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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 ROMANIA[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 the MONEYVAL Committee at its 27th Plenary Session Strasbourg, 7 – 11 July 2008

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LIST OF ACRONYMS USED

AML	Law Anti-Money Laundering Law
CDD	Customer Due Diligence
CETS	Council of Europe Treaty Series
CFT	Combating the financing of terrorism
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]
FATF	Financial Action Task Force
FIU	Financial Intelligence Unit
IN	Interpretative Note
IT	Information Technology
LEA	Law Enforcement Agency
NARB	National Association of Romanian Bars
MLA	Mutual Legal Assistance
MOU	Memorandum of Understanding
NCCT	Non co-operative countries and territories
PEP	Politically Exposed Persons
SRO	Self-Regulatory Organisation
STRs	Suspicious transaction reports
SWIFT	Society for Worldwide Interbank Financial Telecommunication

LEGEND

Abbreviation	Full Name
ABA-CEELI	American Bar Association/Central Europe and Eurasia Legal Initiative
ACOR	Association of Casinos Organisers from Romania
ACSA	Authority for Capitalisation of State Assets
AML	Anti-money Laundering
AML/CFT Law	Law 656/2002
ANAT	National Authority for Tourism Agents
ANPC	National Authority for Consumer Protection
APIA	Automotive Manufacturers and Importers Association
ARAI	Romanian Association of Real Estate Agencies
Art.	Article
BIM	Working International Office
CBR	Cross-border Transaction Report
CC	Criminal Code
CCOA	Center for Operative Antiterrorism Coordination
CECCAR	Body of Expert Accountants and Licenced Accountants in Romania
CEPI	European Council of Real Estate Profession
CEREAN	Central European Real Estate Association Network
CPC	Criminal Procedure Code
CPI	Consumer Price Index
CFT	Combating Financing of Terrorism
CTR	Cash Transaction Report
DIOCT	Directorate for Investigating Organised Crime and Terrorism
DNFBP	Designated Non-financial Businesses and Professions
EJTN	European Judiciary Training Network
EU	European Union
FG	Financial Guard
FIU	Financial Intelligence Unit
GDP	Gross Domestic Product
GEO	Governmental Emergency Ordinance
GO	Governmental Ordinance
HCCJ	High Court of Cassation and Justice
IMC	Investment Management Company
IMF	International Monetary Fund
IOSCO	International Organisation of Securities Commissions
IPC	Indicators on expenditure price
ISC	Insurance Supervisory Commission
IT	Information Technology
KYC	Know Your Customer
Let.	Letter

Lei/RON/ROL	Romanian Currency
MoFA	Ministry of Foreign Affairs
ML	Money Laundering
MIAR	Ministry of Interior and Administrative Reform
MoJ	Ministry of Justice
MS	Member State
NARB.	National Association of Romanian Bars
NAA	National Anti-drugs Agency
NACE	National Economic Actions Classification
NAD	National Anticorruption Directorate
NAR	National Association of Realtors
NATO	North Atlantic Treaty Organisation
NBR	National Bank of Romania
NCA	National Customs Authority
NFI	Non –banking Financial Institution
NIM	National Institute for Magistrates
NOPCML/Office	National Office for Prevention and Control of Money Laundering
NOTR	National Office of Trade Register
NPO	Non-profit Organisation
NRAC	National Regulatory Authority for Communications
NSC	National Securities Commission
NSPCT	National System for Preventing and Combating Terrorism
OICA	Organisation Internationale des Constructeurs d'Automobiles (International Organisation of Motor Vehicle Manufacturers)
Para.	Paragraph
GPO-HCCJ	General Prosecutor's Office attached to the High Court of Cassation and Justice
RIS	Romanian Intelligence Service
SBP	Standard Buying Parity
SCM	Superior Council of Magistracy
STR	Suspicious Transaction Report
TF	Terrorism Financing
UN	United Nations
UNIM	National Union for Real Estate Agency
USA	United State of America
VAT	Value added tax

LEGISLATION LIST

CC Criminal Code, published in the Official Gazette 21 June 1968, republished, with consequent modifications

CPC Criminal Procedure Code, published in the Official Gazette 12 November 1968, republished, with consequent modifications;

NAD Law 78/2000 on the preventing, discovering and sanctioning of corruption acts, as modified;

MoJ Law 302 of 28 June 2004 on international judicial co-operation in criminal matters as amended and supplemented by Law N° 224/2006, as modified;

DIOCT Law 508/2004 regarding the setting-up, organising and functioning within the Public Ministry of the Department for Investigating Organised Crime and Terrorism, as modified;

MoJ Law 31 of 16 November 1990 Law on commercial companies, with consequent modifications;

MoJ Law 420 of 22 November 2006, on ratification of the Convention of the Council of Europe on laundering, search, seizure and confiscation of the proceeds from crime and terrorism financing, adopted in Warsaw on 16 May 2005;

Law 535/2004 on preventing and fighting terrorism (**RIS, NBR, MoFA, Public Ministry –Prosecutor's Office by the Court of Appeal, MEF, NSC, NOCR, ISC, NOPCML**)

MoFA Law 206/2005 on the implementation of certain international sanctions

DIOCT Law 39/ 2003 on preventing and combating organised crime;

MoJ Law 565/16 October, 2002 for the ratification of Convention of the United Nations Organisation against transnational organised crime, Palermo, 2000;

NOPCML Law 656 of 7 December 2002 on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating terrorism financing, as modified;

NOPCML Decision 496/2006 on Norms on prevention and combating money laundering and terrorism financing, customer due diligence and internal control standards for reporting entities, which do not have overseeing authorities;

NOPCML Decision 90/2007 on working procedures on supervision, verification and control activities developed to the natural/legal persons provided in art. 8 of Law 656/2002 for prevention and sanctioning of money laundering, as well as for setting up of measures on prevention and combating the terrorism financing, with the subsequent modifications and completions – including 3 annexes;

NOPCML Government Decision 531/19 April 2006 for the Approval of the Regulations on the Organisation and Functioning of the National Office for the Prevention and Control of Money Laundering;

NBR Norm N° 3 of 26 February 2002 concerning the standards of acquaintance with the clientele, as modified

MPF Order N° 199 of 17 February 2003 on the approval of the Instructions concerning the prevention and combating money laundering through the units of the State's Treasury;

NBR Governmental Emergency Ordinance N° 99 of 6 December 2006 on Credit Institutions and Capital Adequacy; approved by Law N°227 from 18 July 2007;

NBR Government Ordinance N° 28 of 26 January 2006 governing certain financial and fiscal measures – Title I, approved by Law N° 266 from 2006;

NBR Regulations N° 8 of 7 November 2006 concerning the standards of acquaintance with the clientele of the non-banking financial institutions;

ISC Law regarding the insurance business and insurance supervision (Law no. 32/2000, amended and completed by Law 76/2003, Law 403/2004 and Emergency Government Ordinance N° 201/2005 and Law 113/2006);

ISC Order N° 3128/2005 for the approval of Norms on prevention and combating money laundering and terrorism financing through insurance market;

NSC Law 297/2004 on the capital market;

NSC Regulations N° 32/2006 on financial investment services

NSC Instructions N° 4/2005 on the prevention of terrorist financing;

NSC Regulations N° 11/2005 on the prevention and control of money laundering and terrorist financing through the capital market.

I. PREFACE

1. The evaluation of the anti-money laundering (AML) and combating the financing of terrorism (CFT) regime of Romania 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 Romania, and information obtained by the evaluation team during its on-site visit to Romania from 6 to 12 May 2007, and subsequently. During the on-site visit, the evaluation team met with officials and representatives of all relevant Romanian government agencies and the private sector. A list of the bodies met is set out in Annex I to the mutual evaluation report.

2. The evaluation team comprised: Ms. Kateryna SAKHARENKO, Legal Department, State Committee for Financial Monitoring, Ukraine (Legal Evaluator); Ms. Zana PEDIC, Senior Inspector, Ministry of Finance, Croatia (Financial Evaluator); Mr. Mladen SPASIC, Head of Department for Combating Organised Crime, Ministry of Interior, Serbia (Law Enforcement Evaluator); Ms. Justine Walker, Financial Services Authority, United Kingdom (Financial Evaluator); Ms. Katia Bucaioni, Italian FIU, Italy (Financial Evaluator); and a member 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 Romania 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 Romania's levels of compliance with the FATF 40 + 9 Recommendations (see Table 1). Compliance or non-compliance with the EC Directives has not been considered in the ratings in Table 1.

[2] As updated in February 2007

II. EXECUTIVE SUMMARY

1. Background Information

4. This report provides a summary of the AML/CFT measures in place in Romania as at the date of the on-site visit from 6 to 12 May 2007, or immediately thereafter. It describes and analyses these measures, and provides recommendations on how certain aspects of the systems could be strengthened. It also sets out Romania's levels of compliance with the FATF 40 + 9 Recommendations.

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

6. There have been some significant developments since the 2nd evaluation. The Romanian authorities have moved to a full "all crimes" approach for predicate offences. The "tipping off" offence has been criminalised and corporate liability has been introduced. Confiscation of proceeds are applied in cases of money laundering and terrorist financing and if the proceeds are not found, their equivalent value shall be confiscated.

7. On the repressive side, the AML/CFT legislation is basically in place and appears to be sound and largely in line with the international requirements under the new methodology. The AML/CFT Law (no. 656/2002) with subsequent amendments gives a solid basis for the Romanian anti-money laundering regime. The reporting obligation, however, seems not to cover the full width of Recommendation 13. The mental element is knowledge as required in international conventions. The evaluators recommend that Romanian authorities consider lesser standards for the mental element such as suspicion or negligence, as was also recommended by the evaluators during the second round. There have only been final convictions in five money laundering cases and tax evasion is still the most common predicate offence.

8. Since the second round, separate criminal offences of terrorist financing were introduced in Law 535/2004 on Preventing and Fighting Terrorism. The reporting obligation, however, seems not to cover the full width of SR IV. Attempt is not covered. At the time of the on-site visit these provisions had not been tested in any investigation or prosecution.

9. The Romanian FIU (NOPCML) undertakes a leading role in the development, coordination and implementation of the AML/CFT system. Although the NOPCML appears to be well staffed the number of persons (12 staff members) who may perform on-site inspections seems to be insufficiently with the large number of entities to be supervised. Furthermore the NOPCML has 1.348 pending STR dating back to 2005, which need to be speedily and effectively progressed.

10. On the preventive side Romania's legal framework addresses in detail a substantial number of the FATF requirements on CDD. However, in certain key areas a number of gaps are notable; this is particularly relevant in those areas on which FATF places a considerable emphasis i.e. beneficial ownership and PEPs. Areas of non-financial activities (DNFBP) beyond those covered by the EU and FATF provisions have been identified as exposed to risks and made

subject to the AML/CTF provisions, such as car dealers and travel agencies. AML/CFT measures need to be enhanced for DNFBP.

11. Supervision is performed by several authorities; the financial supervisory authorities supervise the respective financial institutions for AML/CFT compliance. The NOPCML supervises all reporting entities, which do not have overseeing authorities. It should be noted that joint supervision between the NOPCML and the prudential supervisory authorities is currently being undertaken. However, in the light of the number of covered entities and the limited resources of the NOPCML Romania should consider either increasing NOPCML's supervisory capacity, or re-configurating responsibilities between the various supervisors.

2. Legal Systems and Related Institutional Measures

12. The Money laundering incrimination is provided in Article 23 in the AML/CFT Law. Romania has moved to a full "all crimes" approach and all predicate offences for money laundering required in the FATF Recommendations are considered covered. No prior conviction is needed to indict a money laundering offence. At the time of the on-site visit there was 1 indictment of money laundering for which there is neither a prior conviction nor indictment of the predicate offence. The predicate offence was, however, committed outside of Romania and autonomous money laundering still needs to be successfully prosecuted in the case of a domestic predicate offence. It is not a prerequisite that the predicate offence is committed on the Romanian territory for opening a money laundering case.

13. The mental element is knowledge as required in international conventions. The evaluators were told that in practice the intentional element of the offence of ML can be inferred from factual circumstances. The evaluators advise that Romanian authorities consider lesser standards for the mental element such as suspicion or negligence, as was also recommended by the evaluators during the second round. There have only been final convictions in five money laundering cases and tax evasion is still the most common predicate offence. Money laundering is being punished by imprisonment from 3 to 12 years.

14. The extension of criminal liability to legal persons is a welcome development. The procedure for ensuring final convictions needs, however, urgent reconsideration. The evaluators are seriously concerned that the timeframe between indictment and final conviction appears unreasonably long. Thus, the few number of final criminal convictions is a serious impediment to the effectiveness of the overall system.

15. Statistics provided by Directorate for Investigating Organised Crime and Terrorism (DIOCT) shows that between 2002 and 2007, there were 77 indictments (involving 258 persons) for money laundering. It is not possible to disaggregate how many indictments represents police/prosecution generated cases and how many represent STR generated cases. The indictments have so far resulted in 14 non-final convictions, 4 final convictions and 3 final acquittals. The other 56 indictments remained outstanding at the time of the on-site visit. Statistics provided by the National Anti-corruption Directorate (NAD) shows that between 2002 and 2006 there were 4 indictments (involving 36 persons) for money laundering. The indictments have so far resulted in 2 non-final convictions. The other 2 indictments remained outstanding at the time of the on-site visit. The evaluators were informed that the length of court hearings is very long and as a result there are only 5 final convictions (1 being in the beginning of 2007) at the time of the on-site visit. The low number of convictions is a matter of concern to the evaluators.

16. Since the second round, the separate criminal offence of terrorist financing was introduced in Article 36 in Law no. 535/2004 on preventing and fighting terrorism. The law should be amended to explicitly provide for the offence to cover legitimate funds and to ensure that

"funds" cover the terms as defined in the Terrorist Convention. Attempt to commit the offence of terrorist financing should also be an offence. The terrorism financing offence is punished by imprisonment from 15 to 20 years and the interdiction of certain rights with confiscation not only of terrorist assets/funds but also their equivalent in money. Legal persons are fined from 2 500 RON to 2 000 000 RON (700 EUR to 570 000 EUR) and complementary penalties in the form of liquidation, suspending or closure of the whole/one activity/facility etc. At the time of the on-site visit there were no prosecutions and convictions for terrorist financing.

17. The confiscation provisions in the Criminal Procedure Code are applied to a wide range of property including proceeds of crime, equivalent value, income or valuable benefits obtained from the proceeds of crime. The prosecutor and the courts have appropriate powers to seize assets that may be related to money laundering or terrorist financing. The law enforcement authorities have appropriate powers to identify and trace property that may be subject to confiscation. The rights of bona fide third parties are protected.

18. Proceeds are subject to compulsory seizure and confiscation and equivalent value confiscation is possible. The seizure and confiscation regime is embedded in the law and seems to cover all criminal proceeds and instrumentalities. These are important measures that should be further utilised in future cases and applied wherever possible. There is no third party confiscation. Apart from instrumentalities which have been used and belong to a third person who has knowledge about the purpose of their use. Romanian authorities may consider the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation as is stipulated in Article 12 of the Palermo Convention (reversal of the burden of proof).

19. Law 535/2004 on preventing and fighting terrorism provides for "shall be frozen" and the team was assured by the Romanian authorities that the freezing procedure is intended to be an automatic one. The examiners were, however, not convinced that the reporting entities which are compelled to comply with the Law on preventing and fighting terrorism provisions are fully aware of the automatic system of freezing. This needs clearer guidance. Prior authorisation by the NBR, the NCS or the ISC is required for financial operations between residents and non-residents, and between non-residents included in the single List. The evaluators were concerned that operations between residents did not appear to be covered. The freezing procedure does not include funds derived from funds or other assets owned or controlled, directly or indirectly, by the listed or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds or assets are made available, directly or indirectly, for such persons' benefit, by their nationals or by any person within their territory.

20. The approach to delisting and de-freezing is problematic. The examiners encourage the Romanian authorities to consider providing for such procedures as quickly as possible. Equally there are no clear provisions regarding the procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not designated. There are no provisions implemented that give access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses. At the time of the on-site visit no true matches were found.

21. The National Office for Preventing and Control of Money Laundering (NOPCML) is an administrative type of FIU and it is organised as a specialised body with legal personality, under the subordination of the Government. To guarantee its independence, NOPCML has its own budget and makes annual reports on its activities published in the Official Gazette.

22. The NOPCML undertakes a leading role in the development, coordination and implementation of the AML/CFT system. NOPCML is providing training for obliged entities. The number of

trained persons in the NOPCML and other institutions involved in money laundering and terrorist financing issues is impressive. NOPCML is well structured and has quite impressive IT equipment. NOPCML has issued templates of suspicious transaction report (STR), cash transaction report (CTR) and cross border transaction report (CBR). The evaluators also have the impression that the FIU operates effectively with international counterparts and that it demonstrates good cooperation through exchange of information.

23. Although the NOPCML appears to be well staffed the number of persons (12 staff members) who may perform on-site inspections seems to be insufficient given the large number of entities to be supervised. Furthermore the NOPCML has 1,348 pending STR dating back to 2005, which need to be quickly and effectively progressed. The obligation not to disseminate information received while being employed by the NOPCML ceases five years after the cessation of working with the Office. The evaluators recommend this obligation to be perpetual.

24. In Romania, the competence for prosecution of money laundering is divided between several prosecutors' offices, depending on the type of the predicate offence. As a result, the competence is as follows:

- Directorate for Investigating Organised Crime and Terrorism (DIOCT), if the proceeds laundered originate from an offence for which DIOCT is competent investigation body;
- National Anticorruption Directorate (NAD), if the proceeds laundered originate from a corruption offence or an offence related to corruption;
- Regular prosecutors' offices attached to tribunals, if the proceeds laundered originate from an offence which does not fall either under the competence of NAD, or under the competence of DIOCT.

25. The AML/CFT Law and Criminal Procedure Code allows the persons who investigate the money laundering and terrorism financing offences, to benefit from the necessary means in order to obtain the data and information for evidence gathering. If there is a suspicion of money laundering or terrorist financing there is no financial institution secrecy that inhibits the prosecutor and the court to access such information. NOPCML is under the obligation to put any available data and information related to money laundering and terrorist financing at the prosecutor's disposal. The evaluators noted a discrepancy between the number of indictments and the low number of convictions on money laundering. There are few STRs on terrorist financing, and no prosecutions and convictions on terrorist financing.

3. Preventive Measures – financial institutions

26. The Romanian prevention on money laundering regime is based on the Law 656/2002 on the prevention of money laundering and on setting up of certain measures for the prevention and combating of terrorism financing (AML/CFT Law). General customer identification requirements are set out in the AML/CFT Law. Furthermore the AML/CFT Law requires that the prudential supervision authorities issue norms/regulations concerning the standards for knowing the customers (KYC) concerning their respective area. Detailed provisions have been issued for credit institutions, non-banking financial institutions, insurance companies, capital market intermediaries and the DNFBP sector.

27. Romanian's legal framework addresses in detail a substantial number of the FATF requirements on CDD and in practice, the awareness of customer due diligence requirements and the application of measures in relation to customer identification seemed very high. However, in certain key areas a number of gaps are notable; this is particularly relevant in those areas on which FATF places a considerable emphasis i.e. beneficial ownership and PEPs. The Romanian

authorities indicated that all the identified gaps in relation to preventative measures would be rectified with implementation of the Third EU Money Laundering Directive.

28. The AML/CFT Law requires the financial institutions to identify their customers (both individuals and legal entities) when establishing business or professional relations; when carrying out any operation involving more than 10,000 €; when performing transactions in smaller amounts below the threshold but there is information that these operations are linked; and when suspicion of money laundering arises. Financial institutions cannot keep anonymous accounts, accounts under fictious names or other types of accounts where the owner is not identified.

29. Romania has introduced into its legal framework a number of very indirect requirements in relation to PEPs, however the assessors were of the opinion that these fall well short of the expected standard. Whilst acknowledging the implementation of PEPs policies by number of the larger financial institutions it was also apparent that the overall requirements were restrictive and being implemented in an inconsistent fashion. The Romanian authorities should therefore introduce direct obligations as defined in Recommendation 6.

30. There is no enforceable requirement to obtain senior management's approval before establishing new correspondent relationships. Additionally there is no enforceable requirement to document the respective AML/CFT responsibilities of each institution.

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

32. The AML Law obliges subject persons to maintain for a period of 5 years the data about the customers. The five-year period starts with the date when the relationship with the client comes to an end or the date of performing the operation. There is no legal basis for keeping transactions records identification data, account files and business correspondence for longer than 5 years if necessary, when properly required to do so by a competent authority in specific cases upon proper authority

33. There is no explicit provision in the AML/CFT Law which requires financial institutions to pay special attention to business relationships and transactions with persons from countries that do not or insufficiently apply the FATF Recommendations. In addition, there is no requirement to set out in writing any findings of examinations on the background and purpose when transactions have no apparent economic or visible lawful purpose. Such findings should be set out in writing and maintained for a period of at least five years to assist competent authorities. Countermeasures in case such a country continues not to apply or insufficiently applies the FATF Recommendations should also be established by law, regulations or other enforceable means.

34. The reporting obligation in the AML/CFT Law referring to suspicious transactions "...which is on the way to be performed…." does not appear to cover the full width of the reporting obligation as set out in Recommendation 13. The reporting obligation in the AML/CFT Law does not fully cover the reporting obligation if the transaction has been performed. Atypical transactions identified after the transactions are covered but any other kind of suspicion that arises after the transaction has been performed is not covered.

35. In cases where delay of the operation or transaction is not possible or the efforts to trace the beneficiaries of such money laundering suspect operation could be hampered, the subject persons shall notify the NOPCML immediately after its performance. There is no financial

threshold and all suspicious transactions (including for tax purposes) should be reported. Attempted suspicious transactions are not covered.

36. The reporting obligation on terrorist financing is covered by the same provision as the reporting obligation on money laundering in the AML/CFT Law. For this reason the same shortcoming are equally valid for the reporting obligation on terrorist financing. The obligation need to be broadened and attempted suspicious transactions should be covered.

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

38. Administrative sanctions for non-compliance with the AML Law may be imposed by the NOPCML and the financial supervisors. There are some proportionate and dissuasive sanctions in place for natural and legal persons. Some violations that are considered by the evaluators to be serious breaches of the AML/CFT Law are only sanctioned by relatively low fines. There are some additional sanctions which may apply to legal persons. The effectiveness of the overall sanctioning regime is questioned.

39. The National Bank of Romania is responsible for the regulation and supervision of the activities of the banking sector, credit co-operatives and non-banking financial institutions registered in Special Register. The Insurance Supervisory Commission regulates and supervises the insurance companies. The National Securities Commission regulates and supervises the capital market. Joint inspections of financial institutions may be undertaken with the NOPCML. The NOPCML is supervising reporting entities which do not have an overseeing authority. Exchange offices are supervised by the NBR as a foreign exchange regime. On-site AML/CFT inspections have been undertaken by the NBR jointly with the NOPCML. Supervision of exchange offices lack, however, a clear delineation of legal responsibility between the NBR and the NOPCML.

40. Non-banking financial institutions are registered with the NBR in either the General Register, the Special Register or the Evidence Register. The non-bank financial institutions are registered in the Special Register if two cumulative conditions are met: the level of own capital is minimum 50 000 000 RON and the level of credits and financing is minimum 25 000 000 RON. Pawn Houses and Mutual help-houses are registered in the Evidence Register. All other non-bank financial institutions are registered in the General Register. NBR supervises all non-banking financial institutions in the Special Register for AML/CFT compliance (45 entities). The NOPCML performs AML/CFT supervision of all non-banking financial institutions in the General Register (217 entities, out of which 45 entities are registered also in the Special Register) and the Evidence Register (4,600 entities). The NOPCML supervises around 4,600 non-banking financial institutions in all. The evaluators have concerns that this sector is not adequately supervised taking into account the limited number of supervisory staff with the NOPCML (12 on-site supervisors) compared to the number of supervised non-banking financial institutions. For this reason many more resources should be dedicated to the NOPCML or the distribution of supervisory responsibilities among authorities involved in AML/CFT should be reconsidered.

41. Money and value transfer service providers (MVT) have to be registered with the National Commerce Register. Being a "subject person" the MVT service providers are bound by the AML/CFT Law and secondary legislation issued by the NOPCML on identification, record keeping and internal reporting procedures. MVT service providers are supervised by the NOPCML. There are, however, deficiencies identified earlier in the report in respect of CDD, PEPs, and especially in relation to SR VII which materially affect the compliance of the MVT service operators with the FATF Recommendation overall. Furthermore it should be recalled that in terms of inadequacy of the NOPCML resources, being the AML/CFT supervisor of

MVT service providers, evaluators have concerns regarding the effectiveness of the supervision.

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

42. The AMLCFT Law goes significantly beyond the category of DNFBP included in the FATF Recommendations and in the 2nd EU Directive. The evaluators recommend Romania to clarify which entities and natural persons are covered by the notion of "dealers" and "any other natural or legal person, for acts and deeds, committed outside the financial-banking system".

43. Despite the efforts made by Romania to cover a wide range of DNFBP, which goes beyond the category of DNFBP included in the FATF Recommendations and in the 2nd EU Directive, some relevant gaps remain in the CDD procedure. In particular, the procedure of identifying the beneficial owner should be strengthened and adequate provisions should be issued for enhanced due diligence referring to PEPS.

44. The evaluators recommend that adequate and enforceable measures are taken for linking the CDD information with transactions performed in casinos. Furthermore Romania does not address the 3000 Euros threshold for casinos in law, regulation or other enforceable means. Casinos report to and work with the NOPCML, but the evaluators still consider this sector to be vulnerable and thus continued cooperation should be ongoing in order to monitor the sector. The low level of detection of money laundering to some extent appears to be related to a lack of awareness of their vulnerability, and in some cases to reluctance to report.

45. The reporting obligation for DNFBP is the same as for financial institutions and the deficiencies noted for financial institutions are equally applicable for DNFBP. The main area of concern is the low number of STRs filed. In particular when taking into account the specific sectors that - as confirmed during the on site visit by the Romanian authorities - are particularly vulnerable to money laundering, such as real estate agents, lawyers and accountants. The evaluators are also concerned regarding the low level of dedication from these sectors.

46. The evaluators strongly recommend that Romanian authorities consider implementing adequate legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of casinos.

47. The NOPCML supervises all DNFBP apart from lawyers who are supervised by the National Union of Bar Association and notaries who are supervised by National Union of Public Notaries.

48. The evaluators were impressed with NOPCML's movement towards a risk-based supervision approach, which currently is in the early stages of implementation. It is anticipated that this will support more targeted supervision, which should lead to greater effectiveness.

49. Low level of reporting from professionals and high risk sectors (such as real estate agents, lawyers and accountants) require more targeted guidelines to raise awareness. Guidelines should further develop techniques of terrorism financing. The NOPCML should consider targeting specific feed-back to high-risk sectors.

50. Given the limited resources of the NOPCML the implementation of the developed risk based approach to monitoring may be helpful but not sufficient. Whilst there is obvious cooperation, for example through joint inspections, between the NOPCML and other supervisory bodies the view of the evaluators is that NOPCML resources are inadequate, especially taking into account that only 12 staff members are conducting on-site inspections. As such, consideration should be given to either increase NOPCML's supervisory capacity, or re-configure responsibilities between the various supervisors.

5. Legal Persons and Arrangements & Non-Profit Organisations

51. The ownership of shares are registered with the National Office for Trade Register under the Ministry of Justice. The trade register is a public register and the information registered is available to any person that requests such information. Joint-Stock Companies and Limited Partnership by Shares can issue bearer shares. The evaluation team was advised that it is possible to trace bearer shares and how many bearer shares are in circulation. The assessors were unable to assess the full transparency in relation to the operation of bearer shares.

52. The concept of trusts is not known under the Romanian Law.

53. The non-profit sector is closely regulated and associations and foundations are subject to registration systems. The evaluators, however, did not receive any information which demonstrates that Romanian authorities periodically review the NPOs with the object to assess terrorist financing vulnerabilities.

54. A permanent independent audit should be established to ensure that funds are used for the stated purposes, reach the intended beneficiary and to detect misdirection of the funds. Moreover, not only basic information submitted under the registration should be publicly accessible but NPOs' records should also be publicly accessible.

55. Regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in terrorist financing and new protective measures is recommended.

6. National and International Co-operation

56. The evaluators recommend Romania to consider the development of adequate and effective mechanisms of domestic policy coordination of the main players (FIU, law enforcement and supervisors) especially in the fight against money laundering in order to enhance the strategic coordination and to review systematically money laundering vulnerabilities and the performance of the system as a whole.

57. Though the Palermo, Vienna and TF Conventions have been brought into force there are still reservations about effectiveness of implementation in some instances, particularly terrorist financing criminalisation and some aspects of the provisional regime.

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

7. Resources and Statistics

59. The NOPCML is understaffed with on-site supervisors in comparison to the very large number of diverse supervised entities. More resources should also be provided to the authorities who are investigating money laundering and terrorist financing, especially concerning financial investigation. Romanian authorities maintain comprehensive statistics on matters relevant to money laundering.

III. MUTUAL EVALUATION REPORT

1. GENERAL

1.1 General information on Romania and its economy

60. Romania is a country situated in the South-Eastern part of Central Europe. The Romanian border's lengths 3,149.9 Km, of which two thirds (2,064.4 km) are represented by the Danube, Prut and Tisa rivers and the Black Sea, and one third (1,085.5 km) is represented by a terrestrial border. The surface of its territory is 238.391 km2, which positions Romania 80th worldwide and 13th in Europe in terms of size. Romania is situated in the neighborhood of five states: the Republic of Moldova and Ukraine (to the North and East), Bulgaria (to the South), Serbia (to the South and West) and Hungary (to the West). The territory has an administrative division in 41 counties.

61. The population count, in July 2006, was approximately 21,584,365 inhabitants. They are of the following nationalities/ethnics: Romanian 89.5%, Hungarian (including Sequi) 6.6%, Roma 2.5%, Ukrainian 0.3%, German 0.3%, others 0.8%. The density of the population is 90.5 inhabitants/ km2.

62. Romania is a semi-presidential unitary state. The country gained recognition of its independence in 1878. At the end of World War II, parts of the territory were occupied by the USSR and Romania became a member of the Warsaw Pact. With the fall of the Iron Curtain in 1989, Romania started a series of political and economic reforms ending with Romania joining the European Union as a member on 1 January 2007. Romania has the ninth largest territory in the EU, and with 22 million people it has the 7th largest population among the EU member states.

63. The capital of Romania is Bucharest, the sixth largest city in the EU with almost 2.5 million inhabitants. In 2007, Sibiu, a large city in Transylvania, was chosen as European Capital of Culture. Romania joined NATO on 29 March 2004, and is also a member of the Latin Union, of the Francophone and of OSCE.

Economy

64. With a GDP of around $250 billion and a GDP per capita (PPP) of $11,800 (estimated for 2007) Romania is considered an upper-middle income economy. After the Communist regime was overthrown in late 1989, the country experienced a decade of economic instability and decline. From 2000 onwards, however, the Romanian economy was transformed into one of relative macroeconomic stability, characterized by high growth, low unemployment and declining inflation. In 2006, according to the Romanian Statistics Office, GDP growth in real terms was recorded at 7.9%, one of the highest rates in Europe. The growth dampened to 6.0% in 2007 and is expected to be around 5.7% in 2008. Unemployment in Romania was at 3.9% in September 2007, which is very low compared to other middle-sized or large European countries such as Poland, France, Germany and Spain. Foreign debt is also comparatively low, at 20.3% of GDP. Exports have increased substantially in the past few years, with a 25% year-on-year rise in exports in the first quarter of 2006. Romania's main exports are clothing and textiles, industrial machinery, electrical and electronic equipment, metallurgic products, raw materials, cars, military equipment, software, pharmaceuticals, fine chemicals, and agricultural products (fruit, vegetables and flowers). Trade is mostly centered on the member states of the European

Union, with Germany and Italy being the country's single largest trading partners. The country, however, maintains a large trade deficit, which increased sharply during 2007 by 50%, to 15 billon euros.

65. In 2005, the government replaced Romania's progressive tax system with a flat tax of 16% for both personal income and corporate profit, resulting in the country having the lowest fiscal burden in the European Union, a factor which has contributed to the growth of the private sector. The economy is predominantly based on services, which account for 60% of GDP, even though industry and agriculture also have significant contributions, making up 24% and 7 % of GDP, respectively. Additionally, 32% of the Romanian population is employed in agriculture and primary production, one of the highest rates in Europe. Since 2000, Romania has attracted increasing amounts of foreign investment, becoming the single largest investment destination in South-eastern and Central Europe. Foreign direct investment was valued at €8.3 billion in 2006. The average gross wage per month in Romania is 1411 lei as of September 2007 (equating to €403, US$597 based on international exchange rates), and $1001.1 based on purchasing power parity.

66. Romania registered an important growth at the end of the year 2006, reaching a real GDP growth to 7.9 percent. Domestic demand grew strongly owing to a sharp increase in private consumption and investment. CPI inflation was 4.9 percent at the end of 2006, being diminished from 9.0 percent in 2005. The government employment increased by almost 30,000 (3⅓ percent). Given this increase in employment and the average statutory wage increases, the increase in the government's wage bill of 36 percent last year implies a sharp increase in other personnel-related spending, including bonuses. The imports registered at the end of 2005 an increase of 15,453 million Euro, in comparison with 2002. The exports increased, in the reference period, from 14,634 million Euro to 20,954 million Euro (see the graphics below).

Romania, Trade with the World **(EUROSTAT)**					
Year	Imports mio Euro	Yearly % change	Exports mio Euro	Yearly % change	Imports + Exports
2001	17.365		12.713		30.078
2002	18.613	7,2	14.634	15,1	33.247
2003	20.978	12,7	15.531	6,1	36.508
2004	25.979	23,8	18.841	21,3	44.820
2005	34.066	31,1	20.954	11,2	55.021
3m 2005	6.896		4.813		11.708
3m 2006	9.064	31,4	5.513	14,5	14.577
Average annual growth		18,3		13,3	16,3

Government

67. Romania's 1991 constitution proclaims Romania a democracy and market economy, in which human dignity, civil rights and freedoms, the unhindered development of human personality, justice, and political pluralism are supreme and guaranteed values. The constitution directs the state to implement free trade, protect the principle of competition, and provide a favorable framework for production. The constitution provides for a President, a Parliament, a Constitutional Court and a separate system of lower courts that includes a Supreme Court. A plebiscite held in October 2003 approved 79 amendments to the Constitution, bringing it into conformity with the European Union legislation. Romania is governed on the basis of a multi-party democratic system and on the segregation of the legal, executive and judicial powers. The Constitution states that Romania is a semi-presidential democratic republic where executive functions are shared between the president and the prime minister.

68. The two-chamber Parliament, consisting of the Chamber of Deputies and the Senate, is the law-making authority. Deputies and senators are elected for 4-year terms by universal suffrage.

69. The President is elected by popular vote for maximum two terms, and since the amendments in 2003, the term is for five years. The president is the Chief of State, charged with safeguarding the constitution, foreign affairs, and the proper functioning of public authorities. He is supreme commander of the armed forces and chairman of the Supreme Defence Council. According to the constitution, he acts as mediator among the power centers within the state, as well as between the state and society. The president nominates the prime minister, who in turn appoints the government, which must be confirmed by a vote of confidence from Parliament.

Legal System

70. The justice system is independent in relation with government, and is made up of a hierarchical system of courts culminating in the High Court of Cassation and Justice, which is the supreme court of Romania. There are also courts of appeal, county courts and local courts. The Romanian judicial system is strongly influenced by the French model, considering that it is based on civil law and is inquisitorial in nature. The Constitutional Court is responsible for judging the compliance of laws and other state regulations to the Romanian Constitution, which is the fundamental law of the country. The constitution, which was introduced in 1991, can only be amended by a public referendum, the last one being in 2003. Since this amendment, the court's decisions cannot be overruled by any majority of the parliament. Courts in Romania are represented by courts of law, tribunals, specialis ed tribunals, courts of appeal and the High Court of Cassation and Justice. Approximately 180 local courts represented by courts of law represent the basis of the Romanian judicial system. In each county and in the Bucharest Municipality tribunals carry out their activity. The total number of these tribunals is 41. Apart from their own common law competencies granted under the law with respect to certain categories of litigation of medium importance, said courts may also judge legal actions filed against the sentences passed by the courts of law in the first instance. There are also 15 Courts of Appeals, at the level of the entire country, all of them having jurisdiction over several tribunals. The decisions ruled by the Courts of Appeals may only be challenged by final appeal (review), which is to be judged by the High Court of Cassation and Justice.

71. The 1992 law on organisation of the judiciary, replaced by Law no. 304/2004, established a four-tier legal system, including the reestablishment of appellate courts, which existed prior to Communist rule in 1952. The four tiers consist of courts of:
    - courts of law
    - tribunals, including specialised tribunals
    - courts of appeal
    - High Court of Cassation and Justice.

72. Under the law (Romanian Constitution and Law no. 304/2004 on the organisation of the judiciary), the courts are independent of the executive branch. The constitution vests authority for selection and promotion of judges in the Superior Council of Magistracy, independently from the Ministry of Justice. Judges are appointed for life by the president upon recommendation from the Superior Council of Magistracy (SCM). The president and the vice-president of the High Court of Cassation and Justice are appointed for a term of 3 years and may serve only one more mandate. Proceedings are public, except in special circumstances provided for by law.

73. Judges (except for trainee judges) are both independent and immovable. The independence of the judges directly arises from the principle of separation of state powers within the legal state, and this authority is not subordinated to the legislative or the executive power. Any interference of the public authorities, which is intended to influence the decisions of the judges, is prohibited. By being granted immovability, the judges are protected against any arbitrary revocation, transfer or suspension, which could represent methods of pressure directed against the respective judge. In Romania, with the exception of trainee judges, the appointment is made by the President of Romania, upon the proposal of the Superior Council of the Magistracy, while the promotion, transfer and sanctioning of the judges appointed according to the aforementioned procedure may only be performed by the Superior Council of the Magistracy.

74. The Constitutional Court adjudicates on the constitutionality of laws before the promulgation thereof. The Court consists of nine judges, appointed for a term of 9 years. Three judges are appointed by the Chamber of Deputies, three by the Senate, and three by the president of Romania.

75. The Ministry of Justice exercises powers related to the administration of the justice system, the execution of punishments, as well as in connection with the activity of the Public Ministry, based on strict application of the laws and in keeping with the democratic principles of the rule of law, ensuring adequate conditions for the entire justice system.

76. The Romanian Constitution reinstated the Superior Council of the Magistracy, a body of the judicial authority with management powers and disciplinary jurisdiction. Its members are elected directly from the general assemblies of the magistrates by court levels, their list being forwarded through the permanent offices of the Chamber of Deputies and the Senate to the legal commissions with a view to hearings in a joint session. Subsequently, the list of candidates is put to the vote in a joint session of the two chambers of Parliament.

77. Romanian justice is organised on the basis of the principle of double jurisdiction. Therefore, as a rule, any case with respect to which a court resolution was ruled by a first-degree court, may be subject to a retrial by a superior court in all of its aspects, both on the merits and in procedural aspects. As a guarantee for the quality of the act of justice, this system is intended to secure the possibility of the court that is superior in hierarchy to remedy the potential errors made by the judges of the first-degree court.

78. The Romanian judicial activity, being founded on the principles of Roman-German system of law, is based upon the interpretation and implementation of legal norms, in systematized form, as legislative codes (civil code, civil procedure code, commercial code, penal code, penal procedure code, customs code, air code, financial code, etc.). Therefore, the Romanian legal system has not acknowledged the institution of legal precedents as a formal legal source. The Romanian judges settle cases according to their own conviction and their own conscience, independently of the previous court decisions ruled by other judges with respect to similar cases.

Transparency, Good Governance, ethics and measures against corruption

79. Romania ranks 69th out of 179 countries on the 2007 Transparency International Corruption Perceptions Index.

80. One of the most important acts regarding transparency is Law no. 52 adopted in 2003 on decisional transparency in public administration. The purposes of this law are to raise the responsibility of the public administration towards the citizen, as a beneficiary of an administrative decision, and also to involve the citizen in making the administrative decision and in drafting normative acts. Other important normative acts are the following:

- Law no. 144/2007 on the setting-up, organisation and functioning of a National Integrity Agency, with subsequent amendments;
- Law no. 161/2003 on certain measures for ensuring transparency in exercising public dignitaries and public functions as well as in the business environment and preventing of corruption, with subsequent amendments;
- Law no. 571/2004 on protection of whistleblowers;
- GEO no. 34/2006 on the award of public procurement contracts, of public works concession contracts and of services concession contracts.

81. In 2007, the Code of Conduct for civil servants (Law no. 7/2004) was modified, by introducing a new institution – the ethics counselor. This person will be a civil servant named by the manager of the respective public authority or public institution, whose function will be consultation and assistance for civil servants in the area of conduct, and the monitoring of the application of the code of conduct within the framework of the respective state entity.

82. For money laundering related to corruption (in the competence of NAD), the offences committed using the banking system are significantly declining and the other areas to which money laundering was linked, did not suffer major changes, but are slowly decreasing. The National Anti-Corruption Strategy II (NACII) (2005-2007), emphasises the implementation of existing legislation and specifies 10 priority objectives, including increased transparency and integrity on the part of the public administration. It is accompanied by an Action Plan setting out concrete measures to implement the said 10 objectives. The Action Plan also provides for adopting strategies and action plans in all vulnerable sectors of the administration, such as the customs service.

1.2 General Situation of Money Laundering and Financing of Terrorism

83. In Romania, the competence for money laundering is divided between several prosecutors' offices, depending on the type of the predicate offence. The competence is as follows:

- National Anticorruption Directorate (NAD), if the proceeds laundered originate from a corruption offence or an offence assimilated to corruption. For further details on NAD's competence please see sector 1.5 letter b);

- Directorate for Investigating Organised Crime and Terrorism (DIOCT), if the proceed laundered originate from an offence for which DIOCT is a competent investigation body;

- Regular prosecutors' offices attached to tribunals, if the proceed laundered originate from an offence which does not fall under the competence of NAD, nor under the competence of DIOCT.

84. According to Law no. 656/2002 (the AML/CFT law) the predicate offence to money laundering can be any offence provided by the criminal law. The law does not limit the possibility of the prosecutor to investigate the methods through which the licit financial sources are obtained and subsequently recycled.

85. Based on the assessment of the cases investigated by DIOCT, the main characteristic of the transactions performed within financial markets is the negotiable character of the values, subject to these transactions, not being restricted by any legal provision. As a consequence, the majority of these transactions allow that association may be constituted for stockpiling as much capital as possible, with the view of holding the control in that economic area.

86. Between 2002 and 2006 the main sources of illegal funds ascertained by DIOCT are the financial and economic offences as follows:

- Tax evasion and fraud in the field of oil business;
- Tax evasion related to methods of marketing products which generates additional taxes to the state budget;
- Illegal reimbursement of VAT, based on illegal or fictitious transactions; having fiscal servants as accomplices, the commercial companies obtained significant illegal values, to be subsequently included within legal financial circuits;
- Offences related to the patrimony of commercial companies, with the view of conferring a legal appearance to illegal transactions and damaging the company through transferring funds from the accounts of the company to natural persons accounts by concluding *pro causa* contracts;
- Offences related to the illegal use of electronic means of payment;
- Trafficking in persons committed outside the country, with the proceeds of the crime being laundered within Romania.

87. During the same period the main sources of illegal funds ascertained by NAD:

- Illegal income using the banking sector;
- Tax evasion;
- Offences related to the public procurement system.

STATISTICAL DATA[3]

Crimes investigated by the police during 2002-2005

	2002	2003	2004	2005
Total Crimes	**312204**	**276841**	**231637**	**208239**
Financial-economic	113803	102390	74339	56603
Judiciary	102034	86314	75076	70344
Other nature	96367	88137	82222	81292
Out of the total no.:				
Performed in urban level	193610	167984	137080	125808
Performed in rural level	118019	107895	92796	81022
Crimes against human beings				
Homicide	563	551	516	453
Homicide tentative	487	428	524	457
Manslaughter – total	1047	936	884	917
- Performed by automobile drivers	220	216	172	171
Heavy corporal injury	1052	893	700	724
Death causing injuries	156	162	122	109
Rape	1253	983	953	1013
Offences against patrimony,				
Theft	72780	58472	48065	43191
Robbery	3025	2782	3087	3326
Fraudulent management	2178	1959	1095	898
Fraud	15466	11306	8749	8316
Embezzlement	3181	2928	2017	1540
Destruction	18136	16676	16447	16909
False related crime	**27845**	**22836**	**17046**	**14761**
Offences incriminated by special law				
Crimes - road traffic regime(GEO no 195/2002)	22998	21537	19501	19707
Law combating illicit commercial activity (no.12/1990)	3636	1428	323	143
Smuggling and import-export offences	519	387	246	187
Total accused persons–	**230850**	**206766**	**185270**	**170563**
From urban level	124712	110767	100411	92886
From rural level	105001	94998	83939	76261
Foreigners	1137	1001	1219	1416
Out of the total No.				
Minors	15670	13961	15108	15253
- Up to 14 years	464	378	410	616
- 14 - 17 years	15206	13583	14698	14637
Teenagers (18 - 30 years)	83525	73605	65527	62831
Without profession	99871	90979	81584	79456
Unemployed	2426	1478	1196	726
Criminality rate (Crimes investigated by the police within 100000 citizens)	**1432**	**1274**	**1069**	**963**

Source: General Inspectorate of the Romanian Police within the Ministry of Administration and Interior.

[3] Provided by National Institute for Statistics - Romania

Persons definitively convicted, on categories of crimes

	2002	2003	2004	2005
Persons definitively convicted				
Total	**81814**	**76739**	**69397**	**65682**
Out of which, for:				
Crimes against human beings				
- Total	**22092**	**20543**	**18047**	**17411**
Out of which:				
Homicide	1277	1471	1216	685
Death causing injuries	137	118	107	108
Heavy corporal injury	827	733	637	572
Manslaughter	857	789	679	570
Crimes against labor protection	26	29	12	6
Rape	649	792	572	451
Direct actions	13873	12751	11579	11833
Offences against patrimony				
- Total	**39464**	**35531**	**31131**	**29074**
Out of which:				
Theft	30316	27166	24314	22482
Robbery	2836	3012	2432	2731
Embezzlement	1008	1042	801	660
Fraud	2469	2324	1855	1489
Forester crimes - total	**3809**	**3616**	**3270**	**2902**
Offences committed on duty				
To give bribe	52	56	72	76
To receive bribe	145	119	139	79
Traffic of influence	154	126	120	98
Receiving undue goods	9	1	3	1
Offences against authorities				
- Total	**606**	**459**	**396**	**351**
Out of which:				
Insult	527	391	340	299
Economic Crimes- total	**62**	**32**	**21**	**4**
Offences against social relation				
- Total	**3111**	**3213**	**2799**	**2535**
Out of which:				
Insult against the good morals and manners	577	807	580	615
Crimes related the road traffic regime				
- Total	**6391**	**7252**	**7498**	**8197**

Statistics on drugs cases prosecuted by DIOCT – at national level

Drugs cases	Cases open per year	Solved cases	Cases solved by Indictments	Cases solved by non-indictments	Total number of persons prosecuted	Persons under arrest sent to court by indictment	Persons not arrested/under aged sent to court by indictment
2004	2304	1756	441	1315	2307	627	117/19
2005	2615	1344	394	950	2412	526	220/0
2006	2549	1237	327	910	2327	467	181/0
2007	2510	2960	344	2616	4598	460	289/23

88. By its strategic position, Romania represents a segment of the "Balkan Route" and the "Euro Asiatic Route" in trafficking in drugs and human beings outside Europe, thus creating conditions for the organised crime groups to launder the money obtained from the committing of offences.

89. In November 2004, when DIOCT was set-up, several organised crime groups were established. They mainly performed extensive criminal activities in certain regional areas, activities through which illicit financial benefits were acquired within a short period of time, subsequently being transferred to other countries (for example, Delaware USA, Madeira Region, Switzerland, and the Principality of Monaco). They primarily used fictitious commercial contracts and the amounts of money were returned to the initial commercial company as "financial assistance for associates". This mechanism damages the commercial company twice, both by illegal externalisation of the money and by being demanded to pay interests and penalties to a credit they did not legally conclude.

90. During 2006 the main economic sectors affected by money laundering (as identified in the notifications sent by the Romanian FIU to the General Prosecutor's Office) are the internal/external trade, the financial and banking system and the capital market. The illegal funds used in money laundering are generally, directed through Romanian and foreign banks and other financial institutions. In some cases, the fiscal heavens are used within the process of placement and the funds return back to Romania in the integration phase. The large use of cash and the phenomenon of smurffing are identified as means which facilitate money-laundering activities.

91. As regards the persons involved in the notifications sent by the FIU to the GPO during the year 2006, it was highlighted that most of them are Romanian citizens – 61.67%, Chinese citizens – 6.83%, Italian citizens -5.73% and Turkish citizens – 5.51%.

92. Also in the last year the Chinese people have been involved in money laundering obtained by tax evasion. Usually they use the commercial companies, where they are associates, deposit small amounts in cash – generally under the limit of the threshold, with justification "visa for entering in the country" and then transfer the funds to foreign countries with the justification "family help". Even though the amounts are small having regard to the frequency of the cross-border transfers, as well as the large number of persons who disposed these operations, the total amount of the sums leaving the country is important.

Trends in terrorism financing

93. Since 1998, a large number of foreign Arabic citizens have moved their legal residence to Romania (by performing university studies or engaging in commercial activities). The legal framework on commercial companies allowed them to perform economic activities without an efficient overall control.

94. The financial flows within the operations performed by them were monitored, especially after 1999 – the year when the Romanian FIU (NOPCML) was set up - through the reports from the reporting entities. From this moment, the use of both the banking system and money remittance agents for illicit activities was diminished. The practice revealed money transfers from resident and non-resident persons in Romania to citizens or companies located in Asia.

95. Criminal groups try to find other ways of obtaining funds, sometimes of licit origin and to adapt their international means and methods.

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

Financial Sector

96. All the financial activities covered by the glossary by the FATF Recommendations are undertaken by some or all of the financial institutions. The different types of financial institutions which operate in Romania can be classified under the following categories:

Credit institutions

97. Credit institutions are licenced by the National Bank of Romania and are authorised to undertake the business of banking as specified in the Government Emergency Ordinance no. 99/2006. In Romania there were 42 credit institutions at the end of 2007, out of which two banks had public capital and other three had domestic private capital. In addition to them, 36 banks were entities with majority foreign capital (including 10 foreign bank branches from the EU) and totalled a market share of 88% in terms of assets. Furthermore, the Romanian banking system included a co-operative organisation, namely CREDITCOOP with their territorial network of 124 co-operatives. By the end of 2007 the total number of account holders opened with a credit institution was 20,914,215. The Romanian authorities do not have data regarding the proportion of non-resident account holders. During the period December 2004 – September 2007 the banking network has been extended within the territory by 70 %.

98. The credit institutions undertake the following activities reproduced in the list hereunder:

- Acceptance of deposits and other repayable funds;
- Lending including, *inter alia*: consumer credit, mortgage credit, factoring with or without recourse, financing of commercial transactions, including forfeiting;
- Financial leasing;
- Money transmission services;
- Issuing and administering means of payment, such as credit cards, travelers cheques and other similar means of payments, including the issuing of electronic money;
- Guarantees and commitments ;
- Trading for own accounts and/or for account of clients, according to the law, in:

    - Money market instruments such as: cheques, bills, promissory notes, certificates of deposit;
    - Foreign exchange
    - Financial futures and options
    - Exchange and interest-rate instruments
    - Transferable securities and other financial instruments;
- Participating in securities issues and other financial instruments by underwriting and selling them or by selling them and the provision of services related to such issues;
- Advise on capital structure, business strategy and other services relating to mergers, and purchase of undertakings as well as other advice services;
- Portfolio management and advice;
- Safekeeping and administration of securities and other financial instruments;
- Intermediation on the interbank market;
- Credit reference services related to the provision of data and other credit references;
- Safe custody services;
- Operations in precious metals, gems and objects thereof;
- Acquiring of shares in the capital of other entities;
- Any other activities or services that are included in the financial field, abiding by the special laws regulating those activities, where appropriate.

99. The National Bank of Romania has issued Norm. No. 3 of 26 February 2002 concerning customer due diligence measures to be taken in credit institutions.

100. Although money-remitters exist in Romania, generally such transactions are executed through banks.

Non-banking financial institutions

101. Non-banking financial institutions perform exclusively crediting activities and connected activities. Non-bank financial institutions are forbidden to receive reimbursable funds from the public.

102. In order to perform their lending activity, non-banking financial institutions are registered, according to the type of their lending business, in three registers by National Bank of Romania, as follows:

- Pawning houses, credit unions and legal persons without patrimonial scope which grant credits exclusively from public funds or from funds provided based on inter-governmental agreements are registered in the **Evidence Register** (exclusively for statistical purposes). Around 4,600 entities are registered.
- Other types of non-bank financial institutions are registered in the **General Register**. 219 such entities are registered here.
- Non-bank financial institutions, registered in General Register, which exceed by the volume of their effective and potential activity the threshold established by the NBR, in such a way that their activity presents an increased interest from a financial stability perspective, are registered in the **Special Register** as well. Out of the 219 entities registered in the General Register, 45 are also registered in the Special Register.

103. At the end of 2007, the main activity performed by the non-bank financial institutions from the Special Register represented 87 % from the total volume of activities performed by the non-banking financial institutions in the General Register and 15 % of the volume of loans granted by the banking system.

104. In the AML/CFT Law it is stated as a principle that the entities, prudentially supervised by a competent authority, are also supervised by the respective authority for AML/CFT compliance. In the AML/CFT area the NBR has supervising attributions only towards the non-bank financial institutions registered in the Special Register. The non-banking financial institutions are registered only in the General Register and all those registered in the Evidence Register are supervised in the AML/CFT area by the NOPCML

105. The National Bank of Romania has issued Regulation no.8 of 7 November 2006 concerning customer due diligence measures to be taken in non-banking financial institutions, registered in the Special Register.

Capital Market

106. Securities companies are licenced and supervised by the National Securities Commission. Security companies are monitoring entities when performing safekeeping and administration of securities and other financial instruments.

107. The financial investments services companies (SSIF) are entities which are regulated, authorised, supervised and controlled by the National Securities Commission. The National Securities Commission monitors the financial investment companies. There are 71 financial investment services companies performing investment services. 23 of these companies do not carry out transactions with financial instruments for their own account. 44 financial investment companies are controlled by Romanian natural or legal persons. 27 are controlled by natural or legal foreign persons out of which: 5 are from Greece, 6 are from the USA, 3 are from Austria, 3 are from Cyprus, 1 is from the Netherlands, 1 is from Belgium, 1 is from Slovenia, 1 is from Germany,1 is from the British Virgin Islands, 1 is from Turkey, 1 is from France, 1 is from Italy, 1 is from Israel, and 1 is from the UK.

108. The National Securities Commission has issued Regulation no. 11/2005 on the prevention and control of money laundering and terrorist financing through the capital market and Instruction no.4/2005 on prevention of the terrorism financing acts.

Insurance

109. Institutions providing insurance (life and non-life) and re-insurance services are required to be licenced by the Insurance Supervisory Commission under the Law on insurance business and insurance supervision. Insurance and/or re-insurance brokers are also licenced by the Insurance Supervisory Commission. Insurance and re-insurance undertaking and branches of foreign insurance and re-insurance undertakings are monitoring entities following the AML/CFT Law.

110. At present 42 insurance/reinsurance companies are authorised to the activities under the provisions of Law no. 32/2000 on insurance companies and supervision of the insurance sector. 5 companies have Romanian integral capital; 31 companies have joint Romanian and foreign capital; and 6 companies have foreign capital.

111. The President of the Insurance Supervisory Commission has issued Order No. 3128/2005 for the approval of Norms on prevention and combating money laundering and terrorism financing through the insurance market.

Designated Non-Financial Businesses and Professions (DNFBP)

112. The different types of DNFBP which operate in Romania can be classified under the following categories.

Casinos

113. At the time of the on-site visit 21 casinos were operating on the territory of the Republic of Romania. All casinos hold licences issued by the Commission for Authorising Gambling Activities (CAGA). 17 casinos are members of the Association of Casinos Organisers from Romania (A.C.O.R.)

114. All casinos and all economic agents that develop gambling activities are reporting entities in Romania. As a consequence all the gambling agents and casinos have to comply with the obligations stated in the AML/CFT Law. The Romanian FIU (NOPCML) is the supervising authority for reporting entities which are not supervised under the prudential supervision of any authority, including the gambling sector.

Real Estate Agents

115. There are 9,570 real estate agencies registered in Romania. The real estate companies are commercial companies or authorised natural persons performing an activity in the real estate field, registered in accordance with the provisions in Law no. 31/1999 on commercial companies.

116. There are two professional associations in the real estate field, organising and regulating the sector. The National Union for Real Estate Agency (UNIM) is established by Law 35/2001. This association has the main objective of regulating the activity in the field of real estate and for the rising of the professional prestige for the operating agencies in the field of real estate. The Romanian Association of Real Estate Agencies (ARAI) is a non-governmental professional, non-political organisation. The main objectives are to promote and ensure co-operation relationships between the members; to continually improve the service quality offered to clients, and to attract investors; to train and educate its members etc.

Dealers in precious stones and metals

117. In Romania, the regime on precious metals and stones is provided for under the Emergency Governmental Ordinance no. 190/2000. Operations with precious metals and stones, as trading deeds and acts, can only be performed based on an authorisation issued by the National Authority for Consumers Protection (NACP). At the time of the on-site visit 4,817 authorisations had been issued. NACP maintains strict evidence on all natural and legal persons performing legal operations with precious metals and stones on Romanian territory.

118. The supervision of the market on precious metals and stones is performed by the personnel having control attributions from NACP, the Ministry of Internal Affairs and Administrative Reform and from the Ministry of Economy and Finance. NACP, as Community Authority, maintains separate evidence and monitors the operations with rough diamonds on Romanian territory, in accordance with the provisions of the Council Regulations (EC) no. 2368/2002 on implementing the Kimberley Process certification scheme for the international trade in rough diamonds. Out of the 24 registered economic agents, only 9 still perform operations with rough diamonds.

Lawyers

119. The National Association of Romanian Bars (NARB) is a legal person of public interest with its own patrimony and budget. According to the legislation, the lawyer profession is exercised only by lawyers registered within the list of current members of the Bar they are part of, the Bar being an NARB member. The setting up and functioning of Bars outside the NARB is forbidden. One Bar functions in each county, as a member of NARB, with the headquarters in the municipality of the county.

120. There are approximately 20,000 professionally active lawyers in Romania. A Protocol was concluded between the NARB and the NOPCML in 2005 to settle the procedures on how to enforce the provisions of the AML/CFT Law and on setting up of certain measures for the prevention and combating terrorism financing.

Public notaries

121. Law no. 36/1995 on the public notaries and notarial activities, public notaries from Romania are constituted in the National Union of Public Notaries. The Union represents and defences the interests of its members, acting for the prestige and the authority of the public notary profession, as well as for respecting the Law. The Union comprises all notaries in office, organised in 15 Chambers that function within the district of each Court of Appeal.

122. The activity of public notaries is performed in a notarial office, in which one or several associated public notaries, together with the auxiliary personnel, function. Currently, there are 1.753 public notaries. Public notaries are reporting entities, in respect of the AML/CFT Law.

123. In accordance with art. 8 of the Law no. 656/2002, public notaries report in maximum 24 hours all transactions amounting over 10.000 Euro, in cash or the equivalent value of the goods, and the suspicious transactions. Based on the protocol signed between the National Union of Public Notaries from Romania and the National Office for Prevention and Control of Money Laundering, the information that represents transactions reported by the public notaries are centralised by the Union and submitted on daily basis, on CD and on paper, to the Office. During the year 2007, 87.000 transactions in cash over 10.000 Euro and 550 suspicious transactions reports were submitted to the Office.

Accountants

124. At the time of the on-site visit 12,744 expert accountants and 5,357 accountants were registered in Romania.

125. The Body of Expert and Licenced Accountants of Romania (CECCAR), established through the Governmental Ordinance no. 65/1994 on the organisation of the expertise and of authorised accountant's activity, is an autonomous public interest legal entity, consisting of expert accountants and licenced accountants and it has branches, without legal personality in county municipalities and in Bucharest.

126. The Body of Expert and Licenced Accountants of Romania (CECCAR) issued the Deontological Norms of the professional accountants, applicable for all accountants from the economic area and, for the use of the professional accountants, Guidelines for Prevention and Combating Money Laundering. CECCAR designated the persons with responsibilities in the application of the AML/CFT Law, persons who keep contact with the National Office for Prevention and Control of Money Laundering.

127. In 2007, CECCAR organised together with the NOPCML a seminar for discussing the aspects related to the application of the legal provisions referred to the money laundering and terrorism financing prevention.

Auditors

128. The Governmental Emergency Ordinance no. 75/1999 on the activity of the financial auditors, provides that the activity as auditor is regulated by the Chamber of Financial Auditors of Romania (CFAR). The numbers of auditors that are members of CAFR are: Natural persons 2,364 members; and Legal persons 746 members.

129. Decision no. 91/2007 of the CFAR Council regulates the application of the specific legislation on combating and prevention of money laundering and/or the terrorism financing by the financial auditors. Thus, according to this decision, the financial auditors will perform audit activities paying attention to the fact that it may be possible that the commercial company contracting auditing services may have business contacts with the persons presented on the list of natural and legal persons published by the Government Decision no. 1272 from 2 November 2005 for the approval of the list of natural and legal persons suspected of terrorism financing activities, published in the Official Gazette of Romania, no. 973 from 2 November 2005.

Trust and Services providers

130. The institution of trust is not currently regulated by the Romanian legislation. Romania has not signed the Hague Convention of the Law Applicable to Trusts and on their Recognition.

131. Romanian legislation has, however, several provisions related to fiduciary activities. Also, the mandate without representation (provided in the Civil Code) facilitated the development of fiduciary activities, even if these activities are not distinct regulated. Such a mandate may have as scope buying or selling stocks or setting up a commercial company on the Romanian territory.

132. In perspective, the fiduciary activity will be regulated in the new Civil Code (by introducing amendments to the draft Civil Code, within the Chamber of Deputies).

133. Lawyers who perform fiduciary activities, according to Law no. 51/1995, have the obligation to keep written proof of the operation performed on the basis or in connection with the fiduciary mandate (contracts, correspondence, assessment reports, accounts extras etc.). If the client requests the original of these documents, the lawyer has the right to keep hard copies or electronic copies. The lawyer has the obligation to keep at least one register or an equivalent system of registration which shall comprise, separate for each client the following:

a) the identity of the client on whose behalf the funds and/or assets are received and/or administrated;
b) an inventory of the assets received/reimbursed and the value of the funds received and reimbursed as well as the date of receiving and the source of the funds and assets and the date of their reimbursement.

134. The lawyer has the obligation to keep the written proofs related to fiduciary activities for a period of time of at least 10 years.

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

135. The legal persons and legal arrangements establishing or having own property in Romania are civil and commercial legal persons and their activity is regulated by Law on 16 November 1990 No. 31 on commercial companies (legal persons performing profitable activities), republished, with subsequent amendments and by Governmental Ordinance No. 26/2000 on foundations and associations (legal persons with non-profitable purpose).

136. The legal persons performing profitable activities (commercial companies) are regulated by Law No. 31/1990 on commercial companies. The commercial companies may have one of the statutory forms as:
- general partnership;
- limited partnership;
- joint-stock company (public limited liability company);
- limited partnership by shares;
- limited liability company**.**

137. Both natural and legal persons can establish commercial companies. A commercial company shall have at least two associates, excepting the Limited Liability Company, which may have a single associate. A Limited Liability Company shall not have as single associate another Limited Liability Company with a single associate.

138. The General Partnership Company or the Limited Partnership Company shall be set up by a company contract while the Joint-Stock Company, the Limited Partnership Company by shares or the Limited Liability Company shall be set up by a company contract and a statutory act.

139. A single person may set up the Limited Liability Company. In this case only the statutory act shall be drawn up. The statutory act shall be signed by all associates or, in case of a public subscription, by the founders, and shall be concluded in written form. The authentic form is mandatory when:
- A plot of land is subscribed;
- General partnership or a limited partnership company is set up;
- The joint-stock company is set-up through a public subscription.

140. The General Partnership Company or the Limited Partnership Company should be set up by a company contract while the Joint-Stock Company, the Limited Partnership Company by Shares or the Limited Liability Company (2 persons and more) should be set up by a company contract and a statutory act. In case of setting up the Limited Liability Company by one person, only the statutory act should be drawn up. Moreover, the company contract and the statutory act may be drawn up as a single document, entitled constitutive act. When the company contract and the statute are separate documents, the latter should include the identification data of the associates, as well as provisions that regulate the organisation of the company, its functioning and conduct of the company's activity.

141. Persons who, according to the law, are incapacitated or have been convicted for fraudulent management, breach of trust, forgery, use of forgeries, deceit, embezzlement, perjury, and bribery, for several offences provide by the insolvency law offences and the law for commercial companies cannot be founders.

142. The founders of the company are the signers of the constitutive act, as well as the persons with a decisive role in the setting up of the company. The persons who, according to the law, are incapacitated or have been convicted for fraudulent management, breach of trust, forgery, use of forgeries, deceit, embezzlement, perjury, and bribery, for several offences provide by the

insolvency law offences and the law for commercial companies can not assume the position of founders[4].

143. A wide range of formal documents and data mast be submitted and indicated in order to establish and register a company of all statutory forms, such as: identification data of associates/founders; subscribed data on the registered capital, nature and value of the assets; number and nominal value of the shares and if they are registered or on bearer; mentioning each associate's contribution; the associates who represent and manage the company or the non-associate administrators; each associate's part in profits and losses; information regarding secondary establishments - branches, agencies, representation offices etc.

144. In compliance with the Law No. 31 the founders, the first administrators/members of the company as well as their representatives within 15 days since the signing of the constitutive act should request the incorporation of the company in the Trade Register of the place where the registered office of the company is located. They should be jointly liable for any of prejudice caused by the failure to accomplish their duty. The commercial company becomes a legal person from the date of its incorporation in the Trade Register. The request for incorporation should be accompanied by a wide range of documents.

145. According to Law no. 26/1990 the National Trade Register is a public register. The trade register office is obliged to issue, on the applicant's expense, certified copies of registrations performed in the register, of the presented documents, as well as certificates ascertaining that certain deeds or facts are or are not registered. The abovementioned documents can be required and delivered by correspondence (including email, when the electronic signatory should be mandatory attached).

146. The management of the companies is performed by the administrators of a company who may carry out all the operations required for the fulfillment of the company's object of activity, except for the restrictions provided by the statutory act.

147. The company must keep, through the good care of the administrators, a register of the associates, where the name and first name, denomination, domicile or registered office of each associate, his share of the registered capital, the transfer of the participating shares or any other amendments should be mentioned. The administrators are personally and jointly liable for any damage caused by breach of this obligation.

Non-Profit Organisations

148. The non-profit organisations are legal persons with non-profitable purpose, regulated by GO 26/2000 on foundations and associations.

149. The association is comprised of at least 3 persons and is set up in the purpose of performing activities for the general or local interest or for the non-profitable interest of the associates.

150. The foundation may be set-up by one or several persons on the basis of a legal act and should have the property permanently and indisputable appropriated to a purpose of general or local interest. Associations and foundations may also set-up a federation.

151. According to the GO 26/2000, the constitutive act and statute of an association or a foundation, except other data, should comprise: denomination, identification data of the associates, explicit consent for association and the purpose, duration, premises, initial property owned by the

[4] Article 6, paragraph 2, of Law No. 31/1990 on commercial companies.

association, category of owned property, identification data of the first leading, managing and controlling persons, rights and obligations of the associates, tasks of the leading, managing and controlling bodies, destination of the funds and assets when the association is dismantled and signatures of the associates.

1.5 Overview of strategy to prevent money laundering and terrorist financing

a. AML/CFT Strategies and Priorities

152. In accordance with the Governance Programme 2005-2008, the Romanian Government engaged itself to take the necessary measures in order to develop the institutional capacity, the main aspects being represented by:
    - Prevention and combating terrorism, organised crime, money laundering, banking and capital market offences,
    - Protection of classified information,
    - Co-operation in exchanging information and
    - Intervention in stopping human beings and drugs trafficking, counterfeiting of coins, travellers cheques and debit/credit cards, smuggling on nuclear and strategic materials.

153. At the same time, taking into consideration the important role of the national system of prevention and combating money laundering and terrorism financing, the NOPCML and other institutions involved in AML/CTF field have been involved at the national level in assuming responsibilities for implementing measures on:
    - National Antidrug Strategy;
    - National Strategy on the Fight against Fraud for Protection of Financial Interests of the European Union in Romania;
    - National Strategy for Combating Organised Crime;
    - National Strategy for Preventing Criminality;
    - National Strategy for Prevention and Combating Terrorism
    - National Anticorruption Strategy.

154. Currently the NOPCML assumed responsibilities in accomplishing the following objectives:

    1. *Harmonisation of AML/CTF legislation*
    2. *Supervising the non-financial reporting entities:*
        - Drafting and implementing working procedures in order to perform supervision, checking and control actions to reporting entities under Art. 8 of the Law no. 656/2002;
        - Performing by the NOPCML of the off-site supervision for the non-financial reporting entities, in accordance with Art. 17 Para 1 letter b) of the Law no. 656/2002;
        - Carrying on of the on-site supervision activities, respectively checking and control to the reporting entities headquarters;
        - Organising training seminars over the reporting entities on AML/CTF obligations;
        - Providing technical assistance in drafting sector procedures and norms by the non-financial reporting entities;
        - Drafting documentary materials on the obligations of the reporting entities, to be published on the NOPCML website;
    3. *Building Operational Capacity of NOPCML*
        - Enhancing the analysis and synthesis skills of the NOPCML staff on exchange of experience and for presentation of the best practices on the functionality of other MS FIUs;

4. Implementing the AML/CTF legislation

- Performing common training activities, by exchange of specialists involved in prevention and combating money laundering and terrorism financing.

155. In December 2004 the NOPCML delegated 4 financial analysts to offer special assistance and for working in common teams - TASK FORCE – with the specialised prosecutors in complex cases of money laundering and corruption prosecuted by them. Ultimately, these financial analysts have been transferred to the units within the GPO structures, contributing to the close co-operation between institutions.

156. The Central Group for Analysis and Coordination of Activities of Prevention of Organised Crime takes the necessary measures for the elaboration and the periodical updating of the National Action Plan for preventing and combating organised crime, approved by Government Decision no. 233/30 March 2005 which established the functioning of the Council for Coordination of the Implementation of the Anti-corruption National Strategy for the period 2005-2007.

157. In December 2001, the Romanian Parliament adopted the National Security Strategy, which defines the national interests in security and the directions of the main actions, having regard to the specific objectives referred to in the NATO adhesion and the Integration to the European Union., as well as for co-operation within the international community which faces new risks and threats for security, especially those generated by international terrorism.

158. The National strategy for prevention and combat of terrorism – approved by the Supreme Council for State Defence in April 2002 – defines, in a unitary form, the terrorism, establishes the general objectives of the state regarding the anti-terrorism issues, fundaments the existence and the functioning of the National System for Preventing and Combating Terrorism (NSPCT) giving the role of technical coordinator to the Romanian Intelligence Service, as the national authority in anti-terrorist issues.

159. The National Office for Prevention and Control of Money Laundering is part of this National System for Preventing and Combating Terrorism (NSPCT) together with other public institutions, namely:

- the Supreme Council of National Defence, as a strategic co-coordinator;
- the Romanian Intelligence Service, as a technical co-coordinator;
- the Foreign Intelligence Service, the Protection and Security Service, the Special Telecommunication Service;
- the Prosecutor's Office by the High Court of Cassation and Justice, with a role in coordinating and supervising the criminal prosecution activities undertaken by specially appointed prosecutors, in view of identifying the perpetrators of any crime relating to terrorism and making them accountable for their acts;
- the National Bank of Romania;
- the National Agency for Export Control;
- the National Commission for the Control of Nuclear Activities;
- other Ministries.

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

160. The following are the main bodies and authorities involved in combating money laundering or financing of terrorism on the financial side:

Ministry of Interior and Administrative Reform (MIAR)

161. The structures of the MIAR, respectively judicial police, play an important role in performing the penal procedures disposed by the prosecutor. The MIAR also collects information, including in the field of combating terrorism and financing of terrorism.

162. Collecting and capitalisation of the information plays an essential role in offering information to the police and to the prosecutors, in order for them to start penal investigations or to support them during such investigations.

163. The Directorate for Combating Serious Economical-Financial Criminality was established within the General Directorate for Combating Organised Crimes in 2005. Within the department there is a central division formed by 5 police officers and at territorial level with a police officer for each brigade for combating organised criminality.

164. Currently, the Department for Combating Money Laundering is formed by 25 police officers, and at the territorial level there are 73 designated specialised police officers. Their main objective is performing preliminary acts and penal procedure based on the notifications received from the National Office for Prevention and Control of Money Laundering.

Romanian Intelligence Service (RIS)

165. In 2001 the Supreme Council for State Defence designated the Romanian Intelligence Service as the national authority in the antiterrorism domain. The Romanian Secret Service organises and performs activities for searching, verifying and uses necessary information for knowing, preventing, and stopping any action which represents, according to the law, a threat to the national security of Romania.

166. The Romanian Intelligence Service fulfils informational and technical activities for prevention and control of money laundering, In case of a terrorism attack, with the approval of the Supreme Council for State Defence, the Romanian Intelligence Service, its specialised unit, performs counter-terrorist intervention, independently or in co-operation with other authorised forces, throughout the country, on objectives that are under attack or under occupation by terrorists, in view of capturing or annihilating them, freeing the hostages and restoring legal order.

167. The RIS was conceived as an institution without repressive character, RIS does not have competences in carrying out the penal procedure activities. Also, the Law no. 14/1992 for organisation and function of RIS, stipulates that the RIS's personnel cannot perform penal procedures acts, cannot retrain or arrest, and their sub-units do not have own locations for arresting. In complex cases, when there is necessary for specialised knowledge, designated persons from RIS can support in penal procedure for crimes against the state safe. At the request of the competent judiciary bodies, the persons specially nominated within the Romanian Intelligence Service can offer support in the performance of some penal researching activities for offences against national security.

Center for Operative Antiterrorism Coordination (CCOA)

168. The status, role and attributions of the Centre for Operative Antiterrorism Coordination (CCOA) are settled by Law no. 535/2004 on preventing and fighting terrorism. The structure and organisation, as well as the Regulation for organisation and functioning of the CCOA were approved on 28 February 2005, through a Decision of the Supreme Council for State Defence."

169. The Centre for Operative Antiterrorism Coordination (CCOA) is the organisational-functional structure within the Romanian Intelligence Service through which the latest technology coordinates the activity of prevention and combat of terrorism performed at national level, with the co-operation of the NSPCT.

170. CCOA coordinates the activities performed within the NSPCT, through representatives designated by the public authorities and institutions. Thus, permanent special compartments have been set up within the organisational structure of the public authorities and institutions, which form NSPCT, and persons have been designated to ensure the structural and functional support for a coherent development of co-operation of the activities, and the continuous liaison with COAC

Ministry of Justice

171. The Ministry of Justice (MoJ) ensures drafting, coordination and enforcement of the strategy and Government's policy for good functioning of justice. It supervises the enforcement of the laws, according to the democratic principles and the rule of law.

172. The Ministry of Justice is the central national authority, according to the international legal instruments ratified by Romania; analyses the bilateral and multilateral legal framework; performs the attributions provided by the law for approving, negotiating and signing of bilateral treaties; oversees the compliance with the UN Conventions, Conventions of Council of Europe, other international organisations and bilateral agreements in the justice field, ratified by Romania; drafts analysis concerning the jurisprudence of European Court of Human Rights.

173. The Ministry of Justice performs the legal attributions with respect to public notaries, bailiffs, banking executorial officials and credit co-operatives executorial officials; authorises the operators and agents of the Electronic Archive for Secured Transactions and is the supervising authority of the Register; coordinates, guides and controls the activity of the National Office of Trade Register (NOTR) and of the office for Trade Register attached to tribunals; administrates the National Register for non-profit legal persons.

The Public Prosecution Service

174. The General Prosecutor's Office (GPO) includes NAD and DIOCT. The Prosecutors' offices are attached to courts of appeal and to tribunals and to court of first instance.

175. The Prosecutors are independent in relation to the courts and to any other public authority. They exercise their prerogative according to the principle of legality, impartiality and hierarchical control, under the authority of the Minister of Justice.

176. The Minister of Justice may only check the manner in which prosecutors fulfill their managerial duties, their working obligations and the manner in which their work relationships with litigants take place. The law expressly provides that the control exercised by the Minister "may not concern measures ordained by prosecutors in the course of criminal prosecution and the decisions they adopt".

177. When ordered, the control is performed by prosecutors within prosecutors' offices and not by Ministry of Justice (MoJ) staff. The Minister of Justice may ask the general prosecutor of the Prosecutors' Office attached to the High Court of Cassation and Justice (PO-HCCJ), or, as the case may be, the chief prosecutor of the National Anti-Corruption Directorate (NAD), for information on the activity of the prosecutors' offices and may issue written guidelines about the steps to be taken in crime prevention and control.

178. The Directorate for Investigating Organised Crime and Terrorism (DIOCT) is the penal prosecutions body specialised in combating organised crime and terrorism offences. It also may perform penal prosecution in regard to some offences considered by the legislation as very serious ones or very complex.

179. This prosecution unit has 230 prosecutors performing activity in the 15 Territorial Departments within the Prosecutor's Office by the Court of Appeal and in the 41 Territorial Offices within the Prosecutor's Office by Courts.

180. These are specialised in performing activities of penal prosecution related to the crimes in the drug trafficking area, money laundering, terrorism financing etc. (as stipulated in Law no. 508/2004 on the setting-up, organising and functioning of DIOCT within the Public Ministry.).

181. Within DIOCT there are 5 operative departments. They are respectively: Department for Investigating the Organised Crime Offences; Department for Investigating Serious Economic-Financial Criminality (within this Department the Compartment for Investigation "money laundering offences" and predicate offences, and the Compartment for Investigation of Banking and Capital Market Offences); Department for Investigation the Drug Trafficking; Department for Investigation IT Offences; and Department for Investigation Terrorism and Financing of Terrorism Offences.

National Anticorruption Directorate (NAD)

182. The NAD has a central structure, as well as a territorial one. The central structure has its headquarters in Bucharest. It is directly subordinated to the chief Prosecutor.

183. At local level, 15 anticorruption territorial Services function, in the cities where there are courts of appeal. These services are led by chief prosecutors, subordinated to the chief prosecutor of NAD.

184. The National Anticorruption Directorate carries out criminal investigation and prosecution for prevention, detecting and sanctioning of corruption. The specialis ed anticorruption prosecution office is also fighting high level corruption. The National Anticorruption Directorate also performs penal investigation of money laundering committed in connection with an offence of corruption.

Ministry of Foreign Affairs

185. The Ministry of Foreign Affairs (MoFA) is the institution in charge with carrying out the foreign policy of Romania.

186. In the combating terrorism financing field, Law 206/2005 *on the implementation of certain international sanctions* ensures the general framework of the coordination of actions of national authorities competent to apply domestically various types of sanctions decided by the UN Security Council under art. 41 of Chapter VII of the UN Charter and by the European Union. It does so through an "Inter-institutional Committee", coordinated by the Prime Minister and

composed of ministers and heads of several other institutions involved in the implementation of international sanctions. The MFA ensures the permanence of the works of this Committee, coordinates the drafting of the reports due to the Supreme Council of National Defence and to the Parliament and convenes the experts' working groups to discuss various issues regarding the implementation of international sanctions. Currently, one of these working groups discusses Law no. 206/2005 *on applying international sanctions* (considering effective procedures for implementing international sanctions – relationship with commercial banks, competence to receive and resolve exemptions requests, procedure of unfreezing funds or other assets or of lifting travel bans in case of error or de-listing, competence to check if international sanctions are correctly implemented and to punish non-fulfilment, establish punishment for breaching the obligation to obey restrictive regimes instituted internationally). Law 206/2005 *is lex generalis* while particular regimes are regulated separately, such as, in the specific case of preventing and combating the financing of terrorism Law 535/2004 *on preventing and fighting terrorism* and in the case of money laundering Law 656/2002 *on preventing and sanctioning money laundering* (*lex specialis*).

187. The MFA is part of the authorities and public institutions that form the National System for Preventing and Combating Terrorism ((NSPCT). They carry out specific activities – individually or in co-operation – in accordance with their legal assignments and competencies and the provisions of the General Protocol on the Organisation and Functioning of the NSPCT approved by the Supreme Council of the National Defence.

Ministry of Public Finance

188. The Ministry of Public Finance uses specific means in order to fight tax evasion and corruption and implement customs policy of the state. It also co-ordinates and supervises the activity of the state lotteries, and issues licences for gambling games. It co-ordinates and supervises the insurance and reinsurance activity of Romania.

189. In order to co-ordinate the financial policy regarding foreign currencies, monetary and credit policies, the Ministry of Public Finance co-operates with the National Bank of Romania in order to establish the foreign payments balance, the foreign debts and commitments balance, the regulations in the monetary and foreign currencies areas. The Ministry of Public Finance analyses and proposes the legal framework concerning the loans necessary for covering the budget deficit or for activities and works of public interest.

190. The Ministry of Public Finance participates in the international negotiations regarding bilateral and multilateral agreements on promoting and protecting investments and conventions on avoiding double taxation and fighting tax evasion. The Ministry of Public Finance also approves draft agreements, commitments, protocols and other such documents agreed with foreign partners (as well as draft regulations comprising financial and banking provisions, created by public institutions).

Financial Guard

191. The Financial Guard (FG) is organised as a control public institution under the Ministry of Public Finance.

192. FG performs on-site and operative control concerning the prevention, detection and fight against any acts and deeds which can lead to tax evasion or fiscal fraud.

193. FG co-operates with other specialised bodies from ministries and institutions with the view of detecting and fighting against illegal deeds that generate tax evasion or fiscal fraud. In addition,

the commissioners of FG may perform controls concerning illegal deeds on the request of a prosecutor. The written report drawn up following the control is considered as a proof, as provided in the Criminal Procedure Code.

194. The Romanian FIU (NOPCML) concluded a protocol with the Financial Guard in September 2004 on AML/CFT measures.

Customs

195. The National Customs Authorities function as a specialised body of the central public administration, subordinated to the Ministry of Public Finances. The National Customs Authority ensures the application of the state customs politics and performs the attributions established by the law.

196. The National Customs Authority concluded a protocol with the Romanian FIU on AML/CFT measures in July 2004.

Judiciary

197. The judicial power in Romania is exercised by the High Court of Cassation and Justice and by the other courts established by law. The court system comprises:

The High Court of Cassation and Justice (HCCJ);
- 15 courts of appeal;
- 41 tribunals;
- 4 specialised tribunals;
- 187 courts of first instance.

198. The courts of first instance have a general jurisdiction. A decision rendered at the level of courts of first instance may be challenged in appeal at the next court level. The means of judicial review regulated by law are: first instance, appeal and second appeal (review).

199. The Procedure Criminal Code provides only one appeal in simple cases. For complex cases one appeal may be lodged (on matters pertaining to the facts of the case and the interpretation of the law) and the second appeal (only on matters of law).

200. Specialised sections are in place at the level of higher courts (tribunals, courts of appeal and HCCJ).

201. Tribunals are competent to render first instance decisions on money laundering cases.

202. Guarantees of independence are provided both by the Constitution and the laws on judiciary on following matters:

- Judges are independent and obey only to the law.
- All career decisions regarding judges are rendered by an independent body, the Superior Council of Magistracy.
- The judges decide on their own competence to try cases.
- Only courts may review the court decisions.

Financial Intelligence Unit (FIU):
National Office for Prevention and Control of Money Laundering (NOPCML)

203. The National Office for Prevention and Control of Money Laundering (NOPCML) is the Romanian FIU. The Office is based on the special Law no. 656/2002 for prevention and sanctioning of money laundering. The Office is also involved in the combating of terrorist financing.

204. The National Office for Prevention and Control of Money Laundering (NOPCML) is an administrative FIU, which undertakes a leading role in the development, coordination and implementation of the AML/CFT system. In performing its activities as an independent administration under the Government, the FIU receives analyses and discloses information to relevant bodies. The FIU has introduced a new, advanced security system, expanded their access to databases within other authorities and introduced a new IT-infrastructure and security measures in relation to protect the IT-network against unauthorised access. The Romanian FIU is now responsible also for AML/CFT supervision of DNFBP and terrorism financing.

205. The NOPCML notifies, based on solid grounds of money laundering, the General Prosecutor's Office attached to the High Court of Cassation and Justice, and in some cases the Romanian Intelligence Service, in regard to suspicions of financing of terrorism.

The National Bank of Romania

206. The National Bank of Romania (NBR) was established in 1880. NBR is an independent public institution with its headquarters in Bucharest. The network of the NBR comprises the headquarters and 19 branches.

207. According to Law No. 312/2004 on the Statute of NBR, its primary objective is to ensure and maintain price stability. The main tasks of the National Bank of Romania are the following:
    a. To define and implement the monetary policy and the exchange rate policy;
    b. To conduct the authorisation, Regulations and prudential supervision of credit institutions and to promote and oversee the smooth operation of the payment systems with a view to ensuring financial stability;
    c. To issue banknotes and coins as legal tender on the territory of Romania;
    d. To set the exchange rate regime and to supervise its observance;
    e. To manage the official reserves of Romania.

208. Without prejudice to its primary objective of ensuring and maintaining price stability, NBR supports the general economic policy of the Government.

209. According to the law, the National Bank of Romania is solely accountable to Parliament and has no subordination to Government; its relationship with the latter is co-operation on a regular basis. The National Bank of Romania is managed by a Board of Directors appointed by the Parliament of Romania on the recommendation of the standing committees of the two Chambers of the Parliament. Board members are appointed for a five-year mandate, which can be subject to renewal.

210. NBR regulates credit institutions (banks, credit co-operatives) and some of the non-banking financial institutions in special conditions, as defined by Government Ordinance 28/2006."

211. For a smooth implementation of AML/CFT Law, the NOPCML concluded a protocol with the National Bank of Romania on 20 December 2006.

212. NBR issued Norm no. 3/2002 which especially deal with customer due diligence for credit institutions. NBR also issued similar Regulations no. 8/2006 for non-banking financial institutions registered in the Special Register. These regulations ensure the main framework for drawing up proceedings and customer's identity policy and for preventing money laundering and terrorism financing by each banking or non-banking financial institution. This is the essential part of risk's management activity concerning AML/CFT and an efficient system in internal audit since 2002, for credit institutions. At the beginning of 2002, NBR established the obligation of permanent customers' monitoring by periodical updating the customers' identity documents and by regular reassessing the quality of the identification procedure used by intermediaries and persistent observing of transactions, also of the accounts in order to detect and report suspicious transactions. Credit institutions and non-banking financial institutions are compelled to issue instructions and internal proceedings concerning AML/CFT.

The Insurance Supervisory Commission

213. The Insurance Supervisory Commission (ISC) is an independent authority, which seeks to protect the insured's rights and to promote a stable environment for the Romanian insurance market.

214. Its mission is to impartially enforce the insurance legislation; to protect, in accordance with the law, the insured from insurance products. The ISC grants licences to insurance companies and has the power to also suspend and revoke a licence. The ISC supervises the insurance companies to ensure that they comply with the legislation.

215. The ISC was set-up through Law no. 32/2000 regarding the insurance companies and insurance supervision. The Law is aligned to the European Union directives in the insurance field.

216. The ISC has issued Order No. 3128/2005 for the approval of Norms on prevention and combating money laundering and terrorism financing through insurance market.

217. The Insurance Supervisory Commission concluded a Protocol with NOPCML for co-operation in order to prevent and sanction money laundering in August 2004.

National Security Commission

218. The National Security Commission (NSC) is an independent authority, which regulates and supervises the capital market and the market participants. NSC presents its annual activity report to the Parliament.

219. The NSC authorises the financial service investment companies and other market participants and also has the power to suspend and revoke licences. Furthermore the NSC ensures and promotes a fair and transparent operation of the regulated market.

220. The NSC role in preventing and fighting money laundering and terrorism financing is prudential overseeing of bodies mentioned at Art. 8 letter b) in the AML Law no. 656/2002, and who are performing on the capital market. Regulations no. 11/2005 on preventing and fighting against money laundering and terrorism financing through the capital market empowers NSC to supervise the regulated institutions for ensuring the compliance with the legal framework concerning the identification, verification and registering of clients and transactions, reporting suspicious and cash transactions, as well as implementing a programme with all these requirements and training the personnel.

221. The NOPCML concluded a Protocol with NSC for mutual co-operation in order to facilitate and to assure the integrity of the regulated markets, especially, for establishing the rules for a bilateral co-operation, support and exchange of information in August 2004.

Commission for Authorising Gambling Activities (CAGA).

222. The Commission for Authorising Gambling Activities carries out its activity within the Ministry of Economy and Finance, in accordance with the Regulations for the organisation and functioning of the Commission.

223. The Commission for Authorising Gambling Activities is formed by representatives from the following authorities: The Ministry of Economy and Finance; The National Agency for Fiscal Administration; The Ministry of Internal Affairs and Administrative Reform; and the National Office for Prevention and Control of Money Laundering.

c. The approach concerning risk

224. As described in the FATF Recommendations, a country may decide not to apply certain AML/CFT requirements, or to reduce or simplify the measures being taken, on the basis that there is low or little risk of money-laundering of financing of terrorism. The Romanian legislation does not provide for a general risk-based approach.

225. However, the National Bank of Romania has issued Norm No.3/2002 on Know Your Customer Standards. The norms provide requirements for all credit institutions to perform customer due diligence and the norms have introduced a risk-based approach in that respect. Every credit institution shall draw up its own "Know Your Customer" programme, which shall correspond to the nature, size, complexity and extent of its activity and shall be adapted to the degree of risk related to the categories of clients for which it provides banking services.

226. The National Bank of Romania has issued similar regulations for the non-banking financial institutions, registered in the Special Register.

227. The NOPCML has issued Decision no. 496/2006 for the approval of the Norms on prevention and combating money laundering and terrorism financing, customer due diligence and internal control standards for reporting entities, which do not have overseeing authorities. The Decision introduced new risk-based procedures for the supervision of DNFBP. The procedures establish a supervision approach based on the exposure of reporting entities to ML/TF risks, leading to the detection of vulnerabilities to money laundering and terrorism financing as resulted through off-site and on-site activities and inspections.

228. The strategic approach based on the risk assessment to monitor the DNFBP sector, which is extremely fragmented, has been developed only recently by the Romanian FIU. Using a scoring system called MAINSET the ML and TF risk is evaluated on the basis of data and indicators extracted from the off-site supervision.

229. The evaluators were impressed with NOPCML´s movement towards a risk-based supervision approach, which as already noted is currently in the early stages of implementation. It is anticipated that this will support more targeted supervision which should lead to greater effectiveness.

d. Progress since the last mutual evaluation

230. The last on-site visit took place in April 2002. In general Romania's crime situation has not changed since the second round. Smuggling, banking/financial fraud, tax evasion, drug trafficking and corruption are still considered as the main sources of illegal proceeds. In recent years illegal immigration and trafficking in human beings have increased among profit-generating activities.

231. The results in terms of convictions and confiscation for money laundering at the time of the on-site visit remain disappointing. There have only been five convictions in money laundering cases.

232. The lack of convictions for money laundering means that there is currently a lack of jurisprudence to assist prosecutors and investigators on issues of proof. There need to be more cases successfully brought before the courts so that jurisprudence on money laundering is developed and open issues of proof are clarified. A greater willingness by the courts to draw interferences from objective facts and circumstances in establishing the elements of a money laundering offence is encouraged. Considerations should be given to specific legislative provision on this point if this remains problematic in money laundering cases. The Romanian authorities have indicated that the change of the money laundering offence into an "all crimes" one was a legislative measure aimed towards facilitation the making of inferences from evidence.

233. There have been some major developments since the 2nd evaluation. The Romanian authorities have moved to a full "all crimes" approach for predicate offences. The "tipping off" offence has been criminalised and corporate liability has been introduced. Confiscation of proceeds are applied in cases of money laundering and terrorist financing and if the proceed is not found, there equivalent value shall be confiscated.

234. On the repressive side, the AML/CFT legislation is basically in place and appears to be sound and largely in line with the international requirements under the new methodology. The AML/CFT Law 656/2002 with subsequent amendments gives a solid basis for the Romanian anti-money laundering regime. Money laundering is criminalised in art. 23 and attempt is punishable. The mental element is knowledge as required in international conventions. The evaluators were told that in practice the intentional element of the offence of ML is allowed to be inferred from factual circumstances. It is, however, recommended that this practise be reflected in the legislation. It is also recommended that Romanian authorities consider lesser standards for the mental element such as suspicion or negligence, as was also recommended during the second round.

235. Romanian authorities may consider the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation as is stipulated in art. 12 of the Palermo Convention (reversal of the burden of proof).

236. The evaluators were strongly concerned on the recent amendments of Article 10 of the Law 78/2000 on preventing, discovering and sanctioning the corruption offences (March 2007) and decriminalisation of granting of credits from private banks by infringing the law or crediting rules. As a consequence certain numbers of prosecuted persons might be acquitted for money laundering related to "illegal loan" cases. The evaluators are concerned about the future impact of this amendment on money laundering.

237. Likewise the evaluators were concerned about the information that in some criminal cases indictments for money laundering are based on prosecutor's orders for wire tapping issued for other criminal acts related to national security offences. As a result the material obtained by the special investigative means in those specific cases could not be presented as evidence during the trial. Evaluators consider this to be a serious problem.

238. The procedure for ensuring final convictions needs urgent reconsideration. The evaluators are seriously concerned that the timeframe between indictment and final conviction appears unreasonably long. Thus the absence of final criminal convictions is a serious impediment to the effectiveness of the overall system.

239. Since the second evaluation the Law on preventing and fighting terrorism (no. 535/2004) criminalising the financing of terrorism has entered into force. The evaluators strongly recommend attempt to be punishable. There have been no cases of terrorism financing.

240. Regarding regulation and supervision there has clearly been an extension of scope by the NOPCML to cover a range of previously unsupervised entities. This has resulted in a comprehensive package of planned training activities and the production of AML/CFT guidelines. Achievements gained in a relatively short period of time have considerably enhanced the AML/CFT regime. However to further strengthen the effectiveness of feedback the National Office should consider targeting specific feedback to high risk sectors.

241. In extending the scope of the NOPCML to cover reporting entities which have no supervisory authority the evaluators consider the resources of the NOPCML inadequate, especially taking into account that only 12 staff members are conducting on-site inspections. This deficiency might be remedied either by increasing NOPCML's supervisory capacity or by a re-configuration of responsibilities between the various supervisors.

2. LEGAL SYSTEM AND RELATED INSTITUTIONAL MEASURES

Laws and Regulations

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

2.1.2 Description and analysis

Recommendation 1

242. Romania has signed and ratified both the 1988 United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (the Vienna Convention) and the United Nations Convention against Translational Organised Crime (the Palermo Convention).

243. Money Laundering is subject to punishment under Law No. 656/2002 (Annex 1) on the prevention and sanctioning of money laundering and on setting up of certain measures for the prevention and combating terrorism financing (AML/CFT Law). Law no. 39/2003 regulates specific measures for the prevention and combating of organised crime at national and international level. Money laundering is specifically mentioned and comprised by the Law on organised crime. Furthermore The Criminal Code (CC) from 1969 and the Criminal Procedure Code (CPC) are important laws when discussing the criminalisation of money laundering.

244. The CC provides in Article 17, that any deed, which constitutes social threat, which is willingly perpetrated and which is provided in the criminal law, constitutes an offence. Article 141 defines "criminal law" as any provision with a criminal character included in law or decrees.

245. Article 23 in the AML/CFT Law provides:

> **"Art. 23** - (1) The following deeds represent offence of money laundering and it is punished with prison from 3 to 12 years:
>
> a) the conversion or transfer of property, knowing that such property is derived from criminal activity, for the purpose of concealing or disguising the illicit origin of property or of assisting any person who is involved in the committing of such activity to evade the prosecution, trial and punishment execution;
>
> b) the concealment or disguise of the true nature, source, location, disposition, movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity;
>
> c) the acquisition, possession or use of property, knowing, that such property is derived from any criminal activity;
>
> (3) The attempt is punished."

246. The elements of the money laundering offences found in Article 23 are criminalised in line with the requirements of the Vienna and Palermo Conventions. Art. 6 (a) (i) of the Palermo Convention appears fully covered (the conversion or transfer of property, knowing that such property is derived from criminal activity) in Art. 23 (1) (a). The second part of Art. 6 (a) (i) where the physical act is performed for the purpose of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action is fully covered in Art. 23 (1) (a). Art. 6(1) (b) of the Palermo Convention also appears to be fully covered (the concealment or disguise of the true nature, source, location, disposition,

movement, rights with respect to, or ownership of property, knowing that such property is derived from criminal activity) in Art. 23 (1) (c). Similarly the provisions of Art. 6 (1) (b) (i) [acquisition, possession or use] is clearly covered by the same wording in Art. 23 (1) (c).

247. The money laundering offence applies to property that is derived from criminal activity. Article 2 of the AML/CFT Law defines "property" as: "the corporal or non-corporal, movable or immovable assets, as well as the judiciary acts or documents that certify a title or a right regarding them". This definition of property corresponds to the definition of property stipulated in Vienna and Palermo Conventions.

248. Turning to Criterion 1.2.1 money laundering in Romania is considered to be a stand alone crime. No prior conviction is needed to indict a money laundering offence. The judicial practice, however, that appears to have evolved shows that either the indictment for the predicate offence and the money laundering offence are connected or the predicate offence is indicted before the money laundering offence is indicted. When the defendant is acquitted for the predicate offence, the defendant will be acquitted for the money laundering offence as well.

249. At the time of the on-site visit there was only 1 indictment (February 2007) of money laundering for which there is neither prior conviction nor indictment of the predicate offence. It should be noted that in this case the predicate offence was committed outside Romania. The assessors noted that autonomous money laundering still need to be successfully prosecuted in the case of a domestic predicate offence.

250. Romania has now moved to a full "all-crimes" approach and all predicate offences for money laundering required in the FATF Recommendations are considered covered (see Annex II).

251. It is not necessary that the predicate offence is committed on the Romanian territory for opening a money laundering case. Art. 23 of Law no. 656/2002 does not require any legal condition in this respect. Article 6 of the CC allows the Romanian authorities to prosecute crimes committed abroad. The Romanian authorities can prosecute someone for money laundering even if the predicate offence was committed abroad. Dual criminality is required. This is not an obstacle as any crime may constitute the predicate offence for money laundering. When a foreign competent authority notifies the Romanian judicial bodies about the crime that has generated illegal funds that are subject to the laundering process in Romania, the notification is sufficient for opening a case.

252. Self-laundering is criminalised in Romania and in the replies to the questionnaire it is explained that the majority of the money laundering cases in practice are self-laundering cases.

253. The ancillary offences to the offence of money laundering are criminalised through Articles 23-29 of the CC (criminalisation of participation) and Articles 20-22 of the CC (criminalisation of attempt).

254. The CC incriminates the participation as author, instigator or accomplice (Art. 23 of the CC). Articles 24-26 of the CC gives the definitions to such participants and through these definitions ancillary offences as conspiracy to commit, attempt, aiding and abetting, facilitating and counseling the commission appear to be covered. According to the Article 27 of the CC "the instigator and accomplice to the deed provided by the criminal law which was deliberately committed will be subject to penalty provided for the author".

255. With regard to ancillary offences, the Common Law term of "conspiracy" is only used in Romanian legislation when it relates to offences against state security. However, Article 323 (1) stipulates that "Associating or initiating the establishment of an association with the purpose of committing one or more offences, …., or adhering to or supporting in any way such an

association shall be punished by 3-15 years jail, without exceeding the punishment stipulated by the law for the offences related to the purpose of the association."

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

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

258. Article 21 (1) of the Criminal Code provides that "attempt is subject to penalty only when the law specially provides it". This requirement is fulfilled as Article 23 (3) of the AML/CFT Law provides that attempt of money laundering is punished.

Additional elements

259. As already noted dual criminality is always required in respect of the predicate offence for a money laundering case in Romania where the criminality has been committed abroad. Article 4 applies to offences committed outside Romania, if the perpetrator is a Romanian citizen or if, if possessing no citizenship, the perpetrator has residence in Romania. Article 6 applies to offences committed outside Romania if the perpetrator is a foreign citizen or, if possessing no citizenship, the perpetrator does not have residence in Romania on the following conditions: 1) dual criminality and 2) the perpetrator is in the Romanian territory.

Recommendation 2

260. The mental element for natural person is knowledge as required in international conventions. Thus, according to the Article 63 of the CPC the "evidence represents any factual element, which is meant to ascertain the existence or inexistence of an offence, the identification of the person who committed the offence and the knowledge of the circumstances necessary for the right justice of the cause. The evidence does not a prior value. The assessment of the evidence is done by the penal prosecution body or by court, consequently to the examination of all the evidence which is administrated in the purpose of finding out the truth".

261. Negligent money laundering is not a punishable offence under Romanian law and the evaluators were informed that there are no plans to introduce the negligence standard in any of the money laundering offences. The evaluators recommend the Romanian authorities to consider lesser

standards for the mental element such as suspicion or negligence, as was also recommended by the evaluators during the second round.

262. Turning to Criterion 2.2 the evaluators were informed that in practice the intentional element of the offence of money laundering is allowed to be inferred from factual circumstances. .

263. In July 2006 criminal corporate liability was introduced in the CC. Article 19[1] of the CC provides a general provision concerning criminal liability for legal persons and the provision applies to all offences, including money laundering. Moreover, the criminal corporate liability does not exclude the criminal liability for natural persons who in any way contributed to the committing of the same offence.

264. Criminal liability does not preclude civil liability for damages resulted from any offence, including money laundering. The civil liability only refers to *bona fide* third parties and does not exclude the confiscation measure of the proceeds of crime.

265. The punishment for natural persons who committed a money laundering offence is imprisonment from 3 to 12 years (Article 23 of the AML/CFT Law). Additionally, the court, if it is considered appropriate, may apply complementary sanctions under CC Article 64, such as:

- The right of elect and being elected in public authority or public elective positions;
- The right of filling a position involving the exercise of state authority;
- The right of filling a position or of practicing a profession which has the nature of the one by means of which the convict committed the offence;
- Parental rights;
- The right of being a tutor or guardian.

266. The penalties for legal persons are stipulated in Article 53[1] of the CC (Annex 9). The main penalties are fines from 2 500 RON to 2 000 000 RON (700 Euros to 570 000 Euros) and the complementary penalties are liquidation, suspending of whole/one activity, closing of working points etc.

Statistics

267. Statistics provided by Directorate for Investigating Organised Crime and Terrorism (DIOCT) shows the between 2002 and 2007, there were 77 indictments (involving 258 persons) for money laundering. It is not possible to disaggregate how many indictments represents police/prosecution generated cases and how many represents STR generated cases. The indictments have so far resulted in 14 non-final convictions, 4 final convictions and 3 final acquittals. The other 56 indictments remained outstanding at the time of the on-site visit.

268. Statistics provided by the National Anti-corruption Directorate (NAD) shows that between 2002 and 2006 there were 4 indictments (involving 36 persons) for money laundering. The indictments have so far resulted in 2 non-final convictions. The other 2 indictments remained outstanding at the time of the on-site visit.

269. The evaluators were informed that the period of court hearings is very long and as a result there are only 5 final convictions at the time of the on-site visit.

2.1.3 Recommendations and comments

270. Romanian has improved the criminalisation of the money laundering offence since the last evaluation. It is welcomed that Romania has removed the list approach to predicate crime and have moved to an all crimes approach. All "designated categories of offences" in the Glossary to the FATF Recommendations are covered as required by the Methodology. The mental element is knowledge as required in international conventions. The intentional element of the

offence of money laundering is allowed, in practice, to be inferred from factual circumstances. The evaluators, however, recommend this practice to be reflected in the legislation.

271. The evaluators also recommend that Romanian authorities consider lesser standards for the mental element such as suspicion or negligence, as was also recommended by the evaluators during the second round.

272. At the time of the on-site visit there was only 1 indictment (February 2007) of money laundering for which there is neither prior conviction nor indictment of the predicate offence. In this case the predicate offence was committed outside Romania. The assessors noted that autonomous money laundering still needs to be successfully prosecuted in the case of a domestic predicate offence.

273. The extension of criminal liability to legal persons is also a welcome development.

274. The procedure for ensuring final convictions needs urgent reconsideration. The evaluators are seriously concerned that the timeframe between indictment and final conviction appears unreasonably long. Thus, the absence of final criminal convictions is a serious impediment to the effectiveness of the overall system.

275. The statistics that are available suggest doubts as to the effectiveness of the money laundering offences in Romania given the low number of convictions.

2.1.4 Compliance with Recommendations 1 and 2

	Rating	Summary of factors underlying rating
R.1	**Largely Compliant**	• Ineffective implementation resulting in low number of final convictions.
R.2	**Largely Compliant**	• Autonomous money laundering still need to be successfully prosecuted in the case of a domestic predicate offence. The procedure for ensuring final convictions needs urgent reconsideration. The evaluators are seriously concerned that the timeframe between indictment and final conviction appears unreasonably long. (effectiveness issue) • The number of convictions is low (effectiveness issue).

2.2 Criminalisation of terrorist financing (SR II)

2.2.1Description and analysis

276. On 19 November 2002 Romania ratified the United Nations Convention for the Suppression of the Financing of Terrorism (the Terrorist Financing Convention).

277. Article 1 in the Law 535/2004 on preventing and fighting terrorism defines an act of "terrorism" as the ensemble of actions/or threats that represent a public danger and affect national security, with the following characteristics:

a) they are committed with premeditation by terrorist entities, motivated by extremist beliefs and attitudes, hostile to other entities, against which they act through violent and/or destructive modalities;

b) they are aimed at specific objectives, of political nature;
c) they concern human and/or material factors within the public authorities and institutions, the civil population or any other segment belonging to these;
d) they produce situations that have a deep psychological impact upon the population, which are meant to draw attention to the goals that they pursue.

278. Article 2 provides that the acts committed by terrorist entities shall be sanctioned according to the present law, if they meet one of the following conditions:

a) they are usually committed through violence and they cause states of disquiet, uncertainty, fear, panic or terror among the population;
b) they seriously infringe upon both specific and non-specific human factors and material factors;
c) they are aimed at specific objectives, of political nature, by determining the State authorities or an international organisation to ordain, to renounce or to influence the making of a decision in favor of the terrorist entity.

279. Article 2, letter a[1]) of the AML/CFT Law provides that "terrorism financing" means the offence referred to in Article 36 of Law 535/2004 (Annex 2) on the prevention and combating terrorism.

280. Article 36 provides as follows:

(1) Making available to a terrorist entity movable or immovable assets, in awareness that they are being used for supporting or committing terrorist acts, and acquiring or collecting funds, either directly or indirectly, or performing any financial-banking operations, with the view of financing terrorist acts, shall be punished by imprisonment from 15 to 20 years and the interdiction of certain rights.
(2) Moveable or immovable assets made available to a terrorist entity, and the funds acquired or collected with the view of financing terrorist acts shall be confiscated, and if the cannot be found, the convicted shall be obliged to the payment of their equivalent in money.

281. The disposition of Article 36 is directed at a terrorist entity. Article 4 defines a "terrorist entity" as a person, group, structured group or organisation which:

a. commits or participates in terrorist acts;
b. is preparing to commit terrorist acts;
c. promotes or encourages terrorism;
d. supports in any form terrorism.

282. The terrorist financing offence in Art. 36 covers any person who willfully makes available to a terrorist entity movable or immovable assets in awareness that they are being used for supporting or committing terrorist acts, and acquiring or collecting funds, either directly or indirectly, or performing any financial-banking operations, with the view that they should be used or in the knowledge that they are to be used to carry out a terrorist act(s) by an individual terrorist, a terrorist group / structured group or a terrorism organisation.

283. The terrorist financing offence should extend to any funds (from legitimate or illegitimate sources) as the term is defined in the Terrorist Financing Convention. The legislation does not provide the definition of funds or assets. In the replies to the questionnaire it is stipulated that the provision covers both licit and illicit funds as the essential element is the purpose of the funds. The inclusion of licit fund should be explicitly mentioned in the provision for clarity reasons. "Movable and immovable" assets are covered by the provision.

284. Criterion II.1.c requires that the terrorist financing offence should not require that the funds were actually used to carry out or attempt a terrorist act or be linked to a specific terrorist act. The terrorist financing offence in article 36 is extended to collecting funds for the "supporting" of terrorist acts. The criterion is considered fulfilled.

285. It should also be an offence to attempt to commit the offence of terrorist financing. The attempt to commit a terrorist financing offence is not punished in Romania.

286. The all-crimes predicate coverage of the money laundering offence in article 23 of the AML/CFT Law also includes the offence of financing terrorist activity.

287. Romanian authorities are competent to investigate terrorist financing offences regardless of whether the person alleged to have committed the offence is in the same country from the one in which the terrorist / terrorist organisation is located or the terrorist act occurred. Article 4 and 6 of the CC allow the Romanian authorities to prosecute a person – regardless of his citizenship or even stateless persons, if this person committed terrorism financing on the territory of another state.

288. There is no practice on terrorist financing offences interference of the intentional element from objective factual circumstances in relation to terrorist financing. The legislation does not address the issue.

289. Corporate criminal liability applies under the specific provision of Art. 19/1 of the Criminal Code.

290. Article 37 of the Law 535/2004 provides imprisonment from 15 to 20 years and the interdiction of certain rights with confiscation not only of terrorist assets/funds but also their equivalent in money. Article 53¹ of the CC provides the sanctions for legal persons. Fines from 2 500 RON to 2 000 000 RON (700 EUR to 570 000 EUR) and complementary penalties in form of liquidation, suspending of whole/one activity, closing of working points etc.

291. Financing of terrorism is an autonomous offence in Romania. There have not been any investigations of financing of terrorism or cases brought before the court. Thus there is no case-law or practice on the exact scope of the current provisions. 5 STRs on terrorism financing have been filed to the NOPCML and sent simultaneously to the Prosecutor's Office attached to the High Court of Cassation and Justice and the Romanian Intelligence Service. Investigations performed did not reveal any activities related to the financing of terrorism.

2.2.2 Recommendations and comments

292. The separate criminal offence of terrorist financing was introduced in Romania in 2004. The offence seems only to be partially in line with the 1999 UN Convention for the Suppression of the Financing of Terrorism.

293. At this time the examiners are not in a position to comment with certainty on whether Article 36 covers legitimate funds. For clarity reason it should explicitly emerge from the provision that the terrorist financing offence extend to any funds, whether they come from legitimate or illegitimate sources.

294. Furthermore the legislation does not provide a definition of "funds" in relation to terrorism financing. It should be ensured that "funds" fully covers that term as defined in the Terrorist Financing Convention.

295. The attempt to commit a terrorist financing offence is not punished. The evaluators strongly recommend attempt to commit a terrorist financing offence to be criminalised.

296. Terrorist financing offences should apply, regardless of whether the person alleged to have committed the offence is in the same country or a different country from the one in which the terrorist organisation is located or the terrorist act occurred. There is no provision to ensure this requirement.

297. The legislation does not address the issue whether the intentional element can be inferred from objective facts and circumstances. As there is no practice on terrorist financing offences such an inference cannot have applied in practice as Romania informed was the case in money laundering cases.

298. There have not been any investigations of financing of terrorism or cases brought before the court. Thus it not possible to assess the effectiveness of the Romanian provisions and systems to combat terrorist financing.

2.2.3 Compliance with Special Recommendation II

	Rating	Summary of factors underlying rating
SR.II	**Partially Compliant**	• The Law on preventing and fighting terrorism needs to be amended to cover all elements of SR II, to explicitly provide for the offence also covers legitimate funds and that "funds" cover the terms as defined in the Terrorist Financing Convention • The provisions should furthermore provide that knowledge can be inferred from objective factual circumstances. • Attempt to commit the offence of terrorist financing should also be an offence. • There have been no terrorist financing cases and consequently it is not possible to assess whether the offence is effectively implemented.

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

2.3.1Description and analysis

299. The main provision regarding the criminal confiscation regime and the provisional measures can be found in the CC.

300. Article 118 of the CC provides that the following are subject to special confiscation:

Article 118 of the Criminal Code provides that the following are subject to special confiscation:

"a) the objects resulted from the committing of deed provided in the criminal law;

b) the objects which have been used, by any mean, for the commission of an offence, if they belong to the offender or if they belong to a third person, who has knowledge about the purpose of their use; this measure cannot be taken in case of offences committed through mass-media;
c) the objects produced, modified or adapted for committing an offence, if they have been used for committing the offence or if they belong to the offender. When the goods belong to a third person, the confiscation can be disposed if the production, modification or adapting has been done by the owner or the offender with the knowledge of the owner;

d) the objects, which have been granted for the commission of an offence or for rewarding the offender;

e) the objects obtained by committing the offence provided by the criminal law, if they are not restituted to the injured person and to the extent to which they do not serve to the injured person's compensation;

f) the objects possessed without observing the legal provisions."

In the case provided by para 1 letter b), if the value of the goods under confiscation is obviously disproportional to the nature and the gravity of the offence, it shall be disposed the confiscation, in part, of the equivalent value in money, taken into consideration the consequence of committing the offence and the contribution of the good for producing the offence.
In cases provided by para. 1 letter b and c, if the goods cannot be confiscated, due to the fact that they do not belong to the offender, and the person having the right of property on these goods did not know the purpose of their use, it shall be disposed the confiscation of the equivalent value of these goods.
If the goods under confiscation cannot be found, it shall be confiscated the money and the goods till the occurrence value, instead of them.
It shall be confiscated also the goods and the money obtained by exploitation or use of goods under confiscation, except the goods provided by para 1 letter b and c.
The court may not dispose the confiscation of a good, if this is used as subsistence mean, for daily necessity or for exercising the profession by the offender or by the person against whom it may be disposed the special confiscation measure.

301. Article 25 of AML/CFT Law provides that in the case of money laundering and terrorist financing offences, the provisions of Article 118 of the CC shall be applied with respect to the confiscation of the proceeds of crime.

302. Article 25 of the AML/CFT Law further provides that if the proceeds of crime, subject to confiscation, are not found, their equivalent value in money or the property acquired in exchange should be confiscated. Income or other valuable benefits obtained from the proceeds of crime shall be confiscated. If the proceeds of crime subject to confiscation cannot be singled out from the licit property, the property up to the value of the proceeds of crime subject to confiscation shall be confiscated. This applies equally to the income or other valuable benefits obtained from the proceeds of crime subject to confiscation, which cannot be singled out from the licit property.

303. There is no third party confiscation apart from instrumentalities which have been used and belong to a third person who has knowledge about the purpose of their use. The provision may be found in the AML/CFT Law Article 25, 1 and CC Article 118, letter b.

304. Turning to provisional measures, Article 26 provides that in order to guarantee the confiscation of the property, the provisional measures shall be mandatory as provided by the CPC. Article 163 of the CPC provides for seizure as a measure to secure the fine, confiscation, and to repair the damages by committing the offence according to the procedure set out in the CPC. Seizure is ordered by the prosecutor (during the investigation phase) and the court (during the trial phase) and is executed by the criminal pursuit body or by bailiffs.

305. At the time of the on-site visit the examiners were informed that if necessary for estimating the amount of assets to be seized those assets are identified and evaluated by experts. The seized assets are kept by the criminal investigation body in special premises and the amounts of money are deposited in a special account opened in the name of the defendants at the disposal of the judicial body. Within 24 hours a written report is drafted and should be attached to the file and a receipt is attached for the money deposited.

306. The police and the prosecutors can identify and trace the proceeds of crime during the criminal proceedings. The prosecutors have online access to the National Office for Trade Register and bank secrecy as well as professional secrecy cannot impede the prosecution bodies or the courts. Furthermore Article 27 of the AML/CFT Law provides that where there are solid grounds of committing an offence involving money laundering or terrorism financing the following measures may be disposed for the purpose of gathering evidence of identifying the perpetrator: a) monitoring of bank accounts and similar accounts; b) monitoring interception or recording of communications; c) access to information systems. The provision provides some time frames and restrictions when applying these measures.

307. Article 24[1] of the AML/CFT Law provides the provisional measures should be mandatory where a money laundering or terrorism financing offence has been committed and Article 25 of AML/CFT Law adds in order to guarantee the carrying out of the confiscation of the property that the provisional measures shall be mandatory as provided by the CC.

308. Regarding the protection for the rights of bona fide third parties the evaluators were informed that the confiscation can only be ordered against the participants who are convicted for a money laundering offence as provided in Article 118 of the CC. The Article also provides that in case the objects cannot be confiscated, as they no longer belong to the offender, and the person to whom they belong did not know the purpose of their use their equivalent in money should be confiscated.

309. Criterion 3.6 requires there should be authority to take steps to prevent or void actions, whether contractual or otherwise, where persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. The examiners were not informed of any authority to prevent or void such actions. There are procedural rules that provide for procedural guarantees, including the right to appeal to the court or chief prosecutor for persons that may be subjected to the restriction of their personal rights and liberties. If the person suffered damage as a consequence of an illegal decision of the investigation officer, prosecutor or judge, a claim for civil damages can also be made.

Additional elements

310. Law 39/2003 on preventing and combating organised crime provides that "initiation or constitution of an organised group as well as joining or supporting in any way such a group" shall be punished with imprisonment from 5 to 20 years. Concealments of assets which are a result of a serious offence committed by one or more of the members of an organised criminal group shall be punished with imprisonment from 3-10 years.

311. The Romanian Constitution precludes the confiscation of property without a conviction of any person. According to Article 44 of the Romanian Constitution "legally acquired assets should not be confiscated. Legality of acquirement should be presumed. Any goods intended for, used or resulted from a criminal or minor offence may be confiscated only in accordance with the provisions of the law".

312. The evaluation team was informed that according to the Romanian Constitution the burden of proof cannot be reversed. The prosecutors must prove the illicit origin of the property.

Statistics

313. Statistics provided by Directorate for Investigating Organised Crime and Terrorism (DIOCT):

in 2002 – no confiscation proceedings with regard to 1 non-final conviction;
in 2003 – no confiscation proceedings with regard to 2 final convictions;

in 2004 - no confiscation proceedings with regard to 20 non-final convictions and 2 final convictions;
in 2005 – confiscation of 10 million USD in the process of non-final conviction. The money was, however, not confiscated as the indictments ended up in 2 final acquittals.
in 2006 – confiscation of 6 billion ROL in the process of 1 final conviction.

314. Statistics provided by the National Anti-corruption Directorate (NAD):

in 2006 – confiscation of 95,000 EUR under 3 non-final convictions.

DIOCT statistics on the seized assets for 2002-2006 years:

in 2002 - unvalued movable and immovable goods under 14 indictments;
in 2003 – unvalued movable and immovable goods under 12 indictments;
in 2004 - 10 million USD and unvalued goods such as buildings, cars etc. under 53 indictments;
in 2005 – 19.5 million RON (5.5 million Euro), 30 million USD abroad plus 140 million RON (40 million Euro) and unvalued goods such as buildings, cars etc. under 73 indictments;
in 2006 - 10 million USD … under 106 indictments
NAD statistics on seized assets for 2003-2006:

in 2003 - 1 78 million RON (5.8 million Euro) under 25 indictments;
in 2004 – 32 million RON (9 million Euro) under 4 indictments;
in 2006 – 40 million RON (11.4 million Euro) under 7 indictments.

2.3.2 Recommendations and comments

315. According to the CPC the special confiscation provisions are applied to the wide range of property including proceeds of crime, equivalent value, income or valuable benefits obtained from the proceeds of crime. The prosecutor and the courts have appropriate powers to seize assets that may have relation to money laundering or terrorist financing. The law enforcement authorities have appropriate powers to identify and trace property that may be subject to confiscation. The rights of *bona fide* third parties are protected.

316. Proceeds are subject to compulsory seizure and confiscation and equivalent value confiscation is possible. The seizure and confiscation regime is thus imbedded in the law and seems to cover all criminal proceeds and instrumentalities. This is an important measure that should be further utilised in future cases and applied where ever possible.

317. There is no third party confiscation apart from instrumentalities which have been used and belong to a third person who has knowledge about the purpose of their use.

318. While the confiscation system in Romania appears to meet most of the standards, it has produced limited results. However, it is not possible to determine the effectiveness of the confiscation system due to the low number of confiscation cases. Taking into consideration the high level of acquittals compared to the low level of final convictions there should be appropriate restitution mechanism in respect of final confiscated assets. The evaluators were not provided with the statistics on restituted property in case of final acquittals.

319. There is no authority to take steps to prevent or void actions, whether contractual or otherwise, where 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.

320. Romanian authorities may consider the possibility of requiring that an offender demonstrates the lawful origin of alleged proceeds of crime or other property liable to confiscation as is stipulated in the Article 12 of the Palermo Convention (reversal of the burden of proof).

2.3.3 Compliance with Recommendation 3

	Rating	Summary of factors underlying rating
R.3	**Largely Compliant**	• There is no third party confiscation apart from instrumentalities which have been used and belong to a third person who has knowledge about the purpose of their use. • No authority to take steps to prevent or void actions, whether contractual or otherwise, where persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. • The effectiveness of the confiscation system is questionable taking into consideration the limited confiscation proceedings.

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

2.4.1Description and analysis

321. In order to implement S/RES/1267 (1999) and its successor resolutions and S/RES/1373 (2001) Romania adopted the General Emergency Ordinance (GEO) 159/2001 on preventing and combating the use of the financial-banking sector in the purpose of terrorism financing. By Law 535/2004 on preventing and fighting terrorism, GEO. 159/2001 was repealed, except for the Annex, which is still in force. Law no. 206/2005 on the implementation of certain international sanctions stipulates that the UNSC Resolutions adopted under Chapter VII of the UN Charter are directly applicable and determine directly rights and obligations for public institutions and other subjects of Romanian domestic legislation. The law further provides that Common Actions and Common Positions of the Council of the European Union and other decisions of a similar nature, that impose sanctions or restrictive measures towards third states or non-state entities become binding for the Romanian legal subjects – public institutions, natural or legal persons – from their publication in the Romanian Official Journal. Sanctions imposed by other international organisations or, as the case may be, by unilateral decisions of states shall be established by a special normative act.

322. The Annex mentioned above provides for the listing of persons and entities on the United Nations Security Council Resolutions 1267 and 1373, European Union lists and other countries' lists. The freezing procedure is to be found in Law 535/2004 on preventing and fighting terrorism. Article 24 in Law 535/2004 provides that the Annex shall be supplemented and updated periodically through Governmental Decision, based on information received from UNSC.

323. Persons implementing the freezing mechanism are obliged immediately to notify the Prosecutor's Office (DIOCT).

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

The listing and freezing procedure

325. Romania has a two level mechanism to transmit the updated UNSC and EU lists. Law 206/2005 on the implementation of certain international sanctions provides that the MoFA notify all the other institutions represented in the Inter-institutional Committee (the competent body for coordinating the implementation of sanctions). The second level is the RIS which disseminates the updated lists to all authorities involved in the countering of terrorism financing (law 535/2004 on preventing and combating terrorism).

326. Law 535/2004 provides in Chapter III for the mechanisms regarding preventing the financing of terrorist acts. Article 23 of this law prohibits financial-banking operations which are performed for or on behalf of the natural or legal persons provided in the Annex to the GEO. 159/2001 (hereinafter – the Annex). This extends to banking operations which are performed for or on behalf of natural or legal persons in the Annex. The evaluators were informed that such banking operations cover operations between residents and non-residents, and between non-residents but do not cover operations between residents. Performing operations between residents listed in the Annex or on their behalf wil not be detected.

327. Article 24 of this Law stipulates that the Annex should be supplemented and updated periodically by Governmental Decisions, based on information received from the United Nations Security Council. The Annex shall be supplemented and updated, to the extent possible, with the identification data of the natural and legal persons such as nationality, citizenship, date and place of birth, for natural persons, and the establishment, nationality and registration number for legal persons. The identification data shall be requested to the United Nations Security Council by the Ministry of Foreign Affairs, upon request from the Ministry of Public Finance. When EU lists under Council Regulation 2580/2001 are updated, they become automatically binding for Romanian authorities. Unilateral lists of other countries are not binding for Romanian authorities. To become binding the names on such lists should follow the national procedure and are nationally listed, according to the process described below.

328. Article 23 (2) of Law 535/2004 provides that the assets of the persons included in the Annex shall be frozen and all transfers shall be prohibited. Article 25 provides that the personnel of financial institutions shall be obliged to refuse the carrying out of the operations which are performed for on behalf of the natural or legal persons provided in the Annex and to immediately notify the Prosecutor's Office (DIOCT). The evaluators were informed that Articles 23 and 25 are applied in practice by mandatory refusal by the financial-banking institutions to perform the operations with the immediate subsequent notifying of the DIOCT. Simultaneously the assets shall be frozen and all transfers prohibited. At the time of the on-site visit not all reporting entities appeared to be aware that the freezing obligation is formally on them and in practice no true matches were found. For this reason the evaluators cannot assess whether the provisions are properly enforced in practice. In addition, the freezing procedure should include clear provisions that freezing measures should take place without prior notice to the designated person(s) involved.

329. Although Article 23 (2) provides for "shall be frozen" and the team was assured by the Romanian authorities that the freezing procedure is intended to be an automatic one, the examiners were not convinced that the reporting entities which are compelled to comply with the Law on preventing and fighting terrorism provisions are fully aware of the automatic system of freezing. The examiners received different answers from several reporting entities. Some were unclear whether their duty on finding a match was to block funds and simply notify the NOPCML or the DIOCT of the blocking or only to report the match to the NOPCML or the DIOCT and leave any further action for them. This needs to be clarified in the law. Guidelines are also seen as a helpful tool in this respect.

330. The Romanian authorities do not have effective laws and procedures to examine and give effect to the actions initiated under the freezing mechanism of other jurisdictions. Thus there are no procedures to ensure the prompt determination, according to applicable national legal principles, whether reasonable grounds or reasonable basis exists to initiate a freezing action and the subsequent freezing of funds or other assets without delay. This does not appear to be in compliance with criterion III.3.

331. The freezing actions do not extend to funds or other assets wholly or jointly owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations. Nor do the freezing actions extent to funds or other assets derived or generated from funds or other assets owned or controlled directly or indirectly by designated persons, terrorists, those who finance terrorism or terrorist organisations (criterion III.4).

332. Article 26 of Law 535/2004 obliges all bodies involved in the system for preventing and combating terrorism jointly with public authorities and the National Trade Register Office, the National Commission of Securities and the Insurance Supervisory Commission to collaborate for the compilation and updating of national lists containing the Romanian natural and legal persons suspected of having committed or financed terrorist acts, and those mentioned in the Annex. Such compiled lists shall be sent to the Centre for Operative Anti-terrorism Coordination which in its turn send to the Ministry of Public Finance, which shall compile a single list (hereinafter – List), which it shall submit to the Government for approval.

333. Since 2002 the NBR is being updated by the MoFA in relation to the lists revised by UNSC and EU. The NBR disseminates the revised lists to all credit institutions in Romania. The Official Gazette is the source of information on the Annex and the List for all other financial institutions and DNFBP. Some financial supervisors distribute the updating of the sanctions lists; other supervisors post the updated lists on their web site.

334. It appeared, however, to the evaluators that apart from the banks many reporting entities involved in the combating of terrorist financing were not fully aware of the listing and freezing mechanisms. Some reporting entities with whom the assessors met advised that the updated Annex and the List are provided to them through the NOPCML or the supervisory authority. Others said that they periodically check the UN website and the national list by themselves for any updates. The communication channels in respect of listings need to be enhanced.

335. Article 28 of Law 535/2004, which refers to Article 23, requires that financial operations between residents and non-residents, and between non-residents are performed for or on behalf of persons included in the List, the operation shall be subject to prior authorisation by the NBR, the NCS or the ISC. The evaluators were concerned that operation between residents did not appear to be covered.

336. Article 29 and 30 in Law 535/2004 stipulate that the financial institutions supervised by NBR, NSC and ISC shall inform the management of the institution of any request for operations that are subject to prior authorisation. The financial institutions are required to present immediately the documentation on the operation subject to prior authorisation to the NBR, the NCS or the ICS. The supervisory authorities shall, within 5 days from presentation of the documents, issue authorisation or refusal for the operation. If the authorisation of the operation is refused, the Prosecutors' Office (DIOCT) and the Romanian Intelligence Service (RIS) shall be notified. These provisions cover all financial institutions which are allowed to hold funds.

337. There are no special procedures for considering de-listing requests of persons that have been listed, nor are there special procedures to unfreeze the funds of persons that have been delisted. The Romanian authorities explained that a person or entity wishing to be delisted must address a request to be de-listed to the body responsible for the listing. If a person is listed pursuant to a court decision that the person is guilty of committing a terrorist offence this person must go to

that court to have the verdict changed and subsequently has his name removed from the terrorist list.

338. The assessors were not informed of the development of efficient and effective systems for communicating actions taken under the freezing mechanism to the financial sector immediately upon taking such action. As well, they should provide clear guidance, particularly to financial institutions and other persons or entities that may be holding targeted funds or other assets on obligations in taking action under freezing mechanism.

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

340. This approach to de-listing and unfreezing is problematic. There are no effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds of de-listed persons or entities in a timely manner consistent with international obligations. The examiners encourage the Romanian authorities to consider providing for such procedures as quickly as possible.

341. The Romanian legislation has not implemented access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses. As no funds under 1267 have been frozen as being related to Usama Bin Laden or members of Al-Qaeda or the Taliban or associated individuals or entities, there has been no need to consider how release could be effected. It is none-the-less important that the Romanian authorities advise the financial sector and DNFBP and other members of the public of the necessary procedures in this type of case.

342. The NBR, the NCS and the ISC shall control how the supervised institutions comply with the provisions and shall apply sanctions within their competence (Article 31 of Law 535/2004). Non-compliance with the obligations under Article 25, 29 and 30 of Law 535/2004 shall be sanctioned with fines from 5,000 to 10,000 RON (1,350 Euros to 2,700 Euros). The sanctions are applicable to natural as well as legal persons.

343. The evaluators were informed that no transfers into or out of Romania by natural or legal persons included in the Annex were detected. There was only one case of freezing of the assets of a natural person suspected of terrorism financing. This was due to the fact that the name of the person was included in the Annex. During investigations it was established that it was a mistake and accordingly all sanctions toward this person were lifted.

Additional Elements

344. Romanian authorities should pay attention to the measures set out in the Best Practice Paper for the FATF Special Recommendation III and work out appropriate legislative provisions to implement the measure stated in it.

345. Such provisions should also authorise access to funds or other assets that were frozen pursuant to UN SC resolution 1373(2001) and that have been determined to be necessary for basic expenses, the payment of certain types of fees, expenses and service charges or for extraordinary expenses. Such provisions should be consistent with UN SC Resolution 1373(2001) and the spirit of UN SC resolution 1452(2003).

Statistics

346. There were no persons/entities and assets frozen pursuant to or under UN Resolutions relating to terrorist financing in Romania. The evaluators were informed that in 2006 the NOPCML received 5 STRs on terrorist financing. The transactions were suspended and the General

Prosecutor's Office notified, but the cases are still in the operational stage[5]. The lack of any frozen assets raises questions as to the effectiveness of the current mechanisms.

2.4.2 Recommendations and comments

347. There is a basic legal structure in place for prompt determination of freezing orders. The Romanian authorities will need to reassess their regime now in the light of European Union Membership. If reliance is placed on European Union mechanisms a domestic procedure will still be required for European internals.

348. Law 535/2004 on preventing and fighting terrorism provides for "shall be frozen" and the team was assured by the Romanian authorities that the freezing procedure is intended to be an automatic one. The examiners were, however, not convinced that the reporting entities which are compelled to comply with the Law on preventing and fighting terrorism provisions are fully aware of the automatic system of freezing. This needs clearer guidance. In addition the freezing procedure should contain clear provisions that freezing measures should be taken without prior notice to the designated person involved.

349. The banking operations between residents listed in the Annex or on their behalf should be detected.

350. Freezing on behalf of a foreign jurisdiction should be covered.

351. Prior authorisation by the NBR, the NCS or the ISC is based on Article 23 for financial operations between residents and non-residents, and between non-residents included in the single List. The evaluators were concerned that operations between residents did not appear to be covered. Article 23 should be amended accordingly.

352. Romanian authorities cannot give effect to a designated freezing mechanism of other jurisdictions and cannot freeze on behalf of a foreign jurisdiction.

353. The freezing procedure does not include funds derived from funds or other assets owned or controlled, directly or indirectly, by the listed or by persons acting on their behalf or at their direction, and ensure that neither these nor any other funds or assets are made available, directly or indirectly, for such persons' benefit, by their nationals or by any person within their territory.

354. The communication channels in respect of listing and their updating also need to be enhanced.

355. No efficient and effective systems are in place for communicating actions taken under the freezing mechanism to the financial sector immediately upon taking such action.

356. This approach to delisting and de-freezing is problematic. The examiners encourage the Romanian authorities to consider providing for such procedures as quickly as possible.

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

358. There are no provisions implemented that gives access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses.

[5] The Romanian authorities have informed evaluators subsequently that the notification had no relation to terrorist financing.

359. The Best Practice Paper should be taken into consideration.

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

2.4.3 Compliance with Special Recommendation SR.III

	Rating	Summary of factors underlying rating
SR.III	**Partially Compliant**	• No clear guidance that "shall be frozen" is an automatic freezing procedure. • Funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations should be covered by the freezing actions. • Banking operations between residents listed in the Annex or on their behalf are not detected. • Freezing on behalf of a foreign jurisdiction is not covered. • Communication channels in respect of listing and their updating also need to be enhanced. • The Romanian authorities cannot give effect to a designated freezing mechanism of other jurisdictions and cannot freeze on behalf of a foreign FIU. • No efficient and effective systems are in place for communicating actions taken under the freezing mechanism to the financial sector immediately upon taking such action. • No effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds of de-listed persons or entities in a timely manner consistent with international obligations. • No clear provisions regarding the procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated. • No provisions implemented that gives access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses. • Lack of freezing orders raises issues with regard to effective implementation.

Authorities

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

2.5.1Description and analysis

Recommendation 26

361. Criterion 26.1 requires that countries establish a financial intelligence unit (FIU) that serves as a national centre for receiving (and if permitted, requesting), analysing, and disseminating disclosures of STR and other relevant information concerning suspected money laundering or terrorist financing activities. In Romania that authority is The National Office for Preventing and Control of Money Laundering (NOPCML). It was set up in 1999 by Law no. 21/1999 on prevention and sanctioning money laundering, and at present is functioning in accordance with Law no. 656/2002 with subsequent modifications and completions.

362. NOPCML (also named "the Office") is an administrative type of FIU and it is organised as a specialised body with legal personality, under the subordination of the Government. To guarantee its independence, NOPCML has its own budget and makes annual reports on its activities published in the Official Gazette.

363. The NOPCML is managed by a President, appointed by the Government, from among the Board of the Office Members. The Office's Board consists of seven members. The Board acts also as the deliberative and decisional structure, being made of one representative of each of the following institutions: the Ministry of Public Finances, the Ministry of Justice, the Ministry of Administration and Interior, the General Prosecutor's Office by the High Court of Cassation and Justice, the National Bank of Romania, the Court of Accounts and the Romanian Banks Association, appointed for a five-year period, by Government decision.

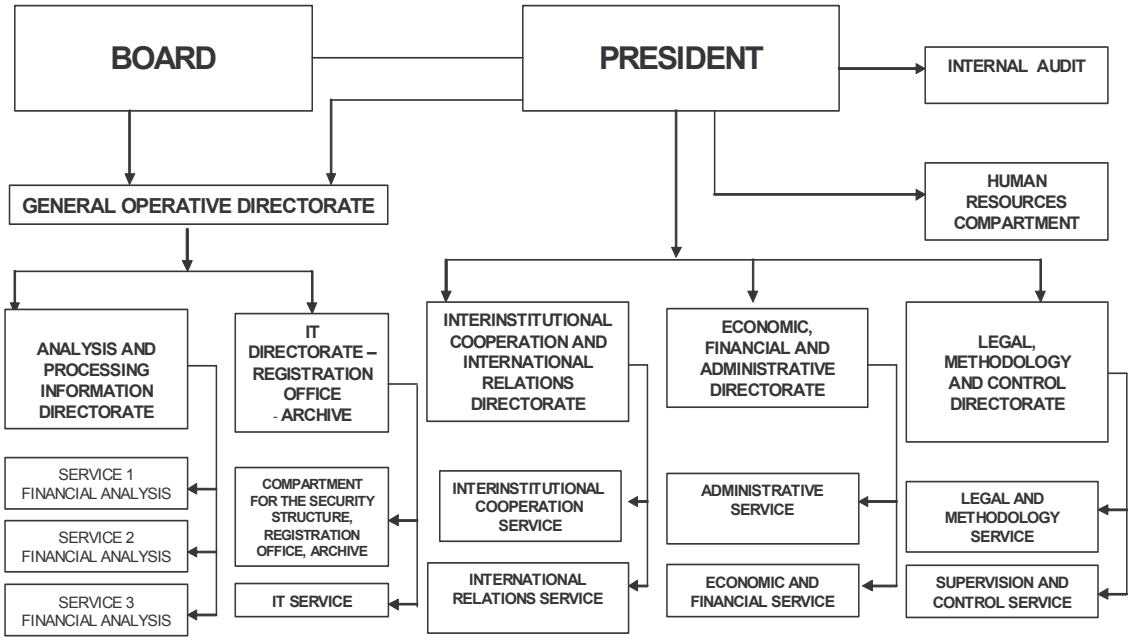
364. The Board adopts decisions with a majority vote. The decision whether an STR should be forwarded to the Prosecutor's Office is equally taken by a majority vote.

365. The members of the Board must fulfill following conditions: a university degree and at least 10 years of experience in a legal or economic position; domicile in Romania; only the Romanian citizenship; exercise of the civil and political rights; and high professional and an intact moral reputation. The Board members are forbidden to belong to political parties or to carry out public activities with political character. The function as Board member is incompatible with any other public or private function, except for teaching at the university. A Board member must immediately inform the President in writing the emergence of a possible incapacity.

366. In the period of occupying the function, the members of the Board shall be detached and their work report shall be suspended, respectively. At the cessation of the mandate, they shall return to the function held previously.

367. At the time of the on-site visit NOPCML consisted of the General Operative Directorate, Internal Audit and Human Resources Compartment. Under the General Operative Directorate there are two departments: Analysis and processing information department and IT department – registration office – archive. Under the President of NOPCML there are three departments: Department for Inter institutional co-operation and international relations; Economic, Financial and Administrative Department and a recently created Legal, Methodology and Control Department.

NOPCML ORGANISATIONAL CHART



368. At the time of the on-site visit, the number of staff of the NOPCML was 90 employees, out of 120 budgeted. The evaluators were informed that the NOPCML were actively looking for additional personnel but many applicants are rejected due to the fact that they did not meet the required criteria imposed by the NOPCML examiners. In the Analysis and processing information department there were 1 Manager, three Heads of units, 25 financial analysts and 5 assistant analysts.

369. NOPCML has the supervision powers (checking, control) for the subject persons listed in Article 8 of the AML/CTF law that are not under the supervision of any other authority regarding AML/CFT issues. These subject persons are part of the non-banking financial institutions (non-banking financial institutions from the General Register and the Evidence Register), DNFBP, persons involved in the privatisation process (regulated by the Authority for Capitalisation of State Assets (A.C.S.A.)) and post offices (regulated by the National Regulatory Authority for Communications). Furthermore the NOPCML may undertake joint AML/CFT inspections of financial institutions and non-financial institutions, with financial supervisory or financial control (Financial Guard) authorities. The NOPCML only has 12 staff members who perform on-site supervision. Although a high number of reporting entities supervised by NOPCML are being supervised off-site through a computerised system allowing for on-site controls to focus more on the risk sectors and entities vulnerable to ML/TF, the evaluators are concerned as to the high number of supervised entities and the low number of on-site supervisors.

370. The staffs of the NOPCML are provided with adequate and relevant training for combating money laundering and terrorist financing. From 2003 - 2006, the representatives of the NOPCML participated in numerous training sessions targeting the fight against money laundering and terrorism financing.

371. The Romanian FIU – NOPCML is a national centre for receiving and requesting, analysing, and disseminating disclosures of STR and other relevant information concerning suspected ML or TF activities.

372. With regard to Criterion 26.1, the tasks of NOPCML are provided in the Law no. 656/2002 (AML/CFT Law) and also in the Regulations on organising and functioning of NOPCML, approved by Government Decision no. 531 from April 2006.

373. The main tasks are:

- Receiving data and information from the reporting entities (listed under article 8 of the AML/CTF Law) and from the overseeing authorities in accordance with the provision of article 17 of the AML/CTF Law concerning operations and transactions performed in national and foreign currency, respective reports on suspect transactions, cash transactions exceeding the equivalent in RON of 10,000 Euros[6] and external transactions exceeding 10,000 Euros.
- Analysing and processing data and information received in accordance with the law in order to identify the existence of solid grounds for money laundering or terrorist financing;
- Requests for any competent authorities to provide necessary data and information in order to accomplish its activity objective; the information related to the notifications received in accordance with the provisions of the information, which are processed and used within the Office in confidentiality regime;
- Immediate notifying the competent body in case in which were found solid grounds of committing other offences than that of money laundering or terrorist financing;
- Notifying the General Prosecutor's Office in the cases in which solid grounds of money laundering are found and notifying, immediately, the Romanian Intelligence Service concerning the operations suspected of terrorist financing, if after the analyses and processing of information solid grounds of such terrorist financing are found.
- The NOPCML is the supervisor for AML/CFT for entities which do not have a supervisory authority.

374. In order to process the information that is necessary for the financial investigations, NOPCML uses an internal computer network, having workstations for all staff members, 10 servers and a dedicated protection system. 30 workstations are dedicated to the Internet access of the financial analysts, in order to separate them from the Office's internal network.

375. Beside in-house applications about cash transactions and cross-border transfers exceeding the equivalent of Euro 10.000 which could be received in electronic format and stored in related tables and suspicious transactions reports which could be received either in electronic format or on paper, NOPCML has the access to the external applications, such as CONTEXTOR - investigation software used to explore, interpret and display complex information from a wide variety of computer-based sources, including large databases.

376. The evaluation team noted that 1,348 from 2005 were still pending but were advised that they would be finalised before the end of 2007. Pending STRs had been a problem but the NOPCML

[6] The reporting threshold for the cash transaction and cross-border transfers was increased to 15,000 Euro, by GEO no. 53/2008 on the modification and completion of Law no. 656/2002.

was catching up. The NOPCML was also trying to identify the predicate offence when dealing with a STR.

377. Criterion 26.2 requires that countries with which the FIU or another competent authority should provide financial institutions and other reporting parties with guidance regarding the manner of reporting, including the specification of reporting forms, and the procedures that should be followed when reporting.

378. In the replies to the questionnaire it is indicated that the NOPCML has issued Decision no. 276/2005, regarding the template and the content of suspicious transaction reports (STR), cash transaction reports (CTR) and cross-border transaction reports (CBR), including models of reports as required under Article 3 (9) of the AML/CFT Law. This decision provides the template for the report and it is published in the Official Gazette and is compulsory for all the reporting entities. The template contains all the information necessary to identify the reporting entity, the legal or natural person who performs the transaction, the amount of the transaction and information on the transaction itself, including why it is considered to be suspicious if an STR has been filled.

379. According to criterion 26.3 the FIU should have access, directly or indirectly, on a timely basis, to the financial, administrative and law enforcement information that FIU requires for proper undertaking of its functions, including the analysis of STRs.

380. The NOPCML has direct on-line access and uses in practice the databases of other institutions such as the National Customs Authority (NCA), the National Trade Registry, the General Inspectorate of Romanian Police – population registry, the Authority for Foreigners, the Ministry of Public Finances – for VAT reimbursements, accounting balances, banking customers, as well as the Egmont network and the FIU.NET network.

381. Criterion 26.4 requires that the FIU, either directly or through another competent authority, should be authorised to obtain additional information needed for proper undertaking of its functions from reporting parties.

382. Article 5 (1) of AML/CFT law provides that the NOPCML may require data and information necessary to perform their legal tasks from any reporting entity as well as from competent institutions, including law enforcement agencies. The requested institutions/ authorities/ reporting entities shall forward the requested information within 30 days after receiving the request. Professional secrecy does not impede the work of the NOPCML. Furthermore the NOPCNL may exchange information, based on reciprocity, with foreign authorities having similar functions and which are equally obliged to secrecy rules, if such an information exchange is made with the purpose of preventing and combating money laundering and terrorist financing.

383. With regard to Criterion 26.5 the NOPCML is required to notify the General Prosecution's Office immediately when solid grounds of money laundering or terrorism financing are established (Article 6 (1) of the AML/CFT Law). When solid grounds of terrorism financing are established the NOPCML shall also notify the Romanian Intelligence Service. Moreover, according to Article 6, paragraphs 4 and 5, NOPCML shall forward to the General Prosecution's Office (on its request) the data and information obtained while performing its legal tasks.

384. Having received STRs the NOPCML analyses and processes data and information received in accordance with the law in order to identify the existence of solid grounds for money laundering or terrorist financing. In case of serious grounds for money laundering or terrorist

financing the NOPCML is sending the notifications to the GPOHCCJ in order to start investigations. One notification may contain several STR which are linked.

385. As already noted the NOPCML is a specialised body subordinated to the Government. To secure the independency of the NOPCML and to prevent any undue influence, the Board has been established as the deliberative and decisional structure of the NOPCML. As noted earlier in paragraphs 304 and the following, the Board is formed by one representative of each of the following institutions: the Ministry of Public Finances, the Ministry of Justice, the Ministry of Administration and Interior, the PO-HCCJ, the National Bank of Romania, the Court of Account and the Romanian Banks Association. Each member of the Board is appointed for a period of 5 years, by Governmental Decision, to the proposal of the represented institution. The NOPCML is led by a president, appointed by the Government from the members of the Board. The NOPCML has financial autonomy – i.e. its own budget (4 million Euros in 2007) – an additional guarantee for ensuring the independence. Decisions are taken with the majority of votes of the Board's members. The president is obliged to enforce decisions issued by the Board.

386. Criterion 26.7 provides that the information held by the FIU should be securely protected and disseminated only in accordance with the law.

387. The Romanian authorities have made significant efforts to meet this Criterion. This effort may be partially due to the fact that the confidentiality of FIU material has been seriously compromised in the recent past. STR information in the form of hard copies appeared in the Romanian press at the beginning of 2006. Around 100 STRs may be found on the websites of Romanian local newspapers. For this reason these STRs have been de-classified. The evaluators have discussed these details with the Romanian side. This unfortunate situation arose during the term of the former Board of the NOPCML and the authorities with whom the team discussed this issue accept that the security systems were obviously not adequate. At the time of the on-site visit the Prosecutors' Office was investigating the case.

388. In July 2006, NOPCML moved to new premises provided by the Romanian Government. The current premises are equipped with:

- an access control system;
- a surveillance system with infrared cameras without computer;
- new post allocations;
- a new computer system which works within the network has been introduced;
- new information on which of the FIU employees have access to a specific STR;
- an integrated security system (constituted from access control system and passive infrared detectors);
- a new photocopying regime. To use the photocopier a special key is needed and the photocopying is supervised by the only person who has the key.

389. Article 5 of the AML/CFT Law provides that the received STRs are processed and used within NOPCML under confidentiality. Nevertheless, Article 18, Para.1 in the AML/CFT Law provides: "The personnel of the Office must not disseminate the information received during the activity only under the conditions of the law. This obligation is still valid after the cessation of the position held within the Office, for a five year period." The obligation not to disseminate information received while being employed by the NOPCML ceases five years after the cessation of working with the Office. The evaluators do not consider Criterion 26.7 to be fully observed.

390. With regard to Criterion 26.8 the FIU should publicly release periodic reports, and such reports should include statistics, typologies and trends as well as information regarding its activities.

The NOPCML releases its Annual Report every year. The 2006 Annual Report and Annexes with statistics can be found on the Romanian FIU's website www.onpscb.ro (only in Romanian).

391. Furthermore Article 6 (7) requires the NOPCML to provide the reporting entities and financial supervisory authorities with general information on suspicious transactions and typologies on money laundering and terrorism financing. To this end, regular meetings are organised with different reporting entities and law enforcement agencies. In July 2005 the NOPCML finalised the PHARE Twinning Project with Italy as the twinning partner. One of several outputs from the Project was an updated Suspicious Transaction Guide and a new Training Manual which was disseminated both at central and territorial level.

392. The NOPCML has been a member of the Egmont Group since May 2000 and is connected to the Egmont Secure Web. When exchanging information with its foreign counterparts (foreign FIU's) the NOPCML follows the Egmont Principles for Information Exchange between Financial Intelligence Units for money laundering cases.

393. Article 5 (4) of the AML Law empowers the NOPCML to exchange information, on a reciprocal basis, with any foreign institution with which it is considered to have similar functions and a similar secrecy policy and provisions. The exchange of information should be made for the purpose of preventing and combating money laundering and terrorism financing. The NOPCML has intensified and improved the exchange of information with other FIUs by creating a unit dealing with requests from the other FIUs as a priority.

394. The NOPCML maintains comprehensive statistics on matters relevant to money laundering. The NOPCML receives three types of reports: Cash Transaction Reports for deposits and withdrawals in cash exceeding 10,000 Euro, Cross-border Transfers Reports for amounts exceeding 10,000 Euro, and Suspicious Transaction Reports. To assist in its smooth functioning and to ensure general feedback to the reporting entities and law enforcement agencies, the NOPCML keeps annual statistics comprising:

Reports on cash deposits and withdrawals over the threshold of 10.000 Euros

Item	**2002**	**2003**	**2004**	**2005**	**2006**
- The number of received reports, out of which:	**8409**	**10.166**	**11.661**	**14.944**	**71.571**
• Banks	8404	8062	9226	9136	8931
• financial investment companies	0	15	62	169	229
• securities companies	0	22	58	82	96
• other	5	9	35	162	1047
• leasing companies	0	0	1	6	34
• foreign currency exchange offices	0	12	22	100	524
• consultancy companies	0	1	0	0	4
• financial intermediary companies	0	0	1	0	0
• insurance and reinsurance companies	0	9	9	84	30
• economic agents that carry out gambling,	0	0	39	182	470
• postal offices	0	22	73	131	166
• money remitters	0	0	6	23	20
• auditors, natural and legal persons giving tax, accounting, or financial and banking advice	0	0	0	1	1
• real estate companies	0	0	0	1	6
• State treasury	0	2014	2126	1473	666
• Notaries	0	0	0	3394	59345
• Lawyers	0	0	0	0	2
- Number of operations	**943.529**	**1.172.876**	**2.098.830**	**6.091.191**	**12.848.399**
- Amounts of cash deposits	**8.490 Mil.Euros**	**8.303 Mil. Euros**	**12.974 Mil.Euros**	**19.239 Mil. Euros**	**25.502 Mil. Euros**
- Amounts of cash withdrawals	**7.838 Mil. Euros**	**8.998 Mil. Euros**	**10.320 Mil. Euros**	**13.280 Mil.Euros**	**16.425 Mil.Euros**

Reports of cross-border transfers, in or out of accounts for amounts over the threshold of 10.000 Euro

Item	**2002**	**2003**	**2004**	**2005**	**2006**
- The number of received reports, out of which:	**4**	**7.489**	**8.991**	**8.761**	**8887**
• Banks	**4**	**7489**	**8980**	**8755**	**8887**
• securities companies			**4**	**1**	
• financial investment companies				**1**	
• insurance and reinsurance companies			**5**	**4**	
• money remitters			**2**		
- Number of operations	**14**	**502.020**	**756.257**	**1.009.086**	**1.192.932**
- amounts out of Romania	**0,18 mil Euro**	**15.544 mil Euro**	**23.815 mil Euro**	**49.446 mil Euro**	**89.219 mil Euro**
- amounts entered into Romania	**1,83 mil Euro**	**13.187 mil Euro**	**23.439 mil Euro**	**41.113 mil Euro**	**95.313 mil Euro**

Suspicious transactions reports

	2002	**2003**	**2004**	**2005**	**2006**
- The number of received reports, out of which:	**592**	**1067**	**1950**	**3.859**	**3.196**
- reporting entities				***3095***	***2720***
Banks				2984	**2560**
Casinos				21	**46**
cars' dealers				0	**2**
foreign currency exchange offices				7	**3**
money remitters				0	**8**
insurance companies				6	**4**
notaries	***266***	***617***	***1470***	32	**47**
financial investment companies				0	**12**
postal offices				0	**5**
other natural persons				26	**32**
real estate companies				10	**0**
NGOs				2	**0**
Lawyers				6	**0**
Financial control and prudential supervision authorities	***167***	***239***	***147***	***232***	***329***
Office's notifications	***159***	***211***	***169***	***313***	***-***
Law enforcement authorities	***-***	***-***	***164***	***219***	***147***

Statistic on STRs and notifications to GPOHCCJ

Year	Received STRs	Notification to GPOHCCJ
2002	592	256
2003	1.067	365
2004	1.950	523
2005	3.859	483
2006	3.196	336
2007[7]	2.908	616

395. In addition the NOPCML maintains the following statistics:

- The status of the operations suspended by NOPCML in AML/CFT operations, concerning the number of suspicious operations suspended and total amounts frozen;
- Statistics on the notifications sent to various law enforcement agencies: PO-HCCJ, NAD and RIS with the approximate amounts of laundered money;
- The number of performed controls for each category of entities with fines applied for misdemeanors;
- The number of financial information exchanges with other FIUs (sent or received).

396. In 2004, the Board of the Office suspended 18 operations amounting to the equivalent of approx. 11.8 million Euros. In 2005, the Board of the Office suspended 54 operations amounting to the equivalent of approx. 6.1 million Euros. In 2006, the Board of the Office suspended 4 operations amounting to the equivalent of approx. 10,020,000 Euro. In 2007, the Board of the Office suspended 3 operations amounting to the equivalent of approx. 676,000 Euro.

397. NOPCML maintains its own comprehensive statistics on STRs, by completing the financial information received and processed within its own IT system with the quarterly feedback given by the PO-HCCJ on the investigation, prosecution or conviction stage generated by the notifications received from the Office. Article 6 (6) in the AML/CFT Law stipulates this obligation for the PO-HCCJ. The evaluators were informed that compliance with this provision is guaranteed by the excellent co-operation of the NOPCML with the PO-HCCJ, DIOCT and NAD.

398. The evaluators assessed on the basis of the statistics provided by the Romanian authorities that the NOPCML performed its activities in effective manner. The prosecutors and the police officers that evaluation team met also expressed that they were pleased with the quality of information received from NOPCML.

399. Romanian Banks are the main reporting entities in the country. As it is clear from the statistics, in 2006 banks reported 8,887 reports of cross-border transfers, in or out of the accounts for amounts over the threshold of 10,000 Euro. Romanian Banks reported that 1,192,932 operations amounting to 89,219 million Euros taken out of Romania and 95,313 million Euros that have entered Romania. Romanian Banks have also reported 2,560 STR in 2006, out of 3,196 reported STR to the NOPCML. Until 2006 Romanian Banks were also the main reporting entities for cash deposits and withdrawals. However, in 2006 Notaries began to be the main reporting entity on cash deposits and withdrawals with 59,345 reports.

[7] The statistical information for 2007 covers the full year although the on-site visit took place from 6-12 May 2007.

2.5.2 Recommendations and comments

400. The NOPCML undertakes a leading role in the development, coordination and implementation of the AML/CFT system. NOPCML is providing training for obliged entities. The number of trained people in the NOPCML and other institutions involved in money laundering and terrorist financing issues is impressive. NOPCML is well structured and has impressive IT equipment. NOPCML has issued a template of the suspicious transaction report (STR), the cash transaction report (CTR) and the cross-border transaction report (CBR). The evaluators also have the impression that the FIU operates effectively with international counterparts and that it demonstrates good co-operation through the exchange of information.

401. Although the NOPCML appears to be well staffed the number of persons (12 staff members) who may perform on-site inspections seems to be in disparity with the large number of entities to be supervised.

402. Additionally there appears to be a considerable shortage of staff, which may have a negative influence of important duties of NOPCML.

403. Furthermore the remaining 1,348 pending STRs need to be quickly and effectively dealt with.

404. The requested institutions/ authorities/ reporting entities shall forward the requested additional information within 30 days after receiving the request Criterion 26.4. The evaluators recommend that the time limit be shortened in order for the NOPCML to properly undertake its functions.

405. The obligation not to disseminate information received while being employed by the NOPCML ceases five years after the cessation of working with the Office. The evaluators do not consider Criterion 26.7 to be fully observed.

406. The NOPCML maintains comprehensive statistics on matters relevant to money laundering.

2.5.3 Compliance with Recommendation 26

	Rating	Summary of factors underlying rating
R.26	**Largely Compliant**	• Pending STRs need to be quickly and efficiently dealt with. • The requested institutions/authorities/reporting entities shall forward the requested additional information within 30 days after receiving the request. Need to shorten the time limit in order for the NOPCML to properly undertake its functions. • Need of an explicit prohibition (without time limit) for NOPCML employees to disseminate information received after the cessation of working with the Office.

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

407. Article 6 (1) of the AML/CFT Law requires that the NOPCML shall analyse and process the information, and if the existence of solid grounds of money laundering or financing of terrorist

activities is demonstrated, it shall immediately notify the General Prosecution's Office. If terrorism financing is demonstrated, the Romanian Intelligence Service shall be immediately notified.

Prosecution

408. In Romania, the competence for the prosecution of money laundering is divided between several prosecutors' offices, depending on the type of the predicate offence. As a result, the competence is as follows:
    - Directorate for Investigating Organised Crime and Terrorism (DIOCT), if the proceed laundered originate from an offence for which DIOCT is the competent investigation body;
    - National Anticorruption Directorate (NAD), if the proceeds laundered originate from a corruption offence or an offence related to corruption;
    - Regular prosecutors' offices attached to tribunals, if the proceed laundered originate from an offence which does not fall under the competence of NAD, nor under the competence of DIOCT.

409. The Department for Investigating Organised Crime and Terrorism (DIOCT), within the Public Ministry is specialised for combating organised crime and terrorism offences. DIOCT is managed by a Directorate Chief Prosecutor. DIOCT has its own budget of approximately 300,000 Euro per year, part of which is used for undercover investigators, informers and collaborators.

410. DIOCT has 230 prosecutors that perform their activity through 15 Territorial Services situated at the Prosecutor's Offices by the Courts of Appeal level and 41 Territorial Bureaus situated at the Prosecutor's Offices by the Tribunals level. The territorial DIOCT units are not part of ordinary prosecutor's offices.

411. DIOCT is specialised in performing prosecution in money laundering offences and predicate offences; in drug trafficking; in prevention and combating organised crime; in combating and preventing trafficking in human beings; in capital market; in the national security of Romania; in the prevention of and combating IT criminality; and in terrorism and its financing.

412. Within DIOCT (central structure) there are 5 operative services: the Service of Organised Crime Offences Investigation; the Service of Economic-Financial Macro-Criminality Offences Investigation within which the Bureau of "Money Laundering" offences and predicate offences is established; the Bureau of banking and capital market offences investigation; the Service of drug trafficking offences investigation; the Service of IT criminality offences investigation; and the Service of terrorism and its financing offences investigation.

413. Within this structure 40 specialists perform their activity, specialists that have technical knowledge in the fields of competence mentioned above, including money laundering and terrorist financing.

414. DIOCT prosecutors are supported in order to perform the prosecutions together with judicial police officers and agents appointed under direct coordination and immediate control of these prosecutors. The prosecutor's orders are binding for the judicial police officers and agents. The appointment of the judicial police officers and agents is made by the Minister of Administration and Interior with the approval of the General Prosecutor of the Prosecutor's Office.

415. Selected personnel have special professional skills and qualifications, and also knowledge of the categories of offences provided by the law under the competence of this prosecutor's unit. According to the Law, specialists appointed within DIOCT have to be highly qualified in processing and recapitulation of information, from economic, financial, banking, customs, and IT fields and from any other sector. In DIOCT there are some internal regulations according to

which the prosecutor has to demonstrate the aptitude and high professional standard that has to be respected.

416. Therefore, the DIOCT employees are attending a programme of permanent training organised by the National Institute of Magistrates and by PO-HCCJ such as: "Financial investigations and implementation of the aspects related to the money laundering and terrorism financing" (attended by DIOCT prosecutors, NOPCML, Ministry of Justice and police) and "Combating of International Terrorism". In the framework of the PHARE programme there were some training activities related to fighting money laundering and terrorist financing.

Training for the specialists from the law enforcement has also been provided in the framework of PHARE project.

Institution	Number of trained specialists
General Prosecutor's Office National Anticorruption Department	253 prosecutors
Ministry of Justice and Superior Council of the Magistrates	144 judges
Ministry of Administration and Interior	413 police officers

417. Within the PHARE Project in which the beneficiaries were the main competent authorities in the field of combating money laundering (NOPCML, the Ministry of Justice, the National Institute of Magistrates, the PO-HCCJ, the National Fiscal Administration Agency, the Financial Guard, the National Customs Authority, the Ministry of Administration and Interior, the Romanian Intelligence Service, the Foreign Intelligence Service and the National Bank of Romania) 20 training sessions were organised for 83 trainers and 310 specialists on anti-money laundering and counter terrorist financing.

Structure of trained personnel

Institution	Number of specialists
General Prosecutor's Office by the High Court of Cassation and Justice	63
National Anti-Corruption Department	3
Ministry of Administration and Interior	60
Ministry of Justice and National Institute of Magistrates	9
Financial Guard	30
National Customs Authorities	67
National Office for Prevention and Control of Money Laundering	20

418. There were also training activities on money laundering and terrorist financing issues organised by NAD and NOPCML for law enforcement representatives.

419. The Criminal Procedure Code (hereinafter CPC) does not limit the prosecutors' powers regarding the moment when a defendant can be arrested. CPC provides 4 types of preventive measures: restraining, preventive arrest, interdiction of leaving the country and interdiction of leaving the city.

420. The restraining can be ordered by the prosecutor or by the criminal investigation body (i.e. police). This measure can only be taken for 24 hours and only before the formal charges are pressed. The restraint cannot be prolonged.

421. The preventive arrest can only be ordered by a judge, by proposal of the prosecutor. This measure can be taken after the formal charges are presented. The tactical moment when the proposal is forwarded to the judge is totally dependent on the prosecutor.

422. The seizure can be ordered by the prosecutor during the criminal investigation phase and by the judge during the trial phase.

423. In cases where investigations are undertaken concerning money laundering and terrorism financing offences, the prosecutor may when there are solid grounds, data or information related to the existence of these offences take certain steps, such as:

- putting the banking accounts and accounts related to these under surveillance;
- requesting any banking information as professional banking secrecy does not inhibit the prosecutor in having such information;
- require information on any other act and document from other public institutions (e.g. the Ministry of Public Finances, the Ministry of Administration and Interior, the NOPCML, the National Office of Trade Register);
- hearing the persons who have knowledge of some circumstances connected to the above mentioned aspects.

424. When the facts are clear, the prosecutor will proceed by choosing the procedural measures considered efficient for the case. This implies the launching of the prosecution procedure, establishing the offences which will be prosecuted, hearing the charged persons and witnesses, disposal of the technical expertise and of technical-scientific activities performed by the DIOCT and NAD specialists, performing house and IT searches, requesting the issue of authorisation for the interception of phone calls, etc.

Police

425. The Romanian Police under the Ministry of Administration and Interior have an important role in performing the penal procedures made disposed by the prosecutor; and in the meantime, Police structures within the Ministry of Administration and Interior also have the role of collecting information on criminals, also in the field of money laundering and combating the financing of terrorism.

426. The Fraud Investigation Directorate (FID) _is the general inspectorate of the Romanian police that undertakes money laundering investigations on proceeds obtained through economic fraud. The Fraud Investigation Directorate has 7 police officers, 1 non-commissioned officer, and 1 civil servant. Within the General Directorate for Combating Organised Crime and Anti drug functions a service with 8 police officers are involved in combating money laundering in relation to organised crime. The FID – and its territorial units, used to be the specialised police unit that investigated the money laundering cases deriving from economic and financial predicate offence, based on rogatory letters issued by the prosecutors according to art. 217 CPC, until 2005 when the Service for Countering Money Laundering within the FID was transferred to the newly established police structure, namely the Directorate for Combating Serious Economical-Financial Criminality (DCSEFC)

427. The Directorate for Combating Serious Economical-Financial Criminality was established within the General Directorate for Combating Organised Crimes in 2005. The Department for Combating Money Laundering was established within its structure. Currently, there are 25 police officers working at the Department for Combating Money Laundering at the national level and 73 specialised police officers are designated at the territorial level. Their main objective is to perform preliminary acts and penal procedures based on notifications received from the NOPCML, through the General Prosecutor's Office, or in cases in which investigations for money laundering and terrorist financing are carried out on persons belonging

to some organised crime groups or on some persons associated to a group established in order to perform such kinds of infringements.

Additional elements

428. There are legislative tools that provide law enforcement or prosecution authorities with diverse special investigative means. It is important to note that these special techniques of investigation could be used in relation to money laundering and terrorism financing offences.

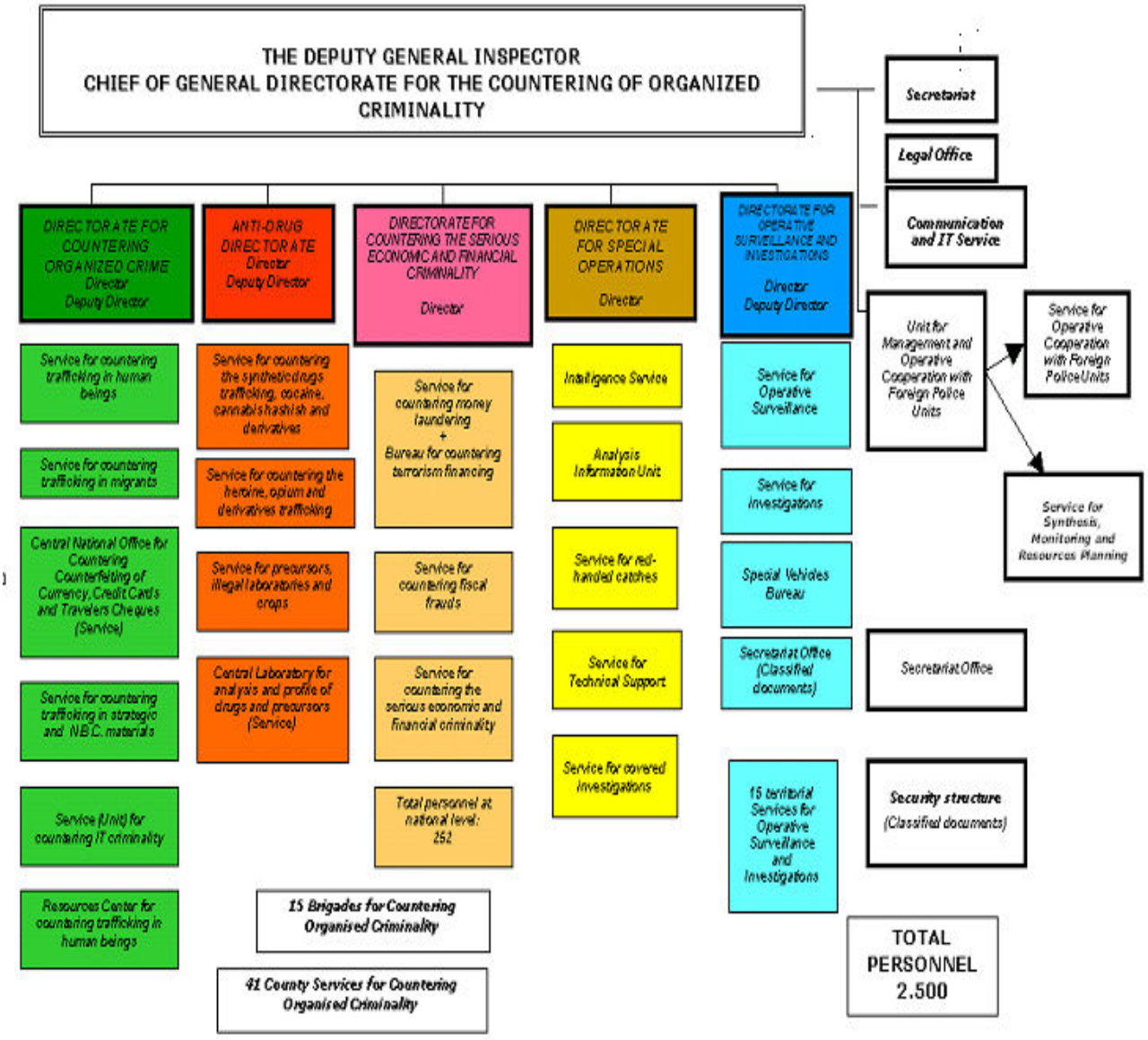
429. These special techniques of investigation consist of:
- using undercover investigators;
- tapping and recording telephone calls or other electronic means of conversation;
- audio and video recording;
- access to IT systems;
- requesting any banking information;
- controlled delivery related to organised crime;
- bank account surveillance;
- IT systems surveillance.

430. Romania has introduced an all-crime approach. Any offence might present a predicate offence to the money laundering offence. The situations in which the legislation allows the use of special investigative techniques for predicate offences, these techniques can be used for the related money laundering or terrorist financing offence as well.

Statistics related special technique investigation used by DIICOT – in period 2004 – May 2007

Wire-tapping	Banking surveillance accounts	Search warrants	IT search warrants
264	**21**	**78**	**31**

431. Within DIOCT and NAD, there is a department of specialists that perform technical activities of consultancy and analysis of the information and data on money laundering and terrorism financing upon the prosecutor's order. The specialists provide the prosecutors with the necessary expertise.



432. Special training and educational programmes are provided to judges and courts concerning money laundering and terrorist offences, and the seizure, freezing and confiscation of property that is the proceeds of crime or is to be used to finance terrorism.

433. NOPCML in co-operation with NIM (National Institute for Magistrates) provides training and an educational programme of activities for the judges and courts. During 2006 five seminars were organised on AML/CFT issues for judges and courts. Fifteen Judges participated in EJTN – European Judiciary Training Network, three seminars were held.

Recommendation 28

434. The AML/CFT Law and Criminal Procedure Code allow the persons who investigate the money laundering and terrorism financing offences, to benefit from the necessary means in order to obtain the data, clues and information for a correct establishment of facts.

435. If there is a suspicion of money laundering or terrorist financing there is no financial institution secrecy that inhibits the prosecutor and the court to access such information. NOPCML is obliged to put any available data and information related to money laundering and terrorist financing at the prosecutor's disposal. DIOCT and NAD may request the NOPCML to complete the initial notifications submitted following the suspicious transactions reports and to put at the disposal of the prosecutor all the necessary information for identifying the suspect and for the correct establishing of facts. If any refusal is made, the prosecutor may request the court to issue a search warrant permitting the prosecutor access to the documents or IT systems. Following the legislation the prosecutor has the power to request that it be provided to him. Breaching of the communication obligation carries criminal liability. If, however, it is ascertained that failure to provide the information has been done in "good faith" it is sanctioned by Article 264 of the Criminal Code (creating favorable conditions for the offender).

436. If the prosecutor faces any refusal from the reporting entities or other legal or natural persons, then the prosecutor can request the court to issue a search warrant that could allow the access of the prosecutor to all documents or IT systems. According to Romanian legislation, the prosecutor can request the court to issue a search warrant in such situations. Breaching the obligation of answering to a prosecutors request could constitute a crime. If the breach of obligation to provide information following a request sent by the prosecutor has not been done in "good faith", then this deed constitutes a crime and will be prosecuted according to art. 264 of the CC on creating favourable conditions for the offender.

437. Article 25 (6) in the AML/CFT Law provides that the prosecutor has to use provisional measures provided by the Criminal Procedure Code in order to guarantee the carrying out of the confiscation of the property. The Criminal Procedure Code provides provisional measures ensuring the seizure and blocking of the amounts within accounts. Equivalent confiscation is possible if the goods under confiscation are not found.

438. Article 27 (2) in the AML/CFT Law provides that the prosecutor may order surveillance of the bank accounts for a period of 30 days, and if necessary, the prosecutor may for well-founded reasons prolong the period based on a motivated ordinance by another 30 days. The maximum duration of this measure is 4 months.

439. Monitoring, interception or recording of communications, as well as access to information systems, can only be ordered by the judge at the request of the prosecutor in the prosecution phase, and *ex officio* during the trial, according to Article 91 in the CPC.

440. Regarding the possibility of performing searches, Article 100 ff. of the CPC, provide that during the prosecution phase, the prosecutor may request a judge to issue a search warrant, to point out clearly the applicable procedure in order for the evidence to be legally obtained.

441. The prosecutor is competent to administrate seizure measures and witness hearings.

442. Likewise, the evaluators were concerned about the information acquired on-site that in some criminal cases indictments for money laundering are based on prosecutor's orders for wire-tapping issued for other criminal acts related to national security offences. As a result, the material obtained by the special investigative means in those specific cases could not be presented as evidence during the trial. Evaluators consider that this was a serious problem

during the period of 4 months when this practice was in place. However, the evaluators were told that this had been the situation in a transition period in which the new law was entering into force and the old one was still effective. The evaluators were subsequently informed that the prosecutor no longer has the attribute to issue wire-tapping warrants for national security. According to Law no. 535/2004 Articles 20 and 21, only the president of the HCCJ can issue such warrants.

443. The evaluators were also strongly concerned about the recent amendments of Article 10 of Law 78/2000 on preventing, discovering and sanctioning corruption offences (March 2007) and the decriminalisation of granting credits from private banks by infringing the law or crediting rules. As a consequence, a certain number of prosecuted persons might be acquitted for money laundering related to "illegal loan" cases. The evaluators are concerned about the future impact of this amendment on money laundering.

Statistics

444. For the purpose of reviewing the effectiveness of the AML/CFT system, methods, techniques and trends, the Romanian authorities have organised working groups and meetings between DIOCT and NAD representatives and the supervisory authorities that supervise banking, capital and insurance markets (the National Bank of Romania, the National Commission of Securities, and the Insurance Supervisory Commission) and other representatives of the reporting entities. The working groups are trying to identify legislative vulnerabilities that give the appearance of Norm infringement situations or late identification of the money laundering or terrorism financing offences.

445. NOPCML uses the information that is received as a feedback from the PO-HCCJ together with all financial information analysed and processed by financial analysts. NOPCML also provides money laundering and terrorism financing typologies, highlighting new trends and techniques used by criminals. These typologies are presented to the reporting entities, as well as to the authorities with financial control functions and the prudential supervision authorities, during the training session organised by the NOPCML.

446. NOPCML is also organising periodical meetings at the management level for bilateral and multilateral consultation and mutual updating with the issues related to money laundering. These meetings are focused on the analyses of the specific crime phenomenon, establishing its trends and taking common measures for the effectiveness of the prevention and control actions.

447. The reviewed methods, techniques and trends, as well as relevant typologies are inserted in the Annual Reports drafted by the NOPCML. The annual reports are disseminated to the law enforcement agencies.

448. According to Criterion 32.2, competent authorities should maintain comprehensive statistics on matters relevant to the effectiveness and efficiency of systems for combating money laundering and terrorism financing. Romanian law enforcement authorities are maintaining statistics.

Statistics regarding money laundering and terrorist financing:

Customs

Year 2005					
ENTERING (Euro)	No. of declarations	Leaving (Euro)	No. of declarations	Restrained (Euro)	No. of declarations
9,770,814	447	9,384,986	445	555,287	18
January - June 2006					
ENTERING (Euro)	No. of declarations	Leaving (Euro)	No. of declarations	Restrained (Euro)	No. of declarations
5,653,759	235	8,846,882	521	1,003,956	23

National Anticorruption Directorate (NAD)

Year	Investigated cases		Indictments			Non Indictments		Convictions				Confiscated assets	
								Non-final convictions		Final convictions		In non-final convictions	In final convictions
	Files	Persons	Files	Persons	Seized assets	Files	Persons	cases	persons	cases	persons		
2002													
2003			2	25	1780 billion ROL								
2004			1	4	320 billion ROL								
2005													
2006			1	7	400 billion ROL			2	3			95,000 Euro	
2004		237	11	53	67	184	1	20	1	2			
2005	151	373	22	73	129	300	4	13			10 mil USD		1
2006	162	645	28	106	134	539	8	10	1	1	5 mld 36,000 euro 1 imobil	6 mld ROL	1

Directorate for Investigating Organised Crime and Terrorism (DIOCT)

Year	Total number of cases investigated		Indictments			Non indictments		Convictions				Confiscated assets		Acquittals	
								Non-final convictions		Final convictions					
	Files	Persons	Files	Persons	Total assets Seized	Files	Persons	cases	persons	cases	persons	In non-final convictions	In final convictions	Non-final	Final
2002	40	66	8	14	Movable and immovable goods obtained as results of committing offences and those belonging to the accused persons – there are no data as regards their or individualisation evaluation	32	52	1	1						
2003	60	155	8	12	Movable and immovable goods obtained as results of committing offences and those belonging to the accused persons – there are no data as their regards	52	143			2	2				1

2.6.2 Recommendations and comments

449. At the time of the on-site visit there were only five final convictions in money laundering cases. The evaluators were concerned about this low number of final convictions. Tax evasion still appears to be the most common predicate offence.

2.6.3 Compliance with FATF Recommendations

	Rating	Summary of factors underlying rating
R.27	**Largely Compliant**	• There is a reserve on the effectiveness of money laundering investigation given that there are few convictions.
R.28	**Compliant**	

2.7 Cross-Border Declaration or Disclosure (SR IX)

2.7.1 Description and analysis

450. The Romanian National Customs Authority (NCA) is responsible for cross-border cash movement control for both EU and non-EU borders. NCA is part of the Romanian AML/CFT system.

451. Norm no. 6/2205 issued by the NBR provides that natural persons are obliged to declare to the NCA the cross-border transportation of currency if the total value exceeds 10,000 Euro. The NCA has the authority to perform customs checks of assets and values held by natural persons when crossing the Romanian border.

452. At the time of the on-site visit the customs did not provide a specific declaration form for money. The evaluators were, however, informed that there was a general declaration form for all kind of goods, including money. Very little information was requested. When arriving at the airport in Bucharest the individual evaluators noted independently that there was no information given that a declaration of cross-border transportation of currency exceeding a certain threshold had to be made.

453. The evaluators were informed that Regulation (EC) 1889/2005 of the European Parliament and the Council of 26 October 2005, on controls of cash entering or leaving the Community would enter into force on 15 June 2007. The EC Regulation is directly applicable in Member States.

454. The evaluators were told that a new a very different declaration form was being prepared for the implementation of the EU Regulation. Much more information will be requested in the new declaration form, including information on the identification data of the persons declaring themselves. It will also ask for information on the type of cash, the purpose for the incoming or outgoing money, the source of the funds, the beneficiary, flight number / name of ship / registration number of car etc. If a person declares that he or she transports more that 10,000 Euro, a verification of all the information given shall be undertaken and a report filed to the NOPCML. All the information is kept in the customs IT-system and they are analysed monthly by a special working group in order to identify potential risks. Furthermore the information is kept for statistical purposes. The FIU has direct access to the customs database containing all the information collected from the declaration forms. The FIU uses this information as part of the analysis process. Customs authorities being a reporting entity has established in each customs point designated persons who are daily analysing all the declarations in order to file STRs to the NOPCML in case of any suspicion.

455. Failure to declare cash or payment instruments exceeding 10,000 Euro to the NCA upon entering or before leaving Romania is considered to be an infringement and will be penalised with fines from 70-100 RON, and the undeclared amounts shall be confiscated. Fines will be increased when the EC Regulation enters into force

456. If a person has made a declaration the customs authority cannot restrain the person even if there is a suspicion of money laundering. Border police may restrain the person for up to 24 hours but declared money cannot be confiscated. A co-operation agreement between the Customs authorities and the Border Police is in place.

457. In 2006 the Customs authorities referred 53 STR to the NOPCML. The Customs authorities informed the evaluators that the NOPCML had provided feed-back in the form of training seminars. No case-by-case feed-back had been provided.

458. Romanian authorities have made efforts towards strengthening co-operation between the NCA and the other authorities involved in combating money laundering by signing Co-operation Protocols between the Ministry of Administration and Interior and Ministry of Public Finances on prevention and combating cross-border criminality and Co-operation Protocol between the Ministry of Administration and Interior and the Ministry of Public Finances on prevention and combating customs fraud. All in all there are 13 Co-operation Protocols between police, customs and other specialised law enforcement services in relation to the prevention and combating of crime.

459. At international level the exchange of information between the National Customs Authority and other customs administrations respectively are based on signed protocols. Bilateral protocols have been signed with Turkey, "the Federal Republic of Yugoslavia, USA, Bulgaria, Greece, Moldova, Ukraine, Armenia, Georgia, the Russian Federation, Albania, Slovenia, Azerbaijan, Slovakia and China.

460. The NCA does not have the competence to block cash physical transports of bearer negotiable instruments that are related to money laundering or terrorism financing. If there is need the NCA will address this issue to the border police in order to start criminal investigation.

461. The illegal transport in or out of Romania of precious metals and precious stones, and also the hiding of such items in order to conceal them from customs control, amounts to a crime. The offence will be punished by a fine from 1,000 RON to 1,500 RON and the goods shall be confiscated in favour of the Romanian state.

462. The NCA is obliged to file a report and to send it to the NOPCML within 24 hours, when a person crossing the border brings in or carries out cash payments instruments exceeding the threshold of 10,000 Euro. This information is also submitted to the Customs Anti-fraud Directorate – Post Control Service and Investigation of Customs Fraud, in order to establish statistics and perform risk analysis.

463. NCA is also obliged to file a STR to the NOPCML if the suspicion of money laundering or terrorist financing arises.

Additional elements

464. Romanian authorities have not implemented the measures set out in the Best Practice paper for SR IX.

465. The NCA has to report to the NOPCML, within 24 hours at the latest, the physical cross-border transportation of currency that exceeds 10,000 Euro. These reports are loaded in the databases of the NOPCML. For this purpose NCA has its own database.

2.7.2 Recommendations and comments

466. NCA is responsible for the control of cross-border cash movement in order to prevent money laundering and terrorist financing.

467. The examiners noted that the Customs have no investigative powers and it is assumed no police powers. Thus, if they formed a suspicion of money laundering or terrorist financing (and there was no breach of the NBR Regulations no.6/2005) there are no clear powers to stop the person and restrain currency etc. until the Border Police arrive. This issue should be addressed.

468. The examiners were informed that the system will change with the entering into force of Regulation (EC) 1889/2005 of the European Parliament and of the Council of 26 October 2005

on controls of cash entering or leaving the Community. It was unclear whether the system had changed within 2 months of the on-site visit to accommodate the mandatory parts of the binding Regulation. As the EU Regulation came into force on 15 June 2007, and, and taking into account that it is directly applicable, the evaluators assume that changes had not occurred within the 2 month period.

469. Romanian authorities, particularly the NCA, should implement procedures to inform persons entering or leaving the country that they have to declare the cross-border transportation of currency and bearer negotiable instruments exceeding the threshold of 10,000 Euros.

2.7.3 Compliance with Special Recommendation IX

	Rating	Summary of factors underlying rating
SR.IX	Partially Compliant	• No clear power to stop and restrain where suspicions of money laundering if the money is declared. • No clear power to stop and restrain where suspicion of money laundering or terrorist financing if below the reporting threshold. • No procedures implemented to inform persons that they have to declare cross-border transportation of currency and bearer negotiable instruments exceeding the threshold of 10,000 Euros.

3. PREVENTIVE MEASURES - FINANCIAL INSTITUTIONS

Generally

470. General customer identification requirements are set out in the AML/CFT Law 656/2002 (Annex 1), especially in Art. 9-14. Furthermore the AML/CFT Law requires that the prudential supervision authorities issue norms/regulations concerning the standards for knowing the customers (KYC) concerning their respective area. Detailed provisions have been issued for credit institutions, non-banking financial institutions, insurance companies, capital market intermediaries and the DNFBP sector.

471. The National Bank of Romania (NBR) has issued Norm No.3/2002 (Annex 3) concerning the standards of acquaintance with the clientele.

472. In reference to Norm 3/2002 it appears the Laws on which Norm 3/2002 was issued have since been abrogated. However Article 421 (1) of the Governmental Emergency Ordinance no. 99/2006 on Credit Institutions and Capital Adequacy provide that regulations issued by the NBR on the basis of specific legislation enumerated in article 422 "shall be further applicable until the express repeal thereof." Consequently it appears that the Norms are still in force.

473. The evaluators, however, find it unusual that although a Law is repealed by the Parliament the underlying regulations are still in force by a Governmental decision. In the opinion of the evaluators this has the potential to create a degree of confusion for credit institutions and does not help to ensure sufficient transparency of the legislative framework on AML/CFT.

474. Furthermore the NBR has issued Regulations No. 8/2006 (Annex 4) concerning the standards of acquaintance with the clientele of the non-banking financial institutions, registered in the Special Register.

475. Those non-banking financial institutions that are categorised within the Evidence or General Register are covered by the NOPCML Decision no.496/2006 on Norm on prevention and sanctioning of money laundering and terrorism financing (Annex 8). This Decision is considered secondary legislation and is subsequently referred to as Norm 496/2006.

476. The Insurance Supervisory Commission (ISC) has issued Order No. 3128/2005 for the approval of Norm on prevention and combating money laundering and terrorism financing through the insurance market (Annex 5).

477. The National Securities Commission has issued Regulation no. 11/2005 on the prevention and control of money laundering and terrorist financing through the capital market (Annex 7) and Instruction no. 4/2005 on prevention of the terrorism financing acts.

478. The supervision authorities, respectively, the NBR, the NSC, the ISC and the NOPCML are public authorities, which are explicitly mandated by Article 9 (6) and (7) in the AML/CFT Law to issue normative acts in the area of customer due diligence (KYC). The respective authorities have each issued normative acts in the form of "Norms, Orders, Decisions or Regulations" which are published in the Official Gazette, Part I. This part of the Official Gazette is reserved for legally binding measures. Overall there was a direct correlation between the AML/CFT Law and the subsequently issued Norms, Orders, Decisions and Regulations. Considering the combination of these factors the evaluators were of the opinion that these measures were equivalent to "implementing regulation or other similar requirements" as described in the Methodology.

479. The secondary legislation differs in detail and wording from sector to sector. In the context of this report references to secondary legislation will sometimes be made by using the general term "regulations" when addressing secondary legislation cross-sector but sometimes it is necessary to refer to the individual regulation issued by the individual supervisory authority.

480. The financial institutions (as other obliged persons) have the obligation to establish internal policies and procedures to combat money laundering and terrorism financing. The internal policies are not enforceable and the evaluators do not consider them to be "other enforceable means".

3.1 Risk of money laundering / financing of terrorism

481. The Romanian AML/CFT framework contains some elements of a risked based approach. The Regulations (e.g. NBRs Norms) provide for financial institutions measures based on the degree of risk attached to particular types of customer, business relationships, transactions and products.

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

3.2.1Description and analysis

Recommendation 5

Anonymous accounts and accounts in fictitious names

482. Criterion 5.1 of the Methodology is marked with an asterisk. This means that it belongs to the basic obligations that should be set out in a law or regulation.

483. Article 12 (2) in Norm no.3/2002 stipulates that credit institutions shall not open and operate neither anonymous accounts nor accounts under fictitious names. A similar provision for the capital market is also stipulated in Article 9 (2) Regulations 11/2005. In the replies to the mutual evaluation questionnaire Romania also highlighted that customer identification policies and procedure shall be equally applicable in the case of non-nominative accounts for which the identity of the holder, known by the bank, is replaced in records by a numerical code or by a code of another nature. The NBR informed evaluators that they have not encountered non-nominative accounts during their on-site inspections.

484. Although there is no express statement prohibiting anonymous accounts for either the insurance sector or the non-banking financial institutions the applicable customer due diligence requirements on customer identification essentially prohibit, in practice, the keeping of anonymous accounts..

Customer due diligence

When CDD is required

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

- When establishing business relations

486. Every Romanian credit institution is required to adopt efficient policies and procedures of acquaintance with the clients in order to promote high ethical and professional standards and to prevent the use of the bank by its clients for the pursuit of activities of a criminal nature or other illicit activities. Non-banking financial institutions are also required to draw up a programme of acquaintance with the client, consisting of policies and procedures that correspond to the nature, size, complexity and extent of its activity and are adapted to the degree of risk relating to the categories of clients for which it provides financial services.

487. It follows from the AML/CFT Law Art. 9 that all obliged persons are required to establish the identity of clients when starting the business relationships, opening of accounts, or offering certain services.

488. Norm no.3/2002 provides provide in Art. 13 and 14 that credit institutions, including branches of foreign banks in Romania, shall obtain all necessary information to establish the identity of each new customer and the purpose and intended nature of the banking services that will be provided to the customer. The extent and nature of the information depends on the type of the prospective applicant, for example whether individual or corporate, and the expected nature and size of the transactions carried out through the financial institution. Customer identification policies and procedures are equally applicable both in the cases of opened accounts and maintained on the customer's behalf, and in the case of non-nominative accounts for which the identity of the holder, known by the credit institution, is replaced in records by a numerical code or by a code of another nature.

489. In the case of savings and deposit accounts, credit institutions are also required to identify the persons acting on behalf of the client, when deposits or withdrawn amounts exceed the equivalent of Euro 10,000 (Art.15 of Norm no.3/2002).

490. In the case of the Insurance market Order no. 3128/2005, Art. 5 states that the insurer shall identify, verify, register and update the identity of clients: "before entering any business relationship or performing transactions in the client's name."

491. Capital market provisions for both natural and legal persons are set out in Art. 111 of Regulation No 32/2006, which stipulates that prior to opening an account in the name of a natural person or legal person, the intermediary, shall verify identity. In the case of legal persons there is also an explicit obligation to valid the mandate given to the representatives of a legal person.

492. In addition, Regulation no. 11/2005, Art. 4 requires that regulated institutions in the capital market shall identify, verify and register the client's identity before they initiate any business relation or perform a transaction in the name of the client.

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

493. The AML/CFT Law provides in Art. 9 the obligation of identifying customers when carrying out operations whose minimum value represents the equivalent in RON of 10,000 Euro, regardless of whether the transaction is performed through one or several linked operations.

494. Credit institutions are also required to identify the client in situations when carrying out transactions equivalent to or above 10,000 Euro according to Art. 4, Para. 1, letters d. and e. in Norm no. 3/2002.

495. Insurance market provisions require client identification for any transaction that implies an amount exceeding 10,000 Euro, regardless of whether the transaction is performed in one or more operations that seemed to be linked. When the amount is unknown while performing the transaction, the insurer shall proceed to identification, as soon as it is informed on the value of the transaction and after it establishes that the minimum limit was reached;

496. Capital market provisions require the identification of the client for any transaction that implies an amount exceeding 10,000 Euro, regardless of whether the transaction is performed in one or more operations that seemed to be linked. When the amount is unknown while performing the transaction, the regulated entities shall proceed to identification, as soon as it is informed on the value of the transaction and after it establishes that the minimum limit was reached.

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

497. Regulation (EC) No 1781/2006 of the European Parliament and of the Council on information on the payer accompanying transfers of funds and Art. 17^1 of Norm no. 3/2002 provides that when transferring funds, credit institutions are required to include in the instructions information regarding the name, address, and, as the case may be, the account number of the principal. When receiving a transfer of funds, credit institutions are required to pay special attention to cases where the information regarding the principal of the transfer are not complete, and shall take the necessary measures for obtaining all the above-mentioned information. The evaluators understand this provision to apply to all wire transfers without exception as no threshold is indicated in the provision.

- When there is a suspicion of money laundering or terrorist financing

498. Article 9(3) of the AML/CFT Law provides that as soon as there is a suspicion that a transaction has the purpose of money laundering or terrorism financing, the obliged person shall proceed to the identification of customers and of persons on whose behalf or interest they are acting, even if the value of the transaction is lower than the minimum limit of 10,000 Euro.

499. Identification is mandatory if the credit institution has grounds to suspect money laundering, regardless of the value of the transaction or exceptions to the identification requirement (Art.17 of Norm no.3/2002).

500. Insurance market provisions require client identification when there are grounds to suspect that an operation is performed for the purpose of money laundering or terrorism perceived by the value of the transaction.

501. Capital market provisions require client identification when there are grounds to suspect that an operation is performed for the purpose of money laundering or terrorism financing, irrespective

of the value of the transaction. Similar provisions also apply to the non-banking financial institutions.

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

502. Norm No. 3/2002 provides in Art. 36 that credit institutions shall ensure the periodical revaluation of the information held on a client and shall conduct the constant updating of the records established at the beginning of the relationship. If there are shortcomings in the information held on any existing client or each time there are clues or the bank suspects that the information provided does not match the reality, it shall take the necessary measures in order to obtain all relevant information as soon as possible. Similar provisions are also included in the regulations and norms concerning non-banking financial institutions.

503. Insurance market regulations require client identifications when suspicions concerning client's identity have risen throughout the operations.

504. Regulated entities within the capital market shall, according to regulations issued, review the information regarding client identification when suspicions arise in the course of operations.

Required CDD measures
(Criteria 5.3 and 5.4)

505. Criterion 5.3 and 5.4(a) are 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.

506. Article 10 of the AML/CFT Law defines the customer identification requirements for monitoring entities, including financial institutions. Monitoring entities shall obtain and ascertain at least the following information:

a) in the case of a natural person:
the data of civil status mentioned in the documents of identity provided by law;
b) in the situation of a legal person:
the data mentioned in the documents of registration provided by the law, as well as the proof that the natural person who manages the transaction, legally represents the legal person.

507. In addition the norms/regulation have individual provisions:

Credit institutions

508. Credit institutions are required to verify the identity of the customer by examining an official identification document or other permissible identification documents. The associated information with this procedure is to be recorded and kept on a customer file; the obligation also extends to occasional customers.

509. Special attention is required to be taken in respect to the non-resident customers and to the customers who are unable to present themselves for interview (Art.18 of Norm no.3/2002).

510. Credit institutions are required to take the necessary steps to verify the information provided by the customer within the customer identification procedures. If considered necessary this will include obtaining confirmation of the domicile indicated, either through keeping a

correspondence with the client, direct observation of the location, and/or dialing the customer telephone number, checking the invoice or by any other method (Art.19 of Norm no. 3/2002).

511. Art. 20 of Norm No. 3/2002, requires in the case of customers / natural persons, that credit institutions obtain at least the following information:

a) name and surname and, where relevant, pseudonym;
b) permanent residential address;
c) date and place of birth;
d) individual numerical code or, where relevant, another similar unique identification element;
e) name of employer or nature of self-employment/business;
f) source of funds;
g) specimen signature.

512. Credit institutions are required to verify the information against original documents of identity issued by an official authority.

513. The identification by credit institutions of customers, legal entities or entities without legal personality must be established based on the information obtained from a public register and the documents upon which the registration of the company was based. These documents are provided either by the customer or by the public register, or by both sources. When no registration requirements are set forth, the identification is made on the basis of the statutory documents, including the business licence and/or the audit reports. The customer identification procedures are required to include at least the following:

a) verification of the legal existence of the customer, by obtaining from the National Office for Trade Register or from another public register, proof of statutory acts, including information concerning the customer's name, legal form, permanent residential address, type and nature of the activity, the administrators/directors' identity and provisions regulating the power to bind the entity;

b) verification if the person acting on behalf of the customer is authorised thereof and subsequently, identification of that person. (Art. 21 of Norm No. 3/2002).

514. In order to fulfil identification requirements, credit institutions may ask for additional information related to their financial statement, entity structure, and identity of the natural persons on whose behalf the transactions are conducted by the entity. In order to verify the information provided by the customer, credit institutions may use the third party's certification.

515. According to Art. 23 of Regulation No. 3/2002, credit institutions are compelled to keep records on customer identification, including photocopies of identification documents and/or of other documents. Credit institutions will ensure the internal audit department and independent auditor access to the evidence kept.

Non-banking financial institutions

516. In relation to the non-banking financial institutions, Art. 9 in Regulation No. 8/2006 and Article 5 and 10 in Norm 496/2006, non-banking financial institutions are required to establish and record the identity of the client based on an official document. There is a specific obligation for the non-banking institutions to pay special attention to non face-to-face transactions. In establishing the identity of the client, non-bank financial institutions are permitted to use any documents, data or information originating from trustworthy sources. Verification is permitted by means of observation, correspondence, or by comparing the information supplied with other

sources of information. In the case of natural persons, Art. 11, Regulations No. 8/2006, require that non-bank financial institutions must obtain at least the following information:

a) full name and, as appropriate, pseudonym;
b) domicile and/or resident address;
c) date and place of birth;
d) numerical personal code or, as appropriate, another similar unique identification element;
e) the name/registered name of the employer or the nature of its activity;

517. In addition, non-bank financial institutions may require additional information which relates to nationality or the home country of the client, public or political status etc.

518. In the case of legal persons, or entities without legal personality, the identification of the client is required to be performed by acquiring, from the client or a public register, or from both sources, documents underlying their registration and an updated file of that register. When no registration requirements are set forth, the identification shall be made on the basis of the statutory documents, including the business licence and/or the audit reports. According to Art. 12 of Regulation no.8/2006, the client/legal person identification procedure are required, at a minimum, to consist of:

a) verification of the legal existence of the entity, including if it is registered in the trade register or, as appropriate, in another public register, and acquiring information concerning the registered name, legal form, the address of the registered office, the type and nature of the activity performed, the identity of the administrators/directors and the provisions governing their powers of managing the entity;
b) verification of every person who claims to be acting on behalf of the client, in order to establish whether that person is authorised thereof, and identification of the person concerned.

519. For a better acquaintance with the client, non-bank financial institutions registered in the Special Register may require additional information relating to the financial situation and the structure of the shareholders of the entity concerned. In order to check the information supplied by the client, non-banking financial institutions may require their confirmation by third parties (Art. 13 of Regulation No. 8/2006). Likewise, Norms apply similar provisions to those non-banking financial institutions that are categorised in the General and Evidence Registers.

520. Art. 14, Regulation No. 8/2006 requires that non-banking financial institutions registered in the Special Register establish and keep suitable records regarding the identity of clients; this includes a requirement to keep copies of identification documents and/or other relevant documents. The same provision is also included in Art 4 (k) of the Norm governing non-banking financial institutions in the General and Evidence registers.

Insurance Market

521. According to Art. 10 of Order no 3128/2005, the insurer is required to keep the following information in connection to any natural person customer:

a) name and surname of the client and any other names used;
b) place and date of birth;
c) personal identification code or another similar identification element if the client is a foreigner;
d) number and series of the identification card;
e) release date of identification card and the issuing entity;

f) permanent or residential address/establishment (completed address - street, number, flat, number of apartment, city, county, postal code, country);
g) citizenship;
h) phone/fax;
i) insurance class and category that was concluded with the insurer;
j) declaration under his/her own liability concerning the source of the funds in national or foreign currency, for amounts exceeding 10,000 Euro.

522. According to Art. 11 of the Order no. 3128/2005, the insurer is required to keep the following information in connection to any legal person customer:

a) unique registration code (CUI) or the equivalent of the code for foreign citizens and natural bodies authorised according to the Law;
b) shape and legal structure;
c) name;
d) complete address of the social or head office or as the case may be, of the branch;
e) phone number, fax number, and, as the case may be, e-mail, web address;
f) type of insurance as well as the insurance class, concluded with the insurance undertaking;
g) Customer's own statement – legal body, as the case may be, regarding the source of funds in RON or other currency, in the case when the amount exceeds the amount of EUR 10,000.

523. According to the provisions of art.11, paragraph (2) of Order no. 3128/2005, the insurer has the obligation to identify the natural persons that have the intention to act in the name of the client-legal person, according to the rules regarding the identification of the natural persons, and shall analyse the documents based on which the persons are assigned to act in the name of the legal person.

Capital Market

524. As noted earlier obligations for the Capital Market are stipulated in Regulation No. 11/2005. Art. 6 provide that regulated institutions have to keep information connected to any client / natural person, which was provided by the client under signature. The regulated institution shall keep a copy of the identification document of the client. The client shall provide a document with photo and the regulated institution is obliged to verify this information, by comparing with primary documents.

525. Art. 7 of the same Regulation provide that regulated institutions have to keep information concerning the client, legal person or body without legal personality, who is obliged to provide that information. There is requirement for the regulated institution to verify the identity of the client / legal person on the basis of the documents received when opening the client's account, and also on the basis of:
- statutory act and statute;
- the empowerment for the person who represents the client, if this is not the legal representative;
- the certificate issued by the National Trade Register Office (for companies) or by similar bodies from originate state and similar documents for other types of legal person or entities without legal personality, that validate information about client's identification.

526. Article 7, Para. (3) of the same Regulations provides that the regulated entity shall identify the natural persons who seek to act on behalf of the legal person, client or entity without legal personality, in accordance with the rules on natural person identification and shall review the documents on which the persons are authorised to act on behalf of the legal person.

527. According to the requirements stipulated by the regulation, the documents provided by the client / legal person or entity without legal personality shall include a certified translation in the Romanian language when the original documents are written in another language.

Beneficial Ownership

528. Criteria 5.5.1 and 5.5.2 (b) are also asterisked. Regarding the identification of the beneficial owner the current obligations for credit institutions are set forth in Art. 24 of Norm No. 3/2002, that require credit institutions to take necessary measures to obtain information about the true identity of the persons on whose behalf an account is opened or a transaction conducted. Norm No. 3/2002 does not use the term "beneficial owner" but "real beneficiary". There is no definition of the concept of "beneficial owner/real beneficiary".[8] If there are any doubts as to whether the customer is acting on his/her own behalf, credit institutions are required to perform adequate due diligence in establishing the identity of the beneficial owner. To this end credit institutions require each customer to state the identity of the beneficial owner in a standardised template that comprises at least the information required in the Annex to Regulation No. 3/2002. The Credit institution is required to ask the customer to submit the statement on the beneficial owner's identity in the following cases:

a) if the cash transaction exceeds the equivalent of 10,000 Euro;
b) when the credit institution enters into a business relationship with its customers through correspondence or performs a non face-to-face transaction.

529. According to Art. 26 of Norm No. 3/2002, credit institutions are also required to identify the following situations as suspicious elements regarding the true identity of the beneficial owner:

a) when the power of attorney is given to someone who clearly would not have sufficient close links to the customer, in order to conduct transactions using his account;
b) when the financial status of the customer wishing to carry out a transaction is known to the credit institution, and the funds or values submitted or about to be submitted is disproportionate to the declared financial status of customer;
c) other unusual situations observed by the credit institution during its relation with the customer.

530. In the case of opening and maintaining joint accounts (held by several owners), credit institutions are required to keep records on full lists of the identity of beneficial owners of the account. In the case of opening accounts on behalf of another person, acting as an intermediary – mandatory, trustee, nominee, funds administrator, custodian, legal guardian or other intermediary – the credit institutions are required to obtain satisfactory information and documents about the identity of the intermediary and the beneficial owners, as well as details of the nature of the trust.

531. In the case of non-banking financial institutions registered in the Special Register, Regulation No. 8/2006 Art. 15 states that the non-banking financial institutions registered in the Special Register must take the necessary measures in order to obtain information with respect to the identity of the persons accessing these services. When a client is suspected of not being the real beneficial, the non-banking financial institutions are required to act with the necessary prudence in establishing the identity of the real beneficiary/beneficial owner. This includes the submission of a declaration on one's own liability (Beneficial ownership declaration form), as required for credit institutions. Art 13 of the Norm on non-banking financial institutions in the

[8] The Romanian authorities informed the evaluators that they have now introduced a legal definition of beneficial ownership I GEO 53/2008.

General and Evidence Registers stipulates that a 'regulated entity shall (must) take all the necessary measures to obtain information on the real identity of the beneficial owner'.

532. Following Art. 17 of Regulation no. 8/2006, non-bank financial institutions registered in the Special Register and Art 12 of the Norm covering those in the General and Evidence Registers stipulate a requirement to identify the following situations as suspicious elements regarding the true identity of the real beneficiary/beneficial owner:

a) When the power of attorney is given to someone who clearly would not have sufficient close links to the customer, in order to conduct transactions using his account;
b) When the financial status of the customer wishing to carry out a transaction is known to the non-bank financial institution, and the funds or values submitted or about to be submitted is disproportionate to the declared financial status of customer;
c) Other unusual situations observed by the non-bank financial institution during its relation with the customer.

533. Art. 5 in Order No. 3128/2005 places a clear obligation for the insurer to identify, verify, record and update the information related to client identification. If there is any doubt that the client is acting on his own behalf or on behalf of other person the insurer is obliged to take all the necessary measures in order to obtain information related to the real identity of the persons acting on behalf of the client.

534. In the case of the Capital Market, Regulation no. 11/2005 Art. 7 (1) and Art. 4 (4) require regulated entities to record, as appropriate, information related to the shareholders of the legal person client, when suspicions arise with respect to the fact that the client might not act on his own behalf, or when the client is certain to act on behalf of another person, the regulated entity is required to take adequate measures to obtain information on the actual identity of the person of the beneficial owner.

535. Whilst financial institutions overall seemed aware of the general requirement to identify beneficial ownership, in practice there was a considerable degree of confusion as to what actually constituted beneficial ownership. The current legal and regulatory framework of Romania provides no explicit definition as to the meaning of beneficial owner, thus in the absence of this there appeared a degree of inconsistency as to how the term beneficial owner should be interpreted. As defined by the FATF Recommendations, the term beneficial owner captures both the notion of equitable ownership, as well as the notion of a person exercising ultimate ownership control over the legal person or arrangement. During the on-site visit a number of representatives expressed confusion on how to adequately manage the process for identifying those who 'nominally control' versus those who 'ultimately control'. Representatives from the financial sector indicated to the evaluation team that they would appreciate further guidance in this area.

536. The requirement as set out by the FATF Recommendations to take reasonable steps to verify the beneficial owner appears weak. The main obligations relate to identification and appear to overly rely on the beneficial ownership self declaration form. It was unclear to the evaluation team what further steps would be generally expected in order to independently verify those who ultimately own or control a customer and/or the person on whose behalf a transaction is being conducted.

Purpose and intended nature of the business relationship

537. Criterion 5.6 covers the requirement to obtain information on the purpose and intended nature of the business relationship (the business profile). This should be required by law, regulation or other enforceable means.

538. At the time of entering into a business relationship, the reporting parties must procure an information form from their clients in order to ascertain the nature of their business or professional activity. For the banking (Norm No. 3/2002 Art. 13) and non-banking financial institutions (Regulation no. 8/2006 Art. 8 and Article 19, Para 2 in Norm 496/2006) the extent and nature of the information required will depend on the type of the prospective applicant – individual, corporate – and the expected nature and size of the transactions carried out through the bank. In the capital market (Regulation no. 11/2005 Art. 6 (1) and Art. 7 (1)) there is a mandatory requirement that on account opening the client provides a statement as to the purpose and intended nature of the business relations. In the case of the Insurance market the evaluators found no explicit requirement to obtain information on the purpose and intended nature of the business relationship. However, Order no. 3128/2005 requires that firms should know their customers identity by keeping copies of all information and documents enumerated in Art. 10 (natural persons) and 11 (legal persons). In Art. 10 (i) and Art. 11 (f) the insurance category and the class adherent to that, concluded with the insurer needing to be record which information is closely linked with the purpose and intended nature of the business relationship.

539. The evaluators were informed by the Insurance Supervisory Commission that in order to obtain information regarding the scope and intentional nature of the business relation in the case of concluding an insurance contract, an explicit request is not necessary, as these derive from the specifications of the insurance contract (the insurance type, the covered risk, the benefits paid when the insured event takes place, the insured person or the beneficiary are clearly defined).

Ongoing due diligence

540. Criterion 5.7 (ongoing due diligence) is marked with an asterisk. There are specific regulations that set out ongoing due diligence obligations that include scrutiny of transactions undertaken throughout the course of the relationship to ensure the transactions being conducted are consistent with the institution's knowledge of the customer. The relevant regulations require that financial institutions ensure that the documents and information that they hold on a customer are kept constantly up to date and recorded accordingly. Art 35 of Norm no 3/2002 for credit institutions and Art. 22 of Regulation no. 8/2006 for non-banking financial institutions requires that institutions re-assess their customers business and risk profile in the light of new and/or additional information. In particular the relevant regulations require that on-going monitoring of customer identification process includes at least the following activities:

- permanent update of customer identification records;
- re-evaluation on a regular bases of the quality of the identification procedures applied by the intermediaries;
- on-going monitoring of transactions and accounts in order to determine and report suspicious transactions in compliance with the credit institution’s internal procedures.

541. In implementing these obligations both credit institutions and non-banking financial institutions are required to review, on a regular basis, the information available on existing customers and keep updated records. Any subsequent amendment of the provided information requires verification and should be recorded accordingly. If significant changes to the customer (company) structure, legal person or other entities without juridical personality or their shareholders subsequently occur, further checks are expected to be undertaken by the institution. Catalysts for reviewing ongoing monitoring arrangements are deemed to include,

significant transaction, changes in customer documentation and material changes in the way that the account is operated.

542. Art. 35 and 36 of Norm no 3/2002 requires that credit institutions constantly update records of the identity of the client. Credit institutions shall furthermore ensure the periodical revaluation of the information held on a client and shall conduct the constant updating of the records established at the beginning of the relationship.

543. Art. 6 (1) of Order 3128/2005 requires that insurance companies verify and update data on customer identity if necessary. For capital market intermediaries Art. 5 in Regulation 11/2005 requires that data which refers to client identification shall be verified and updated as appropriate.

Risk

544. Criterion 5.8 requires financial institutions to perform enhanced due diligence for higher risk categories of customer, business relationship or transaction.

Enhanced due diligence

545. The anti-money laundering requirements that apply to Romanian financial institutions are to some extent risk-based, requiring institutions to have CDD procedures commensurate with the identified risk.

546. For credit institutions Art. 10 of Norm no. 3/2002 requires that those institutions which provide complex banking services, known as private banking, shall develop policies that require enhanced due diligence for their high risk customers. The decision to enter into a business relationship with a higher risk customer is required to be taken exclusively at senior management level, or at executive management level in accordance with the responsibilities given (as provided in Art. 11 of Norm no. 3/2002). Norm N° 3/2002 Art. 18 further requires that credit institutions give special attention to non-resident customers and to the customers who are unable to present themselves for interview.

547. Art. 44 of Norm no. 3/2002, for potential higher risk customers sets out the procedures that should be applied in the management of those who are potentially higher risk:

- *Credit institutions shall ensure that they have adequate management information systems to provide managers and compliance officers with timely information needed to identify, analyse and effectively monitor higher risk customer accounts; The implementation systems shall point out at least missing account opening documentation, transactions made through a customer account that are unusual and aggregations of a customer's total relationship with the credit institution;*
- *Senior management of a credit institution in charge of private banking business should know the personal circumstances of the credit institution's important customers and be alert to sources of third party information;*
- *High value transactions of these customers shall be approved by the board of directors of the credit institution, or as the case may be, by the executive management.*

548. In the case of non-banking financial institutions registered in the Special Register, Art. 9, Regulation No. 8/2006, require that non-banking financial institutions pay special attention to non face-to-face transactions. According to Art. 28, for clients with a higher potential risk, non-bank financial institutions are required to implement adequate information management systems in order to identify, analyse and supervise these transactions; grant increased attention to the

information received from third parties concerning these persons; and approve the high-value transactions of these clients. For those non-banking financial institutions in the General and Evidence Registers, a similar provision is contained in Art 25 of the Norm.

549. For the Insurance market, ISC's Order no. 3128/2005 stipulates that the insurer shall pay special attention to one or more of the following cases, having regard to the anomaly indicators:

a) buying life insurance if the insurance premium are bigger and appear to be in contradiction with the economical profile of the client or with its capacity to realise incomes;
b) the frequent payment in cash or in currency for large amount which seem to be in contrary with the financial capacities of the client or of his activity;
c) the frequent payment in cash through fragmented amounts, which when accumulated, exceed the minimum threshold of the equivalent in lei of 10,000 Euro;
d) appointing beneficiaries for life insurance, where the amounts paid to each of them and established in accordance with the insurance contract as a fragment of the total amount, exceed by cumulating the minimum threshold of the equivalent in lei of 10,000 Euro, in cases in which the relationship between the insured and beneficiary can not justify this aspect;
e) contracting of some insurance policies by paying the premium with cheques issued by third parties, especially where there is not any apparent connection between the third party and the client;
f) contracting by the same contracting party of some life insurances of the same kind, with different beneficiaries;
g) changing the name of an insurance and/or of the beneficiary of the insurance policies in the favour of a third party which does not belong to the insured's family or which has not any justifiable connection with them;
h) the client refuses to provide, or is reserved in providing, the necessary information for contracting the insurance or provides unreal information;
i) the client / legal person provides a financial statement which is not realised by an accountant;
j) the client provides documents related to the insured goods, which are not in accordance with the reality or are false;
k) the client refuses to allow the insurer to understand that the asset which is the object of the insurance contract really exists;
l) the client avoids direct contact with the employees or with the co-worker of the insured, by the frequent issuing of mandates or empowers of attorney in a unjustifiable manner;
m) the client avoids repeatedly direct contact with the insurer, communicating by fax or through other modalities;
n) the client opens more accounts at many branches of a bank and performs repeated transfers of significant amounts in order to pay the insurance;
o) payment of the insurance using the accounts of a commercial company, which indicates a reduced activity and which can justify contracting the insurances in significant amounts.

550. For the capital market, The National Securities Commission imposes through Regulation no. 11/2005 the obligations of the intermediaries to monitor transactions through the accounts of the high risk clients (Art. 11). When deciding on the clients who shall be included in this category, the following information shall be considered:

a) type of client – natural/legal person or entity without legal personality;
b) homes state;
c) public or high-profile position held,
d) type of activity performed by the client;
e) source of client funds;
f) other risk indicators.

551. Increased attention shall furthermore be paid at the time of reviewing transactions which involve persons located in jurisdictions which do not enforce adequate systems for the prevention and control of money laundering and terrorist financing.

Reduced due diligence

552. There are a number of exemptions in which the identification requirements are not mandatory, these include:

553. According to Art. 12 of the AML Law and Art. 7 of Order no. 3128/2005, insurance and reinsurance undertakings and branches in Romania of foreign insurance and reinsurance undertakings, in connection to life insurance policies, if:
- the insurance premium or the annual installments are less than or equal to the equivalent in lei of the sum of 1,000 euros
- the unique insurance premium paid is below 2,500 euros, or the equivalent in Lei. If the periodic premium installments or the annual sums to pay are or are to be increased in such a way as to be over the limit of the sum of 1,000 euros, respectively of 2,500 euros, or the equivalent in lei, the clients' identification shall be required;
- subscription of the insurance policies issued from the pension funds, obtained based on a working contract or on the ensured person's profession, if the policy may not be redeemed before the term and may not be used as guarantee or collaterally for obtaining a loan;
- if the payment will be debited from an account opened in the customer's name with a credit or financial institution from Romania, an EU Member State or with a branch of a credit or financial institution from an EU Member State, or of a credit or financial institution from a third country;
- if the customer is a credit or financial institution from Romania, or an EU Member State, a branch from an EU Member State of a credit or financial institution from a third country or, as appropriate, a credit or financial institution from a third country, which requires identification requirements similar to those laid down by Romanian laws."

554. Having regard to the FATF Recommendations, as well as the provisions of Law no. 656/2002, Art. 4(6) of the National Securities Commission no. 11/2005 stipulates that capital market identification requirements in respect of customers shall not be required if the customer is a credit or financial institution from Romania or a Member State of the European Union, a branch from a Member State of the European Union of a credit or financial institution from a third country or, as appropriate, a credit or financial institution from a third country, which requires identification requirements similar to those laid down by Romanian laws. Similar provisions are also in place for the non-banking financial institutions in the General and Evidence Registers.

Timing of verification

555. There is no general provision permitting delayed verification and the use of business facilities before verification of identify is completed. The legal framework that exists stipulate that financial institutions are subject to the duty of requiring identification and verification when they intend to start a business relationship or perform transactions with occasional customers above the designated threshold. They are also obliged to refuse to carry out operations when the customer does not supply identification or the identification of the person for whom they are effectively acting.

556. Capital market obligations are set forth in Art. 4(1) of the NSC's Regulations no. 11/2005: "Regulated entities shall identify, verify and record the identity of their clients before concluding any business relationship or performing transactions on behalf of their client." For the insurance sector, ISC's Order no. 3128/2005 Art.5 (1) states "The insurer has the obligation to identify, to verify, and to keep the records and to up-date the data related to the client's

identification before initiating business relations or to perform transactions on behalf of the client". Similar obligations are also in place for credit institutions (Norm N° 3/2002. Art.12) and non-bank financial institutions (Regulation N° 8/2002. Art.7).

557. Delayed verification is permitted for credit and non-bank financial institutions in the case of business relations entered into through correspondence by modern electronic means. In such cases the credit or the non-banking financial institution must request the documents necessary for the identification of the client on the first visit. Prior to this visit the credit or non-banking financial institution must certify by other means that the address and the telephone number are genuine.

558. Furthermore credit and non-banking financial institutions may take certain measures in order to achieve the best possible level of knowledge concerning such customers.

Failure to satisfactorily complete CDD

559. Where a financial institution is unable to comply with core CDD requirements, it is not permitted to open the account, commence business relations or perform the transaction. For Credit institutions, Norm No. 3/2002, Art.12 requires that banks "shall not establish a banking relationship until the identity of a new customer is satisfactorily verified". In addition Art.28 states that "If serious doubts persist about the accuracy of the customer‘s written declaration and cannot be dispelled through further clarification, the bank shall refuse to enter into a business relationship or to execute the transaction."

560. Regulation No. 8/2006, Art. 7, for non-banking financial institutions, states that “The non-banking financial institutions must establish an organised procedure for the identity check of the new clients and of the persons which act on their behalf and in order not to engage in business relationships until the identity of the new client is checked adequately". For those non-banking financial institutions in the General and Evidence Registers, a similar provision is stipulated in Art 55 (5) of the Norm. Insurance market obligations are set out in ISC’s Order no. 3128/2005 that stipulates the insurer "shall not initiate operations or carrying out transactions and shall stop immediately any operation if he cannot realise the identification of the client in accordance with the provisions of the present norms". Similar provisions are also in place for the capital market, through NSC’s Regulation 11/2005.

Existing customers

561. Financial institutions should also 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. Some examples of the times when this might be appropriate are given in the box in the Methodology – e.g. when a transaction of significance takes place, when the customer documentation standards change substantially etc.

562. Romania has a specific legal requirement in place for banks, non-banking financial institutions and intermediaries within the capital market, that these reporting entities must ensure the identification of all existing customers. Not withstanding these obligations the evaluators had some doubts as to how these measures were being fully applied to existing customers, particularly customers within the non-banking financial institutions. The Romanian authorities did note that this would normally be expected as part of a financial institution's practice in the implementation of an adequate KYC programme and wider KYC obligations that stipulate the applicability of customer identification policies and procedures to opened accounts.

European Union Directive

Article 7

563. 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.

564. Article 3 (1) of the AML/CFT Law provides that as soon as a monitoring entity has suspicions that a transaction which is on the way to be performed, has the purpose of money laundering or terrorism financing, the NOPCML shall be notified immediately.

565. Article 3(2) further provides that if the NOPCML considers as necessary, it may dispose, based on a reason, the suspension of performing the transaction, for a period of three working days. The amount in respect of which instructions or suspension were given, shall remain blocked on the account of the holder until the expiring of the period for which the suspension was ordered or, as appropriate, until new instructions are given by the General Prosecutor's Office. If the NOPCML considers that the 3 working days period is not enough, it may require to the General Prosecutor's Office before the expiring of this period, the extension of the suspension of the operation up to four working days.

566. Article 3(4) requires that the NOPCML communicates within 24 hours, the decision of suspending the carrying out of the operation or, as the case may be, the measure of its prolongation, ordered by the General Prosecutor's Office. Article 3(5) allows the notifying monitoring entity to carry out the operation if the NOPCML did not make the communication within the said 24 hours.

567. Finally article 4 indicates that a monitoring person knowing that an operation which is to be executed may be linked with money laundering, may carry out the operation without previously notifying the NOPCML, if the transaction must be carried out immediately or if by not performing it, the efforts to trace the beneficiaries of such money laundering suspect operations could be hampered. These persons are under the obligation to inform the NOPCML immediately, but not later than 24 hours, about the transaction performed, specifying the reason why they did not inform the Office before.

568. Article 7 of the 2nd Directive appears fulfilled by Romania.

Article 3(8)

569. According to Article 3 Para 8 of the European Union 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.

570. Article 9 section 3 of the AML/CFT Law provides that as soon as there is a suspicion that the transaction has the purpose of money laundering or terrorism financing, the obliged person shall proceed to the identification of customers and of persons on whose behalf or interest they are acting, even if the value of the transaction is lower than the minimum limit of 10,000 Euro.

571. Article 3(8) of the 2nd Directive appears to be fulfilled by Romania.

Recommendation 6

572. There is currently no comprehensive requirement to conduct additional measures regarding PEPs as required by FATF Recommendation 6. The current legal framework (Norm no.3/2002, Regulation no.8/2006, and Law no. 32/2000 - with subsequent modifications in Order no. 3128/2005 and Order no. 113.117/2006) do provide a number of specific obligations on the identification and management of potential high risk customers, a factor which incorporates identifying the public position held, however these obligations are a subset of wider factors that should be taken into consideration by financial institutions. Whilst the obligations require the identification of 'public position held', there is no explicit reference to establishing the source of funds for customers who hold public office (beyond those applicable to all customers) equally there is no direct obligation to gain senior management approval before entering into a relationship with a PEP. Additionally where a customer has been accepted and the customer or beneficial owner is subsequently found to be, or subsequently becomes, a PEP, there is no requirement for financial institutions to obtain senior management approval to continue the business relationship. Furthermore there is no automatic requirement to conduct enhanced due diligence, but rather the public position held will be one factor that financial institutions should consider when deciding if a customer is high risk.

573. In practice, the absence of an explicit reference to PEPs means that the current requirement to identify the public position is highly restrictive and has resulted in an inadequate application across the various sectors. However, despite the lack of clear requirements the assessors did note that a number of the larger financial institutions, the majority being foreign owned subsidiaries, have implemented group policy for identifying and monitoring PEPs. Nonetheless the overall internal systems implemented to address PEPS in Romania vary considerably across and between sectors; furthermore these systems do not necessarily conform to the specific requirements as laid out by FATF. [9]

Recommendation 7

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

575. The main requirements for correspondent banking and similar relationships are set out in Art. 34 of Norm No. 3 /2002, which stipulates that, Credit institutions must obtain sufficient information concerning the credit institutions with which it maintains correspondent relations in order to fully understand the nature of their activities. When establishing correspondent relations, credit institutions must take into account the following factors:

a) the information concerning the management of the corresponding credit institution, its basic activity, where it is located and its efforts to prevent and detect money laundering activities;
b) the purpose for which the *nostro* account is opened;
c) the identity of any third party that will use the correspondent banking services;

[9] Romania has implemented the Third EU AML/CFT Directive in GEO no.53/2008 which is expected to remedy the deficiencies concerning PEPs.

d) the conditions of regulations and supervision in the home country of the correspondent credit institution.

576. Credit institutions are only permitted to establish correspondent relations with institutions from abroad that are supervised efficiently by the competent authorities. Furthermore, credit institutions are required to refuse to engage in correspondence relations, or to continue such relations with a credit institution that is registered within a jurisdiction where it is not physically present, and to grant special attention when continuing correspondence relations with a credit institution situated within a jurisdiction where there are no regulated requirements concerning acquaintance with the customer or that has been identified as not co-operating for the purpose of combating money laundering.

577. Recommendation 7 not only applies to cross-border correspondent banking but also to "other similar relationships". In footnote 13 of the Methodology it is explained that similar relationships, for example, include those established for securities transactions or funds transfers, whether for the cross-border financial institution as principal or for its customers. In relation to the Capital market, requirements to comply with Recommendation 7 are not captured by NSC Regulation no. 11/2005.

578. In implementing Recommendation 7 there are a number of gaps in the current legislative framework. There are no explicit obligations to gain senior management approval before establishing new correspondent relationships. There is no requirement for financial institutions to document the respective responsibilities of each institution. Likewise, there are no specific obligations with respect to 'payable-through accounts' and that financial institutions have verified the identify of, and performed on-going due diligence on, customers having direct access to accounts of the correspondent and that it is able to provide relevant customer identification data upon request to the correspondent bank. In practice, however, the Romanian authorities did indicate that senior management approval is often required in the internal procedures of a bank.

Recommendation 8

579. 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.

580. Article 9(6) in the AML/CFT Law requires the prudential supervisory authorities to issue, according to their competences, norms concerning the measures necessary for the establishing of the identity of customers where the transactions between persons take place without their physical presence.

581. There are broad provisions under Romanian law regarding the need for financial institutions to have internal policies to prevent the misuse of technological developments in money laundering or terrorist financing. Under Norm No. 3/2002 Art. 46 (2), credit institutions are required to assess new products and services in relation to the risk associated to these, including the risk of being used by clients as a means to carry out activities of an illicit nature.

582. Art. 33 also stipulates
– "(1) In the case of business relations entered into through correspondence or modern means of telecommunications – telephone, e-mail, and internet – credit institutions shall apply equally effective identification procedures and on-going monitoring standards for non-face-to-face customers as to those available to present themselves to the bank.

(2) In the case of such relationships, the bank shall verify the accuracy of the address, and of the telephone number provided by the means stipulated in article 19, or by any other means considered to be appropriate for the bank. In order to identify the customer, bank will require the needed documents and will record them accordingly, on the customer's first visit to the bank.
(3) In order to a better identification of this category of customers, credit institutions shall take some measures, such as:
a) all documents forwarded to bank, including the signature specimen, need to be certified by a branch of a bank or by a trustee, especially in the case of non-resident customers;
b) additional documents may be required;
c) an introduced customer may be accepted, if the intermediary as introducer meets the requirements stipulated in Art. 32;
d) the requirement that the first payment to be carried out on behalf of the customer through an account opened with another bank that comply with similar customer identification and verification standards."

583. The legal provisions that are applicable to the non-banking financial institutions are contained in Regulation No. 8/2006 and Norm 496/2006 are similar to those described above for credit institutions.

584. Article 12 in Order No. 3128 requires insurers to take the measures imposed in the case of those operations which favor anonymity or which allow interaction in the absence of the customer, for preventing their use in operations of money laundering or terrorism financing.

585. Capital market provisions NSC's Regulation no. 11/2005 Art. 9 (3) require regulated entities to take adequate measures in the case of operations which encourage anonymity or which allow interaction in the absence of the client in order to prevent their use in money laundering or terrorist financing operations. In accordance with the provisions of Art. 5 (4), client identification is required to be performed when a client is not physically present or represented at the time when the operation is performed. NSC's Regulation no. 32/2006 Art. 64 also impose obligations on intermediaries to draw up adequate internal procedures for transactions that are performed through the Internet. In the provision of investment services through the internet, the intermediary is required to both ensure verification of the investor identity when the latter accesses the system and to protect the website against any unauthorised access. Also, intermediaries have a direct obligation to keep the documents submitted or received via the Internet, in order to be recovered and examined by NSC. Intermediaries who intend to maintain financial investment services for an investor, exclusively through the Internet, are required to first receive:

i) a copy of the investor identification documents;
ii) information on the bank account, including an account statement or a stamped cheque;
iii) documents to prove the residence of the client.

586. Following verification procedures, the intermediary is required to communicate by electronic mail to the investor the user name and two passwords:

i) the first password – to view orders to purchase/sell financial instruments, trade limits and the balance sheet for own financial instrument portfolios; and
ii) the second password – to introduce orders to purchase/sell financial instruments, to transfer financial instruments and/or cash.

3.2.2 Recommendations and comments

587. Romania's legal framework addresses in detail a substantial number of the FATF requirements on CDD. However, as indicated, in certain key areas a number of gaps are notable; this is particularly relevant in those areas on which FATF places a considerable emphasis i.e. beneficial ownership and PEPs. The Romanian authorities indicated that all the identified gaps in relation to preventative measures would be rectified with the implementation of the Third EU Money Laundering Directive.

588. In practice, the awareness of customer due diligence requirements and the application of measures in relation to customer identification seemed very high. However overall compliance levels with R.5 – R.8 are inhibited due to a number of significant gaps, the following is therefore recommended:

589. The AML Law in relation to ascertaining beneficial ownership is currently weak. Romania should consider issuing further law/regulations and, where appropriate, industry guidance to clarify the responsibilities on identifying and verifying the beneficial ownership.

590. Romania has introduced into its legal framework a number of very indirect requirements in relation to PEPs, however the assessors were of the opinion that these fall well short of the expected standard. Whilst acknowledging the implementation of PEPs policies by a number of the larger financial institutions it was also apparent that the overall requirements were restrictive and being implemented in an inconsistent fashion. The Romanian authorities should therefore introduce direct obligations as defined in Recommendation 6.

591. Introduce an explicit requirement that the opening of individual correspondent accounts should involve senior management approval and for financial institutions to document respective responsibilities of each institution. Specific obligations with respect to 'payable-through accounts' should ensure that financial institutions have verified the identity of, and performed on-going due diligence as required by Recommendation 7, should also be implemented.

3.2.3 Compliance with Recommendations 5 to 8

	Rating	Summary of factors underlying rating
R.5	**Partially Compliant**	• No explicit definition of beneficial ownership. • The requirement to take reasonable measures to verify the identity of the beneficial owner, as required by the FATF standards is not adequately implemented. • Further consideration should be given to the extent that reporting entities have applied CDD measures to existing customers particularly in the case of non-banking financial institutions.
R.6	**Non-Compliant**	• The requirement to identify a PEP is currently too restrictive and only refers to identifying a customers 'public position held'. • The requirement to identify a PEP's source of wealth is not clearly stated (beyond those applicable to all customers); The nature and extent of enhanced CDD measures relating to PEPs are not clearly stated. • No provision for senior management approval to establish a relationship with a PEP.

		• No provision for senior management approval to continue business relationship where the customer subsequently is found to be or becomes a PEP.
R.7	**Partially Compliant**	• No obligation to require senior management approval when opening individual correspondent accounts. • No obligation for financial institutions to document respective responsibilities of each institution. • No specific obligations with respect to 'payable-through accounts'.
R.8	**Compliant**	

3.3 Third Parties and introduced business (Recommendation 9)

3.3.1 Description and analysis

592. The legal framework in Romania permits financial institutions to rely on intermediaries or third parties to perform certain elements of the CDD process or to introduce business. It was however unclear to the evaluators the extent that the principle of relying on third parties, or using the verification work carried out by intermediaries in respect of introduced business is an established practice in Romania. It was also unclear what expectations supervisory bodies would, in practice, place on regulated institutions in establishing internal procedures for reliance on third parties. There was further uncertainty regarding a determination in which countries the third party that meets the conditions can be based. As such the evaluation team was unable to assess the overall level of effectiveness surrounding the implementation of Recommendation 9.

593. Nonetheless, in cases where reliance on third parties may happen there are specific legal obligations which require the reliant financial institutions to have taken steps in order to be assured as to the robustness of the provided information. There is also an express legal statement that indicates that the ultimate responsibility for customer identification and verification remains with the financial institution relying on the third party. When a credit institution accepts a new customer under the identification data provided by another credit institution or by a third party (who is an intermediary between the bank and customer), Norm no.3/2002, Art. 32 requires the credit institutions to have ensured the quality of the customer identification procedures used by the intermediary. In fulfilling this obligation, Art 32 states that banks should consider the following:

> "a) to be ensured that the intermediary's procedures comply with the minimum standards imposed by KYC procedures, and that they are at least as strictly as those implemented by the bank;
> b) to conclude an agreement with the intermediary through which the bank is allowed to verify the intermediary's KYC standards;
> c) to be ensured that the intermediary has the obligation to provide the bank with all the information and identification documents processed by its own identification procedures."

594. In the case of non-banking financial institutions registered in the Special Register Regulations 8/2006 regarding know-your-customer (KYC) standards reflect those stipulated for credit institutions. The NSC's Regulation 11/2005 for the capital market also allows reliance on a

third party to perform customer identification in certain conditions. Order no. 3128/2005 does not address the issue of relying on intermediaries or other third parties to perform customer identification. The evaluators were informed that regardless of the fact that the insurance contract is concluded through intermediaries, the responsibility of identifying the client belongs exclusively to the insurer. All the intermediary does is to represent and bring the insured person in front of the insurer, the latter having the obligation to identify the client.

595. Whilst legal obligations are explicit in their requirement to ensure the intermediary's procedures confirm with the banks minimum KYC procedures, there is no express requirement for financial institutions to satisfy themselves that the third party is regulated and supervised in accordance with FATF Recommendations 23, 24 and 29. There is equally no requirement that financial institutions should be required to 'immediately' obtain from the third party the necessary information concerning certain elements of the CDD process. The exception to this is the capital market where there is an express requirement stipulated in Article 8, Para 3 of Regulation 11/2005 for the capital market.

3.3.2 Recommendation and comments

596. There is some uncertainty across competent authorities and within the regulated sector as to the extent that third parties are being relied upon to carry out CDD, or whether the majority of this activity is being used in an outsourcing context. Romania should review the use of third parties to conduct CDD in all sectors. If the use of third party reliance is an emerging feature within Romania, then competent authorities should ensure that any appropriate guidance deemed necessary is issued to all sectors.

3.3.3 Compliance with Recommendation 9

	Rating	Summary of factors underlying rating
R.9	**Partially Compliant**	• Financial institutions are not explicitly required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29). • An explicit obligation should be introduced that requires all financial institutions relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process. • In determining in which countries the third party that meets the conditions can be based, competent authorities only take into account to a certain extent information available on whether those countries adequately apply the FATF Recommendations.

3.4 Financial institution secrecy or confidentiality (R.4)

3.4.1 Description and analysis

597. Law No. 656/2002 imposes a broad obligation on reporting entities to ensure that financial institution secrecy laws do not inhibit implementation of the FATF Recommendations. Art. 5(3) states that, "Professional secret for persons and entities stipulated at Art. 8 is not opposable to the Office". There is a further stipulation for financial institutions to supply required data and information, within 30 days of receiving the request. Neither the National Office nor financial

institutions raised any concerns as to the capacity of financial institutions to comply with the 30 day limit.

598. In addition to Law No. 656/2002 there are specific norms and regulations for individual sectors that further embed the principle of access to information in combating money laundering and terrorist financing. For the non-banking financial institutions registered in the Special Register, these are set out in Regulation no.8/2006, Art. 36 - (2) which states "*Non-banking financial institutions must ensure, in accordance with the provisions of the law, the access of the authorities competent in the field of investigating and incriminating criminal offences and of the supervision authorities to the entire documentation concerning the clients and the relationship maintained with them, including any assessment that the non-banking financial institution has made to identify the unusual or suspicious transactions or to determine the degree of risk associated to a transaction which it is engaged in*."

599. Capital market provisions are provided for in Law no. 297/2004, which states that professional secrecy cannot be opposed to NSC in exercising its legal powers. The provisions of Art. 3 of the NSC's Regulation no. 11/2005 stipulates that regulated entities are required to provide any relevant information or documents, and that disclaimers, the laws or provisions concerning professional secrecy shall not be brought as an argument for limiting the ability of regulated entities to report suspicious transactions.

600. In addition to requirements under Law No. 656/2002, there is further requirement on the Insurance market, through Order 3128/2005, Art. 17 that stipulates, "*The confidentiality contracts, legislation or provisions related to professional sector cannot be invoked for restriction of regulated entities capacity to report suspicious transactions*".

601. The sharing of information between competent authorities is supported through Law No. 656/2002, Art 5, which states that, "*The Office may exchange information, on the basis of reciprocity, with foreign institutions with similar functions and which are bound by the obligation secrecy under similar conditions if such communications are made for the purpose of preventing and combating money laundering or financing of terrorist activities*."

3.4.2 Recommendations and comments

602. Romania's capacity for dealing with confidentiality allows for exceptions that prevent secrecy laws from inhibiting the implementation of the FATF Recommendations.

3.4.3 Compliance with Recommendation 4

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

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

3.5.1. Description and analysis

Recommendation 10

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

604. Transaction records are covered in Article 13 of the AML/CFT Law, which requires financial institutions to retain all transaction records for a five-year period after performing each operation, in an adequate form, in order to be used as evidence in justice. The five-year period starts with the date when the relationship with the client comes to an end or the date of performing the operation. The provision covers "every situation in which the identity is required…" which implies that both domestic and international transactions are covered. Apart from in the capital market (Art.10 of Regulation no.11/2005), there is no requirement to keep the records for longer periods even if requested to do so by a competent authority in specific cases.

605. Transaction records are also required under Criterion 10.1.1 (which is not asterisked) to be sufficient to permit the reconstruction of individual transactions so as to provide, if necessary, evidence for prosecution. This needs to be required by law, regulation or other enforceable means.

606. Article 56, Para. 1 of Norm No.3/2002 for credit institutions, and Article 36, Para. 1 of Regulation No.8/2006 for non-banking financial institutions, registered in the Special Register, set forth that these records must be sufficient to allow the re-enactment of the transactions - including the amount and currency type - and, if necessary, to provide evidence in order to incriminate criminal offences. Article 6 in Norm 496/2006 provides similar provisions for those non-banking financial institutions in the General and Evidence Registers.

607. Referring to the insurance sector, Order No. 3128/2005 does not properly address all the necessary components of transaction records as required in Criterion 10.1.1. Regulation

32/2006 for the intermediaries within the capital market provides the necessary components of transaction records.

608. Criterion 10.2 requires that financial institutions should be required to maintain records of identification data, account files and business correspondence for at least five years following the termination of an account or business relationship (or longer if requested by a competent authority in specific cases upon proper authority).

609. Article 13 in the AML/CFT Law provides that all reporting entities shall keep a copy of the document, as an identity proof, or identity references, for a five year period, starting with the date when the relationship with the client comes to an end.

610. Referring to credit institutions, Art. 56, Para.2 of Norms No. 3/2002 provides for the obligation to keep records concerning the identification of the clientele, account records and business correspondence for at least five years after the account has been closed or the relationship with the client has ended.

611. Similar obligations are set forth referring to non banking financial institutions of the Special Register (Art.36, Para.1 of Regulation No. 8/2006), of the General and Evidence Register (Art.6 of Decision No. 496/2006), for the insurance sector (Art. 13 of Order No. 3128/2005), as well as for the capital market (Art.10 of Norms No.11/2005) .

612. It is worth noting that for financial institutions of the General and Evidence Register, as well as for the insurance sector the requirements are limited to the identification information and documents, not including account files and business correspondence

613. Apart from the capital market no provision on keeping identification data, account files and business correspondence for longer than 5 years if necessary, when properly required to do so by a competent authority in specific cases upon proper authority.

614. Criterion 10.3 provides that financial institutions should be required to ensure that all customer and transaction records and information are available on “a timely basis” to domestic competent authorities upon the appropriate authority.

615. Article 56 of Norm No. 3/2002, however, sets forth the obligation for credit institutions to maintain, for at least five years, all necessary records on transactions, both domestic and international, in order to comply easily with information requests from the competent authorities. The evaluators were of the opinion that ”easily” did not meet the requirement “on a timely basis” as required in Criterion 10.3

616. For non-banking financial institutions registered in the Special Register Art. 36 (2) in Regulation 8/2006 provides for the access of all competent authorities to the entire documentation concerning the clients and the relationship maintained with them, "*including any assessment that the non banking financial institution has made to identify the unusual or suspicious transactions or to determine the degree of risk associated to a transaction which it is engaged in*." Non-bank financial institutions registered with the Evidence and the General Registers do not have specific provisions on the requirement “on a timely basis” in Criterion 10.3.

617. There are no specific provisions in the Regulations on the Insurance and Capital market respectively.

618. All supervisory authorities emphasised that according to their governing laws, financial institutions are required to ensure that supervisory authorities ad access to all information available within a short period of time.

619. In case financial institutions do not comply with the above-mentioned communication obligation specific sanctions are provided for in Art. 264 of the Criminal Code.

SR.VII

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

621. Since 1 January 2007, Regulation (EC) No 1781/2006 of the European Parliament and of the Council of 15 November 2006, on information on the payer accompanying transfers of funds is directly applicable in Romania being a Member State of the European Union.

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

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

624. The evaluators were informed that the EU provisions have been published on the Internet website of the NBR and that the competent national authorities have started to amend the legal and regulatory framework.

625. As far as the examiners are aware, no monitoring system is place on this issue. In particular, it needs to be clarified how the compliance of financial institutions outside the banking sector (money remitters and bureaux de changes) will be monitored.

626. The EU Regulation classifies wire transfers within the EU as domestic and therefore only seeks limited originator information on wire transfers within the European Community. FAFT has called this into question as the Interpretive Note to SR VII defines domestic transfers as "any wire transfers where the originator and beneficiary institutions are located in the same country." The FATF decided at the June 2007 plenary to further consider this subject[10].

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

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

3.5.2. Recommendation and comments

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

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

630. A requirement should be considered for the financial institutions providing that customer identification data, account files and business correspondence should be maintained for at least five years following the termination of an account or business relationship or longer if requested by a competent authority in specific cases upon the proper authority.

631. For financial institutions of the General and Evidence Register, as well as for the insurance sector the record keeping requirements should also cover account files and business correspondence.

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

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

3.5.3. Compliance with Recommendation 10 and Special Recommendation VII

	Rating	Summary of factors underlying rating
R.10	**Partially Compliant**	• Apart from the capital market there is no requirement of keeping **transactions** records for a longer period even if requested by a competent authority in specific cases. • Criterion 10.1.1 is not fully met with reference to the insurance sector. Apart from the capital market there are no provision on keeping **identification data, account files and business correspondence** for longer than 5 years if necessary, when properly required to do so by a competent authority in specific cases upon proper authority. The requirement to provide information "on a timely basis" as required in Criterion 10.3 is not met. For financial institutions registered in the General and Evidence Register, as well as for the insurance sector the record keeping requirements do not cover account files and business correspondence. • The requirement to ensure that all customer and transaction records and information are available to domestic competent authorites "on a timely basis" as required in Criterion 10.3 is not met.

SR.VII	**Largely Compliant**	• The implementation and effectiveness of the EU Regulation could not be assessed.

Unusual and Suspicious Transactions

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

3.6.1. Description and analysis

Recommendation 11

634. Recommendation 11, which requires financial institutions 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.

635. There is not a provision in the AML Law, which requires financial institutions to pay special attention to all complex, unusual transactions or patterns of transactions Nonetheless the secondary regulation sets out such requirement in a way which complies with the standards as follows:

636. Referring to credit institutions, Article 41 of Norm no. 3/2002 deals with the development of adequate operational systems to detect unusual and suspicious transactions. According to the same Article this can be done by establishing parameters for a particular class or category of accounts, thus paying particular attention to transactions that exceed these limits. They may include normal transactions that can be carried out through particular types of account, such as: value limits on each type of transaction, customer or account, activity field of legal entities or other entities. In this case, the on going monitoring shall focus on the transactions that are not consistent with the established limits.

637. For the non-financial banking institutions, Article 26 of Regulation no.8/2006 and Article 24, Para. 1 in the Norms No. 496/2006 specifically sets forth the need to focus on the transaction types that do not match the usual patterns and isolate the transactions presenting risk factors that require subsequent evaluation.

638. The provisions in the Regulations for credit institutions and non-bank financial institutions meet Criterion 11.1 of the Methodology. Similar requirements are, however, not explicitly provided for in the regulations covering the insurance and capital market sectors. These sectors rely on specific criteria to screen transactions in order to detect STRs which include unusual large transactions and unusual patterns of transactions with no apparent economic or visible lawful purpose. For this reason these sectors are also considered to partially address the criterion.

639. Additionally, both credit institutions and non-banking financial institutions registered in the Special Register are required to examine the background and purpose of such transactions, and the examination should be based also on additional documents requested from the client in order to justify the transaction, the conclusions being recorded in writing and available for subsequent verification (Article 42, Para. 3 of Norm no.3/ 2002 and Article 26, Para. 2 of Regulation no.8/2006). There are no provisions covering Criterion 11.2 for non-banking financial institutions which are registered in the Evidence and General Registers.

640. There are no specific provisions that fulfil Criterion 11.2 for the insurance and the capital market sectors. The evaluators were, however, informed that in practice the intermediaries within the capital market examine complex and unusual transactions and set out their findings in writing.

641. The general record-keeping provision seems to cover also the case of written findings and clarifications of transactions, as it refer not only to the registrations of all financial operations required in compliance with the AML/CFT Law, but also to the "secondary or operative

records". It is, however, not explicitly required in the Law or in Regulations to keep such findings available for competent authorities and auditors.

642. For credit institutions, the obligation to keep the findings available to auditors can be inferred from the general provision which empowers the internal audit to have access to the records drawn up in compliance with the Norms on the standards of acquaintance with the clientele (Article 23, para.2 of Norm no.3/2002 for banks), while for non banking institutions registered in the Special Register. Article 33 sets out the supervision power of internal audit also "by means of random testing of the compliance with internal rules and the revaluation of reports in exceptional cases". There are no specific provisions to cover Criterion 11.3 for non-banking financial institutions registered in the Evidence and General Registers.

643. During the on-site visit it was clarified that financial institutions have developed specific software both in the banking and investment companies sector to detect unusual transactions and that this area is usually examined by competent supervisors during the on-site inspections.

Recommendation 21

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

645. There is no specific provision in the AML/CFT Law, which covers Recommendation 21.

646. Furthermore, Article 7 of the Norms No. 3/2002 sets out that the programmes of acquaintance of the clientele must include also "*the means of approaching those transactions in and/or from the jurisdictions that do not have adequate regulations in the field of money laundering prevention*".

647. Both the aforementioned provisions seem not to be properly in line with the reference to countries "that fails or insufficiently apply FATF Recommendations", not covering those countries that have deficiencies in applying the FATF Recommendation on countering terrorism financing.

648. There are no provisions addressing criterion 21.1 for non-banking financial institutions.

649. Capital market NSC Regulation 11/2005 requires that the regulated entities pay special attention to transactions that involve persons located in jurisdiction with inadequate AML/CFT systems. A similar provision is set out for the insurance sector (Article 14 of Order 3128/2005).

650. For both sectors there is no reference to enhanced due diligence with reference to business relationships.

651. During the on-site visit, both the NOPCML and the NBR confirmed that they have disseminated, only to financial institutions, the NCCT lists through "letters", which are not enforceable measures.

652. In the current absence of any countries being on the NCCT list, criterion 21.1.1 is in fact not implemented.

653. The Romanian authorities have emphasised that the training programmes organised by the NOPCML on typologies and trends play a pivotal role in ensuring that financial institutions are advised of concerns about weaknesses in the AML/CFT systems of other countries. This mechanism seems to be inadequate to comply with Criterion 21.1.1, not being systematic and enforceable.

654. To those transactions that have no apparent economic or visible lawful purpose, credit institutions are required (Article 42, Para. 2, letter c of Norm no.3/2002) to pay attention to external transfers inconsistent or unusual, and consequently to examine the purpose and circumstances of such transactions, and written findings should be available for verification. A similar provision referring to "transactions type that does not match the usual patterns" applies to non-banking financial institutions (Article 26, section 1 of Regulation no.8/2006 and Article 24 and 25 in Norm 496/2006). These provisions do not specifically refer to transactions with countries that insufficiently apply FATF Recommendations.

655. Other than this, there was no system in place which was explained to the assessors how to identify other countries which might present AML/CFT concerns.

656. The Romanian authorities did not identify any mechanism to apply countermeasures on countries that fail to, or insufficiently, apply the FATF Recommendations.

3.6.2. Recommendations and comments

657. The provisions in the Regulations for credit institutions and non-bank financial institutions meet Criterion 11.1 of the Methodology. Similar explicit requirements are, however, not provided for in the regulations covering the insurance and capital market sectors. These sectors are considered to partially address the issue.

658. There is no specific requirement for the non-banking financial institutions or the insurance and the capital market sectors to set forth their findings in writing.

659. There is no explicit requirement to keep the findings available for competent authorities and auditors for at least five years.

660. There is no specific provision in the AML/CFT Law which covers Recommendation 21. Financial institutions are not required to give special attention to business relationships and transactions with persons from countries which do not, or insufficiently, apply FATF Recommendations.

661. There is no requirement to set out in writing any findings of examinations on the background and purpose when transactions have no apparent economic or visible lawful purpose. Such findings should be set out in writing and maintained for a period of at least five years to assist competent authorities. Countermeasures in case such a country continues not to, or insufficiently, apply the FATF Recommendations should also be established in law or Regulations.

3.6.3. Compliance with Recommendations 11 and 21

	Rating	Summary of factors underlying rating
R.11	**Largely Compliant**	• Criterion 11.1 only partially addressed by the insurance and capital market sectors on paying special attention to all complex, unusual large transactions or unusual patterns of transactions. No explicit enforceable provisions for the non-banking financial institutions registered in the Evidence and General Registers and the insurance and capital market sectors to examine the backgrounds of such transactions and set forth their findings in writing. • No explicit requirement to keep the finding available for competent authorities and auditors for at least five years.
R.21	**Non- Compliant**	• Insufficient requirements to give special attention to business relationships and transactions with persons from countries which do not, or insufficiently, apply FATF Recommendations.

		• No enforceable requirements in place to ensure that financial institutions are advised of weaknesses in the AML/CFT systems of other countries. • No specific enforceable requirements for financial institutions to examine the background and purpose of such transactions and to make written findings available to assist competent authorities. • No mechanism to apply countermeasures.

3.7 Suspicious transaction reports and other reporting (Recommendations 13, 14, 19, 25.2 and SR.IV)

3.7.1. Description and analysis

Recommendation 13 and Special Recommendation IV

662. Essential Criteria 13.1, 13.2 and 13.3 are asterisk marked and are required by law or regulations.

663. The Romanian Financial institutions are required by Article 3 in the AML/CFT Law to report immediately to the NOPCML when they suspect that "a transaction which is on the way to be performed has the purpose of money laundering or terrorism financing". The employee of the financial institution shall inform the compliance officer, who shall notify immediately the NOPCML. The NOPCML shall confirm the receipt of the STR.

664. Article 17, Para 1 index 1 of the AML/CFT Law provides that if the supervisory authorities are obtaining information during their on-site inspection that indicates suspicion of money laundering, terrorism financing or other violation of the AML/CFT Law they are obliged to inform immediately the NOPCML.

665. The terminology for applying the reporting obligation in Article 3 of the AML/CFT referring to suspicious transactions "...which is on the way to be performed…." does not appear to cover the full width of the reporting obligation as set out in FATF Recommendation 13. The reporting obligations in the regulations do not appear to be helpful in this regard either. Thus, the reporting obligation does not appear to fully cover money laundering of financing of terrorism if the suspicious transaction has been performed. Article 4, Para 2 covers situations related to performed atypical transactions for the activity of the customer. Other kind of suspicious transactions performed which are not covered by Article 4, Para 2 appear not to be covered by the reporting obligation. The reporting provision covers money laundering, terrorist financing and the proceeds of criminal activity.

666. The requirement to report attempted suspicious transactions is not covered. The Romanian authorities have indicated in the replies to the questionnaire that the authorities interpret the statutory language of article 3 to cover attempted suspicious transactions. However, as this is an asterisked criterion, the need for attempted suspicious transactions to be reported should be explicitly provided for in either law or Regulation.

667. Criterion 13.2 requires that the obligation to make an STR should apply also where there are reasonable grounds to suspect or they are suspected to be linked or related to, or to be used for terrorism, terrorist acts or by terrorist organisations or those who finance terrorism. The

obligation to report does cover the terrorism financing offence. The scope of this offence (which does not specifically include funds to be used by a terrorist organisation or an individual terrorist for any purpose) could limit the scope of the reporting requirement for terrorism financing STRs.

668. The AML/CFT Law defines money laundering to include laundering in relation to any criminal offence (tax matters are included for these purposes and are not excluded for STR reporting purposes). There is no financial threshold in relation to suspicious transaction reporting.

669. As noted earlier a number of 1,348 STRs are pending with the NOPCML but are expected to be analysed, processed and disseminated before the end of 2007.

European Union Directive

670. Paragraph 1 of Article 6 of Directive 2001/308/EEC provides for the reporting obligation to include facts which might be an indication of money laundering. FATF Recommendation 13 puts the reporting obligations for suspicion, or reasonable grounds for suspicion, that the funds are the proceeds of a criminal activity. Article 3 in the AML/CFT Law appears not to be including facts which might be an indication of money laundering.

671. Article 7 of the Second Directive requires States to ensure that institutions and persons subject to the Directive refrain from carrying out transactions for which they know are, or suspect to be, related to money laundering until they have apprised the authorities (unless to do so is impossible or likely to frustrate efforts to pursue the beneficiaries). It is considered that Art. 4, Para 1 in the AML/CFT Law covers this.

672. The AML/CFT Law does not contain any provision for sanctioning in case of performing a transaction postponed for 24 hours on request by a financial institution. Breaching the obligation not to perform a postponed transaction is prosecuted under the article 246 of Criminal code – Abuse in service.

Safe Harbour Provisions (Recommendation 14)

673. Pursuant to Article 7 of the AML/CFT Law: "sending information in good faith by the persons under Article 8 or assigned according to article 14, para.1 may not bring about their disciplinary, civil or penal responsibility" (safe harbour provision).

674. It seems that the above mentioned provision does not ensure the full coverage required by Criterion 14.1, as it refers only to reporting entities and their compliance officers, not including explicitly "directors, officers and employees (permanent and temporary)".

675. It should be emphasised that this provision makes reference not only to an STR but to all data and information additionally sent to the FIU, as well as to cash reports and cross-border reports.

676. It is clear that the protection applies to criminal proceedings. The provision also refers to disciplinary and civil responsibility which seems to rule out all kind of civil liability. The wide coverage of the said article implies that no precise knowledge is required as to the underlying criminal activity.

677. With reference to the insurance sector, Article 17 of Order No.3128/2002 provides that the capacity of regulated entities to report the suspicious transactions cannot be restricted by confidentiality contracts or by any provision on professional secrecy. A similar provision is established in Article 15 of Regulation no.11/2005 for the capital market entities.

Tipping off (Recommendation 14)

678. Article 18, Para. 2 of the AML/CFT Law prohibits the reporting entity as well as their employees to transmit the information related to money laundering and terrorism financing, except as provided by the law, and to warn the customer of the STR sent to the NOPCML.

679. Nevertheless, it is regrettable that the explicit prohibition to disclose the fact that a report has been filed to the NOPMCL is addressed only in respect of the customer, while it should also explicitly cover third persons. The evaluators also noted that the prohibition to transmit information related to money laundering and terrorism financing, except as provided by the law, is generally formulated. The evaluators, however, find that in practice it would be difficult for reporting entities to be fully aware of the exceptions provided for in the law.

680. Under Article 24 of the AML Law the breaching of the Article 18 provision is a criminal offence and is punished with prison from 2 to 7 years.

681. During the on-site visit the examiners were informed that no case of tipping off has occurred so far.

682. It was specified that the employees sign a Confidentiality Commitment, through which they express their commitment to respect the state and service secrecy, with particular reference to the legal provisions on the keeping and handling of information, data and documents, including after the cessation of the position held within the Office. Failure to comply with this provision is punished with administrative, disciplinary, civil or criminal sanctions depending on the seriousness of the infringements.

683. The Romanian authorities have clarified that if classified/confidential information is disseminated, the NOPCML can notify the competent authorities (the Romanian Intelligence Service and the General Prosecutor's Office) of the infringement in order to start legal proceedings.

Additional elements

684. The AML Law (Article 6, Para. 1.1) does not set out clearly the protection of the person that submits the information to the FIU, as the identity of the natural person (compliance officer) that makes the STR "may not be disclosed in the content of the notification".

685. As formulated, it seems that the confidentiality of the person that makes the report is at the discretion of the FIU.

686. It is consequently unclear in which cases the FIU guarantees the said confidentiality and on which basis, as well as further details should be given on and under which conditions the General Prosecutor Office can ask the FIU to provide the name of the natural person that has made the report, provided that it is not disclosed in the content of the notification.

687. The Romanian authorities have informed assessors that the notification submitted by the NOPCML to the General Prosecutor makes reference only to the information provided in the STR and to the details of the legal person that files the report, while the name of the natural person who submit the report is not relevant for the penal investigation.

688. Furthermore, referring to DNFBP, it should be noted that the self-regulatory bodies of lawyers and notaries (NUPN and NUBR) act as filters between the FIU and the reporting entities, thus receiving in the first instance the STRs. The NUPN has developed its own database for

receiving the STRs and it submits them directly to the NOPMCL with the name of the public notary in an encrypted form. During the on-site visit representatives of the NUBR underlined that referring to measures to protect the confidentiality of the person that makes the report; no directives have been issued to the local Bar Association from the National Union of Bars.

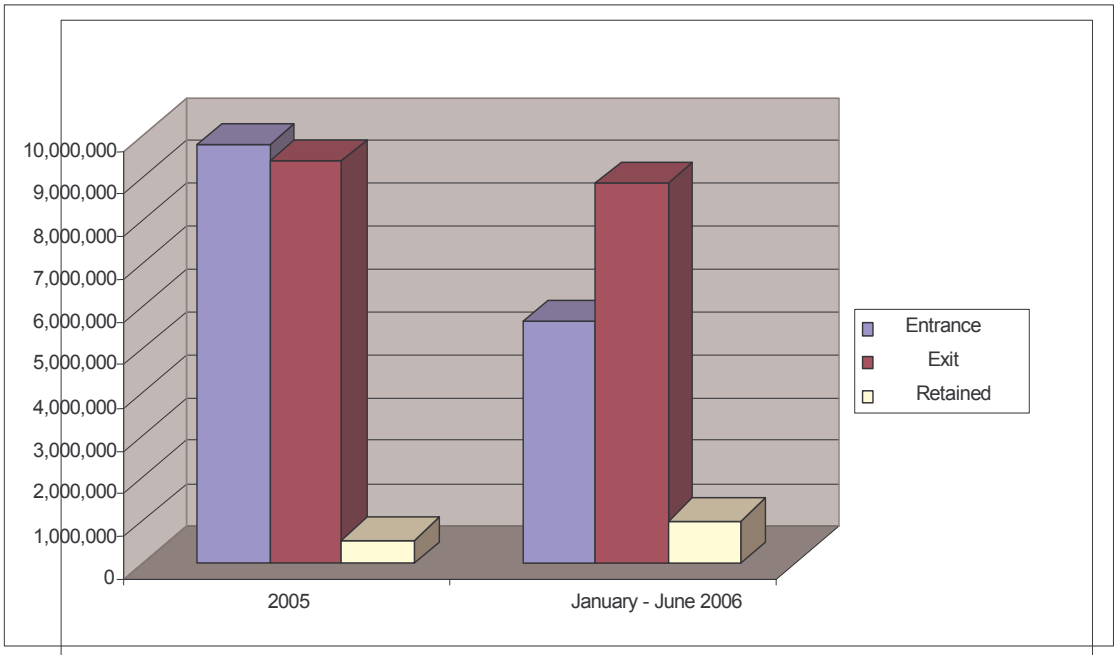
Recommendation 19

689. Criterion 19.1 Countries should consider the feasibility and utility of implementing a system where financial institutions report all transactions in currency above a fixed threshold to a national central agency with a computerised database.

690. Article 3 (6) of the AML/CFT Law provides a reporting obligation for reporting entities, including banks and other financial institutions and intermediaries, to report to the NOPCML, within 24 hours at the latest, the carrying out of operations with sums in cash of or above 10,000 Euros, regardless of whether the transaction is performed through one or several linked operations.

691. Paragraph 7 in the same Article provides that the reporting obligation also applies to cross-border transfers in and from accounts of or above 10,000 Euros.

The currency amounts declared/retained in/from Romania 2005/2006



692. In December 2006, NOPCML signed a Co-operation Protocol with the NBR having as the main objective the connection of the NOPCML to the Inter-banking Communication Network of the National Bank of Romania. In the first semester of 2007 credit institutions started to report on-line the cash transactions above the threshold of 10,000 euros and cross-border transfers above the threshold of 10,000 euros.

693. Reports are stored in the NOPCML which now has safe conditions for ensuring a high degree of protection of data and information.

Recommendation 25.2

694. Pursuant to Art 6, Para.7 of the AML/CFT Law the NOPCML provides general feedback to reporting entities mainly within the training initiatives, presenting typologies and trends of money laundering and terrorism financing.

695. In accordance with Art.5, letter o) of the Government Decision no.531/2006 the NOPCML issues an annual report, which is published and includes the legislative developments in the reference year and a detailed account of the activity performed by each Directorate as well as statistical data on the results obtained.

696. General feedback to supervisory authorities is also given through regular meetings.

697. Referring to case-by-case feedback the NOPCML confirms only the receipt of the report to the reporting entity pursuant to Article 3, Para. 1 of the AML/CFT Law.

698. The examiners recommend enhancing case-by-case feedback, thus creating a timelier and systematic feedback to reporting entities, especially on the status of STRs and the outcome of specific cases (such as providing regular advice on cases that are closed).

3.7.2. Recommendations and comments

Recommendation 13

699. The reporting obligation in Article 3 of the AML/CFT referring to suspicious transactions "...which is on the way to be performed…." does not appear to cover the full width of the reporting obligation as set out in Rec. 13. The reporting obligation in Article 3 of the AML/CFT Law does not fully cover the money laundering and terrorist financing reporting obligation if the transaction has been performed, although this is partly dealt with in Article 4, Para.2 in the AML/CFT Law.

700. Attempted suspicious transactions are not covered.

701. The requirement in Criteria 13.2 that the obligation to make a STR also applies to funds where there are reasonable grounds to suspect that they are, or they are suspected to be, linked to financing of terrorism is not covered.

702. The low number of STRs filed by financial entities by a limited number of financial institutions raises the issue of the effectiveness of the reporting requirement.

Recommendation 14

703. The AML/CFT Law should be amended in order to guarantee the safe harbour provision as contemplated in Criterion 14.1. not only to reporting entities and compliance officers, but also to "their directors, officers and employees".

704. Furthermore, prohibition from disclosing the fact that a STR has been reported should be referred not only to the customer, but also to third parties. The AML/CFT Law should be amended accordingly.

Recommendation 25.2

705. General feedback given by the NOPCML would be more helpful if it was more sector oriented and its effectiveness should be strengthened targeting specific sectors of high risk of ML/FT that are reluctant to report, thus increasing their awareness of reporting obligations.

706. The examiners advise that a more effective case-by-case feedback mechanism is designed for reporting entities, thus developing specific feedback on the status of STRs and the outcome of single cases.

707. Taking into account the low level of reporting, further indicators and typologies should be developed on terrorism financing.

SR IV

708. The reporting obligation in Article 3 of the AML/CFT Law does not appear to fully cover terrorist financing if the transaction has been performed (see comments under Recommendation 13). The obligation needs to be broadened.

709. Attempted suspicious transactions are not covered.

710. The requirement to report suspicious transactions applies regardless of whether they refer to involving tax matters.

711. The reporting obligation should also cover funds suspected to be linked to or related to or to be used for the terrorism, terrorist acts or by terrorist organisations.

712. The relatively low number of reports on financing of terrorism raises the question of effectiveness. In 2005, 5 notifications were sent by the Office to the GPOHCCJ and RIS on suspicions of terrorist financing. In 2006, 2 notifications were sent and in 2007, 8 notifications. These notifications were based on STRs.

3.7.3. Compliance with Recommendations 13, 14, 19, 25 and Special Recommendation SR.IV

	Rating	Summary of factors underlying rating
R.13	**Partially Compliant**	• Requirement to broaden the reporting obligation to also cover money laundering and terrorist financing if a suspicious transaction has been performed (beyond Article 4, Para 2). • Attempted suspicious transactions are not covered. • The reporting obligation should also cover funds suspected to be linked to or related to or to be used for terrorism, terrorist acts or by terrorist organisations. • Low level of reporting outside the banking sector raises effectiveness questions.
R.14	**Partially Compliant**	• The "safe harbour" provision in the AML/CFT Law does not include explicitly directors, officers and employees (permanent and temporary). • The AML/CFT Law does not explicitly prohibit the disclosing to a third person of the fact that a report has been made to the NOPMCL.
R.19	**Compliant**	

R.25.2	**Partially Compliant**	• The effectiveness of general feedback by the NOPCML should be strengthened also targeting specific sectors of high risk of ML/FT that are reluctant to report. • Taking into account the low level of reporting, further indicators and typologies should be developed on terrorism financing. • Specific feedback should be developed on the status of STRs and the outcome of single cases.
SR.IV	**Partially Compliant**	• Clarify and broaden the reporting obligation to also cover terrorist financing if a suspicious transaction has been performed (see Recommendation 13). • Attempted suspicious transactions are not covered. • The reporting obligation should also cover funds suspected to be linked to, or related to, or to be used for, terrorism, terrorist acts or by terrorist organisations. • Relatively low number of reports on financing of terrorism raises question of effectiveness

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

713. Recommendation 15, requiring financial institutions to develop programmes against money laundering and the financing of terrorism, can be provided for by law, regulation or other enforceable means.

714. Article 14 Para (1^1) in the AML/CFT Law requires the executive management of financial institutions to establish internal policies and procedures for combating money laundering and terrorism financing.

715. In addition Article 14 specifies that the financial institutions must ensure high standards of employing staff and provide them with training. Continuous training programmes for employees should be developed. The regulations issued by the different financial supervisory authorities within their specific competence also underline the importance of training.

716. Article 14, Para 1, requires that the executive management of financial institutions appoint a compliance officer, subordinated to the executive management, who implements control procedures for testing the system. The name of the compliance officer shall be communicated to the NOPCML, together with the nature and the limits of the mentioned responsibilities.

717. The specific regulations for the different financial institution sectors address the obligation to establish and apply procedures and other means of internal control and to appoint compliance officer(s). Article 16 in Regulation 11/2005 (capital market) explicitly requires that the compliance officer is designated at the management level but other regulations seem not to

address this requirement. There is no general requirement that the compliance officer should be designated at the management level.

718. Criterion 15.1.2 requires that the compliance officer and other appropriate staff should have timely access to customer identification data and other CDD information, transaction records, and other relevant information.

719. The AML/CFT Law and the regulations require financial institutions to establish their own internal procedures for identifying customers, which include a database with customer identification information. In the replies to the questionnaire Romania has indicated that the compliance officer has direct access to this database. The evaluators did not find any provision in the AML/CFT Law or in the regulations that explicitly secured this direct access. The evaluators noted that there is no provision concerning timely access for the AML/CFT compliance officer and other appropriate staff to CDD and other relevant documents.

720. Financial institutions are required to adequately maintain resourced and independent audit function to test compliance with the procedures, policies and controls regarding AML/CFT. The different regulations contain more detailed provisions for the audit function to test compliance with procedures, policies and control

721. Financial institution are obliged to establish ongoing employee training to ensure that employees are kept informed of new developments, techniques, methods and trends and ensuring a clear explanation of all aspects of the AML/CFT law.

722. Financial institutions have their own recruiting procedures and requirements. However, as already noted Article 14 of the AML/CFT Law requires the insurance of high standards for employing staff and continuous training programmes for employees. The evaluators noted, however, that for the majority of institutions there is only an indirect obligation for financial institutions to establish screening procedures to ensure high standards when hiring employees as required in Criterion 15.4. The exception to this is the investment services sector.

Additional elements

723. The AML/CFT Law provides in article 14(1^1) that the compliance officer is subordinated to the executive body. The regulations on the capital market provide in Article 16 that the compliance officer reports directly to the Board of Directors. The other regulations do not address this issue separately. These provisions ensure that the reporting compliance officer has the ability to bypass the next reporting level and report to senior management or the board of Directors. Art. 18 paragraph (2) of Order no. 3128/2005 provides for the conformity officer to report directly to the Administration Board of the company in order to prevent the implication of the insurance company in money laundering and terrorism acts financing actions.

Recommendation 22

724. Criterion 22.1 requires financial institutions to ensure that their foreign branches and subsidiaries observe AML/CFT measures consistent with home country requirements and the FATF Recommendations, to the extent that local (i.e. host country) laws and regulations permit.

725. All regulations set out requirements for the regulated entities to ensure that all criteria with respect to customer identification are applied by its secondary premises including those located abroad. The evaluators note, however, that the requirements in Criterion 22.1 refer to AML/CFT "measures" in general and not only to customer identification. Turning to Criterion 22.1.1 Norm no. 3/2002 does not cover this Criterion explicitly. Article 50 states that "The bank must ensure the implementation of the programmes of acquaintance with the clientele in all its territorial units and subsidiaries, within the country and from abroad" without requiring that

special attention should be paid in the case of jurisdictions which do not or insufficiently apply FATF Recommendations. The regulations for the insurance and capital markets do not address the issue.

726. Criterion 22.1.2. Article 50 and 51 in the regulation on credit institutions do not explicitly require branches and subsidiaries in host countries to apply the higher standard to the extent that local laws and regulations permit. Norm 3/2002, Article 51 stipulates: "If the laws and regulations of the home country - especially the provision concerning banking secrecy – prevent the implementation of the requirements provided by these Norms, the banks territorial units and subsidiaries from abroad shall observe the home country standards, but inform the Bank and the national Bank of Romania of the existing differences". In the replies to the questionnaire it is indicated that "the bank shall observe the host country standards, but shall inform the bank and, by its intermediary, the National Bank of Romania of the existing differences". There is no requirement to apply the higher standard to the extent that local laws and regulations permit.

727. Article 51 also requires credit institutions to inform their home country supervisor when a foreign branch or subsidiary is unable to observe appropriate AML/CFT measures.

Additional elements

728. Financial institutions (subject to Core Principles) are required to apply consistent CDD measures at group level according to article 50 and 51 in the regulations on credit institutions.

3.8.2. Recommendation and comments

Recommendation 15

729. There is no general requirement that the compliance officer should be designated at the management level. Some of the regulations have such provisions but others do not. Equally there is no general requirement to ensure that the compliance officer has timely access to customer identification data and other CDD information, although it was explained to evaluators that this was the case in practice.

730. The evaluators did not find a provision in the AML/LAW or in the regulations that explicitly secured this direct access to all relevant information. The evaluators noted that there is no provision concerning the timely access of the AML/CFT compliance officer and other appropriate staff to CDD and other relevant documents.

731. There is no legal obligation on financial institutions to establish screening procedures to ensure high standards when hiring employees.

Recommendation 22

732. There is no specific requirement on the financial institutions to require the application of AML/CFT measures to foreign branches and subsidiaries beyond customer identification.

3.8.3. Compliance with Recommendations 15 and 22

	Rating	Summary of factors underlying rating
R.15	**Partially Compliant**	• No general requirement that the compliance officer should be designated at the management level. • No general legal obligation to secure the compliance officers direct and timely access to the relevant data. • Only indirect provisions on employee screening for the majority of financial institutions.
R.22	**Partially Compliant**	• No specific requirement on the financial institutions to require the application of AML/CFT measures to foreign branches and subsidiaries beyond customer identification. • There is no requirement to pay special attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations. • Provision should be made that where minimum requirements of the host and home countries differ; branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.

3.9 Shell banks (Recommendation 18)

3.9.1. Description and analysis

Criterion 18.1

733. The Government Emergency Ordinance on Credit Institutions and Capital Adequacy sets out certain requirements that must be met to establish a bank which prohibits shell banks from operating within Romania. All credit institutions must be registered with and have a licence issued by the NBR, and the NBR must affirm that the management of the bank is meeting Romanian "fit and proper" standards. The NBR supervises the licensing process for all credit institutions and has the sole authority to grant and revoke banking licences.

734. Although there is no specific legally binding prohibition to establish shell banks, the banking licensing rules prohibit the establishment of shell banks in Romania.

Criteria 18.2 and 18.3

735. Financial institutions are not permitted to enter into or continue correspondent banking relationships with shell banks according to Article 34 (2) in Norm 3/2002 on credit institutions. The provision reads: "Credit institutions must establish correspondent relations only with credit institutions from abroad that are supervised efficiently by the competent authorities and that dispose of efficient programs of acquaintance with the clientele. Credit institutions shall refuse to engage in correspondence relations or to continue such relations with a credit institution that is registered within a jurisdiction where it is not physically present, meaning the management of the activity and the records of the institution are not situated within that jurisdiction, and to grant special attention when continuing correspondence relations with a credit institution situated within a jurisdiction where there are no regulated requirements concerning acquaintance with the clientele or that has been identified as not co-operating for the purpose of combating money laundering."

736. Following Article 34 (1 and 2) in Norm 3/2002 on credit institutions financial institutions are required to satisfy themselves that respondent financial institutions in a foreign country do not permit their accounts to be used by shell banks.

737. The evaluation team saw no indication that shell banks are operating on the territory of Romania. Interviews with representatives from credit institutions revealed that credit institutions are well aware of the prohibition against the establishment of correspondent relationships with shell banks.

3.9.2. Recommendations and comments

738. In order to add clarity, the evaluation team encourage that Romania define the term "shell bank" in its body of law.

3.9.3. Compliance with Recommendation 18

	Rating	Summary of factors underlying rating
R.18	**Compliant**	

Regulation, supervision, guidance, monitoring and sanctions

3.10 The supervisory and oversight system - competent authorities and SROs / Role, functions, duties and powers (including sanctions) (R. 23, 29, 17 and 25.1)

3.10.1. Description and analysis

Authorities' roles and duties, structure and resources – Recommendations 23/30.

Recommendation 23

739. Criterion 23.1 requires that countries should ensure that financial institutions are subject to adequate AML/CFT regulation and supervision and are effectively implementing the FATF standards. Criterion 23.2 requires countries to ensure that a designated competent authority (or authorities) has responsibility for ensuring AML/CFT compliance.

740. Law 656 on the prevention and sanctioning of money laundering and on setting up certain measures for the prevention and combating terrorism financing authorises the NOPCML to ensure that subject persons are complying with the AML/CFT Law.

741. The NOPCML has sufficient operational independence and autonomy to undertake its responsibilities. The NOPCML is a specialised body subordinated to the Government.

742. As already noted under 2.5.1 the NOPCML is managed by a President appointed by the Government, from among the Members of the Board of the Office. The Members of the Board are appointed by Government decision. The independence and autonomy of NOPCML is backed by legislation, Article 19 of the AML/CFT Law.

743. In the Regulations on the Organisation and Functioning of the NOPCM it is provided by Article 1 that the maximum number of staff is 120 and an organisational chart of the NOPCML is also provided as an integral part of the Regulations. At the time of the on-site visit evaluators were informed that only 90 positions were filled. On enquiry the NOPCML informed the evaluators that this was partly due to the fact that many applicants are rejected as they do not pass the psychological test. The evaluators noted that only 12 staff members are involved in on-site supervision.

744. Members of the NOPCML appear to have an adequate background and they have furthermore been given relevant training for combating money laundering and terrorist financing. It may also be pointed out that some of the members of the NOPCML have had training in combating money laundering and terrorist financing in their previous job (in credit institutions or in the Police Force).

745. The NOPCML undertakes a leading role in the development, coordination and implementation of the AML/CFT system. In performing its activities as an independent administration under the Government, the NOPCML receives, obtains without limitations, analyses and discloses information to relevant bodies. The NOPCML has introduced a new, advanced security system, expanded their access to databases within other authorities and introduced a new IT-infrastructure and security measures in relation to protect the IT-network against unauthorised access. Unfortunately the NOPCML had experienced a leak in its security system and some of these new measures were taken as countermeasures.

746. It follows from Article 17 (1) in the AML/CFT Law that the financial institutions' prudential supervisors (e.g. NBR, ISC, NSC) are the main body responsible for monitoring the financial institutions within their area of competence and for compliance with AML/CFT obligations. At the time of the on-site visit the supervision of exchange offices lacked a clear delineation of legal responsibility between the NBR and the NOPCML. Until now supervision has been performed jointly by the NBR and the NOPCML. Article 17 (2) stipulates that the NOPCML may also perform checks and have joint control with the prudential supervisory authorities.

747. At the time of the on-site visit most of the financial supervisory authorities have signed co-operation agreements with the NOPCML:
- NOPCML / the Financial Guard in September 2004;
- NOPCML / the National Customs Authority in July 2004;
- NOPCML / the National Bank of Romania in December , 2006;
- NOPCML / the Insurance Supervisory Commission (ISC) concluded on in August 2004;
- NOPCML / the National Securities Commission (NSC) August 2004

748. As already noted joint inspections of financial institutions may be undertaken with the NOPCML according to Article17 (2) in the AML/CFT Law.

749. The NBR is responsible for the regulation and supervision of the activities of the banking sector, credit co-operatives and non-banking financial institutions registered in Special Register. The NBR issued Norm No. 3/2002 establishing "know-your-customer" standards linked to money laundering prevention (see Annex 3). The Norms apply to credit institutions (banks and credit-co-operatives) and bank branches of foreign legal entities operating in Romania. The NBR also issued Regulations No. 8/2006 that applies to non-banking financial institutions registered in the Special Register. The Norms and the Regulations provide the basic framework for these financial institutions registered in the Special Register to issue their own "know-your-customer" policies and procedures as an essential part of a sound risk management and efficient internal audit system.

750. Evaluators were informed that the legislation provides that on-site inspection by the NBR must be conducted at least once a year. For financial institutions subject to the Core Principles, the regulatory and supervisory measures that apply for prudential purposes and which are also relevant to money laundering, should apply in a similar manner for anti-money laundering and terrorist financing purposes. The Supervision Department has 5 divisions of which 3 deal with on-site and off-site supervision. The Supervision Department has 110 employees of which 15 are involved in AML/CFT on-site supervision. An off-site examiner is in charge of each credit institution and non-bank financial institution registered in the Special Register. The AML/CFT experts have received special training on AML/CFT issues. Exchange offices have only been supervised as a foreign exchange regime. On-site inspection was undertaken by the NBR jointly with the NOPCML. During the on-site visit the evaluators were of the opinion that significant gaps existed in relation to the supervision of beneficial ownership, PEPs and corresponding banking. Explicit regulation in these areas was undermining their supervision. On the risk approach much is left for the individual banks to develop within their own internal rules. Although the NBR has issued advice and guidelines, and also letters advising banks to issue their own norms, it appeared to the evaluators that more needed to be done. The evaluators also noted that the NBR has a matrix for implementing risked based approach supervision.

751. Commercial banks are required to prepare internal guidance on anti-money laundering measures. The Evaluation team had the opportunity to meet with representatives from a number of commercial banks and to observe the operation of the guidance. The evaluator found that the banks had a general good knowledge of the requirements under the AML/CFT Law and the norms.

752. Non-banking financial institutions are registered with the NBR in the General Register, the Special Register or the Evidence Register. The non-bank financial institutions are registered in the Special Register if two cumulative conditions are met: the level of own capital is minimum 50,000,000 RON (appr. 13,6 mio Euros) and the level of credits and financing is minimum 25,000,000 RON (appr. 6,8 mio. Euros). Pawn Houses and Mutual help-houses are registered in the Evidence Register. All other non-bank financial institutions are registered in the General Register. NBR is supervising all non-banking financial institutions in the Special Register for AML/CFT compliance (45 entities). The NOPCML is performing AML/CFT supervision of all non-banking financial institutions in the General Register (217 entities, out of which 45 entities are registered also in the Special Register) and the Evidence Register (4,600 entities).

753. The NOPCML supervises around 4,600 non-banking financial institutions in all. The evaluators have concerns that this sector is inadequately supervised taking into account the limited number of supervisory staff with the NOPCML (12 on-site supervisors) compared to the number of supervised non-banking financial institutions. For this reason many more resources should be dedicated to the NOPCML or the distribution of supervisory responsibilities among authorities involved in AML/CFT should be reconsidered.

754. The ISC regulates and supervises the insurance companies. The ISC issued in 2005 Order No. 3128/2005 on prevention and combating money laundering and terrorist financing through the insurance market (see Annex 5). The Order is focusing on the obligations insurers have in combating AML/CFT.

755. ISC has in its structure the Supervision and Control General Directorate, consisting of 21 persons performing on-site inspections at the insurance undertakings, verifying the aspects related to the insurance activity and also the aspects related to compliance with the provisions of the AML/CFT Law and Order no. 3128/2005.

756. The ISC informed evaluators that they check that internal procedures are in place in insurance companies and a compliance officer is appointed. Additional areas or issues could be monitored

if required by the NOPCML. The ISC consider the authority to be a supervisor and not an auditor and consequently they take the view that AML/CFT would only be investigated if the prudential supervision gave rise to concerns. It appeared that the AML/CFT supervision was sometimes limited to checking that the individual financial institution had established its own internal guidelines on the basis of the regulation issued by the supervisory authority and that a compliance officer(s) was appointed.

757. The NSC (National Securities Commission) regulates and supervises the capital market as well as the goods and derivatives regulated markets. It issued Regulation 11/2005 on the prevention and control of money laundering and terrorist financing through the capital market (see Annex 7).

758. The NSC informed evaluators that it elaborates an annual plan for on-site visits every year. The general cycle is to supervise the entities every second year. The NSC has 13 on-site and 40 off-site inspectors. They always monitor the following: anonymous accounts; whether CDD is sufficiently undertaken; record keeping; reporting of large transactions; and STRs. The authority appeared to have a good understanding of the concept of beneficial ownership. The authority does joint inspections with the NOPCML (2006 – 4 joint inspections; 2005 – 3 joint inspections; and in the 1st quarter of 2007 – 1 joint inspection).

759. Evaluators noted that it appears that some supervisory authorities only supervise for AML/CFT if the prudential supervision gives rise for concern. It appeared that AML/CFT supervision was sometimes limited to checking that the individual financial institution had established its own internal guidelines on the basis of the regulation issued by the supervisory authority and that a compliance officer(s) was appointed.

760. Following Article 17 (1) (b) of the AML/CFT Law the NOPCML is supervising monitoring entities for compliance with AML/CFT obligations when there is no other supervising authority. MVT service providers are also supervised for their AML/CFT compliance by the NOPCML as they have no prudential financial supervisor. The evaluators have concerns that this sector is inadequately supervised taking into account the limited number of supervisory staff with the NOPCML (12 supervisors) compared to the number MVT operators (3 money remitters with 1322 working offices).

761. The National Regulatory Authority for Communications is the regulatory body for post offices. The NOPCML is the supervisor of post offices' compliance with the AML/CFT obligations. The evaluators did not meet with this authority.

762. Supervision of exchange offices lacks a clear delineation of legal responsibility between NBR and the NOPCML. Article 17 (2) of the AML/CFT Law provides that the NOPCML may perform checks and controls jointly with the supervisory authorities and joint inspections are undertaken in practice. The evaluators were informed that joint inspections were carried out based on the control plans arranged together with the prudential supervision as well as financial control authorities, taking into account the fact that the NOPCML is the specialised authority in AML/CFT. It is, however, not fully clear to the evaluators why and when an AML/CFT inspection is undertaken by which authority. It was the general impression that the AML/CFT inspections undertaken by prudential supervisors were often performed as part of the prudential supervision.

Market entry

763. The measures of verifying the reputation for honesty and the absence of a criminal record of the founders, auditors, large shareholders and directors of Romanian financial institutions are complete and satisfactory.

764. The financial legislation and regulations require that the authorities are fully aware of the people behind as well as those running a financial institution. As part of the authorisation process, the financial supervisor is required to ensure that founders, auditors, significant shareholders and directors are suitable for the prudent management of the firm.

765. The interdiction stipulated in the legislation also applies to persons that are convicted or even charged for corruption, money laundering, net worth violation, misuse of authority, bribery, forgery and use of forged documents, misappropriation of funds, tax evasion, deriving undue benefits, undue influence, perjury, or any other act which may lead to the conclusion that the necessary prerequisites to ensure sound and prudent financial management are not met.

766. The rules are to be found in Norm No. 10/2004 on the authorisation of banks, electronic money institutions, other than banks, saving and loans banks for housing, and branches of foreign credit institutions operating in Romania. There is no specific legal requirement for establishing a money remittance service provider (other than a credit institution). Money remittance service providers are not registered or licenced but there is an obligation that they register with the Commercial Trade Register as they have to be a legal person. Criterion 23.5 is not complied with.

767. Law 297/2004 regulates the authorisation to enter the capital market.

768. Law no.32/2000 regulates the authorisation for entering the insurance market.

769. Criterion 23.3.1 requires that directors and senior management of financial institutions subject to the Core Principles should be evaluated on the basis of "fit and proper" criteria including those relating to expertise and integrity. Such criteria are established in the legislation for the financial institutions subject to the core principles.

770. Foreign exchange businesses. According to Norm 4/2005 on Performing Exchange Transactions, foreign exchange business shall be registered and licenced by the NBR. Chapter I stipulates categories of entities that may be authorised to perform exchange transactions, and Chapter V stipulates conditions for entities that may perform exchange transactions. Foreign exchange businesses are subject persons under the AML/CFT Law. Exchange offices have only been supervised as a foreign exchange regime. On-site inspections are conducted jointly by the NBR and the NOPCML.

771. Money or value transfer service providers (MVT). Law no 31/1990 on commercial companies requires that money remitters are registered in the National Commerce Register as companies having limited liability. All institutions registered are subject persons under the AML/CFT Law. The NOPCML is the supervisor for MVT service providers.

772. Non-banking financial institutions require a licence from their supervisory body to conduct their business in Romania.

Recommendation 25.1

773. Pursuant to Article 6, Para. 7 of the AML/CFT Law the NOPCML provides not only the financial institutions, but also the other supervisory authorities with general information concerning suspected transactions and the typologies of money laundering and financing of terrorist activities.

774. Guidelines have been issued to assist both the financial institutions and DNFBP in their implementation of the reporting duties on AML/CFT.

775. In 2002, during the Twinning Projects implemented by the FIUs from Italy, Austria and Romania, the NOPCML issued the Guidelines for Suspicious Transactions and the Training Manual for Combating Money Laundering which was consequently updated during the period 2004-2005.

776. The Guidelines cover different sectors, thus providing indicators of anomalies not only for financial institutions (banks, brokerage houses, finance companies, insurers, exchange houses, money transfer service providers), but also for some categories of DNFBP (casinos, notaries, lawyers, accountants, real estate agencies and auctioneers).

777. Taking into account the low level of STRs referring to terrorism financing it seems essential to further develop techniques of terrorism financing, as well as indicators to assist obliged entities on the identification of reports related to financing of terrorism.

Recommendation 29

778. Criterion 29.1 requires that supervisors should have adequate powers to monitor and ensure compliance by financial institutions with requirements to combat money laundering and financing of terrorism.

779. As noted, the prudential supervisors in Romania are the primary designated authorities responsible for ensuring that financial institutions adequately comply with AML/CFT requirements. The financial supervisors are empowered by Article 17(1) (b) in the AML/CFT Law to also supervise anti-money laundering and terrorist financing. The NOPCML, however, is also empowered to supervise financial institutions jointly with the financial supervisory authority and furthermore they are the only supervisory authority for entities that have no other supervisory authority.

780. Both the prudential supervisors and the NOPCML advised that they had all the powers set out in the Criterion 29.2 in the exercise of their supervisory functions. Financial supervisory authorities perform prudential off-site and on-site inspections of all financial institutions and this applies equally for supervision for AML/CFT compliance.

781. The requirements in Criteria 23.2 and 23.3 to have adequate powers to compel production or obtain access to relevant records, documents or information and to have adequate powers of enforcement and sanction against institution are provided for in the laws governing the individual financial sector The regulations, however, set out different fragmented provision on these issues.

782. Norm. No.3/2002 provides in Article 54 that credit institutions shall ensure supervisors have access to all documents existing in connection to the customers or transactions carried out through these accounts, including any analysis the bank has made in order to detect unusual or suspicious transactions, or in order to determine the risk level associated with a transaction in which the bank is involved.

783. Regulation No 11/2005 provides in Article 3 that the NSC may request regulated entities to provide any relevant information or documents.

784. The evaluators found no mention of powers to obtain access to records, documents or information in the Regulation issued by the ISC.

785. Regulation no.8/2006 requires in Article 36 that non-banking financial institutions registered in the Special Register give access to the supervision authorities to the entire documentation concerning the customers and the relationship maintained with them, including any assessment

that the non-banking financial institution has made to identify unusual or suspicious transactions or to determine the degree of risk associated to a transaction which it is engaged in.

786. In the replies to the questionnaire Romania has indicated that the legislation governing the different areas (banks, insurance and capital market) has provisions on powers to compel production of, or obtain access to, all records, documents or information relevant to monitoring compliance. The evaluators fully recognise this, but note that these provisions concern the prudential supervision and not the AML/CFT supervision.

787. The AML/CFT Law requires monitoring entities to report the suspicion of terrorist financing to the NOPCML. At the time of the on-site visit 5 STRs had been filed in 2005, 2 in 2006 and 8 in 2007 to the NOPCML

Recommendation 17

788. Article 21 of the AML/CFT Law provides that violation of the law may cause civil, disciplinary, contravention or penal responsibility.

789. The punishment available for committing a money laundering offence is 3 to 12 years imprisonment. Non-observance of the "tipping off" prohibition is 2 to 7 years of imprisonment.

790. In addition Article 22 provides the acts deemed as contravention for which fines may be imposed. For minor contraventions fines range from 10,000 lei (10,000 lei / 3,703 €) lei to 30,000lei (30,000lei / 11,111 €) lei and others from 15,000lei (15,000 lei / 5,555 €) lei to 50,000lei (50,000 lei /18,518 €) lei (please note that the Romanian currency was changed last year so the fines in today's currency is put in brackets. 1 lei = 0.37 Euro).

791. Some violations are considered to be minor offences (e.g. not filing an STR; not filing a mandatory cash transaction; not informing the NOPCML immediately after the transaction is performed where to refrain from undertaking the transaction is impossible or could frustrate efforts of an investigation). Such violations are sanctioned by a fine ranging from 10,000 – 30,000 RON (approx. 3,703-11,111 €) which the evaluators consider to be far too low for serious breaches of the AML/CFT Law. Furthermore the evaluators have noted that the sanctions for violating these breaches can also be imposed on legal persons.

792. Other violations that are also considered to be minor (e.g. not providing data and information required by the FIU within 30 days; not complying with the CDD requirements; not complying with record keeping requirements; not complying with the requirement to appoint a compliant officer and to issue internal policies and procedures; not complying with the AML/CFT supervision obligation) are sanctioned by a fine from 15,000 – 50,000 RON (approx. 5,555 – 18,518 €). These sanctions are applied also to legal persons. The evaluators consider that the monetary penalty that can be applied is sufficiently dissuasive in nature.

793. For legal persons the following additional sanctions could be applied: confiscation of the goods designed, used or resulting from the violation; suspension of the licence to carry out an activity (including suspension of the economic agent's activity for a period of one month up to six months); revoking the licence for some operations or for international commerce activities for a period or definitively; blocking the banking account for a period of 10 days up to one month; revoking the licence; closing the company.

Number of controls performed by category of entities and sanctions applied

Period of control	Legal entity checked	Number of control actions	Common control with other institutions	Fines applied by NOPCML	Fines applied by other institutions
2003	Foreign currency exchange offices	14	NOPCML Financial Guard	167.000 RON	-
2004	Credit Institutions	9 credit institutions – 48 control actions to head offices, branches, and agencies	NOPCML National Bank of Romania	150.000 RON	-
2005	Credit institutions	14 credit institutions 37 control actions performed to head offices, branches, and agencies	NOPCML National Bank of Romania	199.000 RON	-
	Financial investment companies	3	NOPCML National Securities Commission	2 warnings	-
	Foreign currency exchange offices	19	NOPCML Financial Guard	45.000 RON	15.000RON
	Casinos	21	NOPCML Financial Guard General Inspectorate of Romanian Police	415.000 RON	-
2006	Credit institutions	11	NOPCML National Bank of Romania	-	-
	Foreign currency exchange offices	12	NOPCML Financial Guard	15.000 RON	10.000RON
	Foreign currency exchange offices	13	NOPCML National Bank of Romania	45.000 RON 3 warnings	-
	Financial investment companies	4	NOPCML National Securities Commission	-	-
	Tourism Agents	12	NOPCML Financial Guard	1 warning	90.000RON
	Financial Consultancy	1	NOPCML Financial Guard	-	-
	Economic agents performing selling-purchasing art objects	3	NOPCML Financial Guard	-	30.000RON
	Gambling activities	8	NOPCML Financial Guard	1 warning	15.000RON
	Leasing financial institutions	7	NOPCML Financial Guard	90.000 RON	-
	Car Dealers	18	NOPCML Financial Guard	15.000 RON 3 warnings	130.000RON
	Real estate agents	27	NOPCML Financial Guard	85.000 RON 3 warnings	45.000RON

	Pawn houses	8	NOPCML Financial Guard	7 warnings	
	Public notaries	15	NOPCML National Union of Public Notaries in Romania	Recommendations	
2007	Car dealers	76	NOPCML	170.000 RON Warnings	
	Car dealers	53	NOPCML Financial Guard		215.000 RON
	Foundations	15	NOPCML Financial Guard	Warnings	
	Real estate agents	11	NOPCML Financial Guard	Warnings	40.000RON
	Accountable and financial consultancy	7	NOPCML Financial Guard	Warnings	
	Financial investment company	1	NOPCML National Securities Commission	-	-

794. Sanctions are not only applicable for legal persons that are financial institutions but also to their directors and senior management.

795. Violation of the regulations issued by the financial supervisory authorities is sanctioned on the basis of the sanctioning provisions in the specific laws governing the individual sector.

796. However, article 22 (4) in the AML/CFT Law provides that the sanctions in the AML/CFT Law are applied by the NOPCML and other designated AML/CFT supervisors. Fines may be imposed directly by the NOPCML or the financial supervisor without a court order.

797. Although the NBR and the NSC provided statistics showing the monetary level of fines the evaluators were unable to conclude whether across all sectors fines were effective, proportionate and dissuasive in nature. Fines and sanctions are not published except for the capital market.

The list regarding the sanctions applied and measures imposed by the National Bank of Romania as a result of the non-compliance with the requirements of the KYC Norm 3/2002, as amended subsequently/CFT

No. crt.	*Year*	*Fines/Sanctions*	*Applicable to:*
1.	2003	74,000 RON	1 bank
		80,064 RON	6 managers
		Written warnings	3 banks
		Measures imposed + letters of recommendations	1 bank + 6 banks
2.	2004	32,000 RON	1 bank
		17,430 RON	10 managers
		Written warnings	6 banks
		Measures imposed + letters of recommendations	4 banks + 11 banks
3.	2005	370,000 RON	1 bank
		8,273.1 RON	4 managers
		Written warnings	3 banks
		Measures imposed + letters of recommendations	3 banks + 12 banks
4.	2006	8,972 RON	3 managers
		Written warnings	2 banks
		Measures imposed + letters of recommendations	3 banks + 17 banks
5.	May 2007	6,099 RON	1 manager
		Written warnings	1 bank
		Measures imposed + letters of recommendations	5 banks + 9 banks

List of sanctions applied and measures imposed by the NATIONAL SECURITIES COMMISSION as a result of the non-observation of NSC – AML/CFT REGULATION

Sanction *applied and measures imposed by the NATIONAL SECURITIES COMMISSION as a result of the non-observation of NSC – AML/CFT REGULATION no. 11/2005*	2006	2007 (first semester)
Written Warning	3	7
Fines	12 (in a total amount of 70.500 RON)	20 (in a total amount of 39.000 RON)
Total	**15**	**27**

798. In all these cases, NSC has ordered measures to remedy problems found.

GENERAL INSPECTIONS in which one of the topics was the compliance with the legal provisions regarding the prevention and control of money laundering and terrorist financing	2006	2007 (first semester)
	33 (4 common inspection with the NOPCML)	15 (1 common inspection with the NOPCML)

3.10.2 Recommendations and comments

799. The supervision of exchange offices lack a clear delineation of legal responsibility between the NBR and the NOPCML

800. The NOPCML supervises around 4,600 non-banking financial institutions. The NOPCML supervises exchange offices and MVT service providers (3 money remitters with 1,322 working offices). The NOPCML is also the supervisor of post offices' compliance with AML/CFT obligations. The NOPCML only has 12 AML/CFT experts that perform on-site inspection and the Office also supervises most DNFBP (see section 4 in this report). For this reason many more resources should be dedicated to the NOPCML, or the distribution of supervisory responsibilities among authorities involved in AML/CFT should be reconsidered.

801. There are no specific legal requirements for establishing a money remittance service provider (other than a credit institution). Money remittance service providers are not registered or licenced but there is an obligation that they register with the Commercial Trade Register as they have to be a legal person. Criterion 23.5 is not complied with.

802. Although there is an obligation to report the suspicion of terrorist financing, there appears to be a lack of supervision for this issue, especially exchange offices and MVT service providers.

803. The supervisory authorities have adequate legal structures to prevent criminals from controlling financial institutions. As far as the licensing procedures in the financial market are concerned, these are broadly in line with the relevant European Union legislation and FATF Recommendations.

804. The evaluator's advice the constant updating of the Guidelines to inform reporting entities of the most current trends and techniques as well as to provide sanitised cases of money laundering and terrorism financing. In particular, indicators and techniques of terrorism financing should be further developed.

805. There are some proportionate and dissuasive sanctions in place for natural and legal persons. Some violations that are considered by the evaluators to be serious breaches of the AML/CFT Law are only sanctioned by relatively low fines. There are some additional sanctions which may apply to legal persons.

806. There is a relatively low number of STRs on terrorist financing received by the NOPCML which seem to indicate that awareness rising is needed (effectiveness issue).

3.10.3 Compliance with Recommendations 17, 23, 29 and 30

	Rating	Summary of factors underlying rating
R.17	**Partially Compliant**	• Sanctions which may be proportionate and dissuasive are available for AML breaches by the NOPCML and financial supervisors, but the effectiveness of the overall sanctioning regime, at present, is questioned. • Fines are generally low to have a dissuasive effect.
R.23	**Partially Compliant**	• Supervision of exchange offices lack a clear delineation of legal responsibility between the NBR and the NOPCML • More resources should be dedicated to the NOPCML or the distribution of supervisory responsibilities among authorities involved in AML/CFT should be reconsidered. • AML/CFT supervision of insurance licensees by their respective supervisory authority need to be developed further. Currently the inspections appear to be purely formal.

		• No registration or licensing procedures in place for money remittance service providers. • No adequate and sufficient supervision of MVT service providers (including those that operate through postal offices and independently) due to limited resources for on-site supervision within the NOPCML. • Although there is an obligation to report suspicion of terrorist financing there appears to be a lack of supervision for this issue, especially for exchange offices and MVT service providers. • The overall effectiveness of the AML/CFT systems in the financial institutions also needs to be checked.
R.25.1	**Partially Compliant**	• Sector specific guidelines are missing. • Essential to further develop techniques of terrorism financing, as well as indicators to assist obliged entities in the identification of reports related to financing of terrorism.
R.29	**Largely Compliant**	• Complex AML/CFT on-site inspections including the review of policies, procedures and sample testing are missing, particularly in the insurance sector.

3.11 Money or value transfer services (SR.VI)

3.11.1 Description and analysis

807. The AML/CFT Law Article 8 (1) (g) comprises "post offices and legal persons who provide money transmissions/remittance services in RON or foreign currency" as a monitoring entity.

808. MVT service providers are not registered or licenced but there is an obligation that they register with the Commercial Trade Register as they have to be a legal person.

809. The transfer of money is operated either through the banks, postal offices or through the money remitter company's own network. Operations through the banks or postal offices are based on a service contract between the company and the banks/postal offices.

810. Being a "subject person" a MVT service provider is bound by the AML/CFT Law and all the obligations provided by the Law and sanctions as described under Recommendation 17 are also applicable to MVT service providers.

811. The NOPCML is the AML/CFT supervisor of MVT service providers. During 2005 and 2006 the NOPCML performed 25 controls of MVT service providers operating through credit institutions, during which they controlled the compliance to the AML/CFT obligations of the money remitters operating through the banking system. As money remitters are operating through Post offices and individually as a company, evaluators have a serious concern (despite the new risk approach based supervision) whether this sector has been sufficiently supervised.

812. During 2006-2007 the NOPCML organised 8 training sessions on AML/CFT for the representatives of the MVT companies which operate through their own network.

813. MVT service providers filed 0 STRs in 2005 and 8 STRs in 2006 to the NOPCML and between January to May 2007 11 STRs were filed.

3.11.2 Recommendations and comments

814. MVT service providers are always legal persons and they have to be registered as a company with the National Commerce Register. Being a "subject person" the MVT service providers are bound by the AML/CFT Law and secondary legislation issued by the NOPCML on identification, record keeping and internal reporting procedures. MVT service providers are supervised by the NOPCML. There are, however, deficiencies identified earlier in this report in respect of CDD, PEPs.

815. Furthermore it should be recalled that in terms of the inadequacy of NOPCML resources, being the AML/CFT supervisor of MVT service providers, evaluators have concerns regarding the effectiveness of the supervision.

3.11.3 Compliance with Special Recommendation VI

	Rating	Summary of factors underlying rating
SR.VI	**Non-Compliant**	• No registration or licensing procedures in place for money remittance service providers. • Deficiencies identified under R.5-11, 13-15 and 21 are equally valid for money or value transfer services. • No information that on-site controls have been conducted at postal offices. • No information about on-site controls of MVT operator that has its own network and operates independently. • Concerns regarding the effectiveness of the supervision due to the limited resources of experts for on-site inspections with the NOPCML compared to the number of MVT working offices

4. PREVENTIVE MEASURES – DESIGNATED NON FINANCIAL BUSINESSES AND PROFESSIONS

Generally

816. The obligations laid down in the AML/CFT Law apply to the following non financial businesses and professions (Article 8, para.1):

> d) economic agents that develop gambling, activities, selling and purchase of art objects, precious stones and metals, dealers, tourism, services supplying and any other similar activities that imply the putting in circulation of values;
> e) auditors, natural and legal persons giving tax, accounting, or financial and banking advice;
> e¹) public notaries, lawyers and other persons exercising independent legal professions, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or goodwill elements, the managing of financial instruments or other assets of customers, the opening or management of bank, savings, accounts or of financial instruments, the organisation of contributions necessary for the creation, operation, or management of companies, the creation, operation, or management of companies, undertakings for collective investment in transferable securities or similar structures or when they act on behalf of, and for, their clients in any financial or real estate transactions;
> f) persons with attributions in the privatisation process;
> h) real estate agents;
> i) the State Treasury and customs authorities;
> j¹) associations and foundations;
> k) any other natural or legal person, for acts and deeds committed outside the financial-banking system.

817. The AML Law, as amended in 2006, goes significantly beyond the category of DNFBP included in the FATF Recommendations and in the 2nd EU Directive.

818. It is not clear on which basis this extension has been decided; namely if this considerable wide sector coverage under AML/CFT requirements has been supported by a risk based approach.

819. Tax advisors are included in letter e).

820. The Romanian authorities have informed assessors that "trust and company service providers" (other than auditors, lawyers and notaries who provide this service) are not operating in Romania.

821. Trusts can not be created in Romania as they cannot be registered as a legal person in the Commercial Trade Register. Neither does Romania recognise foreign trust, as the Hague Convention of the Law applicable to Trust and on their Recognition has not been signed. There are no obstacles for Romanian citizens to be trustees of foreign trust and Romanian legal practitioners may establish foreign trusts for their Romanian clients.

822. Company service providers were informed to be theoretically covered by letter d): "service supplying and any other similar activities that imply putting in circulation values", but – according to the Romanian authorities – there are no company service providers operation in Romania (apart from auditors, lawyers and notaries who provide this service). The mentioned

category is extremely vague and company service providers are not considered by the evaluators to be covered by the AML/CFT Law.

823. The notion of "dealers" in letter d) and the notion of "any other natural or legal person, for acts and deeds, committed outside the financial-banking system" in letter k) are not defined in the legislation. The NOPCML informed evaluators that specific provisions are going to be issued on these categories of DNFBP. The provisions were currently being drafted with the Ministry of Justice to clarify the said two categories.

824. The NOPCML is supervising DNFBP that do not already have an overseeing authority (article 17 in the AML/CFT Law).

825. As a consequence, the Board of the Office issued Norm No.496/2006 on prevention and combating money laundering and terrorism financing, CDD and internal control standards for reporting entities, which do not have overseeing authorities. To be in compliance with the Norms each reporting entity must establish internal AML/CFT policies and procedures in order to identify and assess the money laundering and terrorism financing risks, thus applying adequate measures to mitigate such risks.

826. It should be emphasised that, as the said Norms are addressed only to the entities supervised by the NOPCML, they are not applicable to the reporting entities that are under the supervision of the leading structures of independent legal professions (public notaries, lawyers and other persons exercising independent legal professions).

4.1 Customer due diligence and record-keeping (R.12)
(Applying R.5 to R.10)

4.1.1 Description and analysis

827. Criterion 12.1 requires DNFBP to meet the requirements of Recommendation 5 in the circumstances specified in Criterion 12.1.

828. The DNFBP covered by the AML/CFT Law, like financial institutions, are subject to CDD, record keeping, and internal reporting requirements.

829. Furthermore, Norm 496/2006 contains more detailed provisions on CDD and internal control standards for DNFBP supervised by NOPCML, e.g. Article 5 of the Norm covers the obligation to identify the customer that is not present to the performing of operations.

830. Under FATF standards, CDD in casinos (including internet casinos) is required when customers engage in transactions above EUR 3,000. Under Article 3 (5) of the 2nd EU-Directive, identification should occur when buying, purchasing or selling chips with a value of EUR 1,000 or more, though casinos subject to state supervision shall be deemed to have complied if they identify customers immediately on entry.

831. Governmental Decision No 251/1999 enumerates the gambling activities authorised by the Ministry of Economy and Finance. Internet casinos are not mentioned and consequently they cannot be authorised as a gambling activity.

832. Pursuant to Article 49 of Government Ordinance 251/1999 casinos are required to identify their customers at the entry and to record customer's ID details in the computer. For Romanian citizens, an ID document is required or other deeds issued by the police, which include the

owner's photo and signature. For foreign citizens, ID data are based on passport, diplomatic or consular identity cards or a temporary identification card.

833. Article 9, Para.1, of the AML/CFT Law provides also for the identification of a customer in the case of cash transactions above the threshold of 10,000 Euro, which is recognised as a too-high threshold for casinos. In the Interpretive Note to R 12 the designated threshold for transactions of casinos is 3,000 Euros. Romania does not address the 3,000 Euros threshold for casinos in law, regulation or other enforceable means.

834. During the on-site visit, representatives of casinos stated that the customer identification is performed at entry and that they are able, through video tapes, to link CDD information for a particular customer to the gambling performed[11]. Video tapes are mainly recorded to ensure fair gambling and the evaluators were not fully convinced that the video tapes ensure the linking of the customers due diligence information on a particular customer to the transaction that the customer conducts in the casino.

835. Video tapes are only maintained for at least 10 days, pursuant to Article 39 of Government Ordinance N° 251/1999. Only in the case of incidents or other special events shall the police be informed immediately and the video recordings of such cases kept until clarification of the matter. The evaluators were informed that every client of a casino has a file with all the identification documents as well as any other information on the transactions carried out, if such transactions are over a certain threshold or are suspicious. The evaluators were further informed that casinos have internal procedures to link transactions for an individual customer, however, such procedures do not constitute other enforceable means

836. The AML/CFT Law provides for the coverage of a wide range of gambling activities (such as bingo houses, betting houses, and slot machines). There are currently no regulations limiting winning at slot machines.

837. There is one Lottery Ltd. in Romania. One of the bodies of the Romanian Lottery Ltd. is the Council of Administration which manages on a commercial basis the day to day work of the Lottery. The Council of Administration has 5 members out of which 3 members are civil servants appointed by the Ministry of Finance. Civil servants are normally not allowed to hold functions in private companies.

838. The CDD requirements in the AML/CFT Law and in the Norms issued by the NOPCML also apply to real estate agents. During the on-site visit representatives from this sector confirmed that they apply CDD requirements with respect to both the purchasers and the vendor of the property, but there is not a specific provision on this requirement.

839. A written statement from the customer (declaration form) with full details of the ultimate beneficiary is required by Norms No. 496/2006. Furthermore Article 13 of the aforementioned Norms requires the regulated entities shall (must) take all the necessary measures to obtain information on the real identity of a beneficial owner. Nevertheless, there is no definition of “beneficial owner”.

840. The concept of "beneficiary owner” provided in Article 2, letter h) of the Norms makes reference only to “the natural or legal person or entity without legal personality on whos behalf or interest one or severakl operations are performed, stipulated by letter e)” (the customer). No specific provision deals with the obligation of verifying the identity of the beneficial owner, nor

[11] According to footnote 21 in the Methodology conducting customer identification at the entry to a casino could be, but not necessarily, sufficient. Countries must require casinos to ensure that they are able to link customer due diligence information on a particular customer to the transaction that the customer conducts in the casino.

have any instructions been issued to determine how reporting entities should verify the identity of beneficial owner on a risk sensitive basis.

841. Nonetheless, it is not clear in the case of legal entities what measures should be taken on a risk based approach and no guidance has been provided to help reporting entities to address this issue consistently.

842. The Norms 496/2006 outlines a risk based approach which is focused on the implementation of internal policies and CDD procedures by the reporting entities and it is essentially based on enhanced due diligence for the higher risk customer. The implementation of a risk management process by the reporting entities requires as the first essential step the issuing of specific guidance to assist reporting entities in consistently developing the risk based approach.

843. As a consequence, specific provisions should further develop the extent of CDD measures on a risk sensitive basis depending on the type of customer, business relationship or transaction (simplified or enhanced due diligence).

844. Furthermore, in the case of the failure to satisfactorily complete CDD there is no specific provision requiring that the business relation is not started or the transaction is not performed.

845. The general requirements of the AML/CFT Law are also applicable to dealers in precious metals and dealers in precious stones and so is Norm No. 496/2006 issued by the NOPCML. The comments under real estate agents on beneficial owner and risk based approach equally apply to this profession.

846. Lawyers and notaries are subject to CDD, record keeping, and internal reporting requirements as required in the AML/CFT Law. As these professionals are supervised by SROs they are not covered by the Norms issued by the NOPCML. No specific guidelines on CDD and record keeping requirements are issued by the SROs.

847. The assessors were advised that these professionals did not understand their new obligations under the AML/CFT Law very well in the beginning but this situation had changed and they are now much more aware of their obligations. There are, however, still gaps as to the concept of beneficial owner and the risked based approach.

848. The Romanian authorities informed the assessors that "trust and company service providers" (other than auditors, lawyers and notaries who provide this service) do not operate in Romania

849. *Applying Recommendation 6*. There is currently no requirement to conduct additional measures regarding PEPs as required by the FATF Recommendation 6[12].

850. During the on-site visit the Romanian authorities expressed their intent to adopt new provisions in the context of the Third European Union Directive.

851. According to Article 10, Para. 5 of Norms No. 496/2006, the DNFBP shall request information on the public or political position of the customer as part of the CDD procedure and, pursuant to Article 25, the public position is taken into account when assessing customers with a higher risk.

852. Nevertheless, there is not a clear definition of politically exposed person in relation to Recommendation 6. During the meetings with representatives of DNFBP it was obvious that they were not acquainted with the notion of PEPs.

[12] Romanian authorities have indicated that the Third Directive is now implemented by GEO 53/2008 and PEPs are now regulated by the GEO

853. *Applying Recommendation 8*. Pursuant to article 8 of the Norms DNFBP are required to pay special attention in the case of non-resident customers and of customers who are not present when the transaction is performed. In the case of a business relationship through correspondence or through modern telecommunication article 8, 9, 16 and 19, Para. 1of the Norms require that the DNFBP apply the same procedures as provided for when the customer is physically present.

854. The Romanian authorities informed the evaluators that in this case the DNFBP shall verify the truthfulness of the provided information. It is not clear to the evaluators how the said provisions are implemented by the obliged entities. The Romanian authorities have underlined that the practical implementation of the said article is discussed during training activities, but no further provisions set out the measures that should be taken referring to non-face-to-face customers to verify accurately the information provided by the customer.

855. There is no general guidance on the issue of emerging technological developments.

856. *Applying Recommendation 9*. The issue of relying upon a third party concerning the CDD process is not covered for DNFBP. Norms No. 496/2006 is silent on this aspect and the evaluators advice that this issue be addressed in the Norms.

857. *Applying Recommendation 10*. The record-keeping requirements of all reporting entities, including DNFBP, both on transactions and on customer identification are provided for in Article 13 of the AML/CFT Law. The Norms also has a similar provision in article 6. The weaknesses described for financial institutions are equally valid for DNFBP.

858. Furthermore, article 21 of the Norms requires DNFBP to create a database on the identification of customers that will be permanently updated.

859. *Applying Recommendation 11*. Article 24 of the Norms requires DNFBP to focus on a "complex transactions/operations, with a significant value, which involve big amounts".

860. Furthermore criterion 11.2 and 11.3 are not satisfied.

4.1.2 Recommendations and comments

861. The evaluators recommend that adequate and enforceable measures are taken for linking the CDD information with transactions performed in casinos.

862. Romania does not address the 3,000 Euros threshold for casinos in law, regulation or other enforceable means.

863. The evaluators recommend Romania to consider amending Article 8 in the AML/CFT Law in order to clarify which entities and natural persons are covered by the notion of "dealers" in letter d) and especially to clarify the sentence in letter k), which is currently reading "any other natural or legal person, for acts and deeds, committed outside the financial-banking system".

864. Despite the efforts made by Romania to cover a wide range of DNFBP, which goes beyond the category of DNFBP included in the FATF Recommendations and in the 2nd EU Directive, some relevant gaps remain in the CDD procedure.

865. In particular, the procedure of identifying the beneficial owner should be strengthened and adequate provisions should be issued to comply with Rec.6, thus providing a specific requirement for enhanced due diligence referring to PEPS.

866. Furthermore, the risk based approach on simplified and enhanced CDD should be properly developed, also assisting reporting entities with appropriate guidelines.

867. The evaluators believe that even if some relevant provisions have been issued, it is essential to enhance an effective implementation of the said measures through the development of a proper monitoring of implementation by the non financial business and professions. Therefore, it is important to focus on different sectors (also further developing the co-operation with professional associations) in order to improve awareness and overcome reluctance to apply AML/CFT requirements.

868. Norm 496/2006 does not address the possibility of relying on intermediaries or third party CDD performance. It was unclear to evaluators the extent of the option of relying on a third party to perform elements of the CDD process.

869. The authorities should ensure that either by law, regulation or other enforceable means, all DNFBP are required to examine the background and purpose of all complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose. The findings should be established in writing in order to be available to help competent authorities and auditors.

4.1.3 Compliance with Recommendation 12

	Rating	Summary of factors underlying rating
R.12	**Non Compliant**	• Company service providers are not covered by the AML/CFT Law . • No enforceable measures for linking the CDD information with transactions performed in casinos. The 3,000 Euros threshold for casinos should be addressed in law, regulation or other enforceable means. • "Dealers" and "any other natural or legal person, for acts and deeds, committed outside the financial-banking system" in article 8 in the AML/CFT Law should be clarified. • The same concerns in the implementation of Recommendation 5 apply equally to DNFBP. • No adequate implementation of Rec.6 (PEPS). • Clarification on whether relying on third party to perform elements of the CDD process is allowed for DNFBP. • No provisions for DNFBP to examine the background and purpose of complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose and setting forth their findings in writing. No explicit requirement to keep the finding available for competent authorities and auditors for at least five years. • Further guidance should be developed for assisting DNFBP to implement an adequate risk based approach and to define an adequate mitigation procedure. • For legal professions under supervision of SRO the only CDD provisions are in the AML/CFT Law. No secondary and implementing regulation have been provided.

4.2 Suspicious transaction reporting (R. 16)
(Applying R.13 - 15 and 21)

4.2.1. Description and analysis

870. *Applying Recommendation 13*. 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 FIU where the obliged entity suspects or has reasonable cause to suspect funds are the proceeds of criminal activity or has reasonable grounds to suspect or suspects funds are linked to terrorism etc. or those who finance terrorism.

871. Article 3 in the AML/CFT Law clearly requires that the reporting obligation is triggered when information obtained indicates that a person (including the DNFBP listed in Article 8) has suspicions that a transaction, which is on the way to be performed, has the purpose of money laundering or terrorism financing. The employee shall inform the compliance officer, who shall notify immediately the NOPCML. The NOPCML shall confirm the receipt of the notification. Tax matters are included for these purposes and are not excluded for STR reporting purposes. There is no financial threshold in relation to suspicious transaction reporting.

872. The reporting obligation in Article 3 of the AML/CFT equally applies to DNFBP. The reporting obligation refers to suspicious transactions "...which is on the way to be performed…." does not appear to fully cover the full width of the reporting obligation as set out in FATF Recommendation 13. The reporting obligation does not fully cover money laundering or financing of terrorism if the suspicious transaction has been performed. Article 4, Para 2 covers situations related to atypical transactions for the activity of the customer. Suspicious transactions performed which are not covered by Article 4, Para 2 appear not to be covered by the reporting obligation. The reporting provision covers money laundering, terrorist financing and the proceeds of criminal activity.

873. Furthermore the reporting obligations for DNPBP, which do not have an overseeing authority, are also provided in Article 4, letter e) in the Norms (based on Decision 496/2006) for reporting entities, which do not have overseeing authorities. This provision does not broaden the reporting obligation to fully cover performed suspicious transactions. The weaknesses identified in the AML/CFT Law (Recommendation 13) also apply to the Norms.

874. The requirement to report attempted suspicious transactions are not covered. The Romanian authorities have indicated in the replies to the questionnaire that the authorities interpret the statutory language of article 3 to cover attempted suspicious transactions. However, as this is an asterisked criterion the need for attempted suspicious transactions to be reported should be explicitly provided for in either law or Regulation.

875. As far as casinos are concerned they are required to report as provided for in Article 3 in the AML/CFT Law. Casino's filed 21 STR in 2005 and 46 STR in 2006. As there are 21 casinos in Romania the number of STRs filed by casinos appears to be low. The evaluators were informed that casinos were not considered to be an effective way to launder money as they are only allowed to accept cash and credit cards. The examiners do not agree with this statement.

876. Notaries are also required on the basis of the general condition, as the other subject persons. Differently from most reporting persons, notaries file their reports to the National Union of Public Notaries (NUPN). All reports filed by notaries are codified and entered in the NUPN database. The NUPN submit all received STR in an encrypted form to the NOPCML, which has to confirm the receipt of the report. In 2005 NOPCML received 3394 CTR and in 2006 NOPCML received 59345 CTR reported by notaries (main reporting entity on CTR in 2006). Pursuant to Article 3 (8) of the AML/CFT Law all the legal professionals (including notaries) are not subject to reporting obligations when receiving and obtaining information in the course of ascertaining the legal position of a client or performing their responsibility of defending or

representing their client in judicial proceedings. According to the table on STRs on page 74/75 notaries have filed 32 STRs in 2005 and 47 STRs in 2006 on money laundering. At the time of the on-site visit notaries have not filed any STR related to financing of terrorism.

877. On request the notaries with whom the evaluators met informed that the reason for not having filed any STR was that either there was no suspicion or the data and information provided were not sufficient to report to the NOPCML. Some notaries proposed that if all transactions over 15.000 Euros performed by notaries were to be operated trough a bank and through the bank account of the notary the possibility of using notaries as money launderers would be diminished. The National Union of Public Notaries (NUPN) has issued Decision no. 44/2006. The Decision is issued by an SRO and has sanctions for non-compliance. The Decision underpins the reporting obligation and is used by the NUPN when supervising the notaries and by the NOPCML when making joint inspections with the NUPN.

878. Real estate agents are also reporting entities and they are comprised by the same reporting obligation. Real estate agents reported only 10 STR and 1 CTR in 2005 and 6 CTR in 2006. The figure for STR submitted by real estate agents appears to be very low, especially in an economy where the sale and purchase of real estate is growing. The evaluators are not convinced by the argument that the flow of money in real estate transactions could be traced through credit institutions. At the same time the examiners noted that real estate transactions in cash are possible.

879. Lawyers are also reporting persons and thus required to report on the basis of the general condition. Lawyers send their reports to the National Lawyer's Bar. The Bar then distributes the report to the NOPCML. Pursuant to Article 3 (8) of the AML/CFT Law all the legal professionals are not subject to reporting obligations when receiving and obtaining information in the course of ascertaining the legal position of a client or performing their responsibility of defending or representing their client in judicial proceedings.

880. In 2006 there were 2 CTR reported to the NOPCML. There were 6 STRs filed in 2005 on money laundering. So far there has not been filed any STR on terrorist financing. The lawyers did not seem to fully understand their important role in the fight against money laundering and terrorist financing. They appeared to be reluctant to the reporting obligation in order to protect their clients.

881. Accountants and auditors are also reporting entities. The accountants have their own professional association – "National Body of Authorised Accountants" with around 1.500 members. Auditors also have a professional association - "Financial Auditors Chambers" with around 56.000 members. Accountants and Auditors do not report through a self-regulatory body (SRO) but report directly to the NOPCML. The two associations have signed a MoU with the NOPCML. Tax advisors are also reporting entities but the examiners were advised that nowadays tax advisors were only advisers and they provided no other services. Pursuant to Article 3 (8) of the AML/CFT Law all the legal professionals (including accountants, auditors and tax advisors) are not subject to reporting obligations when receiving and obtaining information in the course of ascertaining the legal position of a client or performing their responsibility of defending or representing their client in judicial proceedings Accountant, auditors and tax advisors have not filed any STR on money laundering or terrorist financing. The examiners had the impression that this was partly due to the fact that these professions are protecting their clients.

882. Dealers in precious metals and stones (no threshold) are covered by the reporting obligation. The examiners did not meet with these professions and did not receive any information that substantiate that they have filed any STR at the time of the on-site visit.

883. *Applying Recommendation 14*. The safe harbour provision in Article 7 of the AML/CFT Law also applies to DNFBP and the provision covers all civil and criminal liability. The provision appears to fully guarantee the safe harbour provision to reporting entities and compliance officers but not to "their directors, officers and employees". Tipping off is not fully covered either. The prohibition from disclosing the fact that an STR has been reported should be referred not only to the customer, but also explicitly to third parties

884. *Applying Recommendation 15*. Like financial institutions DNFBP are also expected to establish clear responsibilities and accountabilities and should institute the appropriate internal controls to ensure that the internal policies and procedures established are maintained and adhered to by all concerned. The Norms (based on Decision 496/2006) for reporting entities, which do not have overseeing authorities provides in Article 1 that the DNFBP appoint one or more compliance officers, whose names shall be submitted to the Office, together with the nature and limits of their responsibilities. There is no requirement that the compliance officer should be appointed at the management level in so far as that is relevant in some DNFBP. Equally there is no provision that the compliance officer and other designated staff should have timely access to relevant information. The Norm also requires that the DNFBP elaborate procedures and appropriate methods of internal control, in order to prevent and combat money laundering and terrorism financing and to ensure training of their employees for recognising the operations, which may be connected to money laundering or terrorism financing and for taking immediate appropriate measures in this kind of situations. Article 30 in the Norm requires DNFBP, which have no overseeing authority to have internal control and/or internal audit to assess periodically the efficiency of procedures established including the professional level of the personnel. There are no enforceable provisions to establish screening procedures to ensure high standards when hiring employees. It should be noted, that in Romania part of the DFBBP sector is made up by practitioners or small firms where in practice it is not possible to have fully fledged internal structures for compliance and audit. The evaluators are conscious of the fact that part of the DFBBP sector is made up by practitioners or small firms where in practice it is not possible to have fully fledged internal structures for compliance and audit.

885. *Applying Recommendation 21*. Criterion 16.3 applies Recommendation 21 to DNFBP. There is no specific mention in the legislation for DNFBP to give special attention to business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations.

4.2.2. Recommendations and comments

886. The reporting obligation in Article 3 of the AML/CFT referring to suspicious transactions "...which is on the way to be performed…." does not appear to cover the full width of the reporting obligation as set out in Rec. 13. The reporting obligation in Article 3 of the AML/CFT Law does not fully cover the money laundering and terrorist financing reporting obligation if the transaction has been performed, although this is partly dealt with in Article 4, letter g) in Norm 496/2006.

887. Attempted suspicious transactions are not covered.

888. The main area of concern in the DNFBP AML/CFT regime is the low number of STRs filed. In particular when taken into account the specific sectors that - as confirmed during the on-site visit by the Romanian authorities - are particularly vulnerable to money laundering, such as real estate agents and legal and accountancy professionals. The evaluators are also concerned regarding the low level of dedication from these sectors.

889. Casinos report to and work with the NOPCML, but the evaluators still consider this sector to be vulnerable and thus continued co-operation should be ongoing in order to monitor the sector.

This low level of detection to some extent appears to be related to a lack of awareness of their vulnerability, and in some cases to reluctance to report. In relation to real estate agencies and public notaries there appeared confusion on who was best placed to detect suspicious activity.

890. A further measure to reduce the risk of money laundering within the real estate sector (which was considered extremely high risk) would be to enhance the integrity and 'fit and proper' market entry arrangements for the sector. This could include specific provisions, such as licensing and the creation of a national union of real estate agents.

891. The number of reports coming from DNFBP in general is extremely small, which appears to indicate a low level of effectiveness of the AML/CFT regime in this area so far.

892. Recommendation 14 applies to DNFBP but the "safe harbour" provision does not include explicitly directors, officers and employees ((permanent and temporary). Concerning "tipping off" the provision does not prohibit the disclosing to a third person of the fact that a STR has been filed to the Office.

893. Recommendation 15 also applies to DNFBP. There is an obligation for the DNFBP to elaborate procedures and appropriate methods of internal control and to appoint one or more compliance officers. However, there is no requirement that the compliance officer should be designated at the management level. Nor is there an obligation to secure the compliance officers direct and timely access to the relevant data. There are no specific provisions on employee screening for DNFBP.

894. The issue of potential risks that may arise from business relationships and transactions with persons from countries which do not or insufficiently apply the FATF Recommendations needs to be addressed in regard of the DNFBP.

4.2.3. Compliance with Recommendation 16

	Rating	Summary of factors relevant to s.4.2 underlying overall rating
R.16	**Non-Compliant**	• Requirement to broaden the reporting obligation to also cover money laundering and terrorist financing if the suspicious transaction has been performed (beyond Article 4, letter g) in Norm 496/2006). • Attempted suspicious transactions are not covered. • Not all required aspects of TF are included in the scope of the reporting requirement. • Low level of STR from DNFBP (effectiveness). • Improved outreach and guidance on STR needed for all DNFBP and especially for real estate agents and legal and accountancy professionals who are considered to be particularly vulnerable to ML/TF. • Some DNFBP appear to lack awareness of their vulnerability and/or appear to be reluctant to report (lawyers, notaries, real estate agents, accountants). • "Safe Harbour" provision does not explicitly include directors, officers and employees (permanent and temporary). • Disclosing to a third person that a STR has been filed to the Office is not explicitly prohibited. • No requirement that the compliance officer should be designated at the management level. • No obligation to ensure the compliance officer direct and timely access to relevant data. • Only indirect provisions on employee screening for lawyers, notaries, accountants and public notaries. • DNFBP are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.

4.3. Regulation, supervision and monitoring (R. 17, 24 and 25)

4.3.1. Description and analysis

Recommendation 17

895. Countries should ensure that effective, proportionate and dissuasive criminal, civil and administrative sanctions are available to deal with natural or legal persons covered by FATF Recommendations that fail to comply with national AML/CFT requirements.

896. Description and analysis for financial institutions concerning the criteria set out under Recommendation 17 are fully applicable to DNFBP.

Recommendation 24

897. Criteria 24.1.1 stipulates that countries should ensure that a designated competent authority has responsibility for the AML/CFT regulatory and supervisory regime.

898. Article 17 of the AML/CFT Law provides for the following distribution of tasks in monitoring compliance with the AML/CFT requirements:

- the authorities having financial control attributions, according to the law;
- The prudential supervision authorities of the persons that are under supervision;
- the NOPCML for the persons that are not under supervision of any authority;
- the leading structure of independent legal professions for public notaries, lawyers and other persons exercising independent legal professions.

899. The NOPCML has regulatory and supervisory powers when it comes to DNFBP, including casinos. Lawyers and notaries are, however, supervised by the National Union of Bars from Romania (NUBR) and the National Union for Public Notaries (NUPN). The National Office for Prevention and Control of Money Laundering supervises auditors.

900. Under the AML/CFT Law the monitoring authorities also have obligations. If information obtained indicates suspicions of money laundering, terrorism financing, or other violation of the provisions of the AML/CFT Law the authorities shall immediately inform the Office (Article 17, Para.1.1).

901. The NOPCML supervises a significantly wide range of DNFBP, as summarised by the following table:

Supervision Authority	Categories of DNFBP Entities	Statistical Numbers
NOPCML	accountants	56.000
NOPCML	associations	32.057
NOPCML	auditors	1659 (natural persons) 667 (legal persons)
NOPCML	betting houses	28
NOPCML	bingo houses	12
NOPCML	car dealers	2633
NOPCML	casinos	21
NOPCML	dealers in precious metals and stones	462
NOPCML	foundations	15723
NOPCML	gambling houses	1253
NOPCML	lottery	1
NOPCML	real estate agents	9570
NOPCML	slot machines	951
NOPCML	tourism dealers	3802
NOPCML	consultancy for business and management	26600
National Union of Bar Association	lawyers	16.000
National Union of Public Notaries	notaries	1.753

902. Decision no. 10/2007 provides for the methodological rules applicable on the activity of supervision performed by the Supervision and Control Department of the NOPCML, which has been set up within the Legal, Methodology and Control Directorate, empowered with the task of off-site and on-site supervision.

903. With the aim of enhancing supervision, the NOPCML has signed memoranda of co-operation with the National Bars Union and the National Union for Public Notaries from Romania.

904. In 2004 the NOPCML concluded a Protocol with the Financial Guard, which is the institution empowered to prevent, detect and fight against any acts and deeds which can lead to tax evasion and fiscal frauds.

905. The NOPCML concluded memoranda also with other professional associations that do not have supervisory powers in order to enhance their role of promoting the compliance of AML/CFT regulations, as well as awareness-raising activities especially through training initiatives and the issuing of specific guidelines.

906. The table below summarises the protocols concluded by the NOPCML with professional associations and SRO:

Professional Association	**Date of signature**
Chamber of Financial Auditors	March 2007
Body of Expert Accountants and Licenced Accountants	October 2004
National Union for Public Notaries	September2005
National Union Bars	November 2005
Association of Casinos Organisers	December 2006
Association of Car Dealers (Association of Producers and Cars Importers)	December 2005
Romanian Union of Real Estate	October 2004
Romanian Association of Real Estate	November 2005

907. A designated competent authority should licence casinos according to criteria 24.1.2. The Commission for Licensing Gambling Activities is responsible for licensing gambling activities under the provisions of Governmental Decision no.251/1999 on authorising conditions, organising and exploitation of gambling activities and the competent authority to grant the authorisation.

908. The Commission is an entity which carries out its activities within the Ministry of Public Finance and is composed of representatives from the Ministry of Public Finance, the National Agency for Fiscal Administration, the Ministry of Administration and Interior and a representative of the Association of Casinos Organisers from Romania (who is a member without a voting right).

909. The Commission is in charge of issuing, suspending or cancelling licences for gambling activities. The licence is valid for one year and afterwards the agent may apply for a new licence. A licence cannot be sold without the approval of the Commission.

910. Article 6 of Governmental Decision no. 251/1999 provides for a wide range of gambling activities that are allowed in Romania. Internet casinos are forbidden.

911. Periodical verifications are conducted through the specialised control bodies of the Ministry of Interior related to the compliance with legal provisions regarding organisation, authorisation and performing of gambling activities.

912. The table below summarises the number of licences issued in 2006:

Gambling activity	Number of licences emitted
Casinos	21
Bets agents	28
Places for bingo	12
Slot machines	951
National Lottery	1
Electronic devices with prizes	1253

913. According to criteria 24.1.3n a competent authority should take the necessary legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest in, holding a management function in, or being an operator of a casino.

914. Grounds for refusal of the licence for gambling activities are provided for in Article 19 of Governmental Decision no. 251/1999, among which: "The administrator or executive directors of economic agents were convicted for fraud, theft, false and use of false, tax evasion, contraband or any other offence, which had as result the loss of political and civil rights or were sanctioned for breach of legal provision regarding gambling activities".

915. No legal or regulatory measures seem to be in place to prevent criminals or their associates from holding or being the beneficial owner of a significant or controlling interest in, holding management functions in, or being an operator of casinos.

916. The fact that no specific measures is taken to protect Romanian casinos from being misused by beneficial owners for criminal purposes should be urgently addressed by the Romanian authorities, especially taking into account that casinos have been recognised as a sector particularly vulnerable to money laundering. It should be taken into account that during the on-site visit members of the Association of Casinos Organisers explained that most of the casinos operating in Romania are not owned by Romanians, but by foreigners (from Turkey, Israel, Austria, Ukraine) and they are part of larger groups.

917. Significant steps have been taken by the NOPCML towards an increased co-operation with the Association of Casinos Organisers, which in December 2006 issued internal procedures on AML/CFT.

918. Romanian authorities have underlined that as results of several joint inspections with the Financial Guard, which led to sanctions, including financial fines and temporary closure of the activities, casinos have developed a proactive attitude, and the number of suspicious transactions reports has increased.

919. In accordance with criteria 24.2 countries should ensure that the other categories of DNFBP are subject to effective systems for monitoring and ensuring compliance with AML/CFT requirements. Sub criteria 24.2.1 requires a designated competent authority or SRO responsible for monitoring and ensuring compliance of DNFBP with AML/CFT requirements to have adequate powers to perform its functions, including the power to monitor and sanction and to have sufficient technical and other resources to perform its function.

920. In March 2007 the NOPCML issued Decision no.90/2007 (Working procedures on supervision, verification and control activities for the reporting entities which are not subject to prudential supervision of certain authorities), which provides for the legal framework regarding the organisation of controls and supervision performed by the FIU on the aforementioned entities.

921. The procedures establish a supervision approach based on the exposure of reporting entities to ML/FT risks, leading to the detection of vulnerabilities to money laundering and terrorism financing as resulted through off-site and on-site activities and inspections.

922. The strategic approach based on the risk assessment to monitor this sector, which is extremely fragmented, has been developed only recently by the Romanian FIU. Using a scoring system called MAINSET, the ML and TF risk is evaluated on the basis of data and indicators extracted from the off-site supervision. Before 2007 the inspections of the DNFBP were carried out randomly by the NOPCML.

923. The number of DNFBP to be supervised by the NOPCML is large. Furthermore the DNFBP cover a wide range of heterogeneous activities, which requires different expertises. As the NOPCML only has 12 persons to undertake on-site inspections the assessors have serious concerns regarding the sufficiency of supervisory resources available to the NOPCML.

924. Article 17 (2) of the AML/CFT Law provides that the NOPCML may perform checks and controls jointly with the other supervisory authorities of the obliged entities. Joint inspections have been carried out with the Financial Guard and NUPN.

925. The joint inspections with the Financial Guard are usually taken on the proposal of the NOPCML. Joint inspections were performed on casinos (in 2005: 19 casinos and in 2006: 8 casinos) and on non-profit organisations.

926. The table below summarises the results of on-site supervision structured by the infringements of the reporting entities during the period March-August 2007[13] (period of application of the working procedures system MAINSET):

Table of infringements covering all DNFBP

Infringements	**Percentage**
Violations of Art.14 of the AML Law (failure to designate a compliance officer, internal policies)	37%
Violations of Art.16 of the AML Law (failure to set up adequate procedures of internal control)	32%
Violations of Art. 3, para.6 of the AML Law (failure report cash transactions above 10,000 EUR)	28%
Violations of Art.15 of the AML Law (failure to report STR)	1%
Violations of Art.13 of the AML Law (Keeping ID documents for a years period)	1%
Violations of Art.9 of the AML Law (Failure to apply CDD requirements)	1%

[13] The on-site visit took place in the beginning of May 2007. For this reason only part of the results reflected in the table relates to the time of the on-site visit and immediately thereafter.

927. For independent legal professions the supervisory authorities are the following:

- The National Union for Public Notaries (NUPN) is a professional organisation with legal personality. NUPN coordinates at the national level the activity of public notaries and verifies the compliance with Law no. 36/1995 on Public Notaries and Notaries Activity and the Statute of NUPN. Furthermore it is the supervisory and control body for the public notaries. NUPN has concluded a Protocol with the NOPCML in 2005, establishing a permanent co-operation with the Romanian FIU. According to this Protocol the NUPN has set up a database to collect all the reports (CTR and STR) sent by the public notaries and consequently forwarded to the NOPCML in an electronic codified format.
- In 2006, 15 joint control inspections of public notaries were performed by the NOPMCL and the NUPN. If, during the monitoring of notaries, the NUPN obtains information on violations of the provisions of AML/CFT Law or becomes suspicious that funds are the proceeds of a criminal activity, the NUPN will immediately notify the NOPCML
- The National Union of Bars from Romania is a legal person (Law no.51/1995). According to the Statute of Lawyer's profession all the bars set up in Romania must be members of the NUBR.
- NUBR has concluded a co-operation Protocol with the NOPCML in 2005, which establishes a permanent co-operation to exchange data and information, and organises specific training activities. There have not been any inspections of lawyers and the NOPCML does not perform joint controls with the National Union of Bars.

928. The professional self-regulatory organisations have implemented their AML/CFT responsibilities, thus disseminating specific guidelines to their members, as well as incorporating AML/CFT infractions in their sanctioning policy.

929. The Table below summarises the results of NOPCML controls in the years 2005-2007(end of March)

Year	Reporting entity	Controlled entities	Sanctioned entities	Fines applied by the NOPCML
2005	Casinos	19	19	415.000 RON
2006	Gambling activities	8	2	15.000 RON; 1 Warning
	Real estate agencies	27	8	85.000 RON; 3 Warnings
	Auctions Houses	3	3	30.000 RON; 2 Warnings
	Tourism agents	12	1	1 Warning
	Leasing/car dealers companies	25	10	105.000 RON; 3 Warnings
	Public notaries	15	15	-
	Consulting companies	1	1	Warning
2007	Consulting companies	7	7	7 Warnings
	Real Estate agencies	10	6	6 Warnings
	Foundations	18	5	5 Warnings

Recommendation 25 (Guidelines and feedback)

930. Criterion 25.1 requires competent authorities to issue Guidelines that will assist DNFBP to implement and comply with their respective AML/CFT requirements. Two manuals (The Guidelines for Suspicious Transactions and the Training Manual for Combating Money Laundering) have been issued by the NOPMCL during the Twinning Projects for improving the detection activity of the suspicious transactions in 2002, which were updated in 2004 and in 2005.

931. Guidelines are also issued by various DNFBP organisations. There are, however, extensive sectors which are not covered by the guidelines issued by the NOPMCL (seller and purchasers of art objects, precious stones, car dealers, tourism dealers, associations and foundations) or by Associations.

932. The low number of reports coming from some sectors of DNFBP entails the urgent need for issuing further Guidelines relevant to individual sectors in order to increase their awareness with respect to the suspicious transaction report obligation, particularly aimed at those categories of DNFBP that have never or little reported so far.

933. Moreover, the Guidelines should further develop techniques of terrorism financing.

934. During the period 2002-2006, a significant number of training sessions were organised, in which the compliance officers of DNFBP participated.

935. The NOPCML provides general feedback to reporting entities mainly within the training initiatives, presenting typologies and trends of money laundering and terrorism financing. Referring to case-by-case feedback, only the acknowledgment of the receipt of the report is sent to the reporting entities.

936. The NOPCML should consider targeting specific feedback to high-risk sectors.

4.3.2. Recommendations and comments

937. The evaluators strongly recommend that Romanian authorities consider implementing adequate legal or regulatory measures to prevent criminals or their associates from holding or being the beneficial owner of casinos.

938. A further measure to reduce the risk of money laundering within the real estate sector (which the evaluators consider to be extremely high risk) would be to enhance the integrity and "fit and proper" market entry arrangements for this sector. This could include specific provisions, such as licensing and the creation of a national union of real estate agents.

939. Evaluators also noted that the Register of associations and foundations kept by the Ministry of Justice should be properly updated and the compliance with record keeping requirements properly monitored, to become a reliable source when performing AML/CFT supervision.

940. Given the limited resources of the FIU, the implementation of the developed risk-based approach to monitoring may be helpful but is not sufficient. Whilst there is obvious co-operation, for example through joint inspections, between the NOPCML and other supervisory bodies the view of the evaluators is that NOPCML resources are inadequate, especially taking into account that only 12 staff members are conducting on-site inspections. As such, consideration should be given to the following possibilities:

- Either increasing NOPCML's supervisory capacity, or
- a re-configuration of responsibilities between the various supervisors.

941. The evaluators were impressed with NOPCML's movement towards a risk-based supervision approach, which currently is in the early stages of implementation. It is anticipated that this will support more targeted supervision, which should lead to greater effectiveness.

942. Low level of reporting from professionals and high risk sectors (such as real estate agents and legal and accountancy professions) require more targeted guidelines to raise awareness. Guidelines should further develop techniques of terrorism financing.

943. The NOPCML should consider targeting specific feedback to high-risk sectors.

4.3.3. Compliance with Recommendations 24 and 25

	Rating	Summary of factors relevant to s.4.5 underlying overall rating
R.17	**Partially Compliant**	• All supervisory bodies should consider greater utilisation of proportionate sanctions to raise compliance amongst poor performing and high risk sectors. • To increase the dissuasive effect it is recommended that Romanian authorities consider a clear channel for publicly communicating all sanctions.
R.24	**Partially Compliant**	• For casinos insufficient measures to prevent criminals /associates from holding or being the beneficial owner of a significant or controlling interest of a casino. • To enhance the integrity and "fit and proper" market entry arrangements for the real estate sector in order to reduce the risk of ML and TF. • In consideration of the number and variety of DNFBP controlled evaluators have serious concerns about the sufficiency of supervisory resources available to the NOPCML. • No systematic compliance to significant number of business included in categories that are not clearly defined by law. • No accurate statistics data on supervision of SROs. • Some sanctions have been imposed, but the level of monitoring is tiny given the size of sector.
R.25	**Partially Compliant**	• Low level of reporting from professionals and high risk sectors (such as real estate agents and legal and accountancy professions) require more targeted guidelines to raise awareness. • Guidelines should further develop techniques of terrorism financing. • To further strengthen the effectiveness of feedback the NOPCML should consider targeting specific feedback to high risk sectors.

4.4 Other non-financial businesses and professions / Modern secure transaction techniques (R.20)

4.4.1. Description and analysis

944. Criterion 20.1 states that countries should consider applying Recommendations 5, 6, 8 to 11, 13 to 15, 17 and 21 to non-financial businesses and professions (other than DNFBP) that are at risk of being misused for money laundering or terrorist financing.

945. The AML/CFT Law goes significantly beyond the category of DNFBP included in the FATF Recommendations (e.g. pawn shops, dealers, tourism, State Treasury, Customs authority).

946. Auditors, tax advisors, dealers of works of art and auctioneers are also covered (Article 8, d) and e) by the AML/CFT Law. The extension of the professions and businesses meets the obligations under Article 21, (3) and (6) of the Second Directive. It does not seem that this extension of the provisions of the AML/CFT Law is as a result of special consideration and risk-based approach. The risk of terrorist financing does not appear to have been taken into account as an issue separate from the risk of money laundering in the context of Criterion 20.1.

947. 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 ML. Examples of techniques or measures that may be less vulnerable to ML provided in the Methodology include: reducing reliance of cash, not issuing very large denomination banknotes and secured automated transfer systems.

948. The largest banknote in Romania is 500 RON (lei) (approximately 150 EUR).

949. The legal framework referring to the payment system has been harmonised with EU legislation and the former infrastructure has been replaced by a fully automated system.

950. In 2005 some new automated systems were launched which replace former manually operating systems:
- **ReGIS** (real time gross settlement system) managed by the National Bank of Romania
- **ACH** (Automated Clearing House) managed by TRANSFOND-SA
- **SaFIR** (settlement and financial instruments registration) managed by the National Bank of Romania.

951. Card payments and other electronic payments are processed in compliance with Regulation 6/2006 issued by the National Bank of Romania. The Regulation applies to credit institutions, non-banking financial institutions and other participants in transactions with electronic payment instruments. The NBR provided the following data on the issued cards, which clearly indicate that the use of debit and credit cards is increasing.

952. Cards issued in the country

	2001	2002	2003	2004	2005	2006
Cards with a cash function	2,083,150	3,498,147	4,637,870	5,775,897	7,253,894	9,172,773
Cards with a payment function (except an e money function) of which:	2,083,150	3,498,045	4,641,710	5,781,408	7,267,522	9,174,403
Cards with a debit function	1,928,132	3,260,366	4,382,816	5,485,679	6,613,842	7,884,427
Cards with a delayed debit function	110	476	696	854	1,276	13,958
Cards with a credit function	155,062	237,203	258,198	307,962	721,509	1,287,122
Cards with an e money function	0	0	0	0	0	0
Total number of cards (irrespective of the number of function on the card)	2,083,150	3,498,147	4,641,410	5,793,257	7,325,574	9,181,390

953. Taking into account the data of cards issued in 2005, there was an increase of 26% in one year. In terms of volume card payments grew by 32%.

954. Nonetheless, as confirmed by the following data on currency in circulation outside the Monetary and Financial Institutions, there is still great reliance on cash in the Romanian economy.

Banknotes and coins (RON millions; end of period)

	2001	2002	2003	2004	2005	2006
Currency in circulation	4,001,04	5,282,50	6,520,66	8,223,19	12,739,49	17,365.93
Total banknotes in circulation	3,937,63	5,204,32	6,437,56	8,132,18	12,624,14	17,233.69
Currency in circulation held by MFIs	421.84	683.23	663.75	593.90	1,184.42	2,333.27
Currency in circulation outside MFIs	3,579.20	4,599.27	5,856.92	7,629.29	11,555.08	15,032.66

4.4.2 Recommendations and comments

955. The examiners noted that Romania has taken steps to meet Criterion 20.1 and has considered applying the relevant Recommendations to other DNFBP. Partly this is a result of the specific obligations of the Second EU Directive.

956. Romania has taken steps to encourage the development and use of modern and secure techniques for conducting financial transactions that are less vulnerable to money laundering.

957. As regards the measures taken to date to reduce cash transactions, these do not appear to have had the desired effect so far. Reliance on cash is still extensive, even if significant steps have been taken to develop modern transaction techniques.

4.4.3 Compliance with Recommendation 20

	Rating	Summary of factors underlying rating
R.20	**Largely Compliant**	• Further measures should be taken to reduce cash transactions. Reliance on cash still extensive.

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

958. Law 31/1990 regulates the setting up and functioning of commercial companies. Law 26/1990 and the National Office for Trade Register regulates the trade register issues.

959. The National Office for Trade register (NOTR) is a public institution under the Ministry of Justice. The NOTR is a legal person and it has its own budget. The main functions of the NOTR are the following:

- legal publicity;
- keeping records on the legal and financial status of all traders;
- providing economic and statistical information;
- simplifying of procedures concerning incorporation and authorisation of companies;
- informing and assisting the traders on issues related to the Trade Registers activities.

960. The NOTR manages the central trade register through the database (RECOM) based on daily updated information on companies.

961. Commercial companies are set up under the following forms: general partnership; limited partnership; joint stock company (public limited liability company); limited partnership by shares; limited liability company. The general partnership company or the limited partnership companies should be set up by a constitutive act and should be signed by all the associates or by the founding members. The constitutive act should also acquire an official registration date by submission to the Trade Register Office and should contain an extended requirements list in relation to the submitted documents. Such requirements differ depending on the legal structure of the concerned company.

962. Article 6 (2) of Law 31/1990 provides that persons who are incapacitated or have been sentenced for fraudulent management, misuse of trust, forgery, use of forgeries, cheating, embezzlement, perjury, bribery or taking bribes etc., can not assume the position of founders.

963. Article 36 requires that the company is registered in the Trade Register where the registered office is located within 15 days of the signing of the constitutive act. The request for incorporation should be accompanied by the specified documents such as: the constitutive act of the company; the proof attesting the payments made in accordance with the constitutive act; proof of the company's registered office and available assets; documents attesting the ownership and operations concluded on behalf of the company and approved by the associates etc. They should be jointly liable for any failure to accomplish their duty. The commercial company becomes a legal person from the date of its incorporation in the Trade Register. Information on all shareholders (including majority shareholders) and beneficial ownership is collected or made available. Competent authorities have access in a timely fashion to adequate, accurate and current information on beneficial ownership and control.

964. Even if the registration of the beneficiary ownership in the Trade Register is not mandatory, there are legal provisions meant to ensure that this aspect is correctly presented in the register kept by the company itself (art. 177 from Law 31/1990 on commercial companies). The keeping of the register of shareholders in due form is a legal obligation for the management of the

company. Moreover, the administrators must deliver to any person information on the ownership structure and, if requested, certificates regarding the data included in this register. (art. 178 from Law 31/1990).

965. Changes in the constitutive act, the registered capital and the company's legal status are required to be registered with the NOTR. With regard to the management and control; all commercial companies are compelled to provide this information to the NOTR.

966. The NOTR is a public register and the information registered is available to any person that requests such information. The DIOCT and the NAD have on-line access to the register.

Joint-Stock Companies and Limited Partnership by Shares can issue bearer shares. Article 8 (f) of the Law 31/1990 provides that the constitutive acts of such companies should contain information about the number and nominal value of the shares and whether they are registered or on bearer. The ownership right of the shares on bearer is transferred by simple assignment. There are no limits for the number or amount of bearer shares within a company. A bearer shares owner who wants to vote at the General Assembly has to identify himself. The evaluation team was advised that it is possible to trace bearer shares and how many bearer shares are in circulation. From the statistics provided by the NOTR, between 2002-May 2007, the percentage of joint stock companies that issued bearer shares varies from 2.5% (2002) to 9.1% (2005). Between January-May 2007, the percentage was 2.7 % (147 joint stock companies, out of which 4 issued bearer shares). Shareholders (including bearer shares) have to identify themselves in order to obtain cash dividend and to exercise any other right. The assessors were unable to assess the full transparency in relation to the operation of bearer shares.

Additional elements

967. The evaluators were informed that any interested person may request from the National Office for Trade Register the relevant information on a commercial company. The Trade Register Office is obliged to issue, at the applicant's expense, certified copies of registrations performed in the register.

5.1.2 Recommendations and comments

968. The assessors were unable to assess the full transparency in relation to the operation of bearer shares.

5.1.3 Compliance with Recommendation 33

	Rating	Summary of factors underlying rating
R.33	**Largely Compliant**	• No possibility to fully assess the operation of bearer shares.

5.2 Legal Arrangements – Access to beneficial ownership and control information

5.2.1. Description and analysis

969. Romanian legislation does not contain provisions allowing for the creation of trusts and the legal concept of trusts does not exist under Romanian law. Romania has not ratified the 1985 Hague Convention on the Law Applicable to Trusts and on their Recognition.

970. There are no obstacles for Romanian citizens to be trustees of a foreign trust and Romanian legal practitioners may establish foreign trusts for their Romanian clients. It is also feasible that a subsidiary of a foreign trust might operate in Romania.

971. Whilst the Romanian legal system does not recognise the creation of trusts, and the legal concept of trusts does not exist in Romanian law, it may nevertheless be useful for Romania to consider examining issues with respect to trusts and provide information to raise the awareness of Romanian financial institutions of these types of legal arrangements.

5.2.2. Compliance with Recommendation 34

	Rating	Summary of factors underlying rating
R.34	**N/A**	• The concept of trusts is not known under the Romanian Law.

5.3 Non-profit organisations (SR VIII)

5.3.1. Description and analysis

972. The activity of non-profit organisations in Romania (hereinafter - NPOs) is regulated by Governmental Ordinance No. 26/2000 on foundations and associations. The Ordinance regulates the establishment, registration, organisation, functioning, and dissolution of NPOs. In Romania NPOs are associations and foundations. There are 32,057 associations and 15,723 foundations registered in Romania. NPOs are reporting entities and obligations provided in the AML/CFT Law apply equally to this sector.

Establishment and registration formalities of NPOs

973. Article 4 of the GO provides that an association is comprised of at least 3 persons and is set up with the purpose of performing activities for general or local interest or for the non-profitable interest of the associates.

974. Article 15 of the GO provides that the foundation may be set-up by one or several persons on the basis of a legal act. The foundation should have the property permanently and indisputably appropriated for a purpose of general or local interest. The property of the foundation should comprise assets or money in total value of at least 100 minimum gross salaries at the day of the setting up of the foundation.

975. The constitutive act of an association or foundation shall comprise, otherwise being subject to absolute nullity, among other requirements: identification data of all members of the association or foundation: their name or denomination and, if applicable, permanent address or headquarters; the purpose of setting-up of the association or foundation; the initial patrimony of the association or foundation (Criterion VIII.3.1.).

976. The GO further provides that the association and foundation respectively become legal persons with legal personality after being registered with the Register for Associations and Foundations in the territorial courts of first instance.

977. The National Register for Associations and Foundations is administered by the Ministry of Justice. The Ministry of Justice verifies the availability of the name for the association or foundation and keeps all the records as public information. The annual accounts are supervised by the Financial Guard. The NOPCML is the supervisor for compliance with AML/CFT requirements.

978. Registration in the National Register for Associations and Foundations is performed by a judge from the court of first instance where the association or foundation has its premises. The judge verifies the legality of the documents submitted for registration and renders a motivated decision on enrolling the association in the Register. The judge is specially delegated by the president of the court. The court of first instance is obliged to forward to the Ministry of Justice of Romania the final court decisions regarding the setting-up or dismantling of an association or foundation within 3 days.

979. The National Register is public. The Ministry of Justice is obliged to issue, at the applicant's expense, certified copies of registrations performed in the National Register for Associations and Foundations.

Organisation and functioning of NPOs

980. Associations have the following bodies: General Assembly, Executive Council and Censor or, as the case may be, the Censors' Commission.

981. The General Assembly should have at least one meeting per year and should have permanent control over the other bodies of the association. The Executive Council ensures the enforcement of the decisions taken by the General Assembly. The constitutive act may provide the designation of a censor or a censor's commission.

982. The Foundation has the following bodies: Executive Council and Censor or, as the case may be, the Censors' Commission. For the associations with more than 100 members registered at the date of the last general assembly, the internal financial control shall be carried out by the Censors' Commission. In the field of transparency, GO provides that for the associations and foundations of public utility, there is an obligation to publish excerpts after the activity reports and the annual financial statements in the Official Gazette of Romania, Part IV, as well as in the National Register of non-profit making legal persons, within 3 months of the end of the calendar year.

983. The associations and foundations may set-up commercial companies. The dividends obtained should mandatorily be used in the purpose of association and foundation except when they are reinvested in the same commercial companies. The associations and foundations may be dissolved through a court decision, upon request from any interested person under the circumstances stipulated in the Government Ordinance. Practice has shown from time to time that an association or a foundation did not exist in reality. The Register of Associations and

Foundations kept by the Ministry of Justice should be properly updated in order to be a reliable source when performing AML/CFT supervision.

Preventive measures, powers of the competent authorities and sanctions

984. The associations and foundations are reporting entities, according to Article 8 (j^1) of the AML/CFT Law.

985. Being reporting entities, associations and foundations have the same obligations as all other reporting entities, including the obligation to immediately file STRs to the NOPCML. The evaluators, however, did not receive any information which demonstrates that Romanian authorities periodically review the NPOs with the object of assessing terrorist financing vulnerabilities.

986. The associations and foundations are supervised by the NOPCML. The NOPCML has direct access to the association and foundation register within the Ministry of Justice. The evaluators were informed that the NOPCML uses off-site inspections (1,302 off-site inspections during 2007). As a result of the off-site inspections, high risk NPOs are selected for on-site inspection.

987. The prosecution authorities have access to all information in order to obtain the necessary information on NPOs. Furthermore a mechanism to allow for prompt investigation is in place.

988. The NOPCML started to train NPOs in AML/CFT shortly after the on-site visit.

989. No STRs on money laundering or terrorism financing have been filed by NPOs.

5.3.2. Recommendations and comments

990. The non-profit sector is closely regulated and associations and foundations are subject to registration systems. The evaluators, however, did not receive any information which demonstrates that Romanian authorities periodically review the NPOs with the object of assessing terrorist financing vulnerabilities.

991. A permanent independent audit should be established to ensure that funds are used for the stated purposes, have reached the intended beneficiary and to detect misdirection of the funds. Moreover, not only the basic information submitted under the registration, but also the NPOs' records should be publicly accessible.

992. The NPOs should take preventive verification measures to ensure that their entities, as well as their partner organisations, are not being penetrated or manipulated by terrorists or terrorist organisations. Such preventive measures should also include special training programmes. Terrorist financing experts should work with NPO supervisory authorities to raise awareness of the problem and alert these authorities to the specific characteristics of terrorist financing.

993. Regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in terrorist financing and new protective measures is recommended.

5.3.3. Compliance with Special Recommendation VIII

	Rating	Summary of factors underlying rating
SR.VIII	**Partially Compliant**	• Romanian authorities do not periodically review the NPOs with the object to assess terrorist financing vulnerabilities. • Insufficient measures are in place to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations. • No effective implementation of the essential criteria VIII.2. • No regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures.

6. NATIONAL AND INTERNATIONAL CO-OPERATION

6.1 National co-operation and co-ordination (R. 31)

6.1.1. Description and analysis

994. Recommendation 31 (and Criterion 31.1) is concerned with co-operation and coordination between policy makers, the FIU, law enforcement, supervisors and other competent authorities.

995. The Centre for Operative Anti-terrorism Coordination (COAC) coordinates the activities performed within the NSPCT, through representatives designated by the public authorities and institutions which form the National System for Preventing and Combating Terrorism (NSPCT). COAC is an organisational-functional structure within the Romanian Intelligence Service, which functions according to the provisions of Law no. 535/2004 on preventing and fighting terrorism.

996. In order to apply the provisions of the General Protocol for the organisation and functioning of the National System for Preventing and Combating Terrorism (NSPCT), and of Law no. 535/2004 on preventing and fighting terrorism, the Romanian Intelligence Service and the competent institutions of NSPCT concluded mutual co-operation protocols in the area related to the prevention and combat of terrorism.

997. The CCOA is in charge of the following activities:
- Coordinating the activities performed within the National System for Prevention and Combating Terrorism;
- Improving the operative exchange of data and information between the said authorities on terrorism activities, as well as integrating data and information in order to establish and take the necessary measures;
- Monitoring the terrorist activities and thus informing operatively the authorities and institutions with competence, which is part of the National System for Prevention and Combating Terrorism.

998. The Centre for Operative Antiterrorism Coordination (COAC) within the NSPCT is the co-coordinator of all activities and counteraction related to terrorism.

999. There is no provision in the Romanian legislation for a policy co-coordinating mechanism of the major players in the AML field. The main instruments of operational coordination in the AML field are the bilateral agreements signed by the FIU as well as by the other supervisory authorities.

1000. In particular, the operational coordination of the NOPCML with the domestic law enforcement counterparts, supervisory authorities and professional association is developed through protocols.

1001. The NOPCML has signed 31 co-operation protocols with law enforcement institutions, financial prudential supervision authorities, secret and information services, as well as with the professional associations of reporting entities, which are the subject persons of the AML/CFT Law.

1002. During the on-site visit the NOPCML illustrated initiatives taken towards the strengthening of inter-institutional co-operation, through the development of common activities and periodic consultation with supervisory authorities and law enforcement counterparts.

1003. Based on the co-operation protocols concluded by the Office with the law enforcement authorities, periodical meetings are held on the analyses of the specific crime phenomenon, establishing trends and taking common measures for the effectiveness of the prevention and control actions.

1004. The NOPCML is the co-coordinator of co-operation between the NOPCML and the main institutions and authorities involved in AML/CFT. Internal co-operation activity is materialising through a large area of actions performed in co-operation with the mentioned institutions:

a) proposals for amendments in order to improve the legislation in the area of prevention and combating money laundering and terrorism financing, in order to harmonise the primary and secondary internal legislation with the European and international standards;
b) the elaboration of norms and internal procedures, on categories of institutions (banking, financial, etc) for the prevention, finding and reporting of suspicious transactions;
c) the supervision and control of applying the legislation in the area through the organisation of some common actions of control and checking, according to competences established through art. 17 of Law no. 656/2002 for prevention and sanctioning money laundering, as amended and completed;
d) the investigation and documentation of the cases suspected to be connected with money laundering and terrorism financing activities;
e) the organisation of periodical meetings in order to analyse trends of the criminal phenomena and the measures for the efficiency of the action for prevention and combating money laundering and terrorism financing;
f) the establishing of on-line connections between the informatics system of the Office and of other institutions, in order to increase access to information;
g) participation at working groups in order to implement the national strategies on different activity sectors.

1005. Furthermore, contact persons are appointed to improve efficient communication between the authorities.

1006. The Action Plan on internal co-operation and protocols signed by NOPCML has, as a main objective, the practical implementation of this co-operation mechanism.

1007. The financial supervisory authorities have general co-operation agreements with the law enforcement authorities that allow the exchange of information, including on money laundering and terrorism financing.

Recommendations and comments

1008. The evaluators recommend that Romania considers the development of adequate and effective mechanisms of domestic policy coordination of the main players (FIU, law enforcement and supervisors) especially in the fight against money laundering in order to enhance the strategic co-ordination and to review systematically money laundering vulnerabilities and the performance of the system as a whole.

6.1.3 Compliance with Recommendation 31

	Rating	Summary of factors underlying rating
R.31	**Largely Compliant**	• In the AML field mechanism of policy coordination of the key stakeholders should be further developed. • A mechanism for co-operation and co-ordination in place but appears not to be effective in ensuring that all necessary co-operation and co-ordination happens in practice. Arrangements for supervision and sanctioning need greater coordination.

6.2 The Conventions and United Nations Special Resolutions (R. 35 and SR.I)

6.2.1 Description and analysis

1009. The United Nations Convention against Illicit Traffic and in Narcotic Drugs and Psychotropic Substances, 1998 (Vienna Convention) was signed in 1992 and ratified by Law no. 118/1992. The United Nations Convention against Transnational Organised Crime, 2000 (Palermo Convention) was signed in 2002 and ratified by Law no. 565/2002. The International Convention for Suppression of the Financing of Terrorism, 1999 (the Terrorist Financing Convention) was signed in 1999 and ratified by Law no. 623/2002.

1010. The stated international conventions have binding force since they were published in the Official Gazette. Harmonisation with the provisions of these conventions is ensured through enhancing special laws (AML/CFT Law, Law 535/2004 on preventing and fighting terrorism, Law 39/ 2003 on preventing and combating organised crime etc.). Romania has also amended the criminal legislation in order to implement the Conventions, but the offences do not cover the full scope of the offences as foreseen by the Conventions (Article 3 of the Vienna Convention, Article 6 of the Palermo Convention and Article 2 of the Terrorist Financing convention).

1011. Romania implemented the United Nations Security Council Resolutions relating to prevention and suppression of financing terrorism (S/REC/1267 (1999) and S/REC/1373 (2001)). The description and identification of weaknesses of the mechanisms under these Resolutions is provided in Section 2.2.4 (SR. III).

Additional elements

1012. The European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (1990) was signed on 18 March 1997 and ratified by Law no. 263/2002. It entered into force on 1 December 2002.

1013. Moreover, Romania ratified through Law no. 420/2006 on 22 November 2006 the European Council Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (2005) signed by Romania on 16 May 2005.

1014. Romania has also ratified a number of international multilateral instruments that allow it to co-operate with the states parties. Some examples in the framework of the Council of Europe are:
- the European Convention on Extradition and its Protocols;

- the European Convention on Mutual Assistance in Criminal Matters and its Protocol;
- the European Convention on prevention of terrorism;
- the European Convention on suppression of terrorism and its Protocol;
- the European Criminal Law Convention on Corruption;
- the Civil Law Convention on Corruption;
- the European Convention for the protection of the Individual with regard to the automatic processing of Personal data.

6.2.2 Recommendations and comments

1015. Romania has ratified the Vienna and Palermo Conventions and the Terrorist Financing Convention. Criminal legislation has been amended in order to implement the Conventions but those provisions should be further amended to fully ensure the covering of the money laundering offence and especially the terrorist financing offence and thus completely implement these Conventions.

1016. It is recommended that the Romanian authorities reinforce the system for implementing UN SC Resolutions relating to prevention and suppression of financing terrorism (S/REC/1267 (1999) and S/REC/1373 (2001) by developing and implementing the necessary procedures and mechanisms.

6.2.3 Compliance with Recommendation 35 and Special Recommendation I

	Rating	Summary of factors underlying rating
R.35	**Largely Compliant**	• Effectiveness of the implementing the standards in relation to ML gives rise to doubts. • Though the Palermo, Vienna and TF Conventions have been brought into force there are still reservations about effectiveness of implementation in some instances, particularly terrorist financing criminalisation and some aspects of the provisional regime.
SR.I	**Partially Compliant**	• TF offence should be amended in order to ensure fully cover of the Terrorist Financing Convention. • A precise mechanism for freezing of funds related to terrorist financing should be established.

6.3 Mutual legal assistance (R.32, 36-38, SR.V)

6.3.1. Description and analysis

Recommendation 36 and SR V

1017. In Romania mutual legal assistance is based on three types of instruments:

- multilateral treaties, such as:
  - The European Convention on Mutual Assistance in Criminal Matters, 1959 which was signed on 30 June 1995 and ratified 17 March 1999 and its Protocol (with reservations that the rogatory letters for search or seizure of property will be made if such conditions, as: the offence motivating the rogatory letters must be an extraditable offence according to Romanian law and the execution of the rogatory letters must be in compliance with Romanian law are met);
  - The European Convention of extradition 1957, and its additional Protocol which were signed on 30 June 1995 and ratified on 10 September 1997;
  - The Convention on legal assistance in criminal matters between the European Union's Member States 2000, and the Protocol to this Convention;
- and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime, 1990, signed on 18 March 1997 and ratified on 6 August 2002. Moreover, the European Council Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism, 2005 was signed by Romania on 16 May 2005 and ratified on 22 November 2006.

1018. Since its accession to the European Union, Romania has applied Framework Decision 2002/584/JHA of the Council from 13 June 2002 on the European arrest warrant and the surrender procedures between the EU Member States. Romania will transpose in the near future the following documents of the EU: Framework Decision 2003/577/JHA of the Council from 22 July 2003 on the execution in the European Union of orders freezing property or evidence; Framework Decision 2005/214/JHA of the Council from 24 February 2005 on the application of the principle of mutual recognition to financial penalties; Framework Decision 2006/783/JAI from 6 October 2006 on the application of the principle of mutual recognition to confiscation orders. The implementation of these Framework Decisions was already included in the draft law for modifying Law no. 302/2004, now on parliamentary debates.

1019. Bilateral mutual legal assistance treaties are in force with the following countries: Albania, Algeria, Belgium, Bosnia and Herzegovina, Bulgaria, Canada, Czech Republic, China, North Korea, Croatia, Cuba, Egypt, France, Greece, Italy, Morocco, Moldova, Mongolia, New Zealand, Poland, Russia, Serbia and Montenegro, Syria, Slovakia, USA, Tunisia, Turkey, Hungary. Many of the states with which Romania has concluded bilateral agreements on legal assistance are also parts of the Conventions of the European Council in these matters, conventions that prevail before bilateral agreements.

1020. The relevant provisions of Law no. 302/2004 assure the general framework as regards the international judicial co-operation and granting of assistance in criminal matters.

1021. Law no. 302/2004 applies to the following forms of international judicial co-operation in criminal matters: extradition; surrender based on a European Arrest Warrant; transfer of proceedings in criminal matters; transfer of the sentenced persons; recognition and enforcement of judgments; judicial assistance in criminal matters; other forms of international judicial co-operation in criminal matters. The law does not apply to the specific modalities of international police co-operation, where, under the law, they are not under judicial control.

1022. According to Article 13, requests for international co-operation should be sent through the following central authorities: the Ministry of Justice (extradition and the transfer of sentenced persons or all the requests for mutual legal assistance issued in the trial and post trial stages), the Public Prosecutor's Office attached to the High Court of Cassation and Justice (referring to activities from the pre-trial stage) and the Ministry of Interior and Administrative Reform (referring to the criminal record).

1023. Law no. 302/2004 provides that mutual legal assistance should be granted under reasonable and proportional conditions. International judicial assistance in criminal matters should comprise mainly the following activities: international letters rogatory (including the production, search and seizure of information, documents or evidence and freezing, seizure or confiscation of assets); hearings by videoconference; appearance in the requesting State of witnesses or experts or accused for purpose for providing information or testimony; temporary transfer of the detained person either in the requested state or in the requesting state; service of procedural documents drawn up or submitted in criminal proceedings; judicial records; other forms of judicial assistance.

1024. Article 163 of Law no. 302/2004 provides that letters rogatory for the search or seizure of property and documents or for freezing and sequestration should be subject to the following conditions: the offence motivating the rogatory letters should be an extraditable offence where Romania is the requested State and the execution of the rogatory letters should be consistent with Romanian law. Both conditions may entail the application of the rule of reciprocity.

1025. The evaluation team was informed that the provisions of Article 163 are not applicable in relation to a state that is party to the Convention of 19 June 1990 implementing the Schengen Agreement. In relation to these States, the execution of the request of rogatory commission, having as its object searching or seizures, could be imposed under the specified conditions.

1026. Romanian judicial authorities may, without prior request, forward to the competent authorities of foreign States information obtained within the framework of their own investigations, when they consider that the disclosure of such information might assist the receiving State in initiating criminal proceedings, or might lead to a request for judicial assistance by that State (Article 166).

1027. Romanian as a requesting State should not forward or use information or evidence obtained from the requested State for investigations, prosecutions or proceedings other than those referred to in its request, without the prior consent of the requested State (Article 187).

1028. Romania should grant judicial assistance as regards infringements of the laws and regulations on excise duties, value added tax and customs (Article 1875) as well as extradition for acts provided in criminal law in matters of excise taxes, value-added tax and in matters of customs, under the Law (Articles 27 and 76).

1029. 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". Article 187^5 of the Law no. 302/2004 states that Romania grants judicial assistance in the field of fiscal offences based on the European Convention on mutual legal assistance in criminal matters from 1959 (amended by its Protocols). Also, it should be observed that Romania has no reservation to the Chapter I of the First Protocol of the European Convention on mutual legal assistance in criminal matters which means that Romania will comply with the letters rogatory in respect of fiscal offences (the nature of the offence will never constitute a ground for refusal).

1030. The evaluators consider the Criterion to be fulfilled.

1031. Turning to Criterion 36.5, Romania does not refuse a request for MLA on the grounds of laws that impose secrecy or confidentiality requirements on financial institutions.

1032. Article 174 of Law no. 302/2004 provides that at the request of the requesting State, the provisional measures provided in Romanian law may be taken for the purpose of preserving evidence, maintaining an existing situation or protecting endangered legal interests.

1033. The provisions of Law no. 302/2004 ensure a wide range of applicable mechanisms in relation to the execution of the requests in all cases of international judicial co-operation in criminal matters. Romania also executes foreign requests under the bilateral treaties regarding combating organised crime, terrorism and other serious offences including money laundering.

1034. The evaluators were informed that Romanian authorities offer judicial assistance with high priority. The period for giving the reply takes normally from 2 - 6 months, depending upon the object of the request for assistance and the quality of the data made available by the requested judicial authorities.

1035. The Romanian authorities informed the evaluators that, with regard to the mechanisms for determining the best venue for the prosecution of defendants in the interests of justice, in the case of crimes of organised criminality with cross-border character, the possibility of transferring the criminal proceedings is analysed case-by-case, taking into account the particularities of each case.

Recommendation 37

1036. The request for extradition issued by a foreign country is transmitted to the Romanian authorities through the Ministry of Justice, which examines the international regularity of the request.

1037. Concerning double criminality in relation to extradition - Article 26 of Law No. 302/2004 provides that extradition can be admitted only if the person, whose extradition is requested, is accused or was convicted for an act provided as an offence in the requesting State legislation as well as in Romanian law. Through derogation from these provisions, the extradition can be allowed even if the respective act is not provided for by Romanian law, if for this act the double incrimination requirement is excluded through an international convention to which Romania is part. The differences existent between the legal qualification and the technical title that the laws of the two states give to the same offence have no relevance if an international convention or in the absence of this one, a declaration of reciprocity does not provide otherwise.

1038. From 1 January 2007, Romania has applied the procedure of European arrest warrant. The classical procedure of extradition applies only in relation with non-EU countries and also with EU countries that have declarations regarding the date on which the offence was committed.

1039. If a European Arrest Warrant has been issued for participation in a criminal organisation, terrorism, laundering of the proceeds of crime or for other listed offences (art. 2, Para 2 of the Framework Decision 2002/584/JHA on the European arrest warrant and surrender procedures), sanctioned in the issuing Member State by a custodial sentence or a detention order for a maximum period of at least 3 years, surrender should be granted even if the condition of double incrimination is not met (Article 85 from the Law no. 302/2004).

Recommendation 38

1040. Taking into account Article 118 of the CC, provisions of the AML/TF Law (See Section 2.3 (R.3)), provisions of Law no. 302/2004 and the execution of the foreign requests under the bilateral and multilateral treaties regarding combating organised crime, terrorism and other serious offences including money laundering, it is considered that the appropriate laws and procedures to meet the Criterions 38.1-38.3 are established.

1041. Criterion 38.4 requires that countries consider establishing an asset forfeiture fund into which all or a portion of the confiscated property will be deposited and which will be used for law enforcement, health, education or other appropriate purposes. The CPC provides that the confiscated assets are forwarded to the competent bodies for their capitalisation. The money obtained shall become revenues to the state budget. This issue may need to be reconsidered.

1042. Sharing of confiscated assets between countries when confiscation is directly or indirectly a result of coordinated law enforcement actions is possible based on bilateral agreements or treaties. The evaluators were informed that no assets sharing have been applied in practice so far.

Additional Elements

1043. According to Article 14 of Law no. 302/2004, requests for judicial assistance in criminal matters may be sent directly by the requesting judicial authorities to the requested judicial authorities in case of emergency. However, a copy of these should be sent simultaneously to the Ministry of Justice or to the Public Prosecutor's Office attached to the High Court of Cassation and Justice, according to the nature of the case. Direct transmissions may also be made through the International Criminal Police Organisation (Interpol). Starting with 1 December 2007 the requests issued by the authorities of the EU Member States or addressed to these authorities by the Romanian authorities are transmitted directly based on the EU Convention from 2000 and its Protocol from 2001 (this instruments entered into force for Romania on 1 December 2007).

1044. Foreign non-criminal confiscation orders are not recognised or enforceable in Romania.

Statistics

1045. The evaluators were informed that during the period 2002 – 2006, a total number of 38 requests for legal assistance connected to the freezing, seizing and confiscation related to ML/TF offences were received from foreign requesting authorities, and 14 requests were submitted by the Romanian authorities. Detailed statistics data on mutual legal assistance sent and received are not available. Detailed statistics on the average time are not available.

	Mutual Legal Assistance requests sent by Romania	Mutual Legal Assistance requests received by Romania
2004	5 (**1** of them for Money Laundering)	52 (**4** of them for Money Laundering)
2005	44 (**3** of them for Money Laundering)	214 (**12** of them for Money Laundering)
2006	89 (**10** of them for Money Laundering)	218 (**19** of them for Money Laundering)
Till 31 May 2007	170 (**33** of them for Money Laundering)	150 (**2** of them for Money Laundering)
2004-2007	**47** MLA requests for Money Laundering	**37** MLA requests for Money Laundering

1046. The average time response time to a request for mutual legal assistance is a month and a half.

6.3.2. Recommendations and comments

6.3.3. Compliance with Recommendations 36 to 38 and Special Recommendation V

	Rating	Summary of factors underlying rating
R.36	**Largely Compliant**	• The current limitations in relation to the criminalisation of TF offence may have impact on Romania's ability to deliver mutual legal assistance in TF case.
R.37	**Compliant**	
R.38	**Largely Compliant**	• No considerations have been given to establishing an asset forfeiture fund.
SR.V	**Partially Compliant**	• The limitations in relation to the criminalisation of TF offence may have impact on Romania's ability to deliver mutual legal assistance in FT case.

6.4. Extradition (R. 37 and 39, SR.V)

6.4.1. Description and analysis

7. Romania has signed the European Convention on Extradition and its additional Protocols on 15 October 1975 and 17 March 1978 and ratified its on 10 September 1997 (Law no. 80/1997). The Law no. 80/1997 was amended in 2005 (Romania changed its declaration on article 6 paragraph 2 from Convention indicating the conditions in which a Romanian citizen can be extradited).

1047. Matters related to extradition are regulated in Romania under Art. 19 of the Constitution, Article 9 of the CC ("Extradition is provided or can be requested on the basis of international convention, on the basis of reciprocity, and in case they do not exist, according to the law.") and as a form of international judicial co-operation in criminal matter, Law No. 302/2004 on international judicial co-operation in criminal matters (amended and completed through the Law no. 224/2006) which assures the general framework as regards the international judicial co-operation and granting of assistance in criminal matters including extradition (passive and active extradition, provisions for the implementation of legal instruments relating to extradition and adopted within the European Union).

1048. According to Law no. 302/2004 upon request from a foreign State, persons who are identified on Romanian territory and who are under criminal prosecution or brought to justice for the commission of an offence, or who are wanted for serving a penalty or a security measure in the Requesting State, may be extradited from Romania.

1049. Romanian citizens may not be extradited from Romania; however, based on the multilateral international conventions to which Romania is a party, and based on reciprocity, Romanian citizens may be extradited only if at least one of the following conditions is met: a) the extraditable person domiciles in the Requesting State at the date when the request for extradition is uttered; b) the extraditable person has also the citizenship of the Requesting State; c) the extraditable person committed the act in the territory or against a citizen of a European Union Member State, if the Requesting State is a Member of the European. Under the conditions stipulated by the letters (a) and (c) when extradition is being requested in view of criminal prosecution or trial, a supplementary condition requires that the Requesting State provide assurances deemed as sufficient that, should he or she be sentenced to a custodial penalty through a final court judgment, the extradited person will be transferred to Romania to serve the penalty. Romanian citizens may be extradited also based on the provisions of bilateral treaties (Articles 23-24). Before 2007, Romania had already extradited several Romanian citizens as a result of the requests for extradition issued by a EU Member State which gave the assurance of reciprocity. After 2007, 99% of the persons surrendered based on the European arrest warrants are Romanian citizens.

1050. According to Article 25 of Law No. 302/2004, in the case of refusal to extradite a Romanian citizen upon request from the Requesting State, Romania should submit the case to its competent judicial authorities, in order for the criminal prosecution and trial to take place, if appropriate (*aut dedere, aut judicare* principle). For this purpose, the Requesting State should send the case to the Ministry of Justice in Romania. The Requesting State should be informed of the results of its request. Should Romania opt for the solution of refusing to extradite a foreign national who was accused or convicted in another State for the offences in connected with laundering of the proceeds of crime, terrorism etc. or for any other offence for which the law of the Requesting State provides the penalty of imprisonment with a special maximum of at least 5 years, the examination of its own competence and the exercise, if necessary, of criminal action should take place *ex officio*, without exception and without delay. The Romanian authorities should decide according to the same conditions as those for any serious offence provided and punished by the Romanian law. Romania should also grant extradition for acts provided in criminal law in matters of excise taxes, value-added tax and in matters of customs, under the Law (Articles 27 and 76).

1051. With regard to dual criminality, extradition may be allowed only if the act of which the person the extradition of whom is being requested has been accused, or for which he has been convicted, is provided as an offence both in the law of the Requesting State and in Romanian law. But, extradition may be granted even if the act concerned is not provided in Romanian law, if for this act the prerequisite of double incrimination is excluded by an international convention to which Romania is a party (Article 26).

1052. With regard to the procedure of the European arrest warrant – if it has been issued for one of the acts such as: participation in a criminal organisation, terrorism, laundering of the proceeds of crime and in the case of committing of other offences provided in the list of art. 2, Para 2 of the Framework Decision on the European arrest warrant and surrender procedures, regardless of the name given to these offences in the Issuing Member State, and which is sanctioned in the Issuing Member State by imprisonment or a custodial security measure of a minimum of 3 years, surrender should be granted even if the condition of double incrimination is not met (Article 85).

1053. The evaluators were informed that the extradition procedure is rather quick and executed urgently approximately within 2-3 months.

Statistics

Extradition statistics on money laundering 2002 - 2006

Years	**No. of outgoing request**			**No. of incoming request**		
	EU States	Other states	Total	EU States	Other states	Total
2002			0		1 (Israel)	1
2003			0	2(Italy)		2
2004			0		1 (USA)	1
2005		1 (Canada)	1	2 (Austria, Spain)	1 (Brazil)	3
2006	1 (United Kingdom)		1	1 (Italy)	1 (USA)	1
Total	1	1	2	5	4	9

Legend:

- Outgoing request – extradition requests sent;
- Incoming request – extradition requests received.

1054. No extradition request on terrorism financing was sent or received in 2002-2006. In 2007 one request for financing terrorism was addressed to Romania by USA. The extradition was granted the two persons sought being effectively surrendered to the USA authorities.

Additional elements

1055. Article 14 of Law no. 302/2004 requests that judicial assistance in criminal matters may be sent directly by the requesting judicial authorities to the requested judicial authorities in case of emergency, however, a copy of these should be sent simultaneously to the Ministry of Justice or to the Public Prosecutor's Office attached to the High Court of Cassation and Justice, according to the nature of the case.

1056. The simplified procedures (simplified extradition or voluntary extradition) are applied.

1057. Article 49 of Law no. 302/2004 provides that an extraditable person should have a right to declare before the court that he/she gives consent to being extradited and surrendered to the competent authorities of the Requesting State. A statement should be recorded officially. If the court finds that the extraditable person is fully aware of the consequences of his option, the court, taking note of the public prosecutor's conclusions, examines whether there are any impediments for extradition. If it is found that voluntary extradition is admissible, the court

should take act of this through a sentence and ordain upon the measure of preventive arrest to be taken until the extraditable person is surrendered. The simplified extradition is regulated by Article 50 from Law No. 302/2004. Thus, in the case mentioned in Article 49, it is no longer necessary to present a formal request for extradition if it is thus provided in the international convention applicable in relation to the Requested State or if the legislation of that State allows such a simplified extradition procedure and it has been applied to requests for extradition uttered by Romania. In practice, the simplified extradition procedure was successfully applied with Austria, Hungary and Germany.

1058. Following Article 76 of Law no. 302/2004 simplified extradition should apply in relation to Member States of the European Union, without checking the special conditions provided in Article 50, whenever the conditions in Article 49 are met.

6.4.2 Recommendations and comments

6.4.3 Compliance with Recommendation 37 & 39 and Special Recommendation V

	Rating	Summary of factors relevant to Section 6.4 underlying overall rating
R.37	**Compliant**	
R.39	**Compliant**	
SR.V	**Largely Compliant**	• The limitations in relation to the criminalisation of the TF offence may negatively affect the extradition possibilities. • Statistics on extradition are only available since 2007, which is considered a deficiency.

6.5 Other Forms of International Co-operation (R. 40 and SR.V)

6.5.1. Description and analysis

Prosecutorial authorities

1059. The competent authorities in Romania aim to provide the widest range of international co-operation to their foreign counterparts.

1060. In addition to the formal mutual legal assistance and extradition requests, it is worth noting that, pursuant to Article 166 of Law 302/2004, the Romanian judicial authorities can spontaneously transmit to their foreign counterparts the information obtained during an enquiry, when the information could help the competent authority to initiate a penal procedure or when the information can generate a request for judicial assistance. Romania can impose some conditions on how the transmitted information can be used, the receiving state being obliged to respect those conditions.

Law enforcement co-operation

1061. Law enforcement authorities can co-operate with their foreign counterparts, both spontaneously and at request.

1062. Police authorities directly exchange information with their foreign counterparts using Europol and Interpol channels. In 2003, Romania concluded a co-operation agreement with the European Bureau of Police, which was ratified by Law 197/2004. In accordance with the Governmental Decision 306/2005, the International Police Co-operation Centre was established. The Centre includes in its organisational structure: National Focal Point (Operational Department, National Unit EUROPOL, SIRENE Service) and National Bureau Interpol (International Pursuit and Extradition Department, Operative Documentation Department and Judicial Identification Department), thus ensuring the operative co-operation with the international bodies such as EUROPOL, OIPC-INTERPOL as well as with national police from other countries. The structures are part of the national platform of police co-operation; in particular the National Focal Point is the specialised unit of the Ministry of the Administrative Reform and Interior, in charge of the operative co-operation between the Romanian competent authorities and the liaison officers of the Ministry accredited in other states, or with international organisation/liaison foreign officers accredited in Romania to develop information flows of operational interest in the field of international co-operation.

1063. In particular National Focal Point is empowered with co-operation activities with:
- The Regional Centre of the Co-operation Initiative in the South East of Europe, for combating cross-border crime (Regional Centre S.E.C.I.), whose headquarters are located in Bucharest;
- Liaison officers of the Ministry of Interior and Administrative Reform;
- Liaison foreign officers accredited in Romania (at their request);
- Europol, through the National Unit Europol.

1064. The evaluators were advised that in the future the National Focal Point will implement co-operation activities with the EU Member States within the area of Schengen, through the SIRENE Department.

1065. There was no statistical data available showing the level of informal police international assistance

FIU-FIU co-operation

1066. The NOPCML has broad capacities to co-operate with foreign FIUs.

1067. The NOPCML has concluded 36 Memoranda of Understanding with the following foreign counterparts: Slovenia (OMLP), Belgium (CTIF/CIF), Italy (UIC), Bulgaria (BFI), Greece (CFCI), Poland (FIU), Israel (IMPA), Croatia (FIU), FR Yugoslavia (ECPML), Thailand (AMLO), Spain (SEPBLAC), Turkey (MASAK), Korea (FIU), Czech Republic (FAU), Ukraine (SDFM), the "former Yugoslav Republic of Macedonia" (MLPD), Indonesia (PPATK), Australia (AUSTRAC), Georgia (FMSG), Albania (DBLKPP), Colombia (UIAF), Monaco (SICCFIN), Portugal (UIF), Argentina (UIF), Estonia (FIU), Egypt (MLCU), Moldavia (CCEC), Guatemala (SBIVE), Chile (FAU), Latvia (OPLPDCA), Cyprus (MOKAS), the Principality of Liechtenstein, Luxembourg, USA, UK, the Russian Federation.

1068. At the time of the on-site visit the FIU entered into negotiation with 8 other FIUs (Japan, Mexico, Hungary, Canada, Taiwan, Paraguay, the Seychelles and Nigeria).

1069. The NOPCML co-operates and exchanges information with any type of foreign counterparts (judicial, police, administrative) and there are no legal restrictions on the exchange of

information with foreign FIUs. According to Article 5, Para. 4 of the AML/CFT Law "The Office may exchange information, based on reciprocity, with foreign institutions having similar functions and which are equally obliged to secrecy, if such information exchange is made with the purpose of preventing and combating money laundering and terrorism financing".

1070. NOPCML is member of the Egmont Group since May 2000, and it uses the Egmont Secure Web for information exchange with foreign counterparts. The Office is also connected to the FIU.NET.

1071. During the on-site visit it was clarified that there is a limited number of users within the Office which have access to the ESW and FIU.Net in order to ensure the highest degree of confidentiality to the exchange of information.

1072. The NOPCML also exchanges information with FIUs that are not members of the Egmont Group. It was specified that in cases of exchange of information with FIUs that are not connected to the Egmont Secure Web or to FIU.NET, the NOPCML uses the diplomatic channels, through the Ministry of Foreign Affairs and the Romanian Embassies in the respective States, in order to ensure the protection and confidentiality of the information. Such information exchanges can be made upon requests or spontaneously.

1073. It should be noted that the NOPCML cannot postpone a transaction for a certain period as deemed necessary, if the inquiries or analysis is conducted in co-operation with a foreign FIU.

1074. During the on-site visit it was clarified that the FIU is authorised to search its own database and to request a search on external databases on behalf of foreign counterparts.

1075. Within the NOPCML a specific Directorate for Inter-institutional Co-operation and International Relations is in charge of processing the exchange of information with foreign counterparts.

1076. According to the provision of Article 5, Para. 3 the professional secret is not opposable to the Office. Information requests are not refused because a request is also considered to involve fiscal matters.

1077. The following statistics on information requests from and to the NOPCML were provided during the on-site visit.

Request for information sent by NOPCML during the period 2005-2007
(the statistics reflect the entire year 2007, while the on-site visit took place at the beginning of May**):**

Year	Number of requests sent	Number of requests replied
2005	202	142
2006	140	97
2007	525	304

Request for information received by NOPCML during the period 2005-2007:

Year	Number of requests received	Number of requests replied
2005	80	79 (one was sent spontaneously for information of the FIU)
2006	80	79 (one was sent spontaneously for information of the FIU)
2007	128	128

1078. The data do not distinguish between requests related to the financing of terrorism and to money laundering. The evaluators were informed, however, that out of the 525 requests sent by the NOPCML to foreign FIUs in 2007, 523 requests were related to suspicions for money laundering and 2 requests were related to suspicion of terrorist financing. In 2007, the NOPCML replied to 128 requests for information from foreign FIUs of which 10 were related to suspicions of terrorist financing.

1079. The financial supervisory authorities all have the possibility of exchanging information with their foreign counterparts. The authority to exchange the information is provided in primary legislation.

National Bank of Romania

1080. The NBR is empowered to enter into co-operation agreements and exchanges of information with foreign supervisors.

1081. The NBR signed Memoranda of Understanding of international co-operation in the field of banking and financial supervision with the following foreign counterparts: the National Bank of Moldova; the Banking Regulation and Supervision Agency (Turkey); the Central Bank of Cyprus; Banca d'Italia; Bank of Greece; Bundesanstalt fur Finanzdienstleistungsaufsicht (Germany); De Nederlandsche Bank N.V.; la Commission Bancaire (France); the Hungarian Financial Authority; the Financial Market Authority (Austria) and the Austrian Central Bank.

National Securities Commission

1082. The supervisory authority of the capital market can provide, based on reciprocity conditions, assistance to the foreign regulating authorities in order to fulfil their tasks.

1083. This kind of assistance includes, for example, transmitting both public and non-public information on natural/legal persons subject to the regulatory and supervisory powers of the NSC, as well as providing the necessary documents on the registration kept by supervisory authorities and asking for additional information to the reporting entities.

1084. In November 2006, NSC signed the Multilateral Memorandum of Understanding and exchange of information (CESR-MOU), thus benefiting from a mechanism of exchanging information with similar EU authorities, and the NSC has concluded 24 Memoranda for information exchanges with similar supervisory authorities.

Insurance Supervisory Commission

1085. The Insurance Supervisory Commission co-operates with foreign counterparts. Being a Member State of the European Union, Romania participates in CEIOPS, the Committee of European Insurance and Occupational Pensions Supervisors and EIPOC, the European Insurance and

Occupational Pension Committee. Romania is also a member of the IAIS, the International Association of Insurance Supervisors.

National Custom Authority

1086. The Custom Authority co-operates - based on reciprocity - with the custom authorities of other States to prevent and combat customs frauds.

1087. The exchange of information between the National Customs Authority and other customs administrations, respectively other international institutions, are based on the concluded protocols. Furthermore there are customs-to-customs information exchanges between customs and other relevant agencies on cross-border transportation reports and cash seizures.[14]

6.5.2. Compliance with Recommendations 32 and 40 and SR.V

1088. NOPCML has a broad capacity to exchange information, and there appear to be no major obstacles in the way of prompt and constructive information exchange. The examiners have no information on how quickly and how fully requests of information are answered. Statistical information should be kept in relation to the numbers and types of spontaneous disclosures made by the NOPCML. The evaluators were informed that although there are no working procedures or specific terms for dealing with requests for information, they are treated as a priority. Requests on suspicious transactions of terrorism financing, requests for the information necessary for the FIU in order to decide the suspension of transactions, and requests for information having an urgent character mentioned in the document or a term of answer are analysed with maximum priority by the specialty directorates.

1089. The capacity to exchange information between the supervisory authorities is firmly in place and while (as with most countries) there are no statistics on exchange of information between supervisory authorities, the examiners were satisfied that this was happening in practice on a regular basis.

6.5.3. Compliance with Recommendation 40 and SR.V

	Rating	Summary of factors relevant to Section 6.5 underlying overall rating
R.40	**Compliant**	
SR.V	**Compliant**	

[14] Now, the statistical data is sent to the WCO and European Commission (DG Taxud – Cash Control Working Group), periodically for further analysis. The exchange of information takes into account the European legislation ensuring proper use of the information or data.

7. OTHER ISSUES

7.1 Resources and Statistics

1090. Romanian authorities maintain comprehensive statistics on matters relevant to money laundering.

1091. When speaking of financial institutions the NOPCML supervises around 4,700 non-banking financial institutions. Furthermore the NOPCML supervises MTV service providers (3 money remitters with 1,322 working offices). Finally the NOPCML is the supervisor of post offices in compliance with AML/CFT obligations. The NOPCML only has 12 AML/CFT experts that perform on-site inspections, and the Office also supervises most DNFBP (see section 4 in this report). For this reason, many more resources should be dedicated to the NOPCML, or the distribution of supervisory responsibilities among authorities involved in AML/CFT should be reconsidered.

1092. More resources should be provided to the authorities who are investigating ML/FT, especially concerning financial investigations.

	Rating	Summary of factors underlying rating
R.30	**Largely Compliant**	• NOPCML is understaffed with on-site supervisors in comparison to the very large number of diverse supervised entities (an enormous number of non-banking financial institutions, MTV service providers and all other entities that do not have a supervisory authority). • More resources should be provided to the authorities who are investigating ML/FT, especially concerning financial investigations.
R.32	**Largely Compliant**	• Not possible to disaggregate how many indictments represent police/prosecution generated cases and how many represents STR generated cases. • No statistics provided on the actual sanctions applied to legal persons in money laundering cases as criminal liability for legal person only came into force in 2006.

IV. TABLES

Table 1: Ratings of Compliance with FATF Recommendations
Table 2: Recommended Action Plan to improve the AML/CFT system

TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating[15]
Legal systems		
1. Money laundering offence	**LC**	• Ineffective implementation resulting in low number of final convictions.
2. Money laundering offence Mental element and corporate liability	**LC**	• Autonomous money laundering still need to be successfully prosecuted in the case of a domestic predicate offence. • The procedure for ensuring final convictions needs urgent reconsideration. The evaluators are seriously concerned that the timeframe between indictment and final conviction appears unreasonably long. (Effectiveness issue) • The number of convictions is low. (Effectiveness issue).
3. Confiscation and provisional measures	**LC**	• There is no third party confiscation apart from instrumentalities which have been used and belong to a third person who has knowledge about the purpose of their use. • No authority to take steps to prevent or void actions, whether contractual or otherwise, where persons involved knew or should have known that as a result of those actions the authorities would be prejudiced in their ability to recover property subject to confiscation. • The effectiveness of the confiscation system is questionable taking into consideration the limited confiscation proceedings.
Preventive measures		
4. Secrecy laws consistent with the	**C**	

[15] These factors are only required to be set out when the rating is less than Compliant.

Recommendations		
5. Customer due diligence	**PC**	• No explicit definition of beneficial ownership. • The requirement to take reasonable measures to verify the identity of the beneficial owner, as required by the FATF standards is not adequately implemented. • Further consideration should be given to the extent that reporting entities have applied CDD measures to existing customers particularly in the case of non-banking financial institutions.
6. Politically exposed persons	**NC**	• The requirement to identify a PEP is currently too restrictive and only refers to identifying a customers 'public position held'. • The requirement to identify a PEP's source of wealth is not clearly stated (beyond those applicable to all customers);The nature and extent of enhanced CDD measures relating to PEPs are not clearly stated. • No provision for senior management approval to establish a relationship with a PEP. • No provision for senior management approval to continue business relationship where the customer subsequently is found to be or becomes a PEP.
7. Correspondent banking	**PC**	• No obligation to require senior management approval when opening individual correspondent accounts. • No obligation for financial institutions to document respective responsibilities of each institution. • No specific obligations with respect to 'payable-through accounts'.
8. New technologies and non face-to-face business	**C**	
9. Third parties and introducers	**PC**	• Financial institutions are not explicitly required to satisfy themselves that the third party is regulated and supervised (in accordance with Recommendation 23, 24 and 29). • An explicit obligation should be introduced that requires all financial institutions relying upon a third party to immediately obtain from the third party the necessary information concerning certain elements of the CDD process. • In determining in which countries the third party that meets the conditions can be based, competent authorities only to some extent take into account information available on whether those countries adequately apply the FATF Recommendations.
10. Record keeping	**PC**	• Apart from the capital market there is no requirement of keeping transactions records for a longer period even if requested by a competent authority in specific cases. • Criterion 10.1.1 is not fully met with reference to

		the insurance sector. • Apart from the capital market there were no provision on keeping identification data, account files and business correspondence for longer than 5 years if necessary, when properly required to do so by a competent authority in specific cases upon proper authority. For financial institutions registered in the General and Evidence Register, as well as for the insurance sector the record keeping requirements do not cover account files and business correspondence. The requirement to ensure that all customer and transaction records and information are available to domestic competent authorities "on a timely basis" as required in Criterion 10.3 is not met.
11. Unusual transactions	**LC**	• Criterion 11.1 only partially addressed by the insurance and capital market sectors on paying special attention to all complex, unusual large transactions or unusual patterns of transactions. • No explicit enforceable provisions for the non-banking financial institutions registered in the Evidence and General Register and the insurance and capital market sectors to examine the backgrounds of such transactions and setting forth their findings in writing. • No explicit requirement to keep the findings available for competent authorities and auditors for at least five years.
12. DNFBP – R.5, 6, 8-11	**NC**	• Company service providers are not covered by the AML/CFT Law. • No enforceable measures for linking the CDD information with transactions performed in casinos. • The 3000 Euros threshold for casinos should be addressed in law, regulation or other enforceable means. • "Dealers" and "any other natural or legal person, for acts and deeds, committed outside the financial-banking system" in article 8 in the AML/CFT Law should be clarified. • The same concerns in the implementation of Recommendation 5 apply equally to DNFBP. • No adequate implementation of Rec.6 (PEPS). • Clarification on whether relying on third party to perform elements of the CDD process is allowed for DNFBP. • No provisions for DNFBP to examine the background and purpose of complex, unusual large transactions and all unusual patterns of transactions, which have no apparent economic or visible lawful purpose and setting forth their findings in writing. No explicit requirement to keep the finding available for competent authorities and

		auditors for at least five years. • Further guidance should be developed for assisting DNFBP to implement an adequate risk based approach and to define an adequate mitigation procedure. • For legal professions under supervision of SRO the only CDD provisions are in the AML/CFT Law. No secondary and implementing regulation have been provided.
13. Suspicious transaction reporting	**PC**	• Requirement to broaden the reporting obligation to also cover money laundering and terrorist financing if the suspicious transaction has been performed (beyond Article 4, Para 2). • Attempted suspicious transactions are not covered. • The reporting obligation should also cover funds suspected to be linked to or related to or to be used for terrorism, terrorist acts or by terrorist organisations. • Low level of reporting outside the banking sector raises effectiveness questions.
14. Protection and no tipping-off	**PC**	• The "safe harbour" provision in the AML/CFT Law does not include explicitly directors, officers and employees (permanent and temporary). • The AML/CFT Law does not explicitly prohibit the disclosing to a third person of the fact that a report has been made to the NOPMCL.
15. Internal controls, compliance and audit	**PC**	• No general requirement that the compliance officer should be designated at the management level, • No general legal obligation to secure the compliance officers direct and timely access to the relevant data. • No specific provisions on employee screening.
16. DNFBP – R.13-15 & 21	**NC**	• Requirement to broaden the reporting obligation to also cover money laundering and terrorist financing if the suspicious transaction has been performed (beyond Article 4, letter f and g in Norms 496/2006). • Attempted suspicious transactions are not covered. • Not all required aspects of terrorism financing are included in the scope of the reporting requirement. • Low level of STR from DNFBP (effectiveness). • Improved outreach and guidance on STR needed for all DNFBP and especially for real estate agents and legal and accountancy professionals who are considered to be particularly vulnerable to ML/TF. • Some DNFBP appear to lack awareness of their vulnerability and/or appear to be reluctant to report (lawyers, notaries, real estate agents, accountants). • "Safe Harbour" provision does not explicitly include directors, officers and employees (permanent and temporary). • Disclosing to a third person that a STR has been

		filed to the Office is not explicitly prohibited. • No requirement that the compliance officer should be designated at the management level. • No obligation to ensure the compliance officer direct and timely access to relevant data. • Only indirect provisions on employee screening for lawyers, notaries, accountants and public notaries. • DNFBP are not required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.
17. Sanctions	**PC**	• Sanctions which may be proportionate and dissuasive are available for AML breaches by the NOPCML and financial supervisors, but the effectiveness of the overall sanctioning regime, at present, is questioned. • Fines are generally low to have a dissuasive effect. • All supervisory bodies should consider greater utilisation of proportionate sanctions to raise compliance amongst poor performing and high risk sectors. • To increase the dissuasive effect it is recommended that Romanian authorities consider a clear channel for publicly communicating all sanctions.
18. Shell banks	**C**	
19. Other forms of reporting	**C**	
20. Other DNFBP and secure transaction techniques	**LC**	• Further measures should be taken to reduce cash transactions. Reliance on cash still extensive.
21. Special attention for higher risk countries	**NC**	• Insufficient requirements to give special attention to business relationships and transactions with persons from countries which do not or insufficiently apply FATF Recommendations. • No enforceable requirements in place to ensure that financial institutions are advised of weaknesses in the AML/CFT systems of other countries. • No specific enforceable requirements for financial institutions to examine the background and purpose of such transactions and to make written findings available to assist competent authorities. • No mechanism to apply countermeasures.
22. Foreign branches and subsidiaries	**PC**	• No specific requirement on the financial institutions to require the application of AML/CFT measures to foreign branches and subsidiaries beyond customer identification. • There is no requirement to pay special attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations.

		• Provision should be made that where minimum requirements of the host and home countries differ; branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.
23. Regulation, supervision and monitoring	**PC**	• Supervision of exchange offices lack a clear delineation of legal responsibility between the NBR and the NOPCML • More resources should be dedicated to the NOPCML or the distribution of supervisory responsibilities among authorities involved in AML/CFT should be reconsidered. • AML/CFT supervision of insurance licensees by their respective supervisory authority need to be developed further. Currently the inspections appear to be purely formal. • No registration or licensing procedures in place for money remittance service providers. • No adequate and sufficient supervision of MVT service providers (including those that operate through postal offices and independently) due to limited resources for on-site supervision within the NOPCML. • Although there is an obligation to report suspicion of terrorist financing there appears to be a lack of supervision for this issue, especially for exchange offices and MVT service providers. • The overall effectiveness of the AML/CFT systems in the financial institutions also needs to be checked.
24. DNFBP - Regulation, supervision and monitoring	**PC**	• For casinos insufficient measures to prevent criminals /associates from holding or being the beneficial owner of a significant or controlling interest of a casino. • To enhance the integrity and "fit and proper" market entry arrangements for the real estate sector in order to reduce the risk of ML and TF. • In consideration of the number and variety of DNFBP controlled evaluators have serious concerns about the sufficiency of supervisory resources available to the NOPCML. • No systematic compliance to significant number of business included in categories that are not clearly defined by law. • No accurate statistics data on supervision of SROs. • Some sanctions have been imposed, but the level of monitoring is tiny given the size of sector.
25. Guidelines and Feedback	**PC**	• Sector specific guidelines are missing. • Essential to further develop techniques of terrorism financing, as well as indicators to assist obliged entities in the identification of reports related to

		financing of terrorism. • The effectiveness of general feedback by the NOPCML should be strengthened also targeting specific sectors of high risk of ML/FT that are reluctant to report. • Taking into account the low level of reporting, further indicators and typologies should be developed on terrorism financing. • Specific feedback should be developed on the status of STRs and the outcome of single cases. • Low level of reporting from professionals and high risk sectors (such as real estate agents and legal and accountancy professions) require more targeted guidelines to raise awareness. • Guidelines should further develop techniques of terrorism financing. • To further strengthen the effectiveness of feedback the NOPCML should consider targeting specific feedback to high risk sectors.
Institutional and other measures		
26. The FIU	**LC**	• The great number of pending STRs needs to be fast and efficiently dismantled. • The requested institutions/authorities/ reporting entities shall forward the requested additional information within 30 days after receiving the request. Need for shortening the time limit in order for the NOPCML to properly undertake its functions. • Need of an explicit prohibition (without time limit) for NOPCML employees to disseminate information received after the cessation of working with the Office.
27. Law enforcement authorities	**LC**	• There is a reserve on the effectiveness of money laundering investigation given that there are few convictions. •
28. Powers of competent authorities	**C**	
29. Supervisors	**LC**	• Complex AML/CFT on-site inspections including the review of policies, procedures and sample testing are missing, particularly in the insurance sector.
30. Resources, integrity and training	**LC**	• NOPCML is understaffed with on-site supervisors in comparison to the very large number of diverse supervised entities (an enormous number of non-banking financial institutions, MTV service providers and all other entities that do not have a supervisory authority). • More resources should be provided to the authorities who are investigating ML/FT, especially concerning financial investigations.

31. National co-operation	**LC**	• In the AML field mechanism of policy coordination of the key stakeholders should be futher developed. • Mechanism for co-operation and co-ordination in place but appear not to be effective in ensuring that all necessary co-operation and co-ordination happens in practice. Arrangements for supervision and sanctioning need greater coordination.
32. Statistics	**LC**	• Not possible to disaggregate how many indictments represent police/prosecution generated cases and how many represents STR generated cases. • No statistics provided on the actual sanctions applied to legal persons in money laundering cases as criminal liability for legal person only came into force in 2006.
33. Legal persons – beneficial owners	**LC**	• No possibility to fully assess the operation of bearer shares.
34. Legal arrangements – beneficial owners	**N/A**	
International Co-operation		
35. Conventions	**LC**	• Effectiveness of the implementing the standards in relation to ML gives rise to doubts. • Though the Palermo, Vienna and TF Conventions have been brought into force there are still reservations about effectiveness of implementation in some instances, particularly terrorist financing criminalisation and some aspects of the provisional regime.
36. Mutual legal assistance (MLA)	**LC**	• The current limitations in relation to the criminalisation of TF offence may have impact on Romania's ability to deliver mutual legal assistance in TF case.
37. Dual criminality	**C**	
38. MLA on confiscation and freezing	**LC**	• No considerations have been given to establishing an asset forfeiture fund.
39. Extradition	**C**	
40. Other forms of co-operation	**C**	
Nine Special Recommendations		
SR.I Implement UN instruments	**PC**	• TF offence should be amended in order to ensure fully cover of the Terrorist Financing Convention. • A precise mechanism for freezing of funds related to terrorist financing should be established.

SR.II Criminalise terrorist financing	**PC**	• The Law on preventing and fighting terrorism needs to be amended to cover all elements of SR II, to explicitly provide for the offence also covers legitimate funds and that "funds" cover the terms as defined in the Terrorist Financing Convention. The provisions should furthermore provide that knowledge can be inferred from objective factual circumstances. • Attempt to commit the offence of terrorist financing should also be an offence. • There have been no terrorist financing cases and consequently it is not possible to assess whether the offence is effectively implemented.
SR.III Freeze and confiscate terrorist assets	**PC**	• No clear guidance that "shall be frozen" is an automatic freezing procedure. • Banking operations between residents listed in the Annex or on their behalf are not detected. • Freezing on behalf of a foreign jurisdiction is not covered. • Funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations should be covered by the freezing actions. • No prior authorisation by the NBR, the NCS or the ISC is required for financial operations between residents included in the single List. • Communication channels in respect of listing and their updating also need to be enhanced. • The Romanian authorities cannot give effect to a designated freezing mechanism of other jurisdictions and cannot freeze on behalf of a foreign FIU. • No efficient and effective systems are in place for communicating actions taken under the freezing mechanism to the financial sector immediately upon taking such action. • No effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds of de-listed persons or entities in a timely manner consistent with international obligations. • No clear provisions regarding the procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated. • No provisions implemented that gives access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses • Lack of freezing orders raises issues with regard to effective implementation.

SR.IV Suspicious transaction reporting	**PC**	• Clarify and broaden the reporting obligation to also cover terrorist financing if the suspicious transaction has been performed (see Recommendation 13). • Attempted suspicious transactions are not covered. • The reporting obligation should also cover funds suspected to be linked to or related to or to be used for the terrorism, terrorist acts or by terrorist organisations. • Relatively low number of reports on financing of terrorism raises question of effectiveness
SR.V International co-operation	**LC**	• The limitations in relation to the criminalisation of TF offence may have impact on Romania's ability to deliver mutual legal assistance in FT case. • The limitations in relation to the criminalization of the TF offence may negatively affect the extradition possibilities. • Statistics on extradition is only available since 2007, which is considered a deficiency.
SR.VI AML requirements for money/value transfer services	**NC**	• No registration or licensing procedures in place for money remittance service providers. • Deficiencies identified under R.5-11, 13-15 and 21 are equally valid for money or value transfer services. • No information on on-site controls having been conducted at postal offices. • No information on on-site controls of MVT operator that has its own network and operates independently. • Concerns regarding the effectiveness of the supervision due to the limited resources of experts for on-site inspections with the NOPCML compared to the number of MVT working offices.
SR.VII Wire transfer rules	**LC**	• The implementation and effectiveness of the EU Regulation could not be assessed.
SR.VIII Non-profit organisations	**PC**	• Romanian authorities do not periodically review the NPOs with the object to assess terrorist financing vulnerabilities. • Insufficient measures are in place to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations. • No effective implementation of the essential criteria VIII.2. • No regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures.
SR.IX Cross-border declaration and disclosure	**PC**	• No clear power to stop and restrain where suspicions of money laundering if the money is declared.

		• No clear power to stop and restrain where suspicion of money laundering or terrorist financing if below the reporting threshold. • No procedures implemented to inform persons that they have to declare cross-border transportation of currency and bearer negotiable instruments exceeding the threshold of 10,000 Euros.

TABLE 2: RECOMMENDED ACTION PLAN TO IMPROVE THE AML/CFT SYSTEM

AML/CFT System	Recommended Action (listed in order of priority)
1. General	**No text required**
2. Legal System and Related Institutional Measures	
2.1 Criminalisation of Money Laundering (R.1 & 2)	• Autonomous money laundering still needs to be successfully prosecuted in the case of a domestic predicate offence. • The procedure for ensuring final convictions needs urgent reconsideration. The evaluators are seriously concerned that the timeframe between indictment and final conviction appears unreasonably long.
2.2 Criminalisation of Terrorist Financing (SR.I)	• TF offence should be amended in order to ensure fully cover of the Terrorist Financing Convention. • A precise mechanism for freezing of funds related to terrorist financing should be established.
2.3 Confiscation, freezing and seizing of proceeds of crime (R.3)	• Third party confiscation apart from instrumentalities which have been used and belong to a third person who has knowledge about the purpose of their use should be required. • Authority to take steps to prevent or void actions, whether contractual or otherwise, where 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 should be established.
2.4 Freezing of funds used for terrorist financing (SR.III)	• Clear guidance needed that "shall be frozen" is an automatic freezing procedure. • Banking operations between residents listed in the Annex or on their behalf should be covered. • Freezing on behalf of a foreign jurisdiction should be covered. • Funds or other assets derived or generated from funds or other assets owned or controlled, directly or indirectly, by designated persons, terrorists, those who finance terrorism or terrorist organisations should be covered by the freezing actions.

	• Prior authorisation by the NBR, the NCS or the ISC should be required for financial operations between residents included in the single List. • Communication channels in respect of listing and their updating need to be enhanced. • The Romanian authorities should be able to give effect to a designated freezing mechanism of other jurisdictions and to freeze on behalf of a foreign FIU. • The Romanian authorities should establish efficient and effective systems for communicating actions taken under the freezing mechanism to the financial sector immediately upon taking such action. • Effective and publicly-known procedures for considering de-listing requests and for unfreezing the funds of de-listed persons or entities in a timely manner consistent with international obligations should be developed. • Clear provisions regarding the procedure for unfreezing the funds or other assets of persons or entities inadvertently affected by a freezing mechanism upon verification that the person or entity is not a designated should be developed. • Provisions that give access to funds or other assets that were frozen pursuant to S/RES/1267(1999) and that have been determined to be necessary for basic expenses should be implemented.
2.5 The Financial Intelligence Unit and its functions (R.26)	• Pending STRs need to be quickly and efficiently dealt with. • The current time limit (30 days) for requested reporting entities to forward additional information related to the STR should be shortened in order for the NOPCML to properly undertake its functions. • An explicit prohibition (without time limit) for NOPCML employees to disseminate information received after the cessation of working with the Office should be implemented.
2.6 Law enforcement, prosecution and other competent authorities (R.27 & 28)	
2.7 Cross-border Declaration & Disclosure	• Clear power to stop and restrain should be established where suspicions of money laundering if the money is declared. • Clear power to stop and restrain where suspicion of money laundering or terrorist financing if below the reporting threshold. • Procedures should be implemented to inform persons that they have to declare cross-border transportation of currency and bearer negotiable instruments exceeding the threshold of 10,000 Euros.

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)	• Explicit definition of beneficial ownership should be provided. • The requirement to take reasonable measures to verify the identity of the beneficial owner, as required by the FATF standards, should be adequately implemented. • Further consideration should be given to the extent that reporting entities have applied CDD measures to existing customers particularly in the case of non-banking financial institutions. • The requirement to identify a PEP need changing as it is currently too restrictive and only refers to identifying a customers 'public position held'. • The requirement to identify a PEP's source of wealth should be clearly stated (beyond those applicable to all customers); the nature and extent of enhanced CDD measures relating to PEPs should be clearly stated. • Provision for senior management approval to establish a relationship with a PEP should be implemented. • Provision for senior management approval to continue business relationship where the customer subsequently is found to be or becomes a PEP should be implemented. • Obligation to require senior management approval when opening individual correspondent accounts should be implemented. • Obligation for financial institutions to document respective responsibilities of each institution should be implemented. • Specific obligations with respect to 'payable-through accounts' should be developed.
3.3 Third parties and introduced business (R.9)	
3.4 Financial institution secrecy or confidentiality (R.4)	
3.5 Record keeping and wire transfer rules (R.10 & SR.VII)	• To develop requirements (apart from the capital market) of keeping transactions records for a longer period if requested by a competent authority in specific cases. • Criterion 10.1.1 should be fully met with reference to the insurance sector. • To implement provisions (apart from the capital

	market) on keeping identification data, account files and business correspondence for longer than 5 years if necessary, when properly required to do so by a competent authority in specific cases upon proper authority. . For financial institutions registered in the General and Evidence Register, as well as for the insurance sector the record keeping requirements do not cover account files and business correspondence. • The requirement to ensure that all customer and transaction records and information are available to domestic competent authorities "on a timely basis" as required in Criterion 10.3 should be implemented.
3.6 Monitoring of transactions and relationships (R.11 & 21)	• Insurance and capital market sectors should implement all components in criterion 11.1 on paying special attention to all complex, unusual large transactions or unusual patterns of transactions. • Explicit enforceable provisions for the non-banking financial institutions registered in the Evidence and General Register and the insurance and capital market sectors to examine the backgrounds of such transactions and setting forth their findings in writing should be developed and implemented. • Explicit requirements to keep the findings on complex, unusual large transactions, or unusual transactions available for competent authorities and auditors for at least five years should be implemented. • Sufficient requirements to give special attention to business relationships and transactions with persons from countries which do not or insufficiently apply FATF Recommendations should be developed. • Enforceable requirements in place to ensure that financial institutions are advised of weaknesses in the AML/CFT systems of other countries should be developed. • Specific enforceable requirements for financial institutions to examine the background and purpose of such transactions and to make written findings available to assist competent authorities should be implemented. • Mechanism to apply countermeasures should be established.
3.7 Suspicious transaction reports and other reporting (R.13-14, 19, 25 & SR.IV)	• Romanian authorities should broaden the reporting obligation to also cover money laundering and terrorist financing if the suspicious transaction has been performed (beyond Article 4, Para 2). • Attempted suspicious transactions should be covered. • The reporting obligation should also cover funds suspected to be linked to or related to or to be used for terrorism, terrorist acts or by terrorist organisations. • The "safe harbour" provision in the AML/CFT Law should explicitly include directors, officers and

	employees (permanent and temporary). • The AML/CFT Law should explicitly prohibit the disclosing to a third person of the fact that a report has been made to the NOPMCL. • Techniques of terrorism financing, as well as indicators to assist obliged entities in the identification of reports related to financing of terrorism should be further developed. • General feedback by the NOPCML should be strengthened also targeting specific sectors of high risk of ML/FT that are reluctant to report. • Taking into account the low level of reporting, further indicators and typologies should be developed on terrorism financing. • Specific feedback should be developed on the status of STRs and the outcome of single cases. • To further strengthen the effectiveness of feedback the NOPCML should consider targeting specific feedback to high risk sectors.
3.8 Internal controls, compliance, audit and foreign branches (R.15 & 22)	• General requirement that the compliance officer should be designated at the management level should be provided. • General legal obligation to secure the compliance officers direct and timely access to the relevant data should be provided. • Specific provisions on employee screening should be provided. • Specific requirement on the financial institutions to require the application of AML/CFT measures to foreign branches and subsidiaries beyond customer identification. • Specific requirement to pay special attention to situations where branches and subsidiaries are based in countries that do not or insufficiently apply FATF Recommendations. • Provision should be made that where minimum requirements of the host and home countries differ; branches and subsidiaries in host countries should be required to apply the higher standard to the extent that local (i.e. host country) laws and regulations permit.
3.9 Shell banks (R.18)	
3.10 The supervisory and oversight system - competent authorities and SROs. Role, functions, duties and powers (including sanctions) (R.23, 29, 17 & 25)	• Clear delineation of legal responsibility between the NBR and the NOPCML when is comes to supervision of exchange offices. • More resources should be dedicated to the NOPCML or the distribution of supervisory responsibilities among authorities involved in AML/CFT should be reconsidered.

	• AML/CFT supervision of insurance licensees by their respective supervisory authority need to be developed further. Currently the inspections appear to be purely formal. • Registration or licensing procedures should be established for money remittance service providers. • Supervision of MVT service providers (including those that operate through postal offices and independently) should be strengthened. • Supervision for terrorist financing, especially for exchange offices and MVT service providers should be strengthen. • Complex AML/CFT on-site inspections including the review of policies, procedures and sample testing should be performed, particularly in the insurance sector. • To consider whether to increase fines to have a dissuasive effect. • All supervisory bodies should consider greater utilisation of proportionate sanctions to raise compliance amongst poor performing and high risk sectors. • Romanian authorities should consider a clear channel for publicly communicating all sanctions to increase the dissuasive effect. • Sector specific guidelines should be developed. • Taking into account the low level of reporting, further indicators and typologies should be developed on terrorism financing. • Low level of reporting from professionals and high risk sectors (such as real estate agents and legal and accountancy professions) require more targeted guidelines to raise awareness. • Guidelines should further develop techniques of terrorism financing.
3.11 Money value transfer services (SR.VI)	• Registration or licensing procedures should be established for money remittance service providers. • Deficiencies identified under R.5-11, 13-15 and 21 are equally valid for money or value transfer services. • It should be ensured that on-site controls are being conducted at postal offices. • It should be ensured that on-site controls of MVT operator that has its own network and operate independently are being conducted. • The limited resources of experts for on-site inspections within the NOPCML compared to the number of MVT working offices should be addressed.
4. Preventive Measures – Non-Financial Businesses and Professions	
4.1 Customer due diligence	• Adequate and enforceable measures for linking the

and record-keeping (R.12)	CDD information with transactions performed in casinos should be established. • The 3000 Euros threshold for casinos should be addressed in law, regulation or other enforceable means. • "Dealers" and "any other natural or legal person, for acts and deeds, committed outside the financial-banking system" in article 8 in the AML/CFT Law should be clarified. • The recommendations in the implementation of Recommendation 5 apply equally to DNFBP. • Adequate implementation of Rec.6 (PEPS) should be provided. • Clarification on whether relying on third party to perform elements of the CDD process is allowed for DNFBP. • Provisions for DNFBP to examine the background and purpose of complex, unusual large transactions, or unusual patterns of transactions and setting forth their findings in writing should be implemented. Explicit requirement to keep the finding available for competent authorities and auditors for at least five years should be provided. • Further guidance should be developed for assisting DNFBP to implement an adequate risk based approach and to define an adequate mitigation procedure. • Secondary and implementing regulation should be provided for legal professions under supervision of SRO.
4.2 Suspicious transaction reporting (R.16)	• Requirement to broaden the reporting obligation to also cover money laundering and terrorist financing if the suspicious transaction has been performed (beyond Article 4, letter g in Norms 496/2006) should be provided. • Attempted suspicious transactions should be covered. • All required aspects of terrorism financing should be included in the scope of the reporting requirement. • Improved outreach and guidance on STR needed for all DNFBP and especially for real estate agents and legal and accountancy professionals who are considered to be particularly vulnerable to ML/TF. • Awareness rising of some DNFBP about their vulnerability and/or appearance to be reluctant to report (lawyers, notaries, real estate agents, accountants). • "Safe Harbour" provision should explicitly include directors, officers and employees (permanent and temporary). • Disclosing to a third person that a STR has been filed to the Office should be explicitly prohibited. • Requirement that the compliance officer should be designated at the management level.

	• Obligation to ensure the compliance officer direct and timely access to relevant data. • Provisions on employee screening for lawyers, notaries, accountants and public notaries. • DNFBP should be required to pay special attention to transactions with countries which do not or do not adequately implement the FATF Recommendations.
4.3 Regulation, supervision and monitoring (R.24-25)	• For casinos sufficient measures to prevent criminals /associates from holding or being the beneficial owner of a significant or controlling interest of a casino should be provided. • The integrity and "fit and proper" market entry arrangements for the real estate sector in order to reduce the risk of ML and TF should be enhanced. • Serious considerations should be given to the number and variety of DNFBP controlled and the supervisory resources available to the NOPCML. • Accurate statistics data on supervision by SROs should be developed.
4.4 Other non-financial businesses and professions (R.20)	• Further measures should be taken to reduce cash transactions.
5. Legal Persons and Arrangements & Non-Profit Organisations	
5.1 Legal Persons – Access to beneficial ownership and control information (R.33)	
5.2 Legal Arrangements – Access to beneficial ownership and control information (R.34)	
5.3 Non-profit organisations (SR.VIII)	• Romanian authorities should periodically review the NPOs with the object of assessing terrorist financing vulnerabilities. • Sufficient measures should be in place to ensure that funds or other assets collected by or transferred through NPOs are not diverted to support the activities of terrorists or terrorist organisations. • Effective implementation of the essential criteria VIII.2 needed. • Regular outreach to the sector to discuss scope and methods of abuse of NPOs, emerging trends in TF and new protective measures.
6. National and International Co-operation	
6.1 National co-operation	• In the AML field mechanism of policy coordination of the key stakeholders should be further developed

and coordination (R.31)	• Mechanism for co-operation and co-ordination in place should prove to be effective in ensuring that all necessary co-operation and co-ordination happens in practice. Arrangements for supervision and sanctioning need greater coordination.
6.2 The Conventions and UN Special Resolutions (R.35 & SR.I)	• Effectiveness of the implementing the standards in relation to ML need to be improved. • Effectiveness of implementation of the Palermo, Vienna and TF Conventions need to be improved in some instances, particularly terrorist financing criminalisation and some aspects of the provisional regime. • TF offence should be amended in order to ensure fully cover of the Terrorist Financing Convention. • A precise mechanism for freezing of funds related to terrorist financing should be established.
6.3 Mutual Legal Assistance (R.36-38 & SR.V)	• To ensure that no limitations in relation to the criminalisation of TF offence may have impact on Romania's ability to deliver mutual legal assistance in TF case. • Considerations should be given to establishing an asset forfeiture fund.
6.4 Extradition (R.39, 37 & SR.V)	• To ensure that no limitations in relation to the criminalisation of the TF offence may negatively affect the extradition possibilities.
6.5 Other Forms of Co-operation (R.40 & SR.V)	

TABLE 3: AUTHORITIES' RESPONSE TO THE EVALUATION (IF NECESSARY)

RELEVANT SECTIONS AND PARAGRAPHS	COUNTRY COMMENTS

V. LIST OF ANNEXES

ANNEX I

(Details of all bodies met on the on-site mission - Ministries, other government authorities or bodies, private sector representatives and others)

- National Office for Prevention and Control of Money Laundering (NOPCML)
- Ministry of Justice (MoJ)
  - Administrator of the Register for Associations and Foundations
  - Coordinator of the National Office for Trade Register
- Prosecutor's Office by the High Court of Cassation and Justice – Directorate for Investigating Organised Crime and Terrorism (DIOCT)
- Ministry of Foreign Affairs
- Romanian Intelligence Service (RIS)
- Prosecutor's Office attached to the High Court of Cassation and Justice – National Anticorruption Directorate (NAD)
- Representatives of the Courts
- National Customs Authority
- Border Police
- Ministry of Administration and Interior – General Directorate for Combating Organised Crime, Combating Serious Economic and Financial Criminality Directorate
- Financial Guard
- National Bank of Romania
- Representative of commercial banks
- National Securities Commission
- Representatives from brokers and financial investment companies
- Insurance Supervisory Commission
- Representatives from insurance companies
- Association of Casino Organisers
- Representatives from casinos
- Association of Real Estate Agencies and National Union of Real Estate
- Representatives from real estate agencies
- Romanian Banks Association
- National Union for Public Notaries
- Representatives from public notaries
- National Union of Bars
- Lawyers
- Expert Accountants and Authorised Accountants Body (CECCAR)
- Financial Auditors Chamber
- Representatives from accountants and auditors

ANNEX II

Designated categories of offences based on the FATF Methodology	Offence in domestic legislation
Participation in an organised criminal group and racketeering;	Art. 7 of the Law No. 39/2003 on preventing and combating organised crime; Art. 8 of the Law No. 39 on preventing and combating organised crime
Terrorism, including terrorist financing	Art. 32-36 of the Law No. 535/2004 on preventing and fighting terrorism
Trafficking in human beings and migrant smuggling;	Art. 12-13, 17 of the Law No. 678/2001 on trafficking in human beings
Sexual exploitation, including sexual exploitation of children;	Art. 197-198, 201-202 of the CCR
Illicit trafficking in narcotic drugs and psychotropic substances;	Art. 2 – 4 of the Law No. 143/2000 on preventing and combating illicit trafficking and consumption of drugs and art. 22 of the GEO no. 121/2006 on the legal regime of drugs' precursors
Illicit arms trafficking	Art. 279 of the CCR
Illicit trafficking in stolen and other goods	Art. 221 of the CCR
Corruption and bribery	Art. 254-257 of the CCR; Art. 5-18[5] of the Law No. 78/2000 on preventing, discovering and sanctioning of corruption acts
Fraud	Art. 215-215[1], 302[1] of the CCR
Counterfeiting currency	Art. 282-285[1] of the CCR
Counterfeiting and piracy of products	Art. 297, 313 of the CCR
Environmental crime	Art. 98 of the GEO No. 195/2005 on protection of environment
Murder, grievous bodily injury	Art. 174-179, 182 of the CCR
Kidnapping, illegal restraint and hostage-taking	Art. 189 of the CCR
Robbery or theft;	Art. 208-212 of the CCR
Smuggling	Art. 270-271 of the Customs Code
Extortion	Art. 194 of the CCR

Forgery	Art. 288-294 of the CCR
Piracy;	Art. 212 of the CCR
Insider trading and market manipulation	Art. 279 of the Law No. 294/2004 on capital market

ANNEX III

COMPLIANCE WITH THE SECOND EU AML COUNCIL DIRECTIVE

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	According to Article 8, Para.1 in the AML/CFT Law the following non financial business and professions are subject to the AML/CFT obligations: d) economic agents that develop gambling, activities, selling and purchase of art objects, precious stones and metals, dealers, tourism, services supplying and any other similar activities that imply putting in circulation of values; e) auditors, natural and legal persons giving tax, accounting, or financial and banking advice; e[1]) public notaries, lawyers and other persons exercising independent legal professions, when they assist in planning or executing transactions for their customers concerning the purchase or sale of immovable assets, shares or interests or goodwill elements, managing of financial instruments or other assets of customers, opening or management of bank, savings, accounts or of financial instruments, organisation of contributions necessary for the creation, operation, or management of companies, creation, operation, or management of

	companies, undertakings for collective investment in transferable securities or similar structures or when they act on behalf of and for their clients in any financial or real estate transactions; f) persons with attributions in the privatization process; h) real estate agents; i) State Treasury and the customs authorities; j[1]) associations and foundations; k) any other natural or legal person, for acts and deeds, committed outside the financial-banking system. External accountants, tax advisors, dealers in works of art and auctioneers are covered by the AMLCFT Law. Company service providers were informed to be theoretically covered by letter d): "service supplying and any other similar activities that imply putting in circulation values", but according to the Romanian authorities, there are no company service providers operation in Romania.. The mentioned category is extremely vague and company service providers are not considered by the evaluators to be covered by the AML/CFT Law (apart from auditors, lawyers and notaries who provide this service). .
Conclusion	The AML Law is not fully in compliance with Article 2a of the Second EU AML Council Directive, although several listed subjects and entities go beyond what is required in the Second Directive.
Recommendations and Comments	To comply with Article 2a of the Second EU AML Council Directive Romanian authorities may wish to consider to also adding company service providers to the list of obliged entities.

Articles 3(3) and 3(4): **Identification requirements - Derogation**

Description	By way of derogation from the mandatory requirement for the identification of customers by persons and institutions subject to the Directive, the third paragraph of Article 3 of the EU AML Second Council Directive removes the identification requirement in cases of insurance activities where the periodic premium to be paid does not exceed Euro 1,000 or where a single premium is paid amounting to Euro 2,500 or less. Furthermore, Paragraph 4 of the same Article 3 provides for discretionary identification obligations in respect of pension schemes where relevant insurance policies contain no surrender value clause and may not be used as collateral for a loan. FATF Recommendation 5, in establishing customer

	identification and due diligence, does not provide for any similar derogation. It however provides for a general discretionary application of the identification procedures on a risk sensitive basis. Therefore, in certain circumstances, where there are low risks, countries may allow financial institutions to apply reduced or simplified measures. Indeed, the Interpretative Note to Recommendation 5 quotes the same instances as the EU AML Second Council Directive as examples for the application of simplified or reduced customer due diligence.
Analysis	With respect to insurance business the subject persons have to identify their clients when concluding an insurance contract pursuant to Article 12 in the AML/CFT Law, where the gross amount of the regular premiums or installments in the insurance contract is greater than BGN 2,000 (1,000 Euro) annually or the premium or a single premium payment of more than BGN 5,000 2,500 Euro).
Conclusion	The AML/CFT Law is compliant with the requirement of customer identification.
Recommendations and Comments	

Articles 3(5) and 3(6): **Identification requirements - Casinos**

Description	Paragraph 5 of Article 3 of the EU AML Second Council Directive requires the identification of all casino customers if they purchase or sell gambling chips with a value of Euro 1,000 or more. However, Paragraph 6 of the same article provides that casinos subject to State Supervision shall be deemed in any event to have complied with the identification requirements if they register and identify their customers immediately on entry, regardless of the number of gambling chips purchased. FATF Recommendation 12 applies customer due diligence and record keeping requirements to designated non-financial businesses and professions. In the case of casinos, these requirements are applied when customers engage in financial transactions equal to or above the applicable designated threshold. The Interpretative Note to

	Recommendation 5 establishes the designated threshold at Euro 3,000, irrespective of whether the transaction is carried out in a single operation or in several operations that appear to be linked. Furthermore, in the Methodology Assessment, under the Essential Criteria for Recommendation 12, the FATF defines, by way of example, *financial transactions* in casinos. These include the purchase or cashing in of casino chips or tokens, the opening of accounts, wire transfers and currency exchanges. Identification requirements under the FATF - 40 Recommendations for casinos are likewise applicable to internet casinos.
Analysis	According to Article 9 in the AML/CFT Law casinos are obliged persons and have to fulfil the CDD requirements in the AML/CFT Law. All casinos in Romania are subject to state supervision exercised by the NOPCML. The AML/CFT Law requires the preliminary identification of the customer to provide the client with services or establishing a business relationship with him. Internet casinos are prohibited.
Conclusion	Having adopted procedures for the identification of all customers on entry of the casino, being state supervised, Romania is in compliance with the provisions of article 3 (6) of the Second EU AML Directive.
Recommendations and Comments	

Article 6: Reporting of Suspicious Transactions

Description	Further to the reporting of suspicious transactions paragraph 1 of Article 6 of the EU AML Second Council Directive provides for the reporting obligation to include facts which might be an indication of money laundering. FATF Recommendation 13 places the reporting obligations on suspicion or reasonable grounds for suspicion that funds are the proceeds of a criminal activity.
	Furthermore, paragraph 3 of Article 6 of the EU AML Second Council Directive provides an option for member States to designate an appropriate self-regulatory body (SRB) in the case of notaries and independent legal profession as the authority to be informed of suspicious transactions or facts

	which might be an indication of money laundering. FATF Recommendation 16 imposes the reporting obligation under Recommendation 13 on DNFBP but does not directly provide for an option as to 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 through an SRB.
Analysis	Article 3 in the AML/CFT Law requires subject entities to report immediately to the NOPCML when they suspect that "a transaction which is on the way to be performed has the purpose of money laundering or terrorism financing". The AML Law clearly requires that the reporting obligation is activated only by suspicion of money laundering and the provision does not include obtained information indicating that a person has or may have been engaged in money laundering. The AML Law does not seem to include any fact which might be an indication of money laundering. This is not in line with the EU legislation. Lawyers and notaries report to the NOPCML through an SRB. This is done on the basis of co-operation agreements between NOPCML and both the National Lawyer's Bar and the National Union of Public Notaries.
Conclusion	The reporting obligation does not appear to include facts which might be an indication of money laundering.
Recommendations and Comments	Romania should consider introducing the obligation to extend the reporting obligation to include facts which might be an indication of money laundering.

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	Reporting entities knowing that an operation that is to be carried out has as a purpose money laundering, may carry out the operation without previously announcing the Office, if the transaction must be carried out immediately or if by not performing it, the efforts to trace the beneficiaries of such money laundering suspect operation could be hampered. These persons shall compulsory inform the Office immediately, but no later that 24 hours, about the transaction performed, also specifying the reason why they did not inform the Office, according to the reporting obligation in article 3
Conclusion	Romania complies with Article 7 in the Second EU AML Directive.
Recommendations	

and Comments	

Article 8: **Tipping off**

Description	Article 8(1) of the EU AML Second Council Directive prohibits institutions and persons subject to the obligations under the Directive and their directors and employees from disclosing to the person concerned or to third parties either that an STR or information has been transmitted to the authorities or that a money laundering investigation is being carried out. Furthermore Article 8(2) provides an option for Member States not to apply this prohibition (tipping off) to notaries, independent legal professions, auditors, accountants and tax advisors. FATF Recommendation 14 imposes a similar prohibition on financial institutions, their directors, officers and employees. Recommendation 16 extends this prohibition to all DNFBP. However, the prohibition under Recommendation 14(b) is limited to the transmission of an STR or related information. It does not therefore cover ongoing money laundering investigations. Furthermore, the FATF Recommendations do not provide for an option for certain DNFBP to be exempted

	from the "tipping off". The Interpretative Note to Recommendation 14 exempts tipping off only where such DNFBP seek to dissuade a client from engaging in an illegal activity. The AML/CFT Law does not explicitly prohibit the disclosing to a third person of the fact that a report has been made to the NOPMCL.
Analysis	Article 18, Para. 2 of the AML/CFT Law prohibits the reporting entity as well as their employees to transmit the information related to money laundering and terrorism financing, except as provided by the law, and to warn the customer of the STR sent to the NOPCML. The AML/CFT Law does not explicitly prohibit the disclosing to a third person of the fact that a report has been made to the NOPMCL. The prohibition under Article 18 is not considered to cover the information that a money laundering investigation is being carried out. The AML/CFT Law does not provide for an option not to apply this prohibition (tipping off) to notaries, independent legal professions, auditors, accountants and tax advisors.
Conclusion	Although the AML/CFT Law addresses the "tipping off", the provision is not fully in compliance with Article 8 of the Second EU AML Directive.
Recommendations and Comments	Romanian authorities may wish to consider that the "tipping off" be extended to explicitly prohibit the disclosing to a third person of the fact that a report has been made to the NOPMCL. Furthermore the Russian Federation authorities should consider an explicit prohibition on the disclosure of information which reveals that a money laundering investigation is being carried out. The Romanian authorities should also consider providing an option not to apply this prohibition (tipping off) to notaries, independent legal professions, auditors, accountants and tax advisors.

Article 10: **Reporting by Supervisory Authorities**

Description	Article 10 of the EU AML Second Council Directive imposes an obligation on supervisory authorities to inform the authorities responsible for combating money laundering if, in the course of their inspections carried out in the institutions or

	persons subject to the Directive, or in any other way, such supervisory authorities discover facts that could constitute evidence of money laundering. The Directive further requires the extension of this obligation to supervisory bodies that oversee the stock, foreign exchange and financial derivatives markets. In providing for the regulation and supervision of financial institutions and DNFBP in Recommendation 23 and in providing for institutional arrangements (Recommendations 26 –32) the FATF-40 do not provide for an obligation on supervisory authorities to report findings of suspicious activities in the course of their supervisory examinations.
Analysis	The AML/CFT Law requires that if information obtained by *inter alia* financial supervisory authorities indicates suspicions of money laundering the NOPCML shall be informed immediately.
Conclusion	The AML Law is compliant with the Directive.
Recommendations and Comments	

Article 12: **Extension of AML obligations**

Description	Article 12 of the EU AML Second Council Directive provides for a mandatory obligation on Member States to ensure that the application of the provisions of the Directive are extended, in whole or in part, to professions and categories of undertakings, other than the institutions and persons listed in Article 2a, that are particularly likely to be used for money laundering. FATF Recommendation 20 imposes a similar obligation but in a non-mandatory way by requiring countries to consider applying the Recommendations to categories of businesses or professions other than DNFBP.
Analysis	The Romanian authorities have considered this provision of the Directive by applying the AML Law also to privatization bodies; State Treasury and the customs authorities; associations and foundations and many others outside the scope of reporting entities in the Second Directive.
Conclusion	The AML/CFT Law is compliant with Article 12 in the Second EU AML Directive.
Recommendations and Comments	