all obliged entities and persons to identify the 'mind and management' of a legal person beyond the requirements for banks should be introduced under the relevant Decisions on Minimum Standards of the respective Banking Agencies.) As the relevant decisions on Minimum Standards[4] of the respective Banking Agencies have not been

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date of enforcement of the new law. At the time of the adoption of the third round MER the Book of Rules was not published.

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

changed yet, an obligation for all obliged entities and persons to identify the mind and management of a legal person has not been introduced.

43. Deficiency 8 identified in the MER (*An obligation for the termination of business where a business relationship is established but the identification process cannot be completed should be considered.)* The Guidelines for the Implementation of AML/CFT rules for customers under the jurisdiction of Insurance Supervision Agency of FBiH dated of 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 8 April 2010 include such an obligation. However, as noted above and in the third MER, Guidelines cannot be regarded as "other enforceable means". BiH authorities should introduce such a requirement by a law, regulation or other enforceable means. 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 appear to cover a requirement for obliged entities to terminate the business relationship where it is established but the identification process cannot be completed. If the draft law is enacted as it stands, BiH could be regarded as having complied with this recommendation, but not before.

44. Deficiency 9 identified in the MER *(A legal obligation to apply CDD measures to existing customers beyond what is currently provided for banks under the relevant Decisions on Minimum Standards should be introduced.)* No new legislative steps appear to have been taken by BiH authorities to introduce a legal obligation to apply CDD measures to existing customers beyond what is currently provided for banks under the relevant Decisions on Minimum Standards. Though they report, without specifying the exact legal basis, in the PR that the provisions on the constant monitoring of customers are in place in the field of securities and insurance, it is uncertain if this monitoring requirement covers the obligation to apply CDD measures to existing customers as required under essential criterion 5.17.

45. In conclusion, adoption of the new Law on Foreign Exchange Operations and the new Book of Rules, as well as issuing of above-mentioned two Guidelines appear to have contributed to enhancement of preventive system. However, these steps are still modest. As noted above, with these steps, BiH seem to have addressed only one deficiency fully and one deficiency partially.

**Recommendation 10 - Record keeping (rated LC in the MER)**

46. Deficiency 1 identified in the MER *(Although both the old and the new AML Laws require the retention of all documentation and information obtained on the basis of this Law, yet both laws fall short of meeting all the essential elements of Recommendation 10. In particular there is no distinction between identification and transaction information; and there are no clear provisions for the initiation of the 10 year retention period. The availability of identification information and transactions data to the authorities is indirectly addressed with the only reference on obliged entities being that of delivering the data "without delay or within 8 days" to the FID upon its request. The provision of such data to the supervisory authorities would however be covered by the general relevant provisions for the supervisory authorities under the respective legislation (for example the Laws on Banks). It is therefore recommended that the provisions on record keeping under Article 65(1) of the new law be reviewed and extensively updated and broadened to meet the requirements under Recommendation 10. In this respect, the revision should definitely differentiate between identification data and transaction data, including one off or occasional transactions. In this context, the review should ensure the establishment of the commencement of the retention period under each circumstance.)* The draft Law amending the AML/CFT Law submitted to the Secretariat does not seem to include a draft provision that envisages amending Article 65 (1) of the AML/CFT Law. However, authorities maintain in the PR that Article 65(1) will be amended by that draft Law as

follows: *"(1) The obligor shall keep the data and documentation that are obtained under this Law concerning a customer, established business relationships with a customer and executed transactions for a period of 10 years from the date of termination of the business relationship, executed transaction, or entry in the casino or playroom, and access safe."*

47. The draft text appears to differentiate the transaction and identification records more clearly. It also prescribes the commencement date of the record keeping obligation properly. Nevertheless, the draft Law still needs to be reviewed to make it clear that the transaction records to be kept are sufficient to permit reconstruction of individual transactions to provide evidence, if necessary, for prosecution of criminal activity. In addition, draft law should introduce an obligation for obliged entities to keep those records longer if requested by a competent authority in specific cases upon proper authority. The MER acknowledges that other relevant BiH legislation obliges financial institutions to provide necessary records to the FID and supervisory authorities. However, it would be prudent if BiH authorities consider introducing a clear obligation in the AML/CFT Law that requires obliged entities to ensure that all records are available on a timely basis to domestic authorities upon appropriate authority.

48. Overall, if the draft provision is enacted as it stands BiH could be regarded more in line with the requirements of R.10. Nevertheless, in order to make the provision fully in line with R.10 authorities need to consider abovementioned remarks as well.

**Recommendation 13 – STRs (rated LC in the MER)**

49. Deficiency 1 identified in the MER *(The evaluators were concerned about the low level of transactions reported, particularly as all STRs received were from banks with none received from the insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations. The evaluators recommend that a programme is undertaken with financial institutions to raise awareness of the STR regime. This programme should emphasise the difference between large transaction reports and suspicious transaction reports.)* The evaluators of 3rd round evaluation raised concerns over the low level of transactions reported, particularly as all STRs received were from banks with none received from the insurance and securities sectors.

50. BiH authorities affirm that in 2010 the FID carried out a range of activities towards obligors with a special emphasis on the so called "non-banking sector" and their obligation to report suspicious transactions. Authorities further enlightened the Secretariat about these activities by stating that working meetings were held with the representatives of the Agency for the postal traffic, Bar Association, Association of Notaries, car dealers and insurance companies in order to explain them their role in STR system. However, authorities were unable to provide further details such as the number and frequency of these meetings and participants on a breakdown of sectors. They report that thanks to these activities the FID received 17 suspicious transaction reports in total from the non-banking sector in 2010. (6 STRs from leasing agencies, 2 STRs from post offices, 2 STRs from Western Union, 1 STR from a notary and 6 STRs from micro credit organisations) However, it is noted that still there are no STRs coming from the insurance and securities sector. The authorities believe that the insurance sector in BiH financial flows covers 4% of all the flows, therefore it is not realistic to expect a larger number of STRs. However, the situation seems not to have changed in relation to these sectors as no STR has been received also in 2010 like in the period of third round evaluation.

51. The statistics provided in the PR does show a modest progress in the implementation of the reporting obligations as some obliged entities have started to report in 2010 as noted above. However, this

modest progress, given the continuing problem of lack of STRs from other sectors particularly insurance and securities sector, indicates the necessity of continuation of these awareness raising activities by including all financial and non-financial sectors.

52. Deficiency 2 identified in the MER *(It was also noted that in Republic Srpska STRs were submitted to the Banking Agency rather than to SIPA. It is strongly recommended that all STRs be reported direct to SIPA and not via an intermediate agency.)* Authorities indicate in the PR that the obliged entities of the Republic of Srpska report suspicious transactions only and directly to the FID and not through any kind of intermediaries. According to the statistics provided by the authorities in reply to the draft Secretariat analysis, 170 out of 262 total STRs were received directly from banking sector in the RS in 2010 and 119 out of 199 total STRs were received directly from the same sector in 2010. They further state that only statistical data on suspicious transactions is submitted to the Banking Agency of RS. Though these arguments were raised during the 3rd round visit and highlighted in the report, to eradicate uncertainties, the RS authorities still need to consider clarifying the interpretation of Article 101 of the Law on Banks of RS by appropriate guidance, as necessary.

53. Deficiency 3 identified in the MER (*There appear to be conflicting reporting requirements between the requirements of the new AML Law and the Law on Banks in Republic Srpska and FBiH. The evaluators therefore recommend that the Law on Banks in Republic Srpska and FBiH should be amended to remove any conflicting reporting requirements.)* BiH authorities emphasise that to comply with this recommendation, the Banking Agency of the FBiH sent to the Ministry of Finance of the FBiH the proposed changes to the provisions of the Law on Banks. The Ministry of Finance forwarded those changes to the Parliamentary Assembly with a proposal that such changes should be adopted in shortest procedure possible. However, the Parliamentary Assembly decided that the adoption of such changes should occur in the regular procedure and the House of Representatives of the Parliamentary Assembly adopted those changes on the first reading. It appears that, when enacted as it is, the draft text of Article 47 of the Law on Banks of FBiH will eliminate conflicting reporting requirements between the requirements of the new AML/CFT Law and the Law on Banks in FBiH. However, BiH authorities have yet to take similar steps to amend Article 101 of the Law on Banks of RS that also generates confusion between the requirements of the new AML/CFT Law and the Law on Banks in Republic of Srpska.

*Effectiveness*

54. The FID received 262 STRs in 2009 and 216 in 2010. While 199 out of total STRs in 2010 were sent by commercial banks, 16 STRs were received from other financial institutions (2 from Western Union, 6 from micro credit organizations, 2 from posts and 6 from leasing companies). Only one STR sent by a notary in the same year. Apart from these, none of other obliged entities sent any STR in 2010. However, in 2009 no other sector sent STR to the FID apart from banks. On the other hand, no notification appears to have been made to law enforcement authorities in 2009 and 2010 by the FID. There are only four cases in total where indictments prepared based on STRS in 209-2010. No conviction resulting from STRs has been given since 2009. This was also the case in the period of third round evaluation. Overall, statistics gives rise to concerns about the effectiveness of the implementation of reporting obligation in BiH and indicates the importance of urgent and comprehensive awareness raising programme for all obliged entities.

**Special Recommendation IV - Suspicious transactions reporting regarding FIs (rated LC in the MER)**

55. Deficiency 1 identified in the MER (*The evaluators were, concerned about the low level of transactions reported, particularly as all STRs received were from banks with none received from the*

*insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations. The evaluators recommend that a programme is undertaken with financial institutions to raise awareness of the STR regime. This programme should emphasise the difference between large transaction reports and suspicious transaction reports.)* See paragraphs 49-51 above.

56. Deficiency 2 identified in the MER *(It was also noted that in Republic Srpska STRs were submitted to the Banking Agency rather than to SIPA. It is strongly recommended that all STRs be reported direct to SIPA and not via an intermediate agency.)* See paragraph 52 above.

57. Deficiency 3 identified in the MER *(There appear to be conflicting reporting requirements between the requirements of the New AML Law and the Law on Banks in Republic Srpska and FBiH. The evaluators therefore recommend that the Law on Banks in Republic Srpska and FBiH should be amended to remove any conflicting reporting requirements.)* See paragraph 53 above.

58. Deficiency 4 identified in the MER *(The evaluators recommend that appropriate clarification of the word "odnosno" be made to clarify that suspicion of terrorist financing may arise in cases where funds are not derived from criminal activity.)* Apart from the reference made by the authorities to the plenary discussions on this particular issue, where the third round MER adopted, no progress has been reported in the PR regarding this recommendation.

59. With regard to the statistics, it is noted that no STRs relating to terrorist financing have been received in 2009 and 2010. This gives rise to concerns about the effectiveness of the implementation of reporting obligation relating to terrorist financing.

### *1.3. Main conclusions*

60. Since the adoption of third round report in December 2009 BiH authorities have taken a number of steps especially in the legislative front to comply with the Core Recommendations as noted above.

61. Amendments made to the Criminal Codes of BiH and CCs of the entities (the FBiH and the RS) to the Criminal Procedure Codes in 2010 at the same levels might have improved the overall legislative framework of the BiH's criminal legal system. In addition, particularly amendments made to Article 209 of the CC through which the penalties for ML appear to have been increased and self-laundering offence introduced at the state level. Furthermore, amendments made to the CC BiH contributed to the improvement of overall anti-terrorism provisions including further clarifying the financing of terrorism offence at the state level. In general, these amendments did not address considerably and directly the deficiencies identified in relation to ML and TF incrimination and confiscation regime (though it is acknowledged that the enactment of the Criminal Asset Recovery Act in 2010 might have improved the confiscation procedure in the RS) in BiH.

62. The enactment of the Law on Foreign Exchange Operations and the new Book of Rules seem to improve the level of compliance of BiH seem to contribute to the improvement of preventive AML/CFT regime at all levels. In addition, the Issuance of Guidelines for some sectors such as insurance (in the FBiH and the RS) and securities sectors (the FBiH) are also positive steps taken by the authorities since the adoption of third round report at the preventive side. It should also be noted that BiH authorities prepared a draft law amending the AML/CFT Law that appears to further improving BiH's preventive regime and its compliance with the international standards. Nevertheless,

the legislative process of this draft law should be stepped up by considering its improvement with the aim of filling the existing gaps in it.

63. That is, notwithstanding the abovementioned steps that might have contributed to the enhancement of BiH's overall criminal system and preventive AML/CFT regime, no considerable progress has yet been achieved in respect of specific deficiencies identified R.1, SR.II, R.10, R.13 and SR IV while one deficiency appears to have been addressed fully and one partially under R.5, as noted above.

64. It should also be noted that BiH authorities submitted a strategy document titled as "Strategy and Action Plan for the Prevention of ML and TF Activities in Bosnia and Herzegovina" which was adopted by the Council of Ministers on 30 September 2009 with the support of the European Union. One of the actions defined in the Plan is "ensuring the efficient implementation of the recommendations defined in the evaluation reports of MONEYVAL on state and entities level and in Brčko District". The deadline for this action appears to be "Long term" and "31.12.2013". However, no specific national action plan or strategy appear to have been prepared and adopted both at State level and that of the Entities and Brčko District to address the specific MONEYVAL recommendations formulated in the 3rd round MER Action Plan.

65. Overall, although this progress report covers actions taken within sixteen months from the adoption of the report, it appears that BiH has made slow and very little progress to deal with the majority of the deficiencies related to the FATF Core Recommendations. BiH is thus encouraged to continue to speedily implement the third round MER's Action Plan in a meaningful timeframe.

66. In conclusion as a result of the discussions held in the context of the examination of this first progress report, the Plenary took note of the information provided in the report and thus approved the progress report and the Secretariat's analysis of the progress on the core Recommendations. Pursuant to Rule 41 of the Rules of procedure, the progress report will be subject of an update in every two years between evaluation visit (i.e. April 2013), though the Plenary may decide to fix an earlier date at which an update should be presented.

## *2. Information submitted by Bosnia and Herzegovina for the first progress report*

### *2.1. General overview of the current situation and the developments since the last evaluation relevant in the AML/CFT field*

1. Although the general elections in BiH were held in October, the government has not been formed yet at all the levels, which is a very limiting factor, primarily for the adoption of certain laws and secondary legislation. This refers to the adoption of the new AML/ CFT Law and the Book of Rules on the implementation of restrictive measures set out by the UN Security Council Resolutions and other documents we have mentioned in the Report.

2. In December 2010, BiH Progress Report was submitted, which was not adopted, and in accordance with MONEYVAL procedures the authorities of BiH were given a new deadline, April 2011, for an immediate removal of certain deficiencies and resubmission of the Progress Report. Along with all subjective and objective weaknesses, B&H has undertaken necessary activities and measures in a very short time period in order to enhance the system for the prevention of money laundering and financing of terrorist activities.

3. As the most significant activities, we would like to point out the following:

   - The working group of the institutions of BiH has created amendments to the new Draft AML/ CFT Law in order to improve the future legislative solutions in accordance with the Action Plan and FATF Recommendations.

   - At the state level, amendments to the CC BiH were made for the part covering terrorism, and entity laws and the laws of Brcko District were harmonised with the existing one, removing the deficiencies identified in the Third Round of Evaluation.

   - The B&H Ministry of Security has made the Proposal of the Book of Rules on the implementation of restrictive measures determined by the UN Security Council Resolutions regulating, among other things, the guidelines for the removal from UN Lists.

   - The FID has created the Guidelines for risk assessment and implementation of the AML/CFT Law for obligors and distributed it to all the obligors in relation to the Article 4 of the AML/CFT Law. Upon working agreements with the obligors, there was a significant increase in the reported suspicious transactions from the non-banking sector. There were 17 STR in 2010, which is a significant improvement and an indication of the system's functionality.

   - At the state level, the Draft Law on Confiscation of Proceeds of Crime was made and this Law is in force in RS and it is being acted upon.

   - At the state level, the Anti-Corruption Agency has been formed and its staffing and technical equipping is expected in due time.

   - Amendments to the Law on Foreign Currency Operations in FBiH and RS have been made, which is also a significant progress in comparison to the previous time period. The Guidelines for the Insurance and Securities Sector in both entities were made at the state level.

Likewise, significant changes were made in Brcko District in terms of issuing new laws on the Games of Chance and the Law on Securities, as well as amendments to the Criminal Code.

4. Significant attention is paid to the education of prosecutors and judges at all B&H levels, as well as other obligors. Therefore, trainings on topics in the area of money laundering and financing of terrorist activities in 2009 and 2010 were provided for 300 judges and prosecutors at all the levels.

5. In 2010, a final judgment was passed at the State Court for money laundering, not having tax evasion as its predicate offence, which is an encouraging piece of information proving the efficacy of the system. This contributes to the continuation in passing final judgments for money laundering and terrorism financing. Therefore, for 2005-2010 time periods the total number of final judgments was 27 against 63 individuals, and confiscated property amounting to ca. 2 million Euro.

6. The Council of Minister working group has continued its regular activities in creating efficient mechanisms for the prevention of money laundering and terrorism financing. As the result of these activities, the new version of the amendments to the Draft Law on the Prevention of Money Laundering and Terrorism Financing is being prepared. It would create preconditions for the formal legal harmonisation with the FATF Recommendations and complete implementation of the Action Plan.

## *2.2. Core Recommendations*

Please indicate improvements which have been made in respect of the FATF core Recommendations (Recommendations 1, 5, 10, 13; Special Recommendations II and IV) and the Recommended Action Plan (Appendix 1).

| **Recommendation 1 (Money Laundering offence)** | |
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| **Rating: Partially compliant (R.1)** | |
| Recommendation of the MONEYVAL Report | *The Bosnian authorities should address the lack of clear demarcation between the scope of the money laundering offences in the different Criminal Codes. It is recommended that consideration should be given as to whether it would be more effective to restrict all money laundering cases to the State Court, and abolish the Entity and Brčko District jurisdictions.* |
| Measures taken to implement the Recommendation of the Report | Paragraph 1 of Article 209 CC B&H, Article 273 CC FB&H, Article 280 CC R&S, Article 265 CC Brčko District on money laundering from non-state level criminal codes does not foresee the amount for money or property gain subject to laundering, which means that the same paragraph includes all money laundering up to 50.000 KM. In accordance with the interpretation of the Supreme Court of RS, **high value** ("velika vrijednost") is 50.000 KM (legal opinion adopted at the general session of the Supreme Court on June 30, 2004) which has been treated in other paragraphs of mentioned articles.<br>Paragraph 1 of the Article 209 from the Criminal Code of BiH, however, specifies **larger value** ("veća vrijednost") of money or property gain (the value over 10.000,00 KM, according to the interpretation of the Court of BiH). Also, unlike entity level criminal codes, it talks about the money or property gain generated from a criminal offence endangering the common economic space of Bosnia and Herzegovina or has damaging consequences for performing activities or financing institutions of BiH. |

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| | Based on the above mentioned, we have concluded that the criminal offence of money laundering falls within the competencies of the Court of BiH, whereat the amount of the money of assets exceeds 10.000 KM, and, as a consequence, is resulting in endangering the common economic space of Bosnia and Herzegovina or has damaging consequences for performing activities or financing institutions of BiH. |
| Recommendation of the MONEYVAL Report | If money laundering is not criminalised exclusively at state level, the conditions in CC-BiH Article 209(1) should be reviewed, especially those not related to value thresholds as, in the view of the evaluators, the existing conditions are overly ambiguous and thus very unlikely to be adequately proven in a criminal procedure. These should, therefore, either be replaced by more precise criteria (like the involvement of organised criminality in the predicates, the fact that the offence was committed on the territory of more than one non-state level jurisdiction etc.) or substituted merely by the application of value limitations. |
| Measures taken to implement the Recommendation of the Report | Paragraph 1 of Article 209 CC B&H, Article 273 CC FB&H, Article 280 CC R&S, Article 265 CC Brčko District on money laundering from non-state level criminal codes does not foresee the amount for money or property gain subject to laundering, which means that the same paragraph includes all money laundering up to 50.000 KM. In accordance with the interpretation of the Supreme Court of RS, **high value** ("velika vrijednost") is 50.000 KM (legal opinion adopted at the general session of the Supreme Court on June 30, 2004) which has been treated in other paragraphs of mentioned articles.<br>Paragraph 1 of the Article 209 from the Criminal Code of BiH, however, specifies **larger value** ("veća vrijednost") of money or property gain (the value over 10.000,00 KM, according to the interpretation of the Court of BiH). Also, unlike entity level criminal codes, it talks about the money or property gain generated from a criminal offence endangering the common economic space of Bosnia and Herzegovina or has damaging consequences for performing activities or financing institutions of BiH.<br>Based on the above mentioned, we have concluded that the criminal offence of money laundering falls within the competencies of the Court of BiH, whereat the amount of the money of assets exceeds 10.000 KM, and, as a consequence, is resulting in endangering the common economic space of Bosnia and Herzegovina or has damaging consequences for performing activities or financing institutions of BiH. |
| Recommendation of the MONEYVAL Report | *As a minimum requirement, definitions of value thresholds should be publicly known and should be provided for by the legislation (such as the Criminal Code). At the State level, steps need to be taken to fill the gap between positive criminal law and actual judicial practice by finding an adequate legislative solution instead of the current contra legem interpretation of the law.* |
| Measures taken to implement the Recommendation of the Report | Establishing the "larger value" in the legal text is unacceptable, since unstable social-political and economic circumstances in the country require more often change in opinion on the amount considered to be the higher amount. |
| Recommendation of the MONEYVAL Report | *Definition of money laundering offences should be brought fully into line with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned.* |
| Measures taken to implement the | 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 |

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| Recommendation of the Report | 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.<br>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).<br>Relevant provision of the Law on Property Rights of RS reads:<br>"The contents of the proprietary<br>Article 17, paragraph 1: The property is the actual right which authorizes an owner to freely and in its own will keeps, uses and dispose of the property, and everyone to be deprived of that right within the limitations as prescribed by the Law".<br>In reference to Article 6, paragraph 1 of the Palermo Convention, the issue on participating and associating with conspiracy to commit or attempting to commit has been regulated by Articles 247-250, Chapter XXII of the Criminal Code of BiH, under the title "Conspiracy, Preparation, Associating and Organized Crime: (as well as by Chapters XXIX of the Criminal Code of FBiH, and Brcko District, and Chapter XXX of the Criminal Code of RS).<br>The criminal offence of Accessory (which also includes giving advice or instructions, removing obstacles, concealing offences or perpetrators, tools used for perpetrating criminal offences) has been regulated by Article 31 of the Criminal Code of BiH, and Articles 25 of the Criminal Code of RS, Article 25 of the Criminal Code of FBiH and Article 33 of the Criminal Code of Brcko District.<br>We would like to note that, with regards to the Article 6, paragraph 2 of the Palermo Convention, all above mentioned articles from criminal codes in BiH pertain to all criminal offences as prescribed by these laws, i.e. there are no limitations when it comes to predicate criminal offences.<br>Also, please note that the Prosecutor's Office of BiH works as well on the money laundering cases with smuggling of persons, human trafficking, drug trafficking and others, as predicate offences. To this effect, we processed cases before the Court of BiH, such as the one upon the Indictment of the Prosecutor's Office of BiH No. KT-341/06 against Salih Alibašić *et al.* for the criminal offence of organised crime as read with criminal offence of smuggling of persons and money laundering. This money laundering case with smuggling of persons as the predicate offence was completed before the Court of BiH, and a final and binding verdict was handed down sentencing Đulzara Hozanović with forfeiture of unlawfully obtained property gain in the amount of KM 172,000.00 and forfeiture of a real estate – a house in Tuzla. Furthermore, the proceedings against Hamdo Dacić in the case No. KT-438/07 are pending before the Court of BiH, wherein Haris Zornić, Acik Can and legal entity *Majorka* d.o.o., Sarajevo, are charged with the criminal offence of money laundering with illicit trafficking in narcotic drugs as the predicate offence.<br>Definition of the criminal offence of money laundering from the state level Law on Prevention of Money Laundering and Financing of Terrorist Activities has been harmonized with the mentioned conventions and the Third Directive (2005/60/EC). |
| Recommendation of the Report | *The authorities of Brčko District should criminalise market manipulation in their respective legislation (either in the Law on Securities or elsewhere) to ensure that the range of offences which are predicates to money laundering include all required* |

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| | *categories of offences in all the relevant forms.* |
| Measures taken to implement the Recommendation of the Report | On 14.12.2010 into the parliamentary procedure is passed a new Law on Securities Market and it is expected that in the first half of 2011 this law will be adopted. By this Law is provided the criminal offense of "market manipulation" and envisaged a fine or a prison sentence of 90 days to five years.<br><br>Article 278<br>(Market manipulation)<br>Whoever with the intention of acquiring financial gain for himself or another or material damage to other influences or attempts to influence on the decisions of other persons in terms of purchasing or selling securities in a manner contrary to Article 253 of this Law or perform securities transactions in a manner contrary to article 254 and 255 of this Law, or buys or sells securities at the end of trading day with the aim of deceiving investors who act on the last trading price, shall be fined or sentenced to imprisonment from 90 days to five years. |
| Recommendation of the MONEYVAL Report | *Investigators and prosecutors need to have a clear understanding of the importance of money laundering beyond the tax evasion and fiscal predicates if money laundering criminalisation is to be meaningful. Effective implementation of money laundering incrimination should urgently be achieved beyond the tax predicate.* |
| Measures taken to implement the Recommendation of the Report | A letter was forwarded to the High Judicial and Prosecutorial Council, as well as Centers for Education of Judges and Prosecutors in FBiH and RS to, in educational programs within the Project "Support to BiH Judiciary – Strengthening Prosecutorial Capacities Within the System of Criminal Justice", include issues of relevance to criminal offence of money laundering.<br>National Assembly of the Republic Srpska adopted the Criminal assets recovery act, which was published in the "Official Gazette of RS" no. 12/10 of 19 February 2010 and shall enter into force on 1 July 2010. This law shall regulate the conditions, procedures and bodies responsible for detection, removal and management of property acquired through crime. The provisions of this Law shall apply for a specific criminal offenses under the Criminal Code of the RS, as follows: against sexual integrity; against public health: unauthorized production and trafficking of narcotic drugs; against the economy and the payment system (including c.o. money laundering referred to in Article 280 and c.o. tax and contribution evasion referred to in Article 287); against official duty; against organized crime; against humanity and values protected by international law. Therefore, in this way the legal requirements for processing other predicate offenses except tax crime are provided as well as the compliance and coverage of monitoring of money laundering activities and the ability to profit from organized crime and other forms of crime. |
| Recommendation of the MONEYVAL Report | *Financial investigation into proceeds needs to become an integral part of investigation of various proceeds generating offences. For this to be achieved, more resources and training are needed especially by the prosecution service.* |
| Measures taken to implement the Recommendation of the Report | A letter was forwarded to the High Judicial and Prosecutorial Council, as well as Centers for Education of Judges and Prosecutors in FBiH and RS to, in educational programs within the Project "Support to BiH Judiciary – Strengthening Prosecutorial Capacities Within the System of Criminal Justice", include issues of relevance to criminal offence of money laundering.<br>During the period 2003-2009, the Center organized 6 seminars with topics |

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| | on **„Money laundering, special investigations and management of seized assets acquired in a criminal proceeding"**.<br>The total number of participants, judges and prosecutors included by training who have attended seminars in this field is 373.<br>All data on education of judges and prosecutors are available on the website of the Centers for training judges and prosecutors. |
| Recommendation of the MONEYVAL Report | *State-level incrimination as well as those in the Federation and Brčko District should expressly include "own proceeds" laundering or, at least, appropriate guidance should be given to practitioners in this respect in all the three jurisdictions where self-laundering is not explicitly covered by law (especially in the Federation and Brčko District where there is no relevant judicial practice either).* |
| Measures taken to implement the Recommendation of the Report | After the changes and amendments to these laws had been made in 2010, the Article 209, paragraph 2 of the Criminal Code of BiH and Article 280 of the Criminal Code of RS included "laundry of own funds". The Team for Control and Evaluation of implementation of criminal codes suggested the respective ministry in FBiH, and/or the Judicial Committee of Brcko District, to harmonize their criminal codes accordingly. Moreover, Article 111 of Law on amendments and changes of the Criminal Code of B&H (Official Gazette no 8/10) prescribes obligation of entities and Brčko District to harmonize their CCs with the State CC.<br>Article 111 of Law on amendments and changes of the Criminal Code of BiH (Official Gazette no 8/10) reads as follows:<br>"Responsible authorities of FBiH, RS and BD BiH shall harmonise their Criminal Codes with this law in legal deadline of 90 days from the day of entering into force of this Law." |
| Recommendation of the Report | *Authorities of Republic Srpska should review the policy reasons whether and why it was considered expedient and proportionate to threaten self-laundering with higher penalty than money laundering by third parties.* |
| Measures taken to implement the Recommendation of the Report | An answer to the query forwarded to RS is required. |
| Recommendation of the MONEYVAL Report | *The language of money laundering incrimination and penalties should be harmonised across the State level, the Entities, and Brčko District.* |
| Measures taken to implement the Recommendation of the Report | Terminology on money laundering has been harmonized in all criminal codes at all levels in BiH. Penalties at entity levels and the level of Brcko District have been harmonized. However, taking into consideration the severity of the criminal offence of money laundering as specified in the Criminal Code of BiH, the more rigorous penalty has been foreseen. |
| Recommendation of the MONEYVAL Report | *Legislation should be introduced at all levels to allow the prosecuting and convicting of defendants in absentia.* |
| Measures taken to implement the Recommendation of the Report | According to criminal legislation in BiH, a suspect/defendant cannot be tried in the absence. In accordance with previous recommendations of the Moneyval, the Ministry of Justice of BiH proposed changes to criminal legislation at the state level, which would enable trials to be held in the absence of a defendant. Although the Criminal Code prior to the reform in 2003 included this option, the current |

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| | opinion of the Team for Control and Evaluation of Implementation of Criminal Legislation was that such solution could not be justified, since this option would also mean (as it was the case in the past) simultaneous foresee of the possibility for repeating proceedings once a defendant shows up and makes such request; thus representing additional burden to courts and several repeated trials for the same matter.<br><br>The provisions of the Criminal Procedure Code RS that do not provide for trial in absentia should be considered in correlation with the existing provisions of Chapter XVI of this Law, that prescribe measures to guarantee the presence of a suspect or accused and successful conduct of criminal proceedings, as Chapter XXXIII of the same Law on the procedure for issuing Arrest Warrant and Notification (Revised text – "Official Gazette of RS" no. 100/09). The consistent application of legitimate measures could substantially eliminate any eventual obstacle to effective prosecution of money laundering. |
| Recommendation of the MONEYVAL Report | *Domestic authorities should, at all levels of jurisdiction, consider whether the benefits of negligent money laundering in the statute are being maximised.* |
| Measures taken to implement the Recommendation of the Report | For negligent money laundering, Criminal Codes at all levels in BiH prescribe the imprisonment penalty up to three years; taking into account circumstances under which the crime has been perpetrated and consciousness of a perpetrator, this appears to be justified. |
| Recommendation of the MONEYVAL Report | *The backlog in money laundering cases pending before the Court of Bosnia and Herzegovina is a problem that must be addressed by state-level authorities. It is recommended that appropriate training of the judiciary and prosecutors be provided.* |
| Measures taken to implement the Recommendation of the Report | A letter was forwarded to the High Judicial and Prosecutorial Council, and Centers for Education of Judges and Prosecutors in FBiH and RS. |
| (Other) changes since the last evaluation | |

| **Recommendation 5 (Customer due diligence)<br>I. Regarding financial institutions** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *Article 28 of the Law on Foreign Exchange should be reviewed.* |
| Measures taken to implement the Recommendation of the Report | Parliamentary Assembly of the Federation of Bosnia and Herzegovina, at the session of the House of Representatives of 14.07.2010. and the House of People of 29.07.2010., adopted the new Law on Foreign Exchange Operations that was published in "the Official Gazette of the FBiH", number 47/10 of 04.08.2010. This law cancels the provisions on accounts on barriers.<br>Namely, Article 33 of the Law on Foreign Exchange Operations prescribes the following: „Bank is obliged, at the opening of foreign currency accounts, accounts in convertible marks and foreign currency savings books and when executing a payment transaction, to determine an identity of residents and nonresidents and act |

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| | upon Law on Prevention of Money Laundering and Terrorism Financing.“, and the provisions of Article 34 prescribe that: „Ministry of Finance prescribes the requirements for the opening, method of maintaining and closing of residents and nonresidents' accounts.“<br>Acting upon the provisions of Article 34, the Minister of Finance has made the Rules of Procedure for the process of opening and maintaining foreign currency accounts and foreign currency savings deposits of residents in banks and the Rules of Procedures on requirements and method of the opening, maintaining and closing the accounts of nonresidents in banks. In Article 5 of the Rules of Procedure for the process of opening and maintaining foreign currency accounts and foreign currency savings deposits of residents in banks, it is stated that: „Foreign currency savings deposits on barrier or on barrier with secret code are not permitted“, while Article 9 prescribes that a bank: „when opening foreign currency account or foreign currency savings deposit, apart from the actions specified under Articles 6 to 8 of these Rules of Procedure that define the method of the opening of accounts, is obliged to apply the provisions of the Law on Prevention of Money Laundering and Terrorism Financing and the regulations that based on this Law are adopted by the Ministry of Security and Financial Intelligence Unit, as well as the provisions on prevention of money laundering and terrorism financing of the Law on Banks and the regulations on prevention of money laundering and terrorism financing adopted by the Banking Agency of the FBiH.“ Provisions of Article 10 of the Rules of Procedures on requirements and method of the opening, maintaining and closing the accounts of nonresidents in banks prescribe that a bank: “when opening nonresidents accounts, apart from the actions specified under Articles 6 to 9 that define the method of the opening of accounts, is obliged to apply the provisions of the Law on Prevention of Money Laundering and Terrorism Financing and the regulations that based on this Law are adopted by the Ministry of Security and Financial Intelligence Unit, as well as the provisions on prevention of money laundering and terrorism financing of the Law on Banks and the regulations on prevention of money laundering and terrorism financing adopted by the Banking Agency of the FBiH.“<br>**By adopting the Law on Foreign Exchange Operations („Official Gazette of the FBiH“, number 47/10) and the above rules of procedure, Bosnia and Herzegovina has eliminated a possibility for opening accounts on barriers.** Keeping such accounts has been disabled by the provisions of the mentioned rules of procedures that prescribe banks' obligation, within a month from the effective date of the rules of procedures, to close such accounts and open foreign currency accounts or foreign currency savings deposits on the name.<br>Besides, by adopting the Law on Foreign Exchange Operations („Official Gazette of the FBiH“, number 47/10), Bosnia and Herzegovina has eliminated a possibility for opening and maintaining accounts on barrier as stipulated in the provisions of Article 28 of the Law on Foreign Exchange Operations („Official Gazette of the FBiH“, number 35/98) that is, it acted upon the recommendations from the Recommended Action Plan for Advancement of the AML/CFT system.<br>Evidence:<br>1. Law on Foreign Exchange Operations („Official Gazette of the FBiH“, number 47/10),<br>2. Rules of Procedure for the process of opening and maintaining foreign currency accounts and foreign currency savings deposits of residents in banks and<br>3. Rules of Procedures on requirements and method of the opening, |

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| | maintaining and closing the accounts of nonresidents in banks. |
| Recommendation of the MONEYVAL Report | *An obligation to apply the CDD measures when carrying out occasional transactions that are wire transfers should be introduced by legislation or other enforceable means.* |
| Measures taken to implement the Recommendation of the Report | The Authorities of Bosnia and Herzegovina is preparing the supplement amendments to the AML Law which will remove this deficiency and harmonise the AML Law (Article 6(1)) with the FATF requirements. |
| Recommendation of the MONEYVAL Report | *A review should be undertaken of the definition of "transaction" in the new AML Law which may not necessarily include "cash transactions" and hence there is doubt on the application of CDD measures.* |
| Measures taken to implement the Recommendation of the Report | Working Group of the Council of Ministers prepared a draft amendment Law AML/CFT that will include this remark, and eliminate the definition of cash transactions to avoid all doubt in the application of CDD measures. |
| Recommendation of the MONEYVAL Report | *An awareness raising programme together with and related guidance on the applicability of the risk based approach for CDD should be developed.* |
| Measures taken to implement the Recommendation of the Report | A state wide training and awareness programme has been put in place where a number of sessions have already been held for a number of obliged entities. Awareness and training is an ongoing process and the Authorities plan to continue to delivery such sessions to all the sectors of the obliged entities. |
| Recommendation of the MONEYVAL Report | *Although specific provisions have been included in the new AML Law imposing an obligation for the verification of the identity of customers, these provisions do not address the timing of verification and, therefore, the Decisions on Minimum Standards should accordingly be reviewed.* |
| Measures taken to implement the Recommendation of the Report | There are activities underway of the Banking Agency of the Federation of Bosnia and Herzegovina to make revisions in the Decision on Minimum Standards for Prevention of Money Laundering and Terrorism Financing. However, such activities, not even in the working material, have not been finalized. |
| Recommendation of the MONEYVAL Report | *The relevant authorities should ensure there is awareness and understanding by the industry on the newly introduced concept of the beneficial owner, and a revision of possibly Article 15 of the new AML Law should be considered.* |
| Measures taken to implement the Recommendation of the Report | A state wide training and awareness programme has been put in place where a number of sessions have already been held for a number of obliged entities. Awareness and training is an ongoing process and the Authorities plan to continue to delivery such sessions to all the sectors of the obliged entities |
| Recommendation of the MONEYVAL Report | *An obligation for all obliged entities and persons to identify the 'mind and management' of a legal person beyond the requirements for banks should be introduced under the relevant Decisions on Minimum Standards of the respective Banking Agencies.* |
| Measures taken to implement the Recommendation | Decision<br>On minimum standards for banks' activities<br>On prevention of money laundering and |

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| of the Report | Terrorism financing<br>"Know Your Customer" and Development of the Customer Profile<br>Article 11<br>In every day operations and relations with customers, bank must find out and get to know their customers' activities, to thoroughly understand their operations, to know their financial and payment habits, important information and documentation on customers' business relations and cash flows, types of business relations that customers maintain and to know their business contacts, their local and international market practices, common sources of debits and credits within their accounts, use of various currency, frequency and size, that is scope of transactions, etc. Banks are especially required to:<br>1. in the case of business companies to get to know the ownership structure of the company, authorised decision makers and all other persons who are legitimately authorised to act in their behalf;<br>2. request from its customers to submit information in advance and in timely fashion and to document any expected and intended changes in form of and in way of performing its business activities;<br>3. pay special attention to well known customers and publicly known persons and to ensure that their possible illegal or suspicious operations do not jeopardize bank reputation.<br>Based on the elements from the previous paragraph, banks are required to develop a profile of their customers. This profile will be included in the special registry of all customer profiles, as organized by banks themselves. The customer profile developed by banks, will be used by banks as a general additional indicator in the process of monitoring operations with customers in order to determine:<br>1. orderly, continuous and easy way of conducting operations and relations between the bank and the customer to enable easy and quick review of customer at any given time;<br>2. every unusual behavior and differences in customer's behavior already determined in the profile or in account turnover to enable easy and quick identification and initiation of appropriate procedures. |
| Recommendation of the MONEYVAL Report | *An obligation for the termination of business where a business relationship is established but the identification process cannot be completed should be considered.* |
| Measures taken to implement the Recommendation of the Report | *Law On Amendments To The Law On Prevention Of Money Laundering And Financing Of Terrorist Activities*<br>After Article 7, new Article 7a. is added and shall read:<br><br>Article 7a<br>(Rejecting business relationship and to perform transaction)<br>1) A person under obligation who cannot carry out the measures referred to in Article 7, paragraph (1), Items 1, 2 and 3 of this Law must not establish a business relationship or perform transaction, i.e. must terminate the already established business relationship.<br>2) In case referred to in paragraph (1) of this Article, a person under obligation shall inform the FIA about rejecting or terminating business relationship and rejecting to perform transaction and send all collected information and transaction pursuant to Articles 30 and 31 of this Law.<br><br>Bylaws on Estimating Risk, Data, Indormation, Documents, Methods of |

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| | Identification and Other Minimum Indicators Necessary for Efficient Implementation of the Provisions of the Law on on Prevention of Money Laundering and Terrorism Financing were passed and published in the „Official Gazette of Bosnia and Herzegovina“ No. 93. on December 1, 2009. On the basis of the Bylaws,on April 8, 2010, the Securities Commission of the Federation of Bosnia and Herzegovina passed the Guidelines for the Implementation of the Law on Prevention of Money Laundering and Terrorism Financing for Persons under Obligation within the Authority of the Securities Commission of the Federation of Bosnia and Herzegovina. The Guidelines have been distributed to the FOO, all brokerage companies, investment funds, the Sarajevo Stock Exchange, and the Registry of Securities in the Federation of Bosnia and Herzegovina, to be implemented.<br>Paragraph VI 1. of the Guidelines determines a restriction of establishing a business relationship, and the obligation to stop the pre-existing business relationship or activity in the event that it is not possible to detetmine the identity of the client, or in case of a suspicious identity. The Paragraph is as follows:<br>“It is forbidden to establish a business relationship or carry out a transaction where the customer's identity cannot be determined, or when the customer foundedly doubts the veracity or credibility of data and documentation, by which the customer confirms their identity, and in a situation where a client is not ready or does not show readiness for cooperation with the customer in determining the true and complete information which the customer claims in the analysis of the client. A customer in such a case must not enter into the business relationship and a pre-existing business relationship or transaction must be stopped and reported to FOO.”<br>Guidelines for the implementation of the Law on prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of the FBiH and RS insurance, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>Chapter II, paragraph 1" ..... In the event that the client identity can not be determined or verified, and when he is unable to take measures to follow a client, the customer does not establish a business relationship or transaction, or shall terminate any existing business relationship with that client.<br>**Ordinance on the activities of preventing of money laundering, Merkur BH osiguranje dd, 29 December 2009**<br>Article 6. First paragraph “Through an intermediary Company will make the identification of new clients and will establish business relations with them until the identification of new customers is done in a satisfactory way.”<br>Article 6, item 2 is amended and shall read: When transactions referred to in paragraph 1, item b. of this Article are conducted on basis of or without previously established business relationship with person under obligation, a person under obligation shall collect data referred to in Article 7, as well as missing data referred to in Article 44, paragraph (1), Items a), b), c), e), f), g), i), and m) of this Law. |
| Recommendation of the MONEYVAL Report | *A legal obligation to apply CDD measures to existing customers beyond what is currently provided for banks under the relevant Decisions on Minimum Standards should be introduced.* |
| Measures taken to implement the Recommendation of the Report | The provisions of the constant monitoring of customers were made in the field of securities and insurance sector.<br>On the basis of the Law on fight against money laundering and financing terrorist activities ("Official Gazette" No. 53/09) and Article 30 of Statute of "Merkur BH |

osiguranje dd“, Director of the Company on 29 December 2009 issues:

**O r d i n a n c e on the activities of Prevention of money laundering**

Article 6

Through an intermediary Company will make the identification of new clients and will establish business relations with them until the identification of new customers is done in a satisfactory way.

Identification of clients and persons acting on their behalf or benefit shall be made on the basis of documents that are most difficult to obtain in an unlawful manner or falsified, as well as other documents in accordance with applicable regulations.

Identification is carried out at the start of establishing the business relations. To ensure that the presented documents are still valid and relevant, Mediator and Company will conduct periodic reviews of existing documents. In cases where the mediator determines that there is not enough information about an existing customer it is obliged to take urgent steps to obtain such information in the quickest manner possible.

**Vii - Business Activity Monitoring**

1) Purpose of monitoring the business activities of the client

Regular monitoring of business activities of the client is crucial for determining the effectiveness of implementing the measures within the detection and prevention of money laundering and terrorist financing activities. The purpose of monitoring the client's business activities is reflected in determining the legality of the client's business and the verification of compliance of the client's business with provided nature and purpose of a business relationship, which the client has concluded with the customer, or with its usual volume of business.

Monitoring of the business activities of the client is done through:

- Monitoring and verifying of compliance of the client's business with provided nature and purpose of a business relationship,
- Monitoring and verifying of compliance of client's resources with provided source of funds that the client specified when establishing a business relationship with the customer,
- Monitoring and verifying of compliance of business customers with its usual scope of business,
- Monitoring and updating of the collected documents and customer data.

2) Measures of surveillance of client's business activity

To monitor and verify compliance of client's operations with the provided nature and purpose of a business relationship, which the client has concluded with the customer, the following measures are used:

- Analysis of data on the purchase or sale of securities and other financial instruments or other transactions for a certain period in order to determine whether, in conjunction with the purchase or sale of securities/financial instruments or other transactions, there are present some possible circumstances to believe on money laundering or financing terrorism. Decision on suspicion is based on suspicion criteria, specified in the list of indicators for identifying clients and transactions in which there are reasons to suspect money laundering or the list of indicators to identify customers and transactions for which there are grounds for suspicion of financing,
- Updating the previous risk assessment of the client or preparing of a new risk assessment of a client.

To monitor and verify the conformity of business customers with its usual scope of

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| | business, the following measures are taken into account:<br>- Monitoring the value of the purchase or sale of securities/financial instruments or other transactions over a certain amount - the customer will have to decide which is the amount above which will follow the customer's business and for each client particularly with regard to risk category in which it is located (for implementation of this measure a customer may establish appropriate information system support),<br>- Analysis of certain purchase or sale of securities/financial instruments or other transactions in respect of suspicion to money laundering or terrorist financing, when the total sales or purchases exceeds a certain value. Analysis of suspicion of purchase or sale of securities/financial instruments or other transactions is based on suspicion criteria, specified in the list of indicators to identify customers and transactions for which there are grounds for suspecting money laundering, and the list of indicators to identify customers and transactions for which there is reasonable doubt on the financing of terrorist activities.<br>To monitor and update the collected documents and data about the client, the customer is taking the following actions:<br>- Re-annual analysis of the client, according to this and one form of measure of knowledge and monitoring of the client are taken according to the Law,<br>- Re-analysis of the client when there is doubt about the authenticity of previously obtained data on the client or beneficial owner of the client (if the client is a legal person),<br>- Check the details about the client or her legal representative in the public register,<br>- Verification of the data obtained directly by the client or its legal representative or agent,<br>- Check out the list of persons, states and other entities, for which there are effective measures of the UN or the EU.<br>3) The volume of monitoring the business activity of the client<br>Volume and intensity of monitoring the business activity of client depends on risk assessments of a particular client or its classification to a specific category of risk. Adequate volume of follow-up of business activities of a particular client includes prescribed measures of surveillance of business activity of client, continuously within the services and transactions that the customer makes for the client.<br>Implementation of the surveillance activities of the business of client is not required if the client was not executing the business activities (purchase and sale of securities/financial instruments or other transactions) at the conclusion of a business relationship. Measures of surveillance of business activities of clients, categorized according to the Guidelines, in that case the customer will carry out within the first next purchase or sale of securities/financial instrument, or other transaction.<br>In its internal documents, the customer may, in accordance with its risk management policies in money laundering and terrorist financing activities opt for more frequent monitoring of certain types of business activity of the client and bring an additional range of measures with which to monitor the business activities of the client and determine the legality of its operations. |
| (Other) changes since the last evaluation | |

| Recommendation 5 (Customer due diligence)<br>II. Regarding DNFBP[5] | |
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| Recommendation of the MONEYVAL Report | *The casino seems to be the only DNFBP that has identification procedures in place in accordance with the AML Law. The legal, notary and accountancy professions are more guided by their governing laws as opposed to the AML Law. The Privatisation Agencies of both Entities, on the other hand, appear to have some conflict as to the identification requirements under the AML Law and the financial 'fit and proper' assessment of an investor in State entities. It is recommended that the relevant authorities embark on a state wide programme of AML/CFT awareness within the whole DNFBPs sector, the more so because of the coming into force of the new legislation which now imposes specific requirements on the whole DNFBPs sector in general and to particular elements more specifically.* |
| Measures taken to implement the Recommendation of the Report | A state wide training and awareness programme has been put in place where a number of sessions have already been held for a number of obliged entities. Awareness and training is an ongoing process and the Authorities plan to continue to delivery such sessions to all the sectors of the obliged entities. |
| (Other) changes since the last evaluation | |

| Recommendation 10 (Record keeping)<br>I. Regarding Financial Institutions | |
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| **Rating: Largely compliant** | |
| Recommendation of the MONEYVAL Report | *Although both the old and the new AML Laws require the retention of all documentation and information obtained on the basis of this Law, yet both laws fall short of meeting all the essential elements of Recommendation 10. In particular there is no distinction between identification and transaction information; and there are no clear provisions for the initiation of the 10 year retention period. The availability of identification information and transactions data to the authorities is indirectly addressed with the only reference on obliged entities being that of delivering the data "without delay or within 8 days" to the FID upon its request. The provision of such data to the supervisory authorities would however be covered by the general relevant provisions for the supervisory authorities under the respective legislation (for example the Laws on Banks). It is therefore recommended that the provisions on record keeping under Article 65(1) of the new law be reviewed and extensively updated and broadened to meet the requirements under Recommendation 10. In this respect the revision should definitely differentiate between identification data and transaction data, including one off or occasional transactions. In this context the review should ensure the establishment of the commencement of the retention period under each circumstance.* |
| Measures taken to implement the Recommendation of the Report | Working Group of the Council of Ministers prepared a draft amendment Law AML/CFT that will include this remark:<br>Article 65 , paragraph (1), shall be amended and shall read:<br>(Deadline for Keeping Data by the Person under Obligation)<br>(1)The obligor shall keep the data and documentation that are obtained under this Law concerning a customer, established business relationships with a customer and executed transactions for a period of 10 years from the date of termination of |

[5] i.e. part of Recommendation 12.

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| | the business relationship, executed transaction, or entry in the casino or playroom, and access safe.". |
| (Other) changes since the last evaluation | |

| **Recommendation 10 (Record keeping)<br>II. Regarding DNFBP[6]** | |
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| Recommendation of the MONEYVAL Report | *Record keeping procedures in the AML LAW need to be revisited and clarified in accordance with the requirements under Recommendation 10.* |
| Measures taken to implement the Recommendation of the Report | Working Group of the Council of Ministers prepared a draft amendment Law AML/CFT that will include this remark:<br>Article 65 , paragraph (1), shall be amended and shall read:<br>(Deadline for Keeping Data by the Person under Obligation)<br>(1)The obligor shall keep the data and documentation that are obtained under this Law concerning a customer, established business relationships with a customer and executed transactions for a period of 10 years from the date of termination of the business relationship, executed transaction, or entry in the casino or playroom, and access safe.". |
| (Other) changes since the last evaluation | |

| **Recommendation 13 (Suspicious transaction reporting)<br>I. Regarding Financial Institutions** | |
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| **Rating: Largely compliant** | |
| Recommendation of the MONEYVAL Report | *The evaluators were, concerned about the low level of transactions reported, particularly as all STRs received were from banks with none received from the insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations. The evaluators recommend that a programme is undertaken with financial institutions to raise awareness of the STR regime. This programme should emphasise the difference between large transaction reports and suspicious transaction reports.* |
| Measures taken to implement the Recommendation of the Report | a) We would like to note that in 2010 the Financial Intelligence Department carried out a range of activities towards obligors, in a sense of Article 4 of the Law on the Prevention of Money Laundering and Terrorism Financing with a special emphasis on the so called "non-banking sector" and their obligation to report suspicious transactions. These organised efforts and programmes contributed to the fact that the FID received 17 suspicious transaction reports by the non-banking sector, as follows:<br><br>1. leasing agencies "STR" (suspicious transactions) 6<br>2. Post Offices "STR" 2<br>3. Western union "STR" 2<br>4. Notary "STR" 1 |

[6] i.e. part of Recommendation 12.

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| | 5. MKO "STR" 6<br>Based on the above mentioned, it could be concluded that the non-banking sector has recognised and adopted its obligations in the sense of the Law on the Prevention of Money Laundering and Terrorism Financing and STR submitting.<br>The Insurance Sector in B&H financial flows covers 4% of all the flows, therefore it is not realistic to expect a larger number of STRs, although in the upcoming period of time progress is expected in this area as well, because in accordance with this category a programme has been composed and implemented with the aim of being more familiar with the STR regime. All the obligors understand the difference between large transactions and Suspicious Transaction Reports, which is confirmed by the above mentioned data. |
| (Other) changes since the last evaluation | |
| Recommendation of the MONEYVAL Report | *It was also noted that in Republic Srpska STRs were submitted to the Banking Agency rather than to SIPA. It is strongly recommended that all STRs be reported direct to SIPA and not via an intermediate agency.* |
| Measures taken to implement the Recommendation of the Report | Obligors from the Republic of Srpska regularly report suspicious transactions only and directly to the FID and not through any kind of intermediaries. By introduction of an electronic way of reporting it will be also technically impossible to have an "intermediary". Only statistical data on suspicious transactions are being submitted to the Banking Agency of RS.<br>Notwithstanding, in order to remove any doubts and ambiguities resulting from different interpretation of the relevant provisions of Article 101 of the Law on Banks, the proposed amendments will be reviewing and redrafting this article to better reflect the provision of statistics only. |
| Recommendation of the MONEYVAL Report | *There appear to be conflicting reporting requirements between the requirements of the New AML Law and the Law on Banks in Republic Srpska and FBiH. The evaluators therefore recommend that the Law on Banks in Republic Srpska and FBiH should be amended to remove any conflicting reporting requirements.* |
| Measures taken to implement the Recommendation of the Report | Acting upon the above recommendation, the Banking Agency of the FBiH sent to the Ministry of Finance of the FBiH the Proposed changes of the provisions of the Law on Banks in question. The Ministry of Finance forwarded those changes to the Parliamentary Assembly with proposal that such changes should be adopted in shortest procedure possible. However, the Parliamentary Assembly returned adoption of such changes from short to regular procedure and the House of Representatives of the Parliamentary Assembly adopted those changes in the first reading (in draft version).<br>The Law on Changes and Amendments to the Law on Banking Agency of the Federation of BiH<br>Article 2<br>In the Article 4, Paragraph 1, I<br>Item g) is changed and says:<br>" g) Controls and evaluates the harmonization of banks, microcredit organizations and leasing companies with standards of prevention of money laundering and financing of terrorist activities."<br>Item h) is changed and says:<br>" h) Controls and evaluates the implementation of measures of banks, microcredit organizations and leasing companies with the goal of prevention of financing of |

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| | activities which obstruct and/or threat to obstruct the process of peace implementation that is performed under the sponsorship of General Framework Peace Agreement in BiH, in accordance with the special law."<br>In the Paragraph 1, items i), j), k) and l) will be deleted.<br>Paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 will be deleted.<br>The Law on Changes and Amendments to the Law on Banks<br>Article 2<br>Article 47 is changed and says:<br>"Bank must not acquire, make conversions or transfers, or mediate when acquiring, converting or transferring of money or other property for which it is known or it can be reasonable assumed that it is acquired by committing of criminal offence."<br>Bank must not get involved in the transaction for which it is known or it can be reasonable assumed that it is intended for money laundering, in accordance with the Law on Prevention of Money Laundering and Financing of Terrorist Activities.<br>Bank must not make conversions or transfers, or mediate when acquiring, converting or transferring of money or other property for which it is known or it can be reasonable assumed that it might be used for financing of terrorist activities, in accordance with the Law on Prevention of Money Laundering and Financing of Terrorist Activities and Law on Application of Certain Temporal Measures for efficient implementation of the mandate of the International Criminal Court for Former Yugoslavia and other international restrictive measures.<br>Bank must not make conversions or transfers, or mediate when acquiring, converting or transferring of money or other property for which it is known or it can be reasonable assumed that these might be used by individuals or legal entities or bodies that obstruct or threat with obstructions, or represent significant risk of active obstruction of peace implementation process, in accordance with the Law on Application of Certain Temporal Measures for efficient implementation of the mandate of the International Criminal Court for Former Yugoslavia and other international restrictive measures.<br>Bank is obliged to establish the internal control, policies and procedures with the goal of revealing and preventing of transactions that include criminal activities, money laundering, activities that support terrorism and activities that support the obstruction of the peace process.<br>Bank is obliged to undertake measures in order to determine, in satisfactory way, the real identity of any person who wants to enter the business deals with that bank, who makes transaction or series of transactions in that bank or establishes any kind of other business relationship.<br>Bank is obliged to deliver the monthly statistic report to the Agency, for transactions from the paragraphs 2, 3 and 4 of this Article, about which the bank informed the competent authority for taking and analyzing of the report, in the form proscribed by the Agency. |
| (Other) changes since the last evaluation | |

| **Recommendation 13 (Suspicious transaction reporting)<br>II. Regarding DNFBP[7]** | |
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| Recommendation | *There appears to be a need to review Article 15 of the old LPML – now Article 32* |

[7] i.e. part of Recommendation 16.

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| of the MONEYVAL Report | *under the new AML Law - to clarify in particular paragraph (3) and its application regarding the appointment of the 'authorised person' and the application of internal controls as required under the law for obliged small entities and natural persons – considering further that these provisions have been retained in the new law with specific provisions in this regard to the legal and accountancy professions. It is recommended that the Law be clarified and that the FID carries out a monitoring exercise on its application and, where necessary, imposes the relevant sanctions as provided by the Law.* |
| Measures taken to implement the Recommendation of the Report | In Article 32, paragraph (2) shall be amended and read:<br><br>"(2) Those persons under obligation who have less than four employees, authorized person shall be a legal representative or other person who conducts business of the person under obligation or a responsible person of the person under obligation according to legal regulation." |
| Recommendation of the MONEYVAL Report | *It is highly recommended that DNFBPs are made more aware of their important role in the AML/CFT regime through guidelines and training thus ensuring that, in understanding their role better, DNFBPs acknowledge and implement their AML obligation further.* |
| Measures taken to implement the Recommendation of the Report | The FID developed the Guidelines for the non-banking sector addressing its obligations related to prevention of money laundering and terrorism financing. This Instruction will contribute to awareness rising of the non-banking sector. |
| (Other) changes since the last evaluation | |

| **Special Recommendation II (Criminalize terrorist financing)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *Criminal laws should be amended to incorporate the funding of terrorist organisations and individual terrorists, both at State level and that of the Entities and Brčko District* |
| Measures taken to implement the Recommendation of the Report | Changes and amendments to the Criminal Code of Bosnia and Herzegovina, published in the B&H Official Gazette 8/10, made changes to the criminal section of „Money Laundering, set out in the Article 209 in terms of compliance of this provision with the UN Convention against Transnational Crime. These changes relate to more severe penalties and introduction of a new paragraph on self laundering. Likewise, Paragraph (3) of this Article the amount of cash or material gain originating from a criminal offence has been increased to the amount of 200,000 BAM, with more severe penalties.<br>There were no changes to the Money Laundering section of the Criminal Codes of Brcko District and the Entities.<br>Changes and Amendments to the Criminal Code of Bosnia and Herzegovina, published in the B&H Official Gazette 8/10 made radical changes in terms of criminal offences related to terrorism.<br>The Article 201 („Terrorism"), Paragraph (1) and (2) contain more severe penalties. Likewise, a new paragraph has been added stating the following:<br>*"(4) Whoever provides or collects funds, or removes obstacles or carries out any other activity in order to create conditions for the perpetration of the criminal offence set out in the Paragraph (1) of this Article, shall be punished by* |

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| | *imprisonment for a term between one and ten years."*<br>Changes and amendments to the Article 202 (Funding of Terrorist Activities), Paragraph (1), Item a) have been made with the aim of introducing newly incriminated criminal offences related to terrorism, i.e. terrorist activities.<br>Changes and amendments to the Paragraph (2) of this Article are stipulated in accordance with the Article 7 of the Framework Decision of the Council of the European Union on combating Terrorism (dated June 13th, 2020). Changes and amendments to the Paragraph 3 of this Article have been determined in accordance with the Third Recommendation of FATF, referring to terrorism financing.<br>Introduction of the new Article 202a into the CC B&H (*Encouraging Terrorist Activities in Public )* has been carried out in accordance with the Article 5 of the Council of Europe Convention on Prevention of Terrorism (Warsaw, 2005);<br>Introduction of the new Article 202b into the CC B&H (*Recruitment for Terrorist Activities)* and Article 202c (*Training to Perform Terrorist Activities)* has been carried out in accordance with the Article 6 of the Council of Europe Convention on Prevention of Terrorism;<br>Introduction of the new Article 202d (*Organising a Terrorist Group)* has been carried out in accordance with the Framework Decision of the Council of the European Union on combating Terrorism.<br>There were no changes to the criminal offences related to terrorism in the Criminal Codes of Brcko District and the Entities.<br>Changes and amendments to the Criminal Code of Bosnia and Herzegovina, published in the B&H Official Gazette 8/10, made changes in relation with confiscation of property gain acquired through perpetration of a criminal offence by the introduction of the new Article. This enables a more efficient fight against organised crime, in accordance with requirements set by the UN Convention against Transnational Crime and its Protocols, as well as some Council of Europe Conventions on Combating Organised Crime.<br>The introduced Article states the following:<br>"Extended Confiscation of Property Gain Acquired through Perpetration of a Criminal Offence<br>Article 110a<br>*(1) During criminal proceedings, the Court may confiscate the property gain for which there is sufficient evidence to reasonably believe that such property gain was acquired by the perpetration of the criminal offence.*<br>*(2) The suspect, or the accused, the owner or the user, in a separate judicial proceeding, may attempt to prove that the confiscated property gain was acquired by legal means. "*<br>Changes and amendments to the Criminal Code of the Federation of Bosnia and Herzegovina, published in the B&H Official Gazette 42/10, made changes in relation with confiscation of property gain acquired by the perpetration of the criminal offence, by the introduction of the new Article, stating the following:<br>*"Extended Confiscation of Property Gain Acquired through Perpetration of a Criminal* Offence<br>*Article 114*<br>*Where criminal proceedings involve the criminal offences set forth under Chapters XXII, XXIX and XXXI of this Code, the Court may issue a decision under Article 114, Paragraph (2) and confiscate the property gain for which the prosecutor* |

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| | *provided sufficient evidence to reasonably believe that such property gain was acquired by the perpetration of these criminal offences, while the perpetrator failed to prove that the gain was acquired in a lawful manner."*<br>Changes and amendments to the Criminal Code of Brcko District of Bosnia and Herzegovina, published in the B&H Official Gazette 21/10, made changes in relation to the confiscation of the property gain acquired by the perpetration of the criminal offence by the introduction of the new Article fully in compliance with the previously mentioned changes in the CC of the Federation of Bosnia and Herzegovina.<br>The Republic of Srpska adopted a separate Law on confiscation of property acquired by the perpetration of a criminal offence, determining conditions, procedure and competent authorities for detection, confiscation and management of the property acquired by the perpetration of a criminal offence.<br>Furthermore, there are changes and amendments to the Criminal Code of Bosnia and Herzegovina published in the B&H Official Gazette 8/10 in relation to criminal offences of terrorism, with an explanation that the changes and amendments to the Article 201 are presented by a bolded text, and the other articles are completely new.<br>"Terrorism<br>Article 201<br>(1) Whoever perpetrates a terrorist act with the aim of seriously intimidating a population or unduly compelling the Bosnia and Herzegovina authorities, government of another state or international organisation to perform or abstain from performing any act, or with the aim of seriously destabilising or destroying the fundamental political, constitutional, economic or social structures of Bosnia and Herzegovina, of another state or international organisation, shall be punished by imprisonment for a term not less than *five years.*.<br>(2) If the death of one or more people resulted from perpetration of the criminal offence referred to in paragraph 1 of this Article, the perpetrator shall be punished by imprisonment for a term not less than *eight* years<br>(3) If in the course of the perpetration of the criminal offence referred to in paragraph 1 of this Article the perpetrator intentionally deprived another person of his life, he shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.<br>(4) *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.*<br>(5) A terrorist act, in terms of this Article, means one of the following intentional acts which, given its nature or its context, may cause serious damage to a state or international organisation:<br>Attack upon person's life, which may cause death;<br>Attack upon the physical integrity of a person;<br>Unlawful confinement of, keeping confined or in some other manner depriving another of the freedom of movement, or restricting it in some way, with the aim to force him or some other person to do or to omit or to bear something (kidnapping) or taking of hostages;<br>Causing a great damage to facility of Bosnia and Herzegovina, facility of government of another state or public facility, a transport system, an infrastructure facility, including an information system, a fixed platform located on the continental shelf, a public place or private property, likely to endanger human life or result in |

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| | major economic loss;<br>Kidnapping of aircraft, ships or other means of public or goods transport;<br>Manufacture, possession, acquisition, transport, supply, use of or training for the use of weapons, explosives, nuclear, biological or chemical weapons or radioactive material, as well as research into, and development of, biological and chemical weapons or radioactive material;<br>Releasing dangerous substances, or causing fire, explosion or floods the effect of which is to endanger human life;<br>Interfering with or disrupting the supply of water, power or any other fundamental natural resource the effect of which is to endanger human life;<br>Threatening to perpetrate any of the acts referred to in items a) to h) of this paragraph<br>Funding of Terrorist Activities<br>*Article 202*<br>*(1) Whoever by any means, directly or indirectly, provides or collects funds with the aim to use them or knowing that they are to be used, in full or in part, in order to perpetrate: the criminal offence referred to in the following Articles of this Code: 191 (Taking of Hostages), 192 (Endangering Internationally Protected Persons), 194 (Illicit Procurement and Disposal of Nuclear Material), 194a (Endangering Nuclear Facilities), 196 (Piracy), 197 (Hijacking an Aircraft or a Ship or Seizing a Fixed Platform), 198 (Endangering the Safety of Air Traffic and Maritime Navigation or Fixed Platforms), 199 (Destruction and Removal of Signal Devices Utilised for the Safety of Air Traffic), 200 (Misuse of Telecommunication Signals), 201 (Terrorism), 202a (Encouraging Terrorist Activities in Public), 202b (Recruitment for Terrorist Activities), 202c (Training to Perform Terrorist Activities); any other act intended to cause death or serious bodily injury to a civilian, or to any other person not taking active part in the hostilities in an armed conflict, when the purpose of such act, by its nature or context, is to intimidate a population, or to compel the authorities of Bosnia and Herzegovina or any other authorities or an international organisation to perform or to abstain from performing any act, shall be punished by imprisonment of not less than three years.*<br>*(2) The funds collected for the perpetration or obtained as a result of the perpetration of the criminal offence under paragraph (1) of this Article shall be confiscated*<br>*Encouraging Terrorist Activities in Public*<br>*Article 202a*<br>*Whoever publicly, through the media, disseminates or otherwise sends out a message to the public with the aim of encouraging another person to perpetrate the criminal offences referred to in the following Articles of this Code: 191 (Taking of Hostages), 192 (Endangering Internationally Protected Persons), 194 (Illicit Procurement and Disposal of Nuclear Material), 194a (Endangering Nuclear Facilities), 196 (Piracy), 197 (Hijacking an Aircraft or a Ship or Seizing Fixed Platforms), 198 (Endangering the Safety of Air Traffic and Maritime Navigation or Fixed Platforms), 199 (Destruction and Removal of Signal Devices Utilised for the Safety of Air Traffic), 200 (Misuse of Telecommunication Signals), 201 (Terrorism), 202 (Funding of Terrorist Activities), 202b (Recruitment for Terrorist Activities), 202c (Training to Perform Terrorist Activities) and 202d (Organising a Terrorist Group), shall be punished by a prison sentence of not less than three years.*<br>*Recruitment for Terrorist Activities*<br>*Article 202b* |

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| | *Whoever recruits or incites another person to perpetrate or participate, or assist in the perpetration, or join a terrorist group for the purpose of perpetrating any of the criminal offences referred to in the following Articles of this Code: 191 (Taking of Hostages), 192 (Endangering Internationally Protected Persons), 194 (Illicit Procurement and Disposal of Nuclear Material), 194a (Endangering Nuclear Facilities), 196 (Piracy), 197 (Hijacking an Aircraft or a Ship or Seizing a Fixed Platform), 198 (Endangering the Safety of Air Traffic and Maritime Navigation or Fixed Platforms), 199 (Destruction and Removal of Signal Devices Utilised for the Safety of Air Traffic), 200 (Misuse of Telecommunication Signals), 201 (Terrorism), 202 (Funding of Terrorist Activities), 202a (Encouraging Terrorist Activities in Public) and 202c (Training to Perform Terrorist Activities), shall be punished by a prison sentence of not less than three years*<br><br>*Training to Perform Terrorist Activities*<br>*Article 202c*<br>*(1) Whoever trains another person to manufacture or use explosives, fire arms or other weapons or harmful or dangerous materials or explosive devices, or otherwise trains another person in specific methods, techniques or skills with the purpose of perpetrating any of the criminal offences referred to in the following Articles of this Code: 191 (Taking of Hostages), 192 (Endangering Internationally Protected Persons), 194 (Illicit Procurement and Disposal of Nuclear Material), 194a (Endangering Nuclear Facilities), 196 (Piracy), 197 (Hijacking an Aircraft or a Ship or Seizing a Fixed Platform), 198 (Endangering the Safety of Air Traffic and Maritime Navigation or Fixed Platforms), 199 (Destruction and Removal of Signal Devices Utilised for the Safety of Air Traffic), 200 (Misuse of Telecommunication Signals), 201 (Terrorism), 202 (Funding of Terrorist Activities), 202a (Encouraging Terrorist Activities in Public) and 202b (Recruitment for Terrorist Activities), shall be punished by a prison sentence of not less than three years*<br>*(2) Whoever provides means for the training, or otherwise renders available a facility or a space, aware that they will be used for the perpetration of the criminal offence referred to in paragraph (1) of this Article, shall be punished by the sentence foreseen in paragraph (1) of this Article.*<br><br>*Organising a Terrorist Group*<br>*Article 202d*<br>*(1) Whoever organises a terrorist group or otherwise unites a minimum of three individuals for the purpose of perpetration of the criminal offences referred to in the following Articles of this Code: 191 (Taking of Hostages), 192 (Endangering Internationally Protected Persons), 194 (Illicit Procurement and Disposal of Nuclear Material), 194a (Endangering Nuclear Facilities), 196 (Piracy), 197 (Hijacking an Aircraft or a Ship or Seizing a Fixed Platform), 198 (Endangering the Safety of Air Traffic and Maritime Navigation or Fixed Platforms), 199 (Destruction and Removal of Signal Devices Utilised for the Safety of Air Traffic), 200 (Misuse of Telecommunication Signals), 201 (Terrorism), 202 (Funding of Terrorist Activities), 202a (Encouraging Terrorist Activities in Public), 202b (Recruitment for Terrorist Activities) or 202c (Training to Perform Terrorist Activities), shall be punished by a prison sentence of not less than five years*<br>*(2) 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.* |

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| | *(3) A member of the group referred to in paragraph (1) of this Article who discloses the group before participating in a criminal offence as its member or on its behalf, shall be fined or punished by a prison sentence not exceeding three years, and may even be acquitted.* |
| Recommendation of the MONEYVAL Report | *Domestic authorities at all competent level should satisfy themselves that the full definition of "funds" according to Criterion II.1b is properly covered by the current terrorist financing offences.* |
| Measures taken to implement the Recommendation of the Report | Criminal Codes at all levels in BiH, with regards to criminal offences of financing terrorist activities, fully incorporated the definition on financing terrorism as referred to in the Third Directive (2005/60/EC), within the meaning of providing or collecting funds, directly or indirectly, with the aim to be used or knowing that they are to be used, in full or in part, for perpetrating the criminal offence of terrorism.<br>Unlike the criminal codes of BiH, the state level Law on Prevention of Money Laundering and Financing of Terrorist Activities in Article 2c in more details explains what is included under financing terrorist activities, inclusive of the incitement and assistance in providing and collecting of property, regardless the fact whether the terrorist act was committed and whether the property was used for perpetration of the terrorist act. Furthermore, the Article 3 t.e provides the definition of assets: all assets, material and non-material, movable and immovable, documents or instruments of any kind, including electronic or digital, used for proving the ownership or proprietary, as required and in accordance with the International Convention on Prevention of Financing of Terrorism, dated December 9, 1999.<br><br>Book of Rules<br>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<br><br>Article 2<br>(Definitions of terms)<br>Particular terms used in this Book of Rules shall have the following meaning:<br>e) Funds mean financial assets and benefits of every kind, such as:<br>1) Cash, cheques, claims on money, promissory notes, payment orders and other payment instruments,<br>2) Deposits with financial institutions or other entities, balances on accounts, claims and rights arising from claims,<br>3) Securities subject to stock exchange or other type of trade, such as stocks and shares, certificates, bonds and other kinds of securities,<br>4) Interest, dividends and other income generated by assets,<br>5) Credit, right of set-off, performance guarantees and other financial commitments,<br>6) Letters of credit, bill of lading, consignment note, contract,<br>7) Documents evidencing an interest in funds or financial resources,<br>8) Every other instrument to stimulate export financing;<br>a) Economic resources mean assets of every kind, whether tangible or intangible, movable or immovable, which are not funds but can be used to obtain funds, |

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| | goods or services. |
| Recommendation of the MONEYVAL Report | *Consideration should be given to whether the financing of terrorism should remain criminalised at all levels of legislation in Bosnia and Herzegovina or be qualified among those exclusively dealt with at state level.* |
| Measures taken to implement the Recommendation of the Report | Due consideration has been given to this recommendation. The Head of the BiH delegation has written a letter to this effect to the Team for Control and Evaluation of Implementation of Criminal Legislation at the Ministry of Justice. |
| Recommendation of the MONEYVAL Report | *Consideration should be given to abandoning the use of "double definitions" of legal terms pertaining to criminal substantive law in multiple legal sources.* |
| Measures taken to implement the Recommendation of the Report | Due consideration has been given to this recommendation. The Head of the BiH delegation has written a letter to this effect to the Team for Control and Evaluation of Implementation of Criminal Legislation at the Ministry of Justice. |
| (Other) changes since the last evaluation | |

| **Special Recommendation IV (Suspicious transaction reporting)<br>I. Regarding Financial Institutions** | |
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| **Rating: Largely compliant** | |
| Recommendation of the MONEYVAL Report | *The evaluators were, concerned about the low level of transactions reported, particularly as all STRs received were from banks with none received from the insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations. The evaluators recommend that a programme is undertaken with financial institutions to raise awareness of the STR regime. This programme should emphasise the difference between large transaction reports and suspicious transaction reports.* |
| Measures taken to implement the Recommendation of the Report | b) We would like to note that in 2010 the Financial Intelligence Department carried out a range of activities towards obligors, in a sense of Article 4 of the Law on the Prevention of Money Laundering and Terrorism Financing with a special emphasis on the so called "non-banking sector" and their obligation to report suspicious transactions. These organised efforts and programmes contributed to the fact that the FID received 17 suspicious transaction reports by the non-banking sector, as follows:<br>6. leasing agencies "STR" (suspicious transactions) 6<br>7. Post Offices "STR" 2<br>8. Western union "STR" 2<br>9. Notary "STR" 1<br>10. MKO "STR" 6<br>Based on the above mentioned, it could be concluded that the non-banking sector has recognised and adopted its obligations in the sense of the Law on the Prevention of Money Laundering and Terrorism Financing and STR submitting.<br>The Insurance Sector in B&H financial flows covers 4% of all the flows, therefore it is not realistic to expect a larger number of STRs, although in the upcoming period |

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| | of time progress is expected in this area as well, because in accordance with this category a programme has been composed and implemented with the aim of being more familiar with the STR regime. All the obligors understand the difference between large transactions and Suspicious Transaction Reports, which is confirmed by the above mentioned data. |
| Recommendation of the MONEYVAL Report | *It was also noted that in Republic Srpska STRs were submitted to the Banking Agency rather than to SIPA. It is strongly recommended that all STRs be reported direct to SIPA and not via an intermediate agency.* |
| Measures taken to implement the Recommendation of the Report | Obligors from the Republic of Srpska regularly report suspicious transactions only and directly to the FID and not through any kind of intermediaries. By introduction of an electronic way of reporting it will be also technically impossible to have an "intermediary". Only statistical data on suspicious transactions are being submitted to the Banking Agency of RS.<br>Notwithstanding, in order to remove any doubts and ambiguities resulting from different interpretation of the relevant provisions of Article 101 of the Law on Banks, the proposed amendments will be reviewing and redrafting this article to better reflect the provision of statistics only |
| Recommendation of the MONEYVAL Report | *There appear to be conflicting reporting requirements between the requirements of the New AML Law and the Law on Banks in Republic Srpska and FBiH. The evaluators therefore recommend that the Law on Banks in Republic Srpska and FBiH should be amended to remove any conflicting reporting requirements.* |
| Measures taken to implement the Recommendation of the Report | Acting upon the above recommendation, the Banking Agency of the FBiH sent to the Ministry of Finance of the FBiH the Proposed changes of the provisions of the Law on Banks in question. The Ministry of Finance forwarded those changes to the Parliamentary Assembly with proposal that such changes should be adopted in shortest procedure possible. However, the Parliamentary Assembly returned adoption of such changes from short to regular procedure and the House of Representatives of the Parliamentary Assembly adopted those changes in the first reading (in draft version).<br>The Law on Changes and Amendments to the Law on Banking Agency of the Federation of BiH<br>Article 2<br>In the Article 4, Paragraph 1, I<br>Item g) is changed and says:<br>" g) Controls and evaluates the harmonization of banks, microcredit organizations and leasing companies with standards of prevention of money laundering and financing of terrorist activities."<br>Item h) is changed and says:<br>" h) Controls and evaluates the implementation of measures of banks, microcredit organizations and leasing companies with the goal of prevention of financing of activities which obstruct and/or threat to obstruct the process of peace implementation that is performed under the sponsorship of General Framework Peace Agreement in BiH, in accordance with the special law."<br>In the Paragraph 1, items i), j), k) and l) will be deleted.<br>Paragraphs 2, 3, 4, 5, 6, 7, 8, 9 and 10 will be deleted.<br>The Law on Changes and Amendments to the Law on Banks<br>Article 2<br>Article 47 is changed and says:<br>"Bank must not acquire, make conversions or transfers, or mediate when |

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| | acquiring, converting or transferring of money or other property for which it is known or it can be reasonable assumed that it is acquired by committing of criminal offence."<br>Bank must not get involved in the transaction for which it is known or it can be reasonable assumed that it is intended for money laundering, in accordance with the Law on Prevention of Money Laundering and Financing of Terrorist Activities.<br>Bank must not make conversions or transfers, or mediate when acquiring, converting or transferring of money or other property for which it is known or it can be reasonable assumed that it might be used for financing of terrorist activities, in accordance with the Law on Prevention of Money Laundering and Financing of Terrorist Activities and Law on Application of Certain Temporal Measures for efficient implementation of the mandate of the International Criminal Court for Former Yugoslavia and other international restrictive measures.<br>Bank must not make conversions or transfers, or mediate when acquiring, converting or transferring of money or other property for which it is known or it can be reasonable assumed that these might be used by individuals or legal entities or bodies that obstruct or threat with obstructions, or represent significant risk of active obstruction of peace implementation process, in accordance with the Law on Application of Certain Temporal Measures for efficient implementation of the mandate of the International Criminal Court for Former Yugoslavia and other international restrictive measures.<br>Bank is obliged to establish the internal control, policies and procedures with the goal of revealing and preventing of transactions that include criminal activities, money laundering, activities that support terrorism and activities that support the obstruction of the peace process.<br>Bank is obliged to undertake measures in order to determine, in satisfactory way, the real identity of any person who wants to enter the business deals with that bank, which makes transaction or series of transactions in that bank or establishes any kind of other business relationship.<br>Bank is obliged to deliver the monthly statistic report to the Agency, for transactions from the paragraphs 2, 3 and 4 of this Article, about which the bank informed the competent authority for taking and analyzing of the report, in the form proscribed by the Agency.<br>The same provisional there are in RS Law |
| Recommendation of the MONEYVAL Report | *The evaluators recommend that appropriate clarification of the word "odnosno" be made to clarify that suspicion of terrorist financing may arise in cases where funds are not derived from criminal activity.* |
| Measures taken to implement the Recommendation of the Report | As explained at the Plenary session the word "odnosno" is used in the sense of continuity in the legal text. Consequently, within this context, in English it would refer to the word "and". |
| (Other) changes since the last evaluation | |

| **Special Recommendation IV (Suspicious transaction reporting)<br>II. Regarding DNFBP** | |
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| Recommendation | *Following the introduction of provisions with a mandatory obligation to provide* |

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| of the MONEYVAL Report | *feedback in the new law, FID should provide further general and specific feedback to financial institutions and DNFBPs incorporating, inter alia, statistics on the number of STRs, information on current ML techniques and trends, as well as information on the decisions and results of the analysis of STRs carried out by the FID.* |
| Measures taken to implement the Recommendation of the Report | The FID sends regularly the feedback to the financial institutions while through trainings for the obligors the FID presents new money laundering typologies. The feedback information related to any individual case is sent successively and as the case develops. |
| Recommendation of the MONEYVAL Report | *No guidance has been provided to the non-banking sector on their AML CFT obligations. FID, in conjunction with the relevant supervisory bodies should develop guidance for all financial institutions and DNFBPs and ensure that an adequate awareness raising campaign is in place.* |
| Measures taken to implement the Recommendation of the Report | These guidelines introduce more details to the obligors on their obligations in the implementation of the Law on the Prevention of Money Laundering and Terrorism Financing and we are of the opinion that all possible dilemmas and unclarities have been removed, particularly for the non banking sector |
| (Other) changes since the last evaluation | |

## *2.3. Other Recommendations*

In the last report the following FATF recommendations were rated as "partially compliant" (PC) or "non compliant" (NC). Please, specify for each one what measures, if any, have been taken to improve the situation and implement the suggestions for improvements contained in the evaluation report.

| **Recommendation 3 (Confiscation and provisional measures)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *Consideration should be given to the fact that the specific confiscation regime applicable in money laundering cases pursuant to Article 209(4) and identical provisions in non-state level Codes do not provide for value confiscation.* |
| Measures taken to implement the Recommendation of the Report | Criminal Procedure Codes (Article 394 of the Criminal Procedure Code of BiH, Article 394 of the Criminal Procedure Code of Brcko District, Article 405 of the Criminal Procedure Code of RS, and the Article 415 of the Criminal Procedure Code of FBiH) specify that courts shall establish the value of property gain acquired through perpetration of a criminal offence by a free estimate if the establishment would be linked to disproportional difficulties or a significant delay of the procedure.<br>Article 2 of the Criminal assets recovery act RS Republika Srpska (Official Gazette of RS 12/10), as well as Article 2 of the Draft Criminal Proceeds Recovery Act of Bosnia and Herzegovina, precisely establish the lower threshold of criminal proceeds subject to forfeiture. |
| Recommendation of the MONEYVAL Report | *The provisions on confiscation in the Criminal Code of Republic Srpska should be amended to enable the confiscation of income or other benefits. Equally, confiscation of proceeds commingled with legitimate assets should also be provided for.* |

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| Measures taken to implement the Recommendation of the Report | In Republic of Srpska the Criminal Assets Recovery Act has been adopted and published in the Official Gazette of RS, no. 12 from February 19, 2010 and it will enter into force within the 6 months after being published (necessary time to adopt by laws and to establish institutional capacities for its implementation). This Act defines conditions, procedures and institutions authorized to detect, recover and manage the criminal assets origin from criminal offences defined in the Republika Srpska Criminal Code („ Republika Srpska Official Gazette", no 49/03, 108/04, 37/06 and 70/06), including Money Laundering offence Article 280, Illegal Trade Article 281, Tax and Contribution Evasion Article 287, Organized crime (Article 383a) etc. Provisions of this Act shall be applicable to all criminal offences defined in the Article 2 of this Act, as well as to other criminal offences defined in RS Penal Code, and if the assets, that is the value of items that have been used or were aimed to or are a result to a criminal offence exceeds the amount of 50.000,00 convertible marks.<br>Ministry of Interior of RS is in accordance to this law oblige to establish a special department for financial investigations (preparation for this is undergoing). Also, seven WG where established for the drafting of by-laws for the implementation of this Law. |
| Recommendation of the MONEYVAL Report | *Competent authorities at State level and also in the Federation of Bosnia and Herzegovina and Brčko District should review the articles in the respective Criminal Codes that provide for the confiscation of instrumentalities and other objects with the aim of removing or, at least, concretising the overly vague conditions under which this security measure can be applied (absolute necessity based on public safety or moral reasons etc.) so that the confiscation of such objects can actually be mandatory.* |
| Measures taken to implement the Recommendation of the Report | Upon changes and amendments made to criminal legislation in 2010, relevant articles of criminal codes of BiH, FBIH and Brcko District (Article 74 of the Criminal Code of BiH, Article 78 of the Criminal Code of FBiH and Article 78 of the Criminal Code of Brcko District) have been amended with paragraph 3 which foresees the possibility of legal regulation of mandatory asset forfeiture.<br>Furthermore, the word "absolutely" was deleted from the Criminal Code of BiH and the Criminal Code of Brcko District, thus removing unclear precondition for implementation of the measure on temporary confiscation of items. That way, the possibility for applying this measure was expanded. |
| Recommendation of the MONEYVAL Report | *The authorities of Republic Srpska should consider introducing compulsory confiscation of such objects instead of the current, discretionary provision in the Criminal Code of Republic Srpska Article 62(1).* |
| Measures taken to implement the Recommendation of the Report | In Article 280 of the Criminal Code of RS the criminal offense of money laundering implies incriminated receiving, exchange, keeping, disposal of, use in corporate or other business or concealing otherwise the **money or property** that are known to have been obtained by commission of criminal offense. Provision referred to in paragraph 6 of the same Article implies **mandatory forfeiture of money and property**, which means that the money and assets that is the subject of this crime have been seized. This provision on confiscation is in accordance with the provision of paragraph 3 Article 62 of the Criminal Code of RS which reads: "The law may provide for mandatory forfeiture". |
| Recommendation of the MONEYVAL | *Removal of overly insubstantial preconditions of* in rem *confiscation of instrumentalities and other objects ("interests of general security" etc.) should take place at all levels.* |

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| Report | |
| Measures taken to implement the Recommendation of the Report | Letter forwarded to the Team for Control and Evaluation of Implementation of Criminal Legislation in BiH. |
| Recommendation of the MONEYVAL Report | *Consideration should be given to provisions in the criminal procedure which would enable the confiscation of proceeds where the criminal procedure cannot be concluded because the death or absconding of the perpetrator or for any other reason, on condition that there is a proof that the assets derive from criminal offences.* |
| Measures taken to implement the Recommendation of the Report | Article 247 of the Criminal Procedure Code bans trial in case of absentia.<br>The criminal legislation system of Bosnia and Herzegovina has been conceptualized in a way that a criminal proceeding is to be discontinued in case when a suspect/accused has died during the criminal proceeding (Article 205 of the Criminal Procedure Code of BiH).<br>Article 110 of the Criminal Code of BiH specifies that the property gain acquired through perpetration of a criminal offence shall be forfeited by the court decision which established the perpetration of a criminal offence. In accordance with that, the criminal legislation system allows forfeiture of criminal proceeds only upon the completion of the proceeding resulting in the valid curt decision. |
| Recommendation of the MONEYVAL Report | *Legislative provisions should be introduced at all levels to allow for the voiding of contracts.* |
| Measures taken to implement the Recommendation of the Report | Law on Obligations (Official Gazette of SFRJ 29/78, 39/85, 45/89, 57/89 and 31/93), which is effective in Bosnia and Herzegovina in all jurisdictions, in Article 103 prescribes that agreements which are contrary to mandatory regulations, public system or good practices, shall be considered void.<br>Article 103, paragraph 1 reads:<br>„(1) An agreement which is contrary to mandatory regulations, public system or good practices is void if the aim of confirmed rule does not point at any other sanction or if the law in specific case does not specify otherwise.“ |
| Recommendation of the MONEYVAL Report | *Domestic authorities should review the practical functioning of provisions on confiscation and provisional measures to assess their overall effectiveness to ensure that they are fully operational and to satisfy themselves that the necessary tools are really in place for a complete and effective system. Such a review should primarily be supported by compiling and maintaining of comprehensive and precise statistics on the volume and effectiveness of confiscation and the provisional measures.* |
| Measures taken to implement the Recommendation of the Report | Article 9 of the of the Criminal Assets Recovery Act Republika Srpska (Official Gazette of RS 12/10), as well as Article 9 of the Draft Criminal Assets Recovery Act of Bosnia and Herzegovina, regulate the obligation to keep records on confiscated property and court proceedings in which was decided on such property.<br>Article 411 of the Criminal Procedure Code of BiH (Centralization of Data), as well as identical articles in entity codes and CPC of Brcko District, prescribe the obligation for courts to forward to the BiH Ministry of Justice data on criminal offences, perpetrators, and valid court decision with regards, inter alia, to the criminal offence of money laundering and related criminal offences. Also, courts shall be obliged to forward the above mentioned data to state level institution in charge for money laundering (the Financial-Intelligence Department). |
| Recommendation | *Domestic authorities should review the specific confiscation rule in CC-BiH Article* |

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| of the MONEYVAL Report | *209(4) and identical non-state rules either in themselves or in combination with Article 74 to consider whether these provisions allow for the mandatory confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence as far as such objects are not owned by the perpetrator and introduce legislation to for remedy to this apparent weakness of the system.* |
| Measures taken to implement the Recommendation of the Report | Letter forwarded to the Team for Control and Evaluation of Implementation of Criminal Legislation in BiH**.** |
| Recommendation of the MONEYVAL Report | *The evaluators understand that provisional measures can only be carried out, as a general rule, by the decision of a preliminary proceedings judge as from the initiation of the investigation. Domestic authorities should reassess the extent to which this structure might delay or even hinder the seizure of proceeds, if once applied in a concrete money laundering case.* |
| Measures taken to implement the Recommendation of the Report | Article 22 of the Draft Criminal Assets Recovery Act in BiH, as well as the identical law from RS, prescribe that a prosecutor may issue a decision on temporary measure under the specified conditions, as follows:<br>(1) If there is a risk that an owner shall dispose of the property gained through perpetration of a criminal offence before the court decides on proposal as referred to in Article 21, paragraph 1 of this Law; respective prosecutors' office may issue an order to ban disposal of property.<br>(2) A measure as referred to in paragraph 1 of this Article shall be valid until the court issues a decision upon the proposal made by prosecutors' office.<br>(3) An order as referred to in paragraph 1 of this Article, respective prosecutors' office shall forward to the owner, court and the Agency.<br>Paragraph 2 of the Article 73 of the Criminal Procedure Code of BiH, also allows for the above mentioned possibility, and it reads as follows:<br>2) If there is a risk of delay, an authorized official may temporarily seize property referred to in Paragraph 1 of this Article, may carry out an arrest in property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorized official shall immediately inform the Prosecutor about the measures taken and the measures taken must be confirmed by the preliminary proceedings judge within 72 hours following the undertaking of the measures. |
| Recommendation of the MONEYVAL Report | *They should also reconsider, whether the immediacy of such measures could better be provided by allowing the prosecutor, in extremely urgent cases, on his own authority, to order the investigating bodies to carry them all out, subsequently obtaining the approval of a judge.* |
| Measures taken to implement the Recommendation of the Report | Article 22 of the Draft Criminal Assets Recovery Act in BiH, as well as the identical law from RS, prescribe that a prosecutor may issue a decision on temporary measure under the specified conditions, as follows:<br>(4) If there is a risk that an owner shall dispose of the property gained through perpetration of a criminal offence before the court decides on proposal as referred to in Article 21, paragraph 1 of this Law; respective prosecutors' office may issue an order to ban disposal of property.<br>(5) A measure as referred to in paragraph 1 of this Article shall be valid until the court issues a decision upon the proposal made by prosecutors' office.<br>(6) An order as referred to in paragraph 1 of this Article, respective prosecutors' office shall forward to the owner, court and the Agency.<br>Paragraph 2 of the Article 73 of the Criminal Procedure Code of BiH, also allows |

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| | for the above mentioned possibility, and it reads as follows:<br>2) If there is a risk of delay, an authorized official may temporarily seize property referred to in Paragraph 1 of this Article, may carry out an arrest in property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorized official shall immediately inform the Prosecutor about the measures taken and the measures taken must be confirmed by the preliminary proceedings judge within 72 hours following the undertaking of the measures. |
| Recommendation of the MONEYVAL Report | *The possibility of obtaining bank information with a view to freezing of assets, as is provided by Article 72(1) and (4) of the CPC-BiH (and identical non-state provisions) appears to be unnecessarily restricted; or at least slowed down in concrete cases by factors originating in either incomplete secondary legislation or simply through inaccurate communication between the state authorities and the financial industry. This results in duplication of the court procedure when bank account information needs first to be obtained for applying for a freezing order. Domestic authorities should reassess this potential shortcoming and seek for a solution.* |
| Measures taken to implement the Recommendation of the Report | The BiH Authorities have given due consideration to this recommendation. The procedure for obtaining bank information with a view to freezing of assets is one part of the whole process for freezing assets. The Authorities believe their procedures are adequate and hence it does not appear that this process is unduly creating duplication in the court procedures. Hence the Authorities are of the opinion that a review of the whole procedure including legislative amendments would not be necessary. |
| Recommendation of the MONEYVAL Report | *Legislative amendments should be introduced to introduce explicit provisions to prevent or void contractual or other 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.* |
| Measures taken to implement the Recommendation of the Report | Law on Obligations (Official Gazette of SFRJ 29/78, 39/85, 45/89, 57/89 and 31/93), which is effective in Bosnia and Herzegovina in all jurisdictions, in Article 103 prescribes that agreements which are contrary to mandatory regulations, public system or good practices, shall be considered void.<br>Article 103, paragraph 1 reads:<br>„(1) An agreement which is contrary to mandatory regulations, public system or good practices is void if the aim of confirmed rule does not point at any other sanction or if the law in specific case does not specify otherwise.“ |
| Recommendation of the MONEYVAL Report | *A much greater emphasis needs to be given to the taking of provisional measures at early stages of investigations to support more confiscation requests upon conviction. A clear understanding is required of how early in criminal investigations the preliminary measures could be taken and the practitioners should be orientated, either by adequate guidance or training, to apply these measures as early as possible to prevent dissipation of proceeds.* |
| Measures taken to implement the Recommendation of the Report | Paragraph 2 of the Article 73 of the Criminal Procedure Code of BiH allows for the above mentioned possibility, and it reads as follows:<br>If there is a risk of delay, an authorized official may temporarily seize property referred to in Paragraph 1 of this Article, may carry out an arrest in property or take other necessary temporary measures to prevent any use, transfer or disposal of such property. An authorized official shall immediately inform the Prosecutor about the measures taken and the measures taken must be confirmed by the preliminary proceedings judge within 72 hours following the undertaking of the measures. |
| Recommendation | *In most of the cases, the prosecution is still mainly targeted at proving the predicate* |

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<tr><td>of the MONEYVAL Report</td><td>crime and thus no further investigation takes place to follow the trail of the proceeds. As far as this is result of inadequate staffing and lack of necessary trainings these shortcomings must urgently be remedied by competent authorities at all levels. Equally, the authorities should seek for a solution to the problem underlying this trend, that is, the overly high standard of proof applied by the trial courts with regard to the confiscation of the proceeds of crime.</td></tr>
<tr><td>Measures taken to implement the Recommendation of the Report</td><td>Answer provided from Prosecutors Office of B&H:<br>The Court of BiH takes immediate actions on the money laundering cases processed by the Prosecutor’s Office of BiH, hearings are scheduled in a timely fashion, and criminal proceedings, resulting in appropriate verdicts, are conducted. There have been continuous trainings for judges and prosecutors dealing with these types of cases which include trainings – seminars organised by the Centre for Education of Judges and Prosecutors FBiH, RS and BD BiH, as well as by international organisations ICITAP, NI-CO, and others.<br>Center for education of judges and prosecutors of FBiH and RS, and high judicial and prosecutorial council of B&H.<br>In Republika Srpska during the 2009 years in the organization of international assistance programs of the Ministry of Justice USA (ICITAP), there were two five-day seminars for prosecutors and members of law enforcement agencies on the subject: Financial Investigation.<br>-Seminar on prevention of money laundering, organized by the FID, the Association of Banks, and ATTF "from Luxembourg.<br>-Seminar organized by the FID and ICITAP held in Teslic on advanced investigation techniques, criminal prosecution of complex financial crimes and money laundering offenses.<br>Subject: Education of legally bound persons under the Law on Prevention of Money Laundering and Financing of Terrorist Activities.<br>Organised by consulting firm Revicon Ltd. Sarajevo, which is specialized in consulting activities related to finance, accounting and taxes, 24-25 February, 2011 in Fojnica was held a seminar under the name "Anti-money laundering – procedures with clients based on risk assessment".<br>The seminar was held as one of the seminars in continuing education programs of legally bound persons obligated to apply the Law. The seminar, held in Fojnica, was directed to the accountants and auditors as a profession, banks, micro-credit institutions, leasing and brokerage houses and insurance companies. The seminar was attended by 130 participants from all these activities, legally bound persons applying the Law.<br>The structure of participants:
<table>
<tr><th>Item</th><th>Sector/profession</th><th>Number of representatives</th></tr>
<tr><td>1.</td><td>Banks</td><td>76</td></tr>
<tr><td>2.</td><td>MCO</td><td>16</td></tr>
<tr><td>3.</td><td>Insurance</td><td>8</td></tr>
<tr><td>4.</td><td>Accountants</td><td>5</td></tr>
<tr><td>5.</td><td>Auditors</td><td>4</td></tr>
<tr><td>6.</td><td>Leasing</td><td>11</td></tr>
<tr><td>7.</td><td>Brokerage houses</td><td>4</td></tr>
<tr><td>8.</td><td>Enterprises</td><td>6</td></tr>
</table>
In organisation of Revicon Ltd. Sarajevo, professional part of education was led by: Ibrahim Sinanović (Banking Agency of FBiH), Samir Omerhodžić (Insurance</td></tr>
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| | Agency of Bosnia and Herzegovina), Mijo Golub (SIPA-FID), Damirka Mioč and Hasim Šabotić (SIPA-FID), Jasmin Šlaku (Commission for the Prevention of Money Laundering - The Association of Banks); Sulejman Hadžić (BiH Association of Leasing Companies), Džafer Alibegović (Securities Commission of FBiH) and Željko Rička (Revicon Ltd.).<br>During the period 2003-2009, the Center organized 6 seminars with topics on **„Money laundering, special investigations and management of seized assets acquired in a criminal proceeding"**.<br>The total number of participants, judges and prosecutors included by training who have attended seminars in this field is 373. |
| Recommendation of the MONEYVAL Report | *Legislators at all levels should consider ensuring that, in certain well-defined serious proceeds-generating offences, elements of practice which have proved of value elsewhere should be considered, including the reversal of the burden of proof, post conviction, as to the lawful origin of alleged criminal proceeds or the utilisation of the civil standards of proof as to the lawful origins of proceeds. In this respect, particular emphasis should be given to explaining how The Criminal Code of Bosnia and Herzegovina Article 110(3) and corresponding non-state level provisions are intended to work. As far as RS criminal legislation is concerned, the examiners share the opinion of the local authorities that the Criminal Code of Republic Srpska, which currently lacks such a provision, should also be harmonised in this respect.* |
| Measures taken to implement the Recommendation of the Report | The introduced Article states the following:<br>"Extended Confiscation of Property Gain Acquired through Perpetration of a Criminal Offence<br>Article 110a<br>*(1) During criminal proceedings, the Court may confiscate the property gain for which there is sufficient evidence to reasonably believe that such property gain was acquired by the perpetration of the criminal offence.*<br>*(2) The suspect, or the accused, the owner or the user, in a separate judicial proceeding, may attempt to prove that the confiscated property gain was acquired by legal means. "*<br>Changes and amendments to the Criminal Code of the Federation of Bosnia and Herzegovina, published in the B&H Official Gazette 42/10, made changes in relation with confiscation of property gain acquired by the perpetration of the criminal offence, by the introduction of the new Article, stating the following:<br><br>"*Extended Confiscation of Property Gain Acquired through Perpetration of a Criminal* Offence<br>*Article 114*<br>*Where criminal proceedings involve the criminal offences set forth under Chapters XXII, XXIX and XXXI of this Code, the Court may issue a decision under Article 114, Paragraph (2) and confiscate the property gain for which the prosecutor provided sufficient evidence to reasonably believe that such property gain was acquired by the perpetration of these criminal offences, while the perpetrator failed to prove that the gain was acquired in a lawful manner.* **"**<br><br>Changes and amendments to the Criminal Code of Brcko District of Bosnia and Herzegovina, published in the B&H Official Gazette 21/10, made changes in relation to the confiscation of the property gain acquired by the perpetration of the criminal offence by the introduction of the new Article fully in compliance with the |

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| | previously mentioned changes in the CC of the Federation of Bosnia and Herzegovina.<br>The Republic of Srpska adopted a separate Law on confiscation of property acquired by the perpetration of a criminal offence, determining conditions, procedure and competent authorities for detection, confiscation and management of the property acquired by the perpetration of a criminal offence. |
| Recommendation of the MONEYVAL Report | *Authorities at all levels should establish unified systems for keeping statistics on the amounts of property seized and confiscated, and designate competent bodies for this purpose, in line what was recommended by the first round report. In this respect, the evaluation team considers it more practical to address this question on a Bosnia and Herzegovina wide basis and not separately for each Entity and Brčko District.* |
| Measures taken to implement the Recommendation of the Report | The required system has been regulated by Articles 5 and 9 of the Draft BiH Criminal assets recovery act, as well as the identical law from RS.<br>Article 5<br>Competent Bodies<br>(1) Bodies competent for detection, forfeiture and management over the property acquired through perpetration of a criminal offence are: The Prosecutors' Office of BiH (hereinafter: the Prosecutors' Office), the Court of BiH, the State Investigation and Protection Agency (hereinafter: SIPA), and the Agency for Management over the Forfeited Assets (hereinafter: the Agency).<br><br>Article 9<br>Task of the Agency<br>(1) The Agency shall perform the following tasks:<br>a) manages over the forfeited property which was acquired through perpetration of a criminal offence and items of a criminal offence (Article 74 of the Criminal Code of BiH), property gain acquired through perpetration of a criminal offence and property offered as an assurance in the criminal proceeding;<br>b) conducts expert evaluation of the forfeited criminal proceeds;<br>c) stores, keeps and sells temporary forfeited criminal proceeds and disposes of funds received in such was in accordance with the law;<br>**d) keeps records on property which, in the sense of paragraph 1, item a) of this Article, manages, and on court proceedings in which was decided upon such property;**<br>e) participates in providing international legal assistance;<br>f) participates in training of civil servants and holders of judicial functions in relation to forfeiture of criminal proceeds;<br>**g)** performs other tasks in accordance with this Law. |
| Recommendation of the MONEYVAL Report | *Consideration should be given to establishing a competent agency with adequate procedures for keeping and managing seized and confiscated assets, and the introduction of an asset forfeiture fund as well as a mechanism for asset-sharing, in line with the legislative initiatives currently being in the draft phase in the country. Such an agency could optimally be set up at the level of the State.* |
| Measures taken to implement the Recommendation of the Report | The required system has been regulated by Articles 5 and 9 of the Draft BiH Criminal assets recovery act, as well as the identical law from RS.<br>Article 5<br>Competent Bodies<br>(2) Bodies competent for detection, forfeiture and management over the |

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| | property acquired through perpetration of a criminal offence are: The Prosecutors' Office of BiH (hereinafter: the Prosecutors' Office), the Court of BiH, the State Investigation and Protection Agency (hereinafter: SIPA), and the Agency for Management over the Forfeited Assets (hereinafter: the Agency).<br>Article 9<br>Task of the Agency<br>(2) The Agency shall perform the following tasks:<br>h) manages over the forfeited property which was acquired through perpetration of a criminal offence and items of a criminal offence (Article 74 of the Criminal Code of BiH), property gain acquired through perpetration of a criminal offence and property offered as an assurance in the criminal proceeding;<br>i) conducts expert evaluation of the forfeited criminal proceeds;<br>j) stores, keeps and sells temporary forfeited criminal proceeds and disposes of funds received in such was in accordance with the law;<br>k) keeps records on property which, in the sense of paragraph 1, item a) of this Article, manages, and on court proceedings in which was decided upon such property;<br>l) participates in providing international legal assistance;<br>m) participates in training of civil servants and holders of judicial functions in relation to forfeiture of criminal proceeds;<br>**n)** performs other tasks in accordance with this Law. |
| (Other) changes since the last evaluation | |

| **Recommendation 6 (Politically Exposed Persons)<br>I. Regarding financial institutions** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *At the time of the on-site visit PEPs were only partially and limitedly addressed and only for the banking sector. However even these provisions did not entirely cover the requirements for Recommendation 6. There did not appear to be any similar provisions for the whole financial sector. Although the new law now provides for the treatment of PEPs there is a need to create awareness and provide guidance on the identification process, including where the beneficial owner is a PEP.* |
| Measures taken to implement the Recommendation of the Report | Politically Exposed Persons<br><br>Article 22 shall be amended and read:<br>(1) Persons under obligation shall establish an adequate procedure for determining whether a person from Bosnia and Herzegovina or from abroad has been politically exposed. They shall define such procedures through their internal document, following, at the same time, guidelines issued by institutions in charge for supervision, as referred to in Article 68 of this Law.<br>(2) A politically exposed person as referred to in Item 1 of this Article shall include any physical persons as defined by Laws on Conflict of Interest in Bosnia and Herzegovina.<br>(3) The closest family members of persons referred to in Item 2 of this Article are: spouses, parents, brothers and sisters, children and their spouses. |

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| | (4) Close associates referred to in Item 2 of this Article include all physical persons who participate in the gain of assets or are in business connection or are connected in any way with the business.<br>(5) When a client who enters into a business relation or conducts transaction or if a client on whose behalf enters into a business relation or conducts transaction is a foreign politically exposed person, a person under obligation shall, in addition to measures referred to in Article 20 of this Law, within the procedure on intensified identification and monitoring of a client, carry out the following measures:<br>a) Collect data on source of assets and property which has been or shall be the subject of a business relation or transaction from documents and other documentation submitted by a client. When such data cannot be collected in a described manner, a person under obligation shall obtain it directly from the written statement of a client.<br>b) Employees of a person under obligation which conducts the procedure on establishment of a business relation with the client who has been a foreign politically exposed person shall provide a written approval of its supervisory or responsible person prior to entering into such type of a relation.<br>c) Upon initiating business relation, a person under obligation shall monitor transactions and other business activities carried out by a foreign politically exposed person who is conducted through person under obligation by applying procedures of identification and monitoring. |
| (Other) changes since the last evaluation | Changes from insurance sector: GUIDELINES<br>**I Foreign politically exposed persons:**<br>Customers are required, through a written internal act, to establish adequate procedures for determining whether a foreign person is politically exposed. Through written internal act it will be defined such procedures under the Guidelines.<br>According to legal provisions, contract data are examined with regard to politically exposed persons from abroad. If during an investigation is learned about the status of politically exposed person - client with whom is entered into a business relationship or transaction or if the client on whose behalf it enters into a business relationship or transaction is a foreign politically exposed person, testing based on risk is carried out; in addition to measures of Article 7 of the Law, the measures and procedures for enhanced identification and monitoring of the client are taken:<br>1. collecting data on sources of funds and assets that are or will be subject to a business relationship or transaction, in the manner prescribed by Article 22, paragraph 6 Item a) of the Act;<br>2. obligatory obtaining of written permission from customer's administration prior to entering into a business relationship with such client, pursuant to Article 22 paragraph 6 point b) of the Act;<br>3. particularly careful monitoring of transactions and other business activities carried out at the customer by client - politically exposed person, after the conclusion of a business relationship pursuant to Article 22 paragraph 6 c) of the Act.<br>Foreign politically exposed person means any natural person as defined by the Guidelines and the Law.<br>A natural person who has or had entrusted to prominent public function is:<br>a) the head of state, premier, ministers and their deputies and assistants; |

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| | b) elected representatives in legislative bodies;<br>c) judges of the supreme and constitutional court and other high judicial institutions;<br>d) members of the Audit Committee and Governor of the Central Bank;<br>e) ambassadors and high ranking officers of the armed forces;<br>f) members of management or supervisory boards of companies in majority state ownership.<br>The closest family members of persons referred to in preceding paragraph: spouses, parents, siblings, children and their spouses.<br>Closer associates are all individuals who participate in profits from the property or they are in business relation or they are in any way connected to the business. |

| **Recommendation 7 (Correspondent banking)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *The coverage of correspondent banking is not comprehensive and does not appear to specifically cover respondent bank's relationships. Although correspondent banking is now included under the new AML Law, the issue of 'payable through' accounts is not addressed. It is advisable that (cor)respondent banking relationships be reviewed accordingly.* |
| Measures taken to implement the Recommendation of the Report | Working Group of the Council of Ministers has prepared amendments to the law will be eliminated this objection as follows:<br>In Article 21 after paragraph (4) add new paragraph (5) that shall read:<br>(Correspondent Relationship with Foreign Loan Institutions)<br>(5) The obligor can not establish a loan correspondent relationship with a foreign bank or any other similar institution based on which such foreign institution may use the account with the obligor to operate directly with its clients. |
| (Other) changes since the last evaluation | |

| **Recommendation 8 (New technologies and non face-to-face business)<br>I. Regarding financial institutions** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *Although it appears that electronic business in the financial sector is low, there are no obligations for financial institutions to have policies in place to prevent the misuse of technological developments. This should be provided for in the new AML Law which to date does not address this issue.* |
| Measures taken to implement the Recommendation of the Report | Working Group of the Council of Ministers has prepared amendments to the law will be eliminated this objection as follows:<br>After Article 25, add new Articles 26. that shall read:<br>**New Technologies**<br>(1) The obligor shall pay special attention to the money laundering or terrorism financing risk arising from the application of new technologies which may allow for client anonymity (e.g. e-banking, use of ATMs, telephone banking, etc.).<br>(2) The obligor shall introduce procedures and take additional measures to eliminate the risks posed by and prevent the misuse of new technologies for the purposes of money laundering or financing of terrorism.<br>Book of rules on risk assessment, data, information, documents, identification methods and minimum other indicators required for efficient implementation of |

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| | provisions of the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, Official Gazette of Bosnia and Herzegovina" No. 93/09, 1 December 2009)<br>Article 2 – Written internal program for risk assessment – requirement and content<br>(1) The person under obligation shall, as prescribed in Article 5 of the Law, adopt a written internal program which shall determine the risk level of groups of clients or of a single client and its geographical area of operation, business relationship, transaction, product or service and the way it is provided to the client as well as **new technical developments regarding possible misuse for the purposes of money laundering or terrorism financing according** to this book of rules and the guidelines provided for by the FID and a respective supervisory body.<br>Guidelines for the implementation of the Law on the prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of FBiH and RS Insurance Agency, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>III - Risk assessment<br>Adoption of the interior programs for risk assessment: ".... A written internal program will, in accordance with Article 2 of Regulations, determine the levels of risk of clients groups or individual clients, their geographical area of operation, business relationships, transactions, products or services, the manner of their delivery to the client, **new technological developments regarding the possible misuse for money laundering and the financing of terrorist activities**...." |
| Recommendation of the MONEYVAL Report | *There is a need to clarify Article 10 of the relevant Decisions on Minimum Standards with regard to non-face-to-face business.* |
| Measures taken to implement the Recommendation of the Report | Discussions on amendments to the Decisions on Minimum Standards are ongoing and a proposal will eventually be made within this context for any changes that may be necessary. |
| Recommendation of the MONEYVAL Report | *Following the introduction of the new AML Law, a revised Book of Rules, providing guidance on its implementation and more awareness on the part of 'persons' under obligation', albeit to different degrees, on the concepts and the philosophy of the law and their obligations, needs to be adopted.* |
| Measures taken to implement the Recommendation of the Report | Book of Rules was adopted in September 2009. (See the attachment)**.** |
| (Other) changes since the last evaluation | |

| **Recommendation 9 (Third part and introduced business)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL | *Although the old LPML does not specifically prohibit or allow third party reliance or introduced business, likewise it does not specifically allow it. However there are provisions that appear to indirectly allow such procedures. This is particularly so in* |

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| Report | *relation to the use of companies specialised in customer due diligence. The absence of such companies, though recognised, impacts on procedures to licence and regulate them. This creates an uncertainty as to whether third party reliance is allowed or not. Notwithstanding the fact that the new AML Law has now clarified this doubt in that it specifically allows 'persons' under obligation' to rely on third parties, as defined by the new AML Law, yet the new provisions do not fully cover the FATF criteria for Recommendation 9. In the circumstances it is recommended that the legislative and other relevant provisions be revised such that the obligations and requirements should be harmonised with Recommendation 9.* |
| Measures taken to implement the Recommendation of the Report | Book of rules on risk assessment, data, information, documents, identification methods and minimum other indicators required for efficient implementation of provisions of the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, Official Gazette of Bosnia and Herzegovina" No. 93/09, 1 December 2009)<br>Article 12 – Requirements for identification conducted by third person<br>(3) When relying on a third person, the person under obligation shall ensure that the information and documentation on identification of the client can be obtained and that the third person will provide such information upon request.<br>Book of rules on risk assessment, data, information, documents, identification methods and minimum other indicators required for efficient implementation of provisions of the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, Official Gazette of Bosnia and Herzegovina" No. 93/09, 1 December 2009)<br>In addition to what is prescribed in article 16 of the Law (third person), the person under obligation while establishing a business relationship with a client, can entrust a third person to establish and check a client's identity, establish the identity of the real owner of the client and to collect data about the purpose and the planned nature of a business relationship or transaction when such a person is an organization mentioned in items a, c, d and e of paragraph 1 article 4 of the Law and which has its seat or main office in a member country of the European Union (EU), of the European Economic Area (EEA) and of the Financial Action Task Force (FATF) as described in article 6 of this book of rules.<br>In Article 16, after paragraph (4), add new paragraph (5) that shall read:<br>„(5) A person under obligation cannot entrust a third person from the country on the list of countries that do not to apply standards in the field of prevention of money laundering and financing of terrorist activities with certain actions and measures of identification and monitoring of a client."<br>In Article 17, after paragraph (2), add new paragraph (3) that shall read:<br>„(3) A person under obligation must not accept certain actions and measures of identification and monitoring of a client conducted through a third person if that third person established and verified the client's identity without presence of the person under obligation."<br>Previous paragraph (3) shall become paragraph (4), shall be amended and read:<br>(4) "By entrusting third person with certain actions and measures of identification and monitoring of a client, a person under obligation shall not be relieved of his/her responsibility for proper execution of actions and measures of identification and monitoring of a client pursuant to this Law. A person under obligation shall still hold final responsibility for carrying out measures of identification and monitoring entrusted to a third party."<br>After paragraph (4) add new paragraph (5) that shall read: |

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| | "(5) A third person shall be responsible for meeting the requirements set forth by this Law, including the responsibility for safeguarding data and documentation."<br><br>Article 12<br>After Article 17, add new Articles 17a. and 17b. that shall read:<br>„Article 17a.<br>(Obtaining data and documentation from third person)<br>(1) A third person, who, pursuant to this Law, conducts certain actions and measures of identification and monitoring of a client instead of a person under obligation, shall be obligated to submit to the person under obligation the collected data about the client needed for the person under obligation to establish business relationship pursuant to this Law.<br>(2) A third person shall be obligated to submit to the person under obligation, at their request and without delay, copies of identification documents and other documentation which served for third person to execute actions and measures of identification and monitoring of a client and obtain required data about the client. A person under obligation shall be obligated to keep obtained copies of identification documents and other documentation in accordance with this Law.<br>(3) If a person under obligation suspects the authenticity of the executed actions and measures of identification and monitoring of a client or identification documents, or the truthfulness of the obtained data about the client, a person under obligation shall request a third person to submit a written statement about the authenticity of the executed actions and measures of identification and monitoring of a client and truthfulness of the obtained data about the client.<br><br>Article 17b.<br>(Ban to establish business relationship)<br>A person under obligation shall not establish business relationship if:<br>a) actions and measures of identification and monitoring of a client were executed by a person who is not the third person referred to in Article 16 of this Law;<br>b) a third person established and verified the client's identity without their presence;<br>c) failed to previously obtain data referred to in Article 17a. paragraph (1) of this Law from a third person;<br>d) failed to previously obtain copies of identification documents and other documentation about a client from a third person;<br>e) suspected the authenticity of the executed actions and measures of identification and monitoring of a client or the truthfulness of the obtained data about the client and did not request the written statement referred to in Article 17a. paragraph (3) of this Law." |
| (Other) changes since the last evaluation | |

| **Recommendation 11 (Unusual transactions)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *It is recommended that Recommendation 11 be specifically addressed through a revision of the new AML legislation and an eventual consequent revision of the Banking Decisions for Minimum Standards.* |
| Measures taken to | Book of rules on risk assessment, data, information, documents, identification |

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| implement the Recommendation of the Report | methods and minimum other indicators required for efficient implementation of provisions of the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, Official Gazette of Bosnia and Herzegovina" No. 93/09, 1 December 2009)<br>Article 8 – Higher risk – indicators concerning business and transactions<br>(1)The person under obligation shall consider that a client which conducts transactions in unusual circumstances, such as:<br>(a) Significant and unexplained geographic distance between the location of the client and the institution involved in the transaction;<br>(b) Frequent and unexplained movement of accounts to different financial institutions;<br>(c) Frequent and unexplained movement of funds between financial institutions in various geographic locations,<br>may present a higher risk of money laundering and terrorist financing.<br>(3) The person under obligation shall consider applying intensified identification and monitoring of such a client's activities.<br>Article 11 – Considering higher risk transactions for STRs<br>(1) The person under obligation may consider those higher risk transactions defined in the articles 4, 8 and 10 of this book of rules as suspicious transactions according to the definition in Article 3 paragraph 2 of the Law and shall consider applying intensified identification and monitoring to such transactions.<br>(2) The person under obligation shall also consider reporting such transaction, client or person to the Financial Intelligence Department of the State Investigation and Protection Agency as prescribed in Article 30 of the Law. |
| (Other) changes since the last evaluation | |

| **Recommendation 12 (DNFBP – R.6, 8-11)** | |
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| **Rating: Non compliant** | |
| Recommendation of the Report | *Although the concept of PEPs under intensified identification procedures is addressed through legal provisions and hence also for DNFBPs, in practice the issue of PEPs is not addressed by DNFBPs as there is a complete lack of awareness of the risks involved. It is therefore recommended to introduce an awareness and understanding training campaign accordingly throughout the whole sector of DNFBPs as is also required for some elements of the financial sector.* |
| Measures taken to implement the Recommendation of the Report | The FID has developed the Guidelines for the non-banking sector. Other relevant financial institutions also developed Guidelines.<br>These guidelines introduce more details to the obligors on their obligations in the implementation of the Law on the Prevention of Money Laundering and Terrorism Financing and we are of the opinion that all possible dilemmas and unclarities have been removed, particularly for the non banking sector.<br>Likewise, the Draft of the new law further clarifies and regulates the concept of PEPs by intensified identification procedures. In relation to this, the FID initiated a series of trainings on the introduction to this area for the entire DNFBP sector. In creating these guidelines, the DNFBP sector gave its opinions and suggestions, wherefore they confirmed the significance of their obligations in this sense.<br>**Guidelines For Risk Assessment And Enforcement Of The Law On Money Laundering And Financing Of Terrorist Activities For Persons Under** |

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| | **Obligation**<br>2.1. Enhanced measures of identification and monitoring international politically exposed individuals<br>Pursuant to Law, international politically exposed individual shall be any physical individual entrusted or was entrusted with outstanding public function in the former year, including family members and close associates.<br>If a client who enters into a business relation or executes transaction is an international politically exposed party or if a client on whose behalf an international politically exposed party enters into business relation or executes transaction, in addition to enhanced measures of identification and client monitoring, a person under obligation shall take following measures as well:<br>1) Gather data on source of funds and possessions which are or will be the subject of business relation or transaction;<br>2) The employee of the person under obligation who carries out the procedure for establishing business relation with international politically exposed party provides written approval from his/her superior or a person in charge prior to concluding business relation;<br>3) Upon concluding business relation, person under obligation shall monitor transactions and other business activities made by an international politically exposed party that are carried out via person under obligation through the procedure of identification and monitoring. |
| Recommendation of the MONEYVAL Report | *There is a need for increased awareness of threats from new or developing technologies among DNFBPs, although, as claimed, their activities are mostly related to a one-to-one customer relationship. Developments in technology on the way of carrying out certain activities could however pose certain threats.* |
| Measures taken to implement the Recommendation of the Report | The FID has developed the Guidelines for the non-banking sector. Other relevant financial institutions also developed Guidelines.<br>These guidelines introduce more details to the obligors on their obligations in the implementation of the Law on the Prevention of Money Laundering and Terrorism Financing and we are of the opinion that all possible dilemmas and unclarities have been removed, particularly for the non banking sector.<br>Development of new technologies and developing technologies will be the subject of a separate activity of the FID and other relevant institutions. Currently, this technology is at a low level in B&H, but still remains the need to remove possible threats. |
| Recommendation of the MONEYVAL Report | *Although DNFBPs met by the evaluators claim that they do not undertake non-face-to-face business, the enhanced obligations under the new AML Law call for more awareness of the procedures to be applied in such circumstances throughout the whole sector. It is therefore recommended that the need to conduct proper due diligence of non-face-to-face customers is included in any awareness raising exercise.* |
| Measures taken to implement the Recommendation of the Report | The FID has developed the Guidelines for the non-banking sector. Other relevant financial institutions also developed Guidelines. |
| Recommendation of the MONEYVAL Report | *There is a need for the DNFBPs to be made more aware of the threats to money laundering and the financing of terrorism arising out of large complex transactions that may not have economic reasons. The need to analyse and understand such transactions cannot be over emphasised. It is recommended to statutory obligations to this effect are introduced for all obligors.* |

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| Measures taken to implement the Recommendation of the Report | The FID has developed the Guidelines for the non-banking sector. Other relevant financial institutions also developed Guidelines.<br>Owing to the Instructions and the Law on the Prevention of Money Laundering and Terrorism Financing, the DNFBP are familiar with the threats of money laundering and terrorism financing originating from large complex transactions for which it is possible that there are no economic reasons. We have not yet registered such transactions within the DNFBP sector and the Guidelines additionally emphasise the need to analyse and understand such possible transactions. Within the training for the DNFBP sector, this problem area is included as well. |
| Recommendation of the Report | *Record keeping procedures in the AML LAW need to be revisited and clarified in accordance with the requirements under Recommendation 10.* |
| Measures taken to implement the Recommendation of the Report | Working Group of the Council of Ministers prepared a draft amendment Law AML/CFT that will include this remark:<br>Article 65 , paragraph (1), shall be amended and shall read:<br>(Deadline for Keeping Data by the Person under Obligation)<br>(1)The obligor shall keep the data and documentation that are obtained under this Law concerning a customer, established business relationships with a customer and executed transactions for a period of 10 years from the date of termination of the business relationship, executed transaction, or entry in the casino or playroom, and access safe.”. |
| Recommendation of the MONEYVAL Report | *Although most DNFBPs have informed that they undertake business on a one-to-one basis and they identify their clients directly, yet there is a need to clarify the position on third party reliance and introduced business for customer due diligence particularly since the new AML Law now specifically provides for third party reliance for certain parts of the identification process applied.* |
| Measures taken to implement the Recommendation of the Report | The FID has developed the Guidelines for the non-banking sector. Other relevant financial institutions also developed Guidelines.<br>**Guidelines For Risk Assessment And Enforcement Of The Law On Money Laundering And Financing Of Terrorist Activities For Persons Under Obligation**<br>4. Analysis of a party carried out by the third party<br>Pursuant to conditions defined by Law and bylaws, when concluding a business relation with a client, person under obligation can entrust the third party with determining and verifying identity of a client, determining identity of a real owner of a client and gathering of data on purpose and anticipated nature of business relation or transaction. However, person under obligation is obliged to check whether the aforementioned third party meets requirements prescribed by Law, since final accountability for execution of measures of identification and monitoring of a client entrusted to the third party bears person under obligation.<br>Person under obligation shall provide written approval from the third party as a confirmation of reliability of the third party for the purpose of identification of a client.<br>Exception can be regular monitoring of a client from Article 18 of the Law according to which if a client is international legal entity not engaged in trade business or cannot deal with trade, manufacturing or other activities in the country of registration or if a client is a fiduciary or other similar international legal entity with unknown owners or managers. |
| (Other) changes | |

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| since the last evaluation | |

| Recommendation 15 (Internal controls, compliance and audit) | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *Article 32(2) of the new AML Law should be reviewed in relation to full exemptions from appointing an authorised person and from maintaining internal control by obliged entities (persons under obligation) with four or less employees – and interpretatively, obliged natural persons.* |
| Measures taken to implement the Recommendation of the Report | In Article 32 AML/CFT Low, paragraph (2) shall be amended and read:<br>„(2) Those persons under obligation who have less than four employees, authorized person shall be a legal representative or other person who conducts business of the person under obligation or a responsible person of the person under obligation according to legal regulation.” |
| Recommendation of the MONEYVAL Report | *Competent authorities, and in particular the FID, need to be more receptive to requests for training by the industry.* |
| Measures taken to implement the Recommendation of the Report | -In Republic of Srpska during the 2009 years in the organization of international assistance programs of the Ministry of Justice USA (ICITAP), there were two five-day seminars for prosecutors and members of law enforcement agencies on the subject: Financial Investigation.<br>-Seminar on prevention of money laundering, organized by the FID, the Association of Banks, and ATTF "from Luxembourg.<br>-Seminar organized by the FID and ICITAP held in Teslic on advanced investigation techniques, criminal prosecution of complex financial crimes and money laundering offenses.<br>**Subject: Education of legally bound persons under the Law on Prevention of Money Laundering and Financing of Terrorist Activities.**<br>Organised by consulting firm Revicon Ltd. Sarajevo, which is specialized in consulting activities related to finance, accounting and taxes, 24-25 February, 2011 in Fojnica was held a seminar under the name "Anti-money laundering – procedures with clients based on risk assessment".<br>The seminar was held as one of the seminars in continuing education programs of legally bound persons obligated to apply the Law. The seminar, held in Fojnica, was directed to the accountants and auditors as a profession, banks, micro-credit institutions, leasing and brokerage houses and insurance companies. The seminar was attended by 130 participants from all these activities, legally bound persons applying the Law.<br>The structure of participants: |

| Item | Sector/profession | Number of representatives |
|---|---|---|
| 1. | Banks | 76 |
| 2. | MCO | 16 |
| 3. | Insurance | 8 |
| 4. | Accountants | 5 |
| 5. | Auditors | 4 |
| 6. | Leasing | 11 |
| 7. | Brokerage houses | 4 |
| 8. | Enterprises | 6 |

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| | In organisation of Revicon Ltd. Sarajevo, professional part of education was led by: Ibrahim Sinanović (Banking Agency of FBiH), Samir Omerhodžić (Insurance Agency of Bosnia and Herzegovina), Mijo Golub (SIPA-FID), Damirka Mioč and Hasim Šabotić (SIPA-FID), Jasmin Šlaku (Commission for the Prevention of Money Laundering - The Association of Banks); Sulejman Hadžić (BiH Association of Leasing Companies), Džafer Alibegović (Securities Commission of FBiH) and Željko Rička (Revicon Ltd.).<br>Project coordinator: Doc Dr Željko Rička |
| Recommendation of the MONEYVAL Report | *Adequate screening procedures need to be in place and effectively applied when hiring people, if need be through mandatory obligations.* |
| Measures taken to implement the Recommendation of the Report | Further to this obligation being already in place for the banking sector, Guidelines for the implementation of the Law on prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of the FBiH and RS Insurance Agency, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>VI - Education and training<br>".....For admission to the employment of new employees who will perform the duties of preventing and detecting money laundering and financing terrorist activities, the customer should, bearing in mind the recommendation of the FATF No 15, apply the "screening procedure" observations, in order to ensure high standards of recruitment of employee ... " |
| Recommendation of the MONEYVAL Report | *The obligations under Recommendation 15 need to be applied to the entire financial sector.* |
| Measures taken to implement the Recommendation of the Report | The relevant individual guidelines for the entire sector have already been amended and/or are in the process of being amended to ensure that the obligations under Recommendation 15 are entirely covered as is for the banking sector. For example the Guidelines for the implementation of the law on anti-money laundering and counter terrorist financing for obligors covered by the Commission for Securities of the Federation of Bosnia and Herzegovina was amended on 8 April 2010. Similar changes have been made in 2010 in the Guidelines for the insurance sector. |
| (Other) changes since the last evaluation | |

| **Recommendation 16 (DNFBP – R.14-15 & 21)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *It is highly recommended that DNFBPs are made more aware of their important role in the AML/CFT regime through guidelines and training thus ensuring that, in understanding their role better, DNFBPs acknowledge and implement their AML obligation further.* |
| Measures taken to implement the Recommendation of the Report | The FID developed the guidelines (Instruction) for the non-banking sector addressing its obligations related to prevention of money laundering and terrorism financing. This Instruction will contribute to awareness rising of the non-banking sector. |
| Recommendation of the | *The evaluators express serious concerns on the position taken since certain professions, in particular the legal, notary and accountancy professions, are likely* |

<table>
<tr><td>MONEYVAL Report</td><td>to encounter and handle transactions emerging from foreign countries that may not be applying the relevant AML standards to an acceptable degree.</td></tr>
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| | 8. Enterprises 6<br>In organisation of Revicon Ltd. Sarajevo, professional part of education was led by: Ibrahim Sinanović (Banking Agency of FBiH), Samir Omerhodžić (Insurance Agency of Bosnia and Herzegovina), Mijo Golub (SIPA-FID), Damirka Mioč and Hasim Šabotić (SIPA-FID), Jasmin Šlaku (Commission for the Prevention of Money Laundering - The Association of Banks); Sulejman Hadžić (BiH Association of Leasing Companies), Džafer Alibegović (Securities Commission of FBiH) and Željko Rička (Revicon Ltd.).<br>Project coordinator: Doc Dr Željko Rička |
| Recommendation of the MONEYVAL Report | *Adequate screening procedures need to be in place and effectively applied when hiring people, if need be through mandatory obligations.* |
| Measures taken to implement the Recommendation of the Report | The Guidelines for the non-financial sector issued by the FID in October 2010 do not address this issue. The FID will be reviewing the Guidelines accordingly to create this obligation for the non-financial sector. |
| (Other) changes since the last evaluation | |

| **Recommendation 17 (Sanctions)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *Proportionate and comparable sanctions for non-compliance with AML/CFT requirements need to be introduced throughout the applicable legislation (harmonise the sanctions stipulated by different entity level laws) and all ambiguities on the applicability of sanctions under the new AML Law should be removed.* |
| Measures taken to implement the Recommendation of the Report | To date no specific measures have been taken in this regard. However the matter will be discussed and reviewed by the Permanent Working Group for anti-money laundering who is also responsible to ensure harmonisation. |
| Recommendation of the MONEYVAL Report | *Legislation to provide for the sanctioning powers of the respective supervisory bodies in the insurance market should be introduced.* |
| Measures taken to implement the Recommendation of the Report | Insurance Agency of Bosnia and Herzegovina has prepared draft Law on amendment and supplement of the Law on intermediaries in insurance in order to ensure harmonization of the regimes of the applicable sanctions that are now different according to the laws on insurance intermediaries in Federation Bosnia and Herzegovina and in Republica Srpska. |
| Recommendation of the MONEYVAL Report | *Steps need to be taken to ensure that all requirements of the new AML Law are enforceable (that is; sanctions are stipulated for non-compliance).* |
| Measures taken to implement the Recommendation of the Report | The current AML Law as published in July 2009 basically sanctions non-compliance with all obligations there under. However, as further amendments to the law are currently under consideration, the Permanent Working Group for anti-money laundering, who is also responsible to ensure harmonisation, will further |

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| | review this matter. |
| Recommendation of the MONEYVAL Report | *Administrative sanctions to be applied to the participants of the insurance market for non-compliance with AML/CFT requirements need to be introduced.* |
| Measures taken to implement the Recommendation of the Report | Insurance Agency of Bosnia and Herzegovina has prepared draft Law on amendment and supplement of the Law on intermediaries in insurance in order to ensure harmonization of the regimes of the applicable sanctions that are now different according to the laws on insurance intermediaries in Federation Bosnia and Herzegovina and in Republica Srpska |
| Recommendation of the MONEYVAL Report | *All sanctions should be reviewed to ensure that they are effective, proportionate and dissuasive.* |
| Measures taken to implement the Recommendation of the Report | **In accordance with new draft AML/CFT:**<br>Articles 72. and 73 shall be amended and become one Article 72 that shall read:<br>„Article 72<br>(Punishment of Legal Persons and Responsible Persons in Legal Persons for Offenses)<br>(1) A legal person referred to in Article 4 of this Law shall be fined for an offense in the amount of 20,000 BAM to 200,000 BAM if:<br>a) it fails to perform risk assessment pursuant to Article 5, paragraph (1);<br>b) it fails to perform risk assessment pursuant to guidelines for drafting risk assessment referred to in Article 5, paragraph (2);<br>c) it fails to carry out measures of identification and monitoring of a client when establishing business relationship with the client referred to in Article 6, paragraph (1) Item a);<br>d) it fails to carry out measures of identification and monitoring of a client during transaction in the amount of 30,000 KM or more, pursuant to Article 6, paragraph (1) Item b);<br>e) it fails to carry out measures of identification and monitoring of a client when issuing electronic money referred to in Article 6, paragraph (1) Items c) and d);<br>f) it carries out a transaction to in Article 6, paragraph (1) Item (b) based on or without previously established relationship and fails to obtain data referred to in Article 7, and missing data referred to in Article 44, paragraph (1) Items a), b), c), e), f), g), i), and m);<br>g) it fails to fully implement provisions of this Law in its seat, branch offices and other organizational units in the country and abroad referred to in Article 8, paragraph (1);<br>h) it fails to implement tighter measures of identification and monitoring of branch offices and other organizational units in the country and abroad, especially in the countries that do not apply internationally accepted standards in terms of prevention of money laundering and financing of terrorist activities or do so inadequately as referred to in Article 8, paragraph (3);<br>i) it fails to obtain all required information for identification in accordance with provisions of Article 7 of this Law or if identification is not carried out pursuant to Articles 10, 11, 12, 13, 14, 15 and 17 of this Law;<br>j) fails to establish and verify the identity of a physical person by direct |

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| | inspection of the valid identification document of a client in the presence of the client;<br>k) it fails to collect missing data from other valid public documents pursuant to Article 9, paragraph (2);<br>l) it fails to identify a client or if identification is not carried out in accordance with provisions of Article 7 of this Law;<br>m) person under obligation fails to collect data about final real owners as prescribed by paragraph (3) of Article 15.;<br>n) person under obligation entrusts certain actions and measures of identification to a third person from a country on this list of countries that do not apply internationally accepted standards in terms of prevention of money laundering and financing of terrorist activities referred to in Article 16 of this Law;<br>o) person under obligation accepts measures of identification and monitoring of a client through a third person and that person has established and verified the identity of the client without his presence;<br>p) monitoring of a client's business activities does not include provisions of Article 18. paragraph (2) items a) and b);<br>q) it fails to apply tighter measures of identification when establishing correspondent relationship with a bank or other similar crediting institution with a seat abroad;<br>r) it fails to act pursuant to provisions of Article 22;<br>s) a client is not present when establishing and verifying identity during execution of measures of identification and monitoring;<br>t) a person under obligation fails to collect data, information and documentation referred to in Article 21, paragraph (1) items a) through f) when establishing correspondent relationship with a bank or other similar crediting institution with a seat abroad;<br>u) an employee of a person under obligation establishes relationship with a correspondent bank referred to in Article 21, paragraph 2 of this Law without prior written consent of his/her supervisor and responsible person of the person under obligation,<br>v) a person under obligation fails to collect all data referred to in Article 21, paragraph by inspecting public and other available registries, or documents and business reports submitted by the bank or other similar crediting institution with a seat abroad;<br>w) establishes or continues correspondent relationship with a bank or other similar crediting institution with a seat abroad without prior fulfillment of requirements envisaged by Article 21, paragraph (4), items a) through d);<br>x) Fails to establish an adequate procedure for identifying politically active person pursuant to Article 22.<br>y) fails to undertake measures referred to in Article 22, paragraph (6);<br>z) when establishing a business relationship or performing transaction by a politically active person, a person under obligation, along with measures envisaged by Article 20, within the procedure of tighter identification and monitoring measures;<br>aa) fails to act pursuant to Articles 23, 24 and 25;<br>bb) opens, issues or enables client to have secret account and other products referred to in Article 27 of this Law;<br>cc) establishes a business relationship with shell banks referred to in Article 28 of this Law; |

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| | dd) allows cash payment in the amount exceeding 30,000 BAM contrary to provisions of Article 29 of this Law;<br>ee) fails to report FIA or fails to sent information, data or documentation referred to in Articles 30 and 31 of this Law to FIA;<br>ff) entrusts the tasks of the authorized person and his/her deputy to a person that does not meet the requirements referred to in Article 33, paragraph (1) items a) through d);<br>gg) lawyers, legal companies, and notaries fails to act pursuant to Article 39, paragraph (1) items a) and b);<br>hh) persons performing professional activities within the procedure of identification and monitoring measures fail to act pursuant to Article 40 when establishing business relationship and transaction;<br>ii) persons performing professional activities fail to act pursuant to Article 41 and 43;<br>jj) records of a person under obligation does not contain at minimum the information referred to in Article 44, paragraph (1);<br>kk) fails to act upon the order of FIA on temporary suspension of transaction or directions issued by FIA related to the order and in accordance with Article 48 of this Law;<br>ll) fails to keep information, data and documentation pursuant to Article 65 of this Law for at least 10 years after the identification, transaction or closure of the account.<br>(2) A responsible person in a legal person shall be fined in the amount from 5,000 BAM to 20,000 KM for the offence referred to in paragraph 1 of this Article.<br>(3) A physical person performing private business operations shall be fined in the amount from 3,000 BAM to 20,000 BAM for the offence referred to in paragraph 1 of this Article.<br>(4) A legal person referred to in Article 4 of this Law shall be fined in the amount from 10,000 BAM to 100,000 BAM if:<br>a) it fails to perform additional identification of a foreign legal person at least annually in accordance with provisions of Article 10, paragraph 7 of this Law;<br>b) it fails to submit mandatory information to FIA or fails to submit it as defined by Article 47 of this Law;<br>c) it fails to establish internal control or it fails to make a list of indicators to identify suspicious transactions within set deadline or as defined by provisions of Articles 36 and 37 of this Law;<br>d) it fails to appoint authorized person and his deputy or fails to inform FIA about the appointment, pursuant to the provisions of Article 32 of this Law;<br>e) it fails to ensure in-service training of personnel in accordance with provisions of Article 35 of this Law;<br>f) it fails to keep information about an authorized person and his deputy, about in- service training of employees and internal control carried out at least four years after the appointment of the authorized person and his deputy, after completion of in- service training and after carrying out of internal control respectively in accordance with provision of Article 65, paragraph 2 of this Law;<br>(5) A responsible person in a legal person shall be fined in the amount from 1,000 BAM to 5,000 BAM for the offence referred to in paragraph 1 of this Article.<br>(6)A physical person performing private business operations referred to in Article 4 |

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| | of this Law shall be fined in the amount from 2,000 BAM to 10,000 BAM for the offence referred to in paragraph 1 of this Article."<br>Previous Articles 74, 75, 76, 77 and 78 shall become 73, 74, 75, 76 and 77. |
| (Other) changes since the last evaluation | |

| **Recommendation 21 (Special attention for higher risk countries)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *It is recommended that a specific obligation be included for financial institutions to give special attention to business relationships and transactions with financial institutions and other legal/natural persons from countries that have inadequate AML/CFT measures in place. Such an obligation should go beyond the ongoing monitoring of accounts.* |
| Measures taken to implement the Recommendation of the Report | Book of rules on risk assessment, data, information, documents, identification methods and minimum other indicators required for efficient implementation of provisions of the Law on the Prevention of Money Laundering and Financing of Terrorist Activities, Official Gazette of Bosnia and Herzegovina" No. 93/09, 1 December 2009)<br>Article 4 – Higher risk – indicators concerning geographical location<br>(1) The person under obligation shall consider that a client which has its seat or central office in a country:<br>(a) which is subject to sanctions, embargoes or similar measures issued by the United Nations;<br>(b) identified by the FATF or other credible international organization as lacking internationally accepted standards for the prevention and detection of money laundering and funding of terrorist activities;<br>(c) identified by the FATF or other credible international organization as providing funding or support for terrorist activities that have designated terrorist organizations operating within them or;<br>(d) identified by credible sources as having significant levels of corruption;<br>may present a higher risk of money laundering and terrorist financing.<br>(2) The person under obligation shall consider applying intensified identification and monitoring of such a client's activities.<br>Guidelines for the implementation of the Law on the prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of FBiH and RS Insurance Agency, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>**III - Risk Assessment**<br>The criteria relevant to examination<br>1. Clients:<br>a) **<u>The client citizenship testing</u>**<br>b) Designation of politically exposed persons<br>c) Testing of the actual economic owner<br>d) Relationship to customer<br>**a) <u>The client citizenship testing</u>:**<br>(1) Subject to the citizenship of the client, the customer will consider the application of enhanced identification and monitoring of activities, in accordance with Article 4 of the Rules, or the simple identification and monitoring of client's activities, in accordance with Article 5 and 6 of the Ordinance. |

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| | (2) EU Member States, the European Economic Area (EEA) or members of the Working Group on Financial Measures against Money Laundering (FAFT), are considered to be countries that have adopted international standards for preventing and detecting money laundering and terrorist financing activities, which are equivalent or more stringent than those applicable in Bosnia and Herzegovina.<br>(5) In the case that a client has a permanent residence in BiH, and comes from a country that is not listed as a state that has adopted international standards for preventing and detecting money laundering and financing terrorist activities, which are the same or stricter than those in force in Bosnia and Herzegovina, offering to enter will be considered by application of increased measures of identification<br>**Risk assessment**<br>**1) Client**<br>0 = low risk elements<br>Residence/seat of the company in the country<br>**Nationality EU/EEA**<br>Not politically exposed person<br>Continuous client<br>One contract of life insurance<br>Personal<br>1 = higher risk elements<br>Residence/seat of the company abroad<br>**Citizenship is not in the EU/EEA**<br>Politically exposed person<br>New client<br>More life insurance contracts<br>Through an agent/representative<br>**Internal program for assessing the level of risk customers, Merkur BH osiguranje dd,**<br>**The criteria relevant to the investigation:**<br>I Clients:<br>a**) Examination of nationality of the ensured person;**<br>b) Identification of politically exposed persons;<br>c) Examination of the real economic owner;<br>d) Relation to the insurance company.<br>**a) Examination of nationality of the ensured person**<br>EU Member States, the European Economic Area (EEA) and the members of the Working Group for the financial measures against money laundering (eng FAFT) are considered to be countries that have adopted the international standards for preventing and detecting money laundering and financing of terrorist activities, which are the same or more strict than those which are in use in Bosnia and Herzegovina.<br>Those are:<br>1. Argentina, Australia, Austria, Belgium, Basil, Bulgaria, Cyprus, China, Montenegro, Czech Republic, Denmark, Estonia, Finland, France (including French oversea territories Mayotte, New Caledonia, French Polynesia, Saint Pierre and Miquelon, Wallis and Futuna),Gibraltar, Greece, Hong Kong, Croatia, Ireland, Island, Italy, Japan, South Africa, Canada, Latvia, Lichtenstein, Lithuania, Luxembourg, Hungary, Malta, Mexico, Netherlands(including Antilles and Aruba), Germany, Norway, New Zealand, Poland, Portugal, Romania, Russian Federation, Singapore, USA, Slovakia, Slovenia, Spain, Serbia, Sweden, Switzerland, Turkey and United Kingdom (including three crown dependent territories of United |

Kingdom, Jersey, Guernsey and Island Man).
2. In the case that client comes from a country which is not listed in the Annex, the offer for the conclusion of insurance will not be taken into consideration.

**Changes from Insurance sector:GUIDLINES**

**The criteria relevant to the investigation:**

A customer is required to subject the activities in the life insurance business to analysis based on certain criteria (clients, complex transactions, client activity, the origin of the client, etc.) so life insurance would not be abused for money laundering and financing terrorist activities.

1. **Clients:**
    a. Client citizenship testing
    b. Mark of politically exposed persons
    c. Testing of real economic owner
    d. Relationship to customer

**a) Client citizenship testing**

Depending on the citizenship of the client, the customer will consider the application of enhanced identification and monitoring activities, in accordance with Article 4 of the Rules, or the simple identification and monitoring activities of the client, in accordance with Article 5 and 6 of the Ordinance.

EU Member States, the European Economic Area (EEA) or a member of the Working Group on Financial Measures against Money Laundering (FAFT), considered to be countries that have adopted international standards for preventing and detecting money laundering and terrorist financing activities, which are equivalent to or stricter than those in use in Bosnia and Herzegovina.

Countries mentioned in the preceding paragraph, are considered to be the country listed in the Annex to the Ordinance, namely: Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Cyprus, China, Montenegro, Czech Republic, Denmark, Estonia, Finland, France (including French overseas territory of Mayotte, New Caledonia, French Polynesia, Saint Pierre and Miquelon, and Wallis and Futuna), Gibraltar, Greece, Hong Kong, Croatia, Ireland, Iceland, Italy, Japan, South Africa, Canada, Latvia, Liechtenstein, Lithuania, Luxembourg, Hungary, Malta, Mexico, the Netherlands (including Netherlands Antilles and Aruba), Germany, Norway, New Zealand, Poland, Portugal, Romania, Russian Federation, Singapore, USA, Slovakia, Slovenia, Spain, Serbia, Sweden, Switzerland, Turkey and the United Kingdom (including three Crown Dependencies of the United Kingdom: Jersey, Guernsey and the Isle of Man).

With the client citizenship testing, customers will be guided by a list of countries from the previous paragraph, until the Minister of Security of BiH, on annual level updates the list of countries in Article 4 and 6 of the Ordinance.

In the case that a client has a permanent residence in BiH, and comes from the state that is not listed as a state that has adopted international standards for preventing and detecting money laundering and financing terrorist activities, which are the same or stricter than those in force in Bosnia and Herzegovina, offer to enter will be considered applying the measures of increased identification.

Requirements on conclusion of the life contracts of foreign natural and legal persons who are not domiciled or resident, i.e. has no permanent residence in BiH will not be accepted.

**Guidelines For Risk Assessment And Enforcement Of The Law On Money Laundering And Financing Of Terrorist Activities For Persons Under Obligation**

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| | 6.1.2. Geographical Position of a Party<br>Parties that represent a high risk for money laundering and financing terrorist activities also include parties which have permanent or temporary residence or the seat in the following country:<br>1. A country which is not a member of the European Union, European Economic Area (EEA) or Financial Action Task Force (FATF), or in a country which has no satisfactory regulations or international standards related to prevention of the money laundering and financing terrorist activities;<br>2. A country, which based on the assessment of competent international organizations, is famous for the production of drugs or well-organized and developed traffic in drugs (Middle or Far East countries famous for heroin production: Turkey, Afghanistan, Pakistan and Golden Triangle countries (Myanmar, Laos and Thailand); South American countries famous for cocaine production: Peru, Colombia and neighboring countries; Middle and Far East countries and Middle American countries known for Indian cannabis production: Turkey, Lebanon, Afghanistan, Pakistan, Morocco, Tunisia, Nigeria and neighboring countries, as well as Mexico);<br>3. A country, which based on the assessment of the competent international organization, is famous for its high level of organized crime, corruption, illicit weapon trade, trafficking and violation of human rights,<br>4. A country, which based on the assessment of the international organization FTAF, is placed on the list of uncooperative country or territory (it is about the countries or territories which, according to the FATF, have no adequate legislation for prevention or detection of money laundering or funding of terrorism, there is no control of the state over financial institutions or such control is inadequate, establishment or operation of financial institutions is possible without the approval or registration with the competent national bodies, state abet opening of anonymous accounts or other anonymous financial instruments, there is inadequate system of identification and informing of suspicious transactions, legislation does not prescribe the obligation of identifying the real owner, international cooperation is inefficient or inexistent).<br>5. A country against which the UN measures are effective, among which are the full or partial ban of economic relations, railway, marine, air, post, telegraphic, radio and other communication relations, ban on diplomatic relations, military embargo, travel embargo etc.<br>6. A country which is known as financial or tax heaven (it is very significant that those countries enable full or partial tax exemptions, or the tax rate is much lower than in other countries. Such countries usually have no agreements on avoiding double taxation, or if they have any, they do not adhere to it since their legislation enables them to do so, i.e. to prescribe strict honoring of the banking and business secret and providing quick, discreet and cheap financial services. Among the tax heaven countries are: Dubai – Jabel Alii Free Zone, Gibraltar, Hong Kong, Isle of Man, Lichtenstein, Macau, Mauritius, Monaco, Nauru, Nevis Island, Iceland – Norfolk area, Panama, Samoa, San Marino, Sark, Seychelles, St. Kitts and Nevis, St. Vincent and the Grenadines, Switzerland – cantons Vaud and Zug, Turks and Caicos Island, United States of America – Delaware and Wyoming, Uruguay, Virgin Island and Vanuatu.<br>1. A country generally known as off-shore financial center (it is significant that those countries define limitation regarding direct performance of registered business in the country, provide a high level of banking and business secret, have liberal control over foreign trade, provide quick, discreet and cheap financial |

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| | services and registration of legal persons. They do not have adequate legislations for prevention or detection of money laundering or funding of terrorism. Among the off-shore financial center countries are: Andorra, Angola, Antigua and Barbuda, Aruba, Bahamas, Barbados, Belize, Bermuda, British Virgin Island, Brunei Darussalam, Cabo Verde, Cayman Island, Cook islands, Costa Rica, Delaware (SAD), Dominica, Gibraltar, Grenada, Guernsey, Isle of Man, Jersey, Labuan (Malaysia), Lebanon, Lichtenstein, Macao, Madeira (Portugal), Marshall island, Mauritius, Monaco, Montserrat, Nauru, Nevada (SAD), Netherlands Antilles, Niue, Palau, Panama, Philippines, Samoa, Seychelles, St, Christopher and Nevis, St. Lucia, St. Vincent and the Grenadines, Zug (Switzerland), Tonga, Turks and Caicos Island, Uruguay, Vanuatu and Wyoming (SAD). |
| (Other) changes since the last evaluation | |

| **Recommendation 22 (Foreign branches and subsidiaries)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *Requirements for Recommendation 22 are only partially addressed through the Banking Decisions on Minimum Standards – more specifically only to a minor extent through Article 2 – and through the new Article 8 of the new AML Law. However there are no provisions covering the main requisites of the Recommendation. It is recommended that this matter be addressed through the new legislation and through guidance issued by the relevant competent authorities.* |
| Measures taken to implement the Recommendation of the Report | Guidelines for the implementation of the Law on the prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of FBiH and RS Insurance Agency, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>**IV - Implementation of measures to prevent money laundering and financing terrorist activities in the branches/subsidiaries of customers**<br>(2) For this purpose, especially must take care that the law has stipulated that the customers are obliged to implement enhanced measures to identify and monitor the activities of branches/subsidiaries abroad, particularly in countries that do not apply internationally accepted standards for the prevention of money laundering and terrorist financing activities, or do it inadequately, if the laws and regulations of foreign countries allow so, as envisaged by FATF Recommendation No 22.<br>(3) In the case that the standards for detecting and preventing money laundering and terrorist financing activities that were implemented in the operation of branches/subsidiaries abroad, are in explicit contradiction with the legislation of a third state where the branch/ subsidiary has its headquarters, the customer must notify FOO and implement appropriate measures to abolish the risk of money laundering or financing terrorist activities, such as:<br>1. establishment of additional internal procedures to prevent or reduce the possibility of misuse of money laundering or terrorist financing activities;<br>2. implementing of additional internal controls over operations of the customer in all the key areas that are most at risk of money laundering and terrorist financing activities;<br>3. establishment of internal mechanisms for assessment of risk of certain clients, business relationships and transactions, in accordance with the Guidelines;<br>4. implementing the strict policy of client classification according to their risk and consistent enforcement of measures accepted under this policy; |

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| | 5. additional training of employees.<br>New low. In Article 8, paragraph (1), after the word „abroad“, add comma and words: “in as much as allowed by the laws and by-laws of foreign countries”.<br>After paragraph (1), add new paragraph (2) that shall read:<br>„ (2) If the regulations of the country does not stipulate execution of measures to detect and prevent money laundering and financing of terrorist activities in the same scope as stipulated by this Law, a person under obligation shall be obligated to so inform the FIA without any delay and undertake measures for removing risks of money laundering or financing of terrorist activities. “<br>The necessary changes for the banking and the securities sectors to fully meet the obligations under Recommendation 22 are under consideration and should be implemented in the near future. |
| (Other) changes since the last evaluation | Guidelines for the implementation of the Law on the prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of FBiH and RS Insurance Agency, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>IV - Implementation of measures to prevent money laundering and the financing of terrorist activities in the branches/subsidiaries of the customer<br>(4) A person should inform the Agency when the branch/subsidiary of foreign customer is unable to implement appropriate measures to prevent money laundering and terrorist financing, because it is prohibited by local law (host country), regulations or other measures.<br>CHANGES INSURANCE SECTOR-GUIDELINES<br>IV – ENFORCEMENT OF MEASURES TO PREVENT MONEY LAUNDERING AND FINANCING TERRORIST ACTIVITIES AT THE BRANCHES/SUBSIDIARIES OF THE CUSTOMER<br>The customer is required to establish a unified policy management system to detect and prevent money laundering and financing terrorist activities, both in its headquarters and in its branches/subsidiaries in the country and branches/subsidiaries abroad.<br>For this purpose, special care must be taken with a regard that the Law stipulated that the customers are obliged to implement enhanced measures of identification and monitoring of activities of branches/subsidiaries abroad, particularly in countries that do not apply internationally accepted standards for the prevention of money laundering and financing terrorist activities, or do it inadequately, if it is allowed by the laws and regulations of foreign countries, as envisaged by FATF Recommendation No 22.<br>In the case that the standards for detecting and preventing money laundering and financing terrorist activities that are implemented in the operation of branches/subsidiaries abroad, in explicit contradiction with the legislation of a third state where the branches/subsidiary has its headquarters, the customer must notify the FID and implement appropriate measures to abolish the risk of money laundering or financing terrorist activity, such as:<br>1. establishment of additional internal procedures to prevent or reduce the possibility of misuse of money laundering or terrorist financing activities;<br>2. implementing of additional internal controls over operations of the customer in all the key areas that are most at risk of money laundering and financing terrorist activities;<br>3. establishment of internal mechanisms for assessment of risk of certain clients, business relationships and transactions, in accordance with the Guidelines; |

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| | 4. implementing the strict policy of client classification according to their risk and consistent enforcement of measures accepted under that policy;<br>5. additional training of employees.<br>The customer should inform the Agency when the branch/subsidiary of foreign customer is unable to implement appropriate measures to prevent money laundering and terrorist financing, because it is prohibited by local law (of the host country), regulations or other measures.<br>Administration of customers must:<br>- ensure that all branches/subsidiaries are familiar with the policy of detecting and preventing money laundering and terrorist financing, especially those that are based abroad and their employees;<br>- through branches/subsidiaries, ensure that internal procedures of detecting and preventing money laundering and the financing of terrorist activities that are adopted under the Act, Regulations and Guidelines, are as much as possible incorporated into their business processes;<br>- carry out continuous monitoring of the effectiveness and enforcement to detect and prevent money laundering and financing terrorist activities in the branches/subsidiaries, especially those that are headquartered abroad.<br>Branches/subsidiaries of customers, who are based abroad, they must at least once annually notify the parent customer on adopted measures in detecting and preventing money laundering and financing terrorist activities, particularly in terms of enhanced identification and monitoring of the client, conducting the evaluation process of risk analysis, recognition and reporting of suspicious transactions, security and storage of data and documentation, keeping records on clients, business relations and transactions. |

| **Recommendation 23 (Regulation, supervision and monitoring)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *Legislation should be amended to introduce:*<br>*a) a prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD;* |
| Measures taken to implement the Recommendation of the Report | On 14.12.2010 in the parliamentary procedure is passed a new Law on Securities Market and it is expected that in the first half of 2011 this law will be adopted. This Law provides the following.<br>Article 141<br>(Consent to entry in the register of businesses and consent to the appointment of directors)<br>(1) To be entered in the register of businesses, professional mediator shall submit the following agreement:<br>(a) for entry in the register of business entities;<br>(b) on the appointment of directors.<br>(2) Approval under paragraph (1) of this Article shall be issued by the Commission.<br>(3) A professional mediator along with a request to obtain approval under paragraph (1) item a) of this Article shall submit the following:<br>a) proof of payment of capital;<br>b) Statute of professional intermediaries.<br>(4) *A professional mediator along with the request to obtain approval under paragraph (1) item b) of this Article shall submit the following:*<br>*a) proof that it has the appropriate qualifications and relevant experience in* |

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| | *performing his duties in accordance with a bylaw of the Commission;*<br>*b) evidence that he was not indicted for crimes against:*<br>*1) economic, business and safety of payment;*<br>*2) property;*<br>*3) justice;*<br>*4) the official or other responsibility;*<br>*5) criminal offenses under this law;*<br>*c) evidence that was not sentenced for the crimes referred to in paragraph b) of this paragraph;*<br>*d) that against him there are no security measures prohibiting the performance of activities related to conducting business with securities, which is wholly or partially included in the business.*<br>(5) The Commission may refuse an application for approval, despite fulfilling the requirements of paragraph (3) of this article in accordance with Article 140 paragraph (5) and (6) of this Law.<br>(6) Paragraph (1) and (2) of this Article shall apply to the head of the organizational part of the bank from the article 118 paragraph (1) item b) and paragraph (2) c) of this Law.<br>(7) The Commission shall issue a decision to revoke consent to the appointment of directors in the case:<br>a) that the person who has been given approval within 90 days does not come to the managerial position;<br>b) of termination of the director's duty;<br>c) withdrawal of consent in accordance with Article 272 (2) of paragraph a) of this Law.<br>(8) The decision to revoke the agreement specifies the period within which it can not seek re-issuance of approvals, which may not be less than one year nor more than three years from the date of issuance. |
| Recommendation of the MONEYVAL Report | *b) a requirement for a clean criminal record of the managers of market intermediaries in BD; and* |
| Measures taken to implement the Recommendation of the Report | On 14.12.2010 in the parliamentary procedure is passed a new Law on Securities Market BD and it is expected that in the first half of 2011 this law will be adopted. This Law provides the following.<br>Article 141<br>(Consent to entry in the register of businesses and consent to the appointment of directors)<br>(1) To be entered in the register of businesses, professional mediator shall submit the following agreement:<br>(a) for entry in the register of business entities;<br>(b) on the appointment of directors.<br>(2) Approval under paragraph (1) of this Article shall be issued by the Commission.<br>(3) A professional mediator along with a request to obtain approval under paragraph (1) item a) of this Article shall submit the following:<br>a) proof of payment of capital;<br>b) Statute of professional intermediaries.<br>(4) *A professional mediator along with the request to obtain approval under paragraph (1) item b) of this Article shall submit the following:*<br>*a) proof that it has the appropriate qualifications and relevant experience in* |

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| | *performing his duties in accordance with a bylaw of the Commission;*<br>*b) evidence that he was not indicted for crimes against:*<br>*1) economic, business and safety of payment;*<br>*2) property;*<br>*3) justice;*<br>*4) the official or other responsibility;*<br>*5) criminal offenses under this law;*<br>*c) evidence that was not sentenced for the crimes referred to in paragraph b) of this paragraph;*<br>*d) that against him there are no security measures prohibiting the performance of activities related to conducting business with securities, which is wholly or partially included in the business.*<br>(5) The Commission may refuse an application for approval, despite fulfilling the requirements of paragraph (3) of this article in accordance with Article 140 paragraph (5) and (6) of this Law.<br>(6) Paragraph (1) and (2) of this Article shall apply to the head of the organizational part of the bank from the article 118 paragraph (1) item b) and paragraph (2) c) of this Law.<br>(7) The Commission shall issue a decision to revoke consent to the appointment of directors in the case:<br>a) that the person who has been given approval within 90 days does not come to the managerial position;<br>b) of termination of the director's duty;<br>c) withdrawal of consent in accordance with Article 272 (2) of paragraph a) of this Law.<br>(8) The decision to revoke the agreement specifies the period within which it can not seek re-issuance of approvals, which may not be less than one year nor more than three years from the date of issuance. |
| Recommendation of the MONEYVAL Report | *c) requirements for professional qualifications and expertise of directors and senior management of investment funds in FBiH, in RS, and in BD.* |
| Measures taken to implement the Recommendation of the Report | On 14.12.2010 in the parliamentary procedure is passed a new Law on Securities Market and it is expected that in the first half of 2011 this law will be adopted. This Law provides the following.<br>Please use the answer from previous questions. |
| Recommendation of the MONEYVAL Report | *Licensing/registration procedures should be developed for the 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; issuing financial guarantees and other warranties and commitments, and lending, crediting, offering and brokering in negotiation of loans.* |
| Measures taken to implement the Recommendation of the Report | By adopting the new Law on Foreign Exchange, is removed and this lack of supervision of the exchange. |
| Recommendation of the MONEYVAL | *Steps need to be taken to harmonise the efficiency of monitoring activities in respect of persons involved in money transfer and exchange activities.* |

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| Report | |
| Measures taken to implement the Recommendation of the Report | A new agency, Agency for Supervision of the Post Office Operation (which includes payment transfers), has now been established. The new agency will eventually be recognized under the AML Law as the supervisory authority for AML purposes for the Post Office. Arrangements will be considered for the cooperation of the new Agency and the Agencies for Banks to ensure harmonisation and level playing field in the supervision of the payments sector. |
| Recommendation of the MONEYVAL Report | *Efficient, sufficiently frequent, risk-based supervision of financial institutions needs to be developed and implemented.* |
| Measures taken to implement the Recommendation of the Report | The RBA in supervision that is already applied by the Banking Agencies has remained and is reviewed as the need arises. Consideration is being given for the other supervisory agencies for the insurance and the securities sectors to apply a supervisory RBA. The Insurance Agency of the BiH will be monitoring and providing guidance to the insurance supervisory agencies at entity level in the application of a risk based supervisory approach. |
| (Other) changes since the last evaluation | |

| **Recommendation 24 (DNFBP - Regulation, supervision and monitoring)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *Legislation should be introduced to:*<br>*a) define the basis for entity level Ministries of Finance and for the Tax Administration of BD to supervise implementation of AML/CFT requirements by casinos;* |
| Measures taken to implement the Recommendation of the Report | A Law draft on Gambling in the Brcko District of BiH is completed and in the course of 2011 it should pass the parliamentary procedure for adoption. This Law states the following:<br>Article 2<br>(Definitions)<br>The terms used in this Law shall have the following meanings:<br>a. **Games of chance** are games in which the participant or player has possibility of acquiring income in cash, property or rights, where the ultimate outcome of a game does not depend on knowledge or skills of the participants in the game, but on a case or an uncertain event;<br>b. **organizers of games of chance** is a entity's subsidiary of Lottery, legal entity, independent entrepreneur, sports associations and federations, which in accordance with the law have the right to organize games of chance and other games;<br>c. **Gains Fund** is a share of the total mass of the funds paid in each individual round of games of chance, or the emission value of lottery tickets that are paid in a game of chance, in accordance with the Law and game rules;<br>d. **prize fund** is part of the total number of promotional products and services that are expressed in monetary terms, according to market value for any price of products and services to be promoted;<br>e. **organizing fee** is a fixed amount of money paid by preparers to Single |

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| | Treasury Account of the Brcko District (hereinafter referred to as STA) in accordance with the provisions of this Law;<br>f. **District's public revenue** is tax and nontax revenue, revenue from own sources, grants and other revenues that are collected and deposited in the STA and paid off from it;<br>g. **taxes on gains from the lottery and other games** is an amount payable by withholding by an individual who earns income from the classic games of chance, prize competitions and lotteries;<br>h. **tax from organizing the games of chance** is an amount of money paid by preparers to the tax base prescribed by this Law;<br>i. **suspicious transaction** is each transaction for which the taxpayer or the competent authority determines that in connection with it or with a person conducting the transaction, there are reasons to suspect on the offence of money laundering or that the transaction involves funds derived from illegal activities;<br>j. **beneficial owner** is a natural person:<br><br>1) that owns an organizer or which controls the legal person by direct or indirect ownership,<br>2) having control over 25% plus one share or has control over a sufficient number of votes in that legal entity,<br>3) who otherwise controls the management of legal persons;<br>k. **subsidiary** is a legal entity that is interconnected with other legal entity by management, capital or otherwise which allows them to work together to shape the business policy of which one legal person has directly or indirectly more than 50% of shares or has a direct or indirect majority membership rights in other legal entity;<br>l. **player registration** is downloading and storing the data about player, the player identification with editors, the issuance of an identification number of players and player's opening accounts at the organizer.<br>Article 4<br>(Subsidiary application)<br>In the process of supervision, control and collection of fees and taxes is subsidiary applied the Law on Tax Administration of Brcko District of Bosnia and Herzegovina.<br>Article 6<br>(Right of organizing the games)<br>(1) Organising the games of chance and other games throughout the territory of District may be exercised by organiser, if he is registered for the activity of organizing the games in the Municipal Court of Brcko District of Bosnia and Herzegovina (hereinafter: the Municipal Court) and if he has a permit issued by the Directorate, if the Law does not provide otherwise.<br>**(Comment:** in the composition of Directorate is Tax Administration)<br>Article 15<br>(Prevention of Money Laundering)<br>Organizers of games of chance are required in their operations to comply with the regulations governing money laundering, particularly in cases of complete analysis of the participants in games of chance and determining of their identity, determining the actual owners, suspicious transactions and terms for keeping data about the players.<br>Article 28 |

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| | (Issuance of approval for registration)<br>(1) Approval for registration shall be issued upon request, which is submitted by organiser to Directorate.<br>(2) Along with the application referred to in paragraph (1) of this Article organiser shall submit the following:<br>a. founding act of the legal person;<br>b. casino rules in accordance with Article 37 of this law;<br>c. proof of capital, deposit of security reserve funds and a statement about the origin of the funds of initial capital;<br>d. rules for each type of game that is held, the conditions for participation in the game, stake in the game, price, review and specification of jettons and the ultimate deadline on payment for participation in the game;<br>e. *proof that against the founders and owners of responsible and competent persons in the legal entity there is no criminal proceeding and that he is not convicted of criminal offenses under the Criminal Code of Brcko District of Bosnia and Herzegovina, except for crimes of negligence in the field of transportation. Foreign citizen submits a certificate of the state whose citizen he is and in which resides or stays at least two years before filing this application;*<br>f. *statement of organiser that he had not been revoked approval in the country or abroad;*<br>g. *list of shareholders, or shares in a legal person, with full names and address of individuals or headquarters of legal entities with total nominal amount of shares, or shares, the percentage of shares in the basic capital of such legal persons, as well as information on preferred shares, rights and privileges of their bearers;*<br>h. *an excerpt from a court or other appropriate public register if it is domestic or foreign legal person as a founder or a certified copy of identification paper from which is visible the information including name and surname, address and date and place of birth and etc. in the case of a natural person as a founder .*<br>(3) The Directorate shall issue an approval of registration to legal entity referred to in Article 25 (2) of this Law if it along with the request submits the documentation referred to in paragraph (2) of this Article.<br>(4) Evidence of meeting the requirements of paragraph (2) point e), f), g)) of this Article shall not be older than 30 days from the date of submitting the application.<br>(5) The decision on approval of registration is final in administrative procedure and against it there may be opened an administrative dispute before the Municipal Court.<br>(6) The decision on approval of registration shall be issued within 30 days from the submitting the application.<br>(7) Legal persons who have been already registered in the court registry and intend to expand their business to the activity of gambling and betting are required in addition to the documentation referred to in paragraph (2) of this Article to submit a certificate of registration of legal entities.<br>Article 29<br>(Licensing)<br>(1) Approval for organising the games of chance in the casino of this Law shall be issued upon request of the organiser, submitted to Directorate.<br>(2) Along with the application referred to in paragraph (1) of this Article, the legal person is required to submit the following: |

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| | a. decision on registration;<br>b. business plan of the legal entity for the next three years, which contains data on revenues, expenses, profits, number of employees, compensation and the type and scope of games;<br>c. proof of ownership or co-ownership or right to use the office space in which the games of chance are to be organized and the proof of the size of office space;<br>d. management services contract and other contracts that may have an impact on business of organiser;<br>e. ***information about individuals who lead or will be leading the jobs with the evidence of their professional education and training for performing business in casino;***<br>f. proof of meeting the minimum and technical requirements established by decision of the competent authority;<br>g. employee's proof of employment from Article 38 (1) of this Law temporary employed and proof that he speaks at least two foreign languages;<br>h. legal person's Rules of Procedure;<br>i. information on the beneficial owner of legal persons;<br>j. proof of status and conditions of all current loans, mortgages, powers of attorney, guarantees or any other indebtedness and collateral;<br>k. proof of payment of fees for the issuance of Article 65 of this law,<br>l. evidence that there are no outstanding tax liabilities in accordance with the records of public revenues of the District, for the domestic legal entity or natural person as a founder and persons authorized to representation or proof that there are no outstanding tax liabilities in accordance with the records of the competent authority of the country where there is a headquarter of a foreign legal entity as a founder.<br>(3) Documentation under paragraph (2) of this Article is a proof of fulfilling the prescribed conditions.<br>(4) Directorate is prior to authorization required to obtain approval of the Police of Brcko District of Bosnia and Herzegovina (hereinafter: District Police).<br>(5) The District Police issues the approval in paragraph (3) of this Article based on information provided by the Directorate and which acquires itself when it is necessary, while appreciating if the collected data on previous activity, criminal dossier and the reputation of the editor or persons who are directly or indirectly associated with games of chance are of such nature that could pose a threat or danger to the public interest and public order and peace.<br>(6) The Director of the Directorate shall decide on the request of the legal person within 60 days from the date of application and submitting the documentation referred to in paragraph (2) of this Article and the Article 34 of this law.<br>(7) The decision granting the right of organising games of chance in casino shall be issued for a period of ten years.<br>(8) Upon the expiry of the deadline referred to in paragraph (7) of this Article, the approval may be extended at the request of organiser.<br>(9) An application for renewal shall be submitted six months prior to the expiration of date on which the approval is issued, enclosing documents referred to in paragraph (2) of this Article.<br>(10) If the organiser does not submit a request in accordance with paragraph (9) of this Article, he will be conisdered as new organiser, because the continuity of organizing the games in the casino is interrupted and he is obliged to pay compensation as if he organises games in Casino for the first time. |

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| | (11) The decision granting approval on games of chance in casinos also gives consent to the rules of some games that are organized in a casino.<br>(12) Legal person shall commence work within 15 days from the date of obtaining approval under paragraph (1) of this Article.<br>(13) Procedure, criteria, terms and assessing the collected data relevant to the approval in paragraph (4) and (5) shall be determined by Ordinance adopted by Chief of District Police.<br>Article 33<br>(Revocation of approval)<br>(1) *The Director of the Directorate shall issue a decision terminating the approval for games in casino under Article 29 (1) of this Law if it finds that:*<br>a. *approval was issued on the basis of false information;*<br>b. organiser did not start within a deadline under the Article 29 Paragraph (10) of this Law;<br>c. the organiser quits contrary to the provisions of this Law;<br>d. organiser does not meet the prescribed technical, personnel, information and other conditions;<br>e. organiser violates the rules of games of chance;<br>f. organiser does not pay outstanding liabilities arising from public revenues or does not pay profits to players;<br>g. the organiser has changed ownership and management structure of the company without authorization;<br>h. organiser does not permit or otherwise prevent the monitoring prescribed by this law or complicates conduct of surveillance;<br>i. organiser incorrectly displays the turnover or performs double bookkeeping;<br>j. organiser borrows money to players;<br>k. *organiser fails to comply with the Law on Prevention of Money Laundering of Bosnia and Herzegovina;*<br>l. *with organisers have been occurred the facts which do not permit approval to be issued.*<br>(2) By submitting decision referred to in paragraph (1) of this Article legal person loses all rights set forth in decision on granting permission for the games of chance in casinos, including the loss of the right to refund of previously paid fees from Article 65 of this Law.<br>Article 79<br>(Authority for supervision)<br>(1) Supervision over the implementation of laws and regulations adopted pursuant to this Law shall be performed by Tax Administration.<br>(2) The inspection supervision jobs in the framework of supervision in paragraph (1) of this Article are done by authorized officials of the Tax Administration (hereinafter: authorized officials).<br>(3) The authorized official under paragraph (2) of this Article shall be entitled while performing supervision reviews the following:<br>a) premises and all operations related to games of chance and other games;<br>b) equipment and supplies for games of chance and amusement games, equipment for audio-video supervision of gaming and supplies;<br>c) books, reports, records and other documents or data that enable establishing the legal and actual situation.<br>(4) The authorized officer shall in addition to regular inspections carry out inspections when he receives an order from the Agency Director and when there is reasonable suspicion of any violation of laws and regulations based on this Law. |

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| | (5) An authorized officer is forbidden to take part in games of chance in the casino at slot machines and betting.<br>(6) Supervision of the implementation of Article 13 (1) of this Law shall be performed by authorized person of District Police. |
| Recommendation of the MONEYVAL Report | *b) prohibit individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding management functions in or being/becoming an operator of a casino; and* |
| Measures taken to implement the Recommendation of the Report | A Law draft on Gambling in the Brcko District of BiH is completed and in the course of 2011 it should pass the parliamentary procedure for adoption. This Law states the following:<br>Please use the answer from previous questions. |
| Recommendation of the MONEYVAL Report | *c) define the powers of 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 new AML Law; establish systems and mechanisms for them to ensure compliance of the respective obligors with the national AML/CFT requirements.* |
| Measures taken to implement the Recommendation of the Report | The FID developed the guidelines (Instruction) for the non-banking sector addressing its obligations related to prevention of money laundering and terrorism financing |
| Recommendation of the MONEYVAL Report | *An authority should be designated to monitor and ensure compliance of real estate agencies and traders in precious metals and stones with the national AML/CFT requirements.* |
| Measures taken to implement the Recommendation of the Report | Article 68<br>(General Provisions)<br>The supervision over person under obligation in relation to the implementation of this Law and other laws which regulate obligations of implementing measures for prevention of money laundering and financing of terrorist activities, is implemented by special agencies and bodies in accordance with provisions of this and special Laws which regulated the work of certain persons under obligation and competent agencies and bodies.<br>2. Supervision over implementation of provisions of this Law with the person under obligation, whose work are not supervised by the special agencies and bodies, are implemented by the FID.<br>3. The FID and the supervising bodies shall cooperate in supervising of implementation of the provisions of this Law, within their individual competencies. |
| (Other) changes since the last evaluation | |

| **Recommendation 25 (Guidelines and Feedback)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *FID and all other competent authorities need to introduce measures aimed at ensuring that obligors DNFBPs have a proper understanding of their obligations under the AML/CFT framework.* |

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| Measures taken to implement the Recommendation of the Report | Guidelines for the implementation of the Law on the prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of FBiH and RS Insurance Agency, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>The FID developed the guidelines (Instruction) for the non-banking sector addressing its obligations related to prevention of money laundering and terrorism financing (We will provide the Instruction in English as soon as it is translated). This Instruction will contribute to awareness rising of the non-banking sector. |
| Recommendation of the MONEYVAL Report | *FID should provide general and specific feedback to DNFBPs incorporating, inter alia, statistics on the number of STR-s, information on current ML techniques and trends, as well as information on the decisions and results of the analysis of STR-carried out by the FID.* |
| Measures taken to implement the Recommendation of the Report | The FID sends regularly the feedback to the financial institutions while through trainings for the obligors the FID presents new money laundering typologies. The feedback information related to any individual case is sent successively and as the case develops. |
| Recommendation of the MONEYVAL Report | *Whilst the provision of comprehensive and exhaustive lists of indicators for identifying suspicious transactions and persons is commendable, supervisory authorities should ensure that such indicators are not interpreted as being conclusive such that the examination of transactions is only guided accordingly without any flexibility.* |
| Measures taken to implement the Recommendation of the Report | Guidelines for the implementation of the Law on the prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of FBiH and RS Insurance Agency, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>Ordinance on the activities of preventing of money laundering, Merkur BH osiguranje dd, 29 December 2009<br>**III Guidelines for indicators of suspicious transactions - life insurance**<br><br>Article 11<br>The Company, through mediators, and preferably directly request an explanation from the client for any perceived significant change in behavior. In the case if a customer can not provide an explanation, such behavior would be considered suspicious.<br>Indicators of suspicious transactions identified by this Ordinance in accordance with applicable laws are:<br>1. The client performs transaction that results in questionable contributions to increase investment;<br>2. Client cancels investment or insurance shortly after purchase;<br>3. Duration of life insurance contracts is shorter than three years;<br>4. Transaction involves use and payment of performance bonds, leading to cross-border payments;<br>5. Insured accepts unfavorable conditions, which are not linked with health or client age;<br>6. It is suspected that the insurance policy is concluded in false names and in the names of other persons or the registered address is false;<br>7. Cancellation of insurance policy soon after the conclusion of insurance contracts, especially when it comes to the policy with a premium above the |

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| | amount prescribed in Article 7 of Law on Prevention of Money Laundering;<br>8. Insured requires that compensation from the insurance and money claimed on the basis of compensation in case of cancellation of insurance policies, or the amount of subscribed premiums is being paid to a third party or transferred to the account of a natural or legal persons in the territory of the state in which strict standards are not applied in the field of prevention of money laundering or in which strict rules of confidentiality and secrecy of bank and business data are not applied;<br>9. Legal persons who are owners of insurance policies on behalf of employees, pay high insurance premiums or cancel the policies in a very short period from the date of conclusion of insurance contracts;<br>10. Corporate is buying life insurance for employees, and the number of employees is less than the number of policies purchased, policies are issued to persons who are not employees of the legal person;<br>11. Insurance contract is concluded by person who has a bad reputation and is famous for his illegal activities in the past or an insurance contract is concluded by a person that can be correlated to such person;<br>12. Insured party insists on secret transactions, i.e., that the amount of insurance premiums and insured sum are not reported to the competent authorities in spite of the fact that this is legal obligation of the Company;<br>13. The client request or tries to achieve by bribery that the Company, contrary to law, represents his interests;<br>Client cancels investment or insurance immediately after purchase; |
| (Other) changes since the last evaluation | |

| **Recommendation 26 (The FIU)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *FID should develop its database capability as well as its analytical tools and make far greater use of electronic means of monitoring and analysis.* |
| Measures taken to implement the Recommendation of the Report | The FID has developed the „Instruction for completion of forms and electronic entering of data by the obligors“ that enabled the data not to be entered and processed „manually“ but directly in an electronic form. Moreover, the analysts and investigators were delivered training in „i2 system“by ICITAP and local experts. The *i2 system* is now being filled with the data and it is expected to produce results very soon. Material - technical equipping of the FID (computers, laptops, offices, etc.) is at a high level and in line with the highest standards (The Instruction in English will be provided as soon as it is translated). |
| Recommendation of the MONEYVAL Report | *Article 51.5 of the new AML Law needs to be amended to allow FID to disseminate information on its own initiative to domestic authorities for investigation or action when there are grounds to suspect money laundering and/or terrorist financing.* |
| Measures taken to implement the Recommendation | As instructed by the Minster of Security, in June 2010, the group of experts in money laundering and terrorism financing developed a draft new Law on prevention of money laundering and financing of terrorist activities, which has been forwarded |

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| of the Report | to the B&H authorities for adoption. The new Law provides for establishment of a new Financial Intelligence Agency (FIA) within the Ministry of Security which will be able to forward independently information to national authorities and conduct investigations when there is a grounded suspicion about money laundering and/or terrorism financing (the draft new law in English is enclosed). |
| Recommendation of the MONEYVAL Report | *Staffing of the Investigation Department at FID is not in proportion to the commonly understood expectations of other law enforcement agencies regarding FID's role in initiating ML investigations in BiH. FID should make it a priority to attract suitably qualified staff to fill the current vacancies.* |
| Measures taken to implement the Recommendation of the Report | The FID's Investigation Section is 66% staffed and in this phase it satisfies all needs of the Section considering the scope and issues of the work. The competition to fill in the positions of investigators has been continually open but taking into account that the new draft law does not provide for employement of police officials, there is no interest of skilled investigators for these positions at this stage. Moreover, it is planned that the existing police officials will be transferred to the new Department for financial investigations within the SIPA which will be formed after the law enters into force. |
| Recommendation of the MONEYVAL Report | *FID's operation is isolated from the general law enforcement effort due to restrictive interpretation of existing laws, and other organisational issues. 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 evaluators consider that it is vital that there is full and effective cooperation between all relevant bodies in the entities and Brčko District and the FID, in particular, the Working Group of Bosnia and Herzegovina Institutions related to the Prevention of Money Laundering and Terrorism Financing should make it a priority to achieve full cooperation between all relevant bodies.* |
| Measures taken to implement the Recommendation of the Report | After the adoption of the new law and establishment of an independent Financial Intelligence Agency, the conditions will be created for overcoming the existing legal limitations and establishment of a complete and efficient cooperation between FIA and relevant bodies within the both Entities and Brčko District. The working Group of B&H Institutions has been engaged in development of the draft new law and provided a valid proposals for the purpose of achievement of a total cooperation between all relevant bodies since the members of the Working Group were selected from the 16 institutions at the national, entity and Brcko District levels dealing with money laundering and terrorism financing. |
| (Other) changes since the last evaluation | The FID developed the guidelines (Instruction) for the non-banking sector addressing its obligations related to prevention of money laundering and terrorism financing (We will provide the Instruction in English as soon as it is translated). This Instruction will contribute to awareness rising of the non-banking sector. |

| **Recommendation 29 (Supervisors)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *The supervisory processes of the FID and establish mechanisms for the enforcement of its decisions regarding removal of irregularities in the operations of persons under obligation should be clearly defined.* |
| Measures taken to implement the | In the course of establishing the new FI Agency measures are being taken to set up a specialised internal unit which will be responsible for education and supervision of |

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| Recommendation of the Report | those entities (DNFBPs and other obligors) that do not fall under the remit of any other supervisory authority. It is expected that once the specialised unit is established internal manuals and procedures will be developed for monitoring and supervising obliged entities falling within the supervisory remit of the FID.<br>For the implementation of administrative and other sanctions the new FI Agency will have the administrative powers to impose sanctions and to this effect the Department for International and Legal Cooperation within the new Agency will be assuming this responsibility. Internal procedural manuals will be developed accordingly. |
| Recommendation of the MONEYVAL Report | *Adequate powers should be granted to 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.* |
| Measures taken to implement the Recommendation of the Report | Guidelines for the implementation of the Law on the prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of FBiH and RS Insurance Agency, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.<br>**X - Legal nature and validity of guidelines**<br>(2) The Agency may, under 68th Law on prevention of money laundering and financing terrorist activities, Article 6 and 8 of the Law on insurance companies in the private insurance and to Article 12 of Law on mediation in private insurance verify compliance of internal procedures to detect and prevent money laundering and financing terrorist activities with the provisions of the Act. |
| (Other) changes since the last evaluation | |

| **Recommendation 30 (Resources, integrity, and training)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *An adequate structure, funding, staffing, and technical resources should be made available for supervision of implementation of the national AML/CFT requirements by DNFBPs.* |
| Measures taken to implement the Recommendation of the Report | In the course of establishing the new FI Agency measures are being taken to set up a specialised internal unit which will be responsible for education and supervision of those entities (DNFBPs and other obligors) that do not fall under the remit of any other supervisory authority. In this regard the Agency will be seeking to employ specialised and experienced personnel for this job. It will also have to increase its budget and install technical and other resources such that the Agency is able to fulfill these new obligations effectively and efficiently. |
| Recommendation of the MONEYVAL Report | *There is a need to define professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff of bodies implementing supervision of DNFBPs.* |
| Measures taken to implement the Recommendation of the Report | Establishing a new FOA, is intended to establish the Team for training and supervision. This will be provided adequate training of supervisors to supervise DNFBPS. |
| (Other) changes | |

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| since the last evaluation | |

| **Recommendation 31 (National co-operation)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *The establishment of the Working Group is a welcome positive initiative. However, the evaluators note that there are mixed views and opinions on the structure and effectiveness of the work of the Group. Indeed the evaluators noted that at times the Working Group was only mentioned because the matter was raised by them with some of the Group's representatives. There appears to be some elements of 'tension' in the Group. It is strongly recommended to address these matters for the Working Group to become more efficient and effective in its work as the evaluators are of the opinion that the Working Group is an important component of the whole system.* |
| Measures taken to implement the Recommendation of the Report | The Working Group is very significant, and it is one of the rarest on the state level that is very active. The result of the Group's work is also the Draft of the new law of AML/CFT, national strategy on AML/CFT, the action plan and the Book of Rules. The Working Group is large in composition and some element of tension could naturally arise. The Working Group is a very important part of the whole system. The participation of the Working Group at the meetings is more then 80%. The Chairman of the Working Group takes, and shall continue to take, extensive steps and measures to ensure that any element of "tension" is removed. |
| Recommendation of the MONEYVAL Report | *The establishment and operation of the working group are an important step towards enhancing inter-agency cooperation in BiH and in coordinating between competent authorities domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. However, the working group is not and should not be regarded as a replacement for actual case by case inter-agency cooperation.* |
| Measures taken to implement the Recommendation of the Report | The members of the working group are the representatives of the various agencies and institutions(19),and also, the others experts who are not the members of the Working- group can be invited to the meetings. |
| Recommendation of the MONEYVAL Report | *The focus of the working group should be in setting a national strategy for combating AML/CFT and improving the actual exchange of information between all competent authorities horisontally and vertically thus enhancing the systems capabilities in achieving measurable results in law enforcement (ML indictments forfeiture etc.).* |
| Measures taken to implement the Recommendation of the Report | The Working group has made the National strategy on the state level and the Action- plan on ML /FT. |
| Recommendation of the MONEYVAL Report | *The coordination role of the Central Bank with the respective Banking Agencies is also a very important element in the system, particularly to ensure harmonisation not only in prudential supervision but also in matters related to AML/CFT supervision and compliance. Again the evaluators could sense wide divergent views from the Central Bank in looking at banking supervision being applied at State level and the views of the respective Banking Agencies who believe otherwise. The evaluators recommend that irrespective of the outcome of any decision on the consolidation of prudential supervision, the current structure under the MoU in* |

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| | *relation to AML/CFT issues should continue to be applied and strengthened to be more effective.* |
| Measures taken to implement the Recommendation of the Report | The Central Bank continued the coordinating role with the relevant Entities Banking Agencies in all areas of the banking business, and also in thee area of money laundering and the terrorism financing, in line with the Law on Central Bank and signed Memorandum of Understanding with the Agencies. During this year number of poeple in Central bank involving in coordination with banking agencies iz increased.<br>The Central Bank maintains regular monthly meetings at the top level management (Governor, Vice Governors, Agency Directors and senior staff) with the representatives of the Agencies with whom they talk on all elements listed in the Article 7 of the Memorandum of Understanding, where we have included the prevention of money laundry and of the terrorism funding. One of the results of such like meetings is also high adjustment of the regulations related to the banking operations in both entities, as it is the changes of the Law on Banks, which is now in proceedings in almost identical form. |
| (Other) changes since the last evaluation | |

| **Recommendation 32 (Statistics)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *Comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts need to be maintained. Such statistics should provide statistical information on the underlying predicate crimes and possibly on further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.). The provisions of Article 60 of the new AML Law, which requires that competent prosecutors' offices and courts forward statistical data to the FID on a regular base (twice a year) on indictments and valid court cases related to the offences of money laundering and terrorist financing, including detailed information on the persons indicted and also on the respective criminal acts and the amount of assets temporarily seized in the criminal procedure should be fully complied with.* |
| Measures taken to implement the Recommendation of the Report | On the basis of research mission of UNODC in partnership with the Joint Research Centre on Transnational Crime (TRANSCRIME) the Programme Guidelines which provides a set of recommendations for the improvement of statistical systems on crime and criminal justice as well as on migration, asylum and visa is developed. This research was financially supported by the European Commission and published under the CARDS Regional Programme 2006.<br>BiH Prosecutor's Office statistics: from July 2009. There were 4 investigations for ML (for 13 persons), two indictiments for ML were issued (5 persons) and one indictiment is issued for Counterfeiting of Money and for ML (3 persons), one indictiment was confirmed for ML (6 persons). One judgement has brought for ML for one person (sentence: imprisonment and fine).<br>In 2010. There were no investigations or indictiments for ML & FT (only one judgement was brought- on appeal) .<br>High Prosecutorial and Judicial Council of B&H, in accordance with the Moneyval recommendation, has begun to keep a more detailed and comprehensive statistics (please see the attachment "Table Overview_HJPC"). |
| Recommendation | *Authorities at all levels should establish unified systems for keeping statistics on the* |

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| of the MONEYVAL Report | *amounts of property seized and confiscated, and designate competent bodies for this purpose, in line what was recommended by the first round report. In this respect, the evaluation team considers it more practical to address this question on a Bosnia and Herzegovina wide basis and not separately for each Entity and Brčko District.* |
| Measures taken to implement the Recommendation of the Report | The research programme of the UNODC and the development of the new statistical systems on crime and criminal justice as well as on migration, asylum and visa will contribute to the eventual unification of systems for keeping statistics. |
| Recommendation of the MONEYVAL Report | *Little or no use is made of statistical data to pinpoint areas of risk or highlight where resources are required. It was the view of the evaluators that the statistics that were provided had been prepared largely to support the evaluation visit. It is recommended that comprehensive statistics on all aspects of money laundering and terrorist financing should be maintained and regularly analysed in order to assess the effectiveness of the system and make improvements where necessary.* |
| Measures taken to implement the Recommendation of the Report | Once the system for collection of statistics as defined above is expanded and applied at all levels (state and entities) the Authorities will have access to more meaningful and reliable complete data that could be better managed and put to different uses including to highlight areas of risk and requirement of resources. |
| Recommendation of the MONEYVAL Report | *The BiH authorities should keep annual accurate and detailed statistics on all MLA and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond.* |
| Measures taken to implement the Recommendation of the Report | As indicated in the replies to the above recommendations the development of the new statistical system will eventually help the BiH authorities to have better and more reliable and accurate data that can be better managed and maintained. |
| (Other) changes since the last evaluation | |

| **Recommendation 33 (Legal persons-beneficial owners)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *It is only in the new AML Law that the BiH legal framework attempts to provide a definition of beneficial ownership. However there is no express requirement for the registration courts, while registering a business entity, to identify and keep data on the beneficial ownership and control of legal persons. Thus, it is recommended that such provisions should be in place in order to ensure direct access to updated and accurate data which reflects the real situation, as ensured by Article 15 of the new AML Law.* |
| Measures taken to implement the Recommendation of the Report | In Article 15 after paragraph (2) add new paragraph (3) that shall read:<br>"(3) A person under obligation must collect data about final real owners referred to in paragraph (1) of this Article. A person under obligation shall verify collected data in a manner that enables him/her to know the ownership structure and client control at the level which, depending on risk assessment, corresponds to criteria of satisfactory knowledge of real owners." |
| Recommendation of the | *It is recommended that the updating of the Main Book of Registration at the Courts is done in a timely manner for all legal persons including shareholding companies* |

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| MONEYVAL Report | *with effective, proportionate and dissuasive sanctions for late filing.* |
| Measures taken to implement the Recommendation of the Report | Area of registration of business entities regulated by laws at the entity level. Given the register are competent cantonal courts in the Federation BiH (10 courts) and the Commercial Courts in the RS (5 courts and Higher Economic Court). In accordance with this, BiH delegation has sent a formal letter to all the courts of the intention to give the necessary explanations on the recommendations and issues Moneyval Committee. |
| Recommendation of the MONEYVAL Report | *It is recommended that the obliged entities apply Articles 10 and 15 of the new AML Law better and verifies information through other public registers such as the Register of Securities.* |
| Measures taken to implement the Recommendation of the Report | Area of registration of business entities regulated by laws at the entity level. Given the register are competent cantonal courts in the Federation BiH (10 courts) and the Commercial Courts in the RS (5 courts and Higher Economic Court). In accordance with this, BiH delegation has sent a formal letter to all the courts of the intention to give the necessary explanations on the recommendations and issues Moneyval Committee. |
| Recommendation of the MONEYVAL Report | *There are concerns regarding the viability of the inter-linked electronic database of the Main Book of Register as the data started to be uploaded only in January 2008 and there are still legislative initiatives concerning the electronic signature, business, etc. Thus it is recommended that all necessary measures be undertaken in order for the inter-linked (single) electronic registry to become fully operational.* |
| Measures taken to implement the Recommendation of the Report | Area of registration of business entities regulated by laws at the entity level. Given the register are competent cantonal courts in the Federation BiH (10 courts) and the Commercial Courts in the RS (5 courts and Higher Economic Court). In accordance with this, BiH delegation has sent a formal letter to all the courts of the intention to give the necessary explanations on the recommendations and issues Moneyval Committee. |
| Recommendation of the MONEYVAL Report | *It remains unclear whether foreign legal person that allow bearer shareholding can be shareholders in another legal person registered in Bosnia and Herzegovina. It is recommended that the authorities consider clarifying this issue in the relevant company registration procedures.* |
| Measures taken to implement the Recommendation of the Report | Area of registration of business entities regulated by laws at the entity level. Given the register are competent cantonal courts in the Federation BiH (10 courts) and the Commercial Courts in the RS (5 courts and Higher Economic Court). In accordance with this, BiH delegation has sent a formal letter to all the courts of the intention to give the necessary explanations on the recommendations and issues Moneyval Committee. |
| (Other) changes since the last evaluation | |

| **Recommendation 35 and Special Recommendation I (Implementing UN instruments)** | |
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| **Rating: Partially compliant (R.35 and SR I)** | |
| Recommendation of the MONEYVAL Report | *The same comments as are made on R.. 31 in relation to implementation of the respective Conventions (especially the Terrorist Financing Convention) and the UN Security Council Resolutions apply here.* |

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| Measures taken to implement the Recommendation of the Report | 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.<br>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).<br>Relevant provision of the Law on Property Rights of RS reads:<br>"The contents of the proprietary<br>Article 17, paragraph 1: The property is the actual right which authorizes an owner to freely and in its own will keeps, uses and dispose of the property, and everyone to be deprived of that right within the limitations as prescribed by the Law".<br>In reference to Article 6, paragraph 1 of the Palermo Convention, the issue on participating and associating with conspiracy to commit or attempting to commit has been regulated by Articles 247-250, Chapter XXII of the Criminal Code of BiH, under the title "Conspiracy, Preparation, Associating and Organized Crime: (as well as by Chapters XXIX of the Criminal Code of FBiH, and Brcko District, and Chapter XXX of the Criminal Code of RS).<br>The criminal offence of Accessory (which also includes giving advice or instructions, removing obstacles, concealing offences or perpetrators, tools used for perpetrating criminal offences) has been regulated by Article 31 of the Criminal Code of BiH, and Articles 25 of the Criminal Code of RS, Article 25 of the Criminal Code of FBiH and Article 33 of the Criminal Code of Brcko District.<br>We would like to note that, with regards to the Article 6, paragraph 2 of the Palermo Convention, all above mentioned articles from criminal codes in BiH pertain to all criminal offences as prescribed by these laws, i.e. there are no limitations when it comes to predicate criminal offences.<br>Also, please note that the Prosecutor's Office of BiH works as well on the money laundering cases with smuggling of persons, human trafficking, and drug trafficking and others, as predicate offences. To this effect, we processed cases before the Court of BiH, such as the one upon the Indictment of the Prosecutor's Office of BiH No. KT-341/06 against Salih Alibašić *et al.* for the criminal offence of organised crime as read with criminal offence of smuggling of persons and money laundering. This money laundering case with smuggling of persons as the predicate offence was completed before the Court of BiH, and a final and binding verdict was handed down sentencing Đulzara Hozanović with forfeiture of unlawfully obtained property gain in the amount of KM 172,000.00 and forfeiture of a real estate – a house in Tuzla. Furthermore, the proceedings against Hamdo Dacić in the case No. KT-438/07 are pending before the Court of BiH, wherein Haris Zornić, Acik Can and legal entity *Majorka* d.o.o., Sarajevo, are charged with the criminal offence of money laundering with illicit trafficking in narcotic drugs as the predicate offence.<br>Definition of the criminal offence of money laundering from the state level Law on Prevention of Money Laundering and Financing of Terrorist Activities has been harmonized with the mentioned conventions and the Third Directive (2005/60/EC). |

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| | As for the financing of terrorism. You can use the same answers to SR II above. |
| (Other) changes since the last evaluation | |

| **Special Recommendation III (Freeze and confiscate terrorist assets)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *A single, effective system for implementation without delay by all financial institutions for the freezing of accounts of persons named on the respective lists, together with the provision of clear and publicly known guidance concerning their responsibilities should be introduced.* |
| Measures taken to implement the Recommendation of the Report | Book of rules<br>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<br><br>Article 3<br>(Volume of International Restrictive Measures)<br>(1) In accordance with the provisions of Article 1 of this Book of Rules, international restrictive measures against members of Al-Qaida, Usama bin Laden, the Taliban and other individuals, groups, undertakings and organizations associated with them, include the following:<br>a) Freeze without delay the funds and other financial assets or economic resources including funds derived from property owned by persons from the List or under their direct or indirect supervision or under control of persons acting on their behalf or their instructions, or the person acting in as their successors;<br>Article 4<br>(Publication Procedures of Consolidated List)<br>(5) In the case of a notice on new listing of person or entity from Bosnia and Herzegovina, before the publication of these data on the official website of the Ministry, shall be taken the following steps:<br>a)Freeze without delay all the economic resources and other funds;<br>b)Inform the person listed and learn in detail about the facts and refer to the possibility of filing a complaint.<br><br>Article 5<br>(Implementation of Financial restrictive measures)<br>(1) The authorities of Bosnia and Herzegovina will freeze without delay and without prior notice all funds and economic resources of all persons, groups, undertakings and organizations included in the Consolidated List.<br>(2) The measures referred to in paragraph (1) of this Article shall also apply to economic assets and funds derived from property owned by persons from the Consolidated List or under their direct or indirect supervision or control of persons acting on their behalf or by their instructions, or the person acting as successor. Furthermore, will ensure that any assets owned by other persons not directly or |

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| | indirectly be available for use by persons from the Consolidated List.<br>Article 10<br>(Application of restrictive measures against persons who are brought in contact with people from the Consolidated List)<br>1) The provisions of this Book of Rules shall apply also to persons for which the competent authorities in Bosnia and Herzegovina determined to be in conjunction with persons from the Consolidated List.<br>(2) For the purposes of paragraph (1) of this Article, the following acts or activities indicate that a person, group, economic entity or organization associated with persons from the Consolidated List:<br>a) participation in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with persons from Consolidated List or under their name, on their behalf or in support thereof;<br>(b) perform activities of intermediation, supply, sale or traffic of arms and related material, including military, special equipment and dual use, military vehicles and vehicles for special purpose, technical guidance, assistance or training related to military activities;<br>(c) perform recruitment activities or recruitment for their needs, or<br>(d) actions or activities that otherwise constitute the support of Al-Qaida, Usama bin Laden or the Taliban or any of their cell**,** affiliate, splinter group or derivative thereof or act according to their ideology.<br>Article 17<br>(Submission of Guidelines and other related documents)<br>(1) To effective implementation of this Book of Rules, as well as ensuring greater transparency in the application of international restrictive measures provided for in this Book of Rules, the Ministry shall carry out the translation of all Guidelines and other related documents to the Committee and the Ombudsperson and shall make them available on its official website (www.msb.gov.ba).<br>(2) Guidelines and other related documents referred to in paragraph 1 of this article are in Annex to this Book of Rules. |
| Recommendation of the MONEYVAL Report | *Procedures for considering de-listing requests and unfreezing assets of de-listed persons should be created and/or publicised* |
| Measures taken to implement the Recommendation of the Report | Book of Rules<br>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<br>Article 13<br>(De-listing Procedure)<br>1) Citizens of Bosnia and Herzegovina and the people who legally reside in Bosnia and Herzegovina, as well as responsible persons of legal entities registered in Bosnia and Herzegovina and located on the Consolidated List may at any time apply for delisting to the Ministry.<br>(2) Notwithstanding paragraph (1) of this Article, the request for delisting or providing opinions in an open procedure of delisting can be delivered also indirectly by the Committee or the Ombudsperson of the United Nations for issues of de-listing from the Consolidated List (hereinafter referred to as |

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| | The Ombudsperson).<br>(3) The requirements of paragraph (1) of this Article shall contain the identification information for the applicant and a statement / explanation of the reasons for the delisting request. In addition to the request, copies of any document or other supporting material which the applicant considers to be of importance in the process of delisting may be enclosed.<br>(4) In considering requests for delisting, the Ministry is guided by the provisions of Article 10 of this Book of Rules, the positive regulations in Bosnia and Herzegovina and the Guidelines of the Committee.<br>(5) In proceedings on the application of paragraph (1) of this Article, the Ministry is obliged to obtain all necessary opinions of other competent bodies in Bosnia and Herzegovina, and in particular all police agencies / institutions in charge of the prosecution, the Tribunal and the Intelligence and Security Agencies of Bosnia and Herzegovina. In carrying out this process, the Ministry may require additional explanation or amendment from the person who has applied for de-listing.<br>(6) After collected all the opinions and other required documents, the Ministry shall forward the same to the Council of Ministers for decision. The Council of Ministers of Bosnia and Herzegovina is obliged before making final paragraph and sending the same to the Committee and the Ombudsperson to obtain the opinion of the Presidency of Bosnia and Herzegovina.<br><br>Article 14<br>(Termination of restrictive measures upon notice of the Committee about the fact of de-listing)<br>(1) Upon receiving notification of the Committee about approved deletion of specific person from the List, the Ministry will provide the information with the proposal of measures to be revoked to the Council of Ministers for adoption.<br>(2) Upon the completion of adoption procedures of information about the abrogation of measures by the Council of Ministers of Bosnia and Herzegovina, the Ministry will in writing notify the person in matter about above mentioned, and update information on the website (www.msb.gov.ba)<br>(3) On the above-mentioned, the Ministry will in writing inform the relevant authorities in Bosnia and Herzegovina for further actions within their jurisdiction.<br>(4) Termination of restrictive measures do not apply to measures which are determined in accordance with the provisions of the other positive legislation in Bosnia and Herzegovina, particularly criminal law, the cases pending or resolved before the competent judicial authorities in Bosnia and Herzegovina. |
| Recommendation of the MONEYVAL Report | *A procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the persons are not a designated person should be created and/or publicised.* |
| Measures taken to implement the Recommendation of the Report | Article 12<br>(Proceedings on claims of third parties if their rights have been compromised)<br>(1) All competent authorities in Bosnia and Herzegovina are obliged to take care that the application of the provisions of this Book of Rules shall not be |

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| | to the detriment of third parties.<br>(2) If there is a threat to the rights of third parties they can address the Ministry which is obliged to consider their allegations and make a decision within 30 days. |
| Recommendation of the MONEYVAL Report | *An effective regime of monitoring of the private sector's compliance with freezing assets of designated persons or whether any of the recommendations in the Best Practice Paper had been implemented should be introduced.* |
| Measures taken to implement the Recommendation of the Report | Bosnian authorities are considering the Best Practices Paper for SR III in the context of drafting of the Law on Criminal Code. |
| Recommendation of the MONEYVAL Report | *The relevant parts of the Best Practice Paper should be considered and implemented.* |
| Measures taken to implement the Recommendation of the Report | Bosnian authorities are considering the Best Practices Paper for SR III in the context of drafting of the Law on Criminal Code. |
| (Other) changes since the last evaluation | |

| **Special Recommendation VI (AML requirements for money/value transfer services)** | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *It is recommended that the provision of money or value transfer services be reviewed particularly to ensure that the Post Office or any other agents appointed outside the banking system are subject to supervision.* |
| Measures taken to implement the Recommendation of the Report | At the state level there is the Agency for the postal traffic, which among other things, overseeing of the taxpayers in the area of transport funding. FIU also has the possibility to control, so it is considered that in this way provides an adequate answer |
| Recommendation of the MONEYVAL Report | *The Bosnia and Herzegovina authorities should examine the operations of Tenfore d.o.o within the context of the obligations of the obliged entities under Article 3 of the old LPML – now Article 4 under the new AML Law. Indeed, through the 'Agent Compliance Manual', the company already seems to be imposing upon itself certain AML obligations, in particular in reporting and providing information to the FID. This is a positive initiative on the part of Tenfore d.o.o., however if there is a need for Tenfore d.o.o. to impose such obligations this need should be officially formalised through the AML LAW.* |
| Measures taken to implement the Recommendation of the Report | The BiH Authorities have already held discussions with Tenfore to this effect. A detailed analysis of the information/statistics reported by Tenfore will be undertaken to determine whether the data submitted constitutes or reflects the information submitted through STRs and other reporting (such as CTRs). Should this be the case then the BiH authorities will continue with discussions with Tenfore to establish whether there could be duplicate reporting, whether Tenfore needs to be recognised as an obliged entity (depending on its activities) or whether the information received is information that is transferred only for intelligence |

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| (Other) changes since the last evaluation | |

| Special Recommendation VII (Wire transfer rules) | |
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| **Rating: Partially compliant** | |
| Recommendation of the MONEYVAL Report | *Although wire transfers are covered by the Law on Payment Transactions of both Entities and Brčko District yet most of the criteria for SR VII are not met as the Law only covers the technical operational aspects. The new AML Law now addresses some of the missing aspects identified at the on-site visit. The new law however does not differentiate between domestic and cross-border payments and hence it is difficult to identify compliance with the respective criteria. Notwithstanding, it is recommended that specific legal provisions be introduced:*<br>• *to ensure that full originator information accompanies cross-border transfers;*<br>• *to establish what information should accompany domestic transfers;*<br>• *to ensure that the Post Office is monitored on its compliance with such regulations as may be established;*<br>• *To ensure that appropriate sanctions can be and are applied for non-compliance.* |
| Measures taken to implement the Recommendation of the Report | Law<br>On the prevention of money laundering<br>And financing of terrorist activities<br>Article 26<br>(Electronic Cash Transfer)<br>1. Credit and financial institutions, including companies performing particular payment operations services or cash transfer (hereinafter: payment service providers), are obliged to obtain correct and complete data on payer and include them in application or note which follows the electronic cash transfer, sent or received in any currency. Thereby, those data must follow the transfer all the time during transmission through the payment chain.<br>2. The Minister shall stipulate under the Rulebook the content and type of data that are gathered on the payer, and other obligations of the payment service provider, and exceptions from obligation to gather i data during the cash transfer that represents an irrelevant risk for money laundering or financing of terrorist activities.<br>3. Payment service providers, which are intermediates or recipients of cash, will refuse the cash transfer which does not contain complete data on the payer referred to in paragraph 2 of this Article, or will request that data on the payer are completed in a particular period.<br>4. Payment service providers can limit or terminate a business relationship with those payment service providers who frequently do not meet conditions referred to in paragraphs 1 and 2 of this Article, therewith that they can wan them on thereof, prior to undertaking such measures. Payment service provider will notify FID on any long-term limitations or termination of a business relationship.<br>5. Payment service providers, which are intermediates or recipients of cash, will consider the lack of data on the payer, with regard to assessed risk |

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| | level as a possible reason for applying measures for intensified identification and monitoring.<br>6. Provisions of paragraphs 1 to 5 of this Article relate to electronic cash transfer which is performed by the local and foreign payment service providers.<br>7. When obtaining data referred to in paragraph 1 of this Article, payment service providers shall identify the payer using official identification document, and valid and reliable sources of documentation.<br>A new agency, Agency for Supervision of the Post Office Operation (which includes payment transfers) has now been established and is operational.<br>Appropriate sanctions for non compliance will be considered in the process of the review of the new AML Law. |
| (Other) changes since the last evaluation | |

| **Special Recommendation VIII (Non-profit organisations)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *No review of the adequacy of the relevant laws and no outreach has been undertaken by the authorities in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes. However, considering the existing risk, based on the concrete cases where NPOs have been involved in financing of terrorism activities and current on-going investigations of suspicious NPOs, the authorities should undertake a comprehensive review to assess the adequacy of the national legal framework related to NPOs, identifying the features and types of NPOs (activities, size) that are at risk of being misused for terrorist financing and implement measures to raise awareness of the NPOs about the risks and measures available to protect them against such abuse.* |
| Measures taken to implement the Recommendation of the Report | According to various researches made at all levels of government in Bosnia and Herzegovina, generally spread opinion is that a great number of non-governmental organizations in BiH are funded by foreign foundations, associations and organizations. Non-governmental organizations funded from national public sources are occasional cases and practices, as no policy of NGO sector funding has been designed in BiH. In this connection, there is no possibility of clear, continuous and precise monitoring of financial flows in these organizations.<br>At the level of BiH institutions, under the Law on the Budget of BiH Institutions and International Obligations of BiH ("BiH Official Gazette", No 17/08) and the Decision of the BiH Council of Ministers on Criteria for Grants to be Allocated to Support Non-profit Organizations and Individuals, VM broj: 47/08, the Ministry of Civil Affairs of BiH allocates the funds. |
| Recommendation of the MONEYVAL Report | *The statistics on the number of the existing NPOs in BiH are not accurate enough, considering the lack of a clear mechanism on the reciprocal recognition of associations and foundation and the possibility that certain NPOs are registered, for example, at the entity and state level and counted twice. The authorities should undertake appropriate measures for avoiding double/triple registration and counting of NPOs and improving the mechanism of reciprocal recognition of associations and foundation.* |
| Measures taken to implement the Recommendation | The Ministry of Justice is currently considering the registration of NPOs and is looking at the possibility of creating a unique single database of all NPOs at the State and Entities level. It is expected that through this database both the registration |

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| of the Report | and supervision of NPOs will be refined. |
| Recommendation of the MONEYVAL Report | *There is no single Register of non-profit organisations, as is the case with churches and religious communities, and the authorities should consider introducing such a centralised register for the above mentioned purposes. Also, considering the very limited number of NPOs that decide to be registered at the state level, measures should be undertaken in order to clarify the specific of state and entity registration, advantages of state registration, etc.* |
| Measures taken to implement the Recommendation of the Report | The BiH Ministry of Justice keeps registers of associations and foundations in pursuance of the Law on Associations and Foundations of Bosnia and Herzegovina, which means, only of non-profit organizations registered at the level of BiH.<br>A single Register of all Churches and Religious Communities in Bosnia and Herzegovina, their unions and organizational units is kept only in the BiH Ministry of Justice in accordance with the Law on Religious Freedom and the Legal Status of Churches and Religious Communities in Bosnia and Herzegovina („BiH Official Gazette„ No 5/04).<br>The Register of Churches and Religious Communities in Bosnia and Herzegovina has the following entries:<br>- Register of Jewish Community of BiH.....7;<br>- Register of Catholic Church of BiH.....317;<br>- Register of Serbian Orthodox Church of BiH.....357;<br>- Register of Islamic Community of BIH.....113 i<br>- Register of Other Churches and Religious Communities of BiH.....31. |
| Recommendation of the MONEYVAL Report | *In order to enhance the effective oversight of NPOs the legal provisions regulating the NPO sector should expressly appoint a competent authority to supervise the activity of NPOs. Inspections of NPOs' activity should not only be carried out for tax purposes, but be focused as well on verification if the funds have been spent in a manner consistent with the purpose and objectives of the NPOs. Furthermore, the NPOs' reports on activity, including the financial reports should be required to be sufficiently detailed in order to cover this information.* |
| Measures taken to implement the Recommendation of the Report | The Ministry of Justice is currently considering the registration of NPOs and is looking at the possibility of creating a unique single database of all NPOs at the State and Entities level. It is expected that through this database both the registration and supervision of NPOs will be refined. |
| Recommendation of the MONEYVAL Report | *There should be express legal provisions requiring that the business records of the NPOs are kept for at least five years.* |
| Measures taken to implement the Recommendation of the Report | Article 65<br>(Deadline for Keeping Data by the Person under Obligation)<br>1. A person under obligation is required to keep information, data, and documentation obtained in accordance to this Law for at least 10 years after identification, completion of a transaction, closing of an account or termination of business relationship.<br>**2.** A person under obligation shall keep information and corresponding documentation on authorised person and deputy authorised person mentioned in Article 32 of this Law, on the professional training of employees and conducting of internal control for at least 4 years after the appointment of the authorised person and deputy authorised person, after the completion of professional training and conducting of internal control. |
| Recommendation | *The national cooperation and information exchange between all agencies involved* |

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| of the MONEYVAL Report | *in the investigation of predicate offences, ML and FT cases, at the entities, BD and state level should be improved.* |
| Measures taken to implement the Recommendation of the Report | Law enforcement agencies at all levels of the B & H signed Memorandums of Understanding on enhancing cooperation. |
| (Other) changes since the last evaluation | Article 51.b of the Law on Amendments provides for the Court of Bosnia and Herzegovina as the competent authority in case of the Ministry of Justice of BiH initiating the proceedings to ban an association or foundation and penal provisions under Article 53(1)(d) provide for fines to be imposed on an association or foundation which:<br>„d) failing to utilise the balance of incomes and expenditures earned through economic activities in the manner provided for by law and in the Articles of Association ".<br>According to various researches made at all levels of government in Bosnia and Herzegovina, generally spread opinion is that a great number of non-governmental organizations in BiH are funded by foreign foundations, associations and organizations. Non-governmental organizations funded from national public sources are occasional cases and practices, as no policy of NGO sector funding has been designed in BiH. In this connection, there is no possibility of clear, continuous and precise monitoring of financial flows in these organizations.<br>At the level of BiH institutions, under the Law on the Budget of BiH Institutions and International Obligations of BiH ("BiH Official Gazette", No 17/08) and the Decision of the BiH Council of Ministers on Criteria for Grants to be Allocated to Support Non-profit Organizations and Individuals, VM broj: 47/08, the Ministry of Civil Affairs of BiH allocates the funds. |

| **Special Recommendation IX (Cross Border declaration and disclosure)** | |
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| **Rating: Non compliant** | |
| Recommendation of the MONEYVAL Report | *There is an urgent need to adopt a legislative regime on the state level of BiH for full implementation of SR IX to include domestic cash and negotiable instruments.* |
| Measures taken to implement the Recommendation of the Report | • The Law on Foreign Exchange Operations is adopted and published in the Official Gazette of FBiH No. 47/10 of 04.08.2010. Content of the provisions of Article 45, 52, and 53 of the Law stipulates the following:<br>*Article 45*<br>*Residents and nonresidents are required when crossing the state border to report to customs authority any importation or bringing out of foreign cash, KM, and checks that exceeds the amounts prescribed by the Government of the Federation.*<br>*The obligation in paragraph 1 of this Article applies to the representative, responsible person or authorized person, who over the state border for a legal entity or entrepreneur carries foreign cash, KM and checks.*<br>NOTE: The sanctions imposed are prescribed in contain of provisions of Article 62 of the same Act.<br>In the Law on Foreign Exchange Operations ("Official Gazette of the Republic of Srpska" No. 96/03) and Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09), the same provisions are prescribed |

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| | in the content of Article 41 and the sanctions imposed are prescribed in the content of the provisions of Article 60 of the Law.<br>*Article 52*<br>The Customs authorities shall control the bringing out from the Federation to abroad and bringing in from abroad to Federation of foreign cash, KM and checks in passenger, freight and postal traffic.<br>NOTES: In the Law on Foreign Exchange Operations ("Official Gazette of the Republic of Srpska" No. 96/03) and Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09), the same provisions related to the Republic of Srpska are prescribed in the content of Article 47 of this Law.<br>*Article 53*<br>*The Customs authority, along with the issuance of certificate, may at the border crossing temporarily seize from the resident and non resiedent the amount of convertible marks, foreign cash and checks exceeding the amount prescribed by Government of Federation.*<br>NOTE: In the Law on Foreign Exchange Operations ("Official Gazette of the Republic of Srpska" No. 96/03) and Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09), the same provisions related to the Republic of Srpska are prescribed in the content of Article 48 of this Law.<br>SPECIAL NOTE: Regulations that regulate an area of importation and bringing out the effective foreign money, KM and securities are made at the entity level, as follows:<br>o Law on Foreign Exchange Operations *(Official Gazette of Federation BiH, No. 47/10) and Decision on bringing out the foreign cash and checks, ("Official Gazette of Federation BiH, No. 58/10) and*<br>o Law on Foreign Exchange Operations *("Official Gazette of the Republic of Srpska" No. 96/03) and Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09) and Regulation on bringing out and importation of effective foreign money, KM, checks and securities ("Official Gazette of the Republic of Srpska" No. 16/05).*<br>In relation to the mentioned regulations and quoted content of the provisions of articles of the same regulations and enactment - Guidance on Customs Procedures in International Passenger Traffic - Article 30 (Taking in and out of effective foreign money and securities), issued at the level of the Indirect Taxation Authority, the Indirect Taxation Authority is duly authorized to control the bringing out and importation into BiH from abroad of foreign cash, KM and checks in passenger, freight and postal traffic. |
| Recommendation of the MONEYVAL Report | *The Indirect Tax Authority of Bosnia and Herzegovina does not appear to be fully involved in implementing the current partial regime existing on the entity level in the context of AML CFT according to SR IX efficiently and effectively. In particular it lacks the appropriate powers and tools to do so. A significant number of essential criteria do not appear to be met and there is therefore a need to review the whole framework of cross border declarations and disclosures against the essential criteria for SR IX.* |
| Measures taken to implement the Recommendation of the Report | As noted, regulations that regulate the importation and bringing out effective foreign currency, convertible marks and securities have been adopted at the entity level as follows: Law on Foreign Exchange Operations (Official Gazette of Federation of BiH, No. 47/10) Decision on Bringing out Foreign Cash and Checks ("Official Gazette of Federation of BiH, No. 58/10), Law on Foreign Exchange |

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| | Operations (Official Gazette of the Republic of Srpska No. 96/03) and Law on Amendments to the same Law ("Official Gazette of the Republic of Srpska No. 123/06 and 92/09) and Regulation on Bringing out and Importation of Foreign Currency, Convertible marks, Checks and Securities ("Official Gazette of the Republic of Srpska" No. 16/05).<br>In accordance with these regulations and in accordance with the Law on Indirect Taxation Authority ("BiH Official Gazette" No. 89/05), Article 22 Paragraph 1 point d) which provides that regional centers of the Indirect Taxation Authority carry out currency – exchange control in international passenger traffic and border traffic with abroad and general act passed at the level of the Indirect Taxation Authority - Guidance on Customs Procedures in International Passenger Traffic - Article 30 (Importation and bringing out effective foreign currency and securities), the Indirect Taxation Authority has explicitly prescribed competence for the control of bringing out and importation to BiH from abroad foreign cash, KM and checks in passenger, freight and postal traffic.<br>In terms of assets confiscation, the Indirect Taxation Authority also has explicitly prescribed powers for the retention or temporary seizure of the currency as follows: as it is provided in the content of the provisions of Article 53 of 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) and Law on Amendments to the same Law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09).<br>With respect to the above regulations brought in at the entity level, when the Indirect Taxation Authority (ITA) while performing exchange-currency control operations recognize a violation of above mentioned entity regulations on foreign exchange transactions, in that case, the ITA which in a view of the meaning of Article 3 of Law on Violations is not authorized body for the legal proceedings through the issuance of misdemeanor order or applying for legal proceedings, having previously undertaken the necessary measures and actions within its jurisdiction, informs the competent entity authorities on the measures and actions, along with the submission of collected evidence for sanctioning according to the mentioned Laws on Foreign Exchange Operations.<br>And finally by adoption of the Law on Foreign Exchange Operations (Official Gazette of Federation BiH, No. 47/10) and Decision on Bringing out Foreign Cash and Checks ("Official Gazette of Federation BiH, No. 58/10), the text of the Laws on Foreign Exchange Operations that are passed in entity level are harmonised which provide to the Indirect Tax Authority (ITA) taking actions in terms of control of bringing out and importation to BiH from abroad foreign cash, KM, and checks in passenger, freight and postal traffic. |
| Recommendation of the MONEYVAL Report | *Adequate funding and training is required for Customs and the financial sectors to implement and respect the customs and tax legislation.* |
| Measures taken to implement the Recommendation of the Report | We inform you that at the beginning of December, 2010 experts from the United Kingdom conducted an analysis of training needs in the field of Prevention of money laundering and financing terrorist activities within the EU funded project of joint training of Financial Intelligence Department and the Criminal Investigative Department of the State Investigation and Protection Agency - SIPA, the State Prosecution and financial regulatory agencies and institutions in BiH.<br>The first of four planned trainings was conducted in January 2011 in the same year and it was attended, among others, by officers of the Indirect Taxation Authority. |

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| | Trainings were delivered by experts from the United Kingdom and the Italian Guardia di Finanza (Financial Police Administration) from Italy.<br>Second training is scheduled for April 2011 and will, as well as third and fourth one, be also attended by officers of the ITA. |
| (Other) changes since the last evaluation | |

## *2.4. Specific Questions*

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|---|
| *Has the Central Bank taken any measures since the 3rd round MER to intensify the drive to reduce the use of cash, including an overarching strategy on this matter?* |
| As of May, 26, 2010, the Governing Board of the Central Bank delivered the comprehensive document «Policy of the Cash Production", which among other items in Point 18 reads that the Central Bank shall support all the activities leading to the decrease of level of the cash usage as the instrument of payments, while working in the introduction of more safe and more modern techniques of payments.<br>The Central Bank is the co-organizer of the round table which was held on October 21, 2010, with the subject «E – Payments and the Financial Services» attended by the representatives of the Central Bank, commercial banks, VISA cards institution and other interested in the subject, aiming to extend the financial literacy of the public, meaning the change of behavior of the payments systems participants with the presentation of the experience of banks with all types of the electronic banking.<br>The Central Bank supported the changes of the Law on Foreign Currency Operations in FBiH, where it was not permitted to use Euro cash in the payments system, which shall directly decrease the use of cash and increase the volume of the exchange operations. |
| *Have sanctions been imposed specifically for AML/CFT infringements, at the instigation of the supervisor, since the adoption of the last evaluation report?*<br>*If so, please indicate the main types of AML/CFT infringements detected by supervisors since the adoption of the previous evaluation report by distinguishing between financial institutions and DNFBPs' infringements.*<br>*(NB: it is not necessary for these purposes to provide full detailed statistics, but an overview)* |
| |
| *The 3rd round MER indicated that there is a significant backlog of cases related to serious economic crimes (para 466). What is the current situation and which measures, if any, were taken to address this concern?* |
| Financial investigations are an integral part of the criminal investigations not only in money laundering cases but also various criminal offences involving an unlawful property gain. The Prosecutor's Office of BiH conducts financial investigations in money laundering cases, more precisely in their early stages, but also in other financial crime cases involving an unlawful property gain. Financial investigations are conducted in co-operation with the State Investigation and Protection Agency and other law enforcement agencies in order to determine the amount of unlawful property gain and then move the Court of BiH to order forfeiture of that gain.<br>The Court of BiH takes immediate actions on the money laundering cases processed by the Prosecutor's Office of BiH, hearings are scheduled in a timely fashion, and criminal proceedings, resulting in appropriate verdicts, are conducted. There have been continuous trainings for judges and prosecutors dealing with these types of cases which include trainings – seminars organised by the Centre for Education of Judges and Prosecutors FBiH, RS and BD BiH, as well as by international organisations |

ICITAP, NI-CO, and others.
Also, please note that the Prosecutor's Office of BiH works as well on the money laundering cases with smuggling of persons, human trafficking, and drug trafficking and others, as predicate offences. To this effect, we processed cases before the Court of BiH, such as the one upon the Indictment of the Prosecutor's Office of BiH No. KT-341/06 against Salih Alibašić *et al.* for the criminal offence of organised crime as read with criminal offence of smuggling of persons and money laundering. This money laundering case with smuggling of persons as the predicate offence was completed before the Court of BiH, and a final and binding verdict was handed down sentencing Đulzara Hozanović with forfeiture of unlawfully obtained property gain in the amount of KM 172,000.00 and forfeiture of a real estate – a house in Tuzla. Furthermore, the proceedings against Hamdo Dacić in the case No. KT-438/07 are pending before the Court of BiH, wherein Haris Zornić, Acik Can and legal entity *Majorka* d.o.o., Sarajevo, are charged with the criminal offence of money laundering with illicit trafficking in narcotic drugs as the predicate offence.

*The 3rd round MER indicated concerns regarding providing assistance in a timely manner when the entity/district level authorities are involved and that no mechanism is in place for avoiding conflicts of jurisdiction between the entity/district and state level.*

*What has been done this respect in order to address these concerns?*

Paragraph 1 of Article 209 CC B&H, Article 273 CC FB&H, Article 280 CC R&S, and Article 265 CC Brčko District on money laundering from non-state level criminal codes does not foresee the amount for money or property gain subject to laundering, which means that the same paragraph includes all money laundering up to 50.000 KM. In accordance with the interpretation of the Supreme Court of RS, **high value** ("velika vrijednost") is 50.000 KM (legal opinion adopted at the general session of the Supreme Court on June 30, 2004) which has been treated in other paragraphs of mentioned articles.
Paragraph 1 of the Article 209 from the Criminal Code of BiH, however, specifies **larger value** ("veća vrijednost") of money or property gain (the value over 10.000,00 KM, according to the interpretation of the Court of BiH). Also, unlike entity level criminal codes, it talks about the money or property gain generated from a criminal offence endangering the common economic space of Bosnia and Herzegovina or has damaging consequences for performing activities or financing institutions of BiH.
Based on the above mentioned, we have concluded that the criminal offence of money laundering falls within the competencies of the Court of BiH, whereat the amount of the money of assets exceeds 10.000 KM, and, as a consequence, is resulting in endangering the common economic space of Bosnia and Herzegovina or has damaging consequences for performing activities or financing institutions of BiH.

### *2.5. Statistics*

**a. Please complete - to the fullest extent possible - the following tables:**

| 2005 | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Investigations** | | **Prosecutions** | | **Convictions (final)** | | **Proceeds frozen** | | **Proceeds seized** | | **Proceeds confiscated** | |
| | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) |
| **ML** | 161 | 192 | 29 | 52 | 6 | 11 | N/A | 2.039.554,03 KM or 1.042.540,00 EUR | 0 | 0 | N/A | 38.600 |
| **FT** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| 2006 | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Investigations** | | **Prosecutions** | | **Convictions (final)** | | **Proceeds frozen** | | **Proceeds seized** | | **Proceeds confiscated** | |
| | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) |
| **ML** | 177 | 0 | 23 | 40 | 9 | 22 | N/A | 2.326.742,50 KM or 1.189.662,00 EUR | 0 | 0 | N/A | 412.900 |
| **FT** | 1 | 4 | 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| 2007 | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Investigations** | | **Prosecutions** | | **Convictions (final)** | | **Proceeds frozen** | | **Proceeds seized** | | **Proceeds confiscated** | |
| | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) |
| **ML** | 124 | 14 | 47 | 1 | 4 | 16 | N/A | 1.204.982,78 KM or 615.604,00 EUR | 0 | 0 | N/A | 19.750 |
| **FT** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| 2008 | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Investigations** | | **Prosecutions** | | **Convictions (final)** | | **Proceeds frozen** | | **Proceeds seized** | | **Proceeds confiscated** | |
| | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) |
| **ML** | 111 | 0 | 17 | 73 | 5 | 7 | N/A | 4.300.000,00 KM or 2.198.588,00 EUR | 0 | 0 | N/A | 496.260 |
| **FT** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| 2009 | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Investigations** | | **Prosecutions** | | **Convictions (final)** | | **Proceeds frozen** | | **Proceeds seized** | | **Proceeds confiscated** | |
| | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) |
| **ML** | 57 | 0 | 2 | 4 | 2 | 4 | N/A | 16.850,00 KM or 8.600,00 EUR | 0 | 0 | N/A | 848.840 |
| **FT** | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

| 2010 | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|
| | **Investigations** | | **Prosecutions** | | **Convictions (final)** | | **Proceeds frozen** | | **Proceeds seized** | | **Proceeds confiscated** | |
| | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) | **cases** | **amount** (in EUR) |
| **ML** | 20 | 0 | 1 | 1 | 1 | 3 | N/A | 565.300,00 EUR | 0 | 0 | N/A | 50.300 |
| **FT** | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

**b. STR/CTR**

Explanatory note:

The statistics under this section should provide an overview of the work of the FIU.
The list of entities under the heading "*monitoring entities*" is not intended to be exhaustive. If your jurisdiction covers more types of monitoring entities than are listed (e.g. dealers in real estate, supervisory authorities etc.), please add further rows to these tables. If some listed entities are not covered as monitoring entities, please also indicate this in the table.
The information requested under the heading "*Judicial proceedings*" refers to those cases which were initiated due to information from the FIU. It is not supposed to cover judicial cases where the FIU only contributed to cases which have been generated by other bodies, e.g. the police.
"C*ases opened*" refers only to those cases where an FIU does more than simply register a report or undertakes only an IT-based analysis. As this classification is not common in all countries, please clarify how the term "cases open" is understood in your jurisdiction (if this system is not used in your jurisdiction, please adapt the table to your country specific system).

| 2005 | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Statistical Information on reports received by the FIU** | | | | | | | | **Judicial proceedings** | | | | | | | |
| **Monitoring entities, e.g.** | **reports about transactions above threshold** | **reports about suspicious transactions** | | **cases opened by FIU** | | **notifications to law enforcement/ prosecutors** | | **indictments** | | | | **convictions** | | | |
| | | | | | | | | **ML** | | **FT** | | **ML** | | **FT** | |
| | | **ML** | **FT** | **ML** | **FT** | **ML** | **FT** | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** |
| Commercial Banks | N/A | N/A | N/A | N/A | N/A | N/A | N/A | 1 | 1 | N/A | N/A | N/A | N/A | N/A | N/A |
| Insurance Companies | N/A | N/A | N/A | | | | | | | | | | | | |
| Notaries | N/A | N/A | N/A | | | | | | | | | | | | |
| Currency Exchange | N/A | N/A | N/A | | | | | | | | | | | | |
| Broker Companies | N/A | N/A | N/A | | | | | | | | | | | | |
| Securities' Registrars | N/A | N/A | N/A | | | | | | | | | | | | |
| Lawyers | N/A | N/A | N/A | | | | | | | | | | | | |

| | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Accountants/Auditors | N/A | N/A | N/A | | | | | | | | | | | | |
| Company Service Providers | N/A | N/A | N/A | | | | | | | | | | | | |
| Others (please specify and if necessary add further rows) | N/A | N/A | N/A | | | | | | | | | | | | |
| **Total** | **N/A** | **N/A** | **N/A** | | | | | | | | | | | | |

| 2006 | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Statistical Information on reports received by the FIU** | | | | | | | | **Judicial proceedings** | | | | | | | |
| **Monitoring entities, e.g.** | **reports about transactions above threshold** | **reports about suspicious transactions** | | **cases opened by FIU** | | **notifications to law enforcement/ prosecutors** | | **indictments** | | | | **convictions** | | | |
| | | | | | | | | **ML** | | **FT** | | **ML** | | **FT** | |
| | | **ML** | **FT** | **ML** | **FT** | **ML** | **FT** | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** | **cases** | **persons** |
| Commercial Banks | 200.392 | 28 | 2 | 128 | 0 | 23 | 0 | 23 | 44 | NA | NA | NA | NA | NA | NA |
| Insurance Companies | 0 | 0 | 0 | | | | | | | | | | | | |
| Notaries | 0 | 0 | 0 | | | | | | | | | | | | |
| Stock exchange | 659 | 0 | 0 | | | | | | | | | | | | |
| Off shore | 201 | 0 | 0 | | | | | | | | | | | | |
| Agency for privatization | 32 | 0 | 0 | | | | | | | | | | | | |
| Car dealers comp | 52 | 0 | 0 | | | | | | | | | | | | |
| Posts | 9 | 0 | 0 | | | | | | | | | | | | |
| Currency Exchange | 0 | 0 | 0 | | | | | | | | | | | | |
| Broker Companies | 1.151 | 0 | 0 | | | | | | | | | | | | |
| Securities' Registrars | 163 | 0 | 0 | | | | | | | | | | | | |
| Lawyers | 0 | 0 | 0 | | | | | | | | | | | | |
| Accountants/Auditors | 0 | 0 | 0 | | | | | | | | | | | | |
| Indirect Taxation Authority | 657 | 0 | 0 | | | | | | | | | | | | |
| Company Service Providers | 0 | 0 | 0 | | | | | | | | | | | | |
| Others (please specify and if necessary add further rows) | 0 | 0 | 0 | | | | | | | | | | | | |
| **Total** | **203.316** | **28** | **2** | | | | | | | | | | | | |

| 2007 | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Statistical Information on reports received by the FIU** | | | | | | | | **Judicial proceedings** | | | | | | | |
| **Monitoring entities, e.g.** | **reports about transactions above threshold** | **reports about suspicious transactions** | | **cases opened by FIU** | | **notifications to law enforcement/ prosecutors** | | **indictments** | | | | **convictions** | | | |
| | | | | | | | | **ML** | | **FT** | | **ML** | | **FT** | |
| | | **ML** | **FT** | **ML** | **FT** | **ML** | **FT** | **cases** | **persons** | **cases** | **persons** | | | | |
| Commercial Banks | 231.729 | 87 | N/A | 262 | NA | NA | NA | 14 | 48 | NA | NA | NA | NA | NA | NA |
| Insurance Companies | N/A | N/A | N/A | | | | | | | | | | | | |
| Notaries | N/A | N/A | N/A | | | | | | | | | | | | |
| Currency Exchange | N/A | N/A | N/A | | | | | | | | | | | | |
| Broker Companies | N/A | N/A | N/A | | | | | | | | | | | | |
| Securities' Registrars | N/A | N/A | N/A | | | | | | | | | | | | |
| Lawyers | N/A | N/A | N/A | | | | | | | | | | | | |
| Accountants/Auditors | N/A | N/A | N/A | | | | | | | | | | | | |
| Company Service Providers | N/A | N/A | N/A | | | | | | | | | | | | |
| Others (please specify and if necessary add further rows) | 26.590 | N/A | N/A | | | | | | | | | | | | |
| **Total** | 258.319 | 87 | N/A | | | | | | | | | | | | |

| 2008 | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Statistical Information on reports received by the FIU | | | | | | | | Judicial proceedings | | | | | | | | |
| Monitoring entities, e.g. | reports about transactions above threshold | reports about suspicious transactions | | cases opened by FIU | | notifications to law enforcement/ prosecutors | | indictments | | | | convictions | | | | |
| | | | | | | | | ML | | FT | | ML | | FT | | |
| | | ML | FT | ML | FT | ML | FT | cases | persons | cases | persons | cases | persons | cases | persons | |
| Commercial Banks | 278.395 | 68 | 2 | 200 | 0 | 28 | 0 | 17 | 45 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Insurance Companies | 3 | 0 | 0 | | | | | | | | | | | | | |
| Posts | 209 | 0 | 0 | | | | | | | | | | | | | |
| Notaries | 1.471 | 0 | 0 | | | | | | | | | | | | | |
| Currency Exchange | 1 | 0 | 0 | | | | | | | | | | | | | |
| Broker Companies | 2.354 | 0 | 0 | | | | | | | | | | | | | |
| Securities' Registrars | 755 | 0 | 0 | | | | | | | | | | | | | |
| Lawyers | 1 | 0 | 0 | | | | | | | | | | | | | |
| Indirect Taxation Authority | 831 | 0 | 0 | | | | | | | | | | | | | |
| Gamblings | 148 | 0 | 0 | | | | | | | | | | | | | |
| Car dealers comp | 200 | 0 | 0 | | | | | | | | | | | | | |
| Car dealers comp | 200 | 0 | 0 | | | | | | | | | | | | | |
| Stock exchange | 1.284 | 0 | 0 | | | | | | | | | | | | | |
| Off shore | 1.391 | 0 | 0 | | | | | | | | | | | | | |
| Western Union | 1.127 | 0 | 0 | | | | | | | | | | | | | |
| Lottery | 46 | 0 | 0 | | | | | | | | | | | | | |
| Micro credits org | 2 | 0 | 0 | | | | | | | | | | | | | |
| Agency for privatization | 13 | 0 | 0 | | | | | | | | | | | | | |
| Others (please specify and if necessary add further rows) | 0 | 0 | 0 | | | | | | | | | | | | | |
| **Total** | **288.231** | **68** | **2** | | | | | | | | | | | | | |

| 2009 | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Statistical Information on reports received by the FIU | | | | | | | | Judicial proceedings | | | | | | | | |
| Monitoring entities, e.g. | reports about transactions above threshold | reports about suspicious transactions | | cases opened by FIU | | notifications to law enforcement/ prosecutors | | indictments | | | | convictions | | | | |
| | | | | | | | | ML | | FT | | ML | | FT | | |
| | | ML | FT | ML | FT | ML | FT | cases | persons | cases | persons | cases | persons | cases | persons | |
| Commercial Banks | 283.740 | 262 | 0 | 163 | 0 | 0 | 0 | 2 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Insurance Companies | 5 | 0 | 0 | | | | | | | | | | | | | |
| Stock exchange | 510 | 0 | 0 | | | | | | | | | | | | | |
| Notaries | 2.349 | 0 | 0 | | | | | | | | | | | | | |
| Western Union | 3.708 | 0 | 0 | | | | | | | | | | | | | |
| Lottery | 56 | 0 | 0 | | | | | | | | | | | | | |
| Broker Companies | 922 | 0 | 0 | | | | | | | | | | | | | |
| Car dealers comp | 58 | 0 | 0 | | | | | | | | | | | | | |
| Agency for privatization | 13 | 0 | 0 | | | | | | | | | | | | | |
| Indirect Taxation Authority | 790 | 0 | 0 | | | | | | | | | | | | | |
| Posts | 347 | 0 | 0 | | | | | | | | | | | | | |
| Gambling | 11 | 0 | 0 | | | | | | | | | | | | | |
| Others (please specify and if necessary add further rows) | 0 | 0 | 0 | | | | | | | | | | | | | |
| **Total** | **292.936** | **262** | **0** | | | | | | | | | | | | | |

| 2010 | | | | | | | | | | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| Statistical Information on reports received by the FIU | | | | | | | | Judicial proceedings | | | | | | | | |
| Monitoring entities, e.g. | reports about transactions above threshold | reports about suspicious transactions | | cases opened by FIU | | notifications to law enforcement/ prosecutors | | indictments | | | | convictions | | | | |
| | | | | | | | | ML | | FT | | ML | | FT | | |
| | | ML | FT | ML | FT | ML | FT | cases | persons | cases | persons | cases | persons | cases | persons | |
| Commercial Banks | 222.188 | 199 | 0 | 122 | 0 | 0 | 0 | 2 | 2 | 0 | 0 | 0 | 0 | 0 | 0 | |
| Western Union | 569 | 2 | 0 | | | | | | | | | | | | | |
| Lottery | 60 | 0 | 0 | | | | | | | | | | | | | |
| Stock exchange | 270 | 0 | 0 | | | | | | | | | | | | | |
| Micro credit org | 23 | 6 | 0 | | | | | | | | | | | | | |
| Insurance Companies | 7 | 0 | 0 | | | | | | | | | | | | | |
| Notaries | 2.249 | 1 | 0 | | | | | | | | | | | | | |
| Broker Companies | 607 | 0 | 0 | | | | | | | | | | | | | |
| Securities' Registrars | 271 | 0 | 0 | | | | | | | | | | | | | |
| Car dealers comp | 29 | 0 | 0 | | | | | | | | | | | | | |
| Agency for privatization | 6 | 0 | 0 | | | | | | | | | | | | | |
| Indirect Taxation Authority | 608 | 0 | 0 | | | | | | | | | | | | | |
| Posts | 202 | 2 | 0 | | | | | | | | | | | | | |
| Gambling | 2 | 0 | 0 | | | | | | | | | | | | | |
| Accountants/Auditors | 1 | 0 | 0 | | | | | | | | | | | | | |
| Leasing | 0 | 6 | 0 | | | | | | | | | | | | | |
| **Total** | **227.097** | **216** | **0** | | | | | | | | | | | | | |

## *2.6. Questions related to the Third Directive (2005/60/EC) and the Implementation Directive (2006/70/EC)*[8]

| **Implementation / Application of the provisions in the Third Directive and the Implementation Directive** | |
|---|---|
| Please indicate whether the Third Directive and the Implementation Directive have been fully implemented / or are fully applied and since when. | With reference to the implementation of the Third Directive, we would like to emphasize that all criminal codes in BiH regulate the criminal offence of money laundering, and, as it has been explained in Annex III, it has been harmonized with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention. Also, the Law on Prevention of Money Laundering and Financing of Terrorism contains the definition of money laundering which has been harmonized with the mentioned Conventions and the Third Directive.<br>The explanation and relevant legal text shall be attached to the Annex III of the Questionnaire.<br>In relation to Article 33 of the Third Directive, according to which member states hall ensure that they are able to review the effectiveness of their systems to combat money laundering or terrorist financing by maintaining comprehensive statistics on matters relevant to the effectiveness of such systems, were Such statistics shall as a minimum cover the number of suspicious transaction reports made to the FIU, the follow-up given to these reports and indicate on an annual basis the number of cases investigated, the number of persons prosecuted, the number of persons convicted for money laundering or terrorist financing offences and how much property has been frozen, seized or confiscated, we would like to emphasize the High Judicial and Prosecutorial Council of BiH keeps such records and publish it in its annual activity report. (This information we have already received from the HJPC, and can be attached to the Questionnaire).<br>Article 39 of the Third Directive refers to penalties to the criminal offence of money laundering; in this respect, we would like to emphasize that our legislation prescribes adequate sanctions, which, in addition to imprisonment sentence, also include forfeiture of criminal proceeds. (As noted previously, legal text containing mentioned sanctions is attached to the Questionnaire, Annex III). |

| **Beneficial Owner** | |
|---|---|
| Please indicate whether your legal definition of beneficial owner corresponds to the definition of beneficial owner in the 3rd Directive[9] (please also provide the legal text with your | The Law on Prevention of Money Laundering and Financing Terrorist Activities ("Official Gazette of Bosnia and Herzegovina, no. 53/09) includes a definition of user-owners, which is partially harmonized with the definition Article 3 (6) of the Third Directive (2005/60 / EC). Attached is the Law on Preventing Money Laundering and Financing of Terrorist Activities in Bosnia and Herzegovina. It is necessary to pay special attention to Article 3 , item n, that reads:<br>The actual owner of the client is:<br>1) The actual owner of the client and / or physical person on whose behalf the transaction or activity is conducted.<br>2) The actual owner of a company or other legal entity is:<br>A physical person who is directly or indirectly, holder of 20 or more percent of |

[8] For relevant legal texts from the EU standards see Appendix II.

[9] Please see Article 3(6) of the 3rd Directive reproduced in Appendix II.

| | |
|---|---|
| reply) | business interest, shares, voting rights or other rights, based on which he/she participates in the management of the legal entity or participates in the capital of the legal entity with 20 or more percent of shares or has dominant position in asset management of the legal entity;<br>A physical person, which indirectly provides or is providing assets to a company and on that basis, has the right to significantly influence the decisions made by the management of the company, when deciding on financing and operations.<br>3) The actual owner of a foreign legal entity that receives, manages or distributes the assets for a particular purpose is:<br>A physical person, which is indirect or direct beneficiary of more than 20% of the property that is the subject of management, provided that the future users are determined;<br>A physical person or a group of persons whose best interest is that a foreign legal entity is established or operating, provided that such person or group of persons is determinable;<br>A physical natural person who directly or indirectly, unlimitedly manages more than 20% of assets to foreign legal entity. |

| **Risk-Based Approach** | |
|---|---|
| Please indicate the extent to which financial institutions have been permitted to use a risk-based approach to discharging certain of their AML/CFT obligations. | Law on the prevention of money laundering and financing of terrorist activities<br>ii – tasks and duties of persons under obligation<br>Article 5<br>(risk assessment)<br>1. Person under obligation is obliged to make a risk assessment which shall determine the risk level of group of clients or individual client, business relationship, transaction or product with possibility of misuse for the purpose of money laundering or terrorism financing.<br>2. The assessment referred to in paragraph 1 of this Article shall be prepared in accordance with guidelines on risk assessment, established by FID and competent supervisory bodies, in accordance with sub-legal acts which determine closer criteria for creation of guidelines (type of person under obligation, scope and type of operations, type of clients, i.e. products, etc.) as well as the type of transactions for which, due to non-existence of risk of money laundering and terrorism financing, it is necessary to perform a simplified identification of the client within the meaning of this Law. |

| **Politically Exposed Persons** | |
|---|---|
| Please indicate whether criteria for identifying PEPs in accordance with the provisions in the Third Directive and the Implementation Directive[10] are provided for in your domestic | Law On The Prevention Of Money Laundering And Financing Of Terrorist Activities<br>Article 22<br>(Foreign Politically Exposed Parties)<br>1. Persons under obligation shall establish appropriate procedure for determining whether the foreign person is politically exposed. They shall define such procedures through their internal act, while following guidelines of bodies in charge for supervision referred to in Article 68 of this Law.<br>2. A foreign politically exposed party referred to in Paragraph 1 of this Article includes any natural person which is entrusted or was entrusted with significant |

[10] Please see Article 3(8) of the 3rd Directive and Article 2 of Commission Directive 2006/70/EC reproduced in Appendix II.

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| legislation (please also provide the legal text with your reply). | public function in the previous year, including closest family members and close associates.<br>3. A natural person having or which had entrusted significant public function is:<br>1. Head of the State, Prime Minister, Ministers and their Deputies or Assistants;<br>2. Selected representatives in legislation bodies;<br>3. The judges of the Supreme or Constitutional Court and other high judicial institutions;<br>4. Members of Audit and Governing Board of the Central Bank;<br>5. Ambassadors and high-ranking military officers;<br>6. Members of the Management or Supervisory Boards of companies which are in the majority ownership of the state.<br>4. Closest family members of persons referred to in Paragraph 2 of this Article are: spouses, parents, siblings, children and their spouses.<br>5. Close associates referred to in Article 2 are all natural persons participating in profit from the property or are in business relationship or connected to business otherwise.<br>6. When the client, who enters a business relationship or makes transaction, or if the client on whose behalf a business relationship is entered into or transaction is being performed, is a foreign politically exposed person, a person under obligation will undertake the following measures, apart from measures referred to in Article 20 of this Law, within the procedure of intensified identification and monitoring of the client,:<br>1. Obtain data on the source of assets and property that are or will be the subject of business relationship or transaction from documents and other documents submitted by the client. Once those data cannot be obtained in aforementioned manner, a person under obligation shall obtain them directly from a written statement of the client.<br>2. Employees of the person under obligation, who performs procedure for establishment of business relationship with the client who is a foreign politically exposed person, shall secure a written consent from its supervisor for entering into a correspondent relationship.<br>3. Upon entering into a business relationship, a person under obligation will monitor transactions and other business activities of a foreign politically exposed person, which are performed through persons under obligation using identification and monitoring procedure.<br>*In accordance law on amendments to the law on prevention of money laundering and financing of terrorist activities*<br>Article 13<br>Politically Exposed Persons<br>Article 22 shall be amended and read:<br>(6) Persons under obligation shall establish an adequate procedure for determining whether a person from Bosnia and Herzegovina or from abroad has been politically exposed. They shall define such procedures through their internal document, following, at the same time, guidelines issued by institutions in charge for supervision, as referred to in Article 68 of this Law.<br>(7) A politically exposed person as referred to in Item 1 of this Article shall include any physical persons as defined by Laws on Conflict of Interest in Bosnia and Herzegovina.<br>(8) The closest family members of persons referred to in Item 2 of this Article are: spouses, parents, brothers and sisters, children and their spouses. |

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| | (9) Close associates referred to in Item 2 of this Article include all physical persons who participate in the gain of assets or are in business connection or are connected in any way with the business.<br>(10) When a client who enters into a business relation or conducts transaction or if a client on whose behalf enters into a business relation or conducts transaction is a foreign politically exposed person, a person under obligation shall, in addition to measures referred to in Article 20 of this Law, within the procedure on intensified identification and monitoring of a client, carry out the following measures:<br>d) Collect data on source of assets and property which has been or shall be the subject of a business relation or transaction from documents and other documentation submitted by a client. When such data cannot be collected in a described manner, a person under obligation shall obtain it directly from the written statement of a client.<br>e) Employees of a person under obligation which conducts the procedure on establishment of a business relation with the client, who has been a foreign politically exposed person, shall provide a written approval of its supervisory or responsible person prior to entering into such type of a relation.<br>f) Upon initiating business relation, a person under obligation shall monitor transactions and other business activities carried out by foreign politically exposed people who are conducted through person under obligation by applying procedures of identification and monitoring. |

| **"Tipping off"** | |
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| Please indicate whether the prohibition is limited to the transaction report or also covers ongoing ML or TF investigations. | Law<br>On the prevention of money laundering<br>And financing of terrorist activities<br>Article 62<br>(Protection of Data Secrecy)<br>1. A person under obligation and its staff, including the members of the Board, supervisory, and other executive bodies or other persons which have access to secret data, shall not reveal to the client or third person the forwarding of information, data or documentation about the client or to FID or that the FID in accordance to article 48 of this Law temporarily suspended transaction, or gave instructions to a person under obligation.<br>2. Information about FID requests, or about forwarding information, data or documentation to FID, and about the temporary suspension of a transaction or instructions in accordance to paragraph (1) of this Article, shall be treated as secret information.<br>3. The FID, other official person, or Prosecutor cannot give information, data and documentation collected in accordance with this Law to persons to which they refer to.<br>4. The FID shall decide on removing the classification of secret information. |
| With respect to the prohibition of "tipping off" please indicate whether there are circumstances | Article 63<br>Exceptions to the Principle of Keeping the Data Secrecy)<br>1. When forwarding data, information and documentation to the FID in accordance with this Law, the obligation to protect bank, business, official, lawyer, notary or other professional secrecy shall not apply to the person under obligation, authorities of BiH, Federation of BiH, RS and Brčko District; organisations with public |

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| where the prohibition is lifted and, if so, the details of such circumstances. | authorisation, prosecutors, court and their personnel, unless stipulated otherwise in this Law.<br>Article 64<br>(Use of Collected Data)<br>1. FID, persons under obligation referred to in Article 4 of this Law, state bodies, legal persons with public authorisations and other subjects and their employees, may use the data, information and documentation obtained in accordance to this Law only for the purpose of prevention and detection of money laundering and financing of terrorist activities, if not stipulated otherwise by this Law. |

| **"Corporate liability"** | |
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| Please indicate whether corporate liability can be applied where an infringement is committed for the benefit of that legal person by a person who occupies a leading position within that legal person. | CRIMINAL PROCEDURE CODE<br>OF BOSNIA AND HERZEGOVINA<br>CHAPTER XXVII<br>PROCEEDING AGAINST A LEGAL PERSONS<br><br>Article 375<br>Joint Proceeding<br>(1) A joint proceeding, as a rule, shall be instituted and conducted against a legal person and the perpetrator for the same criminal offense.<br>(2) Proceeding against only a legal person may be instituted or conducted when it is not possible to institute or conduct the proceeding against the perpetrator because of the reasons provided by the law or when the proceeding against the perpetrator has already been conducted.<br>(3) In the joint proceeding against the indicted legal person and the indicted perpetrator, one indictment shall be brought and one verdict shall be pronounced.<br>Article 376<br>Purposefulness of Instituting the Proceeding<br>The Prosecutor may decide not to request institution of a criminal proceeding against the legal person when the circumstances indicate that it would not be purposeful, because the contribution of the legal person to the commission of the criminal offense was insignificant or the legal person has no property or has so little that it would not be enough to cover the costs of the proceeding or if a bankruptcy proceeding has been instituted against the legal person or if the perpetrator is the only owner of the legal person against whom the proceeding should be instituted.<br>Article 385<br>Verdict against the Legal Person<br>Beside the contents stipulated in the Article 285 of this Code, a written verdict shall contain the following:<br>a) In the introductory part of the verdict, there shall be a name under which the legal person acts in legal dealings pursuant to regulations and its seat, as well as the first and the last name of its representative who was present at the main trial.<br>b) In the pronouncement of the verdict, there shall be a name under which the legal person acts in legal dealings pursuant to the regulations and its seat, as well as the provisions of the law under which the legal person is indicted, released from charges or the provisions under which the charges have been dismissed.<br>Article 386<br>Security Measure<br>(1) In order to ensure enforcement of a punishment, forfeiture of property or forfeiture of property gain, the Court may order temporary security against a legal |

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| | person, at the proposal of the Prosecutor. In this case, the provisions of Article 202 of this Code shall apply.<br>(2) If there is a legitimate fear that an offense will be repeated within an indicted legal person and that the legal person will be responsible and if there is a threat that an offense will be committed, the Court may in the same procedure, except for the measures from Paragraph 1 of this Article, impose a time restriction on the legal person to carry out one or more activities.<br>(3) When the criminal procedure is instituted against the legal person, the Court may, at the proposal of the Prosecutor, or *ex officio*, forbid status-related changes, the consequence of which would be deletion of the legal person from the Court registry. The decision on this ban is registered in the Court registry.<br>Article 387<br>Application of Other Provisions of This Code<br>Unless otherwise stipulated, the appropriate provisions of this Code shall be applied accordingly against the legal person even if the procedure is conducted only against the legal person. |
| Can corporate liability be applied where the infringement is committed for the benefit of that legal person as a result of lack of supervision or control by persons who occupy a leading position within that legal person? | |

| **DNFBPs** | |
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| Please specify whether the obligations apply to all natural and legal persons trading in all goods where payments are made in cash in an amount of € 15 000 or over. | **LAW**<br>**ON THE PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORIST ACTIVITIES**<br>**Article 4**<br>**(Persons under Obligation of implementing measures)**<br>1. Measures for detecting and preventing money laundering and financing of terrorist activities shall be carried out according to this Law, when conducted by persons under obligation as listed below:<br>a. Banks<br>b. Post offices<br>c. Investment and mutual pension companies and regardless of the legal form;<br>d. Authorised intermediaries trading in money market instruments, foreign exchange, exchange, interest rate and index instruments, transferable securities and commodity futures trading;<br>e. Insurance companies, brokerage companies in insurance, insurance representation companies and insurance representatives having the license for performing life insurance operations;<br>f. Casinos, gambling houses and other organizers of games of chance and special |

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| | lottery games, particularly betting games, games of chance on machines, internet games and other telecommunication means;<br>g. Currency exchange offices;<br>h. Pawnbroker offices;<br>i. Public notaries, lawyers, accountants, auditors and legal or natural persons performing accounting and services of tax advising;<br>j. Privatisation agencies;<br>k. Real estate agencies;<br>l. Legal and natural persons performing the following activities:<br>▪ Receiving and/or distributing money or property for humanitarian, charitable, religious, educational or social purposes,<br>▪ Transfer of money or value,<br>▪ Factoring,<br>▪ Forfeiting,<br>▪ Safekeeping, investing, administering, managing or advising in the management of property of third persons;<br>m. Issuing, managing and performing operations with debit and credit cards and other means of payment,<br>n. Financial leasing;<br>o. Issuing financial guarantees and other warranties and commitments;<br>p. Lending, crediting, offering and brokering in the negotiation of loans;<br>r. Underwriting, placement and brokering in insurance policies;<br>s. Organizing and executing auctions;<br>t. Trade in precious metals and stones and products made from these materials;<br>u. Trading with works of art, boats, vehicles and aircrafts;<br>v. Persons referred to in Article 3, item 13 of this Law.<br><br>**Article 29**<br>**(Limitations of Cash Payments)**<br>1. Persons which are not persons under obligation referred to in Article 4 of this Law, who perform activities of sale of goods and services in Bosnia and Herzegovina, will not accept cash payment if it exceeds 30.000 KM from their purchasers or third parties in case of sale of individual goods and services. Persons performing activity of the goods sale also include legal and natural persons, who organize or perform auctions, which concern works of arts, noble metals or precious stone or similar products, and other legal and natural persons receiving cash for goods and services.<br>2. Cash payment limitation, referred to in the previous paragraph, shall be applied even when the payment is performed in several connected cash transactions, and when its total value does not exceed 30.000 KM.<br>3. Persons who are not persons under obligations referred to in Article 4 of this Law, and which are engaged in activity of the sale of goods and provide services, will receive a payment referred to in paragraphs 1 and 2 of this Article from the client or third party on his/her transaction account, except if not anticipated otherwise by some other Law. |

# *3. Appendices*

## *3.1. APPENDIX I - Recommended Action Plan to Improve the AML / CFT System*

| AML/CFT System | Recommended Action (listed in order of priority) |
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| **1. General** | **No text required** |
| **2. Legal System and Related Institutional Measures** | |
| 2.1 Criminalisation of Money Laundering (R.1 & 2) | • The Bosnian authorities should address the lack of clear demarcation between the scope of the money laundering offences in the different Criminal Codes. It is recommended that consideration should be given as to whether it would be more effective to restrict all money laundering cases to the State Court, and abolish the Entity and Brčko District jurisdictions.<br>• If money laundering is not criminalised exclusively at state level, the conditions in CC-BiH Article 209(1) should be reviewed, especially those not related to value thresholds as, in the view of the evaluators, the existing conditions are overly ambiguous and thus very unlikely to be adequately proven in a criminal procedure. These should, therefore, either be replaced by more precise criteria (like the involvement of organised criminality in the predicates, the fact that the offence was committed on the territory of more than one non-state level jurisdiction etc.) or substituted merely by the application of value limitations.<br>• As a minimum requirement, definitions of value thresholds should be publicly known and should be provided for by the legislation (such as the Criminal Code). At the State level, steps need to be taken to fill the gap between positive criminal law and actual judicial practice by finding an adequate legislative solution instead of the current *contra legem* interpretation of the law.<br>• Definition of money laundering offences should be brought fully into line with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention as far as material elements of the offence are concerned.<br>• The authorities of Brčko District should criminalise market manipulation in their respective legislation (either in the Law on Securities or elsewhere) to ensure that the range of offences which are predicates to money laundering include all required categories of offences in all the relevant forms. |

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| | • Investigators and prosecutors need to have a clear understanding of the importance of money laundering beyond the tax evasion and fiscal predicates if money laundering criminalisation is to be meaningful. Effective implementation of money laundering incrimination should urgently be achieved beyond the tax predicate.<br>• Financial investigation into proceeds needs to become an integral part of investigation of various proceeds generating offences. For this to be achieved, more resources and training are needed especially by the prosecution service.<br>• State-level incrimination as well as those in the Federation and Brčko District should expressly include "own proceeds" laundering or, at least, appropriate guidance should be given to practitioners in this respect in all the three jurisdictions where self-laundering is not explicitly covered by law (especially in the Federation and Brčko District where there is no relevant judicial practice either).<br>• Authorities of Republic Srpska should review the policy reasons whether and why it was considered expedient and proportionate to threaten self-laundering with higher penalty than money laundering by third parties.<br>• The language of money laundering incrimination and penalties should be harmonised across the State level, the Entities, and Brčko District.<br>• The uncertainty over whether the intentional element of ML may be inferred from objective factual circumstances should be addressed by appropriate guidance from the judiciary at the level of the Entities and Brčko District.<br>• Legislation should be introduced at all levels to allow the prosecuting and convicting of defendants in absentia.<br>• Domestic authorities should, at all levels of jurisdiction, consider whether the benefits of negligent money laundering in the statute are being maximised.<br>• The backlog in money laundering cases pending before the Court of Bosnia and Herzegovina is a problem that must be addressed by state-level authorities. It is recommended that appropriate training of the judiciary and prosecutors be provided.<br>• Comprehensive and detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts need to be maintained. Such statistics should provide statistical information on the underlying predicate crimes and possibly on further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.). The provisions of Article 60 of the new AML Law, which requires that competent prosecutors' offices and courts forward statistical data to the FID on a regular base (twice a year) on indictments and valid court cases related to the offences of money |

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| | laundering and terrorist financing, including detailed information on the persons indicted and also on the respective criminal acts and the amount of assets temporarily seized in the criminal procedure should be fully complied with. |
| 2.2 Criminalisation of Terrorist Financing (SR.I) | • Criminal laws should be amended to incorporate the funding of terrorist organisations and individual terrorists, both at State level and that of the Entities and Brčko District.<br>• Domestic authorities at all competent level should satisfy themselves that the full definition of ”funds” according to Criterion II.1b is properly covered by the current terrorist financing offences.<br>• Consideration should be given to whether the financing of terrorism should remain criminalised at all levels of legislation in Bosnia and Herzegovina or be qualified among those exclusively dealt with at state level.<br>• Consideration should be given to abandoning the use of “double definitions” of legal terms pertaining to criminal substantive law in multiple legal sources. |
| 2.3 Confiscation, freezing and seizing of proceeds of crime (R.3) | • Consideration should be given to the fact that the specific confiscation regime applicable in money laundering cases pursuant to Article 209(4) and identical provisions in non-state level Codes do not provide for value confiscation.<br>• The provisions on confiscation in the Criminal Code of Republic Srpska should be amended to enable the confiscation of income or other benefits. Equally, confiscation of proceeds commingled with legitimate assets should also be provided for.<br>• Competent authorities at State level and also in the Federation of Bosnia and Herzegovina and Brčko District should review the articles in the respective Criminal Codes that provide for the confiscation of instrumentalities and other objects with the aim of removing or, at least, concretising the overly vague conditions under which this security measure can be applied (absolute necessity based on public safety or moral reasons etc.) so that the confiscation of such objects can actually be mandatory.<br>• The authorities of Republic Srpska should consider introducing compulsory confiscation of such objects instead of the current, discretionary provision in the Criminal Code of Republic Srpska Article 62(1).<br>• Removal of overly insubstantial preconditions of *in rem* confiscation of instrumentalities and other objects (“interests of general security” etc.) should take place at all levels.<br>• Consideration should be given to provisions in the criminal procedure which would enable the confiscation of proceeds where the criminal procedure cannot be concluded because the death or absconding of the |

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| | perpetrator or for any other reason, on condition that there is a proof that the assets derive from criminal offences.<br>• Legislative provisions should be introduced at all levels to allow for the voiding of contracts.<br>• domestic authorities should review the practical functioning of provisions on confiscation and provisional measures to assess their overall effectiveness to ensure that they are fully operational and to satisfy themselves that the necessary tools are really in place for a complete and effective system. Such a review should primarily be supported by compiling and maintaining of comprehensive and precise statistics on the volume and effectiveness of confiscation and the provisional measures.<br>• Domestic authorities should review the specific confiscation rule in CC-BiH Article 209(4) and identical non-state rules either in themselves or in combination with Article 74 to consider whether these provisions allow for the mandatory confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence as far as such objects are not owned by the perpetrator and introduce legislation to for remedy to this apparent weakness of the system.<br>• The evaluators understand that provisional measures can only be carried out, as a general rule, by the decision of a preliminary proceedings judge as from the initiation of the investigation. Domestic authorities should reassess the extent to which this structure might delay or even hinder the seizure of proceeds, if once applied in a concrete money laundering case. They should also reconsider, whether the immediacy of such measures could better be provided by allowing the prosecutor, in extremely urgent cases, on his own authority, to order the investigating bodies to carry them all out, subsequently obtaining the approval of a judge.<br>• The possibility of obtaining bank information with a view to freezing of assets, as is provided by Article 72(1) and (4) of the CPC-BiH (and identical non-state provisions) appears to be unnecessarily restricted; or at least slowed down in concrete cases by factors originating in either incomplete secondary legislation or simply through inaccurate communication between the state authorities and the financial industry. This results in duplication of the court procedure when bank account information needs first to be obtained for applying for a freezing order. Domestic authorities should reassess this potential shortcoming and seek for a solution.<br>• Legislative amendments should be introduced to introduce explicit provisions to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities |

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| | would be prejudiced in their ability to recover property subject to confiscation.<br>• A much greater emphasis needs to be given to the taking of provisional measures at early stages of investigations to support more confiscation requests upon conviction. A clear understanding is required of how early in criminal investigations the preliminary measures could be taken and the practitioners should be orientated, either by adequate guidance or training, to apply these measures as early as possible to prevent dissipation of proceeds.<br>• In most of the cases, the prosecution is still mainly targeted at proving the predicate crime and thus no further investigation takes place to follow the trail of the proceeds. As far as this is result of inadequate staffing and lack of necessary trainings these shortcomings must urgently be remedied by competent authorities at all levels. Equally, the authorities should seek for a solution to the problem underlying this trend, that is, the overly high standard of proof applied by the trial courts with regard to the confiscation of the proceeds of crime.<br>• Legislators at all levels should consider ensuring that, in certain well-defined serious proceeds-generating offences, elements of practice which have proved of value elsewhere should be considered, including the reversal of the burden of proof, post conviction, as to the lawful origin of alleged criminal proceeds or the utilisation of the civil standards of proof as to the lawful origins of proceeds. In this respect, particular emphasis should be given to explaining how The Criminal Code of Bosnia and Herzegovina Article 110(3) and corresponding non-state level provisions are intended to work. As far as RS criminal legislation is concerned, the examiners share the opinion of the local authorities that the Criminal Code of Republic Srpska, which currently lacks such a provision, should also be harmonised in this respect<br>• Authorities at all levels should establish unified systems for keeping statistics on the amounts of property seized and confiscated, and designate competent bodies for this purpose, in line what was recommended by the first round report. In this respect, the evaluation team considers it more practical to address this question on a Bosnia and Herzegovina wide basis and not separately for each Entity and Brčko District.<br>• Consideration should be given to establishing a competent agency with adequate procedures for keeping and managing seized and confiscated assets, and the introduction of an asset forfeiture fund as well as a mechanism for asset-sharing, in line with the legislative initiatives currently being in the draft phase in the country. Such an agency could optimally be set up at the level of |

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| | the State |
| 2.4 Freezing of funds used for terrorist financing (SR.III) | • A single, effective system for implementation without delay by all financial institutions for the freezing of accounts of persons named on the respective lists, together with the provision of clear and publicly known guidance concerning their responsibilities should be introduced<br>• Procedures for considering de-listing requests and unfreezing assets of de-listed persons should be created and/or publicised.<br>• A procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the persons are not a designated person should be created and/or publicised.<br>• An effective regime of monitoring of the private sector's compliance with freezing assets of designated persons or whether any of the recommendations in the Best Practice Paper had been implemented should be introduced.<br>• The relevant parts of the Best Practice Paper should be considered and implemented. |
| 2.5 The Financial Intelligence Unit and its functions (R.26) | • FID should develop its database capability as well as its analytical tools and make far greater use of electronic means of monitoring and analysis.<br>• Article 51.5 of the new AML Law needs to be amended to allow FID to disseminate information on its own initiative to domestic authorities for investigation or action when there are grounds to suspect money laundering and/or terrorist financing.<br>• Staffing of the Investigation Department at FID is not in proportion to the commonly understood expectations of other law enforcement agencies regarding FID's role in initiating ML investigations in BiH. FID should make it a priority to attract suitably qualified staff to fill the current vacancies.<br>• FID's operation is isolated from the general law enforcement effort due to restrictive interpretation of existing laws, and other organisational issues. 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 evaluators consider that it is vital that there is full and effective cooperation between all relevant bodies in the entities and Brčko District and the FID, in particular, the Working Group of Bosnia and Herzegovina Institutions related to the Prevention of Money Laundering and Terrorism Financing should make it a priority to achieve full cooperation between all relevant bodies. |
| 2.6 Law enforcement, prosecution and other competent authorities | • ML and FT should be set as a higher priority for law enforcement. The money laundering offence should be an integral part of an investigation when investigating a |

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| (R.27 & 28) | predicate offence involving a funds generating crime. Prosecutors should also place a greater focus on targeting and proving ML as well as the underlying predicate crime. In addition much greater efforts should be put into tracing, seizing freezing and confiscating the proceeds crime.<br>• BiH should address the problems facing the prosecution and judiciary by increasing resources and staffing in order to deal with the backlog of cases related to serious economic crimes affecting not only the effectiveness of the judicial process but also the investigative capacity of law enforcement agencies in the BiH.<br>• A clear AML CFT national strategy should be prepared with set goals to be achieved by law enforcement bodies on all levels, including the state, entity, and cantonal levels. The main goal of such a strategy should be increasing the effectiveness of action taken against the proceeds of crime by harmonising the independent law enforcement efforts against predicate offences, ML, and tax evasion.<br>• Considering the pivotal role of prosecutors, measures should be taken to raise awareness among prosecutors and judges both of the overall AML/CFT legislation, and particularly of the money laundering offence.<br>• Measures should be taken to enhance national cooperation and information exchange between all agencies involved in the investigation of predicate offences, tax offences, and ML.<br>• Special investigative techniques should be utilised to investigate money laundering.<br>• All law enforcement authorities should continue to strengthen inter-agency AML/CFT training programs in order to have specialised financial investigators and experts at their disposal.<br>• Corruption is a problem and it continues to be a problem for all law enforcement bodies and the judicial system. The perception of corruption undermines confidence in the various law enforcement agencies, prosecutors offices and the judiciary and inhibits inter-agency cooperation. Initiatives to eliminate corruption need to be maintained.<br>• Little or no use is made of statistical data to pinpoint areas of risk or highlight where resources are required. It was the view of the evaluators that the statistics that were provided had been prepared largely to support the evaluation visit. It is recommended that comprehensive statistics on all aspects of money laundering and terrorist financing should be maintained and regularly analysed in order to assess the effectiveness of the system and make improvements where necessary. |
| 2.7 Cross Border Declaration & | • There is an urgent need to adopt a legislative regime on the state level of BiH for full implementation of SR IX to |

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| Disclosure | include domestic cash and negotiable instruments.<br>• The Indirect Tax Authority of Bosnia and Herzegovina does not appear to be fully involved in implementing the current partial regime existing on the entity level in the context of AML CFT according to SR IX efficiently and effectively. In particular it lacks the appropriate powers and tools to do so. A significant number of essential criteria do not appear to be met and there is therefore a need to review the whole framework of cross border declarations and disclosures against the essential criteria for SR IX.<br>• Adequate funding and training is required for Customs and the financial sectors to implement and respect the customs and tax legislation. |
| **3. Preventive Measures – Financial Institutions** | |
| 3.1 Risk of money laundering or terrorist financing | |
| 3.2 Customer due diligence, including enhanced or reduced measures (R.5 to 8) | • Article 28 of the Law on Foreign Exchange should be reviewed.<br>• an obligation to apply the CDD measures when carrying out occasional transactions that are wire transfers should be introduced by legislation or other enforceable means.<br>• A review should be undertaken of the definition of "transaction" in the new AML Law which may not necessarily include "cash transactions" and hence there is doubt on the application of CDD measures.<br>• An awareness raising programme together with and related guidance on the applicability of the risk based approach for CDD should be developed.<br>• Although specific provisions have been included in the new AML Law imposing an obligation for the verification of the identity of customers, these provisions do not address the timing of verification and, therefore, the Decisions on Minimum Standards should accordingly be reviewed.<br>• The relevant authorities should ensure there is awareness and understanding by the industry on the newly introduced concept of the beneficial owner, and a revision of possibly Article 15 of the new AML Law should be considered..<br>• An obligation for all obliged entities and persons to identify the 'mind and management' of a legal person beyond the requirements for banks should be introduced under the relevant Decisions on Minimum Standards of the respective Banking Agencies.<br>• An obligation for the termination of business where a business relationship is established but the identification process cannot be completed should be considered. |

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| | • A legal obligation to apply CDD measures to existing customers beyond what is currently provided for banks under the relevant Decisions on Minimum Standards should be introduced.<br>• At the time of the on-site visit PEPs were only partially and limitedly addressed and only for the banking sector. However even these provisions did not entirely cover the requirements for Recommendation 6. There did not appear to be any similar provisions for the whole financial sector. Although the new law now provides for the treatment of PEPs there is a need to create awareness and provide guidance on the identification process, including where the beneficial owner is a PEP.<br>• The coverage of correspondent banking is not comprehensive and does not appear to specifically cover respondent bank's relationships. Although correspondent banking is now included under the new AML Law, the issue of 'payable through' accounts is not addressed. It is advisable that (cor)respondent banking relationships be reviewed accordingly.<br>• Although it appears that electronic business in the financial sector is low, there are no obligations for financial institutions to have policies in place to prevent the misuse of technological developments. This should be provided for in the new AML Law which to date does not address this issue.<br>• There is a need to clarify Article 10 of the relevant Decisions on Minimum Standards with regard to non-face-to-face business.<br>• Following the introduction of the new AML Law, a revised Book of Rules, providing guidance on its implementation and more awareness on the part of 'persons' under obligation', albeit to different degrees, on the concepts and the philosophy of the law and their obligations, needs to be adopted.. |
| 3.3 Third parties and introduced business (R.9) | • Although the old LPML does not specifically prohibit or allow third party reliance or introduced business, likewise it does not specifically allow it. However there are provisions that appear to indirectly allow such procedures. This is particularly so in relation to the use of companies specialised in customer due diligence. The absence of such companies, though recognised, impacts on procedures to licence and regulate them. This creates an uncertainty as to whether third party reliance is allowed or not. Notwithstanding the fact that the new AML Law has now clarified this doubt in that it specifically allows 'persons' under obligation' to rely on third parties, as defined by the new AML Law, yet the new provisions do not fully cover the FATF criteria for Recommendation 9. In the circumstances it is recommended that the legislative and |

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| | other relevant provisions be revised such that the obligations and requirements should be harmonised with Recommendation 9. |
| 3.4 Financial institution secrecy or confidentiality (R.4) | • No recommendations |
| 3.5 Record keeping and wire transfer rules (R.10 & SR.VII) | • Although both the old and the new AML Laws require the retention of all documentation and information obtained on the basis of this Law, yet both laws fall short of meeting all the essential elements of Recommendation 10. In particular there is no distinction between identification and transaction information; and there are no clear provisions for the initiation of the 10 year retention period. The availability of identification information and transactions data to the authorities is indirectly addressed with the only reference on obliged entities being that of delivering the data "without delay or within 8 days" to the FID upon its request. The provision of such data to the supervisory authorities would however be covered by the general relevant provisions for the supervisory authorities under the respective legislation (for example the Laws on Banks). It is therefore recommended that the provisions on record keeping under Article 65(1) of the new law be reviewed and extensively updated and broadened to meet the requirements under Recommendation 10. In this respect the revision should definitely differentiate between identification data and transaction data, including one off or occasional transactions. In this context the review should ensure the establishment of the commencement of the retention period under each circumstance.<br>• Although wire transfers are covered by the Law on Payment Transactions of both Entities and Brčko District yet most of the criteria for SR VII are not met as the Law only covers the technical operational aspects. The new AML Law now addresses some of the missing aspects identified at the on-site visit. The new law however does not differentiate between domestic and cross-border payments and hence it is difficult to identify compliance with the respective criteria. Notwithstanding, it is recommended that specific legal provisions be introduced:<br>• to ensure that full originator information accompanies cross-border transfers;<br>• to establish what information should accompany domestic transfers;<br>• to ensure that the Post Office is monitored on its compliance with such regulations as may be established;<br>• to ensure that appropriate sanctions can be and are applied for non-compliance. |
| 3.6 Monitoring of transactions and | • It is recommended that Recommendation 11 be specifically addressed through a revision of the new AML |

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| relationships (R.11 & 21) | legislation and an eventual consequent revision of the Banking Decisions for Minimum Standards<br>• It is recommended that a specific obligation be included for financial institutions to give special attention to business relationships and transactions with financial institutions and other legal/natural persons from countries that have inadequate AML/CFT measures in place. Such an obligation should go beyond the ongoing monitoring of accounts. |
| 3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV) | • The evaluators were, concerned about the low level of transactions reported, particularly as all STRs received were from banks with none received from the insurance and securities sectors. It was noted that there was a high level of misunderstanding together with a lack of awareness within financial institutions concerning the reporting obligations. The evaluators recommend that a programme is undertaken with financial institutions to raise awareness of the STR regime. This programme should emphasise the difference between large transaction reports and suspicious transaction reports.<br>• It was also noted that in Republic Srpska STRs were submitted to the Banking Agency rather than to SIPA. It is strongly recommended that all STRs be reported direct to SIPA and not via an intermediate agency.<br>• there appear to be conflicting reporting requirements between the requirements of the New AML Law and the Law on Banks in Republic Srpska and FBiH. The evaluators therefore recommend that the Law on Banks in Republic Srpska and FBiH should be amended to remove any conflicting reporting requirements.<br>• The evaluators recommend that appropriate clarification of the word "odnosno" be made to clarify that suspicion of terrorist financing may arise in cases where funds are not derived from criminal activity.<br>• The provisions in the new AML Law, which have enhanced those of the previous law, cover some elements of the essential criteria for Recommendation 14. However the evaluators have two main concerns. First, on the application of the protection to all directors, managements and officers of a 'person under obligation'. Second, on the use of the words "who have access to secret data" as they could create a loophole in the law where information can be disclosed without breach of the legislation. The evaluators therefore recommend a revision of the new provisions to cover such eventualities.<br>• With regard to the cash reporting regime, it is recommended that that the computerised database be reviewed to ensure that all large cash transaction reports are properly input. Furthermore a computerised exceptions reporting system should be developed to |

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| | replace the current manual review by FID analysts.<br>• Following the introduction of provisions with a mandatory obligation to provide feedback in the new law, FID should provide further general and specific feedback to financial institutions and DNFBPs incorporating, inter alia, statistics on the number of STRs, information on current ML techniques and trends, as well as information on the decisions and results of the analysis of STRs carried out by the FID. No guidance has been provided to the non-banking sector on their AML CFT obligations. FID, in conjunction with the relevant supervisory bodies should develop guidance for all financial institutions and DNFBPs and ensure that an adequate awareness raising campaign is in place. |
| 3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22) | • Article 32(2) of the new AML Law should be reviewed in relation to full exemptions from appointing an authorised person and from maintaining internal control by obliged entities (persons under obligation) with four or less employees – and interpretatively, obliged natural persons<br>• Competent authorities, and in particular the FID, need to be more receptive to requests for training by the industry.<br>• Adequate screening procedures need to be in place and effectively applied when hiring people, if need be through mandatory obligations.<br>• The obligations under Recommendation 15 need to be applied to the entire financial sector.<br>• Requirements for Recommendation 22 are only partially addressed through the Banking Decisions on Minimum Standards – more specifically only to a minor extent through Article 2 – and through the new Article 8 of the new AML Law. However there are no provisions covering the main requisites of the Recommendation. It is recommended that this matter be addressed through the new legislation and through guidance issued by the relevant competent authorities. |
| 3.9 Shell banks (R.18) | • The definition of "shell bank" should be brought into full compliance with the FATF Methodology.<br>• Legislation should be introduced to provide for an explicit prohibition of establishing and/or continuing operation of shell banks in BiH. |
| 3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25) | • Proportionate and comparable sanctions for non-compliance with AML/CFT requirements need to be introduced throughout the applicable legislation (harmonise the sanctions stipulated by different entity level laws) and all ambiguities on the applicability of sanctions under the new AML Law should be removed.<br>• Legislation to provide for the sanctioning powers of the respective supervisory bodies in the insurance market should be introduced.<br>• Steps need to be taken to ensure that all requirements of |

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| | the new AML Law are enforceable (that is; sanctions are stipulated for non-compliance).<br>• Administrative sanctions to be applied to the participants of the insurance market for non-compliance with AML/CFT requirements need to be introduced.<br>• All sanctions should be reviewed to ensure that they are effective, proportionate and dissuasive.<br>• Legislation should be amended to introduce:<br>• a) a prohibition for criminals and their associates from holding a significant or controlling share in securities market intermediaries in FBiH and in BD;<br>• b) a requirement for a clean criminal record of the managers of market intermediaries in BD; and<br>• c) requirements for professional qualifications and expertise of directors and senior management of investment funds in FBiH, in RS, and in BD.<br>• Licensing/registration procedures should be developed for the 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; issuing financial guarantees and other warranties and commitments, and lending, crediting, offering and brokering in negotiation of loans.<br>• Steps need to be taken to harmonise the efficiency of monitoring activities in respect of persons involved in money transfer and exchange activities.<br>• Efficient, sufficiently frequent, risk-based supervision of financial institutions needs to be developed and implemented.<br>• FID and all other competent authorities need to introduce measures aimed at ensuring that obligors (especially the representatives of DNFBPs) have a proper understanding of their obligations under the AML/CFT framework.<br>• Whilst the provision of comprehensive and exhaustive lists of indicators for identifying suspicious transactions and persons is commendable, supervisory authorities should ensure that such indicators are not interpreted as being conclusive such that the examination of transactions is only guided accordingly without any flexibility.<br>• The supervisory processes of the FID and establish mechanisms for the enforcement of its decisions regarding removal of irregularities in the operations of persons under obligation should be clearly defined.<br>• Adequate powers should be granted to supervisors in the insurance market to monitor and ensure compliance with AML/CFT requirements and to take enforcement |

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| | measures and sanction both the institutions/businesses and their directors/senior management for incompliance with AML/CFT requirements.<br>• An adequate structure, funding, staffing, and technical resources should be made available for supervision of implementation of the national AML/CFT requirements by DNFBPs.<br>• There is a need to define professional standards (including confidentiality and integrity requirements), and required expertise/skills of the staff of bodies implementing supervision of DNFBPs. |
| 3.11 Money value transfer services (SR.VI) | • It is recommended that the provision of money or value transfer services be reviewed particularly to ensure that the Post Office or any other agents appointed outside the banking system are subject to supervision.<br>• The Bosnia and Herzegovina authorities should examine the operations of Tenfore d.o.o within the context of the obligations of the obliged entities under Article 3 of the old LPML – now Article 4 under the new AML Law. Indeed, through the 'Agent Compliance Manual', the company already seems to be imposing upon itself certain AML obligations, in particular in reporting and providing information to the FID. This is a positive initiative on the part of Tenfore d.o.o., however if there is a need for Tenfore d.o.o. to impose such obligations this need should be officially formalised through the AML LAW. |
| **4. Preventive Measures – Non-Financial Businesses and Professions** | |
| 4.1 Customer due diligence and record-keeping (R.12) | • The casino seems to be the only DNFBP that has identification procedures in place in accordance with the AML Law. The legal, notary and accountancy professions are more guided by their governing laws as opposed to the AML Law. The Privatisation Agencies of both Entities, on the other hand, appear to have some conflict as to the identification requirements under the AML Law and the financial 'fit and proper' assessment of an investor in State entities. It is recommended that the relevant authorities embark on a state wide programme of AML/CFT awareness within the whole DNFBPs sector, the more so because of the coming into force of the new legislation which now imposes specific requirements on the whole DNFBPs sector in general and to particular elements more specifically.<br>• Although the concept of PEPs under intensified identification procedures is addressed through legal provisions and hence also for DNFBPs, in practice the issue of PEPs is not addressed by DNFBPs as there is a complete lack of awareness of the risks involved. It is |

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| | therefore recommended to introduce an awareness and understanding training campaign accordingly throughout the whole sector of DNFBPs as is also required for some elements of the financial sector.<br>• There is a need for increased awareness of threats from new or developing technologies among DNFBPs, although, as claimed, their activities are mostly related to a one-to-one customer relationship. Developments in technology on the way of carrying out certain activities could however pose certain threats.<br>• Although DNFBPs met by the evaluators claim that they do not undertake non-face-to-face business, the enhanced obligations under the new AML Law call for more awareness of the procedures to be applied in such circumstances throughout the whole sector. It is therefore recommended that the need to conduct proper due diligence of non-face-to-face customers is included in any awareness raising exercise.<br>• There is a need for the DNFBPs to be made more aware of the threats to money laundering and the financing of terrorism arising out of large complex transactions that may not have economic reasons. The need to analyse and understand such transactions cannot be over emphasised. It is recommended to statutory obligations to this effect are introduced for all obligors.<br>• Record keeping procedures in the AML LAW need to be revisited and clarified in accordance with the requirements under Recommendation 10.<br>• Although most DNFBPs have informed that they undertake business on a one-to-one basis and they identify their clients directly, yet there is a need to clarify the position on third party reliance and introduced business for customer due diligence particularly since the new AML Law now specifically provides for third party reliance for certain parts of the identification process applied<br>• |
| 4.2 Suspicious transaction reporting (R.16) | • There appears to be a need to review Article 15 of the old LPML – now Article 32 under the new AML Law - to clarify in particular paragraph (3) and its application regarding the appointment of the 'authorised person' and the application of internal controls as required under the law for obliged small entities and natural persons – considering further that these provisions have been retained in the new law with specific provisions in this regard to the legal and accountancy professions. It is recommended that the Law be clarified and that the FID carries out a monitoring exercise on its application and, where necessary, imposes the relevant sanctions as provided by the Law.<br>• it is highly recommended that DNFBPs are made more |

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| | aware of their important role in the AML/CFT regime through guidelines and training thus ensuring that, in understanding their role better, DNFBPs acknowledge and implement their AML obligation further. |
| 4.3 Regulation, supervision and monitoring (R.24-25) | • Legislation should be introduced to:<br>o define the basis for entity level Ministries of Finance and for the Tax Administration of BD to supervise implementation of AML/CFT requirements by casinos.<br>o prohibit individuals with criminal background from acquiring or becoming the beneficial owner of a significant or controlling interest, holding management functions in or being/becoming an operator of a casino.<br>o define the powers of 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 new AML Law; establish systems and mechanisms for them to ensure compliance of the respective obligors with the national AML/CFT requirements.<br>• An authority should be designated to monitor and ensure compliance of real estate agencies and traders in precious metals and stones with the national AML/CFT requirements.<br>• FID and all other competent authorities need to introduce measures aimed at ensuring that obligors DNFBPs have a proper understanding of their obligations under the AML/CFT framework.<br>• FID should provide general and specific feedback to DNFBPs incorporating, inter alia, statistics on the number of STR-s, information on current ML techniques and trends, as well as information on the decisions and results of the analysis of STR-carried out by the FID. |
| 4.4 Other non-financial businesses and professions (R.20) | • The scope of coverage of preventive measures under both the old and the new AML LAW has been extended to other businesses and professions beyond the FATF definition of DNFBPs. Monitoring and supervision mechanisms need to be put in place in order to monitor the implementation of and compliance with requirements for all categories of obligors.<br>• Notwithstanding the measures taken and being taken by the Central Bank, there is a need to intensify the drive to reduce the use of cash and develop further the use of more modern and secure electronic means of settlement. The evaluators welcome the measures taken under the new AML Law through Article 29 limiting cash payments to persons and entities other than those under Article 4 of the Law to €15,000. However, the evaluators do not consider |

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| | this to be an overarching policy for setting up the strategy for reducing the use of cash. In this regard it is recommended that the Central Bank develop and document an overarching strategy to reduce the use of cash |
| **5. Legal Persons and Arrangements & Non-Profit Organisations** | |
| 5.1 Legal Persons – Access to beneficial ownership and control information (R.33) | • It is only in the new AML Law that the BiH legal framework attempts to provide a definition of beneficial ownership. However there is no express requirement for the registration courts, while registering a business entity, to identify and keep data on the beneficial ownership and control of legal persons. Thus, it is recommended that such provisions should be in place in order to ensure direct access to updated and accurate data which reflects the real situation, as ensured by Article 15 of the new AML Law.<br>• It is recommended that the updating of the Main Book of Registration at the Courts is done in a timely manner for all legal persons including shareholding companies with effective, proportionate and dissuasive sanctions for late filing.<br>• It is recommended that the obliged entities apply Articles 10 and 15 of the new AML Law better and verifies information through other public registers such as the Register of Securities.<br>• There are concerns regarding the viability of the inter-linked electronic database of the Main Book of Register as the data started to be uploaded only in January 2008 and there are still legislative initiatives concerning the electronic signature, business, etc. Thus it is recommended that all necessary measures be undertaken in order for the inter-linked (single) electronic registry to become fully operational.<br>• It remains unclear whether foreign legal person that allow bearer shareholding can be shareholders in another legal person registered in Bosnia and Herzegovina. It is recommended that the authorities consider clarifying this issue in the relevant company registration procedures. |
| 5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34) | • No recommendations |
| 5.3 Non-profit organisations (SR.VIII) | • No review of the adequacy of the relevant laws and no outreach has been undertaken by the authorities in order to identify the risks and prevent the misuse of NPOs for terrorism financing purposes. However, considering the existing risk, based on the concrete cases where NPOs have been involved in financing of terrorism activities and |

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| | current on-going investigations of suspicious NPOs, the authorities should undertake a comprehensive review to assess the adequacy of the national legal framework related to NPOs, identifying the features and types of NPOs (activities, size) that are at risk of being misused for terrorist financing and implement measures to raise awareness of the NPOs about the risks and measures available to protect them against such abuse.<br>• The statistics on the number of the existing NPOs in BiH are not accurate enough, considering the lack of a clear mechanism on the reciprocal recognition of associations and foundation and the possibility that certain NPOs are registered, for example, at the entity and state level and counted twice. The authorities should undertake appropriate measures for avoiding double/triple registration and counting of NPOs and improving the mechanism of reciprocal recognition of associations and foundation.<br>• There is no single Register of non-profit organisations, as is the case with churches and religious communities, and the authorities should consider introducing such a centralised register for the above mentioned purposes. Also, considering the very limited number of NPOs that decide to be registered at the state level, measures should be undertaken in order to clarify the specific of state and entity registration, advantages of state registration, etc..<br>• In order to enhance the effective oversight of NPOs the legal provisions regulating the NPO sector should expressly appoint a competent authority to supervise the activity of NPOs. Inspections of NPOs' activity should not only be carried out for tax purposes, but be focused as well on verification if the funds have been spent in a manner consistent with the purpose and objectives of the NPOs. Furthermore, the NPOs' reports on activity, including the financial reports should be required to be sufficiently detailed in order to cover this information.<br>• There should be express legal provisions requiring that the business records of the NPOs are kept for at least five years.<br>• The national cooperation and information exchange between all agencies involved in the investigation of predicate offences, ML and FT cases, at the entities, BD and state level should be improved. |
| **6. National and International Co-operation** | |
| 6.1 National co-operation and coordination (R.31) | • The establishment of the Working Group is a welcome positive initiative. However, the evaluators note that there are mixed views and opinions on the structure and effectiveness of the work of the Group. Indeed the |

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| | evaluators noted that at times the Working Group was only mentioned because the matter was raised by them with some of the Group's representatives. There appears to be some elements of 'tension' in the Group. It is strongly recommended to address these matters for the Working Group to become more efficient and effective in its work as the evaluators are of the opinion that the Working Group is an important component of the whole system.<br>• The establishment and operation of the working group are an important step towards enhancing inter-agency cooperation in BiH and in coordinating between competent authorities domestically with each other concerning the development and implementation of policies and activities to combat money laundering and terrorist financing. However, the working group is not and should not be regarded as a replacement for actual case by case inter-agency cooperation.<br>• The focus of the working group should be in setting a national strategy for combating AML/CFT and improving the actual exchange of information between all competent authorities horisontally and vertically thus enhancing the systems capabilities in achieving measurable results in law enforcement (ML indictments forfeiture etc.).<br>• The coordination role of the Central Bank with the respective Banking Agencies is also a very important element in the system, particularly to ensure harmonisation not only in prudential supervision but also in matters related to AML/CFT supervision and compliance. Again the evaluators could sense wide divergent views from the Central Bank in looking at banking supervision being applied at State level and the views of the respective Banking Agencies who believe otherwise. The evaluators recommend that irrespective of the outcome of any decision on the consolidation of prudential supervision, the current structure under the MoU in relation to AML/CFT issues should continue to be applied and strengthened to be more effective. |
| 6.2 The Conventions and UN Special Resolutions (R.35 & SR.I) | • The same comments as are made above in relation to implementation of the respective Conventions (especially the Terrorist Financing Convention) and the UN Security Council Resolutions apply here (See section 2.1. above) |
| 6.3 Mutual Legal Assistance (R.36-38 & SR.V) | • The identified legal deficiencies in the criminalisation of ML and TF may have a negative impact on providing MLA in an effective manner and need to be addressed (See Sections 2.1 & 2.2 above).<br>• The authorities of BiH should consider enabling rendering MLA in absence of dual criminality, in particular for less intrusive and non compulsory measures.<br>• Bearing in mind the direct co-operation between the Ministry of Justice of BiH and the national judicial |

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| | authorities, there should be in place clearer rules for acting in cases of conflict of jurisdiction between the entity/district and state level.<br>• Although there are no legal impediments for rendering MLA in cases involving fiscal matters or necessity of disclosure banking secrecy, BiH authorities should undertake all necessary measures to ratify the Additional Protocol to the Convention on Mutual Assistance in Criminal Matters and to address the practical problems concerning the banking secrecy raised by the prosecutors.<br>• Considering the initiatives of BiH authorities, further steps should be undertaken for establishing a mechanism in order to avoid conflicts of jurisdiction.<br>• The BiH authorities should consider the establishment of an asset forfeiture fund.<br>• Certain shortcomings related to the confiscation regime (see section 2.3 above) can represent impediments to the effective provision of MLA in this area and need to be addressed.<br>• Bearing in mind that only 56,6% of the positions in the Sector of International and Inter-entity Legal Assistance and Co-operation are filled and that a part of the staff has no higher education, BiH authorities should address the staffing problems and assess the qualification of the personnel working within the sector.<br>• The BiH authorities made some efforts aiming at the training of judges and prosecutors in international legal assistance by elaborating two publications on International Assistance and organising seminars in this area. However, a more comprehensive training programme is needed.<br>• The BiH authorities should keep annual accurate and detailed statistics on all MLA and extradition requests (including requests relating to freezing, seizing and confiscation) that are made or received, relating to ML, the predicate offences and FT, including the nature of the request, whether it was granted or refused and the time required to respond. |
| 6.4 Extradition (R.39, 37 & SR.V) | • The BiH authorities should address the concerns of certain states related to MLA - problems which occurred when the entity level authorities were involved and which could lead to a risk that MLA will not be rendered – in order to ensure that MLA is provided in a timely, constructive and effective manner.<br>• Further steps should be undertaken in order to solve the problems related to the issue of dual citizenship. In cases of non-extradition of own citizens, the BiH authorities should make sure that internal criminal proceedings are instituted efficiently and in a timely manner.<br>• BiH should address the identified legal deficiencies in criminalisation of ML and TF including, among others, |

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| | that all designated categories of offences be covered by the criminal legislation to ensure that dual criminality requirements do not represent an obstacle for extradition. This particularly refers to the fact that market manipulation is, as mentioned above, not a criminal offence in the law of Brčko District.<br>• The BiH authorities should address the staffing problems and assess the qualifications of the personnel working within the Sector of International and Inter-entity Legal Assistance and Co-operation and develop a comprehensive training programme of judges and prosecutors in international legal assistance domain.<br>• It is recommended that the agreements with Croatia and Montenegro are ratified as soon as possible. |
| 6.5 Other Forms of Co-operation (R.40 & SR.V) | • It is recommended that the authorities develop and maintain appropriate statistics in order to assess the effectiveness of the system. Such statistics should be reviewed regularly and necessary action taken to ensure that the system is operating effectively |
| **7. Other Issues** | |
| 7.1 Resources and statistics (R. 30 & 32) | • See the recommendations relating to the other recommendations above. |
| 7.2 Other relevant AML/CFT measures or issues | • No recommendations |
| 7.3 General framework – structural issues | • No recommendations |

## *3.2. APPENDIX II – Relevant EU texts*

Excerpt from Directive 2005/60/EC of the European Parliament and of the Council, formally adopted 20 September 2005, on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing

**Article 3 (6) of EU AML/CFT Directive 2005/60/EC (3rd Directive):**

(6) "beneficial owner" means the natural person(s) who ultimately owns or controls the customer and/or the natural person on whose behalf a transaction or activity is being conducted. The beneficial owner shall at least include:

(a) in the case of corporate entities:

(i) the natural person(s) who ultimately owns or controls a legal entity through direct or indirect ownership or control over a sufficient percentage of the shares or voting rights in that legal entity, including through bearer share holdings, other than a company listed on a regulated market that is subject to disclosure

requirements consistent with Community legislation or subject to equivalent international standards; a percentage of 25 % plus one share shall be deemed sufficient to meet this criterion;
(ii) the natural person(s) who otherwise exercises control over the management of a legal entity:

(b) in the case of legal entities, such as foundations, and legal arrangements, such as trusts, which administer and distribute funds:

(i) where the future beneficiaries have already been determined, the natural person(s) who is the beneficiary of 25 % or more of the property of a legal arrangement or entity;
(ii) where the individuals that benefit from the legal arrangement or entity have yet to be determined, the class of persons in whose main interest the legal arrangement or entity is set up or operates;
(iii) the natural person(s) who exercises control over 25 % or more of the property of a legal arrangement or entity;

**Article 3 (8) of the EU AML/CFT Directive 2005/60EC (3rd Directive):**

(8) "politically exposed persons" means natural persons who are or have been entrusted with prominent public functions and immediate family members, or persons known to be close associates, of such persons;

Excerpt from Commission directive 2006/70/EC of 1 August 2006 laying down implementing measures for Directive 2005/60/EC of the European Parliament and of the Council as regards the definition of 'politically exposed person' and the technical criteria for simplified customer due diligence procedures and for exemption on grounds of a financial activity conducted on an occasional or very limited basis.

**Article 2 of Commission Directive 2006/70/EC (Implementation Directive):**

**Article 2**
**Politically exposed persons**

1. For the purposes of Article 3(8) of Directive 2005/60/EC, "natural persons who are or have been entrusted with prominent public functions" shall include the following:
(a) heads of State, heads of government, ministers and deputy or assistant ministers;
(b) members of parliaments;
(c) members of supreme courts, of constitutional courts or of other high-level judicial bodies whose decisions are not subject to further appeal, except in exceptional circumstances;
(d) members of courts of auditors or of the boards of central banks;
(e) ambassadors, chargés d'affaires and high-ranking officers in the armed forces;
(f) members of the administrative, management or supervisory bodies of State-owned enterprises.
None of the categories set out in points (a) to (f) of the first subparagraph shall be understood as covering middle ranking or more junior officials.
The categories set out in points (a) to (e) of the first subparagraph shall, where applicable, include positions at Community and international level.

2. For the purposes of Article 3(8) of Directive 2005/60/EC, "immediate family members" shall include the following:
(a) the spouse;
(b) any partner considered by national law as equivalent to the spouse;
(c) the children and their spouses or partners;
(d) the parents.

3. For the purposes of Article 3(8) of Directive 2005/60/EC, "persons known to be close associates" shall include the following:
(a) any natural person who is known to have joint beneficial ownership of legal entities or legal arrangements, or any other close business relations, with a person referred to in paragraph 1;
(b) any natural person who has sole beneficial ownership of a legal entity or legal arrangement which is known to have been set up for the benefit de facto of the person referred to in paragraph 1.

4. Without prejudice to the application, on a risk-sensitive basis, of enhanced customer due diligence measures, where a person has ceased to be entrusted with a prominent public function within the meaning of paragraph 1 of this Article for a period of at least one year, institutions and persons referred to in Article 2(1) of Directive 2005/60/EC shall not be obliged to consider such a person as politically exposed.

## *3.3. APPENDIX III – Information submitted by Bosnia and Herzegovina on the state of compliance with the important deficiencies under the Compliance Enhancing Procedures*[11]

**Recommendation 1**

***Deficiency (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 B&H Criminal Code, as well as Article 272 CC FB&H, Article 280 of CC RS and Article 265 of Brcko District CC (regulating the criminal offence of money laundering) are in compliance with Article 3 of the Vienna Convention and Article 6 of the Palermo Convention, in a sense that the provide for the following actions: accessing, exchanging, receiving, use in business operations, concealing, attempting to conceal and holding.

The entity legislation regulates 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. The Law on Proprietary Rights of RS (Official Gazette 124/08), The Law on Ownership and Legal Relations of FB&H („Official Gazette. 6/98, 29/03„), the Law on Ownership and other Real Rights of the BD („Official Gazette11/01, 8/03, 40/04, 19/07).

The relevant provision of the Law on Proprietary Rights of RS states:

*"The contents of the right to property*
*Article 17, Paragraph 1: Property is a proprietary right authorising the owner to freely, and in accordance with their own will, holds and uses an object, and excludes everybody else from this right within the limits set by the Law".*

In relation to Article 6, Paragraph 1 of the Palermo Convention, the issue of connecting and affiliating for the purpose of execution or an attempt of execution is regulated by Articles 247-250, Chapter XXII CC BiH titled "Conspiracy, Preparation, Associating and Organised Crime" (as well as Chapters XXIX CC Federation B&H and Brcko District and Chapter XXX of CC RS).

[11] MONEYVAL decided to apply Compliance Enhancing Procedures at step (i) at the 33rd plenary in respect of some core and key Recommendations (R.1, R.5, R.26, SR II and SR III), and also some other Recommendations (SR VIII and SR IX). It further decided that the progress report to be submitted to the 34th plenary will be a merged one that will contain replies to those important deficiencies. This decision was reiterated at the 34th plenary meeting. This information was submitted by the BiH authorities in reply to this decision.

The criminal offence of assisting (including giving advice or instructions, removing obstacles, hiding offences, perpetrators and means with which the offence was committed, as well as traces and objects from the criminal offence) is provided for by the Article 31 of the CC B&H, and Articles 25 of CC RS, 25 of CC FB&H and 33 of CC BD.

We would like to point out that, in relation to Article 6, Paragraph 2 of the Palermo Convention, all the above mentioned Articles of the Criminal Codes in B&H are related to all the criminal offences provided for by these laws, i.e. there are no limitations when it comes to predicate offences.

The definition of the money laundering criminal offence is within the state level Law on the Prevention of Money Laundering and Financing of Terrorist Activities, harmonised with the mentioned two Conventions and the Third Directive (2005/60/EC).

***Deficiency (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;***

In Paragraph 1 of the above mentioned Articles for the criminal offence of money laundering in the Criminal Codes that are not at the state level, odes not provide for the minimal money or property value that is being laundered, which means that this Paragraph covers all the criminal offences of money laundering up to 50,000 KM. In accordance with the interpretation of the Supreme Court of RS, high value ("velika vrijednost") is 50,000 KM (legal position adopted at the general assembly of the Supreme Court on June 30$^{th}$, 2004), covered in other Paragraphs of these Articles.

Paragraph 1 of the Article 209 of the criminal offence of money laundering in CC B&H mentions a "larger value "/ "veća vrijednost"(in accordance with the interpretation by the Court of B&H, the value exceeding 10,000 KM), and opposite from Criminal Codes that are not at the state level, it refers to money or property originating from a criminal offence endangering the joint economic area of Bosnia and Herzegovina or has harmful effects to industry or financing of the institutions of Bosnia and Herzegovina.

From the above mentioned, it could be concluded that the Court of B&H is authorised for the criminal offence of money laundering, by which the money or property value exceeds 10,000 KM, and its consequence is endangering the joint economic area of Bosnia and Herzegovina or has harmful effects to industry or financing of the institutions of Bosnia and Herzegovina.

**Recommendation 5**

***Deficiency (1) - include an obligation to apply the CDD measures when carrying out occasional transactions that are wire transfers;***

***Deficiency (2) - review the definition of "transactions" in the new AML/CFT Law;***

***Deficiency (3) - introduce a clear timing for the verification of identification information with a review the Decisions on Minimum Standards accordingly;***

***Deficiency (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;***

***Deficiency (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;***

***Deficiency (6) - establish clear requirements for financial institutions to conduct ongoing due diligence on the business relationship;***

***Deficiency (7) - require obliged entities to consider filing a suspicious report where the identification process cannot be completed;***

***Deficiency (8) - require obliged entities to consider the termination of business where a business relationship is established but the identification process cannot be completed***

**BOOK OF RULES**

**On risk assessment, data, information, documents, identification methods and minimum other indicators required for efficient implementation of provisions of the Law on the Prevention of Money Laundering and Financing of Terrorist Activities**

*Article 10 – Higher risk – trade in bank notes and precious metals and other products providing anonymity*

(1) The person under obligation shall consider that a client:
   (a) Whose services include banknote and precious metal trading and delivery;
   (b) Whose products provide more anonymity or can easily cross international borders, such as online banking, stored value cards, international wire transfers, private investment companies and trusts;
   may present a higher risk of money laundering and terrorist financing.
(2) The person under obligation shall consider applying intensified identification and monitoring of such a client's activities.

Agent Compliance Manual
Section II. Customer Identification
The Tenfore clients that use Western Union Money Transfer service are exclusively physical persons and as such for establishing their identity the following information and documents are mandatory:
- Name and surname;
- Father's name;
- Permanent address of residence;
- Date and place of birth;
- Citizenship;
- National identification card, driving license or passport is accepted for identification of a resident customer, passport is accepted for identification of a non-resident customer;
- Document expiration date;
- Unique Citizen's Identification Number (for residents), date of birth (for non-residents);
- The name of the authority that issued the document;
- Signature or thumb print;
- Currency, amount, time and date of the transaction;

NOTE: Expired documents are considered invalid.
Tenfore and the Banks are entitled to request a photocopy of a personal ID certified by a competent authority if we are not sure of the identity of the prospective client.
If the client refuses to submit such certified photocopy, Tenfore and the Banks are entitled to refuse service.
No Western Union Money Transfer service will be rendered to a prospective client without the above information being provided.
Tenfore keeps electronical records (in a form of data base) about conducted money trasnfers (including identification data about customers).
Working Group of the Council of Ministers prepared a draft amendment Law AML/CFT that will include this remark, and eliminate the definition of cash transactions to avoid all doubt in the application of CDD measures.

Working Group of the Council of Ministers prepared a draft amendment Law AML/CFT that will include this remark:

Article 65, paragraph (1) shall be amended and shall read:

(Deadline for Keeping Data by the Person under Obligation)

(1)The obligor shall keep the data and documentation that are obtained under this Law concerning a customer, established business relationships with a customer and executed transactions for a period of 10 years from the date of termination of the business relationship, executed transaction, or entry in the casino or playroom, and access safe.".

The provisions of the constant monitoring of customers were made in the field of securities and insurance sector.

On the basis of the Law on fight against money laundering and financing terrorist activities ("Official Gazette" No. 53/09) and Article 30 of Statute of "Merkur BH osiguranje dd", Director of the Company on 29 December 2009 issues:

**O R D I N A N C E**
**ON THE ACTIVITIES OF**
**PREVENTION OF MONEY LAUNDERING**

Article 6

Through an intermediary Company will make the identification of new clients and will establish business relations with them until the identification of new customers is done in a satisfactory way.
Identification of clients and persons acting on their behalf or benefit shall be made on the basis of documents that are most difficult to obtain in an unlawful manner or falsified, as well as other documents in accordance with applicable regulations.
Identification is carried out at the start of establishing the business relations. To ensure that the presented documents are still valid and relevant, Mediator and Company will conduct periodic reviews of existing documents. In cases where the mediator determines that there is not enough information about an existing customer it is obliged to take urgent steps to obtain such information in the quickest manner possible.

**APPLICATION GUIDELINES**
**OF THE LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING TERRORIST ACTIVITY FOR CUSTOMERS UNDER THE JURISDICTION OF SECURITIES COMMISSION OF FBIH**

VII - BUSINESS ACTIVITY MONITORING

3) The volume of monitoring the business activity of the client

Volume and intensity of monitoring the business activity of client depends on risk assessments of a particular client or its classification to a specific category of risk. Adequate volume of follow-up of business activities of a particular client includes prescribed measures of surveillance of business activity of client, continuously within the services and transactions that the customer makes for the client.

Implementation of the surveillance activities of the business of client is not required if the client was not executing the business activities (purchase and sale of securities/financial instruments or other transactions) at the conclusion of a business relationship. Measures of surveillance of business activities of clients, categorized according to the Guidelines, in that case the customer will carry out within the first next purchase or sale of securities/financial instrument, or other transaction.
In its internal documents, the customer may, in accordance with its risk management policies in money laundering and terrorist financing activities opt for more frequent monitoring of certain types of business activity of the client and bring an additional range of measures with which to monitor the business activities of the client and determine the legality of its operations.
This question will be defined by the new law AML / CFT

The provisions of the constant monitoring of customers were made in the field of securities and insurance sector.
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**LAW ON AMENDMENTS TO THE LAW ON PREVENTION OF MONEY LAUNDERING AND FINANCING OF TERRORIST ACTIVITIES**

After Article 7, new Article 7a is added and shall read:

Article 7a
(Rejecting business relationship and to perform transaction)

(1)A person under obligation who cannot carry out the measures referred to in Article 7, paragraph (1), Items 1, 2 and 3 of this Law must not establish a business relationship or perform transaction, i.e. must terminate the already established business relationship.

(2) In case referred to in paragraph (1) of this Article, a person under obligation shall inform the FIA about rejecting or terminating business relationship and rejecting to perform transaction and send all collected information and transaction pursuant to Articles 30 and 31 of this Law.

Bylaws on Estimating Risk, Data, Indormation, Documents, Methods of Identification and Other Minimum Indicators Necessary for Efficient Implementation of the Provisions of the Law on on Prevention of Money Laundering and Terrorism Financing were passed and published in the „Official Gazette of Bosnia and Herzegovina" No. 93. on December 1, 2009. On the basis of the Bylaws,on April 8, 2010, the Securities

Commission of the Federation of Bosnia and Herzegovina passed the Guidelines for the Implementation of the Law on Prevention of Money Laundering and Terrorism Financing for Persons under Obligation within the Authority of the Securities Commission of the Federation of Bosnia and Herzegovina. The Guidelines have been distributed to the FOO, all brokerage companies, investment funds, the Sarajevo Stock Exchange, and the Registry of Securities in the Federation of Bosnia and Herzegovina, to be implemented.

Paragraph VI 1. of the Guidelines determines a restriction of establishing a business relationship, and the obligation to stop the pre-existing business relationship or activity in the event that it is not possible to detetmine the identity of the client, or in case of a suspicious identity. The Paragraph is as follows:

"It is forbidden to establish a business relationship or carry out a transaction where the customer's identity cannot be determined, or when the customer foundedly doubts the veracity or credibility of data and documentation, by which the customer confirms their identity, and in a situation where a client is not ready or does not show readiness for cooperation with the customer in determining the true and complete information which the customer claims in the analysis of the client. A customer in such a case must not enter into the business relationship and a pre-existing business relationship or transaction must be stopped and reported to FOO."

Guidelines for the implementation of the Law on prevention of money laundering and terrorist financing activities for customers under the jurisdiction of the Insurance Supervision Agency of the FBiH and RS insurance, Adopted by the Board of Insurance Agency of BiH at the session held on 31 May, 2010.

Chapter II, paragraph 1" ..... In the event that the client identity can not be determined or verified, and when he is unable to take measures to follow a client, the customer does not establish a business relationship or transaction, or shall terminate any existing business relationship with that client.

**ORDINANCE ON THE ACTIVITIES OF PREVENTING OF MONEY LAUNDERING, MERKUR BH OSIGURANJE DD, 29 DECEMBER 2009**

Article 6 (1) "Through an intermediary Company will make the identification of new clients and will establish business relations with them until the identification of new customers is done in a satisfactory way."
Article 6, item 2 is amended and shall read: When transactions referred to in paragraph 1, item b. of this Article are conducted on basis of or without previously established business relationship with person under obligation, a person under obligation shall collect data referred to in Article 7, as well as missing data referred to in Article 44, paragraph (1), Items a), b), c), e), f), g), i), and m) of this Law.

**Recommendation 26**

***(Deficiency 1) - ensure that the FID does not operate in isolation from other law enforcement agencies and financial intelligence at the FID is requested by or disseminated to other law enforcement agencies at the level of entities and Brčko District when investigating predicate offences of money laundering.***

The Draft Law on the Prevention of Money Laundering and Financing of Terrorist Activities provides for the establishment of the Financial Intelligence Agency (FIA), which would not be composed of police officials, but only civil servants and administrative employees.
Article 51 regulates inter-institutional cooperation, and the Item 5 clarifies the procedure when the FIA acts upon requests from other agencies in charge of dealing with money laundering and terrorism financing.

The establishment of the new FIA will be in compliance with R26 calling for the independence of the FID. Since the new FIA will not be carrying out police investigative activities and there will be no police officials, data, information and analyses will be forwarded on its own initiative to the agencies in B&H

dealing with money laundering and terrorism financing (Article 45, Item1). Although the Article 51, Item 5 still states that the FIA "upon detailed request" shall forward data, this refers to instances when the agencies request data, and it does not cover the entire activity of data exchange and forwarding. The very name of the Agency containing the term "intelligence" confirms that it will be notifying other agencies in the area of money laundering and financing of terrorist activities. We are of the opinion that this does not decrease efficacy of the FIA, and that there is no confusion, contrary to the statements of the evaluators from the 3rd round of evaluation. Therefore, there is no need to delete the Article 51, Item 5 since it covers the instances when the FIA acts upon requests from other agencies. We have to point out that the remark from the evaluators that none of the remarks made for R26 were solved and that there are limitations and unacceptable conditions related to forwarding information to local authorities is not in place.

***(Deficiency 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.***

In case the evaluators and Moneyval, even after this clarification, hold the position that a part on "detailed request" should be deleted from the Article 51, the Working Group of the institutions of B&H will create a proposal for the amendment to this Article in a way that the "disputed" part will be deleted and a new part added: "the FIA shall, on its own initiative, exchange data with domestic authorities…"

The deadline for the implementation of this corrective measure is June 1st, 2011.

**Special Recommendation II**

***(Deficiency 1) 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.***

The Criminal Codes at all the levels in Bosnia and Herzegovina contain the criminal offence of "financing of terrorist activities" (Article 202 of CC B&H, Article 199 of CC BD, Article 202 of CC FB&H and Article 301 of CC RS).

All of these Criminal Codes mention assets that would be used for the perpetration of the criminal offence of terrorism, i.e. that are being given or collected to be used, or with knowledge that they will be used in full or partly for the perpetration of the criminal offence of terrorism.
These Articles of the Code mention a perpetrator of this criminal offence regardless weather it is an individual terrorist or a terrorist group.

The Criminal Code of B&H also contains a definition of a terrorist group in Article 1.
These Articles of the Criminal Codes of B&H mention clear criminal sanctions of this criminal offence, and Amendments to the CC B&H 8/10 provide for the more severe sanctions compared to the other Criminal Codes.

**Special Recommendation III**

***(Deficiency 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;***

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

Article 3
(Volume of International Restrictive Measures)

1)In accordance with the provisions of Article 1 of this Book of Rules, international restrictive measures against members of Al-Qaida, Usama bin Laden, the Taliban and other individuals, groups, undertakings and organizations associated with them, include the following:

a)Freeze without delay the funds and other financial assets or economic resources including funds derived from property owned by persons from the List or under their direct or indirect supervision or under control of persons acting on their behalf or their instructions, or the person acting in as their successors;

Article 4
(Publication Procedures of Consolidated List)

In the case of a notice on new listing of person or entity from Bosnia and Herzegovina, before the publication of these data on the official website of the Ministry, shall be taken the following steps:

a)Freeze without delay all the economic resources and other funds;

b)Inform the person listed and learn in detail about the facts and refer to the possibility of filing a complaint.

Article 5
(Implementation of Financial restrictive measures)

(1) The authorities of Bosnia and Herzegovina will freeze without delay and without prior notice all funds and economic resources of all persons, groups, undertakings and organizations included in the Consolidated List.Slušajte.

(2) The measures referred to in paragraph (1) of this Article shall also apply to economic assets and funds derived from property owned by persons from the Consolidated List or under their direct or indirect supervision or control of persons acting on their behalf or by their instructions, or the person acting as successor. Furthermore, will ensure that any assets owned by other persons not directly or indirectly be available for use by persons from the Consolidated List.

Article 10
(Application of restrictive measures against persons who are brought in contact with people from the Consolidated List)

1) The provisions of this Book of Rules shall apply also to persons for which the competent authorities in Bosnia and Herzegovina determined to be in conjunction with persons from the Consolidated List.

(2) For the purposes of paragraph (1) of this Article, the following acts or activities indicate that a person, group, economic entity or organization associated with persons from the Consolidated List:

a)participation in the financing, planning, facilitating, preparing or perpetrating of acts or activities by, in conjunction with persons from Consolidated List or under their name, on their behalf or in support thereof;
b)perform activities of intermediation, supply, sale or traffic of arms and related material, including military, special equipment and dual use, military vehicles and vehicles for special purpose, technical guidance, assistance or training related to military activities;
c)perform recruitment activities or recruitment for their needs, or
d)actions or activities that otherwise constitute the support of Al-Qaida, Usama bin Laden or the Taliban or any of their cell, affiliate, splinter group or derivative thereof or act according to their ideology.

Article 17

(Submission of Guidelines and other related documents)

(1) To effective implementation of this Book of Rules, as well as ensuring greater transparency in the application of international restrictive measures provided for in this Book of Rules, the Ministry shall carry out the translation of all Guidelines and other related documents to the Committee and the Ombudsperson and shall make them available on its official website (www.msb.gov.ba).
(2) Guidelines and other related documents reffered to in paragraph 1 of this article are in Annex to this Book of Rules.

***Deficiency (2) - create and/or publicise a procedure for considering de-listing requests and unfreezing assets of delisted persons;***

**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**

Article 13
(De-listing Procedure)

1) Citizens of Bosnia and Herzegovina and the people who legally reside in Bosnia and Herzegovina, as well as responsible persons of legal entities registered in Bosnia and Herzegovina and located on the Consolidated List may at any time apply for delisting to the Ministry.

(2) Notwithstanding paragraph (1) of this Article, the request for delisting or providing opinions in an open procedure of delisting can be delivered also indirectly by the Committee or the Ombudsperson of the United Nations for issues of de-listing from the Consolidated List (hereinafter referred to as The Ombudsperson).

(3) The requirements of paragraph (1) of this Article shall contain the identification information for the applicant and a statement / explanation of the reasons for the delisting request. In addition to the request, copies of any document or other supporting material which the applicant considers to be of importance in the process of delisting may be enclosed.

(4) In considering requests for delisting, the Ministry is guided by the provisions of Article 10 of this Book of Rules, the positive regulations in Bosnia and Herzegovina and the Guidelines of the Committee.

(5) In proceedings on the application of paragraph (1) of this Article, the Ministry is obliged to obtain all necessary opinions of other competent bodies in Bosnia and Herzegovina, and in particular all police agencies / institutions in charge of the prosecution, the Tribunal and the Intelligence and Security Agencies of Bosnia and Herzegovina. In carrying out this process, the Ministry may require additional explanation or amendment from the person who has applied for de-listing.

(6) After collected all the opinions and other required documents, the Ministry shall forward the same to the Council of Ministers for decision. The Council of Ministers of Bosnia and Herzegovina is obliged before making final paragraph and sending the same to the Committee and the Ombudsperson to obtain the opinion of the Presidency of Bosnia and Herzegovina.

Article 14

(Termination of restrictive measures upon notice of the Committee about the fact of de-listing)

(1) Upon receiving notification of the Committee about approved deletion of specific person from the List, the Ministry will provide the information with the proposal of measures to be revoked to the Council of Ministers for adoption.

(2) Upon the completion of adoption procedures of information about the abrogation of measures by the Council of Ministers of Bosnia and Herzegovina, the Ministry will in writing notify the person in matter about above mentioned, and update information on the website (www.msb.gov.ba)

(3) On the above-mentioned, the Ministry will in writing inform the relevant authorities in Bosnia and Herzegovina for further actions within their jurisdiction.

(3) Termination of restrictive measures do not apply to measures which are determined in accordance with the provisions of the other positive legislation in Bosnia and Herzegovina, particularly criminal law, the cases pending or resolved before the competent judicial authorities in Bosnia and Herzegovina.

***(Deficiency 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.***

Article 12

(Proceedings on claims of third parties if their rights have been compromised)

(1) All competent authorities in Bosnia and Herzegovina are obliged to take care that the application of the provisions of this Book of Rules shall not be to the detriment of third parties.

(2) If there is a threat to the rights of third parties they can address the Ministry which is obliged to consider their allegations and make a decision within 30 days.

**Special Recommendation VIII**

***(Deficiency 1) - 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.***

In accordance with the basic principles of a specific recommendation VIII Ministry of Justice established by the Department for Civil Society, which monitors the work of nongovernmental organizations and participates in the implementation of joint programs.
The Department for Administration of the Ministry performs the registration of associations and foundations that are establishing the level of Bosnia and Herzegovina in accordance with the Law on Associations and Foundations of Bosnia and Herzegovina (Official Gazette of BiH ", Nos. 32/01, 42/03, 63 / 08) and the Regulations on keeping the register of associations and foundations of Bosnia and Herzegovina and foreign and international associations and foundations and other nonprofit organizations ("Official Gazette BH", number 44/10).

I.4. REGISTRATION OF ASSOCIATIONS AND FOUNDATIONS

Article 28

1. Registration of associations and foundations is voluntary, except as provided in Article 29 of this Law, but registration must be accomplished in order for an association or foundation to gain the capacity of a legal person of Bosnia and Herzegovina.

2. Registration, the filing of documents, and the cessation of operation of an association or foundation shall be done in accordance with this Law, other applicable laws of Bosnia and Herzegovina, regulations of the Ministry, and the Statute of the association or foundation.

3. Where those laws and regulations contain conflicting provisions, the Ministry shall interpret the laws and regulations in a way that:

   a) Promotes the policy of transparency and public disclosure; and,
   b) Reduces the administrative burden for organizations and individuals, to the extent that this can be done while promoting transparency and disclosure.

4. If the applicable laws are in conflict and cannot be reconciled, the provisions of this Law shall prevail.

5. The registration of an association is entered into the Registry Book of Associations. The registration of a foundation is entered into the Registry Book of Foundations. Both of these registry books shall be kept by the Ministry.

6. The registry books shall be kept in accordance with the provisions of this Law and regulations prescribed by the Ministry.

7. The registry books shall be open for public scrutiny. Inspection of any document or information filed in the registry books shall not conditioned on the approval by the Ministry. No document or information filed pursuant to this law shall be designated as “confidential” or as a “business secret”.

8. Every individual, either in person, or by mail, may request a copy of any entry from the registry or any document from the application file of a registered association or foundation. Fees for such copies shall not exceed normal amounts. The copies must be issued within fifteen working days from the day the request has been submitted.

Non-governmental organizations operating in accordance with the appointed Law on Associations and Foundations of Bosnia and Herzegovina and the above rules, as well as in accordance with its internal regulations, primarily the Statute.

**LAW ON ASSOCIATIONS AND FOUNDATIONS**

Article 12

The statute of an association shall include:

a) Full name of the association, its abbreviated name (if there is any), and its address;
b) The goals and objectives of the association;
c) The procedure for admission and dismissal of members;
d) The organs of the association, the method of their election, their competencies, their quorum and voting rules, the duration of their mandates, the person authorized to convene sessions of the assembly, the conditions and modalities of dissolution or cessation of operation;
e) The rules for obtaining, use and disposal of assets of the association, as well as the body authorized to supervise the use of these assets;
f) The publicity of operations;
g) The procedure for amending the statute, competency and method of enactment of other general acts;
h) A description of the shape of the seal and its contents;
i) The representation of the association;
j) The conditions and procedures for merger, separation, transformation or dissolution of the association, or the cessation of its operations, including any specific rules on quorum or qualified majority in the voting procedures;
k) The procedure for disposition of remaining property and any other assets in the case of dissolution of the association or cessation of its operations.

In order to monitor the work of NGOs as well as the use of funds of the same law provides for mandatory reporting by these organizations are the Ministry of Justice.

Article 29

All associations or foundations referred to in the Article 1 of this Law which intend to obtain public benefit or charitable status from the Ministry, all associations or foundations which perform public competences of Bosnia and Herzegovina, and all associations or foundations with any office or activity in Bosnia and Herzegovina and which receive grants or other disbursements from or through any governmental institution of Bosnia and Herzegovina in an aggregate amount exceeding 5,000 KM per year, shall:

a) Register in accordance with the law; and,

b) Annually file a report with the Ministry for filing in the Registry books, in form prescribed by regulations of the Ministry; provided, that the annual report must generally describe the activities of the association or foundation and those of any separate legal persons established pursuant to Article 4, and furthermore, that the annual report must also contain a balance sheet listing the income and expenditures of the association or foundation, as well as those of any separate legal persons established pursuant to Article 4 of this Law.

In order to act on abuse prevention activities of non-governmental organizations, or to punish the organization that its resources and activities centered in the opposite direction of the law are provided and the corresponding sanctions described in the below listed members of the Law:

Article 51

1. A registered association or foundation may be involuntarily dissolved by decision of the Ministry as hereinafter provided, if the association or foundation acts contrary to the provisions of this Law or if, without justified reason, it does not perform activities to implement its goals and objectives during a period of at least two full calendar years, or as a result of conditions described in the Article 50 of this Law.
2. Involuntary dissolution should be ordered only in cases of recurring or aggravated irregularities in operation, and may only be ordered after the association or foundation concerned has been notified of the matter and has been given an opportunity to be heard.
3. Sanctions and cessation of operation, and involuntary termination of an association or foundation shall be made by a request of the Ministry. Prior to a decision imposing sanctions, cessation of operation or involuntary termination, the Ministry shall give notice of the violations to the association or foundation. The notice shall describe the possible sanctions laid out in Article 53. The Ministry may allow the association or foundation to remedy the violation and/or may provide for sanctions as set out in this Law.

Article 53

1. The Ministry may impose a fine of at least 300 KM, but not exceeding 3,000 KM, against an association or foundation for:

    a) Failing to register, if registration is required by this Law;
    b) Failing to file an annual report, if filing is required by this Law;
    c) Performing activity that substantially departs from the goals and objectives of the association or the foundation concerned;
    d) Failing to use one of its registered names in legal transactions with the intention to deceive another legal or physical person, or a government organ;
    e) Changing its founding act or its Statute without lodging a request to amend it (Article 43(1) of this Law);
    f) Using its profit or assets contrary to its Statute or any applicable law, intentionally or with a gross negligence;
    g) Providing any information to the Ministry in connection with any application for registration, amendment of registration, or dissolution pursuant to any provision of this Law, which is materially and intentionally false and misleading.

2. The Ministry may also impose a fine against a responsible representative of an association or foundation who is found to have committed any of the acts described in this Article, provided the responsible representative had previous knowledge of the acts causing the violation and acted with a wrongful intent. The fine shall be at least 100 KM but shall not exceed 1,000 KM.

3. Penalties provided in this Article may be imposed only after the responsible person has been notified about the proceedings and its basis, and has been given an opportunity to be heard. Proceedings pursuant to this Article shall be conducted according to regulations prescribed by the Ministry.

**Special Recommendation IX**

***Deficiency (1) - adopt a legislative regime on the state level of BiH for full implementation of SR.IX to include domestic cash and negotiable instruments;***

The **Law on Foreign Exchange Operations** is adopted and published in the Official Gazette of FBiH No. 47/10 of 04.08.2010.

Content of the provisions of Article 45, 52, and 53 of the Law stipulates the following:

*Article 45*
*Residents and nonresidents are required when crossing the state border to report to customs authority any importation or bringing out of foreign cash, KM, and checks that exceeds the amounts prescribed by the Government of the Federation.*
*The obligation in paragraph 1 of this Article applies to the representative, responsible person or authorized person, who over the state border for a legal entity or entrepreneur carries foreign cash, KM and checks.*

NOTE: The sanctions imposed are prescribed in contain of provisions of Article 62 of the same Act.
In the Law on Foreign Exchange Operations ("Official Gazette of the Republic of Srpska" No. 96/03) and Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09), the same provisions are prescribed in the content of Article 41 and the sanctions imposed are prescribed in the content of the provisions of Article 60 of the Law*Article 52*

The Customs authorities shall control the bringing out from the Federation to abroad and bringing in from abroad to Federation of foreign cash, KM and checks in passenger, freight and postal traffic.

NOTES: In the Law on Foreign Exchange Operations ("Official Gazette of the Republic of Srpska" No. 96/03) and Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09), the same provisions related to the Republic of Srpska are prescribed in the content of Article 47 of this Law.

*Article 53*
*The Customs authority, along with the issuance of certificate, may at the border crossing temporarily seize from the resident and non resiedent the amount of convertible marks, foreign cash and checks exceeding the amount prescribed by Government of Federation.*

NOTE: In the Law on Foreign Exchange Operations ("Official Gazette of the Republic of Srpska" No. 96/03) and Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09), the same provisions related to the Republic of Srpska are prescribed in the content of Article 48 of this Law.
SPECIAL NOTE: Regulations that regulate an area of importation and bringing out the effective foreign money, KM and securities are made at the entity level, as follows:

- Law on Foreign Exchange Operations (Official Gazette of Federation BiH, No. 47/10) and Decision on bringing out the foreign cash and checks, ("Official Gazette of Federation BiH, No. 58/10) and
- Law on Foreign Exchange Operations ("Official Gazette of the Republic of Srpska" No. 96/03) and Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09) and Regulation on bringing out and importation of effective foreign money, KM, checks and securities ("Official Gazette of the Republic of Srpska" No. 16/05).

In relation to the mentioned regulations and quoted content of the provisions of articles of the same regulations and enactment - Guidance on Customs Procedures in International Passenger Traffic - Article 30 (Taking in and out of effective foreign money and securities), issued at the level of the Indirect Taxation Authority, the Indirect Taxation Authority is duly authorized to control the bringing out and importation into BiH from abroad of foreign cash, KM and checks in passenger, freight and postal traffic.

***Deficiency (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;***

In relation to this issue, the ITA has power to gather additional information and the same is prescribed in content of provisions of Article 29 Paragraph 1 item b) of the Law on Indirect Taxation Authority ("Official Gazette of BiH" No. 89/05), which is as follows:

*An authorized official of the ITA, within its powers as established by the laws of Bosnia and Herzegovina, has the right and obligation to require from persons who can provide assistance in collecting the required information, to testify or give information,to provide the insight to documents and hand over the documents, to provide their copy and provide other evidence held by them or under their control and to require that these actions be made by other authorized bodies.*

As regards the second part of the question relating to the retention of currency by the ITA, where there is a doubt regarding to money laundering, the ITA has explicitly prescribed authority for the detention or temporary seizure of the currency as follows: within the contents of the provisions of Article 53 of Law on Foreign Exchange Operations ("Official Gazette of FBiH" No. 47/10) and 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) and Law on Amendments to the same law ("Official Gazette of Republic of Srpska" No. 123/06 and 92/09).

***Deficiency (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.***

The content of the provisions of Article 59 of Law on Prevention of Money Laundering ("Official Gazette" No. 53/09) stipulates.

*(1) BiH Indirect Taxation Authority shall submit data on each transfer of cash across the state border in the value of KM 10,000.00 or more to FID, within three days from the date of transfer.*
*(2) BiH Indirect Taxation Authority shall submit to FID the notices and information on the measures and actions performed against individuals in connection with which the application for legal proceedings is submitted.*

The content of provisions of the mentioned Article requires that ITA delivers to the State Investigation and Protection Agency – SIPA, data and information on each transfer of cash across the state border in the amount of 10.000,00 KM or more.

***Deficiency (3) - give power to ITA to apply sanctions or seize funds as required by SR.IX.8-11.***

In the first issue of the SPECIAL NOTE, it was stated that regulations that regulate the importation and bringing out the effective foreign currency, KM and securities have been adopted at the entity level as follows: Law on Foreign Exchange Operations *(Official Gazette of Federation of BiH, No. 47/10) Decision on bringing out the foreign cash and checks, ("Official Gazette of the Federation of BiH", No. 58/10),* Law on Foreign Exchange Operations *("Official Gazette of the Republic of Srpska" No. 96/03) the*

*Law on Amendments to the same law ("Official Gazette of the Republic of Srpska" No. 123/06 and 92/09) and Regulation on bringing out and importation of foreign currency, convertible marks, checks and securities ("Official Gazette of the Republic of Srpska" No. 16/05).*

With respect to the above regulations brought in at the entity level, when the Indirect Taxation Authority (ITA) while performing exchange-currency control operations recognize a violation of above mentioned entity regulations on foreign exchange transactions, in that case, the ITA which in a view of the meaning of Article 3 of Law on Violations is not authorized body for the legal proceedings through the issuance of misdemeanor order or applying for legal proceedings, having previously undertaken the necessary measures and actions within its jurisdiction, informs the competent entity authorities on the measures and actions, along with the submission of collected evidence for sanctioning according to the mentioned Laws on Foreign Exchange Operations.

In terms of seizing the assets it has been already noted that the ITA had explicitly prescribed authority for the retention or temporary seizure of the currency as follows: in the contents of the provisions of Article 53 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) and Law on Amendments to the same law ("Official Gazette of Republic of Srpska" No. 123/06 and 92/09).