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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
C R O A T I A[1]

ANTI-MONEY LAUNDERING
AND COMBATING THE FINANCING OF TERRORISM

Memorandum
prepared by the Secretariat
Directorate General of Human Rights and Legal Affairs

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

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LIST OF ACRONYMS USED

AML Law	Anti-Money Laundering Law
AML By-law	Procedures on Implementation of the Law on Prevention of Money Laundering
AMLD	Anti-Money Laundering Department (Croatian FIU)
CC	Criminal Code
CDA	Central Depository Agency
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
CPA	Criminal Procedure Act
CTR	Cash Transaction Reports
DNFBP	Designated Non-Financial Businesses and Professions
ETS	European Treaty Series [since 1.1.2004: CETS = Council of Europe Treaty Series]
EUR	Euro
FATF	Financial Action Task Force
FEI	Foreign Exchange Inspectorate
FIU	Financial Intelligence Unit
HANFA	Croatian Financial Services Supervisory Agency ("Hrvatska agencija za nadzor financijskih usluga")
HRK	Croatian Kuna
IN	Interpretative Note
IT	Information Technology
LEA	Law Enforcement Agency
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
MLPD	Money Laundering Prevention Directorate
NCCT	Non-cooperative countries and territories
NN	Narodne Novine (official Gazette)
PEP	Politically Exposed Person
SAO	State Attorney's Office
SAR	Suspicious Activity Report
STR	Suspicious transaction report
SWIFT	Society for Worldwide Interbank Financial Telecommunication
USKOK	Office for the Suppression of Corruption and Organised Crime ("Ured za suzbijanje korupcije i organiziranog kriminaliteta")
UTR	Unusual Transaction Report

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Croatia 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 2004[2]. The evaluation was based on the laws, regulations and other materials supplied by Croatia, and information obtained by the evaluation team during its on-site visit to Croatia from 25 to 30 September 2006, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant Croatian 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: Mr Lajos KORONA, Public Prosecutor, Budapest, Hungary (Legal Evaluator); Ms Daniela STOILOVA, Financial Intelligence Agency, International Co-operation and Training Programs Division, Sofia, Bulgaria (Law Enforcement Evaluator); Mr Oleksiy BEREZHNYI, Director AML/CFT Department, National Bank of Ukraine, Kyiv, Ukraine (Financial Evaluator); and Ms Abigail SULLIVAN, Policy Advisor-Europe, Office of Terrorist Finance and Financial Crime, U.S. Department of the Treasury, Washington D.C., United States (Financial Evaluator); and three 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 Croatia 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 Croatia'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 June 2006.

II. EXECUTIVE SUMMARY

1. Background Information

4. This report provides a summary of the AML/CFT measures in place in Croatia as at the date of the third on-site visit from 25 to 30 September 2006, or immediately thereafter. It describes and analyses the measures in place, and provides recommendations on how certain aspects of the system could be strengthened. It also sets out Croatia's levels of compliance with the FATF 40 + 9 Recommendations.

5. Since the second evaluation in June 2002, Croatia has taken some steps to improve its AML/CFT system. The Law on Prevention of Money Laundering (hereinafter: AML Law), which entered into force on 1 November 1997, had formed the basis for the development of an AML/CFT system in the Republic of Croatia. It was amended by the Act on Amendments to the Prevention of Money Laundering Act which entered into force on 1 January 2004; this amendment was intended to harmonize Croatian legislation with European Union legislation. On the basis of these amendments new Procedures on Implementation of the Law on Prevention of Money Laundering (hereinafter: AML-Bylaw) were issued which entered also into force on 1 January 2004.

6. According to the information provided by the Croatian authorities, the money laundering situation has not changed in Croatia since the last onsite visit. The main sources of illegal income to be laundered are considered to be economic crime offences connected with abuse of authority in economic business operations, and abuse of office and official authority, and abuse of narcotic drugs. As described below at appropriate places, the Croatian legal framework to combat money laundering and terrorist financing suffers in certain areas from quite complicated legislation which requires numerous cross-references to be fully comprehensive. This should be revised to make its application easier and more understandable both for governmental authorities and also for private sector.

7. Turning to the terrorist financing situation, the Croatian authorities are of the opinion that Croatia is not exposed to terrorist threats; so far no terrorist financing cases could be detected. The Croatian government installed a "Counter Terrorism Working Group", which focuses on terrorism and also includes terrorist financing issues; this working group is chaired by the Ministry of Foreign Affairs and European Integration. The authorities seem to be aware of terrorist financing issues, e.g. the FIU received two STRs from banks, which did not specify whether they were related to suspicion of money laundering or terrorist financing, but which were considered by the FIU to be connected with possible terrorist financing because of the indicators described in these STRs; the FIU undertook an analysis of these cases and then forwarded it to other authorities.

8. Nonetheless, Croatia will have to do more to tackle terrorist financing in a satisfactory manner. Financing of terrorism is only to a very limited extent provided for as an autonomous offence and moreover the preventive law addresses the prevention of terrorist financing in an insufficient way. In 2003, Art. 1 para 1 of the AML Law was amended and the phrase "*and prevention of terrorist financing*" was added. The Croatian authorities explained that there had not been enough time in 2003 to carry out more comprehensive changes in this field and the thought behind this minimalist amendment was that it was to be the easiest way to extend the scope of the entire AML Law to the prevention of terrorist financing. However, the evaluators were not convinced by this argument particularly in the case of provisions in the AML Law which explicitly mention only money laundering. For those articles it is difficult to argue that they could be applied beyond the explicit language of the legal texts.

2. Legal System and Related Institutional Measures

9. The separate money laundering offence (Article 279 of the Criminal Code) is basically in line with international standards and the legislation helpfully contains an explicit provision to ensure that the laundering of foreign proceeds is covered in Croatia. The judges considered that a conviction for the predicate offence was not essential to a successful prosecution for money laundering. Corporate criminal liability had been introduced in Croatia since the last evaluation and successful prosecutions had been achieved in respect of legal persons, though not as yet in money laundering cases. However, some inconsistencies with the international instruments exist and raise some uncertainties which may impede the practical implementation of the provisions. One uncertainty is that the scope of the money laundering offence is unnecessarily limited to "*banking, financial or other economic operations*". Even if the term "*other economic operations*" were to be widely interpreted, the scope of this provision does not cover all the physical (material) elements as required by the international standards.

10. Concerning money laundering proceedings, there have only been 2 cases (involving 5 persons) that resulted in a conviction for money laundering since it was separately criminalised in 1996. In the period of 2002-2006 (up to the time of the on-site visit), the State Attorney's Office issued indictments against 14 persons. In spite of these numerous indictments, from 2003 until the on-site visit in 2006, there were no convictions or final decisions in any money laundering case. At the time of the onsite visit, there were 15 indictments[3] pending before courts (covering laundering on behalf of others, as well as "own proceeds" laundering) and one of these cases dated back 8 years. The main reason for this deficient situation was the backlog generally in criminal cases; furthermore the Croatian authorities referred to "*long-lasting court investigations, partially caused because of lack of experience and lack of specific education, particularly in economic crime offences as predicate offences for money laundering offence"* and the lack of competent forensic financial experts as impeding factors. The Croatian authorities are aware of these deficiencies and should continue to address these significant problems.

11. Confiscation of pecuniary gain, in money laundering and proceeds-generating criminal cases, is provided for and the provisions appear wide enough to cover value confiscation, confiscation of indirect proceeds and substitute assets and include confiscation from third parties. Voiding contracts is provided for as part of the special forfeiture regime in money laundering offences, but not as part of the general forfeiture regime. The criminal confiscation provisions which cover illicit pecuniary gain would be insufficient to confiscate legitimate funds directed to the financing of terrorism in any such prosecution. It is positive, however, that in cases of organised crime, since 1 October 2006 it was possible to reverse the burden of proof in establishing proceeds that can be forfeited after conviction. The specialised prosecutorial body "USKOK" (Office for the Suppression of Corruption and Organised Crime) has yet not achieved any money laundering conviction.

12. Though the complex legal structure to forfeit proceeds of crime after conviction seemed to be sound, there was little practice which could be pointed to and a general absence of statistical data on the number of confiscation orders in major proceeds-generating cases. A much greater emphasis needs to be given to the taking of provisional measures at early stages of financial investigations to support more confiscation requests upon conviction. More training on these issues is required particularly for law enforcement and the judiciary.

13. The United Nations Convention on the Suppression of Terrorist Financing has been ratified. Financing of terrorism is not provided for as an autonomous offence. Numerous provisions were pointed to in Croatian legislation to cover terrorist financing. Different provisions are applicable

[3] There have been altogether 22 persons indicted since money laundering was criminalized, out of which 5 have already been convicted and 2 acquitted.

depending on whether a terrorist act or a related offence is associated with ”domestic” or ”international” terrorism, which results in problems for the system. “Terrorist financing” in the sense of the Terrorist Financing Convention appears to be punishable only if related to terrorist *acts* of an *international* character while other forms of financing terrorism are apparently not covered. Financing of *domestic* terrorism is, however, provided on a more restricted basis with a typical aiding-and-abetting approach. So far these provisions have never been tested before the court (no criminal proceedings, indictments or convictions) and there have been no investigations initiated against anyone in relation to any offence said to cover terrorist financing. As a result, there is no case-law or practice on the exact scope of the current provisions.

14. Though the Croatian authorities pointed to various provisions, the evaluation team came to the conclusion that there are no legal provisions specifically implementing UNSC Resolutions 1267 and 1373 in terms of roles, responsibilities and conditions. Nonetheless, it needs to be noted that despite this deficient legal base, some results had been achieved: bank accounts were checked, transactions suspended and assets frozen by court decisions.

15. The Croatian FIU, the Anti-Money Laundering Department (hereinafter the AMLD), is an administrative FIU and was established in 1998. It has no investigative powers and its main task is to gather information on transactions with a view to submitting reports to the authorized bodies (State Attorney’s Office and law enforcement bodies). Since the last evaluation, the FIU’s IT system has been considerably enhanced. There were 17 staff in place at the time of the on-site visit and 5 vacancies. Though Croatia undertook some steps to reinforce the unit with recruitment of additional staff, the actual number of staff seems somewhat insufficient. The AMLD indicated a need to recruit experts in analytics, statistics, IT technology, financial market, securities market and investment funds. Moreover, as was already indicated in the 2nd round report, there is a high turnover of staff. Notwithstanding this difficult staff situation, the AMLD sends a steady flow of reports to law enforcement.

16. The FIU is an active member of the Egmont Group and appears to provide generally timely and helpful assistance to other FIUs. Moreover, it has the capacity to exchange information with all types of FIU. The Department appears to be fully operational. Considering the role of the AMLD in the Croatian AML/CFT system it can be concluded that the AMLD satisfactorily fulfils its obligations. It exercises in an efficient way its core responsibilities in steering, coordinating and evaluating the reporting system and analysing the received reports. The prosecutors and Police with which the evaluators met expressed that they are satisfied with the overall work of the AMLD and that the reports received are of good quality for further proceedings. The examiners, however, noted that the FIU does not have its own separate budget. Though this does not appear to be a problem at present, in the examiners’ view a separate budget may strengthen its independence. Of more concern is the lack of sufficient and adequate feedback to reporting entities. The FIU does not give case specific feedback to the reporting entities, but general feedback information is given once per year to only banks in connection with cases opened by the AMLD based on transaction reports from the particular bank, which also contains typologies and money laundering techniques that can be found in cases. No case specific feedback (even general) is given on such occasions and there is no feedback at all with bodies other than banks.

17. The AML Law and the AML By-law provide the legal basis for the obligations of the reporting entities to file a report to the AMLD if one or both of the following provisions exist a) a transaction raises a suspicion of money laundering; b) the amount of the transaction exceeds a certain threshold. As noted, this system is quite complex and requires numerous cross-references in order to be fully comprehensible, which makes it very difficult to determine the full scope of the obligations; this causes a significant risk that the reporting institutions may misunderstand their obligations. Attempted transactions are only partially covered, and in an indirect manner. The FIU was concerned about over-reporting of suspicious transactions based on objective indicators which they had issued to the financial sector and supervisory bodies. They are now

directing the reporting entities to focus more on subjective indicators for suspicious transactions and have revised their guidance to the reporting institutions in this regard. The number of reports coming from the non-banking sector was considerably low; efforts should be undertaken to raise the awareness of the risks associated with money laundering in this sector.

18. The AML Law addresses terrorist financing only in a limited way and, as noted, this is a significant deficiency with regard to the reporting obligation regime. As the relevant provisions of the AML Law dealing with suspicious transaction reporting only refer to the suspicion of money laundering (Art. 4 para 5; Art. 8 para 3), it is difficult to interpret these provisions beyond their clear language and one has to assume that the STR regime provided by the AML Law does not extend to the prevention of terrorist financing. However, the FIU issued a list of indicators which should serve as a basis for reporting institutions to report suspicious transactions and which also contains indicators related to terrorist financing. Nonetheless, it is questionable whether there is a clear legal basis for the FIU to do so; the AML By-law (which again only refers to suspicion of money laundering but not to terrorist financing) gives the FIU the authority to issue a list of indicators (Art. 12).

3. Preventive Measures – financial institutions

19. Turning to the preventive side, numerous key elements of FATF Recommendation 5 which need to be covered either in Law or Regulation (marked with an asterisk in the 2004 Methodology) or otherwise by other enforceable means are not provided for in Croatian laws, regulations or enforceable guidance.

20. The Croatian AML/CFT framework is not based on a risk assessment. Neither the AML Law nor other regulations provide for financial institutions measures to be based on the degree of risk attached to particular types of customers; business relationships; transactions and products. More specifically, enhanced scrutiny regarding establishing relations with high-risk customers, such as foreign correspondent banks and politically exposed persons (PEPs), is not required by law, regulation or other enforceable means. There are no provisions that require financial institutions to establish customer profiles, conduct CDD on a continuing basis and to detect and analyze all complex, unusual large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. However, in practice it seems that internal rules and procedures in those banking institutions which are owned by foreign banks are based on their parent banks' compliance and CDD procedures, and thus could be more in line with the FATF Recommendations, notwithstanding current Croatian requirements (in this context it is worth mentioning that the assets of six of the largest foreign owned banks exceed 85 % of total banking sector assets). Nonetheless, the evaluators could find no familiarity with the issue of PEPs in the financial sector.

21. A certain deficiency of the Croatian AML/CFT system is the situation concerning anonymous accounts, numbered accounts and accounts in fictitious names. Concerning non-residents' bearer (domestic and foreign) currency savings accounts, residents' bearer foreign currency accounts and coded bearer foreign currency accounts, the existing legislation seems to be now in line with international standards. However, though such accounts should have been closed after 2003, the Croatian authorities do not have complete information that demonstrate the extent to which this has been done. For residents' accounts in domestic currency, there is no single act or subordinate legislation that explicitly prohibits the opening of anonymous Kuna accounts or coded bearer Kuna accounts. Concerning anonymous savings books, the new Civil Obligations Act, which entered into force on 1 January 2006, prescribes that a saving book may only be registered in the name of a person. Thus, as from 1 January 2006 issuing a bearer saving book is not allowed in the Republic of Croatia. However, there are no provisions which would require the closing of existing bearer passbooks.

22. Despite the fact that the preventive law and secondary legislation requires all reporting entities to establish the identity of the "beneficial owner", no definition of this term is provided by any of the relevant Croatian legislative acts. As a result, financial institutions normally would not go further than collecting information at the second level in respect of owners of a legal entity. It thus appears that Croatian law does not require adequate transparency concerning beneficial ownership and control of legal persons.

23. In general, for identification of natural persons the reporting institutions can use for verification of identification of natural persons passports or a personal I.D. card. However, some legal provisions allow the use (sometimes only for certain situations) of other documents which are described in various ways using the terms: "*other relevant identification card*", "*other public I.D. documents*" "*other appropriate public document*" or "*other adequate government identification*". However, none of these terms is further defined elsewhere. The legislation does not specifically identify which documents these are, what quality they need to have, from which authority they have to be issued, etc. Thus, it is left to the discretion of the reporting entities what they consider appropriate.

24. Till December 2006, fit and proper requirements for qualified owners and members of the management board of foreign exchange offices were quite limited and criminal convictions other than for money laundering were no obstacle to the obtaining of a licence. The evaluators were advised that after the onsite visit, namely on 14 December 2006, the Act on Amendments to the Foreign Exchange Act (NN 132/2006) entered into force, which provides enhanced requirements. Now the requirement that qualified owners and members of the management board of foreign exchange offices should have "*no history of criminal offence against the values protected by international law, payment transactions and operations security, document authenticity or of criminal offences as defined in Foreign Exchange Act*" covers a broader range of crimes.

25. The evaluation team was advised that at the time of the on-site visit only one global money remittance company, namely Western Union, conducted its business through 2 agents (Croatian Post Office and one bank). The annual amount of funds transferred in this way was estimated at 11 million EUR. The FEI supervised so far only once (in 2006) the activities of Western Union in one bank. The absence of a registration or licensing regime and general legal provisions for the supervision regarding money remittance providers poses serious ML/FT risks for Croatia. Also, for companies issuing debit/credit cards, no special licensing or registration system exists. As a consequence, there are also no requirements to prevent criminals or their associates from holding or being the beneficial owners of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in such entities. Though these companies provide their services mainly via banks and this kind of business is then an element of the general licence for banks, two companies issuing debit/credit cards operate autonomously and are not covered by a banking licence. So far, only one company has been supervised in 2001 and in 2003 by the FEI.

26. Supervision in the banking sector is diverse and divided between various bodies: the Ministry of Finance is the supervisory body of Savings and Loan Cooperatives; the CNB supervises the opening of accounts and transactions both in domestic and foreign currency for AML purposes; the Foreign Exchange Inspectorate (FEI) does this only with respect to accounts and transactions in foreign currency; and housing savings banks are supervised and licensed exclusively by the CNB. Though the evaluators were advised that there should be no overlap in the area of supervision of accounts and transactions in foreign currency because both the CNB and the FEI exercise this supervision only according to the competence given by law, the examiners were concerned that a more even and unified approach to supervisory issues should be in place across the whole banking sector. The sharing of examination methodologies could assist.

27. The Croatian Financial Services Supervisory Agency (HANFA) succeeded and merged on 1.1.2006 the Croatian Securities Commission, the Agency for the Supervision of Pension Funds and Pension Insurance and Directorate for the Supervision of Insurance Companies. It is responsible for the supervision of all legal and natural entities that deal with the provision of financial services, financial market advising, sales, brokerage activities and asset management for users of financial services. This means that HANFA has to supervise the operations of large range of entities. A more coordinated approach to supervision across the whole financial sector is encouraged.

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

28. DNFBP are covered under the AML Law. Both casinos and real estate agents are held to the same standards on identification, verification and suspicious transaction reporting requirements as financial institutions. However, these DNFBP are in the same position as the financial institutions in that the full requirements of FATF Recommendations 5, 6 etc are not covered by law, regulation or other enforceable means. All DNFBP, including lawyers, accountants and public notaries, appear to be conducting sufficient client due diligence of physical persons in accordance with the laws regulating their individual sectors. However, it seems that their obligation to report transactions regardless of thresholds, as required by Article 8(3) of the AML Law, is not understood and therefore not generally followed. Furthermore, though the FIU has reached out to various sectors within the DNFBP, there appears to be minimal ongoing communication as evidenced by the lack of dissemination of both guidance and UN lists of designated persons. Finally, even though the AML Law does not designate a specific agency responsible for supervision of the DNFBP, the Tax Administration has taken on this responsibility. Nevertheless, only its office for supervision of games of chance conducts regular on-site visits. Any inspections pertaining to real estate, lawyers, notaries, accountants or car dealerships are the direct result of a targeted request from the AMLD, instead of being conducted on a regular basis.

5. Legal Persons and Arrangements & Non-Profit Organisations

29. There are various forms of enterprises established in Croatia for the purpose of undertaking business and they have to be registered by the court registry. The registration process itself is a specific activity performed by commercial courts regulated by the Court Registry Act. There are only formal checks verifying whether the submitted documentation is complete. The registering court is only obliged to determine whether the application contains all requirements and if the stipulated documents have been attached. Consequently, the court is not authorized to engage in determining the authenticity of the documents or of their content. Details of shareholders, i.e. members of limited liability companies are, as noted above, available on the public Court Register. In case of joint stock companies, data on shareholders are available at the Central Depository Agency (CDA) on the request of entitled persons and state bodies only (except for data concerning the identity of the 10 largest owners of each security, which are accessible to public). Judicial and administrative bodies including, *inter alia* courts, state attorneys, Police, the AMLD or the tax authority have the right to access, within their competence provided by law and on the basis of a written request, any data kept by the CDA.

30. As the preventive law and secondary legislation only requires all reporting entities to establish the identity of the "beneficial owner" but does not define this term, there is insufficient transparency concerning beneficial ownership and control of legal persons. Thus, it will be a difficult and cumbersome procedure for competent authorities to obtain the necessary information, for example, by searching the premises of a company in order to find the relevant documents etc. Certainly, the Croatian authorities can rely on investigative powers of law enforcement to determine the ultimate owners of the company from its internal records. However; this procedure,

especially in case of shareholders who are legal persons and/or with residence or seat abroad, cannot be carried out in a timely way (e.g. where mutual legal assistance is required) and doubts may remain whether information obtained by this route is adequate, accurate and verifiable.

31. There has been no formal review of the adequacy of laws and regulations that relate to the NPO sector concerning entities that can be abused for the financing of terrorism, even though there is a base to build upon, as there is some financial transparency and reporting structures are in place.

6. National and International Co-operation

32. The cooperation between policy makers, the AMLD, law enforcement and supervisors in the AML/CFT area seems appropriate. The various bodies have signed Memoranda of Understanding and they also participate in co-ordination groups. Information exchange seems to work. The FIU has access to various databases of other bodies which shows a good level of co-operation.

33. Croatia is able to provide a wide range of mutual legal assistance including, pursuant to Art. 3(1)1 of the MLA Act, "*procuring and transmitting articles to be produced in evidence, service of writs and records of judicial verdicts, appearance before the court of witnesses for testimony and other acts necessary to carry out the court proceedings*". Considering that, as it was discussed above, the provisions of the Criminal Procedure Act and the Law on USKOK can also be applied in proceedings conducted for the execution of a letter rogatory, it is beyond question that the powers of competent authorities required under Recommendation 28 are generally available for use in response to requests for mutual legal assistance.

34. Requests are executed in accordance with national procedures and those stipulated in international treaties. Nevertheless, domestic judicial authorities are required to comply with any formalities and procedures expressly indicated in the request as necessary, pursuant to the law of the requesting state (Art. 10).

35. As far as mutual legal assistance is concerned, the MLA Act contains no rules that would require dual criminality. All that is required in this context, according to Art. 1(2), is that assistance should only be provided "*in respect of criminal acts the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting state"* - apparently regardless of whether such an act would be punishable under Croatian criminal law. The evaluators were not informed of any further provision in Croatian law that would make mutual legal assistance subject to unreasonable, disproportionate or unduly restrictive conditions – on the contrary, affording such assistance "in the widest sense" is a key principle of the law (Art. 4). Though money laundering and, to the very limited extent it is covered by Articles 187a and 153 of the Criminal Code, the financing of terrorism are extraditable offences and the law, at least in principle, allows for a wide interpretation of dual criminality. Deficiencies in the criminalization of terrorist financing may nevertheless pose a significant obstacle to executing extradition requests related to such offences.

III. MUTUAL EVALUATION REPORT

1 GENERAL

1.1 General information on Croatia

36. Croatia is situated on the cross-roads between Central Europe and the Mediterranean, along the eastern coast of the Adriatic Sea and its hinterland. It stretches from the hilly sides of the Alps on the North-West to the Panonnian plain on the East. The population is 4 437 460; the official language and script are Croatian language and Latin script and the national currency unit is Kuna (100 Lipa), which is approximately 0,14 EUR. The system of government is multi-party parliamentary republic. The Croatian capital is Zagreb, which has 779 145 inhabitants; it is Croatia's economic, traffic, cultural and academic centre. The country is a candidate for membership in the European Union.

Economy

37. The estimated Gross Domestic Product per capita in purchasing power parity in 2006 was around USD 15 500 or 51% of the EU average for the same year. The industrial sector is dominated by shipbuilding, with food processing and chemical industry taking a significant portion of industrial output. Industrial Sector represents 27% of Croatia's total economic output and agriculture represents 6%. Tourism is a significant source of income during the summer. With over 10 million foreign tourists in 2006 generating over 7 billion euros in revenue, Croatia is ranked as the eighteenth most popular tourist destination in the world. Trade is starting to play a major role in Croatian economic output. In 2006, Croatia exported goods in value of 10,4 billion USD. Persistent economic problems still remain, specifically in terms of unemployment (11,9% in 2006) and slow progress of economic reforms. Unemployment is particularly high in eastern parts of Croatia (up to 20% in some areas), and relatively low in larger cities.

38. The country has in recent years experienced faster economic growth and has been preparing for membership in the European Union, its most important trading partner. In February 2005, the Stabilization and Association Agreement with the EU officially came into force and Croatia is advancing towards full EU membership.

System of Government

39. Since the adoption of the 1990 Constitution, Croatia has been a democratic republic. Between 1990 and 2000 it had a semi-presidential system, and since 2000 it has a parliamentary system.

40. The President of the Republic (*Predsjednik*) is the head of state, is directly elected to a five-year term and is limited by the Constitution to a maximum of two terms. In addition to being the commander in chief of the armed forces, the president has the procedural duty of appointing the Prime Minister with the consent of the Parliament, and has some influence on foreign policy.

41. The Croatian Parliament (*Sabor*) is a unicameral legislative body (a second chamber, the "House of Counties", which was set up by the Constitution of 1990, was abolished in 2001). The number of the Sabor's members can vary from 100 to 160; they are all elected by popular vote to serve four-year terms. The plenary sessions of the Sabor take place from January 15 to July 15, and

from September 15 to December 15. The Parliament has authority to enact laws in any session where a majority of representatives are present. There are two kinds of laws:

- Ordinary laws: the parliament is entitled to declare those in any session where more than 1/2 of the present representatives votes for their passing.
- Essential laws (the Constitution calls them "organic" laws): laws which rlate to basic rights and freedoms of ethnic and national communities. The Parliament is entitled to declare organic laws if the "qualified majority" (2/3 of present representatives) votes for their passing.

42. Considering the fact that Croatia is a parliamentary democracy, the executive power is divided between the President (Predsjednik Republike Hrvatske) and the Cabinet (Vlada Republike Hrvatske). The President represents the state in the country and abroad, and his powers are essentially those of state protocol. He has the authority to dissolve the Parliament and he proposes a candidate for a mandate of Prime Minister. The Cabinet holds the highest executive power in Croatia. According to protocol, the President appoints the Prime Minister of the Cabinet who is usually the president of the party that has most votes in the Parliament. The Prime Minister is confirmed by the Parliament, and he has the power to appoint the members of his Cabinet.

43. The Croatian Government (*Vlada*) is headed by the Prime Minister who has two deputy prime ministers and fourteen ministers in charge of particular sectors of activity. It is amongst other responsible for proposing legislation and a budget, guiding the foreign and internal policies of the republic etc.

Legal System and Hierarchy of Normative Acts

44. Judicial power is administered by the Supreme Court of the Republic, county courts and municipal courts. The judges are bound to be impartial and are independent from the other branches of government. The Constitutional Court rules on matters regarding the Constitution.

45. Municipal courts are courts with first instance jurisdiction in both civil and criminal cases. In criminal cases these courts are competent in all cases with a penalty of imprisonment of no more than 10 years. In civil litigation these courts act as first instance courts in all judicial, extra-judicial and execution procedures, especially in litigation against unlawful actions, and lawsuits for correction of information.

46. County courts are almost exclusively second instance courts. On occasion these courts are used as first instance courts: in criminal cases if the punishment by law surpasses 10 years or by special regulations (e.g. compensation for expropriated real estate). It is important to recognize that a right to appeal is a constitutional right of every citizen and legal entity according to the practice of the Constitutional court.

47. The Supreme Court is a court of full jurisdiction with respect to court decisions and it can void them, confirm them or revise them. The Supreme court is the highest court in Croatia, and as the last instance, it decides on extraordinary legal remedies against valid court decisions of the courts of general jurisdiction (dismissed appeal), and all other courts in Croatia. The Supreme Court is also an appellate court in all cases where municipal court was the first instance.

48. The Constitutional Court is not a court with full jurisdiction. It was designed by the Constitution as a forth branch of state authority. All of the decisions of the constitutional court must be published in Narodne Novine – the official gazette of Republic of Croatia; writs are published only if the constitutional court decides to publish them. All of the decisions of the constitutional court are considered a precedent (case law) because according to the constitution all courts and other governmental bodies must adhere to opinions and interpretations of the constitution and laws taken by the constitutional court. Beside this fundamental jurisdiction this court helps in execution and control over the elections to the Parliament and solves any questions concerning the

conflict of jurisdiction of the legislative, executive and judicial powers. The court decides on appeals against the decisions of State Judiciary Council to impeach judges due to disciplinary violations. Any breaches of human rights guaranteed by the constitution also fall under its jurisdiction. Only in these matters this court can interfere in particular judicial acts (litigation), and this is the sole reason it was named a court although it stands completely outside the hierarchy of the courts. If an individual citizen (or a legal entity) deems his/her rights and freedoms viaolated by an act of judicial or executive power, they have the right of appeal to the constitutional court. If it pertains to a judicial act the constitutional court appears to be the court of the fourth instance (an instance above the Supreme Court) but with exclusive jurisdiction to confirm or deny the decisions validity.

49. In Croatia, the hierarchy of normative acts is as follows:

    1. Croatian Constitution (Ustav)
    2. Constitutional Laws (Ustavni Zakoni, Organski Zakoni)
    3. International Agreements (Međunarodni Ugovori):
       International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.
    4. Laws and Decrees with the force of law (Zakon I Uredbe Sa Zakonskom Snagom)
    5. Subordinate Legislation (Podzakonski Akti)
       Subordinate legislation can be issued by units of local and regional self-government (county, district), public administration bodies and executive bodies (the Government of Croatia).

50. Professionals such as accountants, auditors and lawyers have to be registered and licensed according to the relevant domestic laws and regulations of their professional bodies.

Transparency, Good Governance, Ethics and Measures against Corruption

51. Croatia applied for EU membership in 2003, and the European Commission recommended making it an official candidate in early 2004. Candidate country status was granted to Croatia by the European Council (the EU's heads of government) in mid-2004. The entry negotiations, while originally set for March 2005, began in October of that year, which in turn commenced the screening process.

52. In June 2006, EU officials projected that the accession of Croatia would likely happen in 2009 or 2010. The closure of negotiations for all chapters of the *acquis communautaire* is expected in 2008 or 2009, while signing the Accession treaty would happen in the following year. Before starting negotiations with Croatia, the *acquis* was divided into 35 chapters, 4 more than the previous 31; the new chapters, previously part of the agricultural policy and judiciary, are complex areas - their division into a few smaller chapters is meant to enable more efficient and expedient negotiations.

53. Croatia ranks 69th on the 2006 Transparency International Corruption Perceptions Index[4].

54. High ethical and professional requirements for public officials, police officers, prosecutors and judges are in place. Ethic Codes for all these professionals exist.

[4] In 2007, Croatia improved to 64th place.

1.2 General Situation of Money Laundering and Financing of Terrorism

55. According to the information provided by the Croatian authorities, the money laundering situation has not changed in Croatia in the last 4 years. The police statistics show that the types of criminal offences that are the main sources of money laundering remained the same: economic crime offences as abuse of authority in economic business operations, and abuse of office and official authority, and abuse of narcotic drugs.

56. Criminal Damage – Police Statistics:

Damage in millions EUR (estimated)				
	2002	2003	2004	2005
General Crime[5]	71,7	103,6	79,3	89
Organised Crime	1,2	0,5	1,3	0,5
Economic Crime	366	312	147	170

57. Police cases statistics

YEAR	ML OFFENCES	Perpetrators	PREDICATE OFFENCES	CRIMINAL DAMAGE per year
2002	1	6	Fraud	
2002	1	1	Abuse of Authority in Economic Business Operations	
2002	1	1	Abuse of Narcotic Drugs	
2002	1	1	Abuse of Narcotic Drugs	
total	**4**	**9**		**ca 2,7 m €**
2003	1	1	*Embezzlement*	
2003	1	1	Abuse of Narcotic Drugs	
2003	1	2	Pandering	
2003	1	1	Abuse of Authority in Economic Business Operations	
total	**4**	**5**		**ca 380 000 €**
2004	1	1	Abuse of Authority in Economic Business Operations	
2004	1	1	Fraud Extortion Usurious Contract	
2004	1	2	Abuse of Narcotic Drugs	
2004	1		Abuse of Narcotic Drugs	
2004	1	2	Accepting a Bribe	
total	**5**	**6**		**ca 1,5 m €**
2005	1	1	Abuse of Authority in Economic Business Operations Abuse of Office and Official Authority Evasion of Tax and Other Levies Fraud in Economic Operations Misuse of Bankruptcy	
2005	1	2	Abuse of Authority in Economic Business Operations Abuse of Office and Official Authority Misuse of Bankruptcy	
2005	1	1	Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1	2	Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1	1	Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1	1	Robbery	

[5] This covers mainly crimes against property, persons, environmental crimes.

2005	1		Robbery	
2005	1	2	Concluding a Prejudicial Contract Abuse of Authority in Economic Business Operations Abuse of Office and Official Authority	
total	**15**	**10**		**ca 1,5 m €**

58. One of the possible stages in concealing the source of capital in money laundering is the transfer of funds to offshore zones. Offshore destinations used by Croatian money launderers are very diverse. Directly related to this item are non-resident accounts, which are significant indicators that can give rise to suspicion of money laundering activities, though they are not as strong indicators as offshore zones, as they represent a common, modern and widely used form of contemporary banking. Non-resident accounts are very closely connected to another item, the typology on natural persons, because transactions are conducted through non-resident accounts of offshore areas in the neighbouring countries, which are convenient due to their proximity, developed banking systems and developed communication channels. Transfers are simple: an offshore company which has a non-resident account in a neighbouring country issues an invoice, which is then paid through a legitimate Croatian bank to said account. Further analysis by the FIU has shown that trade-based money laundering takes place in Croatia. Fictitious agreements and fictitious invoices are made out on a "legal basis", a technique used in execution of transactions referred to above represents a third typology of money laundering in Croatia. This area can be further divided into:
    (i) issuing fictitious invoices, mainly for services which cannot, will not, and have not been provided, such as consulting, market research, and similar services – mostly non-goods payments;
    (ii) under invoicing and over invoicing for goods or, to a lesser extent, for services. Balances in such cases are transferred abroad by using methods referred to in first two typologies.

59. The FIU has also analyzed the forms of money laundering which involve resident and non-resident natural persons; e.g. transfer of unusually large cash deposits to (any type of) account, which are not in accordance with the usual account turnover, and which are not a result of legitimate business operations and income of that customer. Analyses have shown that such transactions typically lack a logical sequence, in terms of business and economic criteria. Another type are cross-border credit transfers to accounts of residents and non-residents, involving large amounts, transfers from offshore zones, and transfers which have no justification in terms of usual account turnover or the customer's credit-worthiness (sailors' wages and similar remittances excluded). Use of credit lines, i.e. the use of early repayment option under a credit line, has been shown to represent a safe method of turning "dirty money" into legitimate money and ensuring full legal documentation of the origin of money (a loan).

60. According to the FIU's statistics, the introduction of cash into the financial system through payment systems represents the fourth group of techniques and typologies of money laundering in Croatia. This involves deposits into a company's giro accounts, loans of any type, credit relations between employees and company partners, deposits of fictitious daily proceeds, transactions from accounts of legal persons to accounts of natural persons and vice versa. According to the Croatian authorities the said methods are usually combined and they are very rarely used alone and separately.

61. According to police analyses, the most common ways for money laundering are through investments in real estate, cars purchase, bank transactions through physical person's accounts, and business investments by fictitious loans.

62. The Croatian authorities consider that the following are the most important problems in their work: long-lasting court investigations, partially caused by lack of experience and lack of specific education, particularly in economic crime offences as predicate offences for money laundering

offence; lack of competent forensic financial experts; and inadequate statistics, not in accordance with requirements of the Law on Prevention of Money Laundering (hereinafter: AML Law; Annex 1).

63. Recognizing the importance of financial investigations, the police are in the process of finding a solution for the establishment of a specialized financial investigations and money-laundering unit. The idea is covered by the Government's National Plan for Fighting Organized Crime (2004) and Declaration on Tools for Fighting Economic and Organized Crime (2005) signed by the ministers of interior of regional countries within CARDS POLICE project (CARPO). Within the CARDS project, there is also a plan for creating an IT-Net, which would enable all institutions involved in AML issues (FIU, Police, Public Prosecutor) to connect "on-line", exchange data in a timely manner and to provide unique information to a database on money laundering.

64. Regarding terrorist financing, the AMLD circulates the names of persons and entities related to terrorist financing listed by the United Nations Security Council Resolution as well as the European Union clearing house to commercial banks (some foreign owned banks receive these lists also from their parent banks). The banks check whether the designated people/entities have any bank accounts or assets in Croatia. These lists are not sent to other financial institutions or DNFBP. The Ministry of Interior (Police) receives information on these lists directly from the Ministry of Foreign Affairs. Though there are no obstacles for Croatian authorities to use other lists, the Croatian authorities are not actively looking for other lists than the ones mentioned above. Nonetheless, if the AMLD receives information (not restricted to lists) from foreign FIUs or other jurisdictions/international organisations, the AMLD would forward it to banks.

65. By the end of April 2005 the Republic of Croatia ratified the 12 UN anti-terrorism conventions and protocols:
    1. Convention on Offences and Certain Other Acts Committed on Board Aircraft,
    2. Convention for the Suppression of Unlawful Seizure of Aircraft,
    3. Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation,
    4. Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents,
    5. International Convention against the Taking of Hostages,
    6. Convention on the Physical Protection of Nuclear Material,
    7. Protocol on 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,

    8.-9. Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf,

    10. Convention on the Marking of Plastic Explosives for the Purpose of Detection,
    11. International Convention for the Suppression of Terrorist Bombings,
    12. International Convention for the Suppression of the Financing of Terrorism.

66. The Republic of Croatia ratified the Protocol supplementary to the European Convention for the Suppression of Terrorism (2003) as well. In May 2005, Croatia signed but has not yet ratified the Council of Europe Convention on the Prevention of Terrorism (CETS 196)[6].

67. The Croatian FIU established a system of indicators to aid the banking sector in detecting suspicious transactions related to financing of terrorism (Annex 3).

[6] The Convention was ratified in October 2007 with the Act on the Ratification of the Council of Europe Convention on the Prevention of Terrorism (NN 10/2007).

68. Within its authority, the FIU undertakes the following actions to combat terrorist financing: checking the UNSCR and EU Clearinghouse lists of individuals and entities belonging to or associated with terrorism; checking the transactions filed in the FIU databases; participating in international seminars; and improving international cooperation. Since September 2001, the Croatian FIU regularly checked updates to the UNSCR list.

69. The FIU checked its own databases as well as those of the Croatian banks for almost 1610 individuals and 880 entities. Most of them were checked several times. The FIU informed the relevant domestic and foreign bodies of its findings.

70. In 4 cases, the FIU forwarded reports concerning the individuals and entities designated on the lists to the competent authorities. Following the reports, the FIU temporarily restrained the financial activities of five bank accounts suspected to be used for terrorist financing. After that, the competent Croatian court brought decisions which temporarily seized the funds in these bank accounts.

71. After searching its own databases, in the period from 11 September 2001 to 30 April 2006, the Croatian FIU analyzed the financial activities of certain individuals and entities who were not designated on the lists of individuals and entities belonging to or associated with terrorism, but the FIU established its own indicators for detecting possible terrorist financing. Accordingly, the FIU received two STRs from banks, which did not specify whether they were related to suspicion of money laundering or terrorist financing, but which were considered by the FIU to be connected with possible terrorist financing because of the indicators described in these STRs; the FIU undertook an analysis of these cases and then forwarded it to FinCEN and the Croatian prosecutor service.

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

72. The Croatian AML framework includes the following types of financial and non financial businesses and professionals:
    1. banks and residential saving banks;
    2. savings and loan cooperatives (sometimes referred to as “credit unions”);
    3. investment funds and companies for the management of investment funds;
    4. pension funds and companies for the management of pension funds;
    5. Financial Agency and Croatian Post Office;
    6. Croatian Privatization Fund;
    7. insurance companies;
    8. stock market and other legal persons authorized to perform financial transactions with securities;
    9. exchange offices;
    10. pawnshops;
    11. organizers of gambling games;
    12. all other legal persons, traders and individuals, business persons and physical persons conducting business that involve receipt and remittance of funds, purchase and sale of loans and debts, fund management for third parties, issuing debit and credit cards, transactions with the a.m. cards, leasing, organization of travel tours, organization of auctions, real estate, art objects, antiques and other items of significant value, and dealers in precious metals and gems.
    13. Lawyers, lawyer companies, notaries, audit companies, certified auditors and legal and physical persons conducting accountancy services or tax advisory services under certain conditions provided by the law.

73. Croatian authorities advised that trust service providers are not allowed to operate in Croatia.

Financial Sector

Banking Sector

74. As of 31 December 2005, the structure of the banking sector was as follows:
    - 34 commercial banks;
    - 4 housing saving banks (also referred to as "building societies" or "building savings societies");
    - 6 representative offices of foreign banks;
    - 22 banks and building societies were in bankruptcy;
    - 9 banks and building societies were under liquidation;
    - 104 loan co-operatives.

75. At that time, the assets of all banks totalled to 260 593 million Kuna, of which the ten largest banks accounted comprised 92,26% (240 425 million Kuna). The assets of six of the largest foreign owned banks exceed 85 % of total banking sector assets. The evaluators were advised that there are no internet banks in Croatia and all the existing banks operate exclusively via their registered head offices in the Republic of Croatia.

76. The Foreign Exchange Inspectorate (FEI) keeps a register of non-resident accounts. Non-resident accounts in this sense are all accounts of legal persons with company seats abroad, representation of foreign legal persons in the Republic of Croatia, individual tradesman, craftsman and other natural persons with seat or domicile abroad which perform independently economic business activities for which they are registered, foreign religious communities, associations and other foreign organizations, and subsidiaries of resident companies doing business abroad. According to this register, between 2004 and 2005 there was a total of 1164 non-resident accounts in 26 banks. The ownership structure of these non-resident accounts were as follows:
    - representative offices of foreign companies (app 80%);
    - foreign associations, foundations;
    - other foreign organisations.

    The FEI keeps records regarding the turnover of each of these accounts; the level of turnover may be an indicator for possible checks by the FEI. However, the FEI keeps no records concerning the balance of these accounts and no data could be provided to the evaluation team. The CNB provided the following data concerning non-resident deposit accounts at banks in the Republic of Croatia as of 31 December 2006:

resident/non-resident deposit accounts						
	Residents plus non-residents (in millions)			Non-residents only (in millions)		Percentage of non-residents accounts*
	A	B	C	D	E	
	in Kuna (equivalent in EUR)	in foreign currency (equivalent in EUR)	total (A + B)	in Kuna (equivalent in EUR)	in foreign currency (equivalent in EUR)	
Giro and current accounts	4919,75 EUR	212,52 EUR	5132,27 EUR	22,33 EUR	60,86 EUR	1,62
Saving Deposits	397,14 EUR	3224,44 EUR	3621,58 EUR	0,82 EUR	161,88 EUR	4,49
Time deposits	7482,56 EUR	11394,34 EUR	18876,90 EUR	95,71 EUR	620,42 EUR	3,79
Total	12799,45 EUR	14831,30 EUR	27630,75 EUR	118,86 EUR	843,16 EUR	3,48

*** in relation to all (resident plus non-resident) accounts: ratio assets; accumulated: both domestic and foreign currency**

77. Banks are mainly regulated by the Banking Act (NN 84/2002). The Act on Saving and Loan Co-operatives (NN 84/02) regulates savings and loan co-operatives (credit unions). Housing savings banks (building savings societies) are covered by the Act on Housing Savings and State Incentives for Housing Savings (NN 109/97, 117/97, 76/99, 10/01, 92/05); subsidiary the Banking Act applies (Art. 178 of the Banking Act; Art. 4 of the Act on Housing Savings and State Incentives for Housing Savings). Housing savings banks are defined as financial institutions which are conducting an organized accumulation of cash assets – deposits by domestic individual persons and legal persons for the purpose of solving the housing needs of residents by approving housing credits to Croatian citizens through government supported funding in the territory of Republic Croatia. Housing saving banks may approve housing credits solely for these purposes: buying a flat or a family house; building a flat or a family house; reconstruction, adaptation, reparation and furnishing of a flat or a family house; purchase and restructuring of real estate for housing needs; paying off a housing credit to a bank or a housing savings bank founded in a territory of Republic Croatia. Housing savings banks can be established either by banks or insurance companies, receive cash deposits, and approve credits only in domestic currency. As of 31 December 2005, the assets of housing savings banks totalled 6 126 million Kuna.

Croatian capital market

78. In Croatia 2 stock exchanges exist: the Zagreb stock exchange and the Varazdin stock exchange[7]. On 19 April 2006, 44 certified companies operating in this area have been registered in the Republic of Croatia; this included 28 brokerage houses and 16 banks which also conduct activities with securities in separate departments.

79. Furthermore, there have been registered 23 investment funds management companies; these companies govern
    - 57 open-end investment funds;
    - 6 closed-end investment funds;
    - 1 fund named “Pension fund” and
    - 1 fund named “Croatian defenders' of the Homeland War fund”.

    The activities of these investment funds management companies are defined by the Investment Funds Law (Official Gazette, No. 150/05), the Privatization Investment Funds Law (Official Gazette, Nos. 109/97, 114/01), and Amendments to the Act on Privatization Investment Funds (Official Gazette, No.114/01). The “Pension fund” and “Croatian defenders' of the Homeland War fund” are governed by separate laws.

Insurance undertakings

80. On 19 April 2006, 23 insurance companies and 2 reinsurance companies had been registered in the Republic of Croatia. No foreign insurance companies have branches in Croatia, but some foreign insurance companies have subsidiaries in Croatia.

Pension funds and pension funds management companies

81. The activities of these entities are defined in the Pension Insurance Law (NN 102/98), the Law on mandatory and voluntary pension funds (NN 49/99 and 63/00), the Law on pension insurance companies and payment of pension annuities based on individual capitalized savings (NN 106/99 and 63/00). By 19 April 2006, the following entities had been registered in the Republic of Croatia:
    - 4 mandatory pension funds and 4 mandatory pension fund management companies (1 management company can manage only with one mandatory pension fund);

[7] As of March 2007, the two stock exchanges merged into one, the “Zagreb Stock Exchange”.

- 6 open-end voluntary pension funds and 9 close-end voluntary pension funds which are managed by 4 voluntary pension funds management companies.

Foreign exchange business providers

82. The "Decision on the Conditions and the Manner in which Authorized Foreign Exchange Providers Perform Operations of Foreign Exchange" regulates the conditions and the manner of performing operations of foreign exchange offices, and the documentation that should be enclosed with the request for the issuance of a licence, etc.

83. The number of authorised exchange offices was said to be 1200, of which 870 were limited liability companies, 117 were joint-stock companies, and 213 were craftsmen. The Croatian authorities explained that after the Act on the Amendments to the Foreign Exchange Act (NN 140/05) entered into force, the records on authorised exchange offices had to be maintained by the Croatian National Bank, which took over the data from the Ministry of Finance, Foreign Exchange Inspectorate. As updating of the list was still under way during the on-site, the said data could not be confirmed[8].

Designated Non-Financial Businesses and Professions (DNFBP)

84. The major DNFBP are as follows:
- Public notaries: 254 public notaries operating in accordance with the Notaries Public Act and The Statute of Croatian Public Notary Association. They are given the power to: draw up and issue public documents related to legal affairs; officially certify private documents; preserve documents, money and objects of significant value for the purpose of handing them over to other persons or competent bodies; and executing courts' and other public entities' procedures as defined by the law;
- Lawyers: of which there are 2,917. In Croatia, there are 174 joint lawyer firms, 74 lawyer companies and 1,327 trainees of lawyers. The Act on the Responsibility of Legal Persons for the Criminal Offences provides the legal framework for lawyers;
- Auditing, Accounting and Tax Consulting Services: The Act on Tax Advisory Services authorizes tax consultants to: give advice related to tax issues; represent clients in the tax procedures in front of tax authorities; compose tax reports; bookkeep; and draft financial reports. At the time of the on-site, there were 311 registered audit companies, and according to the Croatian Auditor's Association, 1,007 auditors had been certified. The Association anticipated that an additional 93 auditors would soon be certified. The Benedikt Kotruljevic Association was an association of auditors which certified another 360 auditors, bringing the total number of auditors to 1,460. Since entering into force the Audit Act (NN 146/05) in 2005, this association had no more right to conduct its activities related to auditing. The Independent Association of Croatian Accountants, Tax Counsellors and Financial Employees (RRiF) issued 1,135 certificates to natural persons performing accountant services.
- Real Estate Agencies: Evaluators had been informed that there was no specific act regulating real estate agents, though there was one being prepared at the time of the on-site. Evaluators were informed, however, that the Civil Obligations Act does generically cover customer identification and record keeping requirements. Evaluators have not seen a translated version of this text. There are 1,811 registered entities performing real estate activity; 891 performing "own real estate activity" (539 agencies developing/constructing and selling real estate; 352 agencies which buy and sell "own real estate"); 295 entities that lease "own property;" 621 entities that perform real estate activities on a fee or contract basis; 487 real estate agencies, and 134 businesses which manage real estate on a fee or contractual basis.

[8] Subsequently the Croatian National Bank confirmed that the said data were correct.

- Retail of Precious Metals and Stones: There are 69 small sized companies which are registered to conduct retail sale of watches, clocks, jewellery, photography, optical and similar equipment.
- Organizers of Games of Chance: At the time of the on-site, there were 12 casinos, three of which are located in Zagreb, and four of which are state-owned. There are 13 betting houses and 46 slot machine clubs. The Law on Conducting Games of Chance and Promotional Award Games (NN 83/02, 149/02) regulates this sector. Licensing for these entities is performed by the Ministry of Finance.
- Pawnshops
- Organizers of travel tours
- Organizers of auctions
- Dealers in art objects, antiques and other items of significant value

85. The AML Law holds most categories of DNFBP to the same standards as the reporting financial institutions. Specifically:
    - pawnshops
    - organizers of lottery games, casino games, betting games and slot machine games
    - organizers of travel tours
    - organizers of auctions
    - real estate agents
    - dealers in art objects, antiques and other items of significant value, and
    - dealers in precious metals and gems

    are all covered by the AML Law. Accountants, notaries and lawyers, on the other hand, do not have the same requirements placed upon them: the evaluators consider that for these entities no other provisions of the AML Law apply than Art. 9a (the specific reporting obligation for these entities), and particularly that they do not fall under the scope of Art. 2 of the AML Law listing reporting institutions. However, the Croatian authorities consider accountants, notaries and lawyers as having the full obligations under the law. Trust and company service providers are not covered by the AML Law at all, as they do not exist.

86. The main deficiencies that apply in the implementation of the AML/CFT preventative measures applicable to financial institutions regarding Recommendations 5-11, and other preventive Recommendations, apply to the DNFBP as well because their obligations are based on the same AML/CFT regime. To recap, with the exception of accountants, lawyers and public notaries, the aforementioned DNFBP under the AML Law are obligated to: perform client identification (Articles 4 and 5); gather and keep information on transactions (Articles 6 and 16); report cash transaction reports and suspicious transaction reports to the FIU (Article 8); and keep information confidential (Articles 15 and 17).

87. It should be noted that lawyers, lawyer companies, notaries, auditor companies, certified auditors, chartered accountants and tax advisors are not included in Article 2 of the AML Law, which lists the reporting institutions fully covered by the law. Rather, this group of DNFBP is covered under Article 9a of the AML Law, which requires them to inform the FIU of suspicion of money laundering when conducting transactions with assets and when they are solicited by their clients for advice connected with money laundering. However, when a lawyer or a lawyer company represents the client in judicial proceeding or in an administrative procedure, they are exempt from the requirement to inform the FIU if there is suspicion of money laundering. Article 9a does not set out any client identification requirements, reporting requirements or record keeping requirements similar to those placed on other DNFBP identified as reporting institutions in Article 2. The lawyers explained to the evaluation team that they do not accept a responsibility to perform CDD measures because they are not included in Article 2 of the AML Law.

88. It should also be stated at the outset that historically the casinos, lawyers and notaries have rarely submitted suspicious transaction reports to the FIU. While there is some communication between the FIU and the obligated DNFBP, there needs to be enhanced communication and cooperation between the entities, as well as enhanced AML/CFT supervision of these entities.

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

89. The basic law regulating the formation and business activity of companies in the Republic of Croatia is the Act on Companies (NN 111/1993). According to this Act, companies can be divided into two basic groups: companies of persons (including public companies, limited partnership companies and economic interest associations) and capital companies such as stock companies and limited companies. The basic difference between these groups is in the level of responsibility for obligations of the members of the company. For the purposes of this report, the relevant entities are the capital companies where partners/shareholders are liable for the obligations of the company only up to the amount of their stakes (contributions).

90. These legal persons formally come into existence on the date on which they are incorporated into the court registry. Court registers are public registers kept and maintained by commercial courts established as specialized courts within the judicial structure (there are 13 commercial courts in the Republic of Croatia). Company information from the register is available on a dedicated website on the Internet (http://sudreg.pravosudje.hr/). Publicity of the register means that anyone, without having to prove legal interest, can have access to any information recorded on the registered entities as well as the documents attached. The operation of the company registration is governed by the Court Registry Act (NN 1/1995). The Croatian administration has launched a project to establish an internet-based one-stop-shop to facilitate company registration procedures (on the website www.hitro.hr). However, this is focused at limited liability companies and it appears to involve no changes to the statutory requirements for registering a company.

91. A joint stock company is a company the stock capital of which is composed of a certain number of shares of nominal value. The value of the company's stock capital must not be less than 200 000 Kuna. The capital of a joint stock company can be represented by either registered or bearer shares.

92. According to Art. 165 para 1 of the Act on Companies, a joint stock company may issue bearer shares[9]. In course of the on-site visit, the appearance of bearer shares was often referred to as a result of the privatization (transformation of formerly socially-owned enterprises), though it was not clear whether the possibility of issuing bearer shares had only been open for this type of joint stock company – in fact, the Croatian authorities advised in the replies to the questionnaire that "*the statutes of a stock company can stipulate that stock made out to a name can be exchanged for stock made out to the bearer or vice versa at the stockholder's request*".

[9] The latest amendments to the Companies Act enacted by the Croatian Parliament on 27 September 2007 removed the provisions which allowed for the issuance of bearer shares. Article 165 paragraph 1 of the Companies Act reads now as follows: "*Shares may be issued as registered shares.*" However, it remains unclear what happened with existing bearer shares. Article 49 paragraph 4 of the Constitution of the Republic of Croatia prescribes that the rights acquired by investing capital cannot be diminished by any law or any other legal act. Due to this provision of the Constitution, previously acquired rights of holders of shares which are made out to the bearer are accepted as such. Hence, earlier issued shares made out to the bearer can exist as such. Joint stock companies can offer their shareholders the possibility to exchange shares made out to the bearer for shares made out to the name, however, pursuant to the said provision of the Constitution they can not force them to make the change. Correct data on the number of these shares is unknown. No database concerning bearer shares exists at Central Depository Agency.

93. Nevertheless, the evaluators were assured by Croatian authorities that shares of this type are very rare in Croatia due to the restrictions envisaged by the domestic legislation. Certain companies, such as banks and investment fund management companies are automatically prohibited from issuing bearer shares, while the Securities Market Act prescribes that shares of certain joint stock companies, including those which emerged after the transformation from socially-owned enterprises (and many others, such as public joint-stock companies having over 100 shareholders and equity capital of a minimum of 30 000 000 Kuna etc.), must be registered with the accounts of their holders in the computer system of the Central Depository Agency (hereinafter: CDA), which means that shares must be registered by name. It appears that there is no provision requiring that bearer shares as such, issued by any sort of joint stock company, have to be registered. However, due to the limited economic significance of bearer shares, the Croatian authorities also advised that the possibility of their issuing would be abolished during the final harmonization with the *acquis communautaire*[10].

94. There appears to be no requirement under the Act on Companies for details of shareholders to be publicly disclosed and recorded in the court register in case of joint stock companies, except if the company has only one shareholder (Art. 187 para 1 item 6). Data on owners are therefore available at the CDA on the request of entitled persons and state bodies. The issuers are authorised to obtain data on the securities they issued and on owners of these securities (i.e. the list of shareholders). Furthermore, the data concerning the identity of the 10 largest owners of any security are also accessible to the public at the website of the CDA (Art. 132 para 4 of the Securities Market Law; www.sda.hr).

95. A limited liability company is a company whose initial capital is made up of previously agreed contributions (stakes) pledged by its members. Under Croatian law, a limited liability company must have a minimum founding capital of 200 000 Kuna where the minimum contribution (initial stake) is 200 Kuna. Such a company is incorporated on the basis of a contract between the founders (partnership contract) made in the form of a notarial document and signed by all founders (if the company is incorporated by a single founder, a statement of the founder is required).

96. Details of shareholders, that is, members of limited liability companies are available for public inspection at the court register. The administration is obliged to keep a book of records of the company's business shares in which are entered the data on the firm (name, seat) as well as on its members (name, residence/seat, natural persons: personal identification number, legal entities: registration data) and their stakes. Within three days of any changes to the entries, the administration is obliged to inform the registering court of the change. In addition, a list of the members of the company has to be submitted to the registering court every January.

97. Foreign companies may operate on the territory of the Republic of Croatia by opening a branch of their company according to the legal provisions applicable for the establishment and registration of branches of domestic companies. Having passed the registration procedure, the branch of the foreign company can conduct its activities, and its legal position (rights-obligations) is practically no different from that of a branch of a domestic company. Foreign companies may,however, open a representative office in Croatia instead of, or before, incorporating a branch. Representative offices of foreign companies have no legal personality. A representative office must not perform business/trade activities as it is only allowed to pursue market research – this is why offices like this are obliged to open a non-resident bank account, but funds from that account can only be used for maintenance costs of the entity. Such an office needs to be registered with a special register kept by the Ministry of Economy, Labour and Entrepreneurship which, however, does not contain any specific information on the ownership of the represented foreign company, that is, no

[10] see FN 9.

additional data beyond what is included in the excerpt of the foreign registry that has to be attached.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

98. There are two Multi-Disciplinary Committees (Task Forces) in Croatia examining AML/CFT measures with an aim to be operative and strategic co-operative structure among the member agencies. The committee that deals with money laundering committee is chaired by the Ministry of Finance and the committee that handles counter-terrorist financing is chaired by the Ministry of Foreign Affairs, and the Anti-Money Laundering Department has an active role within its legal competence. The state authorities that comprise these Committees are the Croatian FIU (AMLD), Tax and Customs Administrations, Foreign Exchange Inspectorate and other supervisory bodies, different police services within MoI (drugs, economic crimes and corruption, organized crime and terrorism counteraction departments), Croatian National Bank, State Attorneys Office, the Office for the Suppression of Corruption and Organised Crime (USKOK), Ministry of Foreign Affairs and European Integration and Ministry of Justice. The functions of these Committees are to inform the Government of any measures undertaken and any general policy applied against money laundering and to advise the Government about additional measures which should be undertaken for better implementation of the AML Law (for details see below paragraph 128).

99. Croatian authorities consider the monitoring and supervision of the financial sector and the provision of appropriate training to entities and their staff involved in the prevention and detection of money laundering and terrorist financing as one of their highest priorities. Concerning training, particular attention is given to persons or professionals who have recently been made obliged entities under the AML Law such as lawyers, accountants and notaries.

100. In 2004, the Government's "National Plan for Fighting Organized Crime" was brought into force. It focuses on: confiscation of illegal proceeds as major tool in fighting organized crime; coordination between relevant bodies; specialization of relevant institutions by forming financial investigation and money laundering units within the State Attorney's Office, the Police, the Customs and the Tax Authority; modernization of criminal legislation.

101. Croatia participated in 2005 in a regional CARPO - CARDS POLICE PROJECT named "Regional Strategy on Tools against Economic and Organized Crime", tackling financial investigation and money laundering. Furthermore, Croatia participated in an 18 months lasting CARDS 2003 AML twinning project, which started mid 2006 and covered the whole AML/CFT system.

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

102. The following are the main bodies and authorities involved in combating money laundering and/or financing of terrorism:

The Ministry of Finance

103. The Ministry of Finance is responsible for developing of policy on the regulatory framework for the financial sector. Draft laws on the banking sector are prepared by the Financial System Directorate of the Ministry. It is empowered to send recommendations to the Croatian Government concerning banks.

104. Furthermore, the Ministry of Finance is responsible for numerous other tasks, including: analysis and forecasting of macroeconomic movements that are the basis for establishing the fiscal policy and the formulation of the national budget; the preparation of elements for financing public needs and the preparation of the draft budget, extra-budgetary funds and local budgets; budget consolidation; proposals of the system for financing public needs as well as local government and self-government units; execution of the national budget; budgetary control; national accounting standards; the accounts plan; the keeping of the general ledger of the state treasury and the preparation of financial reports; management of budgetary investments; preparation of reports on short-term financial requirements; monitoring revenues, expenditures and cash balances; foreign and domestic debt scheduling; the preparation and keeping of records concerned with the issue of securities; recording the government's immediate and contingent liabilities and monitoring the amounts of domestic and foreign debt repayments; keeping records of and monitoring loans given by the government; drafting statutory and other provisions as well as elements for negotiations from the field of financial relations with foreign countries ensuing from multilateral, bilateral and credit cooperation with international and regional financial institutions, foreign governments and commercial banks; operations concerning the membership of the Republic of Croatia in international financial organisations; stimulation of foreign investments; systematic monitoring of natural disasters and war destruction; keeping the register of concessions; preparing analyses from the field of banking and the foreign exchange system as well as the insurance system; the tax system and tax policy, the tariff system and the policy of tariff and non-tariff protection; the supervision and inspection of taxes, customs duties and other public revenues, foreign exchange and foreign trade operations; organisation of games of chance; taking measures to reveal and prevent money laundering; supervision of the procurement of goods and services and the award of contracts.

105. It is also the competent authority for some of the supervisory authorities within the financial sector (Foreign Exchange Inspectorate). The Tax and Customs Administrations and the FIU are situated at the Ministry of Finance. The Ministry also chairs one of the two Multi-Disciplinary Task Forces (i.e. Task Force for Money Laundering prevention).

The Financial Intelligence Unit – FIU

106. The Anti-Money Laundering Department (AMLD), which serves as the Croatian FIU, was established at the beginning of 1998. It is within the structure of the Ministry of Finance and consists of 2 departments: the Prevention Department and the Analytical Department. It comprises 17 employees, and as of the time of the on-site, it planned to recruit 5 additional employees[11]. The FIU has operational independence in performing its duties and powers, but its budget is part of the budget of the Ministry of Finance. It is an administrative type of FIU without investigative powers. Art. 3 of the AML Law describes its tasks as "*to gather, analyze, classify and keep data received from all the reporting institutions, to disseminate the information to relevant state bodies and together with them to undertake measures for the prevention of money laundering*". As described under Section 2.5 in more detail, it is difficult to determine that the AML Law authorizes the AMLD to cover the prevention of terrorist financing; nonetheless, in practice there is no doubt that the AMLD deals with this issue.

107. The AMLD has an important role in the AML/CFT policy of Croatia at operational and strategical level. It is a member of the Counter Terrorism Working Group (see below in paragraph 128). Within the Ministry of Finance exists also a Coordinative Working Group, which is comprised of the supervisory bodies of the Ministry, such as the Tax Department, the Customs Department, the Foreign Exchange Inspectorate and the FIU. This working group has been established to implement UNSCR 1373 and is chaired by the AMLD.

[11] the Croatian government approved at the end of 2007 to increase staff of the AMLD from 22 to 36.

The Tax Administration

108. The Tax Administration is part of the Ministry of Finance. The service collects revenue and has the responsibility for detecting tax crimes. It is also legally responsible for the supervision of the implementation of the AML Law in the area of its jurisdiction, including DNFBP (Art. 21a of the AML Law) though this is done in practice only for casinos.

The Customs Administration

109. The Customs Administration is also part of the Ministry of Finance. It is authorized for the supervision and control of taking in and taking out of the Croatian customs area domestic and foreign currencies, cash and cheques. However, the Custom Administration is not authorized for initiating a proceeding concerning an infringement, this being the authority of the Croatian Foreign Exchange Inspectorate, similarly acting within the Ministry of Finance. The Custom Administration of Croatia has neither authority concerning the investigation activity regarding the AML Law nor the authority to investigate the attributable deeds such as, i.e. customs fraud.

110. In accordance with the AML Law (Art. 9 para. 1) the Custom Administration is obliged to inform the AMLD on the legal transport, or an illegal attempt to transport cash or cheques in domestic or foreign currency across the state border of 40 000 Kuna (approx. 5 500 EUR), or exceeding this value, at the latest within three days.

Foreign Exchange Inspectorate

111. The Foreign Exchange Inspectorate is an administrative unit within the Ministry of Finance, which performs inspections, supervision and conducts misdemeanour proceedings in the first instance in the area of foreign exchange transactions of residents and non-residents when they perform their activities in the territory of Croatia. Its activities are regulated by the Foreign Exchange Act, the Act on Amendments to the Foreign Exchange Act, the Act on the Foreign Exchange Inspectorate and the AML Law. Its scope of competence is defined by the Regulation on the Internal Structure of the Ministry of Finance. It employs 40 staff and consists of the Foreign Exchange Supervision Sector and the Department for Foreign Exchange Offences. It supervises the activities of "state bodies and bodies of units of local government and self-government, authorized banks and other financial organizations, companies and other legal persons that are engaged in foreign exchange and foreign trade business transactions, diplomatic and other representative bodies of the Republic of Croatia, work units, etc. that were founded abroad by legal persons having their head office in the Republic of Croatia, foreign legal persons that are performing their economic or other activity in the territory of the Republic of Croatia, as well as natural persons, in view of regulations on foreign exchange transactions" (Art. 2 of the Act on the Foreign Exchange Inspectorate).

Croatian Financial Services Supervisory Agency (HANFA)

112. The Croatian Financial Services Supervisory Agency (HANFA) succeeded and merged on 1.1.2006 the Croatian Securities Commission, the Agency for the Supervision of Pension Funds and Pension Insurance and Directorate for the Supervision of Insurance Companies. It is responsible for the supervision of all legal and natural entities that deal with the provision of financial services, financial market advising, sales, brokerage activities or asset management for users of financial services. This means that HANFA has to supervise the operations of a large scale of entities:

- stock exchanges and regulated public markets, authorised securities companies and issuers,
- companies for the management of investment, privatisation investment and pension funds, investment funds, privatisation investment funds, pension funds, Fund of the Croatian Defenders of the Homeland War and Members of their Families, and the Retired Persons' Fund,

- brokerage companies, brokers and investment advisers,
- institutional investors,
- the Central Depositary Agency,
- Central policyholders register,
- insurance companies, pension insurance companies, insurance brokers and representatives;
- legal entities performing the operations of leasing and factoring, unless the banks perform them within the scope of their registered activities.

113. HANFA is regulated by the Act on the Croatian Financial Services Supervisory Agency (NN 140/05). The board of this agency issued on this basis also a Statute on the Croatian Financial Services Supervisory Agency which further defines its activities.

The Ministry of Justice

114. The Ministry of Justice conducts administrative and other activities related to: civil, criminal and commercial law and administrative jurisdiction; structure and operations as well as vocational education and training of judges, state attorneys and court employees, state attorney's offices, bodies in charge of offence procedures and bodies imposing offence sanctions; administrative and other affairs in the domain of notaries public and the state attorney's office; court and notary fees; international legal aid and other forms of legal aid; granting paroles and probation releases and the computerization of the judiciary. It conducts administrative and other activities related to: property rights; property relations in the field of dispossession and other ownership restrictions; property relations connected with the building, agricultural and forest land; land consolidation; trade in land and buildings, and the part of agricultural operations not within the scope of other state administration bodies; property of foreign nationals; matters in the area of compensation for property seized during the Yugoslav communist rule that are not within the scope of other state administrative bodies, and the matters related to the succession of property, rights and obligations of the former Socialist Federal Republic of Yugoslavia.

Judiciary

115. The government in the Republic of Croatia is organized on the principle of separation of powers into legislative, executive and judicial branches. Judicial power is exercised by the courts. The judiciary is autonomous and independent.

116. In Croatia the following types of courts exist: misdemeanor courts, municipal courts, county courts, commercial courts, the High Misdemeanor Court of the Republic of Croatia, the High Commercial Court of the Republic of Croatia, the Administrative Court of the Republic of Croatia and the Supreme Court of the Republic of Croatia. The seat and territorial jurisdiction of courts are regulated by the Law on Territorial Jurisdiction and Seats of the Courts (NN 3/94, 100/96, 115/97, 131/97, 129/00 and 67/01) and the Law on Territorial Jurisdiction and Seats of the Misdemeanor Courts (NN 36/98). The Law provides for 114 misdemeanor courts, 114 municipal courts, 13 commercial courts, and 21 county courts, the High Misdemeanor Court, the High Commercial Court, the Administrative Court and the Supreme Court of the Republic of Croatia. The High Commercial Court (1 court), as well as the county courts (20 courts), are generally courts of the second instance. In criminal matters, county courts conduct investigation and trial certain types criminal cases of the first instance. The Administrative Court of the Republic of Croatia (1 court) decides on appeals against the final administrative acts (administrative disputes). The Supreme Court of the Republic of Croatia, as a highest judicial instance, ensures the uniform application of law and equal position of citizens under the law. In total, 249 courts exist in Croatia. In 20 Croatian counties - out of 21 - the county courts are operational, while establishment of one county court is pending.

117. The courts adjudicate on the basis of the Constitution and the law. Case law also has an important role, but not as a system of precedents. However, decisions by higher courts are binding for lower instance courts by the strength of the legal argument, and therefore the effect is attained of the standardization of case law. A first instance court is not obliged to accept the legal position of the second instance court, but it is obliged to carry out all procedural actions and discuss all disputed issues pointed out by the second instance court in the decision by which the case was remanded. In some proceedings the lower instance court is also obliged to accept the legal position, but only in the case of the opinion of the Supreme Court. This obligation is found for example in the Civil Procedure Act. In sessions of the court divisions which include several chambers in the same court, in a certain branches of court proceedings (for example civil or criminal), decisions are not made in actual cases, but rather a common position is found, which is binding for all chambers, if there is a conflict of legal opinions in the same factual or legal situation between two or more chambers. This is how the standardization of case law is reached. Positions accepted by the court divisions are then binding for all judges, or chambers of judges within that division. Positions are also binding if they are accepted by a majority of all the judges in the division.

118. Turning to criminal law, Croatia has the institution of Investigating Judge. The evaluators understood that after the establishment of USKOK, a special group of judges was established at court level to deal with USKOK cases. These judges are also subject to the same security checks as the employees of USKOK. The law on USKOK also contains provisions regarding the designation of County Courts having jurisdiction in criminal cases in USKOK competence. Article 25 of the Law requires that at County Courts in Osijek, Rijeka, Split and Zagreb, special Investigation Departments shall be established to investigate the criminal offences from Article 21 of the Law on USKOK. The Departments shall be composed of investigating judges with the experience and pronounced capabilities for investigating most severe and complex forms of criminal offences, and graduate criminal assistants.

119. Cases are distributed among judges by alphabetical order, the Court's Chair having the discretional power to choose a less overloaded or better experienced judge. It was underlined by the Croatian authorities that additional/specialized expertise would also be useful to judges.

The Ministry of Foreign Affairs

120. The Ministry of Foreign Affairs and European Integration is in charge of administrative and other activities related to: representation of the Republic of Croatia in other states, international organizations and at international conferences; development and promotion of relations of the Republic of Croatia with other states, international organizations and other entities from the field of international law and international relations; co-operation with international organizations and other forms of international co-operation between states, monitoring the development of international economic relations; protection of the rights and interests of the Republic of Croatia and its nationals who are either residents or temporary residents abroad; establishment, maintenance and promotion of relations with Croatian emigrants and minorities as well as with their associations abroad; talks and negotiations with representatives of other states, international organizations and other entities from the field of international law and international relations; drafting, concluding and implementation of international agreements; providing incentives and support to the co-operation of state bodies with foreign countries in political, economic, cultural, scientific and other areas; maintenance and development of relations with foreign missions and international organizations in the Republic of Croatia, as well as with consular posts of foreign countries; monitoring the development and participating in discussions on the subject of international public and private law in the country and abroad; providing information to foreign institutions and bodies as well as international organizations and public on the state of the country's affairs and other significant issues for the Republic of Croatia. The Ministry chairs one of the two Multi-Disciplinary Task Forces, namely the Task Force/Working Group for Terrorist prevention tackling terrorist financing (see below).

The Ministry of Interior

121. The Ministry of Interior performs administrative and other work related to: police and criminal police work including protection of the lives and personal security of people and property, crime prevention and detection; tracing and capturing delinquents and their apprehension; the maintenance of public peace and order and the protection of individuals, buildings and areas; conducting crime-laboratory investigations and expertise; traffic safety activities; surveillance of borders; keeping track of the movements and sojourn of foreign nationals and giving them shelter; the issue of passports and identification papers for border crossing; the regulation of public assemblies; issuing certificates of citizenship; personal identity cards, residence and temporary residence registration; issuing driving licenses and motor vehicle registrations; issuing firearm licenses as well as weapons and ammunition procurement permits; explosives; providing the necessary assistance to remove the consequences of public danger caused by natural disasters and epidemics; fire protection; civil defense; fire-fighting; protection of the constitutional order; the work of the special police and supervision of the work of the security services.

122. The Police Academy is part of the Cabinet of the Ministry of Interior.

123. The police service is organized within the Ministry of the Interior: at state level (General Police Directorate), regional (Police Administrations) and local levels (Police Stations). A total number of authorized police officers in Croatia is approx. 19 000 (of which 3 000 are criminal police officers).The police tasks are as follows:

(i) Protection of life, rights, safety and inviolability of a person;
(ii) Protection of property;
(iii) Prevention and revealing of criminal offences and misdemeanours;
(iv) Searching for perpetrators of criminal offences and misdemeanours and their taking to the competent authorities;
(v) Control and regulation of the road traffic;
(vi) Tasks relative to the movement and stay of aliens;
(vii) Control and securing of the state border;
(viii) Other tasks defined by law.

Police

124. The main police unit which is entrusted with anti-money laundering detection and prevention is the Economic Crimes and Corruption Department within the Criminal Police Directorate; this unit also plays a coordination role between other police services which powers and duties may be relevant to the problem (drugs department, organized crime and terrorism counteraction) and the AMLD. It cooperates closely with the AMLD and there are no formal procedure in writing although there are some plans in this direction regarding the cooperation between AMLD and police units. The Ministry of Interior issued so far 6 internal police instructions on the issues related to the AMLD, its reports/notifications to the police, money laundering and financial investigations, and seizure.

Prosecution authorities (including USKOK)

125. The Public Prosecution Service is hierarchically organised at three levels of jurisdiction that corresponds to the organisation of the courts (State, County, and Municipal level). The Public Prosecutor is competent to undertake the necessary measures aimed at discovering the commission of offences and perpetrators, and request that a judicial investigation and specific investigative actions be ordered and carried out. The Public Prosecutor is empowered to demand explanations at any time on any case from the police, and to request them to undertake certain measures. Moreover, the police have to report to the Public Prosecutor about any criminal offence coming to its knowledge and inform the Public Prosecutor about its findings on the said offence. Within the State Attorney's Office of the Republic of Croatia, the Office for Suppression of

Corruption and Organized Crime (USKOK) has been established. It is regulated by the Law on the Office for the Suppression of Corruption and Organised Crime (hereinafter: Law on USKOK; Annex 6) of September 2001 (NN 88/2001) which provides a separate set of detailed rules applicable exclusively in procedures conducted by the said Office. It is a specialised body that is in charge of tackling corruption and organised crime. The USKOK started its operations in December 2001. The USKOK has investigative, prosecutorial and preventive functions. It is *inter alia* competent for criminal offences of money laundering if the predicate offence thereof is included within criminalized organized crime and corruption offences listed in Article 21 of the Law on the Office for Suppression of Corruption and Organized Crime.

Security Intelligence Agency

126. The Security Intelligence Agency is responsible to the Prime Minister and President of the Republic. It has its headquarters in Zagreb. It works amongst others in organized crime and counter-terrorism. In these two areas they are supposed to prepare annual reports on its activity and to present it to both the president and the prime minister. According to domestic laws they shall have close cooperation with the AMLD and Ministry of Interior services.

The Croatian National Bank (CNB)

127. The Croatian National Bank is the central bank of the Republic of Croatia. Pursuant to the Croatian Constitution and the Croatian National Bank Act it enjoys operational autonomy and independence: it is independent in its decision-making and in the implementation of decisions which are based on the Croatian National Bank Act. The responsibilities of the CNB include *inter alia* supervision of the business operations of banks and housing saving banks (including supervision in the area of AML/CFT), issuing and revoking licenses for banks and enactment of subordinate legislation which regulate banking operations. The supervision concerning the implementation of the AML Law is an integrated part of regular bank supervision, with some examiners focusing specifically on this issue. Upon each completed on-site examination, the CNB submits to the AMLD a copy of the reports of this examination relating to the implementation and application of the AML Law. The Croatian National Bank has appointed a contact person and a deputy for communication with the AMLD and other supervisory authorities for the exchange of information with a view to achieving improved cooperation in the area of prevention of money laundering. In August 2006, the CNB signed a Memorandum of Understanding with the AMLD.

Multi-disciplinary committees (task forces)

128. There are two Multi Disciplinary Committees (Task Forces) in Croatia: one less formal committee, the "AML Working Group", examines the anti-money laundering measures (this committee is chaired by the Ministry of Finance) and the other, the "Counter Terrorism Working Group", focuses on terrorism, which includes also terrorist financing issues; the latter one is chaired by the Ministry of Foreign Affairs and European Integration. The AML Working group consists of representatives of the AMLD, Tax and Customs Administration, Foreign Exchange Inspectorate, Ministry of Interior (economic crimes and corruption), Croatian National Bank, State Attorneys Office. The function of the AML Working Group is to coordinate all relevant AML activities at both strategic and operational levels. In practice, this working group acts as a platform for case by case operational coordination. While the AML Working Group was not formally established and meets only on an irregular basis, the Counter Terrorism Working Group is based upon a Decision (published in the official gazette). According to the Decisions of the Croatian Government of 22 November 2001 and 21 April 2005 the mandate of the Counter Terrorism Working Group includes implementation of the Security Council Resolutions 1267, 1373 and 1566 as well as all other relevant international legal documents related to the suppression of terrorism and issued by the European Union, the United Nations, NATO, the Council of Europe and OSCE. The Members of the Counter Terrorism Working Group include representatives from:

- Ministry of Foreign Affairs and European Integration

- Ministry of Interior
- Ministry of Defence
- Ministry of Justice
- Ministry of Finance – Customs Administration
- Ministry of Finance – Foreign Exchange Inspectorate
- Ministry of Finance – Anti-Money Laundering Department
- Ministry of Economy, Labour and Entrepreneurship
- Ministry of the Sea, Tourism, Transport and Development
- Security and Intelligence Agency
- Military Security and Intelligence Agency
- National Protection and Rescue State Directorate
- State Attorney's Office
- State Office for Nuclear Safety
- Croatian National Bank.

The functions of the Counter Terrorism Working Group are: instigation and coordination of the implementation of the relevant counter-terrorism international documents, ensuring the coordination of inter-institutional cooperation with the UN Counter-terrorism Committee, international institutions and countries, informing the Government on the implementation of the obligations, creation of the national counter terrorism strategy etc.

c. The approach concerning risk

129. The Croatian authorities did not introduce a risk approach in the AML/CFT framework. Neither the AML Law nor other regulations provide for financial institutions measures based on the degree of risk attached to particular types of customer; business relationship; transaction and product. There are no regulations concerning high-risk customers, such as foreign correspondent banks and PEPs. It only seems that banks which are foreign owned have internal rules and procedures which address the issue of higher risk situations.

d. Progress since the last mutual evaluation

130. The Prevention of Money Laundering Act (NN 69/1997), which entered into force on 1 November 1997, has formed the basis for the development of an AML/CFT system in the Republic of Croatia. On 1 January 2004 the Act on Amendments to the Prevention of Money Laundering Act (NN 117/2003) entered into force for the purpose of harmonization of Croatian legislation related to the prevention of money laundering with European Union legislation. On the basis of these amendments new Procedures on Implementation of the Law on Prevention of Money Laundering (hereinafter: AML-Bylaw; NN 189/2003; Annex 2) were adopted and entered into force on 1 January 2004.

131. Amendments to identification and reporting obligations: before, the threshold was identical for customer identification and reporting of cash transactions (105 000 Kuna or approximately EUR 14 000). The new provision left the threshold for identification with 105 000 Kuna, but the threshold for cash reporting is now 200 000 Kuna or approx. EUR 27 000 - for life insurance business and for the transfers across the state border the threshold remains the same: 40 000 Kuna (approx. 5 500 EUR). The reason for this augmentation of the threshold was that before these amendments the FIU received a huge number of reports concerning irrelevant transactions which were very difficult to process. However, the FIU considers this only a provisional solution and wants to move in the future to a sole STR system.

132. The Act on Croatian Financial Services Supervisory Agency has been adopted. The new created Croatian Financial Services Supervisory Agency (HANFA) succeeded and merged on 1.1.2006 the Croatian Securities Commission, the Agency for the Supervision of Pension Funds and Pension Insurance and Directorate for the Supervision of Insurance Companies.

133. The new Civil Obligations Act, which entered into force on 1 January 2006, regulates the issuance of saving books. It prescribes that a saving book may only be registered in the name of a person. Thus, as from 1 January 2006, issuing a bearer saving book is not allowed in the Republic of Croatia.

134. The FIU created a new list of indicators (Annex 3), which should serve as a basis for reporting institutions to report suspicious transactions in accordance with subjective and objective criteria.

135. Criminal liability has been established for legal persons.

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

136. The criminal offence of money laundering was introduced into Croatian legislation in 1996 by an Amending Act (NN 28/1996) to the former "Basic Penal Code" of the Republic of Croatia (NN 31/1993) including this offence in Art. 151a under the name "Concealment of Unlawfully Acquired Money". In January 1998, the new Criminal Code of the Republic of Croatia (NN 110/1997; Annex 4) replaced the said Penal Code and covered money laundering, still under the same designation, in its Art. 279. This article has so far been amended twice: the Amending Act of December 2000 (NN 129/2000) broadened the scope of predicate offences and introduced an "all crimes approach" (before it was restricted to serious crimes). The second amendment (NN 111/2003) renamed the offence to the more adequate term "money laundering" in July 2003. Nevertheless, as this amending law was subsequently abrogated by a decision of the Constitutional Court, the designation of the offence has not changed.

137. Art. 279 CC reads now as follows:

Money laundering

(1) Whoever, in banking, financial or other economic operations, invests, takes over, exchanges or otherwise conceals the true source of money, objects or rights procured by money which he knows to be acquired by a criminal offence, shall be punished by imprisonment for six months to five years.

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever acquires, possesses or brings into circulation for himself or for another the money, objects or rights referred to in paragraph 1 of this Article, although at the moment of acquisition he knew the origin of such.

(3) Whoever commits the criminal offence referred to in paragraphs 1 and 2 of this Article as a member of a group or a criminal organization, shall be punished by imprisonment for one to ten years.

(4) Whoever, committing the criminal offence referred to in paragraphs 1 and 2 of this Article, acts negligently regarding the fact that the money, objects or rights are acquired by the criminal offence referred to in paragraph 1 of this Article, shall be punished by imprisonment for three months to three years.

(5) If the money, objects or rights referred to in paragraphs 1, 2 and 4 of this Article are acquired by a criminal offence committed in a foreign state, such an offence shall be evaluated pursuant to the provisions of the Croatian criminal legislation taking into consideration the provisions of Article 16, paragraphs 2 and 3 of this Code.

(6) The money and objects referred to in paragraphs 1, 2 and 4 of this Article shall be forfeited while the rights referred to in paragraphs 1, 2 and 4 shall be pronounced void.

(7) The court may remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1, 2, 3 and 4 of this Article who voluntarily contributes to the discovery of such a criminal offence.[12]

138. The physical (material) elements of the offence, except for the range of predicate offences, have not changed since the Criminal Code came into force in 1998. As a consequence, most of the deficiencies as described in previous MONEYVAL (PC-R-EV) evaluations remain.

139. Comparing Art. 279 with the requirements of Art. 3 of the Vienna Convention and Art. 6 of the Palermo Convention, it has to be noted that the *actus reus* of Art. 279(1) is limited to acts that occur *"in banking, financial or other economic operations"*. Even if the evaluators have no grounds to doubt that the term "*other economic operations*" would be, as already noted in the 1st Round Report, widely interpreted, the scope of this provision does not cover all the physical (material) elements as required in the said treaties. The money laundering offence addresses in its Paragraph 1 expressly conversion (using the term "exchange") and concealment of property; acquisition and possession of property is expressly provided for in Paragraph 2 of Article 279. But it is doubtful whether the transfer, concealment and use of property are (fully) covered as well: the transfer of property is neither covered by the terms "conversion", "exchange" and also not by the other conducts provided by Art. 279 (1) like "investing" and "taking over". Concealment is only covered in respect of the "true source" of property; thus it is questionable if concealing of other characteristics of its origin, such as true location, disposition, ownership etc. would be qualified as money laundering. The evaluators also doubt that the use of property is sufficiently covered because the scope of the term "*brings into circulation*" seems too limited. One could argue that the use of property could be covered in some respects by "possession", but there remain situations where this might be not the case.

140. No particular purpose or motive is defined as a prerequisite element of the offence. As a result, the notion of conversion (or transfer) and concealment (or disguise) of property appears to cover laundering activities committed for the purpose of either concealing or disguising the illicit origin of the proceeds, or assisting any person who is involved in the commission of the predicate offence to evade the legal consequences of his action.

141. The offence extends to "money", "objects" and "rights". The Croatian authorities indicated that "property" is to be understood as "property rights". It appears that these terms are flexible enough to encompass an adequately wide range of proceeds, presumably including immovable property as well.

142. The object of the offence is "money, objects or rights procured by money…" [known to be acquired by a criminal act, etc.] in the recent English version. This translation is slightly misleading because a thorough examination of the Croatian original[13] shows that the proper translation should read as follows: "*money and, respectively, objects or rights procured by money*..."[14] which means that the notion of launderable property comprises, on the one hand, money derived (either directly or indirectly) from criminal offence and, on the other, objects or (property) rights procured by such money. Thus, it is arguable that the money laundering offence is actually extended both to direct and indirect proceeds of crime if the property derived from money [known to be acquired by a criminal act, etc.] even though the Art. 279 offence does not

[12] Since the 2nd Round Evaluation, Art. 279 of the Criminal Code has - except for its title - not been changed. Nevertheless, one can find significant differences between the text of that article as quoted in the 2nd Round Report and the English translation with which the 3rd Round evaluators were provided. Thorough examination of the variants, as well as of the Croatian original, shows that discrepancy was merely caused by mistranslation (and also proves the accuracy of the recent English version).

[13] "novca odnosno predmeta ili prava priskrbljena novcem…"

[14] Emphasis added.

contain any clear statement in this respect. However, it was unclear if indirect proceeds which derived from other sources than money (e.g. in a money laundering scheme "money – other goods – money") were also covered.

143. The evaluators of the second round found it likely that a conviction for the predicate offence was necessary prior to a conviction for money laundering because at that time only one conviction had been achieved which was linked with a conviction for the predicate offence. The third round evaluation team was informed during the on-site visit that there is no need for a conviction for the predicate offence to successfully prosecute money laundering – it was said to be sufficient that the underlying criminal act was actually committed. Both the prosecutors and judges the team met shared this opinion which, in addition, had already been tested by the court. The evaluators' attention was drawn to a 2003 conviction (the second money laundering conviction ever) achieved in a case in which defendants had been prosecuted for third party money laundering (i.e. laundering on behalf of others) where the proceeds had been derived from a drug trafficking offence committed in Germany but no conviction for that underlying drug crime had been available to the Croatian court. Nevertheless, the court accepted documentary evidence, received from German authorities, that the respective drug crime had actually taken place and did not feel it necessary to further prove this fact by requiring a conviction for the predicate crime.

144. As from December 2000, the criminalisation of money laundering has been based on an "all crimes approach". All the designated categories of offences under the Glossary to the FATF Recommendations are covered (Annex II).

145. The laundering of foreign proceeds is addressed by Art. 279(5) which states that if the assets *"are acquired by a criminal offence committed in a foreign state, such an offence shall be evaluated pursuant to the provisions of the Croatian criminal legislation taking into consideration the provisions of Article 16, paragraphs 2 and 3 of this Code"*. However, the evaluators were not absolutely clear about the goal of this provision due to its ambiguous wording: Somehow this provision seems to deal also with dual criminality but in such a context, a dual criminality rule would normally define the conditions under which the laundering of proceeds, derived from an extraterritorial predicate offence, can be prosecuted and it would most typically require that such a conduct not only constitutes an offence in the country of perpetration but also would have constituted a predicate offence had it occurred domestically. It seems more likely that this paragraph refers to conditions under which extraterritorial predicate offences themselves can be prosecuted in Croatia, as Art. 16 Paragraphs 2 and 3 to which a reference is made in Art. 279(5) deal with particularities regarding the institution of criminal proceedings for criminal offences committed abroad, as far as the conduct in question is not a criminal offence in the country of perpetration:

> *"(2) If, in the cases specified in Article 14, paragraphs 2, 3 and 4 of this Code, such an act does not constitute a criminal offence under the law in force in the country of the perpetration, criminal proceedings may be constituted only upon the approval of the State Attorney of the Republic of Croatia.*
> *(3) In the case referred to in Article 14, paragraph 4 of this Code, when the committed act is not punishable under the law in force in the country in which it was committed but is deemed to be a criminal offence according to the general principles of law of the international community, the State Attorney of the Republic of Croatia may authorize the institution of criminal proceedings in the Republic of Croatia and the application of the criminal legislation of the Republic of Croatia."*

146. Consequently, Art. 279(5) can be interpreted that the money laundering offence covers extraterritorial predicate offences under the condition of dual criminality. The predicate act shall be "evaluated" according to the Croatian criminal substantive law – that is, they appear to be admissible as "predicate offences" as long as they could also be covered by Croatian criminal legislation had they been committed in Croatia. In the context of this interpretation, it is quite

likely that Art. 16 (2)-(3) are referred to just for the sake of completeness, as they might be applicable in case the conduct that occurred in another country, and from which the proceeds were derived, is not an offence in the country of perpetration but it would have constituted a predicate offence had it been committed domestically. If this reasoning proved to be correct then Art. 279(5) would allow a conviction for money laundering if the predicate offence occurred in a foreign country regardless whether the foreign predicate offence would be considered under the foreign legislation as a crime or not (only subject to the discretionary power of the State Attorney of the Republic of Croatia; Art. 16 (2)-(3) CC). Consequently not only criterion 1.5 but also additional criterion 1.8 would be met by Croatian law. Though the language of this article is quite ambiguous (e.g. on the notion of "evaluation") and that there seems to be some confusion about the provisions referred to in Art. 279 para 5 (Art. 16 Paragraphs 2 and 3 are in explicit contradiction with Art. 14 Paragraph 4 in terms whether the extraterritorial conduct is a criminal offence in the country of perpetration or not), it seems that this provision works in practice considering the money laundering conviction mentioned above.

147. It is not explicitly covered in Croatian criminal legislation whether the offence of money laundering applies to persons who commit the predicate offence. The previous MONEYVAL evaluation team noticed that this apparent uncertainty had lead in a concrete case to a dilemma among the repressive and judicial authorities on whether the authors of the predicate offence could also be convicted for the money laundering offence. This dilemma was solved by a cumulation of both offences, leading to the first money laundering conviction in Croatia. It has since been a common ground of interpretation for cases involving laundering of own proceeds. This is obviously also the opinion of the Croatian Ministry of Justice which advised the evaluation team in a written statement that "*a predicate criminal offence can, but does not necessarily, consume the subsequent criminal offence. Whilst, for instance, the criminal offence of theft (as a predicate offence) consumes the criminal offence of concealing (the perpetrator of a theft shall not be responsible for the criminal offence of concealing) it is not the case with the criminal offence of drug abuse (as a predicate offence) or the criminal offence of concealing of illicitly acquired money (the perpetrator shall be held responsible for both related criminal offences)*".

148. Criterion 1.7 requires that there should be appropriate ancillary offences, unless this is not permitted by fundamental principles of domestic law. In Croatian criminal law, most ancillary offences are provided by the general part of the Criminal Code with a potential applicability to any criminal offence defined in the Special Part, including money laundering.

149. According to Art. 33(1) of the Criminal Code, the attempt is punishable only for criminal offences *"for which a punishment of five years of imprisonment or a more serious penalty is prescribed by law"*; the attempt of a less serious offence is not punishable unless it is expressly provided by law. Money laundering is, as quoted above, threatened with imprisonment of six months to five years therefore the attempt of this offence is evidently subject to criminal liability. Pursuant to Art. 33(2) the attempt shall be punished as if the offence had been completed. An "attempt" as defined by Art. 33(1) is necessarily a deliberate act *("whoever intentionally commences to execute a criminal offence…")* so it is not applicable to the negligent form of money laundering in Paragraph 4 of Art. 279 (which is not mandatory under the Methodology).

150. Further ancillary offences are similarly sanctioned on the base of intention, as it is defined in Art. 36(1) of the Criminal Code: *"the instigator and the aider and abettor shall be liable in accordance with their intent"*. Art. 37(1) provides that *"whoever intentionally instigates another to commit a criminal offence shall be punished as if he himself committed it"* and the same sanction applies, according to Art. 38(1), for anybody who *"intentionally aids and abets another in the perpetration of a criminal offence"*. At this point, Art. 38(2) provides a list of conducts that are particularly to be deemed acts of aiding and abetting:

(2) The following shall in particular be deemed acts of aiding and abetting: giving advice or instructions on how to commit a criminal offence, providing the perpetrator with the means for the perpetration of a criminal offence, removing obstacles for the perpetration of a criminal offence, giving an advance promise to conceal the criminal offence, the perpetrator, or the means by which the criminal offence was committed, as well as concealing the traces of a criminal offence or the objects procured by the criminal offence.

151. Thus it can be said that this language also covers "facilitating" and "counselling the commission". The wording *"concealing the traces of a criminal offence or the objects procured by the criminal offence"* appears to be in some overlap with the money laundering offence itself as defined in Art. 279(1) for as much as the notion of money laundering includes, in fact, concealing the traces of the predicate offence. It is most likely, however, that these provisions would not actually collide as the application of Art. 279(1) as a *sui generis* criminal offence would prevail.

152. Conspiracy to commit a serious criminal offence constitutes a separate offence in Croatian criminal law according to Art. 332 of the Criminal Code:

Conspiracy to Commit a Criminal Offence
Article 332

Whoever agrees with another to commit a serious criminal offence for which imprisonment for three years or a more severe penalty may be imposed, shall be punished by a fine or by imprisonment not exceeding three years.

153. As money laundering is threatened with imprisonment of six months to five years, it falls within the scope of the above provision. Though the FATF Recommendations do not provide a definition for "conspiracy", this term is commonly understood as an agreement between two or more natural persons to break the law at some time in the future. It can be concluded that Art. 332 goes beyond the other ancillary offences like attempt, aiding and abetting as there are separate provisions for these acts (see above). Thus, Article 332 covers a stage of crime which is in advance of the other ancillary offences provided by the general part of the Croatian Criminal Code. Consequently it can be said, that conspiracy to commit money laundering is punishable under Croatian law.

154. It is worth mentioning that Croatian Law even penalizes failure to report the preparation of a serious criminal offence: according to Art. 299, the latter "serious" refers to the same category as Art. 33(1) above ("five years of imprisonment or a more severe punishment is prescribed" etc.) which would therefore cover money laundering offence as well.

Recommendation 2

155. The *mens rea* as set out in Art. 279(1) and (2) is twofold: first of all, a money launderer must "know" that the objects of the offence are acquired by a criminal offence. Concerning the money laundering conducts itself (conversion, transfer, concealing, disguise, acquisition, possession or use), Art. 279 provides no specific level of *mens rea*. Thus, the general rule of Art. 39 Criminal Code applies (Art. 12 stipulates that the provisions of the general part shall apply to all criminal offences under the Criminal Code and any other statutes) which provides that a perpetrator is culpable, if he acts with intent. This is below the international standards which require only knowledge. On the other side, Croatian Law also provides negligent money laundering in Art. 279(4) of the Criminal Code which goes beyond the international standards. Thus, money laundering committed only with knowledge could probably be prosecuted under Art. 279 (4). However, the evaluators have no information whether this provision has ever been applied in practice.

156. The Croatian criminal legislation contains no explicit provision whether the intentional element of a criminal offence, including money laundering, may be inferred from objective factual circumstances. The examiners were nevertheless assured by the representatives of the judiciary that circumstantial evidence is admissible in this respect, that is, drawing inference from facts in order to prove *mens rea* standards might be "entirely sufficient" in criminal proceedings. The circumstantial evidence relied upon can include a combination of factors such as the means of the accused in relation to his or her lifestyle, the manner in which the property was disposed of, expert evidence of a financial nature concerning the accused's transaction activity, evidence of previous bad character, including the accused criminal record, etc.

157. It was noted with approval that corporate criminal liability had been introduced in Croatian law since the last evaluation. The Act on Responsibility of Legal Persons for Criminal Offences (NN 151/2003; Annex 7) came into force on 24th March 2004. According to its Art. 3(1), a legal entity shall be punished for any criminal offence committed by a responsible person "if such offence violates any of the duties of the legal person or if the legal person has derived or should have derived illegal gain for itself or for third person". Responsibility of the legal entity is based on the guilt of the responsible person (Art. 5). Art. 4 defines a „responsible person" as a natural person in charge of the operations of the legal person or entrusted with the tasks from the scope of operation of the legal person. A legal person shall be punished for the criminal offence of the responsible person also in cases when the existence of legal or actual obstacles for establishing of responsibility of responsible person is determined (Art. 5 para 2), which means that no prior conviction of a natural person is necessary to establish corporate criminal liability.

158. Legal entities may be punished with fines or termination of the legal person (Art. 8 para 2). In general, the fines shall not be less than 5 000 Kuna nor exceed 5 000 000 Kuna (Art. 9 of the Act on Responsibility of Legal Persons for Criminal Offences), which is approx. between 677 and 677 000 EUR. The exact amount needs to be determined in accordance with the range of punishment prescribed for the respective offence as regards natural persons (rates of conversion can be found in Art. 10). This means that the amount of fine that can be imposed on a legal person for money laundering is 10 000 to 3 000 000 Kuna (1 355 to 406 500 EUR) as regards the basic offence in Art. 279 para. 1 and 2 of the Criminal Code and between 15 000 and 4 000 000 Kuna (2 031 to 542 000 EUR) when committed as a member of a criminal group (Art. 279 para. 3 CC in conjunction with Art. 10 para. 3 of the Act on Responsibility of Legal Persons for Criminal Offences). According to Art. 279 para 4, the sanctions for legal entities for negligent money laundering range from 5 000 to 2 000 000 Kuna (677 to 270 000 EUR). The court may pronounce the termination of the legal person where it is proven that the legal person has been established for the purpose of committing criminal offences or it has used its activities primarily to commit criminal offences; parallel to the penalty of termination of the legal person the court may also impose a fine upon the legal person (Art. 12 of the Act on Responsibility of Legal Persons for Criminal Offences).

159. Apart from the penalties mentioned above, there are further measures that may equally be taken against legal entities. The court may apply one or more of the following "security measures": the ban on performance of certain activities or transactions (Art. 16), ban on obtaining of licenses, authorizations, concessions or subventions (Art. 17), ban on transaction with beneficiaries of the national or local budgets (Art. 18) and also confiscation ("confiscation of objects" Art. 19). "Security measures" are, as discussed more in details later, neither of an administrative character nor provisional measures but criminal sanctions pursuant to Art. 5 of the Criminal Code. The evaluators were not informed about any administrative or civil sanctions for legal persons.

160. Despite the sound legal basis available, no investigation has yet been initiated against legal persons in money laundering cases, let alone prosecutions or convictions. In this respect, the replies that Croatia gave to the Questionnaire also indicated that in the past few years, the State

Attorney's Office had received from the Office for Prevention of Money Laundering "*several notifications of suspicious transactions regarding legal entities (...) and pre-investigatory proceedings have been conducted to establish the existence of the criminal offence of money laundering and the predicate criminal offence, but up until now no criminal proceedings were instituted against a legal entity for perpetration of such criminal offences*". The examiners found all this somewhat inexplicable, taking into account that conducting criminal proceedings against a legal person is otherwise a common and successful practice in Croatian jurisdiction. During the on-site visit, the evaluators were informed of 11 convictions already brought against legal persons with 80 more cases still pending before the court, not to mention the hundreds of proceedings in the phase of investigation (there were as many as 305 of them only in 2005, bringing criminal charges of offences against safety of domestic payment system and business operation in most cases).

161. The sanctions applicable for natural and legal persons as described above are effective, proportionate and dissuasive in relation to the Croatian system (compared with the sanctions for other crimes and according to the economical situation). As for criminal sanctions against natural persons, any form of money laundering is threatened with imprisonment as principal punishment, without alternative: the range of punishment is 6 months to 5 years of imprisonment in respect of the unaggravated form of the offence (Art. 279[1]-[2]) while it is 1 to 10 years in respect of the aggravated offence (Art. 279[3]). Moreover, even the negligent form of money laundering (Art. 279[4]) is subject to serious terms of imprisonment (3 months to 3 years). On the other side, a money laundering crime which was committed knowingly (not intentionally) can only be prosecuted under the negligent form of money laundering which means that it can only be sanctioned up to 3 years, which is on the low end of the international standards. The Croatian legal system provides no possibility to change imprisonment into a fine.

162. Imprisonment is thus the sole form of principal punishment that is applicable in respect of money laundering. However the court has the right to impose also a fine in money laundering cases as a supplementary punishment to the imprisonment. Article 49(4) of the Criminal Code provides that "for criminal offences committed for personal gain, a fine may be imposed as a supplementary punishment, even when it is not prescribed by law" which may obviously increase the effectiveness of the sanction. When deciding on the amount of the fine, the court first takes into account the daily income of the person against whom the fine is going to be imposed, then determines how many multiples of that are proportionate to the gravity of the offence within the range of 10 to 300 daily incomes, while up to 500 daily incomes for offences committed for personal gain (Art. 51). The fine cannot be collected by force, so in case of non-payment it would be substituted by imprisonment.

163. Attention should also be drawn to Art. 279 para 7 CC which gives the court the discretionary power to remit the punishment of the perpetrator in case he voluntarily contributes to the discovery of a money laundering offence. On one side, this provision is welcomed because it helps to investigate complex money laundering cases with the knowledge of insiders. On the other side this provision only allows to remit the punishment as a whole which might reach too far if the person was himself heavily involved in the money laundering scheme. For these situations a broader range of possibilities (e.g. reducing the punishment) would be desirable.

164. So far, five persons were convicted for money laundering and all of them were sentenced to imprisonment (either enforceable or suspended; for details see below under "statistics").

Statistics

165. Criterion 32.2 (b)(i) requires that competent authorities maintain comprehensive statistics, among others, on money laundering investigations, prosecutions and convictions. The Croatian

authorities actually provided certain statistical information on these issues. Nevertheless, the evaluators are not convinced whether and to what extent such statistics are maintained on a regular base.

166. The AMLD (the FIU) considers that the maintenance of these statistics belongs primarily to its responsibilities as Art. 13 of the Law on Prevention of Money Laundering requires the courts „to send to the AMLD all information about the opening of an investigation, the indictment and the legally binding sentence for the criminal offence of concealing of illegally acquired proceeds, as well as on other criminal activities connected with money laundering." On the base of such data, comprehensive statistics should be kept on an annual base. In the replies to the MEQ, however, the Croatian authorities acknowledged that these statistics were actually "inadequate" and not in accordance with the above-mentioned Art. 13. Furthermore, the evaluators learnt that the Police also keep certain statistics relevant in this aspect.

167. The evaluators were given two sorts of statistics, one of which was provided by the Police and the other was the one maintained by the AMLD as mentioned above. The Police case statistics looks as follows:

YEAR	ML OFFENCES	Perpetrators	PREDICATE OFFENCES	CRIMINAL DAMAGE per year
2002	1	6	Fraud	
2002	1	1	Abuse of Authority in Economic Business Operations	
2002	1	1	Abuse of Narcotic Drugs	
2002	1	1	Abuse of Narcotic Drugs	
total	**4**	**9**		**ca 2,7 m €**
2003	1	1	*Embezzlement*	
2003	1	1	Abuse of Narcotic Drugs	
2003	1	2	Pandering	
2003	1	1	Abuse of Authority in Economic Business Operations	
total	**4**	**5**		**ca 380 000 €**
2004	1	1	Abuse of Authority in Economic Business Operations	
2004	1	1	Fraud Extortion Usurious Contract	
2004	1	2	Abuse of Narcotic Drugs	
2004	1		Abuse of Narcotic Drugs	
2004	1	2	Accepting a Bribe	
total	**5**	**6**		**ca 1,5 m €**
2005	1	1	Abuse of Authority in Economic Business Operations Abuse of Office and Official Authority Evasion of Tax and Other Levies Fraud in Economic Operations Misuse of Bankruptcy	
2005	1	2	Abuse of Authority in Economic Business Operations Abuse of Office and Official Authority Misuse of Bankruptcy	
2005	1	1	Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1	2	Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1	1	Abuse of Narcotic Drugs	
2005	1		Abuse of Narcotic Drugs	
2005	1	1	Robbery	
2005	1		Robbery	
2005	1	2	Concluding a Prejudicial Contract Abuse of Authority in Economic Business Operations Abuse of Office and Official Authority	
total	**15**	**10**		**ca 1,5 m €**

168. The Police statistics contain data on the number of money laundering offences detected every year indicating, on a case-by-case basis, the number of persons involved in each offence as well as the respective predicate crimes. In these statistics, however, there is no further information on the outcome of the cases (e.g. whether there has been a formal investigation initiated or an indictment issued against anyone.).

169. The AMLD provided the following statistics:

Basic criminal act Art. 279 CC (151a CC RC)		1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	total
From previous years												
Reported in the period		2	4	9	4	10	14	9	14	8	1	**75**
Decision on the occasion of filing	Rejected		2	6	2	3			1	3		**17**
	Of which (r.3) Article 28 CC											
	Of which (r.3) Article 175. PPA											
	Indictment				1			2	5	1		**9**
	Request for investigation	2	2	3		7	8	5	3	4	1	**35**
	Overall	2	4	9	3	10	8	7	9	6		**58**
Decision after invest. is completed	Discontinue criminal proceedings	1					5	2				**8**
	Indictment	1	2	1	1	2	3	1		2		**13**
	Total											
Discontinue criminal proceedings, reject, after submitting ind.												
Type of sentence	Conviction		2				3					**5**
	Acquittal					2						**2**
	Dismissal of claim											
	Total		2			2	3					**7**
Sanctions and measures	Imprisonment		2									**2**
	Fine						3					**3**
	Suspended sentence											
	Judicial warning											
	Measures (art. 446. PPA)											
	Total		2				3					**5**
Appeal of SAO	Due to punishment											
	For other reasons											
	Due to punishment and other reasons											
	Total											
Security measure	Ban on the performance of activities or duties art.77.Criminal Code											
	Seizure of objects (Art. 80. CC)		2				3					**5**
Confiscation (Art 82 CC)			2									**2**

170. The statistics provided by the AMLD, on the other hand, contain precise data on the number of money laundering investigations, prosecutions (indictments) and court decisions, broken down on a yearly basis. The latter one is, however, not helpful in terms of the number of money laundering cases (or offences) as these statistics are exclusively focused on the number of perpetrators, that is, they merely provide data on how many persons were indicted or convicted every year but nothing about how many cases they had actually been involved in. Such an approach may be misleading, considering that a significant number of perpetrators can be involved only in one or a few separate cases (offences). Due to the different approaches these two statistics are not compatible.

171. No statistical information was available as regards how many, if any, of the ongoing investigations or prosecutions were related to autonomous money laundering, that is, where the laundering offence was prosecuted separately from the predicate offence. Considering, however, that the second money laundering conviction was said to be achieved as result of an autonomous money laundering prosecution, the evaluators have no particular concerns in this respect. Neither

was there any statistical data provided in relation to investigations or prosecutions involving negligent money laundering.

172. In any case, the figures in the AMLD statistics are quite balanced as far as the numbers of investigations (i.e. persons under investigation) and indictments are concerned. In the period of 2002-2006 (up to the time of the on-site visit) the State Attorney's Office issued indictments against 14 persons, which means there were 3 to 5 persons indicted each year (except 2006) and the number of persons under investigation was equally balanced (3-8 each year and 1 in 2006).

173. In this context, the examiners were concerned that there have only been 2 cases that ended with a conviction (which means 5 convictions of persons in 2 cases) for money laundering in all since it was separately criminalised in 1996. Furthermore, at the time of the on-site visit, there had been no convictions or final decisions in any money laundering case since 2003, in spite of the numerous indictments brought in by the State Attorney's Office. At that time, there were 15 such indictments[15] pending before the court (covering laundering on behalf of others, as well as "own proceeds" laundering) and one of these cases dated back 8 years.

174. In any case, the lack of convictions is somewhat hard to explain bearing in mind that the separate money laundering offence has not changed for a long time and there appears, at least from the angle of Croatian authorities, no significant problem as to its interpretation. At least, there have in fact been some convictions achieved on the base of Art. 279 which proved to be applicable, as practice shows, even in case of an autonomous money laundering offence with the predicate crime committed abroad. As a consequence, the evaluators are inclined to accept the view of the Croatian authorities according to which the explanation lies in the overloading of courts and lack of expertise. As it was set out in the replies to the Questionnaire: the most important problems were the *"long-lasting court investigations, partially caused because of lack of experience and lack of specific education, particularly in economic crime offences as predicate offences for money laundering offence"* and the lack of competent forensic financial experts.

175. The examiners were seriously concerned that backlogs generally in criminal cases impact on the current effectiveness of money laundering criminalisation, particularly as such delays in achieving final results in cases also reduce the potential for making confiscation orders. The evaluators were advised that a general Action Plan for the Judicial Reform had been prepared and adopted by the government of the Republic of Croatia. One of the principal aims of this plan is to increase the efficiency of the judicial system as a whole (which also implies the reduction of court backlogs). The Plan has been revised by precisely specifying the subjects responsible for certain activities and the time limits for the fulfilment of tasks.

2.1.2 Recommendations and comments

176. Even though most of the essential criteria in Recommendations 1 and 2 appear to be met, the legal provisions in Art. 279 of the Criminal Code have some inconsistencies with the international instruments and raise some uncertainties which may impede the practical implementation of the provisions.

177. The Croatian authorities should satisfy themselves that all the language of Art. 6(1) (a) and (b) of the Palermo Convention and Art. 3(1) (b) and (c) of the Vienna Convention on the physical aspects of the money laundering offence are properly reflected in Art. 279 of the Criminal Code (particularly transfer, concealment and use of property). Consideration should also be given to

[15] There have been altogether 22 persons indicted since money laundering was criminalized, out of which 5 have already been convicted and 2 acquitted.

broadening the scope of Art. 279 by removing the clause that restricts its applicability to "banking, financial or other economic operations".

178. It is unclear if indirect proceeds deriving from property other than money is covered. The text of Paragraph 1 of Article 279 ("*...procured by money which he knows to be acquired by a criminal offence....*"[16]) should be reconsidered and be brought into line with the language of the Palermo and Vienna Convention.

179. The evaluators appreciate that the anti-money laundering criminalization, while providing for negligent money laundering, actually exceeds the international standards (though money laundering committed only knowingly needs to be treated under negligent money laundering). On the other hand, and as far as the evaluators are informed, this potential of the regime has not yet been made use of, as there have been no investigations or prosecutions involving negligent money laundering. Equally, the very impressive and otherwise widely applied rules on corporate criminal liability should have already led to money laundering cases against legal entities. The Croatian authorities should therefore consider whether the benefits of negligent money laundering in the statute are being maximised and also seek for possible obstacles that may hinder law enforcement and prosecutors in successfully investigating and prosecuting legal persons for money laundering activities.

180. There still needs to be some further clarification as to the precise requirements for extra-territorial offences in respect of dual criminality.

181. So far no investigations, prosecutions or convictions of legal entities for money laundering could be achieved. Considering that criminal proceedings against legal entities is otherwise a common and successful practice, the evaluators have concerns on effective implementation of corporate criminal liability.

182. As far as practical issues are concerned, the enormous backlog in money laundering cases pending at courts should be urgently addressed. Overloading of courts together with the lack of expertise, both issues referred to as possible reasons behind long delays in money laundering cases, appear to be remediable by appropriate training of the judiciary and prosecutors which had already been mentioned among priorities in previous rounds of MONEYVAL evaluations. In any case, Croatian authorities should urgently determine what obstacles in court proceedings may have led to this situation and take the necessary measures to overcome that.

183. Considering the advantages and the disadvantages of the different statistics kept by the Police and the AMLD, it is nevertheless advised that either of the authorities involved maintains *comprehensive* and more detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts (and whether confiscation has also been ordered) indicating not only the numbers of persons involved but also that of the cases/offences and, in addition, providing statistical information on the underlying predicate crimes and further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.).

2.1.3 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**Partially compliant**	• Some of the legislative provisions need further clarification, particularly: • Precise requirements for extra-territorial offences in respect of dual

[16] Emphasis added.

		criminality. • It is unclear if indirect proceeds deriving from property other than money is covered. • The scope of the money laundering offence is limited to "banking, financial or other economic operations". • Significant backlogs both in general terms and especially in money laundering cases are seriously threatening the effectiveness of the AML system. • There have been no convictions or final decisions in any money laundering case since 2003.
R.2	**Largely compliant**	• Significant backlogs both in general terms and especially in money laundering cases are seriously threatening the effectiveness of the AML system. • There have been no convictions or final decisions in any money laundering case since 2003. • No prosecutions or convictions of legal entities for money laundering which raises a concern on effective implementation of corporate criminal liability.

2.2 Criminalisation of terrorist financing

2.2.1 Description and analysis

184. Croatia ratified the International Convention for the Suppression of the Financing of Terrorism (hereafter "Terrorist Financing Convention") on 1st October 2003 and, as Croatian authorities subsequently confirmed, it has actually been binding on Croatia since 31 December 2003[17]. Indeed, this Convention was referred to in the replies to the Questionnaire as an international standard being actually implemented in Croatian legislation. Notwithstanding that, the financing of terrorism is not criminalised as a separate criminal offence either by the Criminal Code (Annex 4) or any other statute in Croatian law.

185. Croatian authorities pointed to numerous provisions to cover terrorist financing, but none of them appears to adequately correspond to the offence that is provided for in Art. 2 of the Terrorist Financing Convention (let alone the obligations of SR.II going beyond the Convention). Croatian criminal law is focused primarily on terrorist acts and similar offences, among which the most important are Art. 169 ("international terrorism") and Art. 141 of the Criminal Code ("anti-state terrorism", i.e. domestic terrorism). The core definition of these offences is as follows (bold letters indicate where it was modified as from October 2006 by the last Amending Act, NN 71/2006):

International Terrorism
Article 169

(1) Whoever aims to cause major fear among the population, to force foreign states or international organizations to do or not do something or suffer, or who aims to seriously jeopardize the fundamental constitutional, political or economic values of a foreign state or an international organization, who commits a criminal offence referred to in Articles 170 through 172, and Articles 179 and 181 of this Code[18], who causes an explosion or fire, or by a generally perilous act or means creates a dangerous situation for people or

[17] It is prescribed by the Convention itself (Art. 26) that it shall enter into force for a State-Party 30 days after the deposition of the ratification document which, in case of Croatia, took place on 1st December 2003.

[18] Art. 170 (Endangering the Safety of Internationally Protected Persons), Art. 171 (Taking of Hostages), Art. 172 (Misuse of Nuclear Materials), Art. 179 (Hijacking an Aircraft or a Ship), Art. 181 (Endangering the Safety of International Air Traffic and Maritime Navigation).

*property, who kidnaps a person or commits another violent act which can seriously harm a foreign state or an international organization, shall be punished by imprisonment for not less than **five** years […]*

Anti-State Terrorism
Article 141

*Whoever, with an aim to endanger the constitutional order or the security of the Republic of Croatia, causes an explosion, fire, or by a generally dangerous act or device imperils the lives of people or endangers property or kidnaps a person, or commits some other act of violence within the territory of the Republic of Croatia or against its citizens, thus causing a feeling of personal insecurity in citizens, shall be punished by imprisonment for not less than **five** years.*

186. The Croatian authorities asserted that these offences (as well as other ones which also contain elements of terrorism) combined with the generic provisions on complicity (instigation, aiding, abetting) and a number of further offences targeting certain accessory acts to the said offences would together provide for a full coverage of all relevant acts associated with terrorist financing. As for the latter, supplementary offences, reference was made to Art. 187 (Association for the Purpose of Committing Criminal Offences against the Values Protected by International Law), Art. 187a (Planning Criminal Offences against Values Protected by International Law), Art. 187b (Subsequent Assistance to the Perpetrator of a Criminal Offence against Values Protected by International Law), Art. 152 (Association for the Purpose of Committing Criminal Offences against the Republic of Croatia), Art. 153 (Preparation of Criminal Offences against the Republic of Croatia) and Art. 154 (Assistance to the Perpetrator Following the Perpetration of Criminal Offences against the Republic of Croatia) of the Criminal Code. Art. 187, 187a and 187b were said to be related to international terrorism, while Art. 152, 153 and 154 were referred to in respect of "domestic" terrorism.

187. SR.II requires the criminalising of the financing of terrorism, terrorist acts and terrorist organisations as well as that such offences be money laundering predicate offences. The Methodology notes that financing of terrorism should extend to any person who wilfully provides or collects funds by any means, directly or indirectly with the unlawful intention that they should be used in or in the knowledge that they are to be used, in full or in part (i) to carry out a terrorist act/s (ii) by a terrorist organization or (iii) by an individual terrorist. On the other hand, the footnote to the Methodology and the FATF Interpretative Note to SR.II (para 2d) makes it clear that criminalisation of financing of terrorism solely on the basis of aiding and abetting, attempt or conspiracy does not comply with SR.II.

188. There is not only no autonomous offence of financing of terrorism in Croatian legislation, but neither has the applicability of the presumed legal framework, consisting of the provisions so referred to by Croatian authorities, ever been tested before the court (no criminal proceedings, indictments or convictions). In fact, there have not been even investigations initiated against anyone in relation to any offence said to cover terrorist financing. As a result, there is no case-law or practice on the exact scope of the current provisions. Examination of the legal base, though, shows that Croatian criminal legislation falls short of the requirements set in Special Recommendation II.

189. First, it needs to be clarified, which provisions can be taken into account at all. As said before, the majority of the *sui generis* accessory offences related to terrorist activities do not have much relevance in this respect, as the organization of a terrorist group (cf. Art. 187 or 152 CC) as well as the subsequent assistance provided to the perpetrator of a terrorist act (cf. Art. 187b or 154 CC) are far from the notion of terrorist financing. The legal base being available to counter the financing of terrorism would therefore consist of Art. 187a and 153 CC together with their respective principal offences (primarily those in Art. 169 and 141 CC) as well as the generic rules

on aiding and abetting in Art. 38 (which, to a certain extent, overlap with Art. 187a and 153). Thus it is necessary to have a deeper analysis of Art. 187a and 153 CC:

Planning Criminal Offences against Values Protected by International Law
Article 187a

(1) Whoever removes obstacles, makes a plan or arrangements with others or undertakes any other action to create the conditions for the direct perpetration of criminal offences referred to in Articles 156 through 160, Articles 169 through 172, ***Article 174 paragraphs 3 and 4***[19] *and Articles 179 and 181 of this Code, shall be punished by imprisonment for one to five years.*

(2) The same punishment as referred to in paragraph 1 of this Article shall be inflicted on whoever procures or collects financial means, being aware that they shall be used in total or partially for the perpetration of the criminal offences referred to in the para 1 of this Article.

Preparation of Criminal Offences against the Republic of Croatia
Article 153

Whoever procures or ensures the operation of the means, removes obstacles, makes a plan or conspires with others or undertakes other actions that create conditions for the direct perpetration of the criminal offences referred to in Article 135, paragraphs 1 and 2, Articles 137 to 139, Articles 141 to 143, Articles 147 and 150 of this Code, shall be punished by imprisonment for one to five years.

190. It is apparent that Art. 187a (1) and Art. 153 CC cover practically the same scope of conducts; the main difference lies in whether or not the related principal offences have an international character. The coverage of these provisions extends to what is normally considered as aiding and abetting before the fact. However, this cannot be interpreted to cover all relevant acts embraced by the concept of financing of terrorism (as required by the Interpretative Note to SR.II).

191. From the aspect of terrorist financing, special attention has to be paid to the "procurement or collection of financial means" as it is criminalized in Art. 187a(2). Considering that this article was drafted and adopted after the ratification of the Terrorist Financing Convention[20] it was obviously intended to transpose the requirements of this Convention in the national legislation. However, this transposition appears to be incomplete as an adequately identical provision related to domestic terrorist offences is lacking: Art. 153 covers only the "procurement or ensuring the operation of the means". It is obvious from Art. 187a(2) that "procurement of means" does not comprise "collection" as they are referred to there as two separate sorts of activities. As for "procurement of means" it is equally covered by both provisions. "Collection of means" which is unquestionably one of the core activities in the field of terrorist financing is, however, criminalized only in international relation considering that "ensuring the operation of means" that is, the other conduct criminalized by Art. 153 is even further from the notion of "collection". This argumentation may lead to the conclusion that as far as the collection of (financial) means is concerned, criminalization of terrorist financing activities appears to be carried out to different extents in domestic and international relations. If so, it would be contrary to Criterion II.3 that requires terrorist financing offences be applicable regardless of whether the person alleged to have committed that offence is in the same country or a different country from the one in which the terrorist act(s) occurred or will occur. Although the examiners do not believe that such a differentiation has been intended by Croatian legislators, it nevertheless appears to be existent and also likely to cause problems in interpretation, should the law be applied in a concrete case. Even if an interpretative solution could be found for this discrepancy, the said provisions would still be unable to respond to most activities the Terrorist Financing Convention qualified as "financing of terrorism".

[19] Bold letters indicate where it was modified as from October 2006 by the last Amending Act, NN 71/2006.

[20] It was inserted into the Criminal Code in 2004 (cf. amending act in NN 105/2004).

192. Both Art. 187a(2) and Art. 153 appear to be aimed to cover the provision or collection of funds with the intention that they should be used in full or in part to carry out a terrorist act, as referred to in Criterion II.1a(i). Coverage nevertheless seems to be achieved only in relation to international terrorism, where Art. 187a(2) explicitly covers procurement or collection of financial means, "being aware that they shall be used in total or partially for the perpetration" of the respective criminal offences. In relation to domestic terrorism, however, procurement or ensuring "the operation of the means" is punished by Art. 153 only in so far as it is committed "for the direct perpetration" of the respective principal offences. This restrictive clause makes it quite difficult to interpret Art. 153 as wide enough to fully cover the said Criterion. It is also contrary to the requirement in Criterion II.1c(ii), according to which terrorist financing offences should not require that the funds be linked to a specific terrorist act(s).

193. Examiners could not find any specific provision in the Criminal Code, by which Criteria II.1a(ii) and (iii) that require criminalization of the provision or collection of funds with the unlawful intention that they should be used in full or in part, for any purpose, by a terrorist organisation or an individual terrorist, would have been clearly covered. It appears that situations where there are no links to a particular terrorist act cannot be subsumed under Art. 187a(2) and even less under Art. 153. It is also questionable and, in lack of jurisprudence, it cannot yet be decided, if these provisions would apply irrespective of whether the funds were actually used to carry out or attempt a terrorist act, as it is required by Criterion II.1c(i).

194. In the absence of jurisprudence, it is also unclear whether, to the limited extent that they may meet some aspects of SR.II, the Art. 187a(2) and Art. 153 offences would cover the full definition of "funds" according to Criterion II.1b.

195. As there is no autonomous terrorist financing offence, the evaluators have concerns that the aiding and abetting approach could cover attempt and the other ancillary offences as requested by criteria II.1 (d) and (e).

196. As the money laundering offence follows an all crimes approach, the relevant paragraphs intended to address terrorist financing (as far as they go) are predicate offences for money laundering (criterion II.2).

197. The Croatian criminal legislation contains no explicit provision whether the intentional element of a criminal offence, including terrorist financing, may be inferred from objective factual circumstances. The examiners were nevertheless assured by the representatives of the judiciary that circumstantial evidence is admissible in this respect, that is, drawing inference from facts in order to prove *mens rea* standards might be "entirely sufficient" in criminal proceedings.

198. The analysis in respect to corporate criminal liability given under Section 2.1 applies also for terrorist financing respectively.

2.2.2 Recommendations and comments

199. The evaluators are positive that the ratification of the International Convention for the Suppression of the Financing of Terrorism should already have led to more concrete legislative results in Croatian criminal law than what has actually taken place. Practically, the proper implementation of the Convention has not yet been achieved so it must be a matter of urgency for Croatian authorities.

200. Croatian criminal legislation focuses primarily at terrorist acts and related offences while those offences which, in the opinion of the Croatian authorities, are supposed to cover all terrorist financing activities, appear to be insufficient for this purpose.

201. In the Criminal Code, different approaches are followed depending on whether a terrorist act or a related offence is associated with ”domestic” or ”international” terrorism, which results in overall discrepancy in the system. That is, “terrorist financing” in the sense of the Convention appears to be punishable only if related to terrorist acts of an international character while other forms of financing are apparently not covered. Financing of domestic terrorism is, however, provided on a more restricted basis with a typical aiding-and-abetting approach.

202. The first step should obviously be the criminalisation of financing of terrorism as an autonomous, independent offence, which explicitly addresses all the essential criteria in SR.II and the requirements of the Interpretative Note to SR.II., covering all forms of terrorist acts provided for in the Convention, and all forms of financing of terrorist organisations, and financing of individual terrorists. In this context, the evaluators deem it a priority that the present distinction between „domestic” and „international” terrorism be removed in favour of a single approach.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating

SR.II	**PC**	• Financing of terrorism is only to a very limited extent provided for as an autonomous offence.
		• The present incrimination of terrorist financing appears not wide enough to clearly sanction
		  • the provision or collection of funds for a terrorist organization for any purpose, including legitimate activities;
		  • the collection or provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist for any purpose (as above) and
		  • - as far as domestic terrorism is concerned - the collection of funds with the intention or in the knowledge that they should be used in full or in part to carry out terrorist acts as referred to in Art. 2(a) and (b) of the Terrorist Financing Convention, irrespective of whether or not the funds are actually used to (attempt to) carry out a terrorist act.

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

2.3.1 Description and analysis

203. The confiscation and provisional measures regime being in force and effect at the time of the third on-site visit was largely the same as in the last two rounds of evaluation. However, the third round evaluation came to some different conclusions which is mainly caused by the fact that some inaccuracies in translation could be detected which had mislead the previous evaluation teams.

204. The Croatian confiscation regime is twofold in respect of money laundering cases. The substantive law contains on one hand general provisions (Art. 80, 82 CC) and on the other hand there is also a specific provision for the money laundering offence (Art. 279 [6] CC) which complements the generic provisions.

General confiscation provisions

205. Turning to the general provisions, it is at first necessary to solve the translation complications: In every English version of the Criminal Code (Annex 4) the examiners of all the three rounds of evaluation had ever been provided by the Croatian authorities, the measure in Art. 80 CC was always translated as "forfeiture" of instrumentalities while the one in Art. 82 CC as "confiscation" of proceeds of crime. Searching for the reason of this distinction, previous evaluation teams came to the conclusion that Art. 80 CC must be some kind of provisional measure. The latter opinion was reinforced by the fact that Art. 80 CC, in contrast to Art. 82 CC, is qualified as a "security measure" in the Criminal Code, which category would rather imply a temporary measure than a definite one. As a consequence, the provision in Art. 80 CC was referred to in both the first and the second round reports as the "provisional seizure of instrumentalities" while, on the other hand, there was no provision of criminal substantive law that could have been pointed out in relation to the final "confiscation" of these instrumentalities – this is why the 2nd Round Report, for lack of a better, referred to the criminal procedure law in this respect[21]. Taking "forfeiture" as a provisional seizure led to further confusion as regards Art. 279(6) CC that contains a special provision, applicable exclusively for the offence of money laundering, on the "forfeiture" of the money and objects having been laundered. At this point, the second round evaluators had already realized[22] that there had been some inaccuracies in translation. Also the third round evaluation team was confronted with this situation and undertook a thorough analysis (including a detailed linguistic examination) and came to the following conclusions:

206. A starting point to solve the translation problems can be found in the Croatian original of the Criminal Code. In the original text of the relevant articles, it is the same word ("oduzimanje") that stands for both "forfeiture" as in Art. 80 or 279(6) CC and "confiscation" as in Art. 82 CC. As the very same Croatian term is used for all of these three measures, it is quite evident that they are all of the same kind as far as they all refer to the permanent deprivation of property, regardless of whether this is translated as "confiscation" (Art. 82 CC) or "forfeiture" (Art. 80 CC) in the English version. That said, none of these measures has a provisional character where the deprivation of property would only last until the end of the criminal proceedings.

207. The former confusion might have been caused by the – potentially misleading - term "security measure" under which Art. 80 is classified in the Criminal Code. According to Art. 73 CC, security measures include "*compulsory psychiatric treatment, compulsory treatment of addiction, prohibition to engage in a profession, activity or duty, prohibition to drive a motor vehicle, expulsion of aliens and forfeiture*". In conjunction with Art. 23(1) CC[23] it becomes evident that this category of measures can only be imposed by the court in its final decision when convicting someone for the perpetration of a criminal offence. Such measures are deemed as criminal

[21] As in the 2nd Round Report: "The provisional seizure of instrumentalities appears to be catered for under Article 80 of the Criminal Code and the procedure for a final decision on their confiscation appears to be covered in Article 468 of the Criminal Procedure Act. The forfeiture as envisaged in Article 80 is considered a security measure which – in order to avoid the danger - may be ordered in regard to an object which was designed for, or used in the perpetration of a criminal offence."

[22] "The previous evaluation team came across different translations containing either the word 'confiscated' or the word 'forfeited'. At the time of the second round evaluation, the evaluators first saw 'seized' in the version of Article 279 (para 6) submitted initially to them but they were told that the correct expression would be 'forfeited'. The second round evaluation team therefore wishes to remind the first evaluation round team uncertainty as to 'whether this apparently mandatory provision was a provisional measure or a confiscation measure.'"

[23] Art 23/1 reads like this "*The period prescribed by statutes of limitation to execute the punishment or security measures commences on the day of the final decision imposing the punishment or security measures.*"

sanctions[24] (Art. 5 CC) and applicable besides the punishment the defendant otherwise receives in order *"to eliminate the conditions which enable or encourage the perpetration of another criminal offence"* (Art. 74 CC).

208. It has to be noted that the confiscation of pecuniary gain (Art. 82 CC) is not classified as a "security measure" but dealt with in a separate chapter, yet both measures have common characteristics as they equally refer to the permanent deprivation of property (items) that can only be ordered by the final decision of the court.

209. As a general rule, the confiscation regime is conviction based as it is expressed by Article 372(1) subpara. 5 of the Criminal Procedure Act (Annex 5): *"In a judgement of conviction the court shall state (...) the decision on security measures and the confiscation of pecuniary benefit"*[25].

210. The confiscation of proceeds of crime (criterion 3.1a) is provided for by Art. 82 of the Criminal Code (with the Amending Act NN 71/2006, entering into force on 1st October 2006, a new paragraph 2 was inserted; the new text is in bold):

Confiscation of Pecuniary Gain Acquired by a Criminal Offence
Article 82

(1) No one shall keep any pecuniary gain acquired as a result of a criminal offence.
(2)[26] The gain that was achieved by a group of people or criminal organization, which is in timely correlation with the committed criminal offence and for which a ground suspicion can be established that it is result from that offence because its legal origin can not be established, shall be considered as pecuniary gain from Paragraph (1) of this Article.
(3) The confiscation of a pecuniary gain shall be ordered by a court decision establishing that a criminal offence has been committed. If it is impossible to confiscate[27] in full or in part the pecuniary gain consisting of money, securities or objects, the court shall obligate the perpetrator of the criminal offence to pay the equivalent sum of money.

211. This article is a general confiscation provision related to money laundering as well as any other types of crime. The strict language of this provision appears to leave no doubt that confiscation of proceeds is compulsory ("*no one shall keep any pecuniary gain…", "pecuniary gain shall also be confiscated…"* etc.). Furthermore all the authorities, before whom criminal proceedings are conducted, are obliged to determine whether there has been any pecuniary benefit obtained as a result of the commission of the respective criminal offence (Art. 483[1]-[2] of the Criminal Procedure Act)[28]. Nevertheless, despite the rigour of the substantive law, the evaluators

[24] Art. 5(1) "*Criminal sanctions which may be prescribed by statute and applied against the perpetrator are: punishments, non-custodial sanctions (judicial admonition and suspended sentences), security measures and educational measures."*

[25] As it was just mentioned, confiscation ("forfeiture") of instrumentalities is one of the "security measures".

[26] Unofficial translation, provided by the Ministry of Interior subsequent to the on-site visit.

[27] The provided translation uses here the term "seize" instead of "confiscate". But, as discussed above, "forfeiture" and "confiscation" are sometimes used simultaneously for the same Croatian term ("oduzimanje"), which is here also the case. Representatives of the Ministry of Interior confirmed this subsequent to the on-site visit. Overall, the text contains three different English terms for the very same Croatian original ("oduzimanje" and its derivatives).

[28] Most articles of the Criminal Procedure Act were renumbered in 2003 when a clarified version of the Act was issued in the Official Gazette (NN 62/2003). For example, the former provisions that deal with proceedings for the confiscation of pecuniary benefit can now be found under Art. 482-490 (Chapter XXX) which were formerly numbered Art. 463-471 (Chapter XXVIII.a). Even though the evaluators had been provided with a clarified (i.e. renumbered) English version of the Criminal Procedure Act, the local authorities kept on referring to the former numbers of the respective articles – both in course of the on-site discussions and, in written form, in the replies

could not decide it with complete certainty whether and to what extent the entire regime for the confiscation of proceeds of crime is mandatory. On the contrary, examination of the respective procedural rules appears to prove the findings of the first and second round evaluation teams, according to which confiscation is, in fact and in more respects than one, left to the discretion of the court: pursuant to Art. 487(1) CPA *"the court may order the confiscation of pecuniary benefit by a decision in which the defendant is found guilty of the offence charged"* (emphasis added). This implies that the court is not bound to do so. From the procedural point of view, only the form of such a decision is clearly mandatory: Art. 487(2) CPA, as well as the above quoted Art. 372(1)5 CPA equally require that the court put it in the ordering part of the judgement of conviction. However, it does not clearly oblige the court to make such a decision. That said, the confiscation of proceeds (pecuniary benefit) of crime appears to be to some extent discretionary.

212. Turning to the object of confiscation, the previous report criticized the use of the term "pecuniary" in Art. 82 CC because its restrictive interpretation which, being not in line with the wide interpretation of "proceeds" under the 1990 Strasbourg Convention, was likely to prove ineffective. Again, it seems that this conclusion was caused by an improper translation as the original Croatian term is not so closely related to the notion of "money" like its English equivalent. In the original text, the adjective that was translated as "pecuniary" is "imovinske" (plural feminine form) that is directly derived from "imovina", i.e. "property". Therefore, the original term is related to the general notion of "property" irrespective of what sorts of property are concerned, while "pecuniary" as an English term would rather be definable by its relation to money. This interpretation proves to be true also because of the fact that "pecuniary", in this narrow sense, would be translated into Croatian with another word ("novčan" from the word "novac" = "money"). Overall, the term "pecuniary gain" appears to be wide enough to cover any sorts of property.

213. Turning to the coverage of indirect proceeds, Art. 82(1) CC uses the language "*any pecuniary gain required as a result of a criminal offence*": as this is not explicitly restricted to assets directly derived from a criminal offence, it appears to be wide enough to cover also indirect proceeds of crime. Also the Croatian authorities assured the examiners that the term "pecuniary gain" or "benefit" covers indirect proceeds. However, the examiners consider that para (3) of Art. 82 CC significantly restricts the applicability of para (1) in this respect. Para (3) applies when proceeds consisting of money, securities or objects cannot be confiscated in their original form (that is, money as money etc.). If the form of these proceeds has changed, their "*equivalent sum of money*", i.e. the pecuniary equivalent, can be confiscated (value confiscation; see below). This means on the other side that property items required through the ill-gotten money/securities/objects cannot be confiscated and that the confiscation regime does not cover substitute assets or any other indirect proceeds of crime.

214. As just mentioned, Art. 82(3) CC is primarily designed for value confiscation: if it is impossible to confiscate, in full or in part, the *"pecuniary gain consisting of money, securities or objects",* the court is allowed to make a corresponding value order. The Croatian authorities confirmed that the term "objects" is interpreted quite broadly by the existing case law, so as to cover all other sorts of property including real estate, cheques and other monetary instruments. Moreover, Art. 82 (3) limits the confiscation order to the "equivalent" sum of money which ignores that indirect proceeds can be higher than the original ill-gotten assets. On the positive side concerning value confiscation can be noted that Art. 485 CPA provides that "*the amount of pecuniary benefit shall be fixed at the discretion of the court whenever its assessment entails*

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they had given to the MEQ. Shortly before the plenary discussion, the Croatian authorities advised the evaluation team that this renumbering of the Criminal Procedure Act was carried out by the Croatian Parliament without a proper legal authorization and that it was subsequently cancelled. As a consequence the old numbering is now used again. However, in order to prevent any further confusion, all references to the Criminal Procedure Act will hereinafter be made according to the new article numbers, as they are in the version with which the evaluation team was provided for.

undue difficulties or a significant delay in the proceedings." The examiners welcome this provision, because similar provisions in other jurisdictions have already proven that this encourages judges to take such decisions instead of waiving the confiscation order itself because of daunting obstacles to establish the precise amount of the pecuniary benefit.

215. Confiscation of proceeds of crime committed by a legal entity is dealt with by Art. 20 of the Act on Responsibility of Legal Persons for Criminal Offences (NN 151/2003; Annex 7)[29]:

> *Confiscation of pecuniary benefit*
> *Article 20*
>
> *(1) The court shall confiscate from the legal person the pecuniary benefit acquired by a criminal offence.*
> *(2) The pecuniary benefit referred to in paragraph 1 of this Article means any increase or prevention of a decrease of the legal person's property in consequence of the commission of a criminal offence.*
> *(3) The pecuniary benefit acquired by a criminal offence shall be confiscated on the basis of the judgement which establishes the commission of the criminal offence. The amount of the pecuniary benefit shall be determined by the court after studying the entire property of the legal person and relation of the same to the offence committed.*
> *(4) Should it be established that it is impossible to confiscate the pecuniary benefit consisting in money, rights or objects, the court shall oblige the legal person to pay the full replacement value in money. In determination of such value in money the court shall take into consideration the market value of material assets or rights at the moment of judgement.*[30]

216. Comparing the above provision with Art. 82 of the Criminal Code, they are quite similar. As far as substantive law is concerned, the regime appears mandatory in both cases, and the procedural rules according to which confiscation is, in fact, left to the discretion of the court appear equally applicable in both respects: pursuant to Art. 2 of the Act on Responsibility of Legal Persons, the provisions of the Criminal Procedure Act shall apply also to legal persons (unless otherwise prescribed which is here not the case).

217. There is, however, an unexplained difference between the two regimes. Value confiscation, as provided by para (4) above, is apparently restricted to the same extent as Art. 82(3) in the Criminal Code (see above), with one exception: one group of proceeds (in addition to money and objects) is "rights". In contrast, Art. 82(3) covers "securities". This difference is not caused by translation inaccuracies because there are also two different expressions in the Croatian original text. Left without any rational explanation, the examiners came to the conclusion that this discrepancy must have been caused by lack of harmonization in the legislative process and it might lead to problems in cases where both natural and legal persons are prosecuted.

218. Until recently, Croatia had not introduced a general reversal of the burden of proof in the framework of measures targeting the proceeds of crime. Only in special proceedings conducted by the Office for the Prevention of Corruption and Organised Crime ("USKOK"), suspects were required to prove the legitimate origin of their assets, in order to avoid being deprived of them (this will be discussed later). This situation has recently changed and according to the latest amendment of the Criminal Code being in force as from October 2006, the burden of proof for the purpose of confiscation can be reversed under special circumstances. The new paragraph (2) of Article 82 provides that

[29] The language of this provision – as it was initially provided by the Croatian authorities - appeared to be remarkably different from that of Art. 82 CC but this was in great part due to erroneous translation.

[30] The first translation of this paragraph was inaccurate and was then changed in the course of discussions.

"The gain that was achieved by a group of people or criminal organization, which is in timely correlation with the committed criminal offence and for which a ground suspicion can be established that it is result from that offence because its legal origin can not be established, shall be considered as pecuniary gain from Paragraph (1) of this Article."

219. The introduction of the above provision that is, requiring that the defendant demonstrate the lawful origin of his/her property, must be considered a significant step forward in Croatian criminal law, particularly because the language of the new Art. 82(2) CC, contrary to the system applicable for USKOK, appears to be broad enough to encompass any criminal offences thereby more complying with the additional element 3.7(c).

220. The terms "group of people" and "criminal organization" are defined by Art. 89 para (22) respectively (23) of the Criminal Code. A "group of people" is characterized as "*at least three persons connected for the purpose of regular or occasional perpetration of criminal offences, whereby each of them exercises his share in the perpetration of a criminal offence*" while a "criminal organization" is "*a structured association of at least three persons which*[31] *exists during a certain period and acts with a common aim of committing one or more criminal offences for direct or indirect acquiring of pecuniary or other material benefit or with the purpose of realization and maintenance of supervision over certain economic or other activities, and for such criminal offence for which can be pronounced a sentence of imprisonment for at least four years or a more severe penalty.*"

221. In this context, however, Art. 82(2) CC may be unnecessarily restrictive by requiring that the proceeds be acquired (and not the crime, from which the proceeds have been derived, be committed) by at least three persons as defined above. It is not clear, for example, whether all the three (or more) persons have to acquire the proceeds together, what if only one of them is the acquirer but all of them have participated in the perpetration of the offence, whether and how to prove that the acquirer acts on behalf of the group/organization etc.

222. An apparent weakness of the new regime is that the Act on the Responsibility of Legal Persons has not been amended accordingly. As a consequence, the requirement that the defendants prove the legitimate origin of their property is applicable only to natural persons, while legal entities need not to fear that the burden of proof will be placed on them.

223. Following on with the issue of instrumentalities, the essential criterion 3.1 requires that laws provide for the confiscation of property that constitutes instrumentalities either used in or intended for use in the commission of any money laundering, terrorist financing or other predicate offences (criteria 3.1b and c). In Croatian law, it is Art. 80 of the Criminal Code that provides for the confiscation ("forfeiture") of instrumentalities as well as objects resulting from the commission of a criminal offence:

Forfeiture [literally: "Confiscation of objects"]
Article 80

(1) The security measure of forfeiture [confiscation of objects] *may be ordered with regard to an object which was designed for, or used in, the perpetration of a criminal offence, or came into being by the perpetration of a criminal offence, when there is a danger that the object will be used again for the perpetration of a criminal offence or when the purpose of protecting the public safety or moral reasons make the forfeiture* [confiscation] *of such an object seem absolutely necessary.*
(2) The implementation of this security measure does not affect the right of redress of third persons from the perpetrator.
(3) In certain cases, the law may prescribe mandatory forfeiture [confiscation of objects].

[31] The first translation of this paragraph the evaluators saw was inaccurate and was then changed in the course of discussions ("who" to "which").

224. Art. 19 of the Act on the Responsibility of Legal Persons makes this provision also directly applicable against legal persons.

225. In the definition given by Art. 80 above, the phrase *"objects designed for or used in the perpetration of a criminal offence"* corresponds with the language of Criterion 3.1. On the other side confiscation of objects is only possible

(i) when there is a danger that the object will be used again for the perpetration of a criminal offence or
(ii) when the purpose of protecting the public safety or
(iii) moral reasons make the confiscation of such an object seem absolutely necessary.

Particularly the last possibility seems to be rather vague and may unnecessarily restrict the applicability of this Article by requiring that the prosecution prove it is "absolutely necessary".

226. Moreover and of even more concern is that Art. 80 CC is in general only discretionary. This can be concluded from the language of para 3 which stipulates that "*in certain cases, the law may prescribe mandatory forfeiture"*. Provisions for mandatory confiscation of objects can be found in several provisions. For example, in case of abuse of narcotic drugs, Art. 173(7) prescribes the confiscation of both the drugs (since they "*came into being by the perpetration of a criminal offence")* and the devices for their preparation. Chapter XXI of the Criminal Code ("Criminal Offences against the Safety of Payment and Business Operations") provides "mandatory forfeiture" to a number of criminal offences, especially to those related to counterfeiting activities (Art. 274-278).

227. Also the money laundering offence which is as well classified in chapter XXI of the Criminal Code provides a mandatory confiscation rule in its Paragraph 6 as follows:

> *(6) The money and objects referred to in paragraphs 1, 2 and 4 of this Article shall be forfeited* [confiscated] *while the rights referred to in paragraphs 1, 2 and 4 shall be pronounced void.*

228. However, money and objects referred to in Art. 279(1) cannot be classified under Art. 80(1) because they are neither instrumentalities of a criminal offence nor came into being by the perpetration of such an act (not even in the context of the predicate offence, since the money to be laundered is not a product but proceeds of the underlying criminal activity). Thus, Art. 279(6) appears to be a separate, sui generis provision having no direct connection with Art. 80(3).

229. As a consequence, there seems to be no provision available that would prescribe, according to Art. 80(3) CC, mandatory confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence. It is therefore assumed that such items may be confiscated exclusively at the discretion of the court.

230. Art. 279(6) refers to illicit money, objects and rights which, pursuant to Art. 279(1), represent the object of the money laundering offence, i.e. the property to be or having been laundered (in the second money laundering conviction, Art. 279(6) was applied to confiscate the proceeds derived from drug crimes). Such a mandatory confiscation rule is therefore in line with the first part of criterion 3.1 that requires the confiscation of "property that has been laundered".

231. While value confiscation is apparently not applicable in case of instrumentalities and other objects confiscatable pursuant to Art. 80 of the Criminal Code, Art. 279(6) does not even provide a possibility for value confiscation in money laundering cases at all, regardless of the sort of property (money, objects or rights). However, Croatian authorities could hypothetically try a different way to establish value confiscation for money laundering cases. The property referred to in Art. 279(6) CC could also be confiscated on a different ground, that is, not only as "laundered

property" but also as proceeds (pecuniary gain) of the predicate crime (Art. 82 CC) provided that predicate offence is prosecuted together with money laundering. In such a situation, application of Art. 82 CC together with (or–instead of) Art. 279(6) CC seems to provide opportunity also for value confiscation though the evaluators have no information whether this solution has ever been tested in practice.

232. Art. 482(1) of the Criminal Procedure Act provides an *in rem*-confiscation: *"objects which must be seized* [confiscated] *according to the Criminal Code shall also be seized* [confiscated] *when criminal proceedings do not terminate with a judgement of conviction, provided that this is required by considerations of public safety or the protection of the honour and dignity of citizens."* This provision refers to cases where the criminal proceedings have been terminated but a conviction of a perpetrator was not possible (e.g. the offender could not be identified or the criminal proceedings need to be discontinued etc.). It is also applicable, if, according to para (3), the court "*has failed to render such a decision in a judgement of conviction"*. Nevertheless, the conditions under which *in rem*-confiscation can be applied are in the view of the evaluators too vague ("considerations of public safety" etc.) and leave too much room for judicial discretion.

233. Art. 482(1) CPA does not specify to which types of "objects" it applies. Thus it is arguable, that it always takes over the definition/scope of the relevant basic provision: i.e. money, objects and rights for Art. 279 (6) CC; "money, securities and objects for Art. 80 CC etc. On the other side, the examiners are not convinced whether this interpretation is in fact feasible, bearing in mind that Art. 482 comes under Chapter XXX of the Criminal Procedure Act that exclusively deals with "proceedings for the confiscation of pecuniary benefit".

234. Confiscation from third parties (criterion 3.1.1. b) is expressly provided as regards confiscation of pecuniary benefit (Art. 82[4] CC). It also appears applicable for instrumentalities and other objects that can be confiscated (Art. 80[2] CC). Art. 20(5) of the Act on Responsibility of Legal Persons for Criminal Offences provides a provision for legal persons to confiscate the illegally gained benefit of third parties; no provision seems to exist to provide for the confiscation of instrumentalities and other objects held by a third party.

235. Confiscation of proceeds from third parties depends on their knowledge. While Art. 82(4) CC simply requires that the pecuniary gain has not been acquired in good faith, contains Art. 20(5) of the Act on the Responsibility of Legal Persons more elaborated conditions:

> *(5) The pecuniary benefit shall also be confiscated if it is in possession of someone else on any legal ground if, according to the circumstances under which such benefit was acquired, he/she knew or could know and was supposed to know that the value was gained in consequence of the commission of a criminal offence.* [32]

Differences between the two regimes, particularly in terms of how the actual knowledge is described, might have been caused merely by lack of harmonization and they may lead to some confusion if natural and legal persons are prosecuted in the same case.

236. The protection for the rights of bona fide third parties is likewise provided in the Criminal Code and the Act on the Responsibility of Legal Persons. Rights of bona fide third parties are also protected by procedural rules: chapter XXX of the Criminal Procedure Act contains rules of proceedings for the confiscation of pecuniary benefit, Art. 484 CPA provides that the person to whom the pecuniary benefit was transferred as well as the representative of the legal entity shall be summoned for interrogation in pre-trial proceedings and at the trial, where they are entitled to propose evidence concerning the determination of the pecuniary benefit.

[32] The first translation of this paragraph was inaccurate and was then changed in the course of discussions.

237. As far as instrumentalities and other objects are concerned, their confiscation may be carried out without the same respect to third parties and the only protection is that such confiscation *"does not affect the right of redress of third persons from the perpetrator"* (Art. 80[2] CC). Though it is not explicitly provided by law, the examiners think it very likely that the latter provision also refers to property being confiscated pursuant to Art. 279(6).

238. Criterion 3.6 requires that there should be authority to take steps to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. As far as money laundering is concerned, Art. 279(6) provides that the rights constituting the object of money laundering *"shall be pronounced void"*. However, this provision has not yet been applied in any money laundering case. Furthermore, criterion 3.6 is an overall requirement which is not limited to money laundering cases and Croatian criminal law contains no explicit provision by which it addresses this issue in a general way. In the opinion of the Croatian authorities, however, this situation would not pose an obstacle to the functioning of the confiscation regime, as property can be seized and confiscated even if involved in any unlawful contract.

Provisional measures

239. The regime of provisional measures has not been amended since the second round. The pivotal provision is Art. 233 (formerly 218) of the Criminal Procedure Act that provides for the "temporary seizure of objects" as follows:

Article 233

(1) Objects which, according to the Criminal Code, have to be seized or which may be used to determine facts in proceedings shall be temporarily seized and deposited for safekeeping on the ground of a court's decision.

240. In the beginning, some issues of translation need to be clarified: in the context of the above provision "seized" obviously stands for "confiscated" ("oduzeti" – "to confiscate") while "temporarily seized" ("privremeno oduzeti" – "to confiscate temporarily") refers to what one would normally call "seizure", meaning a temporary measure. As a consequence, Art. 233(1) CPA appears, on the face of it, to apply for any object that can be confiscated pursuant to the Criminal Code including proceeds from crime as well as instrumentalities of or objects resulting from a criminal act and, obviously, money and objects having been laundered thus being confiscatable according to Art. 279(6) CC. On the other hand, the fact that Art. 233(1) covers only "objects" and not "proceeds" in a broader sense (or "pecuniary benefit" as it is generally used) implies that it must have been intended to cover objects confiscatable under Art. 80 of the Criminal Code as well as those falling under the scope of provisions like Art. 279(6) but not the proceeds of crime in a general sense. Because of its restrictive language, Art. 233(1) CPA appears *prima facie* not to cover either intangible property items (e.g. dematerialized securities[33]) or real estate. However, the language of Art. 234(6) CPA extends the scope of Art. 233(1) CPA and makes it clear that also money in the form of "cash amounts in domestic and foreign currency" is covered by Art. 233(1) CPA. Assets in the form of bank account money (deposits on a bank account etc.) are not seizable under Art. 233(1).

241. However, assets in the form of bank account money could be subject to a freezing order ("suspend temporarily") according to Art. 234 (formerly 219):

Article 234

(5) The court may order by a ruling an individual or legal entity to suspend temporarily the execution of a financial transaction if the suspicion exists that it represents an offence

[33] i.e. securities that are not on paper and no certificate exists (they may exist only in the form of entries in a depositories book etc.).

or that it serves to conceal an offence or to conceal the benefit obtained in consequence of the commission of an offence.
(6) By the ruling referred to in paragraph 5 of this Article the court shall order that the financial means assigned for the transaction referred to in paragraph 5 of this Article as well as cash amounts in domestic and foreign currency temporarily seized according to Article 233 paragraph 1 of this Act shall be deposited in a special account to be kept until the termination of the proceedings or until the conditions are met for their recovery.

242. In the evaluators' view, the language of Art. 234 (5) and (6) seems too restrictive as the law focuses on the suspension of bank transactions and the securing of "financial means assigned for the transaction", i.e. assets that either have been or are intended to be transacted. While the term "financial means" appears to embrace any sorts of immaterial assets, it seems that the focus on "transaction" does not allow to freeze money or other assets which is/are simply deposited and kept on a bank account.

243. Both seizure (Art. 233 CPA) and freezing (Art. 234 CPA) can only be ordered from the point in time where the investigation is commenced and only by a court decision. According to the Criminal Procedure Act, a criminal investigation against a concrete person is formally initiated by an investigating judge upon the request of the State Attorney. Freezing and Seizing orders can be upheld until the termination of the proceedings.

244. The Croatian legal system allows provisional measures in certain cases also before the formal commencement of the investigation: Art. 233(8) CPA gives the power to the police authorities to temporarily seize objects in the course of the so-called pre-investigatory proceedings:

(8) The police authorities may seize the objects stated in paragraphs 1, 2 and 3 of this Article when proceeding pursuant to the provisions of Article 186 and Article 196 paragraph 1 of this Act or when executing a court's warrant.

Article 186 and 196 belong to Chapter XVII of the Criminal Procedure Act which deals with pre-investigatory proceedings. Article 186 stipulates the general rules of "inquiries into criminal offences" that is, what measures can be taken by the Police to discover the perpetrator, to discover and secure traces of the offence and objects of evidentiary value and to gather all information that is necessary for successfully conducting criminal proceedings. Article 196(1) CPA, on the other hand, provides for "urgent investigatory actions" which means that if there is danger in delay (*periculum in mora*), the police authorities may even before the commencement of the investigation carry out certain investigative measures, including the temporarily seizure of objects (Article 233 CPA).

245. Even though the broad language of Art. 233(1) CPA, as quoted above, appears to encompass the seizure of any objects and cash that are confiscatable pursuant to the Criminal Code thus including also items constituting proceeds (pecuniary gain), the evaluators were informed by the Ministry of Interior that this provision is interpreted rather restrictively in practice. That said, in the course of the pre-investigatory proceedings, the Police are only authorized to seize objects that are "directly related" to the offence e.g. objects used or intended to be used for the perpetration of a criminal offence, while the seizure of objects or cash suspected to constitute proceeds of crime but having no direct relationship with the offence (cannot be used as material proof etc.) can only be carried out by a court decision. In the evaluators' view, such a distinction cannot be deduced from the language of paragraphs (1) and (8) of Art. 233 CPA.

246. Contrary to the seizure of objects, the suspension of a financial transaction and freezing of assets cannot be carried out by the police authorities in the pre-investigative phase of the criminal procedure. Application of these measures always requires a court decision and the formal initiation of an investigation.

247. According to Art. 10 of the AML Law (Annex 1), also the AMLD (Croatian FIU) can request financial transactions to be suspended, but only for a time period of no more than three days:

> *Receipt of the report*
> *Article 10*
> *(1) The AMLD confirms to the reporting institutions the receipt of the report as under Article 8 of this Law immediately, or at least within 24 hours.*
> *(2) When certain information from the report has to be verified, the AMLD can request the reporting institutions by telephone, fax, or other means of communication, to postpone said transaction but by no more than 72 hours.*
> *(3) After submitting the request for the reporting institutions to postpone the transaction, the AMLD shall immediately inform the Croatian Public Prosecutors Office.*

248. The situation and circumstances under which the latter measure can be applied are, of course, different from what may establish the application of Art. 234(6) as above. According to Art. 10 AML, the suspension or rather postponement of a financial transaction is merely an administrative measure and does not even require a well-grounded suspicion of money laundering or that it is necessary to secure the assets involved in the suspicious transaction. Instead, it is applicable in cases where the content of the STR has to be - for any reason - verified. On the one hand, this condition may be interpreted flexibly so that this measure can be applied practically in any cases. On the other hand, however, Art. 10 does not seem to be, in the strict sense of the word, applicable where the report itself provides all the necessary information that may establish, without the need for any further verification, the suspicion of money laundering.

249. In any case, the three-days deadline in Art. 10(2) of the AML Law appears sufficient to verify any information and, what is even more important, to provide enough time for the prosecution to prepare for further measures e.g. to apply for a freezing order according to Art 234(6) of the Criminal Procedure Act. It is not expressly formulated in Art. 10, but Art. 19 of the AML Law authorises the AMLD to order the reporting institutions to postpone a financial transaction. The Croatian authorities provided the following statistics how often this was done:

Financial transactions postponed by request of the AMLD (Art. 10 of the AML Law)	
2004	1
2005	1
2006	5

The violation of such a "request" is properly sanctioned by Art. 19. As till now, no institution refused to postpone a transaction over request by the AMLD; thus, there was no need for the AMLD to apply sanctions.

250. Concerning the securing of assets that constitute proceeds of crime, Art. 486 (former: 467) CPA provides for a further, separate measure that can exclusively be applied by the court in course of the proceedings for the confiscation of pecuniary benefit (Chapter XXX CPA):

> *When the confiscation of pecuniary benefit is under consideration, the court shall, by virtue of the office, and pursuant to the provisions dealing with enforcement proceedings, order provisional security measures. In such a case, the provisions of Article 142 paragraph 2 of this Act shall respectively apply.*

According to Article 142(2) CPA, the ruling on the application of "provisional security measures" may be rendered either in the course of the investigation or after the indictment is preferred. In the investigative phase of proceedings, decision is made by the investigating judge. It is therefore obvious that Art. 486 cannot be applied in the pre-investigating proceedings and requires (similarly to Art. 234[6]) the formal commencement of the investigation. As it was explained by Croatian authorities in their replies to the MEQ, the "enforcement proceedings" mentioned in Art.

486 refer to the provisions of the "Enforcement Act". The Enforcement Act (NN 57/1996 mod. 29/1999) is a set of administrative measures governing judicial enforcement. Consequently, Art. 486 CPA does not refer to the application of provisional measures (seizure, freezing) which are regulated by the Criminal Procedure Act but to the additional application of further administrative measures in order to secure assets that constitute proceeds of crime. Such security measures are as follows (Art. 262[1] of the Enforcement Act):

1. registration of a lien on real estate of the opposer of the security,
2. seizure of real estate not entered in the land register according to the rules by which execution is carried on this real estate for the collection of a monetary claim,
3. the seizure of the moveables of the opposer of the security,
4. the seizure of the monetary claims of the opposer of the security,
5. the seizure of part of the earnings of the opposer of the security on the basis of a contract aboutwork or employment,
6. the seizure of a part of a pension, disability pension or compensation for lost earnings,
7. the seizure of a claim that the opposer of the insurance has on an account at a bank or on a savings account (book),
8. the seizure of a claim that moveables be surrendered or delivered or that real estate be surrendered,
9. the seizure of other property or material rights,

251. It has to be noted that Art. 486 CPA provides an interesting construction as it is applicable in a stage of proceedings when the confiscation of proceeds is "under consideration", meaning when the court has already - on its discretion - started contemplating whether and what to confiscate. Whenever the court has entered this rather vague determined stadium, Art. 486 has to be applied mandatorily (*ex officio*).

The specific rules for the Office for the Suppression of Corruption and Organised Crime (USKOK)

252. Besides of the system described above, the Law on the Office for the Suppression of Corruption and Organised Crime (hereinafter: Law on USKOK; Annex 6) of September 2001 (NN 88/2001) provides a separate set of detailed rules applicable exclusively in procedures conducted by the said Office, inter alia, for the securing of means, proceeds or assets resulting from criminal offences for which USKOK is competent. These rules can be found in Art. 44 to 56 of the respective law and they provide for a special regime in which, similarly to Art. 486 of the Criminal Procedure Act, the provisions of the Enforcement Act can be applied to support the criminal proceedings. According to Art. 44(2)-(3) of the Law on USKOK such a procedure "*does not constitute criminal proceedings, and it includes adequate implementation of the provision of the Seizure Act* [Enforcement Act] *unless specified otherwise herewith*" but the securing of means, proceeds or assets referred "*shall be carried out pursuant to the provisions for the seizure of proceeds* [i.e. proceedings for the confiscation of pecuniary gain] *included in the Criminal Procedure Act*".

253. The procedure is strictly mandatory. Pursuant to Art. 47 of the Law on USKOK it shall be initiated *ex officio* by USKOK even before the commencement of the criminal proceedings. Securing measures can be ordered by the court acting upon the request of USKOK and such orders are to be delivered within 12 hours (Art. 51 of the Law on USKOK) provided there is ground to suspect that the means, proceeds or assets

(i) resulted directly or indirectly from a criminal offence falling under the competence of USKOK;
(ii) their value exceeds[34] Kuna 100 000 (approx. 13 550 EUR) and

[34] In the English version the evaluators received, this condition (Art. 50[1]2) is translated as "does not exceed Kuna 100 000" which obviously contradicts Art. 52(3)1. The Croatian original ("prelazi ukupnu svotu od 100 000 Kuna") leaves no doubt that the total value has to exceed the threshold of 100 000 Kuna.

(iii) it has to be feared that the offender will, either prior to the start of or during the criminal proceedings, prevent or make significantly difficult their seizure (Art.50).

As a securing measure, the court may specify one or more measures provided in the Enforcement Act (as already referred to in relation to Art. 486 CPA above).

254. The securing measures may last up to one year and must be repealed should criminal proceedings not be started within that period. Nevertheless, they must also be repealed if the suspect or any other person against whom the measures have been ordered asserts by virtue of authentic documents, according to Art. 52(3), the legitimate origin of his/her means, proceeds or assets. These rules are strictly mandatory and their scope of application covers, contrary to Art. 486 of the Criminal Procedure Act, not only proceeds but also instruments of crime (according to Art. 45 "means" stands for "any item used or intended for use, in any way, wholly or partly, to commit one or more criminal offences, or an item resulting from criminal offence").

255. Nevertheless, the relevance of all these procedures is, from the angle of a MONEYVAL evaluation, limited by the fact that the competence of USKOK does not cover but a certain part of money laundering offences. These are, according to Art. 21 of the Law on USKOK:

(i) the aggravated form of money laundering as provided by Art. 279(3) of the Criminal Code (i.e. if committed as a member of a group or a criminal organization)

(ii) the basic money laundering offence (Art. 279[1]-[2]) if committed in connection with the perpetration of certain criminal offences listed in Art. 21(1) of the Law on USKOK:

- criminal offences related to corruption (bribery etc.)
- other serious offences (kidnapping, trafficking in human beings and, among others, the aggravated form of money laundering too) if committed as a member of a group or a criminal organization
- the aggravated form of the abuse of narcotic drugs[35]
- association for the purpose of committing criminal offences committed by a group or criminal organization
- any other crimes punishable with more than 3 years of imprisonment if committed in connection with the activity of a group or a criminal organization and the offence was committed in two or more states or a significant part of its preparation or planning was performed in another state.

256. As a consequence, a money laundering case committed in relation to tax evasion, fraud or a number of proceeds-generating offences including those described by Croatian authorities as "main sources of money laundering assets" (namely, the abuse of authority in economic business operations Art. 292 CC or the abuse of office and official authority Art. 337 CC) and where no connections with a group or criminal organization can be established, would be handled according to the normal procedure. Until now USKOK has not yet achieved any money laundering conviction.

257. The situation whether provisional measures can be carried out *ex parte* and without prior notice requires examination of different legislative provisions. Overall, it seems to be possible clearly to carry our provisional measures *ex parte* and without prior notice only in some situations:

(i) the police authorities can temporarily seize objects in the so-called pre-investigatory proceedings (Art. 196[1] CPA) but this does not apply to freezing

(ii) the AMLD in the situations of Art. 10 of the AML Law.

[35] That is, if "*committed by a number of persons who conspire to commit such offences, or if the perpetrator of this criminal offence has organized a network of resellers or dealers*" (Art. 173[3] CC).

258. Concerning freezing orders under Art. 234 CPA, it appears that freezing orders can be obtained from the investigating judge by the prosecutor in writing. The provision is silent as to whether notice is required, but the Croatian authorities advised that in practice, it is not necessary to give prior notification to the defendant. The situation for seizing orders under Art. 233 CPA appears similar in the investigative phase of the proceedings. For securities measures under the Law on USKOK, Art. 51(5) states that a decision on ordering a securing measure "*shall be served to the opponent, the bank and other persons involved in the payment transactions, as well as other government agencies as appropriate*". Again, the Croatian authorities advised that such applications could be made *ex parte* without prior notice, though this is not clear from the legislation.

259. Overall, the legislative texts the evaluators have seen do not explicitly provide for *ex parte* procedures and given the lack of statistics on provisional measures and confiscations generally, the evaluators cannot comment as to whether such a procedure is regularly applied. The evaluators considered that a clear provision, across the board, covering *ex parte* freezing and seizing without prior notice would assist the legislative framework.

260. Law enforcement agencies appear to have sufficient powers to trace and identify property as required by Criterion 3.4. In this context, and apart from the measures already discussed, reference needs to be made to Art. 186(2) CPA (Inquiries into Criminal Offences) as well as Art. 196 CPA (Urgent Investigatory Actions). Furthermore, important powers are given to the investigating judge in Article 234(3) CPA, which allows him, with a view to the subsequent freezing of illicit assets, to

> *"require a bank to deliver him information on the bank accounts of a defendant or another person against whom proceedings for the confiscation of pecuniary benefit (...) are being conducted (...) even before the commencement of an investigation or before the commencement of proceedings for the confiscation of pecuniary benefit if it is likely that the money obtained by involvement in the commission of criminal offences committed by a group (Article 89 paragraph 22 of the Criminal Code) or a criminal organization (Article 89 paragraph 23 of the Criminal Code) or of a criminal offence of the misuse of drugs (Article 173 of the Criminal Code) punishable by imprisonment for a term of more than three years are placed in those bank accounts."*

261. The evaluators were informed during and subsequent to the on-site visit that this provision had previously been interpreted as if the last condition (the 3-years threshold) was a fourth, autonomous option. Indeed, even the Croatian authorities stated in their Replies to the MEQ that this provision referred to, among others, "*criminal offences for which the sentence of imprisonment for more than 3 years can be pronounced, that is in relation to the criminal offence of money laundering from Article 279 of the Criminal Code*." Obviously and considering that practically all the significant criminal offences met the sole condition of 3 years of imprisonment, paragraph (3) was widely applied until recently, when the courts, contrary to the previous understanding, started to interpret it in a restrictive manner. According to the judicial interpretation, the phrase "*punishable by imprisonment for a term of more than three years*" is considered as referring to the preceding options (criminal group, criminal organization, drugs offences) as an additional requirement (and not as a separate option). Unfortunately, the wording of the above provision appears to support the courts' recent interpretation. In other words, it is not the judicial practice that interprets the law restrictively but it is the language of paragraph (3) that is formulated in a restrictive manner. Thus, Art. 234(3) remains an exceptional measure that will only be applicable where the respective criminal offence is punishable by more than 3 years of imprisonment and is either (1) a drug crime, (2) committed by a group or (3) a criminal organization. As a consequence, Art. 234(3) is applicable in relation to a money laundering offence only when it is committed by at least 3 persons in the form of a criminal group or criminal organization. This situation needs to be urgently remedied by taking the necessary legislative steps

in order to broaden the conditions under which bank information can be obtained so as to cover, at least, all serious offences (in this respect, an overall and autonomous condition of minimum 3 years of imprisonment could actually be favourable).

Additional elements

262. described in the text above.

2.3.2 Recommendations and comments

263. The third round evaluation team shares the opinion of the evaluators of the previous round that the current legal framework applicable to confiscation and provisional measures seems rather complicated. There are parallel regimes both in terms of criminal substantive and procedural law, that is, a different set of rules has to be applied for instrumentalities, another one for the proceeds of crime and a practically separate set of rules for cases prosecuted by USKOK. In addition, criminal and administrative provisions (enforcement law) can be applied at the same time.

264. Absence of proper statistical figures concerning confiscations and application of provisional measures had been mentioned as a problematic issue already in previous rounds of evaluation and there appears to be no significant development in this field. According to Croatian authorities, there are no official statistics kept on either the number of the respective court orders or the volume of seized/frozen/confiscated assets. The evaluators were only informed of a rather small number of confiscations and a moderate number of provisional measures: as for money laundering cases investigated or prosecuted at the time of the on-site visit, the evaluators were informed of 15 provisional measures (this figure refer to persons) altogether involving 6.9 Millions EUR. The examiners were not satisfied that provisional measures were only rarely taken at early stages in proceeds-generating criminal offences especially when they learnt that this situation had allegedly been resulting from the reluctance of judges to apply such measures because of the risk of non-conviction, especially if property of substantive value is involved. On the other hand, long delays in achieving final results in cases, as referred to above, also reduce the potential for making confiscation orders.

265. Lack of practical experience in the functioning of provisions on confiscation and provisional measures made it difficult to form a judgement about their overall effectiveness. In any case, Croatian authorities should review this regime to ensure that it is fully operational and to satisfy themselves that the necessary tools are in place for a complete and effective system. Such a review should primarily be supported by compiling and maintaining of comprehensive and precise statistics on the volume and effectiveness of confiscation and the provisional measures.

266. As far as Art. 82 of the Penal Code is concerned, the evaluators share the opinion of the second round evaluation team that the power to order measures under this provision is discretionary due to the wording of the procedures foreseen in the relevant parts of the Penal Procedure Act. On the other hand, the Croatian authorities appeared to have no doubt that the confiscation of proceeds, as it is provided by Art.82, is fully mandatory in Croatian law, regardless of the language of the respective procedural rules. Nevertheless, considering that the apparent contradiction between the (mandatory) substantive law and the (discretionary) procedural law is not likely to be resolvable merely by interpretation, the evaluation team suggests strengthening the mandatory element of the current system by making legislative steps, putting it beyond doubt that confiscation of pecuniary gain does not depend on the discretion of the court.

267. Art. 82 is mainly focused at proceeds directly derived from crime. According to the strict interpretation of the law, substitute assets (i.e. real estate, vehicles or other assets purchased by illicit proceeds) appear not to be covered and value confiscation applies only in relation to a

limited set of proceeds (money, securities, objects). On the other hand, evaluators are aware of the fact that, in certain cases reported by the second round evaluators, the confiscation rules had already been interpreted more flexibly, allowing for the confiscation of real estate and other goods not directly related to the respective criminal offence. Nevertheless, considering the restricted language of the current provisions, the evaluators suggest considering a legislative amendment to ensure that a sufficiently wide interpretation of the term "proceeds" is applied by the courts where, as well as direct proceeds, their substitutes and also income and benefits were expressly made subject to confiscation, as it is required by Criterion 3.1.1.

268. In both previous rounds of evaluation, attention was called to the fact that the specific confiscation regime applicable in money laundering cases pursuant to Art. 279(6) does not provide for value confiscation. As nothing has since changed, the evaluators need to reiterate all the recommendations the previous evaluation teams made in this respect.

269. The evaluation team welcomes the introduction of the new Art. 82(2) of the Criminal Code by which the defendant is required, under certain conditions, to demonstrate the lawful origin of his/her property. Taking into account, however, the somewhat restrictive character of these conditions, the Croatian authorities should follow with attention whether the benefits of the reversal of the burden of proof in Art. 82(2) can be fully maximised by law enforcement and prosecutors and, if necessary, take legislative steps to broaden its scope of application. No such provision appears to be applicable against legal entities subject to prosecution, as Art. 82(2) refers to natural persons only while the Act on the Responsibility of the Legal Persons has not been amended accordingly.

270. As far as confiscation of proceeds (pecuniary gain) is concerned, the discrepancy in scope of Art. 82(3) of the Criminal Code and Art. 20(4) of the Act on Responsibility of Legal Persons should be resolved by applying, to the greatest extent possible, equal standards in both regimes. Besides, the broader language of Art. 20(4) ("rights" vs. "securities") appears more favourable in this context. There is a similar difference between the two laws as regards the conditions for confiscation from third parties.

271. Voiding contracts is provided for as part of the special confiscation regime in money laundering offences. Nevertheless, it is not provided as part of the general regime which, in the evaluators' view, is a shortcoming that should be remedied.

272. The specific confiscation rule in Art. 279(6) of the Criminal Code appears not to provide, either in itself or in combination with Art. 80, for the mandatory confiscation of instrumentalities used in or intended for use in the commission of a money laundering offence. This is an apparent weakness of the system, which should urgently be remedied by the legislation.

273. The evaluators understand that it comes from the structure of the administration of justice system that provisional measures can only be carried out, with the sole exception of seizure of objects directly related to the offence, by the decision of an investigating judge as from the formal initiation of the investigation. Nevertheless, Croatian authorities should reassess to what extent this structure might retard or even hinder the seizure of proceeds, if once applied in a concrete money laundering case. They should also reconsider, whether the immediateness of such measures could better be provided by allowing the investigating bodies to carry them all out, if necessary and upon subsequent approval of the judge.

274. The circumstances under which Art. 10 of the AML Law empowers the AMLD (Croatian FIU) to suspend financial transactions seems to be limited to cases where the content of the report has to be - for any reason – verified. Though the evaluators have no doubt that this provision may be "interpreted" rather broadly, Croatian authorities should satisfy themselves that the AMLD is

empowered to suspend financial transactions also in cases where there is the mere suspicion of money laundering.

275. It is impressing to which extent specific (administrative/enforcement) provisional measures can be applied in the procedures conducted by USKOK, where the same regime is applied for instruments (means) and proceeds and, which is equally important, the content of the respective terms (means, proceeds, assets) as well as the undoubtedly mandatory character of the measures are defined very precisely. Overall, the Law on USKOK shows a very advanced legislative approach and the only limitation which can be detected is the necessity to inform about a security measure amongst others the opponent and other persons involved in the payment transaction.

276. In any case, the evaluators agree with the previous team that a much greater emphasis needs to be given to the taking of provisional measures at early stages of investigations to support more confiscation requests upon conviction. A starting point could be a more extensive interpretation of Art. 233(1) CPA as the only provisional measure applicable in pre-investigation proceedings so that it could be applied for the seizure of objects or cash that constitute proceeds of crime.

277. The possibility to obtain bank information with a view to the confiscation of proceeds, as it is provided by Art. 234(3) of the Criminal Procedure Act, is unnecessarily restricted in its scope (only applicable where the respective criminal offence is punishable by more than 3 years of imprisonment and is either a drug crime, committed by a group or a criminal organization). Croatian authorities should broaden its scope of applicability so as to cover, at least, all the serious criminal offences.

278. Only in certain situations (by the Police in pre-investigatory proceedings and the AMLD under the authority of Art. 10 of the AML Law) provisional measures can be carried out *ex parte* and without prior notice. Croatian authorities should remedy this situation also for the other parts of the provisional measures regime.

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating

R.3	**Partially compliant**	• The confiscation regime is still far too complicated which may hamper its effective application.
		• The number of confiscations is too small (there had been no confiscation in money laundering cases during the period under evaluation) which questions the effectiveness of the system.
		• Confiscation of proceeds appears, at least in terms of procedural rules, only discretionary and the same goes for instrumentalities of money laundering offences.
		• The general confiscation regime covers indirect proceeds only in specific cases (i.e. the pecuniary equivalent of ill-gotten money, securities or objects).
		• The specific confiscation regime for money laundering cases does not allow for value confiscation.
		• The general value confiscation regime is
		  • restricted to "money, securities or objects" and does not cover any other sorts of property, like real estate or property rights,
		  • in its amount limited to the pecuniary equivalent of the ill-gotten assets.
		• There is – apart for money laundering cases – no general authority to take steps to prevent or void contractual or other actions where the

		persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. • A clearer provision for freezing orders *ex parte* or without prior notice would be beneficial. • Provisional measures are not taken regularly.

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

2.4.1 Description and analysis

279. Criteria III.1 and III.2 require that countries have effective laws and procedures to freeze terrorist funds or other assets of persons designated either by the United Nations Al-Qaida and Taliban Sanctions Committee in accordance with S/RES/1267(1999) or in the context of S/RES/1373(2001). Such freezing should take place without delay and without prior notice to the designated persons involved.

280. Croatian authorities explicated in their Replies to the MEQ that the Republic of Croatia had implemented the nine FATF Special Recommendations in its legislation, including SR.III on freezing and confiscating terrorist assets, and that all the relevant UN Security Council Resolutions, including Resolution 1267(1999) and 1373(2001), had actually been implemented in the activities of the Croatian FIU (AMLD). Nevertheless, the evaluation team came to the conclusion that currently there is no legislation existing in Croatian law specifically implementing the said UNSC Resolutions in terms of roles, responsibilities and conditions.

281. The Croatian authorities referred *inter alia* to the Act on International Restrictive Measures (NN 178/2004). This Act deals with the "*introduction, implementation and lifting of international restrictive measures*" applicable "*against states, international organizations, territorial entities, movements or physical and legal subjects and other subjects covered with international restrictive measures*" (Art.1) in order to, among others, implement the "*international legal binding decisions of the United Nations Organization*" (Art. 2[1]). Theoretically such a legislative approach could result in establishing a practical administrative procedure for freezing accounts of names on the respective lists. However, this Act does not serve as such a legal basis. The aforementioned "restrictive measures" in Art. 1 are limited by Art. 3 to *"breaking of diplomatic relations, complete or partially breaking of economic relations, as well as railroad, sea, air, postal and other communications, including other measures in accordance with international law"*. Most likely the "*other measures in accordance with international law*" could provide such an authority; Art. 4 requires the Croatian Government to issue a respective Decision on that. The law does not specify whether this needs to be a general decision or an ad hoc decision (dealing with a concrete case). The Croatian authorities consider that an ad hoc decision by Government would be sufficient; however the Croatian authorities were not aware whether this has ever been done to date in practice. This possibility does not provide a mechanism or procedure how such a government decision would be carried out.

282. In lack of an administrative procedure, Croatian authorities apparently resort to the provisions of the domestic criminal procedure law. In the opinion of the evaluation team, this regime, as it will be discussed beneath, is based upon a strained or, at some points, even unfounded interpretation of certain provisions of the Criminal Procedure Act and the AML Law. In this context it is surprising that this regime, in spite of its unsound base, has actually been functioning: bank accounts are checked, transactions are suspended and assets are frozen by court decisions.

283. In practice, the regime works as follows: The Ministry of Foreign Affairs and European Integration sends the consolidated UNSCR lists to the other members of the working group (Ministry of Interior, State Attorney's Office, AMLD, SOA – Security Intelligence Agency). The AMLD checks the designated names in its own databases; parallel to this it mails the lists, on a regular basis, directly to commercial banks (some foreign owned banks receive these lists also from their parent banks). The banks check whether the designated people/entities have any bank accounts or assets in Croatia. These lists are not sent to other financial institutions or DNFBP. The Ministry of Interior (Police) receives information on these lists directly from the Ministry of Foreign Affairs. There are no obstacles for Croatian authorities to use other lists. However, the Croatian authorities are not actively looking for other lists than the ones mentioned above. Nonetheless, if the AMLD receives information (not restricted to lists) from foreign FIUs or other jurisdictions/international organisations, the AMLD would forward it to banks. If the State Attorney's Office receives additional information about listed persons, it coordinates the tasks of the other bodies (mainly Police and AMLD) to undertake further investigations.

284. The evaluators were informed by the Croatian authorities that if a bank detects a designated name in its database, it has to be reported to the AMLD immediately. According to Art. 10(2) of the AML Law, the AMLD has to decide whether or not to block the bank account for up to 72 hours. If the AMLD decides to apply such a measure, they immediately inform the State Attorney's Office pursuant to Art. 10(3) so that the public prosecutor may apply for a freezing court order according to Art. 234(former: 219) para (5) and (6) of the Criminal Procedure Act.

285. Evaluators were informed by Croatian authorities that this mechanism had actually been functioning successfully in a number of concrete cases. There were 2 such cases in the year 2003 where the total value of frozen assets was 38,16 EUR; in 2006, the FIU was informed by the CT Working Group on the latest changes of the consolidated list in respect to the UNSCRs 1267/1373. One name from the list was detected in one bank and one account was frozen (6.468,56 USD and 6.870,69 EUR). Nonetheless, as it has already been indicated, the examiners have some doubts about the soundness of the underlying legal basis as follows.

286. The Croatian authorities are convinced that the scope of the AML Law is extended to the financing of terrorism. To support this opinion, they pointed to Art. 1(1) of the AML Law which reads as follows: *"this Law stipulates: measures and actions in banking, money and other economic business undertaken for the purpose of detecting and preventing money laundering and prevention of terrorist financing, reporting institutions for the implementation measures and actions that are obliged to comply with this Law, activities and operations of the Anti Money Laundering Department in detecting suspicious transactions that conceal illegally derived money and assets or rights for which there is a suspicion that are illegally acquired within the country or in foreign countries (hereinafter referred to as: money laundering), and regulates other items of importance for developing the money laundering preventive system"* (emphasis added). The phrase "*and prevention of terrorist financing*" was inserted in 2003. This is the solely part in the AML Law where "terrorist financing" is mentioned. The Croatian interlocutors explained to the team, that there had not been enough time in 2003 to carry out more comprehensive changes in this field and they expected that the next amendment of the AML Law would bring more articles on CFT issues. The evaluators disbelieve that Art. 1(1) of the AML Law with this modest amendment provides a sufficient legal base upon which the AML Law could be interpreted so as to cover terrorist financing. Certainly, this issue is mentioned in a context where the purpose of the law is described. Nevertheless, from a structural point of view, the wording of para (1) does not imply that when the law refers to "money laundering" it has to be understood as if referring to the financing of terrorism as well. The rest of the law deals exclusively with money laundering without any connecting clause to terrorist financing.

287. The procedure raises further questions, particularly whether and how to apply criminal procedural rules in lack of a criminal procedure: all the freezing orders by courts issued so far in

such cases were based on the Criminal Procedure Act, even if there had not been (and would not have been) any criminal procedure initiated against anybody. Certainly, all the bank accounts involved were presumably related to persons or entities designated by the relevant lists as "terrorists" or "terrorist organizations". At this point it needs to be emphasized that the simple appearance of any person or entity on a UNSCR list cannot be counted as any sort of evidence being able to establish the suspicion of a criminal offence subject to prosecution. That said, as far as the respective freezing orders are concerned, the evaluators could not find any legal ground upon which the provisions of the Criminal Procedure Act could have been applied.

288. The unsoundness of the Criminal Procedure Act as a legal base was confirmed by the fact that none of the authorities interviewed knew what happens to the assets once they have successfully been frozen. According to Art. 234(6) CPA they should be deposited on a special account and kept there "*until the termination of the proceedings or until the conditions are met for their recovery*" which cannot be implemented in the context of freezing under the UNSCR lists, where there are neither proceedings that could be terminated nor any conditions under which the frozen assets could be returned to their original owners if the latter are indeed terrorists or terrorist organizations. As it was summarized by the Ministry of Interior: "All that they have ever frozen is still frozen".

289. In relation to freezing under these lists, Croatian authorities referred not only to criminal procedural rules but also to Art. 80 and 82 of the Criminal Code which deal with confiscation of instrumentalities and of proceeds of crime. Considering the conviction-based character of the confiscation regime, these provisions cannot meet the requirements of SR.III. Moreover, neither of the said criminal confiscation provisions would be sufficient to confiscate legitimate funds intended to finance terrorism.

290. As far as Criterion III.4 is concerned, the relatively restricted language of the respective Criminal Procedure Act provisions appears insufficient to cover all the contents of the term "funds or other assets" as it is defined by the Interpretative Note to SR.III.

291. Some of the said freezing orders also referred to Art. 140 of the Constitution of the Republic of Croatia according to which "*international agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects*." Certainly, UNSC Resolutions and similar legal instruments cannot be characterised like this. Even if those Resolutions are directly applicable (no ratification is required), a provision like this cannot substitute the necessary domestic rules for unfreezing, delisting etc.

292. The latter is particularly important, as Criteria III.7 and III.8 require "effective and publicly-known procedures" for considering de-listing requests and for unfreezing the funds or other assets of de-listed persons. Bearing in mind that not even the Croatian criminal procedural rules are tailored to meet such requirements and that there is not any other (administrative) procedure being applicable in this field, one can conclude that there is not any legal instrument in Croatian jurisdiction that would fulfil these criteria. At this point, the Croatian authorities pointed at para (7) of Art. 234 CPA according to which

> *"The State Attorney, the owner of the cash amounts in domestic and foreign currency, the defendant and the legal entity or the natural person who is to proceed according to the ruling referred to in paragraphs 3 and 5 of this Article may take an appeal from the ruling of the investigating judge referred to in paragraphs 3 and 5 of this Article."*

293. But this provision is practically inapplicable in the context of freezing under the UNSCR or similar lists as there is no criminal procedure, no defendant and probably not any owner of the "cash amounts". In addition, it is not clear why it would meet, from any aspect, the requirements set out in Criteria III.7 and III.8. The same goes for Criterion III.9 (appropriate procedures for

authorising access to frozen funds or other assets) and it is only Criterion III.10 (procedures through which a person or entity whose funds or other assets have been frozen can challenge that measure with a view to having it reviewed by a court) which appears to be met by Art. 234(7) CPA as quoted above.

294. Criterion III.5 requires countries to have effective systems for communicating actions taken under the freezing mechanisms to the financial sector and/or the general public immediately. Croatia does not have at present the ability to immediately communicate freezing actions to its financial sector.

295. The AMLD sent to the reporting entities in 2003 a general guidance on how to act in the field of prevention of terrorism financing. However, this guidance does not give instructions what institutions should do if it comes to freezing funds in accordance with the UNSC Resolutions and since 2003 it was not yet updated (criterion III.6).

296. It goes without saying that with respect to the total lack of a legal system to address SR.III, that there are also no provisions to comply with the requirements of criteria III.12 (bona fide third parties) and III.13 (measures to monitor compliance with the relevant legislation).

Additional Elements

297. As Croatia was not yet active in the legal implementation of SR.III, there are consequently also no legal provisions in place to cope with the additional elements III.14 and III.15. The AMLD at the time of the on-site visit did not provide consolidated information on designations in a more user friendly form than they were received from the United Nations or third countries (such as alphabetically or, by date of designation, as suggested in the Best Practices Paper)

Statistics

298. The AMLD is aware of the figures of freezing orders in terrorist financing cases (four). The AMLD also made checks of its own databases as well through the Croatian banks databases for almost 1610 individuals and 880 entities. However, these figures are not kept with a view to produce statistics and to use them for an evaluation of the system.

2.4.2 Recommendations and comments

299. Despite the number of actual freezing orders already issued, neither the AML Law nor the Criminal Procedure Act provide a sufficient legal basis for freezing accounts of persons named on the respective lists without delay, and especially for answering to the numerous practical questions following implementation of the United Nations Resolutions. Reliance on criminal procedural rules should therefore be abandoned and a comprehensive set of rules for an administrative procedure should be drafted and adopted (even on the conceptual base that has already been provided by the Act on International Restrictive Measures). The number of freezing orders is welcome; however, it gives no sufficient ground to deem the whole system as effective. Without having the whole picture of the terrorist financing threat, 4 freezing orders cannot dispel the concerns of the evaluators about the soundness of the system. Freezing orders are only the final result of a system to comply with SR.III, but to address SR.III properly an entire system is required: Apart from a sound legal basis, all the institutions should be given clear user-friendly guidance and instructions concerning their rights and obligations under the freezing mechanisms, such as in the case of errors, namesakes or requests for unfreezing and for access for basic expenses. Equally, it was unclear what monitoring is being undertaken of the private sector's compliance with freezing assets of designated persons or whether any of the recommendations in the Best Practice Paper had been implemented.

300. The examiners also recommend

- establishment of an effective system for implementation without delay by all financial institutions in this field, together with the provision of clear and publicly known guidance concerning their responsibilities;
- create and/or publicise procedures for considering de-listing requests and unfreezing assets of de-listed persons;
- create and/or publicise a procedure for unfreezing in a timely manner the funds and assets of persons inadvertently affected by the freezing mechanism upon verification that the persons is not a designated person;
- clarify the procedure for authorising access to funds/assets that are frozen and that are determined to be necessary on humanitarian grounds in a manner consistent with S / Res / 1452 (2002);
- create and/or publicise the procedure for court review of freezing actions;
- consideration and implementation of relevant parts of the Best Practice Paper.

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**Non compliant**	• A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place.

Authorities

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

2.5.1 Description and analysis

301. At the beginning of 1998, Croatia established on the basis of the Law on Prevention of Money Laundering (AML Law; Annex 1) within the Ministry of Finance a Financial Intelligence Unit, named Anti-Money Laundering Department (hereinafter AMLD). The AMLD is an administrative type of FIU and has no investigative powers. Art. 3 of the AML Law describes its tasks as "*to gather, analyze, classify and keep data received from all the reporting institutions, to disseminate the information to relevant state bodies and together with them to undertake measures for the prevention of money laundering*". As already indicated, the prevention of terrorist financing appears only in the first paragraph of the AML Law and was inserted as an amendment which came into force in 2004. The idea of this programmatic provision was considered to be the easiest way to extend the scope of the entire AML Law to the prevention of terrorist financing. However, the evaluators were not convinced of this argumentation particularly in the case of provisions in the AML Law which explicitly mention only money laundering. For those Articles it is difficult to argue that the scope of this provision should go beyond the explicit language of the legal texts. As both Art. 1 para. 1 and Art. 3 link the task of the AMLD expressly only with money laundering, it is difficult to interpret the law that the prevention of terrorist financing is also part of its remit by virtue of Art. 1 of the AML Law; nonetheless in practice there is no doubt that the AMLD deals with this issue (e.g. the list of indicators [Annex 3] issued by the AMLD contains a specific section to detect suspicious transactions related to terrorist financing; till now the AMLD also never experienced difficulties when requesting data from obliged entities in the case of a suspicion of terrorist financing).

302. The AMLD also, as noted earlier (Section 2.4), disseminates the consolidated UNSCR lists directly to commercial banks. The examiners have considered the reporting obligation under SR.IV in Section 3.7 beneath. It is concluded that the reporting obligation in respect of terrorist financing is not sufficiently explicit to meet the full requirements of SR IV. Financing of terrorism is not separately covered in the suspicious transaction report form to the AMLD, and no received reports were attributed to financing of terrorism. This could affect the overall efficiency of the FIU as the national centre for receiving, analysing and disseminating all potential disclosures concerning suspected terrorist financing activities. However, in practice, the AMLD received two STRs, which were not specified as to whether it was a suspicion of money laundering or terrorist financing, but which were considered by the AMLD to be connected with possible terrorist financing because of the indicators described in these STRs; the AMLD undertook an analysis of these cases and then forwarded it to FinCEN and the Croatian prosecutor service.

303. The AMLD plays an important role in the anti-money laundering policy of Croatia at operational and strategical level together with the Ministry of Interior and its police services (in particularly the Economic Crimes and Corruption Department within the Criminal Police Directorate). There is a good level of cooperation between the AMLD and other state authorities with responsibilities in the anti-money laundering area – police, customs, Tax Administration, State Attorney's Office, USKOK and supervisory bodies. The AML Law provides in its Art. 3 para 1 and 4 and in Art. 11 para 4 a legal basis for cooperation; however, there is no formal procedure on this cooperation. The AMLD actively participates in two Multi Disciplinary Committees (as described in section 1.5).

304. The AMLD comprises 17 employees (the head of the AMLD and 1 deputy head, 8 inspector-analysts, 1 inspector for prevention matters, 1 head of department, 1 IT expert, 4 employees for administrative work). At the time of the on-site visit it was planned to recruit - with the approval of the Ministry of Finance - 5 additional employees. New employees who have been recruited for the AMLD are first trained before starting their tasks (induction course; exchange with other institutions etc.). The employees of the AMLD are considered civil servants and governmental employees and as a consequence the Civil Service Act (NN 92/2005), which governs the labour relations between the State and the employees, applies; this Act contains requirements which candidates must fulfil for admission to the civil service (Art. 48). Furthermore "*defendants in a criminal proceedings or who have been convicted of a crime for which a prison sentence of not less than two years is mandated by domestic or international laws for crimes against the person, humanity, morality, public or private property, public administration and public interest, or due to public sector fraud, unless subject to rehabilitation under a separate law*" are not allowed to be employed (Art. 49). Applicants who meet the formal requirements have to undergo a testing procedure concerning their competences, skills and professional experience. All candidates for admission are checked whether they have criminal records or are subject to criminal indictments. Persons who will have access to classified data have to be checked by Security and Intelligence Agency (at the time of the on-site visit, this applied for all FIU staff though there was no legal obligation to do so).

305. The AMLD is divided in 2 subdivisions: the Prevention Department and the Analytical Department. The tasks of the Prevention Department are receiving of transactions reports; administration of the system; safe-keeping, safety and analysis of information; elaborating of indicators and reports for the need of analytics; information system of the FIU; administrative supervision (off-site); training of banks and non-banking sector. The Analytical Department has to deal with checking the FIU databases; analysis of cash and suspicious transaction reports; analysis and directions for further procedures; requests to the reporting institutions for additional information; requests to foreign FIUs and submitting STRs to competent bodies.

306. The staff of AMLD are trained in relevant anti-money laundering and counteracting terrorist financing issues both locally and abroad. In addition the staff were also trained concerning other issues (intelligence work, IT etc), as follows:

a.) internal training:

- training on analytical intelligence work (procedures, typologies);
- education by FIU employees and by law enforcement;
- education in foreign languages;
- adoption of new computer based skills on practical use of new technologies, instructed by outside experts and international experts (new versions of software);
- interactive training of the AMLD and Ministry of Finance employees (Tax Administration, Customs Administration and Foreign Exchange Inspectorate);
- training on the scope of main criminal offences, held by professors from the University of Law and experts from the Ministry of Interior and State Attorney's Office.

b.) external training:

- exchange of staff and meetings with other FIUs (Belgium, Bosnia and Herzegovina, Czech Republic, Liechtenstein, Slovenia, "the former Yugoslav Republic of Macedonia");
- international seminars that cover the area of prevention of money laundering and terrorism financing (e.g. in March 2006 in Maastricht).

307. Together with the European Commission (Technical Assistance and Information Exchange – TAIEX) the AMLD organized thematic seminars for the employees of the AMLD and specific groups of reporting institutions, in connection with:

- electronic banking and money laundering (8 and 9 December 2005, Zagreb),
- prevention of money laundering – insurance agencies and casinos (16 and 17 February 2006, Zagreb),
- prevention of money laundering – off-shore zones and securities (May 2006, Zagreb).

308. Though Croatia undertook some steps to reinforce the unit with recruitment of additional staff, the actual number of staff seems not quite sufficient. The AMLD indicated a need to recruit experts in analytics, statistics, IT technology, financial market, securities market and investment funds. Moreover, as it was already indicated in the 2nd round report, there is a high fluctuation of staff due to better salaries offered by the private sector (e.g. the deputy director of the AMLD left immediately after the on-site visit). This seems to be a constant problem influencing the effective operation of the AMLD.

309. The AMLD does not have its own separate budget: its budget is part of the budget of the Ministry of Finance, because the AMLD itself is part of the structure of the ministry. As a consequence the AMLD needs for recruitment of additional staff the approval of the Ministry of Finance. The AMLD receives logistic support of the Secretariat of the Ministry of Finance. In the course of 2004 and 2005, the Ministry of Finance provided hardware and software for every inspector of the AMLD for analytical work and access to external databases and also renewed licenses for existing software. Though this budgetary situation does not appear to be a problem at present, in the examiners' view a separate budget may strengthen the independence of the AMLD. (26.6)

310. The law requires relevant obliged entities to report suspicious transactions and transactions exceeding 200 000 Kuna (approx. 27 000 EUR) to the AMLD. In the 2nd round report it was indicated that the number of STRs, particularly from banks, was too high and that the Croatian authorities should take measures to limit the apparent over-reporting of STRs because it overwhelms the work of the AMLD. This "over-reporting" was obviously caused by the fact that the AMLD had advised the banks to report anything which might be suspicious (based on objective indicators which the AMLD had issued to the financial sector and supervisory bodies).

In the meanwhile, the AMLD took some steps to reduce the amount of STRs. They are now directing the reporting entities to focus more on subjective indicators for suspicious transactions and have revised their guidance to the reporting institutions in this regard. As a consequence the number of STRs received decreased significantly (see table below under statistics).

311. Article 10 of the AML Law authorises the AMLD to request the reporting institutions to postpone transactions for a maximum of 72 hours. If the AMLD decides to apply such a measure, they immediately inform the State Attorney's Office pursuant to Art. 10(3) so that the public prosecutor may apply for a freezing court order. This faculty has been used successfully in a number of concrete cases; all postponements of transactions by the AMLD were followed by judicial freezing orders (for details see Section 2.4 and the table beneath under statistics). If a reporting institution would not follow such an order, the AML Law provides pecuniary sanctions both for the reporting institution and the compliance officer (Art. 19).

312. Turning to Criterion 26.2, Art. 22 of the AML Law provides the legal authority for the Ministry of Finance to issue regulations defining the manner and the deadlines for informing the AMLD on suspicious and above threshold transactions. On this basis, Section III of the "Procedures on Implementation of the Law on Prevention of Money Laundering" (hereinafter AML By-law; Annex 2) regulates the form and the time framework of reporting to the AMLD. Its Art. 5 obliges the reporting institutions to use the form which is enclosed to this By-law and to follow the instructions of this form. As indicated above, financing of terrorism is not separately covered in the suspicious transaction report form of the AMLD, and no received reports were attributed to financing of terrorism (nonetheless the AMLD initiated two terrorist financing cases on the basis of STRs filed from banks; these STRs were related to cross-border wire transactions involving one party residing in a "terrorist related"-country). The AMLD developed also together with the reporting institutions and other competent authorities indicators for the identification of transactions suspected to be related to money laundering or terrorist financing. The indicators for the financial sector are divided in indicators for identification of cash transactions and wire transactions, with subgroups of subjective and objective criteria for each of them. These indicators were incorporated in guidelines and sent to reporting institutions.

313. The AMLD is engaged in training activities and daily methodological assistance for the obliged entities (also via phone). Training is considered a key issue; at the beginning the focus was on financial institutions and has been recently shifted to DNFBP. Twice per year the AMLD organises together with the NBC a training for the banking sector. However, there is a very uneven reporting (see below under statistics): banks send still the biggest number of STRs and the number of STRs submitted by other reporting entities (insurance, gambling houses, exchange bureaus, real estate agents, notaries, lawyers etc.) is significantly low. This indicates a lack of understanding of these sectors and further outreach to these entities is needed.

314. The AMLD performs off-site (but no on-site) supervision of reporting entities. Though the AML Law contains no restriction for the AMLD to perform also on-site supervision, the Croatian authorities explained that the Ordinance on the Organisation of the Ministry of Finance would exclude this possibility. Furthermore it was said that also the lack of a provision describing the powers of the AMLD when going on-site and of a supervisor's ID (which was explained to be necessary for all on-site inspectors) would prohibit the AMLD from doing on-site inspections. According to the AML By-law, reporting institutions are obliged to perform at least once per year internal control of the compliance with the AML Law, and to inform the AMLD about that (send written reports). The AMLD reviews and analyses these reports on compliance and if it finds irregularities it may request the respective supervisory body to perform on-site inspection on that reporting entity.

315. Regarding the equipment and technical facilities of the AMLD, the assessors were informed that the IT system of the unit was recently substantially upgraded: a new IT system with analytical

software was introduced which is now operational. The AMLD employees use an integrated internal network between the workstations of the AMLD and they dispose also of additional external net. An own database was designed and is used with in conjunction with analytical software for initial analyses and second level analyses. The information kept by the AMLD is protected through various firewalls and respective passwords. There are also physical limitations to get access to the FIU (locks; security guard).

316. Art. 15 of the AML Law provides that all information gathered in accordance with this law is considered as confidential and secret, and can only be used for the purposes stipulated by the AML Law. The AMLD and its employees may use the information gathered on the basis of this Law only for the detection and prevention of money laundering or a criminal act related to money laundering (para 3). At the time of admission to public service in the office, employees must sign statements on protection of official secrets which obliges them to keep secret data, information and facts encountered relating to work in the office, and not to reveal and announce them to anyone or on any other way make them available. The person is obliged to comply with regulation regarding secrecy also after leaving the office. The Croatian authorities advised the examiners that an unauthorized disclosure would be punishable under the criminal offence of Disclosure of an Official Secret (Art. 351 CC). Additionally, Art. 21 of the Civil Servants Act requires civil servants to keep secret data which they gain in the process of their professional work (this obligation continues for five years after the termination of service, unless specified otherwise by separate legislation) and this can attract civil penalties initiated by the Ministry of Finance. The evaluators were advised that these two processes (criminal and civil) would be applied in parallel in the case of a breach of professional secrecy by an employee of the FIU.

317. The AMLD keeps the received information for ten years. After these 10 years, records are stored and can be used only upon the request of a court. Records are required to be destroyed one year after the day when they were stored (Art. 17 of the AML Law).

318. As discussed under Section 3.4 in more detail, Art. 21d of the Law on the Office for the Suppression of Corruption and Organised Crime ("Law on USKOK"; Annex 6) provides that USKOK is authorized to ask the AMLD "*to check the business operation of a legal entity and natural person and ... request information on the information gathered, processed and stored concerning unusual and suspicious financial transactions"*. The AMLD "*is obliged to provide all available data on the transactions of suspects suspected of money laundering, and execute necessary checks in order to establish the existence of such transactions*" (Art. 21e[2]). Thus, USKOK has indirect access to the banking data via the AMLD. If the data already kept by the AMLD should be insufficient for the purposes of the investigation, USKOK is even authorized to oblige the AMLD to obtain further confidential information from the banks (by requiring, as quoted above, to check the business operation of a legal/natural person as well as to execute "*necessary checks*" to establish the existence of certain transactions). Art. 21d of the Law on USKOK provides that failure to act on the request of USKOK would be considered as an *"aggravated violation of the official or working duty"*. Though this competence of USKOK provides a hypothetical risk to the data security of the AMLD, it seems that there are sufficient elements regulating this competence of USKOK in a satisfying manner as the request of USKOK needs to be linked either with suspected money laundering or indications of organized crime. However, it is recommended that this access should be covered by a regulation setting out the criteria how this access by USKOK can be established (e.g. in writing; explaining the reasons for this request). The evaluation team was informed that this competence of USKOK could cause problems in some cases when the information kept by the AMLD was gathered from other (foreign) institutions who provided these data only under the condition of keeping this information confidential. The subsequent request of USKOK to provide these data brought the AMLD in a situation breaching either the agreement with the foreign counterpart or breaching a professional duty. It is recommended that the Croatian authorities satisfy themselves to issue regulations to address this issue. Considering the fact that this situation might circumvent international channels

of communication, it is recommended to except the AMLD in these cases from providing information to USKOK and to justify this decision to USKOK in writing explaining the reasons.

319. Art. 21d of the Law on USKOK gives USKOK the authority to request information from the AMLD not only in cases linked with money laundering or terrorist financing but also in all other competences of USKOK. This could cause theoretically problems for the AMLD as it could be required to gather information which is not within its competence. However, the evaluators were told that till now this was not problematic as there exists an oral (informal) agreement between the AMLD and USKOK that requests of USKOK must explain a link to suspicion of money laundering.

320. The AMLD has the following internal databases:

- cash transactions database,
- suspicious transactions database,
- Customs report database,
- database on (opened and closed) cases of the AMLD.

The AMLD has furthermore direct (on-line) access to the following external databases:

- customs administration database (including data on declarations of imported and exported goods);
- tax authorities database, including (amongst others):
    1. real estate database,
    2. database on annual income declarations and
    3. motor vehicle database;
- Commercial Court database (publicly accessible database);
- "Business Croatia" (commercial database of companies, governmental institutions, associations).

The access to the Police database is not online and if the AMLD needs information, it has to send a written request to the police. The AMLD requested several times to have on-line access to this database (the negotiations took place already during the previous on-site visit). It was explained that the average time to get information from the Police database is approximately between 15 and 30 days.

321. Criterion 26.4 deals with the FIU's authority to obtain additional information from reporting parties. Pursuant to Article 8 of the AML Law, the AMLD is authorised to request and obtain from reporting institutions additional information on the transaction and on clients. This is understood to apply not simply in respect of the reporting institution which made the report, but also to other reporting institutions that did not submit the report**.**

322. Turning to Criterion 26.5, Art. 12 of the AML Law obliges the AMLD to notify the proper state authorities when it detects during its activities that there is a suspicion that an offence or criminal activity or an infringement has been committed. It has transmitted, as the statistics beneath shows, 316 reports to supervisors, the General Prosecutor Office and various ministries between 2002 and the on-site visit.

323. The AMLD issued annual reports on its work including statistics, typologies, and trends. These reports are submitted to the Government of the Republic of Croatia at least once per year (annual reports on its activities). The AMLD provides also once per year a feedback to the banking sector on the results of its activities. This feedback is based on the annual reports of the AMLD and usually announced at a press conference; in 2006 till the time of the on-site visit no such conference took place. For the future it is planned to send the summary of the annual report to the supervisory bodies. The AMLD explains its activities to public also by issuing articles on specific subjects in various publications.

324. The AMLD is a member of the Egmont Group since 1998 and participates actively in its working groups. It follows the Egmont Group Principles regarding the information exchange among FIUs.

325. Considering the role of the AMLD in the Croatian AML/CFT system it can be concluded that the AMLD satisfactorily fulfils its obligations. It is an administrative type of FIU and its core responsibilities in steering, coordinating and evaluating the reporting system and analysing the received reports are exercised in an efficient way (to the changes in the reporting system see below paragraph 516). The prosecutors and Police with which the evaluators met expressed that they are satisfied with the overall work of the AMLD and that the reports received are of good quality for further proceedings.

Statistics

326. The AMLD provided the following statistics concerning its activities:

Table 1:
Received STRs, SARs, UTRs, /information from reporting institutions, law enforcement, supervisory or other state bodies and foreign FIUs.

Suspicious Transactions Reports by sectors from 1.6.2002-1.9.2006					
Reporting institutions and professions	**1.6. – 31.12. 2002**	**2003**	**2004**	**2005**	**1.1.-1.9. 2006**
1. Reporting institutions and professions referred to in Art. 2 of AML Law	**9.818**	**17.688**	**2.063**	**2.748**	**1.909**
Banks and housing savings banks	*9.755	*17.543	2.024	2.622	1.898
Savings and loan co-operatives	1	12	15	34	
Investment funds and investment funds management companies				1	4
Financial Agency and Croatian Post Office	*52	*118	3	9	
Insurance companies	3	4	1	4	3
Brokers	2	1	3	2	1
Authorised bureaux de change	3	4	3	5	
Organizers of lottery games, casino games, betting games and slot machine games	2	1	1	12	2
Other reporting institutions and professions referred to in Art. 2(3) of AML Law: real estate agencies, leasing and others		5	13	59	1
2. Reporting institutions and professions referred to in Art. 9a of AML Law			**2**	**6**	**1**
Lawyers			1	2	
Notaries			1	4	1
3. Law enforcement and other competent authorities	**67**	**58**	**74**	**115**	**83**
The Ministry of Interior	25	31	26	55	27
Interpol					11
State Attorney's Office	5	4	1	2	3

The Office for Suppression of Corruption and Organized Crime, USKOK			5	3	2
The Ministry of Finance, Tax Administration	17	6	4	3	7
The Ministry of Finance, Customs Administration	6	2	15	29	21
The Ministry of Finance, Foreign Exchange Inspectorate	5	8	19	15	5
Croatian National Bank	2			2	
Intelligence Agency				3	2
Commission for Securities	1				
Directorate for Supervision of Insurance Agencies					
Croatian Financial Services Supervisory Agency, HANFA (from 1.1.2006)					4
State Auditing Office	2				
State Inspectorate					1
The Ministry of Justice	1				
County Court of Law		1			
Open sources	3	6	4	3	
4. Foreign FIUs	**17**	**55**	**40**	**39**	**31**
Total	**9.902**	**17.801**	**2.179**	**2.908**	**2.024**

327. In the period from June 2002 until the end of 2003, reporting institutions (banks and financial agencies) reported to the AMLD under the term ”suspicious transactions” three kinds of transactions (marked in the table above with an *):

1. STRs - Transactions when they suspect or have reasonable grounds to suspect that funds are the proceeds of a criminal activity,
2. UTRs - All complex, unusual large transactions or unusual patterns of transactions, that have no apparent or visible economic or lawful purpose, although funds of those transactions are not proceeds of criminal activity, and
3. STRs/UTRs based on objective indicators (e.g. transactions over 500 000 Kuna; offshore related transactions).

328. With the adoption of the ”Procedures on Implementation of the Law on Prevention of Money Laundering” (AML By-law; Annex 2) a new list of indicators for identification of suspicious transactions (Annex 3) was created. Since then reporting institutions report only transactions under categories 1) and 2) as described in the paragraph above.

Table 2a:
Cash Transactions reported to the AMLD in the period from June 2002 until September 2006

	1.6. – 31.12. 2002	2003	2004	2005	1.1.-1.9. 2006
Banking Sector	20 947	47 537	24 727	26 919	21 549
Non-banking Sector	40 866	70 797	5 204	7 355	7 388
Others (Non-financial businesses and professions)	21	35	21	60	37

Table 2b:
Cash Transactions reported to the AMLD - breakdown for the period of 2005 and 2006

Reporting institutions and professions	2005	1.1.-1.9. 2006
1. Reporting institutions and professions referred to in Art. 2 of AML Law	**34 334**	**28 974**
Banks and housing savings banks	26 919	21 549
Savings and loan co-operatives	251	109
Investment funds and investment funds management companies	4499	5504
Financial Agency	2443	1363
Insurance companies	12	3
Authorised bureaux de change	101	96
Organizers of lottery games, casino games, betting games and slot machine games	13	29
Other reporting institutions and professions referred to in Art. 2(3) of AML Law: Croatian Privatization Fund, Croatian Post, pension funds, real estate agencies, leasing and others	95	320
2. Reporting institutions and professions referred to in Art. 9a of AML Law		
Lawyers and Notaries	1	0

329. From 2002 till the end of 2003, reporting institutions reported to the AMLD also deposits of daily proceeds of legal persons and large business chains as cash transactions. However, by adoption of the AML By-law (from 1 January 2004) it was made clear, that deposits of daily proceeds should not be reported (Article 24). On that basis and as well due to the increase of the threshold (from 1 january 2004) for reporting on cash transactions (from KN 105 000 to KN 200 000), the total number of received reports on cash transactions decreased.

Table 3:
Cases opened by the AMLD on the basis of STR/SAR/information received from the reporting entities, supervisory bodies, law enforcement and foreign FIUs

Cases opened on the basis of STRs/SARs, by sectors for 1.6.2002-1.9.2006					
Reporting institutions and professions	**1.6. – 31.12. 2002**	**2003**	**2004**	**2005**	**1.1.-1.9. 2006**
1. Reporting institutions and professions referred to in Art 2 of AML Law	**36**	**154**	**152**	**162**	**120**
Banks and housing savings banks	36	148	145	156	111
Savings and loan co-operatives			1	1	2
Investment funds and investment funds management companies				1	2
Financial Agency		1	1	2	
Insurance companies		1	1	1	1
Brokers			1		1
Authorised Bureaux de change		2	1		
Organizers of lottery games, casino games, betting games and slot machine games		1	1	1	2
Other reporting institutions and professions referred to in Art. 2 (3) of AML Law:: real estate agencies, leasing and others		1	1		1
2. Reporting institutions and professions referred to in Art. 9a of AML Law			**2**	**6**	**1**
Lawyers			1	2	

Notaries			1	4	1
3. Law enforcement and competent authorities	**32**	**53**	**50**	**79**	**70**
The Ministry of the Interior	12	32	26	54	27
Interpol					11
State Attorney's Office	3	2	4	2	3
The Office for Suppression of Corruption and Organized Crime, USKOK		2	2	3	2
The Ministry of Finance, Tax Administration	8	6	4	3	7
The Ministry of Finance, Customs Administration	2	2	8	4	8
The Ministry of Finance, Foreign Exchange Inspectorate	2	8	6	5	5
Croatian National Bank	1			1	
Intelligence Agency				3	2
Commission for Securities	1			3	
Directorate for Supervision of Insurance Agencies				1	
Croatian Financial Services Supervisory Agency, HANFA (from 1.1.2006)					4
State Auditing Office	2				
State Inspectorate					1
The Ministry of Justice	1				
County Court of Law		1			
4. Foreign FIUs	**17**	**55**	**40**	**39**	**31**
Total	**85**	**262**	**244**	**286**	**222**

330. The AMLD advised the evaluators that 90% of the opened cases result from suspicious transaction reports, while the remaining 10% are opened on the basis of cash transaction reports. At first sight the number of opened cases appears to be rather low in relation to the number of reports received. The Croatian authorities advised that often several STRs are linked with an opened case (though no precise numbers could be provided to the evaluation team). Thus it can be concluded that the analytical work of the AMLD is processed in a satisfactory manner.

Table 4:
Total number of reports/refferals, disseminated by the AMLD to competent authorities for further proceedings for the period 1.6.2002-1.9.2006

Total number of reports, disseminated to competent authorities for further proceedings						
	1.6. – 31.12. 2002	**2003**	**2004**	**2005**	**1.1.-1.9. 2006**	**Total**
State Attorney's Office	13	26	19	26	18	102
Office for the Suppression of Corruption and Organized Crime (USKOK)	4	8	5	2	3	22
The Ministry of the Interior	8	11	18	20	14	71
The Ministry of Finance, Tax Administration	4	13	9	11	18	55
The Ministry of Finance, Foreign Exchange Inspectorate	6	7	11	10	4	38
The Ministry of Finance, Customs Administration		4			1	5
Foreign FIUs	3	6	6	1	5	21
The State Auditing Office	1					1
Croatian National Bank					1	1
Total	**39**	***75**	**68**	**70**	****64**	**316**

***Remark:** Total number of disseminated suspicious activities reports/ STRs (cases) for the year 2003, includes as well 14 supplementary reports, reports sent to apprize competent authorities.

****Remark:** In the period from 01.01.2006 until 01.09.2006, the AMLD sent to competent bodies not only 64 STR's (cases) but also 22 supplements to STR's (cases). In the same period, the AMLD sent to the same bodies as well 26 written reports relating to other serious criminal offences.

Table 5:
Total number of orders, issued by the AMLD for 72 hour postponement of suspicious transactions based on Art. 10 (2) of the AML Law

Orders for 72 hours delay of execution of suspicious transactions issued by the AMLD				
1.6. – 31.12. 2002	**2003**	**2004**	**2005**	**1.1.-1.9. 2006**
2	7	1	1	4

2.5.2 Recommendations and comments

331. Croatia should make clarifications to the AML Law with regard to the prevention of terrorist financing, particularly amending the relevant provisions and make it absolutely clear that they also cover the prevention of terrorist financing. However, this seems to be currently no problem in practice and nobody seems to question the authority of the AMLD to be active in this area.

332. The salaries for the AMLD seem to be not competitive to salaries offered by private sector. This obviously caused a high fluctuation of staff and influences also the effective operation of the AMLD. The number of staff seems to be not sufficient to cover all tasks (particularly for giving guidance and training to reporting institutions). Croatian authorities may wish to consider to increase the staff of the AMLD and also to make the positions within the AMLD more attractive.

333. The fact that the AMLD does not have its own separate budget does not appear to be a problem at present, but in the examiners' view a separate budget may strengthen its independence (particularly with regard to the need of approval of the Ministry of Finance to recruit additional staff or just to buy computer hardware or software).

334. There is some disparity between the number of received reports, opened cases/investigations and further disseminations / referrals to competent authorities. The reasons for this may be still an over-reporting of obliged entities as well as obstacles within the AMLD to proceed with investigations (e.g. insufficient staff, training of employees etc.). It is recommended to reduce the time period for the investigations of the AMLD.

335. It was unclear and the AMLD also does not keep statistics on this, how many reports sent from the AMLD to the State Attorney's Office were subject to investigations, prosecutions, indictments or convictions. This may hamper to evaluate the effectiveness of the reporting of the AMLD.

336. Regarding the number of STRs received by the AMLD, the measures of the AMLD to limit the apparent over-reporting of STRs was successful and the decrease of received reports to a more adequate number is a positive development (for details see paragraphs 310 and 516). However, concerning reporting entities, banks send still the biggest number of STRs; the Croatian authorities should undertake efforts to increase the number of STRs submitted by other reporting entities.

337. The AMLD is well-regarded by domestic financial institutions and other governmental institutions. The informal cooperation with the police, the customs and the public prosecutor functions effective and quick. The competence of USKOK to get access to the banking data via the AMLD is in principle a positive feature though it provides a hypothetical risk to the data

security of the AMLD. To further strengthen the data security of the AMLD, Croatian authorities may wish to satisfy themselves to oblige USKOK to justify their requests in writing and to highlight the reasons for these requests.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	**LC**	• The AML Law provides only in its Art. 1 a reference to terrorist financing and contains no further provision in this regard. As a result there is no clear competence of the AMLD in this area which could affect its overall efficiency as the national centre for receiving, analysing and disseminating all potential disclosures concerning suspected terrorist financing activities. • The suspicious transaction report form of the AMLD relates only to money laundering but not to terrorist financing. • The high rate of turn over of staff could cause difficulties to the efficient work of the FIU.

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

Police

338. Apart from USKOK (the special public prosecutor's office for combating corruption and organized crime; see below), the Croatian police is the most important authority empowered to prevent, detect and pre-investigate crimes. The Police tasks are:

- protection of life, rights, safety and inviolability of a person;
- protection of property;
- prevention and revealing of criminal offences and misdemeanours;
- searching for perpetrators of criminal offences and misdemeanours and their taking to the competent authorities;
- control and regulation of the road traffic;
- tasks relative to the movement and stay of aliens;
- control and securing of the state border;
- other tasks defined by law.

339. Croatia has a single centralised police service (Police Directorate) within the Ministry of the Interior. The police service is organised at state, regional (Police Administrations) and local levels (Police Stations). The total number of authorised police officers in Croatia is approx. 19 000 (of which 3 000 are criminal police officers). At state level, the Police Directorate is primarily responsible for coordination, direction and supervision of regional Police Administrations, for international cooperation and education at the Police Academy. In complex cases it also directly cooperates and assists in the investigations carried out by regional Police Administrations.

340. The Police Directorate is divided into two main operative administrations - the Police Administration (uniformed officers) and the Criminal Police Administration - and several logistic services, such as the Security Office, Police Operations and Communications Centre, Special Units Command, Criminal Investigation Centre and the Police Academy. The Economic Crime and Corruption Department comprises 12 staff at the central level and about 240 at the regional level. The Economic Crime and Corruption Departments (at the state and regional levels) carry out the majority of the money laundering investigations. Special units dedicated only to money laundering and financial investigations are still not formed. As the result of the National Plan for Fighting Organised Crime and the Regional Strategy on Tools against Economic and Organized Crime, there is a plan to establish specialized units for money laundering and financial investigations at the state level as well as at regional level within the 5 biggest police administrations.

341. In the last 5 years, the criminal police completed and passed to the prosecution service 40 cases related to Art. 279 CC (money laundering): 12 cases in 2001, 4 cases in 2002, 4 cases in 2003, 5 cases in 2004 and 15 cases in 2005. The main predicate offences were abuse of narcotic drugs, abuse of office and official authority, and abuse of authority in economic business operations. The AMLD has been involved in all these cases, either by submitting reports which were the basis for Police to initiate investigations or by submitting additional information upon requests in Police generated cases.

342. In the pre-investigative phase, the Police have direct access to criminal records of the Ministry of Interior and, on request by the head of units, they can obtain information from the Tax Administration, Customs and Securities Commission. The most difficult issues the Police face are access to data protected by bank secrecy (only with court order) and to gather information on the transactions of offshore companies, which the police try to solve through INTERPOL channels, direct cooperation with foreign counterparts or through the cooperation with the AMLD in the joint cases of money laundering.

343. According to the CPA, the police authorities are obliged to take all necessary measures aimed at discovering the perpetrator, preventing him/her from fleeing or going into hiding, discovering and securing traces of the offence and objects of evidentiary value, as well as gathering information which could be useful for conducting successful criminal proceedings. To fulfil this obligation, the CPA grants the police a number of powers in the so-called pre-investigation proceedings (i.e. take statements, search premises and buildings, identify persons and items, perform voice analysis, put someone under surveillance, etc.). However, while gathering information, the police may not examine individuals as defendants, witnesses or expert witnesses, and the gathered information cannot be used as evidence in Court; an exception is a statement given to the police by a suspect with a defence lawyer present. The Law on USKOK makes a further exception to the CPA in this regard and allows statements of witnesses and suspects given to the Police or Public Prosecutors in the pre-trial stage to be used as evidence in Court.

344. The Economic Crime and Corruption Department organises yearly seminars for the economic crime units of the police. Money laundering and financial investigation issues are covered; furthermore, other seminars for other departments (drug, organised crime) also address the issue of money laundering and financial investigations. Starting in 2006, annual financial investigation seminars were planed, as well as permanent basic training in financial investigations. Police officers working in economic crime units are highly educated. A faculty degree is a prerequisite for working on economic crime. Although the economic crime investigators usually conduct money laundering and financial investigations, all criminal police officers are authorized to undertake those investigations as necessary.

345. The Economic Crimes and Corruption Department cooperates closely with the AMLD. The AML Law provides in its Art. 3 para 1 and 4 and in Art. 11 para 4 a legal basis for this

cooperation; however, there is no formal procedure on this cooperation but there are some plans in this direction regarding the cooperation between AMLD and police units. The Ministry of Interior has issued so far 6 internal police instructions on the issues related to the AMLD, its reports/notifications to the police, money laundering and financial investigations, and seizures.

Prosecution authorities

346. Pursuant to the Code of Criminal Procedure, criminal proceedings for offences prosecuted *ex officio* are instituted and conducted only upon request of the public prosecutor. Art. 124 of the Constitution is intended to guarantee the independence of public prosecutors: *"The Office of the Public Prosecutions is an autonomous and independent judicial body empowered and due to proceed against those who commit criminal and other punishable offences, to undertake legal measures for protection of the property of the Republic of Croatia and to provide legal remedies for protection of the Constitution and law"*. The organisation of the public prosecution service, its competencies, and the conditions for appointment and dismissal of public prosecutors are regulated by the Law on the Public Prosecution Service of June 2001.

347. The Public Prosecution Service is hierarchically organised at three levels of jurisdiction that corresponds to the organisation of the courts (State, County, and Municipal levels). The employment at different levels requires a national judicial exam and a prescribed time of working experience. The Public Prosecution Service is headed by the Chief Public Prosecutor who is appointed by the Parliament at the proposal of the Government and with a prior opinion of the Judicial Committee of the Parliament for a four-year term (with a possibility of reappointment).

348. According to Art. 42 CPA, the Public Prosecutor is competent to undertake the necessary measures aimed at discovering offences, and to request that a judicial investigation and specific investigative actions be ordered and carried out. The Public Prosecutor is empowered to demand explanations at any time on any case from the police, and to request them to undertake certain measures. Moreover, the police have to report to the Public Prosecutor about any criminal offence coming to its knowledge and inform the Public Prosecutor about its findings on the said offence. The prosecution authorities are steering and coordinating investigations conducted by the Police and are in close co-operation during the investigations. As a result, the reports finally submitted from Police to prosecutorial authorities are of a satisfying quality for the prosecutors which enable them to either proceed with indictments or to close a case. This resulted in a satisfying number of indictments: in the period of 2002-2006 (up to the time of the on-site visit), the State Attorney's Office issued indictments against 14 persons (though this was not followed by any convictions since 2003 till the time of the on-site visit in 2006 but which was merely caused by the backlog of the courts).

349. The evaluators were advised that the CPA was amended (although the amendments were not made available to them) in May 2002, which was the beginning of a penal reform aimed at giving more power to prosecutors. The reform intends to strengthen the investigative powers of the Public Prosecution Service which enables it to become the leading investigating body.

350. As of 1999, the State Attorney's Office has issued several binding instructions so as to ensure unique modus operandi in criminal matters regarding money laundering prevention, as well as to ensure a unique manner of cooperation and coordination between the State Attorney's Office and other state bodies involved in combating money laundering. Its binding instruction No. O-2/02 as of 28 March 2002, issued in cooperation with the Office for Prevention of Money Laundering (USKOK) and the Department of Economic Crime and Corruption of the Ministry of the Interior, established the modus operandi following the notification of the Office for Prevention of Money Laundering to the State Attorney's Office of the Republic of Croatia on suspicious transactions, which gives basis to suspect the perpetration of criminal offences of money laundering mentioned

in Article 279 CC. It contains a set of seven rules on the handling of cases forwarded by the AMLD:

(i) All cases received from AMLD are classified as "secret".
(ii) So classified cases must be taken with a higher priority.
(iii) When Public Prosecutor receive STR from the AMLD, the case has to be passed to the Police, with the aim to gather additional evidences and information. About that action the prosecutor shall inform the AMLD.
(iv) After receiving the information from the Police about the actions they have taken, the Public Prosecutor shall inform immediately the relevant lower/subordinated Prosecutor's Office, and in the case of organized crime, the Office for the Suppression of Corruption and Organised Crime (USKOK).
(v) For cases concerning Article 279 CC, the State Prosecutor shall appoint the deputy who is solely in charge at those cases.
(vi) The lower subordinated Prosecutor's Offices shall coordinate the proceedings with County or District Police, and if needed, cooperate the work with other law enforcement agencies.
(vii) If the Prosecutor in charge determines that there are the prerequisites to apply the provisional measures from Article 219 CPA, he will propose immediately to the investigative judge the needed measures.

351. In the State Attorney's Office of the Republic of Croatia, one deputy of the State Attorney General of the Republic of Croatia, who is specialized in prevention of money laundering, is designated to receive notifications on suspected transactions. He initiates inquiries and the collection of all relevant evidence by the police. The competent County or Municipal State Attorney's Office and the Office for Suppression of Corruption and Organized Crime are involved in pre-investigatory proceedings in order to coordinate the course of pre-investigatory proceedings conducted by the police and other supervisory authorities as the Ministry of Finance (Tax Administration, customs, foreign exchange inspectorate and in the future financial police).

352. In the State Attorney's Office of the Republic of Croatia, a Section for Economic Crime has been established within the Crime Department. It is responsible for financial crime and money laundering. The deputy of the State Attorney General who specializes in the monitoring of money laundering cases is at the head of this Section. In every County State Attorney's Office, one person is in charge of money laundering cases, and in every County and Municipal State Attorney's Office a Section for Economic Crime has been established (depending on the number of assistants at each State Attorney's Office).

353. Each Municipal and County State Attorney's Office includes one deputy of the State Attorney specialized at working on cases of money laundering prevention. Such State Attorney's Deputies are designated to work on economic crime cases.

Office for the Suppression of Corruption and Organized Crime (USKOK[36])

354. The Law on the Office for the Suppression of Corruption and Organised Crime (hereinafter "Law on USKOK"; Annex 6) that entered into force on 19 October 2001, established USKOK, a specialised body that is in charge of tackling corruption and organised crime and which started its operations in December 2001.

355. The USKOK is a special body within the Public Prosecutor's Office with a nation-wide competence. The USKOK has investigative, prosecutorial and preventive functions. It is also

[36] USKOK is the acronym for the Croatian name of this body: "Ured za suzbijanje korupcije i organiziranog kriminaliteta".

responsible for international cooperation and exchange of information in complex investigations. According to the above law, USKOK is organised as follows:

- Investigation and Documentation Department: it shall systematically collect data on corruption and organised crimes, organise and run databases, and organise and direct cooperation between government bodies ;
- Anticorruption and Public Relations Department: it shall inform the public of the danger and damage of corruption and organised crime, advise on methods and means of prevention, coordinate the activities from the Action Plan of the National Anticorruption Programme with other bodies, prepare report and analysis on corruption, propose amendments to legislation, and organise training activities;
- Department of Public Prosecutors: It shall direct the work of the police and other bodies in detecting and investigating corruption and organised crime offences, cooperate with competent authorities in other countries and with international organisations, and initiate procedures relating to the seizure of proceeds from crime;
- Secretariat: It shall perform personnel management and other duties ;
- Supporting Service.

356. The USKOK employs a number of special prosecutors appointed by the Chief Public Prosecutor nominated by the Head for a period of 4 years (with a possibility of re-appointment). Exceptionally, for particularly important reasons, the Chief Public Prosecutor may, at the proposal of the Head, refer a Public Prosecutor or a Deputy Public Prosecutor to work for the Office on a particular case or for a limited period of time (this period shall not exceed one year). At the time of the on-site visit, USKOK employed 36 people (including the Head): 15 prosecutors, 6 legal advisors, journalists for public relations, interpreters for international cooperation, etc. All employees of the Office are subject to the same security checks as the Head. The number of employees is not limited by law and can be adjusted to USKOK's workload. In order to ensure a high level of expertise, capacity and independence in their work, the law prescribes that USKOK may employ only prosecutors who have passed the national judicial examination and have at least 8 years of working experience as judges, prosecutors, lawyers or criminal investigation police officers (these requirements refer specifically to the Departments of Public Prosecutors; other departments within USKOK may recruit their staff from other sources: i.e. economists, accountants, analysts, IT experts etc.).

357. The Law also provides for the presence of police experts within USKOK. Art. 17 requires the Chief of Police to transfer at least two police officers to the Office whose responsibilities shall be to 1) cooperate and assist in forwarding the Office's requests, 2) propose the necessary measures and actions for discovering criminal offenders, and for finding and securing evidence, 3) harmonise the work of the police to whom the Office forwarded request for investigating criminal offences.

358. The criminal offences falling under USKOK's jurisdiction are strictly enumerated in Art. 21 of the law on USKOK. It is, among other things, competent for criminal offences in the case of:

(i) money laundering committed as a member of a group or a criminal organization (Art. 279 para 3 CC) and
(ii) money laundering in its unaggravated form (Art. 279 Paragraphs 2 and 3 CC) if such offences have been committed in connection with the perpetration of criminal offences as listed in Art. 21 para 1 of the Law on USKOK (i.e. basically organized crime and corruption offences).

359. Between December 2001, when USKOK started its activities, and September 2006, USKOK forwarded 10 reports to the AMLD which opened on this basis 9 cases. At the time of the on-site visit, no conviction for money laundering based on an USKOK initiative had been achieved.

Tax Administration

360. The Tax Administration is part of the Ministry of Finance. The service collects revenue and has the responsibility for detecting tax crimes. It is also legally responsible for the supervision of the implementation of the AML Law in the area of its jurisdiction, including DNFBP (Art. 21a of the AML Law), though this is done in practice only for casinos. It implements misdemeanour proceedings foreseen by the AML Law. The Tax Administration has no investigative powers; as a consequence, evidence gathered by tax authorities would not be allowed as evidence at courts. When the predicate offence of a money laundering case concerns tax issues, the AMLD forwards such a case to the Tax Administration.

Customs Administration

361. The Customs Administration is part of the Ministry of Finance. With respect to the AML Law, it has no investigation authority, not even when it is e.g. customs fraud. If a case of customs fraud has been discovered in the process of the customs service activities, it informs the State Attorney Office or directly the Criminal Police, with the purpose to execute further investigations. The Custom Administration is also not authorized to initiate proceedings concerning an infringement but they can and do send a request for initiating procedures to the Foreign Exchange Inspectorate which is entitled to initiate such proceedings. In the period 2002 – 2006, Customs Administration forwarded 92 reports to the Foreign Exchange Inspectorate: 2 556 010,83 EUR were confiscated and (in total) fines about 891 400 Kuna were imposed; however, none of these reports related to money laundering or terrorist financing.

362. Art. 9 para 1 of the AML Law obliges the Custom Administration to inform the AMLD "*of the legal transfer or attempt of illegal transfer across state borders of cash or checks in domestic or foreign currency amounting to 40 000 Kuna*[37] *or more, no later than three days upon receiving the information on such transfer or attempt of illegal transfer*".

363. The customs service is authorized for the supervision and control of physical cross-border transportation of cash and cheques. During the performance of these controls, customs officials can perform an inspection and search of persons in passenger traffic, the luggage and other items that they carry with them, as well as the inspection and search of their means of transport.

Counter Intelligence Agency

364. The Security Intelligence Agency is responsible to the Prime Minister and President of the Republic. It has its headquarters in Zagreb. It works amongst others in organized crime and counter-terrorism. In these two areas they are supposed to prepare annual reports on its activity and to present it to both the president and the prime minister. According to domestic laws they shall have close cooperation with the AMLD and Ministry of Interior services.

365. In respect of Criterion 27.2, Paragraph 7 of Article 279 Criminal Code (the money laundering offence) provides that "*the court may remit the punishment of the perpetrator of the criminal offence referred to in paragraphs 1, 2, 3 and 4 of this Article who voluntarily contributes to the discovery of such a criminal offence*". Supplementary provisions can be found in the Criminal Procedure Act and the Law on USKOK.

[37] approx. 5 500 EUR.

Additional measures

366. Legislative measures are in place to empower law enforcement authorities to use special investigative techniques – usually undercover operations and controlled delivery as well as interception of telecommunications under certain conditions. These techniques are permitted in investigations for money laundering, terrorist financing and underlying predicate offences. The evaluators were not advised whether these powers had yet been used in money laundering investigations.

Recommendation 28

367. The measures listed in Recommendation 28 (law enforcement access to documentation/ witness statements) are contained in several provisions of the Criminal Procedure Act:

368. The ***State Attorneys Office*** is empowered to (Art. 42 CPA):
(i) undertake the necessary measures aimed at discovering the commission of criminal offences and the perpetrators;
(ii) undertake inquiries into criminal offences, and require and entrust the implementation of individual investigatory actions and measures aimed at collecting the data relevant for the institution of criminal proceedings;
(iii) request that an investigation and investigatory actions be carried out;
(iv) prefer and press an indictment or motion to indict before the court having jurisdiction thereof;
(v) take appeals against courts' decisions before they become final and submit extraordinary judicial remedies against final court decisions;
(vi) represent the prosecution in proceedings upon a request for judicial protection against a decision or action of an administrative authority having jurisdiction for the infliction of a sentence or imprisonment imposed by a final judgment in the criminal proceedings.

Police investigations

369. If there are grounds for suspicion that a criminal offence subject to public prosecution has been committed, the police has to take necessary measures aimed at discovering the perpetrator, preventing the perpetrator or accomplice from fleeing or going into hiding, discovering and securing traces of the offence and objects of evidentiary value as well as gathering all information which could be useful for successfully conducting criminal proceedings (Art. 177 CPA). In order to fulfil these duties, the police authorities may seek information from citizens, apply polygraph tests, voice analyses, carry out the necessary inspection of the means of transportation, passengers and luggage, restrict movement in a certain territory for an absolutely necessary time (surveillance, observation, blockade, raid, ambush, entrapment, surveillance of the transport of objects, etc.) undertake necessary measures regarding the establishment of the identities of persons and objects, issue an arrest warrant or warrant for seizure, carry out in the presence of the authorized person an inspection of certain objects and premises of state authorities, legal entities and other business premises and review their documentation and data, collect information concealing the purpose of the collection or concealing the capacity of a police officer, using an undercover agent, request an examination of the identity of telecommunication addresses establishing connections during a certain period of time from the legal entity providing telecommunication services as well as undertake other necessary measures and actions. The police authorities may summon citizens. A suspect who has failed to appear may be brought in by force.

370. On the basis of the information collected, the police authorities shall draw up a crime report stating the evidence discovered. The contents of the statements given by certain citizens in the course of collecting information shall not be included in the crime report. The objects, sketches, photographs, reports, records on measures and actions undertaken, official notes, statements and

other material which may be useful for successfully conducting proceedings shall be attached to the crime report. If the police authorities after filing the crime report discover new facts, evidence or traces of the offence, they shall be bound to collect necessary information and to deliver the report on this as a supplement to the crime report to the State Attorney.

2.6.2 Recommendations and comments

371. The Croatian institutional system (the AMLD in co-operation with the prosecutorial authorities, Tax Administration and Customs) provides designated law enforcement authorities that have responsibility for ensuring that money laundering and terrorist financing offences are investigated. The Police use pro-actively the given powers in money laundering investigations. It undertakes its investigations in close co-operation with the AMLD, Tax Administration, Customs and prosecutor service. In the course of this co-operation all the necessary steps are co-ordinated and lead to effective investigations. However, the fact that there have been no convictions or final decisions in any money laundering case since 2003 is of concern (effectiveness).

372. Recommendation 28 is fully observed.

2.6.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.27	**LC**	• There have been no convictions or final decisions in any money laundering case since 2003 (effectiveness).
R.28	**C**	

2.7 Cross Border Declaration or Disclosure (SR IX)

2.7.1 Description and analysis

373. The Croatian legal rules governing the transfer of currency and bearer negotiable instruments across borders are the following:
(i) the Foreign Exchange Act;
(ii) the Decision Governing the Taking In and Out of the Country Cash, Cheques and Materialized Securities;
(iii) the AML Law;
(iv) the Customs Act.

374. Regardless whether it is the import or export of foreign or domestic cash or checks, in all cases if the amount exceeds a threshold stipulated by the AML Law, "*natural persons shall report to the responsible customs officer any cash and checks in foreign currency and in Kuna that is being taken or sent across the state border*" (Art. 40 of the Foreign Exchange Act in conjunction with Art. II of the Decision Governing the Taking In and Out of the Country Cash, Cheques and Materialized Securities). However, the AML Law does not directly provide such a threshold but stipulates in its Art. 9 that the Customs Service "*shall inform the AMLD of the legal transfer or attempt of illegal transfer across state borders of cash or checks in domestic or foreign currency amounting to 40 000 Kuna or more*". Taking into account this reporting obligation for Customs, one can arguably defer that there is a corresponding obligation for persons crossing the Croatian border to report the import/export of foreign or domestic cash or checks exceeding this threshold (40 000 Kuna; approx. 5 500 EUR).

Import/Export of foreign cash and cheques issued in foreign currency

375. Pursuant to Art. 36 of the Foreign Exchange Act and Art. III of the Decision Governing the Taking In and Out of the Country Cash, Cheques and Materialized Securities, there are – apart from the just mentioned declaration obligation - no restrictions limiting the import of foreign cash and cheques issued in foreign currency into the Republic of Croatia.

376. Concerning the export of foreign cash and cheques issued in foreign currency, the rules differ depending whether residents or non residents are concerned:

377. For residents, Art. IV of the Decision Governing the Taking In and Out of the Country Cash, Cheques and Materialized Securities governs the export of foreign cash and cheques issued in foreign currency: in international passenger traffic, residents may take out of the Republic of Croatia money and cheques in the amount not exceeding 3 000 EUR; a larger amount may be taken out of the country only subject to a previous approval of the Croatian National Bank. This limitation does not concern:

1. residents who have been working abroad on the basis of a valid work permit in the duration of at least 183 days;
2. natural persons staying in the Republic of Croatia on the basis of a valid residence permit in the duration of at least 183 days;
3. a resident natural person travelling abroad for a business trip "*on the basis of a travel order form and a bank receipt issued to the amount stated in the travel order form*".

378. Residents which are not natural persons according to Article 2 of the Foreign Exchange Act (i.e. representatives of legal persons with a head office in the Republic of Croatia, except their foreign branches; branches of foreign companies and sole traders enrolled in a register kept by a competent government authority or administration in the Republic of Croatia; sole traders, craftsmen, and other natural persons with a head office or a place of residence in the Republic of Croatia who are self-employed and perform the economic activity of their registration) may take out foreign currency and cheques needed for the payment of goods and services import up to 3 000 EUR. Any amount exceeding 3 000 EUR is subject to a corresponding approval of the Croatian National Bank. This needs to be justified to the customs officers by presenting a specific Bank Certificate, the so called "Order 14". This Order 14 contains:

- the first and the last name of the person authorized by this order to take over foreign cash for this purpose;
- the reference number and the date of the approval given by the Croatian National Bank if the amount to be withdrawn for payment in foreign cash exceeds the permitted limit for this purpose.

379. For non-residents, the taking out of foreign currency and cheques is free from any limitations, on the condition that amounts exceeding 40 000 Kuna (approx. 5 500 EUR) need to be declared to the Customs officer on duty when crossing the state border.

Import/Export of cash in domestic currency (Kuna)

380. Natural persons (residents) may take out/into the Republic of Croatia in international passenger traffic cash in Kuna-currency up to the amount of 15 000 Kuna. Any amount exceeding this threshold must have an approval of the Croatian National Bank (Art. X of the Decision Governing the Taking In and Out of the Country Cash, Cheques and Materialized Securities). This obligation is also valid for any representative, a responsible party or an authorized representative crossing the state border in the name of an entity and carrying cash in Kuna currency.

381. Non-residents may take out/into the Republic of Croatia Kuna-currency without limitations – only the declaration threshold of 40 000 Kuna applies.

382. Employees in international transport vehicles may take out and into the Republic of Croatia Kuna cash received from natural persons in exchange for goods and services sold, without restrictions and shall declare this only if it exceeds 40 000 Kuna (see above). By way of exception from Art. X para 1 (see para 380 above), the same employees when in service may carry cash in Kuna currency only up to the maximum amount allowed as daily business trip allowance (Art. X para 4); the evaluators were advised that this is currently approx. 70 EUR per day.

Implementation

383. The Customs Administration is authorized for the supervision and control of taking in and taking out of the Croatian customs area domestic and foreign payment matter, or cash and cheques, in the travelling cross-border traffic. During the performance of this supervision and control, customs officials can perform an inspection and search of persons in passenger traffic, the luggage and other items that they carry with them, as well as the inspection and search of their means of transport. Customs can temporarily withhold cash, cheques and other documents/matter used for the execution of customs offences, being the result of a customs offence, or which may be used as evidence in further proceedings related to a customs offence. Cash in Kuna currency as well as foreign currency cash will be paid to special accounts of the Foreign Exchange Inspectorate. The Customs Service Act gives Customs the authority to detain persons for up to 6 hours till the Police arrives when they detect a suspicion of a customs offence. However, in the case of discovery of a false declaration of currency or bearer negotiable instruments or a failure to declare them, there is no provision allowing Customs authorities to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use; this would be only possible in the case of a "*misdemeanour or criminal offences related to customs violation*" (Art. 23 Customs Service Act), though this term is not defined by Croatian legislation. Customs authorities "*may use means of coercion (bodily force, devices for vehicle stopping, service dogs, fire weapons) ... if there is reasonable doubt on execution or attempt of execution of misdemeanours or criminal offences*" (Art. 20 Customs Service Act). Art. 26 Customs Service Act allows Customs to seize "*things that are illegally carried in or out of the Customs area of the Republic of Croatia*"; however, when it comes to legally carrying things in or out of the Republic of Croatia and if there is a suspicion of criminal activity, Customs does not have the power to seize these things. Moreover, there is no explicit provision allowing Customs to stop/restrain currency or bearer negotiable instruments in the case there is a suspicion of money laundering or terrorist financing. The Custom Administration in Croatia is also not authorized for initiating a proceeding concerning an infringement, this being the authority of the Croatian Foreign Exchange Inspectorate, similarly acting within the Ministry of Finance. Till the time of the on-site visit, Customs did not yet provide a specific training to their employees concerning cash couriers. There are also no specific measures in place addressing the issue of Cash Couriers.

384. Travellers who report cash amounts of Kuna or foreign currency, or cheques which exceed the legal limits have to deposit the exceeding amount in a bank or, if possible, in the Customs Office (Art. 37 of the Foreign Exchange Act).

385. According to Art. 9 para 1 of the AML Law, the Croatian Customs Service is obliged to inform the AMLD on the legal transport or attempt of illegal transport of cash or cheques (regardless whether in domestic or foreign currency) across the state border, if the value is up to or exceeds 40 000 Kuna, at the latest within three days counting from the moment the knowledge on such transport or an attempt of an illegal such transport has been acquired. Such information must contain data about the person who is transferring or is attempting to transfer illegally cash or checks across the state borders for his own behalf or for a third party, the place and time of the border crossing and all information about the use of the cash or checks. These reports are stored within the computer database of the AMLD.

386. The Foreign Exchange Act provides detailed rules for sanctioning breaches of regulations determining the bringing in and taking out of cash across the state border:

a) A fine from 2 000 to 20 000 Kuna shall be imposed for misdemeanours on any natural person which, in international passenger traffic, illegally takes out or attempts to take out of the country foreign cash, cheques denominated in foreign currency or domestic cash in excess of the permitted limits, without the permission of the Croatian National Bank, fails to report to the customs officer the export of foreign cash, cheques or domestic cash and imports or attempts to import domestic currency in excess of the permitted limits without an authorization of the Croatian National Bank (Article 68 lit. 1);
b) The same fine shall be imposed on passengers who declare to take out of the country foreign or domestic cash in excess of the permitted amount, and refuse to deposit the excess (Article 68 lit. 2).
c) A fine from 5 000 to 50 000 Kuna will be imposed for any misdemeanour done by natural or legal persons, representatives, responsible persons or proxies of legal persons who try to transfer or are transferring across state borders cash or cheques in excess of the value declared in the Money Laundering Act (i.e. 40 000 Kuna; see above) without a declaration to customs (Article 69 lit. 1).

In the situations described above under a), b) and c), cash and cheques as the objects of misdemeanours shall be confiscated in favour of the State Budget – even when they are not the property of the person committing the infringement (Art. 68 lit. 3 and 4; Art. 69 lit. 2 and 3). In exceptional and justifiable cases when there are special exonerative circumstances present, it may be decided to refrain from confiscating the cash or cheques or to confiscate only parts of it (Art. 68 lit. 5; Art. 69 lit. 4).

387. As stated above, the Custom Administration is also not authorized to initiate proceedings concerning an infringement but they can and do send a request for initiating procedures to the Foreign Exchange Inspectorate which is entitled to initiate such proceedings (for details see above under section 2.6). The Customs Administration also has no investigative/police powers with regard to the AML Law or predicate offences for money laundering, e.g. customs fraud. If the Customs service discover in the process of their activities a case of customs fraud, they inform the State Attorney Office thereof, or directly the Criminal Police. Representatives from Customs expressed that they would like to have also Police powers to better support their tasks.

388. The legal basis for international cooperation of the Croatia Customs Administration with the customs administrations of European Union Member States are Protocol No. 5 on the Stabilization and association Agreement between the European Countries and their Member States and the Republic of Croatia (NN 14/01) as well as bilateral contracts with some EU Member States. In relation to CEFTA-members, international cooperation is accomplished on the basis of the mutual assistance concerning customs issues within the Middle-European Contract on Free Trade (CEFTA) (NN 4/03), while the international cooperation with EFTA-members is realized within the Agreement between EFTA States and the Republic of Croatia - Mutual Administrative Assistance in Customs Matters (NN 12/01). The cooperation with the state-members of the Southeast European Cooperative Initiative (SECI) is realized on the basis of the Contract on Prevention and Combating the Cross-border Criminal Activity and the Charter on the Organization and Activity of the Initiative for Cooperation in South-East Europe - SECI Regional Centre (NN 11/00).

Statistics

389. The Croatian authorities provided the following figures concerning reports from Customs Administration to the AMLD under the regime of Art. 9 of the AML Law:

Custom administration reports	2002	2003	2004	2005	till May 2006	Total
Legal transport	990	1163	820	915	311	**4199**
Attempt of illegal transport	3	4	15	29	9	**60**
Total	**993**	**1167**	**835**	**944**	**320**	**4259**

Customs Administration reports (breakdown by currencies)		
	2005	**2006**
Legal transport		
CHF	209 200	700 400
EUR	9 561 155	23 717 835
GBP	588 815,4	54 300
HRK	100 000	4 139 325
HUF		53 100 000
BAM	46 360	174 500
SEK		390 000
SIT		11 190 000
USD	124 864	331 330
Nr. of Reports	**915**	**1748**
Attempt of illegal transport		
CHF	79 500	32 000
EUR	495 645	677 205
GBP		15 885
HUF		840 000
BAM	37 750	87 800
SIT		2 600 000
USD	50 000	5 600
Nr. of Reports	**29**	**34**

390. The table below shows how many STRs the Customs administration submitted to the AMLD (extract from table under Section 2.5):

Suspicious Transactions Reports from 1.6.2002-1.9.2006					
	1.6. – 31.12. 2002	**2003**	**2004**	**2005**	**1.1.-1.9. 2006**
The Ministry of Finance, Customs Administration	6	2	15	29	21

391. On the basis of STRs /SARs/ submitted by by the Customs authorities, the following number of cases were opened:

Cases opened on the basis of STRs/SARs					
	1.6. – 31.12. 2002	2003	2004	2005	1.1.-1.9. 2006
The Ministry of Finance, Customs Administration	2	2	8	4	8

392. In the period from 1.6.2002-1.9.2006, the AMLD forwarded to the Customs Administration the following number of reports for further proceedings related to customs violations.

Total number of reports, disseminated to competent authorities for further proceedings						
	1.6. – 31.12. 2002	2003	2004	2005	1.1.-1.9. 2006	Total
The Ministry of Finance, Customs Administration		4			1	5

2.7.2 Recommendations and comments

393. Croatia has a complex system relating to the declaration of movement of domestic and foreign currency and bearer negotiable instruments. The system provides various restrictions/obligations depending whether it concerns domestic or foreign currency and whether the person crossing the border being a resident or non-resident. In addition there are some exceptions for some type of business activities (international transport). However, it was welcome that there is only one threshold for declaration of movement of domestic and foreign currency and bearer negotiable instruments (40 000 Kuna as provided for by Art. 9 of the AML Law) which makes the application easier in this respect. It was understood that the provisions using the term "cheques" cover all types of bearer negotiable instruments as provided for by the Interpretative Note to SR IX.

394. However, in the case of discovery of a false declaration of currency or bearer negotiable instruments or a failure to declare them, Customs authorities do not have the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use this would be only possible in the case of a "*misdemeanour or criminal offences related to customs violation*" (Art. 23 Customs Service Act), though this term is not defined by Croatian legislation. Customs authorities *may use means of coercion (bodily force, fire weapons etc) if there is a suspicion of misdemeanours or criminal offences*". Customs is allowed to seize "*things that are illegally carried in or out of the Customs area of the Republic of Croatia*"; however, when it comes to legally carrying things in or out of the Republic of Croatia and if there is a suspicion of criminal activity, Customs does not have the power to seize these things. Moreover, there is no explicit provision allowing Customs to stop/restrain currency or bearer negotiable instruments in the case there is a suspicion of money laundering or terrorist financing.

395. The evaluators advise to include Customs more in the institutional framework to fight money laundering and terrorist financing by giving them more responsibilities and obligations in this area.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	**PC**	• In the case of discovery of a false declaration of currency or bearer negotiable instruments or a failure to declare them, Customs authorities have the authority only in limited situations to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use. • When it comes to legally carrying things in or out of the Republic of Croatia and there is a suspicion of criminal activity, Customs does not have the power to seize these things. • There is no explicit provision allowing Customs to stop/restrain currency or bearer negotiable instruments in the case there is a suspicion of money laundering or terrorist financing.

3 PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

396. In Croatia, as noted earlier, there is a hierarchy of normative acts. In the context of the Methodology criteria marked with an asterisk are basic obligations that should be set out in law or regulation. In this context, "law or regulation" refers to primary and 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 regulations are "other enforceable means" like Recommendations, 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. a financial supervisory authority). In practice, the hierarchy of normative acts is as follows:

1. Croatian Constitution (Ustav)
2. Constitutional Laws (Ustavni Zakoni, Organski Zakoni)
3. International Agreements (Međunarodni Ugovori):
   International agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects. Their provisions may be changed or repealed only under conditions and in the way specified in them or in accordance with the general rules of international law.
4. Laws and Decrees with the force of law (Zakon I Uredbe Sa Zakonskom Snagom)
5. Subordinate Legislation (Podzakonski Akti)
   Subordinate legislation can be issued by units of local and regional self-government (county, district), public administration bodies and executive bodies (the Government of Croatia).

397. The relevant provisions governing the preventive side of the Croatian AML/CFT system are the Law on Prevention of Money Laundering (AML Law; Annex 1), the Procedures on Implementation of the Law on Prevention of Money Laundering (AML By-law; Annex 2), the National Payment System Act, the Foreign Exchange Act and various subordinate legislation. According to the Methodology "*law or regulation"* refers to primary and 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. The AML By-law was issued by the Ministry of Finance which was authorised on the basis of the AML Law to do so (Art. 22). The evaluators were advised that infringements of provisions of the AML By-law could only be sanctioned when the AML Law itself contains a sanctionable provision with an explicit reference to the AML By-law. These cross-references are limited to Art. 5 para 3 (identifying of "beneficial owners") and Art. 8 para 1 (manner of reporting) of the AML Law. With regard to these specific provisions the AML By-law can be regarded as secondary legislation. All other provisions, i.e. those which are not covered by a cross-reference by the AML Law or which do not even have a basis in the AML Law, cannot be sanctioned.

Customer Due Diligence and Record Keeping

3.1 Risk of money laundering / financing of terrorism:

398. The Croatian AML/CFT framework is not based on a risk assessment. Neither the AML Law nor other regulations provide for financial institutions measures based on the degree of risk attached to particular types of customer; business relationship; transaction and product. More specifically, enhanced scrutiny regarding establishing relations with high-risk customers, such as foreign correspondent banks and PEPs, is not required by law, regulation or other enforceable means. However, the evaluators were informed by compliance officers of banks that internal rules and procedures in those banking institutions that are owned by foreign banks are based on their parent

banks' compliance and CDD procedures, and thus could be more in line with the FATF Recommendations, notwithstanding current Croatian requirements. In this context it is worth mentioning that the assets of six of the largest foreign owned banks exceed 85 % of total banking sector assets.

399. However, according to Art. 4 para 6 of the AML Law, withdrawal of cash from debit, checking and savings accounts is exempt from the threshold reporting requirement and related client identification specified by para 2 of this article. At the same time, the abovementioned Art. 4 has an explicit requirement to perform identification procedure whenever a suspicion exists that a transaction is related to money laundering or terrorist financing. Furthermore, Art. 25 of the AML By-law provides a list of exemptions from identification requirements in a number of cases related to transactions performed between financial institutions, or to cash withdrawal from customer accounts linked to consecutive purchase of foreign exchange, while the AML Law has no reference to such exemptions. This appears to be in conflict with the AML Law, which does not delegate any authority to introduce new or specify established exemptions from client identification obligation to the Ministry of Finance. No specific basis for taking such decision was provided to the assessors during on-site visit.

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

3.2.1 Description and analysis

Recommendation 5

400. The following types of financial institutions are covered by Article 2 of the AML Law as "reporting institutions":
   a. banks and residential saving banks,
   b. savings and loan cooperatives,
   c. investment funds and companies for the management of investment funds,
   d. pension funds and companies for the management of pension funds,
   e. Financial Agency and Croatian Post Office,
   f. Croatian Privatization Fund,
   g. insurance companies,
   h. stock market and other legal persons authorized to perform financial transactions with securities,
   i. authorised exchange offices,
   j. all other legal persons, traders and individuals, business persons and physical persons conducting business that involve: receipt and remittance of funds; purchase and sale of loans and debts; fund management for third parties; issuing debit and credit cards as well as transactions with the said cards; leasing.

   The Croatian Privatization Fund was established to implement and complete the privatization of former socially-owned enterprises, assets and legal persons in its portfolio wherein certain state institutions hold shares and business interests. The reason to include it in this list was that these activities could be possible areas of money laundering and that the fund is authorised to conduct some financial transactions. The Financial Agency (also referred to as "Agency for Financial Transactions") and the Croatian Post Office are covered by this list because they are authorised to conduct (state) financial transactions.

401. Banks are mainly regulated by the Banking Act (NN 84/2002), housing savings banks are covered by the Act on Housing and Savings and State Incentives for Housing Savings (NN 109/97, 117/97, 76/99, 10/01, 92/05); the Act on Saving and Loan Co-operatives (NN 84/02) regulates savings and loan co-operatives. The latter are sometimes referred to as "credit unions".

Housing savings banks are sometimes referred to as "building societies" or "building savings societies".

402. As of 31 December 2005, 34 commercial banks, 4 housing saving banks and 6 representative offices of foreign banks were operating in Croatia. 22 banks and building societies were in bankruptcy, 9 were under liquidation. 104 loan co-operatives were operating in Croatia. At that time, the assets of all banks totalled 260 593 million Kuna, of which the ten largest banks accounted for 92.26% (240 425 million Kuna). The assets of building societies/housing saving banks totalled 6 126 million Kuna. The number of authorised exchange offices was said to be 1200, of which 870 where limited liability companies, 117 were joint-stock companies and 213 were craftsmen. The Croatian authorities explained that after the entry into force of the Act on the Amendments to the Foreign Exchange Act (NN 140/05), the records on authorised exchange offices had to be maintained by the Croatian National Bank which took over the data from the Ministry of Finance, Foreign Exchange Inspectorate. As updating of the list was still under way the said data could not be confirmed[38].

Anonymous accounts and accounts in fictitious names

403. The issue of anonymous accounts, numbered accounts and accounts in fictitious names is addressed by various pieces of legislation. There are different provisions whether it concerns accounts in Kuna or foreign currency and whether these accounts are held by residents or non-residents. Special rules are applied to saving books as well.

a) Non-residents' bearer (domestic and foreign) currency savings accounts; residents' bearer foreign currency accounts and coded bearer foreign currency accounts

404. Art. III of the "Decision Governing the Conditions for and the Manner of Opening and Managing Non-Resident Bank Accounts" stipulates that "*non-resident bearer savings accounts or non-resident coded bearer saving accounts shall not be allowed*". This Decision entered into force on 23 July 2003 and its transitional provisions require that non-resident bearer saving accounts or non-resident coded bearer saving accounts which existed at the moment this Decision entered into force were to be closed within one year from the date of effect of this Decision; term deposits and saving deposits had to be brought in line with the provisions of this Decision within one month from the date of the expiry of their term. If a non-resident would have failed to do so within the stated time limits, the banks were obliged, within the following month, to transfer the funds from the bearer or coded bearer current or savings account to a current or a savings account opened under the client's name kept in the bank's files. Where data on the client opening the account would not have been available, the bank should have transferred the funds from the bearer or coded bearer current or savings account to a special account with a bank until the identification of the owner had been confirmed.

405. Residents' bearer foreign currency accounts and coded bearer foreign currency accounts were in the year 2003 addressed in a similar way as non-residents' bearer (domestic and foreign) currency savings accounts. The relevant piece of legislation is the **"**Decision Governing the Opening and Managing of Foreign Currency Accounts and Foreign Currency Savings Deposit Accounts of Residents with a Bank", which also entered into force on 23 July 2003 and stipulates in its item VI para 2 that "*bearer foreign currency savings accounts or coded bearer foreign currency savings deposit accounts shall not be permitted*". The transitional provisions of this Decision are comparable to the situation concerning non-residents' bearer (domestic and foreign) currency savings accounts.

[38] Subsequently the Croatian National Bank confirmed that the said data were correct.

406. As criterion 5.1 is an asterisked one, both situations (non-residents' bearer currency savings accounts; residents' bearer foreign currency accounts and coded bearer foreign currency accounts) need to be covered by "law or regulation" as understood by the Methodology and needs to be enforceable. These two Decisions are based on the Foreign Exchange Act which is the legal basis for the CNB to issue these decisions. Article 16 of the Foreign Exchange Act stipulates that "any bank opening a foreign currency account and taking a foreign currency savings deposit shall be obliged to establish the identity of the relevant resident". Art. 30 of the Foreign Exchange Act has a similar provision regarding accounts of non-residents. Non-compliance with the aforementioned two provisions would be sanctionable under Art. 64 of the Foreign Exchange Act which requires a bank to be sanctioned if it manages foreign exchange accounts contrary to Regulations of the CNB or if it fails to comply with identification obligations when opening accounts as stipulated by the Foreign Exchange Act.

407. However, the Croatian authorities have not systematically collected information on how many of these bearer accounts or coded bearer accounts existed before 2003 and how many of them were closed afterwards as well as the outstanding balances and activities of these accounts. However for the purposes of this evaluation the CNB asked commercial banks to provide this data (see below). It was explained that the CNB monitors compliance with the above mentioned decision as part of its on-site examination which was also part of the "Manual for Supervision of Foreign Exchange Transactions" issued by the CNB in July 2004.

b) Residents' accounts in domestic currency

408. Concerning residents' accounts in domestic currency, the Croatian authorities acknowledge that there is no single act or subordinate legislation that explicitly prohibits the opening of anonymous Kuna accounts or coded bearer Kuna accounts of resident natural persons; there are also no provisions which would require the closing of existing bearer Kuna accounts or coded bearer Kuna accounts of residents. With a view to the provisions of existing regulations the Croatian authorities consider that bearer Kuna accounts or coded bearer Kuna accounts cannot be opened in the Republic of Croatia. The Croatian authorities referred to the AML Law which stipulates the obligation to identify the client when opening any type of bank accounts or in connection with other forms of long-term business co-operation with a client. The obligated entities under Article 2 of the AML Law are required to identify their clients when establishing business relations – the opening of all kinds of bank accounts or passbooks and other more permanent forms of business accounts. This is done on the basis of an official identifying document for physical persons (Article 5). It was explained that the opening of a bearer account or coded bearer account would be a direct violation of the AML Law, which entered into force in 1997; it is within the responsibility of the Ministry of Justice to issue regulations concerning anonymous accounts which were opened before 1997; the Ministry of Justice cannot confirm for the evaluators that it has done so. Thus, they are of the opinion that it is not possible to open a bearer Kuna account or a coded bearer Kuna account of a natural resident person even though this is not explicitly stipulated. However, the evaluators were not convinced of this argumentation as the process of identification in the course of opening an account cannot compensate the lack of a prohibition to open and keep anonymous accounts. Moreover, the AML Law does not address the issue of anonymous/bearer accounts at all. Furthermore the Croatian authorities could not provide complete information on how many of these accounts which existed before 1997 were closed afterwards (see table below under paragraph 412). Thus it remains unclear whether such accounts still exist and if yes to which extent. The evaluators were told that the CNB monitors compliance with the above mentioned decision as part of its on-site examination.

409. With regards to numbered accounts, the evaluators were told that there was only a small number of pre-1997 numbered passbooks which, in accordance with the two decisions mentioned above from July 2003, should be converted to nominative accounts by the end of 2003. Concerning Kuna accounts, there was no piece of legislation requiring the closure of these

accounts; however, the Croatian authorities explained that banks did so voluntarily. How this was done in practice, is shown below in table "Anonymous and coded accounts".

c) Savings books (residents and non-residents, natural and legal persons)

410. The new Civil Obligations Act, which entered into force on 1 January 2006, regulates the issuance of saving books in its Article 998. Paragraph 2 of the same Article prescribes that a saving book may only be registered in the name of a person. Thus, as from 1 January 2006 issuing a bearer saving book is not allowed in the Republic of Croatia. There are no provisions which would require the closing of existing bearer passbooks.

411. For all categories (as listed above) Art. 49 para 4 of the Constitution of the Republic of Croatia prescribes that the rights acquired by investing capital cannot be diminished by any law or any other legal act. As a result, all anonymous accounts opened prior to 2003 cannot be mandatory closed; the same situation applies for anonymous savings books. Nonetheless, the Croatian authorities explained that to date no owner of such an account or passbooks has used this provision to preserve the status of the account/saving book.

412. The Croatians authorities provided data concerning the status of anonymous accounts and passbooks which were closed after issuing relevant provisions. This data was gathered from the banking industry in February 2008 by the CNB; the banks which responded provide for 78,7 % of the total assets of the banking sector.

Table "Anonymous and coded accounts"

1.	**Anonymous Residents Kuna Accounts and Saving Books**		Number
	Number of bearer or coded bearer Kuna accounts and saving books of resident natural persons which existed before 1 November 1997 (when the AML Law was enacted) and were closed afterwards		**1605**
2.	**Bearer or coded bearer accounts (non-residents´ Kuna and foreign currency accounts and residents´ foreign currency accounts)**		
	Number of bearer accounts or coded bearer accounts which existed before 23 July 2003	Number	Balance in EUR
A)	**Non-residents' Kuna accounts (HRK 3.812.884,98)**	**1 620**	**507 788,86**
B)	**Non-residents' and residents' foreign currency accounts**	**1 425**	**4 408 730,12**
	TOTAL (A+B)	**3 045**	**4 916 518,98**
	CLOSED OR OPENED UNDER CLIENTS NAME/ TERM DEPOSITS / BLOCKED	in HRK	in foreign currency
C)	**Number of bearer accounts or coded bearer accounts which were closed after 23 July 2004**	**854**	**932**
D)	**Number of bearer or coded bearer accounts which funds were, after 23 July 2004, transferred into accounts opened under the clients name kept in the bank files**	**322**	**437**
E)	**Number of bearer or coded bearer term deposits and savings deposits**	**444**	**56**
	TOTAL (C+D+E)	**1620**	**1425**
3.	**ANONYMOUS SAVING BOOKS**	in HRK	in foreign currency
F)	**Number of bearer saving books issued before 1 January 2006**	**2 990**	**216**
G)	**Number of bearer saving books which were issued after 1 January 2006**	**0**	**0**
H)	**Number of bearer saving books which were closed after 1 January 2006**	**1453**	**72**

I)	**Number of bearer saving books which were registered in the name of a person after 1 January 2006**	**1537**	**144**
	TOTAL (H+I)	**2 990**	**216**

Customer due diligence

When CDD is required

413. Criterion 5.2 has an asterisk too. It requires all financial institutions to undertake CDD when:
   a.) establishing business relations;
   b.) 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;
   c.) carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;
   d.) 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; or
   e.) the financial institution has doubts about the veracity or adequacy of previously obtained customer identification data.

414. In addressing this issue, Art. 4 of the AML Law provides that
   "(1) The reporting institutions identify the client on opening of all bank accounts or during the establishing of other kinds of more permanent cooperation with client.
   (2)The reporting institutions identify the customer at each transaction conducted with cash, foreign currency, securities, precious metals and gems, if the said transaction amounts to 105 000 Kuna[39] or more.
   (3)The reporting institutions identify the customer at linked transactions as under Paragraph 2 of the Article, when those linked transactions amount to 105 000 Kuna or more.
   (4)Insurance companies identify the customers in all life policies if the annual premium exceeds 40 000[40] Kuna.
   (5) In addition to the identification of the customer as under Paragraphs 1, 2 and 3 of this Article, the identity of the customer shall be verified at all other cash or non-cash transactions if there is a suspicion of money laundering.
   (6)Withdrawal of money from debit, checks and saving accounts by physical persons is not considered as a transaction as under Paragraph 2 of the Article."

415. The Croatian authorities explained that the term "*more permanent cooperation*" used in Article 4 paragraph 1 of the AML Law has been chosen to make a difference between the obligation to identify customers under paragraphs 1 and 2 of Article 4: paragraph 1 applies for opening bank accounts and performing other kinds of permanent cooperation with a client, paragraph 2 concerns individual transactions. Though this is not explicitly regulated, the Croatian authorities are of the opinion that "permanent cooperation" should be interpreted equivalent to "business relationship" as it is defined in Article 3 paragraph 9 of the 3rd EU AML Directive[41];

[39] approx. 14 200 EUR.

[40] approx. 5 420 EUR.

[41] The said provision reads as follows: "'business relationship' means a business, professional or commercial relationship which is connected with the professional activities of the institutions and persons covered by this Directive and which is expected, at the time when the contact is established, to have an element of duration".

otherwise it should be regarded like an individual transaction as specified under paragraph 2 of Article 4.

416. CDD under criteria 5.2 (c) and (e) are not explicitly provided for in the AML Law. As the programmatic provision of Art. 1 of the AML Law seems insufficient to extend the scope of the whole AML Law to the issue of terrorist financing (see in more detail above under Section 2.5), thus there is no obligation to undertake CDD measures in the case of a suspicion of terrorist financing (criterion 5.2d).

Required CDD measures

417. Criterion 5.3 is marked with an asterisk too. Financial institutions are required to identify permanent or occasional customers (whether natural or legal persons or legal arrangements) and verify the customers' identity using reliable independent source documents, data or information.

418. Art. 5 of the AML Law prescribes the customer identification procedure. Concerning physical persons, the reporting institutions have to verify the identity by checking the identity documents; the latter can be a "*personal I.D. card, passport or other relevant identification card*". The following data are required: first and last name, the address of residence or home, the personal identity number or date of birth, as well as type, number and issuing entity of the document. If a foreign citizen is concerned, the reporting entity has to verify his identity "*by looking at his/her passport or other public I.D. documents*" (Art 5 para 4).

419. In the case of conducting a transaction for legal persons, the reporting institutions have to establish the name (title), address and registration number of the legal person requesting the transaction and to verify the identity of the person who is requesting the transaction on behalf of the legal person (as described for physical persons under Art 5 Para 1). If the transaction is conducted on behalf of a third party the reporting institutions have to request from the customer a power of attorney (Art. 5 para 6).

420. In general, for identification of natural persons the reporting institutions can use for verification of identification of natural persons passports or a personal I.D. card. In addition, the legal provisions allow to use other documents which are described in various ways using the terms "*other relevant identification card*" (Art 5 para 1 of the AML Law) or "*other public I.D. documents*" (Art. 5 para 4). For certain situations exists specific (subordinate) legislation which uses slightly different expressions: the "Decision Governing the Opening and Managing of Foreign Currency Accounts and Foreign Currency Savings Deposit Accounts of Residents with a Bank" allows for "*other appropriate public document*". The "Decision Governing the Conditions for and the Manner of Opening and Managing Non-Resident Bank Accounts" uses the term "*other adequate government identification*". However, none of these terms is somewhere further defined. There is no definition in legislation, which documents this could be, which quality they need to have, from which authority they have to be issued etc. Thus, it is left to the discretion of the reporting entities what they consider appropriate. However, Croatian authorities assured that banks and other financial institutions accept in practice only passports and personal I.D. cards for identification.

421. Moreover, Art. 5 of the AML Law covers only a "first level" verification obligation, because the identification of clients is only possible with certain types of documents (see above). However, these obligations are only detailed at one level and do not contain provisions for enhanced verification measures for cases/clients which present higher risks. Neither does the AML Law, nor subordinate legislation contain an obligation for financial institutions to use reliable, independent source documents, data or information to verify the authenticity of the provided information. The examiners consider that to enhance the effectiveness of the verification process further steps

should be taken to provide for reporting entities to conduct enhanced due diligence in higher risk cases by using other reliable independent documents.

422. Criterion 5.4 requires two specific issues to be covered in respect of the verification process with regard to legal persons.

423. The first is verification that any person purporting to act on behalf of the customer is so authorised, and the identification and verification of the identity of that person (criterion 5.4a). In the case of individual or combined transactions - conducted with cash, foreign currency, securities, precious metals and gems - in excess of 105 000 Kuna; in the case of a life insurance premium in excess of 40 000 Kuna or in the case of any cash or non-cash transaction where money laundering is suspected, i.e. in all cases where an identification procedure has to be implemented, the reporting institutions have a legal duty to request a declaration from the party concerned stating whether the transaction is requested on his own account or on behalf of a third party. If the latter, the obligated entity should also request to see the power of attorney (Art. 5 para 5 and 6 of the AML Law). However, in the cases where a power of attorney exists, there is no obligation to identify the person(s) granting the power of attorney.

424. Criterion 5.4b of the Methodology covers the second issue in relation to the verification process for legal persons. It is not marked with an asterisk but needs to be covered by other enforceable means. The verification of the legal status of the legal person or arrangement requires e.g. proof of incorporation or similar evidence of establishment and information on the customer's name, trustees (for trusts), legal form, address, directors and provisions regulating the power to bind the legal person or arrangement. This requirement is covered by the AML Law and various subordinate legislation: e.g. the regulations of the CNB require to use reliable independent source documents, data or information, such as, in a case of a resident legal person, a decision on the enrolment in the Register of Companies or a register of a competent body, if the enrolment in a register is compulsory; articles of incorporation, issued by a competent body, if the business entity is not subject to enrolment in a register and has not been established pursuant to law; in case of a non-resident legal person it requires a proof of registration in the register of companies in the country of domicile.

Beneficial owners

425. The AML Law prescribes in Art.5(3) that at the time of account opening or establishing other forms of permanent business cooperation, the reporting institutions are obliged to request from the customer a written statement indicating the beneficial owner(s) of the legal person and a list of its Management Board members, for the purpose of identifying the beneficial ownership. According to Art. 3(3) of the Procedures on Implementation of the Law on Prevention of Money Laundering (AML By-law), the reporting institution requires such a statement also whenever it has a suspicion of change of the ownership structure. The procedures provide, however, that in case the reporting institution is not able to conduct identification in this manner "*and is not familiar with the ownership structure of the client*" it will refuse to open an account or enter into business relationship or close the account as well as the business relationship with the client (Art. 3[5]).

426. Despite the fact that the preventive law and secondary legislation, as discussed above, requires all reporting entities to establish the identity of the beneficial owner, no definition of this term was provided by any of the relevant Croatian legislative acts as this term is defined in the Glossary to the FATF Recommendations (i.e., the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted, and those persons who exercise ultimate effective control over a legal person or arrangement). This is particularly the case when one company buys shares in another one. Equally, beneficial ownership information is not available in case of (branches of) foreign companies. As a result, financial institutions normally would not go further than collecting information at the second level in

respect of owners of the legal entity. It thus appears to the examiners that Croatian law does not require adequate transparency concerning beneficial ownership and control of legal persons.

427. Also there is no requirement to use information or data from a reliable source for the purpose of identifying beneficial customer and verifying that information. The approach taken by both the AML Law and the Implementing Procedures is that such information has to be provided by the customer itself. Moreover, according to Art. 3 para 4 of the AML By-law, in a case when it is impossible to identify a natural person as a beneficial owner, reporting institutions accept a statement from a customer in which a beneficial owner is referenced as a legal person registered in countries that sufficiently apply international AML standards and CDD measures.

428. No guidance was provided to financial institutions to address risks, inherent in establishing relations with legal persons that have capital in form of bearer shares, especially with regard to identification of a beneficial owner, which in this case presents a challenge.

Purpose and intended nature of the business relationship

429. There is no requirement in the law or by other enforceable means (which are sanctionable) to obtain information on the purpose and intended nature of the business relationship.

Ongoing due diligence

430. In general, financial institutions are not required to conduct ongoing due diligence (which should include, among other actions, scrutiny of transactions to ensure that they are consistent with knowledge of the customer and the customer's business and risk profile, and also source of funds, when necessary) on the business relationship. The "Decision on the Structure of an Account with a Bank, Bank Account Number, Terms and Methods of Opening an Account with a Bank and the Content of the Register of Business Entities´ Accounts with a Bank" (Art. 18) requires a business entity to "*send to the bank with which it has an account, a notification in writing of any change in the data, which is subject to enrolment in the register of accounts with a bank pursuant to this Decision, not later than eight days from the date on which the change occurred, and to enclose the appropriate documentation therewith*". The "Decision Governing the Conditions for and the Manner of Opening and Managing Non-Resident Bank Accounts" (Item VI) puts an obligation on customers to send to the bank annually a written notification of "*a proof of registration in the register of companies in the country of domicile, or when registered in a country where no such register exists, any other valid registration document, in accordance with the law of the non-resident's country of domicile, stating the legal form of the non-resident and time of establishment*". Where the non-resident fails to do so until 31 March of the current year, the bank shall inform the Ministry of Finance - Foreign Exchange Inspectorate thereof by the 30 April of the relevant year, and shall forbid the use of funds in the account and transfers to the account until the required information is provided, or shall, upon a written request of the client, disburse the funds and close the account (Item 6 para 3). However, these provisions are neither sanctionable nor do they address the issue of ongoing due diligence in a sufficient way, as they only put an obligation on the customer to provide certain information but they do not require financial institutions (and not only banks) to conduct ongoing due diligence (which should include e.g. scrutiny of transactions to ensure that they are consistent with knowledge of the customer and the customer's business and risk profile). Art. 3 of the AML By-law requires the reporting institutions in the course of establishing the beneficial owner (as far as it goes) to request from their clients a written statement with certain data. One element of this statement is that the client has to declare to inform the reporting institution of any change in its ownership structure within 30 days; art. 3 para 2 states that the client "*is submitting [this information] under penal and material responsibility*". Also this provision of the AML By-law puts only an obligation on the client but not on the reporting institution. Despite the fact that it is unclear which sanctions could

be imposed in these situations (both the AML Law and the AML By-law are silent on this issue), hypothetically sanctions could only be imposed for false or deficient information but not when zero information has been submitted at all. Apart from this provision in the AML By-law and the two decisions mentioned above, there is no other legislation which would somewhat address the issue of "ongoing due diligence".

Risk

431. Criterion 5.8 requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction. As mentioned under Section 3.1, the Croatian AML/CFT framework does not provide for a risk based approach. Enhanced due diligence in higher risk situations such as non face to face relationships, legal persons such as companies on bearer shares, non-resident customers, private banking and PEPs is completely missing. Neither the AML Law nor other regulations provide for financial institutions measures based on the degree of risk attached to particular types of customer; business relationship; transaction and product. However, the evaluators were told that internal rules and procedures in those banking institutions that are owned by foreign banks (the assets of six of the largest foreign owned banks exceed 85 % of total banking sector assets) are based on their parent banks' compliance and CDD procedures, and thus could be more in line with the FATF Recommendations, notwithstanding current Croatian requirements.

Simplified or reduced CDD

432. Art. 25 para 1 of the AML By-law provides three situations where identification of a client is not needed (unless there is a suspicion of money laundering):
- *transaction between banks, savings banks, FINA, Croatian Post and insurance companies;*
- *transactions between banks and authorized bureau de changes related to purchase of foreign currency or checks and checks payments;*
- *transfer of bank's cash to foreign bank in favour of its own bank account and after the payment of foreign checks.*

433. Again, the failure of the AML Law to satisfactorily address the issue of terrorist financing (see Section 2.5), makes this provision problematic, because it could be interpreted that simplified CDD could be applied even when there is a suspicion of terrorist financing. Apart from that appears to be another problem with these provisions as the AML Law does not delegate an authority to the Ministry of Finance to introduce exemptions from identification requirements.

Timing of verification

434. According to Article 4 of the AML Law, reporting institutions have to identify clients when opening of bank accounts or during the establishing of other kinds of more permanent cooperation with a client. As explained above, the term "*more permanent cooperation*" has been chosen to make a difference between the obligation to identify customers under paragraphs 1 and 2 of Article 4: paragraph 1 applies for opening bank accounts and performing other kinds of permanent cooperation with a client, paragraph 2 concerns individual transactions. The Croatian authorities explained that "*permanent cooperation*" should be interpreted equivalent to "business relationship" as it is defined in Article 3 paragraph 9 of the 3rd EU AML Directive (2005/60/EC)[42].

[42] The said provision reads as follows: "'business relationship' means a business, professional or commercial relationship which is connected with the professional activities of the institutions and persons covered by this Directive and which is expected, at the time when the contact is established, to have an element of duration".

435. Furthermore, the reporting institutions have to identify clients at each individual or combined transaction(s) - conducted with cash, foreign currency, securities, precious metals and gems - in excess of 105 000 Kuna; in the case of a life insurance premium in excess of 40 000 Kuna or in the case of any cash or non-cash transaction where money laundering is suspected (Art. 4 para 2-5 of the AML Law). Art. 4 para 6 provides that "*withdrawal of money from debit, checks and saving accounts by physical persons is not considered as a transaction as under Paragraph 2 of the Article*". The Croatian authorities argued that this exemption does not pose a risk in practice because they are of the opinion that banks routinely identify clients upon withdrawal of cash. Nonetheless, the evaluators consider the withdrawal of cash not an appropriate situation for the exemption of identification, particularly in the case of terrorist financing. Moreover, in the event that a bank does not opt to identify a client in such a situation, there is no legal basis to sanction either the compliance officer or the bank.

436. Croatian legislation does not allow reporting agencies to complete verification of identification data after establishing a business relationship, so no situations as described under criterion 5.14 could occur.

Failure to satisfactorily complete CDD

437. According to Art. 7 para 1 of the AML Law, the reporting institutions have to refuse to execute a transaction if there is no possibility to identify the client in the situations where an identification is required by the AML Law (i.e. the situations as described under paragraphs 2, 3, 4 and 5 of Article 4: individual or combined transactions - conducted with cash, foreign currency, securities, precious metals and gems - in excess of 105 000 Kuna; in the case of a life insurance premium in excess of 40 000 Kuna or in the case of any cash or non-cash transaction where money laundering is suspected), and whenever a customer, in his capacity of authorized person, does not produce a power of attorney as listed in paragraph 5 of Article 5 of the AML Law.

438. The reporting institutions have also to refuse to execute a transaction in the situations when they have to file a report (STR/CTR) to the AMLD (Art. 8 para 1) and fail to gather the information as provided by Art. 5 and 6 of the AML Law (information on the client/transaction). This provision (Art. 7 para 1 item 2) is simple in its meaning but the legal provision is drafted in a complicated way as it uses various cross-references to other provisions within the AML Law which are again linked amongst each other; thus the evaluators have doubts whether the reporting entities are able to follow these requirements. This issue becomes even more confusing when considering that Art. 8 para 2 contains an obligation to inform the AMLD of all refused transactions which is to a certain extent the reverse approach of Art. 7 para 1 item 2.

439. However, there is no direct prohibition to open an account in the circumstances described above. Only the AML By-law prescribes in its Art. 3 para 5 that when a reporting institution is not able to gather a statement or sufficient information of a client on beneficial ownership (as far as this issue is covered in Croatian system - to the limitations of this term see above) and it is not familiar with the ownership structure of the client, it shall refuse to open an account, enter into business relationship, close the account or close the business relationship with the client.

Existing customers

440. Financial institutions should be required to apply CDD requirements also to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times. Some examples are given in the box in the Methodology of the times when this might be appropriate – e.g. when a transaction of significance takes place, when the customer documentation standards change substantially etc. At present, this is only somewhat addressed by Art. 3 para 3 of the AML By-law which requires the reporting institutions to request from clients a statement on beneficial ownership whenever a suspicion of changes in the

ownership structure arises. Apart from that there are no other provisions in the Croatian legal system addressing these issues and, as far as the examiners understood, it is also not done in practice. This issue should also be addressed preferably in the Law or by enforceable means.

Practice of banks in addressing Recommendation 5

441. An important factor in assessing the overall effectiveness of CDD process in Croatian banking system is related to internal CDD procedures in foreign-owned banks, whose combined assets cover, as mentioned above, the large majority of the total assets of the banking sector. During a meeting with AML compliance officers of a number of Croatian banks, different issues related to practical implementation of CDD requirements were discussed. It appeared that internal controls in foreign-owned banks regarding on-going due-diligence, establishing the identity of beneficial owners (as defined by the Glossary to the FATF Recommendations), are based on their parent's banks compliance and CDD procedures and thus could be more in line with the FATF Recommendations than current Croatian legislation. However, this could not make a serious impact on assessment of the effectiveness of the CDD regime in Croatia. Evaluators welcome the pro-active role of more advanced Croatian banks in implementing the CDD standards of the parental banks (though they are not legally required to do so). This, however, cannot be regarded as a substitute for a legal regime which is compliant with the FATF Recommendations on CDD process and is enforced through supervisory actions of relevant state regulatory bodies.

European Union Directive

Article 7

442. According to Article 7 of the Second European Union AML Directive, member States shall ensure that financial institutions refrain from carrying out transactions which they know or suspect to be related to money laundering until they have apprised the competent authorities. In addition, these authorities may, under conditions determined by their national legislation, give instructions not to execute the operation which has been brought to their attention by an obliged person who has reason to suspect that such operation could be related to money laundering.

443. Art. 8 para 3 of the AML Law requires reporting institutions to "*inform the AMLD of transactions where there is a suspicion of money laundering [...] before they perform the transactions and specify the deadline within which they are to execute the said transactions*"; if this should be - due to the nature of a transaction - not possible, the reporting institutions are not obliged to inform the AMLD prior to carrying out a transaction. In these situations the reporting institutions are obliged to report to the AMLD not later than 24 hours after the transaction was completed (Art. 8 para 4 of the AML Law). Art. 10 of the AML Law allows the AMLD to request financial transactions to be suspended up to three days (for details see paragraphs 247 to 249). It can be concluded that the requirements of Article 7 of the Second European Union AML Directive are covered in Croatian legislation.

Article 3(8)

444. According to Article 3 para 8 of the Second European Union AML Directive, institutions and persons subject to this Directive shall carry out identification of customers, even where the amount of the transaction is lower than the threshold laid down, wherever there is a suspicion of money laundering. This issue is covered in Croatian legislation for all cash or non-cash transactions by Art. 4 para 5 of the AML Law.

Recommendation 6

445. Neither the Croatian AML legislation nor other enforceable provisions contain specific and/or enhanced CDD measures in relation to politically exposed persons (PEPs), whether foreign or domestic. So far, financial institutions are neither, by the AML Law nor by sectoral laws, required to put in place appropriate risk management systems to determine if a potential customer, a customer or the beneficial owner is a PEP. Nor are there requirements to develop procedures to obtain authorisation for establishing business relationships with a PEP from senior management, or for continuing such a relationship with a customer or beneficial owner who is subsequently found to be or becomes a PEP. As they are not identified, there is no requirement to conduct enhanced ongoing monitoring of business relationships with PEPs. It follows that financial institutions are also not required to take reasonable measures to establish the source of funds of customers.

446. The evaluators were informed that the internal rules and procedures of foreign-owned banking institutions, which are based on their parent banks' compliance and CDD procedures (the assets of six of the largest foreign owned banks exceed 85 % of total banking sector assets), seem to be more in line with the FATF Recommendations. Nonetheless, the evaluators could find no familiarity with the issue of PEPs in the financial sector. The fact that the CNB and Foreign Exchange Inspectorate seem to establish in the course of their supervision whether banks apply their own PEP lists does not help very much in this respect considering that a legal basis for this is missing. On the positive side, the list of indicators (Annex 3) created by the FIU, which should serve as a basis for reporting institutions to report suspicious transactions in accordance with subjective and objective criteria, also contains the requirement to report "*loro, nostro and domestic transactions over account owned by well known persons from public, cultural and political life, out of usual business or without economic reason*".

Additional elements

447. Croatia has signed (2003) and ratified (2005) the 2003 United Nations Convention against Corruption.

Recommendation 7

448. Croatia has implemented AML/CFT measures regarding the establishment of cross-border correspondent banking relationships only to a very limited extent. Only Art. VI para 1 item 3 of the "Decision Governing the Conditions for and the Manner of Opening and Managing Non-Resident Bank Accounts" addresses partially criterion 7.1 as it requires where a non-resident person seeking to open a non-resident current or savings account to provide *"the latest available annual report on non-resident's business operations in a home country or in the country where the non-resident is carrying out a registered business activity, certified by an audit firm or registered by the tax authority. A non-resident carrying out a business activity for a period of less than a year shall submit a financial statement on its business activity covering the relevant period. Where a non-resident is not obliged under the law of the home country to compile financial statements, the non-resident shall submit a document proof of a full settlement of tax liability.*" Apart from that no further elements of Rec. 7 are covered by Croatian legislation.

449. Although not prescribed by Croatian Laws, regulations or other enforceable means, foreign owned and some domestic banks (which cover approx. 93 % of total shares of the banking industry) provide an AML/CFT questionnaire to their respondent financial institutions, which, among identification and documentation requirements (banking licence, the excerpt from the Company register, Annual report, List of principal Foreign Correspondents and list of Contact Persons) contains also some questions related to Recommendation 7. However, this is done only on a voluntarily basis.

Recommendation 8

450. 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 the specific risks associated with non-face to face business relationships or transactions. The evaluators had not been informed that any such measures had been taken; the only legislation which partially addresses this issue is the "Electronic Signature Act", which governs "*the right of natural and legal persons to use electronic signatures in administrative, commercial and other operations, and the rights, obligations and responsibilities of natural and legal persons associated with the providing of services to certify electronic signatures*". An electronic signature is used for the purpose of signer identification and verification of authenticity of the signed electronic document, using the asymmetric cryptographic techniques as well as public key infrastructure.

451. The second round evaluators were informed by the Croatian Bank Association that e-banking is on the rise in Croatia because banks are trying to bypass the rather cumbersome centralised payments system which is still in operation. The now evaluators were advised that there are no internet banks in Croatia and all the existing banks operate exclusively via their registered head offices in the Republic of Croatia. Some banks perform internet banking transactions and the number of payment transactions initiated electronically is in constant growth; Croatian legislation does not specifically encompass and regulate internet banking. However, the transactions executed via internet are not exempted from the AML Law. Therefore, all which is prescribed by that Act applies to both transactions and entities involved in internet banking.

452. On the other side, both the "Decision Governing the Opening and Managing of Foreign Currency Accounts and Foreign Currency Savings Deposit Accounts of Residents with a Bank" (Art. VII para 3) and also the "Decision Governing the Conditions for and the Manner of Opening and Managing Non-Resident Bank Accounts" (Art. V para 3) allow for the opening of certain accounts (foreign currency accounts or foreign currency savings deposit accounts of residents; current or saving account for non-residents) for natural persons without physical presence of the client when opening the account. The only requirement is the presentation of a document (not older than 3 months) certified by a "competent authority" (for residents) or by a "diplomatic or consular representative office of the non-resident's country of origin or the Republic of Croatia, or on the basis of signature certification on the part of the correspondent bank" (for non-residents). By way of exception, documents and certification from a country on the list of off shore zones or uncooperative jurisdictions, which is compiled and updated by the AMLD, may not be accepted (Art. V para 4).

3.2.2 Recommendations and comments

453. The situation concerning anonymous accounts, numbered accounts and accounts in fictitious names is addressed by various pieces of legislation. Concerning non-residents' bearer (domestic and foreign) currency savings accounts, residents' bearer foreign currency accounts and coded bearer foreign currency accounts, the existing legislation seems to cover the requirements of criterion 5.1. However, though such accounts should have been closed after 2003, it is unclear to what extent this has been done (the information provided by banks does not cover the entire banking sector). For residents' accounts in domestic currency, there is no single act or subordinate legislation that explicitly prohibits the opening of anonymous Kuna accounts or coded bearer Kuna accounts. Thus, Croatian authorities should as a matter of urgency issue legislation clearly prohibiting financial institutions from keeping anonymous accounts or accounts in fictitious names. Furthermore, it should be established whether such accounts still exist. If so, they should be closed as soon as possible.

454. Financial institutions should be clearly required to identify customers when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, when the financial institution has doubts about the veracity or adequacy of previously obtained identification data and when there is a suspicion of terrorist financing.

455. The concept of verification of identification should be further addressed. The Croatian authorities should take steps to apply an enhanced verification process in appropriate cases. In higher risk cases, they should consider requiring financial institutions to use *other* reliable, independent source documents, data or information when verifying customer's identity (in addition to the documents as currently prescribed by law).

456. Croatian authorities should clearly define which other documents than passports or I.D. cards can be used for verification of identification and which are in accordance with the international standards as required by Footnote 5 of the Methodology (with reference to the General Guide to Account Opening and Customer Identification issued by the Basel Committee's Working Group on Cross Border Banking). Currently the terms "*other relevant identification card*", "*other public I.D. documents*", "*other appropriate public document*" and "*other adequate government identification*" are used. These terms are not further defined and leave it to the discretion of the reporting entities what they consider appropriate.

457. In all cases where a power of attorney exists, full identification of the person(s) granting the power of attorney should be carried out.

458. Croatian Legislation should provide a definition of "beneficial owner" on the basis of the glossary to the FATF Methodology. Financial institutions should take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources.

459. Moreover, for all clients, financial institutions should determine whether the customer is acting on behalf of a third party. If this is the case, they should identify the beneficial owner and verify the latter's identity. With regard to clients which are legal persons, financial institutions should understand the controlling structure of the customer and determine who the beneficial owner is.

460. Financial institutions should obtain information on the purpose and intended nature of the business relationship.

461. Financial institutions should be required to conduct on-going due diligence on the business relationship and to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships.

462. Financial institutions should be required to perform enhanced due diligence for higher risk categories of customers, business relationship or transaction, including private banking, companies with bearer shares and non-resident customers.

463. The exemption from identification provided by the AML By-law concerning transactions between banks should be reduced to relations between domestic banks. Furthermore it appears that these provisions of the AML By-law do not have a sound legal basis. The AML By-law should clearly specify that no exemption from identification is allowed if there is a suspicion related to terrorism financing (and not only if there is a suspicion of money laundering as it is currently provided for in Art. 25).

464. Also the exemption from identification which is stipulated in Art. 4 para 6 of the AML Law in the situations of "*withdrawal of money from debit, checks and saving accounts by physical persons*" presents a risk, especially from a terrorist financing prospective, and should be removed.

465. Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.

466. There are no requirements in Croatian Law or Regulation with regard to PEPs. The Croatian authorities should put in place measures by enforceable means that require financial institutions:

- to determine if the client or the potential client is - according to the FATF definition – a PEP;
- to obtain senior management approval for establishing a business relation with a PEP;
- to conduct higher CDD and enhanced ongoing due diligence on the source of the funds deposited/invested or transferred through the financial institutions by the PEP.

467. Recommendation 7 is addressed only to a very limited extent; Croatia should implement all the missing elements.

468. Financial institutions need to be required to have policies in place to prevent the misuse of technological developments for AML/CFT purposes, and to have policies in place to address specific risks associated with non-face to face transactions.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating

R.5	**NC**	• Anonymous accounts and accounts in fictitious names are only prohibited for certain types of accounts; where it is forbidden it is unclear how many of these accounts existed before 2003 and how many of them were closed afterwards.
		• There is no legal obligation which covers customer identification
		  • when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;
		  • when the financial institution has doubts about the veracity or adequacy of previously obtained identification data;
		  • when there is a suspicion of terrorist financing.
		• Croatian legislation does not provide for a concept of "beneficial owner" as required by the Methodology.
		• The documents which can be used for verification of identification are not sufficiently determined by Croatian Law.
		• There is no requirement regarding:
		  • the purpose and nature of the business relationship,
		  • ongoing CDD,
		  • enhanced CDD or
		  • conducting CDD on existing customers;
		• The Croatian preventive system does not provide a "risk based approach", requiring financial institutions to perform enhanced CDD measures for higher risk categories of customers, business relationships, transactions and products.
		• The exemptions from identification which are stipulated by the AML Law and the AML By-law raised concerns.

R.6	**NC**	Croatia has not implemented any AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs).
R.7	**NC**	Recommendation 7 is addressed only to a very limited extent (partially criterion 7.1).
R.8	**NC**	There is no legal obligation requiring financial institutions to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions.

3.3 Third Parties and introduced business (Recommendation 9)

3.3.1 Description and analysis

469. The AML Law contains no provisions covering the introduction of clients by third parties to the institutions obliged to identify them or the delegation of CDD obligations to any third party, such as a business introducer. Only Art. V para 3 of the "Decision Governing the Conditions for and the Manner of Opening and Managing Non-Resident Bank Accounts" allows banks to open a non-resident current or savings account for non-resident natural persons without being present: in such a situation, banks can open these types of accounts by identifying the client "*on the basis of documents certified by a responsible domestic or foreign authority, or on the basis of documents certified by a diplomatic or consular representative office of the non-resident's country of origin or the Republic of Croatia, or on the basis of signature certification on the part of the correspondent bank*". With regard to Art IV lit. 3 and 6 of this Decision, the following natural non-residents could open such accounts without being present:

- sole traders, craftsmen, and other natural persons domiciled or resident abroad who are self-employed and engage abroad in the economic activity of their registration,
- natural persons resident abroad.

However, the Croatian authorities explained that clients have to submit these documents themselves which may be arranged without physical presence at the bank, but should not involve a third party in conducting any of the stages of the CDD process – as a consequence, this is not a situation covered by Recommendation 9.

3.3.2 Recommendation and comments

470. Currently the AML law does not provide for third party reliance or introduced business, but neither does it prohibit it, even though in practice this situation does not occur. However, as financial institutions could in future consider relying on intermediaries or other third parties to perform some of the elements of the CDD process or to introduce business, the Croatian authorities should cover all the essential criteria under Recommendation 9 in the AML Law.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**N/A**	Recommendation 9 is not applicable to the Croatian AML/CFT system.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

471. Banking secrecy is defined by Art. 98 of the Banking Law (NN 84/2002), which requires banks to safeguard as confidential all data "*on the balance in individual savings deposits and other cash deposits at the bank, and on the balances in, and transactions through current and giro accounts"* as well as data, facts and circumstances that the bank "*has acquired on the basis of providing services to clients and in performing operations with individual clients*". According to Art. 99(1), members of the bank bodies, bank shareholders, bank employees *"and other persons who, owing to the nature of operations they perform with or for the bank, have access to confidential data"* as referred to above, are obliged not to disclose such data to third parties, make use of such data against the interest of the bank or its clients, or enable third parties to make use of such data.

472. Information covered by bank secrecy may only be disclosed by the bank *"if the client explicitly agrees in writing that certain confidential data may be disclosed"* (Art. 99[2]1). In certain cases stipulated by the Banking Law (Art. 99 para 2), such data shall be disclosed without seeking approval of the respective client, for example, *if confidential data are disclosed for the purposes of the Office for the Prevention of Money Laundering and pursuant to laws and other regulations regulating the prevention of money laundering"*(lit 3). As described in Section 2.5 above, the competence of the "Office for the Prevention of Money Laundering"(i.e. AMLD) is limited to money laundering issues and it has no explicit competence on terrorist financing matters. Consequently, Art. 99 para 2 (3) provides no authority for banks to disclose to the AMLD information which is covered by bank secrecy and relates to financing of terrorism. The latter conclusion is also supported by the fact that Art. 99 para 2 (3) of the Banking Law requests that data shall be disclosed without seeking approval of the respective client if this is in line with "*laws and other regulations regulating the prevention of money laundering*". With this explicit reference to money laundering, it is difficult to read in this provision an authorisation in the case of suspicion of terrorist financing.

473. However, Art. 99 para 2 of the Banking Law contains further possibilities allowing the disclosure of data covered by bank secrecy without seeking approval of the respective client, for example

- if requested or ordered in writing by the competent court as the disclosure is necessary:
  - to collect and establish the facts in preliminary/criminal proceedings (lit 2),
  - to establish the legal relationship between a bank and its client in a court dispute (lit 4),
  - for the execution against the property of a bank client (lit 6),
  - for the purposes of the estate proceedings or other property proceedings (lit 5);
- to the Croatian National Bank, Foreign Exchange Inspectorate or other supervisory authority at their written request and according to their competence, for supervisory purposes (lit 7);
- to tax authorities in a procedure they conduct within their legally prescribed fields of competence and disclosed at their written request (lit 9).

474. According to Art. 100 of the Banking Law, the Croatian National Bank, courts and other competent authorities as well as their (former) employees may use confidential data obtained pursuant to the above provision exclusively for the purpose for which the data have been acquired and may not disclose these data to third parties or enable third parties to learn and make use of such data except in cases prescribed by law.

475. Other sectoral laws, such as the Securities Market Act (Art. 59 para 2 and 3), the Insurance Act (Art. 138) and the Investment Fund Act (Art. 18), also contain provisions on financial secrecy

including exemptions that allow competent authorities to access the relevant information to perform their duties.

476. Art. 15(2) of the AML Law provides that informing the AMLD and other proper state authorities in accordance with this law (i.e. compliance with the reporting obligations prescribed by Art. 8 of the AML Law), shall not be considered a violation of banking or other secrecy. As described below in Section 3.7 in more detail, neither the AML Law nor the AML By-law contain a clear obligation to report a suspicion of terrorist financing; as a consequence, it is questionable whether the AML Law provides a sufficient basis for such a disclosure.

477. Art. 180 CPA prescribes a general obligation to report criminal offences: "*all state authorities and all other legal entities shall be bound to report criminal offences subject to public prosecution about which they have learned themselves or have learned from other sources*" (para 1); furthermore they are obliged to indicate evidence known to them or to undertake measures to preserve traces of the offence (para 2). However, there seems to be no rule that would automatically release the banks from the obligation of secrecy. Art. 234(1) CPA provides that banks may refuse to reveal data which represent a bank secret, and if presenting or giving files and other bank documents or data is denied on this ground, it can only be ordered by a court decision. This discretionary power of banks to disclose any information covered by banking secrecy (unless it is required by a court order), reduces the practical applicability of Art. 180(1) CPA.

478. Apart from this, there is no obstacle for the competent authorities acting within the scope of criminal procedures to have access, upon request, to confidential banking data. As a general rule, it requires a court order. According to Art. 99(2)2 of the Banking Law, banking secrecy rules do not apply in cases where the "*disclosure of confidential data is necessary to collect and establish the facts in criminal proceedings and preliminary proceedings, and requested or ordered in writing by the competent court*". Procedural rules applicable in this relation are set out in Art. 234 of the Criminal Procedure Act: As mentioned above, Art. 234(1) CPA allows banks in principle to refuse to reveal data which represent a bank secret. Art. 234(3) CPA gives power to the investigative judge to require banks to deliver information on the bank accounts of a defendant or another person against whom proceedings for the confiscation of proceeds of crime are being conducted. For other persons than the defendant or person against whom proceedings for the confiscation of proceeds of crime are being conducted (e.g. relatives of a defendant) it is not possible for the investigative judge to require this data unless such a person himself would meet the criteria of Art. 234(3) CPA; another possibility would be a case in which there is a suspicion of money laundering, in this case, the data could be requested via the AMLD. In the case that a bank would refuse to do so, Art. 234 (1) CPA provides that "*if presenting or giving files and other documents or data, which represent a bank secret, is denied, the final decision thereon shall be made by the panel of the county court*". If, notwithstanding the decision of the panel, the bank still does not deliver the data requested, "*the investigating judge shall immediately inform thereof the National Bank of Croatia and undertake other legal measures*" (Art. 234[4]). Such "*other legal measures*" could be initiating criminal procedures on the basis of Art. 304 para 2 CC ("Obstruction of Evidence").

479. The application of Art. 234(3) CPA to obtain banking information requires the commencement of a formal investigation unless "*it is likely that the money obtained by involvement in the commission of criminal offences committed by a group (Article 89 paragraph 22 of the Criminal Code) or a criminal organization (Article 89 paragraph 23 of the Criminal Code) or of a criminal offence of the misuse of drugs (Article 173 of the Criminal Code) punishable by imprisonment for a term of more than three years are placed in those bank accounts*" – in this case the investigative judge may request for banking data even in the course of preliminary (pre-investigative) proceedings. To sum up, banking information may, at this stage, be obtained under two conditions: it must be likely that the illicit money is actually being placed in the account and that this money must be derived either from drug crimes or from other offences if committed by a

group or a criminal organization. Consequently, Art. 234(3) appears to be not applicable in the pre-investigative phase

(i) if there is no actual deposit on the given bank account or

(ii) if the money deposited was obtained from other sorts of criminal activities, including money laundering or terrorist financing, if not committed in a group or by an organization (which is often hard to prove in the early stage of proceedings).

480. Art. 21d of the Law on USKOK provides that - if inquiries conducted by the Police or the State Attorney's Office reveal indications of organized crime in relation with a range of criminal offences (including money laundering) - USKOK "*shall ask from the competent administrative organizations of the Ministry of Finance (Tax Administration, Financial police, Custom Administration, Foreign Exchange Inspectorate, Money Laundering Prevention Department) request to check the business operation of a legal entity and natural person and to temporarily seize money, securities, items and documents that may serve as evidence and request information on the information gathered, processed and stored concerning unusual and suspicious financial transactions"*. Furthermore, in the case of suspected money laundering, and upon request of USKOK, the AMLD "*is obliged to provide all available data on the transactions of suspects suspected of money laundering, and execute necessary checks in order to establish the existence of such transactions*" (Art. 21e[2]).

481. Thus, USKOK has indirect access to the banking data via the AMLD. If the data already kept by the AMLD should be insufficient for the purposes of the investigation, USKOK is even authorized to oblige the AMLD to obtain further confidential information from the banks (by requiring, as quoted above, to check the business operation of a legal/natural person as well as to execute "necessary checks" to establish the existence of certain transactions). Art. 21d of the Law on USKOK provides that failure to act on the request of USKOK would be considered an *"aggravated violation of the official or working duty"*. Representatives from USKOK told the evaluators that the AMLD responds quickly to their requests. The question how this competence of USKOK relates to independence and data security from the AMLD is considered under Section 2.5. Overall, USKOK seems to be in a favourable position compared to other law enforcement authorities, which do not have this access to the data from the AMLD and always need to obtain a court order to have access to confidential banking information. However, as there is no clear legal basis which would authorize the AMLD to obtain information regarding a suspicion of terrorist financing, the possibilities of USKOK are also limited in this regard.

482. The AMLD has access to financial, administrative and law enforcement information and can disclose information to respective local state authorities or foreign counter-partners/international organizations. There are no restrictions concerning the exchange of information with domestic state bodies or other FIUs, regardless of its type, or with international organizations for the purposes of detection and prevention of money laundering. Again, the legal situation limits the possibilities of the AMLD to the prevention of money laundering and does not provide clear authority for the combating of terrorist financing.

483. Regarding the exchange of information among financial supervisors, see Chapter 6.1 (domestic exchange of information) and 6.5 (international exchange of information).

3.4.2 Recommendations and comments

484. There are no reported practical restrictions in the Croatian legislative framework limiting competent authorities from implementing the FATF Recommendations when performing their anti-money laundering functions. In this context, the FIU is also able to access further information from the reporting entities. However, when it comes to terrorist financing, the AMLD has no clear competence to gather information; in the course of preliminary/criminal proceedings related to terrorist financing a disclosure of banking secrecy would require always a court order. Moreover,

this is limited in scope as the criminalization of terrorist financing itself is limited in Croatia (as described under Section 2.2). Overall, it is understood that a court order is an essential condition to obtain information protected by bank secrecy.

3.4.3 Compliance with Recommendation 4

	Rating	Summary of factors underlying rating
R.4	**LC**	• The AML Law does not seem to provide a clear legal basis to lift bank secrecy for STRs in respect of terrorist financing.

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

3.5.1 Description and analysis

Recommendation 10

485. Article 6 of the AML Law requires gathering information on a transaction only in the event that the transaction exceeds 200 000 Kuna (approx. 27 000 EUR) or when there is suspicion of money laundering (Article 8). Article 16 para 1 of the AML Law requires that "*the reporting institutions shall keep records gathered in accordance with this Law for at least five years after the last of related transactions was made, unless Law specifies otherwise*". The Croatian authorities explained, that the phrase "*unless Law specifies otherwise*" provides only for the possibility that other laws contain requirements to keep records for a longer period than five years; as examples they referred to the Banking Act (Art. 102: at least ten years) and the Accounting Act (Art. 12: at least 7 years). The evaluators were told from representatives of the insurance sector that they keep the necessary records both in paper and electronic form up to five years after the transaction was made.

486. Article 16 para 2 of the AML Law requires reporting institutions to keep customer identification records for five years after completion of the business relationship. Art. 39 of the National Payment System Act requires banks to "*keep payment orders and other documents on the basis of which changes in the accounts with the bank have been registered for at least 5 years following the end of the year in which the changes in the accounts based on these payment orders or documents were registered*". For the non-banking industry no similar obligation exists. There is no authority for competent authorities to request the reporting institutions to keep these records longer than five years. In accordance with criterion 10.3, Art. 21 para 1 of the AML By-law requires reporting institutions to keep identity and transaction records in chronological order and in a way that enables efficient control in preparation for AMLD requests. Supervision of the banking sector performed by the CNB includes also supervision of record keeping obligations. The Manual for AML supervision of February 2003 (Point 1.1. "Checking whether the bank is keeping records on the transactions that were reported to the FIU in accordance with existing legal obligations") describes this as an element of the supervision process[43]. During the period from 2005 and 2006, the CNB discovered no infringements with regard to record keeping obligations; it only requested from one bank to provide more adequate conditions for record keeping. Supervision of record keeping obligations is also exercised by the FEI in the course of its supervision.

[43] The Manual for On-Site Supervision in the Area of Prevention of Money Laundering and Prevention of Terrorist Financing in Credit Institutions of July 2007 contains a similar obligation.

487. Art. 20 of the AML Law provides sanctions in the case that reporting insitutions do not keep records as required under Art. 16 (ranging from 10 000 to 100 000 Kuna for the reporting institution and from 5 000 to 30 000 Kuna for the responsible compliance officer).

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488. There is no comprehensive requirement for ordering financial institutions to verify that originator information is accurate and meaningful. Also there is no obligation to verify the identity of a customer for all wire transfers of EUR/USD 1000 or more.

489. At the same time, commercial banks, according to regulations of the CNB, are required to obtain and maintain (in case of intermediary bank) information regarding originator for all wire transfers that use bank accounts, domestic or international, regardless of their amount.

490. Banks and the Croatian Post Office are the unique entities that provide (domestic and international) wire transfers. Only the Croatian Post Office and one bank were co-operating as agents with one global money remittance company, namely Western Union.

491. Both Banks and the Croatian Post Office have to identify clients at each individual or combined transaction(s) - conducted with cash, foreign currency or securities - in excess of 105 000 Kuna or in the case of any cash or non-cash transaction where money laundering is suspected (Art. 4 para 2-5 of the AML Law).

492. For cross-border wire transfers, according to the CNB Instruction for the "Implementation of the Decision Governing the Conditions and Manner of Performing Cross-border Payment Operations", originator information must include name and address of originator. In case of incoming cross-border transfer which does not contain full originator information, the banks, when a transaction exceeds the threshold established by the AML Law, are required to return it. For domestic wire transfers from bank accounts originator information, according to the CNB Decision on payment orders, must include name and account number. In both cases the originator information, if obtained from a customer file that is formed as a result of identification and verification of a customer's identity, has to be accurate and meaningful. However, this does not directly follow from the mentioned regulations of the CNB. Moreover, for the occasional customers, that do not have an account with a bank, or are initiating wire transfer through an agent of Western Union, all of the above concerns remain.

493. Financial institutions are not required to have in place risk-management systems to identify and handle wire transfers that lack full originator information, aimed at detecting transfers of suspicious nature that may result in making an STR report. At the same time, Croatian authorities advised that in practice some banks apply such an approach regardless of transaction amount.

494. The CNB is examining the issue of obtaining and maintaining full originator information during on-site bank examinations. The FEI in 2006 inspected one bank which acts as an agent for Western Union and this bank was sanctioned for non keeping records related to this Western Union activity. The FEI at the time of the on-site visit did not perform inspections of the Croatian Post[44].

[44] Croatian authorities informed that in 2007 the FEI performed on-site examination of the Croatian Post, acting as an agent of the Western Union, after which sanctions were applied for non-compliance with the provisions of the AML Law on identification and record-keeping.

495. Instructions of the CNB, regulating international and domestic wire transfers, are enforceable. No specific enforceable regulations for the Croatian Post as an agent of Western Union existed at the time of on-site visit.

496. There are no procedures in place for banks and the Croatian Post Office dealing with "batch transfers", and there are no provisions requiring financial institutions to ensure that non-routine transactions are not batched. Financial institutions are not required to adopt risk-based procedures for handling wire transfers that are not accompanied by complete originator information. There are no provisions requiring intermediary financial institutions to maintain all the required originator information with the accompanying wire transfers.

3.5.2 Recommendation and comments

Recommendation 10

497. Apart from the banking sector, the record keeping provisions do not require the collection or maintenance of account files or business correspondence which should be addressed. Financial institutions should also be required to keep documents longer than five years if requested by a competent authority.

SR.VII

498. Croatia should implement all the requirements of Special Recommendation VII.

3.5.3 Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**LC**	• There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority. • Apart from the banking sector, the record keeping provisions do not mention collecting or maintaining account files or business correspondence.
SR.VII	**PC**	• There is no comprehensive requirement for ordering financial institutions to verify that originator information is accurate and meaningful. • There is no obligation to verify the identity of a customer for all wire transfers of EUR/USD 1000 or more. • Financial institutions are not required to have in place risk-management systems to identify and handle wire transfers that lack full originator information, aimed at detecting transfers of suspicious nature that may result in making an STR report. • At the time of the on-site visit, no specific enforceable regulations existed for the Croatian Post which acts as an agent for a global money remittance company. • The FEI at the time the of on-site visit did not perform inspections of the Croatian Post. • There are no procedures in place for banks and the Croatian Post Office dealing with "batch transfers". • There are no provisions requiring intermediary financial institutions to maintain all the required originator information with the accompanying wire transfers.

Unusual and Suspicious Transactions

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

3.6.1 Description and analysis

Recommendation 11

499. Financial institutions in Croatia are not required to pay special attention to all complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose, needs to be provided for by law, regulation or other enforceable means. Croatia relies instead on the STR process to identify these types of financial activities. Neither the AML Law nor the AML By-law contain indicators what should be considered suspicious. Art. 22 of the AML Law obliges the Minister of Finance to issue regulations concerning the manners and the deadlines for informing the AMLD on suspicious and above threshold transactions. This was done with the AML By-law which entrusted the AMLD to produce a list of indicators for the detection of suspicious transactions. The AMLD developed in cooperation with the reporting institutions and regulators (the CNB, the Foreign Exchange Inspectorate, the Tax Administration, the Croatian Banking Association) such a legally not binding list (Annex 3). This list is divided into several subsections for the various sectors and their areas of activities. It provides an extensive set of examples for suspicious transactions and activities and it covers to some extent complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose. This list of indicators was well known by the reporting institutions. Although not part of law or by-law, this list of indicators is used by the CNB and FEI while conducting supervision. After determining a transaction that falls under these indicators has not been reported, the supervisor would inform the AMLD so that the latter can initiate misdemeanor proceedings (which usually results with a fine for not reporting a STR). In practice, Croatian authorities advised that in at least 2 cases banks were sanctioned for non reporting of a complex, unusual large transactions or unusual patterns of transactions that have no apparent or visible economic or lawful purpose.

Recommendation 21

500. The reporting institutions have to report all transactions which raise a suspicion of money laundering to the AMLD. The list of indicators for the detection of suspicious transactions which was issued by the AMLD (see previous paragraph) contains indicators which address the criteria of Recommendation 21. The reporting institutions have to pay particular attention to their clients coming from a country which has not in place an appropriate money laundering identification and prevention system and any person producing identification documents from off-shore destinations or countries from a so called "black list", countries commonly associated with the production and distribution of narcotics and countries which are considered, in accordance with internationally set criteria, suspicious of inciting terrorism and terrorism financing. The AMLD is supposed to regularly update the list of the above-mentioned destinations and to distribute it to the obligated entities; the evaluators were informed that this has been done so far twice. Another indicator given for possible money laundering in this list is when transactions have no apparent economic or visible lawful purpose. Indirectly the obliged entities are also required to have an understanding of normal and reasonable activity of their customer as they also have to identify transactions "*which depart from the common turnover and/or business activity*".

501. There are no laws or mechanisms in place to apply counter-measures against countries which do not apply or insufficiently apply FATF recommendations.

3.6.2 Recommendations and comments

502. Financial institutions are not required to investigate the purpose of complex/unusual large transactions and thus to keep a record of the written findings. There is no requirement to establish the purpose and background of unusual transactions or to maintain this information in writing and keep records which will be accessible by authorities. It is strongly recommended that Croatia implements Recommendation 11.

503. The Croatian authorities have taken some steps to meet Recommendation 21 by making transactions with NCCT-areas suspicious transactions and by making transactions over 200 000 Kuna subject to monitoring by reporting institutions. This goes part way to meeting the recommendation. However, there is no overall and direct requirement to examine, as far as possible, the background and purpose of such transactions which have no apparent economic or visible lawful purpose and to keep written findings.

3.6.3 Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**NC**	• Recommendation 11 has not been implemented.
R.21	**NC**	• In the case of all transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, there is no specific requirement on the financial institutions to examine the background and purpose of such transactions and set out their findings in writing and to make them available to the competent authorities. • There are no mechanisms in place to apply counter measures.

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

3.7.1 Description and analysis

Recommendation 13 and Special Recommendation IV

504. The legal basis for the obligations of the monitoring entities to report suspicious and above threshold transactions can be found in the AML Law and the "Procedures on Implementation of the Law on Prevention of Money Laundering" (hereinafter AML By-law). The system of the AML Law is quite complex and requires numerous cross-references in order to be fully comprehensible. A starting point is Art. 8 para 1 of the AML Law which requires that the so-called reporting institutions (as defined by Art. 2[45]) "*shall identify the customer and forward to the AMLD the information listed in Article 5 and 6 of this Law, within three days after the transaction has been executed, for all transactions referred to in paragraphs 2 and 3 of Article 4 of this Law if the value of transaction is 200.000,00 Kuna or more and for the transactions listed in paragraphs 4 and 5 of Article 4 of this Law in a manner that is provided by this Law and by-law regulations*". In this context it is also necessary to consider Art. 8 para 3 of the AML Law which stipulates that the reporting institutions "*shall, as under Paragraph 1 of this Article, inform the AMLD of transactions where there is a suspicion of money laundering as under Art. 4 para 5 [...]*". The latter provision provides that "*in addition to the identification of the customer as under Paragraphs 1, 2 and 3 of this Article, the identity of the customer shall be verified at all other cash or non-cash transactions if there is a suspicion of money laundering*". This system of several cross-references makes it very difficult to determine the full scope of the obligations and provides a significant risk that the reporting institutions may misunderstand their obligations.

505. Leaving aside the difficulties caused by the complexity of the AML Law, it can be concluded that these provisions stipulate an obligation for the reporting entities to file a report to the AMLD if one or both of the following provisions exist
   a.) a transaction raises a suspicion of money laundering;
   b.) the amount of the transaction exceeds a certain threshold.

506. The reporting obligation refers to "transactions", which are defined in Art. 1 para 2 of the AML Law; the latter definition seems to cover all types of funds as provided for by the glossary to the Methodology.

507. Reporting of transactions for legalising illicit income presumably covers all offences required to be included as predicate offences under Recommendation 1 including also tax matters, but with the exception of financing of terrorism in all its forms (see section 2.1). However, there is no law or regulation which makes it clear that also proceeds of all predicate offences required under Recommendation 1 should be covered in the reporting obligation.

508. In terms of implementation, the AML Law contains no indicators that determine what should be considered suspicious. Art. 22 of the AML Law obliges the Minister of Finance to issue regulations concerning the manners and the deadlines for informing the AMLD on suspicious and above threshold transactions. This was done with the AML By-law which also contains no definition or indicators for the detecting of suspicious transactions, but it entrusted the AMLD to

[45] i.e. banks and residential saving banks, savings and loan cooperatives, investment funds and companies for the management of investment funds, pension funds and companies for the management of pension funds, Financial Agency and Croatian Post Office, Croatian Privatization Fund, insurance companies, stock market and other legal persons authorized to perform financial transactions with securities, authorized exchange offices, pawnshops, organizers of lottery games, casino games, betting games and slot machine games.

produce a list of indicators for the detection of suspicious transactions. The AMLD developed such a list in co-operation with the reporting institutions and regulators, such as the CNB, the Foreign Exchange Inspectorate, the Tax Administration, and the Croatian Banking Association (Annex 3). This list is divided in several subsections for the various sectors and their areas of activities. It provides numerous examples for suspicious transactions and activities. The indicators for the banking sector are divided in subjective and objective factors, while the indicators for the other financial institutions are only objective. This list of indicators was well known by the reporting institutions. Although not part of law or by-law, this list of indicators is used by the CNB and FEI while conducting supervision. After determining a transaction that falls under these indicators has not been reported, the supervisor would inform the AMLD so that the latter can initiate misdemeanor proceedings (which usually results with a fine for not reporting an STR).

509. The AML Law does not explicitly cover the reporting of attempted transactions. However, reporting of attempted transactions is partially covered in an indirect way:

- when reporting institutions
    a. have no possibility to identify the client, or
    b. cannot gather information concerning the client or the transaction, and
- if the customer, in his capacity as an authorized person, does not produce a power of attorney.

In these situations, Art. 7 in conjunction with Art. 8 para 2 of the AML Law oblige reporting institutions to refuse the transaction and to inform the AMLD.

510. There is no threshold for transmitting suspicious transactions or (as far as it goes) attempted suspicious transactions to the AMLD.

511. Under Art. 8 of the AML Law, reporting institutions are required to report suspicious transactions to the AMLD within 3 days and shall not execute the transaction. If it should be not possible - because of the nature of the transaction - to inform the AMLD before the transaction is conducted, the reporting institutions shall inform the AMLD no later than 24 hours after the said transaction was performed (Art. 8 para 4). In the case, that a reporting entity cannot inform the AMLD within this timeframe, Art. 13 para 4 of the AML By-law obliges the reporting entities to request from the AMLD authorization for a time extension. These time frames were discussed during the onsite and it seemed that they did not pose an operational challenge for the reporting entities.

512. A certain difficulty of the AML Law is that the prevention of terrorist financing appears only in the first paragraph of the AML Law. In the view of the Croatian authorities, this provision extends the whole scope of the AML Law also to the prevention of terrorist financing. As already indicated in Section 2.5, the evaluation team was not convinced by this argumentation and concluded that this applies at least not in those cases where provisions make a reference only to money laundering (but not to terrorist financing). As the relevant provisions of the AML Law dealing with suspicious transaction reporting always refer only to the suspicion of money laundering (Art. 4 para 5; Art. 8 para 3), it is not possible to interpret these provisions beyond their clear language and one has to assume that the STR regime provided by the AML Law does not extend to the prevention of terrorist financing. A further problem in this context is that the provision in the AML By-law which gives the AMLD the authority to issue a list of indicators for the detection of STRs (Art. 12) refers again only to a suspicion of money laundering but not to terrorist financing.

513. The obligation to report transactions related to terrorist financing seems to be minimized as it is not defined in the AML Law. It is unclear whether the provisions of the Criminal Code which address this issue (though limited as discussed in Section 2.2) could help to fill this gap. Also, the indicators issued by the AMLD to detect suspicious transactions are not sufficiently specific as they are more or less a summary of the indicators for suspicion of money laundering (e.g. there is no reference to listed persons; see Section 1.2); moreover, they are neither law nor regulation.

514. A further difficulty with the reporting obligation related to possible terrorist financing is that Section V of the AML By-law contains exemptions for the reporting institutions concerning their reporting obligations: Art. 24 of the AML By-law exempts cash transactions of "daily goods or services retail deposits on the business account" from the reporting obligation, unless there is a suspicion of money laundering. The Croatian authorities explained that the reasons for this exemption were that these cash transactions are based on a contract between the entities and banks, and present a very low or no risk as they are part of basic daily activity. Those entities (e.g. drug stores, markets and similar) are obliged to deposit cash from daily operations. Otherwise this could lead to an overreporting to the AMLD. However, this exemption is problematic in 3 respects: firstly the AML Law does not give the authority for such an exemption provided by the AML By-law; in addition it creates a loophole as all transactions which fulfil the criteria to be exempted do not need to be checked whether there is a risk of terrorist financing; third, given the absence of full-scale CDD, this exemption, is also hard to validate because it relies on establishing business profile of a customer in the first place.

515. In practice, no reports with a suspicion of terrorist financing have been sent to the AMLD. However, the representatives from the banking sector assured the evaluation team that banks would file a report to the AMLD if such a suspicion would arise. The AMLD also received two STRs, which were not specified as to whether it was a suspicion of money laundering or terrorist financing, but which were considered by the AMLD to be connected with possible terrorist financing because of the indicators described in these STRs; the AMLD undertook an analysis of these cases and then forwarded it to FinCEN and the Croatian prosecutor service.

516. Figures on STRs are provided in Section 2.5 of the report. These figures show a very uneven reporting: banks send still the largest number of STRs while the number of STRs submitted by other reporting entities (insurance, gambling houses, exchange bureaus, real estate agents, notaries, lawyers etc.) is significantly low. This indicates a lack of understanding of these sectors and further outreach to these entities is needed. On the positive side, it can be mentioned that banks obviously reacted to the steering measures of the AMLD: At the beginning, the number of STRs, particularly from banks, was too high and there was a risk that this apparent "over-reporting" could overwhelm the work of the AMLD. This over-reporting was obviously caused by the fact that the AMLD had advised the banks to report anything which might have been suspicious (based on objective indicators which the AMLD had issued to the financial sector and supervisory bodies). In the meanwhile, the AMLD took some steps to reduce the amount of STRs. They are now directing the reporting entities to focus more on subjective indicators for suspicious transactions and have revised their guidance to the reporting institutions in this regard. As a consequence the number of STRs received decreased significantly to a more manageable (and reasonable) number. The AMLD expressed that with decrease of reports at the same time the quality of the reports increased and that the reduced number but higher quality of reports (more precise and descriptive) significantly contributed to efficiency of the system.

517. The Croatian authorities provided a flowchart explaining the process of the AMLD when analysing STRs, which is attached to this report as Annex IV. Overall this system seems to be very comprehensive, including various steps in the analytical process, and create a valid base for further proceedings by law enforcement. The prosecutors with which the evaluation team met expressed that they are satisfied with the quality of the submitted reports of the AMLD.

European Union Directive

518. Article 6 Paragraph 1 of the Directive 1991/308/EEC provides for 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. As indicated above, the reporting obligation covers all transactions which raise a suspicion of money laundering.

519. Comments on Article 7 of the Second EU Anti-Money Laundering Directive (in respect of the requirement to refrain from carrying out transactions which financial institutions know or suspect relate to money laundering until they have apprised the competent authorities) have been discussed under Recommendation 5 (paragraph 443). It is considered that Art. 8 para 3 of the AML Law covers this. Art. 10 of the AML Law allows the AMLD to request financial transactions to be suspended up to three days (for details see paragraphs 247 to 249).

Recommendation 14

Safe Harbour Provisions

520. Neither the AML Law nor any other pieces of Croatian legislation known to the evaluators contain any provision that would completely and expressly release the reporting persons or entities from criminal and civil liability as it is required by criterion 14.1. Protection appears to be provided only against liability for breach of banking secrecy rules, by virtue of Art. 15(2) of the AML Law: "*Informing the AMLD and other proper state authorities in accordance with this Law will not be considered a violation of banking or other secrets*". Though not expressly mentioned, this provision seems to cover financial institutions as well as their directors, officers and employees. This sole provision, however, could not serve as shelter from other sorts of criminal charges or civil lawsuits (e.g. for defamation). Even in this limited scope, two restrictions need to be mentioned: Firstly, it is not clear whether the language "*informing ... in accordance with this Law*" also covers good faith reporting and whether it provides protection when no illegal activity actually occurred. Another problem is the insufficient legal basis of the reporting obligation related to terrorist financing; consequently, also the protection for reporting suspicion of terrorist financing seems insufficient.

Tipping off

521. Article 17 par 1 of the AML Law provides that "*the AMLD and the reporting institutions shall not*[46] *notify the customer about gathered records and about procedures initiated in accordance with this Law*". Art. 2 of the AML Law makes it clear that a "reporting institution" does not only cover legal persons, but also the "*authorized persons within those entities, as well as physical persons required to implement measures and actions to detect and prevent money laundering*".

522. Unlike other violations of provisions of the AML Law, the infringement of the above prohibition cannot be sanctioned according to the AML Law itself (cf. Chapter V. - Sanctions). The Croatian authorities advised the examiners that this would be considered to establish the criminal offence of Disclosure of an Official Secret pursuant to Art. 351(1) thereof:

> *Disclosure of an Official Secret*
> *Art. 351*
>
> *(1) Whoever, without authorization, communicates, conveys or otherwise renders accessible to another data which are an official secret or provides such data with an aim to convey them to an unauthorized person shall be punished by imprisonment for three months to three years (...)*

523. The term "official secret" is defined by Art. 89 (14) of the Criminal Code as " information received and used for the needs of official bodies, designated to be an official secret by statute,

[46] In the first version of the AML Law, this was translated with "cannot". Subsequently, the Croatian authorities confirmed that this should be translated as "shall not".

some other legal provision or bylaws of a competent body passed in accordance with the law". When records are gathered and procedures are initiated in accordance with the AML Law, this designation can be found in Art. 15(1) of the latter law:

> *"All information gathered in accordance to this Law is considered confidential and secret, and can be used only for the purposes stipulated by this Law."*

524. Croatian authorities stated during the on-site visit that this argumentation has not yet been tested before the courts as there has been no prosecution for the offence of disclosure of an official secret with regard to the notion of "secrecy" pursuant to Art. 15(1) above. In fact, the evaluators are not completely convinced of the accuracy of this argumentation as Art. 15(1) does not designate anything as an "official secret"; therefore it may be argued whether any officers and employees of obliged entities could be held responsible for disclosure of official secret. AMLD employees, who are also covered by Art. 17(1) of the AML Law, might obviously be bound by further specific, internal secrecy rules (via employment contracts), but that has nothing to do with criterion 14.2.

525. Art. 15(1), on the other hand, appears to meet the additional element in criterion 14.3, as the names and personal details of the staff of financial institutions who make a transaction report are necessarily covered by the notion of "all information gathered in accordance to this Law". Therefore, they must be kept secret and confidential by the AMLD.

526. The "tipping off" prohibition is not limited to transaction reports. Taking into account that it covers any procedure initiated in accordance with the AML Law, its coverage must necessarily extend to ongoing money laundering investigations initiated by the AMLD pursuant to Art. 12 of the Law.

527. As the AML Law contains no obligation to report a suspicion of terrorist financing (or to gather information related to possible financing of terrorism), there are no "tipping off" prohibitions in this respect.

Additional elements

528. The obligation to keep confidential the names and personal details of the employees who submit STRs confidential stems from Art. 15 of the AML Law.

Recommendation 19

529. The AML Law provides for the reporting of cash transactions over a certain threshold. Art. 8 para 1 in conjunction with Art. 4 paragraphs 2 and 3 of the AML Law obliges the reporting institutions to file a report to the AMLD in the case of a transaction or linked transactions conducted with cash, foreign currency, securities, precious metals and gems, which amount(s) to 200 000 Kuna (approx. 27 000 EUR). Life insurance agencies are obliged to identify customers in all life policies if the annual premium exceeds the 40 000 Kuna (approx. 5 500 EUR) threshold and to report this to the AMLD.

530. As already indicated under SR IV, the AML By-law provides an exemption from CTR reporting. Art. 24 of the AML By-law exempts cash transactions of "daily goods or services retail deposits on the business account" from the reporting obligation, unless there is a suspicion of money laundering.

531. The AMLD receives reports from the banks electronically; other obliged entities send the reports by fax etc. The AMLD anticipates that all reporting institutions will send the reports electronically in the near future.

Recommendation 25

532. The AMLD provides annual feedback to the banking sector on the results of its activities. This feedback is based on the annual reports of the AMLD (which are sent to the Government of Croatia) and is usually announced at a press conference; in 2006 till the time of the on-site visit no such conference had taken place. These annual reports contain detailed statistics, typologies and trends as well as information on the activities of the AMLD, comprehensive analysis and assessments of reports (purpose of the AML Law, secrecy of the activities and record keeping, supervision, core functions of the AMLD, national cooperation, key elements of the AMLD work: statistics, STRs, disseminated cases, criminal procedure data, activities in the area of terrorist financing, evaluation of the AMLD work, EU accession process, AML projects, international activities, assessment of current and foreseeing of future threats, case studies etc.). The AMLD also explains its activities to the public by issuing articles on specific subjects in various publications. However, representatives from the banking sector expressed that they would like to receive information about the results of their individual reporting. Though there seems to be some feedback at training seminars, more needs to be done in this area.

3.7.2 Recommendations and comments

533. As a general point, the AML Law is difficult to follow and requires frequent cross-referencing to understand its meaning. The prevention of terrorist financing is only addressed in its first Article, which insufficiently transposes this issue into legislation. It is recommended that the new draft AML Law provides clearer and more user friendly language.

Recommendation 13 and Special Recommendation IV

534. The legal provisions determining the Croatian STR system are too complicated in its structure, which makes it difficult for the obliged entities to understand their obligations. Croatian authorities should therefore revise the relevant provisions and make them easier to follow.

535. In terms of money laundering, Recommendation 13 should apply to all offences which are required to be included under Recommendation 1. In Croatia, financing of terrorism in all its forms is not covered. There needs to be a clear, mandatory requirement that all predicate offences required under Recommendation 1 should be the subject of suspicious transaction reports.

536. The AML By-law contains exemptions for the reporting institutions concerning their reporting and identification obligations. This causes a significant loophole because any transaction which fulfils the criteria to be exempted does not need to be checked whether there is a risk of terrorist financing.

537. The low numbers of STRs outside the banking sector raises concerns as to effective implementation.

538. As far as SR IV is concerned, the evaluators consider that the concept for reporting suspicions on terrorist financing is not clearly provided for in the AML Law. This should be addressed as a matter of urgency.

Recommendation 14

539. The existing safe harbour provisions are very limited in their scope: it is not clear if the language "*informing ... in accordance with this Law*" covers also good faith reporting and whether it provides protection when no illegal activity actually occurred. There is no protection from other sorts of criminal charges or civil lawsuits than from breach of banking secrecy rules. As the reporting obligation does not clearly cover terrorist financing, also the protection for reporting a

suspicion of terrorist financing seems insufficient. Croatian authorities should introduce safe harbour provisions to the full extent as required by criterion 14.1.

540. There is no direct and explicit sanctioning for "tipping off". The AML Law does not provide for administrative sanctioning and the solution suggested by Croatian authorities (i.e. criminalising it as the offence of disclosure of official secret) does not appear well-founded and was not yet tested in practice.

Recommendation 19

541. The recommendation is fully observed.

Recommendation 25

542. The feedback provided to the private sector by the AMLD is mainly based on the summary of their annual reports. Though the AMLD explains its activities to the public also by issuing articles on specific subjects in various publications and gives some feedback at training seminars, more needs to be done in this area; particularly more outreach to the non-banking sector is necessary.

3.7.3 Compliance with Recommendations 13, 14, 19, 25 (criterion 25.2) and Special Recommendation IV

	Rating	Summary of factors underlying rating
R.13	**PC**	• There is no clear obligation to report STRs on terrorism financing. • Attempted transactions are only partially and in an indirect manner covered. • The STR reporting regime contains exemptions for certain transactions, regardless whether there is a suspicion for terrorist financing. • Low numbers of STRs outside the banking sector raises concerns as to effective implementation.
R.14	**NC**	• There is no protection from other sorts of criminal charges or civil lawsuits than from liability for breach of banking secrecy rules. • It is not clear if the safe harbour provisions cover also good faith reporting and when no illegal activity actually occurred. • There is no clear legal basis for protection in the case of reporting a suspicion of terrorist financing. • There is no direct and explicit sanctioning for "tipping off".
R.19	**C**	
R.25	**LC**	• The feedback to the non-banking sector is insufficient.
SR.IV	**NC**	• There is no clear obligation in law or regulation to report STRs on terrorism financing.

Internal controls and other measures

3.8 Internal controls, compliance, audit and foreign branches (R.15 and 22)

3.8.1 Description and analysis

Recommendation 15

Generally

543. Art. 19 of the AML By-law requires the reporting institutions to perform at least once per year an internal control examination concerning their compliance with the AML Law and to provide the results to the AMLD. These controls are supposed to detect and prevent irregularities in the application of the AML Law and should improve the internal system of suspicious transaction reporting.

544. Furthermore, the AML By-law obliges the reporting institutions to produce general internal regulations, which should describe the measures, actions and activities for the prevention and detection of money laundering and terrorist financing (Art. 14). In these regulations, reporting institutions should particularly describe: the means of client and beneficial owner identification; time and manner of reporting to the AMLD; obligation to apply the list of indicators for suspicious transaction detection; the necessary measures related to suspicious transactions; the mode of nominating the responsible person (compliance officer) and its deputy; the type of professional education required of the responsible person, deputy and staff; the form of record keeping, etc. The AML Law also sets up minimum employment standards for compliance officers (e.g. no conviction for offences against the Republic of Croatia, property, safety of payment system, justice, legality of documents and official power; at least three years of working experience in banking, financial or similar sector, etc.). Art. 17 of the AML By-law prescribes the rights of the compliance officer within the reporting institution, which encompasses, amongst others: access to all databases, documents and information needed; sufficient funding for training, etc. The reporting institutions also have to provide "permanent and regular professional education" to their employees to enable them to detect suspicious transactions (Art. 18 of the AML By-law). The compliance officers need to be involved in drafting the programme of education for the employees.

545. There is no obligation that an AML/CFT compliance officer should be at the management level.

546. There is no general legal requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls (criterion 15.2). Though banks (Art. 106-114 of the Banking Act) and insurance companies (Art. 145-155 of the Insurance Act) are obliged to have both an internal and external audit function, compliance with AML/CFT regulations is not listed as a part of this audit.

547. Though some sector specific laws (Banking Act, Company Act) contain provisions defining conditions for the employment of certain categories of employees, there are no general formal obligations imposed on financial institutions regarding screening procedures to ensure high standards when hiring employees (criterion 15.4).

Additional elements

548. There is no specific regulation to ensure that the AML/CFT compliance officer has the ability to bypass the next reporting level and to report to senior management or the board of directors.

Recommendation 22

549. As of 31 December 2005, 34 banks, 4 housing savings bank and 6 foreign bank representative offices were operating in Croatia (22 banks and building societies were in bankruptcy, 9 were under liquidation). All of these institutions must acquire a license from the Croatian National Bank. Banks which are owned by foreign banks have to be registered as Croatian banks (subsidiaries), while foreign banks, unless they have registered subsidiaries for performing banking operations, may operate only through their branch offices in Croatia. The evaluators were informed that the assets of six of the largest foreign-owned banks exceed 85 % of total banking sector's assets; this seems to be an element of strength in the AML/CFT regime, as group-wide standards are applied in Croatia, and many international financial entities provide support for local money laundering prevention within their entity, through lists and typologies. They also conduct on-site internal audits. The evaluators were advised that there are no internet banks in Croatia and all the existing banks operate exclusively via their registered head offices in the Republic of Croatia.

550. Art. 2 para 2 of the AML Law requires the reporting institutions that have subsidiaries or a majority ownership of a foreign financial institution or that control a financial institution in "*foreign countries that do not implement standards for prevention of money laundering*", to implement measures for preventing money laundering as stipulated by the AML Law unless this is in opposition with the laws and other regulations of their home countries. This provision addresses some parts of Recommendation 22 but the element "*foreign countries that do not implement standards for prevention of money laundering*" could weaken its practical application as an already minimalist foreign AML regime would prevent the application of this provision.

551. Currently, the Croatian banking industry is not yet that active abroad (only one Croatian bank has a branch abroad) and thus the risks appear low. There are no Croatian insurance or brokerage companies which have branches abroad. However, it cannot be excluded that in the future, Croatian financial institutions will operate more abroad, and the requirements of FATF Recommendation 22 will then need more attention in the financial sector.

552. There is no provision that requires financial institutions to inform their home country supervisor when a foreign subsidiary or branch is unable to observe appropriate AML/CFT measures.

3.8.2 Recommendation and comments

Recommendation 15

553. The AML Law requires financial institutions to adopt internal control procedures and regulations for the purpose of preventing money laundering and debatable (but not on a clear legal basis) also for terrorist financing.

554. With regard to compliance officers units, a person should be designated at the management level.

555. Financial institutions should be required to
(i) maintain an adequately resourced and independent audit function to test compliance;
(ii) put in place screening procedures to ensure high standards when hiring employees.

Recommendation 22

556. As Croatia financial institutions are not yet that active abroad, the risks in this area appear low (so far only one Croatian Bank has a branch abroad). Nonetheless, Croatian financial institutions may want

to expand more in the future and thus Croatian authorities should implement an explicit obligation to require financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with the Croatian requirements and FATF recommendations. Croatia should amend Art. 2 para 2 of the AML Law and make it fully consistent with the requirements of Recommendation 22 (i.e. not link it with "*foreign countries that do not implement standards for prevention of money laundering*").

557. There is no provision that requires financial institutions to inform their home country supervisor when a foreign subsidiary or branch is unable to observe appropriate AML/CFT measures.

3.8.3 Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**PC**	• Clear provision should be made for compliance officers to be designated at management level. • There is no general legal requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls. • There are no general formal obligations imposed on financial institutions regarding screening procedures to ensure high standards when hiring employees.
R.22	**PC**	• The current provision requiring financial institutions to apply AML/CFT measures to foreign subsidiaries consistent with home country requirements is not fully operational. • There is no provision that requires financial institutions to inform their home country supervisor when a foreign subsidiary or branch is unable to observe appropriate AML/CFT measures.

3.9 Shell banks (Recommendation 18)

3.9.1 Description and analysis

558. Banks which are owned by foreign banks have to be registered as Croatian banks (subsidiaries), while foreign banks, unless they have registered subsidiaries for performing banking operations, may operate only through their branch offices in Croatia. The evaluators were advised that there are no internet banks in Croatia.

559. Article 2 of the Banking Act stipulates that "a *bank is a financial institution which has obtained an operating license from the Croatian National Bank and which has been founded as a joint stock company with a head office in the Republic of Croatia*". Art. 37 of the Companies Act provides a definition for a banks head office as "*the place where the company's management is located and from which the activities of the company are run or where the company performs its activities*". In addition, Art. 35 lists what an applicant has to enclose with a request for issuing a licence by the CNB:

1) the Articles of Association in the form of a verified copy of a notary public record;
2) the operating plan for the first three years of operation that includes the income statement, the type of services planned, the appropriate organizational and personnel structure of the bank, the accounting policy and the organization of the internal audit;

3) *a list of shareholders, giving full name and address, and other identification data and/or name of the firm and address of its head office, the total nominal value of the shares and the percentage participation in the bank's share capital;*
4) *for shareholders – juridical persons who are owners of qualifying holdings:*
   - *a certificate from the Register of Companies or any other appropriate public register in the form of an original or verified copy;*
   - *a print-out of shareholders from the Register of Shareholders (the book of shares) or the book of participation, in the form of an original or verified copy;*
   - *financial statements for the last two years of operation;*
5) *a list of persons connected with the owners of qualifying holdings with a description of the manner of connection;*
6) *the names of candidates proposed for membership in the bank management or supervisory board, in the case of establishment of a bank;*
7) *an opinion or approval of the supervisory authority of a bank of a Member State or the supervisory authority of a foreign bank on a bank that intents to establish a bank in the Republic of Croatia;*
8) *the appropriate enactment of the competent supervisory authority if it is stipulated by the regulations on the provision of other specific financial services set out in the bank's operating plan;*
9) *documentation stipulated by the Croatian National Bank from which it is possible to determine whether in terms of personnel, technical and organizational conditions a bank will be capable of providing services referred to in the request for issuing the authorization.*

560. The CNB has the authority to refuse issuing a licence for a bank in the following cases (Art. 37 of the Banking Law):
- *if it proceeds from the bank's Articles of Association and other documentation that the bank is not organized in accordance with this Law and that the conditions for the operation of the bank stipulated by this Law or regulations issued on the basis thereof are not ensured;*
- *if the provisions of the Articles of Association contravene the provisions of the present Law or the provisions of regulations issued on the basis thereof;*
- *if it proceeds from the documentation and other known facts that the bank is not capable, in terms of personnel, technical and organization conditions of providing banking and/or other financial services in the manner and to the extent set out in its operating plan;*
- *if any other regulation on the provision of other financial services envisaged by the bank's operating plan stipulates specific conditions for the provision of such services, and the bank does not fulfil the said conditions; or*
- *if it proceeds from the request and enclosed documentation that the bank does not fulfil other conditions for the provision of other financial services to which the request for the issue of the authorization refers.*

561. These elements seem to provide sufficient coverage of criterion 18.1.

Criteria 18.2 and 18.3

562. There is no specific provision prohibiting financial institutions from entering into or continuing correspondent banking relationships with shell banks. Additionally, there is no specific obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country does not permit its accounts to be used by shell banks. The evaluators were advised that such regulations will be covered by guidelines which were in draft status at the time of the on-site visit.

3.9.2 Recommendations and comments

563. Croatia should create a specific provision that will prohibit financial institutions from entering into or continuing correspondent banking relationship with shell banks. In addition, there should

be an obligation placed on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

3.9.3 Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**PC**	• There is no legally binding prohibition on financial institutions to enter or continue correspondent banking relationships with shell banks nor is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.

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

Recommendation 23 (overall supervisory framework: criteria 23.1, 23.2)

564. Article 21a para 1 of the AML Law provides for supervision of financial institutions as follows:
(i) the Croatian National Bank supervises banks and building societies,
(ii) the Croatian Securities Commission supervises investment funds and companies for the management of investment funds; stock market and other legal persons authorized to perform financial transactions with securities,
(iii) the Pension Funds and Pension Insurance Control Agency supervises pension funds and companies for the management of pension funds,
(iv) the Directorate for the Supervision of Insurance Companies supervises insurance companies;

565. Art. 21a para 2 requires the AMLD and the supervisory bodies of the Ministry of Finance (Tax Administration, Customs Administration and Foreign Exchange Inspectorate) to perform supervision of all the reporting institutions within their scope of competence. As a consequence the AMLD is entitled to supervise all the reporting institutions as listed in Art. 2 of the AML Law. As described under section 2.5, the AMLD performs off-site (but no on-site) supervision of reporting entities. According to the AML By-law, reporting institutions are obliged to perform at least once per year internal control of the compliance with the AML Law, and to inform the AMLD about that (send written reports). The AMLD reviews and analyses these reports on compliance and if it finds irregularities it may request the respective supervisory body to perform on-site inspection on that reporting entity. Furthermore, the AMLD also checks the internal regulations of banks. It also receives and checks the minutes of on-site visits of other supervisory bodies. Furthermore, the AMLD undertakes continuous administrative supervision by checking the quality and deadline of submitted STRs and other information (spontaneously and on request).

566. In general, one substantial deficiency – as already described above concerning the AMLD - applies also in respect of the competencies of other supervisors. As the AML Law insufficiently addresses the issue of terrorist financing (only its Art. 1 contains a programmatic regulation trying to extend the scope of the entire AML Law to the prevention of terrorist financing; for details see

Section 2.5), it provides no clear authority for the other supervisors to cover CFT issues as part of their supervision activity (including inspections). As also the other sectoral laws do not cover this issue, it must be concluded that the legal basis to address CFT issues in the course of supervision is insufficient.

567. Supervision in the banking sector is divided between various bodies: the CNB supervises for AML purposes the opening of accounts and transactions both in domestic and foreign currency, while the Foreign Exchange Inspectorate (FEI) does this only in respect to accounts and transactions in foreign currency. The evaluators were advised that there should be no overlap in the area of supervision of accounts and transactions in foreign currency because both the CNB and the FEI exercise this supervision only according to their competence given by law. Housing savings banks are supervised and licensed exclusively by the CNB. The Department for Financial System within the Ministry of Finance is entitled for the supervision of Savings and Loan Cooperatives, which are also reporting institutions under the AML Law (Article 36 of the Savings and Loan Cooperatives Law, NN 84/02).

568. Since adoption of the AML Law some structural changes have taken place: the Croatian Financial Services Supervisory Agency (HANFA) succeeded and merged on 1.1.2006 the Croatian Securities Commission, the Agency for the Supervision of Pension Funds and Pension Insurance (HAGENA) and Directorate for the Supervision of Insurance Companies. It now supervises all legal and natural entities that deal with the provision of financial services, financial market advising, sales, brokerage activities or asset management for users of financial services. Art. 23 of the Act on the Croatian Financial Services Supervisory Agency (NN 140/05) clarifies that HANFA is meant whenever in legal acts the name of a replaced agency is mentioned.

569. Pursuant to Art. 2 of the Act on the Foreign Exchange Inspectorate, the FEI is responsible for the supervision of the activities of "state bodies and bodies of units of local government and self-government, authorized banks and other financial organizations, companies and other legal persons that are engaged in foreign exchange and foreign trade business transactions, diplomatic and other representative bodies of the Republic of Croatia, work units, etc. that were founded abroad by legal persons having their head office in the Republic of Croatia, foreign legal persons that are performing their economic or other activity in the territory of the Republic of Croatia, as well as natural persons, in view of regulations on foreign exchange transactions". Art. 89 of the Regulation on the Internal Structure of the Ministry of Finance clarifies that the FEI also has to supervise the application of the AML Law by the obligated entities as part of its remit. Art. 58 para 2 of the Foreign Exchange Act (NN 96/03, 140/05) duplicates this authority with respect to exchange offices.

570. Overall the following situation concerning supervision and licensing of financial institutions occurs in Croatia:

Financial institution	Supervisory authority		Licensing authority
	AMLD*	others	
Banks (banks, branches of foreign banks and representative offices of foreign banks)	yes	Croatian National Bank (CNB) concerning accounts and transactions in domestic and foreign currency Foreign Exchange Inspectorate (FEI) concerning accounts and transactions in foreign currency	Croatian National Bank (CNB)
Housing savings banks ("Building Savings Societies")	yes	CNB	CNB
Savings and Loan Cooperatives - SLC (Credit unions)	yes	Ministry of Finance (Department for Financial System)	Ministry of Finance (Department for Financial System)
Insurance companies (including life)	yes	Croatian Financial Services Supervisory Agency (HANFA)	Croatian Financial Services Supervisory Agency (HANFA)
Pension Funds	yes	HANFA	HANFA
Companies issuing credit/debit cards	yes	CNB (for banks) FEI/Tax Administration (for non banks)	No special licencing regime**
Foreign Exchange Offices	yes	Foreign Exchange Inspectorate (FEI)	CNB
Money remitters	yes	Croatian National Bank Foreign Exchange Inspectorate (within the supervision of their agents by which they operate in the Republic of Croatia)	There is no licencing or registration requirement.[47]
Brokerage activities	yes	HANFA	HANFA
Investment funds/investment fund management companies	yes	HANFA	HANFA
Electronic money institutions (if non banks)	Do not exist and could not be established in Croatia.		

Explanatory note:
* The AMLD performs only offsite supervision.
** Mainly this service is provided via banks and then covered by the general banking licence (see para 601).

Recommendation 30 – (Structure, funding, staffing, resources, standards and training)

Anti-Money Laundering Department (AMLD)

571. The Croatian authorities acknowledge that their resources for performing offsite supervision are too limited[48].

[47] An initiative to introduce a licencing regime for these entities has been started in January 2008.

[48] As a consequence of this, the Croatian government approved at the end of 2007 to increase staff of the AMLD from 22 to 36.

Croatian National Bank (CNB)

572. Within the CNB there is a Prudential Regulation and Bank Supervision section with a staff of 93 employees. This section is divided in five different departments: Prudential Regulation and Banking System Analysis Department, Off-Site Supervision Department, On-Site Risk Management Supervision Department, Specialised On-Site Supervision Department and Licensing and Market Competition Department. The Specialised On-Site Supervision Department is responsible for on-site supervision of banks which includes also the supervision of systems to prevent money laundering activities and financing of terrorism. The Department has a total of 22 employees (15 with a university degree in economy, 2 with a university degree in law and 4 IT specialists with a relevant university degree, as well as one administrator) of which 9 are engaged in on-site supervision of implementation of legislation in the area of anti-money laundering and prevention of financing of terrorism. On-site supervision of AML/CFT issues is performed by two divisions of the Specialized On-Site Supervision Department: the Internal Controls System Supervision Division and the Monetary and Foreign Exchange Policy Measures Implementation Supervision Division. For each supervision of a bank/ housing savings bank the examiner in charge appoints one or more supervisors (depending on the size of the bank/housing savings bank) to perform exclusively supervision of AML/CFT issues; the supervisory role for AML/CFT issues is rotating among all supervisors within the two aforementioned divisions with the intention that all supervisors are familiar with all areas of supervision. In addition, also the supervisors who are in charge during supervision for other areas have to take into consideration AML/CFT issues while performing their examinations. Although on site supervision of AML/CFT issues is performed primarily by Specialized On site Supervision Department, on site supervisors form On-Site Risk Management Supervision Department have also gone trough AML/CFT training and have in some cases trough their on site supervision also discovered and filed suspicious transactions reports or some irregularities in implementation of the AML Law to the AMLD (2004: two cases; 2005: two cases; 2006: one case).

573. All supervisors in the two divisions of the Specialized On-Site Supervision Department have gone through internal and external education concerning AML/CFT issues. In 2004, an in-house seminar was held for the employees of the CNB entitled “Supervision of the Application and Implementation of the Law on Prevention of Money Laundering”. It covered current issues concerning the conduct of supervision over general by-laws of the bank, organisation of the system for the prevention of money laundering and the conditions of work of the authorised persons, customer and transaction identification procedures, reporting and monitoring cash transactions, reporting and monitoring related cash transactions, reporting and detection of suspicious transactions, bank's IT solutions for identifying transactions which are subject to reporting requirements, reporting suspicious and cash transactions in the context of bank's exchange operations, keeping documentation, employee training, internal audit in the area of prevention of money laundering and periodic reporting to the management board. CNB employees also attended a seminar on 26 May 2004 in Zagreb entitled “The Croatian System of Prevention of Money Laundering” organised by the Croatian Institute for Banking and Insurance. During 2004, 3 employees of the Specialised On-Site Supervision Department participated in 4 international seminars in the area of prevention of money laundering:

- Anti-money Laundering, Financial Stability Institute, 24-26 February 2004, Basel, 1 employee
- Combating Money Laundering, Banca d'Italia, 14-16 June 2004, Perugia, 1 employee
- Prevention and Detection of Money Laundering, CEF, CE, BS, SMARS, 17-19 October 2004, Ljubljana, 1 employee
- Fight against Financial Delinquency and Money Laundering, Banque de France, 21-25 June 2004, Paris, 1 employee.

In 2005, 4 employees of the Specialised On-Site Supervision Department participated in 3 international seminars in the area of prevention of money laundering:

- Combating Money Laundering, Deutsche Bundesbank, 14-18 November 2005, Frankfurt, 1 employee
- AML/CFT for supervision workshop, Joint Vienna Institute/IMF 17-21 January 2005, Vienna, 2 employees
- Fight against Financial Delinquency and Money Laundering, Banque d'France, 17-21 October 2005, Paris, 1 employee.

On 8 and 9 December 2005, a seminar was held in Zagreb entitled "Electronic Banking and Money Laundering", organised by the Anti-Money Laundering Department and TAIEX (European Commission). The seminar was attended by 4 CNB employees. Upon participation in international seminars, CNB employees have to draft a report about the seminar they attended which is posted on CNB intranet for all other CNB employees. On 28 June 2005, a presentation was held in the organisation of the Croatian Institute for Banking and Insurance (HIBO) and in cooperation with Anti-Money Laundering Department for the representatives of reporting institutions pursuant to the Law on Prevention of Money Laundering, and with the aim of acquainting them with supervisory requirements and expectations in accordance with European Union legislation.

Croatian Financial Services Supervisory Agency (HANFA)

574. The Croatian Financial Services Supervisory Agency (HANFA) is an independent legal person with public authorities within its scope of activities. It is only accountable to the Croatian Parliament. It is regulated by the Act on the Croatian Financial Services Supervisory Agency (NN 140/05) and the Statute on the Croatian Financial Services Supervisory Agency which further defines its activities; none of these pieces of legislation require HANFA to establish separate departments and adequate staff that would be in charge of conducting activities with the aim of preventing money laundering[49]; however, at the time of the on-site visit, HANFA had the following number of employees responsible for supervision:

- Sector for Supervision I:
  - Insurance Companies And Pension Insurance Companies Department — 6 employees
  - Leasing And Factoring Department — 1 employee
- Sector for Supervision II:
  - Capital Markets Department — 5 employees
  - Investment Funds and Pension Funds Department — 6 employees

575. The evaluators were informed that all employees working within the supervision sector should be familiar with the AML Law and its amendments. With the aim of maintaining competencies in conducting supervision, they should also follow and be familiar with the legislation in the field of accountancy, finances and investments, auditing, tax law and commercial law and legislation related to combating money laundering and financial crime. In 2006, HANFA staff attended the following AML/CFT-related seminars[50]:

[49] In April 2007, HANFA established a Board on the Prevention of Money Laundering and the Financing of Terrorism within the agency; this was a requirement by the Action Plan on the Prevention of Money Laundering and Financing of Terrorism. The board as such has the role to represent HANFA in matters tied with the prevention and detection of money laundering and financing of terrorism, it monitors the execution of assumed rights and obligations, it deals with requests from other bodies on the delivery of data and information in accordance with the concluded memoranda of understanding with other bodies, it organizes education for its employees and for the members of the non-banking sector, it recommends the participation of members of HANFA at conferences, seminars and meetings of international organizations which are related to the prevention and detection of money laundering and financing of terrorism, it also recommends the drafting and publishing of certain by-laws and participates in the development of the draft of Law on the Prevention of Money Laundering and Financing of Terrorism.

[50] HANFA staff also attended the MONEYVAL typologies meeting in Becici, Montenegro (29 October – 1 November); in 2007, HANFA staff discussed AML/CFT issues during the study tours/visits to the following

(i) Insurance Core Principles seminar, Zagreb, 26-30 June (one of the insurance core principles, namely 28, concerns AML/CFT)
(ii) EBRD seminar on AML, Zagreb, 28-31 August.

576. It was explained that the employees of this agency are familiar with the competencies and way of work of the AMLD. HANFA staff attended the following seminars which were organized by the AMLD and the European Commission in course of harmonization of the national legislation with the legal requirements of the European Union:

- Prevention of money laundering - insurance companies and casinos (16-17 February 2006);
- Prevention of money laundering - off shore zones and securities (11-12 May 2006).

Foreign Exchange Inspectorate

577. The Foreign Exchange Inspectorate (FEI) is an organisational unit within the Ministry of Finance that is financed by means of the state budget. Article 6 of the Act on the Foreign Exchange Inspectorate prescribes the professional requirements that must be fulfilled by its employees. It employs 40 staff: 28 with university degree and 12 with secondary school degree. Employees are required to have high professional university training in banking business operations, transactions, fundamentals of accounting, capital markets and have a high level of computer knowledge. Employees are also obliged to be informed of novelties in the legislation area and of new techniques and technologies in the aforementioned areas. The FEI consists of the Foreign Exchange Supervision Sector and the Department for Foreign Exchange Offences; the Foreign Exchange Supervision Sector consists of three departments: the Department for Foreign Exchange Supervision of Business Entities, the Department for Foreign Exchange Supervision of Financial Institutions and the Department for Foreign Exchange Supervision of Foreign Exchange Providers.

578. The employees of the FEI enjoy continuously training and participated at numerous seminars on latest achievements in the AML/CFT area:

- in December 2005, 5 employees participated in the seminar "Electronic Banking and Money Laundering", which was organized by the AMLD and the European Commission (TAIEX).
- in February 2006, 6 employees participated in the "Seminar on Combating Money Laundering in Insurance Companies and Casinos", also organized by TAIEX and the AMLD.
- employees of the FEI also participated in the seminar "Croatian Money Laundering Prevention System " organized by the Croatian Institute for Banking and Insurance held on 26 May 2004 in Zagreb.
- One employee participated in the international seminar "Latest Achievements in the Area of Money Laundering and Terrorist Financing Prevention" held in Maastricht from 30 to 31 March 2006, which was organised by the European Institute for Public Administration (EIPA).
- The employees of the FEI also participated in a training organised by the CNB regarding the application of a secured computer program for authorized foreign exchange providers.

Department for Financial System within the Ministry of Finance

579. This department supervises the operation of Savings and Loan Cooperatives (Credit unions) and has 7 employees which supervise the operations of 116 Savings and Loan Cooperatives which were at the time of the on-site visit operating in Croatia. Those officers must have high level university degree; the evaluators were informed that they participate in all inter-institutional domestic seminars and trainings together with the AMLD.

institutions: SEC (USA), Hungarian Financial Supervisory Authority and BaFin (German Financial Supervisory Authority).

Recommendation 29 - Authorities' Powers

CNB

580. Article 116 of the Banking Act entitles the CNB, in the course of supervision, to require from a bank (which includes also branches and representative offices of foreign banks; Art. 115 para 6 of the Banking Act) reports and information on all matters which are, in view of the purpose of each examination, of importance for assessing whether the bank adheres to the provisions of law and regulations adopted pursuant to law, and whether it operates in accordance with its own rules. In the course of an on-site examination, the supervisors of the CNB are authorised and obliged to inspect the business books, documents and other documentation that refers to bank operations. The supervised entity is obliged to deliver – upon request – computer print outs, copies of business books, business documentation and administrative and business records in a paper form and/or in the form of an electronic record on the medium required by the supervisors (Art. 119 para 3). If a bank should somehow obstruct the supervision of its operations, the CNB may revoke the bank's operating licence (Art. 129 para 1).

581. The Act on Housing Savings and State Incentives for Housing Savings in conjunction with Art. 178 of the Banking Act extend the scope of the Banking Act also to housing savings banks. Hence, the CNB has the same powers and competences in respect to building savings societies as for banks (Art. 12 in conjunction with Art. 4 para 2).

HANFA

582. The Croatian Financial Services Supervisory Agency (HANFA) has to supervise a broad range of entities; its powers are regulated in different pieces of legislation. These provisions allow HANFA to conduct both offsite and also on-site supervision of pension companies, pension fund and pension fund management companies as well as insurance companies. This includes also the authority to check business books, documentation etc.

583. Pursuant to the Accounting Act, HANFA is authorized to prescribe the form and the content of fundamental financial reports, as well as reporting deadlines for supervised entities. All entities whose business is supervised by HANFA, are obliged to organize and keep business books by using international accounting standards, by presenting an authentic financial position at all times and the efficacy of business entities. All supervised entities, including investment funds and brokerage companies, are obliged to be audited and to publish annual financial reports. Apart from fundamental financial reports, supervised entities are obliged to produce and deliver additional reports on their work, such as statistical and other reports which are used for further supervision. For example, investment funds are obliged to daily deliver the portfolio structure and the results of the valuation of the fund assets (price per share), while brokerage companies, which are obliged to keep the liquidity, calculate capital requirements on a daily basis, and report to HANFA on the past month, while they produce and deliver financial reports on a quarterly basis. HANFA, during its supervision, is authorized to access business books, registers and similar documents which are directly tied to the business activities for which they are authorized to perform. Any non-compliance with the obligation to produce, deliver or non existence of a report on business activities is a ground for temporary or permanent withdrawal of given authorizations.

584. The supervised entities are obliged to allow the authorised persons of HANFA to place at their disposal adequate premises and personnel, make statements, and provide for other conditions required in the course of the supervisory process. Documentations and business records, securities, cash or objects that can serve as evidence in criminal or legal proceedings, can be temporarily withdrawn by the authorised persons of HANFA, but only until the moment those procedures have started; then they need to be submitted to the body entitled for conducting the procedure. However, in the case of non acceptance, refusal of conducting on-site supervision by

the obliged entities for implementation of the AML Law, HANFA has no authority for direct sanctions and can only notify the AMLD to initiate further activities.

Foreign Exchange Inspectorate (FEI)

585. Article 57 para 2 of the Foreign Exchange Act allows the inspectors of the FEI unrestricted supervision and control of the business operations of their supervised entities (as defined by Art. 2 of the Act on the Foreign Exchange Inspectorate) which shall make available or send to them, on request, all required documentation and data on the business activity they are exercising abroad. In the course of their supervision, the officers of the FEI are entitled to examine the financial documentation, agreements, business books and other documents, business premises, goods, devices and equipment, take statements and determine the identity of persons working in foreign exchange and foreign trade operations and credit relations with foreign countries (Article 7 of the Act on the Foreign Exchange Inspectorate). Art. 8 of the Act on the Foreign Exchange Inspectorate (going beyond the provision of Article 57 para 2 of the Foreign Exchange Act) requires all legal and natural persons under the supervision of the FEI to provide authorized persons of the FEI with data and submit documents and items necessary for the performance of inspection supervision, as well as ensure the conditions for the performance of inspection supervision. If a supervised entity should fail to allow an authorised officer of the FEI to exercise supervision or prevent such a person from carrying out its official duty, both the legal person and the responsible person within the supervised entity can be sanctioned with a fine (Art. 62 of the Foreign Exchange Act).

Department for Financial System within the Ministry of Finance

586. According to Article 37 of the Savings and Loan Cooperatives Law (NN 84/02), officers of the Ministry of Finance can demand from Savings and Loan Cooperatives reports and information concerning relevant for evaluation whether the Savings and Loan Cooperative performs business according to this Law, or according to provisions of other laws which prescribe performing business of Savings and Loan Cooperatives. Concerning the quoted provisions of the Savings and Loan Cooperatives Law, entitled officers of Ministry of Finance during the supervision process, can demand registers and information relevant to enquire whether the Savings and Loan Cooperative obeys the provisions of prevention of money laundering, as well the provisions about transparency of business documentation

Recommendation 17 – Sanctions

587. Section V of the AML Law provides for administrative sanctions (pecuniary penalties only) of reporting entities in case of infringement of regulations on records gathering and keeping reporting obligation to the AMLD or conducting a transaction against the order of the AMLD. The Ministry of Finance is authorised to impose these sanctions via proposal of the respective supervisory body which detected the violation. The range of pecuniary penalties varies, depending on the situation:

(i) from 10 000 Kuna (approx. EUR 1 355) to 100 000 Kuna (approx. EUR 13 550) for legal persons (reporting institution), and
(ii) from 5 000 Kuna (approx. EUR 677) to 30 000 Kuna (approx. EUR 4 065) for the compliance officer within the legal person.
(iii) If the infringement is committed in relation with transactions amounting to 1 million Kuna (approx. EUR 135 100) or more, a pecuniary sanction ranging from 50 000 Kuna (approx. EUR 6 770) to 300 000 Kuna (approx. EUR 40 650) shall be imposed on the reporting institution (legal person) and a pecuniary sanction ranging from 10 000 Kuna (approx. EUR 1 355) to 50 000 Kuna (approx. EUR 6 770) shall be imposed on the compliance officer within the reporting institution.

588. Between 1998 and 2005, the following supervisory bodies made proposals to the Ministry of Finance concerning infringements of the AML Law of reporting institutions:

	number of reports			total
	1998 – 2003	2004	2005	
Foreign Exchange Inspectorate	4	2	13	**19**
Financial Police*	25	0	0	**25**
AMLD	11	2	1	**14**
total	**40**	**4**	**14**	**58**

***Remark**: The Financial Police was dissolved in 2001.

The 19 reports which were submitted by the FEI resulted from previously conducted on-site inspections at authorised foreign exchange offices (16 cases) and banks (3 cases). The misdemeanour proceedings of the Ministry of Finance lead to pecuniary sanctions for legal persons and their responsible persons (managers, directors-board members) as follows:
a) 242 700 Kuna for authorised exchange offices and their directors;
b) 124 000 Kuna for banks and their directors.
Between 7 February 2006 and 12 December 2006, the FEI forwarded to the Ministry of Finance 11 requests for initiating misdemeanour proceedings. All requests related to foreign exchange offices; in one case, a fine of 70 000 Kuna was imposed. The evaluators were not informed about the outcome of the reports from the Financial Police and the AMLD[51].

589. Within the Ministry of Finance, the Tax Administration is the competent body for the sanctioning of infringements against the AML Law. If it should come to criminal sanctions, the judicial bodies (State attorney, courts) are competent.

590. For banks exist in addition to the sanctioning provisions of the AML Law also the sanctioning regime of the Foreign Exchange Act. If they should fail to follow requirements of this Act which are linked with the prevention of money laundering (e.g. Art. 16, 60, 64), the legal person and in certain cases also the responsible natural person are subject to a fine. In its chapter VIII (penal provisions) the Act prescribes for certain conducts a series of criminal and misdemeanour sanctions, which reach from suspension of certain rights till imprisonment (e.g. Art. 62 para 3; 75; 76).

591. Concerning pension companies, HANFA is also authorised to revoke a licence if it detects irregularities or illegal activities. It is not entirely clear whether this is also possible when these infringements are linked with possible money laundering or terrorist financing because the imposing of such sanctions requires illegal acts and irregularities "endangering the functioning of the entire capital market" - it is questionable if such an act could be interpreted as such a danger. Regarding insurance companies, HANFA can impose the following measures: issuing a decision on elimination of violations and irregularities; imposing additional measures; withdrawal of the authorisation; extraordinary administration; compulsory winding-up of the insurance undertaking; taking decision on the reasons for opening of bankruptcy proceedings; submission of proposal to institute misdemeanour proceedings. It is again unclear whether all these measures could be invoked in the case of infringements against the AML Law. The same situation applies for entities involved in securities: under the present Law on Securities (Art. 58 and 98), HANFA has the power to revoke the licence of brokers and investment advisors under certain circumstances; however, there is no explicit provision which would allow HANFA to do so when it comes to infringements under the AML Law.

[51] The Croatian authorities advised the evaluators shortly before the plenary discussion, that between 4 December 2006 and 7 November 2007, the AMLD forwarded to the Ministry of Finance 5 requests for initiating misdemeanour proceedings. All requests related to banks; one request was dismissed; in the four other cases, pecuniary fines were imposed.

592. The AML law only allows to impose sanctions on the legal entities and/or the responsible person[52] but does not explicitly provide a sanctioning regime for directors or senior management. The same situation applies for the Foreign Exchange Act. Though the Banking Law (Art. 182 ff.) and the Insurance Act (Art. 285) in principle allow the sanctioning of board members, these laws seem to have no provisions which would extend this possibility to violations of AML/CFT obligations. However, the Croatian authorities are of the opinion that the term "*responsible person*" covers also directors or senior management and referred to Art. 55 para 1 of the Misdemeanours Act (NN 88/2002) which reads as follows:

"(1)Within the meaning of this Act, responsible person is;
- a person in charge of the certain scope of operations within the legal person,
- any other person in charge to act on a behalf of the legal person,
- person who carries out certain duties within the state bodies and municipality/county level bodies (in case of state bodies)
(2)By the provision related to specific misdemeanour offence, it could be prescribed, which person is responsible for specific misdemeanour offence".

The evaluation team was informed that Croatian authorities had used this regime already and sanctioned directors and members of the board (see paragraph 588 above). However, the evaluation team has concerns about the applicability of this sanctioning system to directors and board members because the Banking Act and also the Insurance Act makes a differentiation between responsible person and management board members; e.g. Art. 182 paragraphs 2 and 4, Art. 183 of the Banking Act refer to the "*responsible person from the management board of a bank*" but in contrast Art. 188 para 2 refers to violations of "*responsible persons*". As the relevant provisions of the Banking Law which allow for sanctions of board members have nothing to do with AML/CFT obligations, one has to conclude that these persons cannot be held responsible for such violations. The same situation applies for sanctioning directors or senior management of insurance undertakings (Art. 283 para 2 and Art. 284 para 2 in contrast to Art. 285 of the Insurance Act). The evaluators were not advised whether other sectoral laws provide an authority to sanction directors or senior management in the case of failure to comply with AML/CFT requirements.

593. Generally, the Croatian sanctioning regime related to AML/CFT is mainly based on the AML Law. The various sectoral laws do not have provisions which were intended to cover AML/CFT; if they do so, it is only in the way of prudent business operations. As a consequence, the majority of AML/CFT infringements can only be sanctioned by the AML Law and can only result in fines; no other types of sanctions are available; e.g. written warnings (separate letter or within an audit report), orders to comply with specific instructions (possibly accompanied with daily fines for non-compliance), ordering regular reports from the institution on the measures it is taking, barring individuals from employment within that sector, replacing or restricting the powers of managers, directors, or controlling owners, imposing conservatorship or a suspension or withdrawal of the license, or criminal penalties where permitted.

Market entry – R.23 (criteria 23.3., 23.5, 23.7 (licensing/registration elements only))

General

594. Apart from the (special) situation for banks, foreign exchange offices and pension funds, Croatian law contains no provisions which would prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution.

[52] Shortly before the plenary meeting, the evaluation team was advised that the term "compliance officer" used in Section V ("Sanctions") of the AML Act was an inaccurate translation and should be replaced by "responsible person" (the same term is used in Art. 55 of the Misdemeanour Act).

Banks (banks, branches of foreign banks and representative offices of foreign banks)

595. Pursuant to the Banking Law, a bank may be established only as a joint stock company. Art. 25 of the Banking Law prescribes that members of the bank management board may only be persons who (amongst other conditions like University qualification):

(i) never managed the operations of a company or bank against which the bankruptcy proceedings have been initiated or whose operating license has been revoked;
(ii) never faced bankruptcy proceedings;
(iii) fulfil the conditions for membership in the bank management board stipulated by the Act on Companies.

596. According to Art. 239 para 2 item 1 of the Companies Act a person may not be a member of the management board in the case of a conviction for certain crimes (e.g. fraud, causing a bankruptcy); however this list is limited and does not include e.g. convictions for money laundering, organised crime.

Housing savings banks

597. Housing savings banks ("building savings societies") are covered by the Act on Housing Savings and State Incentives for Housing Savings (NN 109/97, 117/97, 76/99, 10/01, 92/05). Housing savings banks are defined as financial institutions which are conducting an organized accumulation of cash assets – deposits by domestic individual persons and legal persons for the purpose of solving the housing needs of residents by approving housing credits to Croatian citizens through government supported funding in the territory of Republic Croatia. Housing saving banks may approve housing credits solely for these purposes: buying a flat or a family house; building a flat or a family house; reconstruction, adaptation, reparation and furnishing of a flat or a family house; purchase and restructuring of real estate for housing needs; paying off a housing credit to a bank or a housing savings bank founded in a territory of Republic Croatia. Housing savings banks can be established either by banks or insurance companies, receive cash deposits, and approve credits only in domestic currency. Housing savings banks need the approval of the CNB and the previous consent of the Ministry of Finance (Art. 5 para 2 of the Act on Housing Savings and State Incentives for Housing Savings).

Savings and Loan Cooperatives (SLC)

598. According to the Savings and Loan Cooperatives Law, SLC need a licence from the Ministry of Finance before registering within the Commercial Court register. Within the procedure of obtaining the licence, the founders of SLC are checked, and according to the SLC Law, there are the conditions prescribed for delivering of licence. SLC are obliged to deliver data about the supervisory committee members, as well evidence that there is no criminal procedures in progress against those persons, and the person proposed for the manager has not been performing the function of a manager in a SLC which is under the process of liquidation for loosing the licence, or the function of member of the management board of the company under bankruptcy during the last 3 years from the day when the person was proposed for the manager.

Insurance companies (including life)

599. Art. 58 of the Insurance Law (NN 151/05) prescribes that an insurance company must have a licence issued by the Croatian Financial Services Supervisory Agency (HANFA). To obtain this licence, Art. 59 requires the applicant to provide amongst other

- a list of shareholders including personal information about them, name of the undertaking and its principal place of business, the total nominal value of shares held and the amount of respective holdings, expressed as percentage, in the share capital of the insurance undertaking;
- information on shareholders which are legal persons and hold a certain amount of shares:

- an extract from the judicial register of companies or another equivalent public register;
- where the shareholder is a joint-stock undertaking, in addition to the abovementioned, an extract relating to the shareholder in question from the shareholders' register or, in the case of bearer shares, an authenticated transcript of the notary public's document showing the list of the persons present at the last general meeting of shareholders; where the shareholders are foreign legal persons, notarised translation of the concerned documents must be submitted;
- financial statements for the past two financial years;

- a list of persons related to the holders of qualifying holdings along with the description of their relationship;
- contracts on outsourced business if the insurance undertaking intends to authorise other persons to carry out certain operations.

Pension Funds

600. The establishment and performance of pension companies is regulated by the Mandatory and Voluntary Pension Funds Law (NN 49/99, 63/00, 103/03, 177/04). Since 1.1.2006, HANFA is the competent authority for licensing pension companies and pension funds. In the course of the licensing process it has to establish and check the amount of initial capital paid in (Art. 10), to check the pension company ownership structure (Art. 12), to check the fulfilment of prescribed conditions for the member of the Board or the Supervisory Board of the pension company (article 14, 15) and implementation of provisions regarding affiliated persons in the pension company. Persons who have been convicted for certain criminal offences (bankruptcy, fraud, non-compliance with the obligation to keep business books, of inflicting damage on a creditor, of giving preference to a creditor, of abuse of powers in the procedure of mandatory settlement or in bankruptcy proceedings, of unauthorized disclosure or obtaining of a business or manufacturing secret; misdemeanour or criminal offences with regard to the Securities Act) shall not be a member of the management or of the supervisory board of a pension company (Art. 15 para. 3). This prohibition of a criminal conviction is extended also to the relatives of such persons.

Companies issuing credit/debit cards

601. The evaluators were informed that there is no special licensing or registration regime for this kind of service. As a consequence there are also no requirements to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function, including in the executive or supervisory boards, councils, etc in such entities. However, Croatian authorities advised that companies issuing credit/debit cards provide their services mainly via banks and that this kind of business is an element of the general licence for banks. Nonetheless, two companies, though being part of a banking group, operate autonomously and are not covered by a banking licence; these companies fall under the supervision of the Foreign Exchange Inspectorate (FEI). So far, only one company has been supervised in 2001 and in 2003 by the FEI.

Foreign Exchange Offices

602. The Croatian National Bank issues the approval for the performance of foreign exchange operations (Art. 46b of the Foreign Exchange Act, NN 96/03, 140/05). According to Art. 46 of the Foreign Exchange Act, this business "*may be conducted by any resident with a status of a legal person and any individual undertaking using in their work protected computer programs for exchange transactions that have an agreement with a bank and are authorized to conduct exchange transactions (authorized exchange offices)*". Art. 46a para 1 requires the following documents from applicants:

1. An original or a verified copy of the extract from the court or craft register for the applicant,

2. A list of share owners, i.e. stock owners for the applicant - legal person, with full names and residence addresses and/or company names and head office addresses, overall nominal amounts of shares, that is, stocks and the percentage share in the initial capital of the legal person concerned,
3. An agreement or a pre-agreement on the performance of foreign exchange operations concluded with the bank,
4. An agreement or a pre-agreement on the purchase of a protected computer program for the performance of foreign exchange operations concluded with the manufacturer whose program was certified by the Croatian National Bank, and the certificate of authenticity by which the manufacturer of the protected computer program confirms that the program which is the object of sale has been certified.

603. Furthermore an applicant needs "*a certificate that the owner of the craft, that is the member of the management board of the legal person that is the applicant, has not been punished for a criminal offence prescribed by this Act, that is, for a criminal offence of money laundering*" (Art. 46a para 1 lit 5).

604. The evaluators were advised that after the onsite visit, namely on 14 December 2006, the Act on Amendments to the Foreign Exchange Act (NN 132/2006) entered into force, which provides enhanced requirements for qualified owners and members of the management board of foreign exchange offices. The relevant provisions of Art. 46 (new paragraphs 3 and 4) read now as follows:

"(3) The authorised exchange office referred to in paragraph 2 of this Article may conduct exchange transactions provided it meets the following conditions:[...]
4. authorised exchange office that is a craftsmen, a sole trader, a member of the management board of the authorised exchange office that is a legal person, and qualified owners referred to in Article 46.a, paragraph 1, item 2 and paragraph 2 item 2 of this Act, shall be persons with no history of criminal offence against the values protected by international law, payment transactions and operations security, document authenticity or of criminal offences as defined in this Act, or if they have a history of criminal offence, they shall be allowed to conduct exchange transactions only after a five-year period has elapsed since the verdict's finality, where the time spent serving the term shall not be included in the calculation of this five-year period.
(4) Qualified owner, within the meaning of this Act, shall be a natural or a legal person directly holding a minimum 25% stake or 25% of shares or other rights on the basis of which it partakes in the management of a legal person."

605. It appears that before these amendments, criminal convictions other than for money laundering were no obstacle to get a licence. Now the requirement that qualified owners and members of the management board of foreign exchange offices should have "*no history of criminal offence against the values protected by international law, payment transactions and operations security, document authenticity or of criminal offences as defined in Foreign Exchange Act*" (referring to chapters 13, 21 and 23 of the Criminal Code as well as Art. 75 and 76 of the Foreign Exchange Act) covers a broader range of crimes.

606. If the qualified owner of an applicant is a legal person, the applicant shall additionally submit the original or a certified copy of an excerpt from the court register (not older than 30 days from the date of application) and a list of its qualified owners who are natural persons, stating their full names, place of residence and details concerning their personal identification documents, as well as their individual, percentage shares in the equity capital. Upon a justified request, the CNB shall verify whether these persons have criminal records (Art. 46a para 2 as amended; NN 132/2006).

607. If, after the approval was obtained, circumstances occur due to which the applicant no longer fulfils the requirements based on which the approval was obtained, the Croatian National Bank shall withdraw the licence (Art. 46c para 4).

608. Until the end of September 2006 (during the MONEYVAL on-site visit to Croatia), Croatian National Bank issued 437 licences to exchange offices. Until the end of 2006, this number augmented to 629 licences. In the same period 4 licences were revoked due to administrative reasons[53].

Brokerage activities

609. Business activities with securities in the Republic of Croatia, pursuant to the Law On Securities Market (Official gazette 84/02), may be practiced only by the brokerage companies and banks which had been authorized by the regulatory authority and registered for this activity in the Court Register, therewith brokerage company may be established as either private limited company or joint stock company seated in the Republic of Croatia (Art. 36, item 1. Law On Securities Market); pursuant to the Banking Law, a bank may be established only as a joint stock company.

Investment funds/investment fund management companies

610. Art. 29 of the Investment funds Law (NN 150/05) prescribes that a company for governing an investment fund needs to obtain a licence from the Croatian Financial Services Supervisory Agency (HANFA). Applicants have to provide a list of members of the company, their names, surnames, address of the firm and its headquarters, nominal amount of stocks or shares, and the percentage in equity of stocks or shares belonging to the members and the list of related persons of the company.

Money or value transfer services

611. Currently money or value transfer services are not subject to a licencing or registering regime in Croatia[54].

Ongoing supervision and monitoring – R.23 (criteria 23.4, 23.6, 23.7 (supervision/oversight elements only))

General

612. As described above, the AMLD performs only offsite (but no on-site) supervision of reporting entities. According to the AML By-law, reporting institutions are obliged (though this is not sanctionable) to perform at least once per year internal control of the compliance with the AML Law, and to inform the AMLD about that (send written reports). The AMLD reviews and analyses these reports on compliance and if it finds irregularities it may request the respective supervisory body to perform on-site inspection on that reporting entity. Furthermore, the AMLD also checks the internal regulations of banks. It also receives and checks the minutes of on-site visits of other supervisory bodies. Furthermore, the AMLD undertakes continuous administrative supervision by checking the quality and deadline of submitted STRs and other information (spontaneously and on request).

[53] At the end of 2007, 1220 licences were issued (out of which 63% are limited liability companies, 26% craftsmen, 8% joint-stock companies and 3% other legal persons) and 21 revoked. Until the end of 2007, the Croatian National Bank refused the application for issuing licence in 2 cases were, according to the criminal records of the Ministry of Justice, convictions for drug abuse were found.

[54] An initiative to introduce a licencing regime for these entities has been started in January 2008.

Croatian National Bank

613. The supervision of the implementation of the AML Law is conducted in the context of regular bank supervision, with some examiners focusing specifically on the examination of the implementation of the Law on Prevention of Money Laundering. The evaluators were advised that the CNB's supervisory manual contains a chapter on the procedures to be followed by banks to prevent money laundering. During the course of the on-site examinations carried out by the CNB, banks' compliance with anti-money laundering procedures is checked. The examination reports, prepared by the CNB at the end of each on-site examination, contains a chapter on compliance with anti-money laundering polices and procedures. The supervisors use data collected by the Prudential Regulation and Bank Supervision Section and received from other organisational units of the CNB as well as data from the AMLD. The CNB appointed a contact person and a deputy for communication with the AMLD and other supervisory authorities for the exchange of information with a view to achieving improved cooperation in the area of prevention of money laundering. In August 2006, the CNB signed a Memorandum of Understanding with the AMLD.

614. The CNB conducted 11 on-site visits in banks and building societies in 2004, 9 on-site visits in 2005 and 6 on-site visits during 2006 (January till September 2006). These examinations included also a check of the AML/CFT systems in place. On-site supervisions last usually from 3 up to 7 weeks depending on the size of the bank/ housing savings bank and can include from 3 up to 9 or more supervisors. The system which supervisors are entrusted exclusively with AML/CFT issues in the course of supervision is described above under Rec. 30. According to the Memorandum of Understanding between the CNB and the AMLD, signed in August 2006, the CNB and the AMLD exchange relevant information according to which the CNB can decide to perform targeted supervisions with emphasis on AML/CFT issues (for instance, in May 2006 the CNB performed one AML/CFT targeted supervision which lasted for 4 weeks and involved 6 supervisors).

615. The evaluators were informed that on-site examinations of the systems of prevention in the context of anti-money laundering activities and prevention of financing of terrorism in banks and building societies by the Prudential Regulation and Bank Supervision Section include the following activities:

a) formal checks:
- compliance of banks' acts with the AML Law and AML By-law;
- appointments of authorised persons (and their deputies) in charge exclusively of transactions associated with the prevention of money laundering and financing of terrorism;
- organisation of activities associated with the implementation of the Law, the competencies and the position of the authorised persons and overall awareness of the need to implement measures associated with LPML;
- training provided to the authorised persons and bank employees;
- internal control measures in the area of prevention of money laundering and financing of terrorism;
- adequacy of applications used in payment system operations and the existence and adequacy of program support for automated identification of transactions which are subject to reporting to the Department

b) actual checks:
- accuracy and scope of client identification;
- beneficial owner identification;
- accuracy and scope of reporting cash transactions;
- accuracy and scope of reporting related cash transactions;
- accuracy and scope of reporting suspicious transactions;
- application of lists submitted by the Department (UN lists and lists of off-shore zones) as well as lists used by banks (OFAC and PEP):

- testing program support for automated recognition of transactions which are subject to the reporting requirement to the Department;
- internal control findings and adoption of internal control recommendations;
- safe-keeping, protection and manner of storing data.

616. Examinations are carried out on the basis of specific samples selected for the purpose of checking the implementation of the AML Law, as well as on the basis of samples selected for checking the adequacy of internal control systems in specific business processes of banks and building societies (for instance, through payment system and deposit operations internal control mechanisms). Upon each completed on-site examination, the CNB submits to the AMLD a copy of the minutes of this examination relating to the implementation and application of the AML Law.

617. The Off-Site Supervision Department of the CNB does not have in its questionnaires special questions for AML/CFT issues but it is analyzing banks internal audit findings, including AML/CFT issues, and it is also monitoring implementation of recommendations and measures that were given to the bank/ housing savings banks by the Specialized On-Site Supervision Department.

HANFA (and predecessor supervisory bodies)

618. During 2004 and 2005, the Directorate for the Supervision of Insurance Companies conducted 16 on-site inspections of insurance companies concerning the potential possibility of the money laundering. The annotation on these inspections was submitted to the AMLD. No suspicion related to money laundering had been discovered during these inspections.

619. During 2005, the Agency for the Supervision of Pension Funds and Pension Insurance took into account the provisions of the AML Law as part of the regular supervision concerning the business activities of three pension fund management companies and their related funds. The AMLD was informed on the findings of these inspections by way of an excerpt from the minutes of the supervision; no suspicion related to money laundering occurred during these inspections.

620. In 2006, HANFA submitted 3 STRs to the AMLD.

Foreign Exchange Inspectorate

621. The Foreign Exchange Inspectorate inspects banks (including branches of foreign banks and representative offices of foreign banks) concerning accounts and transactions in foreign currency. It is the only body responsible for supervision of authorized exchange offices. The FEI controls annually more than approx. 500 foreign exchange providers (out of approx. 1200 foreign exchange providers). Supervision is conducted pursuant to Article 55 of the Foreign Exchange Act. Supervision is performed based on special samples chosen for the purpose of verifying the implementation of the AML Law, but also through samples chosen to verify the adequacy of the internal control system. The FEI submits to the AMLD a copy of the minutes of its on-site visits. The evaluators were informed that the FEI verifies in the course of its supervisions *inter alia* the following:

(i) Harmonization of procedures with the AML Law and AML By-law;
(ii) Nomination of authorized persons and their deputies responsible for the prevention of money laundering and terrorist financing;
(iii) Adequacy of the application used in performing of transactions and adequate programme support to automatic identification of transactions which meet the criteria for being reported to the AMLD;
(iv) validity and range of client identification;
(v) identification of the beneficial owner in the process of opening an account and establishing business relations;

(vi) validity and range of reporting of cash transactions;
(vii) validity and range of reporting linked cash transactions;
(viii) validity and range of reporting suspicious transactions;
(ix) application of lists delivered by the AMLD (UN lists and offshore zones list) as well as lists used by the banks (OFAC lists and PEP list);
(x) application of the list of indicators for identification of suspicious transactions;
(xi) programme support for automatic identification of transactions which meet the criteria for being reported by the AMLD;
(xii) results of internal audit and verification of the adoption of recommendations from the internal auditor;
(xiii) protection, storage and manner of storage of data.

Department for Financial System within the Ministry of Finance

622. The Department for Financial System supervises the operations of Saving and Loan Cooperatives (SLC); it has 7 state officers who supervise operations of 116 SLC which were at the time of the on-site visit operating in Croatia. When supervising SLC, the officers of the Department for Financial System check whether the SLC follow the provisions of the AML Law, that is, if they demand from their clients all the information relevant for identification of deposits exceeding 200 000 Kuna, and whether they report about it to the FIU; they also check whether the SLC maintain adequate records about such payments. If in the supervision is determined that SLC have not proceeded according to the provisions of the Prevention of money laundering Law, they file a report to the FIU. In the period 2004 – 2005, the Department for Financial System forwarded 6 reports to the AMLD concerning irregularities of SLC related to the application of the AML Law.

623. If during the supervision some suspicious transactions are identified which indicate possible money laundering, the department also files a report to the FIU.

Recommendation 25 – Guidelines and feedback

624. Article 12 of the AML By-law states that the AMLD should produce in cooperation with reporting institutions and regulators a list of indicators for the detection of suspicious transactions; however, there is no legal requirement to issue guidelines which refer to more general compliance with AML/CFT requirements, such as steps financial institutions can take to ensure their AML/CFT measures are effective or descriptions of money laundering and terrorist financing techniques and methods. The AMLD also has not done so and explained the evaluators that their ability to issue guidance for the reporting institutions depends on their (limited) capacities.

625. It was already noted during Croatia's first evaluation that the banking sector required more guidance on the opening of accounts, especially in the case of corporate customers, on record keeping requirements when banks are involved in electronic funds transfers and on the training of compliance officers. In particular, identification requirements and procedures were noted to be unclear and/or weak in the following instances: firstly, when customers are not acting on their own behalf, no sufficient data was provided to conclude that banks are taking reasonable steps to obtain information as to the real identity of beneficial owners. Secondly, in the case of corporate customers although there is a legal requirement to identify the person acting on behalf of a corporate customer, there appears to be no legal requirement to identify the directors and the beneficial owners of a company. In the light of the above observations, during Croatia's first evaluation, one of the recommendations was that the CNB should be involved not only in the process of preparing the list of suspicious transactions' indicators but also in the drafting and issuing (in conjunction with the supervised banks) of its own Guidance Note on all the legal requirements imposed upon banks by the anti-money laundering legislation. Since then, the AMLD had only issued a list of indicators for the detection of suspicious transactions (Annex 3).

The AMLD developed this list in co-operation with the reporting institutions and regulators (the CNB, the Foreign Exchange Inspectorate, the Tax Administration, and the Croatian Banking Association). Apart from that, no further guidance has been created. Banks have not received any guidance or recommendation on how to apply the "know your customer" principle when operating various types of accounts. Banks have also not received any guidance on the duties of compliance officers, on record keeping procedures or on the provision of training to their employees on money laundering issues. The CNB, however, seems to check in the course of on-site examinations of banks the work of compliance officers and verifies the adequacy of anti-money laundering training. However, no bank has so far been reprimanded by the CNB for not providing adequate anti-money laundering training to its employees.

626. The AMLD explained that it provides feedback once per year to the banking sector on the results of its work which contains:
(i) statistics on the number of disclosures which includes the results of the disclosures, and
(ii) information on current techniques, methods and trends (typologies).
To ensure confidentiality, the information is presented statistically in tables and charts. Data presented in tables is shown both cumulatively and separately for each bank and includes the number of cases opened on the basis of reports sent by banks, the amount of funds which were involved and the typologies of money laundering. This feedback is based on the annual reports of the AMLD and usually announced at a press conference; in 2006 till the time of the on-site visit no such conference took place. For the future it is planned to send the summary of the annual report to the supervisory bodies. The AMLD explains its activities to public also by issuing articles on specific subjects in various publications. Nonetheless, the representatives of the banking sector with which the evaluation team met, expressed that they feel insufficiently informed about the results/outcome of their disclosures. They explained that the information is only presented at seminars but special feedback is missing. Other reporting institutions than banks do not receive feedback at all. The AMLD explained that more specific feedback is not possible due to its limited resources.

3.10.2 Recommendations and comments

627. The AML law only allows to impose sanctions on the legal entities and the responsible person but does not provide a sanctioning regime for directors or senior management. Also the sectoral laws seem to have no provisions to sanction these persons in the case of failure to comply with AML/CFT requirements. Croatian authorities should introduce also for these persons a sanction regime.

628. The Croatian sanctioning regime related to AML/CFT is mainly based on the AML Law. The various sectoral laws do not have provisions which were intended to cover AML/CFT; if they do so, it is only in the way of prudent business operations. As a consequence, the majority of AML/CFT infringements can only be sanctioned by the AML Law and can only result in fines which are in principle proportionate and dissuasive for individuals; concerning legal entities fines seem to be not in all cases sufficiently dissuasive. Croatian authorities should introduce a broader range of dissuasive and proportionate sanctions with regard to the examples provided for by criterion 17.4.

629. The AML Law addresses the issue of terrorist financing only in its Art. 1 in a programmatic way and does not provide a clear legal basis for the supervisors to cover CFT issues as part of their inspections/supervision. As also the sectoral laws do not cover this issue, the legal basis to address CFT issues in the course of supervision appears insufficient. There needs to be a general provision to ensure that CFT issues are addressed by the AMLD and the prudential supervisors in supervision. There are currently no clear sanctioning powers for CFT breaches by the prudential supervisors (i.e. failing to report financing of terrorism transactions).

630. Supervision in the banking sector is divided between various authorities (CNB, Foreign Exchange Inspectorate; Savings and Loans cooperatives are supervised by the Ministry of Finance/Department for Financial System). The examiners were concerned that a more even and unified approach to supervisory issues needs to be in place across the whole banking sector. The sharing of examination methodologies could assist.

631. It seems that HANFA in the course of its supervision focuses more on the detection of non-reported suspicious transactions than evaluating the effectiveness of the whole anti-money laundering system of the obliged entities (for supervision of CFT issues anyway a clear legal basis is missing).

632. The AMLD and/or the other supervisors should issue guidelines for compliance with AML/CFT requirements, not only for filing STRs.

633. AMLD does not give case specific feedback to the reporting entities, but general feedback information is given once per year to banks in connection with cases opened by the AMLD based on transaction reports from the particular bank, which also contains typologies and money laundering techniques that can be found in cases. No case specific feedback (even general) is given on such occasions and there is no feedback at all with bodies other than banks. The AMLD should improve its feedback policy and give adequate and appropriate feedback to all reporting entities (not only banks) about the results of their announcements.

634. For pension funds, legislation should be introduced to prevent all criminals (and not only certain types) and their associates to be a member of the management or of the supervisory board of a pension company.

635. Apart from the special situation for banks, pension funds and foreign exchange offices, Croatia has no legislation to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function in a financial institution. This raises serious concerns and should be addressed as a matter of priority.

636. The resources of the AMLD allow only for (off-site) supervision by checking reports it receives from the obliged entities, minutes from other supervisory authorities and the internal regulations of banks. Croatian authorities should enable the AMLD to fulfil its legal obligations in a satisfactory manner (e.g. more staff to exercise supervision).

637. The Department for Financial System (within the Ministry of Finance) has not sufficient staff to exercise supervision in a satisfying manner (only 6 supervisors for 116 Savings and Loan Cooperatives).

638. Natural and legal persons providing a money or value transfer service should be licenced or registered. There is also no special licensing or registration regime for companies issuing credit/debit cards.

3.10.3 Compliance with Recommendations 17, 23, 29 and 30

	Rating	Summary of factors underlying rating
R.17	**PC**	• The AML Law does not provide a clear legal basis for sanctions concerning infringements in the context of terrorist financing. • The AML law does not provide a sanctioning regime for directors or senior management. Also the sectoral laws seem to have no such provisions with regard to violations of AML/CFT obligations. • The majority of AML/CFT infringements can only be sanctioned by the AML Law and can only result in fines; a comprehensive sanctioning regime providing for proportionate and dissuasive sanctions is missing.
R.23	**PC**	• There is no clear legal basis to cover CFT in the course of supervision. • Not for all types of financial institutions exists legislation to prevent all criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function. • HANFA in the course of its supervision focuses more on the detection of non-reported suspicious transactions than evaluating the effectiveness of the whole anti-money laundering system of the obliged entities. • No system in place of registering and/or licensing MVT services. • There is no special licensing or registration regime for companies issuing credit/debit cards.
R.25	**PC**	• Guidance is not issued for general compliance with AML/CFT requirements, only for filing of STRs. • Apart from the general feedback to banks, the AMLD does not give general and sufficient feedback to the reporting entities.
R.29	**LC**	• No general power in the whole financial sector to supervise CFT issues.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

639. The evaluation team was advised by the representatives of the Foreign Exchange Inspectorate (FEI) and the Croatian National Bank (CNB) that at the time of the on-site visit only one global money remittance company, namely Western Union, conducted its business through 2 agents (Croatian Post Office and one bank). The annual amount of funds transferred in this way was estimated at 11 million Euros. The FEI supervised so far only once (in 2006) the activities of Western Union in one bank.

640. The absence of a registration or licensing regime and general legal provisions for the supervision regarding money remittance providers poses serious money laundering / terrorist financing risks for Croatia.

3.11.2 Recommendations and comments

641. Croatia should implement Special Recommendation VI.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**NC**	• No system in place of registering and/or licensing MVT service operators. • MVT service operators are not subject to the applicable FATF Recommendations. • There is only indirect monitoring of MVT service operators with regard to compliance with the FATF recommendations. • There are no sanctions applicable to MVT service operators.

4 PREVENTIVE MEASURES – DESIGNATED NON-FINANCIAL BUSINESSES AND PROFESSIONS

642. The major DNFBP are as follows:

- Public notaries: 254 public notaries operating in accordance with the Notaries Public Act and The Statute of Croatian Public Notary Association. They are given the power to draw up and issue public documents related to legal affairs; officially certify private documents; preserve documents, money and objects of significant value for the purpose of handing them over to other persons or competent bodies; and executing court and other public entity procedures as defined by the law;
- Lawyers: of which there are 2 917. In Croatia, there are 174 joint lawyer firms, 74 lawyer companies and 1 327 trainees of lawyers. The Act on the Responsibility of Legal Persons for the Criminal Offences provides the legal framework for lawyers;
- Auditing, Accounting and Tax Consulting Services: The Act on Tax Advisory Services authorizes tax consultants to give advice related to tax issues, represent clients in the tax procedures in front of tax authorities, compose tax reports, provide bookkeeping services, and draft financial reports. At the time of the on-site, there were 311 registered audit companies, and according to the Croatian Auditor's Association, 1 007 auditors had been certified. The Association anticipates that an additional 93 auditors will soon be certified. The Benedikt Kotruljevic Association was an association of auditors which certified another 360 auditors, bringing the total number of auditors to 1 460; since entering into force of the Audit Act (NN 146/05) in 2005, this association has no more right to conduct its activities related to auditing. The Independent Association of Croatian Accountants, Tax Counsellors and Financial Employees (RRiF) issued 1 135 certificates to natural persons performing accountant services;
- Real Estate Agencies: Evaluators have been informed that there is no specific act regulating real estate agents, though there is one currently being prepared. Evaluators were informed, however, that the Civil Obligations Act does generically cover customer identification and record keeping requirements. Evaluators have not seen a translated version of this text. There are 1 811 registered entities performing real estate activity; 891 performing "own real estate activity" (539 agencies developing/constructing and selling real estate; 352 agencies which buy and sell "own real estate"); 295 entities that lease "own property;" 621 entities that perform real estate activities on a fee or contract basis; 487 real estate agencies, and 134 businesses which manage real estate on a fee or contractual basis;
- Retail of Precious Metals and Stones: There are 69 small sized companies which are registered to conduct retail sale of watches, clocks, jewellery, photography, optical and similar equipment;
- Organizers of games of chance: At the time of the on-site, there were 12 casinos, three of which are located in Zagreb, and four of which are state-owned, 13 betting houses, and 46 slot machine clubs. The Law on Conducting Games of Chance and Promotional Award Games (NN 83/02, 149/02) regulates this sector. Licensing for these entities is performed by the Ministry of Finance;
- Pawnshops;
- Organizers of travel tours;
- Organizers of auctions; and
- Dealers in art objects, antiques and other items of significant value.

Generally

643. The AML Law (Annex 1) holds most categories of DNFBP to the same standards as the reporting financial institutions. Specifically:

- pawnshops
- organizers of lottery games, casino games, betting games and slot machine games
- organizers of travel tours
- organizers of auctions
- real estate agents
- dealers in art objects, antiques and other items of significant value
- dealers in precious metals and gems

are all covered by the AML Law. Accountants, notaries and lawyers, on the other hand, do not have the same requirements placed upon them: the evaluators consider Art. 9a of the AML Law, which specifies the reporting obligations for these entities, to be the only provision that applies to them. The evaluators also believe that accountants, notaries and lawyers do not fall under the scope of Art. 2 of the AML Law, which identifies the obligated institutions. However, the Croatian authorities consider accountants, notaries and lawyers to be subject to the full obligations under the law and to be obliged entities like those listed in Art. 2. There are no statistics that support this point of view (statistics relate only to STR reporting; there are no statistics concerning AML/CFT supervision). Trust and company service providers are not covered by the AML Law at all, as they do not exist.

644. The main deficiencies that apply in the implementation of the AML/CFT preventative measures applicable to financial institutions regarding Recommendations 5-11, and other preventive Recommendations (as described in Section 3 above), apply to DNFBP as well because their obligations are based on the same AML/CFT regime. To recap, with the exception of accountants, lawyers and public notaries, the aforementioned DNFBP under the AML Law are obligated to: perform client identification (Articles 4 and 5); gather and keep information on transactions (Articles 6 and 16); report cash transaction reports and suspicious transaction reports to the AMLD (Article 8); and keep information confidential (Articles 15 and 17).

645. It should be noted that lawyers, lawyer companies, notaries, auditor companies, certified auditors, chartered accountants and tax advisors are not included in Article 2 of the AML Law, which lists the obliged institutions fully covered by the law. Rather, this group of DNFBP is only covered under Article 9a of the AML Law, which requires them "*under specific conditions to inform the AMLD whilst conducting their business perform financial transaction or other transaction with assets, if there is a suspicion of money laundering*". These "specific conditions" are not defined by the AML Law itself but regulated by Art. 26 (2) and (3) of the "Procedures on implementation of the law on prevention of money laundering" (hereinafter: AML By-law; Annex 2) which reads as follows:

> *(2) Lawyers, lawyer's companies, notaries are obliged to notify the AMLD according to Article No 9a, para 1 and 4 of the Law, while perform financial transactions or other transactions with property, transactions with suspicion on money laundering, or when are requested to provide advice for money laundering, on the form as under Article No 5 para 1, of this Procedures.*
> *(3) Auditors and legal and physical persons who perform accountancy or tax businesses shall inform the AMLD as under Article No 9a para 3 and 4, if detect suspicion on money laundering during performing their duties, or when requested for advice for money laundering, on the form as under Article No 5 para 1, of this Procedures.*

However, when a lawyer or a lawyer company represents the client in judicial proceeding or in an administrative procedure, they are exempt from the requirement to inform the AMLD if there is suspicion of money laundering (Article 9a para 2 of the AML Law). Article 9a of the AML Law does not set out any client identification requirements, reporting requirements or record keeping

requirements similar to those placed on other DNFBP identified as reporting institutions in Article 2. The representative lawyers at the on-site interview confirmed that they generally do not accept a responsibility to perform CDD measures because they are not included in Article 2 of the AML Law.

646. It should also be stated at the outset that historically casinos, lawyers and notaries have rarely submitted suspicious transaction reports to the AMLD. While there is some communication between the AMLD and the obligated DNFBP, there needs to be enhanced communication and cooperation between the entities, as well as enhanced AML/CFT supervision of these entities.

4.1 Customer due diligence and record-keeping (R.12)

(Applying R.5 to R.10)

4.1.1 Description and analysis

647. Criterion 12.1 requires DNFBP to meet the requirements of Recommendation 5 in the circumstances specified in Criterion 12.1.

648. The issue of anonymous accounts and accounts in fictitious names applies for DNFBP in the same way as described under Section 3.2 for financial institutions. In addition, it is worth mentioning that according to Art. 165 para 1 of the Act on Companies, a joint stock company may issue bearer shares[55]. During the on-site visit, the appearance of bearer shares was often referred to as a result of the privatization (transformation of formerly socially-owned enterprises), though it was not clear whether the possibility of issuing bearer shares had only been available to this type of joint stock companies – in fact, the Croatian authorities advised in the replies to the Questionnaire that "*the statutes of a stock company can stipulate that stock made out to a name can be exchanged for stock made out to the bearer or vice versa at the stockholder's request*".

649. Nevertheless, the evaluators were assured by Croatian authorities that shares of this type are very rare in Croatia due to the restrictions envisaged by the domestic legislation. Certain companies, such as banks and investment fund management companies, are automatically prohibited from issuing bearer shares, while the Securities Market Act prescribes that shares of certain joint stock companies, including those which emerged after the transformation from socially-owned enterprises (and many others, such as public joint-stock companies having over 100 shareholders and equity capital of a minimum of 30 000 000 Kuna etc.), must be registered with the accounts of their holders in the computer system of the Central Depository Agency (hereinafter: CDA), which means that shares must be registered by name. It appears that there is no provision requiring that bearer shares as such, issued by any sort of joint stock company, have to be registered. The Croatian authorities also advised that, due to the limited economic significance of bearer shares, the possibility of their issuance would be abolished during the final harmonization with the *acquis communautaire*[56]. Although the importance of bearer share companies in the economy of Croatia is not totally clear, the fact remains that they do exist and that banks and non-banking financial institutions do not appear to have any clear policies on how to deal with them nor do they appear to have received any clear instructions or recommendations on this matter from the competent supervisory authorities.

650. Generally speaking, it appears that the DNFBP generally conduct due diligence of physical persons in accordance with the laws regulating their individual professional sectors or with the

[55] see FN 9.

[56] see FN 9.

AML Law. The AML Law requires that the DNFBP included in Article 2 identify and verify the client identification of the physical and legal persons, as well as their authorized person when opening bank accounts; during the establishment of other forms of more permanent cooperation with a client; when an individual or a series of linked transactions exceed 105 000 Kuna; or when there is a suspicion of money laundering. Identification procedures outlined in the AML Law do include use of personal identification cards or passports, and request first and last name, address and date of birth.

651. General CDD obligations for the categories of DNFBP covered by the AML Law have the same strengths and weaknesses as described in 3.3. Therefore, DNFBP are not required by law to obtain information on the purpose and intended nature of the business relationship, conduct ongoing due diligence on the business relationship or perform enhanced due diligence for higher risk categories of customers, business relationships or transactions (as outlined in R 5.6-5.8). Moreover, the AML Law and regulations do not require reporting entities to perform CDD when there is a suspicion of terrorist financing or when there are doubts about the veracity or adequacy of previously obtained data; nor must they apply CDD requirements to existing customers on the basis of materiality and risk, as recommended respectively in 5.2 and 5.17 of the methodology. Paragraph 3 of Article 3 of the Procedures on Implementation of the Law on Prevention of Money Laundering, however, does require a reporting institution to request a statement of beneficial ownership when there is suspicion of change of the ownership structure.

*Applying R5—Customer Due Diligence Procedures**

652. Even in the case of those DNFBP listed in Article 2 of the AML Law, most entities tend to adhere to the laws that regulate their specific industry, rather than the AML Law.

653. For casinos, R 5.1-5.18 should apply when their customers engage in financial transactions equal or above 3 000 EUR/USD (criterion 12.1a). In Croatia, no such threshold exists; the AML Law and its implementing regulation places casinos under the same requirements as those for the financial institutions, rather than placing specific requirements on the casinos. In casinos, all natural persons are identified upon entry, as provided for in Article 45 Paragraph 1 of the Law on Conducting Games of Chance and Promotional Award Games (NN 83/2002; hereinafter: Games of Chance Law): "*The visit and participation in the casino games shall be permitted to adults solely after identification verification [...]*". In this law, documents used to verify identification are not specifically determined, however, it was communicated to the delegation that either an identity card or a passport is photocopied upon entrance and video camera surveillance provides for further identity verification. In Croatia, privately owned casinos do not re-identify customers when they buy or cash-in chips: however, Article 42, Paragraph 1 of the Games of Chance Law states that the points of exchange of chips for cash are also covered by video surveillance. The government-owned casinos, informed the assessors that when a payment exceeds 105 000 Kuna (approximately 14 000 EUR), they will identify the client a second time. In the AML Law, Article 4 Paragraph 2 requires identification of the customer before any transaction above 105 000 Kuna, linked transactions above 105 000 Kuna (Para 3) and all other cash or non-cash transactions if there is a suspicion of money laundering (Para 5). Because casinos are able to link their CDD information with a customer's individual gaming and cashier transactions at the relevant thresholds through video recording, the CDD requirements under the FATF standards are broadly satisfied. According to the interview with the state-owned casinos, if someone wins over 200 000 Kuna, then they have to notify the compliance officer and the AMLD. The evaluators were told that internet casinos do not exist in Croatia. Legislation requiring verification of the identity of the person who is requesting the transaction on behalf of the legal person does not appear to be implemented.

654. As for real estate agents involved in the purchase and selling of property, it can be deduced from Article 4, paragraph 1 of the AML Law ("*The reporting institutions identify the client on*

opening of all bank accounts or during the establishing of other kinds of more permanent cooperation with client") that the client's identity must be established at the outset of establishing permanent cooperation with the client. In addition, as real estate agents belong to the designated reporting institutions, they must identify the customer if a transaction of *cash* exceeding 105 000 Kuna takes place (Article 4, paragraph 2). The Croatian authorities explained that the term "*more permanent cooperation*" used in Article 4, paragraph 1 of the AML Law has been chosen to make a difference between the obligation to identify customers under paragraphs 1 and 2 of Article 4: paragraph 1 applies to the opening of bank accounts and performing other kinds of permanent cooperation with a client, whereas paragraph 2 concerns individual transactions. "Permanent cooperation" should be interpreted as equivalent to a "business relationship" as it is defined in paragraph 9 of Article 3 of the Directive 2005/60/EC of the European Parliament and of the Council on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing. For the real estate sector, the following example was provided: the term "more permanent cooperation with a client" applies to a single/individual purchase or sale of real estate if the payment is made by using loan granted by a financial institution. Otherwise, it shall be deemed an individual transaction as specified under paragraph 2 of Article 4.

655. The evaluation team has been informed that both the buyers and sellers of real estate must be identified. While this may be common practice, there is no specific act regulating real estate agents that requires them to perform CDD measures to fill the Recommendation 5 gaps in the AML Law. One of these gaps is that real estate agents are not required to identify customers who do not use cash to purchase the property (i.e. bank to bank transfers). During the on-site visit, evaluators were informed of a new Act that will regulate real estate agencies, but will not address AML/CFT or CDD measures[57]. Furthermore, the real estate representative told the evaluators that the lawyer who holds the power of attorney must submit identity documentation to finalize a real estate transaction.

656. Lawyers, public notaries, accountants and auditors are not included in Article 2 of the AML Law as reporting institutions. Thus, they are not obligated to perform customer identification; nonetheless, the Croatian authorities consider them to be obliged entities. As mentioned above, this group of DNFBP is only covered under Article 9a of the AML Law; according to the latter provision in conjunction with Art 26 Para (2) and (3) of the AML By-law they are obliged to inform the AMLD of a suspicion of money laundering when conducting transactions with assets and when they are solicited by their clients for advice connected with money laundering. The only obligation for this kind of DNFBP to identify their clients can be found in Article 26 Para (1) of the AML By-law:

> *Article No 26*
>
> *Lawyers, laywer's companies, notaries, auditors and legal and physical persons who perform accountance of tax businesses, identify clients as under Article No 5 of the Law and collect information as under Article No 6 of the Law.*

However, this provision only states that these entities should identify their clients as regulated by Article 5 of the AML Law. But Article 5 only outlines the customer identification procedure(i.e. *how* a client should be identified), it does not state *when* or under what conditions a client should be identified (this is covered by Article 4 of the AML Law). Apart from this missing reference to Article 4 of the AML Law, the AML Law and the AML By-law are also inconsistent because the By-law places procedural requirements on the lawyers, accountants, public notaries and auditors that are not grounded in the primary law. Therefore, there is no sound legal basis to oblige lawyers, accountants and public notaries to identify their clients.

[57] The "Agency in Real Estate Transactions Act" was enacted on 3 October 2007 by Croatian Parliament and it was published in Official Gazette on 19 October 2007. The Act entered into force on the eight day following its publication in the Official Gazette with the exemption of paragraph 3 of Article 5 which shall enter into force when the Republic of Croatia becomes member of the European Union. This new law does not address AML/CFT or CDD measures.

657. The Bar Association informed the assessors that if a client is establishing a company, lawyers only ask for passports or identity cards because more extensive identity information is required by the court/company registry. The Bar Association also claimed that it rarely performs this duty, as it is more commonly conducted by notaries. Lawyers are required, however, to verify the identity of a client, including passport number or identification number when establishing power of attorney. The delegation had also been informed that lawyers do not manage bank, savings or security accounts in Croatia. Finally, evaluators were informed that the Act on the Responsibility of Legal Persons for Criminal Offences provides the legal framework for the lawyer profession. This Act does not provide customer due diligence requirements. There is no law, including the AML Law, that requires lawyers to perform customer due diligence when preparing for or carrying out transactions related to buying and selling real estate; managing client money or other assets; managing back accounts; organizing contributions for the creation or operation of companies; or creating, operating, or managing legal persons and buying and selling business entities.

658. The Chamber of Public Notaries reported to the assessors that notaries ask for either identification cards or passports. According to Art. 60 of the Notaries Public Act, a notary public is only required to establish a client's identity with an identity card or passport if s/he "does not know the participants personally and by name." If neither of these options are possible, then the client's "identity has to be witnessed by another notary public or two identity witnesses." Again, because public notaries are not included in Article 2 of the AML Law and are provided with separate requirements set out in Article 9a of that Law, there is a significant gap in customer due diligence requirements placed on this DNFBP sector.

659. Finally, the Association of Accountants informed the assessors that when accounting agencies establish business relationships, they are required to identify the legal representatives or natural persons, which includes obtaining an identification number, address and name of the legal representative. There is no evidence in the Act on Tax Advisory Systems that accountants are required to conduct CDD measures when commencing business with a new client. The Croatian Government later informed the evaluators that the Accounting Act and the General Tax Act do not have customer identification provisions either. Furthermore, the Tax Advisor's Code of Ethics does not yet exist and the Chamber of Tax Advisers has not yet been established. The Act on Tax Advisory Systems does state that the tax advisor is allowed to terminate the business relationship with its client if s/he questions the authenticity of "a certain document" submitted by the client. However, the law does not specify the types of documents a client would submit, including customer identification documents. Therefore, no law, including the AML Law, requires accountants to perform CDD measures.

*Applying Recommendation 6—Politically Exposed Persons**

660. Croatia has not implemented proper AML/CFT measures concerning the establishment of customer relationships with PEPs that are applicable to DNFBP. There is no provision which requires at a minimum identification of PEPs in law, regulation or other enforceable means. There appeared to be some confusion as to the definition of PEPs, as the United Nations lists of designated terrorists had been referred to as a PEPs list during the on-site. It is strongly advised that this issue be addressed and that when it is, the same standards should apply across the whole financial market and include DNFBP. The evaluators heard from the Bar Association, that even if they were required to identify whether or not a potential customer is a PEP, they do not have the tools to obtain this kind of information.

Applying Recommendation 8—Threats from New or Developing Technologies

661. There were no policies explicitly detailing the prevention of the misuse of technological developments in money laundering or terrorist financing schemes. Nor were there any policies in place to address any specific risks associated with non-face to face business relationships or transactions. Furthermore, DNFBP had not been issued guidance regarding emerging technological developments.

662. Real estate agents noted that when purchasing property there would be at least one face-to-face meeting. The Deputy Secretary of Casinos and Slot Machine Clubs stated that two new casinos in Zagreb will utilize new software to monitor people's progress and individual spending, though there is no legal obligation to do so, nor is it a response to money laundering threats.

*Applying Recommendation 9—Third Parties and Introduced Business**

663. Provisions were not in force covering the use of intermediaries or other third parties for elements of the CDD process. Therefore, essential criteria 9.1 to 9.5 were not covered.

*Applying Recommendation 10—Record Keeping **

664. Article 6 of the AML Law requires obliged entities to gather information on a transaction only in the event that the transaction exceeds 200 000 Kuna (approx. 27 000 EUR) or when there is suspicion of money laundering (Article 8). Article 16 Para 1 of the AML Law requires that "*the reporting institutions shall keep records gathered in accordance with [the AML] Law for at least five years after the last of related transactions was made, unless Law specifies otherwise*". Article 16 Para 2 also requires keeping customer identification records for five years after completion of the business relationship. There is no authority for competent authorities to request the reporting institutions to keep these records longer than five years and there is no mention of collecting or maintaining account files or business correspondence. In accordance with criterion 10.3, Art. 21 para 1 of the AML By-law requires reporting institutions to keep identity and transaction records in chronological order and in a way that enables efficient control in preparation for AMLD requests.

665. Further demonstrating the gap in obligations for lawyers, accountants and public notaries caused by Article 9a of the AML Law, the Bar Association testified that these professions are not required to adhere to Article 16 of the AML Law. In Article 29 paragraph 2 of the AML By-law, however, lawyers, notaries, auditors and accountants are required to keep a database of suspicious transactions and of requested advice for money laundering in chronological order – here again, the regulations place additional requirements on these professionals without the legal grounding in the primary law.

666. Nonetheless, under the Lawyers Act, lawyers are required to keep files for 10 years after the end of representation (Article 32 of the Statute of the Croatian Bar Association, NN 25/95 and NN 92/99). Though this is not provided by law, evaluators had been told that these "files" include all identity documents, documents received from all parties and arbitration, the judgment and trail minutes records.

667. Accountants are required to keep documentation according to Art. 7 Para 1 of Accounting Act (NN 146/05). Their obligations are as follows:

> *"(1) Bookkeeping documents shall be preserved in their original form, using the automatic processing carrier, micrographic processing carrier or in any other appropriate manner.*
> *The following bookkeeping documents shall be preserved for the minimum period of time as follows:*

– Pay-rolls or analytical records of salaries, daily allowances and fees subject to compulsory payments shall be preserved indefinitely,
– Documents on the basis of which data have been entered into business books shall be preserved over the period of seven years,
– Documents on payment clearings at authorised financial institutions shall be preserved over the period of seven years,
– Sale receipts and control slips, subsidiary calculations and similar documents shall be preserved over the period of seven years.
(2) Preservation period shall start on the last day of the financial year to which the books referred to in paragraph 1 of this Article relate. After expiration of the preservation period they shall be kept in accordance with special regulations."

668. The Tax Advisory Services Act requires tax advisors and tax advisory companies to keep documents that are not returned to the client for at least six years from the date of preparation or receipt thereof (Article 19 Paragraph 2). While this exceeds the requirements placed upon other reporting institutions in the AML Law, the statement referring to returning documents to a client appears to create a loophole which may lift the obligation from the accountant to maintain documents.

669. The Chamber of Public Notaries informed the delegation that most documents are usually kept on a permanent basis and that the Ministry of Justice determines how long the documentation must be kept. Article 24 para 6 of the Notaries Public Act requires all "notarial acts and books" be kept permanently. The means to keep archive materials of notaries public (individual files, registers, directories and other auxiliary books) is prescribed by the Ministry of Justice in the Notaries Public Regulations (NN 38/94, 37/96 and 151/05) adopted on the basis of Article 169 paragraph 2 of the Notaries Public Act. The time limits for keeping archive materials are prescribed in Article 87 of the Notaries Public Regulations. The following are kept permanently: registers and directories which notaries public are obliged to keep according to the Notaries Public Act and the Notaries Public Regulations; all notary public acts and solemnized documents relating to real estate, files on entrusted statements of last will and testament, and other files, which due to their content or the persons to whom they relate, are of particular historical, scientific or political importance. Files of solemnizations or certificates are kept for three years. Files of work entrusted to notaries public and files in cases where proceedings are being conducted before a court or another authority, are kept for the same length of time as the same type of files that are kept by the court or other authority. Files in relation to work entrusted to the notary, which notaries public keep only as copies are kept for five years beginning at the end of the year in which the work entrusted was completed and the original file returned to the authority who entrusted the work to the notary public. All other files are kept for five years.

670. As stated above, the reporting institutions mentioned in Article 2 of the AML Law are required to keep documents for five years after the transaction. Casinos are among the reporting institutions that are required to do so. Article 42 of the "Law on conducting games of chance and promotional award games" (hereinafter: Games of Chance Law) also states that casinos only have to keep video surveillance footage for 15 days. Because the assessors determined that casinos are able to link their CDD information with a customer's individual gaming and cashier transactions at the relevant thresholds through video recording, the CDD requirements under the FATF standards are broadly satisfied. The Tax Administration advised the evaluators that books must be kept for a minimum of 15 days. Later the Croatian authorities assured the evaluators that this applies only to keeping video surveillance tapes ("recorded documentation") and that according to Art. 7 of the Accounting Act casinos are required to keep documents, "which make changes to business books", for 7 years (the evaluators have not seen a translated copy of the Accounting Act).

*Applying Recommendation 11—Complex, Unusual, Large Transactions**

671. The recommendation to pay attention to complex, unusually large transactions or to analyze them and keep records on them, is not provided for either in the AML Law or AML By-law, but it is provided for in the list of indicators for suspicious transactions (Annex 3). The AML Law provides merely the obligation to identify the customer when transactions are equal to or above 105 000 Kuna (Article 4 Para 2 and 3) and to submit a report to the AMLD when the transaction is equal to or above 200 000 Kuna (Article 8 Paragraph 1).

EU-Directives

672. Under the FATF standards, CDD in casinos (including internet casinos) is required when customers engage in transactions above EUR 3 000. Under Article 3 paragraph 5 of the Second EU AML Directive, the identification of all clients of casinos is required if they purchase or sell gambling ships with a value of 1 000 EUR or more. However, the subsequent paragraph 6 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 clients immediately on entry, regardless of the number of gambling ships purchased. In Croatia, all casinos are subject to state supervision by the Tax Authority, however, supervision is conducted with a focus on tax-related matters and compliance with the Games of Chance Law, rather than the AML Law. Nonetheless, all customers must have their identity verified upon entry into the casino. Having adopted procedures in both the AML Law and the Games of Chance Law for the identification of all customers on entry of the casino, Croatia is in compliance with the provisions of Article 3 (6) of the Second EU AML Directive.

673. Croatia should consider making the identification requirements for the casinos under the AML Law and the Games of Chance Law consistent. Specifically, the AML Law states the procedures for client identification, such as checking personal identification cards or passports, date of birth and addresses. The Games of Chance Law does not provide such procedures; it merely calls on casinos to "verify identity."

4.1.2 Recommendations and comments

674. Croatia should include accountants, lawyers and public notaries within Article 2 of the AML Law, along with the other reporting institutions. This would make these professions subject to the same CDD and reporting requirements as the other DNFBP when they are participating in financial transactions.

675. Croatia should fully implement Recommendations 5, 6, 8 and 9 and make these measures applicable to DNFBP. For example, reporting entities should be required to perform CDD when there are doubts about the veracity or adequacy of previously obtained data. They should also be informed of what a PEP is, have a means to identify PEPs, and manage the risk involved with doing business with them, including conducting enhanced ongoing monitoring of their relationship with PEPs. The AML Law should also be amended in such a way that clarifies real estate agents and others should conduct CDD when there is a transaction of financial assets, including bank-to-bank transfers, not just when there is a cash transaction.

676. For casinos, the documents which are necessary for verification of identification are not determined. Though casinos rely in practice only on passports and ID-cards, Croatian authorities should clarify that only reliable, independent source documents, data or information can be used for the verification process of identification. Though casinos are obliged to identify their clients at entrance, they are not obliged to apply CDD measures when their clients engage in financial transactions equal or above 3 000 EUR/USD.

677. For Recommendation 10, all transaction records should be kept, regardless of whether the transaction exceeds 200 000 Kuna or there is suspicion of money laundering, for at least five years. Account files and business correspondence should be kept in addition to identification records. Croatian authorities should satisfy themselves that casinos clearly follow the record keeping requirements of the AML Law.

678. To be in compliance with Recommendation 11, DNFBP should be required to pay special attention to all complex, unusually large transactions or unusual patters of transactions that have no apparent or visible economic or lawful purpose. Additionally, they should examine the background and purpose of complex transactions, set out their findings in writing, and keep the findings available for competent authorities for at least five years.

679. At the time of the on-site visit, assessors had been informed that the AML Law will be amended in the near future. If Recommendations 5 through 11 are fully covered under the new AML Law, special attention to the effectiveness of implementation will still need to be developed by proper monitoring. It is also important that the different sectors and their professional associations work more closely with the AMLD and with each other in order to improve awareness and overcome any unwillingness to apply AML/CFT requirements. Information campaigns to this end would be beneficial.

680. As Croatia drafts a new law to regulate real estate agents, it should consider adding articles to address their responsibilities as a reporting institution within the Croatian AML/CFT regime.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**NC**	• Essential Criterion 5.7 is not covered by law, regulation or other enforceable means. • Essential Criteria 5.6, 5.8 and 5.17 are not implemented across the board. • Recommendations 5-11 do not apply to lawyers, notaries and other independent legal professions when they carry out the specified transactions. • There is no authority for competent authorities to request the reporting institutions to keep all necessary records on transaction longer than five years and there is no mention of collecting or maintaining account files or business correspondence. • Recommendations 6, 8 and 9 are not covered by law nor are they implemented. • For casinos, the documents which are necessary for verification of identification are not determined. • Casinos are not obliged to apply CDD measures when their clients engage in financial transactions equal or above 3 000 EUR/USD. • There is no sound legal basis to oblige lawyers, accountants and public notaries to identify their clients. • There is no law which obliges accountants to perform CDD measures.

4.2 Suspicious transaction reporting (R. 16)
(Applying R.13 - 15 and 21)

4.2.1 Description and analysis

*Applying Recommendation 13**

681. Criterion 16.1 requires essential criteria 13.1-4 to apply to DNFBP. Criteria 13.1 – 3 are marked with an asterisk. The first two require reports to the AMLD where the obliged entity suspects or has reasonable cause to suspect funds are the proceeds of criminal activity or has reasonable grounds to suspect funds are linked to terrorism or those who finance terrorism. Article 8 of the AML Law requires that the DNFBP covered by this law report to the AMLD when there is a "suspicion of money laundering" with no requirement of a Kuna threshold; however, as already indicated above, there is no clear requirement to submit an STR when there is a suspicion that funds may be related to terrorism. The only reference in the AML Law to terrorist financing appears in its first paragraph. In the view of the Croatian authorities, this provision for the prevention of terrorist financing permeates the entire AML Law. As outlined above, the evaluation team does not share this opinion because the scope of Art. 1 is more programmatic and the relevant descriptive provisions contain no reference to terrorist financing.

682. Article 9a of the AML Law obligates lawyers, notaries, auditors and accountants, when performing financial transactions or other transaction with assets, to inform (directly) the AMLD if there is a suspicion of money laundering. In terms of implementation, both the Bar Association and the Chamber of Public Notaries received suspicious transaction indicators from the AMLD, but despite dissemination of indicators and occasional seminars held with the DNFBP, the minimal number of reports submitted by these professionals suggests that the requirements are either unclear or deemed unnecessary. The AMLD also reported that its interaction with the DNFBP is constrained by resources and their capacity. The Bar Association explained that according to the Penal Code, because of legal privilege, there is a legal consequence for lawyers who submit STRs, especially after proceedings have been initiated. The Chamber of Public Notaries also referred to a discrepancy between the AML Law, and specifically Article 37 of the Public Notaries Act, which states:

Article 37

(1) A notary public is obliged to keep everything he found out in performing his service confidential, unless otherwise determined by the Act, will of the parties or the contests of the legal business.
(2) Employees in the office of a notary public are also obliged to keep the notary secret.
(3) A client can release a notary public from keeping the secret. If a client died, or if it would be very difficult to obtain his statement, a notary public can demand from the court from the Article 34 Subsection 4 of this Act to release him from the duty of keeping the secret. The court will demand the opinion of the Chamber before it brings a decision.
(4) An obligation of keeping the secret exists also after the service termination.
(5) A notary public may not file a report against the clients regarding the requested legal opinion or request for undertaking official actions.

Moreover, the public notaries were very unclear as to how their profession could be taken advantage of by money launderers or financiers of terrorism, and therefore why STRs should be submitted.

683. Casinos and real estate agents must adhere to Article 8, paragraph 3 of the AML Law, and are therefore required to submit a report to the AMLD if there is a suspicion of money laundering. No such requirement is placed on reporting institutions if there is a suspicion of terrorism financing. Regarding implementation, casinos submitted 8 CTRs in 2006 to the AMLD for cases in which the casino issued winnings above 100 000 Kuna, whereas the AML Law only requires that

payouts above 200 000 Kuna have to be reported. The Tax Administration did not know if STRs were being submitted by casinos to the AMLD. During on-site inspections by the Tax Authority, it does ask if frequent cashing of chips without playing would raise any red flags. Criterion 13.3 requires all suspicious transactions or attempted transactions to be reported regardless of the amount. However, evaluators had been told by a representative of Casinos and Slot Machine Clubs that there is no reporting obligation when there is a suspicion of money laundering or terrorism financing when the transaction is below the 200 000 Kuna threshold. The casinos, especially those that are state-owned, were aware of what would be considered suspicious behaviour but need to be clear on their reporting requirements and that they are not exempt when there is a suspicion of money laundering if the transaction is below the 200 000 Kuna threshold.

684. During the on-site, representatives of the real estate sector were under the impression that they did not have the legal obligation to report transactions which are done through "regular channels," i.e. from one bank account to another.

*Applying Recommendation 14**

685. The same issues covered in Section 3 equally apply to the DNFBP covered by the AML Law with the exception of lawyers, public notaries and accountants. As mentioned above, these professions claim that the conflict between the AML Law and either the Penal Code or the Public Notaries Act or the Act on the Responsibility of Legal Persons for the Criminal Offences does not protect them from criminal or civil liability for reporting their suspicions in good faith. For those DNFBP which fall under the term "reporting institutions" of the AML Law (Art. 2), the issue of "tipping off" is covered by Art. 17 Para 1 ("*the FIU and the reporting institutions cannot notify the customer about gathered records and about procedures initiated in accordance with this Law*"[58]); thus, for lawyers, public notaries and accountants no specific "tipping off" provisions exist.

Applying Recommendation 15.*

686. The obligation for reporting institutions to set out general internal regulations for the prevention and detection of money laundering is set out in Article 14 of the AML By-law. More specifically, the AML By-law should address the means for client identification, including beneficial owner identification, reporting procedures to the AMLD, obligation of applying the list of indicators for suspicious transaction detection, the mode of nominating a "responsible person" or compliance officer and his or her deputies, and record keeping. While the AML By-law does state in Article 17 that the responsible person should have access to all databases, documents and information needed to perform his or her duties, it does not address the issue of having appropriate compliance management arrangements, including at a minimum, the designation of a compliance officer at the management level. Article 19 states that reporting institutions are "requested" to perform at least one internal control examination of compliance with the AML Law each year; but there is no mention of techniques that should be used, including sample testing, or ensuring that the responsible person is adequately resourced. Article 18 states that reporting institutions shall provide permanent and regular professional education of employees that enables detection of suspicious transactions. However, there are no screening procedures to ensure high standards when hiring for employees other than the "responsible person" or his or her deputies, as outlined in Article 16 of the regulation. Moreover, the AML By-law is not based on any requirements set out in the AML Law, which puts enforceability into question.

687. As was the case with applying Recommendation 5, the AML Law and the AML By-law are not consistent in terms of requirements placed on lawyers, notaries and auditors. In the AML Law, lawyers, notaries and auditors are not required to have responsible persons who check compliance

[58] The Croatian authorities explained that "cannot" in this context has to be interpreted as a mandatory obligation.

with the AML Law. Nonetheless, the AML By-law goes beyond what is set out in the AML Law and requires in its Article 28 that lawyers, auditors and notaries to have a responsible person, according to what is set out in Articles 15 and 16 of the AML By-law itself. As the AML By-law can only outline the procedures of implementation for the AML Law, the latter provisions do not have legal grounding in the AML Law; consequently it cannot require entities to perform tasks that have no basis in the AML Law.

688. Nonetheless, accountants have their own screening procedures. Article 8 of the Act of the Tax Advisory Services states that a tax advisor cannot have a "criminal record on account of a conviction of a criminal act" if the act was committed in the period of five years from the date of date of conviction. The Games of Chance Law has no such screening procedures for employees—only owners seeking a license cannot be subject to an ongoing criminal investigation, as outlined by Article 34. The Act on Public Notaries states, a "*person who is sentenced for a crime for gains or any other dishonourable crime which is officially prosecuted until the legal consequences of the judgment last*" cannot become a public notary.

Applying Recommendation 21.

689. Criterion 16.3 applies Recommendation 21 to DNFBP. Neither the AML Law nor the AML By-law gives special attention to business relationships and transactions with persons or entities from or in countries which do not or insufficiently apply the FATF Recommendations. Moreover, there was no apparent independent implementation of Recommendation 21 by the DNFBP. Only the list of indicators for detection of suspicious transactions written by the AMLD could theoretically be used as a mechanism to communicate to DNFBP its concerns about specific countries not sufficiently in compliance with the FATF Recommendations.

4.2.2 Recommendations and comments

690. Overall, the number of reports received from DNFBP is significantly small. More outreach to this sector, particularly by providing training and guidance is necessary.

691. The AML Law should expand the requirement to submit an STR when there is a suspicion that funds are the proceeds of criminal activity generally *and* when funds may be related to terrorism.

692. The AMLD should communicate again to the DNFBP that there is a reporting obligation when there is a suspicion of money laundering, even when the transaction is below the 200 000 Kuna threshold.

693. The exceptions for lawyers and notaries to report suspicious transactions because of legal professional privilege/secrecy should be brought in accordance with the circumstances as described by the Interpretative Note to Recommendation 16.

694. The legal provisions concerning the protection of lawyers and notaries from criminal or civil liability for reporting their suspicions in good faith are at the best not sufficiently clear. The discrepancy between the AML Law, the Penal Code, the Public Notaries Act and the "Act on the Responsibility of Legal Persons for the Criminal Offences" should be remedied.

695. For lawyers, public notaries and accountants no specific "tipping off" provisions exist.

696. DNFBP should give special attention to business relationships and transactions with persons or entities from or in countries which do not or insufficiently apply the FATF Recommendations. The indicators list written by the AMLD could theoretically be used as a mechanism to

communicating to DNFBP its concerns about specific countries not sufficiently in compliance with the FATF Recommendations.

697. Amend the primary AML Law to require DNFBP to have a policy for internal controls so that Articles 14-17 of the AML By-law can be fully enforced.

698. Amend implementing regulation to state that responsible person should be at management level and adequately resourced, and place screening procedures for employees who work for the responsible person or chief compliance officer.

699. As the Croatian authorities draft their new AML law and its accompanying by-law, they should ensure the provisions in the by-law have legal grounding in the primary law.

4.2.3 Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating

R.16	**NC**	• There is no obligation to file an STR when there is a reason to suspect financing of terrorism.
		• The number of reports from DNFBP is very small and indicates a lack of awareness and understanding from this sector. There are misunderstandings and uncertainties in various areas, particularly:
		  • It was unclear to DNFBP that the 200 000 Kuna threshold does not exempt reporting entities from submitting STRs.
		  • The circumstances under which lawyers and notaries are exempted from reporting suspicious transactions because of legal professional privilege/secrecy are not sufficiently clear.
		• The safe harbour provisions for lawyers and notaries to protect them from criminal or civil liability for reporting their suspicions in good faith are not sufficiently clear.
		• For lawyers, public notaries and accountants no specific "tipping off" provisions exist.
		• The head of compliance is not required to be at the management level.
		• There are no requirements for an independent audit function to test compliance and there are no screening measures in place for the employees of heads of compliance or "responsible persons."
		• Reporting institutions do not seem to give special attention to transactions or business relationships with individuals from countries which do not sufficiently apply the FATF Recommendations, nor does it appear that the reporting institutions have been advised of which countries have weak AML/CFT systems.

4.3 Regulation, supervision and monitoring (R. 24-25)

4.3.1 Description and analysis

Applying Recommendation 17

700. The range of pecuniary sanctions available to the AMLD are set out in Articles 18-20 of the AML Law, which stipulates that if the reporting institution

(i) does not verify the identity of a client;
(ii) does not gather information on a transaction;
(iii) does not provide a power of attorney when required;
(iv) does not inform the AMLD about a transaction within the stated deadlines;
(v) conducts a transaction that the AMLD has asked it postpone; or
(vi) fails to collect and retain records, as defined in the AML Law,

the institution will be subject to a fine. Depending on the amount of the respective transaction, the sanctions range from 10 000 to 300 000 Kuna (approx. 1 355 to 40 650 EUR). A pecuniary fine can also be imposed on the reporting institution's compliance officer if s/he commits these aforementioned infringements; the sanctions for compliance officers range from 5 000 to 30 000 Kuna (approx. 677 to 4 065 EUR). The AML Law, however, clearly states that the only reporting institutions that are subject to these pecuniary sanctions are those included in Article 2 of the law, thereby excluding the lawyers, accountants and public notaries from the sanctions framework. While the financial sanctions vary in terms of severity of the violation, the AMLD does not have the legal authority to impose disciplinary sanctions such as writing warnings or barring individuals from employment within the sector. Apart from initiated misdemeanour proceedings concerning banks and foreign exchange offices (see above in Section 3.10; paragraphs 587 ff.), the evaluators were not advised of such proceedings in relation to DNFBP.

701. The Bar Association has the power to initiate proceedings against members if they violate their duties and general ethical standards, and will ultimately disbar a member in the event that the lawyer is proven guilty. It should be noted that money laundering is not specifically addressed by the Bar Association's Code of Conduct. The Bar Association notified assessors that there have been no incidents of disbarring as a result of money laundering. The Bar Association, therefore, seems able to implement sanctions against a lawyer if s/he engages in money laundering, but not if s/he just fails to comply with national AML/CFT requirements.

Applying Recommendation 24

702. The Law on Conducting Games of Chance defines the terms and conditions of conducting casinos. While the law outlines licensing procedures and addresses identification requirements, it does not specify what body is responsible for supervising casinos. The Tax Administration Act fills this gap, stating that the Tax Administration, which resides within the Ministry of Finance, is the body responsible for issuing licenses for casinos and supervising the conducting of games of chance. The Tax Administration, however, is not required by law to conduct AML/CFT-specific supervision. According to Article 3 Para (2) of the Tax Administration Act, the Tax Administration's stated roll is *inter alia* to "*perform the activities related to recording, assessment, supervision, collection and conducting seizures of property for the collection of taxes*". Article 6 of the said law further states that the Tax Administration is responsible for "checking the lawfulness and regularity of the application of tax regulations." The AML Law, though it does clearly list certain offices that are responsible for AML/CFT supervision of reporting entities, does not specifically mandate that the Tax Administration or any other body supervise the implementation of AML/CFT laws on casinos. According to the Tax Administration Act, the Tax Administration is entitled to supervise all tax payers. In addition, Art. 21a Para 2 of the AML Law states that "*the supervisory bodies of the Ministry of Finance [...] will perform the*

supervision of all the reporting institutions within the scope of their authorities"; therefore it can be deduced that the Tax Administration is at least authorised to supervise the reporting entities as defined by Art. 2 of the AML Law. It was unclear, whether the DNFBP which are listed under Art. 9a of the AML Law (lawyers, notaries, auditors, accountants) can also be supervised by the tax authorities. Nonetheless, there is no specific authority in the AML Law responsible for ensuring compliance of casinos with AML/CFT requirements.

703. In terms of implementation, the Tax Administration authorities informed evaluators that it has supervisors in Zagreb who are specifically assigned to monitor casinos and other games of chance clubs and conduct on-site inspections. Inspectors had not, to date, received AML/CFT-specific training. However, approximately 40 Tax Administration officials in Zagreb did attend seminars focused on casino supervision hosted by the U.S Department of the Treasury, in which AML issues were mentioned. Supervisors not stationed at Zagreb headquarters have not received AML-specific training either. The Tax Administration informed the evaluators that the inspections are more focused on compliance with the Games of Chance Law (specifically recording casino turnover and inspecting the books) than the AML Law. For example, Tax Administration officials stated that they had not asked about, nor knew, whether or not casinos had internal compliance officers as required by the AML Law. Furthermore, the Tax Administration stated that records only need to be kept for 15 days, as required by the Games of Chance Law (in comparison to the 5 years requirement in the AML Law). An inspection for compliance with the Games of Chance Law does require supervisors to inspect a casino's customer identification procedures, including the use of video surveillance. The most common violation inspectors noted is that casinos do not include all taxable information in their bookkeeping. Even though the casinos, especially those that are state-owned, are being actively supervised by the Tax Administration, it does not appear to be focused on performing AML/CFT supervision of the casinos.

704. According to the Games of Chance Law, the Government of the Republic of Croatia decides the number of licenses that are issued for casinos, and the Ministry of Finance in particular is responsible for putting the issuance of licenses out to tender and for handling the licensing procedures. A license can be valid for up to ten years and owners can apply for five year extensions of the license. Licenses cannot be transferred. In order to be eligible for a license, Article 34 states that an applicant must provide, among other things, a registration of the company's business activities with the Court Register, records of the persons who will manage the business, including their education level and casino skills, the internal controls regulations, and documentation verifying that the authorized persons are not under criminal investigations.

705. It did not appear to the examiners that there was a strategic plan in place for monitoring DNFBP. The Government of Croatia does not give regard to risk when dealing with the various sectors within DNFBP. All DNFBP listed within Article 2 of the AML Law are technically held to the same standards as the financial institutions. Nonetheless, Article 21a of the AML Law does not designate specific competent authorities to supervise those DNFBP listed in Article 2 (pawnshops, lottery games, casinos, travel tour and auction organizers, real estate agents, and dealers in precious metals or other objects of significant value).

706. There does not appear to be an effective system in place for monitoring and ensuring compliance with AML/CFT requirements for the non-casino DNFBP either. The Tax Administration can technically supervise these DNFBP because they are regular tax payers. However, their supervision of these DNFBP, like the supervision of casinos, is focused on tax issues, rather than AML/CFT compliance. Furthermore, inspections of other DNFBP usually result from other government agencies tipping-off the Tax Administration to a tax crime. If the Tax Administration then suspects money laundering or terrorist financing activity, it will contact the AMLD.

707. Tax Administration supervisors have not received special AML or CFT training for the non-casino DNFBP. The Tax Administration Act does not specifically state that the Tax Administration's scope of operations extends to supervising non-financial entities, the way it does for games of chance. While it appeared that there was no formal assessment of which non-financial businesses are high or low risk to money laundering or terrorist financing activity, at least the Tax Administration prioritized its inspection schedule according to the Foreign Exchange Inspectorate (FEI) or AMLD tip-offs.

708. Approximately 700 inspectors from the Tax Administration conduct between 12 000 to 14 000 tax-related inspections each year. In the Zagreb office, there are three people specifically assigned to supervising casinos. Only one person performs an on-site inspection at a time.

709. The Tax Administration has the power to monitor DNFBP for tax purposes and for AML/CFT compliance. However, in practice it only supervises casinos. The AMLD has the power to impose sanctions. The Tax Administration conducts on-site, but not off-site, inspections.

710. The Ministry of Justice and Chamber of Notaries, along with the Tax Administration, are also authorized to supervise public notaries, though they do not perform AML/CFT-specific inspections. They conduct inspections every three years.

*Applying Recommendation 25**

711. Article 12 of the AML By-law states that the AMLD should cooperate with reporting institutions and regulators to produce a list of indicators to assist in the detection of suspicious transactions; however, there is no legal requirement that the guidelines refer to more general compliance with AML/CFT requirements, such as steps DNFBP can take to ensure their AML/CFT measures are effective or descriptions of money laundering and terrorist financing techniques and methods. The AMLD informed evaluators that it did provide some DNFBP with guidelines. The evaluation team was told that these guidelines were addressed to lawyers notaries, auditors, accountants and tax advisors and that it contained examples of suspicious situations. However, the AMLD explained that their ability to educate the DNFBP depends on their capacities.

712. The Bar Association received indicators for STRs from the AMLD, which were then published in their official gazette. The Bar Association, however, informed evaluators that they did not receive feedback from the AMLD. Public notaries also published indicators in their gazette. In a monthly paper produced by accountants, an article outlining the relationship between reporting institutions and the AMLD ran. This article also argued that the financial sanctions available to the AMLD are not applicable to those entities listed in Article 9a of the AML Law.

4.3.2 Recommendations and comments

713. The AML Law, though it does clearly list certain offices that are responsible for AML/CFT supervision of reporting entities, does not specifically mandate the Tax Administration or any other body to supervise the implementation of AML/CFT laws on casinos or other DNFBP.

714. Croatian authorities should amend the AML Law to identify the competent authorities that will be specifically responsible for the AML/CFT regulatory and supervisory regime and give the competent authorities adequate powers to perform its functions, including powers to monitor and sanction.

715. The AMLD should issue guidelines for compliance with AML/CFT requirements, not only for the filing of STRs.

716. The AMLD should provide appropriate feedback to those DNFBP that are filing STRs, with regard to the FATF Best Practices guidelines on Providing Feedback to Reporting Financial Institutions and Other Persons. This will require additional funding to the AMLD.

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	**NC**	• Croatia does not have an effective system for monitoring and ensuring compliance with AML/CFT requirements among DNFBP. • Apart from casinos, the Tax Administration is not supervising DNFBP on AML/CFT issues. • The AMLD is the only entity able to sanction reporting institutions for not complying with AML/CFT requirements, and its only available tool is the pecuniary sanction. A broader range of proportionate and appropriate sanctions is missing. • In the absence of statistics about the sanctions implied, there is a reserve on effectiveness.
R.25	**PC**	• Guidance is not issued for general compliance with AML/CFT requirements, only for filing STRs.

4.4 Other non-financial businesses and professions/ Modern secure transaction techniques (R.20)

4.4.1 Description and analysis

717. 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 terrorism financing.

718. The AML Law includes DNFBP which go beyond those designated by Recommendations 12 and 16. It extends to the Croatian Post Office, pawnshops, organizers of travel tours, dealers in art and antiques, and organizers of auctions in order to meet the requirements of Article 2a(6) of the 2nd EU AML Directive. However, it had not been demonstrated to the evaluators that Croatia has implemented any sort of risk-based approach to its AML/CFT regime. Moreover, it is unclear that these sectors actually implement the AML/CFT requirements placed upon them or that there is any supervisory regime in place to monitor their compliance.

719. Criterion 20.2 specifies that countries should take measures to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering. Examples of techniques or measures that may be less vulnerable to money laundering provided in the Methodology are reducing reliance on cash, not issuing very large denomination of banknotes and secured automated transfer systems. The evaluators had not been informed that any such measures had been taken.

4.4.2 Recommendations and comments

720. Croatia has taken steps to extend AML/CFT requirements to some other categories of DNFBP. However, the regulatory structure will need to ensure that the relevant FATF Recommendations (5, 6, 8 to 11, 13 to 15, 17 and 21) are being applied in practice in these cases.

721. Croatia should conduct an analysis of which non-financial businesses and professions (other than DNFBP) are at risk of being misused for money laundering or terrorist financing. This sector should be kept under review to ensure that all non-financial businesses and professions that are at risk of being misused for the purposes of money laundering or terrorist financing are regularly considered for coverage in the AML Law.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**PC**	• No analysis has been undertaken which non-financial businesses and professions (other than DNFBP) are at risk of being misused for money laundering or terrorist financing. • There seems to be no strategy on the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

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

722. Recommendation 33 requires countries to take legal measures to prevent the unlawful use of legal persons in relation to money laundering and terrorist financing by ensuring that their commercial, corporate and other law require adequate transparency concerning the beneficial ownership and control of legal persons. Competent authorities must be able to have access in a timely way to beneficial ownership and control information, which is adequate, accurate and timely. Competent authorities must also be able to share such information with other competent authorities either domestically or internationally. Bearer shares issued by legal persons must be controlled.

723. As noted in Section 1.4 (to which reference should also be made with regard to this Recommendation) there are various forms of enterprises established in Croatia for the purpose of undertaking business and they have to be registered by the court registry. The registration process itself is a specific activity of commercial courts regulated by the Court Registry Act (NN 1/1995).

724. Controls that are performed are formal on the completeness of the documents. The registering court is only obliged to determine whether the application contains all requirements and if the stipulated documents have been attached. Consequently, the court is not authorized to engage in determining the authenticity of the documents or of their content. Thus, rejection of entry into the court register would only take place in case of obvious incorrectness or invalidity of the data submitted. In this relation, the provision of false information or concealment of important circumstances is a criminal offence pursuant to Art. 624 of the Act on Companies, for which a fine or imprisonment of up to 2 years may be imposed.

725. Entry into the court register requires a special application made by all the members of the company administration and supervisory board. The following documents need to be submitted:

- the constitutive documents (the statute of the stock company and related documents, the partnership contract in case of limited liability companies)
- in case of limited liability companies, a list of a founding members with date of birth, personal identification number and residence or, in case of legal persons, the firm and seat specifying the registering court and the number under which it was entered into the commercial register; the amount of the company's initial capital ad the amounts of the initial stakes of the founders and payments made,
- if special privileges are given in incorporation, contracts that establish and implement them,
- in case of investment in goods and rights, the minutes of incorporation and of an audit of incorporation,
- confirmation from a financial institution of the stakes paid in money, as well as evidence on the entry of investment in goods and rights to the effect that the company has free use of them,
- documents on the appointment of the administration (management) and supervisory board, including the lists of members with personal data as above,
- a list of persons authorized to lead the affairs of the company (procuration) with personal data as above ("procurists").

726. Consequently, the name and personal data (date of birth, residence, personal identification number) of persons authorized to act on behalf of registered persons (directors) as well as persons

that are the members of supervisory or administrative boards of registered persons, directors of organizational units (branches) and liquidators will all be registered. The court register is public, and anyone, without having to prove legal interest, can peruse the particulars entered into the main book and the public information from the collection of documents and request that they be issued an excerpt or notarized copy. Additionally, as noted in Chapter 1.4, information from the court registry is available on-line (in Croatian only) at the website www.sudreg.pravosudje.hr where searches can be made either by registration number or by company name (but not by names of members/shareholders). Information provided online comprises

- basic data of the registered entity (corporate name, seat, share capital)
- business activity
- founders/members of the company (except joint stock companies)
- members of the management (liquidator in case of liquidation proceeding)
- members of the supervisory board (joint stock companies)
- persons authorized to lead the affairs of the company ("procurists")
- legal relations (legal form of the company, articles of incorporation, statute etc.)
- data on branches.

727. Details of shareholders i.e. members of limited liability companies are, as noted above, available on the public Court Register. In case of joint stock companies, data on shareholders are available at the CDA on the request of entitled persons and state bodies only (except for data concerning the identity of the 10 largest owners of each security, which are accessible to public). Judicial and administrative bodies including, *inter alia* courts, state attorneys, Police, the AMLD or the tax authority have the right to access, within their competence provided by law and on the basis of a written request, any data kept by the CDA (Art. 131 para 5 of the Securities Market Law).

728. The AML Law (Annex 1) prescribes in Art. 5(3) that at the time of account opening or establishing other forms of permanent business cooperation, the reporting institutions are obliged to request from the customer a written statement indicating the beneficial owner(s) of the legal person and a list of its Management Board members, for the purpose of identifying the beneficial ownership. According to Art. 3(3) of the Procedures on Implementation of the Law on Prevention of Money Laundering, the reporting institution requires such a statement also whenever it has a suspicion of change of the ownership structure. The procedures provide, however, that in case the reporting institution is not able to conduct identification in this manner "*and is not familiar with the ownership structure of the client*" it will refuse to open an account or enter into business relationship or close the account as well as the business relationship with the client (Art. 3[5]).

729. Despite the fact that the preventive law and secondary legislation, as discussed above, requires all reporting entities to establish the identity of the beneficial owner, no definition of this term was provided by any of the relevant Croatian legislative acts as this term is defined in the Glossary to the FATF Recommendations (i.e., the natural person(s) who ultimately owns or controls a customer and/or the person on whose behalf a transaction is being conducted, and those persons who exercise ultimate effective control over a legal person or arrangement). This is particularly the case when one company buys shares in another one. Equally, beneficial ownership information is not available in case of (branches of) foreign companies. As a result, financial institutions normally would not go further than collecting information at the second level in respect of owners of the legal entity. It thus appears to the examiners that Croatian law does not require adequate transparency concerning beneficial ownership and control of legal persons. As a consequence, it must be difficult and necessarily lengthy and cumbersome for competent authorities to obtain the necessary information, for example, by searching the premises of a company in order to find the relevant documents etc. Certainly, the Croatian authorities can rely on investigative powers of law enforcement to produce from company records the ultimate owners of the company but this procedure, especially in case of shareholders with legal personality and/or with residence or seat abroad, cannot be carried out in a timely way (e.g. where mutual legal

assistance is required) and doubts may remain whether information obtained by this route is adequate, accurate and verifiable.

730. According to Art. 165 para 1 of the Act on Companies, a joint stock company may issue bearer shares[59]. In course of the on-site visit, the appearance of bearer shares was often referred to as a result of the privatization (transformation of formerly socially-owned enterprises) though it was not clear whether the possibility to issue bearer shares had only been open for this type of joint stock companies – in fact, the Croatian authorities advised in the replies to the questionnaire that "*the statutes of a stock company can stipulate that stock made out to a name can be exchanged for stock made out to the bearer or vice versa at the stockholder's request*".

731. Nevertheless, the evaluators were assured by Croatian authorities that shares of this type are very rare in Croatia due to the restrictions envisaged by the domestic legislation. Certain companies, such as banks and investment fund management companies are automatically prohibited from issuing bearer shares, while the Securities Market Act prescribes that shares of certain joint stock companies, including those, which emerged after the transformation from socially-owned enterprises (and many others, such as public joint-stock companies having over 100 shareholders and equity capital of a minimum of 30 000 000 Kuna etc.) must be registered with the accounts of their holders in the computer system of the Central Depository Agency (hereinafter: CDA) which means that shares must be registered by name. It appears that there is no provision requiring that bearer shares as such, issued by any sort of joint stock company, have to be registered. However, due to the limited economic significance of bearer shares, the Croatian authorities also advised that the possibility of their issuing would be abolished during the final harmonization with the *acquis communautaire*[60]. Although the importance of bearer share companies in the economy of Croatia is not totally clear, the fact remains that they do exist and that banks and non-banking financial institutions do not appear to have any clear policies on how to deal with them nor do they appear to have received any clear instructions or recommendations on this matter from the competent supervisory authorities.

732. Croatian Authorities informed, that in the new Companies Act, joint stock companies have been given the possibility for issuing solely stock made out to a name (registered shares). It is not possible to issue new stocks made out to the bearer. However, the provision of Article 49 paragraph 4 of the Constitution of the Republic of Croatia prescribes that the rights acquired by investing capital cannot be diminished by any law or any other legal act. Due to this provision of the Constitution, previously acquired rights of holders of shares which are made out to the bearer are accepted as such. Hence, earlier issued shares made out to the bearer can continue to exist. However, no appropriate measures were taken to ensure that such legal persons are not misused for money laundering.

5.1.2 Recommendations and comments

733. It is recommended that Croatia reviews its commercial, corporate and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership. A comprehensive definition of beneficial owner, as provided for in the Glossary to the FATF Recommendations should be embedded in relevant primary or secondary legislation.

[59] see FN 9.

[60] see FN 9.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**PC**	• Croatian law does not require adequate transparency concerning beneficial ownership and control of legal persons.

5.2 Legal Arrangements – Access to beneficial ownership and control information

5.2.1 Description and analysis

734. Recommendation 34 requires countries to take measures to prevent the unlawful use of legal arrangements in relation to money laundering and terrorist financing by ensuring that commercial, trust and other laws require adequate transparency concerning the beneficial ownership and control of trusts and other legal arrangements.

735. Domestic trusts cannot be established in Croatia.

736. Croatia has not signed the Convention on the Law applicable to Trusts and on their Recognition (1 July 1995, the Hague) and the Croatian authorities were positive that Croatia would not recognise trusts created in other countries. When asked whether a foreign trust could establish a subsidiary company in Croatia, domestic interlocutors answered that it would theoretically be possible but only in the form of a marketing or representative office which would not carry out activities in Croatia. After the on-site visit, Croatian authorities explained in more detail that foreign trusts could carry out business operations in the Republic of Croatia pursuant to Article 611 of the Act on Companies, according to which foreign companies and single merchants are, subject to the conditions prescribed by law, in an equal position in doing business in the territory of the Republic of Croatia like domestic entities. Only if they would like to carry out activities in the territory of the Republic of Croatia on a *permanent* basis they would have to establish a branch office.

737. The evaluators were also advised concerning so-called "escrow accounts" in Croatian banking system. Such accounts are opened on a three party agreement: the signatories are a domestic person, a foreigner and a bank. the bank has the function of a trustee to service some documents – escrow accounts are established only on a temporary basis.

5.2.2 Recommendations and comments

738. Domestic trusts cannot be established in Croatia. Nevertheless, given the uncertainty about the position of foreign trusts operating in Croatia, the local authorities should consider satisfying themselves that foreign trusts do not operate in their country having registered themselves as branches of foreign institutions. Under the present circumstances, Recommendation 34 is not applicable as trusts cannot be established in Croatia.

5.2.3 Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	As the Croatian system does not allow to establish a (foreign or domestic) trust, Recommendation 34 is not applicable.

5.3 Non-profit organisations (SR VIII)

5.3.1 Description and analysis

739. In Croatia, the non-profit sector comprises mainly associations and foundations. Establishing, registration and legal status of associations are regulated by the Law on Associations[61] (NN 88/2001) which covers "*any form of voluntary association of natural or legal persons which, in order to protect and promote issues of public or mutual interest, environmental, economic, humanitarian, informative, cultural, ethnic and national, educational, social, professional, sports, technical, health care, scientific and other interests and goals as well as their beliefs, and without the intention of gaining profit, submit themselves to the rules that regulate organizations and activities of that form of association.*" The law is not applicable to political parties or religious groups (Art. 1 para 2). An association acquires legal personality upon registration in the registry book of associations, but registration is not mandatory: *"Registration in the registry book is voluntary and shall be conducted upon the request of the founders of the association"* (Art. 14 para 1). According to Art. 3 of the Law on Associations, associations that remain unregistered do not get the status of legal entities; these associations are governed by the provisions applicable to partnership, i.e. a contractual relationship pursuant to the Civil Obligations Act (NN 35/2005).

740. Foreign associations or other organizational forms established without the intention of gaining profit are also allowed to pursue their functions in the territory of the Republic of Croatia provided that they were established in accordance with the legal rules of the respective foreign state and they meet the conditions prescribed by the Law on Associations (Art. 8). In contrast to their domestic counterparts, foreign associations are required to be registered in order to conduct their activity in Croatia. In addition, they do not acquire legal personality upon registration but only the right to pursue activities determined by their statute within the territory of Croatia, that is, such an association is considered a representative acting on behalf of its parental association in the home country.

741. Domestic associations may be registered (voluntarily) in the registry book of associations of the Republic of Croatia while the foreign ones that operate in Croatia have to be registered (compulsorily) in the registry book of foreign associations. According to Art. 14 para. 3 and 4 of the Law on Associations, the registration of domestic authorities is "*conducted by the competent body of state administration in whose territory the seat of association is located. The registry book of associations is kept by the counties' offices for general administration."* The register of foreign associations has been, however, kept and maintained centrally by the Central State Administrative Office for Public Administration of the Republic of Croatia (hereinafter: Central State Office for Administration) since January 2004.

742. Along with the application for entry into the registry book of associations, the applicant has to enclose, *inter alia*, the constitutive documents (minutes of the founding assembly and the statutes adopted) and the list of founders and persons empowered to represent the association (attaching photocopies of their identity cards or, in case of legal persons, a copy of registration). In case of foreign associations, a recent copy from the registry book of the country of seat is required (or at least a notarized document on the establishment of the association in case registration is not necessary in the other country) together with the statute (or any similar act) as well as the decision on appointment of the empowered representative of the foreign association in the Republic of Croatia (attaching his/her photocopy of identity card). Both registry books contain the name, seat (foreign associations: also the seat in the country of establishment) and registry number of the registered entity, basic aims of association's activities and the names of legal representatives of

[61] available at http://www.legislationline.org/legislation.php?tid=2&lid=2512&less=false (website of the OSCE Office for Democratic Institutions and Human Rights; legislationline.org).

the association. Since both registers are public books, all these data are publicly available, even in searchable form on the website of the Central State Office for Administration[62].

743. In course of the registration procedure, the registering office examines whether all the required documents are listed and the statute of the association is in accordance with the above mentioned Law. Application will be rejected if the statutory goals and activities of the association are prohibited under Croatian law. In case of foreign associations, it is also examined whether the association was validly established pursuant to the legal order of the respective foreign country. The evaluators were nevertheless uncertain by what means could the latter examination be effectively carried out, that is, how and upon what legal grounds the registering office can verify the authenticity of the foreign documents submitted.

744. According to Art. 25 of the Law on Associations, associations are obliged to keep business books and to prepare financial reports in compliance with applicable laws that regulate financial management of non-profit organizations. The evaluators were advised during the on-site visit that financial reports have to be submitted to the Ministry of Finance on an annual base. The evaluators were also informed that the provisions dealing with these reports can be found in the Regulation on accounting of non-profit organisations (NN 112/93) and the Ordinance on the bookkeeping and accounting plan of non-profit organisations (NN 20/94) although the evaluators did not see these provisions. According to Croatian authorities, Art. 1 para (2) of the Regulation on Accounting of Non-profit Organisations obliges non-profit organisations to maintain business books and prepare financial reports in compliance with the principle of sound bookkeeping, meaning clearly showing business events and allowing independent experts to establish the situation and results of activities in an appropriate period. The Regulation also contains penal sanctions for deficient reports. There was no information provided whether these reports were published or available in another way. Legal entities are also required to open a bank account. While no specific law was pointed out in this respect as regards domestic associations and whether unregistered domestic associations (i.e. those without legal personality) are required to comply with any of the above regulations, the evaluators' attention was called, as far as foreign associations are concerned, to the Decision on the Terms and Modalities for Opening and Managing a Non-resident Bank Account (NN 111/2003) which requires foreign non-profit organizations (foreign associations as well as foreign endowments and foundation) to open non-resident bank accounts and to dispose their funds on these accounts.

745. Pursuant to the Law on Endowments and Foundations (NN 36/1995) a foundation is defined as a property assigned to serve permanently by itself or by the incomes it acquires to the accomplishment of some generally beneficial or charitable purpose (cultural, educational, moral, scientific, etc.) while an endowment is the property assigned to serve to the same purpose during a particular period of time. A foundation can be transformed into an endowment when its incomes are no longer sufficient for permanent fulfillment of the foundation purpose.

746. Foundations and endowments are formally established upon registration into the Registry of Foundations whereby they acquire legal personality. Foreign endowments or foundations, that is, entities with a seat abroad, are allowed to establish subsidiaries (missions) in Croatia provided that they have been duly established and registered pursuant to the law of the country of seat. Missions of foreign endowments or foundations, similarly to foreign associations, are not considered legal persons and they are required to be registered with the Register of Missions of Foreign Endowments and Foundations. Both registers mentioned above are maintained by the Central State Office. To requests for entry into the register of domestic foundations, the applicant has to attach, *inter alia*, the constitutive documents (memorandum of association of a foundation) documents related to the founder (in case of a legal person, a copy of registration and also the decision of the competent body to establish a foundation) as well as to the property which the

[62] The register of associations can be found at http://www.uprava.hr/RegistarUdruga/ while the register of foreign associations is accessible at http://www.uprava.hr/RegistarStranihUdruga/.

founder earmarked for the foundation (documents that prove his/her ownership over the property and also certification from a domestic bank where these funds are deposited etc.) In case of foreign foundations, a recent copy from the registry book of the country of seat is required together with documents on the establishment (containing data on purpose, activities, seat of the foundation) certified and recent financial report on the operations of the foundation the decision on the establishment of the mission as well as the decision on appointment and publicly certified acceptance of the authorized representative of the foreign foundation in the Republic of Croatia.

747. Both registry books contain the name, seat and registry number of the registered entities (domestic foundations/endowments or missions of foreign ones) the purpose of the endowment or foundation as well as the group of people for whom it is intended and the names of legal representatives of the entity. Both registers are public books and these data are publicly available, even, in case of domestic endowments and foundations, in searchable form on the website of the Central State Office for Administration[63]. So far, only two subsidiaries of foreign endowments have been entered in the central register of foreign missions.

748. The registering offices (either central or county level) are only responsible for registration procedures. In case of associations, Art. 26 para 2 of the Law on Associations provides that "*administrative supervision ... shall be carried out by the ministry competent for general state administration*"[64] (Croatian authorities advised that the latter refers to the Central Office for State Administration). In contrast, "*inspection(al) supervision over the operation of the association*"[65] shall be carried out by the county (Art. 26 para 3; Croatian authorities explained that "county" in this context refers to competent state administration offices in local and regional self-government units). "Administrative" supervision refers to supervision of the enforcement/implementation of the Law on Associations (and regulations based on this law) while the scope of the "inspectional" supervision carried out over the operation refers, as explained by Croatian authorities, to the issues of status of Associations. The supervision performed by the Central Office (Art. 26 para 2) is indirect, as far as it focuses on the activities of state administration offices in relation to the implementation of the law. In case of foreign associations, the Central Office for State Administration is exclusively responsible for supervision. Though there is a legal basis for some supervision, the evaluators were informed during the on-site visit that neither the Central State Office of Administration nor its local offices have capacity to perform on-site supervision over the registered entities (so far, the Central State Office of Administration has carried out on-site inspection only as regards political parties which are not covered by the Law on Associations [Art. 1 para 2] but by the Act on Political Parties [NN 76/93]). As a consequence, there is no possibility to establish whether all economic resources of those entities are applied exclusively to their goals or for their established purposes.

749. According to Art. 30 of the Act on Foundations and Endowments, supervision over the operation of foundations is administered by the Ministry of Administration (in order to check up the maintenance of the basic property, the compliance with the purpose of the foundation and the lawfulness of its management) as well as the Ministry of Finance (now: Central State Office for Administration) and the State Officer for Revision (now: State Audit Office) (which perform control over the foundations' financial operation). According to the law, any of these supervisory activities should be performed by inspectors and other authorized state officials. Art. 31 also provides that the above.-mentioned state bodies may at any time require an insight into the disposition of foundation property and its management. Nevertheless, the examiners were informed that despite this legal basis, there has been no practice to perform ongoing supervision over the functioning of endowments/foundations.

[63] http://www.uprava.hr/RegistarFundacija/ .

[64] Emphasis added.

[65] Emphasis added.

750. Associations without legal personality do not fall within the scope of the Law on Associations and are therefore not subject to any supervision.

751. Evaluators were informed that endowments and foundations are, similarly to associations, required to submit annual financial statements to the Ministry of Finance. According to the Replies to the MEQ, the Ministry of Finance is responsible for the inspection of financial operations of non-profit organisations. The evaluators were, however, advised during the on-site visit that the Ministry does not exercise actual supervision based on financial documentation submitted by NPOs. The State Audit Office was also mentioned as a supervisory authority in this respect but the evaluators were not given sufficient information on the extent and purpose of that supervision. As far as non-resident accounts are concerned, the Foreign Exchange Inspectorate is authorized to verify the legal basis of opening and keeping of such accounts, in which context they actually perform some inspection the result of which may be the closing of inactive or otherwise suspicious bank accounts related to foreign entities.

752. It appears therefore that there has been no review of the adequacy of laws and regulations that relate to non-profit organizations that can be abused for the financing of terrorism, as required by Criterion VIII.1. Furthermore, there are very limited, if any, measures in place to ensure that terrorist organisations cannot pose as legitimate non-profit organisations or that funds or other assets collected by or transferred through such organisations are not diverted to support the activities of terrorists or terrorist organisations, as required by Criteria VIII.2 and VIII.3. What there is in place does not appear to amount to effective implementation of the Special Recommendation.

5.3.2 Recommendations and comments

753. There has been no formal review of the adequacy of laws and regulations that relate to entities that can be abused for the financing of terrorism, even though there is a base to build upon as there is some financial transparency and reporting structures are in place. It is first advised that a formal review of the current legislation covering the non-profit sector is undertaken from the point of view of the threats to this sector inherent in terrorist financing, in line with SR VIII and its Interpretative Note. It is then recommended that the Croatian authorities review the existing system of laws and regulations in this field so as to assess themselves the adequacy of the current legal framework according to Criterion VIII.1. Consideration should also be given in such a review to effective oversight of the NPO sector, the issuing of guidance to financial institutions on the specific risks of this sector and consideration of whether and how further measures need taking in the light of the Best Practices Paper for SR.VIII. In particular, ongoing programme verification and field audits should be considered in identified vulnerable parts of the sector. Consideration needs to be given to ways in which effective oversight of the NPO sector can be achieved in the context of SR.I.

5.3.3 Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**NC**	• No special review of the risks and not any sort of ongoing monitoring of the NPO sector have been undertaken. • Financial transparency and reporting structures are insufficient and do not amount to effective implementation of criteria VIII.2 and VIII.3.

6 NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1 Description and analysis

754. Recommendation 31 (and Criterion 13.1) is concerned with co-operation and coordination between policy makers, the FIU, law enforcement, supervisors and other competent authorities.

755. The legal basis for cooperation between the AMLD and the Ministry of Interior (Police) in counteracting money laundering is laid down in Art. 3 para 4 of the AML Law (Annex 1). Article 57 of the Banking Law obliges the supervisory bodies in the Republic of Croatia to cooperate, submit data on a bank or other financial institution required by an individual supervisory body in the procedure of performing supervision over a financial institution and in the procedure related to the issuing of an authorization. The supervisory authorities shall also notify one another in the case of irregularities established in the course of supervision. Art. 8 of the AML Law requires state and local governmental bodies as well as other legal persons that have state authority to send to the AMLD "*all information necessary for the detection of money laundering*". Apart from this, a more precise obligation for supervisory bodies to submit STRs to the AMLD in the case of detecting suspicious transactions in the course of their supervisory work is missing.

756. The AMLD cooperates with other supervisory bodies (Croatian National Bank, Croatian Securities Commission, Agency for the Supervision of Pension Funds and Pension Insurance, Directorate for the Suppression of Insurance Companies) that supervise the reporting institutions' implementation of the AML Law. These bodies also report to the AMLD on any suspicious transactions revealed in the course of their work. To improve this cooperation, some of these entities have appointed liaison officers; working meetings are held regularly where specific money laundering cases are discussed also on the basis of signed Memoranda of Understanding. At the end of 2004, the AMLD signed a Memorandum of Understanding on co-operation and exchange of information relating to the suppression and detection of money laundering and the suppression of financing of terrorism with the Commission for Securities (on 1 January 2006 the Croatian Financial Services Supervisory Agency succeeded this commission; the signing of an MoU with this Agency is envisaged). The aim of this MoU is cooperation and exchange of information within the powers stipulated by the Securities Market Act and the AML Law. It is specially implemented while supervising investment funds and investment funds management companies, stock exchanges and other legal persons authorised for conducting transactions with securities. It covers amongst others the exchange of information concerning suspicious transactions; making of recommendations for preventing money laundering and financing of terrorism at securities market's subjects; training and educating persons competent for enforcement of the AML Law at securities market's subjects; and further development of the system for prevention of money laundering and financing of terrorism in the Republic of Croatia. On 5 May 2005 the Insurance Companies Supervisory Authority (which is like the Commission for Securities and the Agency for the Supervision of Pension Funds and Pension Insurance also a legal predecessor of the HANFA; see Section 3.10) signed a Memorandum of Understanding with the AMLD (Ministry of Finance) on cooperation and exchange of information concerning the prevention and detecting of money laundering and financing of terrorism. The Insurance Companies Supervisory Authority has, in cooperation with the AMLD, issued for insurance companies a list of indicators to detect suspicious transactions.

757. Furthermore, the AMLD has signed an MoU with the Foreign Exchange Inspectorate, while signing of an MoU with the Ministry of Finance, the Tax Administration, the Customs Administration, the Department of Financial Systems, the Ministry of Interior and the Office for Suppression of Corruption and Organized Crime is in preparation.

758. The State Attorney's Office, the Ministry of Finance and the Ministry of the Interior concluded an agreement to work on specific cases through formation of specialised teams comprised of experts from other state authorities.

Co-operation between the AMLD and the Foreign Exchange Inspectorate under the AML Law

	YEAR		
	2003	**2004**	**2005**
Notices about suspicious transactions and other submissions received from the FIU	19	10	13
Reports on performed supervision and other data grouped by individual checks submitted to the FIU	26	19	15

759. In addition, the Croatian authorities emphasized that the AMLD and the Foreign Exchange Inspectorate have almost daily contacts concerning concrete or general matters related to money-laundering.

760. Furthermore, an inter-ministerial coordination group has been established, which is headed by the ministry of finance, and comprises representatives of all key bodies and institutions involved in anti-money laundering measures. Its aim is to facilitate operative and strategic cooperation. This group is divided in 2 subgroups depending on their task:

(i) for prevention it comprises the AMLD, the Croatian National Bank, HANFA and the supervisory bodies of the Ministry of Finance (Tax Administration, Customs Administration and the Foreign Exchange Inspectorate);

(ii) for repression the General Prosecutor's Office, the Office for the Suppression of Corruption and Organized Crime (USKOK), the Police and the AMLD are represented.

This inter-ministerial coordination group meets once a year, and on an operational level it meets more often, according to needs[66].

761. Domestic cooperation among financial supervisors is covered by sectoral laws (e.g. Article 57 of the Banking Act; Art. 16 of the Act on HANFA) and details of cooperation are included in Memoranda of Understanding (e.g. in September 2006, the CNB and HANFA concluded a Memorandum of Understanding).

6.1.2 Recommendations and Comments

762. The cooperation between policy makers, the AMLD, law enforcement and supervisors in the AML/CFT area seems appropriate. The various bodies have signed MoUs and they also participate in co-ordination groups. Information exchange seems to work. The FIU has access to various databases of other bodies which shows a good level of co-operation. However, a more precise obligation for supervisory bodies to submit STRs to the AMLD in the case of detecting suspicious transactions in the course of their supervisory work would be beneficial.

[66] At the beginning of 2007, HANFA signed the Protocol on Cooperation and Formation of an Inter-Institutional Working Group for Preventing Money Laundering and Financing Terrorism which entered into force on 1 March 2007; the partners of this Protocol are amongst others the CNB, Ministry of Justice, Ministry of Finance, Ministry of Interior.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**C**	

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

763. Croatia has signed and ratified all the conventions specified by Criterion 35.1 and SR.I as follows:
- the Vienna Convention (UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988) applies to Croatia by succession as it was originally ratified by Yugoslavia in 1990;
- the Palermo Convention (UN Convention Against Transnational Organised Crime 2000) was ratified on 7 November 2002 and entered into force on 29 September 2003;
- the Terrorist Financing Convention (1999 UN International Convention for the Suppression of the Financing of Terrorism) was ratified on 1 October 2003 and is binding on Croatia since 31 December 2003.

764. Since the ratification of any of these conventions does not necessarily mean full implementation as required by R.35 and SR.I, the Methodology requires assessors to make sure whether the most relevant articles of the respective conventions are actually implemented. The comments made earlier in respect of the physical elements of the money laundering offence apply also here.

765. As for the Terrorist Financing Convention, the relevant articles the implementation of which has to be checked are Articles 2 to 18 (namely, Articles 2-6 and 17-18 in relation to SR.II; Article 8 in relation to SR.III and Articles 7 and 9-18 in relation to SR.V). With regard to Article 2 of the said Convention, the criminalization of the financing of terrorism, as discussed above (see 2.2.2) is seriously insufficient and there is urgent need for a specific autonomous offence which fully covers all the elements of SR.II and the respective Interpretative Note.

766. According to criterion I.2, countries should fully implement the United Nations Security Council Resolutions relating to the prevention and suppression of terrorist financing (respectively S/RES/1267(1999) and its successor resolutions as well as S/RES/1373(2001)), which requires "any necessary laws, regulations or other measures to be in place and for these provisions to cover the requirements contained in those resolutions". As discussed in relation to SR.III above (section 2.4), the relevant UNSCRs have only been implemented to a very limited extent which, obviously, raises a number of issues especially as there appears to be no domestic legislation specifically designed for their implementation while the existing legal framework is not considered to fully address all the legal issues relating to this matter.

767. Article 18 (1) (b) of the Terrorist Financing Convention requires financial institutions and other professions involved in financial transactions to utilise the most efficient measures available for the identification of the usual or occasional customers, as well as customers in whose interest accounts are opened and for this purpose to consider *inter alia* adopting regulations prohibiting

the opening of accounts where the holders or beneficiaries are unidentified or unidentifiable, and measures to ensure that such institutions verify the identity of the real owners of such transactions.

Additional elements

768. Croatia ratified the 1990 Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (ETS No. 141) in 1997 which entered into force in December 1998. Comments made earlier about the scope and effectiveness of the current confiscation regime in Croatia indicate that the Convention was not fully implemented at the time of the on-site visit in all its aspects. Croatia has not yet signed the CoE Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198).

6.2.2 Recommendations and comments

769. The same comments as are made above in relation to implementation of the respective Conventions (especially the Terrorist Financing Convention) and the UN Security Council Resolutions apply here.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating

R.35	**Partially compliant**	**Implementation of the Palermo and Vienna Conventions**
		• The scope of the money laundering offence is limited to "banking, financial or other economic operations".
		• It is unclear if indirect proceeds deriving from property other than money is covered.
		Implementation of the Terrorist Financing Convention
		• The present incrimination of terrorist financing appears not wide enough to clearly sanction
		  • the provision or collection of funds for a terrorist organization for any purpose, including legitimate activities
		  • the collection or provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist for any purpose (as above) and
		  • - as far as domestic terrorism is concerned - the collection of funds with the intention or in the knowledge that they should be used in full or in part to carry out terrorist acts as referred to in Art. 2(a) and (b) of the Terrorist Financing Convention, irrespective of whether or not the funds are actually used to (attempt to) carry out a terrorist act.

SR.I	**Partially compliant**	• Croatia has failed to implement several provisions of the Terrorist Financing Convention, notably an autonomous terrorist financing offence. • There is no legal structure for the conversion of designations under S/RES/1267(1999) and its successor resolutions as well as S/RES/1373(2001). • A comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in

		place. • There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to the financial sector and DNFBP.

6.3 Mutual legal assistance (R. 36-38, SR.V)

6.3.1 Description and analysis

Recommendation 36 and SR.V

770. In addition to the Vienna, Palermo and Strasbourg Conventions, Croatia has also ratified the Council of Europe Convention on Mutual Assistance in Criminal Matters of 1959 (ETS No. 030) and its Additional Protocol (ETS No. 099) which were ratified and also entered into force in 1999. The Second Additional Protocol to the said Convention (ETS No. 182) was signed on 9th June 2004 but had not yet been ratified at the time of the on-site visit[67]. The said Convention was implemented through the Act on Mutual Legal Assistance in Criminal Matters (NN – 178/2004) which is in force since 1st July 2005. This law (hereinafter: MLA Act) governs not only mutual legal assistance but also extradition.

771. It comes from Art. 140 of the Constitution of the Republic of Croatia[68] that the main principles applicable in the field of international cooperation in criminal matters are the precedence of international treaties over national law and the direct applicability of the conventions. Pursuant to that article, "*international agreements concluded and ratified in accordance with the Constitution and made public, and which are in force, shall be part of the internal legal order of the Republic of Croatia and shall be above law in terms of legal effects.*" Accordingly, Art. 1(1) of the MLA Act provides that mutual legal assistance is regulated by this law "*unless provided otherwise by an international treaty*". As a consequence, relevant provisions of the MLA Act are applicable only in non-treaty based cooperation or for the regulation of issues not covered by the otherwise applicable treaty. To the extent in which the said Act contains no special procedural rules, the provisions of the Criminal Procedure Act, the Law on USKOK and other laws are to be applied accordingly.

772. The Ministry of Justice is the central judicial authority responsible for mutual legal assistance both in general terms, that is, in the context of the MLA Act and specifically under the 1959 Strasbourg Convention (ETS No. 030). According to Art. 6(1) and (2) of the MLA Act, the Ministry of Justice is responsible for transmitting the requests of domestic judicial authorities to foreign counterparts as well as for receiving foreign rogatory letters. Nevertheless, in case of the 1990 Strasbourg Convention (ETS No. 141) it is not the Ministry of Justice but the Ministry of Interior which is designated as central authority for mutual legal assistance (Declaration of the Republic of Croatia in pursuance of Article 23, paragraph 1, of the said Convention, deposited on 11 October 1997).

773. Foreign requests are executed by domestic judicial authorities, that is, courts and state attorney's offices authorized by a special law (such as, in case of courts, the Law on Courts, NN – 150/2005). Direct communication between domestic judicial authorities and their foreign counterparts, as an exception to the inter-ministerial channel of transmission, is provided for by Art. 6(4) that specifies the possibility of direct sending of requests to foreign counterparts:

> *(4) [...] domestic judicial authorities may directly address the request for mutual legal assistance to a foreign judicial authority, when so explicitly provided by the provisions of this Act and subject to condition of reciprocity, or when such a communication is envisaged by an international treaty (direct communication).*

[67] The Second Additional Protocol was ratified and brought into force subsequent to the on-site visit. According to the Council of Europe website, its ratification took place on 28th March 2007 and it entered into force on 1st July 2007.

[68] http://www.usud.hr/default.aspx?Show=ustav_republike_hrvatske&Lang=en

774. It appears that the language of Art. 6(4) MLA Act ("*may directly address ... the foreign judicial authority*") covers only the sending of MLA requests by the term "direct communication". It appears that there is no similar provision which would allow for the direct reception of such requests – including the competence to autonomously decide upon the given request without asking the Ministry of Justice for prior permission; according to para (5) MLA Act a copy of the request would be communicated to the ministry anyway. The Croatian authorities, while conceding the wording of para (4) is confusing, confirmed that this provision is commonly accepted as if it covered both the sending and reception of MLA requests and it poses no obstacles in practice when it comes to the direct reception of foreign requests. This interpretation appears to be supported by para (7) which envisages, in cases of direct communication under para (4), both transmission and reception of requests.

775. Certainly, this issue would not affect direct communication between judicial authorities where it is provided by an international treaty (e.g. the ETS 141 Strasbourg Convention) or, at least, a bilateral agreement. The representatives of the Ministry of Justice explained that a bilateral agreement is a "minimum condition" for direct communication between domestic judicial authorities and their foreign counterparts. Consequently, it seems that providing assistance on the mere basis of Art. 17 MLA Act (expectation of reciprocity) is not envisaged.

776. Direct communication may also be provided by specific domestic legislation, a good example of which is the Law on USKOK where Art. 15a(3) authorizes the said prosecutorial body to receive foreign requests for mutual legal assistance in proceedings regarding criminal offences falling under the competence of USKOK (subpara 3) and, specifically, foreign requests for undertaking special investigative measures (subpara 1) even if the direct sending of such requests to foreign counterparts is not regulated accordingly (presumably because it is provided by the MLA Act anyway, as discussed above).

777. According to Art. 6(6) of the MLA Act, requests for mutual legal assistance may be transmitted and received through the INTERPOL in urgent cases and, pursuant to para (7), specifically in cases of direct communication between judicial authorities.

778. Spontaneous exchange of information is expressly provided by Art. 18 of the MLA Act. According to this provision *"domestic authorities may, without prior request, forward to the competent foreign authorities information obtained within the framework of their own investigations which relate to criminal offences (...) when they consider that the disclosure of such information might assist the receiving state in initiating or carrying out investigations or court proceedings or might lead to a request for mutual legal assistance by that state."* Such information must be forwarded through the Ministry of Justice and domestic authorities are required to seek feedback from the foreign counterparts on any action undertaken.

779. The content and form of a request is governed by Art. 8 MLA Act unless provided otherwise by an international treaty. Accordingly, the Croatian authorities may commence the legal assistance procedure on the basis of a written request by a foreign authority. Such a request may also be transmitted via "*electronic or some other telecommunications means which provide written record"* in which case the original request must be submitted subsequently (Art. 8[2]). The MLA Act does not provide for the possibility of making oral requests with subsequent written confirmation.

780. Croatia is able to provide a wide range of mutual legal assistance including, pursuant to Art. 3(1)1 of the MLA Act, "*procuring and transmitting articles to be produced in evidence, service of writs and records of judicial verdicts, appearance before the court of witnesses for testimony and other acts necessary to carry out the court proceedings*". Considering that, as it was discussed above, the provisions of the Criminal Procedure Act and the Law on USKOK can also be applied

in proceedings conducted for the execution of a letter rogatory, it is beyond question that the powers of competent authorities required under Recommendation 28 are generally available for use in response to requests for mutual legal assistance.

781. Requests are executed in accordance with national procedures and those stipulated in international treaties. Nevertheless, domestic judicial authorities are required to comply with any formalities and procedures expressly indicated in the request as necessary, pursuant to the law of the requesting state (Art. 10).

782. As far as mutual legal assistance is concerned, the MLA Act contains no rules that would require dual criminality. All what is required in this context is, according to Art. 1(2) that assistance should only be provided "*in respect of criminal acts the punishment of which, at the time of the request for assistance, falls within the jurisdiction of the judicial authorities of the requesting state"* apparently regardless of whether such an act would be punishable under Croatian criminal law. The evaluators were not informed of any further provision in Croatian law that would make mutual legal assistance subject to unreasonable, disproportionate or unduly restrictive conditions – on the contrary, affording such assistance "in the widest sense" is a key principle of the law (Art. 4).

783. In relation to the implementation of the 1990 Strasbourg Convention, the Croatian authorities emphasized in their Replies to the MEQ that "*the Republic of Croatia reserved its right regarding the principle of dual punishability*". For the sake of completeness, evaluators verified this information and found that Croatia had apparently made no reservation to the said Convention – in fact, there was only a single declaration concerning that the Ministry of Interior would be designated as the central authority according to Art. 23(1) of the said Convention.

784. Criterion 36.4 requires that a request for mutual legal assistance should not be refused on the sole ground that the offence is also considered to involve fiscal matters. In this context, Art. 12 of the MLA Act provides as follows:

> *(1) Domestic competent authority may refuse the request for mutual legal assistance: […]*
> *2. if the request concerns a fiscal offence […]*
> *(3) Request for mutual legal assistance concerning the fiscal offence referred to in paragraph 1 point 2 of this Article shall not be refused solely based on the grounds it concerns an offence which is considered to be a fiscal offence pursuant to domestic law.*

The language of Art. 12(3) is in line with Criterion 36.4. No examples of refusing a foreign request on this ground have been observed in practice.

785. In the course of execution of foreign requests, issues of secrecy or confidentiality requirements on financial institutions of DNFBP do not appear to present any particular obstacles. Since there is no specific legislation concerning this issue, the evaluators presume that the relevant provisions applicable in domestic cases would be applied accordingly: that is, among others, Art. 99(2)2 of the Banking Law (NN – 84/2002), which stipulates

> *The obligation to guard banking secret shall not apply in the following circumstances: […]*
> *2) if the disclosure of confidential data is necessary to collect and establish the facts in criminal proceedings and preliminary proceedings, and requested or ordered in writing by the competent court.*

Also Art. 234 para (1)-(4) of the Criminal Procedure Act seem to contain provisions which might be applicable in this context.

786. Execution of mutual legal assistance requests in a timely way and without undue delays is provided by Art. 10(2) MLA Act which prescribes that domestic judicial authorities should

execute the foreign requests "*without delay, taking into account procedural deadlines, as well as other specially determined deadlines explained in the request*".

787. In the context whether Croatia has considered devising and applying any specific mechanism for determining the best venue for prosecution in cases that are subject to prosecution in more than one country, the Croatian authorities referred to Chapter IV. of the MLA Act that deals with taking over and surrendering of criminal proceedings.

Additional element

788. described in the text above.

Statistics

789. Croatian authorities could present to the evaluators only very rough figures concerning mutual assistance requests made or received but this information cannot be regarded as statistics. In fact, evaluators were informed by the Ministry of Justice that as far as mutual legal assistance issues are concerned in general, there are no comprehensive statistics maintained by any authority, let alone statistical data relating specifically to money laundering or terrorist financing.

790. The only statistical figure the evaluators were given is that the State Attorney's Office and USKOK had already delivered 15 requests for legal assistance to their foreign counterparts – this information was, however, corrected on-site to 15 requests until the end of 2005 and 3 additional ones sent up to the time of the visit. All of these requests were said to be submitted under Art. 24 of the 1990 Strasbourg Convention. Nevertheless, the evaluators found no detailed statistics as to exactly when those 15 requests were transmitted except that 9 of them must have already been sent by the time of the 2004 Progress Report. Neither was given any statistical information on similar foreign requests received.

Recommendation 38 - Confiscation / Freezing

791. Criterion 38.1 requires that there should be appropriate laws and procedures to provide an effective and timely response to mutual legal assistance requests by foreign countries related to the identification, freezing, seizure, or confiscation of laundered property or proceeds from, as well as instrumentalities used or intended for use in the commission of any money laundering, terrorist financing or other predicate offences. According to Criterion 38.2, these requirements should also be met where the request relates to property of corresponding value.

792. As far as confiscation is concerned, there are no detailed articles in the MLA Act to regulate the recognition and enforcement of foreign confiscation orders – at least, not in the sense the taking over and enforcement of foreign verdicts. Chapter V of the MLA Act refers to the enforcement of sanctions imposed by a final verdict of a foreign court.

793. The evaluation team was trying to establish which provisions in the Croatian legal framework could deal with this issue and the provisions more likely to be applicable in this respect are Art. 28 and 29 MLA Act which can be found under the sub-title "Treatment of Temporarily Seized Articles". Pursuant to Art. 28(1) MLA Act, "*articles, documents or monetary gain, which have been temporarily seized to be presented as evidence* (…) *shall be made available to a foreign judicial authority upon its request."* Obviously, this provision can only be applied as far as the respective items are requested by a foreign authority merely for the purpose of being used as evidence. In addition, they have to be returned after the completion of the foreign proceedings "*should a third person who acquired the right in good faith, the state authority or the injured*

party domiciled in the Republic of Croatia claim his/her right" in those items (para 2). As a consequence, Art. 28 appears not to cover the requirements of criterion 38.1. Art. 29(1) of the MLA Act, on the other hand, provides that "*articles or monetary gain, which have been temporarily seized for security purposes may be delivered to a foreign judicial authority, upon its request (...) for the purpose of seizure or return to an authorised person.*" According to paragraph (2) the term "articles and monetary gain" encompasses, among others,

- articles used to commit the criminal offence,
- products of the criminal offence or their counter-value,
- gain resulting from the criminal offence or their counter-value.

It comes from the language of this provision that "delivery" (and not "making available" as in Art. 28) implies a definite act, that is, with no reservation as to the returning of the items (as it is foreseen by Art. 28). One of the purposes of delivery is "seizure" which, in this context, obviously means "confiscation" (that is, not a provisional measure) as the respective Croatian term is "*oduzimanje*" which is, as discussed earlier, used for "confiscation" in the Criminal Code. According to Art. 29 para (2) of the MLA Act, instrumentalities and proceeds of crime are clearly covered. In line with Criterion 38.2, proceeds can be delivered even if the foreign request relates to property of corresponding value.

794. In this regard, the Croatian authorities advised that Croatia is a full party to the Strasbourg Convention and has advised that they enforce foreign confiscation orders through the permissible route under the Convention of submitting the case to a Croatian court for enforcement. Foreign confiscation orders are treated as requests for mutual legal assistance, and are enforced pursuant to domestic law (including the MLA Act, in particular Art. 28 and 29, and the Criminal Procedure Act).

795. Instrumentalities are defined as "articles" (a synonym to "objects" used by Art. 80 of the Criminal Code in this respect – the Croatian word "*predmeti*" is the same). As far as "proceeds" and the possible coverage of this term are concerned, the term used in the MLA Act that is, "gain resulting from criminal offence" is the same as used by the Criminal Code and Criminal Procedure Act in domestic relations[69]; reference is therefore made to the respective part of this report for further description and analysis.

796. As far as the delivery of laundered property is concerned, there is no direct reference in the articles quoted above. Such property may nevertheless be confiscated and therefore subject to delivery under Art. 29(1) if considered as proceeds of the underlying predicate offence (see argumentation related to Art. 279[6] of the Criminal Code).

797. Para (3) provides that "delivery may follow in any stage of foreign criminal proceedings, and it may only be executed based on a final and enforceable decision of a foreign judicial authority". Considering that, in the context of the MLA Act, a "foreign judicial authority" means "*foreign courts and other judicial authorities having jurisdiction, pursuant to the law of the foreign state, to act in criminal matters, including the foreign administrative authorities having jurisdiction in misdemeanour proceedings subject to conditions referred to in Article 1 paragraph 3 of this Act*" (Art. 2[5]) this final and enforceable decision does not even require the form of a court order.

798. It is worth noting that the application of Art. 29 MLA Act requires that the respective articles or proceeds be previously "*temporarily seized for security purposes"*. The term „temporary seizure", as already discussed in relation to Art. 233 of the Criminal Procedure Act refers, in fact, to what one would usually define simply as "seizure".

[69] It is „imovinski korist" in the Croatian original which is translated as „pecuniary gain" in the CC and the CPA while simply as „gain" in the MLA Act. This issue has already been discussed in detail, together with grammatical argumentation, in previous parts of the report.

799. However, in this context, Art. 23 of the MLA Act provides that „*upon a request of a foreign judicial authority, the competent domestic judicial authority may issue a decision ordering provisional measures for securing the evidence, protection of endangered legal interests and other measures in compliance with the domestic law*". This provision appears to be flexible enough, in accordance with the connecting clause in Art. 81, to cover any temporary measures that can otherwise be applied in domestic cases, including not only those provided for by the Criminal Procedure Act but, pursuant to Art 81, also those regulated by the Law on USKOK (provided that the respective foreign request is executed by this authority). Apparently for the sake of flexibility, Art. 24 goes even further providing that domestic judicial authorities may, upon request of a foreign authority, order measures "*temporarily restricting certain constitutional rights, subject to conditions provided by the Criminal Procedure Act*". Certainly, on the face of it, the language of this provision is impressive; nevertheless it appears to be interpretable to provide full authorization of any provisional measures regulated in the Criminal Procedure Act.

800. Criterion 38.3 on having arrangements for coordinating seizure and confiscation actions with other countries does not appear to have been formally addressed. Evaluators were informed that confiscated property, as a main rule, accrues to the State Budget and no consideration has been given to the establishment of a separate asset forfeiture fund. In these circumstances, Criteria 38.4 is not fully met. Mechanisms for sharing confiscated assets with other countries when confiscation is a result of coordinated law enforcement actions are not provided for either (Criterion 38.5).

Additional element

801. There are no provisions in Croatian law that would allow for the recognition and enforcement of foreign non-criminal confiscation orders in Croatia.

Terrorist financing (SR.V)

802. As for terrorist financing, there is no exception provided for the application of the above mentioned rules. In so far as terrorist financing is, at least, considered to be an offence under Croatian law, the normal mutual legal assistance rules would apply to requests of foreign states. In the apparent lack of dual criminality requirements, the problems explained in respect of the current domestic offences intended to cover financing of terrorism (Art. 187a and 153 of the Criminal Code) are not likely to limit mutual assistance.

6.3.2 Recommendations and comments

803. Apparently, Croatia has a legal framework which complies with some aspects of the requirements of Recommendations 36 to 38 and SR.V, though the effectiveness of the system could not be assessed in the complete lack of statistical figures. Complete, detailed and precise statistics must therefore be kept on AML/CFT mutual legal assistance issues, which will also assist in strategic analysis as well as identifying efficiency issues / timing and fulfillment of requests in whole or in part.

804. Arrangements for coordinating seizure and confiscation action with other countries should be established. Consideration should also be given to establishment of an asset forfeiture fund as well as to sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action.

6.3.3 Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**Largely Compliant**	• The definitional problems with the domestic offences intended to cover the financing of terrorism would severely limit mutual legal assistance based on dual criminality.
R.37	**Compliant**	
R.38	**Largely Compliant**	• In the complete absence of statistics it is not possible to determine whether and to what extent Croatia provides effective and timely response to foreign requests concerning freezing, seizure or confiscation. • Croatia has not considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes. • There are no arrangements for coordinating seizure or confiscating actions with other countries. • Croatia has not considered authorising the sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action.
SR.V	**Partially Compliant**	• The definitional problems with the domestic offences intended to cover the financing of terrorism would severely limit mutual legal assistance based on dual criminality.

6.4 Extradition (R. 37 and 39, SR.V)

6.4.1 Description and analysis

805. Croatia ratified the European Convention on Extradition (ETS No. 024) together with both of its Additional Protocols (ETS No. 086 and 098) which were ratified and also entered into force in 1995. The domestic legislation by which these are implemented is the above mentioned MLA Act, in which extradition rules are regulated in Chapter III.

806. According to the MLA Act, foreigners may be extradited for the purpose of criminal proceedings if, as a general rule, the act constituting the offence meets dual criminality requirements, that is, it constitutes "*a criminal offence in both domestic law and the law of the state in which it was committed*" (Art. 35[1]3) and is punishable under the Croatian law by a prison sentence for a maximum period of at least one year (Art. 34[2]). If the request concerns the extradition of foreigners for the purpose of enforcement of criminal sanctions, extradition may be granted when a final verdict has been issued for imprisonment or a security measure implying detention, for a period of at least four months (Art. 34[3]). Exceptionally, extradition may also be granted in cases, where the conditions concerning the duration of penalty are not met, if the request for extradition covers several separate criminal offences out of which some fail to meet these conditions or if the offences concern only pecuniary fines (Art. 34[5]). In line with criterion 37.2, Article 34(1) provides for a flexible interpretation of dual criminality where it is only required that the domestic law incorporate "*corresponding essential features of the relevant offence*" for which extradition is requested. Consequently, not only money laundering is an extraditable offence but, to the very limited extent it is covered by Articles 187a and 153 of the Criminal Code, also the financing of terrorism – nevertheless, one cannot tell in advance how widely the Croatian courts will interpret the notion of "corresponding essential features" and

therefore deficiencies in the criminalization of terrorist financing may pose a significant obstacle to executing extradition requests related to such offences.

807. The Constitution of Croatia precludes the extradition of nationals, prescribing that "*no Croatian citizen shall be exiled from the Republic of Croatia or deprived of citizenship, nor extradited to another state*" (Art. 9). Accordingly, Art. 32(1) of the MLA Act provides that *"a Croatian national may not be extradited for criminal prosecution or enforcement of a prison sentence in a foreign state(...)"* which is reiterated in Art. 35(1) among the grounds upon which extradition shall be refused.

808. Criterion 39.2(b) requires that a country that does not extradite its own nationals solely on the grounds of nationality, should, at the request of the country seeking extradition, submit the case without undue delay to its competent authorities for the purpose of prosecution of the offences set forth in the request. Fully in line with this requirement, Art. 62 of the MLA Act provides as follows:

> *"Upon request of a foreign judicial authority, the domestic judicial authority may take over carrying out criminal proceedings for a criminal offence committed abroad:*
> *1. when extradition is not allowed,*
> *2. if a foreign judicial authority stated that it shall not further criminally prosecute the prosecuted person after the final decision of the domestic judicial authority."*

809. In such cases, the offence committed abroad "*shall be tried as though committed in the Republic of Croatia*" (Art. 64 para 1) that is, in the same manner as in the case of any other offence under the domestic law, with two exceptions: the rules of the respective foreign law (i.e. the foreign criminal substantive law) shall be applied instead of Croatian law "*when it is more lenient for the prosecuted person*" (para 2) and that trial *in absentia* is not allowed (para 3).

810. Criterion 39.3 on the procedural and evidentiary aspects of taking over criminal proceedings appears to be adequately met by Art. 68 that recognizes each investigative action previously undertaken by a foreign judicial authority pursuant to its respective law as equal to a corresponding investigative action pursuant to Croatian law.

811. Reasons that render extradition inadmissible are listed in Art. 35(1) including, apart from the lack of dual criminality and the exemption of nationals referred to already,

- lapse of time (subpara 4),
- *ne bis in idem* (subpara 5),
- where the identity of the person to be extradited has not been determined (subpara 6),
- the offence, for which the extradition is claimed, was committed either on the territory of the Republic of Croatia, or against Croatia or its national[70] (subpara 2)
- and, particularly, subpara 7 which does not allow for extradition in case there is "*no sufficient evidence for well grounded suspicion*[71] *that the foreigner whose extradition is claimed has committed a particular criminal offence or that there exists a final verdict*".

812. The language of subpara 7 implies that the competent Croatian court shall, at least to some extent, weigh the available evidence before deciding on the admissibility of the extradition as the law requires a decision on whether or not the evidence, supposedly provided by the requesting

[70] That is, a foreigner prosecuted/convicted abroad for a criminal act (s)he had committed outside Croatia, cannot be extradited if the person injured by the respective offence is a Croatian national, regardless whether or not he actually resides in Croatia which is, in the evaluators' view, a rather unnecessary restriction (even if this very rule is unlikely to be applied in money laundering or terrorist financing relations).

[71] The first version of this provision had the wording "*reasonable doubt*" but the Croatian authorities explained that "*well grounded suspicion*" is a better translation.

state, is sufficient to establish grounds for suspicion. Art. 43 para (1) lit 3 of the law requires the request for extradition to be supported by, inter alia, "*evidence for reasonable doubt*" (i.e. "reasonable suspicion") while this requirement remains somewhat unclear, considering that the law does not specify what sort of evidence may be necessary and exactly what procedure for deliberation would be carried out. Subsequent to the on-site visit, the evaluators were, however, informed by the Croatian authorities that Art. 35(7) would only be applied in extraordinary cases where there are obvious doubts that the person whose extradition is sought was able to commit the criminal offence with which (s)he is charged (e.g. if there is strong evidence suggesting the person could not have been at the scene of the crime or might not have committed the crime because of his/her physical disability etc.) In such cases, the requesting state would be asked to provide additional information; according to Croatian authorities, there has not been a single extradition request refused on the ground of Art. 35(7).

813. Contrary to mutual legal evaluation which can be refused on the ground (though not on the sole ground) that the request concerns a fiscal offence, there is not a similar exception to extradition.

814. Article 34 para (5) states that extradition shall be allowed only "*if the requesting state guarantees that it would grant the request of the Republic of Croatia of the same kind*". Nevertheless, with regard to Art. 1 para (1) on the superiority of international treaties, such a guarantee of reciprocity is necessary only as far as there is not a treaty or a bilateral agreement by which both Croatia and the requesting state are bound.

815. To avoid undue delays and in line with Criterion 39.4, time limits are envisaged at each stage of the procedure. Relevant provisions can be found in Art. 48, 56 and 59 of the MLA Act.

Statistics

816. The Croatian authorities provided the following data concerning statistics on extradition:

Extradition			
year	**cases (= Persons) including requests of foreign countries and also from Croatia**	**Persons extradited from Croatia**	**Refusals**
2004	64	20	no data provided
2005	67	22	3*
2006	125	33	1**
2007	128	41	0

Explanatory note:
* 1 conflicting request (2 countries at the same time); 1 lapse of time; Croatian citizenship.
** lapse of time.

Additional elements

817. In compliance with the additional element 39.5, the AML Law provides for a simplified procedure of extradition of consenting persons who waive formal extradition proceedings. Rules of this procedure can be found under Art. 54.

6.4.2 Recommendations and comments

818. Though money laundering and, to the very limited extent it is covered by Articles 187a and 153 of the Criminal Code, the financing of terrorism are extraditable offences and the law, at least in principle, allows for a wide interpretation of dual criminality, deficiencies in the criminalization of terrorist financing may nevertheless pose a significant obstacle to executing extradition requests related to such offences.

819. Extradition shall be – amongst others - only allowed "*if the requesting state guarantees that it would grant the request of the Republic of Croatia of the same kind*" (Article 34[5] MLA Act). This requirement may in certain cases, where no international treaty or a bilateral agreement exist, limit the possibilities to grant extradition. Nevertheless, with regard to Art. 1(1) on the superiority of international treaties, such a guarantee of reciprocity is necessary only as far as there is not a treaty or a bilateral agreement by which both Croatia and the requesting state are bound.

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	**Largely Compliant**	• Because financing of terrorism is insufficiently, if at all, criminalized in the current domestic legislation, the requirement of dual criminality for extradition would mean that not all kinds of terrorist financing offences would be extraditable.
R.39	**Largely Compliant**	• In the absence of proper statistics it is not possible to determine whether extradition requests are handled without undue delay.
SR.V	**Partially Compliant**	• The lack of a comprehensive domestic incrimination of financing of terrorism is a serious obstacle to extradition possibilities.

6.5 Other Forms of International Co-operation (R. 40 and SR.V)

6.5.1 Description and analysis

820. Criterion 40.8 stipulates that requests for cooperation should not be refused on the grounds of laws that impose secrecy or confidentiality requirements on DNFBP, except where legal privilege or legal professional secrecy applies. The AML Law does not contain a provision that the AMLD would have to refuse requests for cooperation on grounds of secrecy laws or confidentiality requirements (other than where legal professional privilege applies) as long as reciprocity applies, which is the main rule concerning international exchange of information. Article 15 of the AML Law stipulates that informing the AMLD or other proper competent authorities in accordance with this Law will not be considered a violation of banking or other secrets, and Article 9 of the same law states that when a lawyer or a lawyer company represents the client in judicial proceeding or in an administrative procedure, they are not obliged to inform the AMLD whilst conducting their business, perform financial transaction or other transaction with assets, if there is a suspicion of money laundering. However, the evaluators heard from the lawyer interviewed during the on-site visit that the laws regulating lawyers, including the AML Law, are not harmonized. Therefore, it is not clear to what extent legal privilege could prevent AML/CFT information being passed to the AMLD.

821. In addition to the formal Mutual legal assistance and extradition requests based on International Conventions, Croatia had concluded a number of bilateral agreements with a large number of countries. These bilateral agreements include provisions for exchange of information.

822. Police authorities may exchange directly information with police authorities of foreign countries using Europol or Interpol channels. Furthermore, Croatia has signed bilateral agreements on international police co-operation with 23 states (Albania, "the former Yugoslav Republic of Macedonia", Belgium, Moldova, Bosnia and Herzegovina, Romania, Bulgaria, Slovakia, Czech Republic, Slovenia, Chile, Serbia and Montenegro, Egypt, Sri Lanka, Greece, Sweden, India, Turkey, Italy, the United Kingdom of Great Britain and Northern Ireland, Latvia, Ukraine, Hungary).

823. The AMLD can exchange information with its counterparts irrespective of their nature (administrative, police, judicial). This exchange of information is made upon request and spontaneously. The AMLD uses the rules and terms prepared by the Egmont Group (which includes the usage of the Egmont Secure Web System). The AMLD can also exchange information with FIUs which are not yet members of the Egmont Group. The AMLD does not need a Memorandum of Understanding as a requirement for exchange of information. Art. 14 of the AML Law entitles the AMLD to submit information which it gathered in accordance with the AML Law to foreign bodies and (national and international) organisations which deal with the prevention of money laundering; a prerequisite for the exchange of information between the FIU of Croatia and its counterparts of other countries is the principle of reciprocity. According to the AML Law, the Croatian FIU would not refuse to assist solely on the ground that the request is considered to involve fiscal matters.

824. The AMLD is authorized to conduct inquiries on behalf of foreign counterparts and can provide information from its own databases and databases of other authorities such as law enforcement databases, public databases, administrative databases and public available databases. If it should be deemed necessary in the course of inquiries with the foreign FIU, the AMLD interprets Art. 10 of the AML Law in such a way that it could request a financial institution also in these situations to postpone a transaction up to 72 hours.

825. Before the foreign FIU wants to disseminate the submitted information to any other foreign authority, e.g. to law enforcement authorities for further investigation, it needs the consent of the AMLD.

826. However, as noted already above (for details see Section 3.7), one of the main deficiencies is again that the AML Law does not sufficiently address the issue of terrorist financing. As a consequence the evaluators have doubts whether the AMLD, and particularly its Art. 14, provides a sufficient legal basis for the AMLD to provide information to its foreign counterparts when it comes to mutual legal assistance in the area of terrorist financing.

827. As some countries are demanding - according to their internal legislation - a Memorandum of Understanding as a requirement for exchange of information, the AMLD signed the following Memoranda of Understanding in order to improve cooperation and formalize the relations:

Year	Country
1999	Belgium
	Slovenia
	Czech Republic
2000	Italy
2001	Lithuania
	Panama
2002	Bulgaria
	Romania
	Israel
	"the former Yugoslav Republic of Macedonia"
	Lebanon
2003	Australia
	Liechtenstein
2004	Albania
2005	Bosnia and Herzegovina
	Montenegro
	Poland
	Serbia
2006	Ukraine
	Georgia

At the time of the on-site visit, an MoU with Moldova was pending for signature.

828. The AMLD also has good co-operation on a regional level: it cooperates and exchanges data with similar institutions in Slovenia, Albania, Bosnia and Herzegovina, Montenegro, "the former Yugoslav Republic of Macedonia" and Serbia without any problems. It participates in periodical multilateral working meetings: October 2005 in Banja Luka (Bosnia and Herzegovina) and in April 2006 in Belgrade (Serbia).

829. The evaluators received some information from countries which were requested to provide information to the assessors on the effectiveness on international co-operation. One FIU informed that the response time in the 2 cases they had with Croatia was approx. 5 months and that the quality of replies were in both cases very good. Two other countries also noted that there was a good ongoing co-operation respectively that there were no difficulties in co-operation.

830. Cooperation of Croatian financial supervisors with foreign financial supervisors is regulated by sectoral laws: e.g. Art. 18 para 2 of the Act on the Croatian Financial Services Supervisory Agency concerning HANFA. For the Banking Supervision it is Article 57 of the Banking Act,

which requires to conclude a Memorandum of Understanding between the CNB and the relevant supervisory authority to define the principles and the scope of information exchange (para 5). As a consequence, the Croatian National Bank has concluded bilateral Memoranda of Understanding with 4 foreign banking sector supervisory authorities: Hungarian Financial Supervisory Authority (December 2005), Austrian Financial Market Authority (June 2005), Banking Agency of Federation of Bosnia and Herzegovina (November 2003) and a Memorandum of Understanding with Italian Banca d'Italia. Two of them (the MoUs with Austria and Hungary) address explicitly the issue of prevention of money laundering, while the remaining two (Bosnia and Herzegovina; Italy), have no particular provisions governing the prevention of money laundering. However, since the latter two MoUs regulate cooperation between supervisory bodies in the area of supervision, this cooperation also encompasses the exchange of information with the aim of providing support and assistance in their respective supervisory roles. With the supervision of the systems in place in banks for the prevention of money laundering and financing of terrorism being one of those roles, all the general provisions of these MoUs also apply to cooperation in the area of prevention of money laundering and financing of terrorism. The CNB provided the evaluation team with figures concerning this cooperation activity. However, no supervisory authority keeps statistics covering this issue generally.

831. HANFA endorsed the MoUs which were signed by the previous securities regulator (Croatian Securities Commission) with the following foreign authority bodies: Securities Commission of the Republic of Serbia, Macedonian Securities Commission, Capital Markets Board of Turkey, Albanian Securities Commission, Bulgarian Financial Supervision Commission, Securities Commission of the Federation of Bosnia and Herzegovina, Securities Commission of Republika Srpska, Romanian National Securities Commission, Securities Commission of the Republic of Montenegro and Austrian Securities Authority. HANFA also endorsed 2 MoUs which were signed by the previous insurance regulator (with Slovenian Insurance Supervisory Authority and Ministry of Finance – Anti-money laundering department) and pension insurance regulator (with the Macedonian Pension Funds Supervisory Agency and Ministry of Finance – Anti-money laundering department)[72].

6.5.2 Recommendation and comments

832. All supervisory authorities should keep comprehensive statistical information on exchange of information with foreign counterparts (including spontaneous exchange of information).

833. Though it seems to be so far no problem in practice, Croatian authorities should amend the AML Law with regard to the prevention of terrorist financing, particularly amending the relevant provisions and make it absolutely clear that the prevention of terrorist financing is covered.

6.5.3 Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.40	**LC**	• The AML Law does not provide a satisfactorily legal basis to cooperate in terrorist financing cases.
SR.V	**LC**	• The AML Law insufficiently addresses financing of terrorism which may hamper its applicability concerning mutual legal assistance in relation to financing of terrorism offences.

[72] At the end of 2007, HANFA signed an MoU with the Hungarian Financial Supervisory authority.

7 OTHER ISSUES

7.1 Resources and Statistics

834. ***Remark:*** *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.*

Recommendation 30

835. The AMLD has not sufficient staff to cover its tasks satisfactorily; e.g. the AML Law requires the AMLD to exercise supervision over the reporting institutions but due to its limited resources the AMLD can only check the transactions received from the reporting entities, the minutes from other supervisory authorities and the internal regulations of banks. Furthermore, the AMLD is also not able to provide adequate and appropriate feedback to the reporting entities. The training for prosecutors, judges and employees should be improved.

7.1.1 Resources - Compliance with Recommendation 30

	Rating	Summary of factors underlying rating
R.30	**LC**	• The AMLD has not sufficient staff to cover all its tasks satisfactorily. • The fast turnover of staff causes deficiencies in the capabilities of the AMLD. • Insufficient staff and training for both prosecutors and judges. • Neither the AMLD nor the Department for Financial System has sufficient resources to exercise supervision in a satisfying manner.

Recommendation 32

836. Though the AMLD keeps comprehensive statistics, the other authorities (e.g. prosecutors and judicial authorities) do not keep sufficient statistics. As a consequence, the effectiveness of Croatia's AML/CFT regime is difficult to measure both for evaluators and the country itself.

7.1.2 Statistics - Compliance with Recommendation 30

	Rating	Summary of factors underlying rating
R.32	**PC**	• No authority keeps comprehensive and detailed statistics containing precise figures of money laundering investigations and prosecutions (particularly in terms of the number of cases) also providing information on the nature of the respective money laundering offences and the predicates involved. • The evaluators were not provided with any kind of statistics for mutual legal assistance issues. • No statistics on the results of the reports disseminated to other institutions (investigations, indictments, convictions, persons involved, cases). • No comprehensive statistics on information exchange by supervisory bodies.

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[73]
Legal systems		

1. Money laundering offence	**PC**	• Some of the legislative provisions need further clarification, particularly:
		  • Precise requirements for extra-territorial offences in respect of dual criminality.
		  • It is unclear if indirect proceeds deriving from property other than money is covered.
		• The scope of the money laundering offence is limited to "banking, financial or other economic operations".
		• Significant backlogs both in general terms and especially in money laundering cases are seriously threatening the effectiveness of the AML system.
		• There have been no convictions or final decisions in any money laundering case since 2003.

2. Money laundering offence Mental element and corporate liability	**LC**	• Significant backlogs both in general terms and especially in money laundering cases are seriously threatening the effectiveness of the AML system. • There have been no convictions or final decisions in any money laundering case since 2003. • No prosecutions or convictions of legal entities for money laundering which raises a concern on effective implementation of corporate criminal liability.
3. Confiscation and provisional measures	**PC**	• The confiscation regime is still far too complicated which may hamper its effective application. • The number of confiscations is too small (there had been no confiscation in money laundering cases during the period under evaluation) which questions the effectiveness of the system. • Confiscation of proceeds appears, at least in terms of procedural rules, only discretionary and the same goes for instrumentalities of money laundering offences. • The general confiscation regime covers indirect

[73] These factors are only required to be set out when the rating is less than Compliant.

		proceeds only in specific cases (i.e. the pecuniary equivalent of ill-gotten money, securities or objects).
		• The specific confiscation regime for money laundering cases does not allow for value confiscation.
		• The general value confiscation regime is
		  • restricted to "money, securities or objects" and does not cover any other sorts of property, like real estate or property rights,
		  • in its amount limited to the pecuniary equivalent of the ill-gotten assets.
		• There is – apart for money laundering cases – no general authority to take steps to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation.
		• A clearer provision for freezing orders *ex parte* or without prior notice would be beneficial.
		• Provisional measures are not taken regularly.

Preventive measures		
4. Secrecy laws consistent with the Recommendations	**LC**	• The AML Law does not seem to provide a clear legal basis to lift bank secrecy for STRs in respect of terrorist financing.

5. Customer due diligence	**NC**	• Anonymous accounts and accounts in fictitious names are only prohibited for certain types of accounts; where it is forbidden it is unclear how many of these accounts existed before 2003 and how many of them were closed afterwards.
		• There is no legal obligation which covers customer identification
		  • when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII;
		  • when the financial institution has doubts about the veracity or adequacy of previously obtained identification data;
		  • when there is a suspicion of terrorist financing.
		• Croatian legislation does not provide for a concept of "beneficial owner" as required by the Methodology.
		• The documents which can be used for verification of identification are not sufficiently determined by Croatian Law.
		• There is no requirement regarding:
		  • the purpose and nature of the business relationship,
		  • ongoing CDD,
		  • enhanced CDD or

		• conducting CDD on existing customers; • The Croatian preventive system does not provide a "risk based approach", requiring financial institutions to perform enhanced CDD measures for higher risk categories of customers, business relationships, transactions and products. • The exemptions from identification which are stipulated by the AML Law and the AML By-law raised concerns.
6. Politically exposed persons	**NC**	Croatia has not implemented any AML/CFT measures concerning the establishment of customer relationships with politically exposed persons (PEPs).
7. Correspondent banking	**NC**	Recommendation 7 is addressed only to a very limited extent (partially criterion 7.1).
8. New technologies and non face-to-face business	**NC**	There is no legal obligation requiring financial institutions to have in place or take measures to prevent the misuse of technological developments in AML/CFT schemes and to address the specific risks associated with non-face to face business relationships or transactions.
9. Third parties and introducers	**N/A**	Recommendation 9 is not applicable to the Croatian AML/CFT system.
10. Record keeping	**LC**	• There is no requirement in law or regulation to keep documents longer than five years if requested by a competent authority. • Apart from the banking sector, the record keeping provisions do not mention collecting or maintaining account files or business correspondence.
11. Unusual transactions	**NC**	• Recommendation 11 has not been implemented.
12. DNFBP – R.5, 6, 8-11	**NC**	• Essential Criterion 5.7 is not covered by law, regulation or other enforceable means. • Essential Criteria 5.6, 5.8 and 5.17 are not implemented across the board. • Recommendations 5-11 do not apply to lawyers, notaries and other independent legal professions when they carry out the specified transactions. • There is no authority for competent authorities to request the reporting institutions to keep all necessary records on transaction longer than five years and there is no mention of collecting or maintaining account files or business correspondence. • Recommendations 6, 8 and 9 are not covered by law nor are they implemented. • For casinos, the documents which are necessary for verification of identification are not determined. • Casinos are not obliged to apply CDD measures when their clients engage in financial transactions equal or above 3 000 EUR/USD. • there is no sound legal basis to oblige lawyers,

		accountants and public notaries to identify their clients. • There is no law which obliges accountants to perform CDD measures.
13. Suspicious transaction reporting	**PC**	• There is no clear obligation to report STRs on terrorism financing. • Attempted transactions are only partially and in an indirect manner covered. • The STR reporting regime contains exemptions for certain transactions, regardless whether there is a suspicion for terrorist financing. • Low numbers of STRs outside the banking sector raises issues of effectiveness of implementation.
14. Protection and no tipping-off	**NC**	• There is no protection from other sorts of criminal charges or civil lawsuits than from liability for breach of banking secrecy rules. • It is not clear if the safe harbour provisions cover also good faith reporting and when no illegal activity actually occurred. • There is no clear legal basis for protection in the case of reporting a suspicion of terrorist financing. • There is no direct and explicit sanctioning for "tipping off".
15. Internal controls, compliance and audit	**PC**	• Clear provision should be made for compliance officers to be designated at management level. • There is no general legal requirement for financial institutions to maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls. • There are no general formal obligations imposed on financial institutions regarding screening procedures to ensure high standards when hiring employees.

16. DNFBP – R.13-15 & 21	**NC**	• There is no obligation to file an STR when there is a reason to suspect financing of terrorism.
		• The number of reports from DNFBP is very small and indicates a lack of awareness and understanding from this sector. There are misunderstandings and uncertainties in various areas, particularly:
		  • It was unclear to DNFBP that the 200 000 Kuna threshold does not exempt reporting entities from submitting STRs.
		  • The circumstances under which lawyers and notaries are exempted from reporting suspicious transactions because of legal professional privilege/secrecy are not sufficiently clear.
		• The safe harbour provisions for lawyers and notaries to protect them from criminal or civil liability for reporting their suspicions in good faith are not sufficiently clear.
		• For lawyers, public notaries and accountants no

		specific "tipping off" provisions exist. • The head of compliance is not required to be at the management level. • There are no requirements for an independent audit function to test compliance and there are no screening measures in place for the employees of heads of compliance or "responsible persons." • Reporting institutions do not seem to give special attention to transactions or business relationships with individuals from countries which do not sufficiently apply the FATF Recommendations, nor does it appear that the reporting institutions have been advised of which countries have weak AML/CFT systems.
17. Sanctions	**PC**	• The AML Law does not provide a clear legal basis for sanctions concerning infringements in the context of terrorist financing. • The AML law does not provide a sanctioning regime for directors or senior management. Also the sectoral laws seem to have no such provisions with regard to violations of AML/CFT obligations. • The majority of AML/CFT infringements can only be sanctioned by the AML Law and can only result in fines; a comprehensive sanctioning regime providing for proportionate and dissuasive sanctions is missing.
18. Shell banks	**PC**	• There is no legally binding prohibition on financial institutions to enter or continue correspondent banking relationships with shell banks nor is there any obligation on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
19. Other forms of reporting	**C**	
20. Other DNFBP and secure transaction techniques	**PC**	• No analysis has been undertaken which non-financial businesses and professions (other than DNFBP) are at risk of being misused for money laundering or terrorist financing. • There seems to be no strategy on the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
21. Special attention for higher risk countries	**NC**	• In the case of all transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, there is no specific requirement on the financial institutions to examine the background and purpose of such transactions and set out their findings in writing and to make them available to the competent authorities. • There are no mechanisms in place to apply counter measures.

22. Foreign branches and subsidiaries	**PC**	• The current provision requiring financial institutions to apply AML/CFT measures to foreign subsidiaries consistent with home country requirements is not fully operational. • There is no provision that requires financial institutions to inform their home country supervisor when a foreign subsidiary or branch is unable to observe appropriate AML/CFT measures.
23. Regulation, supervision and monitoring	**PC**	• There is no clear legal basis to cover CFT in the course of supervision. • Not for all types of financial institutions exists legislation to prevent all criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function. • HANFA in the course of its supervision focuses more on the detection of non-reported suspicious transactions than evaluating the effectiveness of the whole anti-money laundering system of the obliged entities. • No system in place of registering and/or licensing MVT services. • There is no special licensing or registration regime for companies issuing credit/debit cards.
24. DNFBP - Regulation, supervision and monitoring	**NC**	• Croatia does not have an effective system for monitoring and ensuring compliance with AML/CFT requirements among DNFBP. • Apart from casinos, the Tax Administration is not supervising DNFBP on AML/CFT issues. • The AMLD is the only entity able to sanction reporting institutions for not complying with AML/CFT requirements, and its only available tool is the pecuniary sanction. A broader range of proportionate and appropriate sanctions is missing. • In the absence of statistics about the sanctions implied, there is a reserve on effectiveness.
25. Guidelines and Feedback	**PC**	• Guidance is not issued for general compliance with AML/CFT requirements, only for filing STRs. • Apart from the general feedback to banks, the AMLD does not give general and sufficient feedback to the reporting entities.
Institutional and other measures		
26. The FIU	**LC**	• The AML Law provides only in its Art. 1 a reference to terrorist financing and contains no further provision in this regard. As a result there is no clear competence of the AMLD in this area which could affect its overall efficiency as the national centre for receiving, analysing and disseminating all potential disclosures concerning suspected terrorist financing activities.

		• The suspicious transaction report form of the AMLD relates only to money laundering but not to terrorist financing. • The high rate of turn over of staff could cause difficulties to the efficient work of the FIU.
27. Law enforcement authorities	**LC**	• There have been no convictions or final decisions in any money laundering case since 2003 (effectiveness).
28. Powers of competent authorities	**C**	
29. Supervisors	**LC**	• No general power in the whole financial sector to supervise CFT issues.
30. Resources, integrity and training	**LC**	• The AMLD has not sufficient staff to cover all its tasks satisfactorily. • The fast turnover of staff causes deficiencies in the capabilities of the AMLD. • Insufficient staff and training for both prosecutors and judges. • Neither the AMLD nor the Department for Financial System has sufficient resources to exercise supervision in a satisfying manner.
31. National co-operation	**C**	
32. Statistics	**PC**	• No authority keeps comprehensive and detailed statistics containing precise figures of money laundering investigations and prosecutions (particularly in terms of the number of cases) also providing information on the nature of the respective money laundering offences and the predicates involved. • The evaluators were not provided with any kind of statistics for mutual legal assistance issues. • No statistics on the results of the reports disseminated to other institutions (investigations, indictments, convictions, persons involved, cases). • No comprehensive statistics on information exchange by supervisory bodies.
33. Legal persons – beneficial owners	**PC**	• Croatian law does not require adequate transparency concerning beneficial ownership and control of legal persons.
34. Legal arrangements – beneficial owners	**N/A**	As the Croatian system does not allow to establish a (foreign or domestic) trust, Recommendation 34 is not applicable.
International Co-operation		
35. Conventions	**PC**	**Implementation of the Palermo and Vienna Conventions** • The scope of the money laundering offence is limited to "banking, financial or other economic operations". • It is unclear if indirect proceeds deriving from property other than money is covered.

		Implementation of the Terrorist Financing Convention
		• The present incrimination of terrorist financing appears not wide enough to clearly sanction
		  • the provision or collection of funds for a terrorist organization for any purpose, including legitimate activities
		  • the collection or provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist for any purpose (as above) and
		  • - as far as domestic terrorism is concerned - the collection of funds with the intention or in the knowledge that they should be used in full or in part to carry out terrorist acts as referred to in Art. 2(a) and (b) of the Terrorist Financing Convention, irrespective of whether or not the funds are actually used to (attempt to) carry out a terrorist act.

36. Mutual legal assistance (MLA)	**LC**	• The definitional problems with the domestic offences intended to cover the financing of terrorism would severely limit mutual legal assistance based on dual criminality.
37. Dual criminality	**LC**	• Because financing of terrorism is insufficiently, if at all, criminalized in the current domestic legislation, the requirement of dual criminality for extradition would mean that not all kinds of terrorist financing offences would be extraditable.
38. MLA on confiscation and freezing	**LC**	• In the complete absence of statistics it is not possible to determine whether and to what extent Croatia provides effective and timely response to foreign requests concerning freezing, seizure or confiscation. • Croatia has not considered establishing an asset forfeiture fund into which all or a portion of confiscated property will be deposited and will be used for law enforcement, health, education or other appropriate purposes. • There are no arrangements for coordinating seizure or confiscating actions with other countries. • Croatia has not considered authorising the sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action.
39. Extradition	**LC**	• In the absence of proper statistics it is not possible to determine whether extradition requests are handled without undue delay.
40. Other forms of co-operation	**LC**	• The AML Law does not provide a satisfactorily legal basis to cooperate in terrorist financing cases.
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• Croatia has failed to implement several provisions of the Terrorist Financing Convention, notably an

		autonomous terrorist financing offence. • There is no legal structure for the conversion of designations under S/RES/1267(1999) and its successor resolutions as well as S/RES/1373(2001). • A comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place. • There is no system for effectively communicating action taken by the authorities under the freezing mechanisms to the financial sector and DNFBP.
SR.II Criminalise terrorist financing	**PC**	• Financing of terrorism is only to a very limited extent provided for as an autonomous offence. • The present incrimination of terrorist financing appears not wide enough to clearly sanction • the provision or collection of funds for a terrorist organization for any purpose, including legitimate activities; • the collection or provision of funds with the unlawful intention that they should be used in full or in part by an individual terrorist for any purpose (as above) and • - as far as domestic terrorism is concerned - the collection of funds with the intention or in the knowledge that they should be used in full or in part to carry out terrorist acts as referred to in Art. 2(a) and (b) of the Terrorist Financing Convention, irrespective of whether or not the funds are actually used to (attempt to) carry out a terrorist act.
SR.III Freeze and confiscate terrorist assets	**NC**	• A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. is not yet in place.
SR.IV Suspicious transaction reporting	**NC**	• There is no clear obligation in law or regulation to report STRs on terrorism financing.
SR.V International co-operation	**PC**	• The definitional problems with the domestic offences intended to cover the financing of terrorism would severely limit mutual legal assistance based on dual criminality. • The lack of a comprehensive domestic incrimination of financing of terrorism is a serious obstacle to extradition possibilities. • The AML Law insufficiently addresses financing of terrorism which may hamper its applicability concerning mutual legal assistance in relation to financing of terrorism offences.
SR.VI AML requirements for money/value transfer services	**NC**	• No system in place of registering and/or licensing MVT service operators. • MVT service operators are not subject to the

		applicable FATF Recommendations. • There is only indirect monitoring of MVT service operators with regard to compliance with the FATF recommendations. • There are no sanctions applicable to MVT service operators.
SR.VII Wire transfer rules	**PC**	• There is no comprehensive requirement for ordering financial institutions to verify that originator information is accurate and meaningful. • There is no obligation to verify the identity of a customer for all wire transfers of EUR/USD 1000 or more. • Financial institutions are not required to have in place risk-management systems to identify and handle wire transfers that lack full originator information, aimed at detecting transfers of suspicious nature that may result in making an STR report. • At the time of the on-site visit, no specific enforceable regulations existed for the Croatian Post which acts as an agent for a global money remittance company. • The FEI at the time the of on-site visit did not perform inspections of the Croatian Post. • There are no procedures in place for banks and the Croatian Post Office dealing with "batch transfers". • There are no provisions requiring intermediary financial institutions to maintain all the required originator information with the accompanying wire transfers.
SR.VIII Non-profit organisations	**NC**	• No special review of the risks and not any sort of ongoing monitoring of the NPO sector have been undertaken. • Financial transparency and reporting structures are insufficient and do not amount to effective implementation of criteria VIII.2 and VIII.3.
SR.IX Cross Border declaration and disclosure	**PC**	• In the case of discovery of a false declaration of currency or bearer negotiable instruments or a failure to declare them, Customs authorities have the authority only in limited situations to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use. • When it comes to legally carrying things in or out of the Republic of Croatia and there is a suspicion of criminal activity, Customs does not have the power to seize these things. • There is no explicit provision allowing Customs to stop/restrain currency or bearer negotiable instruments in the case there is a suspicion of money laundering or terrorist financing.

9 TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	• Croatian authorities should amend the AML Law and make it absolutely clear that the prevention of terrorist financing is covered.
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• The enormous backlog in money laundering cases pending at courts should be urgently addressed. • Croatian authorities should satisfy themselves that all the physical and material elements of the Palermo Convention and the Vienna Convention are properly covered (particularly transfer, concealment and use of property). Consideration should also be given to broadening the scope of Art. 279 by removing the clause that restricts its applicability to "banking, financial or other economic operations". • The text of Paragraph 1 of Article 279 should be reconsidered and it should be clarified that indirect proceeds deriving from property other than money is covered. • There needs to be some further clarification as to the precise requirements for extra-territorial predicate offences in respect of dual criminality (Art. 279 para 5 CC). • The Croatian authorities are encouraged to use the new powers providing corporate criminal liability proactively in money laundering cases.
2.2 Criminalisation of Terrorist Financing (SR.I)	• An autonomous offence of terrorist financing should be introduced which explicitly addresses all the essential criteria in SR.II and requirements of the Interpretative Note to SR.II.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Croatian authorities should satisfy themselves to make the current confiscation regime less complicated and easier to apply. • Confiscation of proceeds and instrumentalities of money laundering offences should be mandatory. • The general confiscation regime should cover indirect proceeds not only in specific cases (i.e. the pecuniary equivalent of ill-gotten money, securities or objects). • The specific confiscation regime for money laundering cases should also allow for value confiscation. • The general value confiscation regime, which is restricted to "money, securities or objects", should cover any other sorts of property, like real estate or property rights. Furthermore, it should allow for confiscation going beyond the pecuniary equivalent of the ill-gotten assets.

	• The authority to take steps to prevent or void contractual or other actions where the persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation (criterion 3.6) is currently only applicable in money laundering cases but should be extended to the entire confiscation regime. • A clearer provision for freezing orders *ex parte* or without prior notice would be beneficial. • Provisional measures should be taken more regularly.
2.4 Freezing of funds used for terrorist financing (SR.III)	• A comprehensive system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc. should be introduced.
2.5 The Financial Intelligence Unit and its functions (R.26)	• Croatia should make clarifications to the AML Law with regard to the prevention of terrorist financing, particularly amending the relevant provisions and make it absolutely clear that they also cover the prevention of terrorist financing. • A suspicious transaction report form which covers also terrorist financing should be introduced. • Croatian authorities may wish to consider to increase the staff of the AMLD and also to make the positions within the AMLD more attractive. • A separate budget for the FIU may strengthen its independence.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	• Croatian authorities should set up measures to speed up the judicial process in money laundering cases.
2.7 Cross Border Declaration & Disclosure	• In the case of discovery of a false declaration of currency or bearer negotiable instruments or a failure to declare them, Customs authorities should be given for all situations the authority to request and obtain further information from the carrier with regard to the origin of the currency or bearer negotiable instruments and their intended use. • When it comes to legally carrying things in or out of the Republic of Croatia and there is a suspicion of criminal activity, Customs should have the power to seize these things. • Customs should be explicitly entitled to stop/restrain currency or bearer negotiable instruments in the case there is a suspicion of money laundering or terrorist financing.
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)	• Croatian authorities should as a matter of urgency issue legislation clearly prohibiting financial institutions from keeping anonymous accounts or accounts in fictitious names. Furthermore, it should be established whether such accounts still exist. If so, they should be closed as soon as possible.

	• Financial institutions should be clearly required to identify customers when carrying out occasional transactions that are wire transfers in the circumstances covered by the Interpretative Note to SR VII, when the financial institution has doubts about the veracity or adequacy of previously obtained identification data and when there is a suspicion of terrorist financing. • The concept of verification of identification should be further addressed. The Croatian authorities should take steps to apply an enhanced verification process in appropriate cases. In higher risk cases, they should consider requiring financial institutions to use *other* reliable, independent source documents, data or information when verifying customer's identity (in addition to the documents as currently prescribed by law). • Croatian authorities should clearly define which other documents than passports or I.D. cards can be used for verification of identification and which are in accordance with the international standards as required by Footnote 5 of the Methodology. • In all cases where a power of attorney exists, full identification of the person(s) granting the power of attorney should be carried out. • Croatian Legislation should provide a definition of "beneficial owner" on the basis of the glossary to the FATF Methodology. Financial institutions should be required to take reasonable measures to verify the identity of beneficial owners using relevant information or data obtained from reliable sources. • Financial institutions should be required to determine for all clients whether the customer is acting on behalf of a third party. If this is the case, they should identify the beneficial owner and verify the latter's identity. With regard to clients which are legal persons, financial institutions should understand the controlling structure of the customer and determine who the beneficial owner is. • Financial institutions should be required to obtain information on the purpose and intended nature of the business relationship. • Financial institutions should be required to conduct on-going due diligence on the business relationship and to ensure that documents, data or information collected under the CDD process are kept up-to-date and relevant by undertaking reviews of existing records, particularly for higher risk categories of customers or business relationships. • Financial institutions should be required to perform enhanced due diligence for higher risk categories of customers, business relationship or transaction, including private banking, companies with bearer shares and non-resident customers. • The exemption from identification provided by the AML By-law concerning transactions between banks should be reduced to relations between domestic banks. The AML

	By-law should clearly specify that no exemption from identification is allowed if there is a suspicion related to terrorism financing.
	• The exemption from identification in the situations of "*withdrawal of money from debit, checks and saving accounts by physical persons*" (Art. 4 para 6 of the AML Law) should be removed.
	• Financial institutions should be required to apply CDD requirements to existing customers on the basis of materiality and risk and to conduct due diligence on such existing relationships at appropriate times.
	• Financial institutions should be required by enforceable means:
	  • to determine if the client or the potential client is a PEP;
	  • to obtain senior management approval for establishing a business relation with a PEP;
	  • to conduct higher CDD and enhanced ongoing due diligence on the source of the funds deposited/invested or transferred through the financial institutions by the PEP.
	• Croatia should implement all the missing elements of Recommendation 7.
	• Financial institutions should be required to have policies in place to prevent the misuse of technological developments for AML/CFT purposes, and to have policies in place to address specific risks associated with non-face to face transactions.

3.3 Third parties and introduced business (R.9)	• Though Rec. 9 is currently not applicable, Croatian authorities should satisfy themselves by covering all the essential criteria under Recommendation 9 in the AML Law.
3.4 Financial institution secrecy or confidentiality (R.4)	• The AML Law should provide a clear legal basis to lift bank secrecy for STRs in respect of terrorist financing.
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• Financial institutions should be required to keep documents longer than five years if requested by a competent authority. • The record keeping provisions for all financial institutions (and not only for banks) should require the collection or maintenance of account files or business correspondence. • There should be a comprehensive requirement for ordering financial institutions to verify that originator information is accurate and meaningful. • Financial institutions should be required to verify the identity of a customer for all wire transfers of EUR/USD 1000 or more. • Financial institutions should be required to have in place risk-management systems to identify and handle wire transfers that lack full originator information, aimed at detecting transfers of suspicious nature that may result in making an STR report. • Croatian authorities should introduce specific enforceable regulations for all agents which act for global money

	remittance companies. • Croatian authorities should introduce procedures for banks and the Croatian Post Office dealing with "batch transfers". • Croatian authorities should introduce provisions requiring intermediary financial institutions to maintain all the required originator information with the accompanying wire transfers.

3.6 Monitoring of transactions and relationships (R.11 & 21)	• Croatia should implement Rec. 11.
	• In the case of all transactions (with persons from or in countries which do not or insufficiently apply FATF Recommendations) which have no apparent economic or visible lawful purpose, financial institutions should be required
	  • to examine the background and purpose of such transactions and
	  • set out their findings in writing and to make them available to the competent authorities
	• Mechanisms need to be considered to apply appropriate counter measures where a country continues not to apply or insufficiently applies FATF Recommendations.

3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• The legal provisions determining the Croatian STR system are too complicated in its structure and should be made easier to follow. • The AML Law should be amended and provide a clear legal basis for reporting suspicions on terrorist financing. • Croatian authorities should make it clear that the exemptions provided by the AML By-law concerning the reporting and identification obligations of the reporting institutions do not apply when there is a suspicion of terrorist financing. • More attention should be given to outreach to the non banking financial sector to ensure that they are reporting adequately. • The AML Law should provide for attempted suspicious transactions to be reported. • Croatian authorities should introduce safe harbour provisions to the full extent as required by criterion 14.1. • There should be a clear legal basis for protection in the case of reporting a suspicion of terrorist financing. • There should be a direct and explicit sanctioning authority for "tipping off". • More feedback to the non-banking sector is necessary.

3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• Clear provision should be made for compliance officers to be designated at management level.
	• Financial institutions should be required to
	  • maintain an adequately resourced and independent audit function to test compliance with AML/CFT procedures, policies and controls;
	  • put in place screening procedures to ensure high standards when hiring employees.
	• Croatian authorities should implement an explicit obligation to require financial institutions to ensure that their foreign

	branches and subsidiaries observe AML/CFT measures consistent with the Croatian requirements and FATF Recommendations. Croatia should amend Art. 2 para 2 of the AML Law and make it fully consistent with the requirements of Recommendation 22. • Financial institutions should be required to inform their home country supervisor when a foreign subsidiary or branch is unable to observe appropriate AML/CFT measures.
3.9 Shell banks (R.18)	• Croatia should create a specific provision that will prohibit financial institutions from entering into or continuing correspondent banking relationship with shell banks. In addition, there should be an obligation placed on financial institutions to satisfy themselves that a respondent financial institution in a foreign country is not permitting its accounts to be used by shell banks.
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• The AML Law should provide a clear legal basis for sanctions concerning infringements in the context of terrorist financing. • Concerning directors or senior management a sanctioning regime for violations of AML/CFT obligations should be introduced. • A clear legal basis to cover CFT in the course of supervision should be introduced. • For all types of financial institutions legislation should be introduced preventing all criminals and their associates from holding or being the beneficial owner of a significant or controlling interest or holding a management function. • HANFA should in the course of its supervision evaluate the effectiveness of the whole anti-money laundering system of the obliged entities (and not focus mainly on the detection of non-reported suspicious transactions). • Croatia should introduce a system for registering and/or licensing MVT services and companies issuing credit/debit cards. • Guidance should be issued for general compliance with AML/CFT requirements, not only for filing of STRs. • The AMLD should give adequate and appropriate feedback to the non banking financial sector. • For the whole financial sector there should be clear authority for all supervisors to supervise CFT issues. • Croatian authorities should introduce a broader range of dissuasive and proportionate sanctions with regard to the examples provided for by criterion 17.4.
3.11 Money value transfer services (SR.VI)	• Croatia should implement Special Recommendation VI.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence and record-keeping (R.12)	• Croatia should include accountants, lawyers and public notaries within Article 2 of the AML Law, along with the other reporting institutions and make these professions

	subject to the same CDD and reporting requirements as the other DNFBP when they are participating in financial transactions. • Croatia should fully implement Recommendations 5, 6, 8 and 9 and make these measures applicable to DNFBP in the situations described in Recommendation 12. • Croatian authorities should clarify that casinos can use only reliable, independent source documents, data or information for the verification process of identification. • For Recommendation 10, all transaction records should be kept, regardless of whether the transaction exceeds 200 000 Kuna or there is suspicion of money laundering, for at least five years. Account files and business correspondence should be kept in addition to identification records. Croatian authorities should satisfy themselves that casinos clearly follow the record keeping requirements of the AML Law. • DNFBP should be required to pay special attention to all complex, unusually large transactions or unusual patters of transactions that have no apparent or visible economic or lawful purpose. Additionally, they should examine the background and purpose of complex transactions, set out their findings in writing, and keep the findings available for competent authorities for at least five years. • The different sectors and their professional associations should cooperate more closely with the AMLD and with each other in order to improve awareness and overcome any unwillingness to apply AML/CFT requirements. • Real estate agents should be made reporting institutions within the Croatian AML/CFT regime (covering the situations described by Rec. 12).
4.2 Suspicious transaction reporting (R.16)	• With regard to the small number of reports received from DNFBP, more outreach to this sector, particularly by providing training and guidance is necessary. • The AML Law should expand the requirement to submit an STR when there is a suspicion that funds are the proceeds of criminal activity generally *and* when funds may be related to terrorism. • The AMLD should communicate again to the DNFBP that there is a reporting obligation when there is a suspicion of money laundering, even when the transaction is below the 200 000 Kuna threshold. • The exceptions for lawyers and notaries to report suspicious transactions because of legal professional privilege/secrecy should be brought in accordance with the circumstances as described by the Interpretative Note to Recommendation 16. • The discrepancy between the AML Law, the Penal Code, the Public Notaries Act and the "Act on the Responsibility of Legal Persons for the Criminal Offences" concerning the protection of lawyers and notaries from criminal or civil liability for reporting their suspicions in good faith should be remedied. • Croatian authorities should introduce clear safe harbour

	provisions for lawyers and notaries to protect them from criminal or civil liability for reporting their suspicions in good faith. • For lawyers, public notaries and accountants specific "tipping off" provisions should be introduced. • The head of compliance should be at management level and adequately resourced, including screening procedures for employees who work for the responsible person or chief compliance officer. • DNFBP should give special attention to business relationships and transactions with persons or entities from or in countries which do not or insufficiently apply the FATF Recommendations.
4.3 Regulation, supervision and monitoring (R.24-25)	• Croatia should introduce an effective system for monitoring and ensuring compliance with AML/CFT requirements among DNFBP. • Croatian authorities should amend the AML Law to identify the competent authorities that will be specifically responsible for the AML/CFT regulatory and supervisory regime for DNFBP and give these authorities adequate powers to perform their functions, including powers to monitor and sanction. • The sanction regime of the AML Law should provide for a broader range of proportionate and appropriate sanctions. • Guidance should be issued for general compliance with AML/CFT requirements, not only for filing of STRs.
4.4 Other non-financial businesses and professions (R.20)	• Croatia should conduct an analysis of which non-financial businesses and professions (other than DNFBP) are at risk of being misused for money laundering or terrorist financing. This sector should be kept under review to ensure that all non-financial businesses and professions that are at risk of being misused for the purposes of money laundering or terrorist financing are regularly considered for coverage in the AML Law. • Croatia should consider developing a strategy on the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	• Croatia should review its commercial, corporate and other laws with a view to taking measures to provide adequate transparency with respect to beneficial ownership. A comprehensive definition of beneficial owner, as provided for in the Glossary to the FATF Recommendations should be embedded in relevant primary or secondary legislation
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	• An overall review of the risks in the NPO sector needs to be undertaken.

	• Financial transparency and reporting structures of the NPO sector should be brought in line with the requirements of criteria VIII.2 and VIII.3.
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)	• Croatia should implement all the provisions of the relevant international conventions it has ratified; amongst others it should introduce an autonomous terrorist financing offence.
	• The requirements of the UN Conventions should be reviewed to ensure that Croatia is fully meeting all its obligations under them. Particularly Croatia should introduce
	  • a legal structure for the conversion of designations under S/RES/1267(1999) and its successor resolutions as well as S/RES/1373(2001);
	  • a comprehensive and effective system for freezing without delay by all financial institutions of assets of designated persons and entities, including publicly known procedures for de-listing etc.;
	  • a system for effectively communicating action taken by the authorities under the freezing mechanisms to the financial sector and DNFBP.

6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• Enact an autonomous financing of terrorism offence to improve the capacity for rendering mutual legal assistance. • Arrangements for coordinating seizure and confiscation action with other countries should be established. • Consideration should be given to an asset forfeiture fund and a system for sharing of confiscated assets with other countries when confiscation is a result of coordinated law enforcement action. • More statistical data (e.g. nature of mutual assistance requests; the time required to handle them; type of predicate offences related to requests) is needed to show the effectiveness of the system.
6.4 Extradition (R.39, 37 & SR.V)	• Enact an autonomous financing of terrorism offence to improve extradition capacity in relation to financing of terrorism offences. • Croatia should maintain proper and comprehensive statistics regarding extradition requests for money laundering or financing of terrorism including the time required to handle them.
6.5 Other Forms of Co-operation (R.40 & SR.V)	• To cooperate in terrorist financing cases without impediments, Croatian authorities should amend the AML Law and make it absolutely clear that the prevention of terrorist financing is covered.
7. Other Issues	
7.1 Resources and statistics (R. 30 & 32)	<u>Recommendation 30:</u> • Croatian authorities should consider to increase the staff of

	the AMLD and also to make the positions within the AMLD more attractive. • Croatian authorities should consider to increase the staff for both prosecutors and judges. • Prosecutors and judges should be provided for with appropriate and adequate AML/CFT training. • The AMLD and the Department for Financial System should provided with sufficient resources to exercise supervision in a satisfying manner. <u>Recommendation 32:</u> • One authority should maintain *comprehensive* and detailed statistics on money laundering investigations, prosecutions and convictions or other verdicts (and whether confiscation has also been ordered) indicating not only the numbers of persons involved but also that of the cases/offences and, in addition, providing statistical information on the underlying predicate crimes and further characteristics of the respective laundering offence (whether it was prosecuted autonomously etc.). • More statistical data (e.g. nature of mutual assistance requests; the time required to handle them; type of predicate offences related to requests) is needed to show the effectiveness of the system. • Croatia should maintain statistics regarding extradition requests for money laundering or financing of terrorism including the time required to handle them.

10 TABLE 3: Authorities' Response to the Evaluation

Relevant Sections and Paragraphs	Country Comments

11 LIST OF ANNEXES

11.1 ANNEX I (Details of all bodies met on the on-site mission)

- **Anti Money Laundering Department (FIU)**
- **The Tax Administration**
- **The Customs Administration**
- **The Foreign Exchange Inspectorate**
- **The Administration for Financial System**
- **The Croatian National Bank**
- **The Croatian Banking Association (HUB)**
- **The Croatian Financial Services Supervisory Agency (HANFA)**
- **The Ministry of Interior**
- **The State Attorney's Office**
- **Office for Suppression of Corruption and Organized Crime (USKOK)**
- **The Ministry of Justice**
- **The County Court Zagreb**
- **The Ministry of Foreign Affairs and European Integration – Counter Terrorism Working Group**
- **Croatian Chamber of Economy (HGK)**
- **Croatian Lottery**
- **Croatian Chamber of Public Notaries**
- **Croatian Bar Association**
- **Croatian Association of Accountants and Financial Professionals (RIF)**
- **Security and Intelligence Agency (SOA)**
- **Ministry of Economy, Labour and Entrepreneurship**
- **Central State Administrative Office for Public Administration**
- **Commercial Court Zagreb**
- **High Commercial Court**
- **Government Office for Cooperation with NGOs**

as well the representatives of insurance sector, casinos, brokers etc.

11.2 ANNEX II (Designated categories of offences based on the FATF Methodology)

Designated categories of offences based on the FATF Methodology	Offence in domestic legislation (CRIMINAL CODE)
Participation in an organised criminal group and racketeering;	333 ***Associating for the Purpose of Committing Criminal Offences***
Terrorism, including terrorist financing	141 ***Anti-State Terrorism*** *169* ***International Terrorism*** *170* ***Endangering the Safety of Internationally Protected Persons*** *171* ***Taking of Hostages*** *172* ***Misuse of Nuclear Materials*** *179* ***Hijacking an Aircraft or a Ship*** *181* ***Endangering the Safety of International Air Traffic and Maritime Navigation*** 187a ***Planning Criminal Offences against Values Protected by International law***
Trafficking in human beings and migrant smuggling; Sexual exploitation, including sexual exploitation of children;	*157a* ***Crimes against Humanity*** *175* ***Trafficking in Human Beings and Slavery*** *177* ***Illegal Transfer of Persons across the State Border*** *178* ***International Prostitution*** 195 ***Pandering***
Illicit trafficking in narcotic drugs and psychotropic substances;	*173* ***Abuse of Narcotic Drugs***
Illicit arms trafficking	*335* ***Illicit Possession of Weapons and Explosive Substances***
Illicit trafficking in stolen and other goods	236 ***Concealing*** 297 ***Illicit Trade***
Corruption and bribery	*347* ***Accepting a Bribe*** *348* ***Offering a Bribe*** 294a ***Accepting a Bribe in Economic Business Operations*** 294b ***Offering a Bribe in Economic Business Operations***
Fraud	224 ***Fraud*** *293* ***Fraud in Economic Operations*** *344* ***Fraud in the Performance of a Duty***
Counterfeiting currency	*274* ***Counterfeiting of Money***
Counterfeiting and piracy of products	223a ***Computer Forgery*** *230* ***Illicit Use of an Author's Work or an Artistic Performance*** *277* ***Manufacturing, Supplying, Possessing, Selling or Providing of Instruments of Forgery*** *278* ***Forgery of Trademarks, Measures and Weights***
Environmental crime	***250 Environmental Pollution*** ***251 Endangering the Environment by Noise*** ***252 Endangering the Environment by Waste Disposal*** ***252a Illegal construction*** ***253 Importing of Radioactive or Other Hazardous Waste into the Republic of Croatia*** ***254 Endangering the Environment with Installations***

	261 Devastation of Forests ***261a Unlawful Exploitation of Mineral Resources*** ***262 Serious Criminal Offences against the Environment***
Murder, grievous bodily injury	*90* ***Murder*** 91 ***Aggravated Murder*** *98* ***Bodily Injury*** 99 ***Aggravated Bodily Injury***
Kidnapping, illegal restraint and hostage-taking	*125* ***Kidnapping*** *124* ***Unlawful Deprivation of Freedom*** *171* ***Taking of Hostages***
Robbery or theft;	*218* ***Robbery*** *219* ***Larceny by Coercion*** *216* ***Larceny*** *217* ***Aggravated Larceny***
Smuggling	*298* ***Avoiding Customs Control***
Extortion	234 ***Extortion***
Forgery	***274 Counterfeiting of Money*** *275* ***Counterfeiting of Securities*** 276 ***Counterfeiting of Value Tokens*** *277* ***Manufacturing, Supplying, Possessing, Selling or Providing of Instruments of Forgery*** *278* ***Forgery of Trademarks, Measures and Weights*** *311* ***Forgery of a Document*** *312* ***Forgery of an Official Document*** *313* ***Special Cases of Forgery of a Document***
Piracy;	*180* ***Piracy on the Sea and in the Air***
Insider trading and market manipulation	*337* ***Abuse of Office and Official Authority*** *351* ***Disclosure of an Official Secret*** *SECURITIES MARKET LAW:* *149* ***Unauthorised Use and Divulgence of Privileged Information*** *150* ***Market Manipulation and Dissemination of False Information***

11.3 ANNEX III (Compliance with the two Directives of the European Parliament and of the Council (91/308/EEC and 2001/97/EC))

1. Prior to the on-site visit MONEYVAL had identified seven Articles in the two Directives of the European Parliament and of the Council (91/308/EEC and 2001/97/EC) that differed, mostly in their mandatory aspect, from the FATF 40-Recommendations:

(i)	Article 2a	on the applicability of the AML obligations;
(ii)	Article 3	on identification procedures;
(iii)	Article 6	on reporting suspicious transactions and facts which might be an indication of money laundering;
(iv)	Article 7	on suspected transactions and the authority to stop/suspend a transaction;
(v)	Article 8	on tipping off;
(vi)	Article 10	on reporting of facts that could contribute suspicious transactions by supervisory authorities;
(vii)	Article 12	on extension of AML obligations.

2. The following sections address the findings of the on-site examination. They first describe the differences between the identified articles of the EU AML Second Council Directive and the relevant FATF 40-Recommendations. Following an analysis of the findings of the on-site visit and conclusions on compliance and effectiveness, recommendations and comments are made as appropriate.

2.1 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	Art. 2 para 1 of the AML Law makes the requirements of the AML Law applicable to: k. banks and residential saving banks, l. savings and loan cooperatives, m. investment funds and companies for the management of investment funds, n. pension funds and companies for the management of pension funds, o. Financial Agency and Croatian Post Office, p. Croatian Privatization Fund, q. insurance companies, r. stock market and other legal persons authorized to perform financial transactions with securities, s. authorised exchange offices, t. pawnshops, and u. organizers of lottery games, casino games, betting games and slot machine clubs. Art. 2 para 3 extends the scope of the AML Law to "*all other legal persons, traders and individuals, business persons and physical persons conducting business that involve: receipt and remittance of funds; purchase and sale of loans and debts; fund management for third parties; issuing debit and credit cards as well as transactions with the said cards; leasing; organizers of travel tours; organizers of auctions; real estate agents; dealers in art objects, antiques and other items of significant value; dealers in precious metals and gems*". Lawyers, lawyer companies, notaries, auditor companies, certified auditors, chartered accountants and tax advisors are not included in Article 2 of the AML Law, which lists the obliged institutions which are fully covered by the law. Rather, this group is only covered under Article 9a of the AML Law, which requires them "*under specific conditions to inform the AMLD whilst conducting their business perform financial transaction or other transaction with assets, if there is a suspicion of money laundering*". In the view of the evaluators, these entities have less stringent obligations to fulfil.
Conclusion	The AML Law is not fully in line with Art. 2a of the Second EU AML Council Directive.
Recommendations and Comments	Croatia should consider including lawyers, auditors, certified auditors, and tax advisory service providers in Article 2 of their AML Law so that they are held to

	the same standards as real estate agents and reporting financial institutions.

2.2.1 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 EUR 1 000 or where a single premium is paid amounting to EUR 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	Art. 25 para 1 of the AML By-law provides three situations where identification of a client is not needed (unless there is a suspicion of money laundering): ▪ *transaction between banks, savings banks, FINA, Croatian Post and insurance companies;* ▪ *transactions between banks and authorized bureau de changes related to purchase of foreign currency or checks and checks payments;* ▪ *transfer of bank's cash to foreign bank in favour of its own bank account and after the payment of foreign checks.* Insurance companies have to identify customers in all life policies if the annual premium exceeds 40 000 Kuna (approx. 5 420 EUR). There might be situations where this exemption goes beyond the possibilities provided by the Second EU AML Council Directive.
Conclusion	The AML Law is not fully in compliance with Art. 3 (3) and (4) of the Second EU AML Council Directive.
Recommendations and Comments	Croatia should adjust the exemptions from the identification requirements to the obligations of Art. 3 (3) and (4) of the Second EU AML Council Directive.

2.2.2 Articles 3(5) and 3(6): Identification requirements - Casinos

Description	Article 3 paragraph 5 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 EUR 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	In Croatia, all casinos are subject to state supervision by the Tax Authority, however, supervision is conducted with a focus on tax-related matters and compliance with the Games of Chance Law, rather than the AML Law. Nonetheless, all customers must have their identity verified upon entry into the casino.
Conclusion	Having adopted procedures in both the AML Law and the Games of Chance Law for the identification of all customers on entry of the casino, Croatia is in compliance with the provisions of Article 3 (6) of the Second EU AML Directive.
Recommendations and Comments	Though Croatia is in compliance with the provisions of Article 3 (6) of the Second EU AML Directive, it would be beneficiary making the identification requirements for casinos under the AML Law and the Games of Chance Law consistent: the AML Law states the procedures for client identification, such as checking personal identification cards or passports, date of birth and addresses. The Games of Chance Law does not provide such procedures; it merely calls on casinos to "verify identity".

2.3 Article 6: Reporting of Suspicious Transactions

Description	Further to the reporting of suspicious transactions, Article 6 paragraph 1 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 DNFBPs 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 reporting obligation of the obliged entities covers all transactions which raise a suspicion of money laundering. The reporting obligation refers to "transactions", which are defined in Art. 1 para 2 of the AML Law; the latter definition seems to cover all types of funds as provided for by the glossary to the Methodology and also "facts" as required by the EU AML Second Council Directive. The reporting entities are required to enclose with their report information related to the transaction and information gathered in the course of the CDD process. The AML Law requires notaries, lawyers and accountants to inform (directly) the AMLD, when performing financial transactions or other transactions with assets, if there is a suspicion of money laundering. Lawyers, however, are exempt from this obligation when they represent their clients in judicial proceedings or in an administrative procedure.
Conclusion	Croatia is in compliance with the provisions of Article 6 paragraph 3 of the EU AML Second Council Directive.
Recommendations and Comments	No further recommendations.

2.4 **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- 3 of the Interpretative Note to Recommendation 5 seem to be more mandatory in filing an STR in such circumstances.
Analysis	Art. 8 para 3 of the AML Law requires reporting institutions to "*inform the AMLD of transactions where there is a suspicion of money laundering [...] before they perform the transactions and specify the deadline within which they are to execute the said transactions*"; if this should be - due to the nature of a transaction - not possible, the reporting institutions are not obliged to inform the AMLD prior to carrying out a transaction. In these situations the reporting institutions are obliged to report to the AMLD not later than 24 hours after the transaction was completed (Art. 8 para 4 of the AML Law). Art. 10 of the AML Law allows the AMLD to request financial transactions to be suspended up to three days (for details see paragraphs 247 to 249).
Conclusion	Croatia is in compliance with the provisions of Article 7 of the EU AML Second Council Directive.
Recommendations and Comments	No further recommendations.

2.5 **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 DNFBPs. 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 DNFBPs to be exempted from the "tipping off". The Interpretative Note to Recommendation 14 exempts tipping off only where such DNFBPs seek to dissuade a client from engaging in an illegal activity.
Analysis	Article 17 para 1 of the AML Law provides that "*the AMLD and the reporting institutions shall not notify the customer about gathered records and about procedures initiated in accordance with this Law*". Art. 2 of the AML Law makes it clear that a "reporting institution" does not only cover legal persons, but also the "*authorized persons within those entities, as well as physical persons required to implement measures and actions to detect and prevent money laundering*". The entities referred to in Article 6(3) of the EU Directive are not prevented from disclosing to the customer concerned nor to other third persons that information has been transmitted to the authorities in accordance with Articles 6 and 7 of the EU Directive or that a money laundering investigation is being carried out.
Conclusion	Croatia is in compliance with the provisions of Article 8(1) of the EU AML Second Council Directive.
Recommendations and Comments	No further recommendations.

2.6 **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 DNFBPs 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.
	The legal basis for cooperation between the AMLD and the Ministry of Interior (Police) in counteracting money laundering is laid down in Art. 3 para 4 of

Analysis	the AML Law. Article 57 of the Banking Law obliges the supervisory bodies in the Republic of Croatia to cooperate, submit data on a bank or other financial institution required by an individual supervisory body in the procedure of performing supervision over a financial institution and in the procedure related to the issuing of an authorization. The supervisory authorities shall also notify one another in the case of irregularities established in the course of supervision.
Conclusion	It can be concluded that Croatia has a legal basis to cover the requirements of Article 10 of the EU AML Second Council Directive, though a more specific provision would be preferable.
Recommendations and Comments	A more specific provision, explicitly requiring supervisory authorities to inform the AMLD about suspicion of money laundering which occurs in the course of their supervision activity would be beneficial.

2.7 **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 DNFBPs.
Analysis	Croatia has extended its provisions to cover other businesses, including travel agents, pawnshops, and lottery and slot machine games.
Conclusion	Croatia is in compliance with the provisions of Article 12 of the EU AML Second Council Directive.
Recommendations and Comments	No further recommendations.

C.) Conclusions

On the basis of the examination of the divergences of the relevant Articles of the two Directives of the European Parliament and of the Council (91/308/EEC and 2001/97/EC) from the FATF-40 Recommendations, although, as indicated in Sections 2.1 to 2.7 above some issues remain outstanding from the full implementation of the relevant points of the Directive, the Croatian authorities have transposed the two Directives of the European Parliament and of the Council (91/308/EEC and

2001/97/EC) to a satisfactory degree. However, the Croatian authorities may wish to re-examine the transposition of Articles 2, 3, 7 and 10 for further harmonization of the AML Law to the EU Directive.

11.4 ANNEX IV (AMLD Flowchart concerning STR analysis)