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EUROPEAN COMMITTEE ON CRIME PROBLEMS
(CDPC)

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

THIRD ROUND DETAILED ASSESSMENT REPORT ON BULGARIA[1]

ANTI-MONEY LAUNDERING AND COMBATING THE FINANCING OF TERRORISM

Memorandum
Prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs (DG-HL)

[1] Adopted by MONEYVAL at its 26th Plenary Session (Strasbourg 31 March – 4 April 2008).

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LIST OF ACRONYMS USED

Institutions

CPOC - Chief Prosecutors Office of Cassation
BNB - Bulgarian National Bank
CEPACA - Commission for establishing of property, acquired from criminal activity
FSC – Financial Supervision Commission
SCG – State Commission on Gambling
MF- Ministry of Finance
MoI – Ministry of Interior
MJ – Ministry of Justice
MFA – Ministry of Foreign Affairs
NCA - National Customs Agency
NRA – National Revenue Agency
FIA – Financial Intelligence Agency
Registry Agency to the MJ
GDBOP (Bulgarian acronym) - Chief Directorate for Combating Organised Crime of MoI
NPOs- Non-profit Organisations
BAEGG - Bulgarian Association on Entertainment and Gambling Games
ACB- Association of Commercial Banks
USAID – United States Agency for International Development
FSIP - Financial Sector Integrity Project
NSS – National Security Service
NIS – National Investigation Service

Legislation

AML/CFT – Anti Money Laundering /Counteracting Financing of Terrorism
LMML – Law on Measures against Money Laundering
RILMML – Rules on the Implementation of LMML
ORFIA - Organic Regulations of Financial Intelligence Agency
LMTF – Law on Measures against Terrorist Financing
TIPC - Tax-Insurance Procedure Code
PC or CC -Penal Code / Criminal Code
PPC or (CPC) - Penal Procedure Code /Criminal Procedure Code
LFPC or (LCPACAFS) - Law on Forfeiture of Proceeds of Crime /Law for the Confiscation of Property Acquired from Criminal Activities in Favour of the State
Law on Administrative Violations and Sanctions
Law on Extradition and the European Arrest Warrant
Law on issuing, adoption and implementation of the decisions for securing property or evidence, issued by the EU Member States
LMoI - Law on the Ministry of Interior
RILMoI - Regulation for Implementation of the Law on the Ministry of the Interior
BNBA - Bulgarian National Bank Act
Currency Act / Foreign Exchange Act
Law on Funds Transfers, Electronic Payment Instruments and Payment Systems,
Law on Credit Institutions

FSCA - Financial Supervision Commission Act
FSCR- FSC Regulation
LPOS - Law on Public Offering of Securities
LSIPC - Law on the Special Investment Purpose Companies

Insurance Code

Social Security Code;
Health Insurance Act.
Law on Measures against Market Abuse with Financial Instruments
Act on the Special Investment Purposes Companies
Law on additional supervision of the financial conglomerates
Ordinance No 1 on the Requirements to the activity of the Investment Intermediaries
Law on Gambling
Law of the commercial register
Ordinance for the order and the way to access to the commercial register in official way;
Tariff no. 1 to the Law for local taxes and fees collected by the courts, prosecutor investigation offices, Ministry of justice and registry agency
Ordinance for keeping, preservation and access to the commercial register.
Non-profit Legal Persons Act / Law on Non-Profit Legal Persons
Regulation on the Structure and the Activities of the Central Register on the Non-profit Legal Persons pursuing activities for public benefit at the Ministry of Justice
MLA - Mutual Legal Assistance

Others

BGN – Bulgarian Lev
ESW - Egmont Secure Web
FIU.Net - Network of European FIUs.
FIUs – Financial Intelligence Units
Register BULSTAT – Unified registration for corporate bodies; individuals – sole entrepreneurs; branches of foreign persons; trade representations of foreign persons under Article 6 of the Law of encouragement of the investments; foreign corporate bodies: - who implement economic activity in the country, including also through place of economic activity or defined base or object, or whose effective management is on the territory of the country, or who own immovable property in the country; unregistered partnerships under the Law of obligations and contracts and Contribution Payment Centers under Article 8 of the Social Security Code and others.
SIMS – Special investigative means and techniques

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Bulgaria was based on the Forty Recommendations 2003 and the Nine Special Recommendations on Terrorist Financing 2001 of the Financial Action Task Force (FATF), together with the two Directives of the European Parliament and of the Council (91/308/EEC and 2001/97/EC), in accordance with MONEYVAL's terms of reference and Procedural rules, and was prepared using the AML/CFT Methodology 20042. The evaluation was based on the laws, regulations and other materials supplied by Bulgaria, and information obtained by the evaluation team during its on-site visit to Bulgaria from 22 to 28 April 2007, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant Bulgarian government agencies and the private sector. A list of the bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation team comprised: Ms. Catalina Stroe, Legal Adviser, Department for the Relations with the Public Ministry, Prevention of Crime and Corruption, Ministry of Justice, Romania (Legal Evaluator); Mr. George Farrugia, Senior Financial Analyst, Financial Intelligence Unit, Malta (Financial Evaluator); Mr. Damir Bolta, Deputy Head, Anti Money-Laundering Department, Ministry of Finance, Croatia (Law Enforcement Evaluator); Mr. Michael Rosen, Policy Advisor, Office of Terrorist Financing and Financial Crimes, Department of the Treasury, USA (Financial Evaluator) and two members of the MONEYVAL Secretariat. The examiners reviewed the institutional framework, the relevant AML/CFT Laws, regulations and guidelines and other requirements, and the regulatory and other systems in place to deter money laundering and financing of terrorism through financial institutions and designated non-financial businesses and professions (DNFBP), as well as examining the capacity, the implementation and the effectiveness of all the systems.

3. This report provides a summary of the AML/CFT measures in place in Bulgaria as at the date of the on-site visit or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened (see Table 2). It also sets out Bulgaria's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

[2] As updated in February 2007.

II. EXECUTIVE SUMMARY

1. Background information

1. This report provides a summary of the AML/CFT measures in place in Bulgaria as at the date of the on-site visit from 22 – 28 April 2007, or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened. It also sets out Bulgaria's levels of compliance with the FATF 40 + 9 Recommendations.

2. The second evaluation of Bulgaria took place in October 2002. In general Bulgaria's crime situation has not changed since the second round. The major sources of illegal proceeds are still the illicit traffic of drugs, fraud and financial crimes, customs and tax crimes and smuggling of goods. In recent years illegal immigration and human trafficking have increased among profit-generating activities.

3. There have been some significant developments since the 2nd evaluation. Primary and secondary legislation have been amended and issued to incorporate the preventive measures that need to be provided for in law or regulation. The access of the Financial Intelligence Agency (FIA) to information has been extended to information which otherwise would be subject to bank secrecy.

4. Money laundering can now and has been prosecuted as a stand alone crime. Additionally, the law now explicitly covers foreign predicate offences.

5. A new development is the establishment of the Multidisciplinary Commission for establishing of property acquired from criminal activity (CEPACA). The Law on Forfeiture of Proceeds of Crime broadly subjects (after conviction for a serious offence) a defendant's identified, direct and indirect proceeds of significant value to a civil confiscation procedure. This procedure includes some provisions involving the reversal of the burden of proof and applies to third parties.

6. Since the second round, separate criminal offences of terrorist financing were introduced in the Criminal Code. At the same time the Law for the Measures against Financing Terrorism (LMFT) was adopted, which entered into force in February 2003. At the time of the on-site visit these provisions had not been tested in any investigation or prosecution.

7. A new system of mandatory reporting of all cash transactions in excess of BNG 30 000 (15 000 Euros) was established.

8. The AML Law now includes the requirement for identification and monitoring of the clients, verification of the collected information and the requirement to identify the beneficial owner of the client (legal person). It was the view of the evaluators that the definition of beneficial owner was not understood by all financial institutions and there are substantial concerns regarding the overall implementation. The AML Law has introduced limitations to establishing correspondent banking relationships. Financial institutions are obliged to apply extended measures to customers who occupy, or have occupied any supreme state position in Bulgaria or abroad. There is, however, no clear provision in law or regulation or other enforceable means for the determination of whether a customer is a political exposed person (PEP).

9. The scope of reporting entities is broader than prescribed by FATF Recommendations as the AML/CFT Laws now cover categories of reporting entities based on risk analyses for money laundering, including privatisation bodies, sport organisations; political parties; wholesale traders; and others. Supervisory authorities have also been designated as obliged persons.

10. Supervision is performed by several authorities; however, the FIA under the LMML has the leading AML/CFT responsibility. It should be noted that joint supervision between the FIA and the prudential supervisory authorities is currently being undertaken. However, in the light of the number of covered entities and the limited resources of the FIA, Bulgaria should consider providing all supervisory authorities with the ability to impose sanctions under the AML Law, and grant the FIA additional resources for this activity.

2. Legal Systems and Related Institutional Measures

11. The Money laundering incrimination is provided in Article 253 and 253a in the Criminal Code, which are "all crimes" offences. The money laundering offence now covers acts that are dangerous to the public, which is intended to underline that a conviction for a crime is not first required. Furthermore the law now explicitly covers foreign predicate offences.

12. The prosecutors with whom the team met considered that they did not require a prior or simultaneous conviction for the predicate offence. This had been a major issue in past evaluations. One of the reasons for the introduction into Article 253 of the language "or another act that is dangerous to the public" was to ensure that courts did not interpret "acquired through crime" strictly to mean acquired as a result of a proven criminal offence, which has resulted in a sentence of a court. Any Act which is "dangerous to the public" is thus seen as embracing the full concept of predicate crime without opening up arguments that a prior conviction is needed. Moreover, it was indicated that autonomous money laundering had now been successfully prosecuted (once in the case of a foreign predicate and once in the case of a domestic predicate).

13. The Bulgarian money laundering offence has always been an "all crimes" offence. The examiners have examined the list provided (Annex II) which is very comprehensive, and almost all of the designated categories of offences required by the FATF are covered in Bulgarian Law. However, the examiners were not satisfied that insider trading and market manipulation, as it is generally understood, are covered. The offences listed here in this context relate entirely to embezzlement or abuse of office. The Bulgarian authorities should ensure that insider trading and market manipulation are fully covered as designated categories of predicate crime and that financing of terrorism in all its forms is also capable of being a predicate offence.

14. The mental element for natural persons is knowledge or assumption that property is acquired through crime or another act that is dangerous for the public. "Assumption" is equated with (subjective) suspicion. Thus, the knowledge standard in respect of the origin of the proceeds is mitigated and suspicion is an alternative mental element.

15. According to the Bulgarian Criminal Code, criminal liability can only be imposed on a physical person who has committed a crime. Bulgarian criminal law does not provide for criminal liability of legal persons. However a new law was adopted in 2005 – the Law on Administrative Offences and Sanctions (provisions on the liability of legal persons for criminal offences) which makes some limited inroads into the formal position.

16. Between 2002 and 2007, there were 18 indictments for money laundering. There was no statistics on how many indictments represent police/prosecution generated cases and how many represent STR generated cases. Until 2006, there were no convictions for money laundering. In 2006, 5 indictments were brought to court which achieved convictions (two resulted in final convictions and 3 in non-final convictions). All involved both domestic and foreign predicate offences. The number of postponed or suspended sentences raises questions about how dissuasive the penalties imposed actually are. There have been 3 acquittals for money laundering so far. The other 10 indictments remained outstanding at the time of the on-site visit.

17. Since the second round, separate criminal offences of terrorist financing were introduced in the Criminal Code in Article 108a. Attempt is criminalised for all offences for which an attempt is possible, including terrorism financing. While the incrimination is quite wide the major

reservation is that the offence does not appear on its face to cover the broader approach of SRIII in relation to contributions for any purpose (including legitimate activity which may support terrorism). The terrorism financing offence is punished by imprisonment from 3 to 15 years and a fine of up to BGN 30,000. At the time of the on-site visit there were no prosecutions and convictions for terrorist financing.

18. There are two types of confiscation under the Criminal Code. Firstly, there is confiscation of "existing property" as an additional penalty which can only be applied if the special provision criminalising the act provides for it. Secondly, there is the confiscation of the objects of crime, which is intended to implement the Palermo and Vienna Conventions in respect to confiscation of property. Since the second round the criminal code was improved for value confiscation and for offences committed outside the Bulgarian territory. The evaluators noted the differences of view between the Bulgarian authorities on third party confiscation. Clear guidance on this issue as well as on confiscation of indirect proceeds should be given to the prosecutors.

19. In 2005 new legislation, the Law on the Forfeiture to the State of Proceeds of Crime (civil confiscation) was introduced. This law regulates the terms and procedure for imposition of seizure and forfeiture to the State of any assets derived, whether directly or indirectly, from criminal activity which has not been restored to the victim or which have not been forfeited to the State or confiscated under other laws. By this law, the body handling the procedure is the Multidisciplinary Commission for Establishing of Property Acquired from Criminal Activity (CEPACA), which became operational in October 2006. This law broadly subjects (after conviction for a serious offence) a defendant's identified direct and indirect proceeds of significant value to a civil confiscation procedure. This procedure includes some provisions reversing the burden of proof and applies to third parties. At the time of the on-site visit, it had only been operating for six months. The evaluators very much support the proactive pursuit of criminal proceeds by this state agency, and also encourage such an approach by investigators and prosecutors in other proceeds-generating cases.

20. Since the second evaluation the Law for the Measures against Financing Terrorism was adopted and entered into force in February 2003. This law provides for the listing and delisting of the persons on the United Nations Security Council Resolutions 1267 and 1373, European Union lists and other countries' lists, as well as for the freezing and unfreezing mechanisms. The law explicitly provides for the obligation of the reporting entity which applies the freezing procedure under LMFT to immediately notify the Minister of Interior, the Minister of Finance and CEPACA about the measure taken. Due to the fact that in practice there were no matches found and that not all reporting entities are aware that the freezing obligation formally falls on them, the examiners cannot say whether the provisions are properly enforced in practice.

21. The Financial Intelligence Agency (FIA) which is an administrative FIU continues to undertake a leading role in the development, coordination and implementation of the AML/CFT system. It was noted by the examiners that the system, as a whole, is quite well integrated: joint inspections with the prudential supervisory authorities take place; there is a police liaison officer attached to the FIA; there are multi-agency groups working on major criminal cases and several joint working groups co-coordinating policy and operational practice. The FIA is fully involved in all these activities. In performing its activities as an independent administration, under the Minister of Finance[3], the FIA receives, obtains without limitations, analyses and discloses information to relevant bodies. FIA also undertakes AML/CFT on-site supervisions of all reporting entities. STRs received basically arise from the banking sector and the Customs Administration.

[3] The Law on the State Agency for National Security which entered into force on 1 January 2008 provides that the status of Financial Intelligence Agency has changed to the Financial Intelligence Directorate at the State Agency for National Security. The State Agency for National Security is a specialised authority under the Council of Ministers. As a consequence The Law on Measures against Money Laundering, the Law on Measures against Financing of Terrorism and the Rules on implementation of the Law on Measures against Money Laundering have been changed respectively.

22. Bulgaria has designated authorities to investigate ML and TF offences and equipped them with necessary powers. The Chief Directorate for Combating Organised Crime (GDBOP) within the National Police Service is in general responsible for investigation of money laundering cases. The public prosecution office has discretion to institute criminal proceedings. The evaluators observed that the cooperation and coordination between law enforcement agencies has improved since the last evaluation. GDBOP and Chief Prosecutors' Office of Cassation comprise specialised units of jointly trained experts in the field of money laundering. The number of money laundering related investigations and convictions are, however, low compared with the total number of STRs passed to law enforcement. It was unclear how many cases law enforcement generated themselves. A proactive approach should be considered related to the financial investigations performed by police to better trace the proceeds of organized and economic crimes. Simplified access to the tax data should also be considered.

3. Preventive measures – Financial institutions

23. The Bulgarian prevention on money laundering regime is based on the Law on Measures to prevent Money Laundering (LMML) which has been amended several times since 1998. The LMML is supplemented by new Rules on Implementation of the Law on Measures against Money Laundering (RILMML), which further elaborate the preventive obligations under the AML Law. These cover the obligations required by Law or Regulation under the Methodology. Furthermore financial institutions and other subject persons shall adopt within 4 months as from their registration, internal rules for control and preventing money laundering. These rules provide further details as to criteria for identifying suspicious operations or transactions or customers; the training of the employees and the use of technical means for prevention and detection of money laundering; and also an internal control system for the compliance with the measures under the AML Law. The rules are required to be approved by the Director of the FIA. While in many ways the Bulgarian system for the issuing of internal rules is quite unique it was the view of the Plenary that its use in this context could not be viewed as producing texts which satisfied the "other enforceable means" test.

24. The AML Law requires the financial institutions to identify their customers (both individuals and legal entities) when establishing business or professional relations; when carrying out any operation involving more than 15,000 €; when performing an operation in cash exceeding 5 000€; when performing transactions in smaller amounts below the threshold but there is information that these operations are linked; and when suspicion of money laundering arises. Financial institutions cannot keep anonymous accounts or other types of accounts where the owner is not identified.

25. Bulgarian legislation and regulations on financial institutions' duty of diligence concerning customers and transactions are fairly satisfactory. The provisions seem to be fully consistent with the FATF recommendations on the extent to which customers must be identified and their identities checked information on the purpose and planned nature of business relationships, when customer identities have to be checked and the need for constant vigilance with regard to business relationships, including the regular updating of customer information. All financial institutions have specialised units for AML compliance.

26. Generally the institutions that were interviewed by the examiners seemed to be quite accustomed to all the requirements of identification and its verification. The industry's understanding and implementation appears to be the result of the focus given to AML by the FIA. As noted earlier, the effectiveness of the legislation is not reflected in the reports filed. With the exception of banks, financial institutions need to work harder to raise awareness and be effective in CDD due diligence.

27. The concept of beneficial owner is addressed in the AML Law and the definition is provided in the implementing rules. Financial institutions are required to identify the beneficial owner. Financial institutions are also required to verify the identification data of the customer and the

beneficial owner. It was the view of the evaluators that the definition of beneficial owner was not fully understood by all financial institutions.

28. Financial institutions have to make an initial assessment of the risk profile of the customer. Then, on the basis of this assessment, the credit- and financial institutions have to place higher risk customers under special supervision and apply extended measures. These categories may include customers without registered address or place of business in the country, off-shore companies, companies with nominal owners or bearer stocks and shares, fiduciary management companies or other similar structures. At the time of the on-site visit, some financial institutions had special software to assess high risk customers and others had opened a tender for such software.

29. Financial institutions are obliged to apply extended measures to customers who occupy, or have occupied any supreme state position in Bulgaria or abroad. There is no clear provision in law or regulation or other enforceable means for the determination of whether a customer is a political exposed person (PEP).There was no requirement to have senior management approval prior to the establishment of such business relationships. The Bulgarian authorities were intending to adopt additional rules when implementing the Third European Union Directive.

30. Some measures are in place concerning correspondent banking relationships. There is, however, no enforceable requirement to assess the respondent institutions AML/CFT controls, and ascertain that they are adequate and effective. There is no enforceable requirement to obtain senior management's approval before establishing new correspondent relationship. Additionally there is no enforceable requirement to document the respective AML/CFT responsibilities of each institution.

31. There are no restrictions in the Bulgarian legislation to prevent competent authorities from accessing required information to perform anti-money laundering functions. No secrecy provisions inhibit the exchange of information between competent authorities.

32. The AML Law obliges subject persons to maintain for a period of 5 years the data about the customers and the documents for the transactions and operations carried out. With respect to customers, the time limit for holding this documentation starts from the beginning of the calendar year following the year in which the relationship is terminated or, in the case of transactions and operations from the beginning of the calendar year following the year of their performance. It is noted that the language is quite broad though may not provide sufficient guidance to reconstruct financial records.

33. A requirement to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations is introduced in the AML Law. There is, however, no requirement to set out in writing any findings of examinations on the background and purpose when transactions have no apparent economic or visible lawful purpose. Such findings should be set out in writing and maintained for a period of at least five years to assist competent authorities. Countermeasures in case such a country continues not to apply or insufficiently applies the FATF Recommendations should also be established in law or regulations.

34. The AML Law provides that wherever there is suspicion of money laundering, the subject persons are obliged to notify forthwith the FIA prior to carrying out the operation or transaction, holding up its completion within the period admissible under the legal acts that regulate the corresponding type of activity. In cases where delay of the operation or transaction is objectively impossible, the subject persons shall notify the FIA immediately after its performance. The definition of money laundering in the AML Law includes laundering in relation to any criminal activity (tax matters are included for these purposes and are not excluded for STR reporting purposes).There is no financial threshold and all suspicious transactions should be reported. Attempted suspicious transactions are not explicitly covered.

35. LMFT provides that everybody who knows that certain operations or transactions are directed to financing terrorism shall be obliged to inform immediately the Minister of Interior. LMFT further provides that subject persons under the LMML shall be obliged on the occurrence of a doubt for financing terrorism, to inform the Minister of Interior and the FIA. There is no financial threshold. Attempted suspicious transactions related to financing of terrorism are not explicitly covered.

36. The Bulgarian legislation does not allow shell banks to be licensed for banking activities in Bulgaria. It is the licensing requirements which prohibit the establishment of shell banks rather than direct prohibition in any legislation.

37. Administrative sanctions for non-compliance with the AML Law may be imposed by the FIA. The range of permissible sanctions is low for corporations (50 000 BNG). Fines imposed by the FIA appear not to be frequent and the amount is relatively low compared with the maximum permissible. The major types of infringements that have been sanctioned are: "not filing a Suspicious Transaction Report"; "not filing a Cash Transaction Report"; "lack of internal rules"; "tipping off"; "no declaration of origin of funds" and different kind of "lack of client identification". It is difficult to assess the level of effectiveness.

38. With respect to the Bulgarian National Bank it is believed that although they have the expertise and apparently conduct their inspections diligently the BNB seems to lack some resources to enable it to conduct more timely inspections with the same accuracy. The Bulgarian authorities should consider additional resources in this respect.

39. Although the evaluation team was assured that the Financial Services Commission is adequately resourced the number of inspections compared to the total subject persons seem to be disproportionate. It is believed that the large number of subject persons supervised calls for more human resources. The Bulgarian authorities should consider additional resources in this respect.

40. Money transfer services are offered only through licensed institutions with the exception of Postal Services which currently provide domestic transfers. Money transfers are affected through financial houses or exchange bureaus only on a contractual basis with banks. Banks and financial houses need a licence to perform such activities. Exchange bureaus perform their activities subject to registration. No informal alternative remittance systems are allowed and the evaluation team was informed that the informal money or value transfer services were not considered as a problem in Bulgaria. Moreover financial services operators who offer licensed money transfer services do not feel any form of competition from informal money or value transfers services and believe that if there is any it is negligible.

4. Preventive Measures – Designated Non-Financial Businesses and Professions (DNFBP)

41. The general CDD obligations for financial institutions have equal force and applicability to DNFBP and are codified in law and regulation. Many of the systemic deficiencies noted for financial institutions are equally applicable to DNFBP. The AML/CFT laws cover a range of DNFBP beyond those specifically enumerated in FATF Recommendation 12 and those of the 2nd EU Directive. In addition to the regulated industry, supervisory agencies such as the Bulgarian National Bank, the National Tax Authority and Customs are all obliged entities and must report to, and file STRs with the FIA. Briefly, DNFBP, like financial institutions, must: identify customers and beneficial owners; keep records, inform the FIA of suspicious activity; check lists for terrorist financing; delay unusual business activities if possible; and develop internal procedures and units dedicated to AML/CFT compliance.

42. During the past two years, the FIA has begun to engage in outreach and provide training to DNFBP to improve their understanding of AML/CFT requirements, including CDD measures. The FIA has increased the staffing and devoted more resources to inspection of the DNFBP

sector. For specific industries, which do not have a self-regulating organisation, Bulgaria should consider continued training on CDD and record keeping.

43. The Bulgarian authorities should consider clarifying the obligations for reporting attempted suspicious transactions. Furthermore, Bulgaria should consider providing further guidance and feedback for DNFBP on STR filings. In particular, such guidance should be geared towards DNFBP, AML/CFT risks.

44. Based on its risk analysis, the FIA should consider continuing targeted training to sectors that pose the greatest AML/CFT risks. Specific training may be necessary to enhance the effectiveness of DNFBP use of their internal rules as well as to reinforce procedures for addressing business relationships and transactions with persons from countries that insufficiently comply with the FATF Recommendations. Additionally, many DNFBP did not fully comply with the requirements of LMFT and further outreach on terrorist financing indicators under the internal rules should also be considered.

45. The DNFBP are subject to FIA supervision and inspection, which has an array of powers under the AML/CFT Laws. In the light of the scope of covered entities, the FIA should have sufficient resources to fully supervise all subject entities.

5. Legal Persons and Arrangements & Non-Profit Organisations

46. The Law on Commercial Register provides for the setting-up of a commercial register, as a unified centralised electronic data base kept by the Registry Agency within the Ministry of Justice. The new commercial register was to enter in force as of 1 July 2007 (shortly after the on-site visit) replacing the present court registration with an administrative one conducted under the Commercial Register Law.

47. The ownership of shares in listed companies could be traced at the Central Depositary where the issue of shares and their transfers are registered. Information on the shares of limited liability companies is available in the Commercial Register. The Commercial Register is public.

48. The examiners were advised that bearer shares can be issued in Bulgaria only by the joint stock companies. There is no limitation for the issuing of bearer shares, but banks and state companies are not allowed to issue bearer shares. The owner of the bearer share is known when first registered, but after having sold the share the owner of the bearer share is no longer known or registered. The Bulgarian authorities highlighted that bearer sharer are rarely used, due to the uncertainty which they have.

49. It cannot be guaranteed that in the future, the practise of issuing bearer shares will not be used more widely. This being said, the examiners recommend the Bulgarian authorities to consider providing the obligation of registering the ownership of bearer shares or to introduce other adequate transparency measures concerning bearer shares in the legal framework governing the commercial companies.

50. The concept of trusts is not known under the Bulgarian Law.

51. The examiners were advised that the NPO sector is one of the reporting entities sectors. The FIA is the overseeing body for NPOs. The non-profit sector is governed by the Law on Non-profit Corporate Bodies and a recent amendment in 2006 introduced detailed provisions regarding financial obligations and annual reports only applicable to NPOs for public benefit. Consideration should be given to widening the annual obligations of the NPOs for public benefit to the other NPOs.

52. No specific review of the risks in the NPO sector has been undertaken. Though there is some financial transparency and reporting structures (especially for NPOs for public benefit), Bulgaria

should consider the development of a strategy of monitoring the most vulnerable parts of the NPO sector. Furthermore regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures should be undertaken.

6. National and International Co-operation

53. The assessment process clearly showed a number of examples of national co-operation among all relevant agencies on all levels, from policy makers to ad hoc case to case teams.

54. The examiners welcomed the fact that that Bulgaria has ratified all the relevant international instruments and that measures are taken to implement their requirements. Several issues raised in the domestic context still also need to be addressed in the international context, including the limited scope of liability of legal persons; and differences of view between the Bulgarian authorities on the application of third party confiscation need resolution. The awareness of some reporting entities with respect to their role in CFT mechanism and the specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person need also to be addressed in the context of international cooperation..

55. In the absence of any significant legal restriction in the field of mutual legal assistance, Bulgaria is in principle able to provide a wide range of assistance in the field of criminal proceedings and in ML and FT in particular. Likewise Bulgaria is in principle able to provide a wide range of assistance in the field of extradition and in ML and FT in particular.

56. The evaluators strongly advise that Bulgaria keeps more detailed statistics in order to allow its authorities to assess the effectiveness of the AML/CFT system more clearly.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Bulgaria

1. Bulgaria is situated in South-Eastern Europe. It is bordered by Turkey, Serbia and Montenegro, "the former Yugoslav Republic of Macedonia", Greece and Romania. It has a territory of 110 993,6km^2 and a population of 7 973 671. The capital, Sofia, has 1 173 811 inhabitants. The official language is Bulgarian. The national currency is BGN (Leva), which has 100 stotinki. The official exchange rate is 1 Euro = 1.95583 BGN.

2. The territory of the Republic of Bulgaria subdivides into provinces and municipalities. In all, Bulgaria has 28 provinces, each headed by a provincial governor appointed by the government. In addition, the country includes 263 municipalities.

3. According to the 2001 census, Bulgaria's population consists mainly of ethnic Bulgarian (83.9%), with two sizable minorities, Turks (9.4%) and Roma (4.7%). Of the remaining 2.0%, 0.9% comprises some 40 smaller minorities, most prominently in numbers the Russians, Armenians, Vlachs, Jews, Crimean Tatars and Karakachans. 1.1% of the population did not declare their ethnicity in the latest census in 2001.

4. 96.3% of the population speak Bulgarian as their mother-tongue. Bulgarian, a member of the Slavic language group, remains the only official language, but numbers of speakers of other languages (such as Turkish and Romany) correspond closely to ethnic proportions.

5. Bulgaria joined NATO on March 29, 2004 and signed the European Union Treaty of Accession on 25 April 2005. It became a full member of the European Union on 1 January 2007. The country had joined the United Nations in 1955, and became a founding member of OSCE in 1995. As a Consultative Party to the Antarctic Treaty, Bulgaria takes part in the governing of the territories situated south of 60° south latitude.

Economy

6. The Bulgarian economy sustained its growth in 2006. The real GDP grew up by 6.1 per cent in 2006. Inflation fell compared with 2005 to 6.1 per cent. The GDP per capita has grown by 15 % from 2830 Euro in 2005 to 3260 Euro in 2006. The macroeconomics indicators have preserved the positive trend during the last three years.

7. Corporate and municipal bond turnover increased by 16 per cent on 2005 to BGN 323.3 million.

8. The total increase in equity prices and the admission of new companies into the stock exchange doubled market capitalization to BGN 15, 265 million (31.2 per cent of GDP) by the end of the year. The total insurance premiums at the end of 2006 reached an amount of BGN 1, 247 million (2.54 per cent of the GDP) and the amount of the assets of the insurers was BGN 1, 755 million. The premiums per capita were BGN 126.38.Pension funds assets at the end of 2006 were BGN 1, 517 million (3,09 per cent of the GDP). The assets managed by the investment intermediaries at the end of 2006 were BGN 3, 029 million.

The Bulgarian authorities provided the following tables:

Basic Characteristics of the Bulgarian Economy according to Agency for Economic Analyses and Forecasting

MAIN MACROECONOMIC AND FINANCIAL INDICATORS		annual data						
		2000	2001	2002	2003	2004	2005	2006
REAL SECTOR								
National accounts								
GDP, current prices	thous. BGN	26 752 833	29 709 210	32 335 083	34 546 642	38 275 339	41 94 109	49 090 605
Final consumption	thous. BGN	23 291 456	25 818 421	28 070 129	30 314 471	33 222 394	37 16 929	42 494 959
Gross fixed capital formation	thous. BGN	4 206 005	5 415 212	5 908 531	6 694 368	7 969 398	9 971 137	12 878 326
Exports of goods and services	thous. BGN	14 902 039	16 509 634	17 180 421	18 500 300	22 191 700	25 50 927	31 420 432
Imports of goods and services	thous. BGN	16 334 291	18 759 953	19 320 500	21 778 900	26 114 500	32 44 355	40 740 774
GDP real growth rate, y/y	(%)	5,4	4,1	4,9	4,5	5,7	5,5	6,1
Final consumption	(%)	5,7	4,4	3,6	6,6	5,1	6,8	6,5
Gross fixed capital formation	(%)	15,4	23,3	8,5	13,9	13,5	19,0	17,6
Exports of goods and services	(%)	16,6	10,0	7,0	8,0	13,0	7,2	9,0
Imports of goods and services	(%)	18,6	14,8	4,9	15,3	14,1	14,6	15,1
Inflation								
Inflation in the end of the year	(%)	11,3	4,8	3,8	5,6	4,0	6,5	6.5
average annual inflation	(%)	10,3	7,4	5,8	2,3	6,2	5,0	7.3
Labour market								
Average number of employed persons		2 980 108	2 968 069	2 978 562	3 166 499	3 226 343	3 253 518	3 349 199
Public sector		869 706	791 233	737 252	771 691	737 428	689 511	678 578
Private sector		2 110 402	2 176 836	2 241 310	2 394 808	2 488 915	2 564 007	2 670 621

Average monthly wage by quarters, total**	BGN	224,5	240,0	257,6	273,3	292,0	323,8	360.3
Public sector	BGN	263,3	290,9	322,6	343,1	367,0	400,9	441.0
Private sector	BGN	192,5	204,3	217,8	232,5	254,0	288,4	326.3
Unemployment rate (till 2002 end of period; since 2003 average for the period)	(%)	16,4	19,5	16,8	12,7	12,0	9,9	8.4
FINANCIAL SECTOR								
Broad money (M3)	thous. BGN	9 856 616	12 400 512	13 857 326	16 566 457	20 394 366	25 259 580	32 061 383
Annual change	(%)	30,8	25,8	11,7	19,6	23,1	23,9	26.9

* *Percentage changes are derived from the indices, which are arithmetic*
** Data for 2005 are preliminary

sources: National Statistic Institute; Agency on Employment; Ministry of Finance, BNB

9. The Bulgarian National Bank, established in 1879, is the Central Bank of Bulgaria. Its main objective is to maintain the stability of the national currency, the Lev, through the implementation of adequate policies and of an efficient payment system. After the introduction of a Currency Board Arrangement on July 1, 1997, the number of monetary policy instruments at the disposal of the Bank was reduced and the exchange rate is currently fixed by Law at 1.95583 BGN per Euro. The BNB has the exclusive right to issue banknotes and coins in Bulgaria. The BNB performs the function of financial agent of the government.

10. Since 1990, the bulk of Bulgarian trade has shifted from former COMECON countries primarily to the European Union, although Russian petroleum exports to Bulgaria make it Bulgaria's single largest trading partner. In December 1996, Bulgaria joined the World Trade Organisation. In the early 90's Bulgaria's slow pace of privatization, and prevailing government tax and investment policies, kept foreign investment low. Total direct foreign investment from 1991 through 1996 was $831 million. In the years since 1997, however, Bulgaria has begun to attract substantial foreign investment. In 2004 alone over 2.72 billion Euro (3.47 billion US dollars) were invested by foreign companies. In 2005 economists observed a slowdown to about 1.8 billion euros (2.3 billion US dollars) in FDI which is attributed mainly to the end of the privatization of the major state owned companies.

11. As noted, 1 January 2007 Bulgaria entered the European Union. This led to some immediate international trade liberalization. The government is running annual surpluses of above 3%. This fact, together with annual GDP growth of above 5%, has brought the government indebtedness to 22.8% of GDP in 2006 from 67.3% five years earlier. Low interest rates

guarantee availability of funds for investment and consumption. For example, a boom in the real estate market started around 2003 and has not subsided yet. Foreigners seeking additional homes have recently boosted the Bulgarian property-market. Buyers come from across Europe, but mostly from the United Kingdom. At the same time annual inflation in the economy is variable and during the last five years (2003-2007) has seen a low of 2.3% and high of 7.3%. The country's nominal GDP per capita is about 13% of the EU 25 average.

System of government

12. Bulgaria is a parliamentary republic. The unicameral National Assembly, or Narodno Subranie, consists of 240 deputies who are elected for 4-year terms through a system of proportional representation in 31 electoral regions. Party or coalition lists, rather than individual candidate names, appear on the ballots. A party or coalition must obtain a minimum of 4% of the vote to enter parliament. Parliament selects and dismisses government ministers, including the prime minister, exercises control over the government. It is responsible for enactment of laws, approval of the budget, scheduling of presidential elections, declaration of war, and ratification of international treaties and agreements.

13. The president of Bulgaria is directly elected for a 5-year term with the right to one re-election. The president serves as the head of state and commander in chief of the armed forces. The president is the head of the Consultative Council for National Security and while unable to initiate legislation, the president can return a bill for further debate. Parliament can overturn the president's veto with a simple majority vote.

14. The prime minister is head of the Council of Ministers, which is the primary component of the executive branch. In addition to the prime minister and deputy prime ministers, the Council is composed of ministers who head the various agencies within the government and usually come from the majority/ruling party or from a member party of the ruling coalition in parliament. The Council is responsible for carrying out state policy, managing the state budget and maintaining law and order. The Council must resign if the National Assembly passes a vote of no confidence in the Council or prime minister.

Legal system and hierarchy of laws

15. Chapter VI of the constitution of the Republic of Bulgaria states the general structure of the judicial system, its management by the Supreme Judicial Council and the rules for election of the members of the Council. Article 117 (1) of the Constitution of the Republic of Bulgaria provides for the functions of the judicial system "...to protect the rights and the legal interests of the citizens, legal persons and the state".

16. The Bulgarian judicial system became an independent branch of the government following passage of the 1991 constitution. In 1994, the National Assembly passed the Judicial Powers Act to further delineate the role of the judiciary. In 2003, Bulgaria adopted amendments to the constitution, which aimed to improve the effectiveness of the judicial system by limiting magistrates' irremovability and immunity against criminal prosecution.

17. The Supreme Judicial Council (SJC) is composed of 25 members serving 5-year terms. Those who serve on the council are experienced legal professionals and are either appointed by the National Assembly, selected by the judicial system, or serve on the SJC as a result of their position in government. The SJC manages the judiciary and is responsible for appointing judges. In 2007 parliament revised the Judicial Powers Act to make it compliant with the latest constitutional amendments, which provided for the establishment of the Inspectorate with the Supreme Judicial Council: a standing body with 11 members who oversee the activity of all magistrates with no right to rule on the substance of judicial acts.

18. The following system of courts operates in the Republic of Bulgaria:

a. Regional Courts - Art. 52-56 of the Judicial System Law
b. District Courts - Art. 57-65 of the Judicial System Law
c. Courts of Appeal - Art. 72-79 of the Judicial System Law
d. Supreme Courts - Supreme Court of Cassation (Art. 80-90 of the Judicial System Law), Art. 124 of the Constitution of the Republic of Bulgaria, Supreme Administrative Court (Art. 91-100 of the Judicial System Law), Art. 125 of the Constitution of the Republic of Bulgaria
e. Court Martial - Art. 65-71 of the Judicial System Law.

19. The first, appellate, and cassation (highest appellate) courts comprise the three tiers of the judicial system.

20. The Judicial power is administered by districts, countries, military, appeal, Supreme Administrative Court and Supreme Court of Cassation. Civil, penal and administrative cases are within the jurisdiction of the courts.

21. The Supreme Court of Administration and Supreme Court of Cassation are the highest courts of appeal and determine the application of all laws. The court that interprets the constitution and constitutionality of laws and treaties is the Constitutional Court. The Constitutional Court supervises the review of the constitutionality of laws and statutes brought before it, as well as the compliance of these laws with international treaties that the Government has signed. Parliament elects the twelve members of the Constitutional Court by a two-thirds majority: the members serve for a nine-year term.

22. A typical representative of the Romano – Germanic legal family, the Bulgarian legal system recognizes the Acts of Parliament as a main source of law. The Bulgarian jurisprudence does not regard the judicial precedent as a source of law. Nevertheless, apart from the direct sources, the legal doctrine also refers to the so called indirect sources (or "subsidiary" sources) of law such as: case law (the practice of the courts), the legal doctrine, the legal customs, moral rules, and equity ("justice"). In addition, two types of decisions of the Constitutional Court (refer to 2.3. below) are clearly a source of law (but they cannot be regarded as case law). In terms of direct sources of law, which include also *acquis communautaire*, the Bulgarian legal system is based on a strictly defined hierarchy of the sources of law as follows below:

23. The Bulgarian Constitution, effective as from July 12, 1991, is supreme internal legislative act. The Constitution provides for the basic rights of the citizens as well as it stipulates the form of the state government and structure, functions and collaboration between the branches of government, etc. The Constitution has been amended four times so far, never by a Grand National Assembly. According to art. 149, Para. 1, p. 1 of the Constitution: "The Constitutional Court gives compulsory interpretations of the Constitution". The Constitutional Court is also entitled to declare provisions contained in an Act of Parliament anti-constitutional. Those two types of decisions of the Constitutional Court are a very important source of law in Bulgarian legal system.

24. According to art. 5, Para. 4 of the Constitution: "The international treaties, ratified in compliance with the constitutional procedure, published and entered into force for the Republic of Bulgaria are part of the domestic law of the country and have supremacy over those provisions of the domestic law which contradict them". This rule has been applied consistently by Bulgarian courts. In respect to the above, it should be noted, however, that EU has the legal capacity to be a party to international treaties with third countries and international organisations. These international treaties are an important part of the EU legal order and therefore their provisions are binding for the member states as well as for the private persons therein.

25. The main sources of law, apart from the EU laws, according to the Bulgarian legal doctrine, are Acts of Parliament. Legislative initiative is vested in any Member of Parliament, as well as in the Council of Ministers (refers to 3.2.1. below). Annual budgets bills can be drafted only by the

Council of Ministers. Some major branches of the legal system are codified, even though codes (enacted by the Parliament) have no higher standing than but are equal to other Acts of Parliament. The codes having the ranking of an Act of Parliament currently in force in Bulgaria include the Administrative Procedure Code 2006 (dealing with the procedures for the issuance and appeal of administrative acts and, among others, for the procedures for indemnification of private parties who have suffered damages from administrative instruments, acts or omission to act); the Civil Procedure Code 1952; the Criminal Code 1968 as amended many times (dealing exclusively with all matters falling within substantive criminal law); and the Criminal Procedure Code 2006 (dealing exclusively with all mattes falling within criminal procedure law, including the law of evidence).

26. The Constitution provides for and a number of Acts of Parliament delegate to the Council of Ministers, the Ministers separately, to other public bodies and/or officers the issuance of decrees, regulations, ordinances and instructions which regulates of specific areas of economic or social activity. If such subordinate statutory instruments contravene an Act of Parliament or the Constitution they can be appealed before (and possibly revoked by) the Supreme Administrative Court.

27. In the context of this evaluation primary legislation includes *inter alia* the Law on Measures against Money Laundering (LMML), Law for the Measures against Financing Terrorism (LMFT), the Criminal Code (CC), the Criminal Procedure Code (CPC), Bulgarian National Bank Act and Law on Credit Institutions, in all of which FATF Recommendations are given some treatment.

28. Some of the basic preventive obligations are, however, marked with an asterisk in the Methodology. This means that they belong to the basic obligations that should be set out in law or regulation. In this context "Law or regulation" refers to primary or secondary legislation, such as laws, decrees, implementing regulations or other similar requirements, issued or authorised by a legislative body, and which impose mandatory requirements with sanctions for non-compliance. Separate to laws or regulation are "other enforceable means" like guidelines, instructions or other documents or mechanisms that set out enforceable requirements with sanctions for non-compliance, and which are issued by a competent authority (e.g. financial supervisory authority) or an SRO. In other words: according to the Methodology, obligations set out in law or regulation as well as in other enforceable means have to be enforceable. In addition, the law or regulation has to be issued or authorised by a legislative body.

29. Some of the basic preventive obligations arising from FATF Recommendation 5 are currently referred to in Decree No. 201 of August 2006 on Rules on implementation of the Law on Measures against Money Laundering (RILMML). The RILMML are issued by the Council of Ministers on the basis of paragraph 6 of the transitory and concluding provisions of the LMML. The said paragraph 6 provides: "The enforcement of this Law shall be entrusted to the Council of Ministers and the Council of Ministers shall adopt Rules on the Implementation of the Law within 2 months as from the entering of the Law into force." The RILMML are issued by the Council of Ministers on a general authority granted by the Parliament and thus *prima facie* qualify as secondary legislation in Bulgaria and amount to "law or regulations" as that term is generally understood by the FATF and FSRBs. Under Article 23 (5) of the LMML, it is provided that infringement of a by-law shall be punished with a fine of 500 to 2 000 BGN. Article 23 (6) provides that if the infringement is performed by a legal person the fine varies from 1,000 BGN to 5,000 BGN. The evaluators were informed that sanctions for violation of the RILMML are imposed in practice. Thus obligations set out in RILMML in so far as they are sanctionable are obligations found in enforceable secondary legislation.

30. Article 16 of the LMML and Article 17 of the RILMML require obliged entities to adopt "internal rules" for control and preventing money laundering. These rules provide further details as to criteria for identifying suspicious operations or transactions or customers; the training of the employees and the use of technical means for prevention and detection of money laundering; and also an internal control system for the compliance with the measures under the AML Law. The

rules are required to be approved by the Director of the FIA. In MONEYVAL evaluations hitherto it has never been the case that the internal rules of individual financial institutions could be considered to be "other enforceable means".

31. The FATF note to assessors, which had been issued prior to the MONEYVAL plenary discussions of Bulgaria (Annex 2 in FATF/PLEN/(2008)10) on other enforceable means, was considered in relation to the internal rules. Briefly, in order to be considered as other enforceable means a "document or mechanism" must satisfy several specific factors set out in the FATF note including that a document / mechanism was issued by a competent authority, and that there should be sanctions for non compliance. The Bulgarian authorities argued that as their rules were authorised by the Director of the FIA and were capable of being sanctioned they constituted other enforceable means. It was pointed out that sanctions had been issued not simply for failure to produce internal rules as provided for by the LMML, but also for breach of the content of individual rules. In this regard it was noted that one bank had been sanctioned by the FIA on the basis of the rules for not reporting a category of suspicious transaction described in the particular rules.

32. While in many ways the Bulgarian system for the issuing of internal rules is quite unique it was the view of the Plenary that its use in this context could not be viewed as producing texts which satisfied the "other enforceable means" test. The plenary was also concerned that the evaluators could not in a system of this kind review all the individual sets of rules authorised by the FIA for each financial institution. As such they were not in a position to determine globally whether there were in fact in place general and consistent national obligations on all relevant issues which could be covered by internal rules issued under Article 16 of LMML and Article 17 of the RILMML. Additionally it appeared that the internal rules could address issues beyond what is provided for in the law (e.g. PEPs and correspondent banking).

Transparency, Good Governance, ethics and measures against corruption

33. Generally, the public can obtain access to administrative information except in relation to confidential information kept by various state institutions. The main principles are laid down in the Constitution of Republic of Bulgaria. Art. 41 Para 1 and 2 of the Constitution provide for following: "(1) every person has the right to search, receive and circulate information. Fulfilment of this right could not be directed against the rights and good reputation of other citizens as well as against the national security, public order, population's health and morality. (2) Citizens have right to obtain information by state body or institution on matters, which are subject of their lawful interest, if the information is not state or other protected by the law secret or not affect somebody else's rights."

34. An amendment of the Constitution created the institution of the Ombudsman which is new for the Bulgarian legal system. The Ombudsman may intervene by the means, envisaged by law, when citizens' rights and freedoms have been violated by actions or omissions of the State and municipal authorities as well as by public officers.

35. A proper culture of AML/CFT compliance is shared and reinforced by the Bulgarian government and the institutions and bodies referred to in paragraph 7 (b) of the Methodology.

36. Several amendments to the Bulgarian legislation in the area of combating money laundering have been introduced as regards the provisions on money laundering offence, confiscation, proceeds from crime, etc., following to recommendations from the Second Evaluation Report of Bulgaria.

37. Bulgaria ranks 64th out of 179 countries on the Transparency International Corruption Perceptions Index for 2007.

38. Bulgaria is a member of the Group of States against Corruption (GRECO). GRECO concluded in its 2nd Evaluation Report (2005) that in Bulgaria, the existing legal framework on freezing and

forfeiture of proceeds and instrumentalities of crime still suffers from a number of serious shortcomings, namely the lack of clarity in the legislation with regard to the possibility of imposing provisional freezing and forfeiture of the proceeds of crime when those proceeds are in the possession of legal persons or other third parties.

39. Bulgaria has implemented adequate reforms to prevent corruption within public administration at the central level. With regard to legal persons, the GRECO Evaluation Report concluded that there remained a need to modernise the system of registration of legal entities, as well as to establish liability of legal persons in accordance with the Criminal Law Convention, accompanied by sanctions that are effective, proportionate and dissuasive.

40. The Law on Amendment of the Law on Administrative Violations and Sanctions was adopted by the Parliament on 21 September 2005. The amendment provides for monetary sanctions for legal persons for certain corruption and other offences committed for their profit. With the amendment a new chapter was introduced in the Law on Administrative Offences and Sanctions, where the substantial and procedural aspects of legal persons' administrative liability is stipulated in compliance with the standards of the Second Protocol of Convention on the protection of the European Communities financial interests, the Council of Europe Criminal Law Convention on Corruption and the OECD Convention for Combating Bribery of Foreign Public Officials in International Business Transactions.

41. Bulgaria has continued to improve its legal and administrative framework against corruption. As part of the programme for the implementation of the strategy for transparent governance and for preventing and counteracting corruption, amendments to the Law on the Publication of the Assets of Persons Occupying High Public Positions, were adopted in August 2006. The law authorises the National Audit Office with support of other public bodies to carry out inspections to confirm the accuracy of declarations submitted to the National Audit Office by persons occupying high public positions. Furthermore, the recent amendments widened the range of persons obliged to declare their assets. All ministers publish their asset declarations on the internet.

42. Amendments to the Law on Political Parties were adopted in August 2006. These amendments stipulate that members of the governing and controlling bodies of the political parties have to declare all their domestic and foreign assets, income and expenditure to the National Audit Office. Political parties are obliged to name their donors, as well as the type and value of donations. Furthermore, political parties now also have to submit to the National Audit Office a list of (non-profit) bodies in which their senior members participate. In September 2006, the National Audit Office made public the results of a detailed audit of the financial activities and the management of the property of political parties.

43. With Decision N° 61/2.02.2006 a Commission on Corruption Prevention and Counteraction has been established. This Commission is chaired by the Minister of Interior; deputy chairmen are the Minister of Justice, and Minister of State Administration and State Reform. The members of the Commission are the Minister of Finance, Minister, responsible for European Issues, Deputy Minister of Education and Science; Deputy Minister of Health; the Chairman of the National Audit Office; Director General of Agency on State Financial Inspection; Director General of Financial Intelligence Agency; Executive Director of National Revenue Agency; Director of the National Customs Agency; Secretary of the CM Security Council; Director of Strategic Planning and Management Directorate at the Administration of CM and Director of EU and International Financial Institutions Coordination Issues Directorate.

44. Contact points for receiving reports of corruption have been established in many state bodies. Various preventive measures have been taken - hotlines and complaint boxes, as well as simplified procedures for citizens to address local authorities. Within the border police arrangements have been made to reduce the risk of corruption through random changes in working hours and places of work. The vetting of staff as well as training and the introduction of preventive measures and good practice are underway within the Ministry of the Interior.

45. Bulgaria has signed and ratified the 2003 UN Convention against Corruption. The convention entered into force on December 14th 2005, after the thirtieth instrument of ratification was deposited. Bulgaria ratified the convention on September 20th 2006.

46. Bulgaria has signed and ratified the Council of Europe Criminal Law Convention on Corruption. The convention was ratified by Bulgaria on November 7th 2001. It entered into force on July 1st 2002 after the deposition of the 14th ratification document.

47. High ethical and professional requirements for public officials, police officers, prosecutors and judges are in place. Ethic Codes for all the above professionals exist and are strictly implemented. These are observed by the various disciplinary bodies which can impose sanctions in cases of breach of such rules by the professionals concerned.

48. Professionals such as accountants, auditors and lawyers have to be registered and licensed according to the relevant laws and regulations of their professional bodies. Furthermore, Codes of Conduct and Good Practices exist for such professions including disciplinary procedures and penalties.

1.2 General Situation of Money Laundering and Financing of Terrorism

49. The major sources of illegal proceeds are still the illicit traffic of drugs, fraud and financial crimes, customs and tax crimes and smuggling of goods. In recent years illegal immigration and human trafficking have increased among profit-generating activities. For further statistical information see Annex IV.

50. Profits from prostitution, car-thefts, and human trafficking have been established as being laundered through money transfers via money transfer systems.

51. There is numerous money laundering cases in various stages of the investigative and prosecutorial process, though the statistics are not always clear. The Bulgarian authorities stated that a new centralized database on criminality will be implemented under the Ministry of Justice authority and contain data from all relevant authorities.

52. In 2006, there were 5 indictments, two final convictions and 3 non-final convictions.

53. The European Commission stated in its "Monitoring Report on the State of Preparedness for EU Membership" (September 2006) that Bulgaria made some progress in the fight against money laundering. However, certain concerns persisted. Effective implementation of legislation remained rather limited, with an absence of tangible results in terms of enforcement and prosecution. The Commission concluded that the effectiveness of the fight against money laundering continued to be seriously hampered by corruption and organised crime. Therefore Bulgaria still needed to demonstrate its ability to deliver tangible results in terms of enforcement and prosecution of cases of money laundering.

    At the time of the on-site visit there was a significant money laundering case involving the proceeds of high level corruption in process[4].

54. One development in the last 4 years is a growth in investment in real estate of funds of unclear origin coming from Russia and the Commonwealth of Independent Countries. Typically citizens from these countries establish joint commercial vehicles together with a Bulgarian partner. Similarly Bulgarian citizens have become partners with British, Irish and German citizens, or

[4] The indictment for money laundering was brought to court but the case was returned to the Prosecutors' Office for further investigative proceedings.

citizens of neighbouring countries, such as Turkey and "the former Yugoslav Republic of Macedonia" in suspected money laundering schemes.

Relevant statistics on the prosecutions and convictions for serious offences in organised crime, by offence type, for the last 4 years have been provided by Bulgaria

55. The following table provides information on referrals submitted by the Bulgarian FIU (the Financial Intelligence Agency – the FIA to the Prosecutor's Office and MoI/agencies.

	2003	2004	2005	2006
Prosecutors Office	**115**	**19**	**69**	**11**
MoI	**86**	**47**	**251**	**261***

*all copied to the Prosecutors Office.

56. Further in 2003 FIA postponed 4 operations; in 2004 -3; in 2005 – 0 and in 2006 -5 operations.

57. The following trends in money laundering have been observed in the last 4 years. Firstly the Bulgarian authorities have noted a high level of financial transfers from and to countries abroad, the purpose of which is to supply smuggling and customs fraud schemes and to launder the proceeds of these schemes. One of the recent developments over the last 2 years is the use of funds with unclear or criminal origins, which have been invested in the construction and hotel businesses or in agriculture which is one of the most developing sectors in the recent years where organised crime could gradually legalise its assets. Other laundering schemes which have been observed involve tax crimes (mostly VAT-schemes), production and distribution of drugs (the latter includes Bulgarian and foreign citizens and criminal groups). A great number of transfers include transactions within offshore areas and "straw" persons or companies, which frustrate the tracing of financial flows.

58. The law enforcement authorities have detected about a dozen organised crime groups operating on the territory of Bulgaria. The activities of these groups could be summarised as follows: attempts at misuse of privatization deals and agricultural funds; money laundering through concealment of incomes of legal and natural persons through counterfeit documents; VAT frauds; investment in real estate of criminal assets; and illegal financial operations.

Financing of terrorism

59. On 5 February 2003, the National Assembly adopted the Law on the Measures against Financing of Terrorism. That law put in place a preventative administrative mechanism for the detection of acts that might constitute terrorism-related offences. The aim pursued by the Law on the Measures against Financing of Terrorism, as defined in Article 2, is the prevention and disclosure of the actions of natural persons, legal persons, groups and organisations aimed at the financing of terrorism. The measures envisaged in that Law are freezing of assets and other property, and a prohibition on providing financial assets, services or property. A multidisciplinary Working Group on the implementation of UNSC Resolution 1373 (2001) was established in the beginning of 2002. This Working Group is chaired by the deputy Minister of Interior.

60. Under the Law on Measures against the Financing of Terrorism, anyone who knows that certain operations or transactions are aimed at the financing of terrorism must report to the Minister of the Interior. Banks and other reporting entities under the Law on Measures against Money Laundering must notify the Minister of the Interior and the Financial Intelligence Agency about

any suspicion of the financing of terrorism. Those entities are also under an obligation to insert in their internal regulations criteria for the identification of suspicious operations, transactions and customers related to the financing of terrorism. The disclosure of such information cannot be prevented on grounds of official, bank or commercial secrecy. The competent authorities having received information under that Law must keep confidential the identity of those who provided the information, and may only use those data for the purpose of the Law or to combat crime.

61. The Bulgarian State authorities have not so far identified serious instances of the use of the Bulgarian Financial System for terrorist financing. In 2006 FIA received 2 STR on TF and in 2007 FIA received 1 STR on TF plus several notifications on partial matches of names with names listed in the international anti-terrorist lists. The cases concern usual transactions of small amounts. The geographical position of Bulgaria between East and West and the possibilities for attracting external workers from Middle East and Asia could be considered as a threat.

62. So far no case of suspected terrorist financing has been identified by law enforcement or by the FIA. It follows that no cases have been brought before the court for terrorist financing offences. Indeed no terrorist offences generally are recorded so far in the court statistics.

1.3 Overview of the Financial Sector and Designated Non-Financial Businesses and Professions (DNFBP).

Financial Sector

63. All the financial activities covered by the glossary by the FATF Recommendations are undertaken by some or all of the financial institutions. The following operate in Bulgaria:
    - National Bank of Bulgaria
    - Credit institutions
    - Financial Houses
    - Bureaus of Exchanges
    - Persons providing money transfers
    - Insurers, re-insurers and insurance intermediaries
    - Collective investment schemes, investment intermediaries and management services providers
    - Pension insurance companies
    - Exchanges, exchange brokers and persons who organise unofficial markets of securities
    - Postal services that accept or receive money or other valuables.

64. There are 32 **commercial banks** in the Republic of Bulgaria which are licensed and supervised by the Bulgarian National Bank. Five of these banks are branches of foreign banks while 17 of the other 27 banks are majority foreign owned. The foreign countries which own the majority of Bulgarian banks are: Austria, France, Italy, Hungary, Greece, Slovenia, Belgium, USA, and Cyprus.

    The percentage of non-resident clients of Bulgarian banks to the total number of Bulgarian bank clients is 11.30%. The ratio of resident clients to non-resident clients is 8:1. About 89% of non-resident client come from EU member States: Greece, the Netherlands, Austria, Hungary, UK and Italy.

65. The major ten banks (of which nine are majority foreign owned) have: 74% of assets held in banks; 73% of deposits in banks; and 77% of net loans. The five branches of foreign owned banks control 3% of assets held in banks, almost 4% of deposits, and 2% of net loans.

66. Banking services include taking of deposits and granting credit. According to Article 2 of the Law on Credit Institutions (LCI) other financial services are:

1. non-cash transfers and other forms of non-cash payments such as letter of credit and cash collection;
2. issue and administration of means of payment such as electronic payment instruments, travellers' cheques;
3. acceptance of valuables on deposit;
4. activity as a depository or trustee institution;
5. funds transfers outside the cases of subparagraph 1;
6. financial leasing;
7. guarantee transactions;
8. trading for own account or for account of customers in:
   (a) money market instruments - cheques, bills, certificates of deposit, etc.
   (b) foreign exchange and precious metals;
   (c) financial futures, options, exchange and interest-rate instruments as well as other derivative instruments;
9. trading for own account or for account of customers in transferable securities, participation in securities issues and other services and activities as described in Article 54 (2) and (3) of the Public Offering of Securities Act (LPOS);
10. financial broking;
11. portfolio investment advice;
12. purchase of accounts receivable arising from the supply of goods or the provision of services and assumption of the risk of collection of such receivables (factoring);
13. acquisition and management of participating interests;
14. safe custody services;
15. collection, provision of information and reference on customer creditworthiness;
16. any other activities as may be specified by an ordinance of the Bulgarian National Bank.

67. The commercial banks in Bulgaria have their own self regulatory body – the Association of the Commercial Banks. Membership of the association is voluntary. At the time of the on-site visit all banks operating in Bulgaria were members of the Association.

68. **Financial houses** are licensed and supervised by BNB and provide a variety of financial services. There are 86 financial houses licensed and registered in Bulgaria. The activities conducted by these institutions are defined by the Law on Credit Institutions, Article 2, (2) items 5–14.The following is a list of permitted activities:
    - funds transfers [5](in cases other than non-cash funds transfers and other forms of non-cash payments such as letters of credit or bills for collection);
    - financial leasing;
    - guaranteeing transactions;
    - trading for its own account or for customers' account with:
      – money market instruments
      – foreign currency and precious metals;
      – financial futures, options, exchange and interest-rate instruments, and other derivative instruments;
    - trading for its own account and for customers' account in transferable securities, underwriting issues in securities, and other services and activities under Article 54 (2) and (3) of the Public Offering of Securities Act (LPOS);
    - financial brokerage;
    - advice on portfolio investments;
    - purchasing of accounts receivable for the delivery of goods or services provided and assumption of the risk related to the collection of these claims (factoring);
    - equity acquisition and management; and
    - "provision of safety deposit boxes".

[5] Article 4, Para.5 of the Law on fund transfers, electronic payment instruments and payment systems permits only commercial banks and the BNB to perform wire transfers.

69. In 1999, BNB issued Ordinance No. 26 on Foreign Exchange Transactions of Brokerage Financial Houses in accordance with Article 3(8) of the Currency Act. A new Ordinance, No 26, (text only in Bulgarian) has been adopted by BNB. The evaluators were informed that this ordinance, which was effective from the beginning of 2007, was in compliance with the requirements of the Directive 2005/60/EC.

70. **Non-banking financial institutions** which are licensed and supervised by the Financial Supervision Commission (FSC) offer a number of non-banking services. These entities operate as:
    - the regulated securities markets;
    - the Central Depositary;
    - investment intermediaries;
    - investment and management companies;
    - natural persons who directly execute transactions in securities and provide investment advice;
    - public companies and other securities issuers;
    - insurers;
    - insurance brokers and insurance agents;
    - health insurance companies; and
    - companies carrying out activities concerning the supplementary (voluntary) social insurance, including the pension, and for unemployment and professional qualification, as well as of the funds managed by them.

71. The development of the non-banking financial sector in year 2006 confirmed the already delineated trend of stable increase in the activity of the non-banking intermediaries, operating on the Bulgarian financial market. The constantly increasing number of the institutional investors and of the assets managed by these is indicative of the confidence in the market environment.

Structure of the Financial Intermediation by Institutional Investors

Indices	2001	2002	2003	2004	2005	2006
Assets of the Investment Intermediaries	-	-	1.70%	2.98%	3.60%	6.19%
Net Assets of the Collective Investment Undertakings	0.08%	0.08%	0.09%	0.20%	0.26%	0.64%
Assets of the Special Purpose Vehicles	-	-	0.04%	0.08%	0.35%	1.30%
Insurance & Health Insurance Premiums	5.27%	5.16%	4.22%	3.49%	3.46%	2.59%
Net Assets of the Pension Funds	1.44%	2.15%	2.56%	2.86%	3.02%	3.10%
Assets of the Banks	93.20%	92.61%	91.38%	90.38%	89.32%	86.17%
Total	100%	100%	100%	100%	100%	100%

72. Banking activities still have a predominant share in the sphere of financial intermediation, although the aforesaid share decreases with the gradual but stable increase in the activities in the field of non-banking financial services. The most substantial growth in the non-banking sector was realized by recently- or newly-emerged segments – the special purpose vehicles and the collective investment undertakings.

73. The contractual funds as introduced by the amendments of the LPOS dated May 10, 2005 have contributed greatly to the development of the market segment of the collective investment undertakings. As at the year's end, the number of the collective investment undertakings increased considerably, and the assets accumulated by these reported a growth of 231.81% on a

yearly basis. More than threefold growth was registered in the number of the special purpose vehicles. The serious interest shown by the investment community towards this type of companies led to an increase of 361.28% in the funds amassed in these for the last 12 months.

74. In year 2006 all indices characterizing the **depth of financial intermediation** recorded considerable growth. At the end of year 2006, the share of non-banking financial intermediation reached 36.87% of the GDP, where for the sake of comparison in 2005 the said share was 25.79%, and in 2001 – merely 5.96%.

75. As at the end of year 2006, the Stock Exchange's market capitalization amounted to BGN 15.31 billion or 31.20% of the GDP. For comparison, as at the end of year 2001, the capitalization of BSE-Sofia was merely BGN 1.11 billion or 3.72% of the GDP. In addition to the privatization deals concluded through the Stock Exchange, predetermining factors for the growth were the increased demand and the increase in the prices of the greater part of the shares actively traded in combination with the increasing confidence demonstrated by the economic agents towards the non-banking segment of the financial market.

Depth of the Financial Intermediation,
Per Cent of the GDP

	2001	**2002**	**2003**	**2004**	**2005**	**2006**
Market Capitalization of *BSE – Sofia*	3.72%	4.25%	7.91%	10.55%	20.11%	31.20%
Insurance & Health Insurance Premiums	1.61%	1.91%	1.94%	2.51%	3.03%	2.59%
Net Assets of the Pension Funds	0.63%	1.03%	1.48%	2.07%	2.65%	3.09%
Assets of the Banks	41.13%	45.04%	50.34%	65.51%	78.31%	85.95%

76. In the insurance sector, the bustle resulted from the normative amendments in the field of compulsory insurance introduced under the newly-adopted Insurance Code. The insurers reported growth not only in terms of their premium proceeds, but also in terms of number of policies taken out.

77. The amendments to the Social Insurance Code gave an additional impetus to the development not only of the supplementary pension insurance market, but also of the capital market. The minimum thresholds for investment in securities issued and guaranteed by the state were dropped, and the restrictions for investment in different investment instruments were raised or removed. As of December 31, 2006 the investments of the twenty four (24) supplementary pension insurance funds reached BGN 1.45 bln. Out of these, 38.91% or BGN 564.97 mln. were invested in shares and bonds traded on the Bulgarian Stock Exchange-Sofia.

78. Despite the emerging stable growth rate, intermediation through non-banking financial institutions is still insufficiently popular in Bulgaria, which may be noticed where comparing the data with these regarding the EU countries. However, the outlook for the sector's development is exceptionally favorable with a view to the integration of the Bulgarian market of non-banking financial services in the European one. It is expected that the said process shall contribute to the introduction of new players, increase in competition and processes of horizontal and vertical mergers that are more and more intensified, which shall inevitably lead to improving the quality and diversifying the products and services offered.

79. A table indicating the numbers of active financial institutions between 2000 and 2006 is set out below:

Year	2000	2001	2002	2003	2004	2005	2006
Bulgarian Stock Exchange- Sofia	**1**	**1**	**1**	**1**	**1**	**1**	**1**
Central Depository	**1**	**1**	**1**	**1**	**1**	**1**	**1**
Investment Intermediaries	**97**	**105**	**107**	**108**	**93**	**88**	**85**
Financial houses	62	65	73	81	84	88	86
Banks	35	36	35	35	35	34	32
Issuers and Public Companies	**531**	**402**	**362**	**374**	**385**	**361**	**371**
Management Companies;	**1**	**1**	**3**	**6**	**9**	**14**	**24**
Investment Companies	**3**	**3**	**4**	**5**	**9**	**11**	**11**
Contractual Funds	**-**	**-**	**-**	**-**	**-**	**14**	**34**
Special purpose vehicles	**-**	**-**	**-**	**3**	**5**	**13**	**40**
Investment advisors				**51**	**92**	**106**	**176**
Investment brokers				**208**	**237**	**254**	**257**
Insurance companies	**32**	**32**	**32**	**31**	**31**	**31**	**37**
General (non-life) insurance	20	20	20	20	20	19	21
Life insurance	12	12	12	11	11	12	16
Voluntary health insurance companies	**-**	**2**	**2**	**6**	**11**	**12**	**13**
Pension insurance companies	**9**	**8**	**8**	**8**	**8**	**8**	**9**

80. **Exchange offices** can perform currency transactions in cash. This activity can be executed by natural and legal persons registered under the Commercial Act which have currency exchange as their business activity. The exchange offices in Bulgaria are under a registration regime.

81. The Financial Intelligence Agency is the authority responsible to register and maintain the Register of exchange offices, while the control over the activities of exchange offices is exercised by the National Revenue Agency (NRA). There are 588 exchange offices which have 1197 exchange outlets.

82. According to the provisions of the Law on Measures against Money Laundering (LMML) and the Rules on the Implementation of the Law on Measures against Money Laundering (RILMML) the NRA, in its capacity as a supervisory body for the exchange offices, can indicate AML/CFT infringements to the FIA with a view to impose sanctions under the provisions of the LMML.

Designated Non-Financial Businesses and Professions (DNFBP)

Casinos

83. At the time of the on-site visit 20 casinos were operating on the territory of the Republic of Bulgaria. All casinos hold licenses issued by the State Commission on Gambling ("Commission"). As of December 2006 there are 172 gambling tables and 828 slot machines operative in the casinos. Further 50 bingo halls are active on the territory of the Republic of Bulgaria. Licenses for organizing "Bingo" lottery games have been issued to 42 entities. The slot machines games sector occupies the largest share of the gambling activities on the territory of the Republic of Bulgaria.

84. The State Commission on Gambling ("SCG") and the FIA under the LMML are the primary competent authorities for AML/CFT. Additionally, NRA also has the authority to review

AML/CFT compliance as part of its supervisory role; however, it does not appear to be actively engaged in such reviews. Additionally, as specified in law, the SCG may be assisted by the National Tax Authority, the State Agency for Standardization and metrology, the Ministry of Interior and the Financial Intelligence Agency. The FIA has provided guidance in the form of Methodological Guidelines and approves Internal Rules for AML/CFT as a condition of operation. Each casino has Internal Rules and the larger casinos have adopted Unified Internal Rules, and such procedures form the basis of an inspection.

Lawyers, notaries, other independent professional and accountants

85. At the beginning of 2006, there were 11,275 licensed attorneys, as well as 31 junior attorneys. It appears that the vast majority of attorneys work function as sole practitioners in small partnership and there are not more than 15 large law firms in Bulgaria. Attorneys provide a full range of commercial and professional services, including serving as company formation providers as permitted by the LMML. As for the legal framework, attorneys are an obliged entity under the auspice of the FIA and are subject to the LMML and RILMML. Prior to commencing practices, all attorneys must have Internal Rules approved by the FIA. Attorneys also are governed by Law on Attorneys and Attorney's Ethic Code, which incorporate general AML/CFT compliance obligations. Attorneys can be disciplined by regional councils in charge of attorney professional conduct.

Notaries

86. Currently, there are 1561 notaries in Bulgaria listed with the notary chamber, who perform a range of professional services. However, the bulk of notary transactions involve real estate transactions. In terms of supervision, notaries are an obliged entity under the LMML, supervised by the FIA and must receive approval of Internal Rules. Notaries are also regulated by the Notary Chamber of Bulgaria ("Notary Chamber").

Accountants

87. Presently there are approximately 190 registered certified accountants and audit enterprises. Bulgarian law requires that certain companies above a certain financial threshold should be subject to an independent audit.

88. There are also major international accounting/consultancy firms working in Bulgaria. In terms of the range of services, auditors do not give investment advice, but may provide tax services, as long as it does not conflict with their independent audit function. In terms of supervision, accountants/auditors are obliged entities and are supervised by the FIA and their professional organisation.

Real Estate Agents

89. There are approximately 3 000 real estate agents in Bulgaria. The exact number is not known as there is no unified organisation of all real estate agents as well as no register of the commercial vehicles dealing in real estate. There are several associations of real estate agents, which are organised as non-profit organisations. However, the associations do not play a self-regulating function for AML/CFT. Some of the associations cover the national level while building up regional structures in almost every big town in Bulgaria. In terms of composition, real estate agencies range from 2-200 employees. The general purposes of the association are to protect the interest of real estate agents and to unify the business activity criteria. The association provides professional training including domestic and foreign lecturers, for its members. Such trainings and assistance encompasses AML/CFT. In terms of practice, a trend observed in the last 4 years with Bulgaria's EU accession is the significant increase in real estate agents' involvement in deals with foreign naturals.

Dealers in precious stones and metals

90. In Bulgaria approximately 2000 corporate vehicles have licenses for the trade and production of jewelry, but only 160 of them were in the business of selling jewelry.

91. In terms of supervision, the FIA is responsible for AML/CFT compliance. The Ministry of Finance keeps the public register of subjects performing business in extracting, processing and deals with precious metals and stones and articles manufactured by them. Dealers in precious stones and metals are subject to inspection by the National Tax Authority, primarily for VAT and tax-related issues. Inspections by the tax authorities are frequent. Dealers in precious metal and stones are obliged entities and the have to receive approval of their Internal Rules by the FIA.

Postal Service

92. The Postal Service is licensed and regulated by the Communications Regulation Commission. Additionally, the Postal Service is an obliged entity under the LMML and must file STRs, develop Internal Rules and is subject to on-site inspection by the FIA.

93. Since 2004, the Postal Service provides domestic money transfer services. Domestic transfers are made in over 3000 offices (Bulgarian Post) throughout Bulgaria. Beside the Bulgarian Post 7 other companies have a licence issued as postal money transfers. This service is similar to one provided by financial houses in Bulgaria and the large size of outlets makes it an attractive means to effectuate money transfers. Because this is a relatively new service it is still growing in popularity and recognition. However, it appears that the international service is not fully functional. As for domestic transfers, the maximum amount permitted is 3,000 BGN from any postal service office and there is a database which monitors transactions for structuring. When a structuring transaction is discovered this information is sent to the FIA.

1.4 Overview of commercial laws and mechanisms governing legal persons and arrangements

94. The legal persons and legal arrangements that can be established or created, or can own property, in Bulgaria are civil and commercial legal entities:
    - Associations under the Law on Liabilities and Contracts
    - Non Profit organisations (foundations and associations) under the Law on Legal Persons with Non Profit Purpose
    - Sole proprietor which is a physical person under the Commercial Act.

95. The commercial entities can be set-up only in one of the following designed companies:

I. Under the Commercial Act

1. general partnership;
2. limited partnership;
3. sole proprietor public limited company;
4. limited partnership with shares;
5. sole proprietor limited partnership with shares;
6. limited liability company;
7. sole proprietor limited liability company;

II. Under the Cooperative Societies Act

1. Cooperative societies.

96. Commercial consortiums can be set-up as contractual groupings of traders in the form of an association under the Law on Liabilities and Contracts or a company under the Commercial Act. Holding companies can be established as public limited companies, limited partnership with

shares or limited liability companies. The main legislation regulating the commercial field are the Commercial Act; the Law on Liabilities and Contracts, the Law for Public Offering of Securities, the Law on Credit Institutions, the Insurance Code, the Law on Privatization and Post-Privatization Control, the Law on Companies with Special Investment Purpose, the Law for the Small and Medium Sized Enterprises, the Law on Cooperative Societies, Law on Legal Persons with Non Profit Purpose etc.

97. With respect to the management and representation of the *commercial companies*:

- ***General partnership*** – usually each partner can manage and represent the undertaking except where the management and representation is expressly entrusted to one of the partners. The management and representation can be entrusted to different persons; however these circumstances need to be included in the commercial register to be valid in relation to third parties. Collective representation on the part of all the partners is also possible subject to input in the register.
- ***Limited partnership*** – representation and management is carried out by one or several partners of unlimited personal liability. Where a partner of limited personal liability performs activities on management and representation without prior authorization he/she becomes subject to unlimited personal liability. The participation of limited liability partners in management is possible but quite unusual.
- ***Limited liability companies (LLC)*** – It is mandatory to have a General Assembly of shareholders once a year and to appoint executive officers.

Joint stock company – there are two basic management systems, both allowed by Bulgarian law – one-tier and two-tier systems. General Assembly of the shareholders is provided for in both systems. The other bodies are in accordance with the specific system as follows:
a) the one-tiered structure includes Board of Directors only;
b) the two-tiered structure includes Managing Board and Supervisory Board.

Limited partnership with shares – management by a one-tier structure, i.e. general assembly and board of directors. Only the limited liability partners have power to vote in the general assembly; the unlimited liability partners even when holding shares are entitled to consultative functions only. The general assembly has limited functions – mainly in cases of amendments to the Charter and suspension of the limited partners; the rest of the issues are held by the board of directors, consisting of the unlimited liability partners, mainly responsible for the activities of the vehicle.

98. Sole proprietor: the sole owner in the Sole proprietor companies combines the functions of general assembly and executive; therefore all decisions are made in writing and registered in the commercial register. The sole owner in a Sole Trader JSC, organised in one-tier or two-tiered structure, performs the functions of a general assembly while the other bodies of the vehicle comprise third persons to the vehicle. Where the state or a municipality is sole owner of the capital they dispose of broader powers.

99. Cooperatives: the compulsory bodies consist of the general assembly, the executive council, the control council and the chairman of the cooperative.

Non-profit organisations (NPOs)

100. The Law on non-profit organisations was adopted in 2000 and amended several times. The last amendment being in December 2006. NPOs can be set up in Bulgaria under the following forms: associations and foundations. Associations and foundations can be set up for private benefit or for public benefit. For NPOs for private benefit, management bodies are the general assembly and the executive council. The NPO is represented by the executive council which can delegate certain representative powers to its members. With respect to NPOs for public benefit, according to law they possess ‘a supreme collective body’ and ‘an executive body’.

101. The association can be founded by three or more persons, uniting for the purposes of carrying out non-profit activity. An association for public benefit can be founded by at least 7 individuals or 3 corporate bodies. The statutory act of an association shall contain:

- name;
- headquarters;
- goals and means of their achievement;
- definition of the type of activity, according to Article 2 of the law;
- subject of activity;
- bodies of management;
- branches;
- authority of the bodies of the association;
- rules for the ways of representation of the association;
- rules for the occurrence and termination of the membership, as well as the order of settlement of the proprietary relations in termination of the membership;
- term for which the association is founded;
- order of determining the size and the way of making the proprietary installments;
- order of distribution of the remaining property upon indemnification of the creditors.

102. The Non-profit Legal Persons Act provides for two types of legal persons – *associations* and *foundations*. The association is a union of physical and or legal persons for the purposes of carrying out non-profit activity. Article 3 of the Non-profit Legal Persons Act specifies the **minimum number** of persons who can establish an association – 7 for physical persons and 3 for legal persons. The foundation is an organization to which property for achieving a non-profit goal is conceded. The foundation is established in the lifetime or in the event of death by unilateral articles of association *granting gratuitously property* for attainment of non-profit objective. The main difference between the two types of legal persons lies in their structure. The association is a voluntary unification of three or more persons for pursuing non-profit activity. The main specific characteristic of the association is that it is a corporative structured legal person – it has members and there is relation between each individual member and the association itself. For instance, the content of the articles of association is different /in the case of foundation/ and the statute /in the case of association/ - Article 34 and Article 20 of the Non-profit Legal Persons Act respectively. As a whole the remaining part of the content is overlapping in respect of the name, the seat, the type of activity under Article 2.

103. There are no members in the foundation since there is no unification of persons who are prepared to actively work with joint efforts for attaining the purposes thereof. The foundation represents a personified property dedicated to pursuing and achieving non-profit purposes. In its legal nature, the foundation does not comprise in itself the requirement that the founders thereof should carry out activity for pursuing and achieving the goals. It is sufficient that they provide property therefore.

104. Concerning the similarities – for instance, the objectives that may be set by an association, may be set also by a foundation. Under Article 28 of the Non-profit Legal Persons Act both foundations and associations set their task to use their property for the " development and strengthening of spiritual values, the civil society, health care, education, science, culture, engineering, technology or physical culture" etc.

105. The founding act of a foundation shall indicate:

- the name;
- the headquarters;
- the goals;
- the type of the activity according to Article 2;
- the submitted property;
- the bodies of the foundation;

- the branches;
- the rules regarding the authority of the bodies;
- the rules regarding the way of representation;
- the term for which the foundation is founded.

106. A foundation has a managing body which can be personal or collective. If the founding act stipulates more than one body the rules for the general assembly and the managing board of an association shall apply respectively for the other bodies.

NPOs for public benefit

107. The non-profit corporate bodies created for carrying out socially useful activity are required to use or administer their property for:
    - the development and strengthening of spiritual values, civil society, health care, education, science, culture, technology, etc.;
    - the support of the socially weak, or the disabled or the persons needing care;
    - the support of social integration and personal development;
    - the protection of the human rights or the environment;
    - other goals determined by a law.

108. The NPOs for public benefit has to be entered in a special central register kept at the Ministry of Justice. The law provides a specific book keeping obligation for NPOs for public benefit. These provisions are not applicable to the NPOs for private benefit. The NPOs for public benefit are obliged to keep books of the written records of the meetings of its collective bodies. The chairman of the meeting of the collective body and the person who has prepared the written records shall certify and be responsible for the correctness of its contents. The non-profit corporate body for carrying out socially useful activity shall prepare a report on its activity once a year and submit it to the central register at the Ministry of Justice.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

109. The protection of the financial system from misuse for the purposes of money laundering is in the strategy of the present Government, called Government of the European Integration, the Economic Growth and Social Responsibility for the period 2005-2009, which is further elaborated in the Programme.

110. Under the Programme of the Government of the European Integration, the Economic Growth and Social Responsibility the Bulgarian Ministry of Finance adopted a set of priorities and tasks within the Programme of the Ministry of Finance with a view to implement measures against organised crime and corruption. Based on this programme the Financial Intelligence Agency formulated its strategic objectives including:

1. Maintaining the integrity of the financial system to provide effective protection against it being used for the purpose of money laundering and terrorist financing.

2. Supplying information on cases of money laundering for the effective functioning of the Bulgarian law enforcement through processing the disclosures of the financial and other institutions stated in the LMML, as well as active involvement in the process of enhancing this information in cooperation with the law enforcement bodies.

111. On the grounds of these strategic goals the Financial Intelligence Agency is engaged in the implementation of the following priorities:

- Performing preliminary assessment and prioritizing cases related to money laundering or terrorist financing.
- Providing efficient operational contacts with the security and public order bodies.
- Maintaining ongoing contact with the respective sector of the Supreme Prosecutor's Office of Cassation and the regional levels of the Prosecution.
- Maintaining and enhancing the information and analytical system with a view to efficient matching of persons suspected for ML/TF and detection and presentation / revelation of any links among the suspected persons.
- Maintaining contacts with other institutions (Customs Agency, the National Revenue Agency, bodies of the Ministry of Interior) with a view of obtaining updated information and increasing the efficiency of the information exchange through growing use of on-line connection.
- Maintaining constant contacts with the internal control services of the reporting entities and providing feedback.
- Money laundering risk analysis per categories of reporting entities and designating different levels of risk.
- Performing planned and incidental on-site inspections of the reporting entities.
- Performing specialised inspections of the high-risk categories of the reporting entities based on the risk assessment by the Financial Intelligence Agency.
- Proposal of additional measures in relation to detected cases of non-compliance.
- Analysis of the FIA activities in relation to imposing administrative sanctions and increasing their effectiveness.
- Detecting any corruption on the part of the FIA officials.
- Ensuring effective legal protection of FIA.
- Effective information exchange with FIA's counterpart bodies.
- Providing methodological assistance to the obliged entities.

112. Risk assessment in respect of the reporting entities was performed by FIA, discussed and adopted within the Multidisciplinary Task Force for the Prevention of ML and TF (see beneath).

113. Following the 2006 amendments to the LMML additional amendments are planned in 2007 to ensure the transposition of the remaining provisions of Directive 2005/60/EC taking into accounts the developments and additional technical measures adopted or delineated within the comitology procedure established pursuant to the Directive (mainly third equivalent counties and simplified CDD).

b. The institutional framework for combating money laundering and terrorist financing

Ministry of Finance

114. Under the current legislation the Ministry of Finance is responsible for the financial management and policy of the state. The main objective of the Ministry is to maintain a transparent fiscal, financial and budgetary policy. The following structures are subordinated to the Minister of Finance and have responsibilities in the field of AML/CFT.

National Revenue Agency

115. The National Revenue Agency is the successor to the tax administration from 1 January 2006, as a result of the Tax-Insurance Procedure Code. The National Revenue Agency has 28 regional directorates, which handle the Republic taxes (tax on general income, corporate taxes, excise duties, VAT, patent duties) and compulsory social insurance payments.

116. National Revenue Agency is one of the obliged entities under the Bulgarian AML (LMML), which is required to submit STRs to the FIA (Bulgarian FIU). Also its Inspectorate (Operational Control Divisions) is a supervisory body for exchange offices and is obliged to provide information to the FIA if they find operations and transactions raising suspicion of money laundering or it encounters non-compliance with the obligations under LMML.

National Customs Agency

117. The Agency is a centralised administrative structure of the Ministry of Finance. The Agency is a juridical person. The Agency is structured into Central Customs Directorate and Regional Customs Directorates in Bourgas, Varna, Plovdiv, Rousse, and Sofia. The Regional Customs Directorates are managed by Directors who are directly responsible for the activity of the respective Regional Customs Directorates. The total number of the staff of the Customs Agency is 3768 official posts. The number of the staff of the Central Customs Directorate is 447 official posts. One official post in the Customs Intelligence and Investigation Directorate with the Central Customs Directorate is for the liaison official at the Regional Centre for Combating Cross-border Crime with the Co-operation Initiative in South-East Europe (SECI centre) based in Bucharest, Romania. The administration of the Central Customs Directorate of the Agency is organised into two directorates of general administration, 7 directorates of specialised administration, and an inspectorate. The organisation and activity of the Regional Customs Directorates are determined by regulations approved by the Minister of Finance and proposed by the Agency's Director.

118. The National Customs Agency is also one of the obliged entities under the Bulgarian AML (LMML), which is required to submit STR to the FIA

Financial Intelligence Agency (FIA)

119. The Financial Intelligence Agency is the Bulgarian FIU. It is an administrative type of FIU of autonomous type reporting to the Minister of Finance[6].

120. The Agency receives stores, examines, analyses and discloses to law enforcement bodies information, connected with suspicions of money laundering or financing of terrorist activities. The Agency also carries out international exchange of financial intelligence information. The FIA also functions as a supervisory body for all 30 categories of obliged entities with regard to their compliance with Bulgarian AML/CFT provisions.

Bulgarian National Bank (BNB)

121. The main functions of the Central Bank of Bulgaria are set out in article 2 in the Bulgarian National Bank Act. as follows:

    1) The Bulgarian National Bank shall have as its principal objective the maintenance of price stability by ensuring the stability of the national currency and implementing monetary policy in accordance with the requirements of this Act.
    2) The Bulgarian National Bank shall act in conformity with the principle of open market economy under free competition, promoting the efficient allocation of resources. Upon the accession of the Republic of Bulgaria to the European Union and without prejudice to the principal objective to maintain price stability, the Bulgarian National Bank shall support the common economic policies in the European Community in order to contribute to the

[6] The Law on the State Agency for National Security which entered into force on 1 January 2008 provides that the status of Financial Intelligence Agency has changed to the Financial Intelligence Directorate at the State Agency for National Security. The State Agency for National Security is a specialised authority under the Council of Ministers. As a consequence The Law on Measures against Money Laundering, the Law on Measures against Financing of Terrorism and the Rules on implementation of the Law on Measures against Money Laundering have been changed respectively.

implementation of the purposes of the said Community, as set out in Article 2 of the Treaty Establishing the European Community.

3) Without prejudice to the objectives referred to in Paragraphs (1) and (2), the Bulgarian National Bank shall promote a policy of sustainable and non-inflationary growth.
4) The Bulgarian National Bank shall facilitate the establishment and functioning of efficient payment mechanisms and shall exercise supervision of the said systems.
5) The Bulgarian National Bank shall enjoy the exclusive right to issue banknotes and coins in Bulgaria.
6) The Bulgarian National Bank shall regulate and exercise supervision of the activities of the other banks in Bulgaria with a view to maintaining the stability of the banking system and protecting the interests of depositors.

122. The BNB regulates and supervises the banking sector with a view to the stability of the banking system. The BNB grants banking licences conducts on-site inspections and collects data from the commercial banks. Non-bank financial institutions, such as financial houses, are also subject to licensing and supervision by the BNB. The supervisory function of BNB is preserved with a view to guaranteeing financial stability.

123. Supervisory cooperation, particularly in the form of bilateral agreements with foreign supervisory bodies, plays an important role in banking supervision and maintaining stability of the Bulgarian banking system, which is dominated by foreign banks. An all-time BNB objective concerning overall stability of the Bulgarian financial system, involves intensive collaboration with local administrative bodies related to supervisory activity.

124. According to Article 3a of LMML the BNB, as a supervisory body, is obliged to provide information to the FIA if they find operations and transactions raising suspicion for money laundering or encounter breaches of the LMML while performing their supervisory functions. The checks on the spot performed by the BNB include compliance checking of the implementation of LMML. When BNB establishes a violation they shall notify the FIA by sending an extract of the findings with a view to impose sanctions according to the provisions of the LMML.

State Commission on Gambling (SCG)

125. The State Commission on Gambling is a collective body and consists of the Chairman and four Members. They adopt decisions for granting, termination, and suspension of permits for organising gambling activity. The activity of the Commission is supported by general and specialised administration. It performs supervision in the field of gambling - inspection and research on filed written requests for issuing gambling activity permits, as well as control for complying with the law and regulatory documents on behalf of the organisers of gambling games, and for organizing gambling games without permission by the State Commission on Gambling.

126. The State Commission on Gambling receives written requests for issuing permits under the Law on Gambling, performs inspections and research work on these applications, and operates by adopting decisions recorded in registers. The State Commission on Gambling is the regulatory body for casinos, bingo halls, gambling equipment, and the lotto games in the Republic of Bulgaria.

127. The SCG is empowered by the Law on Gambling to impose sanctions on casinos if infringements of the law have been established (Article 83 of the Law on Gambling). The Law on Measures against Money Laundering provides in Article 19 that whenever a reporting person (including a casino) does not fulfil their duties under the LMML, the Minister of Finance can oblige them to take concrete steps as necessary for investigating the infringement or withdrawing the permit (licence), or to order the removal of the listing in cases of a registration regime for the respective activity. The body that issued the permit (licence) for carrying out the activity can withdraw the issued permit (licence) or order for the removal of the listing where there is a registration regime

on its own initiative, or following a proposal of the Minister of Finance in pursuance of Paragraph 1 of Article 19 of LMML.

Financial Supervision Commission (FSC)

128. The Financial Supervision Commission (FSC) was established on March 1st, 2003 under the Financial Supervision Commission Act. It is an institution that is independent from the executive authority and reports its activity to the National Assembly of the Republic of Bulgaria. The Commission is a specialised government body for regulation and control over the financial system, which unifies the regulatory functions that used to be carried out by the former State Securities Commission, the State Insurance Supervision Agency and the Insurance Supervision Agency.

129. The FSC is a collective body that consists of seven members: a chairperson, three deputy chairpersons and three other members. The powers of the chairperson are determined as coordinating, organisational, supervisory and representative. The law assigns to him/her strictly administrative functions that are related to the management and control of the FSC as an administrative unit. The authorities of the deputy chairpersons, who supervise the three main sectors - investment, insurance and social insurance, have been tailored in accordance with these specific areas. They have been given the legal authority for operational independence regarding the decision-making in their respective fields.

130. The primary function of the institution is to assist through legal, administrative and informational means for the maintenance of stability and transparency on the investment, insurance and social insurance markets.

131. The supervised entities are:

- the regulated securities markets,
- the Central Depositary,
- the investment intermediaries,
- the investment and management companies,
- the natural persons who directly execute transactions in securities and provide investment advice,
- the public companies and other securities issuers,
- the insurers,
- the insurance brokers and insurance agents. (At the he end of 2006 there were 215 registered insurance brokers in Bulgaria and 31 300 insurance agents).
- the health insurance companies,
- the companies carrying out activities concerning the supplementary social insurance, including the pension, and for unemployment and professional qualification, as well as of the managed by them funds.

132. The FSC has at its disposal the following tools for implementation of its objectives: powers for adopting regulations; preliminary control over the participants' admission to the market through the licensing regime; the right to control the activities of participants that have already been admitted; and finally, the right to impose sanctions upon establishment of violations.

133. The FSC issues licences, supervises and monitors the following, which are designated as reporting entities under the LMML:

1. Insurers, re-insurers, and insurance intermediaries with headquarters in the Republic of Bulgaria; Insurers, re-insurers, and insurance intermediaries from EU member-states, or from a country, which is a signatory to the European Economic Area Agreement, which perform their business in the Republic of Bulgaria.; Insurers and re-insurers with headquarters in countries that are not EU member-states, or signatories to the European

Economic Area Agreement, holders of licenses of FSC for carrying out business in the Republic of Bulgaria through a branch; insurance intermediaries with headquarters in countries that are not EU member-states, or signatories to the European Economic Area Agreement, registered in the Register of FSC/item 2/;

2. Collective investment undertakings, investment intermediaries and management companies /item 3/;
3. Pension Insurance Companies /item 4/;
4. Stock-exchanges, exchange brokers and persons operating OTC securities markets /item 12/;
5. Central Securities Depository /item 23/.

134. In accordance with Article 17, Para. 4, of Law on Measures against Money Laundering (LMML) the Financial Supervision Commission and the Financial Intelligence Agency may jointly perform compliance audits.

135. The provision of Article 3a of LMML stipulates that the FSC in its capacity as supervisory authority with regard to the activities of the above-mentioned entities is obligated to provide information to the Financial Intelligence Agency, when in the course of their supervisory activities; it discovers any indications that operations or transactions involve suspicions of money laundering.

136. FSC has the same obligation also if it finds a failure of any entity subject to supervision under Article 11a of LMML to meet its obligation, i.e. where any financial institution fails to inform FIA about any cash payment in excess of BGN 30 000 or their equivalent in foreign currency effected by or to any of its customers. Under Article 4, para.12, of LMML, the persons under Article 3, Para. 2 and 3, shall identify their clients when concluding insurance contracts, where the gross amount of the regular premiums or instalments provided for in the insurance contract is greater than BGN 2 000 annually or the premium or payment is singular and amounts to more than 5 000 BGN.

137. Inspections performed by FSC also include compliance with LMML provisions by the entities subject to supervision. In a case of identified violations, FSC informs the Financial Intelligence Agency, and should forward to them an excerpt from the respective part of the statement of findings (Article 3a, Para. 2 of LMML).

138. FIA and FSC may exchange classified information in pursuance of their statutory functions.

139. FIA and FSC may mutually collaborate in establishing clear criteria for identification of suspicious operations and transactions, and customers, as well as measures for prevention and detection of money laundering in the respective areas (Article 22 of RILMML).

140. Upon establishment of a violation by the supervised entities, the Commission imposes coercive administrative measures. They include the issuance of recommendations with respect to the adoption of specific actions, fines or penalty payments.

The Commission for Establishing of Property Acquired from Criminal Activity (CEPACA)

141. The Commission for establishing of property, acquired from criminal activity (CEPACA), is a specialised independent state body for establishing of property in the country and overseas of individuals, falling under Article 3 on the Law of Forfeiture of Proceeds of Crime.

142. The Commission is a collective body, consisting of five members with a mandate of five years. The Chairman of CEPACA is appointed by the Prime Minister of the Republic of Bulgaria, the Deputy Chairman and two of the members are elected by the National Assembly, and one of the members is appointed by the President of the Republic. The Law on Forfeiture of Proceeds of Crime was in force from the 1st of January 2006, and the Commission was constituted and

commenced its activities on the 8th of August 2006, when the fifth member from the quota of the President was appointed.

143. The activity of the Commission is carried out by the general and the specialised administration. The general administration provides technical support to the Commission and to the specialised administration. It is directly subordinate to the Chairman and the Chief Secretary of the Commission. The specialised administration is organised into functional and territorial directorates. They are directly subordinated to the Commission.

144. The territorial directorates perform the activities related to the identification and tracing of property, acquired directly or indirectly from criminal activity. They gather the necessary evidence and carry out the legal representation of the Commission in front of the court during the proceedings for imposing injunction orders and deprivation of the property, acquired from criminal activity.

Ministry of Foreign Affairs

145. The Ministry of Foreign Affairs has little direct responsibility for money laundering. It has signed an Instruction on coordination its activities with FIA on 31.07.03 and is represented in the Multidisciplinary Working Group on the implementation of UNSC Resolution 1373 (2001).

Ministry of Interior

146. The Ministry of Interior has responsibilities in the field of protection of public order and interests.The main structural units of the Ministry of Interior are the National Services; the Specialised Directorates; the Ministry of Interior's Academy; the Ministry of Interior's Science Institutes.

147. The National Services are:
- National Security Service
- National Police Service
- National Fire Safety and Protection of Population Service.

148. The National Police Service consists of:
a) General Directorate "Police" – This structure comprises Chief Directorates and directorates. The former National Service for Combating Organised Crime is currently the Chief Directorate for Combating Organised Crime (GDBOP).
b) Regional Directorates "Police".

149. The organisation of the activities, the structure and the functions of the Chief Directorate for Combating Organised Crime is defined in the Regulation for Implementation of the Law on the Ministry of the Interior. Article 79 (1) and (2) of the Regulation for Implementation of the Law on the Ministry of the Interior define the activities of the GDBOP, while Article 80 defines the areas in which GDBOP will conduct these activities including the activities related to combating money laundering.

150. The Regulation for Implementation of the Law on the Ministry of the Interior creates a special unit for combating money laundering within GDBOP. The GDBOP special unit for combating money laundering works together with the Financial Intelligence Agency and the specialised sector for combating money laundering within the Supreme Prosecutors Office of Cassation and it has authority to prevent, detect and investigate money laundering.

Ministry of Justice

151. The Ministry of Justice manages co-ordinates and controls the implementation of the state policy in the field of justice. It produces draft laws and secondary legislative acts, related to the judicial

system and to the activities under the competences of the Minister of Justice. The Ministry implements the international legal co-operation and the international legal assistance. With respect to the anti money laundering policy the Minister of Justice:

- exercises the powers, entrusted to him by the Law on Non-profit Organisations and organises the activity of the Central Register of Non-profit Organisations Implementing Activities for Public Use;
- exercises the powers, entrusted to him by the Law on Cadastre and Property Register (maintaining of the property register; management and control of the entire activity regarding the property register);
- is the central authority under the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (Strasbourg Convention) and the Council of Europe 2005 Convention, the Council of Europe 1959 Convention on Mutual Legal Assistance, the Council of Europe 1970 Convention on the International Validity of Criminal Judgements (including enforcement of seizure and confiscation measures) and the Council of Europe Convention on Transfer of Proceedings in Criminal Cases. Requests are received by the Ministry and then forwarded to the competent body. The enforcement of requests is communicated by the Ministry of Justice to the foreign authorities.
- Exercises regulatory functions as regards notaries, who are subject to the LMML.

Prosecutors Office

152. The Prosecutor's Office in the Republic of Bulgaria consists of the Prosecutor General, the Supreme Prosecutor's Office of Cassation, Prosecutors' Offices of Appeals, Military Prosecutors' Offices of Appeals, District Prosecutors' Offices, Military District Prosecutors' Offices and Regional Prosecutors' Offices.

153. The Prosecutor's Office of the Republic of Bulgaria is a legal entity financed by the State budget with a seat in Sofia. It is a secondary appropriator of budget credits. The Supreme Judicial Council is the primary appropriator of the budget of the Judiciary. The structure of the Prosecutor's Office is in accordance with the courts (The courts in the Republic of Bulgaria are Regional, District, Military, Appellate, a Supreme Administrative Court and a Supreme Court of Cassation).

154. In the regions, there are: 5 Prosecutors' Offices of Appeals, 1 Military/ Prosecutor's Office of Appeals, 27 District Prosecutors' Offices and a Sofia City Prosecutor's Office, having a District Prosecutor's Office status, Military District Prosecutors' Offices, 112 Regional Prosecutors' Offices.

155. There is a specialised department established at the Supreme Cassation Prosecutor's Office, dealing with organised crime and money laundering, corruption of high ranking state officials and crime in the sphere of opening up European Funds. Each one of the appellate and district prosecutor's offices has structured such a specialized division.

c. The approach concerning risk

156. At the systemic level, the Bulgarian authorities firstly pointed to the fact that their circle of obliged entities is wider than the FATF Recommendations (and the EU Directive). The Bulgarian LMML also covers other categories of entity on the basis of a risk analysis. They are: privatisation bodies; central depositary, revenue/tax and customs authorities, all insurers and insurance intermediaries, sport organisations, political parties, wholesale traders and others. There has been no derogation from or limitations of the FATF requirements based on risk.
157. The degree of risk of which supervisory bodies need to be aware in respect of obliged entities has been considered by the Multidisciplinary Task Force, which was established in February 2006.

158. The Task Force is chaired by the Deputy Minister of Finance and hosted by the Bulgarian FIU. The FIA's Director General is a Vice-Chairman of the Task Force. The members of this Task Force are representatives of: Bulgarian National Bank; Financial Intelligence Agency; Customs Agency; State Commission on Gambling; Financial Supervision Commission; Ministry of Justice; and, Ministry of Interior. This Task Force, which holds regular meetings, may invite for its meetings also representatives of self regulatory organisations of obliged entities, if the matters of discussions involved the respective group of reporting entities.

159. The objectives of the Multidisciplinary Task Force include *inter alia* designating high risk sectors and priorities.

160. A risk assessment in respect of the reporting entities was performed by the FIA, discussed and adopted within the Multidisciplinary Task Force for the Prevention of ML and TF. The assessment included the level of compliance with disclosure procedures and the impact of training provided. In addition, assessments of the compliance with and, in general, deficiencies of the system were produced as a result of the Twinning Project 'Combating Money Laundering' of 2003-2004 and the Twinning Light Project 'Improving Cooperation of FIA with the Obliged Entities' in 2005-2006. Recommendations of both projects resulted in the multi-agency structures and procedures established in 2006 for interaction between the authorities responsible for the prevention of money laundering and terrorist financing and interaction with reporting entities under the LMML.

161. According to the risk assessment elaborated within the Multidisciplinary Task Force for Prevention of money laundering and terrorist financing the following groups have been specified as being of higher or medium risk for money laundering and the control activity of FIA is adjusted accordingly:
    - persons who organise public procurement orders assignment (no STRs submitted);
    - pawnshops (training was provided as part of the twinning light project of FIA in 2005/6; however no STRs have been submitted by pawnshops);
    - postal services accepting money (6 STRs filed in 2005; however the information provided is often inadequate - missing documentary evidence of the activity etc.);
    - leasing partnerships (no STRs submitted);
    - state and municipal bodies concluding concession contracts (only one STR in 2004);
    - professional unions and organisations (no STRs submitted);
    - political parties (only 1 STR in 2004; extensive training was provided to representatives of political parties within the FIA twinning light project in 2005/2006);
    - merchants who sell automobiles by occupation (no STRs,; the growing market of luxury automobiles however supposes increasing risk of ML);
    - persons dealing by profession in high value goods (a total of 3 STRs (one STR for each of the years 2004, 2005 and 2006) - *part of these entities are registered by the Ministry of Finance: precious metal, precious stones and gems*);
    - sports organisations (trainings are provided to this category - however reporting is still insufficient considering the funds used by these organisations);
    - dealers in weapon, petroleum and petroleum products (2 STRs in 2004, no STRs for 2005 and 2006);
    - wholesale merchants (2 STRs submitted in 2004, no STRs for 2005 and 2006)

162. The Financial Supervision Commission uses a risk approach particularly collecting detailed entity-specific risk factor information: by scanning newly published financial statements; review of the previous period's published financial information; information from third parties (newspapers, analysts or industry reports, information from third parties such as auditors and intermediaries, whistle-blowers and complaints).

163. Risk is assessed by the FSC in its work by reference to a number of issues and factors: compliance history; industry specific issues; corporate governance issues and internal control environment; related parties transactions; business combinations and disposals; financial structure and business trends; financial position and ratios, out performance; audit related issues;

administrative, court and regulatory actions against the obliged person or entity; third party signals, including complaints; whether pre-clearance advice has been provided; initial public offerings.

164. By the assistance of the project PHARE 2005 Project "Strengthening of Administrative Capacity of the Financial Supervision Commission to Implement the Acquis in Field of Securities, Pension and Insurance" FSC expects in the beginning of 2008 to have a complete and reliable information system (software and hardware) for supervised entities data accumulation, market surveillance and risk-based supervision. The project is expected to have the following results:
    - Full multifunctional database with FSC's records created;
    - Web-based portal built as a medium for supervised entities information disclosure;
    - System for analysis and control of financial data, risk assessment with statistical application introduced;
    - IT staff trained to manage the new systems.

165. The Bulgarian National Bank and the State Commission on Gambling apply similar risks assessment in their daily work.

166. FIA reviewed and adapted its half–year plan schedule for on-site inspections based on the risk assessment carried out by the Multidisciplinary Task Force.

167. In discussions with representatives of the supervised sectors, it was clear that the banks and investment service providers with which the team met take risk into account routinely in the CDD context using risk matrices.

168. The examiners were informed that financial institutions are inspected. The BNB assess what supervised entities are treating at a normal risk and higher risk level of customers. Additionally, BNB audits the high risk customers of the supervised entity according to the requirements of the RILMML (Article 8). The AML Law also provides for simplified customer due diligence in certain circumstances, Article 4 (9).

d. Progress since the last mutual evaluation

169. There have been some significant developments since the 2nd evaluation. The Law on Measures against Money Laundering (LMML) was last amended in July 2006 to incorporate the revised 2003 40 FATF Recommendations, and now incorporates the preventive measures which need to be provided for by law or regulation. Obligations are also developed in secondary legislation – the Rules on Implementation of the Law on Measures against Money Laundering 2006 (RILMML).

170. The amendments to the Law on Measures against Money Laundering (LMML) include the requirement for identification and monitoring of the clients and verification of the collected information, the requirement to identify the beneficial owner of the client (legal person), limitations to establishing correspondent relations in accordance with the FATF recommendations, and enhanced customer due diligence with regard to politically exposed persons (PEPs). One important amendment further extends the access of the Financial Intelligence Agency (FIA) to information which otherwise would be subject to bank secrecy. Prior to these amendments, FIA had access to bank secrecy only in cases where the suspicious transaction report had been filed by a financial institution or a request for information had been submitted by a foreign FIU. With the amendments, the FIA was granted access to bank secrecy information on the base of any suspicious transaction report (STR) filed by a person under Article 3, Para. 2 of the LMML. Similar information can also be gathered whenever a request by EU authorities (e.g. OLAF) is received. No court ruling or other permission is now required for such access.

171. On the criminal side, there were several amendments since the 2nd evaluation. The evaluators welcomed the changes in Article 253 in the Criminal Code so money laundering can now and has been prosecuted as a stand alone crime. The money laundering offence now covers acts that are dangerous to the public, which was intended to underline that a conviction for a crime was not first required. The successful prosecution of money laundering as a stand alone crime since the second evaluation resolves the long running debate about the need for a prior conviction before money laundering proceedings in a positive way. Additionally, the law now explicitly covers foreign predicate offences.

172. Furthermore, Article 253a of the Criminal Code now criminalises attempt, incitement and association for the purpose of commission of a money laundering offence.

173. Criminal liability can still only be imposed on a physical person, who has committed a crime. The evaluators noted, however, that a new statute – the Law on Administrative Offences and Sanctions] – where they had benefited from certain crimes (including money laundering, some fraud offences and some corruption offences).

174. A welcome development following 2nd round recommendations is the establishment of the Multidisciplinary Commission for establishing of property acquired from criminal activity, which has launched 100 proceedings including 52 freezing orders and 12 procedures for civil deprivation of property. The Law on Forfeiture of Proceeds of Crime broadly subjects (after conviction for a serious offence) a defendant's identified, direct and indirect proceeds of significant value to a civil confiscation procedure. This procedure includes some provisions involving the reversal of the burden of proof and applies to third parties.

175. In July 2006, the Bulgarian Parliament adopted a Law on issuing, adoption and implementation of the decisions for securing property or evidence, issued by the EU Member States, which introduces the requirements of the Framework Decision, on the execution in the European Union of orders freezing property or evidence into the national legislation. It regulates in detail the conditions for recognition and execution of decisions for securing property or evidence, issued by an authority of an EU Member State and the conditions of issuing and forwarding such a decision by a Bulgarian court for execution in an EU Member State. The Law became effective from 1 January 2007.

176. Since the second round, separate criminal offences of terrorist financing were introduced in the Criminal Code. At the same time the Law for the Measures against Financing Terrorism was adopted, which entered into force in February 2003. The law was amended several times, the last being in July 2006. At the time of the on-site visit these provisions had not been tested in any investigation or prosecution.

177. A new system of mandatory reporting of all cash transactions in excess of BGN 30 000 (15 000 Euros) was established.

178. Since the last evaluation the lack of unanimity as to the scope of the control of the tax administration over foreign exchange offices has been settled. Apart from the requirements of the LMML cooperation between FIA and NRA is regulated through two instructions: an instruction for cooperation between FIA and NRA, and a specific instruction endorsed by both institutions providing guidance in relation to the procedures for checking compliance within the general inspections of the NRA.

179. The LMML has been amended and the list of reporting entities is now broader than that prescribed by FATF Recommendations. The LMML covers also other categories of reporting entities based on risk analyses for money laundering, including privatisation bodies, sport organisations; political parties; wholesale traders; and others. Supervisory bodies have also been designated as obliged persons.

180. In November 2006 the FSC adopted a Manual for conducting of inspections of non-banking financial institutions with regard to their compliance with obligations imposed on them and with other requirements under the LMML. The Manual provides to experts guidelines for determining the level of risk of the non-banking financial institutions and the abilities of the management to effectively manage and control risks relating to enforcement of the measures against money laundering.

2 LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

2.1 Criminalisation of money laundering (R.1 and 2)

2.1.1 Description and analysis

Recommendation 1

181. Bulgaria ratified both the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the 2000 United Nations Convention against Transnational Organised Crime (the Palermo Convention) respectively in 1992 and 2001 respectively.

182. Money laundering itself was first incriminated in Bulgaria in 1997 and the offence has been amended in 1998, 2004 and 2006. The currently relevant provisions (Articles 253 and 253a) are set out beneath. They appear in the part of the Criminal Code dealing with crimes against the financial, tax and insurance systems.

183. Article 253.

(1) The one who concludes a financial operation or property transaction or conceals the origin, location, movement or the actual rights in the property, which is known or assumed to be acquired through crime or another act that is dangerous for the public, shall be punished for money laundering by deprivation of liberty from one to six years and a fine of BGN three thousand to five thousand.
(2) The punishment under paragraph 1 shall also be imposed on the one who acquires, receives, holds, uses, transforms or assists, in any way whatsoever, the transformation of property, which is known or assumed, as of its receipt, to have been acquired through crime or another act that is dangerous for the public.
(3) The punishment shall be deprivation of liberty for one to eight years and a fine of BGN five thousand to twenty thousand, if the act under Para. 1 and 2 has been committed:
1. by two or more individuals, who have reached preliminary agreement, or by an individual who acts on the orders of or executes a decision of an organised criminal group;
2. two or more times;
3. by an official within the sphere of his office;
4. through opening or maintaining an account with a financial institution, under a false name or the name of an individual who has given consent to this effect.
(4) The punishment shall be deprivation of liberty from three to twelve years and a fine from BGN 20,000 to BGN 200,000 where the act under Paragraphs (1) and (2) has been committed by the use of funds or property which the perpetrator knew or supposed to have been acquired through a serious crime of intent.
(5) Where the funds or property are in extremely large amounts and the case is extremely grave, the punishment shall be deprivation of liberty for five to fifteen years and a fine of BGN 10,000 to BGN 30,000, and the court shall suspend the rights of the guilty person under Items 6 and 7 of Article 37 (1).
(6) The object of crime or the property into which it has been transformed shall be forfeited to the benefit of the state, and where absent or alienated, its equivalent shall be awarded.
(7) Provisions of Para. 1 through 6 shall also apply where the crime through which property has been acquired falls outside the criminal jurisdiction of the Republic of Bulgaria.

184. Article 253a

(1) Preparations toward money laundering or any association to this goal shall be punishable by deprivation of liberty of up to two years or a fine from BGN five thousand to ten thousand.

(2) The same punishment shall also be imposed on the one who incites another to commit money laundering.

(3) Property destined for money laundering shall be forfeited to the benefit of the state and where absent or alienated, its equivalent shall be awarded.

(4)The member of an association under paragraph 1 who, before money laundering is completed, puts an end to participation therein and notifies the authorities thereof, shall not be punished.

185. The physical or material elements of the offence are almost entirely in line with the international conventions. In particular, A.6 (1) (a) (ii) of the Palermo Convention appears fully covered (the concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property) in A 253 (1). Similarly the provisions of A.6 (1) (b) (i) [acquisition, possession or use] are clearly covered in A.253 (2). Conversion or transfer of property is presumably covered by the opening words of Article 253 ("…concludes a financial operation") though it might have been better to use the words of the Convention (conversion or transfer). It is less clear how the second part of Article 6 (1) (a) (i) where the physical act is performed for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action is covered. The Bulgarian authorities indicated Article 215 of the CC (concealment) and the general scope of Article 253 (1) of the CC to cover this Palermo Convention part which appears to be missing. As in many other legal frameworks concealment is a traditional offence and in terms of its enforcement a lot was achieved. But, however, as it is provided in the Bulgarian CC, it does not cover the convention's essential elements in question. On the other hand, the evaluators recognise that Article 253 (1) has a broad scope which may include by way of interpretation "helping someone to escape legal consequences of these actions". Furthermore there has been no binding jurisprudence on this issue. Nevertheless the evaluators take the view that no legal amendments are needed but the Bulgarian authorities may consider monitoring future developments of the jurisprudence on this specific issue to be in consistency with the language of the conventions.

186. The Bulgarian authorities advised that the money laundering offence is extended to any type of property, regardless of its value, that directly or indirectly represents the proceeds of crime. No statutory provision or jurisprudence provides the definition of "property". The term is taken directly from the wide definition of "property" in the Palermo Convention. The Constitutional Court has ruled that if a legal term is not defined in Bulgarian law then recourse should be made to the definition in an international treaty which Bulgaria has ratified and published in the State Gazette.

187. The Prosecutors with whom the team met considered that they did not require a prior or simultaneous conviction for the predicate offence. This had been a major issue in past evaluations. One of the reasons for the introduction into Article 253 of the language "or another act that is dangerous to the public" was to ensure that courts did not interpret "acquired through crime" strictly to mean acquired as a result of a proven criminal offence, which has resulted in a sentence of a court. Any Act which is "dangerous to the public" is thus seen as embracing the full concept of predicate crime without opening up arguments that a prior conviction is needed. Moreover, it was indicated that autonomous money laundering had now been successfully prosecuted (once in the case of a foreign predicate and once in the case of a domestic predicate).

188. The Bulgarian money laundering offence has always been an "all crimes" offence. The examiners have examined the list provided (Annex II) of crimes in domestic legislation which are said to cover the FATF minimum required designated categories of offence. The list provided is very comprehensive, and almost all of the designated categories of offences required by the FATF are covered in Bulgarian Law. However, the examiners were not satisfied that insider trading and market manipulation, as it is generally understood, are covered. The offences listed here in this context relate entirely to embezzlement. It is clear that relevant offences including offences provided for in Article 2 and 3 of the Strasbourg Convention on the protection

of environment are covered in Bulgarian law. For full list of environmental offences, see Annex II. As noted beneath under SR.II, the scope of the terrorist financing offence is insufficiently broad to cover all the aspects of the SR. The missing element relates to the provision or collection of funds for any purpose (including legitimate activities). To this extent, the full concept of terrorist financing is not a predicate for money laundering.

189. Article 253 (7) explicitly provides that the money laundering offences as described in Article 253 (1) – (6) apply also where the predicate crime is committed outside the jurisdiction of Bulgaria. The Bulgarian authorities advised the team that they could prosecute for money laundering even if the foreign predicate was not capable of being prosecuted in Bulgaria, though this has not been tested in practice.

190. The perpetrator of the predicate offence can be prosecuted for "own proceeds" laundering. There have now been convictions for "own proceeds" laundering.

191. With regard to ancillary offences, the Common Law term of "conspiracy" is not used in Bulgarian legislation. However, the 2004 amendments in Article 253a (i) provide for punishment of up to two years imprisonment (or a fine) for "preparations toward money laundering or any *association* to this goal".

192. The Methodology requires conspiracy to be an ancillary offence without defining what is meant by conspiracy. In Common Law countries a conspiracy requires an agreement by two or more natural persons to pursue a course of conduct which would involve the commission of a criminal offence at some time in the future. The offence is committed even if the criminal offence is not carried out.

193. It is not considered by the evaluators that the actual term "conspiracy" needs to appear in the legislative text for this part of the essential criteria to be covered. The evaluators have noted that, unlike the Methodology, Article 3 of the Vienna Convention and Article 6 of the Palermo Convention require a country to take measures (subject to its constitutional principles and the basic concepts of its legal system) to criminalize "association with *or conspiracy to commit"*. The language of the two Conventions appears to provide for *equivalent* offences of "association" (which is more a civil law concept) and "conspiracy" (which is more familiar in common law jurisdictions). The examiners consider that this supports the common sense view that requires them to look at the substance of available offences and not just the form – i.e. whether the precise term "conspiracy" is used in the Law. On an analysis of the Bulgarian concept of association an agreement to commit money laundering at a very early stage (including long before an attempt would be indictable) is possible and the offence of association can be prosecuted even if the full money laundering offence is not carried out. In these circumstances, it appears to the evaluators that the availability of association as an offence factually covers the same circumstances as the Common Law offence of conspiracy to commit money laundering and that therefore this part of the criterion is adequately covered.

194. The other relevant ancillary offences are also available: attempt, facilitating and counseling the commission of money laundering are covered by the general part of the Penal Code (Articles 18 and 20).

Additional elements

195. If the activity which generates proceeds is not an offence in the foreign country but the proceeds were laundered in Bulgaria the Bulgarian authorities considered that they could prosecute for money laundering on the basis that the activity committed abroad would constitute an "act that is dangerous for the public" under Article 253 (1).

Recommendation 2

196. The mental element for natural persons is knowledge or assumption that property is acquired through crime or another act that is dangerous for the public. "Assumption" is equated with (subjective) suspicion. Thus, the knowledge standard in respect of the origin of the proceeds is mitigated and suspicion is an alternative mental element. The judge would reflect the lower mental element in the penalty. One of the sentences was based on the court accepting the suspicion standard.

197. Article 104 of the Criminal Procedure Code states "Evidence in the criminal proceedings may be factual data related to the circumstances in the case, such that contribute to their elucidation and are ascertained by the procedure provided for by this Code". The Bulgarian authorities thus indicated that the mental element of the offence may be inferred from objective factual circumstances. Despite this, the judge with whom the team met indicated that in his view A.253 creates problems for judges. He considered it particularly difficult to prove the mental element to the satisfaction of the court. At least 2 of the 3 acquittals were due to problems with the mental elements, though in these two cases the Supreme Court overturned the decision and returned the case for rehearing with a clearer direction as to the mental element in money laundering cases. Subsequently these cases resulted in convictions.

198. According to the Bulgarian Criminal Code, criminal liability can only be imposed on a physical person who has committed a crime. Bulgarian criminal law does not provide for criminal liability of legal persons. However a new law was adopted in 2005 – the Law on Administrative Offences and Sanctions (provisions on the liability of legal persons for criminal offences, which makes some limited inroads into the formal position. The administrative liability is conditioned by a commission of an offence or ancillary offence to one of the listed offences by a natural person in one of the following situations:

- person is empowered to form the will of the legal person;
- person is representing the legal person;
- person is elected in control or supervising body of the legal person;
- employee and servant to whom the legal person has assigned a particular work, where the offence is committed on the occasion of or in performing this work.

199. Administrative liability thus depends on the commission of an offence or ancillary offence to one of the listed offences, which includes a range of corruption offences including those which correspond to the standards in the Council of Europe Criminal Law Convention on Corruption and the OECD Convention for Combating Bribery of Foreign Public Officials in International Business transactions, money laundering, other financial crime and financing of terrorism. A prosecutor can trigger action against the legal person where the legal person has obtained an advantage (or would obtain an advantage) from one of the relevant listed offences (and additionally offences on behalf of organised crime groups) where they are committed by persons in authority in the company or by employees while at work. The proceedings against the legal person can only be instituted where the indictment against the natural person has been brought before the court or where the criminal proceedings may not be instituted or are discontinued because the perpetrator is not criminally liable for a range of reasons (including amnesty, death or mental incapacity).

200. The responsibility of juridical persons does not preclude parallel criminal responsibility for physical persons. At the time of the on-site visit there no cases related to money laundering involving the responsibility of juridical persons.

201. The basic penalty for money laundering for natural persons ranges from 1 to 8 years and a fine. In particularly serious cases, where the funds or property are in extremely large amounts and the case is extremely grave, the penalty ranges from 5 to 15 years and a fine. Thus, the limits set by

law appear to be dissuasive and are in line with other serious offences domestically (and with several other countries) but the penalties actually imposed by the courts appear less dissuasive. Up to the time of the on-site visit, there were 5 convictions (2 final and 3 non-finals). In 2006, in 2 money laundering convictions the execution of imprisonment was suspended and in 2007 one money laundering conviction resulted in a suspended sentence. The highest penalty awarded of an immediate term of imprisonment for money laundering was 4 years and a 10,000 BGN fine for laundering in Bulgaria the proceeds of a predicate crime committed abroad (car theft). The average sentence so far (whether suspended or not) is in the region of 11 months to 1 year.

Statistics

202. Between 2002 and 2007, there were 18 indictments for money laundering. It is not possible to disaggregate how many indictments represent police/prosecution generated cases and how many represent STR generated cases.

203. Until 2006, there were no convictions for money laundering. In 2006, 5 indictments were brought to court which achieved convictions (two resulted in final convictions and 3 in non-final convictions). All involved both domestic and foreign predicates. Two of the convictions had predicate offences of fraud (one of which was a self laundering case and one of which was 3rd party laundering in respect of bank fraud. One other conviction involved a predicate offence of drugs distribution and this was also the laundering of the defendant's own proceeds, which was tried with the drugs offence. Another conviction involved laundering 22,500 Euros resulting from "abatement to prostitution" by another person (the money laundering sentence of 11 months was suspended here for 3 years). One conviction was for money laundering from car theft committed abroad.

204. There have been 3 acquittals for money laundering so far. For further information on these acquittals see Para.193. The other 10 indictments remained outstanding at the time of the on-site visit.

205. As noted earlier at the time of the on-site visit, a significant money laundering case involving the proceeds of high level corruption was in process (see footnote 2).

2.1.2 Recommendations and comments

206. Bulgaria has improved its legal framework for criminalisation since the last evaluation. The examiners welcome the prosecution and conviction of money laundering as a stand-alone offence and the clear widening of the scope of the offence to cover crimes committed abroad. It is positive that the debate on the need for a prior conviction for the underlying criminality appears to have been settled in a way that enhances the capacity of prosecutors to proceed with money laundering cases.

207. Although the legal framework is now greatly strengthened, the Bulgarian authorities should satisfy themselves that the language of the offence fully covers laundering, where it is committed for the purpose of helping any person who is involved in the commission of the predicate to evade the consequences of his or her action.

208. The Bulgarian authorities should ensure that insider trading and market manipulation are fully covered as designated categories of predicate crime and that financing of terrorism in all its forms are also capable of being predicate offences.

209. Notwithstanding the legal framework, some judges still consider the mental element of money laundering is difficult to prove. They have the alternative mental element of suspicion to fall back on, and given the length of some of the sentences in cases where there have been convictions; it appears to the evaluators that they could be convicting on this basis, rather than on the basis of

knowledge that the proceeds were acquired from predicate crime. The Bulgarian authorities could in future review acquittals and assess whether further guidance or legislative initiatives are required to ensure that judges understand that in satisfying the mental element of knowledge they need only to be sure that laundered proceeds come from a general category of crime, like drug trafficking, and not necessarily from a particularised drug trafficking offence on a specific date.

210. The extension of administrative liability in some circumstances to legal persons is also a welcome development, albeit that the extension is quite limited, and the administrative sanctions provided may not necessarily always be very dissuasive. The evaluators strongly advise further consideration of more general criminal liability for legal persons.

211. The sanctions available for natural persons in the legislation are effective and proportionate but the penalties so far applied are comparatively low and the number of suspended or postponed sentences raises some questions about the dissuasive nature of penalties actually imposed. The Bulgarian authorities may wish to monitor the sentences passed to satisfy themselves that the courts are treating money laundering cases seriously, and will no doubt consider in appropriate cases appealing penalties which appear to the prosecution less than dissuasive.

212. Different statistics presented to the examiners during the visit and afterwards lead to the conclusion that the present system of keeping statistics should be further improved. Furthermore, with a view to monitoring the effectiveness of the whole system of preventing and combating money laundering, consideration should be given to introducing new statistical indicators, for tracking cases which are STR-generated and police-generated. It would be helpful to keep full records: of the underlying predicate offences; which cases are autonomous money laundering prosecutions and which are tried in the same indictment as the predicate offence; and which are self laundering. Also, consideration could be given to designating one single institution responsible of keeping integrated statistics related to AML and CFT.

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**Largely Compliant**	• Not all designated categories of offences are fully covered as predicates (insider trading and market manipulation; and one aspect of terrorist financing).
R.2	**Largely Compliant**	• Liability of the legal persons remains limited to administrative liability. • Almost half of the final convictions on money laundering were dealt with suspended sentences of imprisonment, fact which raises questions with respect to the compliance with the requirements of "effective and dissuasive sanctions". • Difficulties of proof of intention need further addressing in guidance or legislation to address effectiveness issues.

2.2 Criminalisation of terrorist financing (SR II)

2.2.1 Description and analysis

213. Bulgaria signed the 1999 Convention for the Suppression of Financing of Terrorism on March 19, 2001 and ratified it on January 23, 2002.

214. The terrorism offence inserted into the Criminal Code in 2002) is provided in art 108a, Para. 1, as follows: "Anyone who, in view of causing disturbance or fear among the population or of threatening, or forcing a competent authority, a representative of a public institution or of a foreign state or international organisation to perform or omit part of his/her duties, commits a crime under Art. 115, 128, Art. 142, par. 1, Art. 216, par. 1, Art. 326, Art. 330, par. 1, Art. 333, Art. 334, par. 1, Art. 337, par. 1, Art. 339, par. 1, art. 340, Para. 1 and 2, art. 341a, Para. 1 - 3, art. 341b, par. 1, art. 344, art. 347, par. 1, art. 348, Art. 349, Para. 1 and 3, Art. 350, par. 1, Art. 352, par. 1, Art. 354, par. 1, Art. 356f, par. 1, Art. 356h, shall be punished for terrorism by deprivation of liberty from five to fifteen years, and where death has been caused - by deprivation of liberty of up to thirty years, to life imprisonment or to life imprisonment less substitution". The offences referred to in Article 108a inter alia cover murder, serious bodily injury, arson, criminal damage, aircraft hijacking, offences in connection with nuclear safety. They cover all of the terrorist acts in Article 2 of the 1999 Convention. The Bulgarian authorities have provided a correlation table annexed at Annex II

215. Art. 109 of the Criminal Code provides for different levels of punishment for the persons involved in committing terrorism offences depending on the role of the persons in the commission of such acts: (as whether leaders or otherwise).

216. Terrorism financing is criminalised in Article 108a, Para. 2, of the Bulgarian Criminal Code: "Any one who, regardless of the specific mode of operation directly or indirectly provides or collects means for accomplishing terrorism acts[7], in full knowledge or based on the assumption that these would be used for the above purposes".

217. This provision follows the approach of the relevant part of Article 2 of the 1999 Convention virtually reproducing its language with the exception of the qualification in the Convention relating to knowledge that funds are to be used "in full or in part" to carry out terrorist acts. Equally "means" rather than "funds" is used.

218. The examiners accept that the article does not provide any restriction with respect to who is to use the funds – an individual, terrorism organisation or terrorist group.

219. The Bulgarian authorities consider that, the use of the word "means" is very wide and should equate with the broad definition of "funds" in the 1999 Convention and in their view it is wide enough to cover funds from licit and illicit sources.

220. The examiners were advised that *corpus delicti* of terrorist financing does not require the funds actually to have been used for the purpose of committing or attempting to commit terrorist acts or to have any relation to specific terrorist acts. The examiners accept the first part of the argument but have reservations about the second part. Given the clear link in Article 108a, Para. 2, to the accomplishment of terrorist acts as defined, it is difficult to see how the terrorist financing offence could be applied more widely to cover the provision or collection of funds for any purpose (including a legitimate activity) by a terrorist or a terrorist group, such as supporting the family while a terrorist is in prison.

[7] Defined in Article 108a, Para. 1

221. Under Article 18 of the Criminal Code, attempt is criminalised for all offences for which an attempt is possible, including terrorism financing. Money laundering is incriminated on an "all crimes approach', thus terrorism financing as far as it is criminalised can be a predicate offence for money laundering.

222. Under the Bulgarian legislation (Article 4, Paragraph 1 and Article 5 of the CC) (Annex –4) the provisions of the Criminal Code are applicable to Bulgarian nationals for crimes, committed by them abroad. The provisions are also applicable to foreign nationals who commit crimes of a general nature abroad and in such a way affect the interests of the Republic of Bulgaria and Bulgarian nationals. Thus, as long as the offender is a Bulgarian or foreign citizen and the terrorism financing is committed on Bulgarian territory; a person can be held liable under the criminal law for terrorism financing. If terrorism financing is committed abroad, the offence can be prosecuted in Bulgaria if the conditions in Article 4 or 5 Criminal Code apply.

223. According to Article 104 of the Criminal Procedure Code, the proof in criminal proceedings can constitute factual data, which are related to circumstances connected to the case, and which contribute to their clarification and are established according to the order, envisaged in the Code. Thus, as noted earlier, the law should permit the intentional element of the offence to be inferred from objective factual circumstances.

224. According to Article 35 of the Bulgarian Criminal Code, criminal liability is personal and punishment can be only imposed on a physical person, who has committed a crime envisaged by law. The Bulgarian criminal law does not provide for criminal liability for legal persons. However, a new law on administrative offences and sanctions against legal persons was adopted in October 2005. A description of the administrative liability of legal persons is set out under Recommendation 2 above.

225. The terrorism financing offence is punished by imprisonment from 3 to 15 years and a fine of up to BGN 30,000. The sanctions provided by the law seem dissuasive. Indeed the limits are rather high in comparison with other serious offences provided by the Bulgarian criminal law.

226. At the time of the on-site visit, there were no prosecutions and convictions for terrorist financing.

2.2.2 Recommendations and comments

227. The terrorism financing criminalisation under the Bulgarian legislation is quite wide and seems to cover all the requirements imposed by the 1999 Convention for the Suppression of the Financing of Terrorism. The major reservation, as noted, is that the offence does not appear on its face to cover the broader approach of SR.II in relation to contributions for any purpose (including legitimate activity). It is understood that this may be a matter of interpretation. As no prosecution or conviction has occurred in relation to terrorism financing, it is difficult to estimate how in practice judicial bodies would interpret the legal provisions. The Bulgarian authorities are none-the-less advised to broaden the scope of the offence to clearly cover this aspect to avoid future protracted legal argument on the point. Although there is a strong legal framework generally in respect to SR.II, it is too soon to indicate its effectiveness, in terms of practical enforcement.

228. As noted while analysing the compliance of Recommendation 2, more consideration should be given to widening the scope of the administrative liability of the legal persons.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**Largely**	• Not clear if the offence, as provided in the Bulgarian CC, also

	Compliant	includes the contributions for any purpose (including legitimate activity). • Liability of legal persons still limited to administrative accountability.

2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)

2.3.1 Description and analysis

229. The main provisions regarding the criminal confiscation regime and the provisional measures can be found in the Criminal Code and the Criminal Procedure Code. Additionally, a new law on Forfeiture of Proceeds of Crime (civil confiscation) has been into force since January 1, 2006, introducing a form of civil forfeiture for the benefit of the state.

230. In Bulgaria, under the general criminal law, there are two types of confiscation in criminal matters.

231. Firstly, there is confiscation of "existing property" as an additional penalty provided for in Articles 37 and 44 – 46 of the Criminal Code. This additional punishment can only be applied if the special provision criminalising the act provides for it. In general, this form of confiscation (where it applies) is discretionary (see e.g. Article 196 [2] Penal Code in respect of certain types of theft).

232. Secondly, there is confiscation of objects provided for in Article 53 of the Criminal Code in the following terms:

> "(1) notwithstanding the penal responsibility, confiscated in favour of the state shall be:
> a) objects belonging to the convict, which were intended or have served for the perpetration of intentional crime;
> b) objects belonging to the culprit, which were subject of intentional crime - in the cases expressly provided in the Special Part of this Code.
> (2) Confiscated in favour of the state shall also be:
> a) articles that have been subject or means of the crime, the possession of which is forbidden, and
> b) objects acquired through the crime, if they do not have to be returned or restored. Where the acquired objects are not available or have been disposed of, an equivalent amount shall be adjudged."

233. This (forfeiture) regime covers property as described in Article 53. The Bulgarian authorities from the Ministry of Justice consider that the law envisages confiscation from third parties. However, this was not an interpretation which was shared by the prosecutors. The Bulgarian authorities from the Ministry of Justice explained that as Article 53, Para. 2, letter b, refers to objects acquired through crime it is intended to cover direct and indirect proceeds. By contrast, the prosecutors indicated that their practice in the case of indirect proceeds was not to seek confiscation of such proceeds on conviction for a proceeds generating crime, but to pursue the indirect proceeds through a separate money laundering investigation. Value confiscation is covered by Article 53, Para.2, letter b, and the Ministry of Justice considers that this provision covers value confiscation in respect of both direct and indirect proceeds. The evaluators fully accept that this covers value confiscation in the context of direct proceeds. However, there was no practice that could be pointed to in respect of value confiscation of indirect proceeds. In these circumstances the evaluators had concerns as to whether value confiscation orders would be made in practice in the case of indirect proceeds, given the prosecutors' explanation in respect of their handling of indirect proceeds generally.

234. Thirdly, under the general criminal law, Article 253 has certain provisions which require mandatory confiscation in the case of laundered property. For money laundering, special provisions of Article 253, Para. 6, from the Criminal Code are applicable:

> "(6) The object of crime or the property into which it has been transformed shall be forfeited to the benefit of the state, and where absent or alienated, its equivalent shall be awarded. (7) Provisions of Para. 1 - 6 shall also apply where the crime through which property has been acquired falls outside the criminal jurisdiction of the Republic of Bulgaria."

235. On the positive side the evaluators noted that the confiscation regime in money laundering cases is applicable even when the offence was committed outside the Bulgarian territory. It was unclear how regularly confiscation under the general criminal provisions (apart from the money laundering specific provisions) was applied. No statistics were provided.

236. Turning to provisional measures, Article 72 of the Criminal Procedure Code provides for seizure as a measure to secure the fine, confiscation, and forfeiture of objects to the benefit of the state, according to the procedure set out in the Civil Procedure Code. The person who can request the seizure is the prosecutor, both during the criminal investigation and criminal trial. How regularly this was done and at what stage in general criminal cases was unclear.

237. According to Article 12 of the LMML, the Minister of Finance, upon a proposal by the Director of FIA, may suspend by an order in writing a certain financial operation or transaction for a period of up to three working days, following the day of issuing the order. If no preventive measure or foreclosure (a form of administrative suspension of a certain transaction, suspected to be performed for the purpose of money laundering or terrorism financing) is undertaken until the expiration of that time limit, the reporting entity may perform the transaction. The FIA shall immediately notify the Prosecutor's Office about the suspension of the operation/ transaction while submitting all the necessary information to the prosecution. The prosecutor may impose a preventive measure or place a request before the corresponding court for imposing of seizure or foreclosure. The court has the obligation to deal with this request within 24 hours as from the submission. The procedure for freezing property as a result of the Article 12 LMML process is the same as the general process for criminal freezing under Article 72 of the CPC described above. Such applications are made ex parte and without notice.

238. The police and the prosecutors can identify and trace the proceeds of crime during the criminal proceedings. The Bulgarian legislation provides for bank and tax secrecy as well as commercial secrecy on securities market. With respect to bank secrecy, it can be lifted by the court, upon the written request of one of the persons explicitly provided by the Law on Credit Institution, including the prosecutors if there are solid grounds that an offence has been committed. The court has to deal with the request within 24 hours and the decision cannot be challenged. The decision shall contain the time limit for disclosure of the information. Similar provisions apply to lifting the commercial secrecy in the securities market. Additionally, in cases of organised crime and money laundering, the Chief Public Prosecutor or a Deputy authorised by him may require banks to submit the facts and circumstances concerning balances and operations on accounts and deposits held by clients of the bank. Turning to tax secrecy, data constituting tax and social insurance information may be disclosed solely to the persons explicitly provided for by the law, including the Prosecutor General. Additionally, tax secrecy can be lifted by the court, upon the request of a prosecutor and police investigator, if the criminal proceeding or the preliminary investigation was started. The court has to deal with the request within 24 hours and the decision cannot be challenged furthermore. The decision shall specify the person in respect of whom the tax and social insurance information is to be disclosed the scope of the specific identifying data about the person and the time limit for disclosure of the information. The prosecutors and the investigators informed the examiners that these provisions applicable to secrecy may sometimes burden the criminal investigation.

239. There are procedural rules that provide for procedural guarantees, including the right to appeal to the court, for persons that may be subjected to restriction of their personal rights and liberties.

If the person suffered damage as a consequence of an illegal decision of the investigation officer, prosecutor or judge (court), a claim for civil damages can also be preferred.

Additional elements

240. The Bulgarian authorities have recognised that their confiscation and forfeiture of objects regime under the general Criminal Code needed modernising to address the fight against organised crime more effectively, and introduced in 2005 new legislation, the Law on the Forfeiture to the State of Proceeds of Crime (civil confiscation).

241. The Law on Forfeiture to the State of Proceeds of Crime regulates the terms and procedure for imposition of seizure and forfeiture to the State of any assets derived, whether directly or indirectly, from criminal activity. Any assets derived, whether directly or indirectly, from criminal activity which has not been restored to the victim or which have not been forfeited to the State or confiscated under other laws are forfeitable under this law. By this law, the body handling the procedure is the Multidisciplinary Commission for Establishing of Property Acquired from Criminal Activity (CEPACA), which became operational in October 2006. This law broadly subjects (after conviction for a serious offence) a defendant's identified direct and indirect proceeds of significant value to a civil confiscation procedure. This procedure includes some provisions reversing burden of proof and applies to third parties.

242. Proceeding under the Law on the Forfeiture to the State of Proceeds of Crime (LFPC) is conducted if there is sufficient information about assets of substantial value which can be reasonably assumed to have been derived from criminal activity and a criminal prosecution has been undertaken against a person in connection with a certain criminal offence under the Criminal Code specified in Article 3 of the Law as follows;

1. Article 108a, Section 1 [terrorism]; Article 108a, Section 2 [financing of terrorism]; Article 109 [creation, leadership or participation in an organised criminal group that has as its aim to commit crimes under Article 108a, Sections 1 and 2]; Article 110 [preparation for terrorism];
2. Article 116, Section 1, Subparts 7 and 10 [homicide];
3. Articles 155, 156, 159 [enticement to commit prostitution];
4. Articles 159a – 159c [trafficking in human beings];
5. Articles 194 – 196a [theft of a motor vehicle];
6. Articles 198 – 200 [robbery of a motor vehicle];
7. Articles 201 – 203 [misappropriation];
8. Articles 209 – 211, Article 212, Paragraphs 3, 4 and 5, Article 212a, 213 [fraud];
9. Articles 213a – 214 [extorsion];
10. Articles 215, Section 2, Subpart 1 [constructive theft];
11. Articles 227c and 227d [intellectual property crimes];
12. Article 233 [crimes related to dual-use goods];
13. Article 235 [poaching];
14. Articles 242 – 242a [smuggling];
15. Articles 243 – 246 [counterfeiting of currency] and 250 – 252 [bank fraud];
16. Articles 253 [money laundering] and 253a [preparation to commit money laundering or association for this purpose];
17. Article 257, Section 1 [tax evasion];
18. Article 282, Section 5 [public corruption];
19. Articles 301 – 306 [bribery];
20. Article 308, Sections 2, 3 and 5 [counterfeiting of documents];
21. Articles 321 – 321a [forming or leading of organised criminal group];
22. Article 327, Sections 1 – 3 [illegal gaming];
23. Articles 337 and 339 [manufacturing or possession of illegal weapons];
24. Article 346, Section 2, Subpart 4 and Section 3 [vehicle misappropriation];
25. Articles 354a, 354b, Sections 4, 5 and 6 and Article 354c [drug trafficking].

243. CEPACA has the power to initiate enquiries for establishing criminal assets. This enquiry runs in parallel with the criminal proceedings. However, the Commission cannot initiate a request to the civil court for deprivation of the criminal assets, unless the criminal proceeding is concluded according to Article 3, Para. 2.

244. CEPACA can bring reasoned motions (motivated requests) to the courts to apply freezing orders only after an enquiry for establishing of criminal assets has been initiated. In order for this to happen, CEPACA has to have identified property of significant value (worth over 60 000 BGN under LFPC) that does not correspond to the legal income of the investigated individual[8]. The defendants are not notified in advance about the freezing of their property, so they cannot transform it or transfer it to third parties in order to undervalue it.

245. The procedure under the Law on Forfeiture of Proceeds of Crime is also conducted where there is sufficient information about assets of substantial value which can be reasonably assumed to have been derived form criminal activity but:

- no criminal proceedings have been launched or the criminal proceeding launched has been discontinued due to the death of perpetrator;
- no criminal proceeding has been launched or the criminal proceeding launched has been discontinued due to the fact that after committing the offence the perpetrator was affected by a lasting mental disorder that caused insanity, or an amnesty has occurred, or
- the criminal proceedings have been suspended in pursuance of art 25 of the Criminal Procedure Code.

The CEPACA Law provides that assets of substantial value means assets of a value beyond 60 000 BGN.

246. The procedure referred to in Article 3 of the Law is also conducted where property of substantial value is identified as derived from criminal activity carried out abroad and is not under the criminal jurisdiction of the republic of Bulgaria.

247. According to Article 24 of the Law on Forfeiture of Proceeds of Crime "if, pursuant to proceedings under this law, it is established by an act issued by the Commission for criminal assets identification that a property covered by an injunction has legitimate origin, the court shall lift the injunctions on application from the party concerned or on the motion of the Commission.
(2)Any third party claiming independent rights in or to a property covered by injunctions may seek the lifting of those injunctions.
(3)Any application under Section 2 shall be accompanied by a declaration identifying the sources of the funds and the grounds for the acquisition of the property and evidence thereof.

248. The following aspects should also be noted:

Property which can be forfeited to the benefit of the state:

- Property acquired during the checked period by persons about whom it has been established that the grounds in Article 3 exist, and in the concrete case can be made grounded supposition that the acquisition(s) is connected to the criminal activity of the persons as far as lawful source has not been established;
- Property acquired from criminal activity from the heirs of the person who has acquired it up to the extent of the acquired by them;
- Property, acquired from criminal activity, which has been included in the property of a corporate body, controlled by the checked person independently or jointly with other

[8] Until November 2007 CEPACA has initiated 197 proceedings for establishing of property, acquired from criminal activity. Following the reasoned motions of the Commission, the Bulgarian district courts have imposed injunction (freezing) orders over property of total value equal to 88 531 233 BGN. For the same period CEPACA has initiated 40 proceedings for deprivation of criminal assets of total value equal to 24 503 458 BGN.

individual or corporate body. The property shall also be divested in the cases of legal succession of the respective corporate body;

- property transferred during the checked period to spouse, relatives of direct line without limitation in the degree, and of lateral line and by marriage – up to second degree inclusive when they have known that it has been acquired from criminal activity;
- Property, acquired from criminal activity, which is matrimonial community property, shall also be divested in favour of the state when is established the lack of contribution of the other spouse for its acquisition.

249. Moreover, the transactions, implemented with property acquired from criminal activity shall be regarded as null and void with regard to the State and shall be subject to divestment when they are:

1. gratuitous transactions with third persons or corporate bodies;
2. onerous transactions with third persons if they have known that the property has been acquired from criminal activity, or have acquired the property for its concealing or for non disclosure of its unlawful origin or the actual rights connected with this property.

250. Presumptions can be applied regarding the acquired property:

- In respect of the property transferred during the checked period to the spouse, relatives in direct line without limitation of the degree and in lateral line and by marriage up to the second degree, the knowledge of these persons that the property has been acquired from criminal activity is presumed until the adverse is proven.
- Property acquired by the spouse and under-aged children from third parties in their names shall be considered acquired for the account of the checked persons, when the acquisition is of significant value, exceeds the incomes of these persons during the checked period and other source of the resources cannot be established, until the adverse is proven.

251. *Reverse burden of proof.* With respect to the checked person, to a certain extent, the burden of proof is reversed as he/she is obliged under Article 17 of the law to hand in a written statement9 in which he/she has to prove the source of the resources and the grounds for acquiring the property.

252. Article 29 of the CEPACA Law provides the possibility for a third party to intervene in the procedure to protect his or her rights.

253. Between October 2006 and January 2007, CEPACA issued decisions on 80 procedures for identification, securing or forfeiture of property acquired from criminal activity, against persons who have been brought to justice or sentenced for crimes. 35 securing requests were submitted to court, amounting more than 16, 3 million BGN. All these requests were accepted by the court and the property was placed under interdiction or distraint was levied. The Commission submitted to court 9 motivated requests for divestment in favour of State of property proved to be acquired from criminal activity. The total value of the applications amounts to more than 3, 4 million BGN.

254. Turning to money laundering activities, CEPACA has (until January 2007) initiated 3 proceedings against individuals for crimes under Article 253, paragraphs 1 and 5 of the Criminal Code. No confiscation /freezing measures had been undertaken up to the time of the on-site visit. During the same period, CEPACA has not taken proceedings against individuals for crimes under Article 108a, paragraph 1 (terrorism), Article 108a, paragraph 2 (financing of terrorism), Article 109 (creation, leadership or participation in an organised criminal group that has as its aim to commit terrorist activity), and Article 110 (preparation for terrorism) of the Criminal Code.

[9] Only if CEPACA or its regional bodies request this.

2.3.2 Recommendations and comments

255. In respect of the general seizure and confiscation regime, the law was improved, for value confiscation (Article 253 (6) providing for value confiscation was not in force at the time of the second evaluation) and for offences committed outside the Bulgarian territory. The complete absence of statistics on freezing, seizing and confiscation under the general law and the decision to create CEPACA would support a conclusion that the general provisions are not effectively utilised.

256. The evaluators noted the differences of view between the Ministry of Justice and the prosecutors on third party confiscation. Clear guidance on this issue should be given to the prosecutors. The reported prosecutorial practice of not applying for confiscation in respect of indirect proceeds but following up these issues through money laundering investigations seems to be ineffective, given the overall number of money laundering convictions. This reported practice should be urgently reviewed so as to ensure that indirect proceeds are being routinely made the subject of confiscation requests upon conviction for major proceeds generating offences.

257. The LFPC Law is a very welcome development. It is advised that the Bulgarian authorities verify that all the designated categories of predicate offence to money laundering can be handled by CEPACA.

258. Notwithstanding this, it is necessary that the effective freezing and confiscation of proceeds under the general law should be pursued to divest criminals of their unlawfully gained assets in the (many) proceeds-generating cases in which the CEPACA will not be involved.

259. Nevertheless, CEPACA is still a young institution, and, as statistics show, it still has a lot to prove in terms of concrete results. At the time of the on-site visit, it had only been operating for six months. The evaluators very much support the proactive pursuit of criminal proceeds by this state agency, and also encourage such an approach by investigators and prosecutors in other proceeds-generating cases.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**Partially compliant**	• Differences of view between the Bulgarian authorities on the application of third party confiscation need resolution to ensure it is happening. • Clearer guidance to be given to prosecutors on confiscation of indirect proceeds and value confiscation. • Lack of effectiveness of the general confiscation regime. • New agency (CEPACA) not operating for sufficient length of time to judge its effectiveness.

2.4 Freezing of funds used for terrorist financing (SR.III)

2.4.1 Description and analysis

260. In order to implement S/RES/1267(1999) and its successor resolutions and S/RES/1373(2001), Bulgaria adopted the Law for the Measures against Financing Terrorism (LMFT), (Annex 2), which entered into effect in February 2003. The Law was amended several times, the last being in July 2006 before accession to the European Union. The objectives of this law are expressed as the prevention and disclosure of activities of individuals, corporate bodies, groups and organisations occupied in financing terrorism. The mechanism for freezing assets and funds was described as an administrative procedure. The authority which enforces this law is the Ministry of Interior.

261. LMFT provides for the listing and delisting of the persons on the United Nations Security Council Resolutions 1267 and 1373, European Union lists and other countries' lists, as well as for the freezing and unfreezing mechanisms. According to Article 3, the measures under this law shall be:
    1. freezing cash resources, financial assets and other property (freezing is described in the law as having the effect of a "distraint or interdiction");
    2. prohibition of providing financial services, financial assets or other property.

262. An amendment to the law in 2005 required persons who had implemented the freezing measure immediately to notify the Minister of Interior, the Minister of Finance and CEPACA.

263. At the time of the on-site visit, shortly after European Union accession, this procedure was still in place, notwithstanding the direct applicability of Council Regulation 2580/2001. From 2003, Bulgaria has been designating European Union internals, and at the time of the on-site visit were continuing to do so, whilst they decided how best to handle the whole designation issue post European Union accession.

The listing and freezing procedure

264. LMFT provides in Article 5 the obligation of the Council of Ministers to adopt and update a list comprising two categories of persons, as follows:
    - individuals, corporate bodies, groups and organisations named by the Security Council of the United Nations Organisation, connected with terrorism or regarding whom have been imposed sanctions for terrorism by a resolution of the Security Council of the United Nations Organisation;
    - persons against whom prosecutions have been initiated for terrorism, financing terrorism, formation, leading or membership in an organised criminal group whose objectives are terrorism or financing terrorism, preparations for terrorism, obvious instigation of terrorism or threat of terrorism according to the Criminal Code. The list may also include persons named by the competent bodies of another country or of the European Union. The list is publicly known and is based on a decision of the Council of Ministers, published within the Official Gazette of Bulgaria, immediately after adoption.

265. The procedure is the Foreign Office receives designations from the United Nations etc. and passes them to the Ministry of the Interior, which arranges for a proposal by the Minister of the Interior (or the Chief Prosecutor) to the Council of Ministers for designation. The designation process takes as a maximum 1 week and is without prior notice to the designated persons.

266. Articles 6 – 8 of LMFT provide the freezing procedure. The provisions are quite broad: according to Article 6, all monetary resources, financial assets and other property of the persons included on the list, regardless of the owner of estate, as well as all monetary resources, financial assets and other property possessed or held by the persons included on the list, with exception of the possessions and rights that cannot be subject to execution, shall be frozen. These provisions are

said to cover the assets/values/monetary resources/other property wholly or jointly owned by the listed persons. The Bulgarian authorities consider that "regardless of the owner of estate" implies jointly owned funds or that other assets can be frozen / distrained. The freezing also applies to the monetary resources, financial assets and other property acquired after the promulgation of the list. Additionally, any newly acquired interests and other civil benefits from the frozen monetary resources, financial assets and other property shall be frozen.

267. Although, as noted, the provisions of Articles 6 – 8 are quite wide, the examiners would encourage the Bulgarian authorities to explicitly include the assets/monetary resources/other property directly or indirectly controlled by the persons on the list, as this aspect of the Security Council Resolutions is not reflected in LMFT.

268. Article 7 of LMFT prohibits any individual or corporate body from providing financial resources, financial assets or other property, as well as financial services to persons included in the list, excepting small transactions for satisfying the current needs of the person included in the list or of the members of his family. Article 8 provides the prohibition on transactions with the frozen assets/monetary resources/other property as well as the transactions for providing monetary resources, financial assets and other property to such persons. If such a transaction is carried out in violation of Article 8, the funds/assets/values granted to the transaction by the parties shall be forfeited to the benefit of the state. If any monetary resources, financial assets or other property, subject to seizing, are missing their equal value shall be adjudicated and frozen / distrained.

269. Although LMFT provides for "shall be frozen" and the team was assured by the public institutions that the freezing procedure is intended to be an automatic one, the examiners were not convinced that all the reporting entities which are compelled to comply with LMFT provisions are fully aware of the automatic system of freezing. The examiners received different answers from several reporting entities. Some were unclear whether their duty on finding a match was to block funds and simply notify the Ministry of Finance (FIA) of the blocking or only to report the match to the Ministry of Finance (FIA) with a view to an administrative freezing by the Minister of Finance. This needs clearer guidance. Similarly, some reporting entities which the examiners met advised that the list is provided to them through the FIA or through the supervisory body. Others said that they periodically check the UN website and the international lists by themselves for any updates. The communication channels in respect of listings also need clarifying.

270. The examiners encourage the Bulgarian authorities to further address these issues. On the positive side, almost all reporting entities the team met acknowledged that they are comparing the lists they receive with their own customer data bases.

271. The law explicitly provides for the obligation of the reporting entity which applies the freezing procedure under LMFT to immediately notify the Minister of Interior, the Minister of Finance and CEPACA about the measure taken (Article 3). Due to the fact that in practice there were no matches found and that not all reporting entities are aware that the freezing obligation is formally on them, the examiners cannot say that the provisions of Articles 3 and 6 are properly enforced in practice. It should be noted, however, that 69 matches were checked but they were all false matches.

272. *The delisting procedure* is provided in Article 5, Para. 6 and 7, of LMFT. The persons on the list may challenge (by an appeal) the decision of the Council of the Ministers through which they were included on the list. The request is addressed to the Supreme Administrative Court. The appeal shall not prevent the enforcement of the appealed act. A copy of the decision of the Supreme Administrative Court which adjudicates on the complaint under Para. 5 would be sent to the Council of Ministers. The Council of Ministers should then immediately introduce the necessary amendments, and publish its decision immediately in the Official Gazette.

273. When the grounds for including a person on the list have been removed, the Minister of Interior or the Chief Prosecutor, at their initiative or on request of the interested persons, within 14 days

from acknowledging the grounds for removing from the list, shall file a proposal with the Council of Ministers for deletion of this person from the list. The decision of the Council of Ministers which amends the list shall be immediately published in the Official Gazette. According to Article 12 of LMFT, the freezing measures shall cease within 7 days of the publication in the Official Gazette of the decision of the Council of Ministers by which the individuals or the corporate bodies, the groups and the organisations were deleted from the list.

274. LMFT does not explicitly provide for a procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. However, there is a general civil procedure for complaints (Article 97 of the Civil Procedure Code) which the Bulgarian authorities indicated would be applicable to this situation. The examiners nevertheless encourage the Bulgarian authorities to consider providing for such procedures when future amendments are being prepared.

275. The Bulgarian legislation has implemented access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses. Article 6, Para. 4 - 6, provides that the Minister of Finance may allow payment or other administering activities with the frozen monetary resources, financial assets and other property when it is necessary for:
1. therapy or other pressing humanitarian needs of the person who property has been frozen, or of a member of his family;
2. payment of liabilities to the state;
3. payment of labour remuneration;
4. obligatory public insurance;
5. meeting necessities of the individuals included in the list and of the members of their families.

276. The authorisation under Para. 4 above shall be issued for each individual case on the basis of a reasoned application of the interested person, and when it regards payment of liabilities to the state, also by the initiative of the Minister of Finance. The Minister of Finance shall announce his decision within 48 hours from receiving the application. The refusal of the Minister of Finance to give authorization according to Para. 4 may be challenged (by an appeal to the Supreme Administrative Court). Additionally, the prohibition on providing funds, financial assets or other property, as well as financial services to persons included in the list, shall not apply to ordinary, minor transactions aimed at meeting current needs of the natural person, or of the members of his/her family.

Freezing, seizing and confiscating in other circumstances

277. If a person is being prosecuted for terrorist financing, the Bulgarian authorities indicated that they would follow the provisions described earlier in respect of freezing, seizing and confiscating. Under the general criminal law, it is understood that the collected or provided funds for a terrorist act could be seized in the investigative stage as an object which served for the perpetration of crime or as a direct object acquired through crime. Under the general Criminal Law it is understood that confiscation of collected or provided funds is thus possible as objects of the offence regardless of whether they are funds of originally lawful origin. However, the practical enforcement of these provisions clearly depends on the way the prosecutors and judiciary deal with the third party confiscation

278. In practice now it is also assumed that in cases, where the funds collected or provided (which are of significant value), CEPACA could pursue the funds from lawful sources or otherwise through the civil procedure under the Law on Forfeiture of Proceeds of Crime (Civil Confiscation) as Article 108a, Para. 2, offences are covered in section 1 of this Act. The problems of transfer to third parties should not be an issue in a CEPACA procedure.

279. In urgent cases, when it is the only possibility of freezing monetary resources, financial assets or other property of a person, for whom information exists that he is preparing to commit a terrorist

act, the Minister of Interior may, by a written order, order the freezing of monetary resources, financial assets or other property for a period of up to 45 working days from the day following the day of issuing the order. The Minister of Interior shall immediately inform and submit all necessary information to the prosecution. This order may be challenged before the Supreme Administrative Court. The Supreme Administrative Court shall rule on the appeal within 24 hours from its submission. The appeal shall not stop the immediate enforcement of the order. The persons obliged to fulfil the order shall be considered informed from the date of receipt of copies of them. This procedure is provided by the law and has been applied once in 2006.

280. Article 8 Para. 5 of LMFT provides that third parties acting in good faith who claim independent rights to blocked/frozen funds, financial assets and other property may bring their claims within six months after the publication in the official Gazette of the decision of the Council of Ministers for the adoption, supplementing or modification of the list. This is consistent with the standards in Article 8 of the Terrorist Financing Convention.

281. A Multidisciplinary Working Group on the implementation of UNSC Resolution 1373 (2001) was established in the beginning of 2002. This Working Group is chaired by the deputy Minister of Interior and has members from following state bodies - Ministry of Justice, Ministry of Foreign Affairs, Ministry of Defence, Ministry of Transport, Ministry of Economy, Ministry of Health, Ministry of Interior (Border Police, Chief Directorate for Combating Organised Crime, National Security Service, Gendarmerie), Bulgarian National Bank, Supreme Prosecutors Office. The examiners were advised that this task force deals with monitoring compliance with relevant legislation, rules or regulations governing the obligations under SR III, at a policy level. The supervisory authorities include compliance with LMFT in their supervisory checks and breaches of the detailed provisions of LMFT are sanctionable administratively by the Ministry of the Interior with fines in respect of individuals ranging from 2000 – 5000 BGN or 20,000 – 50,000 BGN as a property sanction in relation to corporate bodies or sole entrepreneurs. The supervisors are obliged to notify the Ministry of Interior of breaches of LMFT. So far no person has been sanctioned in this respect.

Additional Elements

282. Some parts of best practices outlined in the Best Practices Paper for SR.III are implemented. However, consideration should be given to improving the communication channels with the private sector, particularly DNFBP. Consolidated lists in user friendly form are not provided and contact points and support mechanisms are not in place.

283. As noted, procedures are in place under Article 6 (4) for the Minister of Finance to permit necessary basic expenses in line with Article 1 (a) of UNSCR 1452 (2002). The Bulgarian authorities advised that in the case of extraordinary expenses, which require the consent of the United Nations Al-Qaeda – Taliban Sanctions Committee, before authorisation there would be diplomatic communication between the Bulgarian authorities and the United Nations.

Statistics

284. There were no persons/entities and assets frozen pursuant to or under U.N. Resolutions relating to terrorist financing in Bulgaria. Recently, in 2006, FIA received 2 STRs under the LMTF, but the cases are still in the operational stage. The lack of any frozen assets raises questions as to the effectiveness of the mechanisms currently.

2.4.2 Recommendations and comments

285. There is a basic legal structure in place for prompt determination of freezing orders and a clear legal authority for designations, though the Bulgarian authorities will need to reassess their regime now in the light of European Union membership. If reliance is placed on European Union

mechanisms a domestic procedure will still be required for European Union internals. The LMFT provides for "shall be frozen" and the team was assured by the public institutions that the freezing procedure is an automatic one. The examiners were, however, not convinced that the reporting entities which are compelled to comply with LMFT provisions are aware of the automatic system of freezing.

286. There were no clear provisions regarding the procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

287. The effectiveness of the enforcement side should be further improved.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**Largely Compliant**	• Although LMFT provides for "shall be frozen" and the team was assured by the public institutions that the freezing procedure is an automatic one, the examiners were not convinced that all the reporting entities which are compelled to comply with LMFT provisions are aware of the automatic system of freezing. • Law does not cover assets controlled by listed persons. • No specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. • Concerns with regard to effective implementation in the non-banking sector.

2.5 The Financial Intelligence Unit and its functions (R.26, 30 and 32)

2.5.1 Description and analysis

288. The Bulgarian Financial Intelligence Agency (FIA) was established according to Article 10 of the LMML as an administrative type FIU with its own budget responsible to the Minister of Finance. The FIA is responsible for receiving, analysing and disclosing information related to money laundering and terrorism financing, gathered in accordance with the terms and conditions of the LMML (Article 11 and Art. 18) and LMTF (Article 9). It became operational in October 1998 as a division of the Ministry of Finance. Since 2001 it became an autonomous, independent administrative body with a legal personality, reporting to the Minister of Finance.

289. FIA, as well as carrying out its responsibilities as an FIU, continues to undertake a leading role in the development, coordination and implementation of the AML/CFT system. It was noted by the examiners at the time of the on-site visit that the system, as a whole, is quite well integrated: joint inspections with the prudential supervisory authorities take place[10]; there is a police liaison officer attached to the FIA; there are multi-agency groups working on major criminal cases, several joint working groups co-coordinating policy and operational practice. The FIA is fully involved in all these activities.

290. In performing its activities as an independent administration, under the Minister of Finance, FIA receives, obtains without limitations, analyses and discloses information to relevant bodies. FIA also undertakes AML/CFT on-site supervisions of all reporting entities. STRs received basically arise from the banking sector and the Customs Administration.

291. The FIA is adequately structured to perform its tasks. It has three directorates: Financial and Economic Activities Directorate (general administration), Money Laundering and Terrorism Financing Information Directorate and Inspectorate Directorate (specialised administration). The functions of the directorates are determined by the Organic Regulation of the FIA (Annex 7). The common administration is organised in the Financial and Economic Activities Directorate. The Money Laundering and Terrorism Financing Information Directorate, among others activities, carries out financial intelligence analysis of the cases under LMML and LMTF, collects additional information and draws a conclusion whether the initial suspicion was confirmed, exchanges information with the financial intelligence services and other states' bodies competent in that field on cases and suspicions of money laundering and terrorism financing etc. The Inspectorate Directorate, among other activities, carries out on-site inspections (independently or jointly with other supervisory agencies) of all the reporting entities on the implementation of the measures against money laundering and terrorism financing, as well as where suspicions of money laundering and terrorism financing exist.

The Organic Regulation of the FIA presently provides for 44 employees with its last amendment in August 2006.	**2004**	**2005**	**2006**	
			May 2006	August 2006
Total	**34**	**36**	**34**	**44**

[10] Due to the recent legislative changes relating to the FIA (see footnote 2) on-site inspections performed by Bulgarian FIU were temporarily frozen for the first two months of 2008. During this period the supervisory authorities continued to perform their AML/CFT supervision of the credit and financial institutions. Joint inspections have now been resumed.

Director	1	1	1	1
Chief Secretary	1	1	1	1
Information Security Officer	1	1	1	1
Common administration	6	6	6	6
MLTF Information Directorate	15	16	15	15
Inspectorate Directorate	10	11	10	20

292. Of that number 15 employees work within Money Laundering and Terrorism Financing Information Directorate as analysts with adequate experience and University degrees and 20 employees work within Inspectorate Directorate as on-site supervision inspectors with adequate experience and University degrees and all are of high integrity and appropriately skilled. They observe the provisions of FIA`s Ethics Code.

293. Recently FIA renovated its IT-resources. The Ministry of Finance purchased part of the equipment, and the other part was delivered by a Phare investment project (2006). After the 2nd round evaluation FIA enhanced its IT facilities through analytical software - Analyst's Notebook Version 5 and Version 6 of i2 Ltd. (UK), sponsored by the British Embassy in Sofia and under the Phare investment project. The software rsCASE (case management) was delivered and installed under the above mentioned Phare investment project too. Apart from that FIA has in-house developed software systems for registration of information received by FIA under the LMML/LMFT and statistics. The current network architecture features enhanced security through two network rings (optics) preventing external access to classified information. The systems are built around a total of 7 servers (some supplied recently under Phare investment project) and network equipment. FIA has a total of 50 PCs. Facilities for electronic exchange of information with reporting entities are in place. Currently the vast majority of CTRs under Article 11a of LMML are delivered electronically. In relation to international exchange of information FIA is connected to the Egmont Secure Web and participates in the FIU.NET.

294. All FIA`s employees receive training for combating money laundering and financing of terrorism both domestically and abroad. They participate in training seminars of international organisations dealing with these issues, e.g. Council of Europe, European Union – Phare or TAIEX projects, IMF workshops and USAID. The FIA completed successfully 18 months Twinning Project with Spanish Institute for Fiscal Studies (2003-2004) on AML where FIA officers, tax and customs officers, law enforcement, prosecutors and judges took part in various workshops and seminars and received knowledge on EU practice and standards in the AML field. This project included also several study visits to some EU MS. Authorities of Spain, France, Italy, Denmark and Ireland shared their knowledge with representatives of the Bulgarian FIU, FSC, Customs, BNB, law enforcement and magistrates. This project was followed by Twinning Light Project with North Ireland NI-CO, dedicated to the work and training with non financial reporting institutions such as lawyers, notaries, accountants, political parties, real estate agents. FIA had also two days training under TAIEX program for FIA analysts, law enforcement on AML issues and practice of EU MS. FIA officers took part in the workshops of IMF, organised in 2004, 2005, 2006 within the Vienna Joint Institute on AML, CFT, IT for FIUs issues and in Syracuse 2006. The FIA analysts received training under the US projects – US Department of Treasury, Office of technical assistance organised in 2004 a series of 6 workshops on financial crimes. This was followed by similar workshops in the second half of 2006 and in early 2007 (for analysts and inspectors).

295. Guidance to financial institutions and other reporting entities under the LMML regarding the manner of reporting, including the specification of reporting forms and the procedures to be followed when reporting, apart from the relevant provisions in the law, is given with the Methodological Guidelines issued by the FIA . The FIA also elaborates, together with respective self-regulating bodies, Unified Internal Rules on the Implementation of LMML and LMTF. The Methodological Guidelines and Unified Internal Rules are published on the FIA`s website. FIA also provide methodological assistance to reporting entities by trainings if requested. The FIA`s Director General adopted reporting forms for reporting entities. The reporting procedures are

regulated in the Regulations on the Implementation of the LMML. The FIA provides feedback to some reporting entities on a case-to-case basis (e.g. a bank is informed that an STR is sent to the police) including instruction how to proceed with the client when an STR is sent.

296. The FIA has access to financial, administrative and law enforcement information, so as to properly undertake its functions and analyse the STRs. It has direct access to the Trade Register in relation to the information regarding companies registered in Bulgaria, shareholders, directors etc. There are no legal limitations in requesting and approaching different governmental databases. It was advised that the time needed for gaining data indirectly is satisfactory so there have been no consideration of the need for further direct access.

297. The FIA always has the right to obtain additional information from the reporting entity that made the notification to FIA under Article 11 of the LMML. With regard to its analysis of notification, the FIA can demand information from any reporting entity including the Bulgarian National Bank and credit institutions under Article 13 LMML. It should be noted, however, that the FIA has to receive a written notification (e.g. an STR, international request for information etc.) in order to request additional information from the BNB and credit institutions.

298. Article 13, paragraph 1 and 2 of the LMML are both addressing the obtaining of additional information from the reporting entities. Article 13, Para 2 concerns credit institutions. Article 13, Para 3 concerns all other reporting entities. However, in practice there are no differences concerning the FIU's access to additional information from all reporting entities. The Bulgarian authorities explained that in order to maintain the structure of the LMML (which was in force before amendments in 2006), it was decided to maintain the former provision in Art. 13 (1), while adding Art. 13 (2).

299. The demanded information shall be delivered within the time limits specified by the Agency. The Financial Intelligence Agency requests from the government and municipal bodies information needed and that information cannot be refused. The requested information shall be delivered within the time defined by the Agency. The Financial Intelligence Agency shall have the right of gratuitous access to the information registers built up and maintained by state budget funds. The submission of the information could not be denied or limited for reasons of professional, banking or commercial secrecy. It was stated by the Bulgarian authorities that infringement of Article 13 of the LMML (non-delivering requested information) can result in punishment even for governmental institutions.

300. The FIA has access to law enforcement information indirectly through its liaison officer within the Money Laundering Unit of the Chief Directorate for Combating Organised Crime of the MoI. There are no limitations regarding police data. The same liaison officer is also responsible for organising joint (MoI-MF) working groups on concrete cases. The FIA considers this approach satisfactory and efficient.

301. FIA is also authorised to collect banking, criminal, commercial and other information on behalf of its counterparts. FIA is not restricted by any kind of secrecy when collecting such information.

302. Article 12 (4) of the LMML provides for disclosing of FIA findings to the Prosecution authorities or the respective security and public order service whilst keeping the anonymity of the reporting institutions and its employees, who have filed the information under the provisions of LMML. In practice, according to the agreed cooperation procedure, the referral with the relevant documents attached is sent directly to the police (Chief Directorate for Combating Organised Crime, GDBOP) with a copy of the referral to the prosecutor's office. Further Article 11c provides that the FIA and the security and public order services shall exchange classified information related to their respective legal functions. Decisions regarding the scope of information to be shared shall be made on a case-by-case basis by the Director of the Financial Intelligence Agency and the respective director of the security and public order services.

303. According to Article 9 of the LMTF, the director of the Financial Intelligence Agency shall immediately inform the Minister of Interior, when there is a suspicion that certain operations or transactions are directed to terrorism financing. In the year 2006 there have been only 2 STRs related to the TF and one related freezing case. The freezing case was triggered by an STR concerning a company listed in the OFAC list and the Bulgarian FIU postponed the operation.

304. If there is a suspicion of money laundering, the Minister of Finance upon a proposal by the Director of the Financial Intelligence Agency may suspend by an order in writing a certain operation or transaction for a period of up to three workdays, following the day of issuing the order. The Financial Intelligence Agency shall immediately notify the Prosecutor's Office about the suspension of the operation or transaction. It was explained that the signature at the level of Minister of Finance did not slow down the process. The Minister's signature is based completely on the work undertaken by FIA.

305. In urgent cases, when it is the only possibility of freezing monetary resources, financial assets or other property of a person, for whom the information exists that he is preparing to commit a terrorist act, the Minister of Interior may, by written order, order the freezing of monetary resources and financial assets for a period of up to 45 working days from the day following the day of issuance of the order.

306. The orders of the Minister of Interior may be appealed to the Supreme Administrative Court, who shall rule on the appeal within 24 hours from its filing.

307. The FIA has sufficient operational independence. Its director reports to the Minister of Finance on the activities of FIA, but the Bulgarian FIU has full operational independence. The LMML prohibits FIA's Director General to be instructed how to perform his duties (Article 10, Para 11 of the LMML and Section II of the Organic Regulations of FIA contain provisions on this issue.)

308. Article 15a of the LMML provides that FIA may use the information that are covered by official, banking or commercial secrecy as well as protected personal information received under the reporting obligations only for the purposes of the LMML. The employees of the FIA, the Chief Inspector of the Financial Intelligence, and other employees who may be involved with specific tasks in relation to the LMML cannot disclose, use for personal favour or in favour of persons related to them, information and facts, that are covered by official, banking or commercial secrecy, which have become known to them while exercising their official duties. They sign a declaration of confidentiality of information they handle. Written and practical procedures are in place to securely protect information received in accordance with the LMML.

309. FIA issues annual reports, which include statistics, typologies and trends which are published on its website. The FIA Director General and his media adviser usually present the report at press conferences. The FIA´s director or employees may also be interviewed by the media on particular issues of great interest in the field of ML/TF counteraction in coordination with the Ministry of Finance. The FIA has a very proactive media relations policy.

310. The Bulgarian FIU has been a member of the Egmont Group since May 1999 and it actively participates in the Legal Working Group and other Egmont Group initiatives[11]. It hosted the Autumn Egmont Group Working Group meetings in October 2005.

311. The FIA has regard to the Egmont Group Statement of Purpose and its Principles for Information Exchange between FIUs for money laundering cases. It fulfils all three core function (receiving, analysing, disseminating STRs). The FIA co-operates and exchange information with all foreign counterpart FIUs of any type (judicial, police, administrative) without additional need for formal MoUs.

[11] Since the beginning of 2008 the connection of the Bulgarian FIU to the Egmont Secure Web was frozen. It is expected by the Bulgarian authorities that the connection will be reinstated after the Egmont Legal Working Group has considered the Bulgarian legal AML/CFT framework in March 2008.

312. The STRs received according to the LMML and the LMTF (the Law on Measures Against Terrorism Financing):

General number of received STRs

Year	2003		2004		2005		2006	
	LMML	LMTF	LMML	LMTF	LMML	LMTF	LMML	LMTF
General Number	276	0	432	0	680	0	374	2

STRs according to the specific entities

Year: 2003 Category of Reporting Person	No of STR	%
BNB	3	1,09
Banks	156	56,52
Insurers	9	3,26
Investment intermediaries	5	1,81
Privatisation Bodies	4	1,45
State and municipal bodies organizing public procurement	3	1,09
Persons organizing games of chance	10	3,62
Notaries Public	12	4,35
Political parties	1	0,36
Non Profit Organisations	1	0,36
Tax authorities	19	6,88
Customs authorities	17	6,16
Dealers in weapon, petroleum and petroleum products	1	0,36
Pursuant to Art. 18 Para.2 LMML	24	8,70
Supervisors	11	3,99
Total number for 2003:	276	100,00

Year: 2004 Category of Reporting Person	Number of STR	%	Sum in EUR
Banks	199	46,06%	64770497
BNB	1	0,23%	0
Tax authorities	11	2,55%	2057312,78
State and municipal bodies organizing public procurement	1	0,23%	634104,34
Insurers	8	1,85%	131733,86
Investment intermediaries	1	0,23%	13534
Persons dealing in real estate intermediation	1	0,23%	0
Persons dealing in precious metals, stones etc.	1	0,23%	0
Persons providing legal consulting	6	1,39%	237088,73
Persons organizing games of chance	11	2,55%	197463,01
Customs authorities	73	16,90%	13834203,64
Notaries Public	25	5,79%	1989839,318
Privatisation Bodies	10	2,31%	23179443,8
Supervisors	39	9,03%	1285111,93
Pension Funds	1	0,23%	460162,8

Pursuant to Art. 18 Para.2 LMML	36	8,33%	6621564,58
Political parties	1	0,23%	0
Wholesale dealers	2	0,46%	1076831,8
Dealers in petroleum and petroleum products	2	0,46%	0
Non-profit organisations	3	0,69%	17179411,2
Total	432	100,00%	133668302,8

Year 2005

Category of Reporting Person	Number of STR	%	Sum in EUR
Year: 2005			
Banks	263	38,68%	124421875,8
Tax authorities	38	5,59%	12258568,09
Insurers	1	0,15%	
Persons dealing in real estate intermediation	1	0,15%	6905243,3
Persons dealing in precious metals, stones etc.	1	0,15%	17600
Persons providing legal consulting	1	0,15%	51129,2
Customs authorities	307	45,15%	64974602,69
Notaries Public	9	1,32%	486612,64
Privatisation Bodies	8	1,18%	24720917,58
Pursuant to Art. 18 Para.2 LMML	44	6,47%	70836966,09
Postal Services	6	0,88%	535148,21
Sport Organisations	1	0,15%	2666600
Total	680	100,00%	307875263,6
Requests from Supervisory bodies	41		

Year 2006

LMML			
Category of Reporting Person	Number of STR	%	Sum in EUR
Year: 2006			
Banks	267	71,39%	123082771,8
Tax authorities	21	5,61%	21739581,34
Persons dealing in precious metals, stones etc.	1	0,27%	3000
Persons organizing games of chance	8	2,14%	212936,87
Customs authorities	49	13,10%	18923168,01
Non-banking financial institutions – financial houses	1	0,27%	16537,12
Notaries Public	1	0,27%	580000
Privatisation Bodies	6	1,60%	2389043,29
Pursuant to Art. 18 Para.2 LMML	18	4,81%	32171310,12
Central Depositary	1	0,27%	0
Non profit organisations	1	0,27%	199397
Total	374	100,00%	199317745,6
[Postal services	0		

Requests from Supervisory bodies	**35**		
LMTF			
Category of Reporting Person	**Number of STRs**	**%**	**Sum in EUR**
Year : 2006			
Banks	**2**	**100,00%**	**9900**
Total	**2**	**100,00%**	**9900**

313. The tables show a decrease of STRs in 2006. This is due to the fact that the Customs Agency decided to include several STRs in one notification to the FIU instead of sending them as separate STRs. For this reason the decrease in STRs for 2006 is considered to be rather a statistical than a real decrease in STRs.

314. The monthly average of STRs from banks appears to be low. The FIA has explained that the quality of the STRs from banks is high and this is why the banks do not tend to report as frequently as might be expected. STRs from non-banking financial institutions are extremely low which may be explained, in part, by the recent emergence of the financial intermediaries services and the low number of their operations compared to the total number of operations in the financial sector. Law enforcement confirmed that in general the quality of STRs is good. No additional information is normally needed to start law enforcement activities. From the statistics it appears as only half of the STRs are passed on to law enforcement. In practice, a higher percentage of STRs were referred to law enforcement as many law enforcement activities involve multiple STRs related to the same case or conduct.

315. The FIA described that the Head of the Analysis Division prepared analytical reports every year on the quality and quantity of STRs received by the FIA for assessing the efficiency of the system.

316. There is a system in place of reporting cash transactions in excess of BGN 30 000 (approximately 15 000 EUR). The cash transaction reports are received by the FIA and used as an additional database when conducting analyses on received STRs.

CTRs (cash operations exceeding 30 000 BGN or its equivalent in foreign currency)

2003	2004	2005	2006
N/A	138 035	145 779	225 310

317. No notification to law enforcement are based purely on CTRs. The FIA uses the CTR database as an additional tool for analysing STR.

318. The table beneath shows the cases passed by law enforcement. The decision-making process is taken by the Head of the FIA depending on the underlying facts for each case. Previously there were no formal rules. After the signature of the Instruction on cooperation between Supreme Prosecutors Office of Cassation, Chief Directorate for Combating Organized Crime-MoI and FIA, it is provided that all FIA referrals shall be send to the Chief Directorate for Combating Organized Crime-MoI and copied to the Supreme Prosecutors Office of Cassation.

Number of signals/ referrals/ information sent by FIA to prosecutors` office /MoI services

	2003	2004	2005	2006
Prosecutors Office	**115**	**19**	**69**	**11**
MoI	**86**	**47**	**251**	**261**

The speed of processing of particular cases depends on its priority (high, middle, low). A special committee comprised of FIA officers decide on the priority of the cases based on written internal procedures and give an initial assessment on the priority. The final decision is taken by the Director of the FIA. The analyst who is working on the case will then proceed in light of the assigned priority.

Number of finished operational files, which have been started in the same year

Year	**2003**	**2004**	**2005**	**2006**
Number	69	109	139	109

319. As noted earlier, the Minister of Finance, upon a proposal by the Director of the Financial Intelligence Agency may suspend by an order in writing a certain operation or transaction for a period of up to three working days.

320. In 2006 the Minister of Finance postponed by request of the FIA, 5 financial operations in financial sector, amounting to 1 915 133 Euros. In the first 3 months of 2007, one further financial operation, amounting to 1 117 957 BGN was postponed. In all these cases the court issued further distraint orders.

321. The FIA is an active member to the Egmont group. It exchanges all relevant data with foreign counterparts. It also uses the FIU.net.

Number of international FIU requests	2000	2001	2002	2003	2004	2005	2006
received	24	22	46	86	97	93	82
sent	69	67	130	255	261	341	414

322. Basically the FIA does not support statistics on spontaneous notifications sent abroad. Some of the requests for assistance might be regarded as spontaneously sent notifications, because the foreign FIU started its own processing which resulted in a notification to their law enforcement authorities. The statistics for the sent requests (also for the received) contain only the number of new requests initiated by FIA and on many of these requests there is additional correspondence that is not included in the table

2.5.2 Recommendations and comments

323. Although there appear to be no problems in obtaining Tax and Customs data, consideration could be given to enhancing the data exchange system by ensuring direct, on-line access to these databases, especially as all the information is in the Ministry of Finance.

324. Bearing in mind that the FIA suspension of certain operations or transactions is an urgent procedure, it could be considered to redefine the procedure to authorise the FIA to order the reporting entities directly, without formalisation of the Minister's signature, to avoid any delays, or, indeed, to review the necessity for a written procedure in particularly urgent cases.

325. Cases passed to law enforcement have increased since a dip in 2004. It appears that a large number of cases are now passed to law enforcement, while the numbers of STR from the banks are not that great in numbers and range between 156 and 267.

326. The speed of processing the operational cases depends on its priority.

327. The FIU appears well resourced and very much at the centre of the Bulgarian AML/CFT system. It was clearly a well organised and well structured unit taking independent decisions. It finds its place in preventive area at both strategic and operational level. It is recognised by the reporting entities as a relevant central AML system authority. The FIU is well coordinated with law enforcement agencies. Although not statistically shown, it is obvious that results of the FIU work presents major and relevant bases for law enforcement money laundering investigations in general.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	**Compliant**	

2.6 Law enforcement, prosecution and other competent authorities – the framework for the investigation and prosecution of offences, and for confiscation and freezing (R.27 and 28)

2.6.1 Description and analysis

Recommendation 27

Law enforcement authorities

328. The new Law on the Ministry of the Interior, which was adopted in May 2006 demilitarized the staff of the Ministry of Interior. The officers who had military status became state employees. The new law regulates the principles, activities, structure, management bodies, and special tools to be used for national security protection and for prevention and countering of crime and securing the public order in the Republic of Bulgaria.

329. The main structural units of the Ministry of Interior are the National Services; the Specialised Directorates; the Ministry of Interior's Academy; the Ministry of Interior's Science Institutes.

330. The National Services are: National Security Service, National Police Service, National Fire Safety and Protection of Population Service.

331. The National Police Service consists of the General Directorate "Police" and Regional Directorates "Police". The General Directorate structure consists of Chief directorates and directorates. The former National Service for Combating Organised Crime is currently the Chief Directorate for Combating Organised Crime (Bulgarian acronym "GDBOP").

332. There are four institutions relevant to specific parts of law enforcement activities. Firstly, there is the National Security Service which is responsible for intelligence work and "operative checks" in the field of terrorism and organised crime related activities. Secondly, the specialised Directorate of the National Police Service for combating organised crime, Chief Directorate for Combating Organised Crime "GDBOP" which is responsible for "operative checks" and police

investigations of serious crimes. "Operative checks" are the non-formal pre-phases of investigating crime when there is not enough suspicion that a crime has been committed to begin formal proceedings. In the operative checks phase evidence cannot be collected but grounds of suspicion can be established or rejected. It is a level of criminal intelligence. Thirdly, the National Investigation Service (NIS) is responsible for (preliminary) investigations of specific types of crimes. Generally, (preliminary) investigations are undertaken by (NIS) investigators and police investigations by the police investigators. Both, investigation and police investigation, are of the same level but related to two separate authorities that undertake investigations. And fourthly the institution - relevant for prosecution – is prosecution service in general.

National Security Service (NSS)

333. NSS is the specialised counter-intelligence and information service of the Ministry of the Interior responsible for protection of national security with no police powers. International terrorism and organised crime present threats to the national security, and are therefore within their remit.

334. In the period 2005 - 2007 NSS made 101 clandestine financial profiles of terrorism suspects on their own initiative. However, no direct links with criminal activities were established. It was stated that several additional cases (checks) are going on. In creating financial profiles, NSS is authorised to use several sources: Tax, Customs, loans information, money transmitters, real estates registers, central depository, and they cooperate with the FIA.

335. NSS cooperates with FIA on operational cases or checks on people and organisations suspected for performing ML/TF- related financial activities. There is a special Instruction for cooperation between NSS and FIA detailing the modalities of data exchange. NSS also supports the prosecution service by undertaking checks. Their Financial & Banking System and ML&TF Section serves as contact point for FIA. At the time of the on-site visit 97 requests have been sent from FIA to the NSS and 54 NSS requests have been sent to the FIA for further checks.

Chief Directorate for Combating Organised Crime (GDBOP)

336. The GDBOP in general is responsible for investigating money laundering cases. The organisation of the activities, the structure and the functions of the Chief Directorate for Combating Organised Crime is defined in the Regulation for Implementation of the Law on the Ministry of the Interior. Article 79 (1) and (2) of the Regulation for Implementation of the Law on the Ministry of the Interior define the activities of the GDBOP, while Article 80 defines the areas in which GDBOP will conduct these activities including the activities related to combating money laundering. The Regulation for Implementation of the Law on the Ministry of the Interior creates a special unit for combating money laundering within GDBOP, within its Economic Crime Department. The GDBOP special unit for combating money laundering cooperates with the Financial Intelligence Agency and the specialised sector for combating money laundering within the Supreme Cassation Prosecution Service and it has authority to prevent, detect and investigate money laundering.

337. Taking into account the two main phases of the police work (operative checks and investigations); there are two types of police officer authorised to investigate money laundering. For the phase of the "operational checks" there are 15 officers at the national level, and 2-3 officers within each of the 28 regional units (operational officers). They undertake preliminary and operative checks of data using informants and informal contacts with citizens. The prosecutor must be informed about their findings. If there is a need the prosecutor may requests additional checks. There are 15 operational officers at the GDBOP specialised countering money laundering section. Within regional units of the District Police Directorates of the major Bulgarian towns - Sofia, Varna, Burgas and Plovdiv there are 2 operational officers in each, and at the rest District Police Directorates there is 1 operational officer. The total number of the operational officers at the national lever is 47 specialised in detection of money laundering activity.

338. If there is a ground of suspicion that the offence has been committed, the prosecutor will initiate and coordinate formal police investigation (or NIS preliminary investigation). For the phase of formal police investigation, under the new Criminal Procedure Code (2006) some officers of the Ministry of Interior have the right to investigate crimes and to collect evidence that can be used in court. They are called inquest officers ("Doznateli"). There are 3 such money laundering specialists at the national central level (GDBOP) and 1-2 officers within each of the regional units. These officers work close with the prosecutor who coordinates their work. During investigation, these officers also cooperate with operational police officers. There are 21 inquest officers ("Doznateli") at the GDBOP, 2 of them are specialized in countering money laundering activity, and other 19 of them are competent to carried out investigation of money laundering crimes if in the course of investigation of common crime the data of the money laundering is arises**.**

339. An officer of the GDBOP money laundering unit serves as the liaison for the FIA and is responsible for exchanging relevant data needed for FIA work. This officer is also responsible for organising case working groups.

340. According to internal Instructions for cooperation, operational checks upon receipt of an FIA STR have to be conducted within 30 days and results should be sent to the prosecutor for further decision. In general, there are no time limits for the operational check phase but according to the internal police instructions; these can last as a maximum between 6 - 12 months.

341. Formal investigation is limited to 2-6 months according to the CPC. With a decision of the Prosecutor General this time limit may be prolonged.

342. The most usual predicate offences detected through the police work are smuggling of goods, false declaration of goods, VAT fraud and drug trafficking. There is often a need for coordination among several police units regarding the investigation of the predicate crime and conducting financial investigation. In general, police work is coordinated by the prosecutor. Internal coordination and division of work is the responsibility of the managerial level in respect of several units of equal levels in the police structures; or it is the responsibility of the national central level in respect of several regional units involved.

National Investigation Service (NIS)

343. The National Investigation Service is an independent judicial authority defined by the Judiciary Act and its jurisdiction is defined by Article 194 of Criminal Procedure Code: Investigation shall be carried out by investigators in cases of crimes against the Republic of Bulgaria, crimes committed by individuals enjoying immunity and criminal offences committed abroad. In cases other than these, investigation shall be carried out by police investigators. Their remit includes money laundering committed abroad and terrorist financing.

344. There is one national and 28 regional NIS units with total of 500 investigators. It was understood that many NIS investigators are assigned to work for the police.

345. The NIS has the same investigatory/police powers as police investigators. Unlike the police, they do not undertake "operative checks" but start investigations directly on request of the prosecutor. They cooperate directly with all relevant institutions during the investigations.

Prosecution Office

346. Under the Bulgarian Criminal Code the Prosecutor may draft an indictment and prosecute offences of a general nature as well as conduct an investigation and permanently control its timely execution according to the law, in his capacity of supervising prosecutor.

347. There is a special department established at the Supreme Cassation Prosecutor's Office dealing with organised crime and money laundering.

348. A website for the Prosecution Office was under construction at the time of the on-site visit.

349. With the Prosecutor's Ordinance from March 29, 2006 the Counter-Organised Crime and Corruption Department was established at the Public Prosecutor's Office with three sectors: Organised Crime, Corruption and Abuse of EU Funds and Anti-Money Laundering. Four prosecutors work in the sector in charge of money laundering, performing a supervising and controlling role during the checks made by signals from the Financial Intelligence Agency and during the money laundering proceedings as well as all other money laundering cases according to police information, information from the media etc. Similar structures were established in all Appellate and Regional Prosecutor's Offices and designated particular prosecutors to deal with such correspondence and cases.

350. The assigned prosecutors at the appellate and district prosecutor's offices try all cases of organized crime, corruption and money laundering that are supervised by the above mentioned department of the Supreme Prosecutor's Office of Cassation. There are no special divisions within the structures according to organized crime, corruption or money laundering. The total number of cases amount to 81.

351. The Bulgarian authorities explained that after receiving a report from the Police, the prosecutor can decide to request additional checks or decide who will undertake the investigation (i.e. the Police or the NIS). Domestic money llaundering cases are usually sent to the police and money laundering committed abroad to the NIS[12].

352. In conformity with the Guidelines for Cooperation, signed on July 07, 2006 between the Public Prosecutor's Office, the Financial Intelligence Agency and the Ministry of Interior, a possibility for the formation of joint working groups is provided for in cases of money laundering and terrorist financing. Such a possibility for joint action groups is also provided in the Guidelines for Cooperation, signed on September 25, 2006 between the authorities for establishing the criminal proceeds, authorities of the Ministry of Interior, the Ministry of Finance, the Public Prosecutor's Office and the NIS. The possibility for the formation of a permanent working group between the authorities of the Public Prosecutor's Office, the FIA and the GDBOP is being discussed. There are such joint checks and investigations. Coordination and meetings with the representatives of different authorities are performed daily in connection with investigations of the proceeds from money laundering, on exchange of information and necessary analyses are also executed. The prosecutor has a coordinating role over those groups.

353. The prosecutor is authorised to define concrete measures that have to be undertaken by the police, and to be present during the execution of the measures.

354. In major cases, such as money laundering, coordination meetings are held with the police, regional prosecutor and General Prosecutor's Office in order to assess progress and to set further targets and objectives.

355. The time limit for investigation is generally 2 months, though an additional 4 months can be obtained if the appellate prosecutor so decides and it can be extended if necessary upon a decision of the Prosecutor General. If seizure was made, after 2 years of extended investigations, the investigated person can request commencement of the trial or returning of the seized objects.

[12] According to the new CPC the money laundering cases are examined by the police; then the investigation services complete the cases for money laundering that had been opened under the former CPC. Under the new CPC Art.194a, on-going cases received from the newly established State Agency for National Security (SANS) shall be investigated by a prosecutor who can also assign the investigation or some actions of investigation to a NIS investigator.

Operational checks and investigations

period	total ML signals received	police operational checks performed		reports sent to the prosecutor	further investigation after prosecutor's decision	
2005	104	FIA signals	74	36	NIS	7
		other signals	30		GDBOP	2
2006	267	FIA signals	204	129	NIS	2
		other signals	63		GDBOP	13

"other signals" in the table reflects the number of ML signals received in police from other sources /mostly generated within police/; present statistic maintained in GDBOP register only two indictors - notifications from FIA and notifications from other sources – other police units or GDBOP itself**.**

Commission for Establishing of Property Acquired from Criminal Activity (CEPACA)

356. The Commission for Establishing of Property from Criminal Activity (CEPACA) was established in 2005. The activity of CEPACA is to identify and trace property, acquired directly or indirectly from criminal activity. CEPACA gathers the necessary evidence and carries out the legal proceedings in court during the proceedings for imposing injunction orders and deprivation of the property, acquired from criminal activity.

357. Within the investigation proceedings the criminal asset identification authorities (the territorial directors and the inspectors of the CEPACA) have the power to:
    - require explanations from the respondent;
    - appoint expert witnesses;
    - collect documentary evidence;
    - require from all persons as well as state and municipal authorities information and data, and perform particular activities relevant to the identification of the origin of the property and its value;
    - require the documents prescribed by law concerning the origin of the funds and the manner of acquiring and disposing of a legal person's assets;
    - collect and inquire into any other evidence relevant to the clarification of the origin of the property;
    - conduct actions for search and seizure under the rules of the Criminal Procedure Code when there are sufficient grounds to assume that certain premises or within a person there is property, objects, documents or computer information systems, containing computer data that might be relevant to the procedure under this law.

358. According to the Art. 16 section 2 of the Law on Forfeiture of Proceeds of Crime the criminal asset identification authorities, police, and investigation and prosecution services may carry out joint actions when necessary.

359. An Instruction No. 1 for Collaboration between the CEPACA, Ministry of Interior, Ministry of Finance, and the prosecution and investigation services was issued on the basis of which permanent contact points in each institution have been appointed.

360. In the Law on the Forfeiture to the State of Proceeds of Crime, it is stated in Article 18 (1) that " The bodies under Article 12, Section 9 shall verify: 1. the property acquired, the legal grounds for its acquisition, and its value; 2. the transformation of the property; 3. the income of the respondent; 4. the public-law debts to the Exchequer and to the municipalities paid by the

respondent; 5. the normal and exceptional expenses of the respondent; 6. the tax returns of the respondent; 7. any other circumstances relevant to the clarification of the origin of the property and the manner of its acquisition by the respondent, the members of his family and third parties."

361. Furthermore, it is stated in Article 18(2) that " In carrying out the inspection under Article 18, Section 1, the bodies under Article 12, Section 9 shall have the power to: 1.require explanations from the respondent; 2. appoint expert witnesses; 3. collect documentary evidence; 4. require from all persons as well as state and municipal authorities information and data, and perform particular activities relevant to the identification of the origin of the property and its value; 5. require the documents prescribed by law concerning the origin of the funds and the manner of acquiring and disposing of a legal person's assets; 6. collect and inquire into any other evidence relevant to the clarification of the origin of the property; 7. conduct actions for search and seizure under the rules of the Criminal Procedure Code when there are sufficient grounds to assume that certain premises or within a person there is property, objects, documents or computer information systems, containing computer data that might be relevant to the procedure under this law.

362. The CEPACA cannot launch proceedings by itself but upon information of pre-trial or prosecution authorities. Before commencement, the information must be checked if it meets the thresholds for CEPECA involvement (serious cases with significant value, offence from the list etc.). The offender must have been previously questioned as a suspect for offences on the list.

363. During 2006, 38 947 signals were checked (15000 from courts); only 100 met the statutory requirements. The very large number of signals received in 2006 is a result of the 5-year legal prescription period, to which the Commission abides by in its investigations, i.e. in 2006 CEPACA received signals for criminal sentences and ongoing criminal proceedings for the 5 previous years. Furthermore, many of the signals (the exact number is 13196) did not meet the criteria of Article 3 of LFPC, most probably because the pre-trial authorities and the prosecutors lacked practice in dealing with the new law. Many of the other signals had not resulted in the initiation of proceedings for establishing of criminal assets at the time of the on-site visit, because either the identified property did not meet the "significant value" criteria, or the preliminary investigation had not yet been completed. Furthermore the signals include all the offences under Article 3 of the LFPC, and not only money laundering and the financing of terrorism**.**

364. In undertaking proceedings, CEPACA may investigate up to 5 years before the offence and can investigate in respect of issues 25 years after the offence.

365. In 2006 the CEPACA has launched 100 proceedings, including 52 freezing orders and 12 procedures for civil deprivation of property. 2% of the CEPACA cases were money laundering related.

366. There are no formal provisions permitting the Bulgarian law enforcement officials investigating money laundering cases to postpone or waive the arrest of suspected persons and/or the seizure of the money for the purpose of identifying persons involved in such activities or for evidence gathering.

367. Law enforcement may decide to use special intelligence techniques or as a matter of discretion to postpone the arrest of suspected persons or the seizure of evidence in order to collect more evidence on the case. Controlled delivery of cash proceeds is permissible under Article 10a of the law. At present there is no practice related to money laundering under this provision of the law.

Additional elements

368. The law enforcement authorities may decide to use special intelligence means and techniques (SIMS) in order to collect more evidence on the case. The authorities of the preliminary investigation are empowered under Article 172, paragraph 1 of the Criminal Procedure Code to use special surveillance devices – technical and operational as well as controlled delivery,

"trusted deals"[13] and undercover officers when it comes to the investigation of particular crimes, including terrorist financing and money laundering. Presently, these special surveillance devices and controlled delivery are being successfully implemented. At the time of the on site visit there were no structures established concerning undercover officers as this possibility was adopted during 2006 with the promulgation of the new Criminal Procedure Code. There was, however, a case of using such an officer by another country.

369. SIMS are generally initiated by the prosecutor. A court order is needed for SIMS but it can be started without a court order but within 24 hours the court must be informed. Results of the first 24 hours cannot generally be used as evidence in the court but, exceptionally, the prosecutor may propose to the judge to use the first results. The total time for using SIMS is 2+6 months.

370. SIMS are undertaken by the special police directorate that also undertakes SIMS on behalf of the other authorities (e.g. military police).

371. Article 10 of the Law on Measures against Money Laundering (LMML) and the Instruction for Cooperation between the Ministry of Interior (MoI) and the Financial Intelligence Agency (FIA) regulate the establishment of temporary working groups for particular cases. The working groups consist of experts from the Ministry of Interior and FIA. Sometimes experts from the Bulgarian National Bank join these groups.

372. There is also a multidisciplinary task force (permanent inter-institutional working group for coordination) on ML/FT prevention that consist of representatives of FIA, State Commission on Gaming, Financial Supervision Commission, National Revenue Agency, Customs Agency, Ministry of Justice, BNB and MoI.

373. Furthermore there is a Bulgarian-American Financial Crimes Task Force for combating money laundering. It includes experts from GDBOP, National Security Service, Prosecution Service, National Revenue Agency, BNB, FIA, CEPACA, U.S. Treasury Department, U.S. Secret Service, and FBI. There are no legal obstacles for the use of the SIMS by the Bulgarian-American Financial Crimes Task Force, but the use of such special intelligence techniques should be performed under the Bulgarian legislation. There are three cases where the Bulgarian-American Financial Crimes Task Force worked and used such special intelligence techniques.

374. ML and FT methods, techniques and trends are reviewed by the competent authorities on a regular basis. Some reports or extracts on such studies were published on the websites of the state institutions.

Recommendation 28

375. The functions of the inquest officers are regulated in the Law on the Ministry of the Interior and the Regulation for Implementation of the Law on The Ministry of the Interior. Under Section V of the Criminal Procedure Code the inquest officers have the power to conduct searches of persons, searches of locations and to seize all kind of required documents. The materials, which are seized by the inquest officers, can be used in the pre-trial and trial proceedings.

376. A court order is not needed to establish the mere information that there is a bank account. The information, which is deemed bank secrecy, are facts and circumstances relating to the balances and operations on bank customers' accounts and deposits. Investigative bodies may obtain bank data by court order under the general provisions in Article 159 of the CPC. Since 1 January 2007 bank data information can also be obtained under provisions of the Article 62 of the Credit Institutions Act without a court order in specific circumstances. Article 62, Para. 10, provides that if there is a reason to believe that an organised criminal offence or money laundering has been committed, the Chief Public Prosecutor may require banks to submit the facts and

[13] Trusted deal is a fictitious deal concluded on property (sale or other deal) in order to gain the trust of the other party.

circumstances which are bank secrecy. The requests made to banks and the information received in response shall be kept in a register with the Chief Public Prosecutor and the BNB. Both types of orders are capable of being made in respect of historic and prospective data. It was unclear to what extent prospective orders had been made. Tax data can be obtained by a court order or upon request of the Police Director. It is stated that there is a draft provision for amending this obstacle since tax data is considered important information by the Bulgarian police. The prosecutor is authorised to obtain tax data directly.

377. The inquest officers have also the right to interview witnesses. It is regulated in Article 139 of the Criminal Procedure Code. The witness testimonies can be used in the pre-trial and trial proceedings of money laundering and terrorist financing, and other underlying predicate offences, or in related actions.

Recommendation 30

378. The training for MoI officers is performed as follows:
    1. Intensive general training on prevention and combating organised crime. This is a required part of the curriculum of the students at the Ministry of Interior Academy, who obtain a bachelor degree from the Academy.
    2. Every year (within 8 academic hours) the Ministry of Interior Academy conducts training targeted at the newly hired employees of the Ministry of Interior who will work on ML, FT investigations and cases.
    3. Twice a year, the Ministry of Interior Academy conducts three-day courses targeted at increasing the knowledge and qualifications of the police officers who work on ML, FT investigations and cases.

379. The employees of the Ministry of Interior also participate very actively in all international trainings, seminars and workshops related to: investigation of money laundering and financing of terrorism; exchange of experience; money laundering typologies; and tracing, freezing and forfeiture of assets.

380. The specialised police unit for combating money laundering has employees who are selected under the following criteria: university degree in Economics or Law; professional experience in banking, accounting, financial and tax law; minimum operational experience in investigating economic crimes; analytic skills; knowledge of the organised crime and the management of its financial flows; foreign languages; and computer skills. The specialised unit is equipped with hardware and software. Its budget is part of the budget of the Ministry of Interior. The administrative capacity of the units in the Chief Directorate for Combating Organised Crime working on money laundering and protection of the European funding was enhanced at the end of 2006.

381. With the Prosecutor's Ordinance of March 29, 2006, the Counter-Organised Crime and Corruption Department was established at the Public Prosecutor's Office with three sectors, one of which is Anti-Money Laundering. The employees of the specialised unit for combating money laundering have full access to classified information. They are appointed after the necessary security clearances and checks and examinations, as well as psychological status tests and physical ability tests. All these checks and examinations are verified with certificates and documents presented by the employees. The employees have an ethics code of conduct. According to Art. 126 (1) of the Law on the Judiciary, a person could be appointed as a prosecutor if he/she has only Bulgarian citizenship and fills following requirements:
    1. has master degree in law;
    2. has the required length of service and legal capacity;
    3. Has not been convicted and been subject to effective sentence for indictable crime;
    4. has necessary ethical and professional qualities following an assessment in accordance with the Rules on the professional ethics of the prosecutors, endorsed with Protocol Decision of Supreme Judiciary Council No.44/ 26.11.2003.

382. The members of the CEPACA have to be Bulgarian nationals who have full legal capacity, have not been sentenced for an intentional indictable offence, hold a university degree in law or in economics, and have at least five years of work experience in a relevant field. The chairperson of the Commission must hold a university degree in law.

383. The criminal asset identification authorities have access to classified information. They are appointed after compulsory security clearance.

384. In September 2006 the heads of the territorial directorates of CEPACA have passed Financial Profiling and Criminal Analysis Training organised by USAID. Representatives of the FIU, Supreme Prosecution of Cassation and Ministry of Interior also took part in this training.

385. In February 2007 training only for the criminal asset identification bodies (the inspectors of the Commission) on Financial Profiling and Criminal Analysis was held.

386. In December 2006 a twinning light project fiche prepared by CEPACA was granted. The project Strengthening the Investigation Capacity of Commission for the Establishment of Property Acquired from Criminal Activity aims at ensuring more efficient investigation of proceeds of crime and improvement of cooperation with relevant EU Member states' authorities (Asset Recovery Offices). The specific objectives of the project are as follows:
    1. Development and improvement of the methods and techniques in the area of identification of proceeds of crime and other property, related to crime.
    2. Improvement of the technical skills of Commission of the Establishment of Property Acquired from Criminal Activities (CEPACA) managing and operational staff for tracing and identification of proceeds of crime
    3. Strengthening the implementation of the new legal framework, related to the European legal acts in the field of criminal assets investigation and confiscation of proceeds of crime;
    4. Reinforcing and facilitating cooperation within competent authorities in EU member states.

387. The project implementation started in December 2007, as CEPACA was looking for a twinning partner that would best meet its requirements. The project is currently being implemented with partners from Great Britain (The Assets Recovery Agency and the Northern Ireland Police Service).

Additional elements

388. Special Trainings and workshops on ML cases has been performed for judges under the FIA Twinning Project in 2003 and 2004. Also the National Institute on Justice provides workshops for the judges on the subject "Offences against financial, tax and social security system", since 2006.

Recommendation 32

389. Statistics are provided beneath on pre-trial investigations, cases brought to the court by prosecutors acts and convicted persons related to ML:

Year	Observed pre-trials	Prosecutors acts brought to court /indictments	Convicted persons
2002	-	1	-
2003	29	4	-
2004	56	5	-

2005	58	3	-
2006	60	5	2*
Total	203	18	* Two convictions final.

390. In 2006, there were 5 indictments, two final convictions and 3 non-final convictions. A significant ML case involving the proceeds of high level corruption case was in process. There are numerous ML cases in various stages of the investigative and prosecutorial process.

391. It was noted that several court cases for autonomous money laundering are pending without the concrete predicate offence having been proved.

392. It was stated by Bulgarian authorities that new judicial statistics will be maintained in order to have unique overview on the whole money laundering and confiscation related issues.

2.6.2 Recommendations and comments

393. The Chief Directorate for Combating Organised Crime within the National Police Service and Chief Prosecutors' Office of Cassation comprise specialised units of jointly trained experts in the field of money laundering. The number of money laundering related investigations and convictions are low compared with the number of cases referred by the FIA. It would appear that many FIA referrals are not taken forward by the police and/or prosecution. Moreover it is unclear how many cases law enforcement are generated themselves. A proactive approach should be considered related to the financial investigations performed by police to better trace the proceeds of organised and economic crimes as a matter of routine.

394. Simplified access to tax data should also be considered. The Bulgarian authorities should consider maintaining detailed statistics including number of seizures and confiscation (of the proceeds of crime and assets laundered). Better and more detailed joint or comparable statistics should be routinely kept. The Bulgarian authorities stated that a new centralized database on criminality will be implemented under the Ministry of Justice authority and contain data from all relevant authorities.

2.6.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.27	**Largely Compliant**	• The overall effectiveness of the law enforcement response to ML investigation is questionable.
R.28	**Compliant**	

2.7 Cross Border Declaration or Disclosure (SR IX)

2.7.1 Description and analysis

395. In case of physical cross-border transportation of currency and bearer negotiable instruments the Bulgarian Currency Act (adopted 1999 and last amended in 2006) provides for a declaration system in the following terms:

Article 10 a. (1) The Customs authorities shall keep registers of commercial credits for exports and imports including financial leasing between residents and non-residents, as well as of export and import of BGN foreign currency in cash and bearer negotiable instruments subject to declaration in accordance with Article 11.

(3) In cases of export and import of BGN, foreign currency in cash and bearer negotiable instruments in amounts, subject to declaration in accordance with Article 11, the natural persons shall submit to the Customs authorities a declaration in accordance with a model to be approved by the Minister of Finance.

(4) The Minister of Finance shall issue an Ordinance on the implementation of this Article.

Article 11. (1) Resident and non-resident natural persons may import and export an unlimited amount of BGN, foreign currency in cash and bearer negotiable instruments in compliance with the requirements set forth in this Law.

(2) The amount of the currency subject to declaration before the Customs authorities in case of import and export of sums in excess of BGN 5,000[14] (approx. 2500 EUR) or their equivalent in foreign currency in cash shall be set forth in the ordinance referred to in Para 6.

(3) In case of export of sums exceeding BGN 25,000 (approx. 12,500 EUR) or their equivalent in foreign currency in cash, the resident and non-resident natural persons shall declare before the Customs authorities the amount and the sources of the funds including the bearer negotiable instruments concerned, and shall also submit a certificate from the relevant territorial directorate of the National Revenue Agency, certifying that they have no tax arrears.

(4) Except for the cases referred to in paragraph 3, in the case of sums exceeding BGN 25,000 or their equivalent in foreign currency in cash, the non-resident natural persons shall declare before the Customs authorities only the amount and the type of the exported funds including the amount and the type of the exported bearer negotiable instruments, where their value is not in excess of the value of the imported and declared currency.

396. The provisions of the Currency Law and the provisions of the Ordinance No 10/2003 on the Import and Export of BGN and foreign currency in cash, precious metals and stones and articles produced by them were in force until 15.06.2007. After this date the control over the funds is performed in conformity with the EU Regulation № 1889/2005, in relation to which the above mentioned Ordinance was amended. The control (declaration regime) will include both the EU external as well as its internal borders.

397. The Minister of Finance has issued an Ordinance in relation to Articles 10a, 11 and 14 of the Currency Act. The Ordinance was effective as of 9 January 2004 and changed the threshold from BGN 5000 to BGN 8000.

398. Thus according to the regulations of the Currency Act, local and foreign persons may import and export unlimited quantities of currency in cash and bearer negotiable instruments. The amount of currency subject to declaration is above 8000 BGN (approx. 4 000 Euros) or their equivalence in foreign currency.

[14] Changed to BGN 8000 (approx. 4000 EUR) in the Ordinance issued by the Minister of Finance in relation to Art. 10a, 11 and 14 of the Currency Act – see text beneath this paragraph.

399. On export of cash above 25 000 BGN (approx. 12,500 Euros) or their equivalence in foreign currency, persons shall declare to the Customs authorities the amount and origin of the currency including the bearer negotiable instruments by presenting a certificate, issued by the respective territorial directorate of the National Revenue Agency, as proof that they have not any tax liabilities.

400. For export of currency above 25 000 BGN (approx. 12,500 Euros) or their equivalence in foreign currency, foreign persons declare only the amount and the type of the exported cash including the type and the amount of the exported bearer negotiable instruments when their value does not exceed the amount of the imported and declared value.

401. When the Customs authorities (National Customs Agency) discover a false declaration or disclosure of undeclared currency, they are empowered to seize the assets in favour of the State as the subject of the offence, including the cases, when the offender cannot be identified. Acts for establishing an offence under the provisions of the Currency Act will be issued. The seizure of money may be appealed by the offender. If the seized money is above BGN 140.000 the case has to be forwarded to the Prosecutors office and the FIA has to be informed.

402. The Customs authorities are a reporting body, and they do not have any investigative powers. The Bulgarian authorities informed that the Customs authorities could question and search the person. However in such a case of suspicion of a criminal offence, the custom will contact the border police who will usually take over the assets and the persons that were under Customs control, and make enquiries in order to establish a level of suspicion that an offence has been committed. The border police have the power to detain persons for 24 hours. It is possible to extend the detention period on the initiative of the prosecutor by a warrant issued by a judge.

403. The Customs authorities have no power to detain a person entering the country. If a person entering or leaving the country rightfully declares high amounts of cash the Customs authorities have no power to detain the person not even if suspicion arises. The Customs authorities are obliged to file an STR to the FIA and contact the police but they cannot prevent the person from leaving.

404. If Customs have suspicion of money laundering or terrorist financing concerning a concrete operation or consignment, they shall inform the Financial Intelligence Agency through the Customs Intelligence and Investigation Directorate. In case of suspicious cross-border transportation of currency or goods, the Customs informs the Financial Intelligence Agency by sending a report together with certified copies of all documents presented to the Customs. The National Customs Agency provides the Financial Intelligence Agency with information on the cross-border transportation of currency and bearer negotiable instruments on a monthly basis.

405. For preventing of money laundering and terrorist financing, the National Customs Agency works in co-operation with the Financial Intelligence Agency. For the period 2003-2006, the National Customs Agency has sent more than 700 reports on suspicious operations concerning different cases related to cross-border transportation or receiving by natural persons of goods with high value. Typical types of reports they send can include the following suspicions characteristics: evidently unreasonable value of the exported or imported goods; systematic cross-border transportation by natural persons of currency above the amount subject to declaration (i.e. potential cash couriers).

406. At the international level, the National Customs Agency has concluded Agreements on co-operation and mutual assistance in Customs matters with countries as “the former Yugoslav Republic of Macedonia”, Albania, Greece, Turkey, Romania, Poland, Russia etc. On the basis of these agreements there is a long and effective exchange of information and documents concerning possible customs violations. On the basis of the bilateral agreement between Bulgaria and “the former Yugoslav Republic of Macedonia”, the Bulgarian Customs Administration regularly exchanges information on declared cross-border currency transportations.

407. When the violation of the import /export regime or other actions with valuables, including violations to declare them is considered as crime under the Penal Code the subject of crime (non-declared funds) shall be deprived in favor of state. Further in cases when crime was established the perpetrator shall be punished with imprisonment up to 6 years or fine in size of double amount of the subject of crime (the non-declared funs). In case when the violation of the regime on physical transportation over the borders of money, precious metals and stones, and articles made by them, does not constitute a crime, this violation shall be subject of administrative sanctions, in accordance to the administrative and penal provisions of the Currency Act. The subject of violation shall be deprived in favour of state, and additionally fine shall be imposed between 1000-3000 BGN (510 – 1533 Euros). If the violator is legal entity or sole person entrepreneur, property sanction between 2000-6000 BGN (1022 – 3067 Euros) shall be imposed For the period 2003 – 2007 the number of started administrative-penal files was:

	2003	2004	2005	2006	2007
number of started administrative-penal files	193	210	231	178	118
Detained subject of violation (BGN or foreign currency in cash, precious metals, stones), in BGN	2 300 163,92	3 196 719,14	7 910 817,61	3 602 524,11	6 807 621,63

Additional elements

408. The major issues in the Best Practices Paper have been covered. Specifically technical capabilities and expertise has been increased to focus on detecting cash in luggage and cash couriers. The Bulgarian customs authorities use modern technical equipment at borders to detect concealed cash – X-ray systems for checking vehicles and luggage, endoscope- apparatus, "Buster" detectors to reveal smuggled goods. The reports of above threshold cross border cash movements are kept in a computerised data base from which, as noted, regular information is passed to FIA.

2.7.2 Recommendations and comments

409. At the time of the on-site visit there was no power to question carriers as to the origins of imported currency or bearer negotiable instruments by the customs authorities, and they had no power to hold carriers for questioning by the Border Police. Thus the effectiveness of further investigations into cash couriers was questionable.

410. The sanctioning regime for fake declarations was unclear.

411. At the time of the on-site visit, the evaluators were informed that the Regulation (EC) 1889/2005 of the European Parliament and of the Council of 26 October 2005 0n controls of cash entering or leaving the Community would enter into force on 15 June 2007. The system will change with the entering into force of the EC Regulation. The working group under the Ministry of Finance deals with the alterations foreseen in the Bulgarian legislation. It was unclear whether the system had changed within 2 months of the on-site visit to accommodate the mandatory parts of the binding Regulation.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**Partially Compliant**	• No explicit provision to question carriers as to origins of imported currency or bearer negotiable instruments. • No power for Customs to detain pending further investigation by Border Police (effectiveness issue). • Sanctions regime unclear.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

412. Anti-money laundering and counter terrorist financing preventive measures apply to all parts of the financial sector in Bulgaria.

413. The Bulgarian Prevention of Money Laundering legislation is based on two tiers, namely the Law on Prevention of Money Laundering 1998 (LMML), which has been amended several times, last in December 2006. The LMML is supplemented by the new Rules on the Implementation of the Law on Measures against Money Laundering (RILMML) adopted by the Council of Ministers in July 2006. The RILMML provide for detailed procedures of customer due diligence (CDD) depending on the risk profile of the customers, products and transactions. The required data and documents, definition and requirements for effective identification of beneficial owners, and identification of third persons are specified as part of the CDD procedure. The evaluators consider them to be regulations within the meaning of the evaluation methodology (see Para. 38 of this report for more details).

414. In terms of customer due diligence for terrorist financing, neither the LMML nor the RIMML explicitly require such measures. Article 9(4) of the Law for the Measures Against Financing Terrorism (LMFT) requires obliged entities under the LMML to adopt criteria for "distinguishing questionable operations, transactions and clients directed to financing terrorism," however, there is no direct reference in the LMFT that incorporates other LMML or RILMML CDD measures. It should be noted that Article 9(3) requires filing a STR upon "occurrence of a doubt for financing terrorism." Additionally, the methodological guidelines supplied by the FIA to obliged entities, which can form the basis for internal rules, do not make clear that the full range of CDD measures applies in the terrorist financing context. Accordingly, the requirement of obliged entities to perform all applicable CDD measures as set forth in the LMML and RILMML is not clearly stated for CFT.

415. Furthermore financial institutions and other subject persons shall adopt within 4 months as from their registration, internal rules for control and preventing money laundering, which rules shall be approved by the Director of the FIA. The internal rules are not considered to be "other enforceable means" (see Para. 89 - 91 of this report for more details).

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism:

416. See Section 1.5 c. "The approach concerning risk" in the Introduction to this report.

3.2 Customer due diligence, including enhanced or reduced measures (R.5 to R.8)

3.2.1 Description and analysis

Recommendation 5

Anonymous accounts and accounts in fictitious names

417. Criterion 5.1 of the Methodology is marked with an asterisk. This means that it belongs to the basic obligations that should be set out in a law or regulation. As noted above, for the purposes of this report an obligation marked with an asterisk in the 2004 Methodology, which appears in the LMML (Annex 1) or in the RILMML (Annex 3) (in force at the time of the on-site visit) meets the methodology requirements in this regard.

418. Customer Identification requirements are governed by the LMML, which, *inter alia* require that no business relationship is established or any transaction undertaken between two parties one of whom is a "subject person" unless there is a proper and effective customer identification process in place and implemented.(Articles 3 and 4-6).

419. Bulgaria never had anonymous accounts, accounts in fictitious names or numbered accounts. Article 4 (1) of LMML specifies that: "It is not allowed to open anonymous accounts or accounts on fictious name". The required identification process to open accounts also makes it impossible to open numbered accounts. The evaluators were informed that Bulgarian banking legislation does not allow the existence of numbered accounts and that the matter is regulated by the BNB Regulation no.3 Art. 3.

Customer due diligence

When CDD is required

420. Criterion 5.2 has an asterisk too. It requires all financial institutions to undertake CDD:

i. When establishing business relations

421. Identification of the clients and verification of their identity is one of the measures for prevention of the use of the financial system for the purpose of money laundering, LMML Art. 3. The main provisions dealing with customer identification are to be found in the Law on Measures against Money Laundering (LMML) and the Rules on Implementation of the Law on Measures against Money Laundering (RILMML). Subject persons shall moreover adopt internal rules for control and preventing money laundering which rules shall be approved by the Director of the FIA.

422. The LMML Art.4 requires the financial institutions to identify their customers (both individuals and legal entities) in the following instances:

- When establishing business or professional relations, including opening of accounts (bank or securities account). "Business or professional relations" should be understood to include relations linked to business by line of trade of the financial institutions liable under LMML and as of the moment of establishing the above relations it may be presumed that the same will feature an implication of time period;
- When carrying out any operation or concluding a transaction involving more than BGN 30,000 or their equivalent in foreign currency (appr. 15 000 €), and with regard to obliged persons, items 1-4, 9-11, 13 and 28 of LMML – also when performing an operation or concluding a transaction in cash exceeding BGN 10,000 or their equivalent in foreign currency (appr. 5 000 €), LMML Art. 4(1).
- In cases of performing more than one operation or transaction, which separately do not exceed BGN 30,000 or their equivalent in foreign currency, respectively BGN 10,000 or their equivalent in foreign currency, but there is information that these operations or transactions are linked, LMML art 4(2);
- Insurance and reinsurance companies shall identify their customers when concluding insurance contract (in accordance with Section I of Annex 1 to the Insurance Code), when the gross amount of periodic premiums or payments under the insurance contract amounts to BGN 2,000 or more for one year, or the premium or payment under the insurance contract is one-off and amounts to BGN 5,000 or more, LMML art 4(12);
- In each individual case when suspicions for money laundering arise, LMML Art. 4(13);

- When suspicion arises with regard to identification data of the customer, or information is received about any change in them.

423. There is no requirement to undertake CDD measures when the client is a Bulgarian bank; a branch of a foreign bank licensed in Bulgaria; a bank of a Member State of the European Union; or a bank, included in a special list approved pursuant to a joint ordinance issued by the Minister of Finance and the Governor of the Bulgarian National Bank. The special list shall include foreign states with legislation containing requirements equivalent to the requirements in the LLML.

424. With respect to insurance business the subject persons have to identify their clients when concluding an insurance contract pursuant to Division I of Enclosure No. 1 to the Insurance Code, where the gross amount of the regular premiums or instalments in the insurance contract is greater than BGN 2,000 annually or the premium or a single premium payment of more than BGN 5,000.

425. Furthermore, Ordinance No. 1 on the Requirements to the Activity of the Investment Intermediaries prohibits investment intermediaries from concluding a contract if the client or his/her proxy has not presented and has not signed all the necessary documents; has presented documents with obvious irregularities or the data is incomplete; there are inaccuracies or contradictions in them or other circumstances, creating doubt as to the document's authenticity. The investment intermediary cannot conclude such a contract when the other party is represented by a proxy, who declares the carrying out by occupation of transactions in securities.

ii. When carrying out occasional transactions above the applicable designated threshold (USD/€ 15,000). This also includes situations where the transaction is carried out in a single operation or in several operations that appear to be linked.

426. Identification is mandatory in accordance with Art. 4(1) in the LMML before conducting a one-off transaction amounting to more that 30 000 BGN or their counter value in foreign currency (€ 15 000).

427. Identification is correspondingly mandatory in accordance with Art. 4(2) for a series of structured transactions below the minimum of 30 000 BGN.

iii. When carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII.

428. Regulation (EC) no. 178/2006 of 15 November 2006 on information on the payer accompanying transfers of funds is in force in Bulgaria since 1 January 2007. The Regulation is directly applicable in all Member States and is considered to be the EU implementation of SR VII on wire transfers. The Bulgarian Currency Act, Law on Funds Transfers, Electronic Payment Instruments and Payment Systems, Regulations (ordinance) No 3, 27 and 28 define the terms and conditions for carrying out wire transfers. The required information includes the name of the originator, the originator's account and address, the beneficiary's name, account and address and this information is included in the payment documents regardless of the amount transferred. At the time of the on-site visit these provisions were adjusted to the provisions of the Regulation.

iv. When there is a suspicion of money laundering or terrorist financing, regardless of any exemptions or thresholds that are referred to elsewhere under the FATF Recommendations.

429. According to Article 4(13) and 4(14) of the LMML credit and financial institutions are obliged to identify and verify the identification of their customers whenever suspicion arises on the identification data of the customer or they are notified of changes to the identification data. There

is no requirement in law or regulation to identify and verify customers when it concerns terrorist financing.

430. Moreover in cases where the identification process cannot be accomplished in pursuance of the requirements of the AML Law and the acts for its implementation, credit and financial institutions are obliged to refuse to carry out the operation or transaction or establish professional or commercial relations including account opening. If commercial or professional relations already have been established and the subject person cannot carry out identification of the client, they are obliged to suspend these relations. In this case credit and financial institutions shall assess whether it is necessary to notify the FIA.

431. Furthermore Article 7 of the LMML requires that whenever suspicion of money laundering arises, financial institutions are under an obligation to collect information about the essential elements and the amounts of the operation or transaction, the respective documents and the other identifying data. The information collected for the purpose of the AML-law shall be substantiated by documents and stored in a way that the FIA, the respective supervisory bodies, and the authorities have it on hand.

v. When the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

432. According to Art. 4(14) of the LMML financial institutions are obliged to identify and verify the identification of their customers whenever suspicion arises in respect of the identification data of the customer or they have been notified of changes to the identification data. Furthermore Art.6 in the LMML indicates among other things that financial institutions shall "collect information about their customers and maintain accurate and detailed documents for their operations involving money or valuables."

433. Article 9 in the RILMML gives detailed provisions when changes occur in the circumstances related to the identification of clients being legal or natural persons. Credit and financial institutions shall moreover maintain up-to-date information on their clients and the operations and transactions carried out by them while periodically checking and updating the existing databases. The databases of the clients and the business relations of potentially higher risk shall be checked and updated at shorter intervals. Where necessary the information is checked for being updated and additional action is taken for their identification and verification of the identification when: 1) a transaction or operation of value differs from the typical value for the concrete client; 2) there is a significant variation from the usual use of the opened account, and; 3) the credit or financial institution becomes aware that the information gathered about an existent client is insufficient.

Required CDD measures

434. Criterion 5.3 and 5.4 (a) are both marked with an asterisk. Under 5.3 financial institutions are required to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customer's identity using reliable independent source documents, data or information. In the case of customers that are legal persons and arrangements, Criterion 5.4 (a) provides that financial institutions should be required to verify that any person purporting to act on behalf of the customer is so authorised and verify the identity of that person.

435. The financial institutions in Bulgaria have their own opening of account application forms, which include an identification questionnaire.

436. Article 6 of the LMML requires that identification of customers and the verification of their identification shall be done as follows:
    1. For legal persons - by producing official excerpt about their present status from the respective register, and when the person is not subject to registration - by producing

certified transcript of the document of incorporation and registration of name, seat, address and representative.

2. For natural persons - by producing official identity document and registration of its type, number and issuer, as well as the name, address, personal identification number, and for natural persons having the capacity of sole merchants – also by producing the documents under item 1.

437. For customers who are legal persons, the credit and financial institutions shall identify the natural persons who are beneficial owners of a client-legal person, and shall undertake activities to verify their identity depending on the type of client relations and/or the performance of transactions or operations with the same type of client. Whenever there is no other possibility identification can be carried out through a declaration signed by the legal representative or proxy of the legal person.

438. Under Article 6 of the RILMML, credit- and financial institutions are obliged to find out whether the customer is acting on his behalf and on his account or on behalf and on account of a third person. If the operation or transaction is carried out through a proxy, the financial institutions are required to prove the representative power is produced to them, and to identify the proxy and principal. If the operation or transaction is carried out on behalf or an account of a third person without power of attorney, the credit- and financial institutions shall identify the third person on whose behalf or an whose account the operation or transaction has been carried out and the person having performed the operation or transaction.

439. Article 1 of the RILMML requires credit and financial institutions to seek the identification of a customer and of a real owner of a customer-legal entity through the use of documents, data or information from an independent source.

440. The identification and the verification of the identification can be done by demanding additional documents, confirmation of the identification by another person pursuant to Art. 3, Para. 2 and 3 of the Law on Measures against Money Laundering (LMML) or by a person obliged to implement measures against money laundering in an EU member state or in a country enlisted pursuant to Art. 4, paragraph 9 of the LMML, or in another suitable manner which gives sufficient grounds to the credit or financial institution to accept the identification of the customer as trustworthy performed.

441. Identification and verification of legal persons shall be performed through production of an original or a copy certified by a public notary of an official excerpt of the respective register, showing their actual status, and a certified copy of the agreement, or act of establishment. The purpose of the latter is to ascertain the ownership, the management and the control of the customer-legal entity. Art. 3, 2-4 of the RILMML sets out the details of how the requirements for identification of legal persons should be met.

442. The concept of the beneficial owner is addressed in Art. 6(2) of the LMML as mentioned above.

443. The <u>definition</u> of beneficial owner is provided in Art. 3(5) of the RILMML:

1. natural person or natural persons who directly or indirectly own more than 25% of the shares or of the capital of a customer-legal entity, or of another similar structure, or exercise direct or indirect control over it;
2. natural person or natural persons in favour of which more than 25% of the property is controlled or distributed, whenever the customer if a foundation, a non-profit organisation or another person performing trustee management of property or property distribution in favour of third persons;
3. a group of natural persons in favour of whom a foundation, or a public benefit organisation, or a person performing trustee management of property or property distribution in favour of third persons is established, or acts, when these persons are not determined but can be determined by specific signs.

444. At the time of the on-site visit it appeared that banks were familiar with the requirements to identify beneficial ownership and did perform the required CDD measures. Many of the major banks in Bulgaria are foreign owned and are required to obey by the AML/CFT legislation in the country of the parent company which have well developed beneficial ownership obligations. Such banks also had detailed internal rules that supplemented the Bulgarian AML/CFT laws. The BNB indicated that it did specifically review the client files for compliance with the requirements to locate and, if necessary, declare beneficial ownership. In limited circumstances, the BNB did find deficiencies in CDD procedures and issued warning letters. The warning letters related to "not sufficiently clear ownership structure". Warning letters were issued on this issue in respect of two banks. The FIA also inspect for beneficial ownership requirements throughout the financial sector, however, it appeared that so far no deficiencies related to beneficial ownership had been found. Information was not provided on whether any STRs were filed by the financial institutions concerning beneficial ownership structures. Based on the information supplied to the evaluation team, failure to obtain beneficial ownership has not been sanctioned by the FIA. In general, greater emphasis should be placed on supervision of and educating the financial institutions concerning the beneficial ownership requirements.

445. As already noted, credit- and financial institutions are moreover compelled to adopt within 4 months as from their registration, internal rules for control and preventing money laundering which rules shall be approved by the Director of the FIA. The Methodical Instructions for the drawing of organic rules for control and prevention of money laundering and financing of terrorism by the banks as obliged entities contain in section III descriptions of how specific attention in relation to identification of clients should be undertaken in order to prevent money laundering and terrorist financing.

446. Criterion 5.6 covers the requirement to obtain information on the purpose and intended nature of the business relationship (the business profile). Art. 3 (1) of the LMML and RILMML clearly indicates that one of several measures for prevention of the use of the financial system for the purpose of money laundering is collecting information from the client regarding the aim and nature of the relationship which has been established or is to be established with the client.

447. With reference to criterion 5.7 of the Methodology which requires financial institutions to conduct ongoing due diligence on the business relationship the LMML Art. 3(1) obliges the subject persons to permanently monitor the established commercial and professional relationships, including the verification of the transactions and operations performed in the framework of such relations with regard to their congruence with the information available on the customer, their business and risk profile, including a clarification of the origin of funds in the cases stipulated by law.

448. Additionally, during the on-site visit the evaluators were informed by both the supervisors of the financial sector and the operators that they met that most institutions now have installed software to pin-point unusual transactions and sudden changes in customer transactions' patterns.

449. The RILMML (Article 9) obliges subject persons to maintain up-to-date information on their clients and the operations and transactions carried out by them while periodically checking and updating the existing databases. The databases of the clients and the business relations of potentially higher risk have to be checked and updated at shorter intervals. Most operators mentioned half-yearly assessments.

450. Where it is necessary the information is checked for being updated and additional action is taken for the identification and verification of the identification, namely when:
    1. a transaction or operation of value that differs from the typical value for the concrete client;
    2. there is significant variation from the usual use of the opened account;
    3. the subject person becomes aware that the information gathered about an existing client is insufficient.

451. In general, the evaluation team only met the major and well prepared banks and other non-bank financial institutions. It should be noted that the evaluation team did not interview smaller entities, the full range of financial intermediaries or entities that were regionally-based.

Risk

452. Article 4(16) of the LMML stipulates that under terms and conditions provided for in the RILMML, and assessing the potential risk, credit- and financial institutions can apply simplified or extended measures when undertaking identification of the clients and verification of their identity.

453. According to the RILMML (Article 8) credit- and financial institutions have to make an initial assessment of the risk profile of the customer. Then, on the basis of this assessment, the credit- and financial institutions have to place higher risk customers under special supervision and apply extended measures. These categories may include customers without registered address or place of business in the country, off-shore companies, companies with nominal owners or bearer stocks and shares, fiduciary management companies or other similar structures.

454. The customers that can be included in these categories are customers who do not have permanent residence or place of commercial activity in Bulgaria, as well as the off-shore companies, the companies of nominal owners or of bearer shares, the companies of trustee management or other similar structures. In each case, the credit-or financial institution should decide the concrete measures to be taken on the type of client, the nature of the client's activity and the business relations with the client.

455. The enhanced customer due diligence may include:
    1. undertaking visits to the address indicated by the client;
    2. requesting additional documents and information from the client;
    3. gathering information through another client;
    4. referring to the internet;
    5. requiring references from the counterparts inside the country or abroad or from other subject persons;
    6. gathering information on the origin of the incomes;
    7. verification of the activities of the client including through visits to the production facilities or administrative premises of the client, or by acquiring information from the counterparts;
    8. verification through the employer of a client being a natural person;
    9. measures included in the instructions issued by the Minister of Finance or the Director of the Financial Intelligence Agency;
    10. other measures deemed appropriate by the subject person.

456. Bulgaria does utilise a multidisciplinary task-force to assess comparative risks through the financial and DNFBP sector as well as plan for inspections based on such an assessment. It appears that through such a process, Bulgaria has prescribed a limited category of "low risk" clients. Such categories are in line with examples provided under criteria 5.9. Article 4 (9) of the LMML provides simplified CDD for Bulgarian banks; a branch of a foreign bank licensed in Bulgaria; a branch of a foreign bank licensed in Bulgaria; a bank of a Member State of the EU; or a bank, included in a special list. The Bulgarian authorities informed that this list is awaiting a unified list agreed upon in the Contact Committee in Brussels. There is no formal guidance on measures for simplified due diligence, however, on a case-by-case basis the FIA has provided informal guidance at the request of the financial institution.

457. At the time of the on-site visit, some financial institutions had special software to assess high risk customers and others had opened a tender for such software.

Timing of verification

458. Article 4(15) of the LMML requires that the verification of the identification data of the customers and the beneficial owners shall be carried out before or during the process of establishing commercial or professional relations, bank account opening or performing operation or transaction exceeding BGN 30,000; cash transactions exceeding BGN 10,000; or multiple transactions of amounts that could be linked to each other. The RILMML may stipulate a derogation to this provision.

459. Article 10 of the RILMML requires that the obligation to declare the source of funds when conducting operations or transactions in an amount greater than BGN 30 000 or when paying in cash in an amount greater than BGN 10 000 this declaration shall be filed with the credit- or financial institution before the performance of the operation or transaction. The FIA indicated that STRs were filed regarding source of funds, but the frequency or how wide-spread the reporting practice is within the banking and non-bank sectors was not apparent. The FIA has issued several sanctions for failure to obtain source of funds, mainly for exchange houses. However, it does not appear that banks or other financial institutions have been penalized for failure to abide by the above requirement. In light of the acknowledged money laundering risks, Bulgaria may wish to consider dedicating additional resources to ensuring that all financial institutions thoroughly investigate and properly document source of funds, and where appropriate, file STRs.

460. Article 1(3) of the RILMML allows exceptionally credit- and financial institutions to complete the verification process in respect of customer and the real owner of a customer-legal entity after establishment of commercial relations whenever the following cumulative conditions exist:

    1. the verification is concluded in reasonably short time after establishment of commercial relations;
    2. the verification concluding before, or in the course of establishment of commercial relations in view of the nature of these relations objectively leads to interruption of normal performance of the respective commercial activity;
    3. measures are taken to effectively manage the risk of money laundering in the concrete case.

461. The evaluators were informed that many banks voluntarily exceed the requirements of Article 1(3) of the RILMML. In practice, it appears that banks have to be satisfied with the identification provided before allowing transactions in newly established relationships. Additionally they reiterated that account holders have to physically go to the bank at least once before an account is permitted to operate.

462. Additionally, in terms of Criterion 5.14 in the case of insurances the Insurance Code Article 231(1) provides that in certain circumstances a life insurance contract does not have to include name and address in cases where the class of beneficiaries has been clearly defined. Additionally a Group Insurance may be concluded by an employer, where the insured are the employees and/or workers, whose life, health and working capacity are the subject of the an insurance contract. Identification and verification of identity would then occur upon pay out of the insurance proceeds.

463. A customer is not permitted to utilise the business relationship prior to verification as indicated in Criterion 5.14.1.

Failure to satisfactorily complete CDD

464. With reference to Criterion 5.15, Article 4(4) of the LMML requires that whenever a credit- and financial institution cannot accomplish identification of the customer in pursuance of the requirements of the LMML and of the acts for its implementation as well as in cases where no

source of funds declaration has been produced, the subject person is obliged to refuse to carry out the operation or transaction or establish professional or commercial relations including account opening. As such, Article 4(4) broadly covers Criteria 5.3-5, account opening, establishing a business relationship or performing a transaction.

465. With respect to criteria 5.16, if the subject persons cannot carry out identification of the client when commercial or professional relations have already been established, they are obliged to suspend these relations. In the latter case the persons should consider notifying the FIA (file a report). This provision does not apply to legal persons who by profession provide legal consultancy as described in Article 2 (2) item 28 of the LMML.

Existing customers

466. While subject persons have the obligation of "permanent monitoring" Art. 3 (subsection 1 item 4) of the LMML, the RILMML also obliges subject person to gather information and take additional measures for the identification and verification of the identification when:
    1. a transaction or operation of value that differs from the typical value for the client;
    2. there is significant variation from the usual use of the opened account;
    3. the subject person becomes aware that the information gathered about an existing client is insufficient.

467. Furthermore Art. 6(5) of the LMML requires that credit- and financial institutions (and other enumerated subject persons) shall set up specialised units for customer's identification which shall:
    1. collect, process, store and disclose information about the concrete operations or transactions;
    2. gather evidence as to the ownership of the property subject to transfer;
    3. request information about the origin of the money or valuables which form the subject of such operations or transactions; the origin of these funds shall be certified by declaration;
    4. collect information about their customers and maintain accurate and detailed documents for their operations involving money or valuables;
    5. wherever there is suspicion of money laundering, provide the collected information under the above mentioned items to the Financial Intelligence Agency.

European Union Directive

Article 7

468. Article 7 of the Second European Union AML Directive is covered by Article 11 of the LMML, which states that whenever there is suspicion of money laundering, the subject persons are under the obligation to notify forthwith the FIA prior to carrying out an operation or transaction. In such cases, the Director of the FIA may suspend by an order in writing a certain operation or transaction for a period of up to three working days following the day of issuing the order. The same applies when the FIA obtains information containing money laundering suspicion from state bodies and through international information exchange.

469. In the cases where the delay of the operation or transaction is objectively impossible, the subject person shall notify the Agency immediately after its performance.

470. In urgent cases the disclosure may be carried out orally while written confirmation shall be filed within 24 hours.

Article 3(8)

471. Article 4(13) of the LMML requires that subject persons are obliged to identify their clients wherever money laundering is suspected.

472. Art. 7 of the LMML furthermore requires that whenever suspicion of money laundering arises, subject persons are under the obligation to collect information about the essential elements and the amounts of the operation or transaction, the respective documents and the other identifying data. The information collected for the purpose of the LMML shall be substantiated by documents and stored in a way that the FIA, the respective supervisory bodies, and the auditors have it on hand.

Recommendation 6

473. The financial institutions in Bulgaria have their own opening of account application forms, which include an identification questionnaire. In this document the applicant is requested to declare whether the financial institution should consider him/her as a PEP[15]. Through this declaration, and the other identification information contained in the questionnaire, the financial institutions decide whether the customer is to be considered PEP or not.

474. Bulgaria has taken steps to create enforceable obligations on financial institution to deal with Recommendation 6. The LMML (Article 5a, which was enforced from 7 July 2006) requires obliged persons to apply extended measures to "customers who occupy, or have occupied any supreme state position in the Republic of Bulgaria or in a foreign country, and with regard to customers who constitute persons linked to them". This provision goes some way to addressing the issue but lacks clarity in the definition as to who precisely is covered. The evaluators are concerned that on the basis of this definition, a clear requirement to identify a particular category of PEPs, which is understandable by all financial institutions is not apparent. In these circumstances it is difficult to see how the requirements in the statute are enforceable and sanctionable.

475. The evaluators then considered the RILMML Article 8 (2) and (3) and could not find a clear reference to politically exposed persons[16] in these provisions, which could be enforced and upon which sanctions could be taken.

476. In practice some of the internal rules which the evaluators have seen contain clearer provisions than the applicable law and regulation. As noted earlier the internal rules are, however, not considered to be other enforceable means. . In these circumstances the evaluators could not conclude that, at the time of the on-site visit there were enforceable obligations across the whole financial sector on PEPs. Having said this, there is no doubt that what has been done goes some way to implementing Recommendation 6.

477. Under the law, the Council of Ministers is expected to provide the conditions and terms for the implementation of Article 5a of the LMML. At the time of the on-site visit this had not been done. Financial institutions made use of publicly available information regarding foreign PEPs. Certain major banks regularly searched commercially available PEPs databases. Criterion 6.1 requires financial institutions to put in place appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a political exposed person. The evaluators do not consider all financial institutions across the sectors comply with this Criterion.

478. Thus, while the evaluators accept that some steps have been taken in relation to Criterion 6.1, no steps have been put into place to ensure that financial institutions should be required to obtain senior management approval for establishing business relationship with a PEP (Criterion 6,2).

[15] In November 2007 the Law on Amendments of the LMML was adopted. This Law implements the provisions of the 3rd EU AML Directive; amongst others it addresses the issue of PEPS, It provides concrete cases when on the basis of a risk analysis simplified or enhanced measures have to be applied.

[16] The RILMML was amended in December 2007. The Rules now require senior bank management approval for establishing a business relationship with a PEP (Article 8a(7)).

Similarly, there is no generally enforceable requirement to ensure where a customer has been accepted and the customer or beneficial owner is subsequently found to be a PEP to obtain senior management approval to continue the business relationship.

479. The RILMML provide general provisions for the requirement on the source of funds. These provisions do not specifically apply to PEPs but could functionally meet the requirement of Criterion 6.3.

480. There is no specific provision covering Criterion 6.4 requiring financial institutions in a business relationship to conduct ongoing monitoring on that relationship.

481. Against the backdrop of the European Commission Monitoring on the State of Preparedness for EU Membership (September 2006) determination that "the effectiveness of the fight against money laundering continued to be seriously hampered by corruption and organized crime", the FIA and supervisory agencies should consider further outreach and training on PEPs. Specifically, during the on-site visit some of the financial institutions that met with the evaluators expressed a wish for more specific guidelines on PEPs. The evaluators understood that no STR had been filed in relation to PEPs. Furthermore neither the FIA nor the supervisory authorities had issued any sanctions in relation to lack of procedures for PEPs. In these circumstances the evaluators have reservations as to whether in practice Recommendation 6 is effectively implemented.

Additional elements

482. The evaluators were informed that a domestic list of PEPs had been prepared by the Court of Auditors but had not yet been approved by the Council of Ministers. All banks have, however, a list of domestic PEPs prepared for anticorruption reasons by the Court of Auditors and this list was used as a provisional list for domestic PEPs.

483. Furthermore, the evaluators were informed that in August 2006 the Law on the Publication of the Assets of Persons Occupying High Public Positions was adopted. This law obliges a range of persons who occupy, or have occupied any supreme state position in the Republic of Bulgaria, or in a foreign country, and persons linked to them to declare their assets to the National Audit Office. The National Audit Office is authorised, together with the support of other public bodies, to carry out inspections to confirm the accuracy of declarations submitted to the National Audit Office by these persons. The evaluation team was informed that the list of domestic PEPs shall be constituted of the same list as of the National Audit Office. Both BNB and FIA expect financial institutions to check both the existing and new customers against this list. Declarations have to be submitted annually and individuals are requested to submit their declarations up to one year after the termination of their office. As for the foreign PEPs list, the Bulgarian authorities are expecting the EU list following the EU Third Directive.

Recommendation 7

484. Criteria 7.1 to 7.4 of the Methodology cover cross-border banking and other similar relationships (gather sufficient information about a respondent institution, assess the respondent institution's AML/CFT controls, obtain approval from senior management, and document the responsibilities).

485. The LMML (Article 3b) prohibits banks incorporated in, and/or licensed to operate in Bulgaria, to enter into correspondent banking relations with banks located in jurisdictions where they have no physical presence and are not included in a regulated financial group.

486. Banks are also prohibited to enter into correspondent relations with banks abroad that allow their accounts being used by banks located in jurisdictions where they have no physical presence and do not pertain to a regulated financial group.

487. The examiners were informed that banks, which are the only institutions which can have correspondent banking relationships, as obliged persons, are required to perform the identification process of correspondent banks with the same identification obligations used to identify foreign legal persons. The examiners were also informed that this process is repeated on a six monthly basis. In practice many of the major banks have internal rules that covered correspondent relationships and required bank personnel to conduct procedures consistent with Criteria 7.1-4[17]. In terms of Criterion 7.1 Ordinance no.3 on funds transfers and payment systems, Article 3provides that relevant information about the respondent institution including information on the nature of the respondent's business and related publicly available material should be collected and assessed. In addition the Bulgarian authorities interpret Article 3 of the LMML which requires that the basic CDD measures would apply to a potential respondent relationship. Ordinance No.3 also requires that all corresponding banking relationships are set out in writing and that the correspondent and the respondent banks responsibilities are clearly defined.

488. Some of the internal rules which the evaluators have seen contain clearer provisions than the applicable law and regulation. Internal rules, however, do not amount to other enforceable means.

489. BNB on-site inspections of banks include providing lists of correspondent banks and checking the documentation of the identification procedures and the sampling of transactions for beneficial ownership requirements' compliance.

490. There is no requirement to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective as required under Criterion 7.2..

491. The obtaining of approval from the senior management for the opening of a correspondent relationship, as required under criterion 7.3 is not provided for under the regulation at the time of the on-site visit. The evaluators were informed that this issue is covered in the AML internal rules of the banks[18].

492. Criteria 7.1 to 7.5 potentially apply to financial institutions other than banks. The Methodology contains one example of similar relationships being established for securities transactions and funds transfers. There is no guidance on this issue by the FIA or other authority.

493. The evaluators do not find that Bulgaria comply with Criteria 7.2-4.

494. In terms of Criterion 7.5, the Bulgarian authorities stated that Bulgarian banks are not allowed to provide payable-through-accounts. Regulation No. 3 on Funds Transfers and Payments Systems determines the terms and conditions for a customer to conduct payments and does not permit the existence of "payable-through" accounts.

Recommendation 8

495. Criteria 8.1 to 8.2.1 of the Methodology cover: policies to prevent the misuse of technological developments; policies regarding non-face to face customers including specific and effective CDD procedures to manage specific risks associated with non-face-to-face business relationships or transactions.

496. Criterion 8.1 requires financial institutions to have policies in place or to take such measures as may be needed to prevent the misuse of technological developments in money laundering or terrorist financing schemes.

[17] The RILMML was amended in December 2007. The Rules now require senior bank management approval for establishing banking correspondent relationships(Article 5 b(3)).

[18] The RILMML was amended in December 2007. The Rules now require senior bank management approval for establishing banking correspondent relationships(Article 5 b(3)).

497. The evaluators noted that the prevention of misuse of technological developments is not directly mentioned in the legislation or in other enforceable means.

498. With respect to Criterion 8.2, Article 4(5) of the LMML requires subject persons to undertake necessary measures to verify a client's identity when establishing commercial or professional relations or when conducting operations or transactions through electronic statements, electronic documents, electronic signatures or other non-face-to-face operations. Article 7 of the RILMML has similar requirements. Such measures shall include inspection of the documents submitted; requiring additional documents; or certifying the identification by other subject persons or by a person obliged to implement measures against money laundering in a European Union Member State; or stipulating the requirements that the first payment in the operation or transaction be carried out through an account opened in the name of the client with a Bulgarian commercial bank, a branch of a foreign bank holding a license to operate in Bulgaria through a branch, or a bank from a European Union Member State.

499. Based on the language of Article 4 (5), it was not apparent whether this provision covers the full range of emerging technologies such as prepaid or account-linked value cards. The FIA should consider clarifying this provision, or providing additional guidance to the financial sector as to its intended scope.

500. At the time of the on-site visit the evaluators were informed by the financial institutions that customers in almost all cases have to at least physically call at their institution for the identification process to be completed.

3.2.2 Recommendations and comments

501. Generally speaking, Bulgarian legislation and regulations on financial institutions duty of diligence concerning customers and transactions are fairly satisfactory. The provisions are for the large part, consistent with the FATF recommendations on the extent to which customers must be identified and their identities checked, information on the purpose and planned nature of business relationships, when customer identities have to be checked and the need for constant vigilance with regard to business relationships, including the regular updating of customer information. All financial institutions have specialised units for customer identification (Art.6). However, the obligation to undertake CDD measures for terrorist financing should be required in the law.

502. Generally the institutions that were interviewed by the examiners seemed to be quite accustomed to all the requirements of identification and its verification. The industry's understanding and implementation appears to be the result of the focus given to AML by the FIA.

503. The financial supervisors were generally knowledgeable and fully aware of their responsibilities as to the CDD requirements with some reservations. With reference to the FSC their understanding of the required CDD measures is not as well advanced as the bank supervisors and they could benefit from additional training and coordination with the FIA.

504. With the exception of banks - the full range of non-bank financial institutions supervised by the FSC need to work harder to raise awareness and be effective in CDD due diligence. In addition, there were several areas where effective implementation was a major concern across the financial sector. In light of the recognised money laundering and organised crime problem, overall implementation for identifying and verifying beneficial ownership as well as ascertaining source of funds are significant concerns. In practice banks have in place internal rules covering these areas, but it was not apparent how rigorously they were being complied with. It was not clear whether non-bank financial institutions had similar procedures, and their general understanding of these areas did not appear as robust. It should be noted as stated earlier that internal rules do not amount to other enforceable means.

505. At the time of the on-site visit the evaluators considered that the obligation to put in place appropriate risk management systems to determine whether a potential customer or beneficial owner is a politically exposed person was not clearly defined by law, regulation or other enforceable means. The requirements in Criterion 6.2, 6.2.1 and 6.4 were also not provided for by enforceable means.

506. There is no specific requirement to conduct an AML/CFT assessment of respondent financial institutions controls, and ascertain that they are adequate and effective as required in Criterion 7.2.

507. The obtaining of approval from the senior management for the opening of a correspondent relationship, as required under Criterion 7.3 was not provided for by enforceable means.

508. There need to be enforceable measures in place to document the respective AML/CFT responsibilities of each institution.

509. Criteria 7.1 to 7.5 potentially apply to financial institutions other than banks. The Methodology contains one example of similar relationships being established for securities transactions and funds transfers. There is no guidance on this issue by the FIA or other authority.

510. Although the provisions of the AML Law apply equally to non-face-to face business, there are no supplementary requirements in law, regulation or other enforceable means to address the additional associated with new or developing technologies. Regarding Criterion 8.2, consideration should be given to expanding the scope of the LMML, or issuing clarifying guidance, to ensure that all emerging technologies are appropriately covered.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**Partially Compliant**	• It was the view of the evaluators that the definition of beneficial owner was not fully understood by all financial institutions. • Obligation to perform full CDD measures for terrorist financing should be required in the law. • Lack of guidance on applying simplified due diligence. • Requirement to verify source of funds was not fully demonstrated throughout the financial sector • The evaluators found that some financial institutions needed more training on risk assessment. • With the exception of banks financial institutions need to work harder to raise awareness and be effective in CDD due diligence.
R.6	**Non Compliant**	• There is no clear provision in law or regulation or other enforceable means for the determination of whether a customer is a PEP. • There is no provision for senior management approval to establish a relationship with a PEP. • No provision for senior management approval to continue business relationship where the customer subsequently is found to be or becomes a PEP. • No provision to require financial institutions in a business relationship with a PEP to conduct enhanced ongoing monitoring

		on that relationship. • The evaluators found that some financial institutions needed more training on PEPs. • Reservation about effective implementation.
R.7	**Partially Compliant**	• No enforceable requirement to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective. • No enforceable requirement to obtain senior management's approval before establishing new correspondent relationship. • No enforceable requirement to document the respective AML/CFT responsibilities of each institution. • Criteria 7.1 to 7.5 potentially apply to financial institutions other than banks. There is no guidance on this issue by the FIA or other authority.
R.8	**Partially Compliant**	• Financial institutions are not directly required to have policies in place to prevent the misuse of technological developments in ML and TF schemes. • Unclear how businesses issuing and performing operations with emerging technologies such as prepaid or account-linked value cards are implementing preventive measures. • Enforceable measures to prevent the misuse of new and developing technologies are not implemented.

3.3 Third Parties and introduced business (Recommendation 9)

3.3.1 Description and analysis

511. The activity of third party reliance for CDD is not conducted in Bulgaria.

512. The evaluators were informed that the situation might change when the European Union has agreed on the list of "equivalent countries".

3.3.2 Recommendations and comments

513. Currently it is not permitted to rely on a third party to perform customer identification and in practice this situation does not occur.

514. If financial institutions were in future to consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, the Bulgarian authorities would need to take account of all the essential criteria under Recommendation 9 and ensure that they were covered by enforceable means.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

515. There are no restrictions in the Bulgarian legislation to prevent competent authorities from accessing required information to perform anti-money laundering functions. No secrecy provisions inhibit the exchange of information between competent authorities.

516. The provision of information to the FIA may not be refused or restricted due to considerations of official, banking or commercial secrecy. This mandatory provision applies to all obliged persons as well as from the government and municipal bodies. The FIA has also the right of free access to the information databases created and maintained by state budget funds (Article 13 of LMML). The FIA may use the acquired information, constituting official, banking or commercial secrets, and protected private information obtained under the terms and following the procedure set in the LMML, solely for the purposes of the AML Law.

517. The requested information shall be delivered within the time limits specified by the FIA, taking into consideration the volume and the contents of the information requested.

518. It is important to note that listing of official, banking or commercial secrets, and protected private information, is complemented by the "safe harbour" provision contained in Article 15(2) of the LMML stating that the disclosure of information shall not give rise to liability for breach of other

laws or of any contract and no liability is brought forth either in the cases whenever it is found that no offence has been committed, and the operations and deals have been lawful.

519. Bank secrecy invocation cannot be applied in particular, to the disclosure of suspicious transaction reports, to the reporting of cash transactions, from BGN30, 000 or its equivalent. This is equally valid for information obtained from government and municipal bodies or through international information exchanges, requests by corresponding international bodies and EU bodies, authorities of other countries on the basis of agreements and reciprocity and information from registers built up and maintained by state budget funds (LMML Article 13 (7)).

520. Article 11c of the LMML authorises the FIA and the security and public order services to exchange classified information related to their respective legal functions. Decisions regarding the scope of information to be shared shall be made on a case-by-case basis by the Director of the FIA and the respective director of the security and public order services.

521. Interaction is permitted between the FIA and the Bulgarian National Bank, the Financial Supervision Commission, the security and public order services, the National Investigation Service and the Prosecutor's Office and it is regulated by joint instructions of the Minister of Finance on behalf of the FIA, and respectively the Governor of the Bulgarian National Bank; the Minister of the Interior; the Minister of Defence, the Director of the National Intelligence Service; the Director of the National Investigation Service and the Prosecutor General.

522. The FIA and the supervisory authorities can exchange classified information in regard to their legally specified functions. When the supervisory bodies of the obliged persons finds suspicious AML/CFT operations and transactions, or encounters non-compliance with the obligations of cash transaction reporting, while performing their supervisory functions they are obliged to inform the FIA. If, during their on-site visits, the supervisory bodies discover any breaches of the LMML by the subject person, they are obliged to advise the FIA by sending an extract of their findings.

523. The LMML (Art. 11b) obliges the Customs Agency to provide information on commercial credits by export or import, financial leasing between domestic and foreign persons and export and import of BGN or foreign currency in cash from the Customs database to the FIA. The National Customs Agency provides the FIA with information for the cross-border transportation of currency and bearer negotiable instruments on a monthly basis.

3.4.2 Recommendations and comments

524. There are no reported practical restrictions in the Bulgarian legislative framework or in practice limiting competent authorities from implementing FATF Recommendation 4 and performing their anti-money laundering functions. The FIU is able, in analysing reports, to access further information from the reporting entity and other reporting entities.

525. For the purpose of the fight against money laundering the legislation provides specific exemptions to remove such secrecy and confidentiality provisions.

526. There is no impediment to sharing of information between financial institutions where this is required by R 7 and SR VII.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**Compliant**	

3.5 Record keeping and wire transfer rules (R.10 and SR. VII)

3.5.1 Description and analysis

Recommendation 10

527. Recommendation 10 has numerous criteria under the Methodology which are asterisked, and thus need to be required by law or regulation. Financial institutions should be required by law or regulation:
- to maintain all necessary records on transactions, both domestic and international, for at least five years following the completion of the transaction (or longer if properly required to do so) regardless of whether the business relationship is ongoing or has been terminated;
- to maintain all records of the identification data, account files and business correspondence for at least five years following the termination of the account or business relationship (or longer if necessary) and the customer and transaction records and information;
- to ensure that all customer and transaction records and information are available on a timely basis to domestic competent authorities upon appropriate authority.

528. Transactions records are covered by the LMML and the RILMML. In addition the legislation is supplemented also when it comes to record keeping by the internal rules, which have to be approved by the Director of the FIA.

529. Whenever suspicion of money laundering arises, financial institutions are under the obligation to collect information about the essential elements and the amounts of the operation or transaction, the respective documents and the other identifying data. The information collected shall be substantiated by documents and stored in a way that the FIA, the respective supervisory bodies and the auditors may have easily access to it.

530. Article 8 of the LMML obliges subject persons to maintain for a period of 5 years the data about the customers and the documents for the transactions and operations carried out (criteria 10.1* and 10.2*). Reporting persons and entities are under the obligation to store for a period of 5 years the data about the customers and the documents for the transactions and operations carried out. With respect to customers, the time limit shall run from the beginning of the calendar year following the year in which the relationship is terminated and with respect to the transactions and operations from the beginning of the calendar year following the year of their performance. The obligation that records should include both domestic and international transactions is complied with by the generic terms "transactions and operations". This has also been confirmed by the Bulgarian authorities. It is noted that the language is quite broad and may not provide sufficient guidance to reconstruct financial records.

531. Notwithstanding the above, this record keeping obligation does not seem to require obliged persons to keep records for a longer period if requested by a competent authority regardless of whether the business relationship is ongoing or has been terminated. This is not in fully conformity with the obligation under the Recommendation to maintain the information for at

least five years. However, information on customers is as already mentioned above maintained for more than five years.

532. Regulation (Ordinance) No. 3 on Funds Transfers and Payment Systems (issued by the BNB) specifies in detail (and goes beyond) all the components of transaction records that cover the components mentioned in the example given in Criteria 10.1.1.

533. The LMML obliges in Article 9 financial institutions to provide the requested stored data and documents to be forwarded to the FIA in the original or as officially certified copies. Art. 13, 15 and 16 of the RILMML give further guidance on the disclosure of the information, the possibility for the FIA to check the information by carrying out on-site inspections and the obligation to submit the information to the FIA in hard copy or using magnetic media or electronically using a special form.

534. Article 13 of the LMML specifies, however, that information requested by the FIA relating to STRs or international cooperation shall be delivered within the time limits specified by the FIA, taking into consideration the volume and the contents of the information requested.

SR.VII

535. Under Criterion SRVII.1, the Methodology requires, for all wire transfers, that financial institutions obtain and maintain the following full originator information (name of the originator; originator's account number; or unique reference number if no account number exists) and the originator's address (though countries may permit financial institutions to substitute the address with a national identity number, customer identification number, or date and place of birth) and to verify that such information is meaningful and accurate. Under VII.2 full originator information should accompany cross-border wire transfers, though under VII.3 it is permissible for only the account number to accompany the message in domestic wire transfers.

536. The evaluators were informed that in Bulgaria the banks are the only institutions that perform wire transfers of funds. The postal services offer domestic money remittance services, which is executed through its own network.

537. Regulation (EC) no. 178/2006 of 15 November 2006 on information on the payer accompanying transfers of funds entered into force on 1 January 2007. The Regulation which is directly applicable in Member States is considered to be the EU implementation of SR VII on wire transfer. The Regulation is consequently in force in Bulgaria since 1 January 2007.

538. The evaluators were informed that a working group in the BNB was considering changes in the present legislation on wire transfers to avoid any overlap and misunderstandings with the provisions in the EU Regulation.

539. The regulation meets the requirements of SR VII: obtaining and verifying originator information; maintaining full originator information for cross-border transfers; accompanying domestic wire transfers with more limited originator information and making full originator information available within three days; adopting specific procedures for identifying and handling wire transfers not accompanied by full originator information; compliance monitoring; and, sanctions.

540. Although the EU Regulation entered into force on 1 Jan 2007, the sanctions for non compliance will not be enforced until 15 December 2007 coincident with the deadline for implementation of the Third EU AML/CFT Directive.

541. As far as the examiners are aware, no monitoring system is in place on this issue. In particular, it needs to be clarified how the compliance of financial institutions outside the banking sector (money remitters, exchange offices and Postal Services) will be monitored.

542. Due to the recent requirements provided for by the EU Regulation, the implementation and effectiveness could not be assessed by the evaluation team at the time of the on-site visit. nor if beneficiary institutions have specific risk based procedure in place to handle wires unaccompanied by complete originator information.

543. The EU Regulation classifies wire transfers within the EU as domestic and therefore only seeks limited originator information on wire transfers within the European Community. FATF has called this into question as the Interpretative Note to SR VII defines domestic transfers as " any wire transfers where the originator and beneficiary institutions are located in the same country." The FATF decided at the June 2007 plenary to further consider this subject[19].

3.5.2 Recommendations and comments

544. The AML /CFT Law should be considered amended to provide a legal basis for keeping transactions records and identification data for longer than 5 years if necessary, when properly required to do so by a competent authority in specific cases upon proper authority.

545. Apart from banks, the necessary component of transaction records should be clarified as well as a provision should be introduced to fulfil Criterion 10.1.1, thus establishing that records must be sufficient to permit reconstitution of individual transactions – including the amounts and types of currency involved if any – so as to provide, if necessary, evidence for prosecution of penal facts.

546. Further implementing measures are required to provide for the monitoring and sanctions regime on wire transfers. The evaluators were informed that the sanctions regime and the competent authority according to the EU Regulation will be provided for in the laws that will implement the Third European Union Directive, scheduled to be issued by the end of 2007.

547. Due to the recent requirements provided for by the EU Regulation, the implementation and effectiveness could not be assessed by the evaluation team at the time of the on-site visit

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**Largely Compliant**	• Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority.
SR.VII	**Largely Compliant**	• The implementation and effectiveness of the EU Regulation could not be assessed.

[19] The revised Interpretative Note to SRVII issued by FATF on 29 February 2008 provides in paragraph 2, letter c) that the term "*domestic transfer*" also refers to any chain of wire transfers that takes place entirely within the borders of the borders of the European Union.

Unusual and Suspicious Transactions

3.6 Monitoring of transactions and relationships (R.11 and 21)

3.6.1 Description and analysis

Recommendation 11

548. Recommendation 11 requires financial institutions to pay special attention to al complex, unusual large transactions, and all patterns of transactions, which has no apparent economic or visible lawful purpose. The financial institutions should examine, as far as possible, the background and purpose of such transactions and the findings should be established in writing and be available to help competent authorities.

549. The LMML and the RILMML do not explicitly specify that financial institutions shall examine all "complex, unusual large transactions or unusual patterns of transactions,….." as called for by Recommendation 11. According to Article 9 of the RILMML subject persons are obliged to maintain up-to-date information on their clients and the operations and transactions carried out by them while periodically checking and updating the existing databases. The databases of the clients and the business relations of potentially higher risk are to be checked and updated at shorter intervals. Where necessary the information is checked for being updated and additional action is taken for the identification and verification of the identification when:
    1. a transaction or operation of value that differs from the typical value for the concrete client;
    2. there is significant variation from the usual use of the opened account;
    3. the subject person becomes aware that the information gathered about an existing client is insufficient.

    This might capture some of the requirements of Recommendation 11.

550. The requirements of Recommendation 11 are also included in the financial institutions' AML internal rules and represent one of the criteria for suspicious transactions. Additionally Article 9 (4) of the LMFT obliges subject persons to include in their internal rules criteria for identification of suspicious operations, transactions and customers with regard to terrorist financing. Many of the internal rules do include "red flag" indicators of "complex, unusual large transactions". The internal rules are as stated earlier not considered to be other enforceable means.

551. At the time of the on-site visit examiners were additionally informed that some large financial institutions have voluntarily implemented automated screens to detect unusual financial activity. However, it is difficult to determine the extent of this practice or its effectiveness.

552. The law or the Regulations do not specifically cover the requirement for the findings of such examinations to be set out in writing or retained for competent authorities or auditors for at least 5 years.

Recommendation 21

553. Recommendation 21 requires financial institutions to give special attention to business relationships and transactions with persons from or in countries which do not, or insufficiently apply the FATF Recommendations. This should be required by law, regulation or by other enforceable means. It places an obligation on financial institutions to pay close attention to transactions with persons from or in any country that fails or insufficiently applies FATF Recommendations and not just countries designated by FATF as non-co-operative (NCCT countries).

554. Article 7a of the LMML obliges financial institutions and other subject persons to "specially monitor their professional and commercial relations, the operations and transactions with persons from countries that do not at all, or do not fully implement international standards for countering

money laundering." It further explains that whenever such an "operation or deal is not explicable of any logical economic viewpoint or shows no evident reason," the obliged persons are required to collect additional information on the circumstances connected with the operation or transaction, and also on its purpose. Sub-article (3) of Article 7a of the LMML states: "the countries which do not at all, or do not fully implement the international standards of countering money laundering are designated in a list adopted by the Minister of Finance. The Rules on the Implementation of the Law provide for the measures applicable in regard to these countries.

555. There were no provisions in law or regulation for alerting financial institutions about weaknesses in the AML/CFT systems of other countries.

556. The evaluators found no specific requirements in the law or the Regulations to establish in writing any finding on such transactions. This obligation is considered important in order to help and assist competent authorities (Criteria 21.2).

557. Furthermore Criterion 21.3 requires that where a country continues not to apply or insufficiently applies the FATF Recommendation countries should be able to apply appropriate countermeasures. The evaluators were not aware of the existence of any countermeasures in case such a country continued not to apply or insufficiently applies the FATF Recommendations.

558. The evaluators were informed that the said list of countries has not been compiled. The Bulgarian authorities are awaiting the list that shall be adopted by the EU in view of the third directive as a useful tool in this respect. However, the financial institutions with whom the evaluators met had all independently developed their own lists of countries until the said EU list is provided.

3.6.2 Recommendations and comments

559. The obligations with reference to Recommendation 11 seem to be fragmented end the essential monitoring obligation is not clearly set forth in enforceable rules.

560. The Bulgarian authorities should consider to explicitly incorporating the obligations of Recommendation 11 in the AML Law or the Regulations.

561. A requirement to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations is introduced in the LMML. There is, however, no requirement to set out in writing any findings of examinations on the background and purpose when transactions have no apparent economic or visible lawful purpose. Such findings should be set out in writing and maintained for a period of at least five years to assist competent authorities. Countermeasures in case such a country continues not to apply or insufficiently apply the FATF Recommendations should also be established in law or Regulations.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**Partially Compliant**	• The Bulgarian authorities should consider to explicitly incorporating the obligations of Recommendation 11 in law or regulation. • Financial institutions should be required to examine the background and purpose of such transactions, set their findings out in writing. • Financial institutions should keep the findings available

		for competent authorities and audit for at least five years.
R.21	**Partially Compliant**	• No requirement to set out in writing any findings of examinations on the background and purpose when transactions have no apparent economic or visible lawful purpose and to maintain such finding for at least five years to assist competent authorities. • No advisories for non-compliant countries. • There are no mechanisms in place to apply counter measures. • Difficult to measure full effectiveness because list of countries is not yet developed.

3.7 Suspicious transaction reports and other reporting (Recommendations 13, 14, 19, 25 and SR.IV)

3.7.1 Description and analysis

Recommendation 13

562. Essential Criteria 13.1, 13.2 and 13.3 are to be required by law or regulation.

563. Article 11 of the LMML requires that wherever there is suspicion of money laundering[20], the subject persons are obliged to notify forthwith the FIA prior to carrying out the operation or transaction, holding up its completion within the period admissible under the legal acts that regulate the corresponding kind of activity. In the cases where delay of the operation or transaction is objectively impossible, the subject persons shall notify the FIA immediately after its performance. The definition of money laundering in the LMML includes laundering in relation to any criminal activity (tax matters are included for these purposes and are not excluded for STR reporting purposes). There is no financial threshold and all suspicious transactions should be reported. It is recalled that insider trading and market manipulation are not considered to be predicate offences and thus the reporting obligation do not cover these offences.

564. Criterion 13.2 requires that the obligation to make an STR should apply to funds where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organizations or those who finance terrorism. Art. 9(1) of the LMFT provides that everybody who knows that certain operations or transactions are directed to financing terrorism shall be obliged to inform immediately the Minister of Interior. Art 9(3) provides that subject persons under the LMML shall be obliged on occurrence of a doubt for financing terrorism, to inform the FIA too.

565. The reporting obligation covers both subjective based suspicion as well as cases of objective based suspicions ("reasonable grounds to suspect"). The Internal Rules of each reporting entity contain so called "criteria or indicators on suspicious operations".

566. Criterion 13.3. requires that all suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction. In the replies to the questionnaire it is stated that attempted money laundering is covered by the wording "where there is a suspicion of money laundering". While this may be the case in practice, a distinction can be drawn in some cases between attempted money laundering and an attempted suspicious transaction. The Bulgarian authorities interpret the statutory language of Article 11 of the LMML to cover attempted suspicious transactions. However, as this is an asterisked criterion the need for attempted suspicious transactions to be reported should be explicitly provided for in either law or Regulation.

567. The STR regime operates for all categories of crime, including tax matters.

568. The evaluators have noted the low number of reports outside the banking sector and this fact raises issues of effectiveness of implementation. STRs are used by the FIA as a tool to set inspection priorities. Even greater efforts should be made in outreach to the other sectors to increase the numbers of STRs.

[20] Defined in Article 2 LMML on an all crimes basis.

569. With reference to the effectiveness of the implementation of the AML/CFT measures that are in place a review of the total number of STRs filed with the FIA during the last three full years indicate that over half of the reports originated from banks. In 2006 approximately 72 % of the reports originated from banks. At the time of the on-site visit banks demonstrated a strong understanding of the nature and purpose of the reporting obligation. Banks have also developed sophisticated procedures to monitor and file STRs. Many banks are foreign owned and have adopted the AML/CFT controls of these jurisdiction to govern STR reporting.

570. While this is encouraging for the financial services sector and a reflection of the increased awareness, the number of STR filed by the other financial services operators leaves much to be desired especially the non-banking financial institutions and the investment intermediaries. For 2006, only one STR was filed by a non-bank financial institution. However, the FSC did file 11 STR for this time period. Other entities such as insurance companies did appear to have a strong understanding of STR filing.

571. This could be an indication where the regulators should focus most of their energy in monitoring compliance and training. Additionally, it is important to note that a major non-financial services subject person was the Customs Authority which filed a large number of STRs during 2005. From the explanations obtained during the evaluation visit this was attributable to the method of reporting by the Customs Authority rather than any particular AML/CFT exercise and it could be considered more of a distortion of statistics.

Additional elements

572. Financial institutions are required to report to the FIA when they suspect or have reasonable grounds to suspect that funds are the proceeds of all criminal acts that would constitute a predicate offence for money laundering domestically.

European Union Directive

573. Paragraph 1 of Article 6 of Directive 2001/97/EEC provides the reporting obligation to cover facts which might be an indication of money laundering, whereas FATF Recommendation 13 places the reporting obligations on suspicion or reasonable suspicion that funds are the proceeds of criminal activity. Article 11 in the LMML appears to be transaction based and does not appear to include information indicating that a person has or may have been engaged in money laundering. This is not in line with the EU legislation.

574. Article 7 of the Second Directive requires Member States to ensure that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities (unless to do so is impossible or likely to frustrate efforts to pursue the beneficiaries). It is considered that Article 11 in the LMML covers this.

Special Recommendation IV

575. Article 9(1) of the LMFT provides that everybody who knows that certain operations or transactions are directed to financing terrorism shall be obliged to inform immediately the Minister of Interior.

576. Article 9(3) of the LMFT provides that subject persons under the LMML shall be obliged on occurrence of a doubt for financing terrorism, to inform the Minister of Interior and the FIA. The evaluators noted that the provision does not use "suspicion" but "occurrence of doubt" to trigger the reporting obligation for financing terrorism. The reporting obligations does not explicitly cover funds that are suspected to be linked or related to, or to be used for terrorist acts or by terrorist organisations. There is no financial threshold. The reporting obligation does apply

to tax matters. Though the term "suspicion" is not used the evaluators consider that this is what is intended by separating the obligations into two different obligations – one relating to knowledge (Article 9 (1) and one with a lower standard (Article 9(3). The only potential problem is whether the requirement in Article 9(3), which the evaluators have equated with suspicion could be interpreted in different ways by the financial institutions: is it a subjective suspicion standard or is it a subjective/objective standard, as both are provided for as alternatives in the special recommendation. It seems to the evaluators that this would bear clarifying but in practice the evaluators consider Criterion IV.1 is broadly met.

577. Unlike the requirement of Article 11, which require reports to be made "forthwith", Article 9(3) LMFT does not use the word 'promptly' and it is recommended that this should be clarified[21]. It is noted that "immediately" is used in Article 9(1) where a person has knowledge rather than suspicion.

578. Criteria IV.2 require that countries should ensure that Criteria 13.3-13.4 also apply in relation to the obligations under SR IV. Criterion 13.3 requires that all suspicious transactions, including attempted transactions, should be reported regardless of the amount of the transaction. It should be explicitly provided for in either law or Regulations that attempted suspicious transactions of financing of terrorism are covered by the reporting obligation.

579. At the time of the on-site visit only 2 STR were reported by banks based on the LMFT. It did appear that supervisory agencies provided only limited guidance on the reporting obligation on terrorism financing. Although many of the methodical guidance did include specific terrorist financing risk factors, it was readily apparent that financial institutions did not understand or check for such. This may partially account for the low filings number of STR.

Safe Harbour Provisions (Recommendation 14)

580. Article 15 of the LMML provides that the disclosure of information from subject persons (reporting institutions) and state bodies concerning STR and additional information requested by the FIA does not give rise to liability for breach of other laws or of any contract. The terms of Article 15(1) would appear to be sufficient to cover criminal liability but not all forms of civil liability, such as an action for slander or defamation. There needs to be clear immunity from all criminal, civil and disciplinary actions if damages occur and if the disclosure was a result of a mistake.

581. No liability is incurred either in the cases whenever it is found that no offence has been perpetrated and the operations and deals have been lawful.

Tipping off (Recommendation 14)

582. According to Art. 14 of the LMML the reporting entities, their managers or representatives, and their employees are not allowed to notify their customer or any third party of the disclosure of information in the cases where a STR has been filed or additional information under the LMML has been requested. This appears to be a comprehensive coverage in relation to the prohibition on tipping off, including related information.

583. The ban to disclose information does not apply to the respective supervisory authority being obliged to provide information to the FIA if they find operations and transactions rising suspicion for money laundering or encounter non-compliance with the obligations to notify payments in cash amounting to more then BGN 30 000 while performing their supervisory functions.

[21] The Law for the Measures against Financing Terrorism has been amended in December 2007 and Article 9(3) now provides that the reporting entities must file an STR before conducting an operation.

Additional elements

584. According to art. 12(4) of the LMML whenever during the examination and analysis of the information received under the provisions of LMML the suspicion for money laundering is substantiated, the Financial intelligence Agency discloses this information to the Prosecution authorities or the respective security and public order service and must maintain the anonymity of the reporting person and its employees.

Recommendation 19

585. Bulgarian financial institutions are required to report currency cross-border transactions systematically.

586. BNB maintains a database containing data on all bank cross-border operations over 5 000 BGN. The requirement is set forth under Article 7 (1) of the Currency Act. In order to meet the needs of the statistics of the balance of payments, registers shall be maintained concerning any transaction or payment between a domestic and a foreign person, as well as of any trans-border transfer or payment in an amount as determined by BNB in a regulation, but not less than 5 000 BGN, as follows:
    1. by commercial banks and the BNB;
    2. by the ministries and state agencies;
    3. by the Central Depository -and issuers of registered capital market securities for which the effective legislation does not provide for registration with the Central Depository;
    4. by investment intermediaries, insurers and pension funds;
    5. by notaries public, respectfully recording offices.

587. The access to the reports in the BNB database is restricted. Access on request is permitted to the FIA.

588. The law does not require a database; however the examiners were informed that such a database utilised by the FIA also maintain information on cash operations exceeding 30 000 BGN. The Bulgarian authorities explained that Article 11a (2) provides that the FIU shall keep a register of payments in cash, amounting to more than BGL 30,000 or its equivalent in foreign currency. The register can be used only for combating money laundering. The term "register" is considered to be synonym with the term "data base". This CTR data base contains practically only information on domestic cash transactions. Instructions as of May 2004 from the BNB Governor and the Minister of Finance defined the cash payments as currency cash exchange or cash credited in to account, cash payment to or by a client selling or buying bonds or financial instruments.

Recommendation 25.2

589. New procedures on feedback were introduced in the legislation in 2006. Article 11, Para. 4, of LMML provides that the FIA shall, upon request or by its own initiative, deliver feed-back to the reporting institution related to the notification made. The Director of the FIA makes the decision on the scope of information to be delivered on every particular case.

590. The FIA has started the new procedure by informing all banks about the reports sent to the prosecutor's office. The financial institutions expressed strong support for continuing this procedure. The FIA also indicated plans to expand such feedback to other financial institutions.

591. There are several cases of requests from reporting entities how to proceed with their clients reported and FIA has issued guidelines/instructions on the basis of such particular requests. During the on-site visit evaluators were informed by supervisory bodies that the FIA is regularly giving feedback. The FSC informed the evaluators that the supervisory body had a special liaison officer who is given feedback directly from the FIA.

592. The FIA should consider providing the specified feedback to all subject entities. Additionally, more guidance and training should be offered to entities supervised by the FSC.

593. The Bulgarian FIA publishes an Annual Report which included limited AML/CFT analysis. It was the understanding of the evaluators that no methods or trends (typologies) were provided to the financial institutions. Such general feedback would assist the financial sector in effectively complying with its AML/CFT obligations. In addition there were no published sanitised examples of money laundering cases, but the FIA did provide informal case studies through various training sessions.

3.7.2 Recommendations and comments

594. The law and Regulations should be amended to specifically include the requirement to report attempted suspicious transactions on money laundering and terrorist financing and more outreach should be undertaken to the non-banking financial institutions, with a view to more reporting on suspicious transactions.

595. Insider trading and market manipulation are not predicate offences and therefore not covered by the reporting obligation.

596. The reporting obligations does not explicitly cover funds that are suspected to be linked or related to, or to be used for terrorist acts or by terrorist organisations.

597. Bulgarian authorities should ensure that there is full protection from civil liability for those making bona fide disclosures, particularly in respect of possible actions for defamation.

598. Having regard to the FATF Best Practice Guidelines providing feedback to reporting financial institutions and other persons consideration should be given to more specific feedback outside the banking sector.

599. Sustained outreach on the obligation to report suspicious transactions related to terrorism should be provided by the FIA.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**Partially Compliant**	• Attempted suspicious transactions are not explicitly covered. • Insider trading and market manipulation are not predicate offences and therefore not covered by the reporting obligation. • No reporting obligation covering funds suspected to be linked or related to, or to be used for terrorist acts or by terrorist organisations. • There are few STRs from non-banking financial institutions (effectiveness issue).
R.14	**Largely Compliant**	• Complete protection from all civil liability is missing for reporting entities
R.19	**Compliant**	
R.25.2	**Largely Compliant**	• Consideration should be given to more specific feedback outside the banking sector.
SR.IV	**Partially**	• No reporting obligation covering funds suspected to be linked or related to, or to be used for terrorist acts or by terrorist

	Compliant	organisations. • Clear provision needed that STRs must be filed promptly. • The obligation to report attempted suspicious transactions of financing of terrorism is not explicitly covered. • Only 2 reports filed by banks and the industry as a whole do not seem to be well-versed in these requirements.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and analysis

600. Recommendation 15, requiring financial institutions to develop programmes against money laundering and financing of terrorism, can be provided for by law, regulation or other enforceable means.

601. According to Article 16 (1) of LMML all obligated persons should adopt, internal rules on money laundering control and prevention within 4 months from their registration. These rules should clearly set out policies and procedures of the financial institution with regard to such activities and have to be approved by the Director of FIA.

602. Article 16 of the LMML states that the internal rules shall lay down clear criteria for discerning suspicious operations or transactions and customers, the procedure for training of the employees and the use of technical means for prevention and detection of money laundering, and also an internal control system for the compliance with the measures under the LMML.

603. Professional organisations and associations of the subject persons are permitted, with the approval of the FIA, to alternatively adopt unitary internal rules for control and prevention of money laundering. This option is not used by the financial institutions and the evaluators were informed that all financial institutions have their own internal rules.

604. The internal rules shall be sent to the Director of the FIA for affirmation within 14 days as from the date of their adoption.

605. The details of what the internal rules must contain are listed in Article 17 of the RIMML which require the internal rules to establish:

1. clear criteria for detecting suspicious operations or transactions or clients;
2. the terms and conditions for collection, analysis, storage and disclosure of information on operations or transactions;
3. the rules of the organisation and the work of the specialised unit (money laundering reporting officer function);
4. the distribution of responsibilities for the implementation of the measures against money laundering within the branches of the subject persons;
5. the use of technical means for the prevention of money laundering;
6. the system for internal control on the implementation of the obligations provided for in the LMML and the acts of its implementation;
7. the rules for the training of the officials within the specialised units;
8. the rules for the training of the other employees;
9. other requirements in accordance with the specific activities of the entity subject to supervision.

606. In reviewing the financial institutions internal rules, the evaluators found them to be well understood by the financial institutions. However, the internal rules promulgated by the FIA were often generic and did not take into account specific risks for each individual sector. Many of the financial institutions seem to be vigilant about complying and following these internal rules.

607. Additionally Article 9 (4) of LMFT (Law on Measures against Financing of Terrorism) requires the financial institutions to include in their internal rules also criteria for the identification of suspicious operations, transactions and customers with regard to terrorist financing. The evaluators noticed a marked difference in financial institutions awareness of, and controls for, terrorist financing indicators.

608. Article 53 sub-article 1 of Ordinance (Regulation) No. 1 of September 15, 2003 on the Requirements to the Activity of the Investment Intermediaries also requires that investment intermediaries create and maintain internal organisation in accordance with the activity carried out by them, including qualified personnel, property, hardware and software base, which, amongst others, ensures the application of the requirements of the LMML.

609. Article 62 in the Insurance Code requires that an insurer shall establish a Specialised Internal Control Department, whose head shall be elected by the General Meeting of Shareholders or by the General Meeting of Members-Co-operators respectively.

610. The Second evaluation report stated*: "On the preventive side, the LMML was amended to extend the list of entities subject to the reporting duty. Most preventive requirements are in place in Bulgaria and it was confirmed that the "Customer Identification Units" are performing the same tasks as money laundering compliance officers (particularly internal supervision, assistance, and training)"*

611. The setting up of AML/CFT compliance officers in Bulgaria is organised through what are called specialised units. Article 6 of the LMML prescribes that financial institutions shall set up specialised units for customer identification which:
    1. collect, process, store and disclose information about the concrete operations or transactions;
    2. gather evidence as to the ownership of the property subject to transfer;
    3. request information about the origin of the money or valuables which form the subject of such operations or transactions; the origin of these funds shall be certified by declaration;
    4. collect information about their customers and maintain accurate and detailed documents for their operations involving money or valuables;
    5. wherever there is suspicion of money laundering, provide the collected information to the FIA.

612. The financial institutions interviewed by the evaluators appeared quite professional and knowledgeable of their internal rules and other obligations under the LMML and RILMML.

613. The RILMML obliges that the specialised unit is headed by an employee having a managerial position. The evaluators were informed that very often, the persons in charge of these units are executive directors, the chief accountants or the heads of internal audit departments.

614. The audit function of financial institutions is incorporated in the RILMML (Article 17 item 6) which requires that internal rules contain the details of a system for internal control, on the implementation of the obligations provided for in the LMML and the acts of its implementation.

615. Article 7(2) of the LMML requests subject persons (including financial institutions) to document and to store the information collected for the purpose of AML/CFT in a way that the auditors of the institution have full access to it for auditing and testing the compliance with the legal requirements implemented in the internal policies and procedures of the institutions.

616. The internal audit function in a bank is an independent assessment activity of all bank operations. The auditors have unfettered access to the information related to each activity. Chapter 3 of the Ordinance No 10 on the Internal Control in Banks, issued by BNB, instructs the auditors to inspect and assess the adequacy of the bank's systems to manage the risks associated with AML/CFT, and management's ability to implement effective monitoring and reporting systems.

617. Article 18 of the RILMML obliges financial institutions to ensure self-sustained training for their staff within the specialised units in relation to their activities for prevention of money-laundering and applying of the measures under LMML and the bylaws for its enforcement. They shall receive methodological assistance by FIA when developing and implementing training programs.

618. All financial institutions' representatives that met with the evaluators had training programmers either in-house or with the assistance of either their parent companies or other organisations. Training programmes were organised for all staff on a regular basis.

619. Criterion 15.4 requires financial institutions to put in place screening procedures to ensure high standards when hiring employees. There are enforceable regulatory provisions (Law on Credit Institutions, Ordinance no.10 for banks which cover all banks employees. These provisions include technical/professional requirements for particular jobs but for all staff conclude checks on criminal records to ensure that there are no previous convictions. For non-bank financial institutions there is no uniform enforceable requirement to screen all employees. In practice this Criterion is set forth in each entity's internal rules, which do not amount to other enforceable means.

620. The examiners noted that banks appear to have sophisticated, well-thought out internal rules. These rules appear to be well understood by the bank personnel. Many of the internal rules and controls are dictated by the banks foreign ownership, which have well-developed AML/CFT systems. The nature and quality of the internal rules for entities regulated by the FSC were not equally clear to the examiners.

621. Although the FIA does have authority to approve the internal rules and can sanction for non-compliance, it was not apparent how often the FIA actually did return or modify internal rules. Substantively, many of the internal rules appear to be quite generic, and not include industry-specific risk factors. The FIA should work collaboratively with the industries to review the effectiveness of internal rules. Such rules need to be continually monitored and updated, when appropriate.

Recommendation 22

622. Financial institutions are obliged, to the extent permitted by foreign legislation – to provide for the application of the measures pursuant to the LMML and the RILMML to their branch offices and subsidiaries abroad where they hold the control number of shares (LMML Art.3c).

623. When the legislation in the foreign country does not permit or limits the application of the measures of the LMML, the subject persons are obliged to inform the FIA and the respective supervisory body on this (Article 3c).

624. Financial institutions are obliged to specially monitor their professional and commercial relations, the operations and transactions with persons from countries that do not at all, or do not fully implement international standards for countering money laundering (LMML art. 7a).

625. Where the minimum AML/CFT requirements of Bulgaria differ from those where branches and subsidiaries are situated, the LMML does not require the financial institutions to apply the higher standard, to the extent that local (i.e. host country) laws and regulations permit.

Additional elements

626. In the replies to the mutual evaluation questionnaire it is confirmed that financial institutions are subject to the Core Principles required to apply consistent CDD measures at the group level, taking into account the activity of the customer with the various branches and majority owned subsidiaries worldwide.

3.8.2 Recommendation and comments

Recommendation 15 and Recommendation 22

627. Further work to improve and refine the internal rules should be undertaken in order to make these procedures fully effective. Each sector needs to review systemic risk vulnerabilities and develop guidance tailored to these particular risk factors. The FIA and supervisory authorities should consider jointly developing such guidance on a continuing basis.

628. For non-bank financial institutions there is no uniform enforceable requirement to screen all employees.

629. Provision should be made that where minimum AML/CFT requirements of the home and host country differ; branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**Largely Compliant**	• There is an obligation to develop CFT internal procedures, policies and control programmes, however, these programmes were not fully understood by some of the financial institutions. Further development and refining of these programmes are recommended (effectiveness). • For non-bank financial institutions there is no enforceable requirement to screen all employees. • The AML/CFT audit function should be further developed and elaborated to include controls and testing.
R.22	**Largely Compliant**	• Provision should be made that where minimum AML/CFT requirements of the home and host country differ; branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.

3.9 Shell banks (Recommendation 18)

3.9.1 Description and analysis

630. The Bulgarian legislation does not allow shell banks to be established or licensed for banking activities in Bulgaria. This position was explicitly expressed in the former Law on Banks that was in force until December 2006. Since the beginning of 2007 a new Law on Credit Institutions (LCI) has been adopted. The whole licensing procedure described in details in LCI (particularly chapters 2 and 3, and sections 1 and 2) and in the Ordinance No2 on the Licenses and Permits Granted by the Bulgarian National Bank according to the LCI *(Bulgarian version only)* does not permit the establishment of a shell bank or of its branch.

631. Additionally the LMML, Art.3b, prohibits banks licensed and operating in Bulgaria from establishing correspondent banking relationships with banks located in jurisdictions where they have no physical presence and do not pertain to a regulated financial group.

632. Banks in Bulgaria are also banned from entering into correspondent relations with banks abroad that allow their accounts to be used by banks located in jurisdictions where they have no physical presence and do not pertain to a regulated financial group (LMML art. 3b).

3.9.2 Recommendations and comments

633. The licensing requirements to establish a bank prevent that shell banks can be established in Bulgaria.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**Compliant**	

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 and 25)

3.10.1 Description and analysis

Authorities' roles and duties, structure and resources - Recommendation 23/30

634. Criterion 23.1 requires that countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF standards. Criterion 23.2 requires countries to ensure that a designated competent authority (or authorities) has responsibility for ensuring AML/CFT compliance.

635. The responsibility for the implementation of the Law on Measures against Money Laundering is exercised by the Minister of Finance and the Director of the FIA.

Financial Intelligence Agency

636. Ensuring AML/CFT compliance of the financial institutions is the responsibility of FIA pursuant to Article 16 (off-site review of internal rules) and Article 17 (on-site inspections) of the LMML. Financial supervisory bodies also have the authority to conduct AML/CFT inspections Article 17 (4).

637. The FIA has sufficient operational independence and autonomy to undertake its responsibilities. It appears that the FIA organisational structure is suited for the supervision of the particular AML/CFT risks in the financial sector. Staff also appeared to be well-trained and has participated in several international conferences on a range of AML/CFT topics. FIA's inspectors are held to high professional standards (Ethic Code of FIA employees), and have master degrees in economies or law. Additionally the inspectors attend different training.

638. The FIA appears to have made substantial progress in solidifying AML/CFT in the banking sector. This is borne out by banks solid understanding of AML/CFT requirements as evidenced by their overall STR filings. However, the FIA has determined systemic deficiencies in banks STR filings. *"The 2006 Annual Report on the activities of the Financial Intelligence Agency"* (Annual Report) noted as follows: "Some banks: (delay filing their suspicious transactions reports; (2) do not always show the facts and circumstances that have raised their suspicions; (3) do not attach their STRs copies…relating the suspicious activities."

639. The other financial institutions did not appear to have as full an understanding of AML/CFT requirements as the banking sector. The FIA has acknowledged in its Annual Report for 2006 that exchange offices and financial houses do not comply in a satisfactory manner. The main problems are in relation to the identification of clients and filing of suspicious transaction reports. The lack of systematic monitoring of clients' transactions is a problem identified in financial houses. In light of this fact, the BNB inspection and coordination with the FIA needs to improve.

640. Through a multi-disciplinary process, the FIA has developed an inspection cycle that takes into account a sector risk-assessment. However, although the FIA determined that certain financial institutions posed greater AML/CFT risk, it was not clear how the FIA allocated resources to identifying particular financial institutions of concern and whether adequate operational resources were devoted to such institutions. Further mitigating effectiveness, the FIA is the only agency that has independent sanctioning authority. In addition, it appeared that when sanctions were imposed for AML/CFT, they generally were not of a sufficient magnitude to foster compliance or serve as a deterrent.

641. Article 17 of the LMML and Article 15 of the RILMML provide the FIA with comprehensive powers to perform inspections, to receive data, to unlimited access to premises of the reporting entities and persons. The FIA is also authorised to solicit experts to assist in such inspection.

642. In terms of fully implementing the risk-assessment, steps have been taken to better integrate the supervisory authorities. This is witnessed by meetings between the FIA, BNB, FSC and NRA as well as the conducting of joint investigations. However, further work needs to be done to institutionalise cooperation and information sharing.

643. The FIA has overall responsibility for ensuring subject entities compliance with the AML/CFT regime. All subject persons, and the FIA when conducting inspections, are obliged to report to the Minister of Interior. The Council of Ministers is the authority to publish both UN and other national lists of designated terrorist organisations and individuals. Additionally, the Ministry of Foreign Affairs can immediately notify the FIA of changes to such lists and in turn the FIA will notify commercial banks. Other financial institutions must use publicly available information e.g. the UN web site, the national State Gazette. Banks appeared to be aware of such lists and some of the large banks did have access to commercial software to check names against the lists. Checking for CFT compliance by the FIA and supervisory bodies was less evident. Progress had been made to improve the overall understanding of CFT, but it was not clear whether a well-thought out CFT strategy has been implemented. As such, it is difficult to accurately determine the level of compliance with CFT or whether supervision is effective.

644. Article 3a of the LMML provides that supervisory authorities (BNB, FSC, and NRA) as part of their on-site supervision inspect for AML compliance, and are required to report any violation of this law to the FIA.

Bulgarian National Bank

645. The Special Supervision Department of the Bulgarian National Bank is the department responsible for oversight of banks regarding AML/CFT. Its AML responsibilities and tasks are set out in Article 3a of LMML. Article 80 of Law on Credit Institutions provides that whenever necessary, it is required to conduct inspections jointly with the FIA, to render assistance to the FIA, and to provide the FIA with relevant statistical information. The total number of STRs filed by the BNB to FIA from 2003 to 2006 is 17. The type of activity underlying the STR filing was not provided to the evaluators. The FIA is providing specific feedback to the banks and it is hoped that the BNB will continue its efforts to file STRS as part of their AML/CFT inspections.

646. In 2006, the BNB inspected 24 commercial banks, 35 financial houses for AML compliance. These examinations were coordinated with the General Prosecutor's office, law enforcement and the FIA. According to the Annual Report seven of the examinations were "inspected for specific suspicious cases and persons."

647. In terms of enforcement, the BNB is authorised by the Law on Credit Institutions to impose supervisory measures and has issued warning letters to several banks and financial houses related to insufficient customer due diligence, account opening, and enhanced requirements for non-resident customers. The BNB also withdrew licenses for financial houses. However, such revocations were not based on AML/CFT non-compliance and it does not appear that such a measure has been taken. The BNB stated that it works cooperatively with the regulated industry. The FIA is the only agency that has authority to impose administrative fines.

648. Although it is believed that the BNB have the expertise and apparently conduct their inspections diligently the BNB seems to lack some resources to enable it to conduct more timely inspections.

Financial Supervision Commission

649. The Financial Supervision Commission is a fully independent body reporting to the Parliament responsible for regulation and control over the financial system responsible for regulating the securities market; the Central Depository; investment intermediaries investment and management companies; natural persons who execute transactions in securities; public companies that issue securities; insurers, insurance brokers; health insurance companies; and companies that provide social insurance. An important clause contained in the agreements between the FIA and the FSC is a provision that provides for carrying out joint examinations. Inspections performed by the FSC also include compliance with the LMML provisions by the entities subject to its supervision.

650. The FSC stated that they do check if regulated entities have provisions in their internal rules covering LMFT. To date, no violations have been detected; however, in interviewing financial institutions representatives, it was the impression of the evaluators that further training should be provided on compliance with LMFT.

651. The number of joint investigation with the FIA is increasing and this should assist in improving overall AML/CFT compliance. As part of the USAID project, the FSC developed an AML/CFT inspection manual. It appears that the procedures instituted by the manual have led to a more uniform approach to inspections. Additionally, the FSC has adopted a risk-based approach to inspections; however further work needs to be done to align resources to greater risk areas such as investment advisors. Finally, the FSC does not appear to have issued any penalties for violations of the LMML. The lack of independent enforcement action negatively affects the overall effectiveness of the FSC inspection and enforcement regime.

652. The FSC has notified the FIA 11 times under the reporting obligation between 2003-2006, 10 instances by the Investment Supervision Division and 1 time by the Insurance Supervision Division.

653. Although the evaluation team was assured that the FSC is adequately resourced the number of inspections compared to the total subject persons seem to be disproportionate. It is believed that the large number of subject persons supervised calls for more human resources.

The National Revenue Agency

654. The National Revenue Agency has 28 regional directorates, which are responsible for a variety of taxes (tax on general income, corporate taxes, excise duties, VAT, patent duties) and compulsory insurance payments. The FIA is the state authority responsible to register and maintain the Register of *exchange offices* in Bulgaria, the control over their activities is exercised by the National Revenue Agency. The NRA, in their capacity of "supervisory body" for the exchange offices, can only impose sanctions related to taxation; while infringements of the provisions of the LMML and the RILMML are referred to the FIA which can impose sanctions under the provisions of the LMML. If violations of an exchange office are found to be substantial and no corrective action is taken or is unsatisfactory, the FIA has the authority to remove it from the Register and to revoke its registration. The FIA has revoked registration of 3 exchange offices.

655. At the time of the on-site visit the NRA had 350 inspectors who have detailed procedures and check-lists to follow in conducting on-site supervision. However, there is no particular AML/CFT unit, nor was this the focus of any training. Although the evaluation team was informed that on-site inspection check-list of exchange offices included, the review of internal rules and the records of CTRs filed.; it is the impression of the evaluators that reviewing AML/CFT compliance during NRA inspections is considered an auxiliary task rather than an integral part of their legal obligations or practice. The Bulgarian authorities should consider a through training programme in this respect that would promote a change in culture and more expertise in AML/CFT issues. Bulgaria did acknowledge in its 2006 Annual Report that exchange offices were a systemic AML risk and a special action plan is adopted, which included

joint inspections and an information exchange programme between the FIA and the NRA. During 2006, the NRA found 60 infringements of various financial laws; and made 7 notifications to the FIA on infringements related to AML/CFT. Additionally, the NRA has carried out 558 inspections (a few of them jointly with the FIA), of which 12 were conducted in 2004 while the rest (546) were conducted during 2006. The FIA issued 10 sanctions to exchange houses for violation of the LMML.

Market Entry

656. Pursuant to Criteria 23.3, regulatory agencies do regulate and implement legal and regulatory measures to prevent criminal influence of financial institutions. Such measures do appear to cover the misuse of corporate vehicles to obscure true ownership. For example article 11 of the Law on Credit Institutions prohibits a managing board, board of directors from obtaining a license if a person was "convicted of a premeditated crime of general character, unless rehabilitated." This law also requires information on persons owning prescribed equity in a legal person. A similar requirement is found for special investment purpose companies are stipulated in the Law on the Special Investment Purpose Companies (Articles 8 and 11) which also require that the members of the Board of Directors must not have been convicted for a willful crime of general nature together and includes other criteria that if satisfied bar entry into the field. The Annual Report noted that in 2006, the FIA received 35 requests from supervisory agencies concerning the fitness of persons and the source of capital as a condition of obtaining a license.

657. In terms of Criteria 23.4 concerning whether entities subject to the "Core Principles", are applicable, Bulgaria does extend such to AML/CFT. For example, the Law on Credit Institutions which requires licensing, risk management, supervision, and global oversight for banks is equally applicable to money laundering. For banks, the Special Supervision Department of the Bulgaria National Bank is responsible for oversight for AML/CFT. Similar provisions require insurance and other entities required to follow "Core Principles." Lastly, the FSC which is responsible for regulating a wide range of entities under prudential principles also extend AML/CFT compliance to several sectors.

658. Regarding criteria 23.5-23.7, money service business or value transfer system are subject to licensing requirements and are monitored for AML/CFT compliance. Domestic transfers of funds are also performed by national post services through their own distribution network. Additionally there are private entities which perform postal money transfers under license and are inspected by the FIA for AML/CFT compliance. However, the evaluators believed that further study should be undertaken to ascertain if, in fact, an unlicensed "underground" value transfer system exists.

Recommendation 25.1

659. In terms of criteria 25.1, FIA is required to provide methodological assistance to subject persons. Pursuant to Article 18(2) of the RILMML, the FIA provides methodological assistance to the subject persons for the creation and the implementation of training programmes. These include general information on criteria for detection of suspicious activity (both ML and TF) and clients, performing the CDD requirements, disclosure of information and training of the employees. These Guidelines provide guidance on the development of internal rules. It appears that the guidelines for the internal rules are published at the web site of the FIA. However, such guidelines are not available on the English web site. Some of the guidelines that were provided to the assessors are generic and did not capture specific risk factors and measures to mitigate such risks. For the most part, banks developed sophisticated internal rules, in part, based on the guidance supplied by the FIA.

660. The FIA has not provided basic typologies but has published general statistics on the number of disclosures on its public web site. However, such material was not available in English and a translated copy was not provided to the evaluation team. Accordingly, it is not possible to judge the effectiveness of these materials. Actual case studies of money laundering were also not

provided. The FIA should continue to publish and refine such guidance to assist obliged entities in assessing risks and taking appropriate risk management measures.

Recommendation 29

661. In terms of Criteria 29.1, the LMML provides for a broad supervisory activity of the FIA to monitor and ensure compliance over the financial institutions (subjects to AML/CTF measures under the LMML). The regulation and supervision activities of the FIA are focused on review and inspection of an organisation of reporting entities' internal control mechanisms and inspections over compliance with AML/CTF measures (on-site and off-site inspections). The LMML (Article 17) sets forth the requirements and procedures for on-site inspections while the requirements for reporting entities' mechanism of internal control (internal rules of the reporting entities) is found in Article 4(6) and Article 16.

662. The regulation and supervision over the reporting entities is also ensured by the provision of Art. 3a of the LMML that empowers and obliges the general supervisory authorities (BNB, FSC and NRA) to perform as part of their on-site inspections checks for compliance of the reporting entities with the AML measures stipulated in the LMML. Since 2006, the bodies responsible for general supervision over the non-banking financial institutions (NRA and FSC) are performing AML/CFT compliance inspections as part of their general supervisory activities.

663. In terms of 29.2, FIA is entitled to both on-site and off-site inspections of the reporting entities. On-site inspections are currently carried out based on risk assessment of all reporting entities performed and adopted in 2006 by the Multidisciplinary Task Force for Prevention of Money Laundering and Terrorist Financing (including representatives of BNB, FSC and NRA among the other institutions responsible in the prevention and fight against ML/TF).

664. The legal framework for BNB on-site inspections is vested in Article 80 of LCI, Article 4 of Law on the Bulgarian National Bank, and Articles 3a and 17 of LMML. Article 80 of the LCI authorises BNB to conduct on-site inspections and in the case of consolidated supervision the BNB may require parent companies and banks' subsidiaries to provide all the relevant documents and information. On-site inspections in a bank may be carried out jointly with employees of the FIA, the Financial Supervision Commission or other competent authorities

665. Financial Supervision Commission Act Article 19(5)) and the Regulation for the Structure and the Activity of the Financial Supervision Commission (Articles 60 and 68) authorise and empower the FSC to conduct supervisory inspections and demand information in conducting its supervisory function. FSC-inspected subject persons are obligated to cooperate with the FSC and are obliged to provide, amongst other: access to the premises; all documentation necessary; and upon request, explanations in writing. The FSC and the FIA may also perform jointly compliance audits (Article 17(4) of LMML).

666. In terms of criteria 29.3, no court order is required for the inspectors of the supervisory bodies to obtain access for supervisory purposes, including FIA.

667. Article19 (2) of the LMML gives the financial supervisory authorities the power to revoke a licence issued by such authorities. With respect to other sanctions these supervisory authorities are required to make a recommendation to the FIA for its determination to impose financial penalties under the LMML. The FIA has adequate enforcement and sanctioning authority against financial institutions, their directors or senior management for failure to comply with the AML obligations. Failure to comply with the CFT obligations penalties can be imposed by the Minister of Interior or by officials authorised by him.

***ON-SITE* INSPECTIONS PERFORMED BY THE INSPECTORATE DIRECTORATE OF THE FINANCIAL INTELLIGENCE AGENCY**

1st January to 31st December 2006

Reporting entities under Art. 3, Para. 2 of LMML	Number of inspected entities
Banks	5
Exchange offices	10
Financial houses	5
Insurers	2
Casinos	12
Pension funds	6
Notaries Public	5
Lawyers	1
Real estate agents	1
Total for the year	**47**

***OFF-SITE* INSPECTIONS IN 2006**

Category of Reporting Entity as per Art. 3, Para. 2 LMML	Number
1. Credit institutions, financial houses, exchange bureaus, money remitters	107
2. Insurers, re-insurers, insurance intermediaries	5
3. Collective investment schemes, investment intermediaries and management vehicles	30
4. Pension insurance companies	1
5. Privatization bodies	0
6. Persons organizing public procurement	8
7. Persons organizing gambling	26
8. Legal persons that operate employee mutual aid funds	1
9. Pawn houses	3
10. Postal services that accept money or other valuables	2
11. Notaries	6
12. Market operator or regulated market	0
13. Leasing vehicles	8
14. State and municipal organs that conclude concession contracts;	14
15. Political parties	1
16. Professional unions and organizations;	0
17. Non-Profit Legal Persons	84
18. Certified expert-accountants and specialised auditing vehicles	16
19. National Revenue Agency bodies	1
20. Customs bodies	0

21. Persons trading in motor vehicles when the payment is in cash and of value over 30 000 BGN (about 15 000 EUR) or their counter value or their counter value in local currency	28
22. Sports organizations	61
23. Central Depository	0
24. Persons trading in goods by profession when the payment is in cash and of value over 30 000 BGN (about 15 000 EUR) or their counter value or their counter value in local currency	2
25. Dealers in arms, oil and petrol products	9
26. Persons who by profession provide consulting in tax matters	8
27. Wholesale traders	118
28. Persons providing legal advice by profession	22
29. Persons providing real estate intermediation	41
30. Persons, whose occupation is to provide: a) management address, correspondence address, or office for the purpose of legal person registration; b) legal person, off-shore company, fiduciary management company or similar entity registration services; c) fiduciary management services for property or person under letter b).	3
Total	585

Recommendation 17

668. Administrative sanctions for non-compliance with the LMML may be imposed only by the FIA. The Director General of the FIA is authorised by the Minister of Finance to issue administrative sanctions. If it is necessary to revoke the license it is for the supervisory body that issued the licence to withdraw the permit (art. 19 of the LMML). The FIA could make recommendations to relevant supervisory bodies in particularly serious cases to consider revoking licences. Recourse has never been made to such action. In the case of an exchange office (for which the FIA is the registering authority) this action was taken for an AML/CFT breach. The FIA is also empowered to issue instructions to correct deficiencies.

669. According to art. 23 of the LMML administrative sanctions for non-compliance by individuals for infringements of LMML provisions on identification, gathering of information, storing of information, disclosure, protection of information and refusal to assist or to give free access to supervisory bodies can give rise to administrative sanctions from BGN 500 up to 10,000 for individuals and BGN 2,000 to 50,000 (about 25 000 EUR) in the case of a sole entrepreneur or a legal person.

670. When an individual perpetrates, or lets an infringement be perpetrated by failing to report suspicion, failure to report a reportable cash transaction and tipping-off s/he shall be punished by a fine of BGN 5,000 - BGN 20,000, if the act does not constitute a crime. In the case of a sole entrepreneur or a legal person the sanction shall vary from BGN 2,000 to 50,000. For example, in 2006, the FIA imposed only one fine on a commercial bank of 20 000 BGN for failing to file a cash declaration and for tipping off that fact.

671. When a person commits or admits the commission of an offence against the internal rules s/he shall be punished by a fine of 200 to 2 000 BGN, if the act does not constitute a crime ,and in the case of a sole entrepreneur or a legal person, the sanction shall vary from BGN 2,000 to 50,000.

672. Apart from the cases mentioned above, when an individual perpetrates or lets an infringement of the LMML be perpetrated s/he shall be punished with a fine of BGN 500 to 2,000 BGN. In the case of a sole entrepreneur or a legal person, the sanction shall vary from BGN 1,000 to 5,000.

673. The evaluators were advised that no individual has been sanctioned by the FIA. There have been investigations against the officials of reporting entities for breach of the reporting obligations under the LMML.

674. Sanctions are available not only to legal persons that are financial institutions or businesses but also to their directors and senior management. The supervisory authority which issued the licence or registered the subject entity is authorised to suspend, withdraw or revoke the license or registration for AML violation. This has never been done in practice.

675. Article 253 b of the CC criminalises violation on non-compliance with the provisions of LMML and provides for imprisonment up to 3 years. There are current investigations but no criminal penalties have been imposed in particular for serious violation of the LMML.

The Bulgarian authorities provided the following tables:

Type of infringements and the sanction imposed in 2004, 2005 and 2006.

Category of reporting entity	**Type of infringement per year**		
	2004	**2005**	**2006**
Commercial banks	Art. 17, Para. 7 of the LMML ***/free access of supervisory bodies, actually the provision is now revoked/*** §2 of the Temporary and Concluding Provisions of LMFT;/ ***/up-dating the Internal Rules with criteria on identification of TF activities/*** Art. 4, Para. 1 LMML, 2 sanctions of 15 000 BGN each ***/client's identification/***	Art. 11a LMML, 8 sanctions of 5000 BGN each /***not filing a CTR/*** Art. 11 LMML – 1 sanction of 20 000 BGN ***not filing a STR; tipping off/*** Art. 5, Para. 1 LMML ***(deficiency in CDD)*** – 1 sanction of 5000 BGN	Art. 11, Para. 1 LMML ***not filing a STR/*** Art. 14, Para. 1 ***(disclosure of information to a subject of STR)*** - sanction of 20 000 BGN
Exchange Offices	Art. 16, Para. 1 LMML ***(lack of internal rules),*** sanction of 1400 BGN Art. 4, Para. 1 LMML ***(deficiency in CDD)*** – 2 sanctions of 5000 BGN each Art. 4, Para. 7 LMML ***(no declaration of origin of funds)*** – 2 sanctions of 3000 BGN each	Art. 4, Para. 1 LMML ***(deficiency in CDD)*** – 3 sanctions 3000 BGN Art. 4, Para. 7 LMML ***(lack of declaration of origin)*** – 3 sanctions of 3000 BGN	Art. 4, Para. 1 LMML – 4 sanctions of 2000 BGN each, 1 sanction of 3000 BGN ***/client's identification/*** Art. 4, Para. 7 LMML – 4 sanctions of 2000 BGN each, 1 sanction of 3000 BGN ***(no declaration of origin of funds)***
Gambling	Art. 16, Para. 1 LMML ***(lack of internal rules)*** – sanction of 5000 BGN		Art. 4, Para. 3 LMML ***(unidentified client by gambling)*** sanction of 2000 BGN

Financial Houses		Art. 11a LMML – 1 sanction of 5000 BGN ***/not filing a CTR/*** Art. 11 LMML – 1 sanction of 10 000 BGN (revoked) / / ***not filing a STR/*** Art. 4, Para. 7 LMML – 1 sanction of 10000 BGN (reversed) ***(no declaration of origin of funds)***	Art. 11a LMML – 3 sanctions of 5000 BGN each ***/not filing a CTR/*** Art. 4, Para. 2 LMML – 2 sanctions of 2 000 BGN each (appealed) ***/client's identification in case of linked transactions/*** Art. 4, Para. 7 LMML – 1 sanction of 3000 BGN ***(no declaration of origin of funds)*** Art. 4, Para. 1 LMML – 1 sanction of 3000 BGN ***/client's identification/***
Insurance	Art. 4, Para. 7 LMML - 2 sanctions of 3000 BGN each (1 reversed) ***(no declaration of origin of funds)***		
Investment intermediaries		Art. 11a LMML – 1 sanction of 5000 BGN ***/not filing a CTR/***	
Pension Insurance		Art. 4, Para. 7 LMML – 1 sanction of 3000 BGN ***(no declaration of origin of funds)***	Art. 4, Para. 7 LMML – 1 sanction of 3000 BGN ***(no declaration of origin of funds)*** Art. 11a LMML – 2 sanctions of 3000 and 2000 BGN /***not filing a CTR/***
Post offices	Art. 4, Para. 2 LMML 2 sanctions of 3000 and 5000 BGN (reversed) ***/client's identification in case of linked transactions/***		
Notaries public		Art. 4, Para. 7 LMML – 1 sanction of 1000 BGN***(no declaration of origin of funds*** Art. 11a LMML – 1 sanction of 5000 BGN ***/not filing a CTR/***	
Stock exchange	Art. 16, Para. 1 LMML ***(lack of internal rules)*** sanction of 2000 BGN		
Non-profit organizations		Art. 16, Para. 1 LMML ***(no internal rules)*** – sanction of 2000 BGN	

Further for 2007 violation were summarized in separate table.

Type of infringement	***Number***
Art 4, Para.7 of LMML in relation to art. 10 Para. 2 of the RILMML ***(no declaration of***	28

origin of funds)	
Art 4, Para. 1 of the LMML ***(deficiency in CDD)***	6
Art 11a, Para. 1 of the LMML in relation to art. 16 of the RILMML /***not filing a CTR/***	10
Art 6, Para. 1 of the LMML ***/lack of clients identification (legal entity)/***	1
art. 4, Para. 2 of the LMML ***/client's identification in case of linked transactions/***	1
Total:	***46***

Sanctions imposed by the FIA as a result of the on-site inspections in 2006

Reporting entities under Art. 3, Para. 2	**infringement bills/sum**
Commercial banks	1 sanction / 20 000 BGN
Exchange Offices	4 sanctions / 2000 BGN each 1 sanction /3000 BGN 4 sanctions of 2000 BGN each, 1 sanction of 3000 BGN **Total: 10/22 000 BGN**
Gambling	1sanction of 2000 BGN
Financial Houses	3 sanctions / 5000 BGN each 2 sanctions /2 000 BGN each 1 sanction/ 3000 BGN 1 sanction / 3000 BGN **Total: 7/ 11 000* BGN,** **Note: 2 sanctions were appealed**
Pension Insurance Companies	1 sanction / 3000 BGN 2 sanctions/ total 5000 BGN **Total: 3/ 8 000 BGN**
Total value	**63 000 BGN**

676. Since the second evaluation The Criminal Code Article 253 was amended in 2004 and 2006, which intended to improve the effectiveness of the money laundering offence. Thus Article 253 paragraphs 1 and 2 read as follows:

> *(1) A person who carries out a financial operation or a transaction with a property, or hides the origin, location, movement or actual rights on a property about which he knows or supposes that they have been acquired through a crime or another socially dangerous act, shall be punished for money laundering by imprisonment of one to six years and a fine of three thousand to five thousand BGN.*

677. Instigation, preparation and conspiracy in relation to money laundering are also criminalised. The law also provides for the confiscation of assets which have been converted as a result of the laundering process, and for the prosecution of the money laundering offence when the predicate offence has taken place abroad.

678. While the sanctions that may be imposed on individuals and legal persons appear to be proportionate for a money laundering offence, carrying a maximum of six-year imprisonment, they may regarded as comparatively lenient and not dissuasive enough compared to other countries.

3.10.2 Recommendations and comments

679. With respect to BNB it is believed that although they have the expertise and apparently conduct their inspections diligently the BNB seems to lack some resources to enable it to conduct more timely inspections with the same accuracy. The Bulgarian authorities should consider additional resources in this respect.

680. Although the evaluation team was assured that the FSC is adequately resourced the number of inspections compared to the total subject persons seem to be disproportionate. It is believed that the large number of subject persons supervised calls for more human resources. The Bulgarian authorities should consider additional resources in this respect.

681. The NRA, as a recently re-structured entity, needs to integrate its AML/CFT as part of its main functions rather than an "auxiliary task". The Bulgarian authorities should consider a through training programme in this respect that would promote a change in culture and more expertise in AML/CFT issues. Although the number of entities supervised by the NRA is large it is believed that one cannot yet comment on the resources efficiency at this early stage of its learning curve.

682. With respect to the three supervisory authorities, BNB, FSC and NRA, there seem to be a lack of co-ordination between the three of them collectively and individually with the FIA. The representatives that the evaluation team met mostly stated what should happen in theory and little practical experience was revealed. A major effort should be co-ordinated to overcome the lack of experience of working together. The expertise that any institution has should be tapped to assist whoever needs it. The Bulgarian authorities should work more on the application of their legislation, powers and duties into a co-ordinated effort to combat ML/FT.

683. The methodological guidelines that were supplied to the evaluation team seem to adequately supply the implementation measures required by the industries concerned. However, some of the industry operators met by the team seemed rather surprised and to have no knowledge of the existence of these guidelines. A thorough awareness campaign is recommended for most industries, especially with respect to terrorist financing.

684. The maximum permissible financial sanction on a corporation is 50 000 BGN. The maximum that has actually been imposed in practice is 20 000 BGN, for tipping off. No individual was sanctioned in respect of this tipping off offence. The evaluators were surprised by the level of this corporate sanction for such a serious offence as tipping off. The remaining fines of which the evaluators were aware appeared to be rather low as corporate sanctions intended to be dissuasive. Looking at the tables of sanctions imposed it would appear that financial sanctions have been imposed infrequently. The evaluators have been advised that, in the view of the FIA, sanctioning has led to a significant improvement of the internal organisation of the legal persons that have been inspected. The evaluators cannot comment on this on this conclusion. In the view of the evaluators it was difficult to assess whether in fact such sanctions are truly "effective, proportionate and dissuasive".

685. The BNB does not impose pecuniary sanctions, but has issued several warning letters to banks and financial houses. As such, it does not appear to satisfy the requirements of Recommendation 17.

3.10.3 Compliance with Recommendations 17, 23, 29 and 30

	Rating	Summary of factors underlying rating
R.17	**Largely Compliant**	• The range of permissible sanctions is low for corporations effectiveness issue). • In practice the sanctions imposed were also low in comparison with the maximum permitted penalty (effectiveness issue). • In a specific case involving tipping off sanction was imposed only on the corporate entity and is not considered proportionate by the evaluators (effectiveness issue).
R.23	**Largely Compliant**	• More resources should be dedicated by both BNB and FSC with respect to AML/CFT issues. • More training and a change in culture is required in the NRA. • More co-ordination between all four players is required to effectively supervise and control the AML/CFT obligations of all subject persons (effectiveness issue).
R.25.1	**Largely Compliant**	• In some industries there seem to be a lack of awareness of the methodological guidelines available (efficiency issue). • Although useful, many of the guidelines appear to be generic and not tailored to the particular sector (efficiency issue).
R.29	**Largely Compliant**	• In terms of implementing risk based supervision, it was unclear whether the FSC/FIA joint inspections adequately accounted for risks within the various sectors.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

686. Money transfer services are offered only through licensed institutions with the exception of Postal Services who currently provide domestic transfers. Money transfers are affected through financial houses or exchange bureaus only on a contractual basis with banks. Banks and financial houses need a licence to perform such activities. Exchange bureaus perform their activities subject to registration. With the exception of Postal Services, none of the money transfer services operate on their own in Bulgaria and compliance of AML/CTF requirements remains the responsibility of their principal[22].

687. No informal alternative remittance systems are allowed and the evaluation team was informed that the informal MVT was not considered as a problem in Bulgaria. Moreover financial services operators who offer licensed money transfer services do not feel any form of competition from informal MVT and believe that if there is any it is negligible.

[22] Law on money transfers, electronic payment instruments and payment systems has been amended since the on-site visit. The amendment implements Directive 2007/64/EC on payment services. A separate licensing/registration regime is introduced as required in the 3rd EU AML/CFT Directive. The amended law is in force since February 2008.

3.11.2 Recommendations and comments

(N/A)

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**Compliant**	

4 PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

688. The LMML covers the following DNFBP:

1. privatisation bodies;
2. persons who organise public procurement orders assignment;
3. persons who organise and conduct games of chance;
4. legal persons to which mutual-aid funds are attached;
5. persons who grant monetary loans in exchange for the deposit of property;
6. postal services that accept or receive money or other valuables;
7. public notaries;
8. political parties;
8. professional unions and organisations;
9. non-profit legal entities;
10. licensed accountants and specialised auditing enterprises;
11. merchants who sell automobiles by occupation, when payment is made in cash and in an amount greater than BGN 30 000 or its equivalent in foreign currency;
12. sports organisations;
13. persons dealing by profession in high value goods;
14. dealers in weapon, petroleum and petroleum products;
15. persons who by profession provide consultancy in tax matters;
16. wholesale merchants;
17. Leasing partnerships
18. persons who by profession provide legal consultancy when they:
    - I. participate in planning or performing of operation or deal of their client regarding:
    - II. buying and selling of real estate property and selling of business entities;
    - III. managing money, securities or other financial assets; opening or managing of bank accounts or securities accounts;
    - IV. collection of initial business capital, increasing of business capital, lending and any other forms of collection of money for conducting of business of their client (third party);
    - V. establishment, organizing the activity or management of trader or other legal person which is off-shore company, company on trust management or other similar structure;
    - VI. trust management of property
    - VII. act on behalf of, and for their client (third party) in any financial or real estate transaction.

19. persons specialising by vocation in mediation in real estate transactions.

20. persons who by profession provide:
    - I. registered office, office for correspondence or office for the purpose of a legal entity incorporation;
    - II. services for legal registration, off-shore company, company on trust management or other similar structure;
    - III. services of trust management of property or of person under bullet b).

4.1 Customer due diligence and record-keeping (R.12)
(Applying R.5 to R.10)

4.1.1 Description and analysis

689. The general CDD obligations noted in section 3 for financial institutions have equal force and applicability to DNFBP and are codified in law and regulations. Many of the systemic deficiencies noted in Recommendations 5-10 and other preventative Recommendations (described in Section 3 above) are applicable to DNFBP and are not discussed in this section. The AML/CFT laws covers a range of DNFBP beyond those specifically enumerated in FATF Recommendation 12 and those of the 2nd EU Directive. In addition to the regulated industry, supervisory agencies such as the BNB, National Tax Authority and Customs are all obliged entities and must report to, and file STRs with the FIA. Briefly, DNFBP, like financial institutions, must: identify customers and beneficial owners; keep records, inform the FIA of suspicious activity; check lists for terrorist financing; delay unusual business activities if possible; and develop internal procedures and units dedicated to AML/CFT compliance.

690. DNFBP are required to utilise certain risk-sensitive measures for customer identification. In general, understanding of risk varied among individual DNFBP and it was not altogether clear the extent to which individual DNFBP did in fact conduct such risk-assessment.

Applying Recommendation 5

Casinos

691. Under the FATF standards, CDD in casinos is required when customers engage in transactions above 3,000 Euro. Under Article 3 (5) of the 2nd EU-Directive, identification should occur, when buying, purchasing or selling chips with a value of EUR 1,000 or more, though casinos subject to state supervision shall be deemed to have complied if they identify customers immediately on entry. According to industry representatives, all natural persons are immediately identified upon entry to a casino pursuant to Article 4 of the LMML and article 2 of the RIMML. For residents an identification document is required and for non-residents a passport is required. This practice goes beyond the statutory requirement of the LMML, which requires identification if the transaction exceeds $6,000 BGN (app. 3 000 Euro) or its foreign equivalent or upon registration under article 72 of the Law on Gambling. Casino representatives stated that they would deny access for customers who failure to provide adequate identification, but it is not clear if such failure has led to filing of STRs.

692. Under the LMML, casinos like other obliged entities must ascertain the source of funds or obtain a declaration when a transaction exceeds 30,000 BGN or its foreign equivalent; alternatively the source of the funds must be ascertained if the transaction is greater than 10,000 BGN cash or its foreign equivalent. Regarding compliance with the obligation under footnote 21 of Recommendation 12 (identification when transactions are conducted equal to or above USD/€ 3.000), it was not clear whether casinos had the capacity to closely monitor such individual transactions e.g. the purchase or cashing in of casino chips, opening of accounts or wire transfers. According to the representatives interviewed, there are cameras throughout the casino establishment, which can monitor the transactions of customers. However, it was unclear how long tapes were kept and whether, in practice, this measure was adequate to track individual transactions.

Dealers in precious metal and stones

693. Dealers in precious metals and dealers in precious stones as well as other high-value good dealers are covered by the AML/CFT legislation when they engage in any cash transaction with a customer equal to or above USD/€ 15.000.

694. Based on evaluators discussions with a retail store owner, who dealt in high and luxury goods there were doubts about how Recommendation 5 was being implemented in practice. The representative explained that the market for such goods was limited and the majority of the purchases were by established customers whose business and source of funds were known. For non-residents, he would simply check their passport and require such customers to pay a portion of the purchase price in cash, and the remainder through a wire payment transacted through a bank. The procedures to ascertain and document sources of funds for certain cash purchases were not routinely observed. It was evident that the paramount concern was not AML/CFT law compliance, but maintaining a relationship with the distributor, preventing products from entering the "grey market" and tax compliance. In the view of the representative, CDD measures were not widely observed throughout the industry and compliance would create a competitive disadvantage.

Notaries

695. Notaries demonstrated a solid understanding of CDD and provisions under the LMML and RIMML for identification and verification of natural persons and beneficial ownership, source of funds and required record keeping. Notaries use the Registry Agency to verify beneficial ownership. The professional organisation takes an active role in educating their members on CDD.

Real Estate Agents

696. In general, real estates expressed an adequate understanding of CDD measures embodied in the LMML and RIMML. However, due to the broad range of personnel employed in real estate agencies (personnel from 2-200) and operations in diverse geographic markets, it is difficult to accurately gauge the overall level of compliance. The representatives of the association of real estate agents stated that all business transactions are concluded on a contractual basis. A contract incorporates personal identification information contained on an identity card, as well as a person's name and address. In cases involving a third person acting on behalf of a customer, the third person representative is required to prove that he/she is authorised to act on the customer's behalf and undertake measures to identify and verify the actual customer. If a customer is a foreign company, the real estate agency will request identifying information, including a copy of the registration with the official registry of the country of incorporation. Additionally, the representatives were familiar with the statutory requirement to identify beneficial ownership using the Registry Agency and BULLSTAT. For foreign countries which either do not have a registry or have no requirements to identify beneficial ownership, a real estate agent may require a declaration. According to the industry, if a customer is not able to provide the necessary identifying information, the contact is not entered into.

Lawyers

697. Lawyers demonstrated a strong understanding of CDD. The Bar is engaged in educating their members, and does participate in various international bar associations related to the application of the FATF Recommendations to the practice of law. At this point, it is difficult to determine overall effectiveness of implementation, in part, because the provisions of LMML applicable to lawyers are relatively new.

Auditors and accountants

698. Auditors displayed a thorough understanding of CDD requirements. The professional organisation is engaged in continuing education and peer review to maintain high professional standards. Auditors noted a recent change in accounting law, which in their view, could adversely affect their implementation of CDD measures as well as other AML/CFT provisions. The amendment substantially changed the threshold for a financial audit and in practice, may allow the majority of public companies to evade audit requirements. Although recent efforts to combat high level public corruption are underway, auditors stressed the importance of such efforts to a fully effective AML regime.

Trust and company service providers

699. Trust and company service providers are subject persons under the LMML and they have to comply with the same obligations as any other DNFBP. The risk based approach implies that the information gathered under the identification and verification procedures shall be used for an initial assessment of the risk profile of the customer and on the basis of the analysis a category of customers or business relationships of a higher risk whom shall be put under special supervision and in relation to whom extended measures shall apply. In those categories can be included customers who do not have permanent residence or place of commercial activity in the country, as well as off-shore companies, the companies of nominal owners or of bearer shares, the companies of trustee management or other similar structures. Trust and company service providers were not interviewed and thus it is difficult to determine compliance. However, lawyers perform company formation services.

Other DNFBP (Postal Service).

700. The CDD for the Postal Service appears to be hampered by technology deficiencies. It is effectuated by completing a form, which contains information concerning both natural and legal person's transferee for transfer up to 3,000 BGN. The information on CDD is gathered and stored in a central database; however, the approximately 3,000 branch offices do not have on-line access to the central database. Recipients must provide identity information such as an ID, passport, power of attorney or company registration. A database has been developed to detect structuring operations, and where instances of structuring have been found, this information is shared with the FIA. The source of founds is required if the total remittances exceed 30,000 BGN during any calendar year. However, such reporting is hampered by a two to three month delays at the central database, after which time, the authorities attempt to verify the identity and source of funds, and if appropriate, transmit a report to the FIA.

701. *Applying Recommendation 6.* Many of the general observations and recommendations noted in Section 3.2 apply equally to DNFBP. However, there are several noteworthy areas where DNFBP have systemic deficiencies in implementation. Regarding identification procedures, upon commencement of a business relationship, it was unclear whether DNFBP have adopted a questionnaire for self-identification of domestic PEPs similar to one adopted by financial institutions. Equally, unclear was the nature and extent of increased monitoring under Article 8 of the RILMML. Lastly, the evaluators were not informed of whether the DNFBP were checking names against the Law On the Publication of the Assets of Persons Occupying High Public Positions.

702. *Applying Recommendation 8.* All DNFBP are subject to Article 4 of the LMML for verifying the identity of non-face to face relationships. However, almost all transaction involving DNFBP were face-to-face and not mediated through the internet. Internet gambling is not permitted in Bulgaria. The Post Office has sophisticated database for identifying structuring, but there are a number of operational problems that affect the free flow of data between headquarters and the 3,000 field offices. According to the SCG, casinos do have sophisticated electronic surveillance, but there does not appear to be insufficient technological controls over slot machines to minimize the risk of money laundering. Casinos are not equipped with "smart card" technology that can

aide in monitoring customer transactions. Lastly, casinos do not make use of multifunctional kiosk machines that can perform a variety of financial transaction and also serve to monitor client transactions.

703. *Applying Recommendation 10.* See description and analysis of Section 3.5 for full description of record keeping requirements. In general, all DNFBP are subject to record keeping requirements under article 8 of the LMML and must store records for 5 years. Casinos maintain records for inspection by the SCG, FIA and the National Revenue Agency. Bulgaria does not keep or maintain records of casino, deposit or credit accounts. Bulgaria prohibits extending credit except for payment initiated by credit cards. Each casino does keep a record of customers who win amounts above 10,000 BGN**.** These records are frequently and are preserved for longer than five years. Real Estate agents informed that all records of transactions and associated materials are maintained for a minimum of five years. For transactions in excess of 30,000 BGL, the representatives told that records were maintained indefinitely.

704. *Applying Recommendation 11.* See description and analysis of section 3.6. All DNFBP are required under Article 7 of the LMML to identify customers where there is a suspicion of money laundering and suspicions related to identification, the professional organisations were aware of internal rules developed by the FIA and many had adopted unified rules for the industry. The internal rules often include "red flag indicators" covering a variety of suspicious activities or complex/unusual transaction. Some covered were aware of the requirement to ascertain the purpose of such transaction. However, other DNFBP did not comply with this requirement. Equally, unclear was whether the DNFBP routinely make a written record of such transactions and in turn, whether the appropriate authorities inspected for such material. Further, many of the DNFBP did not observe the requirements of Article 9(4) of the LMFT to include specific criteria in their internal rules for suspicious activities or customers related to terrorist financing. One factor affecting overall effectiveness, it appeared that awareness of suspicious activity may in some cases not trigger a STR due to concerns for physical safety.

4.1.2 Recommendations and comments

705. As codified, the LMML and RILMML provide a comprehensive statutory framework, which incorporates, and in some cases exceeds, the FATF Recommendations. During the past two years, the FIA has begun to engage in outreach and provide training to DNFBP to improve understanding of AML/CFT requirements, including CDD measures. The FIA has increased staffing in ML and TF Information Directorate and Inspectorate Directorate and devoted more resources of inspection of DNFBP sector. For specific industries, which do not have a self-regulating organisation, Bulgaria should consider continued training on CDD and record keeping.

706. Overall, there were serious issues related to the overall effectiveness of implementation. This is borne out by the relative low number of STRs filed by certain industries where there is an acknowledged AML risk.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**Partially Compliant**	• Several DNFBP lack awareness and full knowledge of their obligations to perform CDD. • Same deficiencies for PEPS as described under financial institutions. A list of domestic PEPs has been drawn up, but DNFBP do not routinely check the list. Most DNFBP were unaware of the timing of CDD or how to conduct such process. • Record keeping is well observed by professional organisations; however, certain DNFBP record keeping was only for tax compliance purposes**.** • Casinos should undertake steps to improve record keeping. • Measures should be adopted to prevent misuse of technical developments in certain DNFBP sectors. • Not clear how the provisions on complex/unusual transactions are being implemented across the range of DNFBP.

4.2 Suspicious transaction reporting (R. 16)
(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

707. *Applying Recommendation 13.* The LMML covers all enumerated DNFBP set out in Recommendation 13. In terms of effectiveness, it should be noted that Bulgaria has made strides in raising the awareness of STRs in DNFBP sectors, however, there is a marked difference between professional organisations and other DNFBP in terms of their relative compliance with STRs filing. Among the professional organisation, there tended to be a better understanding of STRs. Notaries and accountants have a thorough grasp of the requirements, as evidenced by the number of STRs filed, respectively. Lawyers are not obliged to disclose information revealed to them during or with regard to participation in legal proceedings (including pretrial), which are pending, imminent or have already been completed, or information related to ascertain the legal position of the client. Lawyers report directly to the FIA and not through an SRO. Lawyers have made several reports, but it is difficult to determine whether issues of legal privilege and the scope of their obligation to report under the LMML have inhibited filings. Casinos have filed made a number of STRs filings as well. The FIA has recently held seminars on general AML/CFT compliance with professional organisations. The other DNFBP interviewed had a less-developed understanding of STRs filing, which may partially explain the comparatively lower filings.

708. Some DNFBP stated that filing a STR, in certain circumstances, could raise issues of personal safety. Issues related to systemic corruption were also cited as a factor, which inhibit compliance with the LMML and with STR requirements. Several believed this accounted for the low number of STRs filed.

709. In terms of filings under the LMFT and Special Recommendation IV, no DNFBP filed such reports and in general were not aware of this obligation. Further, it did not appear that DNFBP were provided with ready access to the various terrorist lists or had the capacity to check such list for matches.

710. *Applying Recommendation 14*. See analysis and description under Section 3.7.

711. *Applying Recommendation 15.* See analysis and description under Section. 3.8. A number of DNFBP had adopted unitary rules, especially among the professions and the professional organisations indicated that they check compliance with such rules. Although the internal rules are helpful starting point, many appeared to be duplicative, and may not currently address the particular vulnerabilities of each sector and industry. Additionally, not all DNFBP are fully utilizing internal rules. Unlike financial institutions, many of the DNFBP are relatively small and can not support the required specialised units devoted to AML/CFT. Accordingly, it was difficult to determine whether compliance officers had the ability to act independently in reporting to senior management. There was training conducted by both the FIA and professional organisations; however, it appeared that not all DNFBP sector received this training. In particular, some of the high-risk sectors such as dealers in precious metal and stones were in the need of training. Professional organisations set standards for admission into the profession and casinos had specific standards in place for hiring employees. However, it was not apparent whether all DNFBP routinely screened employees as part of the hiring process. Lastly, it did not appear that DNFBP conduct outside audits of their system of internal controls.

712. *Applying Recommendation 21*. In general, it did not appear that DNFBP gave special attention to or had employed enhanced due diligence under the RILMML to monitor high risk customers and transactions from countries which do apply FATF Recommendations. Similarly the illustrative counter-measures of Recommendation 21 to minimize the risk were not part of the AML law or observed.

4.2.2 Recommendations and comments

713. Many of the same deficiencies in implementation of Recommendation 13-15 outlined for financial institutions are equally applicable to DNFBP. To reiterate, Bulgarian should consider clarifying the obligations for reporting attempted suspicious transactions. Furthermore, Bulgaria should consider providing further guidance and feedback for DNFBP on STR filings. In particular, such guidance should be geared towards DNFBP AML/CFT risks.

714. Based on its risk analysis, the FIA should consider continuing targeted training to sectors that pose the greatest AML/CFT risk provisions. Specific training may be necessary to enhance the effectiveness of DNFBP use of their internal rules under Recommendation 15 as well as reinforce procedures for addressing business relationships and transactions with persons from insufficient compliance with FATF Recommendations under Recommendation 21. Additionally, many DNFBP did not fully comply with the requirements of LMFT and further outreach on terrorist financing indicators under the internal rules should also be considered.

715. To improve the quality and consistency of STR filing and general AML/CFT compliance, Bulgaria may consider extending one of its technical assistance projects or similar initiative to other supervisory agencies such as the NRA.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**Partially Compliant**	• The same deficiencies in the implementation of Recommendations 13-15 and 21 in respect of financial institutions apply equally to DNFBP. • Further education needs to be conducted on filing for both suspicious activity and terrorist financing and additionally training on addressing CDD for unusual or suspicious transactions and terrorist financing.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

716. Internet gambling is not permitted in Bulgaria.

717. **Casinos** are subject to a comprehensive regulatory and supervisory system, involving a number of state agencies. Casinos are licensed and supervised under the Law on Gambling (LG) and is supervised by the State Commission on Gambling (SCG). In terms of market entry, the LG requires has specified several criteria to prevent infiltration by criminals and their associates.

718. In terms of compliance with the LMML, inspections are performed independently by the Financial Intelligence Agency, and jointly with the State Commission on Gambling. For the time period 2003 to April 2007, numerous joint inspections of casinos have been conducted, as well as inspections conducted solely by the FIA. The SCG has also conducted several inspections based on the Law on Gambling. Additionally, as specified in law, the SCG may be assisted by the National Tax Authority, the State Agency for Standardization and metrology, the minister of Interior, and the Financial Intelligence Agency. The SCG and the FIA are guided by an" On-Site Inspection Manual" ("Manual"), which was recently drafted and governs the planning and execution of on-sight inspections for LMML and LMFT. Lastly, a contact group comprised of FIA, SCG and industry associations has recently been created.

719. The **DNFBP** are subject to FIA supervision and inspection, which has an array of powers under the LMML and LMFT. The staff of the FIA is well-trained and dedicated. In past years, hiring has increased, however, in light of the scope of covered entities, the FIA may not have sufficient resources to fully supervise all subject entities. It was not clear if the current organisational structure of the FIA was suited to supervising a diverse universe of DNFBP. The FIA is guided by an overall risk-assessment, and based on its projected inspection cycle, does take into consideration sectors that are at a greater risk of money laundering and terrorist financing.

720. Additionally, DNFBP are subject to inspection (tax-related) by the NRA. The NRA has issued a number of "infringements" for exchange houses violations of the Currency Law and Law on Accounting, and notified the FIA on several occasions for violations of the LMML. The NRA is an obliged entity under the LMML and has filled a number of STRs. Although the NRA is an obliged entity under the LMML, it does not directly inspect for AML/CFT violations ***other than as supervisor of exchange houses.*** As noted above, many of the professional organisations also supervise for AML/CFT compliance, perform inspections, and have the authority to impose discipline measures for non-compliance. In general, these organisations have adequate resources

and technical understanding of AML/CFT laws; and did indicate a willingness to take disciplinary measures in appropriate circumstances.

721. In terms of feedback, there appears to be a supervisory deficiency in both general input on techniques, methods and trends, and on specific and case-by-case feedback. Such information could improve the overall compliance with AML/CFT laws throughout the DNFBP sector.

4.3.2 Recommendations and comments

722. Some of the SCG officials appeared to be unfamiliar with some of the basic requirements of the Manual and Bulgaria may consider further training to improve technical expertise on specific AML/CFT vulnerabilities associated with casinos. Additionally, to leverage resources and strengthen enforcements, Bulgaria may also consider granting the SCG independent authority to sanction for AML/CFT incompliance.

723. By adopting a risk-based approach, Bulgaria has increased its cycle of inspections of DNFBP since the 2005 MONEYVAL Progress Report. In this regard, Bulgaria is beginning to expand its outreach efforts beyond banks and has dedicated staff for outreach. However, the authority to administer the AML/CFT laws is centralised with the FIA, which in light of finite resources, may make it difficult to fully supervise the diverse DNFBP sector. For example, in light of the traditional reliance on cash-based transactions and the paucity of STRs filed, pawn shops, automobile deals and other cash-intensive businesses continues to present AML/CFT systemic vulnerabilities. Bulgaria may consider focusing attention on these acknowledged risks and allocating additional resources to other supervisory authorities.

724. In order to improve overall compliance, further guidance and feedback to the DNFBP sector should be considered. The FIA said such guidance is part of training, but it is not clear if written guidance is available.

4.3.3 Compliance with Recommendations 24 and 25 (criterion 25.1, DNFBP)

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.24	**Partially Compliant**	• Further outreach and training of the DNFBP sector, NRA and SCG is required to ensure effective implementation. • Further cooperation between FIA and supervisory authorities is required to ensure full effectiveness. • Number of STRs too low to reflect the true risk profile of various sectors. • Further training to raise awareness of STR requirements and risk indicators might improve the number and quality of reports. • SRO for casinos should consider increasing monitoring for AML/CFT compliance. • The FIA may consider strengthening enforcement of AML laws by granting authority to sanction by supervisory authorities.
R.25	**Partially Compliant**	• Ongoing guidance on trends and typologies of AML//CFT should be considered • Further feedback for STR may be considered – especially on a case-by-case basis for STRs filed.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20) /Sanctions (R.17)

4.4.1 Description and analysis

725. Criterion 20.1 states that countries should consider applying Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

726. The LMML and LMFT have a wide scope of coverage, including such entities as pawnshops, luxury goods, auction houses, and dealers in weapons that goes beyond Recommendations 12 and 16. The FIA has adopted a risk-base approach, formulated a list of higher risk entities, and in the past two years appears to be increasing its efforts on compliance to address such higher risk categories.

727. Bulgaria has taken several steps to lessen use of cash; in particular, Bulgaria has passed the Law on Funds Transfers, Electronic Payment Instruments and Payment Systems, which regulates the manner and form of electronic funds transfers. However, as reported by Bulgaria, ratio of money outside the banking system has fallen from 48 % in January 2004 to 36.8 % in January 2007.

728. In terms of sanctions under Recommendation 17, DNFBP are subject to sanctions and certain professional organisation can also issue sanctions. The FIA has sole authority to sanction casinos for AML/CFT violations. The FIA does have a range of sanction authority, in addition to monetary sanctions but given the small number of infractions and their relative value, there is doubt as to whether such penalties are "effective, proportionate and dissuasive. Self-regulatory organisations also have sanction authority. Lawyers are subject to sanctions by regional bodies, but none have been disciplined. At the time of the on-site visit two cases of money laundering involving lawyers are pending. Auditors are also subject to similar regulation.

729. In terms of sanctioning authority, SCG may impose sanctions, including revocation of a license, for a variety of operational and prudential violations under the Law on Gambling. However, the Law on Gambling does not provide authority for imposing sanctions for violations of LMML/LMFT and SCG has not imposed financial sanctions for AML/CFT-related violations. Like other supervisory agencies covered by the LMML, if the SCG does find a violation of AML/CFT it forwards such information to the FIA. Under Article 19 of LMML, the Minister of Finance can require that casinos take remedial steps to come into compliance with the provisions of LMML, including withdrawal of licenses granted by the SCG. The FIA has issued two fines for separate violations of the LMML. The Casinos self-regulating organisation has not sanctioned its member for non-compliance with unified internal rules.

4.4.2 Recommendations and comments

730. The FIA may wish to consider allocating additional resources and training to higher risk DNFBP.

731. In light of the number of covered entities the level of monitoring is not considered proportionate – although it is risk based –and it is difficult to see how sanctioning for AML/CFT breaches would be imposed.

732. In light of the systemic vulnerabilities posed by certain DNFBP sectors, Bulgaria may consider granting the NRA explicit authority to inspect and in appropriate circumstances, sanction DNFBP for AML/CFT incompliance. Presently, the NRA's Inspectorate (Operational Control Division) is the supervisory body for exchange houses and must report to the FIA violations of the LMML. To further support AML/CFT compliance, professional organisations should continue to take an active role in maintaining strong professional standards for AML/CFT and, in appropriate circumstances, publish disciplinary proceedings.

4.4.3 Compliance with Recommendations 20 and 17

	Rating	Summary of factors underlying rating
R.20	**Compliant**	
R.17	**Partially Compliant**	• The same deficiencies concerning the implementation of R.17 apply equally to obliged financial institutions and DNFBP (see Section 3.10 of the report). • Sanctions enforcement needs to be stronger for DNFBP that pose AML/CFT risks. • Bulgaria may consider strengthening enforcement of AML law by granting independent sanction authority to supervisory authority.

5 LEGAL PERSONS AND ARRANGEMENTS AND NON-PROFIT ORGANISATIONS

5.1 Legal persons – Access to beneficial ownership and control information (R.33)

5.1.1 Description and analysis

733. The Law on Commercial Register was adopted in April and further amended in October, 2006. The law provides for the setting-up of a commercial register, as unified centralised electronic data base kept by the Registry Agency within the Ministry of Justice.

734. Traders, branches of foreign traders and the circumstances connected with them for which entering is provided by the law shall be entered in the commercial register (art.4). Article 5 stipulates that in the commercial register shall be announced acts referring to the traders and branches of foreign traders for which entering are provided with a law.

735. The new commercial register was to enter in force as of 1 July 2007 (shortly after the on-site visit) replacing the present court registration with an administrative one conducted under the Commercial Register Law.

736. At the time of the on-site visit the system of registration uses the 28 regional courts which keep separate registers run by the judicial administration and controlled by judges. All registration is paper based. The Registry Agency shall assume responsibility for the new registration proceedings, which are to be entirely electronically based and centralised.

737. The circumstances subject to publication at the commercial register are provided for by the law. These include:
- the capital amount;
- the increase or decrease of the capital;
- the representation;
- the approved annual accounts;
- changes in the statutory acts.

738. The ownership of shares in listed companies could be traced at the Central Depositary where the issuance of shares and their transfer are registered. Information on the shares of limited liability companies is available in the commercial register.

739. Although this newly set-up Registry Agency will solve the problem of having a single centralised database regarding commercial companies, the law is not very clear on what information this database shall contain. As mentioned above, some types of companies are registering their ownership in the Central Depositary (listed companies) and others are obliged to register it within the Commercial register.

740. With respect to management and control, all commercial companies are compelled to provide this information to the Commercial Register. The commercial register maintains up-to-date information on ownership, management and control of the commercial companies registered. Upon the entry in the Commercial Register and in cases of amendments data about the applicant(s), the owner of the capital and details about the control and management of the commercial companies through natural persons are checked (article 13 of the Commercial Register Act and Regulation thereto). These data include for example: name, personal identification number, date and place of birth etc. The documents are attached to the application. The applicant(s) sign a declaration concerning the veracity of circumstances declared thereby or concerning the adoption of the acts submitted. The personal identity of applicant is checked at

acceptance of application. The FIA has an online access to the information contained in the Commercial Register. This means FIA can timely access information with respect of management, control and ownership of commercial companies.

741. The Register is public. According to Article 11 of the Law on Commercial Register, anyone shall have right to free access to it and to the documents on the basis of which the entering, the deletions and the announcements have been made. Art. 12 provides that state fee shall be paid for entering in the commercial register, issuing of certificate, preservation of firm as well as for conceding of the data base, according to tariff approved by the Council of Ministers. The Register Agency shall render specialised services for automated access to the commercial register against fee from the tariff. The access to the commercial register in official way of the state bodies, the bodies of local government and local administration and the persons to whom exercising of public function has been assigned shall be free of charge. The order and the way for its implementation shall be provided with an act of the Council of Ministers.

742. Turning to criterion 33.3, the examiners were advised that bearer shares can be issued in Bulgaria, only by the joint stock companies. There is no limitation for the issuing of bearer shares, but banks and state companies are not allowed to issue bearer shares. The owner of the bearer share is known when first registered, but after having sold the share the owner of the bearer share is no longer known or registered. The Bulgarian authorities highlighted that bearer sharer are rarely used, due to the uncertainty which they have.

5.1.2 Recommendations and comments

743. Even though the examiners understand the specificity of the matter the law offers the possibility of issuing bearer shares. The law does not provide for complementary safeguards and obligations for the commercial companies using the possibility of issuing bearer shares. It cannot be guaranteed that in the future, the practise of issuing bearer shares will not be used more widely. This being said, the examiners recommend the Bulgarian authorities to consider providing the obligation of registering the ownership of bearer shares or to introduce other adequate transparency measures concerning bearer shares in the legal framework governing the commercial companies.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**Largely Compliant**	• Ownership of the bearer shares not verifiable at the Commercial Register or any other register.

5.2 Legal Arrangements – Access to beneficial ownership and control information

744. The Bulgarian authorities advised the examiners that the concept of trust is not known in Bulgaria. The only forms of legal persons or entities recognized by the law are the ones described under section 1.4 of the present report; no other form of legal arrangements exists.

5.2.1 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	• **The concept of trusts is not known under the Bulgarian Law**

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and analysis

745. The non-profit sector is governed by the Law on Non-profit Organisations, adopted in 2000 and further amended. The last amendment was made in 2006 and refers only to NPOs for public benefit. NPOs in Bulgaria can be set up as associations or foundations. The Law on NPOs governs the establishment, registration, organisation, activities and dissolution of non-profit legal persons. Pursuant to article 2, NPOs determined as such for performing activities for public benefit are subject to registration upon their establishment in a special register with the Ministry of Justice. The NPOs determine freely the means for attaining their objectives. Restrictions to the activities and the means for attaining the objectives of NPOs may be set forth only by law. Founders may be domestic and foreign legal persons and natural persons with legal capacity. The legal personality of a NPO shall originate as from its registration in the register of NPOs within the jurisdiction of the district court by domicile of the legal person. All statements in writing of the NPO shall include its name, premises, address, as well as data about its registration, inclusive of the BULSTAT number. The premises of the non-profit legal person shall be the settlement where its head office is located and the address - its registered office. The State may assist and encourage for the purposes of pursuing activities for public benefit the registered in the central NPOs register, through tax, credit-interest, customs and other financial and economic preferences, as well as with financing under terms and procedure set forth in the relevant special laws.

746. The organisation of NPOS is governed by the Non-profit Legal Persons Act and by their statute. They may have branches. The Register of NPOs shall be kept with the district courts, where the following circumstances shall be subject to entry:
    - required contents of the articles of association or the statute;
    - address;
    - names and positions of persons representing the non-profit legal person;
    - definition for pursuing activities for public benefit;
    - total number of initial property contributions, if there are provisions to that effect;
    - dissolution of the non-profit legal person;
    - transformation;
    - names, company name, respectively, and addresses of liquidators;
    - deletion of the non-profit legal person.

747. The following circumstances shall be subject to entry in the register of non-profit legal persons by domicile of the branch:

- name, premises and address of the non-profit legal person;
- domicile and address of the branch;
- branch manager and any restrictions to his authority and representative powers provided for in the articles of association.

For branches of foreign non-profit legal persons subject to entry shall also be:

- objectives of the foreign non-profit legal person;
- objectives under Item 1 that are to be pursued through the branch;
- definition of the branch for pursuing activities for public benefit.

Subject to entry shall also be changes to all above mentioned circumstances.

748. The dissolution of the non-profit legal persons is regulated in Article 13. According to this article a non-profit legal person shall be dissolved:

- upon expiry of the term for which it has been established;
- by decision of its supreme body;
- by decision of the district court by domicile of the non-profit legal person, where:
  a) it has not been established in compliance with the legal procedure;
  b) it pursues activities contrary to the Constitution, laws or the moral;
  c) it has been declared bankrupt.

749. The court decision under the first two items shall be issued on the grounds of claim by any interested party or the public prosecutor. In this case the dissolution shall be registered ex officio and the court shall assign a liquidator.

750. NPOs are included in Article 3, Para. 2 (17) in the LMML being reporting entities. Thus, all obligations under the LMML and the LMFT apply to them. FIA is authorised to obtain the necessary information from both the Registry Agency and the entities themselves (Articles 11 and 13 of the LMML and Article 9(3) of the LMFT)). FIA acts as the overseeing body for NPOs. FIA has provided trainings in 2005/2006 within the twinning light project aimed at developing a strategy for further interaction of FIA and NPOs and future self-sustained training of the NPOs.

NPOs for public benefit

751. NPOs for public benefit are subject of annual control according to the Law on Non-Profit Organisations. According to art 46 of the law, the NPOs for public benefit shall be obliged to annually submit to the central register information about their activities through the preceding year. Declared for registration in the register and submitted shall be:

- transcripts of court decisions for registration of changes;
- list of persons who have been members of the managing bodies;
- information about the activities pursuant to Article 38;
- annual financial report, including certified annual financial report, when the latter is subject to an independent financial audit;
- the annual report according to art. 40;
- declaration for payable taxes, charges, custom duties and other public amounts receivable;
- amendments to the statute or the deed of establishment.

752. According to art. 40 of the law, NPOs for public benefit are obliged to keep books with minutes of meetings of its collective bodies. The chairperson of the meeting of the collective body and the person who has prepared the minutes shall attest and be liable for the authenticity of its contents. NPOs for public benefit shall prepare once per year report on its activities, which should include data about:

- substantial activities, funds spent for such purposes, their relevance to the objectives and the programs of the organisation and the results attained;
- amount of properties received in grant and revenues from other activities conducted for the purpose of raising funds;
- financial results.

753. The reports of NPOs for public benefit are public. The notification for availability of the elaborated report, as well as for the place, time and procedure for access thereto, shall be published in the bulletin of the central register. Therefore, starting 2007 the NPOs are also obliged to report annually to the Central Registry with the Ministry of Justice information on the type, amount and purposes of the received and granted funds as well as information on the donors. Those that have received during the previous year EU funds or state support exceeding 50 000 BGN (25 000 EUR) or have made a donation of more than 50 000 BGN to a political party are also subjected to independent audit pursuant to the Law on Accounting.

754. The Register of NPOs maintains a bulletin on the website of the Ministry of Justice, on which information about all the registered NPOs since the establishment of the register is placed. Information may be obtained there from about the objectives of the NPO, the means for reaching these objectives, the subject of their stated activities and the members of their managing bodies.

755. Before assessing the compliance with criteria VIII.3.2 – VIII.3.3, it should be mentioned that the analysis under this paragraph and the following 5 paragraphs is only referring to NPOs for public benefit. For these NPOs a special chapter is designated in the law, namely Chapter III. According to Article 47, the Minister of Justice shall be entitled to request current information about the circumstances subject to entry. According to Article 47a, in the event of ascertainment of breach of law, identified during the annual or the ongoing control, the Minister of Justice shall notify the respective state controlling bodies to conduct inspections and take actions as provided by the law. The registration shall be deleted by the Minister of Justice ex officio, upon request of the public prosecutor or the respective State controlling bodies, where the non-profit legal person pursuing activities for public benefit:
    - systematically fails to submit the information about circumstances subject to entry within the specified terms;
    - two subsequent years fails to submit the information on the activities according to Article 46 Para 1 within the specified terms;
    - pursues activities contrary to Article 13, Para 1, point 3, letter “b”;
    - systematically fails to pay public amounts receivable;
    - has reduced number of members less than the minimum required by law for a period of more than 6 months.

    The deletion of the registration shall not relieve the NPO for public benefit and its managing bodies from their obligations and responsibilities under this Act.

756. *Second registration* - According to Article 49 (1) a NPO for public benefit whose registration has been deleted, may apply for *second registration* not earlier than one year following the removal of the reasons for deletion. This right may be exercised only once. A NPO for public benefit whose registration has been deleted may continue to use its property only for the purposes of activities specified in the statute or the deed of establishment, inasmuch as they are in compliance with the provisions of Article 38, paragraph (1) and Article 41, paragraph (1) (the purposes of a NPO for public benefit as set forth by the law), Articles 43 and 44 (the use of the property after the liquidation).

757. In the Central register of NPOs within the Ministry of Justice only NPOs which already have been registered by the relevant court as NPOs for the public benefit are registered.

758. *Registration in the Central Register* - According to Article 45 NPOs for the public benefit shall submit application for registration in the central register with the Ministry of Justice. Attached to the application shall be:

- transcripts of the court decisions for registration;
- statement on the actual position of the legal person, issued by the court of registration;
- declaration for existence of the circumstances under Articles 38 - 41, as well as for payable taxes, charges, custom duties and other public amounts receivable;
- the rules and procedure for pursuing activities for public benefit.

Subject to entry shall also be the changes in the circumstances presented above.

759. The Minister of Justice shall approve Rules for the organisation and the operating procedure for keeping the register, and shall approve specimens of documents to be submitted to him. The Minister or a person authorised thereby shall register forthwith the declared circumstances by decision with quoted reasons. Where additional evidence should be provided or remedy of omissions in the submitted documents should be effected, the registration shall be done after expiry of the term granted for completion and amendments to the submitted application. The registration in the register shall be refused, if the NPO for public benefit has not been registered by the court of competent jurisdiction as NPO for public benefit, or if its activities are contrary to the law. Where registration is not made within 14 days following the application therefore, this shall be considered tacit refusal of registration. The explicit or tacit refusal of registration shall be subject to appeal within 14 days pursuant to the Administrative Procedure Code.

760. The central register shall be public and any person may request information or transcript of its contents with information subject to notification. The rules in respect of the public nature of the central register shall apply, as appropriate, where circumstances under the Law on NPOs are being registered in another register. The central register issues monthly bulletin with publication of registered NPOs for public benefit, refusals and deleted entries, as well as notifications of information pursuant to the Rules for Operation of the Central Register. The procedure for registration in the central register, the publications, notifications of information and the appeal of refusals for registration shall be exempt from State charges.

761. According to Article 8 of the LMML in the cases under Articles 4 - 7 the persons under Article 3, Paragraphs 2 and 3, are under the obligation to store for a period of 5 years the data about the customers and the documents for the transactions and operations carried out. With respect to the customers, the time limit shall run from the beginning of the calendar year following the year in which the relationship is terminated and with respect to the transactions and operations - from the beginning of the calendar year following the year of their performance. NPOs being reporting entities under the LMML and LMFT, are subject of the obligations mentioned above.

762. According to Art. 13 of the LMML, FIA is entitled to request from the government and municipal bodies information under the conditions of the law and that information cannot be refused. The requested information shall be delivered within the time limits defined by FIA. FIA has gratuitous access to the information registers built up and maintained by state budget funds. The submission of the information cannot be denied or limited for reasons of professional, banking or commercial secrecy.

763. In addition as per Article 9 of the LMFT everybody who knows that certain operations or transactions are directed to financing terrorism, shall be obliged to inform immediately the Minister of Interior. On the other hand when, during the fulfilment of the functions of FIA a doubt occurs that certain operations or transactions are directed to financing terrorism, the Director General of FIA is obliged to inform immediately the Minister of Interior. The persons under Article 3, Para. 2 and 3 of LMML (the list of the reporting entities) are obliged, on occurrence of a doubt for financing terrorism, to inform FIA.

764. Detailed information on the financial situation of NPOs for public benefit are annually requested from such NPOs and kept within the Central Register within the Ministry of Justice. The

examiners would have like to see a similar treatment for the other NPOs, as those for private benefit. The law concentrated the financial control mechanism on the NPOs for public benefit. Although, the examiners understand the bigger importance of such NPOs for an economy and for financial control state bodies, it should not be underdetermined the importance that *all* NPOs have to the overall CTF system. At the same time, the central register comprises only NPOs for public benefit. The others are registered within the regional court and if a prosecution or investigative body needs information on such NPO, have to address this issue to the relevant regional court keeping the information. This poses a question on the timely manner in which such request can be handled. The prosecutors interviewed by the examiners declared satisfied by the time frame in which they receive the information.

5.3.2 Recommendations and comments

765. The examiners were advised that the NPO sector is one of the reporting entities sectors, to which concern by FIA is given. It could not be otherwise, as FIA is the overseeing body for NPOs. At the same time, the Ministry of Justice (only for NPOs for public benefit) is acting as a registering authority, not having any controlling attributions.

766. Although a central register for all NPOs (not only for NPOs for public benefit) is desirable, the main actors involved in the course of an investigation (FIA and the prosecution service), declared themselves satisfied with the present mechanism of registration and said that it does not put any restraints on their investigation.

767. The examiners recommend a further review of the Law on NPOs, based on an assessment of the vulnerabilities and needs of the sector.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**Partially Compliant**	• Although the last review of the law on NPOs was recently undertaken ((2006), the examiners do not see it as a fully adequate and comprehensive review (relates only to NPOs for public benefit); • Detailed provisions regarding financial obligations and annual reports are only applicable to NPOs for public benefit; • Consideration should be given to widening the annual obligations of the NPOs for public benefit to the other NPOs; • Consideration should be given to introduce the provisions in control and deletion of the registration of the NPOs for public benefits to the other NPOs. • No specific review of the risks in the NPO sector has been undertaken. Though there is some financial transparency and reporting structures (especially for NPOs for public benefit); Bulgaria to consider the development of a strategy of monitoring the most vulnerable parts of the NPO sector; • Regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

768. The assessment process clearly showed a number of documentary possibilities for national co-operation among all relevant agencies on all levels, from policy makers to ad hoc case to case teams.

769. In February 2006 the Multidisciplinary Task Force for Prevention ML and TF, chaired by the Deputy Minister of Finance and hosted by the Bulgarian FIU, was established. The FIA`s Director General is a Vice-chairman of the Task Force. Members of this Task Force are representatives of Bulgarian National Bank; Financial Intelligence Agency, Customs Agency, State Commission on Gambling, Financial Supervision Commission, Ministry of Justice, and Ministry of Interior. It is important that this Task Force invites for its meetings also representatives of self regulatory organisations of obliged entities, if the matters of discussions involved the respective group of reporting entities.

770. The objectives of the Multidisciplinary Task Force include:
- Coordination of the activities and elaborating common norms for the represented institutions in enforcing a unitary state policy in the prevention of money laundering and terrorist financing.
- Analysis of the status of the ML/TF preventive system.
- Drafting bills and other regulatory instruments in the field.
- Elaborating conclusions on projects already developed.
- Appraising the level of compliance and the level of effectiveness and elaborating further measures based on the appraisal.
- Designating high-risk sectors and priorities.

771. The Multidisciplinary Working Group on the implementation of UNSC Resolution 1373 (2001) was established in the beginning of 2002. This Working Group is chaired by the deputy Minister of Interior and has members from following state bodies - Ministry of Justice, Ministry of Foreign Affairs, Ministry of Defence, Ministry of Transport, Ministry of Economy, Ministry of Health, Ministry of Interior (Border Police, GDBOP, National Security Service, Gendarmerie), Bulgarian National Bank, Supreme Prosecutors Office of Cassation, State Agency for Refugees with the Council of Ministers, Financial Intelligence Agency.

772. In conformity to the Guidelines (Instruction) for Cooperation, signed on July 07 2006 among the Public Prosecutor’s Office, the Financial Intelligence Agency and the Ministry of Interior, a possibility for the formation of joint working groups is provided for cases of money laundering and terrorist financing.

773. Such possibility for joint action groups is also provided in the Guidelines for Cooperation, signed on September 25, 2006 between the authorities for establishing the criminal proceeds, authorities of the Ministry of Interior, the Finance Ministry, the Public Prosecutor’s Office of the Republic of Bulgaria and the National Investigation Service. The possibility for the formation of a permanent working group between the authorities of the Public Prosecutor’s Office, the Financial Intelligence Agency and the GDBOP is being discussed. There are such joint checks and investigations. Coordination and meetings with the representatives of different authorities are daily performed in connection with the investigations of the proceeds which are subject of money laundering, and exchange of information and necessary analysis are also executed. In major cases, such as money laundering, coordination meetings are held with police, regional

prosecutors and general Prosecutor's Office in order to asses reached results and to make further plans.

774. A draft amendment of the Instruction on the cooperation among the Ministry of Finance (FIA), MoI and Prosecutor's Office provides for establishment of Contact Group on Management of the Cooperation in operational matters. This Group will gather the Head of Organised Crime and Corruption Counteraction department of Supreme Prosecutors Office, Chief Director of the GDBOP and Director General of the FIA. They will meet regularly to discuss and undertake any measures to improve operational cooperation among the prosecutors, MoI and FIA officers or better to coordinate the activity of their institutions on particular cases with big importance.

775. Article 10 of the Law on Measures against Money Laundering (LMML) and the Instruction for Cooperation between the Ministry of Interior (MoI) and the FIA regulates the establishment of temporary working groups for particular cases and the operational interaction between these institutions. The working groups consist of experts from the Ministry of Interior and FIA. Sometimes experts from Bulgarian National Bank join these groups[23].

776. There is a special Instruction for cooperation between NSS and FIA explaining the ways and possibilities of data exchange.

777. There is the Instructions on Cooperation between FIA and Custom Agency, BNB, State Commission on Gambling, Financial Supervision Commission, NRA, MFA, National Intelligence Agency

778. National-international co-operation can be seen through the Bulgarian-American Financial Crimes Task Force for combating money laundering. It includes experts from GDBOP, National Security Service, Prosecution Service, National Revenue Agency, BNB, FIA, CEPACA, U.S. Treasury Department, U.S. Secret Service, and the FBI.

779. In exercising its powers CEPACA, through authorised personnel, works in close co-operation with the Financial Intelligence Agency; Public Internal Financial Control Agency; National Audit Office; Privatisation Agency; Post-Privatisation Control Agency; Customs Agency; National Income Agency; real estate registration services; district courts in charge of keeping commercial registers; and the relevant services of the municipal and regional administration. According to Article 16, section 2, of the Law on Forfeiture of Proceeds of Crime the criminal asset identification authorities, police, and investigation and prosecution services may carry out joint actions when necessary.

780. There is the Instruction N° 1 for Collaboration between CEPACA, Ministry of Interior, Ministry of Finance, and the prosecution and investigation services that appoints permanent contact points in each institution.

781. Regarding the FSC, in order to broaden and improve the efficiency of the control over the financial market in 2003, a Memorandum on Co-operation and Interaction with the Bulgarian National Bank was concluded. The objective of the agreement is enhancement of the co-ordination between the two institutions on issues of mutual interest in the field of the financial services. The efforts are directed at perfection of the practice on laws implementation; rendering co-operation necessary to enhance the legislation, regulating the activities of their supervised entities and support where exercising their supervisory functions.

782. In order to guarantee the security and the stability of the financial markets in Bulgaria and the possibility for adequate strategic planning of the industry's development, the "Consultative Council on Financial Stability" was established. The Chairman of the FSC, the Deputy Governor of the BNB and the Minister of Finance participate in the said Council. A Memorandum of

[23] Subsequent to the on-site visit Article 10 of the LMML is abolished with the adoption of the law on SANS.

Understanding is signed with the Financial Intelligence Agency that provides for the contracting parties to render co-operation where collecting, preserving, examining and disclosing the information they have at their disposal with regard to financial transactions, for which there exist doubts that these are related to money laundering or criminal activities.

783. An agreement on cooperation and interaction is signed in 2004 between the FSC and the Ministry of Interior in order to co-ordinate the activities and issues of mutual interest, related to the financial supervision and the counteraction to the organised crime within the spheres of economic and financial system.

Additional Elements

784. Apart from the methodological assistance provided by FIA to the reporting entities the recent amendments of the LMML of 2006 also provided for the provision of feedback to the reporting entities in regard to disclosure. Art. 11, Para. 3 of the LMML stipulates that the FIA shall provide to the obliged persons information related to the notification performed by him/her. The decision with regard to the scope of information, supposed to be provided as a feedback for each specific case of notification, shall be taken by the Director of the Agency. Mechanisms for the feedback have been internally developed in FIA and approved by the Director General at the end of 2006. In addition professional organisations of reporting entities are involved in the work of the Multidisciplinary Task Force for Prevention of ML and TF as well as in trainings provided by the FIA (e.g. within the twinning light project of 2005/2006, planned project under the Matra-Flex Program of the Dutch Government etc.).

6.1.2 Recommendations and comments

N/A

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**Compliant**	

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

785. In terms of ratification, Bulgaria has signed and ratified the following Conventions:
- 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) in 1992;
- 2000 UN Convention against Trans-national Organised Crime (the Palermo Convention) and the 2 additional Protocols in 2001;
- 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime in 1993;
- 1999 United Nations Convention for the Suppression of the Financing of Terrorism in 2002;
- 2003 Protocol amending the European Convention on the Suppression of Terrorism in 2004;
- 2005 Council of Europe Convention on the Prevention of Terrorism in 2006;

- 2001 International Convention for the Suppression of Financing of Terrorism in 2002.

786. Related to the *Vienna Convention*, trafficking in drugs and other offences related to drugs and psychotropic substances are criminalised in Articles 354a, 354b, sections 4, 5 and 6. Associated money laundering is also an offence, as Bulgaria adopted "all crimes approach" (For details please Recommendations 1 and 2). The Criminal Code provides for confiscation of the proceeds of money laundering related to trafficking in drugs. Some concerns regarding the confiscation of indirect proceeds of crime and third party confiscation were expressed earlier in the present report (please see recommendation 3). Legislation in Bulgaria also provides for mutual legal assistance and extradition. For a detailed analysis on the legal system governing mutual legal assistance and extradition please see Recommendations 36 – 39. Special investigation techniques, including controlled delivery can be used, according to art. 174 Para. 2 in the Criminal Procedure Code. This article provides for an explicit limited list of serious offences for which special means of investigation can be used. The list includes trafficking in drugs and other offences related to drugs and psychotropic substances.

787. Turning to the implementation of the *Palermo Convention*, Bulgaria has legislation criminalising laundering of proceeds of crime. Setting up, leading or participating in an organised crime group is criminalised in Articles 321 and 321a of the Criminal Code. The Criminal Code provides for the confiscation of the proceeds of crime. Some concerns regarding the confiscation of indirect proceeds of crime and third party confiscation were expressed earlier in the present report (please see recommendation 3). Legislation in Bulgaria also provides for mutual legal assistance and extradition. For a detailed analysis on the legal system governing mutual legal assistance and extradition please see Recommendations 36 – 39. As stated earlier, the Criminal Procedure Code puts at the disposal of the criminal investigation bodies a wide range of special investigative techniques: searches, special surveillance, controlled delivery, interceptions of correspondence and communications, undercover agents etc. Setting up, leading and participating in an organised crime group are offences for which these special investigation means can be used.

788. With respect to *1999 United Nations Convention for the Suppression of the Financing of Terrorism,* Bulgaria criminalised terrorism financing in art. 108a of the Criminal Code. It can be committed by natural persons. As stated earlier, while analysing the compliance with Recommendation 2 and Special Recommendation II, the liability of legal persons is limited to administrative liability. Compared with the others offences provided by the Criminal Code, terrorism financing is punishable by harder sanctions (three to fifteen years of imprisonment). MLA and extradition are provided in the Criminal Procedure Code (please see Recommendations 36 – 39).

789. The Republic of Bulgaria is a Party to all 12 (sectorial) UN instruments on terrorism providing for a commitment to criminalize different types of terrorist acts. Under Section 2.4, the main issues concerning the implementation of the UNSC Resolutions were discussed. As stated there, although the legal framework is almost fully complying with the international standards, the effectiveness of the enforcement side should be further improved. The areas of concern are the awareness of some reporting entities of the role they play in the freezing procedure and the lack of specific procedures[24] for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

Additional elements

790. Bulgaria is a full party the Council of Europe Convention on laundering, search, seizure and confiscation of the proceeds from crime. The Council of Europe Convention on Laundering,

[24] However, as noted at paragraph 274 there is a general civil procedure for complaints.

Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism was signed by Bulgaria on November 22, 2006 but has not yet been ratified.

6.2.2 Recommendations and comments

791. The examiners welcomed that Bulgaria ratified all the relevant instruments and that measures are taken to implement their requirements. Several issues still need to be addressed (their detailed assessment was made under Section 2 of the present report):
    - The limited scope of the liability of the legal persons;
    - Differences of view between the Bulgarian authorities on the application of third party confiscation need resolution to ensure it is happening.
    - The awareness of some reporting entities with respect to their role in CTF mechanism;
    - The specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**Largely Compliant**	• The key requirements are covered. Concerns remain regarding the criminal liability of the legal persons and the differences of interpretation between the Bulgarian authorities of parts of the confiscation regime.
SR.I	**Largely Complaint**	• Almost all the requirements are fully implemented. Concerns remain regarding the awareness among some reporting entities and the lack of a specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

6.3 Mutual legal assistance (R.32, 36-38, SR.V)

6.3.1 Description and analysis

Recommendation 36

792. Mutual legal assistance legal framework is regulated by the Criminal Procedure Code, Chapter 36, Section III. Bulgaria is Party to the 1959 Council of Europe Convention on Mutual Legal Assistance in Criminal Cases and the two Additional Protocols thereto. In addition, in the relations with other EU Member States the Law on Recognition, Enforcement and Issuance of Writs for Securing of Assets or Evidence (published in State Gazette No. 59/21.07.2006, effective from January 1, 2007) is applied. Bulgaria has signed and ratified the Council of Europe 1970 Convention on International validity of criminal judgement. The convention entered into force in Bulgaria July 1, 2004. With respect to EU countries, Bulgaria applies all forms of mutual legal assistance provided by EU legal framework.

793. In addition Bulgaria has signed and ratified the Convention on Mutual Assistance in Criminal Matters between European Union Member States adopted on May 29 2000 in Brussels by the European Council in accordance with Article 34 of the European Union Treaty, by following Declarations:

1. Declaration with reference to Article 9, Paragraph 6:

"The Republic of Bulgaria declares that it shall request the consent of the person to be transferred under Article 9, Paragraph 3, before concluding an agreement under Paragraph 1 with any of the interested Member States."

Declaration with reference to Article 24, Paragraph 1:

"The Republic of Bulgaria declares that the authorities competent for the implementation of this Convention and the provisions referring to mutual assistance in criminal cases in connection with offences under Article 1, Paragraph 1, shall be:

- For requests of legal assistance in pre-trial proceedings: the Supreme Prosecutor's Office of Cassation;
- For requests of legal assistance in judicial proceedings:

a) With reference to Article 9: the District Courts at the place where the person is held in custody ;
b) With reference to Article11: the Courts of equal level at the place of residence of the person;
c) With reference to Article 10: the Court of Appeal at the place of residence of the person;
d) In all other cases: the Regional or District Courts in accordance with their competence as per the domestic law.

3. Declaration under Article 24, Paragraph 1, "b":

"The Republic of Bulgaria declares that the authorities competent for the implementation of Article 6 shall be:

- The Supreme Prosecutor's Office of Cassation: for Letters Rogatory requesting Legal Assistance in pre-trial proceeding;
- The Ministry of Justice: for Letters Rogatory requesting Legal Assistance in Judicial Proceedings.
- The authority competent in connection with Article 6 and Article 8 is the Supreme Prosecutor's Office of Cassation. Provisional transfer of persons detained in custody for the purposes of investigation under Article 6 and Article 8 shall be admitted by the competent Court.

4. Declaration in connection with Article 24, "e":

"The Republic of Bulgaria declares that the authority competent for the implementation of Articles 18, 19 and 20 is the Supreme Prosecutor's Office of Cassation."

794. Bulgaria has also ratified the Protocol to the Convention on Mutual Assistance in Criminal Matters between Member States of the European Union drawn by the Council on October 16, 2001 in Luxemburg in accordance with Article 34 of the European Union Treaty.

795. The Law shall become effective on the date specified by the Council in accordance with Article 3, Paragraph 3 from the Act on the Requirements for Accession of the Republic of Bulgaria and the Republic of Rumania and the amendments in the Constituent Treaties.

796. According to art. 471 of the Criminal Procedure Code, mutual legal assistance in criminal matters shall be rendered to another state under the provisions of an international treaty executed to this effect, to which Bulgaria is a party, or based on the principle of reciprocity. Mutual legal assistance in criminal cases is also available to international courts whose jurisdiction has been recognised by Bulgaria. Mutual legal assistance shall comprise the following:

- Submitting documents;
- Investigating actions;
- Collecting evidence;
- Providing information;

- Other forms of legal assistance, where they have been provided for in an international agreement to which the Republic of Bulgaria is a party or is obliged on the basis of reciprocity.

797. The Bulgarian law (Article 473 of the Criminal Procedure Code) provides the facilitation of the appearance of a witness and an expert before a foreign court. The appearance of a witness and an expert before foreign court authorities shall only be allowed if assurance is given that the summoned persons, irrespective of their citizenship, would not bear criminal liability for acts committed prior to summoning them. In the event of a refusal to appear, no coercive measures may be applied to them.

798. Surrendering persons detained in custody, in order to be interrogated as witnesses or experts, shall only be allowed in exceptional cases at the discretion of the respective district court on the grounds of papers submitted by the other state or the international court of justice, provided that the person gives his/her consent for being turned over and provided that his/her stay in the other state will not extend the term of his/her detention in custody. There is also the possibility of using special interrogation techniques, such as video conference interrogation. The procedure for this is detailed provided for in Article 474 of the Criminal Procedure Code.

799. According to Article 469 of the Criminal Procedure Code, other acts of foreign national courts, ruling the forfeiture or confiscation of the means of crime and of proceeds acquired through crime, or of their equivalent, shall be recognised and enforced pursuant to section II of the CPC or directly on the basis of the Strasbourg Convention. As a result, the conditions of awarding and refusal of MLA for the acts and actions/activities required by Recommendation 35 are split in two categories: the first category applicable to enforcement of confiscation ordered by a foreign court and the second category applicable to all the other form of MLA.

800. *Conditions for awarding and refusal of MLA in term of confiscation*

According to Article 4 of the Criminal procedure Code, criminal proceedings instituted by the authorities of another state or a sentence in force issued by a court in another state, not recognised according to the Criminal Procedure Code, shall be no obstacle to the institution of criminal proceedings by the authorities in the Republic of Bulgaria in respect of the same criminal offence against the same individual. A sentence in force issued by a court in another state, which has not been recognised according to the Criminal Procedure Code, shall not be subject to enforcement by the authorities of the Republic of Bulgaria. The provisions above are not applicable if otherwise provided for by an international treaty to which the Republic of Bulgaria is a party where said treaty has been ratified, publicised and has entered in force. According to Article 463 of the Criminal Procedure Code, an effective sentence issued by a foreign national court shall be recognised and enforced by the authorities in the Republic of Bulgaria in compliance with Article 4, Para. 3, where (the conditions are cumulative):

- The act in respect of which the request has been made constitutes a criminal offence under Bulgarian law (dual criminality);
- The offender is criminally responsible under Bulgarian law;
- The sentence has been issued in full compliance with the principles of the Convention for the Protection of Human Rights and Fundamental Freedoms and with the Protocols thereto, to which the Republic of Bulgaria is a party;
- The offender has not been sentenced for a crime that is considered political or for one associated with a political or a military crime;
- In respect of the same offender and for the same crime the Republic of Bulgaria has not recognised any sentence issued by another national court;
- The sentence does not stand in contradiction to the fundamental principles of Bulgarian criminal and criminal procedural law.

801. A sentence issued by a foreign national court recognised under the Bulgarian procedure, has the effect of a sentence issued by a Bulgarian court.

802. The conditions of refusing the enforcement of a foreign sentence are provided by art. 464 of the Criminal Procedure Code and comprise:

- The punishment imposed may not be served due to the expiry of the prescription period envisaged under the Bulgarian Criminal Code;
- At the moment the criminal offence was committed no criminal proceedings in the Republic of Bulgaria could have been initiated against the sentenced individual;
- In respect of the same criminal offence against the same individual in the Republic of Bulgaria criminal proceedings are pending, a sentence has come into force, or a decree or ruling terminating the proceedings have come into force;
- There are sufficient grounds to believe that a sentence has been imposed or aggravated due to racial, religious, national or political considerations;
- Execution stands in contradiction to international obligations of the Republic of Bulgaria;
- The offence has been committed outside its territory.

803. For seizure and confiscation of property in the relations with the other EU member states a special law, implementing the acquis communitaire, was adopted (Law on recognizing, executing and making orders for freezing property or evidence). For seizure and confiscation requests under this law, dual criminality is not requested, for the offences listed below and if they are punishable in the national law of the issuing State by imprisonment of at least three years or another more severe sentence:

1. participation in an organised criminal group;
2. terrorism;
3. trafficking in human beings;
4. sexual exploitation of children and child pornography;
5. illicit trafficking in narcotic drugs and psychotropic substances;
6. illicit trafficking in weapons, munitions and explosives;
7. corruption;
8. fraud, including that affecting the financial interests of the European Communities within the meaning of the Convention on the Protection of the Financial Interests of the European Communities dated 26 July 1995;
9. laundering the proceeds of a crime;
10. counterfeiting currency, including the Euro;
11. computer crimes and computer-related crimes;
12. environmental crime, including illicit trafficking in endangered animal species and endangered plant species and varieties;
13. facilitation of unauthorised entry and residence in the country;
14. murder, grievous bodily injury;
15. illicit trade in human organs and tissue;
16. kidnapping, illegal restraint and hostage-taking;
17. racism and xenophobia;
18. organised or armed robbery;
19. illicit trafficking in cultural goods, including antiques and works of art;
20. swindling;
21. racketeering and extortion;
22. counterfeiting and piracy of products;
23. forgery of administrative documents and trade therein;
24. forgery of payment instruments;
25. illicit trafficking in hormonal substances and other growth promoters;
26. illicit trafficking in nuclear or radioactive materials;
27. trade in stolen vehicles;
28. rape;
29. arson;
30. crimes within the jurisdiction of the International Criminal Court;
31. unlawful seizure of aircraft or ships;
32. sabotage.

804. With respect to *all the other forms of MLA*, the request is executed according to the procedure provided by Bulgaria law or according to a procedure provided by an international agreement to which the Republic of Bulgaria is a part. A request may also be enforced according to a procedure provided for in the law of the other country or the statute of the international court, if is requested and if it is not contradictory to the Bulgarian law. In the latter case, the other country or international court shall be notified of the time and place of execution of the request. Mutual legal assistance may be refused if the enforcement of the request could threaten the sovereignty, the national security, the public order and other interests, protected by law.

805. Neither the national legislation, nor the international instruments do provide any particular terms for execution of MLA requests. The examiners were advised that all mentioned mechanisms of providing MLA are fulfilled in a very efficient, timely and effective manner and that cases of money laundering and terrorism financing are handled with priority. An approximate time frame of dealing with these requests was not provided.

806. Bulgaria does not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters. Bulgaria does not refuse a request for mutual legal assistance on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions. A request related to such issues is treated according to the national provisions for lifting bank secrecy by the court upon request of the prosecutor. For the domestic mechanism of lifting bank, financial and tax secrecy, see Recommendation 3.

807. There is no legal impediment for using the powers of law enforcement agencies required under Recommendation 28 in the mutual legal assistance framework. The procedure of using special investigative techniques in MLA requests is provided in Article 476 of the Criminal Procedure Code

808. As regards the measures for avoiding the conflict of jurisdiction, art. 478 of the Criminal Procedure Code provides the procedure of transferring criminal proceedings to another state or from another state to Bulgaria. A request for transferring criminal proceedings by another state shall be admitted if:
- The act in respect of which the request has been made constitutes a criminal offence under Bulgarian law;
- The offender is criminally responsible under Bulgarian law;
- The offender has his or her permanent residence on the territory of the Republic of Bulgaria;
- The offender is a national of the Republic of Bulgaria;
- The offence in respect of which a request has been made is not considered a political or politically associated, nor a military offence;
- The request does not aim at prosecuting or punishing the person due to his or her race, religion, nationality, ethnic origin, sex, civil status or political affiliations;
- Criminal proceedings in the Republic of Bulgaria in respect of the same or another offence have been initiated against the offender;
- The transfer of proceedings is in the interest of discovering the truth and the most important pieces of evidence are located on the territory of the Republic of Bulgaria;
- The enforcement of the sentence, should one be issued, will improve the chances of the sentenced person for re-socialisation;
- The personal appearance of the offender may not be ensured in proceedings in the Republic of Bulgaria;
- The sentence, if one is issued, may be enforced in the Republic of Bulgaria;
- The request does not contradict international obligations of the Republic of Bulgaria;
- The request does not stand in contradiction to the fundamental principles of Bulgarian criminal and criminal procedural law.

809. The request for transfer of criminal proceedings to another state can be made if:
- The extradition of an individual who committed the offence from the requested state is

impossible, is not allowed or has not been requested for other reasons;

- It is opportune for criminal proceedings to take place in the requested state in order to establish the facts, determine the sentence or enforce it;
- The individual who committed the offence is or shall be extradited to the requested state or his or her appearance at the criminal proceedings in said state in person is possible due to other reasons;
- The extradition of an individual who has been sentenced by a Bulgarian court and the sentence has taken effect is impossible or not allowed by the requested state or where the enforcement thereof in said state is impossible.

Recommendation 37

810. The dual criminality condition exists only in respect of mutual legal assistance related to enforcement of a confiscation sentence. For all the other forms of MLA, starting 2004, there is no such condition. Therefore, the rules on dual criminality applied in practice are the ones provided in the international instruments.

811. As to the Council of Europe Convention on Mutual Legal Assistance, a reservation was made at the time of signature in September 1993, and confirmed at the time of deposit of the instrument of ratification, in June 1994. The reservation was partially withdrawn by a Verbal Note from the Permanent Representation of Bulgaria in January 2004.

812. On November 12, 2003, the National Assembly of the Republic of Bulgaria adopted a Law amending the Law for the Ratification of the European Convention on Mutual Assistance in Criminal Matters and the Additional Protocol thereto, the Convention on the Transfer of Sentenced Persons and the European Convention on Extradition and the two Additional Protocols thereto. The said Law was published in the Official Journal in November 2003. Therefore, the reservation made by the Republic of Bulgaria in respect of Article 2 of the European Convention on Mutual Assistance in Criminal Matters is partially withdrawn and shall read:

813. "The Republic of Bulgaria declares that it will refuse legal aid in cases where:
    - the offender shall not be held responsible by virtue of amnesty;
    - the criminal responsibility is precluded by statutory limitation;
    - after having committed the offence, the offender has fallen into a state of lasting mental disturbance precluding criminal responsibility;
    - there is a pending penal procedure, an enforceable sentence, an order or an enforceable decision to terminate the case, with respect to the same person for the same offence."

Recommendation 38

814. The MLA in respect to freezing, seizure and confiscation is provided in Article 469 of the Criminal Procedure Code. This is applicable to countries others than EU member states. In respect to the latter, the Law on recognizing, executing and making orders for freezing property or evidence is applicable. Even though the practical procedure is the same, the law making cross reference to the general provisions of the Criminal Procedure Code when providing the actual enforcement procedure, there are some major differences. As detailed above, while analysing Recommendation 37, dual criminality is not requested for the relation with EU member states, on specific conditions and for a limited list of offences, including money laundering and terrorism financing.

815. Although, both art. 469 of the Criminal Procedure Code and the law on recognizing, executing and making orders for freezing property or evidence provide for confiscation of
    - laundered property from,
    - proceeds from,
    - instrumentalities used in, or

- instrumentalities intended for use in, the commission of any ML, FT or other predicate offences,

the concerns expressed while analysing the compliance with the Recommendation 3 regarding third party confiscation and confiscation of indirect proceeds of crime still remains. Between January 2004 and April 27, 2007 the National Investigative Service implemented successfully 14 requests for freezing of property – from Belgium (4), from Germany (3), from France (2), from Netherlands (2), from Italy (1), from Kosovo (1) and from Costa Rica (1). In 2006 Bulgaria sent 1 request for freezing of property to Switzerland and in 2007, 1 request for freezing of property was sent to France. The question raises in respect to these freezing orders and their finality.

816. Between 2006 and April 2007, 8 foreign requests for freezing of property were received and processed by the Supreme Cassation Prosecutors´ Office25 (2 from UK, 2 from Germany, 2 from the Netherlands, 1 from France and 1 from USA). In all cases seizure and freezing of movables and immovable property were ordered by different Bulgarian courts. In 6 cases the freezing orders are still in force due to the fact that the criminal proceedings in the requesting countries are pending. In one case the Netherlands withdrew its request and the seizure was lifted by a court order. In one of the cases confiscation of the seized property was requested and enforced directly on the basis of Art. 15 of the Strasbourg Convention in connection with Art. 4 Para. 5 of the CC26. From the confiscated property amounting to 360 000 Euro, the German authorities asked for and received the part which covered the costs of conducting the criminal proceedings. This assets sharing followed on the basis of an ad hoc agreement between the Bulgarian and German authorities.

817. As stated while analysing Recommendation 1 insider trading and market manipulation are not fully covered by the criminal regime. As the procedure of enforcing foreign confiscation orders provided in CPC requires dual criminality with respect to these two designated offences, some shortcomings might appear. However, this is just one of the two procedures which may be used to enforce a foreign confiscation order, the other being based directly on the Strasbourg Convention. The issue of fully criminalising insider trading and market manipulation should be addressed as required under Recommendation 1.

818. The value confiscation can be requested and enforced through mutual legal assistance.

819. The coordination in relation of confiscation and seizure in MLA matters is on the basis of relevant multilateral and bilateral agreements.

820. There is no special assets forfeiture fund (criteria 38.4). The assets and values confiscated go to the state budget. This issue may need to be reconsidered. The Bulgarian authorities advised that asset sharing between the Bulgarian authorities and foreign countries when confiscation is directly or indirectly a result of the coordination of law enforcement actions is possible, either based on bilateral agreements or based on the principle of reciprocity. Asset sharing was twice applied in practice, in 2004 and early 2007.

Additional Elements

The newly created agency for civil confiscation, CEPACA may, by virtue of Article 3 Para. 3 of LFPC cooperates with similar bodies to identify property illicitly acquired. In 2006, CEPACA sent 8 requests to foreign similar bodies for tracing illicit property acquired in Bulgaria or foreign countries, both by Bulgarian nationals and non-Bulgarian nationals. With respect to enforcing foreign civil forfeiture orders, the Bulgarian authorities indicated that the procedure in Articles 117 – 120 of the Private International Law Code was applicable. However, this procedure deals with private requests for recognition of foreign

[25] directly or via the Ministry of Justice

[26] This was the second case where the Strasbourg Convention was directly applied for the purpose of executing foreign confiscation orders

civil sentences. The Bulgarian authorities advised that CEPACA will take the foreign decision to the Bulgarian court for enforcement. The evaluators are not convinced that this is viable as no clear procedure is provided by the law for the foreign civil confiscation order. Furthermore, there is no practice on this issue. The Bulgarian authorities are encouraged to consider providing such procedure.

Special Recommendation V

821. SR V requires, among other things, that each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquires and proceedings related to financing of terrorism, terrorist acts and terrorist organisations.

822. The MLA mechanisms applicable in Bulgaria are presented above, while assessing the compliance with Recommendations 36 to 38. It is, however, worth mentioning the fact that related to terrorism financing the same legal provisions are incident.

823. International cooperation in the area of ML and FT could in some instances suffer from certain gaps in the national legislation, in particular in respect of the confiscation regime. Apart from this there is also the inability to execute the civil confiscation orders.

Statistics

824. The examiners were advised that the MLA Department of the Ministry of Justice, the Supreme Cassation Prosecutors' office and National Investigative Service maintain statistics on matters relevant to combating money laundering and terrorist financing. Statistics are kept on:
- Mutual legal assistance or other international requests for co-operation
- All mutual legal assistance and extradition requests.

825. The Bulgarian authorities provided the following statistics concerning mutual legal assistance

	Mutual Legal Assistance requests sent by Bulgaria	**Mutual Legal Assistance requests received by Bulgaria**
2004	1664	853
2005	1380 (**5** of them for Money Laundering)	811
2006	1794 (**11** of them for Money Laundering)	1059
Till 28 February 2007	480 (**19** of them for Money Laundering)	143
2004-2007	**35** MLA requests for Money Laundering	**19** MLA requests for Money Laundering

826. The National Investigative Service of the Republic of Bulgaria maintains since 2004 an electronic register for the rogatory letters sent to the Bulgarian authorities for conducting the investigative activities requested. The rogatory letters of the Bulgarian investigators sent to foreign authorities are registered electronically since 1 January 2006. For the period January 2004 – 27 April 2007 the National Investigative Service implemented successfully 14 requests for freezing of property – from Belgium (4), from Germany (3), from France (2), from Netherlands (2), from Italy (1), from Kosovo (1) and from Costa Rica (1). In 2006 Bulgaria sent 1 request for freezing of property to Switzerland and in 2007, 1 request for freezing of property

was sent to France. Between 2006 and April 2007, 8 foreign requests for freezing of property were received and processed by the Supreme Cassation Prosecutors´ Office

827. In November 2004, a Task Force was set up in the field of terrorist financing counteraction. This task force includes officers from FIA, National Security Service (within the Ministry of Interior) and the Embassy of the United States of America in Sofia. The task force meets regularly twice a month. At the time of the on-site visit[27], FIA had instituted checks of 100 persons in this regard. The FIA also performs full identification of persons and FIA has also made checks on another 360 persons related to the original 100 persons. The FIA received 11 requests from the National Security Service and has sent 13 replies. 2 positive matches were found in FIA´s database. FIA collected bank, customs, and tax information on all subjects of the above mentioned requests.

828. After September 11, 2001, FIA received numerous requests to check lists sent by the Embassy of the United States of America in Sofia regarding possible financing of terrorism in relation to persons listed under the Executive Order 13224 of President Bush. Also the Ministry of Foreign Affairs submitted to the FIA notifications on UN Resolutions (see SR.IV beneath). In 2002 and 2003, FIA also received several requests on possible cases of financing of terrorism from foreign FIUs. All the requests were checked with FIA databases and databases of financial institutions in Bulgaria. There were some matches. All of them have been processed by FIA, NSS and Police. Some clarifying information from foreign counterparts was required.

829. The following statistics was provided by the Bulgarian authorities:

Checks / lists	Persons checked	Entities checked
FBI	262	41
E.O. 13224 of U.S. president	372	176
Security Council Committee established pursuant to Resolution 1267	335	130
Security Council Committee established pursuant to Resolutions 1518	89	206
Italian FIU	68	7
Belgium FIU	7	-
FIU of B&H	11	-
Total September, 2001 – up to the present	1144	560

830. The provided statistics do not contain information whether it was granted or refused and the time required responding.

6.3.2 Recommendations and comments

831. In the absence of any significant legal restriction in the field of MLA, Bulgaria is in principle able to provide a wide range of assistance in the field of criminal proceedings and in ML and FT in particular. The examiners welcomed the figures provided to corroborate them with the positive legal picture and information provided relating MLA in general.

[27] All statistics referred to are up to the time of the on-site visit.

832. Reservations remain with respect to enforcing foreign confiscation orders related to insider trading and market manipulation, as these offences are not properly criminalised in the national legislation. Another issue is the lack of a special assets forfeiture fund.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**Compliant**	
R.37	**Compliant**	
R.38	**Largely Compliant**	▪ Reservations remain with respect to enforcing foreign confiscation orders related to insider trading and market manipulation, as these offences are not properly criminalised in the national legislation. ▪ Another issue is the lack of a special assets forfeiture fund.
SR.V	**Compliant**	

6.4 Extradition (R. 37 and 39, SR.V)

6.4.1 Description and analysis

Recommendation 37

833. Bulgaria requests dual criminality in order to implement European Convention on Extradition from 1957 and other international conventions, containing extradition rules as well as on the basis of bilateral agreements concluded by Bulgaria so far. The rule for dual criminality is stipulated in art. 5 of the Law on Extradition and European Arrest Warrant:

> *Art. 5. (1) Extradition shall be granted only if the act constitutes a criminal offence as per the Bulgarian legislation and as per the legislation of the requesting country, and for this offence imprisonment or measure requiring detention not for shorter than 1 year or other more stiff penalty is stipulated.*
> *(2) Extradition shall be granted also for the purpose serving of imprisonment penalty, or if measure requiring detention of the person, imposed by the requesting country for not shorter than 4 months.*
> *(3) The act shall constitute offence in the both countries, if, notwithstanding the differences in the corpus delicti, the main elements are identical.*

834. Concerning the European Arrest Warrant Bulgaria implements the principles laid down in the Framework decision on EAW. Therefore, in relation with another EU member state, double criminality shall not be required for the designated offences, if in the issuing State they carry not less than three years of imprisonment or with another more severe penalty, or for them a measure requiring detention for not less than of 3 years is provided. The list of the offences includes money laundering and terrorism financing.

Recommendation 39

835. Money laundering is an extraditable offence. Extradition is covered by the Law on Extradition and the European Arrest Warrant, adopted on May 20, 2005. The law entered in force as of July 4, 2005. The provisions in the law concerning the European Arrest Warrant became effective after coming into force of the Bulgaria's EU Accession Treaty.

836. In relation with other EU member states, Bulgaria extradites its own nationals. In relation to other countries, provisions of art. 6 of the Law on Extradition and the European Arrest Warrant are applicable. According to it, extradition shall not be admitted:
    - of a Bulgarian citizen, except such provided by an entered in force international treaty, where the Republic of Bulgaria is a party to;
    - of a person, for which person refuge has been provided in the Republic of Bulgaria;
    - of a foreign citizen, who has immunity regarding the prosecution jurisdiction of the Republic of Bulgaria;
    - of a person who shall not bear penal liability as per the Bulgarian legislation.

837. The existence of Bulgarian citizenship, of provided refugee status in the Republic of Bulgaria or of immunity regarding the prosecution jurisdiction of the Republic of Bulgaria is assessed at the moment of receipt of the extradition request. In these cases, art. 479 of the Criminal Procedure Code regarding the transfer of criminal proceedings to another state is applicable. It provides that, a request for the transfer of criminal proceedings to another state may be extended, where:
    - The extradition of an individual who committed the offence from the requested state is impossible, is not allowed or has not been requested for other reasons;
    - It is opportune for criminal proceedings to take place in the requested state in order to establish the facts, determine the sentence or enforce it;
    - The individual who committed the offence is or shall be extradited to the requested state or his or her appearance at the criminal proceedings in said state in person is possible due to other reasons;
    - The extradition of an individual who has been sentenced by a Bulgarian court and the sentence has taken effect is impossible or not allowed by the requested state or where the enforcement thereof in said state is impossible.

838. The request for transfer of criminal proceedings to another state at the proposal of competent Bulgarian authorities in the field of criminal proceedings is submitted by:
    1. The Supreme Prosecution Office of Cassation - in respect of pre-trial proceedings;
    2. The Ministry of Justice - in respect of trial proceedings.

839. The examiners were advised that in cases referred to in criterion 39.2(b); Bulgaria cooperates actively with other states in particular on procedural and evidentiary aspects, to ensure the efficiency of the prosecution. In the same manner, the Bulgarian authorities stated that the extradition procedure in Bulgaria is completed in due time within reasonable period.

Additional elements

840. According art. 9 of the Law on Extradition and the European Arrest Warrant, the central authority in this matter is the Ministry of Justice. Therefore, the direct transmission of the extradition requests between the competent ministries is the general rule. Art. 9 provides also for the possibility of using diplomatic channels, International Organisation of the Criminal Police (Interpol) or in another manner which may be agreed between the applying country and Bulgaria. For requests between EU member states, direct contact between the competent authorities is permitted starting January 1, 2007.

841. Both extradition procedures provide for a simplified procedure of extraditing the consenting persons who waive formal extradition proceedings in place (Article 14, Para 4, point 3 and Article 19 – for general extradition; Article 43, Para. 3, Article 44, Para. 3, and Article 45 – for European Arrest Warrant).

Special Recommendation V

842. SR V requires, among other things, that each country should afford another country, on the basis of a treaty, arrangement or other mechanism for mutual legal assistance or information exchange, the greatest possible measure of assistance in connection with criminal, civil enforcement, and administrative investigations, inquires and proceedings related to financing of terrorism, terrorist acts and terrorist organisations.

843. The MLA mechanisms applicable in Bulgaria were presented above, while assessing the compliance with Recommendations 36 to 38. It is worth mentioning the fact that related to terrorism financing, the same legal provisions are incident. No exceptions for terrorism financing or terrorism acts are provided by the law.

844. The additional elements from Recommendation 39 (criteria 39.5) are also applicable in relation with terrorism financing.

845. Republic of Bulgaria withdrew its reservation to the European Convention on the Suppression of Terrorism on 19 December 2001. Hence at present Bulgaria may not refuse extradition on the sole ground that it regards the offence for which the extradition is required as political offence.

Concerning extradition the following statistics were provided:

	Extradition requests sent by Bulgaria	**Extradition requests received by Bulgaria**
2004	65	80
2005	93	73
2006	49	117
Till 28 February 2007	5	14

846. Out of these 284 extradition requests received by the Bulgarian authorities, 3 persons were extradited for money laundering. No Bulgarian citizens have been extradited from abroad for the crime "money laundering" during this period of time. Between January 1, 2007 and May 9, 2007, 8 persons have been extradited on the basis of European Arrest Warrants from Bulgaria (to Poland, Germany – 3 persons, Italy, Slovenia, Romania, France). Two of them are Bulgarian citizens. These extraditions were for offences other then money laundering. The statistics provided did not comprise the number of executed/refused extraditions and the average timeframe of response to such requests. This kind of statistics should be maintained, as being the primarily source of assessing the overall system of MLA and extradition.

6.4.2 Recommendations and comments

847. In the absence of any significant legal restriction in the field of MLA, Bulgaria is in principle able to provide a wide range of assistance in the field of extradition and in ML and FT in particular. The examiners welcomed the figures provided to corroborate them with the positive legal picture and information provided relating MLA in general.

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

	Rating	**Summary of factors relevant to Section 6.4 underlying overall rating**
R.37	**Compliant**	
R.39	**Compliant**	
SR.V	**Compliant**	

6.5 Other Forms of International Co-operation (R. 40 and SR.V)

6.5.1 Description and analysis

848. The Ministry of Interior conducts international cooperation with foreign law enforcement in money laundering cases through INTERPOL, EUROPOL and liaison officers of the foreign embassies. This cooperation is based on bilateral and multilateral agreements. The law enforcement authorities are authorised to conduct investigations on behalf of foreign law enforcement services only if there is a letter oratory made by the Foreign Service.

849. According to Article 33 of the Law on Forfeiture of Proceeds of Crime the CEPACA may exchange information for the purposes with the competent authorities of other countries and with international organisations on the basis of international instruments and international treaties in force for Bulgaria. The directorate"Establishing of property overseas and international relations" is responsible for the international contacts of CEPACA. In the year 2006 contacts with the relevant institutions in UK, Ireland and the Netherlands have been established. Study visits to the Asset Recovery Agency, Criminal Asset Bureau and the Unit for Confiscation of Proceeds of Crime at the Dutch Prosecution Office were done.

850. With the advance of the globalization processes, the amelioration of the business climate in the country and the ever increasing mass penetration of multinational financial companies on the Bulgarian market, as well as the always more active activities of Bulgarian persons, providing financial services outside the country, the necessity for co-operation with the foreign institutions regulating and controlling the financial markets has intensified. In order to exercise more efficient supervision over those financial companies pursuing international activities, prevention of market manipulation, unfair trade, money laundering and intercepting possible financial abuse, the FSC co-operates closely with partnership supervisors from countries with which most active cross-border exchange of financial services is realised.

851. Article 22 empowers the Financial Intelligence Agency to cooperate internationally including exchange of information with the respective peer organisations, cooperation in terms of Memoranda of Understanding etc. FIA is member of Egmont Group since 1999, FIU.NET (2003), CARIN Network.

852. The FIA international statistics:

Number of requests made by the FIU to:	2000	2001	2002	2003	2004	2005	2006
European FIU / Non European FIU	69	67	130	255	261	341	414

Number of requests received by the FIU from:	2000	2001	2002	2003	2004	2005	2006
European FIU / Non European FIU	24	22	46	86	97	93	82

853. Article 22, Para. 1 of the LMML states that the Financial Intelligence Agency on its own initiative or at request for information shall exchange information about cases related to suspicion

of money laundering with the corresponding international bodies and EU bodies and authorities of other countries on the basis of international agreements and reciprocity.

854. According to Article 18 of LMML, the Financial Intelligence Agency can obtain information containing money laundering suspicion not only from subject persons but also from state bodies, and through international information exchange. Article 22, Para. 1, states that the Financial Intelligence Agency on its own initiative or at request for information shall exchange information about cases related to suspicion of money laundering with the corresponding international bodies and EU bodies and authorities of other countries on the basis of international agreements and reciprocity

6.5.2 Recommendations and comments

(N/A)

6.5.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.40	**Compliant**	
SR.V	**Compliant**	

7 OTHER ISSUES

7.1 Resources and Statistics

855. The text of the description, analysis and recommendations for improvement that relate to Recommendations 30 and 32 is contained in all the relevant sections of the report i.e. all of section 2, parts of sections 3 and 4, and in section 6. There is a single rating for each of these Recommendations, even though the Recommendations are addressed in several sections. Section 7.1 of the report contains the boxes showing the rating and the factors underlying the rating.

856. The evaluators strongly advise, that Bulgaria keeps more detailed statistics in order to allow them to assess the effectiveness of their AML/CFT system.

	Rating	Summary of factors underlying rating
R.30	**Largely Compliant**	• More resources for law enforcement would assist proactive investigation and police generated ML cases. • More resources should be dedicated by both BNB and FSC with respect to AML/CFT issues.
R.32	**Partially Compliant**	• The statistics were not consolidated in respect of prosecution and convictions. • Limited information but no statistics showing speed of analysis. • There is no statistics on spontaneous referrals by the FIA to foreign countries. • Joint statistics should be considered. No data on FIU spontaneously sent information. No clear data on prosecution/judicial statistics regarding money laundering seizure and confiscation. • The statistics are not kept on the predicate offences, the nature of the request, whether it was granted or refused, and the time required to respond. • No statistics on underlying reason for filing STR

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

8 TABLE 1. RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating[28]
Legal systems		
1. Money laundering offence	**Largely Compliant**	• Not all designated categories of offences are fully covered as predicates (insider trading and market manipulation; and one aspect of terrorist financing).
2. Money laundering offence Mental element and corporate liability	**Largely Compliant**	• Liability of the legal persons remains limited to administrative liability. • Almost half of the final convictions on money laundering were dealt with suspended sentences of imprisonment, fact which raises questions with respect to the compliance with the requirements of "effective and dissuasive sanctions". • Difficulties of proof of intention need further addressing in guidance or legislation to address effectiveness issues.
3.Confiscation and provisional measures	**Partially Compliant**	• Differences of view between the Bulgarian authorities on the application of third party confiscation need resolution to ensure it is happening. • Clearer guidance to be given to prosecutors on confiscation of indirect proceeds and value confiscation. • Lack of effectiveness of the general confiscation regime. • New agency (CEPACA) not operating for sufficient length of time to judge its effectiveness.
Preventive measures		
4. Secrecy laws consistent with the Recommendations	**Compliant**	
5. Customer due diligence	**Partially Compliant**	• It was the view of the evaluators that the definition of beneficial owner was not fully understood by all financial institutions. • Obligation to perform full CDD measures for terrorist financing should be required in the law. • Lack of guidance on applying simplified due diligence. • Requirement to verify source of funds was not fully

[28] These factors are only required to be set out when the rating is less than Compliant.

		demonstrated throughout the financial sector. • The evaluators found that some financial institutions needed more training on risk assessment. • With the exception of banks financial institutions need to work harder to raise awareness and be effective in CDD due diligence.
6. Politically exposed persons	**Non Compliant**	• There is no clear provision in law or regulation or other enforceable means for the determination of whether a customer is a PEP. • There is no provision for senior management approval to establish a relationship with a PEP. • No provision for senior management approval to continue business relationship where the customer subsequently is found to be or becomes a PEP. • No provision to require financial institutions in a business relationship with a PEP to conduct enhanced ongoing monitoring on that relationship. • The evaluators found that some financial institutions needed more training on PEPs. • Reservation about effective implementation.
7. Correspondent banking	**Partially Compliant**	• No enforceable requirement to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective. • No enforceable requirement to obtain senior management's approval before establishing new correspondent relationship. • No enforceable requirement to document the respective AML/CFT responsibilities of each institution. • Criteria 7.1 to 7.5 potentially apply to financial institutions other than banks. There is no guidance on this issue by the FIA or other authority.
8. New technologies and non face-to-face business	**Partially Compliant**	• Financial institutions are not directly required to have policies in place to prevent the misuse of technological developments in ML and TF schemes. • Unclear how businesses issuing and performing operations with emerging technologies such as prepaid or account-linked value cards are implementing preventive measures. • Enforceable measures to prevent the misuse of new and developing technologies are not implemented.
9. Third parties and introducers	**N/A**	
10. Record keeping	**Largely Compliant**	• Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity.

		• There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority.
11. Unusual transactions	**Partially Compliant**	• The Bulgarian authorities should consider to explicitly incorporating the obligations of Recommendation 11 in law or regulation. • Financial institutions should be required to examine the background and purpose of such transactions, set their findings out in writing. • Financial institutions should keep the findings available for competent authorities and audit for at least five years.
12. DNFBP – R.5, 6, 8-11	**Partially Compliant**	• Several DNFBP lack awareness and full knowledge of their obligations to perform CDD. • Same deficiencies for PEPS as described under financial institutions. A list of domestic PEPs has been drawn up, but DNFBP do not routinely check the list. Most DNFBP were unaware of the timing of CDD or how to conduct such process. • Record keeping is well observed by professional organisations; however, certain DNFBPs record keeping was only for tax compliance purposes. • Casinos should undertake steps to improve record keeping. • Measures should be adopted to prevent misuse of technical developments in certain DNFBP sectors. • Not clear how the provisions on complex/unusual transactions are being implemented across the range of DNFBP.
13.Suspicious transaction reporting	**Partially Compliant**	• Attempted suspicious transactions are not explicitly covered. • Insider trading and market manipulation are not predicate offences and therefore not covered by the reporting obligation. • No reporting obligation covering funds suspected to be linked or related to, or to be used for terrorist acts or by terrorist organisations. • There are few STRs from non-banking financial institutions (effectiveness issue).
14.Protection and no tipping-off	**Largely Compliant**	• Complete protection from all civil liability is missing for reporting entities.
15.Internal controls, compliance and audit	**Largely Compliant**	• There is an obligation to develop CFT internal procedures, policies and control programmes, however, these programmes were not fully understood by some of the financial institutions. Further development and refining of these programmes are recommended (effectiveness). • For non-bank financial institutions there is no enforceable requirement to screen all employees. • The AML/CFT audit function should be further

		developed and elaborated to include controls and testing.
16.DNFBP – R.13-15 & 21	**Partially Compliant**	• The same deficiencies in the implementation of Recommendations 13-15 and 21 in respect of financial institutions apply to DNFBP. • Further education needs to be conducted on filing for both suspicious activity and terrorist financing and additionally training on addressing CDD for unusual suspicious transactions and terrorist financing.
17.Sanctions	**Largely Compliant**	• The range of permissible sanctions is low for corporations (effectiveness issue). • In practice the sanctions imposed were also low in comparison with the maximum permitted penalty (effectiveness issue). • In a specific case involving tipping off sanction was imposed only on the corporate entity and is not considered proportionate by the evaluators (effectiveness issue). • The same deficiencies concerning the implementation of R.17 apply equally to obliged financial institutions and DNFBP (see Section 3.10 of the report). • Sanctions enforcement needs to be stronger for DNFBP that pose AML/CFT risks. • Bulgaria may consider strengthening enforcement of AML law by granting independent sanction authority to supervisory authority.
18.Shell banks	**Compliant**	
19.Other forms of reporting	**Compliant**	
20.Other DNFBP and secure transaction techniques	**Compliant**	
21.Special attention for higher risk countries	**Partially Compliant**	• No requirement to set out in writing any findings of examinations on the background and purpose when transactions have no apparent economic or visible lawful purpose and to maintain such finding for at least five years to assist competent authorities. • No advisories for non-compliant countries. • There are no mechanisms in place to apply counter measures. • Difficult to measure full effectiveness because list of countries is not yet developed.
22.Foreign branches and subsidiaries	**Largely Compliant**	• Provision should be made that where minimum AML/CFT requirements of the home and host country differ, branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country)

		laws and regulations permit.
23.Regulation, supervision and monitoring	**Largely Compliant**	• More resources should be dedicated by both BNB and FSC with respect to AML/CFT issues. • More training and a change in culture is required in the NRA. • More co-ordination between all four players is required to effectively supervise and control the AML/CFT obligations of all subject persons (effectiveness issue).
24.DNFBP - Regulation, supervision and monitoring	**Partially Compliant**	• Further outreach and training of the DNFBP sector, NRA and SCG is required to ensure effective implementation. • Further cooperation between FIA and supervisory authorities is required to ensure full effectiveness. • Number of STRs too low to reflect the true risk profile of various sectors. • Further training to raise awareness of STR requirements and risk indicators might improve the number and quality of reports. • SRO for casinos should consider increasing monitoring for AML/CFT compliance. • The FIA may consider strengthening enforcement of AML laws by granting authority to sanction by supervisory authorities.
25.Guidelines and Feedback	**Largely Compliant**	• In some industries there seem to be a lack of awareness of the methodological guidelines available(efficiency issue). • Although useful, many of the guidelines appear to be generic and not tailored to the particular sector (efficiency issue). • Consideration should be given to more specific feedback outside the banking sector. • For DNFBP ongoing guidance on trends and typologies of AML//CFT should be considered • Further feedback should be considered for DNFBP – especially on a case-by-case basis for STRs filed.
Institutional and other measures		
26.The FIU	**Compliant**	
27.Law enforcement authorities	**Largely Compliant**	• The overall effectiveness of the law enforcement response to ML investigation is questionable.
28.Powers of competent authorities	**Compliant**	
29.Supervisors	**Largely Compliant**	• In terms of implementing risk based supervision, it was unclear whether the FSC/FIA joint inspections adequately accounted for risks within the various sectors.
30.Resources, integrity and training	**Largely Compliant**	• More resources for law enforcement would assist proactive investigation and police generated ML

		cases. • More resources should be dedicated by both BNB and FSC with respect to AML/CFT issues.
31.National co-operation	**Compliant**	
32.Statistics	**Partially Compliant**	• The statistics were not consolidated in respect of prosecution and convictions. • Limited information but no statistics showing speed of analysis. • There is no statistics on spontaneous referrals by the FIA to foreign countries. • Joint statistics should be considered. No data on FIU spontaneously sent information. No clear data on prosecution/judicial statistics regarding money laundering seizure and confiscation. • The statistics are not kept on the predicate offences, the nature of the request, whether it was granted or refused, and the time required to respond. • No statistics on underlying reason for filing STR.
33.Legal persons – beneficial owners	**Largely Compliant**	• Ownership of the bearer shares not verifiable at the Commercial Register or any other register.
34.Legal arrangements – beneficial owners	**N/A**	
International Co-operation		
35.Conventions	**Largely Compliant**	• The key requirements are covered. Concerns remain regarding the criminal liability of the legal persons and the differences of interpretation between the Bulgarian authorities of parts of the confiscation regime.
36.Mutual legal assistance (MLA)	**Compliant**	
37.Dual criminality	**Compliant**	
38.MLA on confiscation and freezing	**Largely Compliant**	• Reservations remain with respect to enforcing foreign confiscation orders related to insider trading and market manipulation, as these offences are not properly criminalised in the national legislation. • Another issue is the lack of a special assets forfeiture fund.
39.Extradition	**Compliant**	
40.Other forms of co-operation	**Compliant**	
Nine Special Recommendations		
SR.I Implement UN instruments	**Largely Compliant**	• Almost all the requirements are fully implemented. Concerns remain regarding the awareness among some reporting entities and the lack of a specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.

SR.II Criminalise terrorist financing	**Largely Compliant**	• Not clear if the offence, as provided in the Bulgarian CC, also includes the contributions for any purpose (including legitimate activity). • Liability of legal persons still limited to administrative accountability.
SR.III Freeze and confiscate terrorist assets	**Largely Compliant**	• Although LMFT provides for "shall be frozen" and the team was assured by the public institutions that the freezing procedure is an automatic one, the examiners were not convinced that all the reporting entities which are compelled to comply with LMFT provisions are aware of the automatic system of freezing. • Law does not cover assets controlled by listed persons. • No specific procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person. • Concerns with regard to effective implementation in the non-banking sector.
SR.IV Suspicious transaction reporting	**Partially Compliant**	• No reporting obligation covering funds that are suspected to be linked or related to, or to be used for terrorist acts or by terrorist organisations. • Clear provision needed that STRs must be filed promptly. • The obligation to report attempted suspicious transactions of financing of terrorism is not explicitly covered. • Only 2 reports filed by banks and the industry as a whole do not seem to be well-versed in these requirements.
SR.V International co-operation	**Compliant**	
SR.VI AML requirements for money/value transfer services	**Compliant**	
SR.VII Wire transfer rules	**Largely Compliant**	• The implementation and effectiveness of the EU Regulation could not be assessed.
SR.VIII Non-profit organisations	**Partially Compliant**	• Although the last review of the law on NPOs was recently undertaken ((2006), the examiners do not see it as a fully adequate and comprehensive review (relates only to NPOs for public benefit); • Detailed provisions regarding financial obligations and annual reports are only applicable to NPOs for public benefit; • Consideration should be given to widening the annual obligations of the NPOs for public benefit to the other NPOs; • Consideration should be given to introduce the provisions in control and deletion of the registration of the NPOs for public benefits to the other NPOs; • No specific review of the risks in the NPO sector

		has been undertaken. Though there is some financial transparency and reporting structures (especially for NPOs for public benefit); Bulgaria to consider the development of a strategy of monitoring the most vulnerable parts of the NPO sector; • Regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures.
SR.IX Cross Border declaration and disclosure	**Partially Compliant**	• No explicit provision to question carriers as to origins of imported currency or bearer negotiable instruments. • No power for Customs to detain pending further investigation by Border Police (effectiveness issue). • Sanctions regime unclear.

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• Ensure that all designated categories of offences are fully covered as predicates (insider trading and market manipulation; and one aspect of terrorist financing). • Difficulties of proof of intention need further addressing in guidance or legislation to address effectiveness issues. • Liability of the legal persons remains limited to administrative liability. Consideration of more general criminal liability for legal persons should be given.
2.2 Criminalisation of Terrorist Financing (SR.II)	• Clarify that the terrorist financing offence includes any purpose (including legitimate activity).
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Differences of view between the Bulgarian authorities on the application of third party confiscation need resolution to ensure it is happening. • Clearer guidance to be given to prosecutors on confiscation of indirect proceeds and value confiscation.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Ensure that all the reporting entities which are compelled to comply with LMFT provisions are aware of the automatic system of freezing. • Provide for a provision to cover assets controlled by listed persons. • Publicly known procedures to be issued for considering unfreezing of funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person.
2.5 The Financial Intelligence Unit and its functions (R.26)	
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• A proactive approach to the financial investigations performed by the police to better trace the proceeds or organised and economic crimes as a matter of routine should be considered.
2.7 Cross Border Declaration & Disclosure	• Explicit power to question carriers as to origins of imported currency or bearer negotiable instruments should be ensured by a provision in law or regulation. • Power of Customs to detain pending further investigation by Border Police should be provided for in law or regulation. • Clarification of the sanctions regime is needed.

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)	• Clear provision to perform full CDD measures for terrorist financing should be provided in the legislation. • Measures should be taken to ensure that the definition of beneficial owner is fully understood by all financial institutions. • Guidance on applying simplified due diligence is required. • Apart from banks financial institutions need more training on risk assessment. • With the exception of banks financial institutions need to work harder to raise awareness and be effective in CDD due diligence. • Clear provision in law or regulation or other enforceable means for the determination of whether a customer is a PEP to be provided. • Provision for senior management approval to establish a relationship with a PEP to be provided. • Provision for senior management approval to continue business relationship where the customer subsequently is found to be or becomes a PEP to be provided. • A clear obligation to require financial institutions in a business relationship with a PEP to conduct enhanced ongoing monitoring on that relationship is required. • Non-bank financial institutions need more training on PEPs. • Enforceable requirement to assess the respondent institution's AML/CFT controls, and ascertain that they are adequate and effective to be provided. • Enforceable requirement for senior management approval before establishing new correspondent relationship to be provided. • Enforceable requirement to document the respective AML/CFT responsibilities of each institution to be provided. • Guidance on Criteria 7.1 to 7.5 should be given by the FIA or other authority to other financial institutions than banks where the Criteria might potentially apply (securities transactions or funds transfers). • Financial institutions should be directly required to have policies in place to prevent the misuse of technological developments in ML and TF. • Clarify how operations with emerging technologies such as prepaid or account-linked value cards are implementing preventive measures.

	• Enforceable measures to prevent the misuse of new and developing technologies should be implemented.
3.3 Third parties and introduced business (R.9)	
3.4 Financial institution secrecy or confidentiality (R.4)	
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• Transaction records should be sufficient to permit reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution of criminal activity. • A clear requirement in law or regulation to keep documents longer than five years if requested by a competent authority should be provided.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• The Bulgarian authorities should consider to explicitly incorporating the obligations of Recommendation 11 in law or regulation. • Financial institutions should be required to examine the background and purpose of such transactions and set their findings out in writing. • Financial institutions should keep the findings available for competent authorities and audit for at least five years. • There should be a specific requirement on financial institutions to set out in writing any findings of examinations on the background and purpose of transactions (with persons from countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose and to maintain such finding for at least five years to assist competent authorities. • Ensure mechanisms are in place to apply counter measures.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Attempted suspicious transactions (AML and TF) should be explicitly covered. • The reporting obligation should also cover insider trading and market manipulation. • Complete protection from all civil liability should be provided. • Consideration should be given to more specific feedback outside the banking sector. • Clear provision that STR on terrorism financing must be filed promptly should be provided. • The reporting obligations (AML and TF) should also cover funds that are suspected to be linked or related to, or to be used for terrorist acts or by terrorist

	organisations.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Improve the understanding of non-bank financial institutions of the obligation to develop CFT internal procedures, policies and control programmes. Further development and refining of these programmes are recommended (effectiveness). • Enforceable requirement for non-bank financial institutions to screen all employees to be provided. • The AML/CFT audit function should be further developed and elaborated to include controls and testing. • Branches and subsidiaries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit, where the minimum AML/CFT requirement of the home and host country differ.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• Considerations should be given to increase the range of permissible sanctions for corporations. • Sanctions imposed are low in comparison with the maximum permitted penalty. The adequacy of this practice should be monitored closely. • It should be considered to strengthening enforcement of AML law by granting independent sanction authority to supervisory authorities. • More resources should be dedicated by both BNB and FSC with respect to AML/CFT issues. • More training and a change in culture is required in the NRA. • More co-ordination between all four players (FIA, BNB, FSC and NRA) is required to effectively supervise and control the AML/CFT obligations of all subject persons. • Awareness raising in non-bank industries of the methodological guidelines. • The guidelines should be less generic and more tailored to the particular sector. • Clarify that the FSC/FIA joint inspections adequately account for risks within the various sectors.
3.11 Money value transfer services (SR.VI)	
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Awareness raising of DNFBP knowledge of their obligations to perform CDD. • Casinos should undertake steps to improve record keeping.

	• The changes recommended for Recommendation 5, 6, 8 and 11 for financial institutions should be applied also to DNFBP.
4.2 Suspicious transaction reporting (R.16)	• The changes recommended for under Recommendations 13 to 15 and 21 should equally apply to DNFBP.
4.3 Regulation, supervision and monitoring (R.24-25)	• Further outreach and training of the DNFBP sector, NRA and SCG is required to ensure effective implementation. • Further cooperation between FIA and supervisory authorities is required to ensure full effectiveness. • Further training to raise awareness of STR requirements and risk indicators might improve the number and quality of reports. • SRO for casinos should consider increasing monitoring for AML/CFT compliance. • The FIA may consider strengthening enforcement of AML laws by granting authority to sanction by supervisory authorities. • Ongoing guidance on trends and typologies of AML//CFT should be considered • Further feedback for STR may be considered – especially on a case-by-case basis for STRs filed.
4.4 Other non-financial businesses and professions (R.20)	
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• It is recommended that ownership of the bearer shares should be verifiable at the Commercial Register or any other register.
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	• An adequate and comprehensive review of NPOs (others than NPOs for public benefit) should be undertaken. • Detailed provisions regarding financial obligations and annual reports should be extended beyond NPOs for public benefit. • Consideration should be given to widening the annual obligations of the NPOs for public benefit to the other NPOs. • Consideration should be given to introduce the provisions in control and deletion of the registration of the NPOs for public benefits to the other NPOs. • A specific review of the risks in the NPO sector should be undertaken and the Bulgarian authorities should also consider the development of a strategy of monitoring the

	most vulnerable parts of the NPO sector. • Regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures.
6. National and International Co-operation	
6.1 National co-operation and coordination (R.31)	
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Consideration should be given to extend administrative liability for legal persons to also cover criminal liability. The differences of interpretation between the Bulgarian authorities of parts of the confiscation regime should be clarified. • A specific procedure should be established for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated person
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• Consider a special assets forfeiture fund.
6.4 Extradition (R.39, 37 & SR.V)	
6.5 Other Forms of Co-operation (R.40 & SR.V)	
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	• More resources for law enforcement is recommended to assist proactive investigation and police generated ML cases. • More resources are also recommended to be dedicated by both BNB and FSC with respect to AML/CFT issues. • Statistics should be consolidated in respect of prosecution and conviction; statistics should be showing speed of analysis; spontaneous referrals by the FIA to foreign countries; joint statistics should be considered; clear data on prosecution/judicial statistics regarding money laundering seizure and confiscation should be provided; statistics should be kept on the predicate offences, the nature of the request, whether it was granted or refused, and the time required to respond and statistics on underlying reason for filing STR should also be available.

10 TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

Relevant Sections and Paragraphs	Country Comments

V. LIST OF ANNEXES

ANNEX I

Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others

- Deputy Minister of Finance, Mr. Dimiter Ivanovski
- Financial Intelligence Agency (FIA)
- National Revenue Administration
- Ministry of Interior - Chief Directorate for Combating Organised Crime
- National Security Service –Terror Counteraction Division
- Supreme Prosecutor's Office of Cassation
- Customs Agency and Border Police
- Ministry of Justice – Registry Agency
- Ministry of Justice - Department responsible for NPO's registration and mutual legal assistance
- Representatives of WG under UNSC Resolution 1373 on combating Terrorist Financing
- Commission for the Establishment of Property Acquired by Criminal Activity (CEPACA)
- Bulgarian National Bank
- State Commission on Gambling
- Association of commercial banks in Bulgaria
- Representatives of United Bulgarian Bank; Post bank; Citibank and DSK-bank
- Financial Supervision Commission
- Representatives of Insurance companies
- Representatives of Investment intermediaries and asset management companies
- Representatives of Pension insurance companies
- Representatives of casinos
- Chamber of Public Notaries and representatives of notaries
- Bar Association and lawyers
- Association of accountants
- Representatives of real estate agencies and auditors
- Representatives of financial houses
- Representatives of exchange offices
- Representatives of Post services

ANNEX II

Designated categories of offences based on the FATF Methodology	**Offence in domestic legislation** ***(all provisions from the Bulgarian Penal Code)***
Participation in an organised criminal group and racketeering;	Article 321
Terrorism, including terrorist financing	Articles 108a, 109, 110, 114, 320, 320a
Trafficking in human beings and migrant smuggling; Sexual exploitation, including sexual exploitation of children;	Articles 159a, 159b, 159c, Articles 155, 156, 159, 188, 189, 190, 191, 192
Illicit trafficking in narcotic drugs and psychotropic substances;	Articles 354a, 354b, 354c
Illicit arms trafficking	Articles 337, 339, 339a, 339b
Illicit trafficking in stolen and other goods	Article 242, 242a
Corruption and bribery	Articles 201, 202, 203, 204, 205, 206, 282, 282a, 283, 283a, 283b, 284, 284a, 284b, 285 Articles 301, 302, 302a, 303, 304, 304a, 304b, 305, 305a, 306, 307, 307a
Fraud	Articles 209, 210, 211, 212, 212a, 212b, 213, 248a, 249, 250, 251, 252, 254b, 308, 309, 310, 311, 312, 313, 313a, 313b, 314, 315, 316, 317, 318, 319, 319a, 319b, 319c, 319d, 319e, 319f
Counterfeiting currency	Articles 243, 244, 244a, 245, 246, 247, 248
Counterfeiting and piracy of products	Articles 172a, 172b, 173, 174
Environmental crime	Articles 352, 352a, 353, 353a, 353b, 353c, 353d, 353e, 354
Murder, grievous bodily injury	Articles 115, 116, 117, 118, 119, 120, 121, 122, 123, 124, 125, 126, 127, 128, 129, 130, 131, 131a, 132, 133, 134, 135

Kidnapping, illegal restraint and hostage-taking	Articles 142, 142a, 143, 143a, 144
Robbery or theft;	Articles 194, 195, 196, 196a, 197, 197a, 198, 199, 200
Smuggling	Articles 241, 242, 242a,
Extortion	Article 213a, 214, 214a
Forgery	Articles 243-252, 308-319
Piracy	Articles 142-144, 172a-174, 340, 341, 341a, 341b, 341c, 342, 343, 343a, 343b, 343c, 343d, 344, 345, 345a, 346, 346a, 346b Bulgaria has ratified the United Nation Convention on the Law of the Sea – ratified on 24.04.1996 – State Gazette, Issue 38 of 3.05.1996 Bulgaria has also ratified the Convention on the High Seas – ratified on 7.07.1962, SG, issue 79 of 2.10.1962 in force since 30.09.1962.
Insider trading and market manipulation	

Annex I to the 1999 Convention for the Suppression of Financing of Terrorism	**Provisions in the Penal Code of Bulgaria**
1. Convention for the Suppression of Unlawful Seizure of Aircraft, done at The Hague on 16 December 1970.	Art.341b of the Penal Code (PC)
2. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 23 September 1971.	Art. 340, Para 1 & 2 and Art. 341a of the PC
3. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly of the United Nations on 14 December 1973.	Art. 116, Para 1, item 1 in connection with Art. 115 of the PC Art. 131 in connection with Art. 128 of the PC Art. 142 , Art. 144, Art. 170, Para 3 of the PC Art. 216 of the PC
4. International Convention against the Taking of Hostages, adopted by the General Assembly of the United Nations on 17 December 1979.	Art.143a of the PC
5. Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980.	Art. 337 and Art. 339 of the PC Art. 356f and Art. 356h of the PC
6. Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, supplementary to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, done at Montreal on 24 February 1988.	Art. 341a of the PC

7. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988.	Art. 340, Para 1 and 3 of the PC
8. Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988.	Art. 340, Para 1 and Para 3 of the PC

ANNEX III

COMPLIANCE WITH THE EUROPEAN UNION ANTI-MONEY LAUNDERING DIRECTIVES

Article 2a: Applicability of AML obligations

Description	Article 2a of the EU AML Second Council Directive lists the types of institutions and legal or natural persons, acting in the exercise of certain professions and businesses that are subject to the Directive. The Article specifies the type of activities of the legal profession for which the obligations become applicable. In the case of auditors, external accountants and tax advisors the obligations are applicable to their broad activities in their respective professions. FATF Recommendation 12, which extends the AML obligations to designated non financial businesses and professions (DNFBP), excludes applicability to auditors and tax advisors whilst it limits the applicability to external accountants under circumstances similar to those applied to the legal profession. Indeed FATF Recommendation 16(a) *strongly encourages* countries to extend the *reporting* requirement (note the further limitation) to the rest of the professional activities of accountants, including auditing – but makes no reference to tax advisors. Also, the applicability of the AML obligations to dealers in high value goods under the EU AML Second Council Directive, in giving some examples, lends itself to a broader interpretation of application. Again, FATF Recommendation 12 limits the application to dealers in precious metals and precious stones. This is further confirmed in the definition of DNFBP in the Glossary.
Analysis	The obligations of the Law on Measures against Money Laundering (LMML) apply to the Bulgarian National Bank; credit institutions; financial houses; bureaus of exchange; money transfers; insurers, re-insurers and insurance intermediaries; collective investment schemes, investment intermediaries and management service providers; pension insurance companies; privatization bodies; persons who organise public procurement orders assignment; persons who organise and conduct games of chance; legal persons to which mutual –aid funds are attached; persons who grant money loans in exchange for the deposit of property; postal services that accept or receive money or other valuables; public notaries; exchanges, exchange brokers and persons who organise unofficial markets of securities; leasing partnerships; state and municipal bodies concluding

	concession contracts; political parties; professional unions and organisations; non-profit legal entities; licensed accountants and specialised auditing enterprises; bodies of the National Revenue Agency; customs body; merchants who sell automobiles by occupation, when payment is made in cash and in an amount greater than BGN 30 000 (15 000 Euro) or its equivalent currency; sport organisations; the Central Depositary; Persons dealing in high value goods like precious metal, precious stones and gems, works of art and goods with historic, archaeological, numismatic, ethnographic, artistic and antiquarian value and natural samples, as well as persons who organise auctions for such goods, when the payment is made in cash and in amount greater than BGN 30 000 or its equivalent in foreign currency; dealers in weapon, petroleum and petroleum products; persons who by profession; persons who by profession provide consultancy in tax matters; wholesale merchants; persons who provide legal consultancies certain respects; real estate agents; company service providers.
Conclusion	The AML Law is in fully compliance with Article 2a of the Second AML Council Directive and even goes far beyond the subject persons listed in the said Directive.
Recommendations and Comments	

Articles 3(3) and 3(4): Identification requirements – Derogation

Description	By way of derogation from the mandatory requirement for the identification of customers by persons and institutions subject to the Directive, the third paragraph of Article 3 of the EU AML Second Council Directive removes the identification requirement in cases of insurance activities where the periodic premium to be paid does not exceed Euro 1,000 or where a single premium is paid amounting to Euro 2,500 or less. Furthermore, Paragraph 4 of the same Article 3 provides for discretionary identification obligations in respect of pension schemes where relevant insurance policies contain no surrender value clause and may not be used as collateral for a loan. FATF Recommendation 5, in establishing customer identification and due diligence, does not provide for any similar derogation. It however provides for a general discretionary application of the identification procedures on a risk sensitivity basis. Therefore, in certain circumstances, where there are low risks, countries may allow financial institutions to apply reduced or simplified measures. Indeed, the Interpretative Note to Recommendation 5 quotes the same instances as the EU AML Second Council Directive as examples for the application of simplified or reduced customer due diligence.
Analysis	With respect to insurance business the subject persons have to identify their clients when concluding an insurance contract pursuant to Division I of Enclosure No. 1 to the Insurance Code, where the gross amount of the regular premiums or instalments in the insurance contract is greater than BGN 2,000 (1,000 Euro) annually or the premium or a single premium payment of more than BGN 5,000 2,500 Euro).
Conclusion	The AML Law is compliant with the requirement of customer identification.
Recommendations and Comments	

Articles 3(5) and 3(6): Identification requirements – Casinos

Description	Paragraph 5 of Article 3 of the EU AML Second Council Directive requires the identification of all casino customers if they purchase or sell gambling chips with a value of Euro 1,000 or more. However, Paragraph 6 of the same article provides that casinos subject to State Supervision shall be deemed in any event to have complied with the identification requirements if they register and identify their customers immediately on entry, regardless of the number of gambling chips purchased. FATF Recommendation 12 applies customer due diligence and record keeping requirements to designated non-financial businesses and professions. In the case of casinos, these requirements are applied when customers engage in financial transactions equal to or above the applicable designated threshold. The Interpretative Note to Recommendation 5 establishes the designated threshold at Euro 3,000, irrespective of whether the transaction is carried out in a single operation or in several operations that appear to be linked. Furthermore, in the Methodology Assessment, under the Essential Criteria for Recommendation 12, the FATF defines, by way of example, *financial transactions* in casinos. These include the purchase or cashing in of casino chips or tokens, the opening of accounts, wire transfers and currency exchanges. Identification requirements under the FATF - 40 Recommendations for casinos are likewise applicable to internet casinos.
Analysis	According to Art. 4(3) in the LMML casinos must identify their customers at the time of registration under the Law of Gambling as well as whenever carrying out an operation or concluding a deal of a value exceeding 6 000 BGN (3 000 Euro). Following Art. 72 (2) in the Law on Gambling the clients of the casino should be entered in a special register. The evaluation team was informed by casino representatives, that all natural persons are immediately identified upon entry to a casino pursuant to Article 4 of the LMML and article 2 of the RIMML. For residents an identification document is required and for non-residents a passport is required. This practice goes beyond the statutory requirement of the LMML, which requires identification if the transaction exceeds 6,000 BGN or its foreign equivalent or upon registration under article 72 of the Law on Gambling. Casino representatives stated that they would deny access for customers who failure to provide adequate identification, but it is not clear if such failure has led to filing STRs.
Conclusion	In Bulgaria all casinos are subject to state supervision by the State Commission on Gambling. The threshold of 3 000 Euro in the LMML does comply with the threshold of 1 000 Euro in the Directive. Although Bulgaria seems to have adopted

	procedures in practice to identify all clients on entry of the casino, being state supervised, Bulgaria is not in full compliance with the Directive.
Recommendations and Comments	Bulgaria should consider lowering the threshold of 3000 Euro and introduce the requirement of registering and identifying the client immediately on entry.

Article 6: Reporting of Suspicious Transactions

Description	Further to the reporting of suspicious transactions paragraph 1 of Article 6 of the EU AML Second Council Directive provides for the reporting obligation to include facts which might be an indication of money laundering. FATF Recommendation 13 places the reporting obligations on suspicion or reasonable grounds for suspicion that funds are the proceeds of a criminal activity. Furthermore, paragraph 3 of Article 6 of the EU AML Second Council Directive provides an option for member States to designate an appropriate self-regulatory body (SRB) in the case of notaries and independent legal profession as the authority to be informed on suspicious transactions or facts which might be an indication of money laundering. FATF Recommendation 16 imposes the reporting obligation under Recommendation 13 on DNFBP but does not directly provide for an option on the disclosure receiving authority. This is only provided for in a mandatory manner in the Interpretative Note to Recommendation 16. Also, probably because the FATF identifies accountants within the same category as the legal profession, the Interpretative Note extends the option to external accountants. Finally, the same paragraph 3 of Article 6 of the EU Directive further requires that where the option of reporting through an SRB has been adopted for the legal profession, Member States are required to lay down appropriate forms of co-operation between that SRB and the authorities responsible for combating money laundering. The FATF Recommendations do not directly provide for such co-operation but the Interpretative Note to Recommendation 16, although in a non-mandatory manner, makes it a condition that there should be appropriate forms of co-operation between SRBs and the FIU where reporting is exercised though an SRB.
Analysis	The AML Law requires monitoring entities to notify forthwith the FIA wherever there is suspicion of money laundering. The AML Law clearly requires that the reporting obligation is activated only by suspicion of money laundering and the provision does not include obtained information indicating that

	a person has or may have been engaged in money laundering. This is not in line with the EU legislation. Notaries and other legal professions report directly to the FIA and not through an SRO.
Conclusion	The AML Law is not fully compliant with the Directive.
Recommendations and Comments	The Bulgarian authorities may wish to broaden the scope of the provision of Art. 11 in the LMML to all fact (being a specific operation or transaction or not).

Article 7: Suspected Transactions – Refrain / Supervision

Description	Article 7 of the EU AML Second Council Directive requires that institutions and persons subject to the Directive refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the authorities who may stop the execution of the transaction. Furthermore where to refrain from undertaking the transaction is impossible or could frustrate efforts of an investigation, the Directive requires that the authorities be informed (through an STR) immediately the transaction is undertaken. FATF Recommendation 13, which imposes the reporting obligation where there is suspicion or reasonable grounds to suspect that funds are the proceeds of a criminal activity, does not provide for the same eventualities as provided for in Article 7 of the EU Directive. FATF Recommendation 5 partly addresses this matter but under circumstances where a financial institution is unable to identify the customer or the nature of the business relationship. However, whereas Recommendation 5 is mandatory in this respect, it does not provide for the power of the authorities to stop a transaction. Furthermore, the reporting of such a transaction is not mandatory. Paragraphs 1 to 3 of the Interpretative Note to Recommendation 5 seem to be more mandatory in filing an STR in such circumstances.
Analysis	Wherever there is a suspicion of money laundering, monitoring entities are obliged to notify forthwith the FIA prior to carrying out the operation or transaction, holding up its completion within the period admissible under the legal acts that regulate the corresponding kind of activity. In the cases where delay of the operation or transaction is objectively impossible, the monitoring entity shall notify the FIA immediately after its performance.

Conclusion	The AML Law is in compliance with the Directive.
Recommendations and Comments	

Article 8: Tipping off

Description	Article 8(1) of the EU AML Second Council Directive prohibits institutions and persons subject to the obligations under the Directive and their directors and employees from disclosing to the person concerned or to third parties either that an STR or information has been transmitted to the authorities or that a money laundering investigation is being carried out. Furthermore Article 8(2) provides an option for Member States not to apply this prohibition (tipping off) to notaries, independent legal professions, auditors, accountants and tax advisors. FATF Recommendation 14 imposes a similar prohibition on financial institutions, their directors, officers and employees. Recommendation 16 extends this prohibition to all DNFBP. However, the prohibition under Recommendation 14(b) is limited to the transmission of an STR or related information. It does not therefore cover ongoing money laundering investigations. Furthermore, the FATF Recommendations do not provide for an option for certain DNFBP to be exempted from the "tipping off". The Interpretative Note to Recommendation 14 exempts tipping off only where such DNFBP seek to dissuade a client from engaging in an illegal activity.
Analysis	According to the provisions of Article 14 of the LMML, the reporting entities, their managers or representatives, and their employees may not notify their customer or any third party concerning disclosure of information in the cases where a STR has been filed or additional information under the LMML has been requested. The prohibition on disclosure of such information is not applicable to the respective supervisory authority.
Conclusion	The scope of the LMML's prohibition is unclear in circumstances involving an investigation being carried out by the FIA or in the case when the FIA has transmitted information to the prosecutorial authorities for investigation.
Recommendations and Comments	The Bulgarian authorities may wish to consider including the tipping off prohibition explicitly for ongoing money laundering investigations.

Article 10: Reporting by Supervisory Authorities

Description	Article 10 of the EU AML Second Council Directive imposes an obligation on supervisory authorities to inform the authorities responsible for combating money laundering if, in the course of their inspections carried out in the institutions or persons subject to the Directive, or in any other way, such supervisory authorities discover facts that could constitute evidence of money laundering. The Directive further requires the extension of this obligation to supervisory bodies that oversee the stock, foreign exchange and financial derivatives markets. In providing for the regulation and supervision of financial institutions and DNFBP in Recommendation 23 and in providing for institutional arrangements (Recommendations 26 –32) the FATF-40 do not provide for an obligation on supervisory authorities to report findings of suspicious activities in the course of their supervisory examinations.
Analysis	Art. 3a in the AML Law requires supervisory bodies of the reporting entities to notify the FIA if they find operations or transactions rising suspicion of money laundering.
Conclusion	The AML Law is compliant with the Directive.
Recommendations and Comments	

Article 12: Extension of AML obligations

Description	Article 12 of the EU AML Second Council Directive provides for a mandatory obligation on Member States to ensure that the application of the provisions of the Directive are extended, in whole or in part, to professions and categories of undertakings, other than the institutions and persons listed in Article 2a, that are likely to be used for money laundering. FATF Recommendation 20 imposes a similar obligation but in a non-mandatory way by requiring countries to consider applying the Recommendations to categories of businesses or professions other than DNFBP.
Analysis	The Bulgarian authorities have considered this provision of the Directive by applying the AML law also to privatization bodies, political parties, customs bodies, and dealers in weapons, petroleum and petroleum products and many others outside the scope of reporting entities in the Second Directive.

Conclusion	The AML Law is compliant with the Directive.
Recommendations and Comments	

Annex IV

	Type of crime, according to Penal Code	Settled pretrials by the prosecutor's office, 2006	Defendants, 2006	Persons found guilty, 2006
	Offences against Republic - total	1	0	0
	Offences against the person - total	113	151	44
From which:	Murder	1	3	0
	kidnapping	2	8	5
	duress	1	2	2
	depravity	9	3	4
	Human Trafficking	100	135	33
	Offences against property - total	51	72	21
From which:	theft	3	0	0
	fraud	30	33	7
	blackmail	18	39	14
	Offences against the economy - total	509	510	82
From which:	Offences in separate branches	30	27	13
	Offences against customs regime	75	119	19
	Offences against monetary and credit system	404	364	50
	Offences against financial system - total	308	285	13
	Offences against the activity of state bodies and public organizations - total	2	4	4
From which:	Offences against order and government	2	4	4
	Offences with documents- total	10	10	4
	Offences against the public order - total	63	225	14
	Offences dangerous for the public - total	163	202	61
From which:	Offences performed in dangerous for the public manner and means	1	0	1
	Offences against public health	161	202	60
	Other offences dangerous for the public	1	0	0

FIGURES OF IDENTIFIED, RESTTITUTED, IMPOSED PROVISIONAL MEASURES AND PREVENTED DAMAGES TO THE ECONOMY IN BULGARIAN BGN IN 2006

IDENTIFIED					FROM WHICH:														
					RESTTITUTED					PROVISIONAL MEASURES					PREVENTED				
Bank fraud	Tax fraud	Fraud with EU Funds	Money laundering	Other financial crimes	Bank fraud	Tax fraud	Fraud with EU Funds	Money laundering	Other financial crimes	Bank fraud	Tax fraud	Fraud with EU Funds	Money laundering	Other financial crimes	Bank fraud	Tax fraud	Fraud with EU Funds	Money laundering	Other financial crimes
16220000	**71442643**	**5369000**	**9658873**	**10729520**	**988456**				**181600**		**15693539**	**700000**	**1340000**	**4 84800**	**5567386**	**7418500**	**3879000**		**11960 84**

FIGURES OF IDENTIFIED, RESTTITUTED, IMPOSED PROVISIONAL MEASURES AND PREVENTED DAMAGES TO THE ECONOMY IN EURO IN 2006

IDENTIFIED					FROM WHICH:														
					RESTTITUTED					PROVISIONAL MEASURES					PREVENTED				
Bank fraud	Tax fraud	Fraud with EU Funds	Money laundering	Other financial crimes	Bank fraud	Tax fraud	Fraud with EU Funds	Money laundering	Other financial crimes	Bank fraud	Tax fraud	Fraud with EU Funds	Money laundering	Other financial crimes	Bank fraud	Tax fraud	Fraud with EU Funds	Money laundering	Other financial crimes
428400			**1888680**	**2591000**	**140000**				**90000**	**140000**			**252510**	**2590000**	**140000**			**112510**	**2591000**