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(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

EXECUTIVE SUMMARY

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

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1. Background information

1. 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.

2. 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.

3. 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.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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

9. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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.

15. 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).

16. 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.

17. 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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

30. 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.

31. 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.

32. 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.

33. 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.

34. 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.

35. 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.

36. 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 Supervision 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 NBT jointly with the NOPCML. Supervision of exchange offices lack, however, a clear delineation of legal responsibility between the NBR and the NOPCML.

37. 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.

38. 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 (DNFBP)

39. 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".

40. 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.

41. 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.

42. 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.

43. 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.

44. 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.

45. 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.

46. 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.

47. 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

48. The ownership of shares is 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.

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

50. 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.

51. 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.

52. 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

53. 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.

54. 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.

55. 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

56. 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.

TABLE 1: RATINGS OF COMPLIANCE WITH FATF RECOMMENDATIONS

Forty Recommendations	Rating	Summary of factors underlying rating[2]
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 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

[2] These factors are only required to be set out when the rating is less than Compliant.

		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 licencees 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		• NOPCML is understaffed with on-site supervisors in comparison to the immense 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 further 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		• 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.